

Mark Kielty

From: Karen Byrne
Sent: Monday 17 August 2020 14:52
To: Mark Kielty
Subject: FW: Re: Our Client: Crossfield Property Company Limited.
Attachments: Letter to An Bord Pleanala 14.08.20.pdf; An Bord Pleanala Inspectors Report.pdf; Planning System and Flood Risk Management Report.pdf; Scan20200814_14231354.pdf

From: Appeals2
Sent: Friday 14 August 2020 17:54
To: Karen Byrne <K.Byrne@pleanala.ie>
Subject: FW: Re: Our Client: Crossfield Property Company Limited.

From: Bord
Sent: Friday 14 August 2020 17:04
To: Appeals2 <appeals@pleanala.ie>
Subject: FW: Re: Our Client: Crossfield Property Company Limited.

From: Info info <info@michealglynn.ie>
Sent: Friday 14 August 2020 14:35
To: Bord <bord@pleanala.ie>
Subject: FW: Re: Our Client: Crossfield Property Company Limited.

Dear Sirs,

Please see the attached for your attention.

Yours faithfully,

Micheál Glynn

MICHEÁL GLYNN & COMPANY,
SOLICITORS,
98 O'CONNELL STREET,
LIMERICK.
T: 061 418518
F: 061 418519
DX: 30-42
E: info@michealglynn.ie

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MICHEAL GLYNN & CO., SOLICITORS

COMMISSIONERS FOR OATHS

An Bord Pleanála,
64 Marlborough Street,
Dublin 1.
D01 V902.
Registered Post.

98 O'Connell Street,
Limerick.
V94 WK3R

Telephone (061) 418518
Fax (061) 418519

Branch Office:
Gaurus, Ennis, Co., Clare.

Telephone: (065) 6840823
Email: info@michealglynn.ie

Our Ref: MG.SR

Your Ref: RL03.RL3611

Date: 14.08.20

**Re: Whether the carrying out of groundworks, constitutes development and development which is or isn't exemptive development Tulla Road environs 1.5km North East of Ennis Town Centre.
Our Client: Crossfield Property Company Limited.**

Dear Sirs,

We confirm that we have been instructed by a Director of Crossfield Property Company Limited and we refer to your letter of the 21st July with enclosures.

You might please note that Crossfield Property Company Limited is no longer the beneficial owner of the lands the subject matter of the application so Crossfield Property Company Limited has no interest or standing presently in the issues raised therein.

Strictly without prejudice the Director echoes the submissions which were made in the original application to An Bord Pleanála under case reference RL03.RL.3611 which was the subject matter of a Judicial Review and on foot of which an order of Certiorari was subsequently made in the High Court.

We have been requested to submit a further copy of the report of Brendan McGrath dated the 1st day of September, 2017 and also the report of the Inspector from An Bord Pleanála, Paul Caprani dated the 19th December, 2017 on foot of a site inspection carried out on the 8th November, 2017.

MICHEAL GLYNN B.C.L. SOLICITOR

JOANNE LANE L.L.B SOLICITOR

BRIAN MURPHY B.A. L.L.B L.L.M Dip. Arb. SOLICITOR
V.A.T. Reg. No. IE 3207991W
LDE 3042

CLODAGH GLYNN L.L.B SOLICITOR

MICHEÁL GLYNN & CO., SOLICITORS

We are instructed that the majority of the works on the site and the associated filling was done by the Office of Public Works and by the contractors who were retained by Clare County Council for the Water Supply Upgrade Scheme in Roslevan in 2015. Our client also points out that the Office of Public Works removed the old embankment on the river and used that material to effectively level the site along with the existing high mounds which were within the curtilage of the site for many years and these were also levelled during the process.

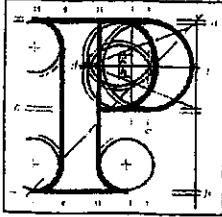
Our client would also like to refer to the report from the Office of Public Works entitled "The Planning System and Flood Risk Management" a copy of which we **enclose**, which shows that that majority of the site is not in a Flood Zone A or a Flood Zone B but rather a Flood Zone C as coloured in white on the map incorporated in the report and this "White Zone" relates to the majority of the site the subject matter of the present referral to An Bord Pleanála. Clare County Council averred to this particular issue erroneously in their most recent Development Plan when referring to the site as being in Flood Zone A and Flood Zone B whereas less than 10% of the site is in those particular zones and in fact the part of the site that is in Flood Zone A as per the Office of Public Works map/report is now totally isolated from the River Fergus and the Special Area of Conservation by the new embankment erected by the Office of Public Works and the previous drain that was there was closed up and piped rendering that part of the site on an equal footing or standing from a flood perspective to all of the lands in the greater Cappahard area to include the Castlerock and White Park housing estates.

Our client has requested that we make these observations/submissions but to reiterate that Crossfield Property Company Limited has no further interest, beneficial or otherwise, in the property the subject matter of the application and the overall site is now in the ownership of two separate parties by way of onward sales.

We trust that you will note the position.

Yours faithfully,


MICHEÁL GLYNN & CO.,
Email: info@michealglynn.ie
Encl.



An
Bord
Pleanála

Inspector's Report RL03.RL3611

Question	Whether Groundworks, including the importation and deposition of fill material, creation of a hardstanding area and raising of the land area is or is not development or is or is not exempted development.
Location	Tulla Road Ennis C. o Clare
Planning Authority	Clare County Council.
Referrer	Clare County Council.
Owner Occupier	Crossfield Property Company Limited
Date of Site Inspection	8 th November, 2017.
Inspector	Paul Caprani.

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1.0 Introduction

A question has arisen pursuant of Section 5 of the Planning and Development Act as to whether or not groundworks including the importation and deposition of fill material and the raising of the ground level in order to create a hardstanding area constitutes development and if it constitutes development, whether or not it constitutes exempted development. The lands in question are located approximately 1.5 kilometres north-east of Ennis Town. The question was referred to the Board by Clare County Council on foot of complaints received by the Planning Authority in respect of the activities undertaken.

2.0 Site Location and Description

2.1. The lands to which the referral relates are located in the north-eastern environs of Ennis Town Centre on the southern side of the Tulla Road. The lands occupy an area of approximately 1.5 hectares. They are currently undeveloped and filled with hardcore material. The north-eastern portion of the lands front onto the Tulla Road and extend back from the road to occupy an area to the rear of a petrol station and a number of commercial units which fronts onto the Tulla Road. The suburban estate of Castle Rock is located on lands to the west and south of the subject site. A large area of public open space associated with this estate is located adjacent to the south-eastern boundary of the site. The documentation submitted demarcates the subject site into two separate parcels (A and B). Area A comprises of a rectangular piece of land c.0.6 hectares in size fronting onto the Tulla Road. Parcel B occupies an area to the rear of the petrol station and is bounded to the west by the River Fergus which forms part of the Lower Shannon SAC. The subject site extends to the bank of the River Fergus but the area where the infill has taken place has not extended to the river. It appears from maps on file that a drainage channel to the east of the River Fergus traversed the centre of Area B in a north/south direction prior to the infilling of the site with hardcore. This drainage channel which comprises of an elongated depression is still apparent on lands to the south of the site adjacent

to the existing residential estate. It appears from maps submitted that this drainage channel previously extended across the site to the rear of the existing petrol station.

3.0 The Nature of the Declaration

- 3.1.1. The declaration was made by Clare County Council. It outlines the planning history associated with the site and states that the only planning history relates to an enforcement file open in respect of the subject importation and fill of hardcore on site. The submission goes on to set out the zoning provisions as they relate to the site and its surroundings. It notes that the site is designated as a flood risk zone and that the Lower Shannon SAC bounds the site to the immediate west and south-west.
- 3.1.2. The submission goes on to state that on foot of a number of complaints, the Planning Authority opened an enforcement file and concluded that the work carried out constituted development which is exempted development by reason of Article 8 of the Planning and Development Regulations 2001 (as amended). Notwithstanding this, further complaints were received and therefore a declaration is now sought from the Board. The Planning Authority submission states that Area A is located outside the flood relief works area. However, the Planning Authority understands that an access route through these lands were agreed between the landowner and the OPW.
- 3.1.3. It is stated that previously, before the current activities were undertaken, the site was overgrown with mounds of material deposited throughout the site. The site was cleared, levelled and additional hardcore material was imported and deposited within the site. The drain that previously ran through the site has been replaced by a 1,050 millimetre diameter pipeline. Clare County Council understands the works carried out were part of, and ancillary to, the River Fergus (Lower Ennis) Certified Drainage Scheme on behalf of the OPW. The Planning Authority notes that the Board ruled that in the case of RL03 3202, that works associated with the flood relief scheme constituted development which was exempted development.
- 3.1.4. A further submission from Clare County Council was received in response to a letter issued by the Board on 10th August, 2017. The further submission from Clare County Council states the following:
- There were no previous planning applications on site.

- Details of the warning letter to the landowner in respect of the activities carried out on site is attached.
- The letter states that Crossfield Property Company are the registered owners of the site.
- Finally, that the Planning Authority are seeking a declaration in respect of the activities undertaken from the Board under the provisions of Section 5 of the Act.

4.0 Submission from the Owner/Occupier of the Lands

- 4.1.1. The lands in question are part of the River Fergus (Lower Ennis) Certified Drainage Scheme. The lands were also used as a compound for Clare County Council/Ennis Town Council Drainage Project and some further filling took place at that time.
- 4.1.2. Site clearance works commenced in February 2013, and it is stated that the bulk of the drainage relief works were completed by August, 2014 and were fully completed by October of that year. Prior to this the site accommodated scrubland which was below the level of the road and while the lands were of some ecological value, the overall value is not deemed to be significant.
- 4.1.3. The whole area of the site was filled with imported material. Details of the timeline were set out under which the works were undertaken. The lands were also used as a temporary compound to carry out a water supply upgrade scheme in the area.
- 1.4. The owner was notified by the OPW of its intention to enter the lands in question and to carry out works under Section 9 of the Arterial Drainage Act 1945. It is stated that the activities in question constitute works which are exempted development under Article 8 of the Planning and Development Regulations 2001 and Section 4(1)(g) of the Planning and Development Act 2000. It is concluded that the works are exempted development under the provisions of the Planning and Development Act 2000.
- 4.1.5. A number of appendices are attached.
 - Appendix 1 contains a letter sent to the appellant from JB Barry and Partners that a Certified Drainage Scheme has been confirmed by Ministerial Order which results in powers conferred upon the commissioners of the OPW to enter

property to construct, execute and complete works specified under the Certified Drainage Scheme.

- Appendix 2 contains details of the works undertaken on site to date.
- Appendix 3 and 4 contain photos of the various stages of works undertaken on site.
- Appendix 5 contains extracts of the habitats survey of the Ennis and Environs Development Plan.
- Appendix 6 contains details of the use of the site as a compound for a local authority water supply scheme.

