



BRENDAN MCGRATH

PLANNING CONSULTANTS



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.

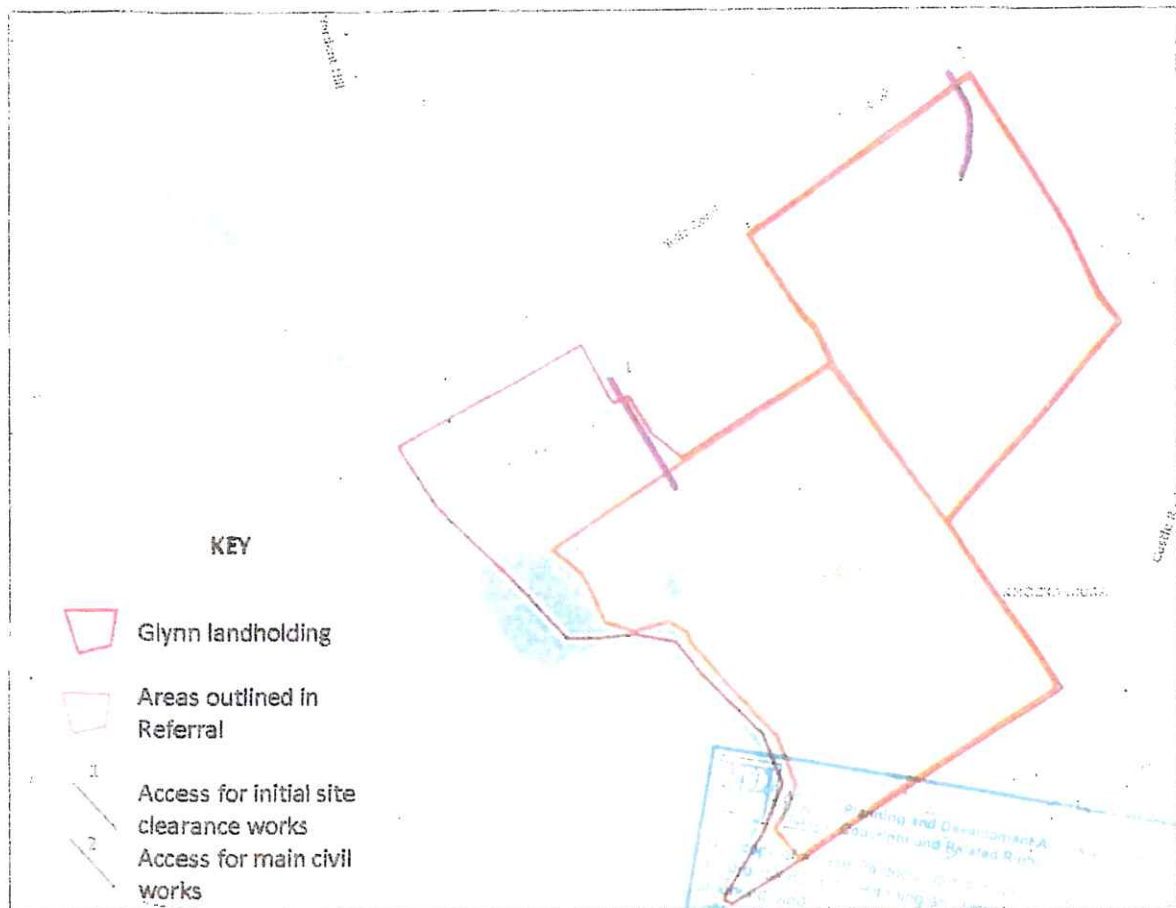


Fig. 4 The Glynn landholding

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.

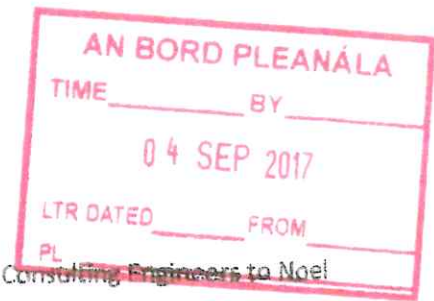
5. Conclusion

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

Attn: Mr Noel Glynn

Date: 13th of March 2014

Ref: Y13102/5.1/0202 RL (email)



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).

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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.



