STATEMENT OF EXCEPTIONAL CIRCUMSTANCES IN RELATION TO A SECTION 177E APPLICATION FOR SUBSTITUTE CONSENT BY MARK ROCHFORD APRIL 2024

William J. Smyth FIEI .

114 WESBURY, STILLORGAN, CO. DUBLIN A94 NN99

1. Introduction

The Rochford family, including Mr. Mark Rochford (the Applicant), operate a dairy farm at Forest Lower, Mountmellick, Co. Laois. This has been the culmination of combination of a number of smaller adjoining farms over years, and required the centralisation of milking and animal welfare facilities. Certain elements of farm infrastructure have been built without the benefit of planning permission over the last 11 years or so, some thought exempt and some required for emergency animal welfare as will be elaborated on below.

All references to 'Sections' below are to the legislative sections of the Planning & Development Act 2000, as amended.

In 2023, following pre-planning consultations with Laois County Council, an application for retention under Section 34 was made but was invalidated under the provisions of Section 34(12) on the basis that the development would have require Stage 2 Appropriate Assessment if applied for pre-development, i.e. an NIS would have been required pre-development, due to the development's proximity to the Barrow-Nore SAC (Site Code 002162).

This now leaves the recently revised provisions of Section 177 as the only and appropriate route to regularise this development in Planning Legislation. Following the repeal of Section 177C, the Leave to Apply for Substitute Consent provisions, in December 2023, potential applicants for Substitute Consent must now apply in the first instance with the substantive application directly to An Bord Pleanala under Section 177E. This is what the applicant is now doing.

The application documents and notices describe the development for regularisation in the following terms:

> *The development consists of historic development comprising of 2 no Cubicle sheds, total floor area 3770m² (Cow Welfare Units), associated concrete feed passages, total area 1485m². Slurry Lagoon, total capacity 4095m³ (Sealed Effluent Storage). Silage Pit, total floor area 1180m² (Winter Feed Storage), accompanying Concrete Apron, total floor area 545m², adjoining concrete yards, total floor area 1263m² and associated site works.*

While the matter of Exceptional Circumstances was historically ventilated and decided upon through the Section 177C process, caselaw and corrective legislation in 2019 then relegated the Section 177C process to a 'provisional' gateway status (now repealed), with the exceptional circumstances now considered during the substantive Section 177E application and subject to public consultation.

This latter requirement is an integral part of the slimmed down Substitute Consent process (post December 2023); it is only with a finding that such circumstances exist that the development may be consented to retrospectively. To that end, this Statement of Exceptional Circumstances is being submitted in order to inform the public consultation process and assessment by the Board of the Exceptional Circumstances which, it is submitted, applies to this development.

The site planning history and the exceptional circumstances grounds for the Section 177E Substitute Consent application are now examined below. The development the subject of this application is set out in the Site Layout Map (Appendix I).

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2. Planning History

(i) Initial Development

Over many years, several adjoining small farms have been amalgamated to form one dairy farming unit by which economies of scale can be achieved. Over time, this required the centralisation of existing facilities into a central 'management' area. In doing so, the management of farm slurry/manure and animal welfare are two of the key concerns in operating a professional dairy business.

Around 2013, a new centralised slurry pit was constructed replacing several small pits present on the constituent farms. This was built to modern Dept. of Agriculture standards, see Contractors Certificate of Ground Prep & Leak Tightness for Lined Slurry Lagoon (Appendix II). Additional works followed included a slatted shed and concrete slabs. The Applicant believed that this development, being by way of replacement (centralisation) of existing development, was within the limits of exempt development.

(ii) 2017 Application

In May 2017, the Applicant sought permission for development at the site for the following, see 17/224 Application Form/Newspaper Notice (Appendix III):

> *Construct a cubicle shed; construct a cubicle shed adjacent to existing unroofed feed area/standoff yard; construct an extension to existing milking parlour collection yard; construct 2 no. concrete aprons to be used as silage storage areas; all associated siteworks.*

There was no attempt to in any way hide the development to date, and, in the course of inspection of the site, the Planning Authority noted the development undertaken prior to this application. The Planning Authority sought an NIS from the Applicant by way of a Further information Request on 22nd June 2017, see 17/224 Further Information Request (Appendix IV).

In an Advice Note within this request, these already existing elements of the existing development were expressly identified and clarity sought on their status. It was stated that one aspect of the development (existing unroofed feed yard) was beyond the size for exempt development, and that particulars within the documents submitted clearly showed an existing slatted shed and associated underground tanks which had not been included for retention. Clarification of the planning status of these works was requested; it was stated that the Planning Authority could not permit further development until these elements were regularised. A form of an NIS was submitted as the FI response, see 17/224 NIS submitted as FI response (Appendix V).

In a letter from Laois County Council of 27th October 2017 (Appendix VI), the Planning Authority stated that the NIS failed to reasonable rule out adverse impacts on the adjacent SAC and so Stage 2 AA was required – this is legally confusing as an NIS for the purposes of Stage 2 had been asked for in FI and supplied in response. With all due respects to the NIS submitted, what was examined in that document was the proposed development and not the historic development whose status the Planning Authority had queried. No Planner's Report is on file regarding this assessment which is unhelpful.

However, the Planning Authority appears to have inferred that the NIS somehow included the historic development and that the Planning Authority's assessment covered the historic development. However, it is worth noting that the NIS did not include specific details of the historic development or any mitigations associated with that development; these are included in the rNIS included with this

application. Consequently, it is submitted that the NIS submitted and Planning Authority assessment in 17/224 is of little value in assessing this Section 177E application as they actually deal with different development.

In the letter of 27th October, the Applicant was directed to apply for Substitute Consent to An Bord Pleanala. While this may have been the result had the correct assessment been carried out, it is respectfully submitted that the Applicant should have been directed to first apply for retention for the development to date at that point with Stage 1 Screening for AA and made a further assessment based on the correct details. This is provided for in Section 34(12) in that it is retention with NIS which is precluded from assessment, not Stage 1 Screening for AA. However, in 2017, many standard design measures were looked on as mitigations and the likely outturn of such a Section 34 retention application process would almost certainly have been a requirement for Stage 2 AA with NIS and preclusion from assessment under the Section 34(12) provisions.

Unfortunately, an emergency had occurred during the processing of 17/224 in that the farm herd was issued with a Restriction Notice on 3rd July 2017 (Appendix VII) which contained a raft of restrictive requirements as detailed in the notice. The Applicant took the view that these mandatory requirements necessitated animal welfare management measures which could only be achieved by the completion of the animal welfare facilities sought for in 17/224 and these works were undertaken then. Thus, the works requiring regularisation had now increased.

(iii) Standard Design Measures

It is worth noting that this farm continued to be run to the highest management standards with the development designed to deal with expected volumes of manure/slurry and its use within the landholding, see letter from Dempsey Agri 20th May 2023 submitted separately with this application. Thus, the structures were designed to best practice with appropriate collection provisions and drainage.

On 15th June 2023, in the matter of Eco Advocacy v. An Bord Pleanala (Case C-721/21), The European Court of Justice found that standard design measures could be taken into account in Stage 1 Screening for AA, where previously they had been regarded as being mitigation measures, see attached summary note from Eco Advocacy v. An Bord Pleanala (Fieldfisher) (Appendix VIII) from which the following extract is taken.

> *On the test for mitigation measures point, the CJEU found that where measures are incorporated into the design of a project not with the aim of reducing the negative effects of that project on the site concerned, but as standard features required for all projects of the same type, those elements cannot be regarded as indicative of probable significant harm to that site*

This ECJ decision is a gamechanger for many developments, particularly where engineered works are involved. Implicit is that the assessment of many projects historically resulted in Stage 2 AA requirements which would not under the caselaw post ECJ C-721/21. On this basis, the Applicant again approached Laois County Council with a view to potentially applying for retention under Section 34 with a Stage 1 Screening for AA which relied on standard design features; in other words, to test whether there actually was an AA offence present under the new caselaw.

As was previously highlighted above, the 2017 assessment was not actually on the then existing development and could then not have had regard to standard design features in that they were to be treated as mitigations at that time. The Applicant reasonably believed that this new caselaw would relieve his development of the alleged AA offence.

In a pre-planning meeting, the view of the Planning Authority was that an application could be accepted and a Section 34 application for retention was submitted on 28th November 2023, see 23/60504 Cover Letter and Application form (Appendix IX). While it doesn't appear on the Planning Authority website, a Stage 1 Screening for AA (Appendix X) was submitted with the application per the cover letter. Unfortunately, this application was ultimately declined on 24th January 2024 on the basis of requiring Stage 2 AA and the provisions of Section 34(12), see Laois County Council Letter 31st January 2024 (Appendix XI).

Unfortunately, again there is no Planner's Report to show how the 2023 application was assessed to conclude that Stage 2 AA was required. This then has brought the Applicant to the current application.

3. Application for Substitute Consent

Thus, we now arrive at the current application for Substitute Consent under Section 177E with remedial Natura Impact Statement. This application has been submitted directly by JK Design to An Bord Pleanala per the legislative provisions and includes full best practice AA documentation by Kingfisher Environmental Consultants, who are highly experienced in preparation of such documentation to current caselaw and legislative provisions.

The remedial NIS is not duplicated here as it is a stand-alone integral part of this application, and is taken as read for the purposes of this Statement of Exceptional Circumstances. The application covers all works requiring authorisation on the site, as was contained in 23/60504, and seeks retrospective consent and the use of these structures in perpetuity.

The AA documentation first goes through Stage 1 Screening for AA and screens in the nearby SAC due to uncertainty without mitigation, and then embarks on the rNIS. There is regard taken to the separation distance and the riparian zone present between the river (SAC) and the development works the subject of the application and rules out the potential for direct impact.

In assessing the potential for indirect impacts, the method and best practice standard of construction is noted, including collecting drainage and slurry management practices.

The rNIS is detailed, does not contain any lacunae, and arrives at a conclusion compatible with *Kelly v An Bord Pleanala* [2014] IEHC 400 in stating:

> *The rNIS findings and conclusions remove all reasonable scientific doubt as to the effects that the works carried out may have had or will have on Natura 2000 sites. Therefore, on the basis of objective scientific and factual information pertaining to the site and the existing agricultural development works, the development either individually or in combination with other plans/projects has not and will not have any significant effects on a European site – in particular the River Barrow and River Nore SAC.*

4. Exceptional Circumstances Considerations

Section 177D(2) sets out a list of considerations to assist An Bord Pleanala as to whether or not exceptional circumstances are present. The Applicant has entered the Section 34 planning process twice to date, albeit the first was deemed too late, and previous development was deemed beyond the scope of exempt development classes having been exceeded. It is submitted that the 2017 application was naïve with regard to the complexity of Habitats legislation and, in any event, did not reflect the management facilities and mitigations already in place on the site.

While the Applicant knowingly added to the totality of development needing authorisation in late 2017, it was done under emergency conditions (herd restrictions/quarantine) and was more by way of adding to existing capacity than beginning some new type of activity with unknown potential for impact/emissions. These works were also further distant from the SAC than the earlier works or indeed many historic structures on the land.

The farm has always been professionally managed and the works the subject of this application were designed as far as possible and built to best practice (Dept. of Agriculture standards). The farm operates under a nutrient management plan, and animal welfare is clearly taken very seriously.

Livestock has been the traditional use of all of the constituent smaller landholdings now bundled into the current single farm unit and the nature of emissions and natural land drainage paths have always been present. Moreover, it is submitted that these better farming practices facilitated by the development the subject of this application are clearly positive improvements on traditional methods in terms of collection and management of farmyard byproduct (manure/slurry) and general animal management.

Accordingly, it is submitted that:

(a) regularisation of this development would not materially circumvent the purpose or objectives of the Habitats Directives in respect of the River Barrow and River Nore SAC;
(b) the applicant could reasonably have thought that the initial development was exempt by way of replacement etc;
(c) certain of the development was subsequently carried out under emergency conditions to comply with mandatory obligations, noting the status of the initial development had only been established by the time the emergency occurred and the more distant location of this further development;
(d) the ability to carry out the necessary assessment of the environmental impacts of the development has not been materially impaired;
(e) the ability of the public to participate in such assessment has not been materially impaired, noting the lack of third-party submissions in 17/224 and 23/60504;
(f) the actual or likely significant effects on the integrity of a Natura site (none) resulting from the carrying on or continuation of the development can be discounted to the appropriate *Kelly* threshold;
(g) At no point did the Planning Authority initiate any form of enforcement proceedings in respect of the development;
(h) even as late as Q4 2023, at pre-planning stage, the Planning Authority was of the opinion that Stage 1 Screening for AA might have sufficed on current caselaw to support a successful Section 34 application;
(i) that there are no remediation measures required to the Natura site.

On the basis of the above, the Board is respectfully requested to reach a finding that Exceptional Circumstances exist in this case and that consideration of the regularisation of the development by way of the submitted application for Substitute Consent is appropriate.

William Smyth FIEI **30th April 2024**

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Appendix II	**Contractors Certificate of Ground Prep & Leak Tightness for Lined Slurry Lagoon;**
Appendix III	**17/224 Application Form/Newspaper Notice;**
Appendix IV	**17/224 Further Information Request 22nd June 2017;**
Appendix V	**17/224 NIS submitted as FI Response;**
Appendix VI	**Laois County Council Letter 27th October 2017;**
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Appendix VIII	**Eco Advocacy v. An Bord Pleanala (Fieldfisher);**
Appendix IX	**23/60504 Cover Letter and Application form;**
Appendix X	**23/60504 Stage 1 Screening for AA;**
Appendix XI	**23/60504 Letter of Invalidation 31st January 2024.**

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Appendix I
Site Layout Map

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BUILDING LEGEND

01 ENTRANCE
02 MILK STORAGE & COLLECTION
03 CALVING SHED / STORAGE
04 MILKING PARLOUR
05 COW FEED / CUBICLE SHED
06 SILAGE PIT
07 SLURRY LAGOON
08 CUBICLE SHED (EXEMPT)
09 HAYBARN (HAY / STRAW STORE)
10 OUTBUILDINGS
11 WATER / WASH / MEAL TANKS
12 COW COLLECTING YARD
13 HARDCORE YARD
14 CONCRETE YARD
15 ACCESS ROADS
16 AGRICULTURAL GRASSLAND

SURFACES LEGEND

- EXISTING BUILDINGS
- CUBICLE SHEDS
- SLURRY LAGOON
- SILAGE PIT
- CONCRETE APRON
- CONCRETE FEED PASSAGE
- CONCRETE YARD
- EXISTING INTERNAL ACCESS ROADS
- AGRICULTURAL PASTURE
- EXISTING FENCELINE
- EXISTING GATES
- EXISTING SLATS / CHANNEL
- EXISTING DRAINS
- RAINWATER DRAINAGE
- EFFLUENT DRAINAGE

Revision:	Date:	Comments
2		
1		

JK Design
Architectural Drawing, Design and Planning
Tullamoy, Stradbally, Co. Laois
Mobile: 086 3640366
E-mail: j.kilbride@jkdesign.ie

title:-	PLANNING DRAWING
client:-	MARK ROCHFORD
scale:-	1:500 ON A1
drawn:-	db jk
date:-	30-04-2024
drawing No:-	2024-585-003

Job: EXISTING DEVELOPMENT AT FOREST LOWER, MOUNTMELLICK, Co. LAOIS

AREA OF SITE 3.46 ACRE / 1.4 HA

DRAWING FOR PLANNING PURPOSES ONLY

SITE LAYOUT PLAN

Appendix II
Contractors Certificate of Ground Prep & Leak Tightness for Lined Slurry Lagoon

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LINING TECHNOLOGY

Unit 1, Riverstown Industrial Estate
Tramore, Co. Waterford
T: 00353 (51) 393 080
F: 00353 (51) 393 108
E: info@liningtech.ie

Contractors Certificate of Ground Preparation and Leak Tightness for Geomembrane-lined Slurry/Effluent Stores.

Name of Client: Mark Rochford

Address of Client: Lower Forest,
Mountmellick,
Co. Laois.

I hereby certify that the excavation and preparation work performed is of the required standard to at least meet the requirements of the Department of Agriculture and Food Specification S126, 'Minimum Specification for Geomembrane-Lined Slurry/Effluent Stores, and Ancillary Works'.

Name of contractor preparing site: Liam Gorman Plant Hire Ltd.

Address of contractor preparing site: Clonaghdoo,
Geashill,
Co. Offaly.

Date site certified ready for lining: 10th October 2013

Name & position of person certifying preparation Work: Barry Griffin
Managing Director

Signature of person Certifying Preparation Work: _____

It is further certified that the Geomembrane-lining has been installed to, at least, the standard of specification S126, and is hereby certified as leak tight. It is also certified that all safety features have been installed.

