Attachments

0. ABP Referral Checklist
1. Referral to ABP – 2 November 2022

2. Section 5 to Kilkenny Co Co cover letter – 23 September 2022
3. Section 5 to Kilkenny Co Co application form – 23 September 2022
4. Section 5 to Kilkenny Co Co support letter – (submitted 23 September 2022)
5. (a) Solicitors letter dated 4 August 2022 and (b) Solicitors letter dated 22 September 2022 – both referenced in the Section 5 application– (submitted 23 September 2022)
6. (a) Eircom site location plan and (b) plans in support of Section 5 application– (submitted 23 September 2022)

7. Kilkenny County Council acknowledgement letter – 27 September 2022

8. Kilkenny County Council decision letter – 21 October 2022

9. The Developers Enforcement Notice Construction Management Plan – Not submitted with section 5 application but submitted to the Board for background information and completion – agreed by Kilkenny County Council on 25 August 2022 (see 11 below)
10. The Developers Enforcement Notice Compliance Plans – Not submitted with section 5 application but submitted to the Board for background information and completion– agreed by Kilkenny County Council on 25 August 2022 (see 11 below)

11. Kilkenny County Council letter of agreement to Enforcement Notice Compliance Plans and CMP – 25 August 2022

12. Solicitors Letter in response to Kilkenny County Council letter of 25 August 2022 – 31 August 2022
13. Our planning consultant's report appended to the solicitors letter
14. Our Ecologist's report appended to the solicitors letter
15. Our Engineer's appended to the solicitors letter

16. Kilkenny County Council letter in response to Solicitors Letter and enclosures of 31 August 2022 - 5 September 2022

17. Kilkeny County Council Planners report and declaration ref: DEC 694 referenced in the cover letter to this Referral

An Bord Pleanála

Planning Referral Check List

(Please read notes overleaf before completing)

1. The appeal must be in writing (e.g. not made by electronic means).
2. State the

name of the appellant **(not care of agent)**	Doreen Thomson and Peter Thomson
address of the appellant **(not care of agent)**	4 Priory Grove, Kells, Co Kilkenny

3. If an agent is involved, state the

name of the agent	n/a
address of the agent	n/a

4. State the Subject Matter of the Referral*

Brief description of the development

Whether:

1. the telecommunication support structure foundation proposed to be constructed between 200mm and 300mm above the permitted level; and
2. the telecommunication support structure foundation proposed to be constructed with dimensions of 3.4m (length) x 3.4m (width) x 1m (depth) rather than the permitted dimensions of 4m (length) x 4m (width) x 1.4m (depth);

will be within the scope of planning permission reference 20/394 (ABP ref: PL10. 308931) and therefore immaterial or de minimis deviations and not development, or are the differences material, development and not exempted development?

Location of the development

Eircom Exchange, Haggard Road, Kells, County Kilkenny

Name of planning authority

Kilkenny County Council

Planning authority register reference number

DEC 714

* Alternatively, enclose a copy of the decision of the planning authority as the statement of the Subject Matter of the Appeal.

5. Attach, in full, the grounds of appeal and the reasons, considerations and arguments on which they are based.
6. Attach the acknowledgement by the planning authority of receipt of your submission or observations to that authority in respect of the planning application, the subject of this appeal. (Not applicable where the appellant is the applicant).
7. Enclose / Pay the correct fee for the appeal and, if requesting an oral hearing of same, the fee for that request see "Guide to Fees Payable" under heading of Making an Appeal on Home Page of this website for current fees.
8. Ensure that the appeal is received by the Board in the **correct manner** and **in time**.

1 a

The Secretary,
An Bord Pleanala,
64 Marlborough Street,
Dublin 1

2nd November 2022

Re: Referral of a non-determined application for a Declaration under Section 5 of the Planning and Development Act 2000 – 2021 made to Kilkenny County Council on 17 November 2021.

Eircom Exchange, Haggard Road, Kells, County Kilkenny

Dear Sir/ Madam,

We, Doreen Thomson and Peter Thomson, 4 Priory Grove, Kells, County Kilkenny wish to Refer the non-determination of an application for a Declaration under Section 5 of the Planning and Development Act 2000 – 2021 made to Kilkenny County Council on 23rd September 2022 in respect of proposed works by or on behalf of Eircom Limited at the Eircom Exchange, Haggard Road, Kells, County Kilkenny.

The question we sought a Declaration for was in respect of the following:

Whether:

1. *the telecommunication support structure foundation proposed to be constructed between 200mm and 300mm above the permitted level; and*
2. *the telecommunication support structure foundation proposed to be constructed with dimensions of 3.4m (length) x 3.4m (width) x 1m (depth) rather than the permitted dimensions of 4m (length) x 4m (width) x 1.4m (depth);*

will be within the scope of planning permission reference 20/394 (ABP ref: PL10. 308931) and therefore immaterial or de minimis deviations and not development, or are the differences material, development and not exempted development?

A copy of the complete application, the acknowledgement dated 27th September 2022 and the response letter of 21st October 2022 are attached. I also attach a number of other documents which provide necessary context and background information.

Kilkenny County Council considered that compliance with planning permission matters do not fall within the remit of Section 5 and are matters for enforcement.

The question put to Kilkenny County Council was in respect of works which the developer proposed to carry out and which Kilkenny County Council considered were within the scope of the planning permission for a telecommunication mast structure and its foundation. I consider the Council was inconsistent and incorrect in its decision.

Its decision was inconsistent with an earlier Section 5 (ref: DEC 694) concerning the same development where the following question was posed:

"Whether the proposed telecommunication support structure, including its foundation, constructed to an overall height of c. 15.67 metres, will be within the scope of planning permission reference 20/394 (ABP ref: PL10. 308931) and therefore the deviations immaterial or de minimis and not development or are the differences material, development and not exempted development".

In that case the Council issued a declaration as follows: *"The telecommunications support structure, including its foundation as constructed at the Eircom Exchange, Haggard Road, Kells, Co. Kilkenny, constitutes development which is not exempt development".*

In coming to that conclusion the Planner noted in the report leading to the decision, *"... The Planning Authority considers that having had regard to those matters generally which would render the development either exempt or not exempt, a declaration can only as regards the general principles (deviation from condition 1 of 20/394 (ABP ref: PL10.308931) and not to the specifics....".*

(A copy of the Planner's report and DEC 964 are attached – attachment 17)

The Council has therefore in the past, correctly allowed the Section 5 procedure to determine whether particular works were within the scope of the planning permission.

There is also considerable case law on the matter. I would refer in particular to the cases of *Palmerlane Limited v An Bord Pleanala*[1], *Grianan an Aileach Interpretave Centre Ltd v Donegal County Council*,[2] *Heatons Ltd v Offaly County Council*[3] and *Krikke v Barranafaddock Sustainability Electricity Ltd*[4]. All these cases are referenced in in *Simons on Planning Law* (3rd edition, §2-304 –

[1] [1999] 2 I.L.R.M. 514
[2] [2004] 1 I.L.R.M. 625, [2005]1 I.L.R.M.106
[3] [2013] IEHC 261
[4] [2019] IEHC825

--316) in the context of discussing the scope of the Section 5 procedure all of which found that Section 5 jurisdiction does allow for the interpretation of a planning permission.

The Board will be aware that there was also another earlier Section 5 Declaration Referral concerning another foundation and infrastructure installed at the Eircom Exchange in Kells (Kilkenny County Council ref: DEC666, ABP ref: ABP 312538-22). In that case the Board declined to determine Referral on the basis it considered the matters raised were planning compliance matters. While we fundamentally disagreed with the Board determination in that case, including as the works referred to were not within the red line planning application site of planning permission ref: 20/394 (ABP ref: PL10. 308931, we decided not to challenge it.

We did however review that particular referral file and found the following:

- The decision not to determine the referral was made by Board Members Paul Hyde and Michelle Fagan. Terry O'Niadh also attended the meeting.

- Paul Hyde and Michelle Fagan were also the two Board Members that over-ruled the Planning Authority and the Inspector who recommended that the telecommunication mast be refused in the first place (Kilkenny County Council ref: 20/394 (ABP ref: PL10. 308931).

- No Board Inspector was appointed to advise. In a memorandum dated 21 February 2021 an EO wrote to her SEO and commented as follows:
  "The grounds of the referral appear to relate mainly to compliance with conditions attached to the permission granted by the Board under ABP-308931-21. The Board may wish to consider dismissing the referral under section 138(b)(i) of the Planning and Development Act i.e. the nature of the referral (including any question which in the Board's opinion is raised by the referral)". The Boards decision appears to have been based on the advice of an EO.

- The EIAR Screening was undertaken by the EO. We would have thought that if the development under consideration was one which constituted an EIA project, as stated in the Screening report, a Board Inspector would have been the appropriate staff member to provide a professional planning opinion to the Board Members to allow them to make an informed decision.

We are specifically requesting that this case be allocated to an Inspector or Senior Inspector for assessment and that Board Members that have had no

previous involvement in this particular project, be appointed to adjudicate upon it.

We look forward to the Board's determination and enclose the required fee of €220.

Yours faithfully,

Doreen Thomson and Peter Thomson,
4 Priory Grove,
Kells,
County Kilkenny
R95 VY05

Director of Services (Planning),
Kilkenny County Council,
County Hall,
Kilkenny

23 September 2022

Re: Unauthorised Eircom telecommunication and mast at the Eircom Exchange, Haggard Road, Kells, Co Kilkenny.

Dear Sir/ madam,

Please find enclosed our third Section 5 application in respect of this unauthorised mast.

The first was in respect of the foundation for the mast having been constructed by the contractor outside the planning application site. No response was received. The Planning Authority issues a Warning Letter and the works stopped.

The second was in respect of the foundation being developed at the wrong height. Eircom firstly rejected that, then conceded but took no action and was served with an Enforcement Notice which necessitated complying with the planning permission; i.e removing the mast and foundation and starting again.

This third Section 5 is a challenge to the proposed replacement foundation by Eircom which will be of reduced dimensions, including depth, to those permitted and the proposed finished level which will still be up to 0.3m higher than permitted, without justification.

Enclosed are the following:

1. Section 5 application form
2. Supporting Text
3. Solicitors letter dated 22 September 2022
4. Location plan
5. Plans

I will contact the planning office with credit card payment of the €80 fee.

Peter Thomson

Peter Thomson
4 Priory Grove,
Kells,
Co Kilkenny

Cc
Evonne Mann, Solicitor,
Eir Mobile
evonne.mann@eir.ie

Stephen O'Brien,
FocusPlus Ltd
Stephen.obrien@focusplus.ie

3

COMHAIRLE CHONTAE CHILL CHAINNIGH
Kilkenny County Council
County Hall
John Street
Kilkenny

Tel: 056 7794000 / Fax: 056 7794004
Email: Planning@kilkennycoco.ie /
Website: www.kilkennycoco.ie

Application Form for Declaration and Referral on Development and Exempted Development under Section 5 of the Planning and Development Acts 2000-2018

(This is a non-statutory advice application prepared by Kilkenny County Council for the purpose of advising people what information is required for a decision to be made under Section 5. This document does not purport to be a legal interpretation of the statutory legislation nor does it state to be a legal requirement under the Planning and Development Acts 2000-2018)

APPLICANT DETAILS:

Applicant Name	Doreen Thomson and Peter Thomson
Address:	4 Priory Grove, Kells, County Kilkenny
Contact Telephone No:	0868196856 (Peter Thomson)
Fax No. or E-mail Address, if any:	-

PERSON/AGENT ACTING ON BEHALF OF APPLICANT (IF ANY):

Name	
Address:	
Telephone No:	
Fax No. or E-mail Address:	

Should all correspondence be sent to the Agents address? Yes { } No { }

Section 5 of the Planning and Development Acts 2000-2018 states that if any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of these Acts, any person may, on payment of the prescribed fee, request in writing from the relevant Planning Authority a declaration on that question, and that person shall provide to the Planning Authority any information necessary to enable the authority to make its decision on the matter.

Sample Question: Is the construction of shed at Hebron Road, Kilkenny development and if so, is it exempt development?

PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT:

Whether:

1. the telecommunication support structure foundation proposed to be constructed between 200mm and 300mm above the permitted level; and
2. the telecommunication support structure foundation proposed to be constructed with dimensions of 3.4m (length) x 3.4m (width) x 1m (depth) rather than the permitted dimensions of 4m (length) x 4m (width) x 1.4m (depth);

will be within the scope of planning permission reference 20/394 (ABP ref: PL10. 308931) and therefore immaterial or de minimis deviations and not development, or are the differences material, development and not exempted development?

Completion of this question is essential. Failure to do so will invalidate your application.

ADDITIONAL INFORMATION WHICH MAY ASSIST THE PLANNING AUTHORITY:

Please see attached sheet

The Applicant is advised to set out the matter on which the declaration is sought, as comprehensively as possible using additional pages if necessary and should use additional material including plans and drawings as appropriate to give as full account as possible on this matter.

LOCATION ADDRESS OF DEVELOPMENT:

Site Location Map must be attached

Eircom Exchange, Haggard Road, Kells, County Kilkenny - Please see attached plans

SITE AREA:

Area of site to which the application **relates in hectares** c 0.0016ha plus area for cables et cha

WHERE THE APPLICATION RELATES TO A BUILDING OR BUILDINGS IF AVAILABLE: n/a

Gross floor space of any existing building(s) in m^2:

Gross floor space of proposed works in m^2:

Gross floor space of work to be retained in m^2 (if appropriate):

Gross floor space of any demolition in m^2 (if appropriate):

Overall height of any existing structure in metres:

Overall height of any proposed structure in metres:

Distance of existing or proposed structure to nearest dwelling(s) not being the applicants, where appropriate:

WHERE THE APPLICATION REFERS TO A MATERIAL CHANGE OF USE OF ANY LAND OR STRUCTURE OR THE RETENTION OF SUCH A MATERIAL CHANGE OF USE: n/a

Details of Existing of Previous use:

Proposed use (or use it is proposed to retain)

Nature and extent of any such proposed use (or use it is proposed to retain)

LEGAL INTEREST OF APPLICANT IN THE LAND OR STRUCTURE:

Please tick appropriate box to show applicant's legal interest in the land or structure

	A. Owner	**B.** Occupier
	C. Other	Yes

Where legal interest is 'Other', please expand further on your interest in the land or structure:

We are neighbours to the works

Name & Address of Landowner and/or Occupier if not the Applicant:
Eircom, Estates/ Legal Department, 2022 Bianconi Avenue, Citywest Business CampusD24 HX03, Dublin 24

DEVELOPMENT DETAILS

Please tick appropriate box

	Yes	No
Does the proposed development consist of work to a **protected structure** and/or its curtilage or proposed protected structure and/or its curtilage?		N
Does the proposed development involve the demolition of any habitable house or part thereof? **Yes [ ] No [ ]**		N
Are you aware of any valid planning applications or decisions for similar or related development on this land/structure?		

If Yes – Please provide Planning Register Ref. No(s) if known:
20/394

The Applicant is advised that notwithstanding the completion of the above application form, that the Planning Authority may require the Applicant to submit further information or particulars with regard to the request in order to enable the Planning Authority to issue the declaration on the question.

The Applicant is also advised that the Planning Authority may request other person(s) other than the applicant to submit information on the question which has arisen and on which the declaration is sought.

Subject to the above, the Planning Authority shall issue the declaration on the question that has arisen and the main reasons and considerations on which its decision is based to the person who made the request and where appropriate, the owner and occupier of the land in question, within 4 weeks of the receipt of the request.

APPLICATION FEE ATTACHED:

Fee payable €80.00. Payment must be made by Cash or Cheque which should be made payable to Kilkenny County Council

I hereby declare that, to the best of my knowledge and belief, the information given in this form

Signed:

Peter Thomson

Applicant or Agent as appropriate

Date: 23th September 2022

Failure to complete this form or attach the necessary prescribed documentation, or the submission of incorrect information or omission of required information will lead to the invalidation of your application.

THE FOLLOWING DOCUMENTATION IF AVAILABLE SHOULD BE SUBMITTED WITH YOUR APPLICATION:

- **Site Location Map (1:2500 Rural Areas) (1:1000 Urban Areas) with location of works clearly marked in red**
- **A Site Layout Plan (Scale 1:500)**
- **Drawings of the development (Scale 1:50)**
- **All drawings to differentiate between the original building, all extensions and proposed development**
- **Copy of Planning Permission, Fire Safety Certificate or any other statutory approval already obtained, where applicable**
- **Prescribed Fee of €80.00 Euro**

COMPLETED APPLICATIONS TO BE RETURNED TO:

Kilkenny County Council
Planning Department
County Hall
John Street
Kilkenny

BACKGROUND

On 17th June 2021, An Bord Pleanála contrary to the recommendation of their Inspector, decided to grant permission for the telecommunication tower development subject to 6 conditions (Kilkenny County Council ref: 20/394; ABP ref: ABP-312538-22).

On the 10th September 2021, contractors for Eircom commenced works constructing a foundation and in November 2021 completed the works.

The planning authority issued a Warning Letter dated 1st December 2021 to Eircom regarding the foundation, which was outside the application site and, therefore, unauthorised.

Agents for Eircom wrote to the planning authority in correspondence received on 20th December 2021 agreeing it would "relocate" (remove?) the unauthorised foundation and associated underground services and, thereafter, proceed to develop in accordance with the development for which it had permission. With the subsequent agreement of the planning authority, they decided not to remove the unauthorised foundation.

On 28th February 2022 works commenced on site in the originally permitted location with the new foundation being physically attached to the side of the earlier unauthorised foundation.

The foundation developed in the correct location was 3.4m in length x 3.4m in width and about 1.4m deep. The dimensions were less than the permitted foundation dimensions (4m x 4m x 1.4m) as there was insufficient space between the first unauthorised foundation and the southwest ownership boundary to develop a foundation to the permitted dimensions. Also, rather than excavating down into the ground to achieve the permitted foundation level, the contractor built up the level of the foundation. Its eventual finished level was deemed by the planning authority to be c0.6m higher than permitted and to be unauthorised.

Before the foundation was declared unauthorised due to its level, the 15m telecommunication mast was attached. This was despite Eircom being notified in writing by our solicitor that it was at the wrong height and requesting the mast not to proceed.

Following an earlier Section 5 application in respect of this second foundation, the height of which the planning authority declared to be development which was not exempted development and not in accordance the planning permission, an Enforcement Notice issued to Eircom dated 3 June 2022. This required a Method Statement of how they proposed to comply with Condition 1 of permission 20/394[1].

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[1] This Section 5 application is in respect of the works that were required by the Enforcement Notice and without prejudice to the view expressed in our solicitor's letter dated 22 September 2022, that the Enforcement Notice is spent (copy attached). In terms of "works", we would be of the view that these relate to the demolition/ removal of the unauthorised foundation and its replacement at the permitted size, level and location. The removal of the mast, which involves unbolting and lifting it off the foundation, is not "works" within the meaning prescribed in the Act and, therefore, not development and does not require permission.

It is understood the initial response to the Enforcement Notice on behalf of Eircom was to apply for Retention, permission. However, this was deemed not to conform with the requirements of the Enforcement Notice. In a second response they agreed to remove the mast and foundation and put in a new foundation in accordance with a Construction Management Plan (CMP) and associated plans which were submitted to the planning authority on 28 July 2022.

We contacted the planning authority for a copy of these documents to review and, on 4 August 2022, our solicitor wrote to the planning authority advising we should be afforded the opportunity of reviewing the Method Statement and CMP and to make comments on same prior to a decision on the acceptability or otherwise of the final documents, in the interests of fair procedures.

These documents were not made available to us until 15th August 2022. Before our submissions could be made, a decision letter issued on 25th August 2022 to Eircom's agents agreeing to the CMP and plans. The implication of this decision is that the planning authority considers the proposals outlined in the CMP and on the plans, to comply with Condition 1 of permission 20/394. Our solicitor was advised of this decision in a letter dated 30 August 2022.

On 31 August 2022 our solicitor again wrote to the planning authority advising, *inter alia*, that the works authorised by way of letter of 25 August 2022 represented a material alteration to the works permitted under Planning Ref. ABP-308931-20 (PA Ref. 20/394), and thus did not represent achievement of compliance with Condition 1 of said permission as required by the Enforcement Notice and requested that the Enforcement Notice be withdrawn as it appeared that the works to demolish and reconstruct the telecommunications mast could not be carried out in compliance with Condition 1 of the grant of planning permission.

In a letter dated 5 September 2022 to our solicitor, the planning authority advised that the Enforcement Notice would not be withdrawn, at this time.

The Construction Management Plan and associated plans.

On page 1 of the Construction Management Plan it is stated;

"Proposal to Remove an Existing 3.4m x 3.4m x 1 m RC Foundation Base and 15m Monopole and Replacement with a 3.4 x 3.4 x 1.0m RC Foundation base, with a new Top of Foundation Base level at 400mm below the existing Foundation Base and install a 15m Monopole".

On page 4 it is further stated;

"The works will be completed with a tolerance of +/- 100mm for the finished level of the top of the foundation base and +/- 200mm for the position of the foundation within the site boundaries".