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EXISTING CASTLEROCK
SURFACE WATER DRAINAGE
TO BE DIVERTED TO NEW
DRAINAGE

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

EXISTING CASTLEROCK
BOUNDARY FENCING

EXISTING & PROPOSED
EMBANKMENT PROFILES
SHOWN ON DRAWING NO 537

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

EMBANKMENT TYPE 2

200mm Ø FILTER DRAIN

MH CR2.2
E=130729.55
N=174717.54

MH CR2.1
E=130729.55
N=174717.54

MH CR1.4
E=130729.55
N=174717.54

MH CR1.3
E=130729.55
N=174717.54

MH CR1.2
E=130729.55
N=174717.54

CH 216-0 (XS3)

CH 140-4 (XS2)

CH 72-0 (XS1)

EMBANKMENT TYPE 1

EXISTING BUSINESS PREMISES
CORRAVARRIN BRIDGE

EXISTING SHOP
CONCRETE YARD

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 535 &
PIPE OPE DETAIL ON DWG NO 902

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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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From: [Brendan McGrath](#)

Sent: Monday 21 August 2017 16:24

To: [Richard Long](#)

Subject: Tulla Road site

AN BORD PLEANÁLA	
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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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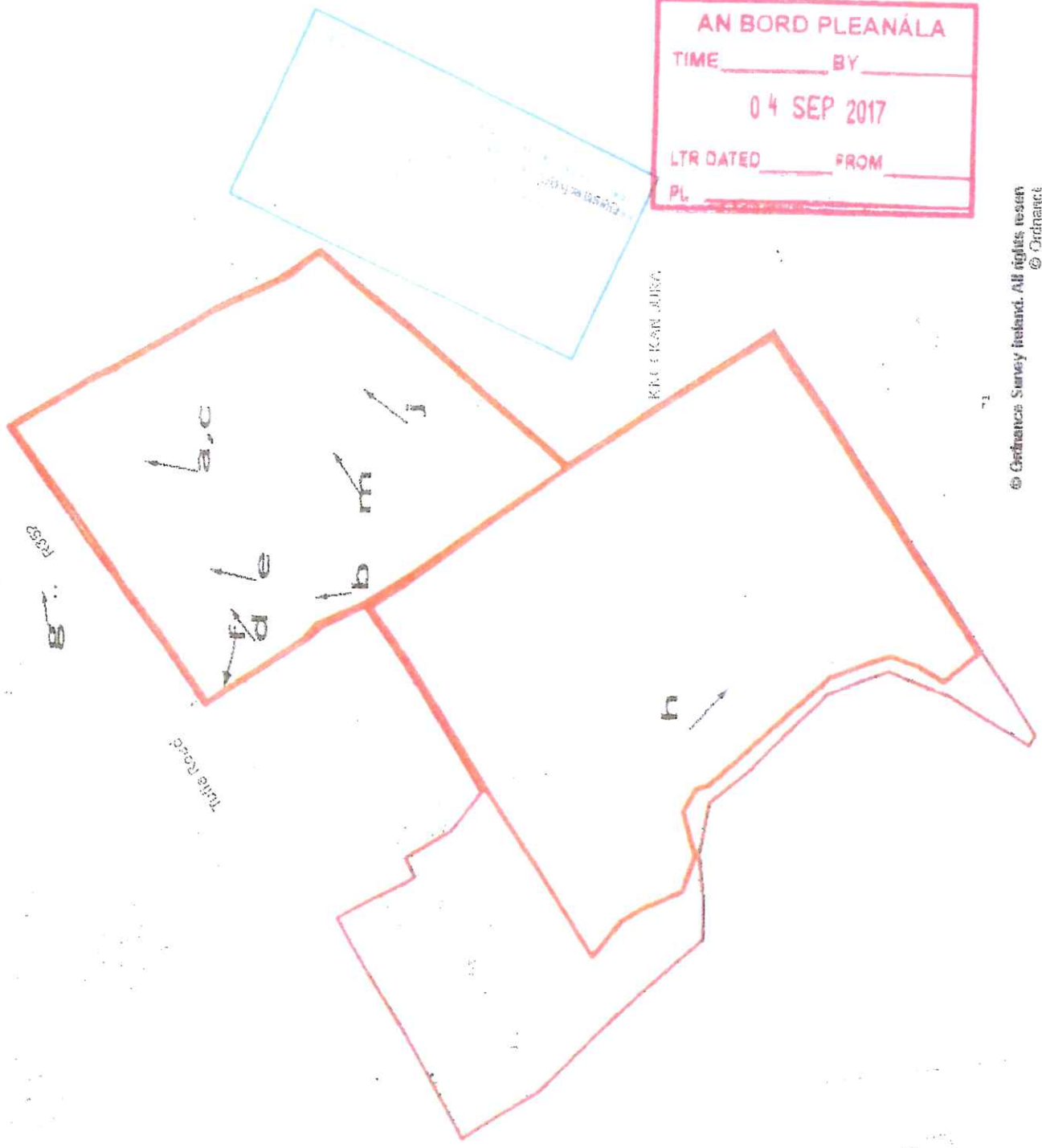
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Appendix 3