Date of Certification: 15th November 2013

Name & Position of Person Certifying Lining: Barry Griffin
Managing Director

Company Stamp of Lining Contractor:

LINING TECHNOLOGY
Unit 1, Riverstown Industrial Estate
Tramore, Co. Waterford
T: 00353 (51) 393 080
F: 00353 (51) 393 108
E: info@liningtech.ie

Appendix III
17/224 Application Form & Site Notice

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PLANNING APPLICATION FORM

1. Name of Relevant Planning Authority

LAOIS COUNTY COUNCIL

2. Location of Proposed Development:

Postal address or townland or location (as may best identify the land or structure in question)	Lower Forest. Mountmellick. Co. Laois.
Ordnance Survey Map Ref No. (and the grid reference where available)[1]	644715 E 709623 N

3. Type of Planning Permission (please tick appropriate box)

[✓] Permission
[ ] Permission for retention
[ ] Outline Permission
[ ] Permission consequent on Grant of Outline Permission

4. Where planning permission is consequent on grant of outline permission:

Outline Permission Register Reference Number: N/A.

Date of grant of Outline Permission: ____/____/____

5. Applicant[2]:

Name(s)	MARK Rochford.
	Contact details to be supplied at the end of this form. (Question: 24)

6. Where Applicant is a Company (registered under the Companies Acts):

Name(s) of company director(s)	N/A.
Registered Address (of company)	
Company Registration No.	

7. Person/Agent acting on behalf of the Applicant (if any):

Name	JAMES Rochford.
	Address to be supplied at the end of this form (Question 25)

8. Person responsible for preparation of Drawings and Plans[3]:

Name	JAMES Rochford BA BAI C Eng MIEI
Firm/Company	B & J Rochford.

9. Description of Proposed Development:

Brief description of nature and extent of development[4]	1. Construct A Cubicle shed. 2. Construct A cubicle shed Adjacent to existing unroofed feed Area/standoff yard. 3. Construct An extension to existing milking Parlour collection yard. 4. Construct 2 no Concrete Aprons to be used As Silage Storage Areas. 5. All Associated site works.

10. Legal Interest of Applicant in the land or Structure:

Please tick appropriate box.	A. Owner ✓	B. Occupier
	C. Other	
Where legal interest is 'Other', please expand further on your interest in the land or structure		
If you are not the legal owner, please state the name and address of the owner and supply a letter from the owner of consent to make the application as listed in the accompanying documentation		

11. Site Area:

Area of site to which the application relates in hectares	1.71 Ha.

12. Where the application relates to a building or buildings:

Gross floor space[5] of any existing building(s) in m^2	336m²
Gross floor space of proposed works in m^2	2537m²
Gross floor space of work to be retained in m^2 (if appropriate)	—
Gross floor space of any demolition in m^2 (if appropriate)	—

13. In the case of mixed development (e.g. residential, commercial, industrial, etc), please provide breakdown of the different classes of development and breakdown of the gross floor area of each class of development:

Class of Development	Gross floor area in m^2
CLASS 3, Agricultural	1. 532 m2
2no sheds.	2. 2,200 m2
1no. extension to collecting yard.	3. 132 m2
2no concrete Aprons.	4. 1,748 m2

14. In the case of residential development please provide breakdown of residential mix:

N/A.

Number of	Studio	1 Bed	2 Bed	3 Bed	4 Bed	4+ Bed	Total
Houses							
Apartments							
Number of carparking spaces to be provided							Total

15. Where the application refers to a material change of use of any land or structure or the retention of such a material change of use:

Existing use[6] (or previous use where retention permission is sought)	FARM LAND.
Proposed use (or use it is proposed to retain)	Agricultural Buildings.
Nature and extent of any such proposed use (or use it is proposed to retain)	CATTLE housing.

16. Social and Affordable Housing

Please tick appropriate box	Yes	No
Is the application an application for permission for development to which Part V of the Planning and Development Act 2000 as amended, applies?[7]		X
If the answer to the above question is "yes" and the development is not exempt (see below), you must specify, as part of your application, the manner in which you propose to comply with Section 96 of Part V of the Act. If the answer to the above question is "yes" but you consider the development to be exempt by virtue of section 97 of the Planning and Development Act 2000[8],as amended, a copy of the Certificate of Exemption under section 97 must be submitted (or, where an application for a certificate of exemption has been made but has not yet been decided, a copy of the application should be submitted). If the answer to the above question is "no" by virtue of section 96(14) of the Planning and Development Act 2000 as amended details indicating the basis on which section 96(14) is considered to apply to the development should be submitted.		

17. Development Details

Please tick appropriate box	Yes	No
Does the proposed development consist of work to a protected structure and/or its curtilage or proposed protected structure and/or its curtilage?		X
Does the proposed development consist of work to the exterior of a structure which is located within an architectural conservation area (ACA)?		X
Does the application relate to development which affects or is close to a monument or place recorded under section 12 of the National Monuments (Amendment) Act, 1994[10]		X
Does the proposed development require the preparation of an Environmental Impact Statement[11]?		X
Does the application relate to work within or close to a European Site (under S.I. No. 94 of 1997) or a Natural Heritage Area[12]?		X
Does the application relate to a development which comprises or is for the purposes of an activity requiring an integrated pollution prevention and control licence?		X
Does the application relate to a development which comprises or is for the purposes of an activity requiring a waste licence?		X
Do the Major Accident Regulations apply to the proposed development?		X
Does the application relate to a development in a Strategic Development Zone?		X
Does the proposed development involve the demolition of any structure?		X

18. Site History

Details regarding site history (if known)

Has the site in question ever, to your knowledge, been flooded?

Yes [ ] No [X]

If yes, please give details e.g. year, extent.

Are you aware of previous uses of the site e.g. dumping or quarrying?

Yes [ ] No [X]

If yes please give details

Are you aware of any valid planning applications previously made in respect of this land structure?

Yes [ ] No [X]

If yes, please state planning reference number(s) and the date(s) of receipt of the planning application(s) by the planning authority if known:

Reference No: _____ Date:,_____

If a valid application has been made in respect of this land or structure in the 6 months prior to the submission of this application, then the site notice must be on a yellow background in accordance with Article 19(4) of the Planning and Development Regulations 2001 as amended.

Is the site of the proposal subject to a current appeal to An Bord Pleanala in respect of a similar development[13]?

Yes [ ] No [X]

An Bord Pleanala Reference No. _____

19. Pre-application Consultation

Has a pre-application consultation taken place in relation to the proposed development[14]?

Yes [ ] No [X]

If yes, please give details:

Reference No. (if any): _____

Date(s) of consultation: _____/_____/_____

Persons involved: _____

_____

20. Services

Proposed Source of Water Supply

Existing connection [ ] New connection [ ]

Public Mains [ ] Group Water Scheme [ ] Private Well [X]

Other (Please specify):

_____

Name of Group Water Scheme (where applicable)

_____

Proposed Wastewater Management/Treatment

Existing [ ] New [ ] N/A

Public Sewer [ ] Conventional septic tank system [ ]

Other on-site treatment system [ ] Please specify

_____

Proposed Surface Water Disposal

Public Sewer/Drain [ ] Soakpit [ ]

Watercourse [X] Other [ ] Please specify _____

21. Details of Public Notice

Approved newspaper[15] in which notice was published	Leinster express.
Date of publication	25th April 2017.
Date on which site notice was erected	25th April 2017.

22. Application Fee

Fee Payable	€760-00.
Basis of Calculation	1. Shed class 3 max 300. 2. Sheed class 3 max 300. 3. collecting yard. 80. 4. silage Aprons 80.

23. I hereby declare that, to the best of my knowledge and belief, the information given in this form is correct and accurate and fully compliant with the Planning & Development Acts 2000 to 2014 and the Regulations made there-under:

Signed (Applicant or Agent as appropriate)	Agent.
Date	28/4/17.

LAOIS COUNTY COUNCIL

SUPPLEMENTARY APPLICATION FORM – A

TO BE COMPLETED FOR ALL COMMERCIAL AND INDUSTRIAL DEVELOPMENTS

1. Specify precisely the nature of the proposed development N/A.

2. Specify type of machinery, finished and unfinished products

3. Hours of operation and number of employees

4. Indicate accurately storage and parking areas

5. Submit full details of all signage

6. Submit detailed landscaping and screening proposals

LAOIS COUNTY COUNCIL

SUPPLEMENTARY APPLICATION FORM – B
TO BE COMPLETED FOR ALL AGRICULTURAL DEVELOPMENTS

1. Distance of proposed development from the public road: ....94..... Metres

2. State proposed means of waste collection

Dungstead & Seepage Tank	☐	.....Cu.M. (M³)
Underslat Tanks	☐	..... Cu.M. (M³)
Separate Slurry Tank/Lagoon	☑	.....5176.....Cu.M. (M³) Existing.
Separate Silage Effluent Tank	☐	.....Cu.M. (M³)

3. State size of concrete yard area associated with proposed development
...1000..Sq. M.

4. State the Means of Collection of soiled yard water to Existing Lagoon 5176 m3.

Dungstead & Seepage Tank	☐	.....Cu.M. (M³)
Underslat Slurry Tanks	☐	..... Cu.M. (M³)
Separate soiled run-off Tank	☐	.....Cu.M. (M³)

5. State the means of collection of dairy or milking parlour washings

Dungstead & Seepage Tank	☐	.....Cu.M. (M³)
Underslat SlurryTanks	☑	.....300..... Cu.M. (M³) Existing.
Solied Water Tank	☐	.....Cu.M. (M³)
Separate Dairy Washing Tank	☐	.....Cu.M. (M³)

6. State the means of disposal of soiled water/dungstead seepage:

Own Tanker	☑
Contract Tanker	☑
Automatic Pump	☐

7. State maximum number and type of animals to be accommodated in the proposed development:

Dairy Cows	No: 275	Beef Cattle	No: 0
Young Cattle	No: 88	Calves	No: 0
Fattening Pigs	No: 0	Weaners	No: 0

SUPPLEMENTARY APPLICATION FORM – B CONTD.
AGRICULTURAL DEVELOPMENTS

Farrowing Pigs:	No: 0	Dry Sows	No: 0
Gilts	No: 0	Boars	No: 0

8. State proposed Feeding Method:

Self Feed	☐
Easy Feed	☑

9. If the proposed development includes pig housing, state whether dry feed or liquid feed is to be used:

Dry Feed	☐ N/A.
Liquid Feed	☐

LAOIS COUNTY COUNCIL[1]

SITE NOTICE

I, MARK ROCHFORD.[2], intend to apply for permission/~~retention permission/outline permission/permission consequent on the grant of outline permission (Ref. No. of outline permission)~~[3] for development at this site

Lower Forest, Mountmellick.

[4]

The development will consist/~~consists~~[5] of (1) Construct A cubicle Shed. (2) Construct A cubicle Shed Adjacent to existing unroofed feed Area/stand off yard. (3) Construct An extension to existing milking parlour collection y'ard. (4) Construct 2NO concrete Aprons to be used As silage storage Areas (5) All Associated site Works.

The planning application may be inspected, or purchased at a fee not exceeding the reasonable cost of making a copy, at the offices of the planning authority during its public opening hours.

A submission or observation in relation to the application may be made in writing to the planning authority on payment of the prescribed fee,€20, within the period of 5 weeks beginning on the date of receipt by the authority of the application, and such submissions or observations will be considered by the planning authority in making a decision on the application. The planning authority may grant permission subject to or without conditions, or may refuse to grant permission.

SIGNED: James Rochford. (Agent). of[7] B&S Rochford. 19 Henry st Kenmare Co. Kerry 064-6640841.
James Rochford BA BAI CEng MIEI.

DATE OF ERECTION OF SITE NOTICE 25th April 2017.[8]

Appendix IV
17/224 Further Information Request 22nd June 2017

William Smyth BE, LLB(Hons), MBA, Dip. EIA Mgmt, Adv. Dip. Pl. & Env. Law, Eur. Ing., C.Eng FIEI

strategicplanning@mail.com +353-89-4598915

REGISTERED POST

Mark Rochford
c/o B & J Rochford
19 Henry Street,
Kenmare,
Co. Kerry

22nd June, 2017

Re: Planning Reference 17/224 – (1) construct a cubicle shed. (2) Construct a cubicle shed adjacent to existing unroofed fed area/stand off yard. (3) Construct an extension to existing milking parlour collection yard. (4) Construct 2nd concrete aprons to be used as silage storage areas. (5) All associated site works.

A Chara,

With reference to the above application I am to inform you that the information submitted is not adequate to enable a decision to be made.

In accordance with the provisions of Section 177T(5) of the Planning & Development Act 2000 as amended, you are hereby requested to carry out a Natura Impact Statement for the proposed development. This report should be prepared by a person or persons with the requisite ecological expertise and experience, supplementary as necessary by additional expertise and experience (e.g. geology, hydrology, civil engineering or planning), and produced in a scientifically complete, professional and objective manner. You are further advised that the N.I.S must include all information prescribed by regulations under Section 177AD of the Planning & Development Act 2000 as amended.

Furthermore you are hereby requested, not more than 2 weeks before submitting the N.I.S, to publish a notice of your intention to submit the N.I.S. in at least one newspaper and the notice should contain as a heading the name of the planning authority and shall state the following:-

(a) the name of the applicant;
(b) the location, townland or postal address of the land or structure to which the application relates (as may be appropriate);

(c) the date of the planning application and its reference number in the register;

(d) the nature and extent of the development;

(e) that, following a requirement of the planning authority, an N.I.S. will be submitted to the planning authority in connection with the application;

(f) that the N.I.S. will be available for inspection or purchase, at a fee not exceeding the reasonable cost of making a copy, during office hours at the offices of the authority and

(g) that, subject to the payment of any relevant fee, a submission or observation in relation to the N.I.S. may be made in writing to the planning authority within 5 weeks of the date of receipt by the authority of the N.I.S.

An N.I.S submitted under article 177T(5) shall be accompanied by a copy of the relevant page of the newspaper in which a notice under sub-article (1) was published.

Please submit 10 copies and 1 electronic copy of the N.I.S within 6 months of receipt of this notice unless a further period for compliance with this notice has been agreed in writing with the planning authority.

Advice Note

Having regard to the scale of the existing unroofed feed yard it is noted that this structure exceeds the exempted development provisions of Class 8 of Part 3, Exempted Development Rural, Schedule 2 of the Planning and Development Act 2000 (as amended) and therefore does not represent exempted development. The Planning Authority also notes that drawings of the existing slatted shed and tanks have been submitted but no retention for same has been sought. The reason for submission of such drawings is therefore unclear. The applicant is therefore requested to clarify the planning status of the existing unroofed feed area and slatted shed with associated underground tanks.

In responding to this item the applicant should note that the Planning Authority will not be in a position to permit any further development on the subject site in the absence of the regularization of the planning status of the existing development.

Yours faithfully,

ADMINISTRATIVE OFFICER,
PLANNING.

Appendix V
17/224 NIS submitted as FI Response

William Smyth BE, LLB(Hons), MBA, Dip. EIA Mgmt, Adv. Dip. Pl. & Env. Law, Eur. Ing., C.Eng FIEI

strategicplanning@mail.com +353-89-4598915

FOREST LOWER DAIRY FARM DEVELOPMENT

NATURA IMPACT STATEMENT

October 2017

Prepared for:

B & J Rochford

By

wetland surveys ireland

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Document Control Sheet

Client	B & J Rochford
Project Title	Forest Lower Dairy Farm Developments
Document Title	Natura Impact Statement
Project Number	WS0539
File Name	ForestLowerNIS_004

Revision	Status	Author	Review	Approved	Date
001	DRAFT Report	BK	PC		07/09/2017
002	Final DRAFT		PC		02/10/2017
003	Final		PC	PC	10/10/2017
004	FINAL		PC	PC	11/10/2017
Wetland Surveys Ireland					

wetland surveys ireland

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wetland surveys ireland

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1 INTRODUCTION

Wetland Surveys Ireland Ltd. were commissioned by B & J Rochford Ltd. to determine the potential impacts, if any, of the proposed development of new cubicle sheds, silage pits, and an extension to an existing milking parlour collecting yard that forms part of an operational dairy farm on any sites designated as European conservation areas known as Natura 2000 sites (hereafter referred to as European sites). The dairy farm is located in Forest Lower, Mountmellick, Co. Laois, in proximity to the River Barrow and River Nore SAC (NPWS Site Code: 002162). The purpose of this assessment is to determine the appropriateness, or otherwise, of the proposed project in the context of the conservation objectives of the SAC.