The existing 3.4m x 3.4m x 1m foundation referenced in the CMP is, in fact, a 3.4m x 3.4m x c1.4m foundation. The permitted foundation was a 4m x 4m x 1.4m structure designed to support the mast structure.

To comply with the permitted level of the foundation, as per planning permission 20/394, the replacement foundation must be 0.6m lower than the existing second foundation; not 0.4m (400mm) as referenced in the CMP.

There are numerous other discrepancies and inaccuracies in the CMP which were highlighted in the submission our solicitor made to the planning authority in the letter dated 31 August 2022. No response has been received to the discrepancies and inaccuracies highlighted. One particular discrepancy and inaccuracy is that agents for Eircom used a level datum of -0.968m below the level of the road to justify all proposed levels in the CMP rather than the -0.8m level, which is the existing road level on the permitted application drawings and is the datum that all surveys undertaken by our engineers and the planning authority were based on.

Despite the numerous discrepancies and inaccuracies in the CMP, this Section 5 application is concerned only with the proposed dimensions of the replacement foundation and its finished level relative to the permitted dimensions and level.

The Case

Condition 1 of planning permission 20/394 requires the development to be carried out in accordance with the plans and particulars.

In *Simons on Planning Law* (3rd edition, §5.74) in the context of discussing "Immaterial Deviations", the author states, "A planning permission is, of its nature, relatively precise. Planning permissions should never be departed from as a matter of law; the development is required to take place as a grant of permission allows. However, it seems that planning permissions are to be interpreted flexibly so to allow for a tolerance in respect of what has been described as "immaterial deviations". The rational is to address unexpected contingencies during the course of the carrying out of the development". [2]

The term '*de minimis*' is referenced in the decision in O'Connell v Dungarvan Energy Limited in which the judge quoted from the decision of *Lever (Finance) Ltd v Westminster Corporation* as follows:

> "In my opinion a planning permission covers work which is specified in the detailed plans and any immaterial variation therein. I do not use the words *de minimis* because that would be misleading. It is obvious that, as a developer proceeds with the work there will necessarily be variations from time to time. Things may arise which are not foreseen. It should not be necessary for the developers to go back to the planning authority for every immaterial variation. The permission covers every variation which is not material". [3]

Nowhere in the Planning and Development Acts and Regulations is there provision for a planning authority to agree to or permit a developer to knowingly deviate from the permitted plans and particulars in advance of carrying out the works.[4]

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[2] My emphasis (underlined)

[3] My emphasis (underlined)

[4] Save for the provisions of Section 12 of the Planning and Development, Maritime and Valuation (Amendment) Act 2022 which amends Section 34 of the Act and permits permissions with a degree of flexibility, and this is not relevant in this case.

The developer is required to comply with condition 1 of the planning permission (i.e. in accordance with the plans and particulars), both to comply with the permission granted and the Enforcement Notice; not alternative plans and particulars.

It is the presence of the existing original unauthorised foundation that will prevent the developer from constructing the permitted foundation to the permitted dimensions and at the permitted level. The existing unauthorised foundation will also prevent the developer from installing a lesser foundation of 3.4m x 3.4m and there is no justification provided for reducing the depth of the permitted foundation from 1.4m to 1m.

The proposed foundation detailed in CMP and associated drawings will not achieve compliance with Condition 1 of planning permission 20/394, is development and is not exempt development and the planning authority is requested to confirm accordingly.

FPLOGUE SOLICITORS

Our Reference: FPL/EJB/842/02972
Your Reference: ENF21112

4 August 2022

By email

Enforcement Section (Planning),
Kilkenny County Council,
Planning4@kilkennycoco.ie

My clients: **Doreen and Peter Thomson**

RE: **Enforcement Notice - ENF21112**
Development at Kells Eircom Exchange, Haggard Road, Kells, County Kilkenny

A Chara,

We act for Doreen and Peter Thomson, of Kells, County Kilkenny.

We refer to Enforcement Notice ENF21112 issued by Kilkenny County Council to Eircom Limited on 3 June 2022. The said Enforcement Notice was issued following complaints of unauthorised development and a Section 5 application by our clients which confirmed non-compliance with planning permission.

Our clients are greatly concerned about this unauthorised structure and its impact on their amenity and the local area.

The Enforcement Notice required Eircom to submit a Method Statement demonstrating how compliance with Condition 1 of Council Planning Reference 20/394 (An Bord Pleanála Ref PL10.308931) could be achieved. It then required works to be carried out on foot of an approved Method Statement. A subsequent letter issued requiring a Construction Management Plan (CMP) to form part of the Method Statement, which was to be "*considerate of neighbouring residential amenity during the construction period*". The deadline for submission of this CMP was Friday 29 July 2022 and we can confirm our clients were not approached by Eircom Limited or its agents in this regard.

Such works will have a significant impact upon our clients in terms of further disruption to their daily activities and enjoyment of their home, a fact previously acknowledged by the Council and Eircom. In such circumstances, our clients should be afforded the opportunity of reviewing the Method Statement and CMP and to make comments on same prior to a decision on the acceptability or otherwise of the final documents.

8/10 Coke Lane
Smithfield, Dublin 7
Ireland

Partners: Eoin Brady, Fred Logue
Consultant: TJ McIntyre

p: +353 (0)1 531 3510
f: +353 (0)1 531 3513
e: info@fplogue.com
www.fplogue.com

It is further considered that any works to remove the unauthorised foundation(s) may have the potential to affect the qualifying species or habitats of the nearby SAC and SPA European Sites and that Appropriate Assessment may be required in light of the anticipated nature of the works. Our clients have instructed a report from an ecologist to confirm whether this will be the case and will require sight of the Method Statement and CMP for this purpose.

Any exemption from the requirement to obtain planning permission in respect of works undertaken on foot of an Enforcement Notice provided for under the Planning and Development Act is subject to the requirement that such works do not require Appropriate Assessment under the Habitats Directive. The CJEU has held that there is a right to public participation in respect of proposed activities requiring Appropriate Assessment (See in particular, Case C-243/15 LZ II (aka "Brown Bears 2"). Accordingly, at the very least in respect of the proposed significant works to be undertaken in close proximity to Natura 2000 sites on foot of the Enforcement Notice, there is an obligation to disclose to the members of the public concerned the nature and extent of such works and how they will be carried out, as set out in the Method Statement and CMP.

Any failure to provide this Method Statement and CMP would represent a breach of fair procedures. Accordingly, I would be obliged if you could confirm by return that the Method Statement and CMP will be provided upon receipt by the Council to our clients.

We await hearing from you in this regard.

Yours faithfully

FP LOGUE

5 (

FPLOGUE SOLICITORS

Our Reference: EJB/842/02972
Your Reference: ENF21112

22 September 2022

By email

Enforcement Section (Planning),
Kilkenny County Council,
Planning4@kilkennycoco.ie

My clients: **Doreen and Peter Thomson**

RE: **Enforcement Notice - ENF21112**
Development at Kells Eircom Exchange, Haggard Road, Kells, County Kilkenny

A Chara,

We refer to this matter, to our letter of 31 August 2022 and and to your letter of 5 September 2022 in response. Our letter requested that Enforcement Notice ENF21112 be withdrawn, and your response indicated that Kilkenny County Council did not intend to withdraw the Enforcement Notice at this time.

It is noted that Enforcement Notice ENF21112 dated 3 June 2022 required any works to be carried out on foot of that notice within four weeks from the date of written agreement to the proposals contained in the Method Statement, or in so far as same may have been revised.

Your letter of 25 August 2022 purported to authorise works on foot of a Method Statement, Construction Management Plan and drawings submitted by the agents for Eircom Limited on 5 July 2022, further to that Enforcement Notice.

Under Section 163 of the Planning and Development Act 2000 (as amended) ("the Act"), permission for development is not required where such development is necessary to comply with an Enforcement Notice issued under Section 154 of the Act.

It is noted that the four week time period within which to carry out the works on foot of the written agreement of 25 August 2022 has now expired, and no works have been carried out on foot of same. Accordingly, ENF21112 is spent as a matter of law, and it is therefore no longer permissible for the works otherwise authorised by ENF21112 to be carried out in compliance with Section 163 of the Act.

8/10 Coke Lane
Smithfield, Dublin 7
Ireland

Partners: Fred Logue, Eoin Brady,
Consultant: TJ McIntyre

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This is reinforced by the decision of the High Court in *Dundalk Town Council v Lawlor* [2005] IEHC 73 where O' Neill J stated:

> *The first thing that has to be borne in mind here is that a failure to comply with an Enforcement Notice is a criminal offence. It is well settled that criminal offences must be defined with clarity and precision so that a person can know whether his conduct is or is not a commission of an offence. (see King v. Attorney General [1981] I.R. 233. What that means is that in construing s. 154 (5)(b) and also in construing any notice issued pursuant to s. 154, a strict construction is required i.e. the subsection in question and any Enforcement Notice must be construed in accordance with the natural and ordinary meaning of the words used and there is no scope for any kind of purposive of or teleological approach.*
>
> *Subsection (5)(b) requires that steps "be taken within a specified period". Any period in time necessarily requires for its definition or ascertainment a beginning and an end. A fortiori a "specified" period must be capable of having its beginning and end clearly ascertained.*

Accordingly the terms of an Enforcement Notice must be strictly construed. The terms of the Enforcement Notice in this instance required that all works to be carried out in compliance with it to be completed within a specified period of four weeks from a date to be determined by Kilkenny County Council.

It is noted that Kilkenny County Council have indicated its intention to issue a Road Closure Order under section 75 of the Roads Act 1993 for the *"purpose of remove and installation of pole for Eir Exchange on Thursday 13th October 2022 and on Friday 18th November 2022 from 10,00am to 2.00pm each day".*

Accordingly, the works proposed to be facilitated by the Road Closure Order are not works permitted under the Act, but are in fact works which will give rise to unauthorised development.

Please now confirm by return that the Council will exercise its powers under Section 154(11)(a) of the Act to withdraw Enforcement Notice ENF21112 as it can no longer be legally complied with, and to provide the necessary clarity to all parties, especially Eircom and its agents. It is important that the Council do not mislead Eircom as to the extent to which it is permitted to carry out works in compliance with the Act by facilitating the provision of a Road Closure Order where such works would constitute Unauthorised Development under the Act, with the consequences which may flow for them in respect of the same.

We believe that a further Enforcement Notice should issue simply requiring Eircom to remove the unauthorised mast at this point as a matter of public safety before the onset of the winter storms. As outlined in our letter of 31 August 2022 the purported permission of demolition works by way of an Enforcement Notice where such works are significantly materially different than the works of construction permitted in a planning permission is of considerable legal concern, not least by reference to the requirements of EU law.

We consider that the appropriate course of action for the Council is to advise Eircom that should they wish to re-erect a further telecommunications mast, they should do so by reference to the available regularisation mechanisms in the Act. Our clients would be happy to participate in any such planning application.

Eircom and its agents are copied to this letter for the purposes of drawing their attention to the contents hereof.

We therefore await hearing from you as soon as possible and at the latest by close of business on Thursday 6 October 2022. Please note that in default of hearing from you, we will be writing to Eircom directly to advise them of the steps our clients intend to take under the Act in the event that they seek to carry out works by reference to Enforcement Notice ENF21112.

Yours faithfully

FP LOGUE

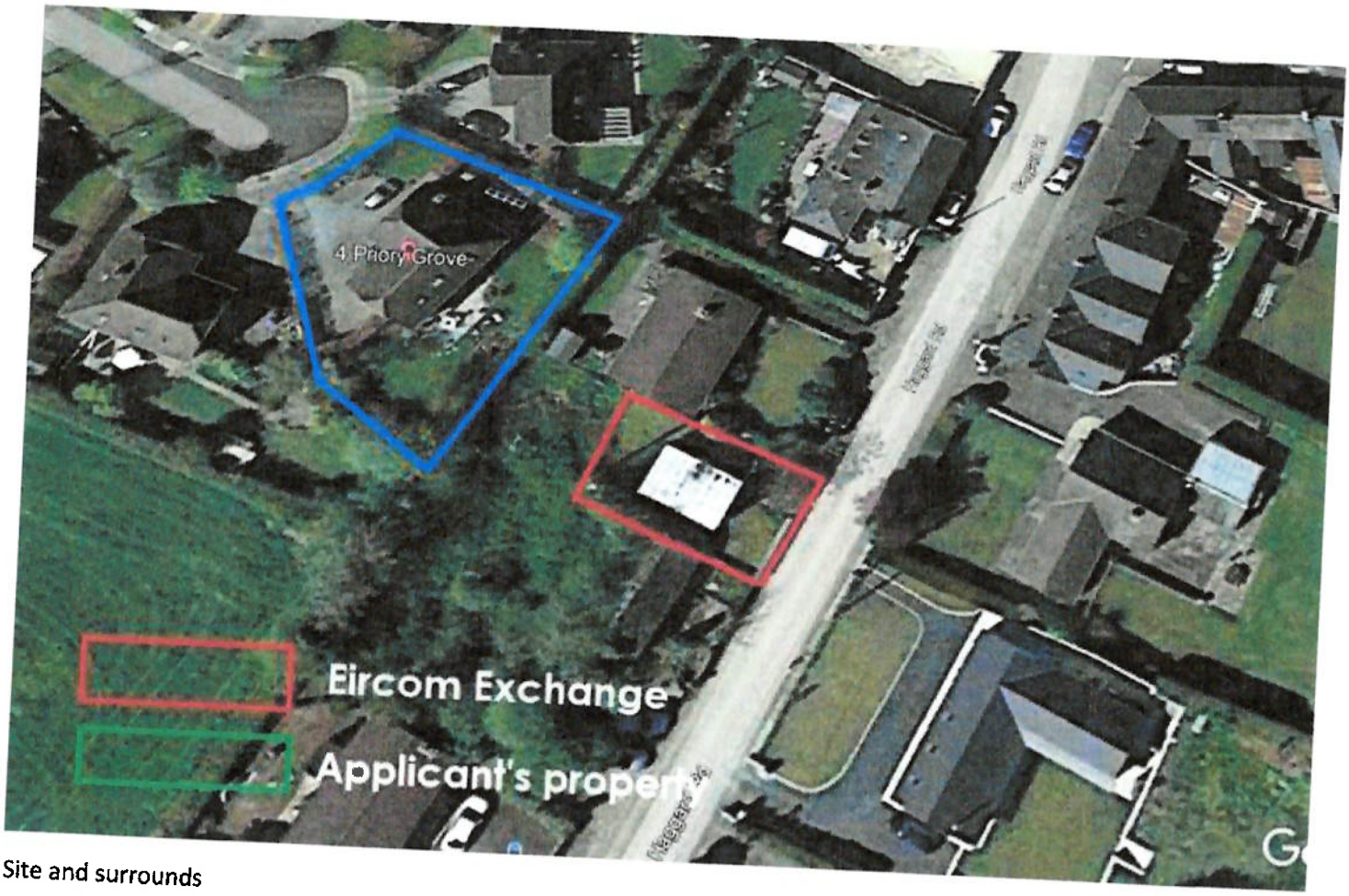
Copy to:

Evonne Man
Solicitor
Eir Mobile
evonne.mann @eir.ie

Stephen O'Brien
FocusPlus Ltd
Stephen.obrien@focusplus.ie

6(a)

Location plan



Site and surrounds

Comhairle Chontae Chill Chainnigh
Halla an Chontae Sraid Eoin Cill Chainnigh
R95 A39T

Cobail agus Áiteanna Inbhuanaithe a Chruthó

Kilkenny County Council
County Hall John Street Kilkenny
R95 A39T

Creating Sustainable Communities and Places

7

Our Ref.: DEC 714

27.09.2022

Doreen & Peter Thomson
4 Priory Grove
Kells
Co. Kilkenny

Re: Application for Declaration under Section 5 of the Planning and Development Act 2000-2022
Development Address: Eircom Exchange, Haggard Road, Kells, Co. Kilkenny

A Chara,

I wish to acknowledge receipt of your application in connection with the above on the 23/09/2022 and inform you that the matter is receiving attention. You will be informed of the Councils' decision in due course.

Please find enclosed receipt for €80.00 confirming payment of the application fee.

Is mise le meas,

S. Meaney

Planning Section

Due 20/10/2022

Comhairle Chontae Chill Chainnigh
Halla an Chontae Sraid Eoin Cill Chainnigh
R95 A39T

Pobal, Ait Aiteanna Inbhuanaithe a Chruthú

Kilkenny County Council
County Hall John Street Kilkenny
R95 A39T

Creating Sustainable Communities and Places

8

Doreen & Peter Thompson
4 Priory Grove
Kells
Co. Kilkenny

Our Ref: DEC 714
Date: 21st October 2022

Re: Application for Declaration under Section 5 of the Planning and Development Act 2000 (amended).
Development Address: Eircom Exchange, Haggard Road, Kells, Co. Kilkenny

A Chara,

The Planning Authority considers that the grounds of the referral relate to detailed compliance with the terms of permission 20/394 (ABP PL 20-308931-21). Notwithstanding the provisions of Article 9(1)(a)(i) of the Planning and Development Regulations and the fact that a declaration issued under Dec Ref 694, the Planning Authority considers that consideration of these compliance matters do not fall within the remit for a Section 5 and are matters for Planning Enforcement which cannot be further considered under this section of the Act.

The Planning Authority is therefore satisfied that under these particular circumstances, this referral should not be considered further having regard to the nature of the referral.

In accordance with Section 5(3)b of the Planning and Development Act 2000 (as amended), Kilkenny County Council will be issuing no declaration on this matter and on payment to the Board of such fee as may be prescribed, the matter can be referred to An Bord Pleanala.

Is mise le meas,

Úna Kealy
Administrative Officer
Planning Section

Comhairle Chontae Chill Chainnigh
Halla an Chontae Sraid Eoin Cill Chainnigh
R95 A39T
Pobail agus Áiteanna Inbhuanaithe a Chruthú

Kilkenny County Council
County Hall John Street Kilkenny
R95 A39T
Creating Sustainable Communities and Places

11

REF: **ENF21112**

REGISTERED POST

DATE: 25th August 2022

Stephen O'Brien
FocusPlus Ltd
No 3 Arbourfield House
Dundrum Business Park
Dublin D14 WD60

RE: **Enforcement Notice ENF21112**
At: **Kells Eircom Exchange, Haggard Road, Kells, Co. Kilkenny.**

Dear Mr O'Brien,

I refer to your letter and the accompanying Construction Management Plan with drawings dated 28th July 2022.

The Planning Authority considers the Method Statement (received 5th July 2022) and further Construction Management Plan and drawings represent a reasonable way forward towards compliance with the requirements of permission PL Reg Ref 20/394 (ABP 10.308931). The Planning Authority would however have concerns about working hours 8am to 4pm on Saturdays, Sundays and Public Holidays. Accordingly, please ensure that works only take place within the hours of 8.00 to 13.00 on Saturday and do not take place on Sundays and public holidays. The attachment of antennae to the structure is not consented to under this Method Statement/CMP assessment and it remains the responsibility of the developer to ensure that these comply with the relevant planning permission/conditions and/or planning exemptions.

You are now required to complete the works within the 4 week period as specified in the Enforcement notice. Please inform the Planning Authority when works have been completed.

Yours Sincerely,

Una Kealy
Administrative Officer
Planning

FPLOGUE SOLICITORS

Our Reference: FPL/EJB/842/02972
Your Reference: ENF21112

31 August 2022

By email

Enforcement Section (Planning),
Kilkenny County Council,
Planning4@kilkennycoco.ie

My clients: **Doreen and Peter Thomson**

RE: **Enforcement Notice - ENF21112**
Development at Kells Eircom Exchange, Haggard Road, Kells, County Kilkenny

A Chara,

We refer to our letter of 4 August 2022 in which we advised our clients required a copy of the Eircom Method Statement and Construction Management Plan (CMP) and that they had instructed an ecologist to review same. These were required to enable my clients, and their retained experts to make comments upon the Eircom proposals prior to a decision on the acceptability or otherwise of the final documents.

We received no response to this letter.

In the meantime, my clients contacted Arlene O'Connor (Enforcement) by e-mail on 9 August 2022, again requesting the documents. No response was received.

On 15 August 2022, Angela Mockler (Enforcement) wrote to our clients advising that Arlene O'Connor was awaiting the Senior Planner's return from annual leave to discuss the file and she would revert to our clients very soon. Later that day the documents were emailed directly to my clients.

On 17 August 2022 my clients emailed Angela Mockler and copied Denis Malone, Nicolaas Louw and Arleen O'Connor thanking her for the CMP and associated documents, reminding them that we had written to the Council in relation to our concerns about the process by which any decision in relation to the approval of works on foot of the Enforcement Notice may be reached. My clients requested that a formal response would be made by the Council directly to us in this regard. They also advised that Mr Brady who was dealing with the matter was on annual leave and that they would be in contact with him to discuss the CMP and how to proceed.

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Ireland

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Our clients had engaged a planning consultant, ecologist and engineer to review the documents to inform the comments they proposed to make in advance of the Council making a decision on the acceptability or otherwise of the CMP and associated documents sent to them.