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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09.09.2013 12:27

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04 SEP 2017

16.09.2013 15:27

Photo D



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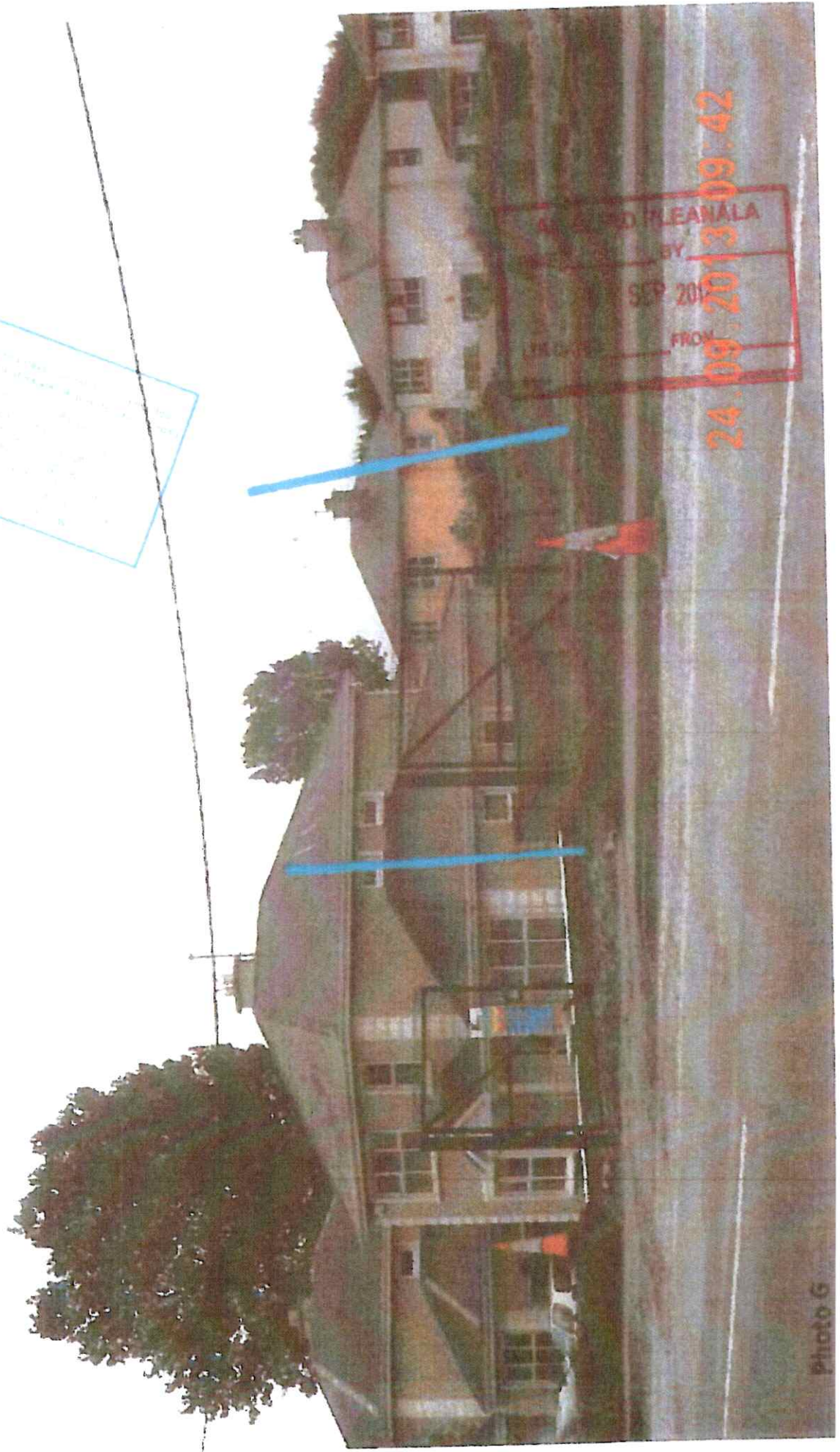
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Photo E