This Natura Impact Statement (NIS) has been prepared in response to a request from Laois County Council to prepare an NIS in accordance with the provisions of Section 1771(5) of the Planning & Development Act 2000 as amended. The main objective of this NIS is to determine whether the project would result in significant adverse impacts to the integrity of any European sites with respect to the site's structure, function, and / or conservation objectives.

1.1 STATUTORY CONTEXT

The EU Habitats Directive (92/43/EEC) provides the framework for legal protection for habitats and species of European importance. The directive provides the legislative means to establish a network of sites (known as the Natura 2000 network) throughout the EU with the objective of conserving habitats and species deemed to be of community interest. These sites include Special Areas of Conservation (SACs) designated under the Habitats Directive and Special Protection Areas (SPAs) designated under the Birds Directive (formally known as the Conservation of Wild Birds Directive 79/409/EEC).

Article 6 (3) and 6(4) of the Habitats Directive lays down the procedure to be followed when planning new developments that might affect a European site. This stepwise procedure requires that a plan or project having a likely significant negative effect on a European site undergoes an 'Appropriate Assessment' to study these effects in detail and to see how they relate to the site's conservation objectives.

Depending on the findings of the Appropriate Assessment, the competent authority shall agree to the project only if the competent authority has ascertained that the project will not adversely affect the integrity of the site concerned. However, should this assessment have ascertained that there will be an adverse effect it may require one or more of the following, depending on the degree of impact:

- specific mitigation measures are introduced to remove the negative effects;
- certain conditions are respected during the construction, operational or decommissioning phases of the project, again to remove the likelihood of negative

effects or to reduce them to an insignificant level where they no longer affect the integrity of the site;

- feasible alternatives are explored instead.

In exceptional circumstances, a plan or project may still be allowed to go ahead under certain conditions, in spite of being assessed as having negative effects on the site provided the procedural safeguards laid down in the Habitats Directive are followed (Article 6(4)). This may be possible, for instance, if the plan or project is considered to be of overriding public interest and there are no alternatives available. In such cases, compensation measures will need to be implemented to ensure that the overall coherence of the Natura 2000 network is protected.

2 METHODOLOGY

2.1 GUIDANCE AND THE APPROPRIATE ASSESSMENT (AA) PROCESS

This Natura Impact Statement has been prepared in accordance with the following guidance:

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

Assessment of plans and projects significantly affecting Natura 2000 sites: Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC. European Commission Environment DG, 2002.

Managing Natura 2000 sites: The Provisions of Article 6 of the Habitats Directive 92/43/EEC. European Commission, 2000.

There are up to four successive stages involved in the Appropriate Assessment process (European Commission 2002). The outcome at each stage determines whether the next stage in the process is required. The following describes each of the four stages:

Stage 1 -Screening

This is the first stage in the process and is carried out to determine the necessity for a more detailed Stage 2 Appropriate Assessment where potential impacts on European sites are deemed to be of significance. The following steps are involved in the Stage 1 Screening:

- Description of the project and site characteristics (existing environment)
- Identification and description of Natura sites that could potentially be affected
- Identification and description of potential impacts
- Assessment of potential impacts
- Exclusion of sites where no significant impacts are foreseen

Stage 2 - Appropriate Assessment

This stage involves the consideration of the impact on the integrity of the European site of the project, either alone or in combination with other projects or plans, with respect to the site's structure and function and its conservation objectives. Additionally, where there are adverse impacts, an assessment of the potential mitigation of those impacts. If adequate mitigation is proposed to ensure no significant adverse impacts on European sites, then the process may end at this stage. However, if the likelihood of significant impacts remains, then the process must proceed to Stage 3.

Stage 3 – Assessment of Alternatives

The process which examines alternative ways of achieving the objectives of the plan or project that may avoid adverse impacts on the integrity of the Natura 2000 site.

Stage 4 – Assessment where no Alternative Solutions Exist and where Adverse Impacts Remain

The Habitats Directive promotes a hierarchy of avoidance, mitigation, and compensatory measures. First, the project should aim to avoid any impacts on European sites by identifying possible impacts early in the process. Second, mitigation measures should be applied, if necessary, during the AA process to the point where no adverse impacts on the site(s) remain. If the plan is still likely to result in impacts on European sites, and no further practicable mitigation is possible, then it must be rejected. If no alternative solutions are identified and the plan is required for imperative reasons of overriding public interest (IROPI test) under Article 6(4) of the Habitats Directive, then compensation measures are required for any remaining adverse effect.

In the case of the proposed development, Laois County Council have determined that potential significant impacts on the River Barrow and Nore SAC cannot be ruled out and therefore Stage II Appropriate Assessment (AA) is required. The content of this Natura Impact Statement (NIS) is presented as part of the application to provide necessary information for the Local Authority to consider when undertaking the Appropriate Assessment of the proposal.

2.2 ESTABLISHING BASELINE ECOLOGICAL ENVIRONMENT

The baseline ecological environment was established by conducting a desktop review of existing datasets supplemented by a field survey as described in the following sections.

2.2.1 Desktop Review

Existing data sources relating to the existing environment were reviewed. This initially included a review of NPWS datasets relating to designated sites. Following this an extensive range of data sources were consulted including; on-line web sources, various maps and GIS datasets, ecological data available from NPWS, and the National Biodiversity Data Centre (NBDC),

published and unpublished ecological reports, and strategic planning documents. Data sources are referenced where appropriate throughout the text and listed in the bibliography at the rear of the document.

2.2.2 Field Survey

A multidisciplinary field survey was undertaken on the 5th of September 2017. The aim of the survey was to record and map the distribution of habitats throughout the study area and identify any pathways for ecological impacts between the proposed development site and sensitive receptors within European sites. The characteristics (dominant vegetation, biophysical characteristics, value to fauna species etc) and condition (evidence of damage or pressures) of habitats was recorded. Hydrological connectivity to the River Barrow and River Nore SAC was also assessed.

Target notes were taken relating to habitats, species, and landuse encountered during the survey including notes on dominant vegetation, topography, drainage, disturbance, and management. The habitats encountered on site were classified in accordance with Fossitt (2000). The methods that were followed during the habitat survey and subsequent mapping followed best practice guidance as outlined by Smith *et al.* (2011). Target notes were recorded on a GPS enabled field computer.

Incidental records of fauna species were also recorded and an assessment made on the potential for habitats to support species of conservation concern.

3 NATURA IMPACT STATEMENT

3.1 PROJECT DESCRIPTION

The proposed development comprises the construction of additional dairy farm cubicle sheds and silage pits adjacent to existing farm sheds. The proposal also includes an extension to an existing milking parlour collecting area. The layout of the proposed development is presented in Figure 1 below and drawing 01-100-01044 Rev D. The main elements of the proposal include the following:

- Construction of a cubicle shed approximately 100m x 20m, 5m east of an unroofed feed yard;
- Construction of a cubicle shed approximately 29m x 19m adjacent to (north of) an existing unroofed feed yard;
- Construction of an extension to an existing milking parlour collection yard;
- Construction of 2 concrete aprons to be used as silage storage areas adjacent to existing silage pits; and
- Site works associated with facilitating the construction of each part of the development.

All construction works are to be carried out within an operational dairy farm. The footprint of the proposed works is confined to artificial surfaces (concrete), disturbed ground, and improved pasture. All construction areas are accessible via existing farm access tracks.

3.1.1 Construction Phase

The following will be undertaken during the construction phase:

- **Site clearance and preparation.** The top layer of soil and surface vegetation will be cleared from the footprint of the proposed developments. Excavation to approximately 600mm to be on solid gravel bed layer. Excavated material will be stored in appropriately designated areas away from any drainage features or other sensitive areas.
- **Excavated material.** Topsoil and subsoil brought to low-lying areas of the farm and spread out, tilled, and grass seed sown.
- **Installation of building foundations.** All foundations will be constructed in accordance with the Department of Agriculture spec S101[1]. The following are details of foundations required for each element of the dairy farm development:
    - Strip foundations of 300mm deep placed on existing gravel base layer.
- **Construction of sheds:** All sheds will be constructed in accordance with Department of Agriculture spec S101 and S123[2].

[1] Minimum Specifications for the structure of Agricultural Buildings.

- Both sheds consist of simple framed steel structures assemblies. The steel rafters and column members will be fabricated off site before being delivered to site for assembly. Members will be bolted together on site with localised welds at haunches.
- All side and roof cladding will be dry fixed using mechanical fixings. All cladding will be pre-painted and in accordance with Department of Agriculture spec S102.
- Shed floors, silage slab, and yards will be between 300mm and 150mm deep and shuttered footprints will be poured in continuous in-situ pours, with saw cut or proprietary expansions joints. Pours will be controlled and good workmanship will dictate that no concrete spillage beyond the footprint occurs.
- All sheds will be by way of shuttered in-situ mass concrete.

- **Silage Pit**
  - Silage pit walls and floors shall be shutter concrete and constructed in strict accordance with Department of Agriculture specs including S128.
  - Ground will be excavated down to the appropriate depth of 600mm, slopes of excavations shall be battened/sloped back at 45 degrees to allow for safe construction at depth (below 1.2m). Ground will be backfilled with crushed stone after curing period of concrete.

3.1.2 Operational Phase

The development will facilitate and improve the continued operation of the dairy farm enterprise. The drainage and effluent management system for the farm yard has been designed to ensure that, during operation and daily use, all effluent and run-off from the yard will be diverted to the slurry lagoon to the south of the proposed development site. This includes all potential contaminated run-off from all areas of the yard including the silage pits. Clean storm water run-off from the area is 'isolated' from dirty water and drains towards the field drains in the surroundings.

The lagoon (capacity of 5176m^3) walls and floor are sealed with an impermeable heavy duty HPDE membrane thereby preventing any leakage to surface or ground water. This specialist lining membrane, which is chemical and sunlight resistant, and carries a 30 year guarantee, has been fitted and welded together to create the seal. The lagoon conforms to Department of Agriculture specification S126. As an additional environmental safeguard the lagoon has an inbuilt leak detection system whereby any leaks can be readily identified. The effluent is temporarily stored in the lagoon before being periodically removed by tanker and spread within the land holding in compliance with standard Department of Agriculture guidelines.

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[2] Bovine Livestock Units and Reinforced Tanks.

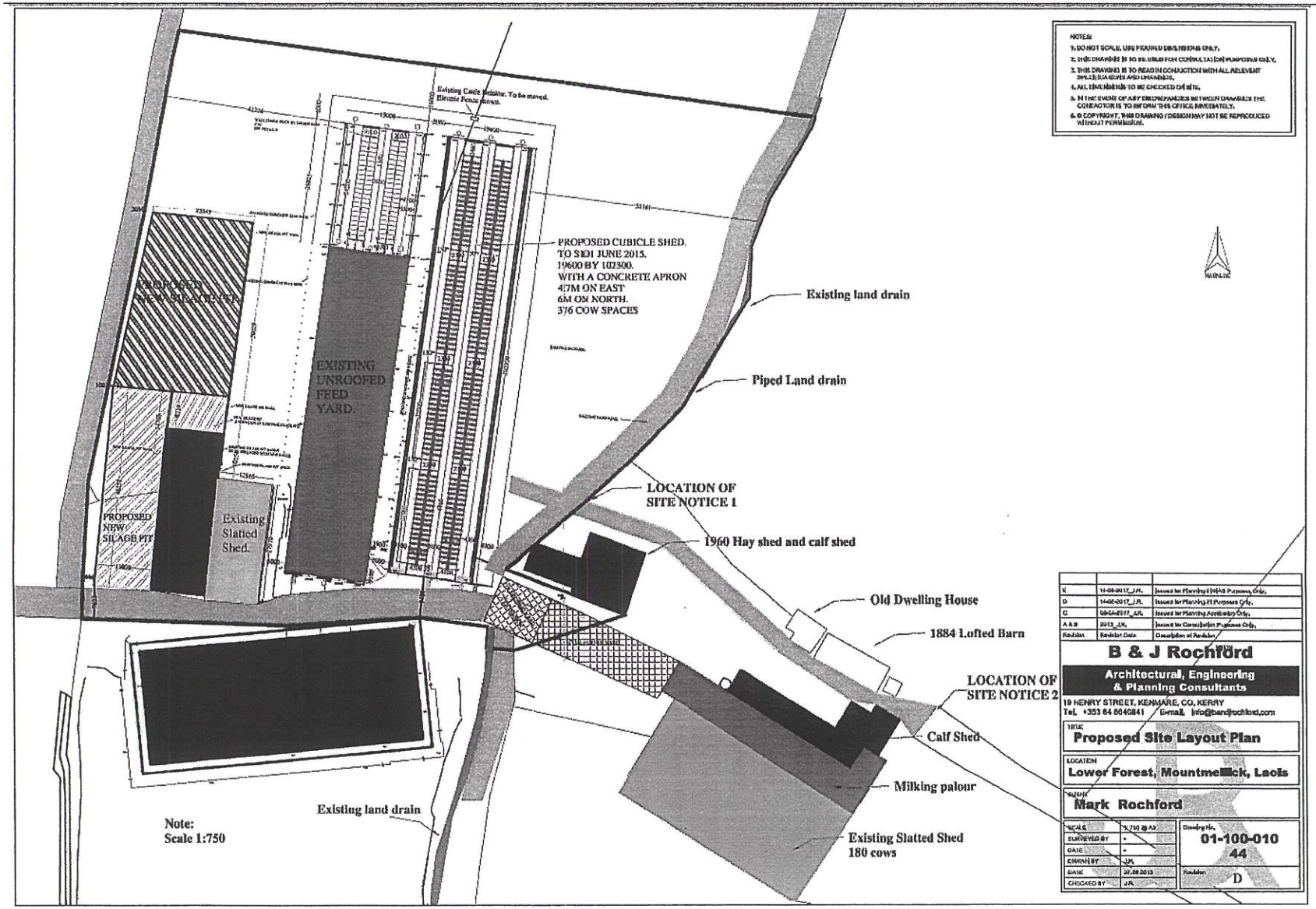

Figure 1: Proposed Site Layout Plan for farm developments in Forest Lower.

4 RECEIVING ENVIRONMENT

4.1 ECOLOGICAL DESCRIPTION OF THE PROPOSED DEVELOPMENTS AND ADJACENT LANDS

A habitat map of the proposed development site is presented in Figure 2 below. The footprint of the proposed shed comprises exposed sand and gravel (ED1) within the southern parts and spoil and bare ground (ED2) within the northern parts of the development site (see Plate 1). The spoil and bare ground occurs on an elevated earthen bank approximately 1.4m high.

The proposed new silage pits will be constructed within the western parts of the site as per Figure 1 above. The silage pits will be constructed over existing concrete hard standing (BL3, buildings and artificial surfaces) (see Plate 2, Appendix I) and on improved pasture (GA1 Improved agricultural grassland) (see Plate 3). Improved pasture is characterised by a dominance of rye grasses (*Lolium* spp.) with dandelion (*Taraxacum officinale*), ragwort (*Senecio jacobaea*), white clover (*Trifolium repens*), broadleaved dock (*Rumex obtusifolius*), and pineapple weed (*Matricaria discoidea*). The improved pasture is bound by a mature hawthorn (*Crataegus monogyna*) dominated hedgerow (WL1) to the west which forms the western site boundary. The hedgerow is approximately 4-5m high with blackthorn (*Prunus spinosa*), holly (*Ilex aquifolium*), and rosehip (*Rosa canina*) occurring occasionally. Bramble (*Rubus fruticosus* agg.), nettle (*Urtica dioica*), and creeping thistle (*Cirsium arvense*) frequently occur along the base of the hedgerow. The hedgerow is bounded by a hard surfaced farm access track on the western side with no associated drainage channel.

An area of recolonising bare ground (ED3) occurs immediately west of the existing unroofed feed yard (see Plate 1) . The recolonising bare ground occurs on an earthen mound ca 1.4m high. Immature willow (*Salix caprea*), creeping thistle, willowherb species (*Epilobium* spp.), curly leaved dock (*Rumex crispus*), broadleaved dock (*Rumex obtusifolius*), selfheal (*Prunella vulgaris*), prickly sow thistle (*Sonchus asper*), and annual meadow grass (*Poa annua*) occur throughout the recolonising bare ground. The eastern site boundary is defined by a hard surfaced farm access track with a non-continuous ash (*Fraxinus excelsior*) treeline occurring along the eastern side of the track, with improved pasture occurring in the western side of the track. A drainage channel occurs along the northern section of this hedgerow, draining to the south. Tis drainage ditch has connectivity to the River Barrow, which occurs ca 400m to the south of the proposed development site (see Plate 4). There is no physical boundary along the northern boundary of the proposed development site. A farm access track occurs along the southern boundary of the development site.

The proposed extension to the collecting yard will be constructed over a concrete surface and partially over a farm access track. A slurry lagoon occurs immediately south of the southern site boundary.