4.2. Further Submission by Clare County Council

- 4.2.1. This submission states that the details on behalf of the owner/occupier indicate the some of the works as carried out were ancillary to the flood relief works and therefore fall within the exemption as per Article 8 of the Regulations. It appears that other works were carried out as part of the watermain upgrading works where part of the site was used as a compound. It is unclear whether these works constituted development as per Section 4(1) (g) of the Act.

5.0 Planning History

One relevant history file is attached. Under RL03.RL3202 a declaration was sought from the Board from the residents of Woodstock Hill and Woodstock View as to whether or not the removal of fill material from lands for the use in the construction of embankments as part of the Ennis South Flood Relief Scheme constitutes development and if it constitutes development whether or not the works constituted exempted development. The Board issued a declaration that the construction of embankments as part of the Ennis South Flood Relief Scheme which is incidental to the works being carried out pursuant to the approval under Appeal Ref. No. 03.JP0013 together with the exemptions under Article 8 of the Planning and Development Act which are not bound by the restrictions on exemptions specified under Article 9 of the said Regulations that the works in question constitute development which is exempted development.

6.0 Relevant Legislation

6.1. Planning and Development Act 2000 as amended.

6.1.1. Section 2 of the Act includes the following definitions:

"Works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal or in relation to a protected structure includes any operation involved in the application or removal of plaster, paint, wallpaper, tiles or any other material to or from the surfaces of the interior to the exterior of the structure.

1.2. Section 3(1) of the Planning and Development Regulations 2000, as amended, states the follow:

"Development" in this Act means except where the context other requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

6.1.3. Section 4 of the Act states the following shall be exempted development for the purposes of this Act.

4(1)(g) 'development consisting of the carrying out by any local authority or statutory undertaking of any works for the purposes of inspecting, repairing, renewing, altering or removing of any sewers, mains, pipes, cables, overhead wires or other apparatus including the excavation of any street or other land for that purpose'.

6.2. Planning and Development Regulations 2001, (as amended).

6.2.1. Article 8 of the Regulations state the following:

Works specified in a drainage scheme confirmed by the Minister of Finance with the Part 2 of the Arterial Drainage Act 1945 (No. 3 of 1945) or the Arterial Drainage (Amendment) Act 1995 (No. 14 of 1995), carried out by or behalf of or in partnership with the commissioners with such additions, omissions, variations, deviations or other works incidental thereto as may be found necessary by the commissioners or their agent or partner in the course of the works shall be exempted development.

Article 6 states that subject to Article 9, development of a class specified in Column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act

provided that such development complies with the conditions and limitations specified in Column 2 of the said Part 1 opposite the mention of that Class in the said Column 1.

6.2.2. In relation to *Temporary Structures and Uses*, Class 16 refers to *the erection, construction or placing on land on, in, over or under which or on land adjoining which development consisting of works (other than mining) is being or is about to be, carried out pursuant to a permission under the Act or exempted development, of structures, works, plant or machinery needed temporarily in connection with that development during the period of which it is being carried out.*

6.2.3. The conditions and limitations as they apply to Class 16 are as follows:

Such structures, works, plant or machinery shall be removed at the expiration of the period and the land shall be reinstated save to such an extent as may be authorised or required by a permission under the Act.

7.0 Assessment

7.1. The first issue the Board must determine is whether or not the importation and deposition of hardcore constitutes "works" and if so whether or not the activities undertaken constitute development. The activities undertaken on site involved the importation of fill material which was deposited and levelled on the subject site which resulted in an increase of ground levels. These works were carried out in accordance with requirements under the Arterial Drainage Act of 1945. Works are defined under the Act as the 'operation of construction, excavation, demolition, extension, alteration, repair or renewal'. I think it could be reasonably argued in this instance that the deposition and levelling of imported hardcore onto the subject site which resulted in a change in ground levels constitutes an alteration to the subject site and would therefore constitute works under the definition of the Act. If the Board agree that the activities undertaken on site constitute works, it logically follows that development has taken place in accordance with the definition set out under Section 3(1) of the Act which specifically refers to the carrying out of 'Works'.

7.2. The next question which arises is whether or not the development constitutes development that is exempted development in accordance with the planning legislation. It is apparent from the documentation submitted with the

owner/occupier's submission that the certified drainage scheme was confirmed by Ministerial Order (see correspondence from JB Barry and Partners, Consulting Engineers in Appendix 1 of submission).

- 7.3. I cannot conclusively state that the works undertaken were strictly and fully in accordance with the drawings submitted. However, I do note that the Planning Authority do not express any concerns in this regard and furthermore the submission on behalf of the owner states that as part of the Certified Drainage Scheme, a large portion of the site was required to be filled with imported material. There is nothing to the contrary which suggests that any works undertaken were not in connection with the Certified Drainage Scheme and as such the works undertaken would appear to be exempted by virtue of Article 8 of the Planning and Development Regulations 2001 (as amended).
- 7.4. The Planning Authority raise some concern that some of the importation of fill and levelling of the grounds did not fall within the area designated for the flood relief scheme. These essentially relate to the land referred as Area "A" in the information contained on file. However, Article 8 does specifically state that works connected with the Arterial Drainage Act and *"or other works incidental thereto as may be found necessary by the commissioners or their agent or partners in the course of the works, shall be exempted development"*. Area "A" as indicated in the drawing was used to create an access to the flood relief works and were also likely to be used as a temporary compound area associated with the works to be undertaken. Therefore, it can be reasonably argued in my view that the infilling and levelling of Area "A" constituted works that were incidental and ancillary to the main works carried out as part of the drainage scheme and as such also constituted exempted development under the Act.
- 7.5. As in the case of RL3202 (see attached) I note that exemption from obtaining planning permission for drainage works under Article 8 of the Regulations are independent for many restrictions and exemptions under Article 9 of the said Regulations. The restrictions on exemption under Article 9 solely relate to development to which Article 6 relates. As such the fact that the works are located adjacent to a European site would not trigger any de-exemption under the provisions of Article 9(viib) (or any other restrictions under Article 9 for that matter). As such, de-exemption only relates to development under Article 6 and not under Article 8.

7.6. The Planning Authority in its letter dated October 18th noted that part of the site was used as a compound associated with the watermain upgrading works. The submission goes onto to state that it is unclear if these particular works constituted exempted development as per Section 4(1)(g) of the Planning and Development Act. Section 4(1)(g) exempts development from requiring planning permission where it involves *"the carrying out by any local authority or statutory undertaker of any works for the purposes of inspecting, repairing, renewing, altering or removing any sewers, mains, pipes, cables, overhead wires or other apparatus including the excavation of any street or other land for that purpose"*.

7.7. The use of the site at a temporary compound for the purposes of upgrading water supply in the area would in my view fall within the definition of works under Section 4(1)(g) and as such would constitute exempted development.

7.8. Furthermore, I consider that a strong case could be made for exempting the use of the site as a temporary compound under Article 6, Schedule 2, Part 1, Class 16 of the Planning and Development Regulations 2001, which exempts the following from requiring planning permission.

"The erection, construction or placing on land on, in, over or under which, or on land adjoining which, development consisting of works (other than mining) is being or is about to be, carried out pursuant of a permission under the Act or is exempted development, of structures works, plant or machinery needed temporarily in connection with that development during the period in which it is being carried out. It appears that any such works complied with the limitations set out under Class 16 in that such structures, works, plant or machinery was removed at the expiration of the period".

7.9. Arising from my assessment above therefore I consider that the activities undertaken on site which included the importation and levelling of hardcore for the purposes of implementing a Certified Drainage Scheme constitutes development which is exempted development primarily by reason of the provisions of Article 8 of the Planning and Development Regulations 2001, but also by virtue of the provisions of Section 4(1)(g) of the Principal Act (as amended) and Class 16 of Schedule 2, Part 1 of the Planning and Development Regulations, 2001 (as amended). I therefore recommend that the Board issue a draft order as follows:

WHEREAS a question has arisen as to whether or not groundworks including the importation and deposition of fill material and the creation of a hardstanding area and the raising of ground levels is or is not development or is or is not exempted development:

AND WHEREAS Clare County Council requested a declaration on the same question in accordance with Section 5(4) of the Planning and Development Act, 2000 (as amended)

AND WHEREAS An Bord Pleanála in considering this referral had regard particularly to

- (a) Sections 2, 3 and 4 of the Planning and Development Act, as amended, and
- (b) Articles 6, 8 and 9 of the Planning and Development Regulations 2001, as amended

AND WHEREAS An Bord Pleanála concluded that

- (a) the groundworks undertaken including the importation and deposition of fill, the creation of a hardstanding area and the raising of ground levels were works carried out as part of the River Fergus Lower (Ennis) Certified Drainage Scheme under the Arterial Drainage Act of 1945, and
- (b) the exemptions under Article 8 of the Planning and Development Regulations 2001 (as amended),
- (c) furthermore, the use of the lands in question as a temporary compound associated with improvements in the water supply network fall within works which are exempted under the provisions of Section 4.(1)(g) of the Planning and Development Act 2000 (as amended) and Class 16 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended).
- (d) the Board noted that exemptions under Article 8 of the Planning and Development Regulations 2001 (as amended), are independent from the exempted provisions identified under Article 6 of the said Regulations and

therefore are not bound by the restrictions on exemptions specified under Article 9 of the said Regulations.

NOW THEREFORE An Bord Pleanála in exercise of the powers conferred on it by Section 5(3)(a) of the 2000 Act (as amended) hereby decides that the groundworks undertaken including the importation and deposition of fill material to create a hardstanding area and the raising of ground levels is development that is exempted development.

MATTERS CONSIDERED

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it is required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.



Paul Caprant,
Senior Planning Inspector.

19th December, 2017.

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The Planning System and Flood Risk Management



Guidelines for Planning Authorities

November 2009



OPW



email as discussed, please see an extract re flood zones from "The Planning System and Flood Risk Management Guidelines":

"Flood zones

Flood zones are geographical areas within which the likelihood of flooding is in a particular range and they are a key tool in flood risk management within the planning process as well as in flood warning and emergency planning. There are three types or levels of flood zones defined for the purposes of these Guidelines:

- *Flood Zone A – where the probability of flooding from rivers and the sea is highest (greater than 1% or 1 in 100 for river flooding or 0.5% or 1 in 200 for coastal flooding);*
- *Flood Zone B – where the probability of flooding from rivers and the sea is moderate (between 0.1% or 1 in 1000 and 1% or 1 in 100 for river flooding and between 0.1% or 1 in 1000 year and 0.5% or 1 in 200 for coastal flooding); and*
- *Flood Zone C – where the probability of flooding from rivers and the sea is low (less than 0.1% or 1 in 1000 for both river and coastal flooding). Flood Zone C covers all areas of the plan which are not in zones A or B."*

Fluvial Maps (Blue)

- Flood Zone A is the the two darkest shades of blue combined (ie 10 % & 1% AEP)
- Flood Zone B is the lightest shade of blue (from 1% AEP to 0.1% AEP)
- Flood Zone C is the white area of the map

Coastal Maps (Green)

- Flood Zone A is the the two darkest shades of green combined (ie 10% & 0.5% AEP)
- Flood Zone B is the lightest shade of green (from 0.5% AEP to 0.1% AEP)
- Flood Zone C is the white area of the map

Please note that the guidelines are available at the following link:

<http://www.opw.ie/media/Planning%20System%20and%20Flood%20Risk%20Management%20Guidelines.pdf>

Sequential approach

3.2 A sequential approach to planning is a key tool in ensuring that development, particularly new development, is first and foremost directed towards land that is at low risk of flooding. Sequential approaches are already established and working effectively in other areas in the plan making and development management processes (e.g. retail planning). The sequential approach described in Fig. 3.1 should be applied to all stages of the planning and development management process. It is of particular importance at the plan-making stage but is also applicable in the layout and design of development within a specific site at the development management stage. Fig. 3.1 sets out the broad philosophy underpinning the sequential approach in flood risk management, while Fig. 3.2 describes its mechanism for use in the planning process.