Yesterday afternoon (30 August 2022), Angela Mockler emailed our clients a letter dated 25 August 2022 to the agents for Eircom advising the Council considered the method statement received 5 July 2022 and the CMP and drawings to represent "*a reasonable way forward*". The Council letter did not consent to the attachment of antennae.

This letter issued without affording our clients fair procedures by facilitating them in making observations on the measures proposed to rectify the unauthorised works which will significantly impact on their amenity. Furthermore, the Council was made aware that our clients had engaged an ecologist expert to address the environmental concerns about the proposed works, but the Council has proceeded to authorise the works in the absence of receiving that report.

We hereby enclose the following independent reports prepared on behalf of our client:

1. Planning consultant's report and appendix,
2. Ecologist's report
3. Engineer's report

As can be seen, these reports set out the following:

a) The works authorised by way of letter of 25 August 2022 represent a material alteration to the works permitted under Planning Ref. ABP-308931-20 (PA Ref. 20/394), and thus do not represent achievement of compliance with Condition 1 of said permission as required by the Enforcement Notice ENF21112.

b) The works authorised by way of letter of 25 August 2022 require Appropriate Assessment under the Habitats Directive.

The works purported to be permitted by way of the letter dated 25 August 2022 thus represent works which are not in accordance with the Enforcement Notice, and thus not permitted by way of Section 163 of the Planning and Development Act 2000 (as amended) ("the Act").

Furthermore, as demonstrated by the Ecologist's report, the works require certain mitigation measures to be carried out in order to ensure the protection of protected species in the River Barrow and River Nore Special Area of Conservation (SAC) and River Nore Special Protection Area (SPA). Based on the decision of the Court of Justice of the European Union (CJEU) in C-323/17 *People Over Wind and Peter Sweetman v Coillte*, such mitigation measures cannot be considered at the screening stage for Appropriate Assessment under the Habitats Directive.

It is noted that no screening for Appropriate Assessment of the works purported to be permitted by way of the letter of 25 August 2022 has been provided to our clients.

In light of the above, the works purported to be permitted and to be carried out within four weeks of the 25 August 2022 are not lawful and therefore cannot be permitted to proceed.

We request the Council urgently reconsider its decision to authorise these works by way of the letter of 25 August 2022 in light of the information enclosed herewith, and exercise its powers under Section 154(11)(a) of the Act to withdraw the Enforcement Notice, as it appears that the works to demolish and reconstruct the telecommunications mast cannot be carried out in compliance with Condition 1 of the grant of planning permission.

We request that you respond to this letter by close of business on Friday 2 September confirming that the Enforcement Notice will be withdrawn. Please note that in default of hearing from you, we have instructions to brief counsel for the purposes of bringing the authorisation of these works before the Courts.

We therefore await hearing from you.

Yours faithfully

FP LOGUE

Encl.

BLUETT & O'DONOGHUE

PROJECT MANAGEMENT ARCHITECTURE ENGINEERING BUILT HERITAGE PLANNING FORENSICS

Our Ref: COS A4-2022 Kells
Reply to: Kilkenny Office
Date: 17th August 2022

The Planning Section,
County Hall
John St.
Kilkenny.

Re: Unauthorised Mast and Foundation at Kells Exchange, Kells, Co Kilkenny: REF ENF 21112

Dear Sir/ Madam,

INTRODUCTION

On behalf of our clients, Peter and Doreen Thomson we have reviewed the Construction Management Plan (CMP dated 20/07/22) submitted in response to the Enforcement Notice to Eircom concerning the unauthorised telecommunication mast and foundation at The Kells Exchange, Kells, County Kilkenny.

It is our opinion the CMP is inaccurate, misleading and contains conflicting statements concerning how the works are proposed to be carried out. It also fails to reflect the nature and full scale and impact of the works which would be required.

The plans which accompany the CMP are also inaccurate, misleading and contain conflicting details. They do not reflect the development permitted by An Bord Pleanala or the nature and scale of the unauthorised development carried out. In addition, the levels do not correspond to the original plans or the findings of the two surveys carried out on behalf of our clients which were confirmed by a third survey carried out by the Council.

The CMP and plans include revised plans and particulars which are materially different to those permitted including:

- A potential increase in the permitted height of the mast foundation in excess of 300mm above the permitted level without justification,
- Decrease in the permitted foundation depth from 1.4m to 1m,
- The spec for the antennae has changed from 2G, 3G and 4G to include 5G which is not permitted and in breach of Condition3 of the permission
- Additional telecommunication equipment proposed on the mast which is not permitted and in breach of Condition3 of the permission, and
- Works which are not exempted development are proposed

Also attached is a report from my clients' Ecologist, Dr Jane Russell O'Connor of Russell Environmental and Sustainability Services, which concludes that the works required to remove the foundation and install a further foundation, have the potential to adversely affect the qualifying species or habitats of the nearby SAC and SPA European Sites and, therefore, could not be screened out for Appropriate Assessment. Her recommendation is that the foundation remains in situ to avoid the potential environmental and ecological impacts of removing it.

A report from my clients' engineering consultants, Byrne and McCabe Design is also enclosed expressing strong reservations about the revised foundation detail involving a 1m deep reinforced foundation to support the 15m high metal support structure in lieu of the permitted 1.4m deep reinforced foundation. No structural engineering calculations have been submitted for this change to the foundation for a mast which is within falling distance of two habitable houses.

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Peter Bluett Cormac O'Sullivan James O'Donoghue Danyal Ibrahim Aidan Murphy

Reg. Address: Prodomo Ltd T/a BLUETT & O'DONOGHUE One Chancery Street, Dublin 7 Ireland CRO No. 284657

It is our opinion that the CMP incorporating the Method Statement for the Program of works, fails to dem(rate how compliance with Condition 1 can be achieved as required by the terms of the Enforcement Notice.

We believe, as a result of Eircom's and its contractor's blatant disregard to the terms of the planning permission, that they have created a situation where they cannot now implement the permitted development. This is as a result of carrying out of a series of unauthorised developments, including: trying to construct the mast outside the application site; constructing the second foundation at the incorrect height; and installing the mast when they knew the mast foundation was at the wrong height.

It is requested that the Council considers withdrawing the current Enforcement Notice and requests Eircom to agree to remove the mast and leave the foundation in situ. If agreement is not forthcoming, that the Council serve a further Enforcement Notice requiring only the removal of the mast. As a result, should Eircom wish to utilise the foundation at a future date following the removal of the mast, it can apply under the procedures for Substitute Consent or retention permission, as appropriate.

THE CONSTRUCTION MANAGEMENT PLAN

The Construction Management Plan, incorporating the Method Statement for the Program of works, was submitted in an effort to comply with the terms of the Enforcement Notice. It was prepared by Eircom's contractor, Delmec. The document is accompanied by a set of drawings also prepared by Delmec.

The following is our commentary on the documents submitted in response to the Enforcement Notice requirements which, in our opinion, supports our request for the mast to be removed and the foundation to remain. The commentary is made for the purposes of highlighting the inadequacies of the documents and without prejudice to the view the mast should be removed, and the existing foundation remain in situ.

The Plans

Foundation and Mast Levels

We would firstly draw attention to a very concerning discrepancy between the permitted planning application, with which the contractors for Eircom were required to comply under planning permission ref: 20/394, and the plans Eircom now propose to implement in response to the Enforcement Notice.

The existing ground level on the road outside the site in the original planning application was given as 0.8m below ground level. The top of the permitted mast foundation at the rear of the exchange building was given as "ground level", i.e. 0.8m above road level.

The surveys carried out on behalf of my clients and that by the Council found that the top of the foundation of the mast as constructed was between 1.413 and 1.484m above road level. That means the top of the foundation, as constructed, is currently between and 0.613m and 0.684m respectively higher than permitted.

Surveyor	*Level to the east of the site*	*Level towards the west of the site*	*Difference in levels*
Eircom	53.2m	54m	+0.800m
Cardinal	100m	101.484m	+1.484m
Kilkenny County Council	49.5148m	50.9282m	+1.413

The existing elevation drawing ref: KK-2168-01-C06 revC by Delmec and proposed elevation drawing ref: KK-2168-01-C07 revC by Delmec now show existing ground level on the road outside the site as 0.968m below ground level and existing ground level as before.

The road level has not changed since planning permission was granted and the ground level of the base of the exchange building has not changed.

The proposed elevation drawing shows the top of the proposed foundation at 0.05m above existing ground level(hich will be 1.018m (0.968m + 0.05m) above road level, as opposed to the permitted level of 0.8m above road level.

Under the "Construction Management" section on page 5 of the CMP, the contractor seeks a tolerance of up to 100mm above permitted level of the top of the foundation, which means the top of foundation could potentially be 1.118m above the permitted level.

If Eircom builds the top of the foundation 1.118m above road level, it will still be 0.318m higher than permitted. Moreover, the existing mast is set 0.074m higher than the top of the foundation (by my clients' Cardinal survey), which means the mast will 0.392m higher than permitted. THIS IS CONSIDERED TO BE AN UNJUSTIFIED AND MATERIAL INCREASE IN THE PERMITTED LEVEL OF THER FOUNDATION AND MAST.

Mast sits above the level of the foundation

Foundation detail - The CMP refers to a 1m deep RC foundation base for the mast. The mast foundation on the planning drawings scales at 1.4m deep and the unauthorised foundations are c1.4m deep; not 1m. The depth of this foundation is a major concern to my clients whose property would be within reach of the mast if it was to fall. Reducing the depth of the mast foundation to avoid further rock excavation, which is what the contractor did when it raised the last foundation above ground level, is totally unacceptable.

Non-Permitted Mast Attachment - Proposed elevation drawing ref: KK-2168-01-C07 revC shows a 600mm diameter RT dish attached to the top of the mast on the NE elevation. The permitted plans showed a 300mm diameter RT dish on the SW elevation.

The antennae specification is to provide 5G coverage. This specification is not in accordance with the permitted development which specified providing improved 2, 3 and 4G coverage only.
Condition 3 of the permission does not permit these changes which requires a separate planning permission.

Ducting detail - The existing site layout plan ref: KK-2168-01-C04 revC shows "existing" cable routes and ducts.

The proposed site layout plan ref: KK-2168-01-C05 revC by Delmec shows "proposed" cable routes and ducts.

The cable routes and ducts, which are shown in the same locations on both plans, cannot be existing and proposed.

They are not existing as the original unauthorised foundation, which is physically attached to the unauthorised foundation shown on the existing site layout, is still in situ and there are no cables or ducts running completely through the original foundation as shown on the plans. As they are therefore "proposed", they cannot be developed as Exempted Development as they will involve works to an unauthorised structure.

Also, Equipment Detail 1 drawing ref: KK-2168-01-C09 RevC illustrates the proposed ducting through existing undisturbed ground. However, the original unauthorised foundation is located where the existing ground is illustrated and to install the ducting will require an excavation into the existing original unauthorised foundation which, as noted above, is not exempted development.

If Eircom intends to keep the original unauthorised foundation, as it previously advised the Council it did to avoid the disruption that removing it would have on neighbours, it requires a separate planning permission to install these duct and power cable installations. Without them, the mast equipment cannot work.

If Eircom intends to remove it, it is not reflected in the CMP and will significantly increase the disruption to neighbours; a disruption which Eircom itself planned to avoid.

The Construction Management Plan Document

The CMP was prepared by Delmec which is the main contractor for the site works and supplier of the mast. The following comments are also made without prejudice to the view the mast should be removed, and the existing foundation remain in situ.

Description of works
The foundation to be removed is c1.4m deep; not 1m.

The description makes no reference to the original unauthorised foundation which is physically attached.

The proposed foundation should be 1.4m deep with the top of the foundation being 800mm above existing road level which is the permitted datum. The original ground levels to the rear of the exchange have been changed and cannot be relied upon as still being 800mm above the road datum and are, therefore, irrelevant in setting the foundation and in turn the mast, at the permitted heights.

There is no requirement for a +100mm tolerance – the foundation could be excavated to a depth which avoids this.

No soakaway test has been carried out to confirm the proposed soakaway would function properly.

Construction Management
In respect of the comments regarding the depth of the existing foundation base – comments as above.

The +/- 200mm tolerance sought for the position of the foundation is unacceptable. Due to the original foundation, the proposed foundation position cannot be moved northeast, and it would come too close to neighbouring properties to the northwest and southwest. The existing foundation excavation dictates the precise location.

The contractors have not contacted the neighbours or their representatives for their views, needs or concerns over construction management, therefore, statements regarding minimising impact and any inconvenience to local residents are without substance. The Council's letter to Eircom's planning agent dated 15th July 2022 specifically stated the CMP had to be "considerate of neighbouring residential amenity during the construction period".

The contractors were unable to work within the confines of the site to install the previous foundations due to the limited area and trespassed on neighbouring land when carrying out previous works, including storing materials and equipment and to mix mortar.

Delm advise that the Contractors will be required to prepare a Method Statement for the development works detailing 4 specific areas of best practice, health and safety etc. **Delmec is the main contractor.**

Hours of work

The hours of work, which include Saturday, Sunday and Public Holidays are totally unacceptable and demonstrate no regard to respecting the amenity of residents in the vicinity. There is a housebound elderly resident living in the house less that 1m from the site of the works and 6m from the proposed demolition works. My clients both work from home and should have been contacted to establish their work patterns, what times would be sensitive to noise etc (scheduled on-line meetings etc).

Pollution of watercourses and Surface Water

See the attached report from Dr Jane Russell O'Connor, Ecologist.

Concrete and *Roads*

My clients have photographic evidence of concrete spillages on the public road, onto the roof of the exchange building and onto the open ground before and after concrete was piped from the roadside mixers parked on the public road when both existing foundations were poured.

Concrete pouring onto open ground

Concrete mixer spllage after pouring on the public road and neighbouring property

Reference to washing out concrete delivery trucks on a site which is inaccessible to such vehicles demonstrates the generic and inapplicable nature of much of the document.

Spillages of concrete, mortar, imported soil/ sub soil and C&D were deposited on the public road and not properly cleaned up (see "*Waste Management*" response below). Evidence of some of the spillages of concrete and mortar remain.

Parking

There is no roadside parking on or beside the exchange for workers or visitors without creating a traffic hazard. Therefore, the proposed parking arrangement will not work.

In terms of access to the site, on day 3 of the proposed works, as detailed in the Method Statement of the Prog[illegible] of works it is stated, "If required, remove a top section of the boundary wall at the front of the EIR Exchange to enable the lifting in of the Mini-digger and breaker attachment into the site".

The front boundary wall had to be demolished to ground level inside the site to get all machinery in to develop the original foundations. The digger was **not lifted** but manoeuvred and driven off a trailer parked on the road. The opening remained throughout the original contract and was infilled just before the contractors left. The photographs below show it was not just a small section of wall, as implied.

Front wall after opening up

Front wall infilled

Traffic Management

No traffic management was in place when previous works were in carried out, save for when the mast was delivered and a road closure was enforced. Complaints were made to the Council by residents.

Day 1 of works – the white car manoeuvring around contractor's vehicles and equipment parked both sides of the road and on the public footpath

Concrete being delivered, road completely blocked, no stop-go or traffic management

Waste Management

A single line in the CMP and Construction Management section of the CMP is given to detailing waste management and this is simply to state waste will go to an authorised recovery facility.

There is no reference to where waste arising from demolitions will be stored, how other wastes will be managed and how the natural ground surface will be protected from seepage arising from waste produced on site. Also, there is no reference to how the site and its surrounds will be protected from pollution arising from on- site waste being stored, finding its way onto the public road and adjoining land (see ecologist's report for impacts and appendix 1 of this report detailing past flooding in Kells (2001) and the hydrological link between the Exchange and the flood plain, SAC and SPA).

The following are some of the examples of poor waste management and the impacts thereof from the work carried out to date by the Contractor.

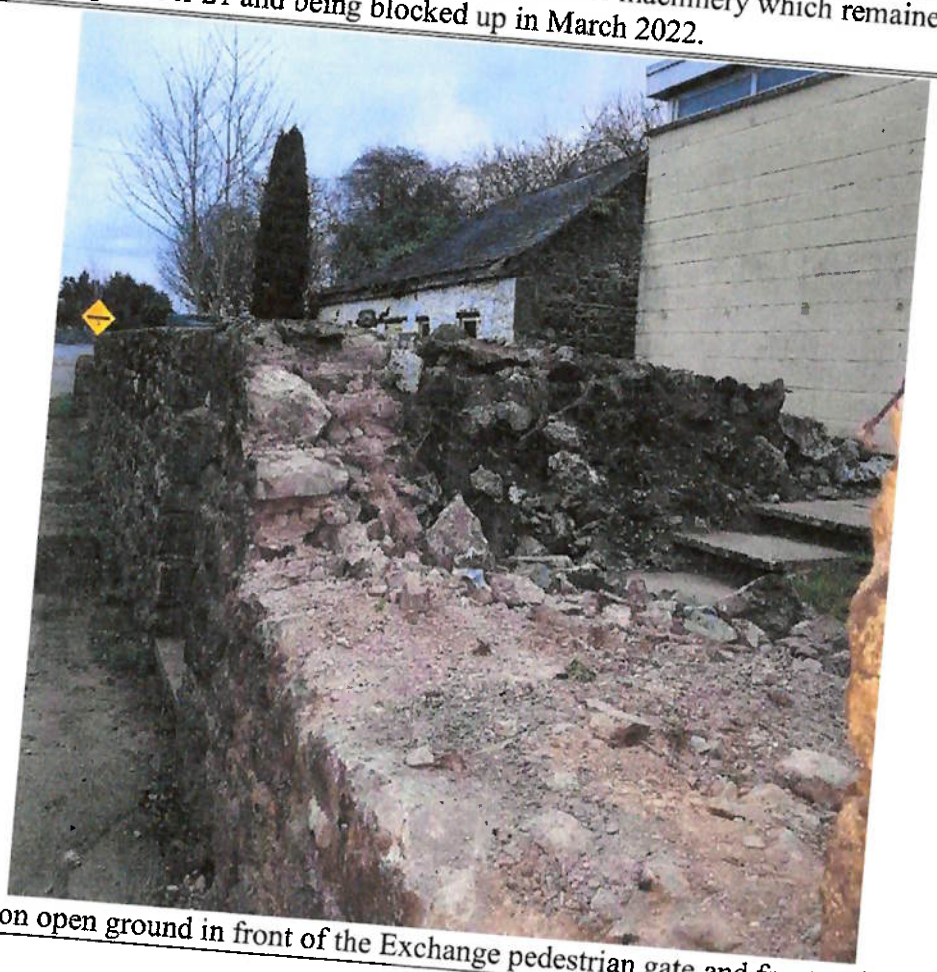
Unauthorised waste fill brought on site and dumped onto the open ground before being used to fill the sides of the foundation and increase ground levels. This was the subject of a formal complaint to the Environment Section of the Council (Ticket ID ref: CAS-06406).

Concrete spilling onto the open ground in the location of the proposed soakaway immediately before pouring the second foundation – the Delmec site foreman looking on (blue jacket)

Spillages on and beside the public road next to the Exchange following pouring concrete from the concrete mixer

Spillage from the works on the public road that remains

Front wall lowered to ground level behind to allow access for machinery which remained open between works starting in September 21 and being blocked up in March 2022.



C& D waste stored on open ground in front of the Exchange pedestrian gate and front wall opening

Noise and Vibration

The excavation of the original foundation started on Friday 10 March 2021 and was complete on Monday 13 March 2021 – 2 working days. Thereafter noise was tolerable. No demolition works were required other than removing part of the front wall of the exchange for machinery to be brought on.

The (ks programme on page 9 of the proposed CMP Method Statement details the disruptive noise and vibration works lasting from day 3 to day 10 involving a mini digger and rock breaker. It is considered this is a gross under estimation of the work which will be required to dismantle and remove the foundation. The foundation is 1.4m deep; not 1m and will inevitably also require the use of jack hammers with compressors and kangos to pick out the concrete from between the steel mesh and steel cutters and angle grinders to remove the reinforcement bars.

No details have been provided of how the foundation to be removed will be cut free from the original unauthorised foundation which is to remain – they are both physically joined. It is inevitable that some of the original foundation will have to be cut back and removed and this has not been accounted for in the programme of works.

Also, no reference has been made to the rock breaking which will be required to excavate the existing foundation hole deeper. The CMP appears to provide for no further excavation on the basis the foundation only needs to be 1m deep and that it can still protrude above the permitted ground level. The foundation needs to be 1.4m deep and only 800mm above road level which will entail a further 500 or 600mm of excavation of solid rock.

The existing mesh of steel reinforcement bars before the concrete was poured. The concrete will have to be excavated from this mesh.

Further works which may be required involve excavating for ducts and cables which, if through the foundation to be retained as per the proposed plans, will create further disruption. The possibility of having to remove the entire original unauthorised foundation to allow for ducts and cables cannot be ruled out which will double the time period of disruptive works.

Under the heading "Monopole Install" the CMP Method Statement references the fitting of an anti- climb screen to the mast and ladder which is proposed to run up the side of the structure. This is intended to prevent unauthorised access to the mast ladder.