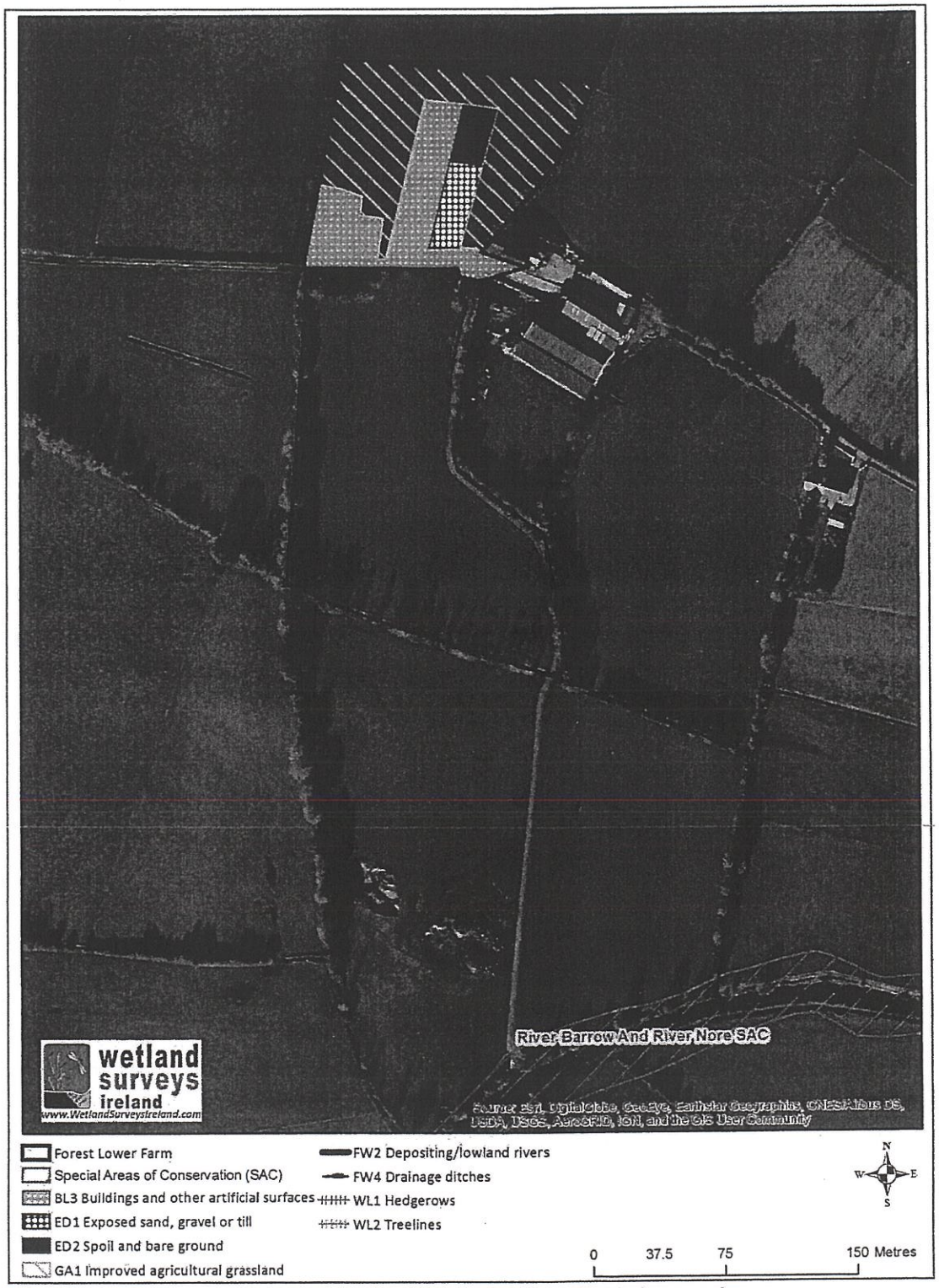

Figure 2: Habitat map of proposed development site and surrounding drainage regime.

4.2 DESCRIPTION OF EUROPEAN SITES

This section of the NIS process identifies and describes the European site(s) within a 5km radius of the proposed development. Two European sites occur within 5km of the proposed development site, the River Barrow and River Nore SAC, and Mountmellick SAC (see Figure 3). Considering characteristics of proposed development impacts on sites beyond this distance can be ruled out.

The River Barrow and River Nore SAC occurs approximately 0.4km south of the proposed development at its nearest point and is hydrologically connected downstream via land drains that occur just south of the proposed development site (see Figure 2). The SAC is designated for a range of freshwater, terrestrial, and coastal habitats and species as presented in Table 1 below.

Mountmellick SAC occurs some 4.5km south-east of the proposed location. This site is an area of fen habitat along the disused section of the Grand Canal. It is designated for Desmoulin's Whorl Snail (*Vertigo moulinsiana*). There is an absence of ecological connectivity between the proposed development site and this SAC. This site is therefore screened out and not considered further in the NIS.

Table 1: Designated European Site in Proximity to Development

Site Name (Site Code)	Qualifying Features (QIs)		Distance from the proposed development
River Barrow and River Nore SAC (002162)	The SAC consists of the freshwater stretches of the River barrow and Nore River catchments and the tidal elements and estuary as far down as Creadun Head in Waterford. The site is designated for freshwater habitats and species, estuaries and coastal habitats, and terrestrial habitats and species:		The SAC occurs approximately 0.4km south of the proposed development at its nearest point. The SAC at this location includes the main River channel and associated river corridor. No terrestrial habitats of conservation concern. Those listed habitats and species most likely to occur in proximity include; Floating River Vegetation, White Clawed Crayfish, Salmon, Otter, and Brook and River Lamprey.
	<u>EU Annex I Habitats</u>	<u>EU Annex II Species</u>	
	Estuaries	Desmoulin's Whorl Snail	
	Mudflats and sandflats	Freshwater Pearl Mussel	
	Reefs	White-clawed Crayfish	
	Salicornia mud	Sea Lamprey	
	Atlantic salt meadows	Brook Lamprey	
	Mediterranean salt meadows	River Lamprey	
		Twaite Shad	
	Floating river vegetation	Atlantic Salmon	
	Dry heath	Otter	
	Hydrophilous tall herb	Killarney Fern	
	Petrifying springs*	Nore Freshwater Pearl Mussel	
	Old oak woodlands		
	Residual alluvial forests*		

4.2.1 Conservation Objectives

The overall aim of the Habitats Directive is to maintain or restore the favourable conservation status of habitats and species of community interest. These habitats and species are listed in the Habitats and Birds Directives and Special Areas of Conservation and Special Protection Areas are designated to afford protection to the most vulnerable of them. These two designations are collectively known as the Natura 2000 network.

European and national legislation places a collective obligation on Ireland and its citizens to maintain habitats and species in the Natura 2000 network at favourable conservation condition. The Government and its agencies are responsible for the implementation and enforcement of regulations that will ensure the ecological integrity of these sites. The maintenance of habitats and species within Natura 2000 sites at favourable conservation condition (at the site level) will contribute to the overall maintenance of favourable conservation status of those habitats and species at a national level.

Favourable conservation status of a habitat is achieved when:

- its natural range, and area it covers within that range, are stable or increasing, and
- the specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future, and
- the conservation status of its typical species is favourable.

The favourable conservation status of a species is achieved when:

- population dynamics data on the species concerned indicate that it is maintaining itself on a long term basis as a viable component of its natural habitats, and
- the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and
- there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis.

In the case of the River Barrow and River Nore SAC, while a conservation management plan has not yet been prepared, detailed conservation objectives have been published (NPWS 2011). The conservation objectives of each qualifying habitat and species for the River Barrow and River Nore SAC are presented as a selection of attributes against which targets are set (NPWS 2011). All of these attributes in relation to each relevant feature have been considered in relation to the potential impacts associated with the proposed development in Section 5 below.

Those species and habitats for which the SAC is designated that are sensitive to potential impacts from the proposed development, considering their known occurrence downstream (and proximate) to the lands in question include: Floating River Vegetation, River and Brook Lamprey

(*Lampetra planeri, Lampetra fluviatilis*), Otter (*Lutra lutra*), Atlantic salmon (*Salmo salar*), and White-clawed crayfish (*Austropotamobius pallipes*). The potential for non-achievement of the conservation objectives relating to these qualifying features are discussed further below.

White-clawed crayfish (*Austropotamobius pallipes*)

Known to occur downstream. The target set by NPWS in relation to distribution is that there should be no reduction from the baseline. The target relating to the attribute 'water quality' is that the Q Value as measured by the EPA should be at least Q3-4 at all sites sampled.

Atlantic salmon (*Salmo salar*)

The target set by NPWS in relation to the attribute 'distribution' is that all rivers up to second order should be accessible from the estuary. The target relating to the attribute 'water quality' is that the Q Value as measured by the EPA should be at least Q4.

Otter (*Lutra lutra*)

The target set by NPWS in relation to the attribute 'distribution' is that there should be no significant decline and that it should be measured according to % of positive survey sites based on standard otter survey techniques. The target for the attribute 'extent of the terrestrial habitat' available to Otter should not suffer significant decline. This includes all habitats within 10m of the designated river-bank which is considered critical for Otter. Similarly in relation to the attribute 'Couching sites and holts' the target set is that there should be no significant decline.

River and Brook Lamprey (*Lampetra planeri, Lampetra fluviatilis*)

Artificial barriers to the species that are present along watercourses present a major threat to their successful migration to up-stream spawning beds.

Floating River Vegetation

The full distribution of this habitat within the SAC remains unknown (NPWS 2011). The conservation objective includes the following attributes that may be relevant to the proposed development:

- 'hydrological regime (river flow)', the target for which is that an appropriate regime be maintained
- 'water quality (suspended sediment & nutrients)', the targets for which is that concentrations in the water column should be sufficiently low to prevent changes in species composition or habitat condition.

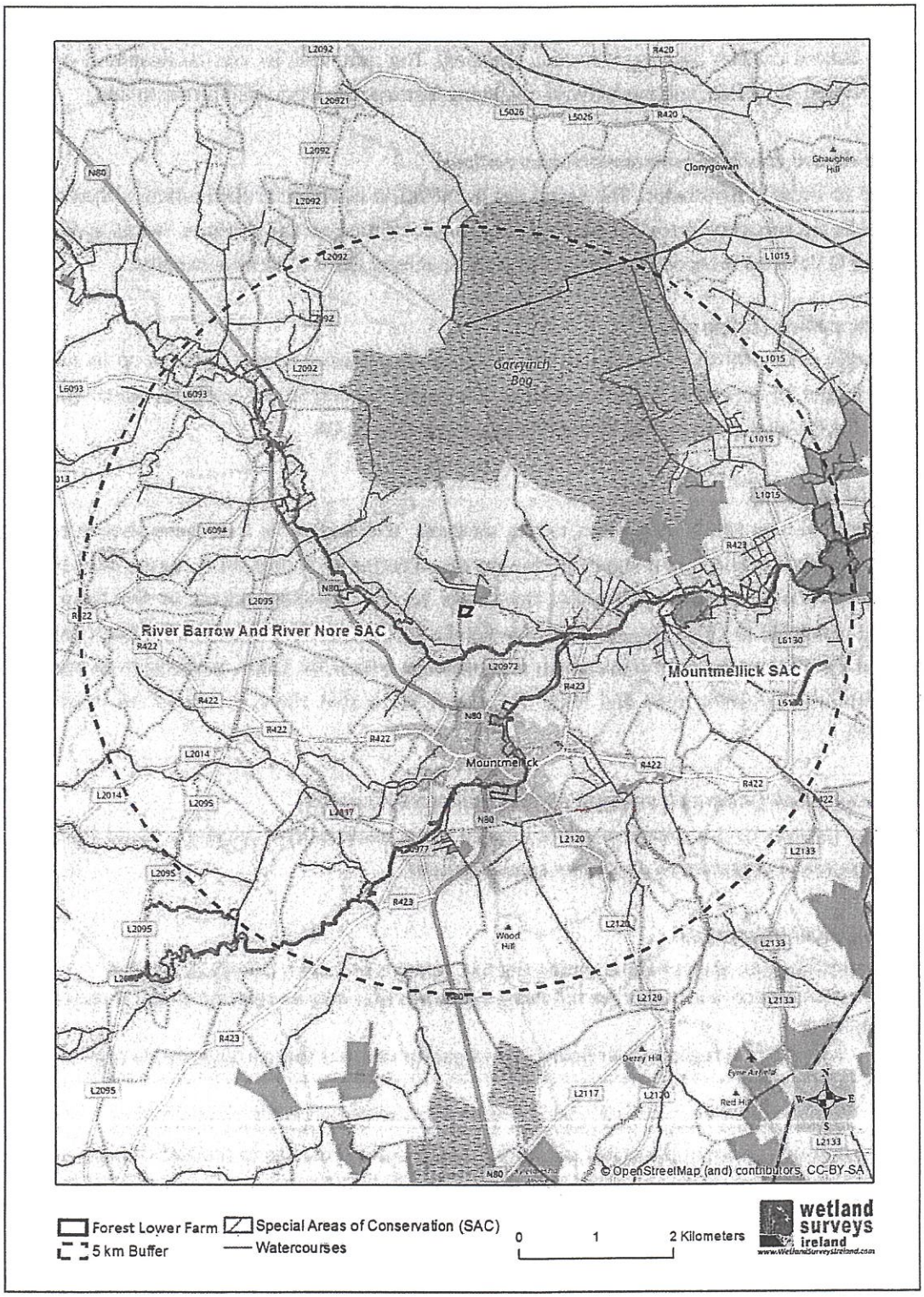

Figure 3: European sites within 5km of proposed development.

5 STAGE II APPROPRIATE ASSESSENT

5.1 ELEMENTS OF THE PROPOSED WORKS LIKELY TO GIVE RISE TO SIGNIFICANT EFFECTS

The construction phase of the proposed development may potentially give rise to adverse impacts on the SAC. It is determined that the following activities could impact on the River Barrow and River Nore SAC:

- Runoff of sediment laden waters following excavation soil and sub-soil;
- Accidental runoff of cementitious waters to surrounding surface waters; and
- Accidental spillages of hydrocarbons or other harmful substances during construction.

During operational phase the primary sources of potential impact is from slurry storage and operation of the farm yard whereby the primary potential hazards are leaching and spillages, and accidental discharges of organic waste to the local surface water system causing a deterioration in water quality. All potential effects are indirect, and can only occur via the surface water flow systems. Two possible flow path scenarios exist between the farm yard and receiving waters of the SAC as follows:

- Farm yard runoff entering the drainage ditches which subsequently flows into the SAC (surface water flow path only). In relation to this surface water run-off, all effluent and dirty water will be directed into the slurry lagoon and therefore will not enter surrounding surface waters.
- Based on design of the lagoon and inbuilt safe-guards, potential leakage of effluent from the slurry tank into surrounding surface / ground waters are not foreseen.

5.2 IDENTIFICATION AND DESCRIPTION OF POTENTIAL IMPACTS

The characteristics, location and scale of the development together with the ecological requirements of the conservation interests of the European site have been taken into consideration in identifying and assessing the potential for significant effects.

As outlined in the European Commission Environment DG document "Assessment of plans and projects significantly affecting Natura 2000 sites: Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC", impacts that could potentially occur through the implementation of the development can be categorised under five headings:

- Loss / reduction of habitat area - not foreseen. Development is located amongst habitats of low ecological importance and will not involve land-take within any European site.
- Disturbance to Key Species (e.g. during the construction phase) - not foreseen. Development sufficiently removed from European sites that disturbance to key species not foreseen.
- Habitat or species fragmentation - not foreseen. Development sufficiently removed from European sites that habitat or species fragmentation will not arise.

- Reduction in species density - possible. Should the proposed development impact on water quality of the SAC then potential indirect impacts on species density are possible.
- Changes in key indicators of conservation value such as changes in water quality / quantity (e.g. run-off of pollutants during construction) - possible. In absence of mitigation the development could cause a deterioration of water quality downstream and within the SAC.

5.3 IMPACTS ON THE RIVER BARROW AND RIVER NORE SAC

The proposed development is hydrologically connected to the SAC via drainage ditches that occur south of the footprint of the development. The drainage channels are illustrated in Figure 2). The shortest hydrological route from the proposed development to the main channel of the River Barrow (forms part of SAC) is approximately 0.5km from a drainage channel that occurs immediately south of the farm yard. The SAC in proximity to the proposed development comprises a depositing / lowland river (FW2) which is approximately 8m wide. The river relatively fast flowing over a muddy substrate. A hard surfaced farm access track continues from the proposed development site south to the river.