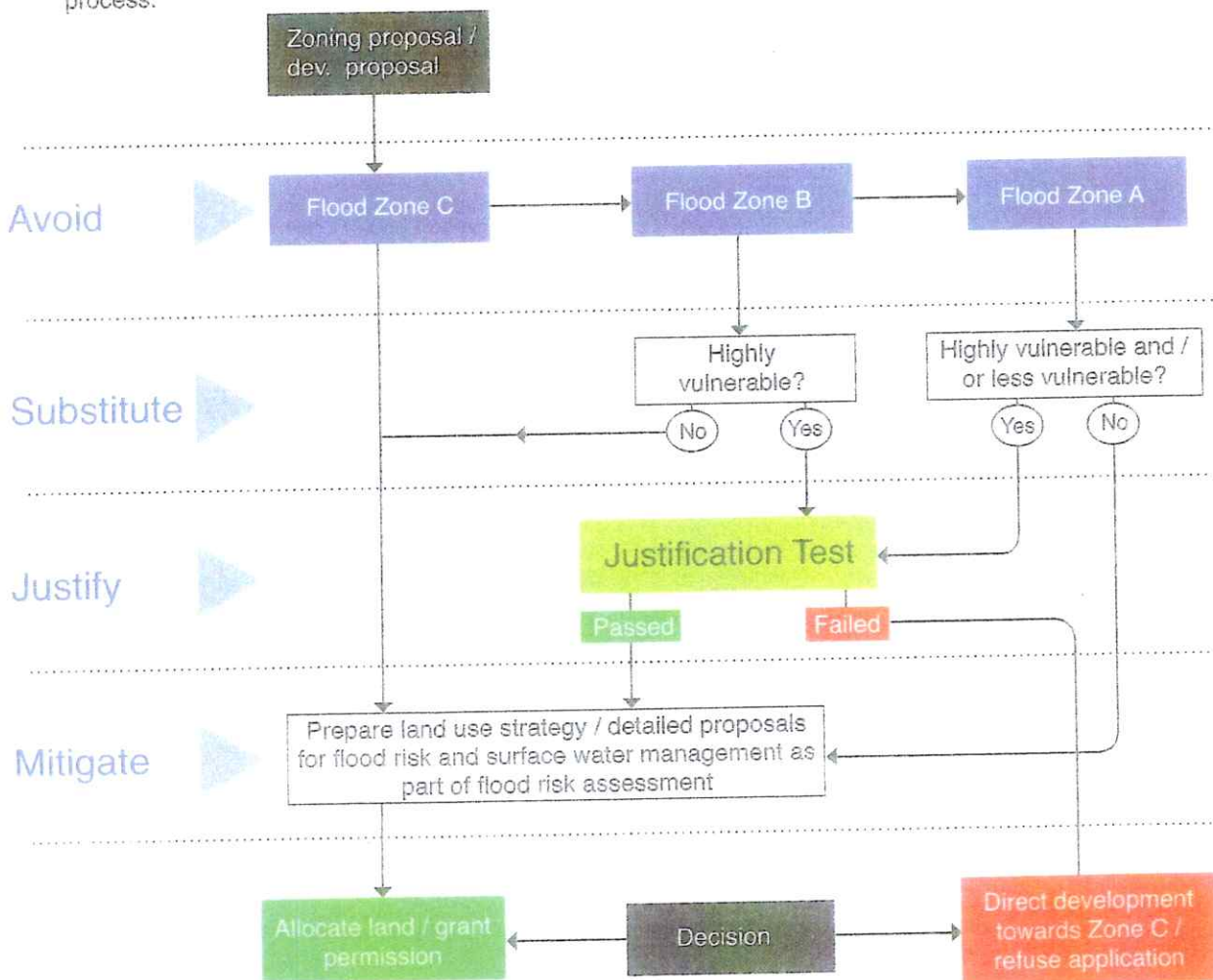


Fig. 3.2: Sequential approach mechanism in the planning process

LOCATION PLAN



Legend:

- Nodes
- Model Reach
- AFA Boundary
- Flood Defence: Wall
- Flood Defence: Embankment
- Defended Area
- 10% AEP Coastal Flood Extent
(1 in 10 chance in any given year)
- 0.5% AEP Coastal Flood Extent
(1 in 200 chance in any given year)
- 0.1% AEP Coastal Flood Extent
(1 in 1000 chance in any given year)

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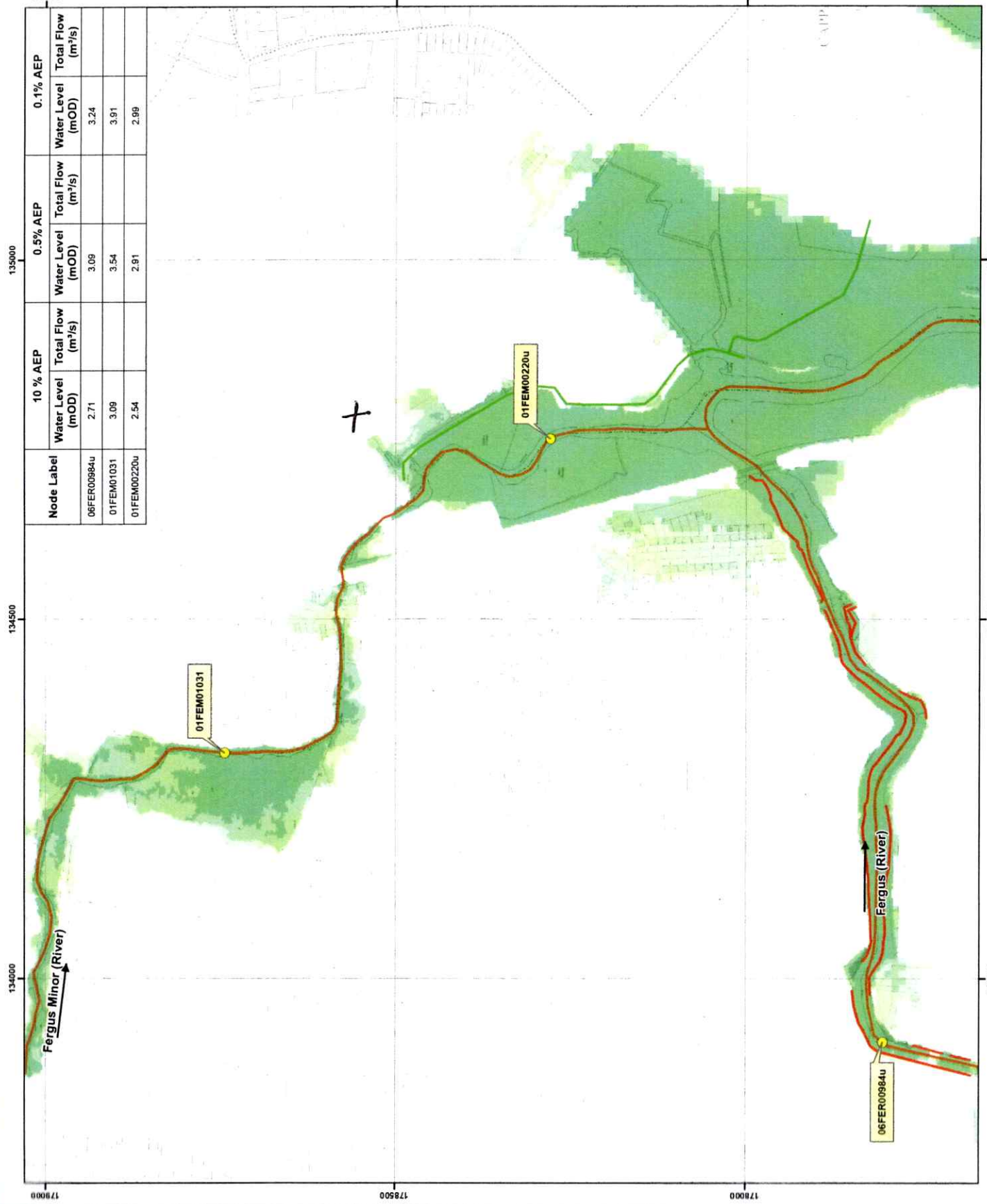
Merrion House
Merrion Road
Dublin 4
D04 R2C5

Project: SHANNON CFRAM STUDY
Map Type: EXTENT
Source: COASTAL-TIDAL
Area: ENNIS

Scenario: EXISTING
Drawn by: EF Date: JUNE 2016
Checked by: AC Date: JUNE 2016
Reviewed by: PT Date: JUNE 2016
Approved by: PT Date: JUNE 2016
Map Number: S27ENS_EXFCO_F1_05
Sheet: 9 of 22 Revision: 0

Map Scale: 1:5000 Plot Scale: 1:1 @ A3

Node Label	10 % AEP		0.5% AEP		0.1% AEP	
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01FEM01031	3.09		3.54		3.91	
01FEM00220u	2.54		2.91		2.99	



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Legend:

- Nodes
 - Model Reach
 - AFA Boundary
 - Flood Defence: Wall
 - Flood Defence: Embankment
 - Defended Area
- 10% AEP Fluvial Flood Extent**
(1 in 10 chance in any given year)
- 1% AEP Fluvial Flood Extent**
(1 in 100 chance in any given year)
- 0.1% AEP Fluvial Flood Extent**
(1 in 1000 chance in any given year)

