

## Garry Dorgan

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**From:** Bord  
**Sent:** Monday 10 October 2022 10:37  
**To:** Appeals2  
**Subject:** FW: Ref: ABP-314209-22 Clarecastle  
**Attachments:** Clarecastle Referral Submission.pdf

**From:** Majella Keating <makeating@water.ie>  
**Sent:** Monday, October 10, 2022 10:35 AM  
**To:** Bord <bord@pleanala.ie>  
**Subject:** Ref: ABP-314209-22 Clarecastle

Dear Sir/Madam

In response to your letter dated 20<sup>th</sup> September 2022, please see attached Irish Waters submission in relation to the above Section 5 referral (ABP-314209-22).

I would appreciate if you could acknowledge receipt of this submission by email.

Kind regards  
Majella

**Majella Keating**  
Project Planning Specialist

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business at Colvill House, 24-26 Talbot Street, Dublin 1.

Thank you for your attention.

Tá an fhaisnéis á seachadadh dírithe ar an duine nó ar an eintiteas chuig a bhfuil sí seolta amháin agus féadfar ábhar faoi rún, faoi phribhléid nó ábhar atá íogair ó thaobh tráchtála de a bheith mar chuid de. Tá aon athsheachadadh nó scaipeadh den fhaisnéis, aon athbhreithniú ar nó aon úsáid eile a bhaint as, nó aon ghníomh a dhéantar ag brath ar an bhfaisnéis seo ag daoine nó ag eintitis nach dóibh siúd an fhaisnéis seo, toirimiscithe agus féadfar é a bheith neamhdhleathach. Níl Uisce Éireann faoi dhliteanas maidir le seachadadh iomlán agus ceart na faisnéise sa chumarsáid seo nó maidir le haon mhoill a bhaineann léi. Ní ghlacann Uisce Éireann le haon dliteanas faoi ghnímh nó faoi iarmhairtí bunaithe ar úsáid thoirmiscithe na faisnéise seo. Níl Uisce Éireann faoi dhliteanas maidir le seachadadh ceart agus iomlán na faisnéise sa chumarsáid seo nó maidir le haon mhoill a bhaineann léi. Má fuair tú an teachtaireacht seo in earráid, más é do thoil é, déan teagmháil leis an seoltóir agus scríos an t-ábhar ó gach aon ríomhaire. Féadfar ríomhphost a bheith soghabhálach i leith truaillithe, idircheaptha agus i leith leasaithe neamhúdaraith. Ní ghlacann Uisce Éireann le haon fhreagracht as athruithe nó as idircheapadh a rinneadh ar an ríomhphost seo i ndiaidh é a sheoladh nó as aon dochar do chórais na bhfaighteoirí déanta ag an teachtaireacht seo nó ag a ceangaltáin. Más é do thoil é, tabhair faoi deara chomh maith go bhféadfar monatóireacht a dhéanamh ar theachtaireachtaí chuig nó ó Uisce Éireann chun comhlíonadh le polasaithe agus le caighdeáin Uisce Éireann a chinntiú agus chun ár ngnó a chosaint. Fochuideachta gníomhaíochta de chuid Ervia is ea Uisce Éireann atá faoi theorainn scaireanna, de bhun fhorálacha an tAcht um Sheirbhísí Uisce 2013, a bhfuil a bpríomh ionad gnó ag 24-26 Teach Colvill, Sráid na Talbóide, BÁC 1.

Go raibh maith agat as d'aird a thabhairt.



10<sup>th</sup> October 2022

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**RE:** Is the replacement of the Clarecastle Wastewater Treatment Plant by diverting wastewater arising through a new sewer to the Clareabbey wastewater treatment plant, which discharges to an SAC considered to be development if so, is it exempted development?

Register Reference: ABP- 314209-22

Dear Sir/Madam,

I refer to the above referral under the Planning and Development Act 2000 (as amended).

In accordance with section 129 of the Planning and Development Act 2000 (as amended) Irish Water makes this submission within 4 weeks of your letter dated 20th September 2022.

### *Clarecastle Sewerage Scheme*

Clarecastle was identified as a coastal agglomeration where there is currently no wastewater treatment. Wastewater from the public sewer network in Clarecastle is collected within the drainage network and gravitates towards the existing Quay Road Pump Station. Wastewater is then pumped forward untreated to outfall to the River Fergus via an existing outfall pipe. The discharge of untreated wastewater is unacceptable, threatens water quality and detracts from the amenity value of the area. Irish Water has commenced works on the Clarecastle Sewerage Scheme, to end the discharge of raw sewage into the River Fergus from Clarecastle. The Scheme provides for the installation of new below ground infrastructure at the site of the existing Quay Road Pump Station, new rising main pipeline along Quay Road, Barrack Street and the Ennis Road, to transfer sewage from Quay Road Pumping Station for treatment at the existing Clareabbey Wastewater Treatment Plant. The key benefits of the project include;

- Improved water quality in the River Fergus in compliance with national and EU regulations relating to the treatment of wastewater
- Enhanced environmental amenity of the Clarecastle area
- Protection of recreational fishing water

Works commenced on the project in Spring 2022. These works are being carried out as exempted development under Class 58 of the Planning and Development Regulations 2001 (as amended) as confirmed by Clare County Council in their Section 5 Declarations register references R21- 61, R19-62, and R19-39.