Many of the Qualifying Interests of the SAC are well removed from the footprint of the proposed development (see Table 2). Qualifying Interests (QIs) that are likely to occur within proximity (downstream) of the proposed development are identified above as: Floating River Vegetation, River and Brook Lamprey (*Lampetra planeri, Lampetra fluviatilis*), Otter (*Lutra lutra*), Atlantic salmon (*Salmo salar*), and White-clawed crayfish (*Austropotamobius pallipes*). These freshwater elements of the SAC are the only QIs that are likely to be exposed to potential impacts from the proposed development.

All of these habitats and species would be somewhat dependant on good water quality within the river. Any significant deterioration of water quality associated with the development could therefore potentially impact on their conservation status within the SAC as discussed further in Table 2.

Table 2: Potential impacts on QIs of the SAC

Qualifying Interest	Threats / Sensitivities	Location in relation to proposed development	Potential for Adverse Impacts[3]
Annex I Habitats			
Floating river vegetation	Nutrient and organic losses from agriculture, municipal and industrial discharges are the most significant pressures to river habitats.	Likely to occur along the main river channel downstream of the farm.	Yes - In the absence of mitigation, there is a risk that downstream water quality could deteriorate due to contaminated surface water run-off from the proposed development and therefore could threaten the achievement of the conservation objective relating to Floating river vegetation.
Annex II Species			
White-clawed Crayfish	Threat of disease introduction is the most notable threat to this species.	Approximately 1.8km downstream of the farm.	Yes - In the absence of mitigation, there is a possibility that downstream water quality could deteriorate due to contaminated surface water run-off and therefore could threaten the achievement of the conservation objective relating to White-clawed Crayfish.
Sea Lamprey	Barriers to upstream migration (e.g. weirs), which limit access to spawning beds and juvenile habitat are main threats to this species.	Unknown distribution in relation to the farm. Likely to occur downstream. Few juvenile Lampetra were recorded along the River Barrow	No - Based on the potential effects of the proposed development on the River Barrow and Nore SAC, and taking into account the targets set for the various attributes for these species, it is considered extremely unlikely that the development could impact on the conservation
Brook Lamprey	No significant pressures affecting this species.		
River Lamprey			

[3] In the absence of mitigation.

Qualifying Interest	Threats / Sensitivities	Location in relation to proposed development	Potential for Adverse Impacts[3]
		(King 2006).	objective relating to Lamprey species.
Atlantic Salmon	There are numerous threats to the freshwater habitats of this species.	Likely to occur in suitable freshwater habitats downstream of the proposed development.	Yes - In the absence of mitigation, there is a risk that downstream water quality could deteriorate due to contaminated surface water run-off from the proposed development and therefore could threaten the achievement of the conservation objective relating to Atlantic Salmon.
Otter	No significant threats listed for this species.	No evidence of otter activity in proximity to the site. Likely to occur downstream along the River Barrow within suitable habitat.	Yes - Significant deterioration in water quality downstream could impact on the conservation status of the local Otter population.

6 MITIGATION

As outlined in Table 2 above, in the absence of suitable mitigation the proposed development may potentially lead to adverse impacts on freshwater species associated with the River Barrow and River Nore SAC.

Mitigation has been considered with the aim of avoiding and reducing potential adverse impacts. The following measures are proposed in order to mitigate against potential adverse impacts on the conservation status of the River Barrow and River Nore SAC:

- Works will be carried out in accordance with best industry practice.
- No washing of concrete truck or shoots to be undertaken on site.

- Pouring of concrete will be restricted to only good weather periods to reduce risk of runoff from uncured concrete.
- The contractor shall ensure that all shuttering for walls and floors will be secure and robust so as to ensure against failure resulting in run off of uncured concrete to surrounding surface waters.
- During construction, all site works (including machinery movements, storage of excavated material etc) will be confined as far as possible to the development footprint.
- Stockpiling of materials during construction will only occur in suitably designated areas away from watercourses with adequate measures taken to prevent any surface water run-off.
- Material will only be stockpiled for very short periods before being used again as backfill. Should material be stockpiled for extended periods, it will be appropriately covered to ensure that material will not become entrained by rainfall.
- The introduction or spread of invasive species and noxious weeds will be avoided by adopting appropriate mitigation measures as per guidance issued by the NRA (2010).
- Re-fueling of machinery will only be carried out in designated areas removed from any watercourses. All fuels used on site will be stored in bunded units. Plant and vehicles will be inspected regularly for leaks. Drip trays will be fitted to all plant machinery
- Sediment control measures (check dams, silt traps, silt curtains etc.) will be implemented to minimise any run-off of sediment laden waters during construction works.
- A surface water management plan will be developed to ensure no impacts on surrounding or downstream watercourses during construction.
- Appropriate effluent and surface water management during operational phase will ensure that adverse impacts on surface waters do not arise during operational phase of the farm yard.

Subject to the above mitigation being adhered to during construction and operation, it is concluded that adverse impacts of significance on the conservation interest of the SAC are not foreseen.

7 IN-COMBINATION / CUMULATIVE IMPACTS

Potential in-combination or cumulative impacts may occur due to the combined effects of the current proposal when taken together with the effects of other projects that are operational or proposed within or close-by the SAC. There are no other new planning applications in proximity to the proposed development. Taking into consideration the size and scale of the proposed development, no combined impacts on the conservation interest of the SAC are foreseen. As no potential significant impacts of the development site in isolation are foreseen, it is concluded that no potential cumulative or in-combination impacts are likely.

8 CONCLUSIONS

This assessment was informed by a desktop review and field survey undertaken in September 2017. The proposed development considered in this assessment occurs within the footprint of an operational dairy farm enterprise.

The development is located within the catchment of the River Barrow which forms part of the River Barrow and River Nore SAC. Drainage channels that occur in proximity of the proposed development discharge to the SAC approximately 0.5km downstream providing hydrological connectivity. Potential adverse impacts on the River Barrow and Nore SAC have been identified (in absence of mitigation) due to possible run-off of sediment laden waters or other pollutants to downstream watercourses during the construction phase. A series of mitigation measures are proposed above which reduce the risk of impacts occurring to negligible.

Taking into account all matters discussed and provided that the mitigation measures and recommendations are adopted, it is concluded that the proposed development of the farm yard will not adversely affect the integrity and conservation status of the River Barrow and Nore SAC.

9 REFERENCES

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APPENDIX I

Plates 1-4

Plate 1: Footprint of the proposed cubicle shed occurs on exposed sand and gravel, spoil and bare ground.

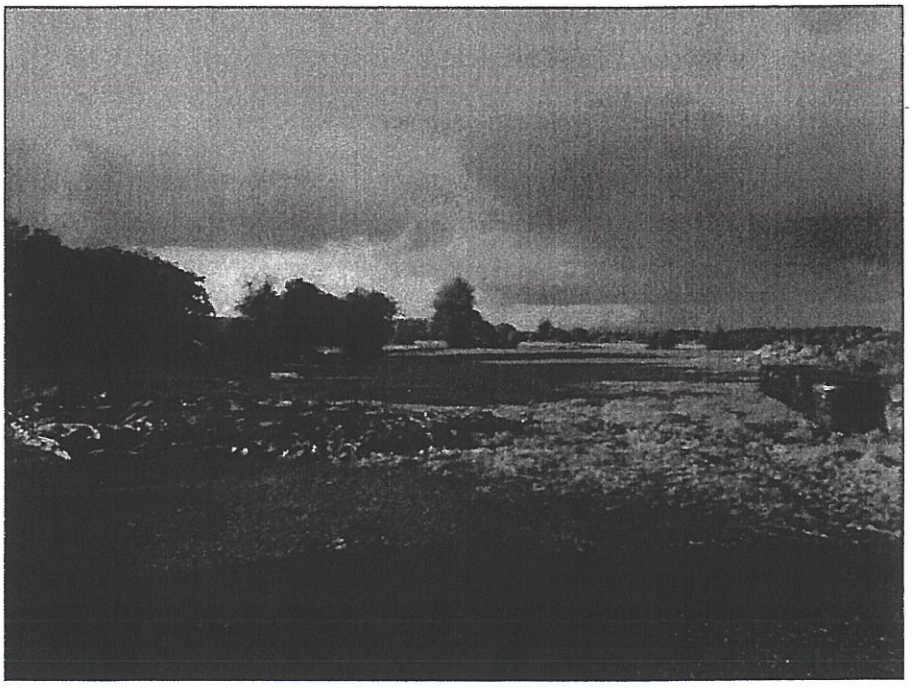


Plate 2: Location of proposed new silage pit.

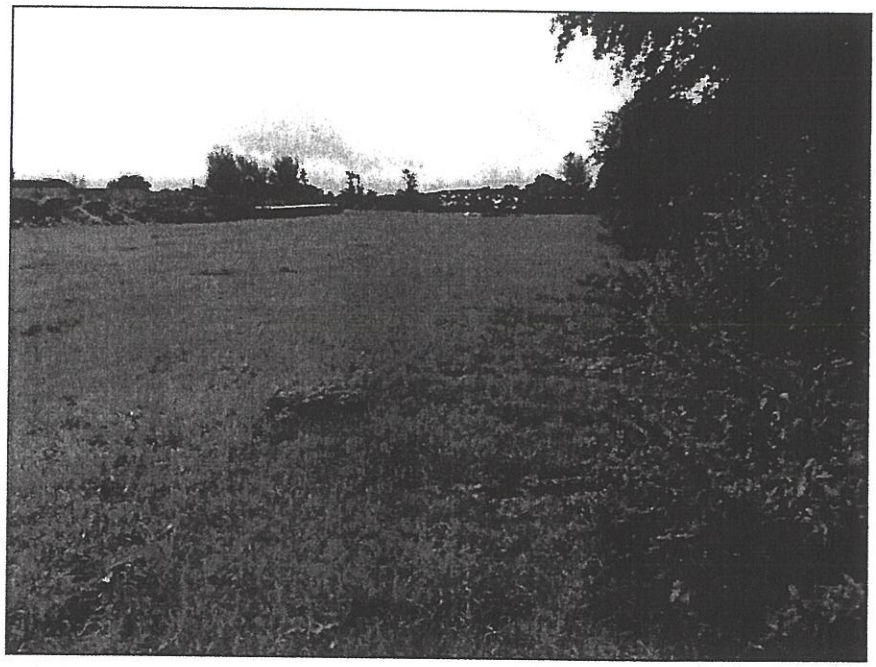


Plate 3: Improved pasture immediately north of existing silage pits where new silage pits are proposed.

Plate 4: River Barrow located ca 400m south of proposed development site.

APPENDIX I – NPWS Published Site Synopses

SITE NAME: RIVER BARROW AND RIVER NORE SAC

SITE CODE: 002162

This site consists of the freshwater stretches of the Barrow and Nore River catchments as far upstream as the Slieve Bloom Mountains, and it also includes the tidal elements and estuary as far downstream as Creadun Head in Waterford. The site passes through eight counties – Offaly, Kildare, Laois, Carlow, Kilkenny, Tipperary, Wexford and Waterford. Major towns along the edge of the site include Mountmellick, Portarlington, Monasterevin, Stradbally, Athy, Carlow, Leighlinbridge, Graiguenamanagh, New Ross, Inistioge, Thomastown, Callan, Bennettsbridge, Kilkenny and Durrow. The larger of the many tributaries include the Lerr, Fushoge, Mountain, Aughavaud, Owenass, Boherbaun and Stradbally Rivers of the Barrow, and the Delour, Dinin, Erkina, Owveg, Munster, Arrigle and King's Rivers on the Nore.

Both rivers rise in the Old Red Sandstone of the Slieve Bloom Mountains before passing through a band of Carboniferous shales and sandstones. The Nore, for a large part of its course, traverses limestone plains and then Old Red Sandstone for a short stretch below Thomastown. Before joining the Barrow it runs over intrusive rocks poor in silica. The upper reaches of the Barrow also run through limestone. The middle reaches and many of the eastern tributaries, sourced in the Blackstairs Mountains, run through Leinster Granite. The southern end, like the Nore runs over intrusive rocks poor in silica. Waterford Harbour is a deep valley excavated by glacial floodwaters when the sea level was lower than today. The coast shelves quite rapidly along much of the shore.

Good examples of alluvial forest (a priority habitat on Annex I of the E.U. Habitats Directive) are seen at Rathsnagadan, Murphy's of the River, in Abbeyleix estate and along other shorter stretches of both the tidal and freshwater elements of the site. Typical species seen include Almond Willow (*Salix triandra*), White Willow (*S. alba*), Rusty Willow (*S. cinerea* subsp. *oleifolia*), Crack Willow (*S. fragilis*) and Osier (*S. viminalis*), along with Iris (*Iris pseudacorus*), Hemlock Water-dropwort (*Oenanthe crocata*), Wild Angelica (*Angelica sylvestris*), Thin-spiked Wood-sedge (*Carex strigosa*), Pendulous Sedge (*C. pendula*), Meadowsweet (*Filipendula ulmaria*), Common Valerian (*Valeriana officinalis*) and the Red Data Book species Nettle-leaved Bellflower (*Campanula trachelium*).

A good example of petrifying springs with tufa formations occurs at Dysart Wood along the Nore. This is a rare habitat in Ireland and one listed with priority status on Annex I of the E.U. Habitats Directive. These hard water springs are characterised by lime encrustations, often associated with small waterfalls. A rich bryophyte flora is typical of the habitat and two diagnostic species, Palustriella commutata and Eucladium verticillatum, have been recorded.

The best examples of old oak woodlands are seen in the ancient Park Hill woodland in the estate at Abbeyleix; at Kyleadohir, on the Delour, Forest Wood House, Kylecorragh and Brownstown Woods on the Nore; and at Cloghristic Wood, Drummond Wood and Borris Demesne on the Barrow, though other patches occur throughout the site. Abbeyleix Woods is a large tract of mixed deciduous woodland which is one of the only remaining true ancient woodlands in Ireland. Historical records show that Park Hill has been continuously wooded since the 16th century and has the most complete written record of any woodland in the country. It supports a variety of woodland habitats and an exceptional diversity of species including 22 native trees, 44 bryophytes and 92 lichens. It also contains eight indicator species of ancient woodlands. Park Hill is also the site of two rare plants, Nettle-leaved Bellflower and the moss Leucodon sciuroides. The rare Myxomycete fungus, Licea minima has been recorded from woodland at Abbeyleix.

Oak woodland covers parts of the valley side south of Woodstock and is well developed at Brownsford where the Nore takes several sharp bends. The steep valley side is covered by oak (*Quercus* spp.), Holly (Ilex aquifolium), Hazel (*Corylus avellana*) and Downy Birch (Betula *pubescens*), with some Beech (*Fagus sylvatica*) and Ash (*Fraxinus excelsior*). All the trees are regenerating through a cover of Bramble (Rubus fruticosus agg.), Foxglove (*Digitalis purpurea*), Great Wood-rush (*Luzula sylvatica*) and Broad Buckler-fern (*Dryopteris dilatata*).

On the steeply sloping banks of the River Nore, about 5 km west of New Ross, in Co. Kilkenny, Kylecorragh Woods form a prominent feature in the landscape. This is an excellent example of relatively undisturbed, relict oak woodland with a very good tree canopy. The wood is quite damp and there is a rich and varied ground flora. At Brownstown, a small, mature oak dominated woodland occurs on a steep slope. There is younger woodland to the north and east of it. Regeneration throughout is evident. The understorey is similar to the woods at Brownsford. The ground flora of this woodland is developed on acidic, brown earth type soil and comprises a thick carpet of Bilberry (*Vaccinium myrtillus*), Heather (*Calluna vulgaris*), Hard Fern (*Blechnum spicant*), Common Cow-wheat (*Melampyrum pratense*) and Bracken (*Pteridium aquilinum*).

Borris Demesne contains a very good example of a semi-natural broadleaved woodland in very good condition. There is quite a high degree of natural regeneration of oak and Ash through the woodland. At the northern end of the estate oak species predominate. Drummond Wood, also on the Barrow, consists of three blocks of deciduous woods situated on steep slopes above the river. The deciduous trees are mostly oak species. The woods have a well-established understorey of Holly, and the herb layer is varied, with Bramble abundant. The whitebeam *Sorbus devoniensis* has also been recorded here.

Eutrophic tall herb vegetation occurs in association with the various areas of alluvial forest and elsewhere where the floodplain of the river is intact. Characteristic species of the habitat include Meadowsweet, Purple Loosestrife (*Lythrum salicaria*), Marsh Ragwort (*Senecio aquaticus*), Ground Ivy (*Glechoma hederacea*) and Hedge Bindweed (*Calystegia sepium*). Indian Balsam (*Impatiens glandulifera*), an introduced and invasive species, is abundant in places.