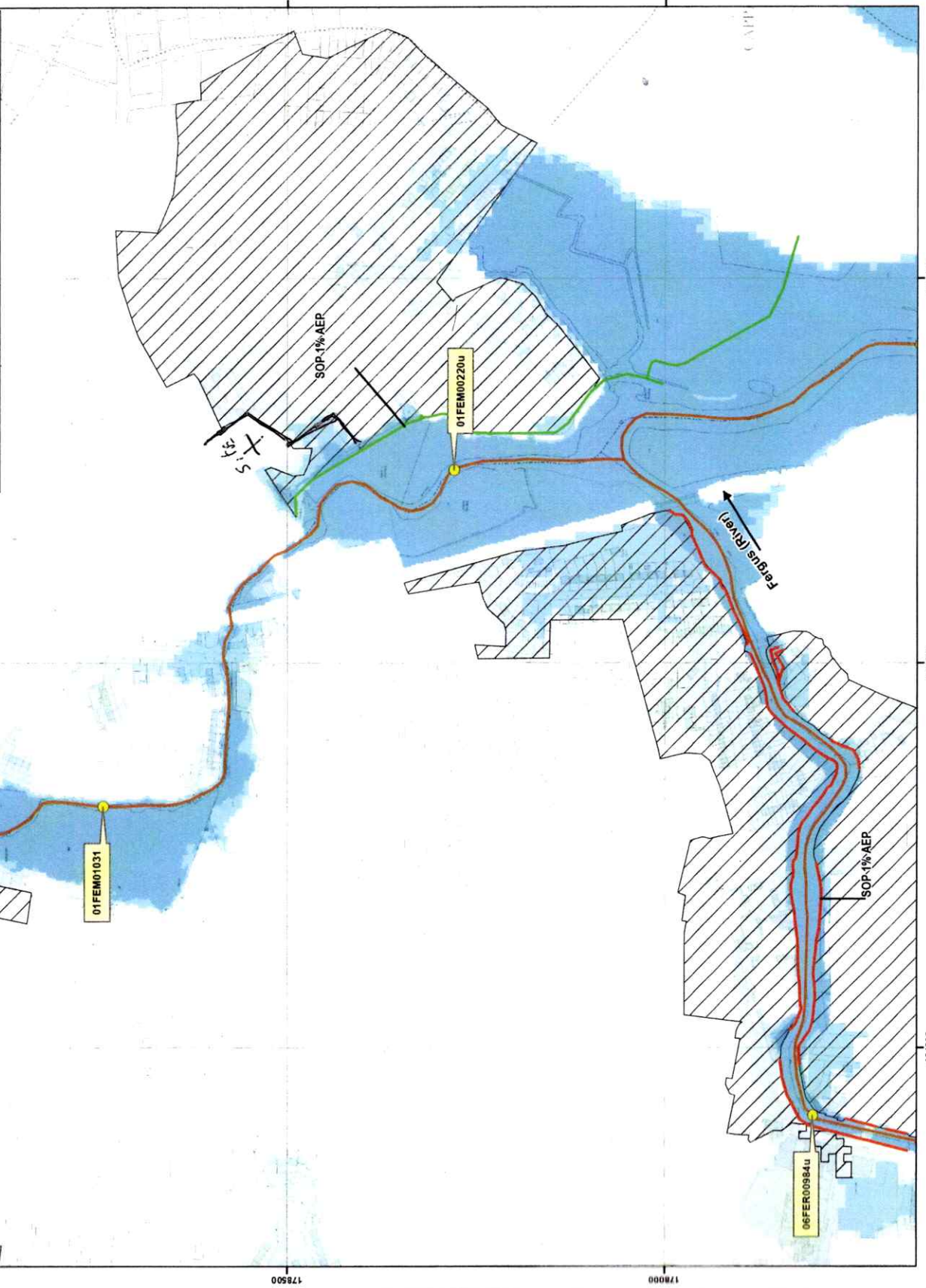
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JACOBS
Merrion House
Merrion Road
Dublin 4
D04 R2C5

Project:	SHANNON CFRAM STUDY
Map Type:	EXTENT
Source:	FLUVIAL
Area:	ENNIS
Scenario:	EXISTING
Drawn by:	GH
Date:	JUNE 2016
Checked by:	AC
Date:	JUNE 2016
Reviewed by:	MC
Date:	JUNE 2016
Approved by:	PS
Date:	JUNE 2016
Map Number:	SZ7ENS_EXFCD_F1_09
Sheet:	9 of 22
Map Scale:	1: 5000
Plot Scale:	1:1 @ A3
Revision:	0

Node Label	10% AEP		1% AEP		0.1% AEP	
	Water Level (mOD)	Total Flow (m ³ /s)	Water Level (mOD)	Total Flow (m ³ /s)	Water Level (mOD)	Total Flow (m ³ /s)
06FER00984u	2.86	57.75	3.27	79.58	3.49	97.15
01FEM01031	3.37	3.92	3.92	12.67	4.51	19.51
01FEM00220u	2.63	0.37	2.87	12.67	3.15	19.51



6. Decisions on the location of development may be required *before* development plans have been fully reviewed in accordance with these Guidelines and prior to the availability of appropriate flood risk mapping. In such circumstances a planning authority may choose to:
 - i) Vary the development plan to facilitate appropriate development provided that the variation is accompanied by a rigorous assessment of flood risk in accordance with these Guidelines and the application of the Justification Test where necessary;
 - ii) Assess the proposal in accordance with the approach outlined in chapter 5 (5.27); and/or,
 - iii) Await the review of the development plan in accordance with these Guidelines, where such a review is imminent.
7. Land required for current and future flood management, e.g. conveyance and storage of flood water and flood protection schemes, should be proactively identified on development plan and LAP maps and safeguarded from development.
8. Flood risk to, and arising from, new development should be managed through location, layout and design incorporating Sustainable Drainage Systems and compensation for any loss of floodplain as a precautionary response to the potential incremental impacts in the catchment.
9. Strategic environmental assessment (SEA) of regional planning guidelines, development plans and local area plans should include flood risk as one of the key environmental criteria against which such plans are assessed where flood risk has been identified. The SEA process provides an opportunity to assess and consider flood risk with respect to other planning and environmental considerations and should be used to show how the sequential approach to managing flood risks has been executed.

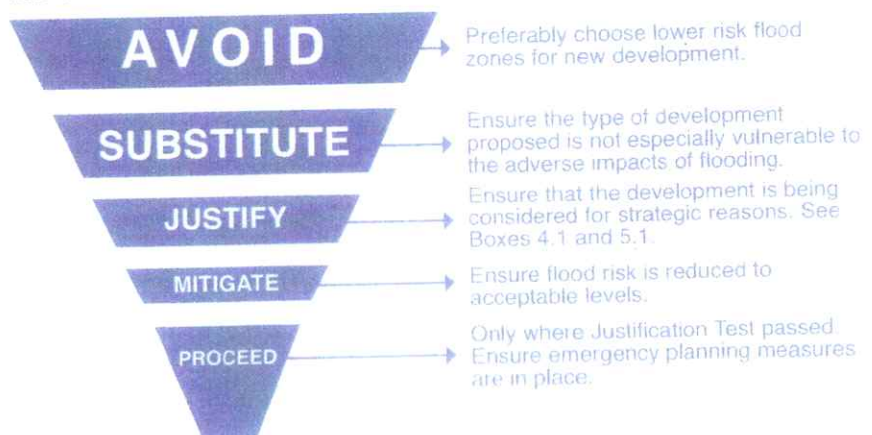


Fig. 3.1 sets out the broad philosophy underpinning the sequential approach in flood risk management, while Fig. 3.2 describes its mechanism for use in the planning process.

Fig. 3.1: Sequential approach principles in flood risk management

3

- 3.3 The sequential approach makes use of flood risk assessment and of prior identification of flood zones for river and coastal flooding and classification of the vulnerability to flooding of different types of development, as illustrated in Table 3.1. It is essential that the risk potentially arising from other sources of flooding should also be taken into account in all areas and at all stages of the planning process.
- 3.4 As outlined in paragraph 2.25 the flood zones ignore the presence of defences. Areas that benefit from an existing flood relief scheme or flood defences have a reduced probability of flooding but can be particularly vulnerable due to the speed of flooding when overtopping or a breach or other failure takes place. Because this residual risk of flooding remains, the sequential approach and the Justification Test apply to such defended locations. The range of residual risks is described in Appendix A.
- 3.5 In summary, the planning implications for each of the flood zones are:
- Zone A - High probability of flooding.** Most types of development would be considered inappropriate in this zone. Development in this zone should be avoided and/or only considered in exceptional circumstances, such as in city and town centres, or in the case of essential infrastructure that cannot be located elsewhere, and where the Justification Test has been applied. Only water-compatible development, such as docks and marinas, dockside activities that require a waterside location, amenity open space, outdoor sports and recreation, would be considered appropriate in this zone.
- Zone B - Moderate probability of flooding.** Highly vulnerable development, such as hospitals, residential care homes, Garda, fire and ambulance stations, dwelling houses and primary strategic transport and utilities infrastructure, would generally be considered inappropriate in this zone, unless the requirements of the Justification Test can be met. Less vulnerable development, such as retail, commercial and industrial uses, sites used for short-let for caravans and camping and secondary strategic transport and utilities infrastructure, and water-compatible development might be considered appropriate in this zone. In general however, less vulnerable development should only be considered in this zone if adequate lands or sites are not available in Zone C and subject to a flood risk assessment to the appropriate level of detail to demonstrate that flood risk to and from the development can or will adequately be managed.
- Zone C - Low probability of flooding.** Development in this zone is appropriate from a flood risk perspective (subject to assessment of flood hazard from sources other than rivers and the coast) but would need to meet the normal range of other proper planning and sustainable development considerations.

Further details on the flood zones is contained in Chapter 2.

3

- 3.6 Tables 3.1 and 3.2 illustrate those types of development that would be appropriate to each flood zone and those that would be required to meet the Justification Test. Inappropriate development that does not meet the criteria of the Justification Test should not be considered at the plan-making stage or approved within the development management process.

	Flood Zone A	Flood Zone B	Flood Zone C
Highly vulnerable development (including essential infrastructure)	Justification Test	Justification Test	Appropriate
Less vulnerable development	Justification Test	Appropriate	Appropriate
Water-compatible development	Appropriate	Appropriate	Appropriate

Table 3.2: Matrix of vulnerability versus flood zone to illustrate appropriate development and that required to meet the Justification Test.

Justification Test

- 3.7 Notwithstanding the need for future development to avoid areas at risk of flooding, it is recognised that the existing urban structure of the country contains many well established cities and urban centres, which will continue to be at risk of flooding. At the same time such centres may also have been targeted for growth in the National Spatial Strategy, regional planning guidelines and the various city and county development plans taking account of historical patterns of development and their national and strategic value. In addition, development plans have identified various strategically located urban centres and particularly city and town centre areas whose continued growth and development is being encouraged in order to bring about compact and sustainable urban development and more balanced regional development. Furthermore, development plan guidelines, issued by the Minister for the Environment, Heritage and Local Government under Section 28 of the Planning and Development Act 2000, have underlined the importance of compact and sequential development of urban areas with a focus on town and city centre locations for major retailing and higher residential densities.
- 3.8 The Justification Test has been designed to rigorously assess the appropriateness, or otherwise, of particular developments that, for the reasons outlined above, are being considered in areas of moderate or high flood risk. The test is comprised of two processes.
- :: The first is the **Plan-making Justification Test** described in chapter 4 and used at the plan preparation and adoption stage where it is intended to zone or otherwise designate land which is at moderate or high risk of flooding.