Following an incident with a young child getting behind the anti-climb screen and climbing the existing mast, the screen was removed, and the ladder cut off c4m above ground level. The reintroduction of a

similar anti-climb screen to the proposed mast and ladder without overall improvements to site security would be irresponsible. It is difficult to comprehend how the revised proposal failed to address this fundamental flaw in safety and security at the site considering this past incident.

Child climbing down

Exiting from behind the anti-climb screen

The lower of section of ladder being removed

Other issues

Workers' facilities
The CMP does not address the basic provision of on-site facilities during the proposed 20 day construction period for workers.

CONCLUSION
It is our opinion that the CMP incorporating the Method Statement of the Program of works, fails to demonstrate how compliance with Condition 1 can be achieved as required by the terms of the Enforcement Notice or that compliance can ever be achieved.

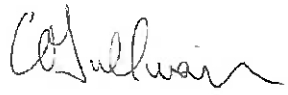
My clients' ecologist has reviewed the planning files, visited the site and surrounds and familiarised herself with the CMP. She concludes that the works required to remove the foundation and install a further foundation, have the potential to adversely affect the qualifying species or habitats of the nearby SAC and SPA European Sites and, therefore, could not be screened out for Appropriate Assessment. She recommends that the foundation remains in situ to avoid the potential environmental and ecological impacts of removing it.

We consider Eircom has created a situation where it cannot now implement the permitted development.

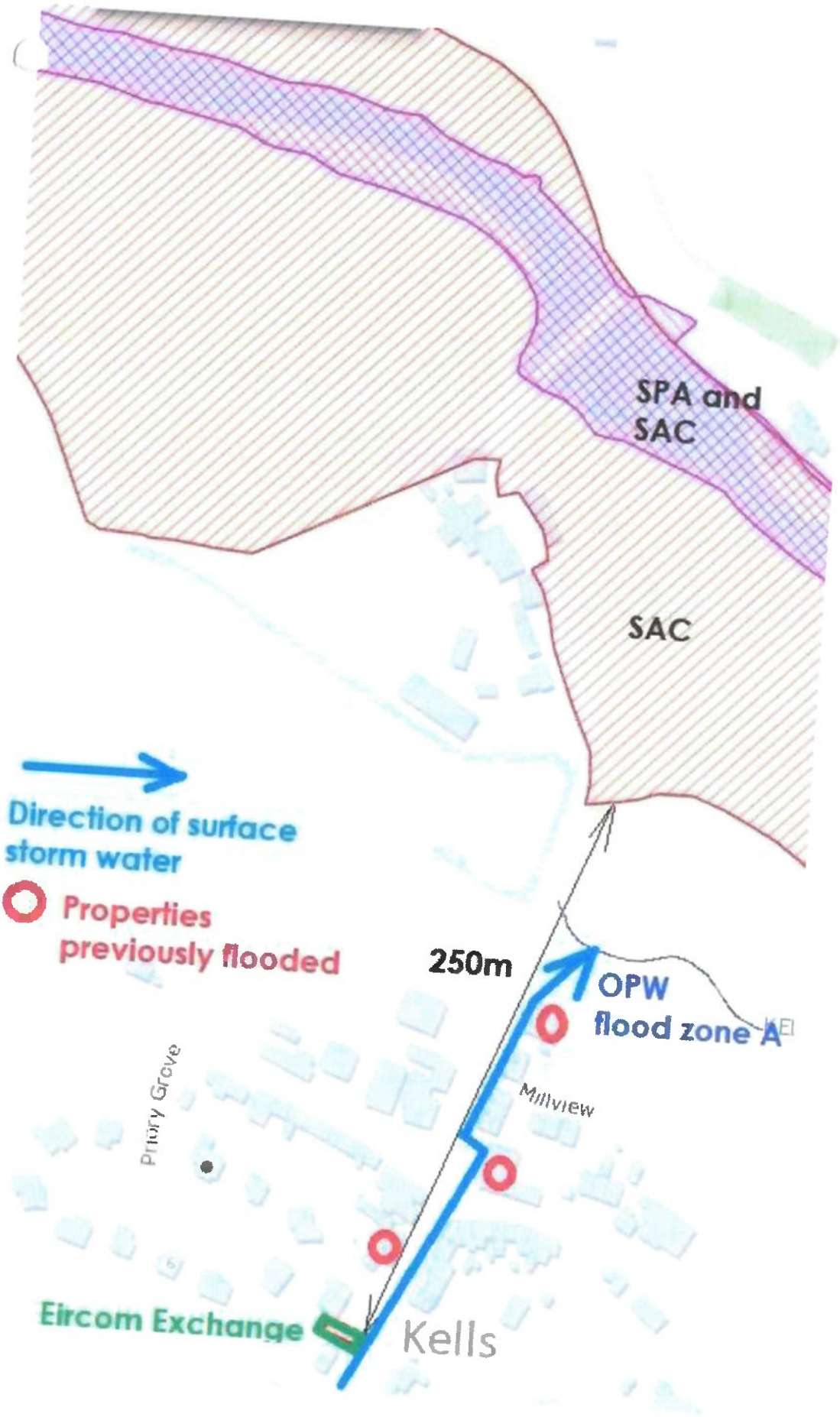
In addition, the proposed deviations from the permitted plans and particulars are material, require permission and the introduction of a 1m beep foundation in lieu of the permitted 1.4m deep foundation without structural engineering justification is a major health and safety concern.

On behalf of our clients, we request that Eircom be required to remove the mast and leave the mast foundation in situ. Should Eircom wish to utilise the foundation at a future date following the removal of the mast, it can apply under the procedures for Substitute Consent or retention permission, as appropriate.

Yours sincerely,



CORMAC O'SULLIVAN
BLUETT & O'DONOGHUE


SPA and
SAC
SAC
Direction of surface
storm water
Properties
previously flooded
250m
OPW
flood zone A
Millview
Priory Grove
Eircom Exchange
Kells

Eircom Exchange is the cream coloured building on the left. The surface water from the flood is flowing towards the cars, village cross roads and the SAC/SPA beyond.

Surface water flooding passing the village cross and down towards the SAC and SPA. Garage forecourt straight ahead.

Surface water running off the garage forecourt and downhill to the SAC/ SPA

Last house beyond the forecourt with surface water flowing through the garden and the SAC in the background.

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Russell Environmental and Sustainability Services

ECOLOGICAL IMPACT ASSESSMENT
Kells Eircom Exchange, Kells, County Kilkenny

Dr Jane Russell-O'Connor 22nd August 2022

Russell Environmental & Sustainability Services

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Executive Summary

This Ecological Impact Assessment has been prepared by Russell Environmental and Sustainability Services (RESS) on behalf of Peter Thomson, in relation to the requirements of the enforcement notice - ENF21112 for Kells Eircom Exchange, Haggard Road issued by Kilkenny County Council to Eircom concerning the demolition, removal and relaying of a concrete platform for the telecommunications mast at Kells, County Kilkenny. The aim of this report is to identify, quantify and evaluate the impacts of the proposed demolition/ excavation, removal and construction works on ecosystems and their components, habitats, flora and fauna.

The River Barrow and River Nore Special Area of Conservation (SAC) is approximately 250m from the site (EPA, 2022). The SAC includes the Kings River, on which there is also the River Nore Special Protection Area (approximately 350m away). There are number of priority Annex habitats protected by the EU Habitats Directives. In addition, there are also a number of protected species such as White-clawed Crayfish, Otter and Kingfisher that have been recorded in this section of the SAC and SPA.

The findings of this Ecological Impact Assessment are that the mitigation measures proposed are insufficient to ensure the protection of protected species in the SAC and SPA and that further Appropriate Assessment is required. These findings are consistent with the findings of previous judgements in respect mitigation measures which cannot be screened out for the purposes of Appropriate Assessment.

1.0 Introduction

1.1 Background

This Ecological Impact Assessment (EcIA) relates to the Enforcement Notice for ENF21112 Development at Kells Eircom Exchange, Haggard Road, Kells, County Kilkenny

The aim of this EcIA is to identify, quantify and evaluate the impacts of the proposed demolition/ excavation, removal and construction works on ecosystems and their components, including habitats, flora and fauna. It has been prepared in accordance with the Guidelines for Ecological Impact Assessment in the UK and Ireland (2018). The purpose of this document is to:

- Provide an objective and transparent assessment of the potential ecological impacts of the proposed development for all interested parties, including planning authorities and the general public.
- Facilitate objective and transparent determination of the consequences of the development in terms of national, regional and local policies relevant to ecology.
- Propose the steps will be taken to adhere to legal requirements relating to designated sites and legally protected species (CIEEM 2018).

Although the above guidelines provide a framework for EcIA, many processes rely on the professional judgement of an ecologist, including survey design, the valuation of ecological features, and the characterisation of impacts.

1.2 Author of the report

Russell Environmental and Sustainability Services (RESS) was contracted by Peter Thomson, Kells, County Kilkenny to conduct an ecological impact assessment for the proposed demolition/excavation, removal and construction works at Haggard Road, Kells, County Kilkenny in relation to the enforcement notice ENF21112. This report details the likely effect of the potential works on the habitats and species of the development site and surrounding environs. The site was surveyed on 13th August 2022, by Ecologists from RESS.

2.0 Scoping

The objective of this assessment is to identify any ecological features that may pose a constraint to the proposed demolition/excavation, removal and construction works. It involves the following steps:

1. Identification of designated sites within an appropriate zone of influence
2. A walkover survey incorporating the following elements:
   i) Classification and mapping of habitats
   ii) A search for rare / protected flora, and for problematic non-native plant species (e.g. Japanese Knotweed)
   iii) A search for field signs of rare or protected fauna (e.g. badgers), and habitat suitability assessments for species that are secretive, nocturnal or seasonal
   iv) Valuation of ecological features, review of legal considerations, and selection of important ecological features

      It is accepted that any development will have an impact on the receiving environment, but the significance of the impact will depend on the importance of the ecological features that would be affected. The following is outlined in the CIEEM guidelines:

      "One of the key challenges in an EcIA is to decide which ecological features (habitats, species, ecosystems and their functions/processes) are important and should be subject to detailed assessment. Such ecological features will be those that are considered to be important and potentially affected by the project. It is not necessary to carry out detailed assessment of features that are sufficiently widespread, unthreatened and resilient to impacts from the development, and that will remain viable and sustainable" (CIEEM, 2018).

   v) Assessment of impacts on important ecological features and development of appropriate mitigation strategies

      Potential direct, indirect or cumulative impacts on ecological features can be described in relation to their magnitude, extent, duration, reversibility and timing/frequency, as outlined in the CIEEM (2018) guidelines. Depending on the type of impact and the sensitivities of the important ecological feature, the ecologist may determine that the impact would have a 'significant effect'. The following definitions are provided in the CIEEM guidelines:

      "A significant effect is simply an effect that is sufficiently important to require assessment and reporting so that the decision maker is adequately informed of the environmental consequences of permitting a project". "For the purpose of EcIA, a 'significant negative effect' is an effect that undermines biodiversity

conservation objectives for 'important ecological features', or for biodiversity in general"(CIEEM, 2018).

Where significant impacts are identified, measures will be taken to avoid, minimise or compensate for impacts (where possible). Based on these measures, any residual impacts are then described.

2.1 Description of the Proposed Development

The details of the proposed works are detailed in the Delmec Construction Management Plan (CMP) submitted in response the Enforcement Notice served on Eircom by Kilkenny County Council, as the existing platform, was constructed in the correct location, but at the wrong height and, consequently was required to be removed in its entirety along with the mast.

A separate report has been prepared by a planning consultant for Peter Thomson highlighting a number of inaccuracies in the CMP and associated documents which have been considered in this Assessment report.

The proposed development will provide Telecoms Coverage in the Kells area.
The existing 3.4m x 3.4m x 1.0m Concrete base and 15m Mono-Pole will be removed at the rear of the Eir Exchange and replaced with a 3.4m x 3.4m x 1.0m Concrete base, with a top of foundation base level 400mm below the existing top of concrete foundation base, which will be the same level as the existing ground level at the rear of the EIR Exchange building. The works will be completed with a tolerance of +/- 100mm for the finished level of the top of the Foundation Base and +/- 200mm for the position of the foundation within the site boundaries.
Surface water will be contained in the soak-away area, confined within the EIR Exchange Site Boundaries.
The existing Ducting will be utilized and incorporated into the new foundation base, for the purpose of permanent ESB and Fiber Supply to this proposed new base.
A 15m Monopole will be installed once curing process of the new base has been completed.
Rigging of Antenna and Outdoor Unit installation will then be carried-out and completed

Figure 1 shows the details of the propopsed demolition/excavation, removal and construction.

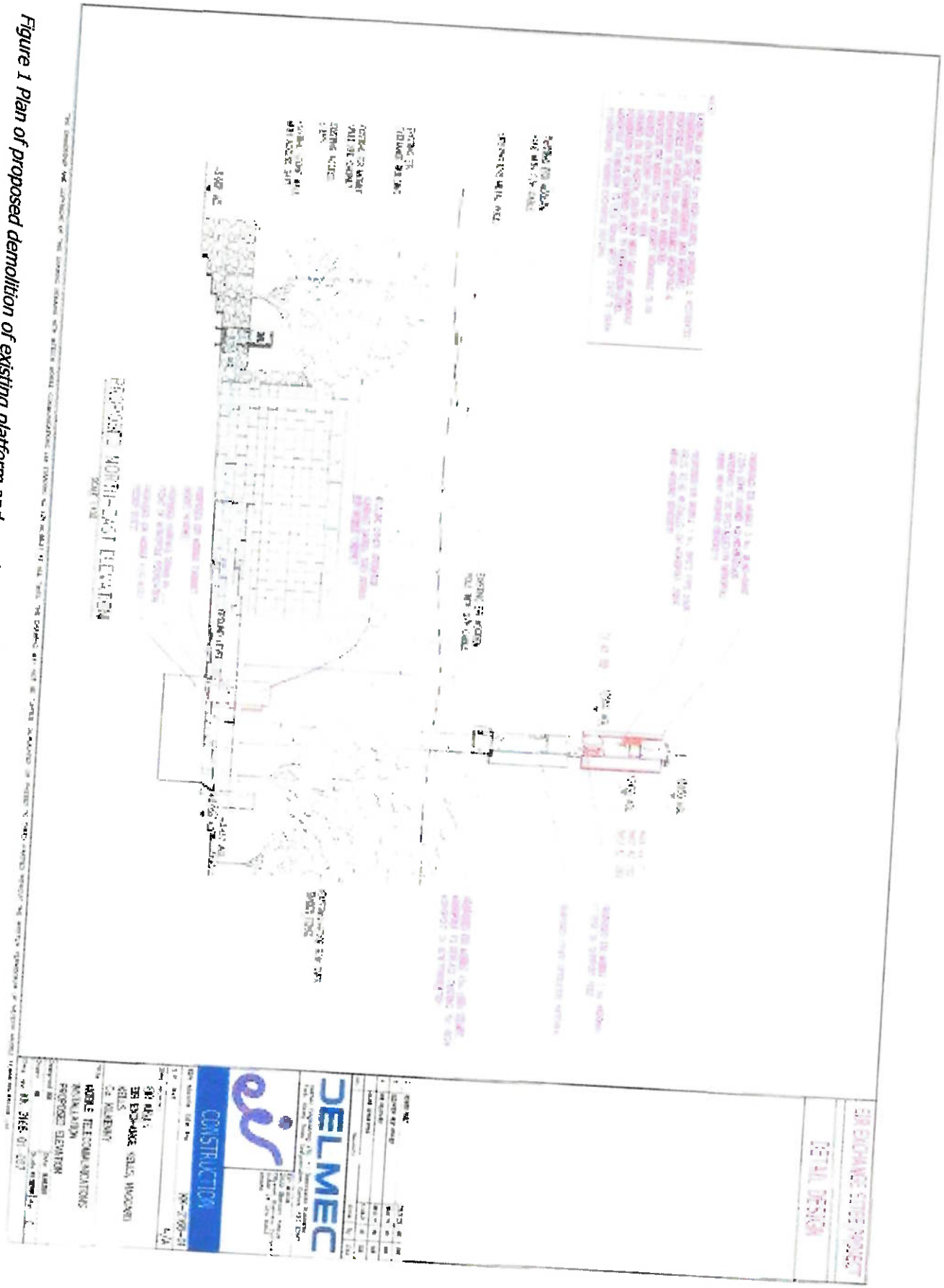

Figure 1 Plan of proposed demolition of existing platform and construction of new platform

3.0 Baseline Information

3.1 Site Description, Location and Topography

The development site currently houses a single storey building (Eir Exchange building), concrete paving and a concrete platform (containing the Eircom mast) with some open recolonized bare ground. The site is adjacent to the L1026 Haggard Road, Kells, County Kilkenny (Figure 2).

The central co-ordinates are Longitude: -7.2737753 and Latitude: 52.5390269. The sites' levels, range from 51.8m above sea level at its lowest point and 52m at its highest point.

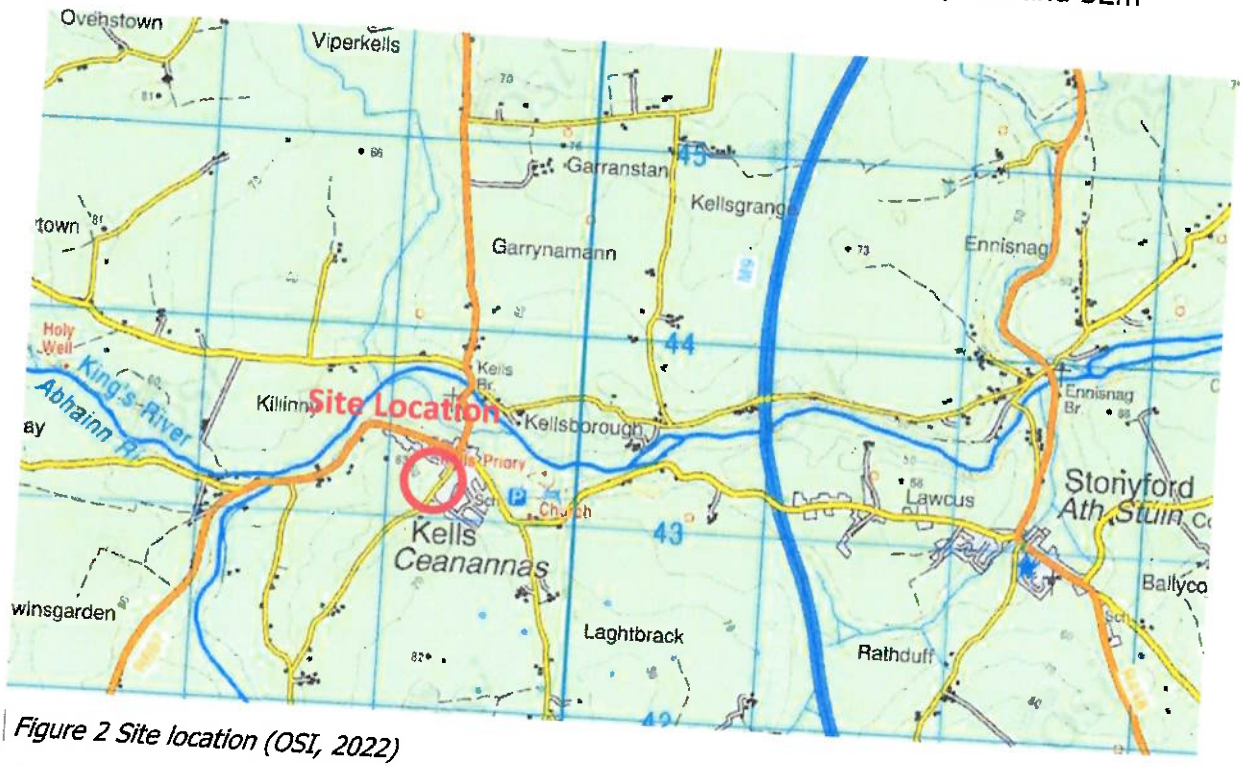

Figure 2 Site location (OSI, 2022)

3.2 Geology and Soils

The bedrock on the site is Visean limestone and calcareous shale (GSI, 2022). The bedrock gives rise to one main soil type which is basic deep well drained mineral soil that is characterised as Grey Brown Podzolics/Brown Earth (EPA, 2022; Teagasc, 2022).