Floating river vegetation is well represented in the Barrow and in the many tributaries of the site. In the Barrow the species found include water-starworts (*Callitriche* spp.), Canadian Pondweed (*Elodea canadensis*), Bulbous Rush (*Juncus bulbosus*), water-milfoils (*Myriophyllum* spp.), the pondweed *Potamogeton x nitens*, Broad-leaved Pondweed (*P. natans*), Fennel Pondweed (*P. pectinatus*), Perfoliated Pondweed (P. perfoliatus) and crowfoots (*Ranunculus* spp.). The water quality of the Barrow has improved since the vegetation survey was carried out (EPA, 1996).

Dry heath at the site occurs in pockets along the steep valley sides of the rivers especially in the Barrow Valley and along the Barrow tributaries where they occur in the foothills of the Blackstairs Mountains. The dry heath vegetation along the slopes of the river bank consists of Bracken and Gorse (*Ulex europaeus*) with patches of acidic grassland vegetation. Additional typical species include Heath Bedstraw (*Galium saxatile*), Foxglove, Common Sorrel (*Rumex acetosa*) and Creeping Bent (*Agrostis stolonifera*). On the steep slopes above New Ross the Red Data Book species Greater Broomrape (*Orobanche rapum-genistae*) has been recorded. Where rocky outcrops are shown on the maps Bilberry and Great Wood-rush are present. At Ballyhack a small area of dry heath is interspersed with patches of lowland dry grassland. These support a number of clover species, including the legally protected Clustered Clover (*Trifolium glomeratum*) - a species known from only one other site in Ireland. This grassland community is especially well developed on the west side of the mud-capped walls by the road. On the east of the cliffs a group of rock-dwelling species occur, i.e. English Stonecrop (*Sedum anglicum*), Sheep's-bit (*Jasione montana*) and Wild Madder (*Rubia peregrina*). These rocks also support good lichen and moss assemblages with *Ramalina subfarinacea* and *Hedwigia ciliata*.

Dry heath at the site generally grades into wet woodland or wet swamp vegetation lower down the slopes on the river bank. Close to the Blackstairs Mountains, in the foothills associated with the Aughnabrisky, Aughavaud and Mountain Rivers there are small patches of wet heath dominated by Purple Moor-grass (Molinia caerulea) with Heather, Tormentil (Potentilla erecta), Carnation Sedge (Carex panicea) and Bell Heather (*Erica cinerea*).

Salt meadows occur at the southern section of the site in old meadows where the embankment has been breached, along the tidal stretches of in-flowing rivers below Stokestown House, in a narrow band on the channel side of Common Reed (*Phragmites australis*) beds and in narrow fragmented strips along the open shoreline. In the larger areas of salt meadow, notably at

Carrickcloney, Ballinlaw Ferry and Rochestown on the west bank; Fisherstown, Alderton and Great Island to Dunbrody on the east bank, the Atlantic and Mediterranean sub types are generally intermixed. At the upper edge of the salt meadow in the narrow ecotonal areas bordering the grasslands where there is significant percolation of salt water, the legally protected species Borrer's Saltmarsh-grass (*Puccinellia fasciculata*) and Meadow Barley (Hordeum secalinum) are found. The very rare and also legally protected Divided Sedge (*Carex divisa*) is also found. Sea Rush (*Juncus maritimus*) is also present. Other plants recorded and associated with salt meadows include Sea Aster (Aster tripolium), Thrift (*Armeria maritima*), Sea Couch (*Elymus pycnanthus*), Spear-leaved Orache (*Atriplex prostrata*), Lesser Sea-spurrey (*Spergularia marina*), Sea Arrowgrass (*Triglochin maritima*) and Sea Plantain (*Plantago maritima*).

Glassworts (*Salicornia* spp.) and other annuals colonising mud and sand are found in the creeks of the saltmarshes and at the seaward edges of them. The habitat also occurs in small amounts on some stretches of the shore free of stones.

The estuary and the other E.U. Habitats Directive Annex I habitats within it form a large component of the site. Extensive areas of intertidal flats, comprised of substrates ranging from fine, silty mud to coarse sand with pebbles/stones are present. Good quality intertidal sand and mudflats have developed on a linear shelf on the western side of Waterford Harbour, extending for over 6 km from north to south between Passage East and Creadaun Head, and in places are over 1 km wide. The sediments are mostly firm sands, though grade into muddy sands towards the upper shore. They have a typical macro-invertebrate fauna, characterised by polychaetes and bivalves. Common species include Arenicola marina, *Nephtys hombergii*, *Scoloplos armiger*, *Lanice conchilega* and Cerastoderma edule. An extensive area of honey-comb worm biogenic reef occurs adjacent to Duncannon, Co. Wexford on the eastern shore of the estuary. It is formed by the polychaete worm *Sabellaria alveolata*. This intertidal *Sabellaria alveolata* reef is formed as a sheet of interlocking tubes over a considerable area of exposed bedrock. This polychaete species constructs tubes, composed of aggregated sand grains, in tightly packed masses with a distinctive honeycomb-like appearance. These can be up to 25cm proud of the substrate and form hummocks, sheets or more massive formations. A range of species are reported from these reefs including: Enteromorpha sp.; Ulva sp.; Fucus vesiculosus; Fucus serratus; *Polysiphonia* sp.; *Chondrus crispus*; *Palmaria palmate*; *Coralinus officialis*; *Nemertea* sp.; *Actinia equine*; *Patella vulgate*; *Littorina littorea*; *Littorina obtusata* and *Mytilus edulis*.

The western shore of the harbour is generally stony and backed by low cliffs of glacial drift. At Woodstown there is a sandy beach, now much influenced by recreation pressure and erosion. Behind it a lagoonal marsh has been impounded which runs westwards from Gaultiere Lodge along the course of a slow stream. An extensive reedbed occurs here. At the edges is a tall fen

dominated by sedges (*Carex* spp.), Meadowsweet, willowherbs (*Epilobium* spp.) and rushes (*Juncus* spp.). Wet woodland also occurs.

The dunes which fringe the strand at Duncannon are dominated by Marram (*Ammophila arenaria*) towards the sea. Other species present include Wild Clary/Sage (*Salvia verbenaca*), a rare Red Data Book species. The rocks around Duncannon ford have a rich flora of seaweeds typical of a moderately exposed shore and the cliffs themselves support a number of coastal species on ledges, including Thrift, Rock Samphire (*Crithmum maritimum*) and Buck's-horn Plantain (*Plantago coronopus*).

Other habitats which occur throughout the site include wet grassland, marsh, reedswamp, improved grassland, arable land, quarries, coniferous plantations, deciduous woodland, scrub and ponds.

Seventeen Red Data Book plant species have been recorded within the site, most in the recent past. These are Killarney Fern (*Trichomanes speciosum*), Divided Sedge, Clustered Clover, Basil Thyme (*Acinos arvensis*), Red Hemp-nettle (*Galeopsis angustifolia*), Borrer's Saltmarsh-grass, Meadow Barley, Opposite-leaved Pondweed (*Groenlandia densa*), Meadow Saffron/Autumn Crocus (*Colchicum autumnale*), Wild Clary/Sage, Nettle-leaved Bellflower, Saw-wort (*Serratula tinctoria*), Bird Cherry (*Prunus padus*), Blue Fleabane (*Erigeron acer*), Fly Orchid (*Ophrys insectifera*), Ivy Broomrape (*Orobanche hederae*) and Greater Broomrape. Of these, the first nine are protected under the Flora (Protection) Order, 2015. Divided Sedge was thought to be extinct but has been found in a few locations in the site since 1990. In addition plants which do not have a very wide distribution in the country are found in the site including Thin-spiked Wood-sedge, Field Garlic (*Allium oleraceum*) and Summer Snowflake. Six rare lichens, indicators of ancient woodland, are found including *Lobaria laetevirens* and *L. pulmonaria*. The rare moss Leucodon sciuroides also occurs.

The site is very important for the presence of a number of E.U. Habitats Directive Annex II animal species including Freshwater Pearl Mussel (both *Margaritifera margaritifera* and *M. m. durrovensis*), White-clawed Crayfish, Salmon, Twaite Shad, three lamprey species – Sea Lamprey, Brook Lamprey and River Lamprey, the tiny whorl snail Vertigo moulinsiana and Otter. This is the only site in the world for the hard water form of the Freshwater Pearl Mussel, M. m. durrovensis, and one of only a handful of spawning grounds in the country for Twaite Shad. The freshwater stretches of the River Nore main channel is a designated salmonid river. The Barrow/Nore is mainly a grilse fishery though spring salmon fishing is good in the vicinity of Thomastown and Inistioge on the Nore. The upper stretches of the Barrow and Nore, particularly the Owenass River, are very important for spawning.

The site supports many other important animal species. Those which are listed in the Irish Red Data Book include Daubenton's Bat, Badger, Irish Hare and Common Frog. The rare Red Data Book fish species Smelt (*Osmerus eperlanus*) occurs in estuarine stretches of the site. In addition to the Freshwater Pearl Mussel, the site also supports two other freshwater mussel species, *Anodonta anatina* and *A. cygnea*.

Three rare invertebrates have been recorded in alluvial woodland at Murphy's of the River. These are: *Neoascia obliqua* (Order Diptera: *Syrphidae*), *Tetanocera freyi* (Order Diptera: *Sciomyzidae*) and *Dictya umbrarum* (Order Diptera: *Sciomyzidae*). The rare invertebrate, *Mitostoma chrysomelas* (Order Arachnida), occurs in the old oak woodland at Abbeyleix and only two other sites in the country. Two flies (Order Diptera) *Chrysogaster virescens* and *Hybomitra muhlfeldi* also occur at this woodland.

The site is of ornithological importance for a number of E.U. Birds Directive Annex I species, including Greenland White-fronted Goose, Whooper Swan, Bewick's Swan, Bar-tailed Godwit, Peregrine and Kingfisher. Nationally important numbers of Golden Plover and Bar-tailed Godwit are found during the winter. Wintering flocks of migratory birds are seen in Shanahoe Marsh and the Curragh and Goul Marsh, both in Co. Laois, and also along the Barrow Estuary in Waterford Harbour. There is also an extensive autumnal roosting site in the reedbeds of the Barrow Estuary used by Swallows before they leave the country. The old oak woodland at Abbeyleix has a typical bird fauna including Jay, Long-eared Owl and Raven. The reedbed at Woodstown supports populations of typical waterbirds including Mallard, Snipe, Sedge Warbler and Water Rail.

Land use at the site consists mainly of agricultural activities – mostly intensive in nature and principally grazing and silage production. Slurry is spread over much of the area. Arable crops are also grown. The spreading of slurry and fertiliser poses a threat to the water quality of the salmonid river and to the populations of E.U. Habitats Directive Annex II animal species within the site. Many of the woodlands along the rivers belong to old estates and support many non-native species. Little active woodland management occurs. Fishing is a main tourist attraction along stretches of the main rivers and their tributaries and there are a number of Angler Associations, some with a number of beats. Fishing stands and styles have been erected in places. Both commercial and leisure fishing takes place on the rivers. There is net fishing in the estuary and a mussel bed also. Other recreational activities such as boating, golfing and walking, particularly along the Barrow towpath, are also popular. There is a golf course on the banks of the Nore at Mount Juliet and GAA pitches on the banks at Inistioge and Thomastown. There are active and disused sand and gravel pits throughout the site. Several industrial developments, which discharge into the river, border the site. New Ross is an important shipping port. Shipping to and from Waterford and Belview ports also passes through the estuary.

The main threats to the site and current damaging activities include high inputs of nutrients into the river system from agricultural run-off and several sewage plants, over-grazing within the woodland areas, and invasion by non-native species, for example Cherry Laurel (Prunus laurocerasus) and Rhododendron (Rhododendron ponticum). The water quality of the site remains vulnerable. Good quality water is necessary to maintain the populations of the Annex II animal species listed above. Good quality is dependent on controlling fertilisation of the grasslands, particularly along the Nore. It also requires that sewage be properly treated before discharge. Drainage activities in the catchment can lead to flash floods which can damage the many Annex II species present. Capital and maintenance dredging within the lower reaches of the system pose a threat to migrating fish species such as lamprey and shad. Land reclamation also poses a threat to the salt meadows and the populations of legally protected species therein.

Overall, the site is of considerable conservation significance for the occurrence of good examples of habitats and of populations of plant and animal species that are listed on Annexes I and II of the E.U. Habitats Directive. Furthermore it is of high conservation value for the populations of bird species that use it. The occurrence of several Red Data Book plant species including three rare plants in the salt meadows and the population of the hard water form of the Freshwater Pearl Mussel, which is limited to a 10 km stretch of the Nore, add further interest to this site.

Appendix VI
Laois County Council Letter 27th October 2017

William Smyth BE, LLB(Hons), MBA, Dip. EIA Mgmt, Adv. Dip. Pl. & Env. Law, Eur. Ing., C.Eng FIEI

strategicplanning@mail.com +353-89-4598915

Planning Ref: 17/224

REGISTERED POST

Mark Rochford,
c/o B & J Rochford,
19 Henry Street,
Kenmare,
Co. Kerry.

27th October, 2017

RE: Planning Reference 17/224: **(1) construct a cubicle shed. (2) Construct a cubicle shed adjacent to existing unroofed fed area/stand off yard. (3) Construct an extension to existing milking parlour collection yard. (4) Construct 2nd concrete aprons to be used as silage storage areas. (5) All associated site works at Lower Forest, Mountmellick, Co. Laois.**

A Chara,

Having regard to the Natura Impact Statement received on 24th October, 2017 it is noted that adverse impacts on the conservation objectives of the Special Area of Conservation comprising the River Barrow and Nore cannot be reasonably ruled out and therefore a Stage 2 Appropriate Assessment is required. However, given that there is an element of retention involved, the Planning Authority will not be in a position to deal with the application. In this regard, the applicant must apply to An Bord Pleanala for leave to apply for Substitute Consent (Part XA) in accordance with Section 177c of the Planning and Development Act 2000 (as amended). The element seeking retention will need to be accompanied by a remedial Natural Impact Statement in accordance with Section 177F and 177G of the Planning and Development Act 2000 (as amended).

Is mise, le meas,

Pat Delaney
Administrative Officer
Planning Section

(This matter has been dealt with by Deirdre Hunt, who can be contacted on 057/8664233 or by email dhunt@laoiscoco.ie)

Appendix VII
Restriction Notice 3rd July 2017

William Smyth BE, LLB(Hons), MBA, Dip. EIA Mgmt, Adv. Dip. Pl. & Env. Law, Eur. Ing., C.Eng FIEI

strategicplanning@mail.com +353-89-4598915

DEPARTMENT OF AGRICULTURE, FOOD AND THE MARINE **ER22**

Animal Health and Welfare Act 2013 (No 15 of 2013) and Animal Health and Welfare (Bovine Tuberculosis) Regulations 2015 (SI No. 58 of 2015)

Animal Health and Welfare Notice
Issued under Section 42 of the Animal Health and Welfare Act 2013
Declaring a Holding a Restricted Holding

To MR GERARD ROCHFORD **Herd Number K1403065**

LR FOREST, MOUNTMELLICK, CO LAOIS

I, the undersigned, being an Authorised Officer under the Animal Health and Welfare Act 2013, being of the opinion that a bovine within the herd referred to above is or may be infected with Tuberculosis (TB), give notice that the holding on which any bovine in the herd referred to above is being kept for farming purposes is **declared to be a restricted holding, with immediate effect**, under the **Animal Health and Welfare (Bovine Tuberculosis) Regulations 2015 (SI No. 58 of 2015)**.

You are required:

1. To ensure that any bovine which has been identified as a reactor or has given an inconclusive reactor result is immediately isolated from the remainder of the bovine herd and from any animal of a species susceptible to tuberculosis as required under Regulation 13 of the above-mentioned Regulations.

2. To take all reasonable steps to prevent the infection of animals susceptible to TB, including preventing a reactor, inconclusive reactor or any animal suspected of being infected with TB from being in contact with other susceptible animals, as required by Regulation 16 of the above-mentioned Regulations.

3. To facilitate the removal of a reactor or any other bovines to slaughter, as the Minister may direct, as required by Regulation 19 of the above mentioned Regulations.

4. To ensure, as required by Regulation 16 of the above-mentioned Regulations, that until this notice is withdrawn, no bovine is moved or permitted to be moved onto or off the holding, except in accordance with a movement permit (other than directly to slaughter - see Point 5 below).

5. To ensure, as required by Regulation 16 of the above-mentioned Regulations, that until this notice is withdrawn, no bovine is moved or permitted to be moved off the holding directly to slaughter, except in accordance with conditions set down by the Minister.