- :: The second is the **Development Management Justification Test** described in chapter 5 and used at the planning application stage where it is intended to develop land at moderate or high risk of flooding for uses or development vulnerable to flooding that would generally be inappropriate for that land.

Flooding and Strategic Environmental Assessment

- 3.9 The Planning Guidelines for Strategic Environmental Assessment (SEA) (DEHLG, 2004) outline an integrated process for SEA and plan-making. SEA is required to be undertaken for regional planning guidelines, development plans and variations, many local area plans and SDZ planning schemes.
- 3.10 The SEA process provides a good practice framework for scoping and considering a range of planning and environmental issues, including flooding in the plan making process. Flood risk assessments carried out in response to these Guidelines should be integrated with the SEA process in, for example, a distinct chapter of the SEA where a full environmental report is required. Where SEA and the environmental report is required, flood risk assessment should be undertaken as early as possible in the process so that the SEA is fully informed of the flood risks and impacts of the proposed zoning or development (See Appendix A).

Flood risk assessment and Environmental Impact Assessment

- 3.11 At the project level, development either exceeding the specified thresholds for Environmental Impact Assessments (EIA) or development under the thresholds but with significant environmental effects and in an area at risk of flooding will require EIS. Flood risk will therefore need to be an integral part of the EIA process. Screening for EIA should be an integral element of all planning applications in an area at risk of flooding. For further details on how EIA would be applied see paragraph 5.18.
- 3.12 As indicated in the Department's Circular Letter SEA 1/ 08 & NPWS 1/ 08, appropriate assessments are required for plans and programmes potentially affecting Natura 2000 sites under the EU Birds and Habitats Directives. These assessments provide a structured process within which the flood risk assessment should relate. Important aspects of the processes are outlined in more detail in chapter 4.



BRENDAN MCGRATH

PLANNING CONSULTANT



Mr Mark Masterson,
Administrative Assistant,
An Bord Pleanála,
64 Marlborough Street,
Dublin 1

Re: RL 03.RL3611

**Whether carrying out of ground works, constitutes development and development which is or isn't exempted development
Tulla Road environs, Ennis**

Dear Mr. Masterson,

Thank you for your letter dated 10th August 2017, enclosing a copy of the referral by Clare County Council. Mr. Noel Glynn of Crossfield Property, the owner of the land in question, has asked me to respond on his behalf. Please send any further correspondence to the address below.

This response is in three main parts; introduction, the extent of the site, the nature of the works and development carried out, the legal status of the works carried out and a conclusion.

1. Introduction

My own direct knowledge of the land in question arises from making a submission for Mr. Glynn in June 2016 concerning proposed zoning of the land in the draft Clare County Development Plan 2017 – 2023 (now adopted). At that time the whole area consisted of a hard standing area which was not in use for any purpose (Figs 1,2 and 3). This remains the case.¹ As pointed out in the referral by Clare County Council the land was part of the River Fergus Lower (Ennis) Certified Drainage Scheme. Mr. Glynn has furnished me with an email letter and attachments from Richard Long of Barry and Partners, Consulting Engineers, sent to Mr. Glynn on the 13th March 2014. The email and attachments help to set out the scope of the drainage scheme as it relates to this site (See Appendix 1). The referral does not mention that in 2015 Mr. Glynn's land was used as a compound for a Clare County Council/Ennis Town Council drainage project and some further filling took place at that time (See Appendix 6).

¹ The land was used by Clare County Council as a temporary public car park for the Ennis Fleadh Cheoil during August 2016

To further describe and establish the nature of the works carried out, I have contacted Mr. Long. He has provided me with photographs taken during the project. All but one of the photographs are date-stamped and were taken in September 2013 (Appendix 3). There are no photographs of the construction of the drains and embankment but the scheme drawing in Appendix 1 and supplied as a separate attachment provides details of those works.

Mr. Long has told me that site clearance commenced in February 2013, that the main civil works commenced shortly after that, and that *'the bulk of the flood defence works were completed by August 2014 but some minor works closed out/completed by October 2014'* (See Appendix 2, copy of email from Mr. Long to me, dated August 25th. 2017)

I am also attaching photographs of the site, taken in 2011, prior to works commencing (Appendix 4, images from Google Street View). At that time the site was scrub-land below the level of the road. While constituting semi-natural habitat of some ecological value, the site was not included in the habitat survey that was part of Ennis and Environs Development Plan 2008-2014, presumably because it was not regarded as significant in terms of ecological value (see extract in Appendix 5)



Fig 1. Site viewed from Tulla Road, June 2016



Fig 3. Site viewed from new embankment, June 2016



Fig 2. New embankment constructed on eastern site boundary, June 2016





2. The extent of the site

Figure 2 of the council referral shows the Glynn landholding, subdivided into two parts; Area A and Area B. At the outset of the scheme, in February 2013, the drainage scheme was confined to Area B and was accessed via a laneway between premises on the Tulla Road (See Fig 4). However, for the bulk of the the project, from March 2013 to the end of 2014, when the site was accessed from the northern corner of the site (Fig 4 and Photo G in Appendix 3) drainage scheme works took place on both Areas A and B.

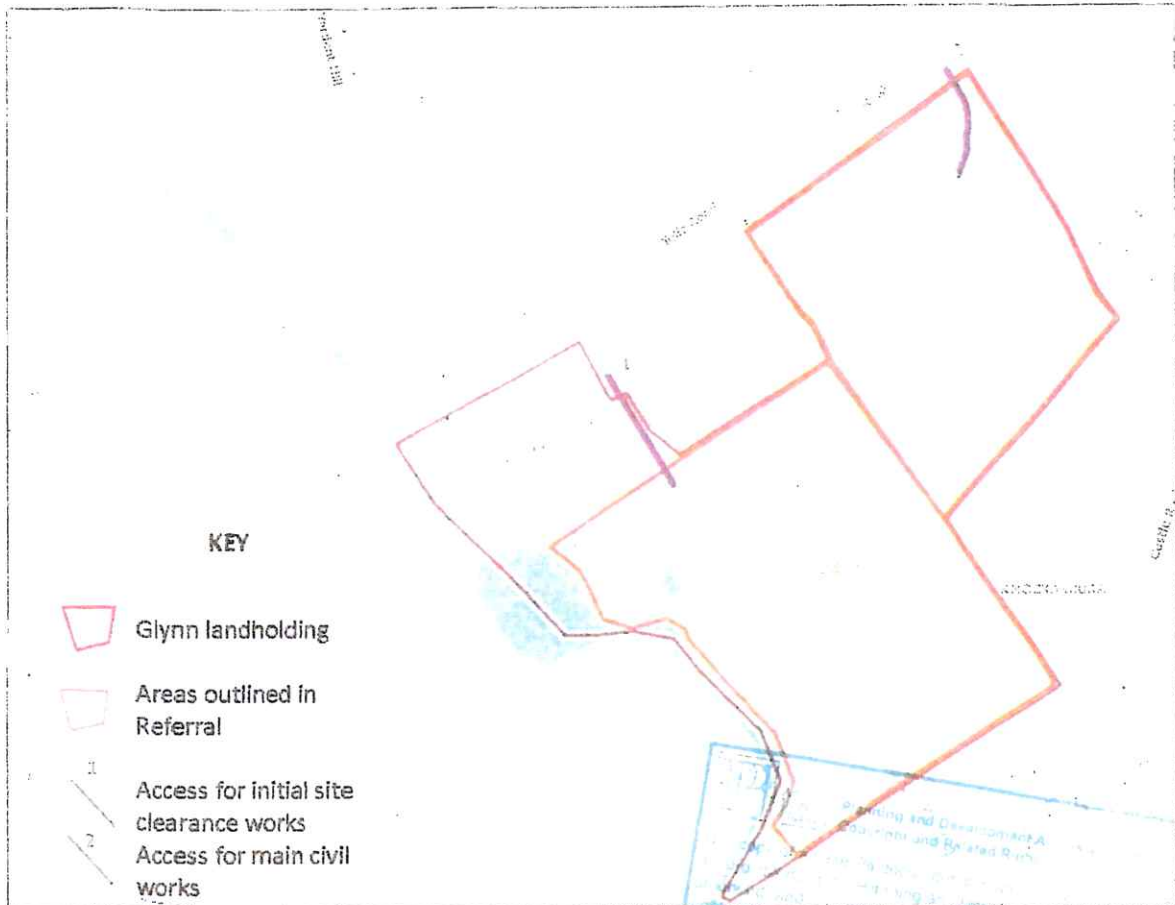


Fig. 4 The Glynn landholding

3. The nature of the works and development carried out

The whole or nearly the whole of the site (Area A and B combined) was filled with material imported onto the site as part of the Certified Drainage Scheme. This work took place between February 2013 and April/May 2015. Richard Long states (item 2 of Richard Long's email in Appendix 2) that *'the section up by the road was carried out early on during their WBL's time² on site with the land cleared and stoned around September/October 2013'*. This is substantiated by photo D, dated 16th September, in Appendix 3. Substantial works took place in Area B over this time, namely the construction of an embankment and drains as described in Drawing no 530 in Appendix 1 (and also attached in hard copy). Over the

² WBL stands for Wills Bros Ltd, the drainage scheme contractors



period March 2013 to October 2014 Area A was used for a number of purposes relating to the Certified Drainage Scheme, i.e. vehicular access, parking and storage of materials (Refer to Photos in Appendix 3).

In 2015 the contractor (Ward and Burke Ltd) carrying out a water supply upgrade scheme in Roslevan for Ennis/Clare County Council, requested permission from Noel Glynn, and was given permission by him, to use the land as a compound for the water supply scheme. This necessitated the importing of 15 truckloads of gravel to enable the site offices to be placed there (Refer to letter in Appendix 6). These are the works carried out after the flood relief scheme, referred to in item 2 of Richard Long's email (Appendix 2).

4. The legal status of the works

Mr Glynn was informed by Richard Long in correspondence dated 13th March 2014 (appendix 1) that the OPW and its contractors were entitled to enter his land and carry out works under Section 9 of the Arterial Drainage Act 1945. These included the following entitlements:-

(a) to construct, execute, and complete the drainage works specified in the scheme with such additions, omissions, variations, and deviations as shall be found necessary in the course of the work, and
(b) to enter on any land and there do all such acts and things as shall be necessary for or incidental to the construction, execution, or completion of the said drainage works with such additions, omissions, variations, and deviations as foresaid, and

(f) for the purpose of the due carrying out of the scheme to do all or any of the following things that is to say:-

- i. Take from any land all sods and other material required for the said purpose*
- ii. Deposit on any land all spoil or other material produced in the course of such carrying out,*
- iii. Utilise for the said purpose all or any spoil, gravel, stone, rock or other matter removed in the course of such carrying out, and*

(g) to do all such other acts and things as shall, in the opinion of the Commissioners, be necessary or proper for or incidental to the due carrying out of the scheme and are not specifically provided for by this Act.' (Refer to Appendix 1 correspondence)

Section 3(1) of the Planning and Development Act 2000, as amended, states that 'Development' in this Act means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in use of any structures or other land.'