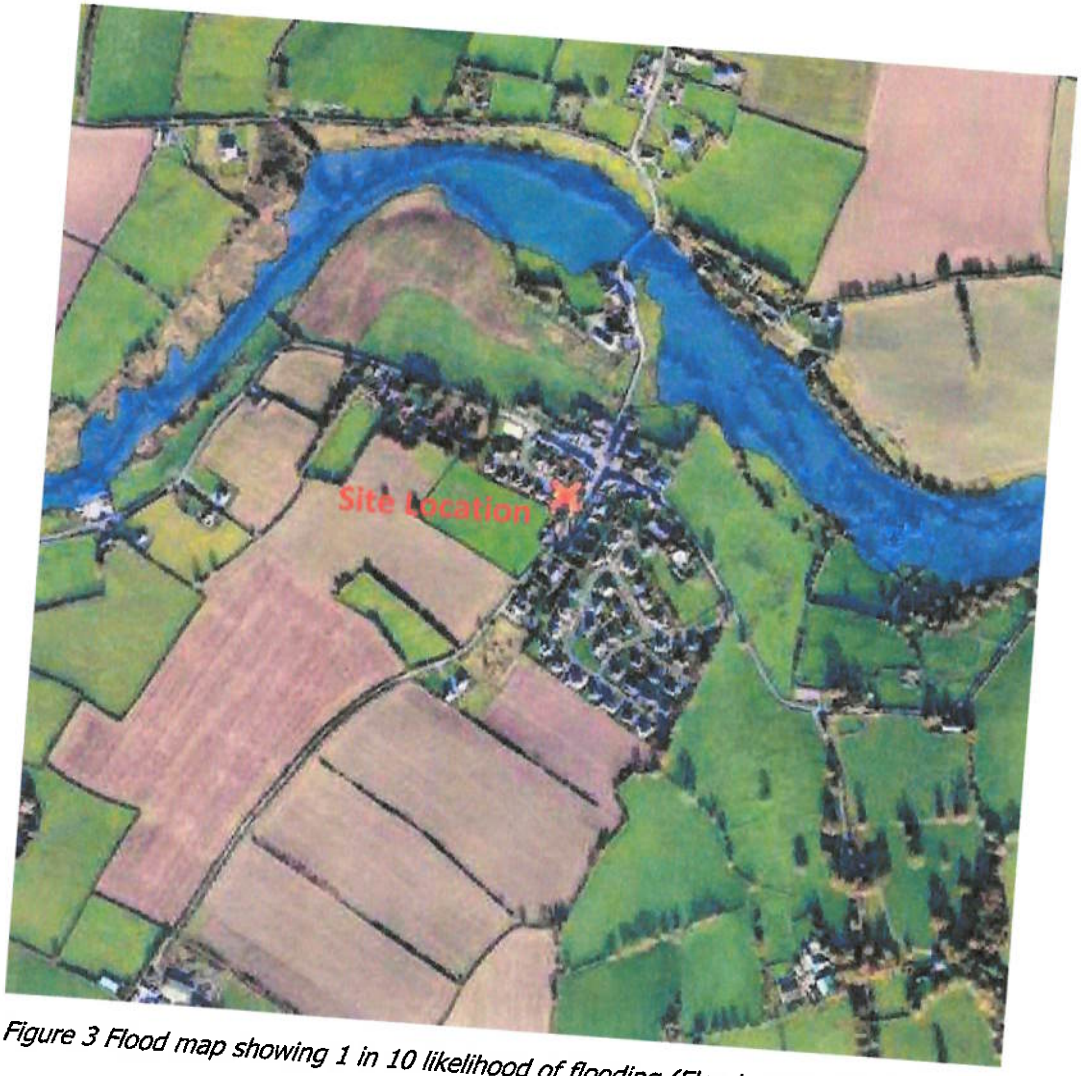

Figure 3 Flood map showing 1 in 10 likelihood of flooding (Floodmap.ie, 2022).

3.3 Hydrology

The King's River is very close to the site at approximately 350m. As can be seen in Figure 3, the site is just outside of the flood zone. However, the elevation of the site is on average 52m above sea level and the elevation of the King's River is 41m, a difference in elevation of 11m. Therefore, during periods of heavy rainfall, there will be a discharge of surface water directly into the King's River and thus provides a direct pathway into the King's River for any pollutants in the surface and storm water.

3.4 Desk Based Ecological Survey

A desk based study was undertaken to determine the proximity of any designated sites within the vicinity of the proposed development site.

The EPA provides the AA Geotool that is a database of the protected sites and associated flow network for water courses within Ireland. The flow network was identified for water courses on or near to the site (Figure 2) (EPA, 2022).

EU Habitats

Article 6(1) and article 6(2) of Council Directive 92/43/EEC of 21st May 1992 on the conservation of natural habitats and of wild fauna and flora aims to promote the maintenance of biodiversity. It forms the cornerstone of Europe's nature conservation policy with the Birds Directive and establishes the EU wide Natura 2000 ecological network of protected areas, safeguarded against potentially damaging developments." (EEC, 1992). These sites are known as European Sites or Natura 2000 Sites.

The River Barrow and River Nore Special Area of Conservation (SAC) is 250m from the site and the River Nore Special Protection Area (SPA) is 350m from the site. Both of these designated sites are European Natura 2000 sites (NPWS, 2022) (Figure 4).

Figure 4 Proximity of the site to the River Barrow and River Nore SAC and River Nore SPA.

The River Barrow and River Nore is designated as an SAC on the basis of qualifying habitats and species as detailed in Table 1.

Habitat Code	**Habitat**
1130	Estuaries
1140	Tidal Mudflats and Sandflats
1170	Reefs
1330	Atlantic Salt Meadows
1410	Mediterranean Salt Meadows
3260	Floating River Vegetation
4030	Dry Heath
6430	Hydrophilous Tall Herb Communities
7220	Petrifying Springs*
91A0	Old Oak Woodlands
91E0	Alluvial Forests*
Species Code	**Species**
1016	Desmoulin's Whorl Snail (*Vertigo moulinsiana*)

1029	Freshwater Pearl Mussel (*Margaritifera margaritifera*)
1092	White-clawed Crayfish (*Austropotamobius pallipes*)
1095	Sea Lamprey (*Petromyzon marinus*)
1096	Brook Lamprey (*Lampetra planeri*)
1099	River Lamprey (*Lampetra fluviatilis*)
1103	Twaite Shad (*Alosa fallax*)
1106	Atlantic Salmon (*Salmo salar*)
1355	Otter (*Lutra lutra*)
1421	Killarney Fern (*Trichomanes speciosum*)
1990	Nore Freshwater Pearl Mussel (*Margaritifera durrovensis*)

Table 1. Qualifying Annex habitats and species of the River Barrow and River Nore SAC (DAHG, 2016)

** Denotes priority Annex habitat.*

The qualifying species of the River Nore SPA is Kingfisher *Alcedo atthis*.

The National Biodiversity Data Centre (Biodiversity Ireland, 2022) provides a national database of biological records from Ireland. The database was consulted with regard to species identified on the site and within the River Barrow and River Nore SAC and River Nore SPA.

Kilkenny City and County Development Plan 2021-2027 document was investigated and the sections pertaining to the aforementioned River Barrow and River Nore SAC and River Nore SPA are as follows:

Section 9.2.1.1. European Sites (Natura 2000)

Integrated Management Plans for European Sites. The Council shall be available to engage with the NPWS with the objective of achieving the preparation and implementation of Integrated Management Plans, informed as appropriate by comprehensive species surveys, for sites within the County, including those which are designated for Kingfisher and Otter. Such Plans would establish the necessary conservation measures for European sites in line with the Habitats Directive and be integrated with other plans and programmes, with the intention that such plans are practical, achievable and sustainable and have regard to all relevant ecological, cultural, social and economic considerations, including those of local communities.

9.2.1.5 Protected Plant and Animal Species

Certain plant, animal and bird species are protected by law. These includes plant species listed in the Flora (Protection) Order 2015 (S.I. No. 356 of 2015) (or other such Orders) and animals and birds listed in the Wildlife Act, 1976 and subsequent statutory instruments, those listed in Annex IV of the Habitats Directive (92/43/EEC), and those listed in Annex I of the Birds Directive.

The Planning Authority will consult with the National Parks and Wildlife Service (a) in respect of any proposed development where there is a possibility that such development may have an impact on a protected area of international or national importance, and (b) take account of any licensing requirements, when

undertaking, or approving development which is likely to affect plant, animal or bird species protected by national or European legislation.

The Council will protect and, where possible, enhance the natural heritage sites designated under EU legislation and national legislation (Habitats Directive, Birds Directive, European Communities (Birds and Natural Habitats) Regulations 2011 and Wildlife Acts). This protection will extend to any additions or alterations to sites that may arise during the lifetime of this plan. The Council will also protect and, where possible, enhance the plant and animal species and their habitats that have been identified under European legislation (Habitats and Birds Directive) and protected under national Legislation (European Communities (Birds and Natural Habitats) Regulations 2011 (SI 477 of 2011), Wildlife Acts 1976-2010 and the Flora Protection Order (SI94 of 1999).

10.1.8.1 Water Framework Directive

In response to the increasing threat of pollution, physically damaging activities and the increasing demand from the public for cleaner rivers, lakes and beaches, the EU developed the Water Framework Directive (WFD). This Directive establishes a framework for the protection of all waterbodies for the benefit of everyone, in terms of water quality and quantity. The protection of water for wildlife and their habitats is also included under the Directive.

The WFD sets out the strategic response to the threat of pollution and its four objectives are:

- Prevent further deterioration of water quality;
- Restore 'good' status of water quality and quantity for ground waters and 'good' or 'high' status for surface waters;
- Reduce chemical pollution of water sources;
- Achieve protected area objectives.

For the purposes of implementing the WFD, Kilkenny County Council is implementing the programme of measures to address significant pressures on water outlined in the National River Basin Management Plan 2018-2021 (RBMP) and will for the subsequent RBMP plan 2022-2027. These include working with all relevant stakeholders to ensure appropriate measures are taken to provide adequate protection of both water quality and quality. This work includes working with the Local Authority Waters Programme (LAWPRO), the Agricultural Sustainability Support and Advisory Programme and other agencies, stakeholders and the public to restore water quality status in Areas for Action identified in the RBMP and protect water quality in areas outside of this network. Specific care is required for the protection for the High-Status objective waterbodies (near pristine waterbodies) in Kilkenny which may require additional measures to meet their specific requirements.

The Council has responsibilities in the areas of maintaining, improving, enhancing and protecting the ecological quality of all waters in the County. The work includes implementation of pollution control measures, licensing of effluent discharges, implementing and monitoring compliance with environmental legislation, and drawing up pollution contingency measures, development control and forward planning.

The Council will continue to take appropriate measures in relation to all development in order to prevent ground and surface water pollution and will implement the River Basin Management Plan for Ireland 2018 – 2021 and its successors (KC&C, 2021).

3.5 Walkover Survey

Although the site was not accessed, it was viewed from neighbouring properties on 13th August 2022, by Ecologists from RESS. There were no other constraints to the field survey.

3.5.1 Flora and Fauna Survey

The flora and fauna survey that took place was based on the Best Practice Guidance for Habitat Surveying and Mapping (Smith *et al.*, 2011). The habitats were classified according to Fossitt (2000). In addition, the habitats mapped and their species were compared with Annex species and habitats of the E.U. Habitats Directive.

Both the common name and the Latin names have been provided for the main plant and animal species identified. The Latin names are in italics. The letter and number codes i.e. GA1 for *Improved grassland* are the standard codes for habitat classification in Ireland (Fossitt, 2000).

In addition, the site was surveyed for invasive species.

4.0 Results

4.1 Desk Based Ecological Survey

A full search of the Biodiversity Ireland data base was completed to determine the presence of any of the qualifying species of the River Barrow and River Nore SAC and River Nore SPA. The following records were identified:

White-clawed crayfish was identified as part of the River Biologists Database for the EPA in the King's River at Kells in Grid S483431 in 2001 and Grid S504433 in 2005.

Otter were identified in Grid S493437 in 1981 in Kells as part of the Otter Survey of Ireland 1982. However more recent records of Otter have been recorded in Grid S54 in 2015 as part of the Atlas of Mammals of Ireland 2010-2015.

Kingfisher as part of the Bird Atlas 2007-2011 in Grid S44 (King's River) in 2010.

The NPWS documents for the River Barrow and River Nore SAC and River Nore SPA were also examined. The Conservation Objectives for River Barrow and River Nore SAC identified that White-clawed crayfish is in the section of the King's River in Kells (DAHG, 2011). Furthermore, all of the habitats listed in Table 1 are to be found down river of Kells and therefore may be subjected to impact. In particular it is likely that Floating River Vegetation, Hydrophilous Tall Herb Communities and Alluvial Forests are to be found in the vicinity.

It should be noted that many of the Biodiversity Ireland records and NPWS Conservation Objectives are not recent and that to determine presence or absence of these species, more recent surveys should be undertaken.

4.2 Walk Over Survey

Flora

Within the site, there were two habitats identified on the site (Fossitt, 2000). These are as follows:

ED3 Recolonising Bare Ground

This habitat constitutes the majority of the site and is indicative of ruderal and weed colonisers. This habitat can be important for wildlife, in particular butterflies and bees. The main species present are Creeping bent *Agrostis stolonifera,* Timothy *Phleum pratense,* False oat-grass *Arrhenatherum elatus,* Perennial rye-grass *Lolium perenne,* Cocks-foot *Dactylis glomerata,* Nettle *Urtica dioica,* Spear thistle *Cirsium vulgare,* Bindweed *Calystegia sepium,* Bramble *Rubus fruiticosus,* Nipplewort *Lapsana communis,* Dock *Rumex acetosa,* Ribwort plantain *Plantago lanceolata,* Dandelion *Taraxacum officinale,* White clover *Trifolium repens,* Vetch (Bush) *Vicia sepium,* Hoary willowherb *Epilobium parviflorum,* Cow Parsley *Anthriscus sylvestris,* Pineapple weed *Matricaria discoidea,* Common poppy *Papaver rhoeas,* Agrimony *Agrimonia eupatoria,* Sun spurge *Euphorbia helioscopia* and Redshank *Persicaria maculosa.*

BL1 Stone Walls

The site is bounded by stone walls on two sides. One of which has been recently repaired. However the other which is on the eastern boundary has a developed flora and may be valuable for invertebrates. There are a number of species growing within the crevices and atop the wall these are: Ivy *Hedera helix,* Rue *Ruta graveolens,* Common Polypody *Polypodium vulgare,* Spleenwort (Maidenhair) *Asplenium trichomanes,* Barberry *Berberis sp.* Ash *Fraxinus excelsior* and Elder *Sambucus nigra.*

The remaining boundaries are bounded with post and rail fencing.

There were no protected or rare species found on the site at the time of surveying.

Fauna

The species of birds present in the environs are House sparrow *Passer domesticus,* Blackbird *Tardus merula,* Pied-wagtail *Motacilla alba,* House Martin *Delichon urbicum* and Swallow *Hirundo rustica.*

No mammals were recorded at the time of surveying, but small mammals are likely to be found on the site such as Shrew *Sorex spp.*, Field mouse *Apodemus sylvaticus* and Rat *Rattus spp.*

Bats are likely to be found in the neighbouring old stone cottage where there is extensive Ivy *Hedera helix* growth, Figure 5. The latter together with apertures in the stonework, may provide suitable roost sites. This building could also provide suitable nesting sites for birds.

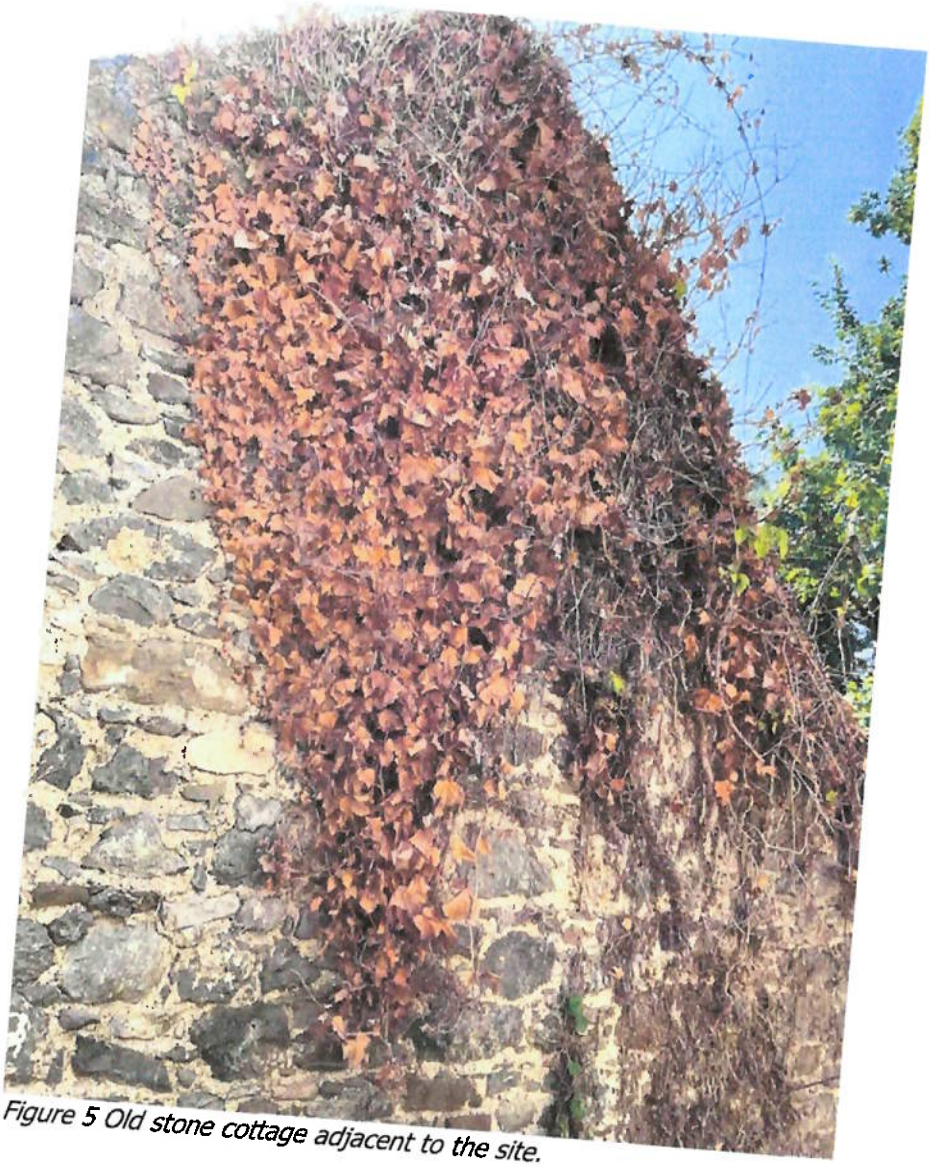

Figure 5 Old stone cottage adjacent to the site.

There was no evidence, at the time of surveying, of reptiles and amphibians. Considering that all habitats within the site boundary are well-represented elsewhere in the county and with more superior diversity, they are considered to be of Negligible importance for these taxa.

The habitats within the Site are common in urban landscapes in Ireland, so it is considered to be of Negligible importance for invertebrates.

4.3 Identification of Important Ecological Features

Based on the desk based survey and walkover surveys, Table 2 has identified a summary of ecological features on the development site together with their importance and legal/conservation status. Table 3 identified a summary of the species and habitats identified in the region of the nearby King's River (River Barrow and River Nore SAC and River Nore SPA).

Ecological Feature	Valuation	Legal Status	Important Feature?
ED3 Recolonising Bare Ground	Negligible	-	No
BL1 Stone Walls	Negligible	-	No
Birds	Negligible	Wildlife Act (WA)*	No
Terrestrial mammals Bats	International	Habitats Directive/Bern Convention/WA	Yes
Reptiles and amphibians	Negligible	-	No
Invertebrates	Negligible	-	No

Table 2 Important ecological features within the site (CIEEM 2018)
* Wildlife [Amendment] Act 2000.

Ecological Feature	Valuation	Legal Status	Important Feature
Floating River Vegetation	International	EU Habitats Directive	Yes
Hydrophilous Tall Herb Communities	International	EU Habitats Directive	Yes
Alluvial Forests*	International	EU Habitats Directive	Yes
Birds - Kingfisher	International	EU Birds Directive	Yes
Terrestrial mammals - Otter	International	EU Habitats Directive Annex Species / Bern convention/ WA	Yes
Reptiles and amphibians – suitable habitat for frog, toad and newts	International	EU Habitats Directive Annex species/ WA	Yes
Invertebrates – White-clawed	International	EU Habitats Directive Annex	Yes

Crayfish		species/ WA	

Table 3 Important ecological features within the King's River near to the development site (River Barrow and River Nore SAC and River Nore SPA) (CIEEM 2018)

5.0 Predicted Impacts of the Proposed Demolition and Construction Works

Birds and Bats

Disturbance of nesting birds/ roosting bats / breeding fauna may occur during the deconstruction and construction phase. It is unlikely that any birds are nesting or bats roosting in the actual site, but may be present in neighbouring hedgerows and buildings (e.g. adjacent old stone cottage, Figure 5). If the removal of the platform and construction of the new platform works are carried out during the bird nesting and bat activity season (between March and October, inclusive), it is possible that bird and bat activity may be disrupted. The killing of any birds or bats, or the disturbance of their nesting sites/roosting sites, would constitute an offence under the Wildlife Act 2000 (as amended) and for Bats the Bern Convention as well as the EU Habitats Directive as bats are Annex species.

It is recommended that a full bat survey and bird survey be undertaken prior to any decommissioning and construction works of the concrete platforms (removal of the mast is unlikely to cause any disruption to birds or bats).