6. Not to deliver, sell or supply milk produced by a reactor or a bovine giving an inconclusive reactor result to a test for onward sale, processing or consumption as required under Regulation 24 of the above-mentioned Regulations.

7. Not to feed milk produced by a reactor or an inconclusive reactor to an animal of a species susceptible to TB as required under Regulation 24 of the above-mentioned Regulations.

8. To ensure the safe and lawful disposal of milk from a reactor or a bovine that has given an inconclusive reactor test result as required under Regulation 24 of the above-mentioned Regulations.

9. To ensure that milk from a bovine on a restricted holding is not used for direct consumption or for manufacturing unless the milk has been subjected to the appropriate heat treatment at an establishment approved by the Minister, or other than in accordance with directions of the Minister as required under Regulation 24 of the above-mentioned Regulations.

10. To immediately inform any person to whom milk has been sold or supplied from the restricted holding as required under Regulation 24 of the suspicion or presence, as appropriate of TB on the holding.

11. Not to sell, supply or use an animal product from a reactor or a bovine that has given an inconclusive reactor result other than in accordance with directions of the Minister as required under Regulation 24 of the above-mentioned Regulations.

12. To furnish such information as is required to identify possible sources of TB infection as required by Regulation 25 of the above-mentioned Regulations.

Penalties
If you fail to comply with this notice or any part of it, you commit an offence and are liable :

on summary conviction to a Class A fine or to imprisonment for a term not exceeding 6 months, or to both, or

on conviction on indictment to a fine not exceeding €250,000 or to imprisonment for a term not exceeding 5 years, or to both.

Appeals
You may, within 7 days from the date of service of this notice, appeal this notice to the District Court in accordance with section 43 of the Animal Health and Welfare Act 2013.

Notice of an appeal shall be served at the following address:

LAOIS D.V.O.
POPLAR HOUSE
POPLAR SQUARE
NAAS
CO KILDARE

Phone No: 045-873035

This notice shall remain in force until it is varied or withdrawn by a further notice in writing by an Authorised Officer.

Date 03/07/2017

Signed CHRISTOPHER MURPHY
Veterinary Practitioner and Authorised Officer.

Appendix VIII
Eco Advocacy v. An Bord Pleanala (Fieldfisher)

William Smyth BE, LLB(Hons), MBA, Dip. EIA Mgmt, Adv. Dip. Pl. & Env. Law, Eur. Ing., C.Eng FIEI

strategicplanning@mail.com +353-89-4598915

INSIGHT

Eco-Advocacy v An Bord Pleanála

fieldfisher

LOCATIONS

Ireland

On 15 June 2023, the Court of Justice of the European Union ('CJEU') issued a decision in the case of *Eco Advocacy v An Bord Pleanála*[1].

Background

Planning permission for a development consisting of 320 dwellings in Trim, Co. Meath was granted in October 2020 by An Bord Pleanála ("the Board"). Trim is a designated heritage town and the development site is close to a zone of archaeological potential and an architectural conservation area. The development site is in the vicinity of the River Boyne and River Blackwater Special Area of Conservation ("SAC") and Special Protection Area ("SPA").

The design of the development site featured a sustainable urban drainage system ('SUDS') which would collect surface water run-off in underground attenuation storage tanks during the operational phase of the site. Following treatment, the water would be discharged into a stream approximately 100 metres south of the development site. This would result in reducing the potential for effects on the protected sites. The Board had decided that a Stage 2 Appropriate Assessment ('AA')[2] under the Habitats Directive was not required.

Challenge

The grant of planning permission was challenged in May 2021. While the High Court rejected the domestic law grounds of challenge and a number of EU law grounds, Mr Justice

Humphreys referred six questions to the CJEU concerning the remaining grounds. Two of the more significant questions are summarised as follows:

1. Where a party brings a challenge to an administrative decision, but does not specify what provisions of EU law have been breached, can national courts examine this complaint notwithstanding national court rules requiring specific breaches to be set out ('own motion argument')
2. Whether a competent authority is entitled to take account of project features that are not intended to reduce harmful effects on a European site even if they have that effect (test for whether an element of a project was a mitigation measure or not)

CJEU Ruling

In relation to the own motion argument, the CJEU found that the national court rules in question (i.e. only being able to pursue points at hearing that have been properly pleaded) did not appear to make the public participation requirements of the EIA/Habitats Directives impossible or excessively difficult to exercise, and were such as to facilitate the proper conduct of proceedings. In addition, the CJEU found that despite the principle of equivalence[3], where there are no rules under national law that allow a court to raise a point not pleaded of its own motion, there is no such obligation conferred on the national court to raise a point of EU law of its own motion.

On the test for mitigation measures point, the CJEU found that where measures are incorporated into the design of a project not with the aim of reducing the negative effects of that project on the site concerned, but as standard features required for all projects of the same type, those elements cannot be regarded as indicative of probable significant harm to that site.

The Judgment followed Advocat General Kokott's Opinion (pronounced in January 2023), and brings clarity in respect of the application of EU law by the domestic courts in respect of both these important points.

Written by Jonathan Moore, Patrick Reilly and Craig Farrar.

[1] Eco Advocacy v An Bord Pleanála (Case C-721/21).

[2] Since the CJEU ruling in C-323/17 People Over Wind and Peter Sweetman v Coillte it has been understood that mitigation measures cannot be taken into account at Stage 1 of an Appropriate Assessment.

[3] The principle of equivalence requires Member States not to treat matters under EU law less favourably than purely domestic matters.

Appendix IX
23/60504 Cover Letter and Application form

William Smyth BE, LLB(Hons), MBA, Dip. EIA Mgmt, Adv. Dip. Pl. & Env. Law, Eur. Ing., C.Eng FIEI

strategicplanning@mail.com +353-89-4598915

JK Design

Architectural Drawing, Design & Planning
Tullamoy Stradbally Co. Laois

Mobile: 086 3640366
E-mail: j.kilbride@jkdesign.ie

Planning Department,
Laois County Council,
County Hall.
Portlaoise.
Co. Laois.

Dear Sir / Madam

Please find enclosed application for Retention Planning Permission at Forest Lower, Mountmellick, Co Laois for Mark Rochford.

Hope it meets with your requirement

Thanking You

Yours sincerely,

Joe Kilbride

Joe Kilbride, Agent.

Enclosed
(a) Planning Application form
(b) Newspaper notice
(c) Site notice

(d) Rural Place map 1:2500	(Drawing 2023-585-001)
(e) Record place map 1:10560	(Drawing 2023-585-002)
(f) Site layout map 1:500	(Drawing 2023-585-003)
(g) Cubicle Shed 'A' for Retention	(Drawing 2023-585-004)
(h) Cubicle Shed 'B' for Retention	(Drawing 2023-585-005)
(i) Slurry Lagoon for Retention	(Drawing 2023-585-006)
(j) Silage Pit for Retention	(Drawing 2023-585-007)

(k) Report from Declan Dempsey, Agri Advisor
(l) Screening report prepared by Roger Goodwillie
(m) Letter of Consent to Agent
(n) Planning Fee €900

PLANNING APPLICATION FORM

Please read directions and documentation requirements at back of form before completion. All questions relevant to the proposal being applied for must be answered. Non relevant questions: Please mark n/a.

PLANNING APPLICATION FORM (Part 1)

1. Name of Relevant Planning Authority: Laois County Council

2. Location of Development

Postal Address or Townland or Location (as may best identify the land or structure in question)	Forest Lower Mountmellick Co Laois
Ordnance Survey Map Ref No (and the Grid Reference where available)	3711, 3711-C Grid Eastings: 644,775 Grid Northings: 709,535

3. Type of planning permission (please tick appropriate box):

[ ] Permission

[X] Permission for retention

[ ] Outline Permission

[ ] Permission consequent on Grant of Outline Permission

4. Where planning permission is consequent on grant of outline permission:

Outline Permission Register Reference Number:

Date of Grant of Outline Permission:

5. Applicant [2]

Name(s)	Mark Rochford
	Contact details of Applicant to be supplied at Question [23]

6. Where Applicant is a Company (registered under the Companies Acts):

Name(s) of company director(s)	
Registered Address (of company)	
Company Registration No.	

7. Person/Agent acting on behalf of the Applicant (if any):

Name	Joe Kilbride
	Address to be supplied at the end of this form. (Question 24)

8. Person responsible for preparation of Drawings and Plans: 3 & 16

Name	Joe Kilbride
Firm/Company	JK Design

9. Description of Proposed Development:

Brief description of nature and extent of development [4]	Retention permission to retain 2 no Cubicle sheds, Slurry Lagoon, Silage Pit and associated site works at Forest Lower, Mountmellick, Co Laois.

10. Legal Interest of Applicant in the Land or Structure:

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner X	B. Occupier
	C. Other	
Where legal interest is 'Other', please expand further on your interest in the land or structure.		
If you are not the legal owner, please state the name of the owner and supply a letter from the owner of consent to make the application as listed in the accompanying documentation.		

11. Site Area:

Area of site to which the application relates in hectares	1.500

12. Where the application relates to a building or buildings:

Gross floor space [5] of any existing building(s) in sq m	4,950.00
Gross floor space of proposed works in sq m	0.00
Gross floor space of work to be retained in sq m (if appropriate)	4,950.00
Gross floor space of any demolition in sq m (if appropriate)	0.00

13. In the case of mixed development (e.g. residential, commercial, industrial, etc), please provide breakdown of the different classes of development and breakdown of the gross floor area of each class of development:

Class of Development	Gross floor area in sq m

14. In the case of residential development please provide the following,

(a) Breakdown of residential mix:

Number of	Studio	1 Bed	2 Bed	3 Bed	4 Bed	4+ Bed	Total
Houses	0	0	0	0	0	0	0
Apartments	0	0	0	0	0	0	0
Number of car parking spaces to be provided							Total: 0

15. Where the application refers to a material change of use of any land or structure or the retention of such a material change of use:

Existing use [6] (or previous use where retention permission is sought)	
Proposed use (or use it is proposed to retain)	
Nature and extent of any such proposed use (or use it is proposed to retain)	

16. Social and Affordable Housing

Please tick appropriate	Yes	No
Is the application an application for permission for development to which Part V of the Planning and Development Act 2000, as amended, applies? [7]		X
If the answer to the above question is "yes" and the development is not exempt (see below), you must provide, as part of your application, details as to how you propose to comply with section 96 of Part V of the Act including, for example, (i) details of such part or parts of the land which is subject to the application for permission or is or are specified by the Part V agreement, or houses situated on such aforementioned land or elsewhere in the planning authority's functional area proposed to be transferred to the planning authority, or details of houses situated on such aforementioned land or elsewhere in the planning authority's functional area proposed to be leased to the planning authority, or details of any combination of the foregoing, and (ii) details of the calculations and methodology for calculating values of land, site costs, normal construction and development costs and profit on those costs and other related costs such as an appropriate share of any common development works as required to comply with the provisions in Part V of the Act." (iii) If the answer to the above question is "yes" but you consider that paragraph (j) of Section 96(3) would be applicable, evidence of when site was purchased should be submitted.		

If the answer to the above question is **"yes"** but you consider the development to be exempt by virtue of section 97 of the Planning and Development Act 2000, as amended [8] , a copy of the Certificate of Exemption under section 97 must be submitted (or, where an application for a certificate of exemption has been made but has not yet been decided, a copy of the application should be submitted). If the answer to the above question is **"no"** by virtue of section 96(13) of the Planning and Development Act 2000, as amended [9] , details indicating the basis on which section 96(13) is considered to apply to the development should be submitted.	Agricultural Development

17. Development Details

Please tick appropriate	Yes	No
Does the proposed development consist of work to a protected structure and/or its curtilage or proposed protected structure and/or its curtilage?		X
Does the proposed development consist of work to the exterior of a structure which is located within an architectural conservation area (ACA)?		X
Does the application relate to development which affects or is close to a monument or place recorded under section 12 of the National Monuments Acts 1930-2004 [10]		X
Does the proposed development require the preparation of an Environmental Impact Statement [11]?		X
Does the application relate to work within or close to a European Site or a Natural Heritage Area[12]?		X
Does the application relate to a development which comprises or is for the purposes of an activity requiring a licence from the Environmental Protection Agency other than a waste licence?		X
Does the application relate to a development which comprises or is for the purposes of an activity requiring a waste licence?		X
Do the Major Accident Regulations apply to the proposed development?		X
Does the application relate to a development in a Strategic Development Zone?		X
Does the proposed development involve the demolition of any structure?		X

18. Site History

Details regarding site history (if known)

Has the site in question ever, to your knowledge, been flooded?
Yes [ ] No [X]
If yes, please give details e.g. year, extent:
Are you aware of previous uses of the site e.g. dumping or quarrying?
Yes [] No [X]
If yes, please give details:

Are you aware of any valid planning applications previously made in respect of this land/structure?

Yes [ ] No [X]
If yes, please state planning reference number(s) and the date(s) of receipt of the planning application(s) by the planning authority if known:

Reference No.:	Date:
Reference No.:	Date:
Reference No.:	Date:
Reference No.:	Date:

If a valid planning application has been made in respect of this land or structure in the 6 months prior to the submission of this application, then the site notice must be on a yellow background in accordance with Article 19(4) of the Planning and Development Regulations 2001, as amended.

Is the site of the proposal subject to a current appeal to An Bord Pleanála in respect of a similar development [13] ?

Yes [ ] No [X].
An Bord Pleanála Reference No.:

19. Pre-application Consultation

Has a pre-application consultation taken place in relation to the proposed development [14] ?

Yes [X] No [ ]
If yes, please give details: Pre Planning Ref Retention of Agricultural Structures

Reference No. (if any): N/A

Date(s) of consultation:2023-08-23

Persons involved: David O'Hara (SEP), Mark Rochford (Applicant), Liam Smyth (Consultant) & Joe Kilbride (JK Design, Agent)

20. Services

Proposed Source of Water Supply
Please indicate whether existing or new: Existing [X] New [ ] Not Applicable [ ] Public Mains [ ] Group Water Scheme [ ] Private Well [X] Other (please specify) [ ] Name of Group Water Scheme (where applicable)
Proposed Wastewater Management/Treatment
Please indicate whether existing or new: Existing [ ] New [ ] Not Applicable [X] Public Sewer [ ] Conventional septic tank system [ ] Other on-site treatment system (Please specify) [ ]

Proposed Surface Water Disposal
Public Sewer/Drain [ ] Soakpit [X] Watercourse [ ] Other (Please specify) [ ] Not Applicable [ ]

21. Details of Public Notice

Approved newspaper in which notice was published	The Nationalist
Date of publication	28-11-2023
Date on which site notice was erected [17]	28-11-2023

22. Application Fee

Fee Payable [18]	900.00
Basis of Calculation	Class 3 (B) - Agricultural Retention Max Fee - €900

I hereby declare that, to the best of my knowledge and belief, the information given in this form is correct and accurate and fully compliant with the Planning & Development Acts 2000, as amended, and the Regulations made there under: Where an application is made in electronic form with the consent of the Planning Authority under article 22(3) of the Principal Regulations valid login credentials will replace the need for a signature and satisfy the declaration.

To be signed by applicant(s) or agent where applicable.

	Applicant	Applicant (where more than one applicant is named).	Agent
Signature	_____	_____	_____
Print Name	_____	_____	_____
Date	_____	_____	_____

Appendix X
23/60504 Stage 1 Screening for AA

William Smyth BE, LLB(Hons), MBA, Dip. EIA Mgmt, Adv. Dip. Pl. & Env. Law, Eur. Ing., C.Eng FIEI

strategicplanning@mail.com +353-89-4598915

Retention of Development at Forest Lower,

Mountmellick, Co Laois

FI: Appropriate Assessment (screening)

Report for Mark Rochford

September 2023

Roger Goodwillie & Associates, Lavistown House, Kilkenny. Ph/Fax 056-7765145

1. INTRODUCTION

The purpose of this report is to examine the proposed development for possible ecological impacts on the integrity of the Natura 2000 network, in particular on the downstream SAC – the River Barrow & River Nore (Site Code 2162).

The development site is located close to the River Barrow and the application has to have due regard to Article 6 (3) of the EU Habitats Directive which states:

> *Article 6 (3): Any plan or project not directly connected with or necessary to the management of the [Natura 2000] site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the [Natura 2000] site in view of the [Natura 2000] site's conservation objectives.*

This is transposed into national legislation by Regulation 31 of the European Communities (Natural Habitats) Regulations 1997.