Article 8 of the Planning and Development Regulations 2001, as amended, states that:-
'Works specified in a drainage scheme confirmed by the Minister of Finance under Part 11 of the Arterial Drainage Act 1945 (No 3 of 1945) or the Arterial Drainage (amendment) Act 1995 (no 14 of 1995), carried out by, on behalf of, or in partnership with, the Commissioners, with such additions, omissions, variations and deviations or other works incidental thereto, as may be found necessary by the Commissioners or their agent in the course of the works, shall be exempted development.'

Section 4(g) of the Planning and Development Act 2000, as amended, states that exempted development includes:-

Development consisting of the carrying out by any local authority or statutory undertaker of any works for the purpose of inspecting, repairing, renewing, altering or removing any sewers, mains, pipes, cables,



overhead worries, or other apparatus, including the excavation of any street or other land for that purpose.

On the basis of the above it is my view that the flood relief works carried out are development and are exempted development, by virtue of Article 8 of the regulations. It is also my view that the additional filling carried out in 2015 is exempted development under Section 4(g) of the Planning and Development Act.

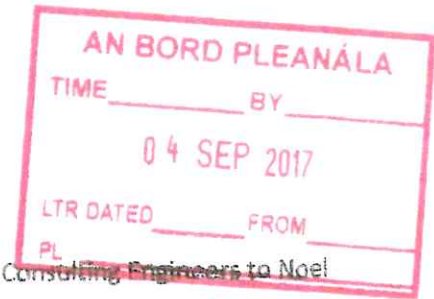
5. Conclusion

On the basis of the information supplied to me and set out in the appendices to this letter, it is my opinion that the works carried out in Area B outlined in the referral, are exempted development by virtue of being works described under a, b, f and g of Section 9 of the Arterial Drainage Act. However, apart from an initial period of about one month, the flood relief scheme works' site was Areas A and B combined. Between March 2013 and October 2014 this site was cleared of existing vegetation and filled with imported material by the contractor engaged to carry out the scheme. In my opinion these works fall under b, f and g of Section 9 and are therefore exempted development. The filling which took place in 2015 was minor compared with the works undertaken under the Flood Relief Scheme and I suggest that the *de minimis* principle applies. However, I believe that this work is also exempted development by virtue of Section 4(g) of the Planning and Development Act.

Yours sincerely,

Brendan McGrath MIPI MRTPI

APPENDICES



1. Correspondence from Richard Long, J B Barry and Partners, Consulting Engineers to Noel Glynn, dated 13th March 2014
2. Correspondence between Richard Long, J B Barry and Partners, Consulting Engineers, and Brendan McGrath, planning consultant, in August 2017
3. Photographs of works in progress on Noel Glynn's land on Tulla Road, Ennis. Photographs by Richard Long, J B Barry and Partners, Consulting Engineers
4. Photographs of the site in 2011 from Google Maps Street View
5. Extract from Habitat Survey, Class 3, part of the Ennis and Environs Development Plan 2008 – 2014, with subject landholding outlined in red
6. Letter from Patrick Barrett, site agent for Ward and Burke Ltd., describing the use of Noel Glynn's site as a site compound for local authority public water scheme in Roslevan

Appendix 1

Correspondence from Richard Long, J B Barry and Partners, Consulting Engineers to Noel Glynn, landowner, dated 13th March 2014

AN BORD PLEANÁLA	
TIME _____	BY _____
04 SEP 2017	
LTR DATED _____	FROM _____
PL _____	

**Durra House,
Spencil Hill,
Ennis,
Co. Clare.**

Attn: Mr Noel Glynn

Date: 13th of March 2014
Ref: Y13102/5.1/0202 RL (email)

AN BORD PLEANÁLA	
TIME _____	BY _____
04 SEP 2017	
LTR DATED _____	FROM _____
PL _____	

RE: RIVER FERGUS LOWER (ENNIS) CERTIFIED DRAINAGE SCHEME

Dear Sir,

J.B.Barry and Partners Limited in association with Byrne Looby Partners Water Services Ltd. are acting as Agents of the Office of Public Works.

With the above noted please be advised that the flood relief works for the River Fergus Lower (Ennis) Certified Drainage Scheme have been underway in Ennis since February 2013, with some works associated with the scheme having been undertaken in the Cappahard area over the last number of months.

The above mentioned Certified Drainage Scheme has been confirmed by a Ministerial Order in accordance with the Arterial Drainage Act of 1945. Further to the confirmation of the River Fergus Lower (Ennis) Certified Drainage Scheme by the Minister of Finance under the Arterial Drainage Act of 1945 and the resultant powers conferred on the Commissions of the Office of Public Work, notice is hereby given that under Section 9 & 52 of the Act, The Commissioners and its contractors, Wills Bros Limited (under Section 43 of the Act), will enter onto your property to construct, execute and complete the work specified under the Scheme.

For the record, please find attached extracts of Section 9 & 52 of the Arterial Drainage Act of 1945.

We note that we previously entered your site as of Feb'13 and have carried out various works to date under Section 9 and 43 of the Arterial Drainage Act of 1945. For the avoidance of doubt please be advised that Wills Bros Limited intend on re-entering your property on the 20th March'14 in order to carry out the remaining works for that of the Cappahard Embankment's Type 1 & 2 under Section 9 and 43 of the Arterial Drainage Act of 1945.

Please refer to drawings 530 Rev2 & 537 Rev2 for details of the above mentioned works.

The manner and sequence in which these works will be carried out is a matter for Wills Bros Limited to confirm.

Finally, please note that the OPW valuer will make contact with you over the coming days in order to address issues pertaining to your entitlements arising from the above mentioned drainage scheme. Regardless of agreement, please be advised that Wills Bros Limited intend on re-entering your property on the 20th March'14.

Yours Sincerely,



Richard Long – Senior Employer's Site Representative
J.B. BARRY and PARTNERS LIMITED
In association with
BYRNE LOOBY PARTNERS WATER SERVICES LTD.



Encl. Dwg 530 Rev 2 – Castlerock, Whitepark, Cappahard Embankment Overall Layout Plan, Dwg 537 Rev 2 – Cappahard Embankment Strip Plan & Cross Section Sheet 1 and Arterial Drainage Act of 1945 extracts Section 9 & 52.

Cc. Brendan McDermott, Tony Brew, Cian O'Domhnaill, Mary Nugent, John Dowds (OPW), Tom McKeown, Jonathon Noonan, Bryan Harrington, Michael Naughton, (JBB), Kieran Thornton (BLP), Tom Tierney (CCC), Eamon O'Dea (ETC), Malcolm Duncan, Michael Carroll, Donal Kearney (WBL).

ON BOARD PLANNING	
TIME _____	BY _____
04 SEP 2017	
LTR DATED _____	FROM _____
PL _____	

Section 9 – The Carrying out of a Drainage Scheme

When the Minister has made an order confirming a drainage scheme, the Commissioners shall proceed to carry out the scheme, and for that purpose the said order shall operate to confer on the Commissioners power—

(a) to construct, execute, and complete the drainage works specified in the scheme with such additions, omissions, variations, and deviations as shall be found necessary in the course of the work, and

(b) to enter on any land and there do all such acts and things as shall be necessary for or incidental to the construction, execution, or completion of the said drainage works with such additions, omissions, variations, and deviations as aforesaid, and

(c) to acquire compulsorily the several lands, easements, fisheries, water-rights, navigation-rights, and other rights proposed in the scheme to be so acquired, and, if the Commissioners think fit so to do, to enter on any such lands or exercise any of such easements, fisheries, water-rights, navigation-rights, and other rights before the conveyance or ascertainment of price of such lands, easements, fisheries, or rights, and

(d) to interfere substantially with any land proposed in the scheme to be so interfered with and, if the Commissioners so think fit, to enter on and so interfere with such land before any ascertainment of compensation in respect thereof, and

(e) to restrict, terminate, or otherwise interfere with any easements, fisheries, water-rights, navigation-rights, or other rights proposed in the scheme to be compulsorily restricted, terminated, or interfered with, and to divert, remove, or otherwise interfere with any roads or bridges proposed in the scheme to be diverted, removed, or interfered with, and, if the Commissioners so think fit, to do any of the things aforesaid before any ascertainment of compensation in respect thereof, and

(f) for the purpose of the due carrying out of the scheme to do all or any of the following things, that is to say:—

(i) take from any land all sods and other material required for the said purpose,

(ii) deposit on any land all spoil or other material produced in the course of such carrying out,

(iii) utilise for the said purpose all or any spoil, gravel, stone, rock, or other matter removed in the course of such carrying out, and

(g) to do all such other acts and things as shall, in the opinion of the Commissioners, be necessary or proper for or incidental to the due carrying out of the scheme and are not specifically provided for by this Act.



Section 52 - Offences and Penalties.

(1) Every person who shall do any of the following things shall be guilty of an offence under this section, that is to say:—

- (a) wilfully obstruct the Commissioners or any of their officers, agents, or servants in the exercise of any of the powers or the performance of any of the duties conferred or imposed on the Commissioners or any of their officers, agents, or servants by or under this Act, or
- (b) pull down, remove, or injure any works constructed or in course of construction by the Commissioners under this Act or transferred to the Commissioners by or under this Act, or
- (c) remove, injure, or deface any poles, pegs, marks, or other similar things erected, placed, or made by the Commissioners or any of their officers, agents, or servants for the purpose or in the course of the exercise of any of the powers or the performance of any of the duties conferred or imposed on the Commissioners or any of their officers, agents, or servants by or under this Act, or
- (d) throw or put any weeds or any stones, soil or other solid matter or cause or permit any weeds or any such solid matter to fall or pass into any watercourse in respect of which any works have been constructed by or transferred to the Commissioners or are about to be or are being constructed under this Act so as to cause obstruction, hindrance, or delay in the construction or operation of such works, or
- (e) without the consent of the Commissioners, place or erect any dam, weir, or other obstruction in any watercourse in respect of which any works have been constructed by or transferred to the Commissioners or are about to be or are being constructed under this Act, or
- (f) obstruct the flow of water to, through, or from any drainage works constructed by or transferred to the Commissioners by or under this Act so as to prevent or hinder the efficient operation of such works or to cause flooding of such works or of any land drained thereby.

(2) Every person guilty of an offence under this section shall, on summary conviction thereof, be liable to a fine not exceeding fifty pounds or, in the discretion of the Court, to imprisonment for a term not exceeding six months or to both such fine and such imprisonment and shall also be liable, in the case of a continuing offence, to a fine not exceeding five pounds for every day during which the offence is continued.