Water Quality

During the deconstruction and construction of the platforms there is a high likelihood of runoff of surface and storm water down Haggard Road into the King's River as there is a decrease in elevation of approximately 11m from the site to the King's River (part of the River Barrow and River Nore SAC and River Nore SPA), and as thus any runoff of surface water or storm water is likely to flow directly into the King's River and surrounding SAC (Figure 4).

Hence, to comply with the EU Water Framework Directive 2000 (2000/60/EC) and other legislation pertaining to surface water quality, as detailed in the Kilkenny City and County Development Plan 2021-2027, and the international legislation concerning the habitats and species in Table 3 and Species in Table 2, that stringent mitigation procedures be applied during the deconstruction of the existing platform and construction of the new platform.

6.0 Proposed Mitigation Measures

Protection of birds and bats during site works is imperative as under the Wildlife Act 1976 (as amended 2000), it is an offence to kill or injure a protected bird or bat, or to disturb their nests/roosts. Most bats are active during nest between March and October (inclusive), so it is strongly recommended that site works are carried out between November and February (inclusive), i.e. outside the activity season. The Delmec CMP does not provide for this.

During construction there is a likelihood of runoff of surface and storm water into the King's River. A Construction Management Plan has been provided to Kilkenny County Council by Eir, however the measures suggested are insufficient to ensure that there are no risks to the SAC and SPA (Appendix i).

Suggested measures that should be implemented to protect the River Barrow and River Nore SAC and River Nore SPA, beyond standard best demolition construction management practice, are detailed below:

Site based work

- Earth works and concrete works will take place during periods of no rainfall to reduce run-off into the SAC and SPA.
- Should unpredicted rain occur then all works should be ceased (e.g. unpredicted extreme rainfall that occurred on 21st August in New Ross (independent.ie, 2022)).
- A site compound shall be established near to the site. The compound shall be secured and fenced with appropriate fencing (e.g. silt fence), to prevent any runoff entering the SAC and SPA.
- A contained storage should be provided for demolition waste pending removal, as boundary demolition works may be required to gain access for machinery to the site. This contained storage should also be appropriately fenced as above to prevent runoff into the SAC and SPA.
- Specialist measures to protect the public road and open ground during concrete pouring to avoid discharges onto the road and open ground within site. These will include a contained area with appropriate fencing (e.g. silt fencing), to prevent runoff into the SAC and SPA.
- Additional soak pits to contain surface water run off within the site, not just from the proposed mast foundation but the unauthorised mast foundation which exists on site and is understood to be retained.

The works will be monitored during the construction phase by a qualified ecologist.

Following completion of the works, the ecologist will complete a final audit report to show how the works complied with the environmental provisions described in this document.

This audit report will be archived for a period of 5 years by the ecologists and forwarded to KCC for their records if required.

7.0 Residual Impacts

Site works should take place outside the season of peak activity for bats. The area should be surveyed by an ecologist to confirm that no protected fauna are present.

A full Appropriate Assessment is required, complete with further surveys, to determine the likely impact on the habitats and the species of the River Barrow and River Nore SAC and River Nore SPA.

A more comprehensive CEMP (Construction and Environmental Management Plan) is required and implemented to ensure that risks to River Barrow and River Nore SAC and River Nore SPA are minimised. To ensure that correct practices are employed an ecologist should be on site to ensure that there is no risk to the SAC and SPA.

It should be noted that removal of the mast itself is unlikely to cause an impact to the River Barrow and River Nore SAC and River Nore SPA or any bats that may be in the vicinity of the site.

It can be concluded that the information provided by Eir is insufficient to determine whether the proposed enforcement works, namely the removal of the existing concrete platform and construction of the new concrete platform in the correct location, to rule out significant negative impacts on the habitats, legally protected species, or any other features of ecological importance.

As a result, it is not possible to rule out any residual impacts to the River Barrow and River Nore SAC, the River Nore SPA and any bats that may be in the vicinity.

This assessment has been undertaken on the basis of the best scientific knowledge in the field and the Precautionary Principle.

Dr Jane Russell-O'Connor PhD, P.G.C.E, BSc.

Russell Environmental and Sustainability Services

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Appendices

9

Construction Management Plan

Proposal to Remove an Existing 3.4 x 3.4 x 1.0m RC Foundation Base and 15m Monopole and Replacement with a 3.4 x 3.4 x 1.0m RC Foundation Base, with a new Top of Foundation Base level at 400mm below the existing Foundation Base and Install a 15m Monopole at the

Eir Exchange, Kells,

Co. Kilkenny

Rev.	Date	Version Details	Author	Reviewed by	Approved by
0	20/07/22	CMP	Terence Dowling	Brid Reardon	Eddie Byrne

TITLE:

Construction Management Plan – Removal of the Existing RC Foundation Base and 15m Monopole and replace with a new RC Foundation Base, at 400mm below the existing Foundation Base Level and Install a 15m Monopole.

LOCATION:

The proposed development is on the Haggard Road, Kells, Co. Kilkenny. The project refers to works to be carried out in the grounds of Eir Exchange, see Figure 1.

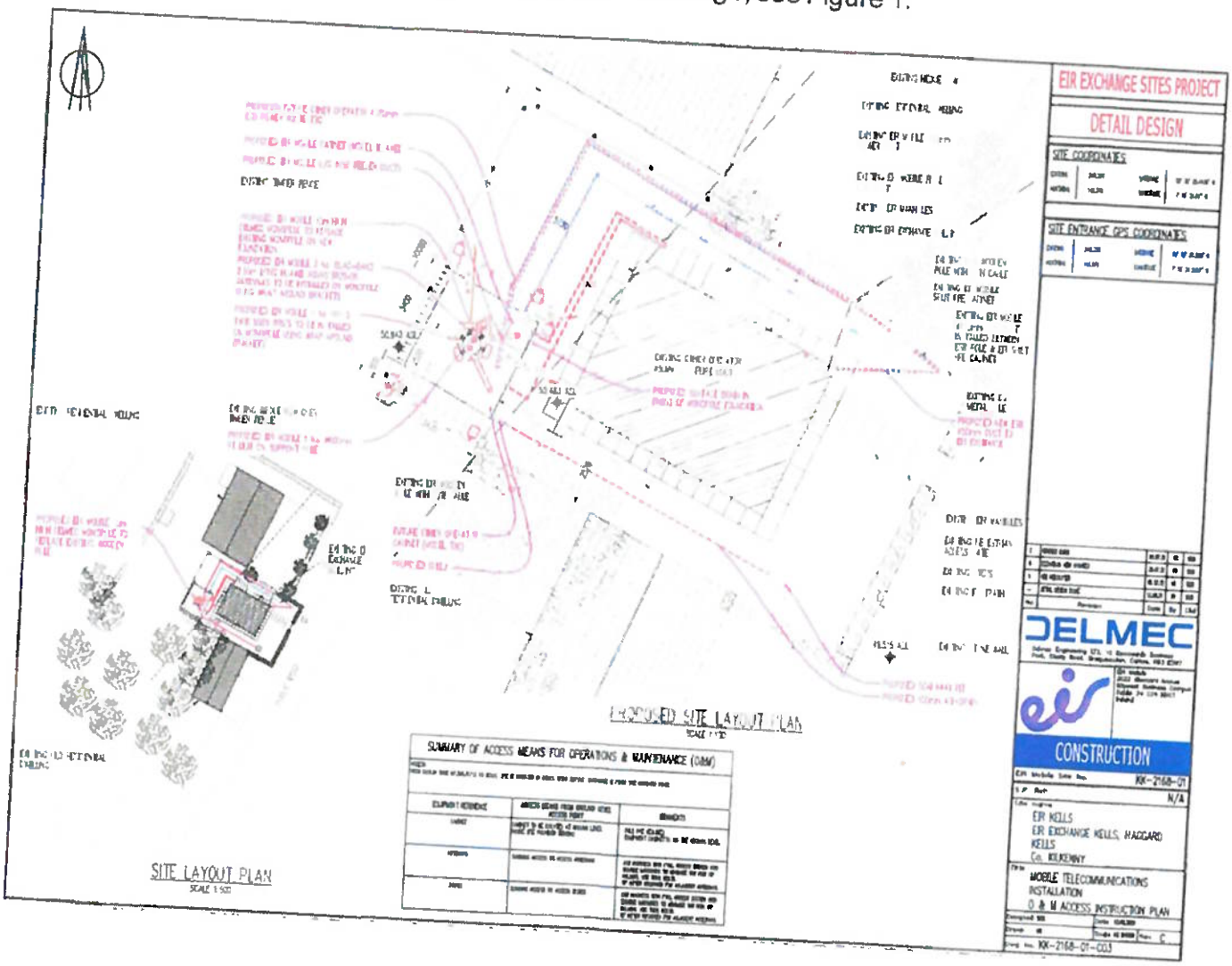
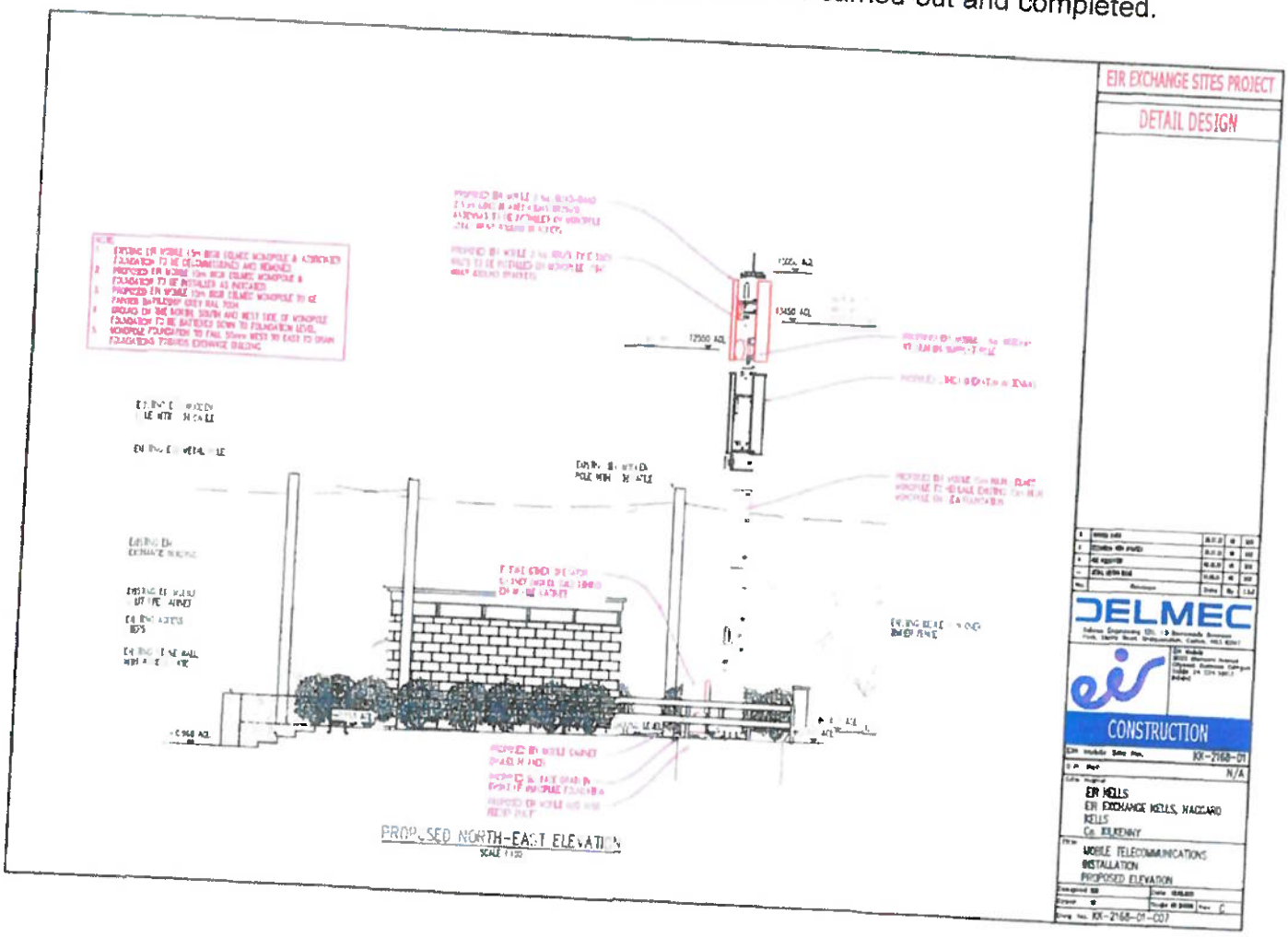


Figure 1. Location of the proposed development at Eir Exchange, Haggard Road, Kells, Co Kilkenny

:SCRIPTION OF WORKS

The proposed development will provide Telecoms Coverage in the Kells area.
The existing 3.4m x 3.4m x 1.0m Concrete base and 15m Mono-Pole will be removed at the rear of the Eir Exchange and replaced with a 3.4m x 3.4m x 1.0m Concrete base, with a top of foundation base level 400mm below the existing top of concrete foundation base, which will be the same level as the existing ground level at the rear of the EIR Exchange building. The works will be completed with a tolerance of +/- 100mm for the finished level of the top of the Foundation Base and +/- 200mm for the position of the foundation within the site boundaries.
Surface water will be contained in the soak-away area, confined within the EIR Exchange Site Boundaries.
The existing Ducting will be utilized and incorporated into the new foundation base, for the purpose of permanent ESB and Fiber Supply to this proposed new base.
A 15m Monopole will be installed once curing process of the new base has been completed.
Rigging of Antenna and Outdoor Unit installation will then be carried-out and completed.



STATEMENT OF WHO WILL CARRY OUT THE WORKS:

Work to be carried out by Delmec Engineering Ltd.'s Civils and Telecoms Contractor, on behalf EIR Mobile Ltd.

COMMENCEMENT DATE:

To be confirmed. (Works will be programmed once all approvals are in place.)

CONSTRUCTION MANAGEMENT:

The proposed project will entail the removal existing 3.4m x 3.4m x 1.0m Concrete base and 15m Monopole will be removed at the rear of the Eir Exchange and replaced with a 3.4m x 3.4m x 1.0m Concrete base, with a top of foundation base level 400mm below the existing top of concrete foundation base, which will be the same level as the existing ground level at the rear of the EIR Exchange building. The works will be completed with a tolerance of +/- 100mm for the finished level of the top of the Foundation Base and +/- 200mm for the position of the foundation within the site boundaries.

Delmec Engineering Ltd. and it's Contractors, will endeavor at all times during the works to minimize the impact and any inconvenience caused to the local residents.

The Contractor shall be cognizant that they will be working within the confines of the Eir Exchange and minimal obstruction will take place on entrance to Eir exchange and the disruption to be agreed with the Management of the Eir Exchange.

The project proponent will be required to ensure that this Construction Management Plan (CMP) is relayed to the contractor who will be constructing the proposed development. This CMP will be required to outline best practice construction methodology to be employed to avoid potential local impacts in the Area.
The CMP will be monitored regularly throughout the duration of the works to ensure best practice is always followed

The contractors will be required to prepare a method statement for the proposed development works. This method statement shall include the following headings:

- Location of the activity and access/ egress arrangements
- Work to be undertaken and methods of construction Plant and materials to be used
- Labor and Supervision Requirements
- Health, safety, and environmental considerations

The following best practice construction management measures will be included as a minimum and will be put in place prior to works:

Hours of work

- Normal working hours apply (Mon-Fri 8am – 6:00pm), subject to risk assessment in consideration of weather and hours of day light
- 8am to 4pm Saturday, Sunday & public holidays
- No work outside of these hours unless agreed with the planning authority.

Pollution of watercourses

- N/A as Project does not include any Watercourses.
- Surface water from top of the foundation base will be collected in an Aco-Drain Channel, as shown on the Construction drawings and will either be contained in a soak pit area within the Site Boundary or connected to the existing Rain-Water outlet pipeline, whichever will be more convenient to the confines of the site.

Surface Water

- Surface water will be collected and managed as stated above.

Fuel/Lubricant spillage from equipment

- All refueling, oiling and greasing will take place above drip trays or on an impermeable surface which provides protection to underground strata and watercourses and away from drains and watercourses as far as reasonably practicable. Vehicles will not be left unattended during refueling.
- Storage areas and machinery depots will be located with due consideration to any watercourse.
- Spill kits will be made available on site and all staff will be properly trained on correct use.
- All fuels, lubricants and hydraulic fluids required will not be stored on site.
- Containers will be properly secured to prevent unauthorized access and misuse. An effective spillage procedure will be put in place with all staff properly briefed. Any waste oils or hydraulic fluids will be collected, stored in appropriate containers, and disposed of offsite in an appropriate manner.
- All plant shall be well maintained with any fuel or oil drips attended to on an ongoing basis.
- Any minor spillage during this process will be cleaned up immediately.

- Should any incident occur, the situation will be dealt with and coordinated by the Site supervisor who will be responsible to comply with the above procedures and instructions by the Local Authority.

Concrete

- Best practice in bulk-liquid concrete management addressing pouring and handling, secure shuttering / form work, adequate curing times.
- Wash water from cleaning ready mix concrete lorries and mixers may be contaminated with cement and is therefore highly alkaline. No washing-out of Concrete delivery trucks is permitted on-site.

Roads

- Care will be taken to ensure that debris from the site is not deposited onto the adjoining road network.
- In the event of any public road being soiled by construction traffic from the site, the road will be cleaned immediately.

Parking

- Parking will be on road beside the Eircom exchange compound.

Traffic Management

- The following type of traffic to be generated during the construction phase will be:
  - Mini digger,
  - Dumper,
  - Up to 3 x vans.
  - 1x Truck mounted Hi-ab Crane / Spoil Grab.
- There will be deliveries intermittently over the construction phase of the project for steel, concrete, stone, monopole, crane and other items.
- Construction hours will be 8am to 6pm Monday to Friday deliveries will be mid-morning to afternoon
- Traffic warning signage will be placed on the approach to the site during construction & pole delivery stage.
- Delmec Eng. Ltd. and the Traffic Management contractor will liaise with Kilkenny County Council to organize temporary road closures and will provide Traffic Management Plans for initial Pole removal and for the subsequent pole install operations.
- A Traffic Management Plan will also be provided to Kilkenny County Council for the Stop / Go System to be temporarily put in place for site deliveries. The estimated duration of the Stop / Go System will be 1 -2 hours for any one delivery.

Waste Management

- Waste generated on site will be deposed of in an authorised recovery facility.

Noise & Vibration

- The potential exists for some noise impact during the construction phase of the scheme. The impacts associated with the construction phase will be of short- term duration, which is estimated to be up to four weeks during the removal of the existing foundation base and the installation of the replacement foundation base.. Noise levels will be kept to a minimum

Controls will be developed and will include:

- Machines will be throttled down when standing.
- Machines will be turned off when not in use
- Care would be taken when unloading vehicles to minimize noise.
- Any compressor bought to site will both have mufflers or silencers fitted, and drip trays beneath the engine.
- Noise Monitor will be set-up on-site during the removal of the existing foundation base operations.

Air Quality, Dust & Emissions

- Care will be taken to ensure that both dust and mal odors will be minimized.
- Measures to be employed will include the damping down of the site in the event of dry weather.

Invasive Species

- All works which may impact on invasive species are to be undertaken in compliance with best practice and national legislation, including best practice management guidelines such as Kelly et al, (2008) Japanese Knotweed Fallopia japonica Invasive Species Ireland, NRA (2010), The Management of Noxious Weeds and Non-Native Invasive Plant Species on National Roads and Environmental Agency (2013) Managing Japanese Knotweed on Development Sites: The Knotweed Code of Practice.

Method Statement for the Program of works

WORK COMMENCEMENT – Civil Works

- On arrival at site, park vehicles in a safe manner.
- Meet with Clark of Works from Eir to discuss work to be carried out daily.
- Identify any possible hazards and plan how to deal with same.
- PICW to ensure that all relevant PPE that is required is used while on site.
- Ensure all necessary safety precautions are taken and that all attendees are briefed accordingly.

Sequence of Work:

Day 1.

- Log on Site.
- Carry out Daily Risk Assessment.
- Put Site Signage in Place.
- CAT scan Ground for possible existing services / Cables
- Hand-dig and install ESB duct from ESB Pole to Exchange Building, as shown on Construction drawings.
- ESB to connect new power supply to Exchange Building and remove existing overhead cable prior to removal of existing 15m monopole.
- Log off Site.

Day 2.

- Log on Site.
- Carry out Daily Risk Assessment.
- Put Site Signage in Place.
- Set-up the approved Traffic Management Plan Road closure system.
- Set-up the Crane in the designated position on the Haggard Road.
- A member of the Rigger Crew will climb the Existing 15m Pole and secure the slings to the top section of the Pole.
- The nuts on the Pole holding down bolt assembly can then be removed.
- The crane, with the assistance of the Banksman will then lift the 15m Monopole off the base plate and lay it down in the designated storage area to the right-hand-side of the EIR Exchange Building.
- PICW will ensure the area safe and secure.
- Log-off Site.