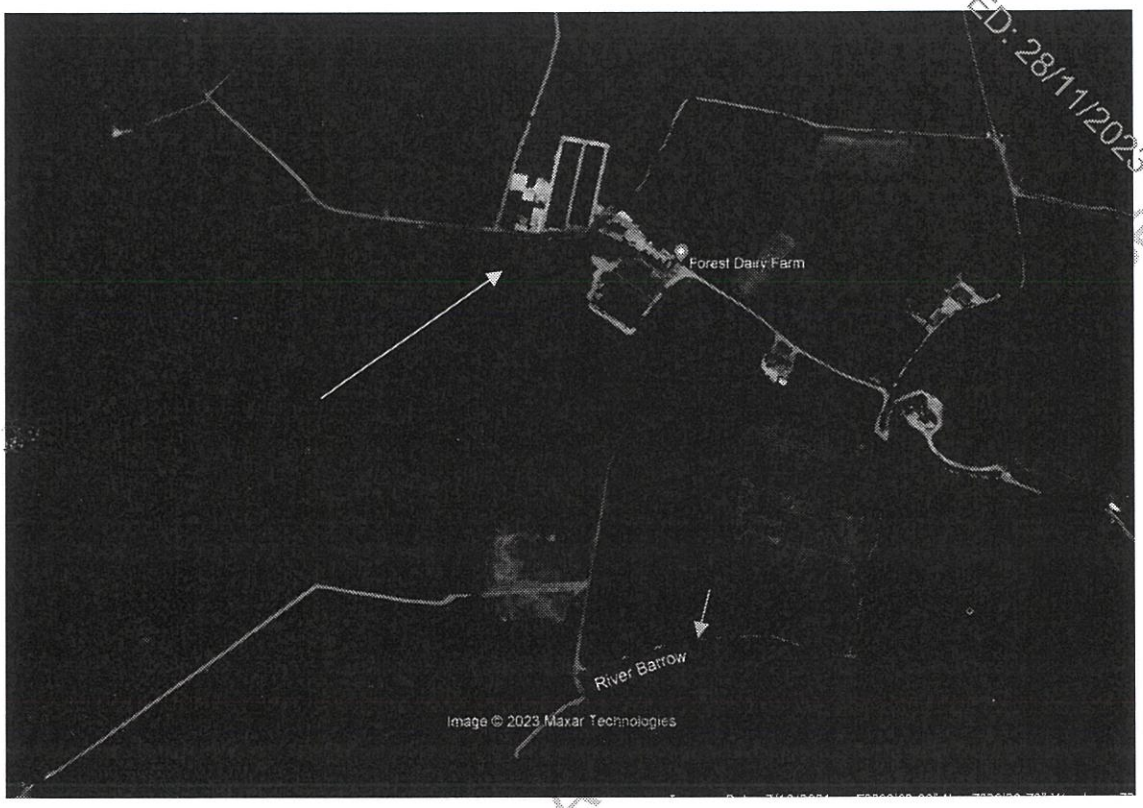
The Report will assess the impacts on the integrity of the Natura 2000 site and include a full Appropriate Assessment (NIS) if required. It begins with a description of the flora and fauna of the site to determine if any ecological connection or parallels exist between the area and the local Natura 2000 sites.

The description is derived from a field visit in September 2023, having examined the available files and online sources of information for the local Natura 2000 sites. All work was undertaken by Roger Goodwillie, a full Member of the Chartered Institute of Ecology and Environmental Management (CIEEM) and qualified in Botany as B.A. (Mod.), M.Sc. He has been a practising ecologist for 40 years.

The sources of information used to collect data on the Natura 2000 network of sites include:

- Ordnance Survey of Ireland mapping and aerial photography available from www.osi.ie, Google Earth and Bing aerial photography.
- Online data available on Natura 2000 sites as held by the National Parks and Wildlife Service (NPWS) from www.npws.ie including; the Natura 2000 network Data Form; Site Synopsis; Generic Conservation Objective data.
- Online database of rare, threatened and protected species o Publicly accessible biodiversity datasets.
- Status of EU Protected Habitats in Ireland. (National Parks & Wildlife Service, 2013).

2. DESCRIPTION OF AREA



The photo above shows the site of the dairy farm with two cubicle sheds aligned NNE-SSW leading to a slurry lagoon just south of the roadway and bordered by a silage clamp to the west.

The fields around are all <u>improved agricultural grassland</u> (GA1 in Fossitt 2000) – a mix of ryegrass *Lolium perenne*, rough-stalked meadowgrass *Poa trivialis* with some dandelion *Taraxacum* agg, white clover *Trifolium repens*, pineapple weed *Matricaria discoidea* and chickweed *Stellaria media*. This type of grassland extends to the Barrow riverbank.

Seasonal drains run southwards from each side of the site leading to more permanent water along the NW-SE hedge to the south. The drains contain abundant nettle *Urtica dioica* and great willowherb *Epilobium hirsutum* with meadowsweet *Filipendula ulmaria* on the banks and ash trees rooted on both sides. The NW-SE drain supports

Sweet grass	*Glyceria fluitans*
Soft rush	*Juncus effusus*
Reed canary grass	*Phalaris arundinacea*
Purple loosestrife	*Lythrum salicaria*
Tufted hairgrass	*Deschampsia cespitosa*

with trees of grey willow *Salix cinerea*, downy birch *Betula pubescens*, poplar *Populus* sp and hawthorn *Crataegus monogyna* above.

The final discharge of water to the river is indicated by the blue arrow on the photo. It is about 520m downstream from the development site.

2.2 Evaluation

The development site has a low level of ecological interest and all species would be considered likely in the habitat.

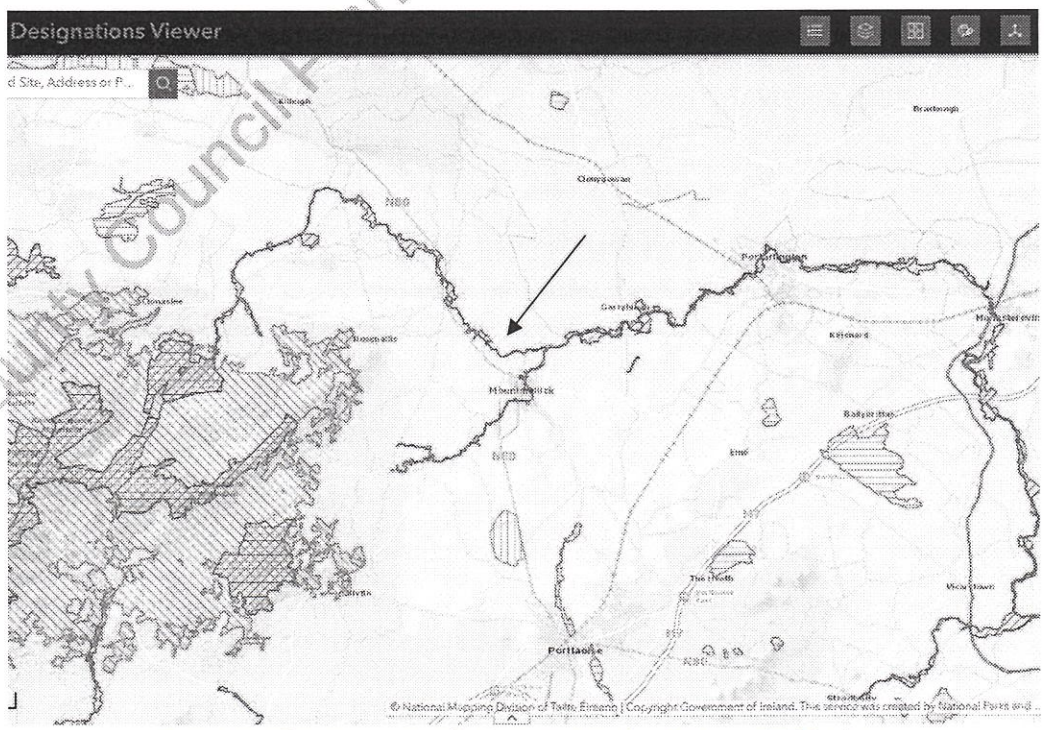
There are no invasive alien plants on site at present.

3. APPROPRIATE ASSESSMENT

3.1 Introduction

Appropriate assessment was introduced by the EU Habitats Directive as a way of determining if a planned project is likely to have a significant effect on the integrity of one of the Natura 2000 sites so far designated (i.e. the candidate SAC's and SPA's), or their conservation objectives. In this case there are five Natura sites within 15km of the project area which are shown on the map below. They are:

Name of site	Site Code	Distance km
River Barrow & River Nore SAC	2162	0.5
Mountmellick SAC	2141	2.4
Slieve Bloom Mountains SPA	4160	3.0
Slieve Bloom Mountains SAC	0412	4.4
Clonaslee eskers & Derry Bog SAC	0859	9.2



Position of project in relation to nearby Natura 2000 sites.

In the Irish context appropriate assessment has been interpreted as a four-stage process. Firstly, a screening exercise (Stage 1) determines if a project could have significant effects on a Natura site. If it does or the situation is unclear and any effects may need mitigation, a Natura Impact Statement (Stage 2) is provided to the planning or regulatory authority. Examples of significant effects are a loss of habitat area, fragmentation of the habitat, disturbance to species using the site and changes in water resources or quality. If such negative effects come to light in the assessment, alternative solutions are investigated by the proponent (Stage 3) and modifications made unless the project is deemed to be driven by 'imperative reasons of overriding public interest' in its current form. In this case Stage 4 then deals with compensatory action.

The following guidance documents have been used in the screening process:

- Appropriate Assessment of Plans and Projects in Ireland - Guidance for Planning Authorities (DEHLG 2009, Revised February 2010).
- EU Guidance document on Article 6(4) of the 'Habitats Directive' 92/43/EEC (EC, 2007).
- Assessment of plans and projects significantly affecting Natura 2000 sites. Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC (EC, 2002).
- Managing Natura 2000 Sites: The provisions of Article 6 of the 'Habitats' Directive 9. (EC 2000).
- Appropriate Assessment under Article 6 of the Habitats Directive: Guidance for Planning Authorities. Circular NPW 1/10 and PSSP 2/10.
- Guidelines for Good Practice Appropriate Assessment of Plans under Article 6(3) Habitats Directive (International Workshop on Assessment of Plans under the Habitats Directive, 2011).
- Guidance document on the strict protection of animal species of Community interest under the Habitats Directive 92/43/EEC.
- The Status of EU Protected Habitats and Species in Ireland 2013 (Department of Arts, Heritage and the Gaeltacht, 2013). 2/43/EEC (EC, 2000.)
- Court of Justice EU Case C-323/17. Directive 92/43/EEC Article 6(3) — Screening in order to determine whether or not it is necessary to carry out an assessment of the implications, for a special area of conservation, of a plan or project — Measures that may be taken into account for that purpose.
- Appropriate Assessment Screening for Development Management OPR Practice Note PN01. March 2021

3.2 Project description

The proposal is to retain the two cubicle sheds, the slurry lagoon, silage pit and associated site works at Forest Lower, Mountmellick, Co Laois.

3.3 Natura site screening

Of the five Natura 2000 sites within 15km it is only the River Barrow & River Nore SAC that has a direct hydrological link with the development site. The Slieve Bloom sites are above it in

altitude while the Mountmellick marsh is lower down the catchment. The Clonaslee eskers and Derry Bog are in a different catchment altogether (Brosna/Shannon).

The River Barrow & River Nore SAC is based on the river channels with extensions to the marginal habitats where these are connected to the aquatic ecosystem (tributaries, floodplains etc) or have habitats of significant interest.

River Barrow & River Nore SAC

The site synopsis (see NPWS website) lists the more interesting aspects of the River Barrow and River Nore site, including the Annex I habitats and Annex II species as listed in the EU Habitats Directive. These 'qualifying interests' are brought together with supporting survey information and conservation objectives in NPWS (2011). The interests are

1016 Desmoulin's whorl snail *Vertigo moulinsiana*
1029 Freshwater pearl mussel *Margaritifera margaritifera*
1092 White-clawed crayfish *Austropotamobius pallipes*
1095 Sea lamprey *Petromyzon marinus*
1096 Brook lamprey *Lampetra planeri*
1099 River lamprey *Lampetra fluviatilis*
1103 Twaite shad *Alosa fallax*
1106 Atlantic salmon (*Salmo salar*) (only in fresh water)
1130 Estuaries
1140 Mudflats and sandflats not covered by seawater at low tide
1170 Reefs
1310 *Salicornia* and other annuals colonizing mud and sand
1330 Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*)
1355 Otter *Lutra lutra*
1410 Mediterranean salt meadows (*Juncetalia maritimi*)
1421 Killarney fern *Trichomanes speciosum*
1990 Nore freshwater pearl mussel *Margaritifera durrovensis*
3260 Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitricho-Batrachion* vegetation
4030 European dry heaths
6430 Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels
7220 * Petrifying springs with tufa formation (*Cratoneurion*)
91A0 Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles
91E0 * Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*)

* indicates priority habitat

Only the interests that occur in this part of the catchment are relevant to this site. These are aquatic animals – the white-clawed crayfish (NBDC data), river and brook lampreys (King 2006), Atlantic salmon and otter. In addition, there may be some examples of floating river vegetation (3260) as the complete distribution is not currently known (NPWS 2011).

3.4 Conservation objectives (NPWS 2011)

Broadly these may be expressed as follows:

1. To maintain the Annex I habitats for which the SAC has been selected at favourable conservation condition

2. To maintain or restore the Annex II species for which the SAC has been selected at favourable conservation condition.

The favourable conservation condition of a habitat is achieved when:

- its natural range, and area it covers within that range, are stable or increasing
- the specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future
- the conservation status of its typical species is favourable.

The favourable conservation condition of a species is achieved when:

- population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats
- the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future
- there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis.

In more detail the specific objectives for the relevant interests are:

3.4.1 White-clawed crayfish

The target set is one of population maintenance while water quality should be at least Q3-4 at all sites sampled. This is the case for the local EPA sampling points (Q4 at Twomile Bridge above the site and Q3-4 at Borness Bridge, below the site where the Owenass joins).

3.4.2 Brook & river lamprey

The target for these species is to remove barriers to their migration (none in this area). Both breed in gravel deposits on the riverbed.

3.4.3 Atlantic salmon

All rivers up to second order tributaries should be accessible from the estuary. The target relating to water quality is at least Q4 though the species successfully migrates through lower quality water in most estuaries and towns.

3.4.4 Otter

No significant decline as measured according to the percentage of positive survey sites based on standard survey techniques. The target for terrestrial habitat is that no changes should occur in a zone of 10m from the riverbank or any decline in couching sites and holts. No suitable breeding sites occur to the south of the development site.

3.5 Likely effects

The site does not support any of the listed habitats or species for the adjacent Natura site.

The development has been designed so that all effluent and run-off from the cubicle houses and yard is diverted to the slurry lagoon from where it can be spread on land. Roof- and other clean water is discharged to the drain on the western side. The lagoon itself has a heavy-duty liner conforming to The Department of Agriculture specification S126. The side slopes are embanked where necessary and there is no sign of any leakage.

The facility has been constructed to a high standard in conformity with Department regulations and advice. Of itself it does not pose a risk to water quality in the Barrow River so cannot adversely affect the Natura site. On-going management of the whole farm, including slurry spreading, ultimately controls the quality of drainage water going to the river.

4. CONCLUSION OF SCREENING

It can be concluded beyond reasonable scientific doubt that there is no likelihood that this development of itself will have significant impacts on the integrity and functioning of the Natura 2000 site network; neither will there be any effects on achieving the conservation objectives. This is so by itself or in combination with other adjacent developments.

The further, more detailed, stages of appropriate assessment are not required.

References

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Appendix XI
23/60504 Letter of Invalidation 31st January 2024

William Smyth BE, LLB(Hons), MBA, Dip. EIA Mgmt, Adv. Dip. Pl. & Env. Law, Eur. Ing., C.Eng FIEI

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COMHAIRLE CHONTAE LAOISE
LAOIS COUNTY COUNCIL

Áras an Chontae
Portlaoise,
Co Laois
R32 EHP9

REGISTERED POST

Planning Ref. No: 23/60504

Mark Rochford
Forest Lower
Mountmellick
Co Laois

31/01/2024

RE: Planning Ref. 23/60504- Permission to retain 2 no cubicle sheds, slurry lagoon, silage pit and associated site works at Forest Lower, Mountmellick, Co Laois.

A Chara,

I refer to the above planning application and wish to advise that 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, 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 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.

The Planning Authority concludes that the development would have required **(c) an appropriate assessment**, to assess the potential impacts on the River Barrow and Nore SAC which is in close proximity to the subject site, and therefore the Planning Authority is refusing to consider the application.

A refund of the application fee is due to you, please find attached a supplier set up form for you to complete and return to enable the Finance Department to issue a refund.

The site notice(s) should be removed from the site immediately.

Is mise le meas,

ADMINISTRATIVE OFFICER,
PLANNING DEPARTMENT