1234
PROPERTY OF THE
STATE OF NEW YORK
COUNTY OF ALBANY
TOWN OF ALBANY
SCHOOL DISTRICT OF ALBANY
No. 1234
Date of Sale
Sept. 24, 2013
By
The State of New York
County of Albany
Town of Albany
School District of Albany
For
The State of New York
County of Albany
Town of Albany
School District of Albany



ALBANY, NEW YORK
BY
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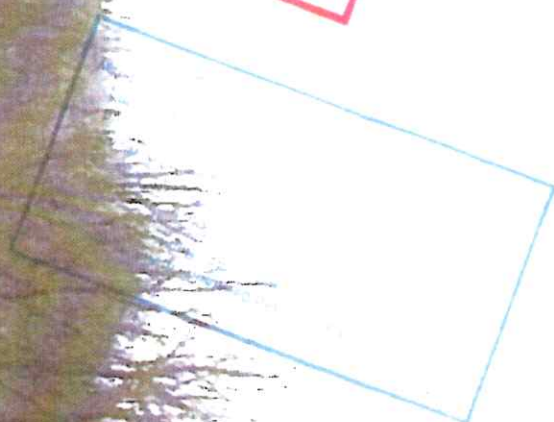
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1. Looking Towards Site from Tulla Road



2. Looking East Across Area A



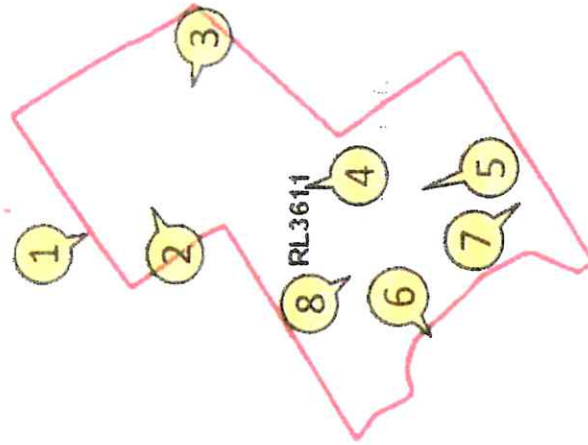
Appendix 4

Photographs of the site in 2011 from Google Maps Street view



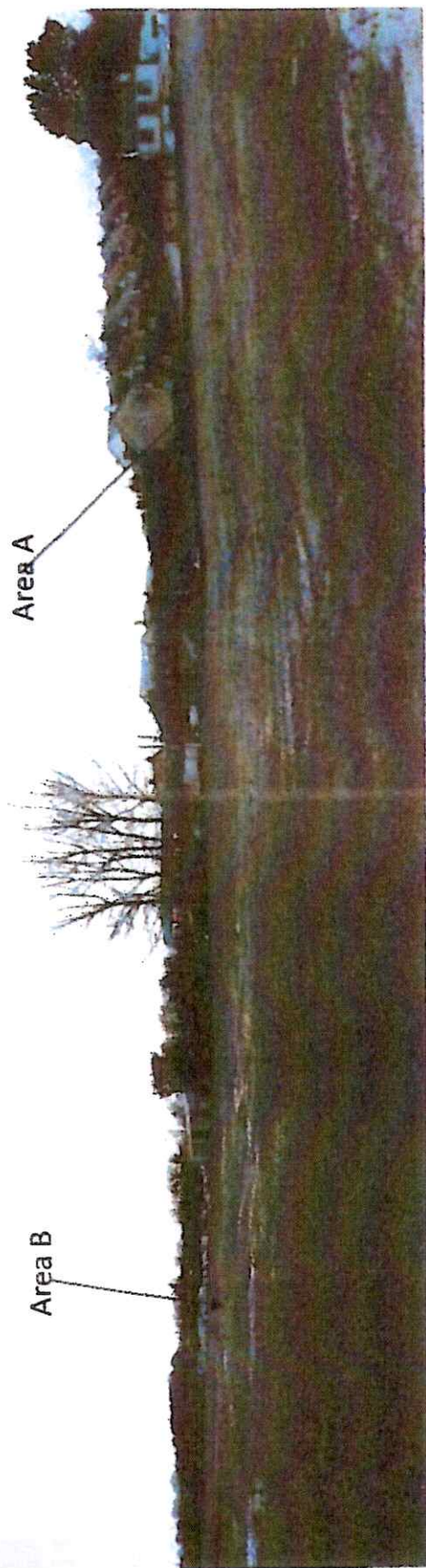
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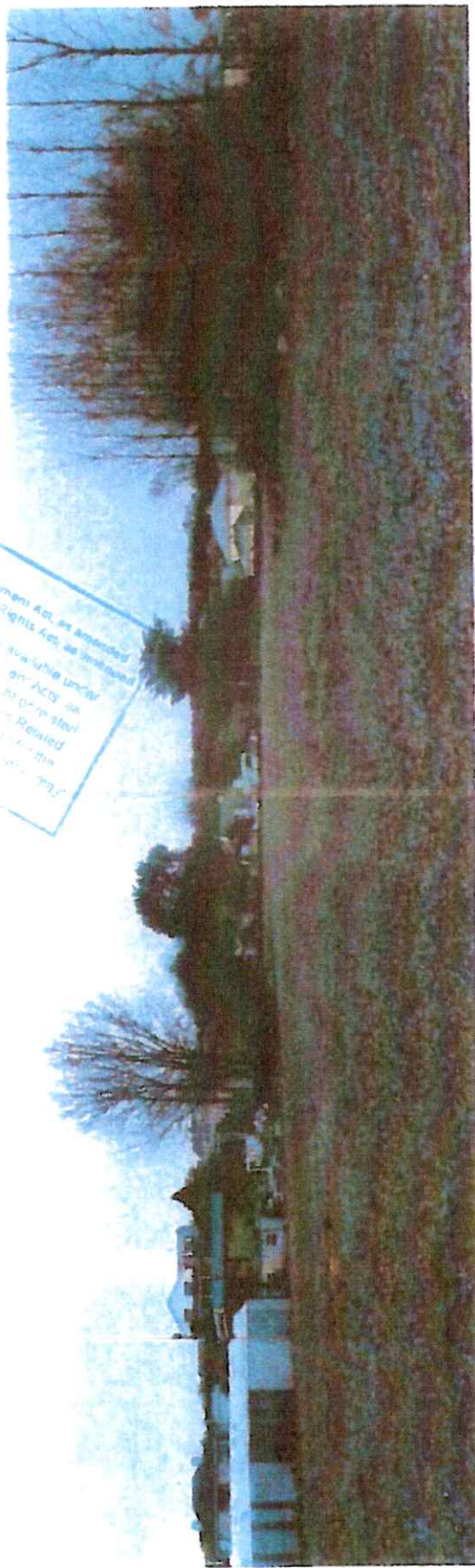


File No. RL3611

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



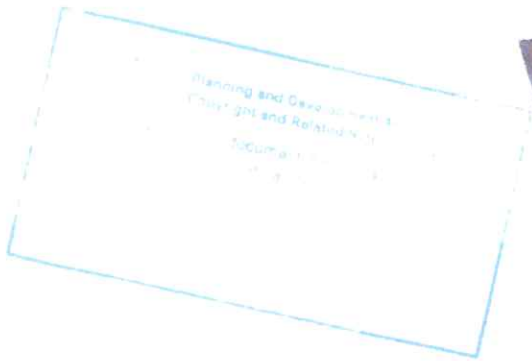
7. Looking South along western boundary of site