Day 3 to Day 10.

- Log on Site.
- Carry out Daily Risk Assessment.
- Put Site Signage in Place.
- Set-up the approved Traffic Management Plan Road Stop / Go system.
- CAT scan Ground for possible existing services / Cables
- If required, remove a top section of the boundary Wall at the front of the EIR Exchange to enable the lifting in of the Mini-digger and breaker attachment into the site.
- With use of Mini Digger and Breaker commence the removal of the existing concrete foundation base. Dust suppression when required.

- Remove spoil to designated area at the front of the site for collection.
- Log off Site.

Day 11 and 12.

- Log on Site.
- Carry out Daily Risk Assessment.
- Put Site Signage in Place.
- Set-up the approved Traffic Management Plan Road Stop / Go system.
- Delivery to Site of relevant materials, i.e., Stone filling, Formwork Timber Shuttering, Reinforcement Steel. etc. required for the installation of the Monopole foundation base.
- Estbalish Benchmark Datum Level for site works, i.e., existing ground level at the rear of the EIR Exchange Building.
- Place Stone filling, to required depths in Foundation area.
- Commence the Formwork installation works.
- Log off Site.

Day 13.

- Log on Site.
- Carry out Daily Risk Assessment.
- Put Site Signage in Place.
- Set-up the approved Traffic Management Plan Road Stop / Go system.
- Proceed and complete the Formwork installation works.
- Log off Site.

Day 14.

- Log on Site.
- Carry out Daily Risk Assessment.
- Put Site Signage in Place.
- Fabricate the Reinforcement Steel for the Foundation Base.
- Install the reinforcement cage and Monopole holding down bolts
- Install all ducting required for Base Install.
- Tie in all Steelwork for Mono Pole Base.
- Log off Site

Day 15.

- Log on Site.
- Carry out Daily Risk Assessment.
- Put Site Signage in Place.
- Complete any ancillary work prior to Concrete pour.
- Cap off all Ducting prior to Concrete pour
- Carry-out pre-pour QA checks.
- Log off Site.

Day 16.

- Log on Site.
- Carry out Daily Risk Assessment.
- Put Site Signage in Place.
- Set-up the approved Traffic Management Plan Road Stop / Go system.
- Delivery to Site of concrete required for the installation of the Monopole foundation base.
- Complete Concrete pour.
- Rub up top of Plinth to required Standard.
- Log off Site

Day 17.

- Log on Site.
- Carry out Daily Risk Assessment.
- Put Site Signage in Place.
- Remove shutters and backfill with topsoil area that topsoil is required.
- Dig out Ducting for both Power & Fibre in a safe manner.
- Install all ducting required for Base Install and backfill.
- Log off Site

Day 18.

- Log on Site.
- Carry out Daily Risk Assessment.
- Put Site Signage in Place.
- Excavate and install surface water drainage Aco-Channel and pipeline to Soak-away area or connect to existing rainwater pipeline.
- Install earthing system around foundation base.
- Log off Site

Day 19.

- Log on Site.
- Carry out Daily Risk Assessment.
- Put Site Signage in Place.
- Complete cleanup of Site removing any excess spoil or building materials.
- Check with EIR Clerk of works that the Site is as per drawings.
- Log off Site

Day 20 – Civils Works CLOSEOUT:

- Log on Site
- Carry out Daily Risk Assessment
- Waste materials and packaging to be removed from site by Delmec's contractors
- Set-up the approved Traffic Management Plan Road Stop / Go system.
- Decant all remaining plant and equipment from site
- Contact Site Provider and sign out.

WORK COMMENCEMENT – Monopole Install

- On arrival at site park vehicles in a safe manner.
- PICW to ensure that all relevant PPE that is required is used while on site.
- Cordon off work area
- Ensure all necessary safety precautions are taken and that all attendees are briefed accordingly.
- Check certs for crane and ensure only crew members with valid tickets can operate relevant Machinery.

- Sequence of Works / Method Statement:
- Day 1
- Ensure work area is cordoned off using hard barriers and signage is put in place.
- Set-up the approved Traffic Management Plan Road closure system.
- Set-up the Crane in the designated position on the Haggard Road.
- A member of the Rigger Crew will secure the slings to the top section of the Pole.
- Lift 15m Monopole into position, tighten Holding Down Bolts and washers and check verticality of pole with digital Disto, tighten nuts to half of full torque value and finally torque down nuts to correct values.
- New earthing system to be connected to the monopole legs.
- Fit the Anti-Climb cover to the ladder access of the Monopole
- Take data for the HOD.
- Clean up site and take photos of all works completed
- CLOSEOUT:
- Waste materials and packaging to be removed from site by Delmec
- Remove cordons from inside exclusion zone.
- Contact Site Provider and sign out

RESOURCES:

The following will be required to carry out the job:

Contact Names and Numbers:

NAME:	TITLE:	CONTACT DETAILS:

PLANT AND EQUIPMENT:

The following is a list of the plant and equipment that will be involved in the job:

(To be completed by the contractor)

EMERGENCY NUMBERS

- Ambulance 112/999
- Fire Brigade 112/999
- Garda Station 112/999
- HSA 01-6147000
- ESB 1850-372999 (if cable is struck)
- Bord Gais 1850-205050 (if gas main/service is struck)
- Eircom 1901
- Kilkenny Co. Co. (Out of Hours) **+353 (0)56 7794000**
- Local Hospital St Lukes General Hospital, Freshford Rd, Kilkenny. R95 FY71
- **056 7785000**

CMP STATEMENT REGISTER:

I have been briefed and understand this management plan:

PRINT NAME:	SIGNATURE:	DATE:

Construction Management Plan

Proposal to Remove an Existing 3.4 x 3.4 x 1.0m RC Foundation Base and 15m Monopole and Replacement with a 3.4 x 3.4 x 1.0m RC Foundation Base, with a new Top of Foundation Base level at 400mm below the existing Foundation Base and Install a 15m Monopole at the

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Rev.	Date	Version Details	Author	Reviewed by	Approved by
0	20/07/22	CMP	Terence Dowling	Bríd Reardon	Eddie Byrne

TITLE:

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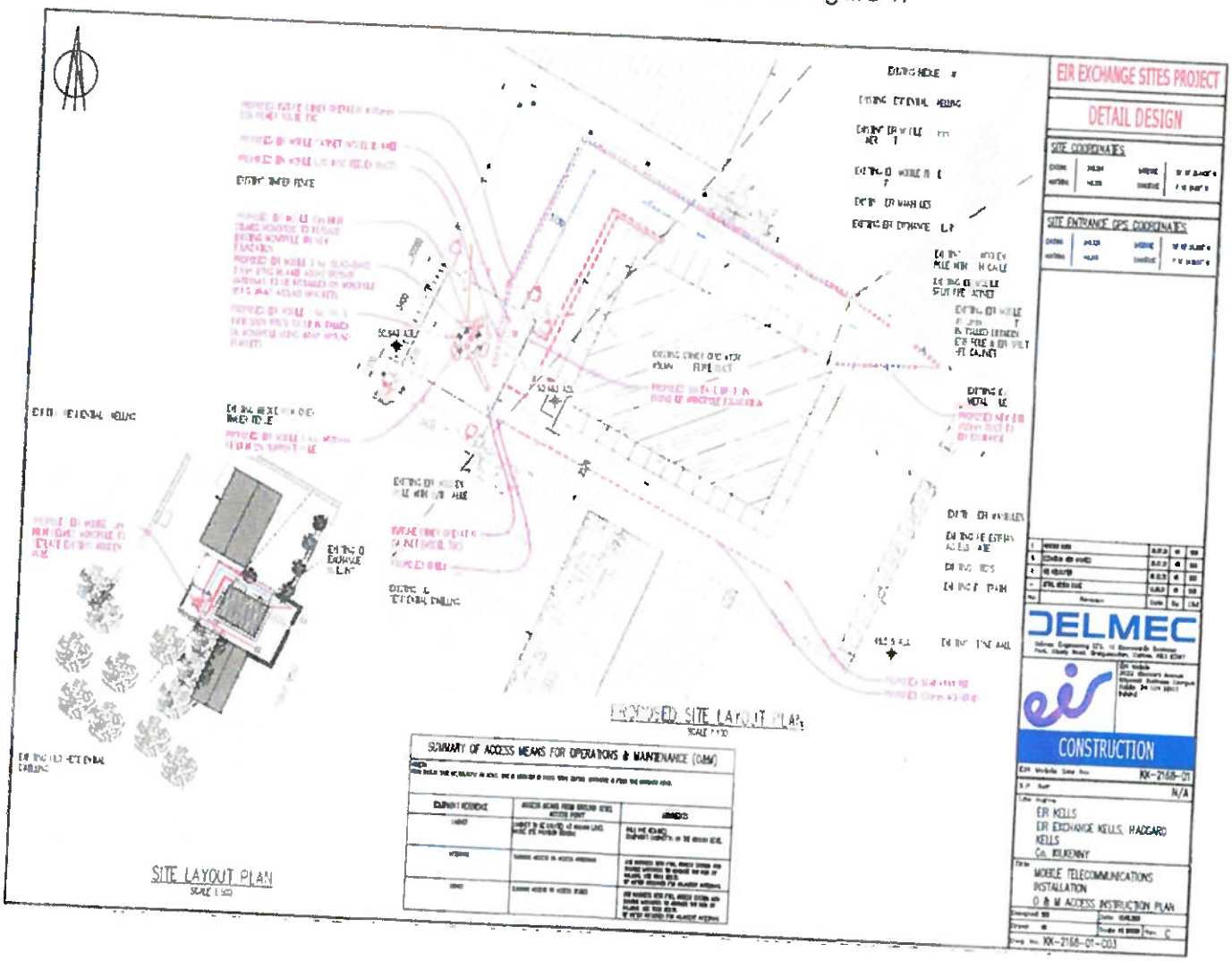

Figure 1. Location of the proposed development at Eir Exchange, Haggard Road, Kells, Co Kilkenny

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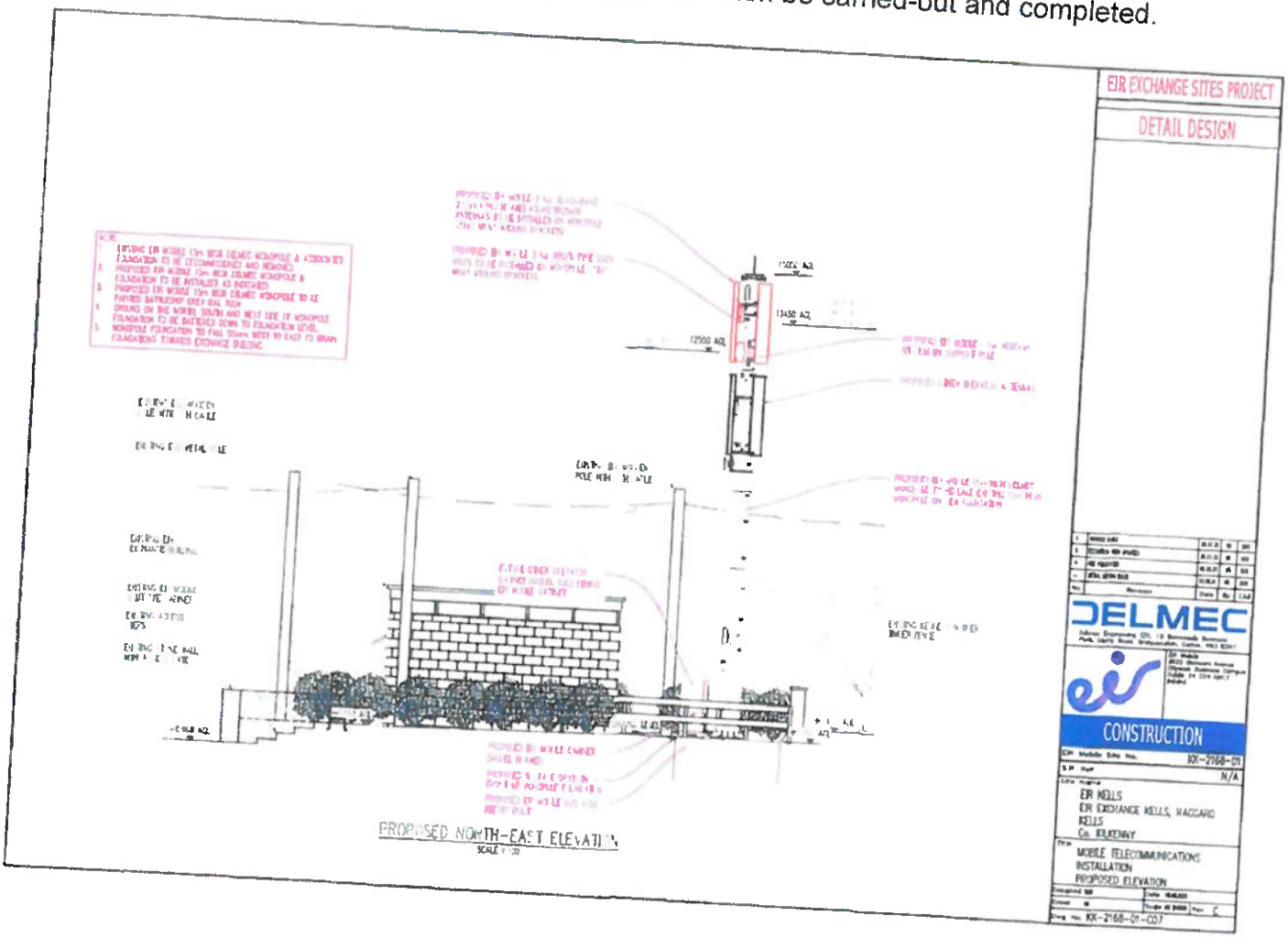

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Pollution of watercourses

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Parking

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- Any compressor bought to site will both have mufflers or silencers fitted, and drip trays beneath the engine.
- Noise Monitor will be set-up on-site during the removal of the existing foundation base operations.

Air Quality, Dust & Emissions

- Care will be taken to ensure that both dust and mal odors will be minimized.
- Measures to be employed will include the damping down of the site in the event of dry weather.

Invasive Species

- All works which may impact on invasive species are to be undertaken in compliance with best practice and national legislation, including best practice management guidelines such as Kelly et al, (2008) Japanese Knotweed Fallopia japonica Invasive Species Ireland, NRA (2010), The Management of Noxious Weeds and Non-Native Invasive Plant Species on National Roads and Environmental Agency (2013) Managing Japanese Knotweed on Development Sites: The Knotweed Code of Practice.

Method Statement for the Program of works

WORK COMMENCEMENT – Civil Works

- On arrival at site, park vehicles in a safe manner.
- Meet with Clark of Works from Eir to discuss work to be carried out daily.
- Identify any possible hazards and plan how to deal with same.
- PICW to ensure that all relevant PPE that is required is used while on site.
- Ensure all necessary safety precautions are taken and that all attendees are briefed accordingly.

Sequence of Work:

Day 1.

- Log on Site.
- Carry out Daily Risk Assessment.
- Put Site Signage in Place.
- CAT scan Ground for possible existing services / Cables
- Hand-dig and install ESB duct from ESB Pole to Exchange Building, as shown on Construction drawings.
- ESB to connect new power supply to Exchange Building and remove existing overhead cable prior to removal of existing 15m monopole.
- Log off Site.

Day 2.

- Log on Site.
- Carry out Daily Risk Assessment.
- Put Site Signage in Place.
- Set-up the approved Traffic Management Plan Road closure system.
- Set-up the Crane in the designated position on the Haggard Road.
- A member of the Rigger Crew will climb the Existing 15m Pole and secure the slings to the top section of the Pole.
- The nuts on the Pole holding down bolt assembly can then be removed.
- The crane, with the assistance of the Banksman will then lift the 15m Monopole off the base plate and lay it down in the designated storage area to the right-hand-side of the EIR Exchange Building.
- PICW will ensure the area safe and secure.
- Log-off Site.

Day 3 to Day 10.

- Log on Site.
- Carry out Daily Risk Assessment.
- Put Site Signage in Place.
- Set-up the approved Traffic Management Plan Road Stop / Go system.
- CAT scan Ground for possible existing services / Cables
- If required, remove a top section of the boundary Wall at the front of the EIR Exchange to enable the lifting in of the Mini-digger and breaker attachment into the site.
- With use of Mini Digger and Breaker commence the removal of the existing concrete foundation base. Dust suppression when required.

- Remove spoil to designated area at the front of the site for collection.
- Log off Site.

Day 11 and 12.

- Log on Site.
- Carry out Daily Risk Assessment.
- Put Site Signage in Place.
- Set-up the approved Traffic Management Plan Road Stop / Go system.
- Delivery to Site of relevant materials, i.e., Stone filling, Formwork Timber Shuttering, Reinforcement Steel. etc. required for the installation of the Monopole foundation base.
- Estbalish Benchmark Datum Level for site works, i.e., existing ground level at the rear of the EIR Exchange Building.
- Place Stone filling, to required depths in Foundation area.
- Commence the Formwork installation works.
- Log off Site.

Day 13.

- Log on Site.
- Carry out Daily Risk Assessment.
- Put Site Signage in Place.
- Set-up the approved Traffic Management Plan Road Stop / Go system.
- Proceed and complete the Formwork installation works.
- Log off Site.

Day 14.

- Log on Site.
- Carry out Daily Risk Assessment.
- Put Site Signage in Place.
- Fabricate the Reinforcement Steel for the Foundation Base.
- Install the reinforcement cage and Monopole holding down bolts
- Install all ducting required for Base Install.
- Tie in all Steelwork for Mono Pole Base.
- Log off Site

Day 15.

- Log on Site.
- Carry out Daily Risk Assessment.
- Put Site Signage in Place.
- Complete any ancillary work prior to Concrete pour.
- Cap off all Ducting prior to Concrete pour
- Carry-out pre-pour QA checks.
- Log off Site.

Day 16.

- Log on Site.
- Carry out Daily Risk Assessment.
- Put Site Signage in Place.
- Set-up the approved Traffic Management Plan Road Stop / Go system.
- Delivery to Site of concrete required for the installation of the Monopole foundation base.
- Complete Concrete pour.
- Rub up top of Plinth to required Standard.
- Log off Site

Day 17.

- Log on Site.
- Carry out Daily Risk Assessment.
- Put Site Signage in Place.
- Remove shutters and backfill with topsoil area that topsoil is required.
- Dig out Ducting for both Power & Fibre in a safe manner.
- Install all ducting required for Base Install and backfill.
- Log off Site

Day 18.

- Log on Site.
- Carry out Daily Risk Assessment.
- Put Site Signage in Place.
- Excavate and install surface water drainage Aco-Channel and pipeline to Soak-away area or connect to existing rainwater pipeline.
- Install earthing system around foundation base.
- Log off Site

Day 19.

- Log on Site.
- Carry out Daily Risk Assessment.
- Put Site Signage in Place.
- Complete cleanup of Site removing any excess spoil or building materials.
- Check with EIR Clerk of works that the Site is as per drawings.
- Log off Site

Day 20 – Civils Works CLOSEOUT:

- Log on Site
- Carry out Daily Risk Assessment
- Waste materials and packaging to be removed from site by Delmec's contractors
- Set-up the approved Traffic Management Plan Road Stop / Go system.
- Decant all remaining plant and equipment from site
- Contact Site Provider and sign out.

..ORK COMMENCEMENT – Monopole Install

- On arrival at site park vehicles in a safe manner.
- PICW to ensure that all relevant PPE that is required is used while on site.
- Cordon off work area
- Ensure all necessary safety precautions are taken and that all attendees are briefed accordingly.
- Check certs for crane and ensure only crew members with valid tickets can operate relevant Machinery.

- Sequence of Works / Method Statement:
- Day 1
- Ensure work area is cordoned off using hard barriers and signage is put in place.
- Set-up the approved Traffic Management Plan Road closure system.
- Set-up the Crane in the designated position on the Haggard Road.
- A member of the Rigger Crew will secure the slings to the top section of the Pole.
- Lift 15m Monopole into position, tighten Holding Down Bolts and washers and check verticality of pole with digital Disto, tighten nuts to half of full torque value and finally torque down nuts to correct values.
- New earthing system to be connected to the monopole legs.
- Fit the Anti-Climb cover to the ladder access of the Monopole
- Take data for the HOD.
- Clean up site and take photos of all works completed
- CLOSEOUT:
- Waste materials and packaging to be removed from site by Delmec
- Remove cordons from inside exclusion zone.
- Contact Site Provider and sign out

RESOURCES:

The following will be required to carry out the job:

Contact Names and Numbers:

NAME:	TITLE:	CONTACT DETAILS:

PLANT AND EQUIPMENT:

The following is a list of the plant and equipment that will be involved in the job:

(To be completed by the contractor)

EMERGENCY NUMBERS

- Ambulance 112/999
- Fire Brigade 112/999
- Garda Station 112/999
- HSA 01-6147000
- ESB 1850-372999 (if cable is struck)
- Bord Gais 1850-205050 (if gas main/service is struck)
- Eircom 1901
- Kilkenny Co. Co. (Out of Hours) **+353 (0)56 7794000**
- Local Hospital St Lukes General Hospital, Freshford Rd, Kilkenny. R95 FY71
- **056 7785000**

CMP STATEMENT REGISTER:

I have been briefed and understand this management plan:

PRINT NAME:	SIGNATURE:	DATE:

Appendix ii

National Parks and Wildlife Service

Conservation Objectives

River Barrow and River Nore SAC 002162

An Roinn
Ealaíon, Oidhreachta agus Gaeltachta
Department of
Arts, Heritage and the Gaeltacht

Introduction

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

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

A site-specific conservation objective aims to define favourable conservation condition for a particular habitat or species at that site.