AN BORD PLEANÁLA
 TIME _____ BY _____
04 SEP 2017
 LTR DATED _____ FROM _____
 PL _____

CASL
 HQ
 EST

EXISTING CASTLEROCK
 SURFACE WATER DRAINAGE
 TO BE DWERTED TO NEW
 LEAKAGE POINT

EXISTING OPEN DRAIN FROM
 MHCR 2.2 TO MHCR 1.1 TO BE
 REPLACED BY TWIN 1050 Ø
 OPEN JOINTED TOE DRAIN

EXISTING CASTLEROCK
 BOUNDARY FENCING

EXISTING CASTLEROCK
 SURFACE WATER DRAINAGE
 TO BE CONNECTED TO
 PROPOSED TOE DRAIN
 EXISTING 100mm DRAIN
 TO CONNECT TO MH CR1.3

EXISTING & PROPOSED
 EMBANKMENT PROFILES
 SHOWN ON DRAWING NO 637

EXISTING TREES &
 VEGETATION TO BE CLEARED
 FROM EMBANKMENTS & OPEN
 DRAIN ON LAND SIDE

EMBANKMENT TYPE 2

200mm Ø FILTER DRAIN

MH CR2.2
 E=13729.55
 N=17471.54

MH CR2.1
 E=14072.39
 N=17481.84

MH CR1.4
 E=13316.70
 N=17433.20

MH CR1.3

MH CR1.2

EXISTING BUSINESS PREMISES
 CORRIVARRIN
 BRIDGE

EXISTING SHOP
 CONCRETE YARD

EMBANKMENT
 TYPE 1

EXISTING 900mm Ø CULVERT & OUTFALL
 INCLUDING GRILL & FLAPVALVE & HEADWALL &
 CONCRETE SURROUND TO BE REMOVED &
 REPLACED BY A 1050 Ø CULVERT, OUTFALL
 HEADWALL & TIDEFLEX VALVE (OR SIMILAR
 APPROVED) ON COMPLETION OF PILING AT THIS
 LOCATION AS PER DETAIL ON DRAWING NO 635 &
 PIPE OPE DETAIL ON DWG NO 902

DESIGN FLOOD
 LEVEL
 3.2mOD



Appendix 2

Correspondence between Richard Long, J B Barry and Partners, Consulting Engineers and Brendan McGrath, planning consultant, in August 2017

Brendan,

Please note the following in relation to questions asked in your correspondence below Re: Noel Glynn's site on the Tulla Rd, Ennis.

Item 1 –

Site Clearance works got under way for the site in question during the last few days of February 2013 with site clearance being carried out along the old river embankment and open drain. Access for this was via the laneway by the Tyre Shop and the Petrol Station. The main civil works followed on shortly after this with access to the site being from the Tulla Rd at the site entrance gate. I believe that the bulk of the flood defence works were completed by August 2014 but some minor works /close out of various items happened after this with all works closed out/completed by October 2014.

Item 2 –

In relation to the hard stand that is on site at the moment, I am not aware of the time line from October 2014 that Mr Glynn placed additional material onto the site in order to have the full site hard surfaced. Following the completion of the flood relief works Mr Glynn had another contractor on the site who were carrying out the water main rehab works in Ennis. In relation to the segment that was carried out by WBL during the flood scheme, the section up by the road was carried out early on during their WBL's time on site with the land cleared and stoned around September /October 2013. In relation to segment by the new river embankment and over the twin ogee pipe this was finished off around June/July 2014.

Item 3 -

As previously discussed Mr Glynn was compensated for the works and interference caused to this property. I do not have any of the documentation around the final agreement between Mr Glynn and the OPW. As mentioned before all accommodation works requested by Mr Glynn would have been taken into account during this process. I am of the impression that this was closed out in April/May of 2015.

In relation to photos of the site pre- works, I don't seem to be able to put my hands on to many of them at the moment. Attached are photos what I have to hand. I haven't put any in of the actual flood relief works just those around the site access and the leveling out the area outside of the works area up at the Tulla Rd. This was carried out as requested by Mr Glynn as part of accommodation works.

If you wish to discuss further please do not hesitate to contact me.

Regards

Richard

Richard Long
Senior Employer's Site Representative
J.B. Barry and Partners Limited
Tel: + 353 87 2537829
E-mail: rlong@jbbarry.ie
Website: <http://www.jbbarry.ie>

J.B. Barry & Partners Limited is registered in Ireland #121649
Registered Office: Classon House, Dundrum Business Park, Dundrum, Dublin 14

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Please consider the environment before printing the e-mail.

From: [Brendan McGrath](#)
Sent: Monday 21 August 2017 16:24
To: [Richard Long](#)
Subject: Tulla Road site



Hi Richard,

If possible, before the end of this week, if possible, I'd like to know

1. when (month) work stopped on Noel Glynn's land
2. by when (month) the site was infilled and hard surfaced as we see it today
3. the nature of the compensation determined for Noel Glynn.

If you had any photography of the works that would also be appreciated.

Thanks again for the help.

Regards,
Brendan

Brendan McGrath and Associates,
Planning Consultants,
Riverstown Cottage,
Corrofin,
Co. Clare
Tel: 065 6837555

<mailto:brendan@bmcgrathplanning.ie>

This email has been checked for viruses by Avast
antivirus software.

<https://www.avast.com/antivirus>

Appendix 3

Photographs of works in progress on Noel Glynn's land on Tulla Road, Ennis.
Photographs by Richard Long, J B Barry and Parters, Consulting Engineers

NB

Photo locations are approximate



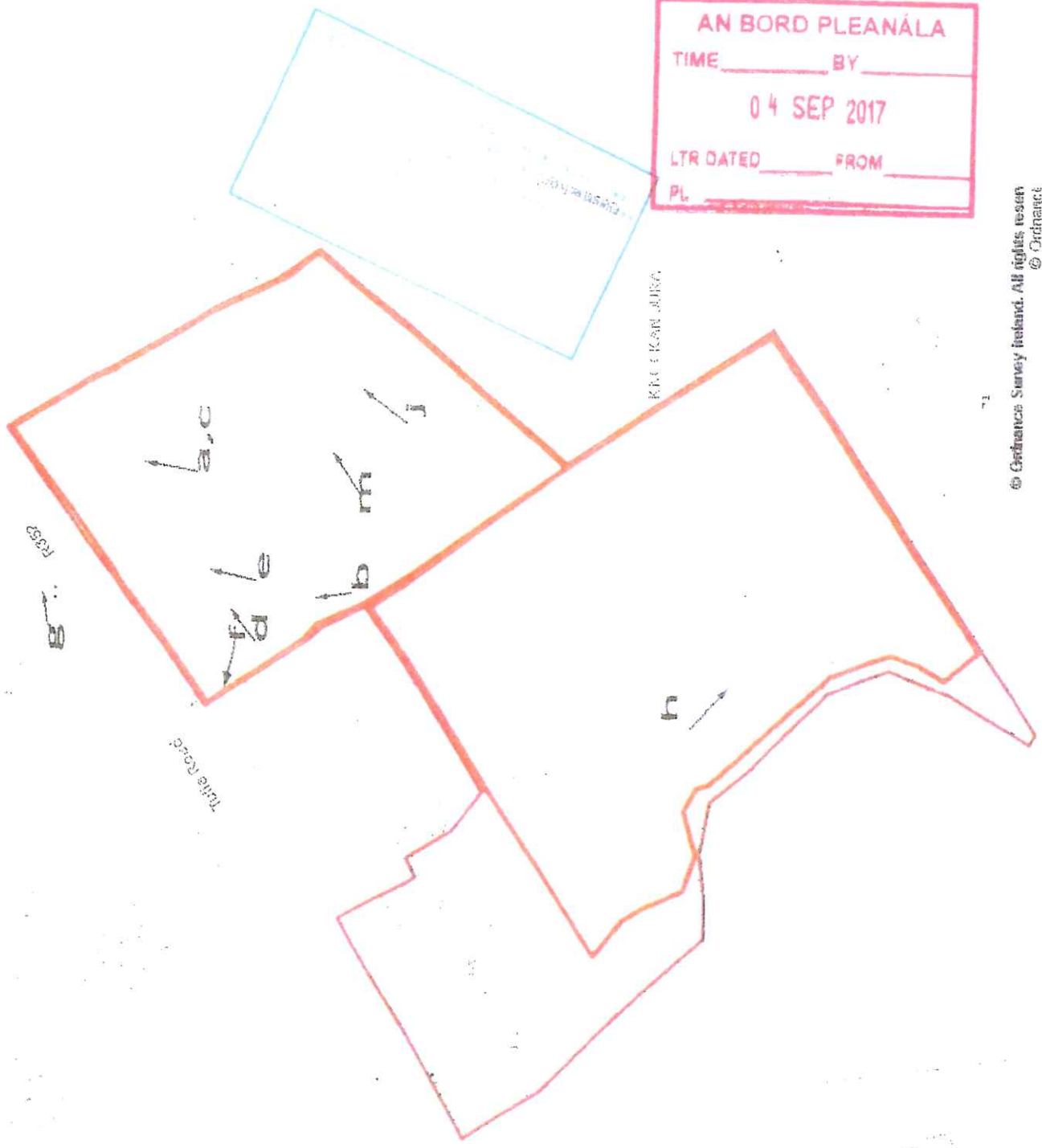
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Appendix 3

Photographs of works in progress on Noel Glynn's land on Tulla Road, Ennis.
Photographs by Richard Long, J B Barry and Partners, Consulting Engineers

NB

Photo locations are approximate



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Photo A

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This notice is issued by the Planning and Building Department, Cork City Council, in accordance with the provisions of the Planning and Building Act 2006 (as amended) and a summary of the relevant provisions of the Act is available on the Council's website. The purpose of this notice is to advise you that the proposed development may be made without objection from the Council.



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09.09.2013 12:27

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04 SEP 2017

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Photo D



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Photo E



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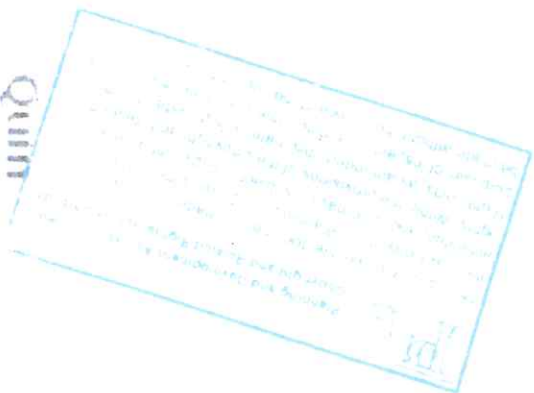
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11:13 AM

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M

Site Location Map.