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



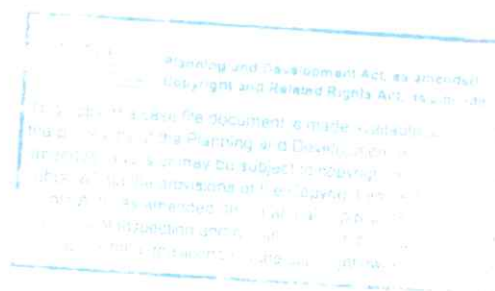
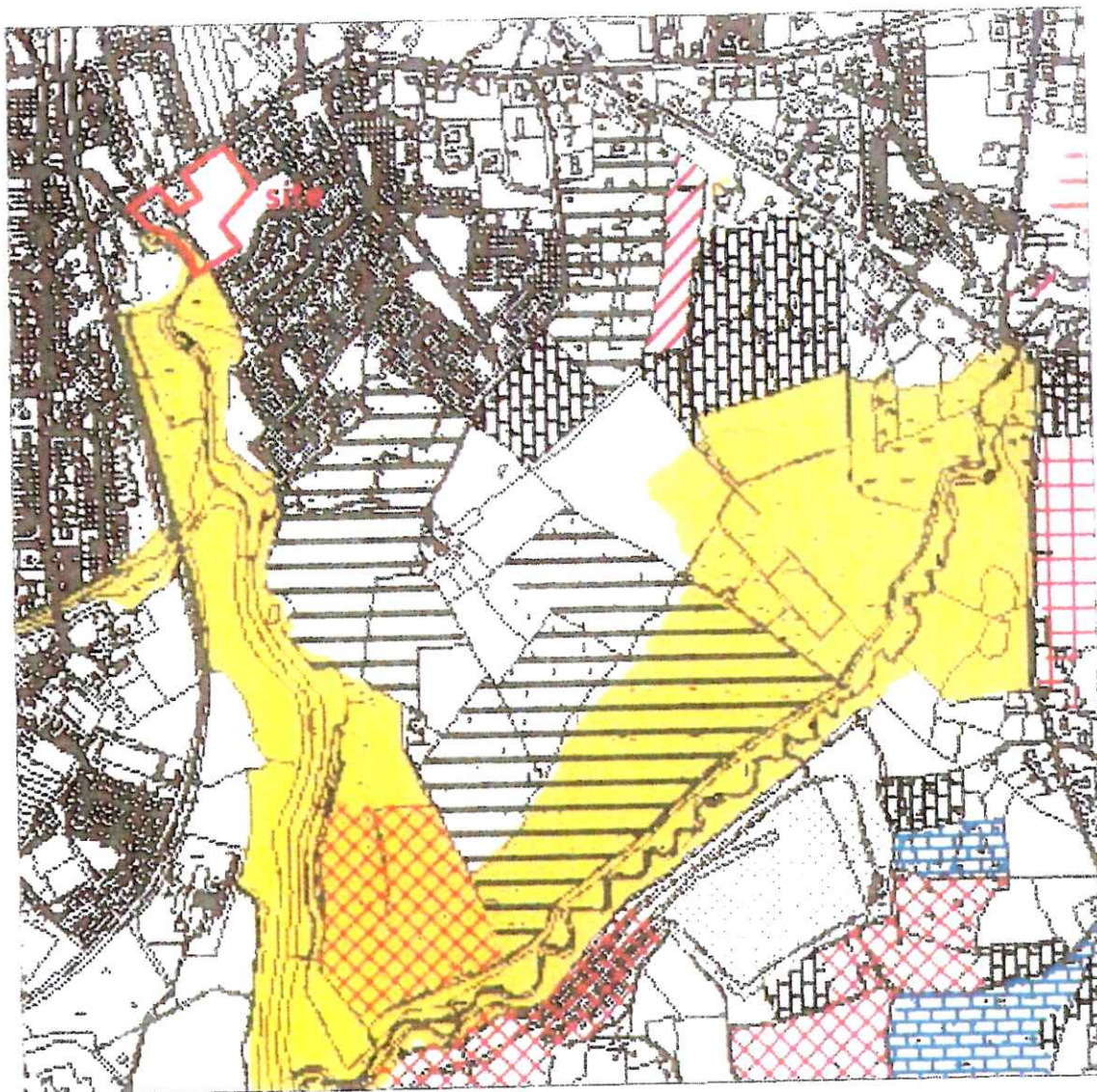
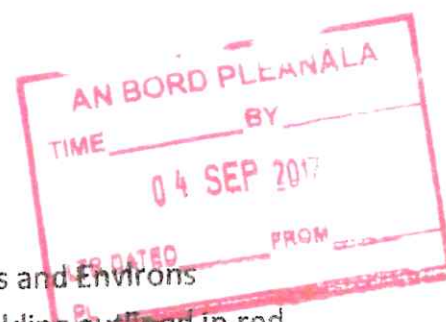




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APPENDIX 5

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



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





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