### *Planning history*

As indicated above, there have been a number of Section 5 applications – and corresponding Section 5 Declarations - relating to this development. These are set out below. The current appeal to ABP relates to matters which have already been determined by way of Section 5 Declarations.

The first Section 5 (reference R19-39) was made by a third party to Clare County Council in July 2019. It asked the following question *“whether the installation of a rising main sewer transporting raw sewage from Clarecastle to Clareabbey WWTP at Clareabbey, Clarecastle, Co. Clare, is or is not development and is not exempted development”*. Irish Water submitted a robust response to this question including an EIA and AA screening report. Clare County Council and its planner considered the details and particulars submitted with the (i) referral application and (ii) Irish Waters response. It also considered the relevant sections of the Planning and Development Act 2000 (as amended) – 2019 (the “Planning Act”) and the Planning and Development Regulations 2001 (as amended) (the “Planning Regulations”) and, on 19 September 2019, determined that the proposed works were considered exempted development.

On 15 November 2019, another section 5 referral (reference R19-62) was made to Clare County Council by the same third party. This section 5 reference asks the following question *“whether development of a sewer to transport wastewater arising in the agglomeration of Clarecastle for treatment in the Clareabbey WWTP and which discharges to waters in and/or connected to European Sites from Clarecastle to Clareabbey, Ennis, Co. Clare, is or is not development and is or is not exempted development.”* While the third party added a question to this section 5 around the discharges to waters in and or connect to European Sites, the works were the same as considered under R19-

39.” Further information was sought both from the third party and Irish Water. The AA screening report submitted by Irish Water contained detailed information on any potential impacts on nearby European Sites and CCC undertook a robust screening assessment (as per the planners report) and determined that no AA was required. Clare County Council determined that the proposed works were considered exempted development.

During 2020, it became apparent that additional land was required at the pumping station site to accommodate the development. Accordingly, on 26th October 2021, Irish Water submitted a Section 5 application (reference R21- 61) to Clare County Council asking the following question *Is the construction of a new underground pumping station to grounds to the south of the existing Quay Road pumping station, diversion of existing wastewater sewers to a new pumping station, internal revisions to the existing Quay Road pumping station and the installation of a new rising main connection to the existing Clareabbey Wastewater Treatment Plant development and if so is it exempted development?*

While the changes to the development were minor, compared to what was considered in the original section 5, Irish Water, being prudent, sought an additional section 5 Declaration to ensure that the slightly amended development remained exempted.

This application was supported by an AA Screening Report and EIA Screening Report. In their decision signed 19th November 2021, Clare County Council considered the said development to be exempted development, did not require an AA or an EIA and did not consist project splitting having regard to the definition of the same.

The 3 Section 5 Declarations were clear – the development was exempted. None of these declarations were challenged by way of Judicial Review.

Notwithstanding the three section 5’s determinations already granted by Clare County Council (confirming that the development is exempted), the applicant sought another section 5 determination (R22-1). The applicant’s Section 5 request posed the exact same question as in the second section 5 referral *“Is the replacement of the Clarecastle waste water treatment plant by diverting waste water arising through a new sewer to the Clareabbey waste water treatment plant, which discharges to an SAC considered development and, if so, is it exempted development.”*

We acknowledge that an earlier section 5 declaration will not preclude a subsequent declaration however case law has held that this situation *only* arises where there has been a change in circumstances between the dates of the two declarations. Outside of these parameters it is not permissible to seek to overturn a previous Section 5 declaration. While, Irish Water submitted a section 5 determination in November 2021 to consider the proposed minor changes to the development, the questions posed by in this section 5 are all the same items that have been considered and determined by Clare County Council in its decisions of 19th September 2019, 12th February 2021, 19th November 2021 and 30th June 2022. There has been no substantive change in the nature of the development.

Clare County Council, in their decision of 30th June 2022 referenced the conclusions by the Court of Appeal in relation to *Narconon Trust v An Bord Pleanála*. In this case, the Court of Appeal concluded that the Board was prohibited from determining the particular Section 5 referral, in circumstances where the planning authority had previously determined the same, or substantially the same question in respect of the same land and where there was no evidence that there had been a change in the planning facts and circumstances since the earlier Section 5 declaration. The Court held that, once it was clear that the same question in substance that had been decided upon previously was again being referred on the same facts, the Board should have dismissed the referral.

It is the position of Irish Water that the principles set out in the *Narconan* case apply to the current Section 5 referral. There have been 4no Section 5 referrals made in relation to this development. The first two were made by a third party with no change in circumstances. The third referral was made by Irish Water when it became apparent that additional land was required (albeit that the change in the nature of the overall development was very minor). The fourth is the subject of this appeal. All essentially determined the same question and there is absolutely no evidence of any change in the planning facts and circumstances since the decisions of the planning authority.

In addition, the subject referral has not raised any new issues that have not already been addressed by Irish Water and considered by Clare County Council.

In conclusion, a number of section 5 declarations form part of the planning history of the site, all of which concluded that the works are exempted and are recorded on the planning register. Based on recent case law (*Narconon v ABP*) an extant, unchallenged and final determination should be able to stand and not be open to continued attack. Irish Water have begun construction of the said

development and have completed 90% of the pipeline and 25% of the pumping station. These works have cost approximately €1m and have been carried out in good faith. It is impractical and unfair to allow continued references for the same development, which is of strategic importance for public health and environmental compliance.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'M Keating'.

**Majella Keating**  
Planning Specialist  
Irish Water

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