1. Looking Towards Site from Tulla Road



2. Looking East Across Area A

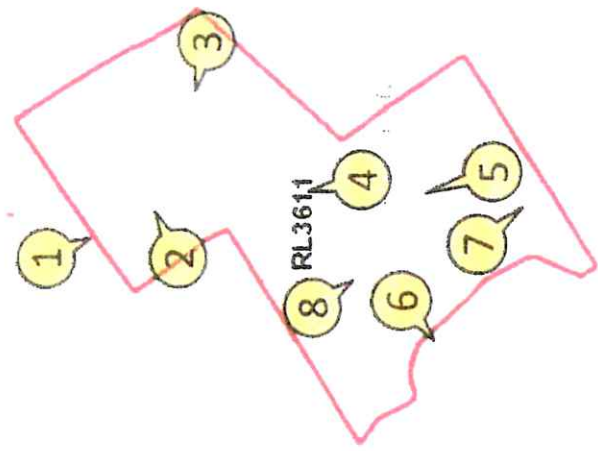


Appendix 4

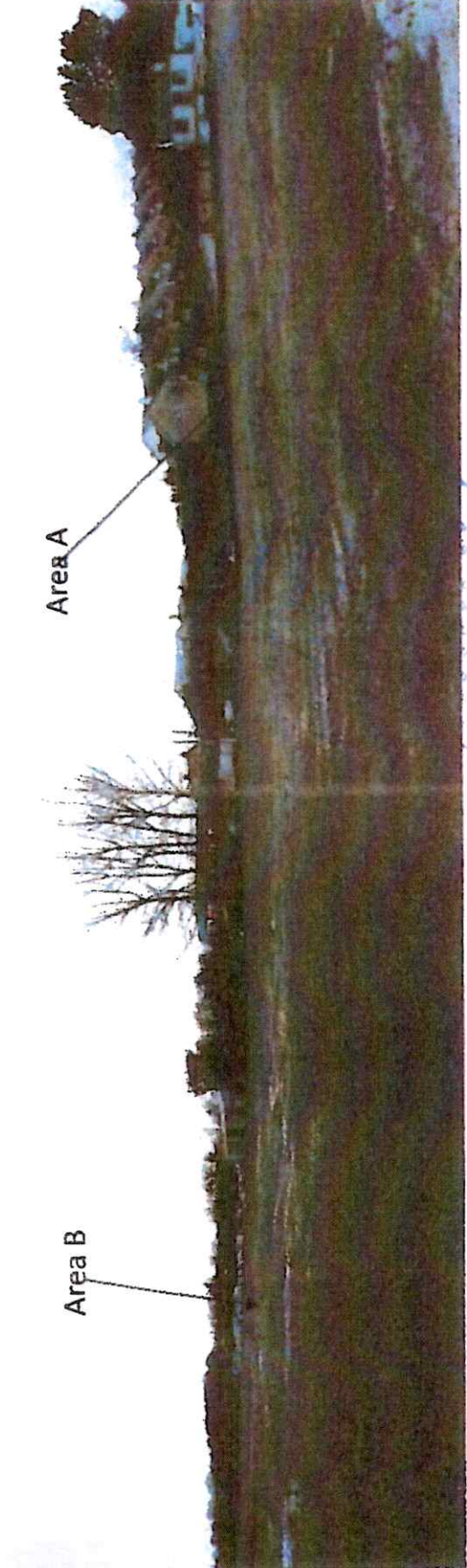
Photographs of the site in 2011 from Google Maps Street view



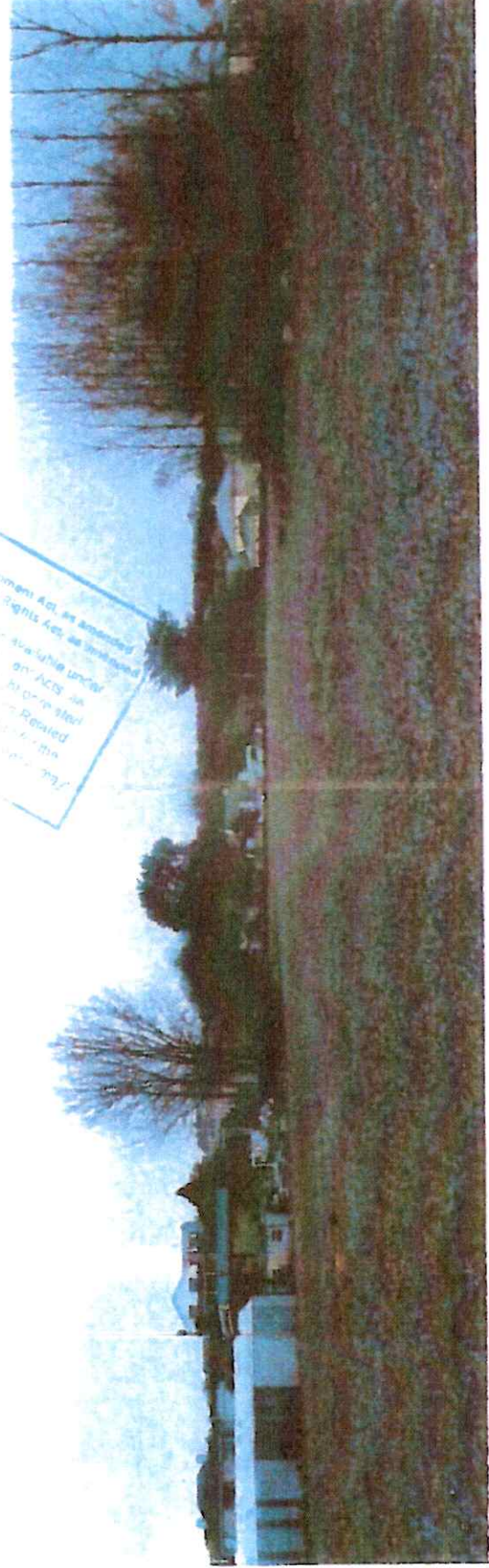
Photo Index



3. Looking North West across site. Area A and Area B



4. Looking north east across site



5. Looking north east across site



6. View of River Fergus SAC on western Boundary of site



7. Looking South along western boundary of site



8. Looking south across site where former drainage channel was located.





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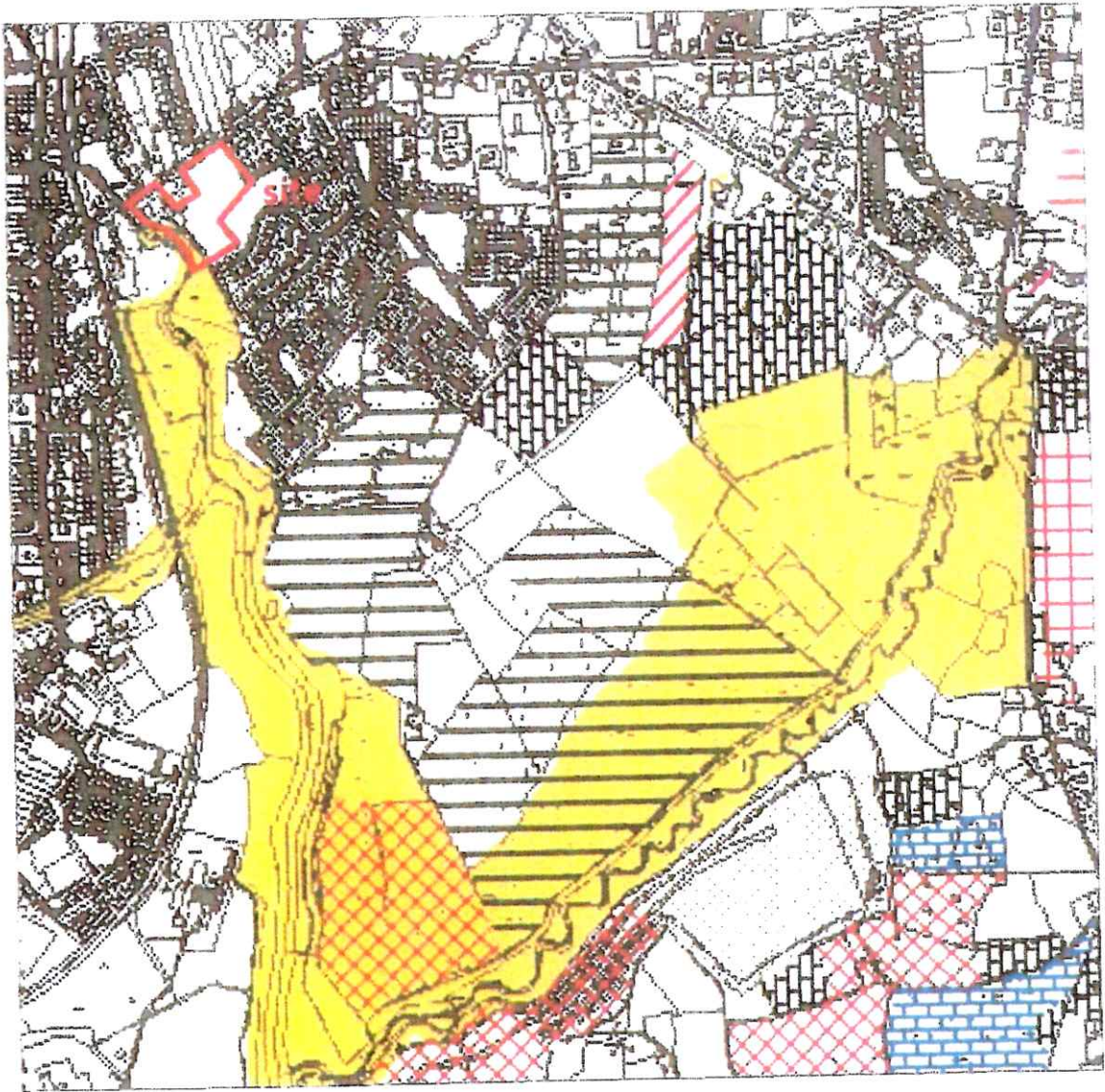


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PREPARED FROM _____

APPENDIX 5

Extract from Habitat Survey Class 3, part of the Ennis and Environs
Development Plan 2008 – 2014, with subject landholding outlined in red



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Appendix 6

Letter from Patrick Barrett, site agent for Ward and Burke Ltd, describing the use of Noel Glynn's site as a site compound in 2015 for local authority public water scheme in Roslevan



WARD & BURKE
CONSTRUCTION LIMITED

Stradbally East
Kilcolgan
Co. Galway

Phone: +353 (0)91 776827
Fax: +353 (0)91 776828
E-mail: info@wardandburke.com
Web: www.wardandburke.com



Dear Howard,

Re Mr Noel Glynn site on the Tulla Road Ennis County Clare

Ward and Burke Construction can confirm that we requested to use Mr Noel Glynn's site as a compound for the duration of our works on the water main rehab on the Tulla road Ennis County Clare Late 2015.

To level the site and make it safe before we could use it we imported 15 loads of stone onto the site. Mr Glynn was aware of all the work that we carried out on site.

Regards

Patrick Barrett

Site Agent 086 8383375