The maintenance of habitats and species within Natura 2000 sites at favourable conservation condition will contribute to the overall maintenance of favourable conservation status of those habitats and species at a national level.

Favourable conservation status of a habitat is achieved when:

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

The favourable conservation status of a species is achieved when:

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

Notes/Guidelines:

1. The targets given in these conservation objectives are based on best available information at the time of writing. As more information becomes available, targets for attributes may change. These will be updated periodically, as necessary.
2. An appropriate assessment based on these conservation objectives will remain valid even if the targets are subsequently updated, providing they were the most recent objectives available when the assessment was carried out. It is essential that the date and version are included when objectives are cited.
3. Assessments cannot consider an attribute in isolation from the others listed for that habitat or species, or for other habitats and species listed for that site. A plan or project with an apparently small impact on one attribute may have a significant impact on another.
4. Please note that the maps included in this document do not necessarily show the entire extent of the habitats and species for which the site is listed. This should be borne in mind when appropriate assessments are being carried out.
5. When using these objectives, it is essential that the relevant backing/supporting documents are consulted, particularly where instructed in the targets or notes for a particular attribute.

Qualifying Interests

**** indicates a priority habitat under the Habitats Directive***

002162 River Barrow and River Nore SAC

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

Supporting documents, relevant reports & publications (listed by date)

Supporting documents, NPWS reports and publications are available for download from: www.npws.ie/Publications

Title: Desmoulin's whorl snail (*Vertigo moulinsiana* - 1016) Conservation Status Assessment Report
Year: 2011
Author: Moorkens, E. ; Killeen, I.
Series: Unpublished Report to NPWS

Title: River Barrow and River Nore SAC (002162): Conservation objectives supporting document - woodland habitats [Version 1]
Year: 2011
Author: NPWS
Series: Unpublished Report to NPWS

Title: River Barrow and River Nore SAC (002162): Conservation objectives supporting document - coastal habitats [Version 1]
Year: 2011
Author: NPWS
Series: Unpublished Report to NPWS

Title: River Barrow and River Nore SAC (002162): Conservation objectives supporting document - marine habitats [Version 1]
Year: 2011
Author: NPWS
Series: Unpublished Report to NPWS

Title: Second Draft Nore Freshwater Pearl Mussel Sub-basin Management Plan (2009-2015)
Year: 2010
Author: DEHLG
Series: Unpublished Report to NPWS

Title: Site investigations for *Sabellaria alveolata* (Honey-comb worm) biogenic reefs in Ireland
Year: 2010
Author: NPWS
Series: Unpublished Report to NPWS

Title: Irish Semi-natural Grasslands Survey. Annual report no. 3: Counties Donegal, Dublin, Kildare & Sligo
Year: 2010
Author: O'Neill, F.H.; Martin, J.R.; Devaney, F.M.; McNutt, K.E.; Perrin, P.M. ; Delaney, A.
Series: Unpublished Report to NPWS

Title: A provisional inventory of ancient and long-established woodland in Ireland
Year: 2010
Author: Perrin, P.M.; Daly, O.H.
Series: Irish Wildlife Manuals No. 46

Title: Guidelines for a national survey and conservation assessment of upland vegetation and habitats in Ireland [Version 1.0]
Year: 2010
Author: Perrin, P.M.; Barron, S.J.; Roche, J.R.; O'Hanrahan, B.
Series: Irish Wildlife Manuals No. 48

Title: A technical manual for monitoring white-clawed crayfish *Austropotamobius pallipes* in Irish lakes
Year: 2010
Author: Reynolds, J.D.; O'Connor, W.; O'Keeffe, C.; Lynn, D.
Series: Irish Wildlife Manuals No. 45

Title: Report of the standing scientific committee to the DCENR. The status of Irish salmon stocks in 2010 and precautionary catch advice for 2011
Year: 2010
Author: SSC
Series: Unpublished Report to DCENR

Title: The European Communities Environmental Objectives (Freshwater Pearl Mussel) Regulations 2009. [S.I. 296 of 2009]
Year: 2009
Author: Government of Ireland
Series: Irish Statute Book

Title: The European Communities Environmental Objectives (Surface Water) Regulations 2009. [S.I. 272 of 2009]
Year: 2009
Author: Government of Ireland
Series: Irish Statute Book

Title: Saltmarsh Monitoring Report 2007-2008
Year: 2009
Author: McCorry, M.; Ryle, T.
Series: Unpublished Report to NPWS

Title: *Margaritifera durrovensis* Survey of Nore River. June – July 2009. NS 2 project
Year: 2009
Author: Moorkens, E. A.
Series: Unpublished Report to NPWS

Title: Benthic Biotope classification of subtidal sedimentary habitats in the Lower River Suir candidate Special Area of Conservation and the River Nore and River Barrow candidate Special Area of Conservation
Year: 2008
Author: ARMS
Series: Unpublished Report to NPWS

Title: A survey of mudflats and sandflats in Ireland. An intertidal soft sediment survey of Waterford Estuary
Year: 2008
Author: ASU
Series: Unpublished Report to NPWS

Title: Assessment of the Risk of Barriers to Fish Migration in the Nore Catchment, Southern Regional Fisheries Board
Year: 2008
Author: CFB; Compass Informatics
Series: Unpublished Report to CFB

Title: Poor water quality constrains the distribution and movements of Twaite shad *Alosa fallax fallax* (Lacepede, 1803) in the watershed of river Scheldt

Year: 2008

Author: Maas, J.; Stevens, M. ; Breine, J.

Series: Hydrobiologia 602, 129 - 143

Title: All Ireland Species Action Plan - Killarney fern

Year: 2008

Author: NPWS ; EHS-NI

Series: Unpublished Report to NPWS & EHS-NI

Title: National Survey of Native Woodlands 2003-2008

Year: 2008

Author: Perrin, P.; Martin, J.; Barron, S.; O'Neill, F.; McNutt, K.; Delaney, A.

Series: Unpublished Report to NPWS

Title: Saltmarsh Monitoring Report 2006

Year: 2007

Author: McCorry, M.

Series: Unpublished Report to NPWS

Title: Supporting documentation for the Habitats Directive Conservation Status Assessment - backing documents, Article 17 forms and supporting maps

Year: 2007

Author: NPWS

Series: Unpublished Report to NPWS

Title: A Survey of Juvenile Lamprey Populations in the Corrib and Suir Catchments

Year: 2007

Author: O'Connor, W.

Series: Irish Wildlife Manuals No. 26

Title: Assessment of fish passage and the ecological impact of migration barriers on the River Nore catchment

Year: 2007

Author: Sullivan, A.

Series: Nore Suir Rivers Trust & OPW

Title: Otter Survey of Ireland 2004/2005

Year: 2006

Author: Bailey, M.; Rochford, J.

Series: Irish Wildlife Manuals No. 23

Title: The status of host fish populations and fish species richness in European freshwater pearl mussel (*Margaritifera margaritifera*) streams

Year: 2006

Author: Geist, J.; Porkka, M.; Kuehn, R.

Series: Aquatic Conservation: Marine and Freshwater Ecosystems 16, 251–266

Title: The distribution of Lamprey in the River Barrow SAC

Year: 2006

Author: King, J.J.

Series: Irish Wildlife Manuals No. 21

Title: Otters - ecology, behaviour and conservation

Year: 2006

Author: Kruuk, H.

Series: Oxford University Press

Title: The ecology and conservation of the gametophyte generation of the Killarney Fern (*Trichomanes speciosum* Willd.) in Ireland

Year: 2005

Author: Kingston, N. ; Hayes, C.

Series: Biology and Environment: Proceedings of the Royal Irish Academy 105B(2): 71-79

Title: Pilot Project for Monitoring Populations of the Freshwater Pearl Mussel. Baseline survey of the Nore River SAC, Counties Laois and Kilkenny

Year: 2004

Author: Moorkens, E. A.

Series: Unpublished Report to NPWS

Title: Monitoring the river, sea and brook lamprey, *Lampetra fluviatilis*, *L. planeri* and *Petromyzon marinus*

Year: 2003

Author: Harvey, J.; Cowx, I.

Series: Conserving Natura 2000 Rivers Monitoring Series No. 5, English Nature, Peterborough

Title: Ecology of Watercourses Characterised by *Ranunculion fluitantis* and *Callitricho-Batrachion* Vegetation

Year: 2003

Author: Hatton-Ellis, T.W.; Grieve, N.

Series: Conserving Natura 2000 Rivers Ecology Series No. 11. English Nature, Peterborough.

Title: Ecology of the Allis and Twaite shad

Year: 2003

Author: Maitland, P.S.; Hatton-Ellis, T.W.

Series: Conserving Natura 2000 Rivers Ecology Series No. 3. English Nature, Peterborough

Title: A survey of the white-clawed crayfish, *Austropotamobius pallipes* (Lereboullet) and of water quality in two catchments of Eastern Ireland

Year: 2002

Author: Demers, A.; Reynolds, J. D.

Series: Bulletin Français de la Pêche et de la Pisciculture, 367: 729-740

Title: Reversing the habitat fragmentation of British woodlands

Year: 2002

Author: Peterken, G.

Series: WWF-UK, London

Title: A survey of broadleaf woodlands in 3 SACs: Barrow-Nore, River Unshin & Lough Forbes

Year: 2000

Author: Browne, A.; Dunne, F.; Roche, N.

Series: Unpublished Report to NPWS

Title: Diet of Otters *Lutra lutra* on Inishmore, Aran Islands, west coast of Ireland

Year: 1999

Author: Kingston, S.; O'Connell, M.; Fairley, J.S.

Series: Biol & Environ Proc R Ir Acad B 99B:173–182

Title: Conservation Management of the White-clawed Crayfish, *Austropotamobius pallipes*
Year: 1998
Author: Reynolds, J.D.
Series: Irish Wildlife Manuals No. 1

Title: Studies on the biology and ecology of Margaritifera in Ireland
Year: 1996
Author: Moorkens, E.A.
Series: Unpublished PhD thesis, University of Dublin, Trinity College.

Title: Imminent extinction of the Nore freshwater pearl mussel *Margaritifera durrovensis* Phillips: a species unique to Ireland
Year: 1994
Author: Moorkens, E.A. ; Costello, M.J.
Series: Aquatic Conservation: Marine and Freshwater Ecosystems 4,363-365

Title: The spatial organization of otters (*Lutra lutra*) in Shetland
Year: 1991
Author: Kruuk, H.; Moorhouse, A.
Series: J. Zool, 224: 41-57

Title: The vegetation of Irish rivers
Year: 1987
Author: Heuff, H.
Series: Unpublished Report

Title: Otter survey of Ireland
Year: 1982
Author: Chapman, P.J.; Chapman, L.L.
Series: Unpublished Report to Vincent Wildlife Trust

Spatial data sources

Year:	2010
Title:	EPA transitional waterbody data
GIS operations:	Clipped to SAC boundary
Used for:	1130 (map 2)
Year:	Interpolated 2011
Title:	Intertidal and subtidal surveys 2008 & 2010
GIS operations:	Polygon feature classes from marine community types base data sub-divided based on interpolation of marine survey data
Used for:	Marine community types, 1140 (maps 3 & 4)
Year:	2005
Title:	OSi Discovery series vector data
GIS operations:	High water mark (HWM) and low water mark (LWM) polyline feature classes converted into polygon feature classes and combined; Saltmarsh and Sand Dune datasets erased out if applicable
Used for:	Marine community types base data (map 4)
Year:	Revision 2010
Title:	Saltmarsh Monitoring Project 2007-2008. Version 1
GIS operations:	QIs selected; clipped to SAC boundary; overlapping regions with Sand Dune data investigated and resolved with expert opinion used
Used for:	1310, 1330, 1410 (map 5)
Year:	Derived 2011
Title:	Internal NPWS files
GIS operations:	Dataset created from spatial reference contained in files
Used for:	7220 (map 6)
Year:	Revision 2010
Title:	National Survey of Native Woodlands 2003-2008. Version 1
GIS operations:	QIs selected; clipped to SAC boundary
Used for:	91A0, 91E0 (map 6)
Year:	2011
Title:	NPWS rare and threatened species database
GIS operations:	Dataset created from spatial references in database records
Used for:	1016, 1092, 1421, 1990 (map 7)
Year:	2005
Title:	OSi Discovery series vector data
GIS operations:	Creation of an 80m buffer on the marine side of the high water mark (HWM); creation of a 10m buffer on the terrestrial side of the HWM; combination of 80m and 10m HWM buffer datasets; creation of a 10m buffer on the landward side of the river banks data; creation of a 20m buffer applied to river centerline and stream data; combination of 10m river banks and 20m river and stream centerline buffer datasets; combined river and stream buffer dataset clipped to HWM; combination of HWM buffer dataset with river and stream buffer dataset; overlapping regions investigated and resolved; resulting dataset clipped to SAC boundary
Used for:	1355 (no map)

1016 Desmoulin's whorl snail *Vertigo moulinsiana*

To maintain the favourable conservation condition of Desmoulin's whorl snail in the River Barrow and River Nore SAC, which is defined by the following list of attributes and targets:

Attribute	Measure	Target	Notes
Distribution: occupied sites	Number	No decline. Two known sites: Borris Bridge, Co. Carlow S711503; Boston Bridge, Kilnaseer S338774, Co. Laois. See map 7	Data from NPWS rare and threatened species database
Population size: adults	Number per positive sample	At least 5 adults snails in at least 50% of samples	Attribute and target from Moorkens and Killeen (2011)
Population density	Percentage positive samples	Adult snails present in at least 60% of samples per site	Attribute and target from Moorkens and Killeen (2011)
Area of occupancy	Hectares	Minimum of 1ha of suitable habitat per site	Attribute and target from Moorkens and Killeen (2011)
Habitat quality: vegetation	Percentage of samples with suitable vegetation	90% of samples in habitat classes I and II as defined in Moorkens & Killeen (2011)	Attribute and target from Moorkens and Killeen (2011)
Habitat quality: soil moisture levels	Percentage of samples with appropriate soil moisture levels	90% of samples in moisture class 3-4 as defined in Moorkens & Killeen (2011)	Attribute and target from Moorkens and Killeen (2011)

1029 Freshwater pearl mussel *Margaritifera margaritifera*

The status of the freshwater pearl mussel (*Margaritifera margaritifera*) as a qualifying Annex II species for the River Barrow and River Nore SAC is currently under review. The outcome of this review will determine whether a site-specific conservation objective is set for this species. Please note that the Nore freshwater pearl mussel (*Margaritifera durrovensis*) remains a qualifying species for this SAC. This document contains a conservation objective for the latter species.

1092 White-clawed crayfish *Austropotamobius pallipes*

To maintain the favourable conservation condition of White-clawed crayfish in the River Barrow and River Nore SAC, which is defined by the following list of attributes and targets:

Attribute	Measure	Target	Notes
Distribution	Occurrence	No reduction from baseline. See map 7	The crayfish is present almost throughout this SAC. The records extend as far downstream as Thomastown on the Nore and Graiguenamanagh on the Barrow
Population structure: recruitment	Percentage occurrence of juveniles and females with eggs	Juveniles and/or females with eggs in at least 50% of positive samples	See Reynolds et al. (2010) for further details
Negative indicator species	Occurrence	No alien crayfish species	Alien crayfish species are identified as major direct threat to this species and as disease vector. See Reynolds (1998) for further details
Disease	Occurrence	No instances of disease	Disease is identified as major threat and has occurred in Ireland even in the absence of alien vectors. See Reynolds (1998) for further details
Water quality	EPA Q value	At least Q3-4 at all sites sampled by EPA	Target taken from Demers and Reynolds (2002). Q values based on triennial water quality surveys carried out by the Environmental Protection Agency (EPA)
Habitat quality: heterogeneity	Occurrence of positive habitat features	No decline in heterogeneity or habitat quality	Crayfish need high habitat heterogeneity. Larger crayfish must have stones to hide under, or an earthen bank in which to burrow. Hatchlings shelter in vegetation, gravel and among fine tree-roots. Smaller crayfish are typically found among weed and debris in shallow water. Larger juveniles in particular may also be found among cobbles and detritus such as leaf litter. These conditions must be available on the whole length of occupied habitat

1095 Sea lamprey *Petromyzon marinus*

To restore the favourable conservation condition of Sea lamprey in the River Barrow and River Nore SAC, which is defined by the following list of attributes and targets:

Attribute	Measure	Target	Notes
Distribution: extent of anadromy	% of river accessible	Greater than 75% of main stem length of rivers accessible from estuary	Artificial barriers can block or cause difficulties to lampreys' upstream migration, thereby limiting species to lower stretches and restricting access to spawning areas. See King (2006), Sullivan (2007) and CFB and Compass Informatics (2008) for further information on artificial barriers
Population structure of juveniles	Number of age/size groups	At least three age/size groups present	Attribute and target based on data from Harvey and Cowx (2003) and O'Connor, (2007). King (2007) provides survey information for the Barrow
Juvenile density in fine sediment	Juveniles/m^2	Juvenile density at least 1/m^2	Juveniles burrow in areas of fine sediment in still water. Attribute and target based on data from Harvey and Cowx (2003)
Extent and distribution of spawning habitat	m^2 and occurrence	No decline in extent and distribution of spawning beds	Attribute and target based on spawning bed mapping by Inland Fisheries Ireland (IFI). Lampreys spawn in clean gravels. Artificial barriers are currently preventing lamprey from accessing suitable spawning habitat. See King (2006), Sullivan (2007) and CFB and Compass Informatics (2008) for further information
Availability of juvenile habitat	Number of positive sites in 3rd order channels (and greater), downstream of spawning areas	More than 50% of sample sites positive	Artificial barriers are currently preventing juvenile lampreys from accessing the full extent of suitable habitat. See King (2006), Sullivan (2007) and CFB and Compass Informatics (2008) for further information

1096 Brook lamprey *Lampetra planeri*

To restore the favourable conservation condition of Brook lamprey in the River Barrow and River Nore SAC, which is defined by the following list of attributes and targets:

Attribute	Measure	Target	Notes
Distribution	% of river accessible	Access to all watercourses down to first order streams	Artificial barriers can block lampreys' upstream migration, thereby limiting species to lower stretches and restricting access to spawning areas. See King (2006), Sullivan (2007) and CFB and Compass Informatics (2008) for further information on artifical barriers
Population structure of juveniles	Number of age/size groups	At least three age/size groups of brook/river lamprey present	Attribute and target based on data from Harvey and Cowx (2003). King (2007) provides survey information for the Barrow. It is impossible to distinguish between brook and river lamprey juveniles in the field, hence they are considered together in this target
Juvenile density in fine sediment	Juveniles/m²	Mean catchment juvenile density of brook/river lamprey at least 2/m²	Juveniles burrow in areas of fine sediment in still water. Attribute and target based on data from Harvey and Cowx (2003) who state 10/m² in optimal conditions and more than 2/m² on a catchment basis
Extent and distribution of spawning habitat	m² and occurrence	No decline in extent and distribution of spawning beds	Attribute and target based on spawning bed mapping by Inland Fisheries Ireland (IFI). Lampreys spawn in clean gravels. Artificial barriers are currently preventing lamprey from accessing suitable spawning habitat. See King (2006), Sullivan (2007) and CFB and Compass Informatics (2008) for further information
Availability of juvenile habitat	Number of positive sites in 2nd order channels (and greater), downstream of spawning areas	More than 50% of sample sites positive	Artificial barriers are currently preventing juvenile lampreys from accessing the full extent of suitable habitat. See King (2006), Sullivan (2007) and CFB and Compass Informatics (2008) for further information

1099 River lamprey *Lampetra fluviatilis*

To restore the favourable conservation condition of River lamprey in the River Barrow and River Nore SAC, which is defined by the following list of attributes and targets:

Attribute	Measure	Target	Notes
Distribution: extent of anadromy	% of river accessible	Greater than 75% of main stem and major tributaries down to second order accessible from estuary	Artificial barriers can block lampreys' upstream migration, thereby limiting species to lower stretches and restricting access to spawning areas. See King (2006), Sullivan (2007) and CFB and Compass Informatics (2008) for further information on artificial barriers
Population structure of juveniles	Number of age/size groups	At least three age/size groups of river/brook lamprey present	Attribute and target based on data from Harvey and Cowx (2003). King (2007) provides survey information for the Barrow. It is impossible to distinguish between brook and river lamprey juveniles in the field, hence they are considered together in this target
Juvenile density in fine sediment	Juveniles/m^2	Mean catchment juvenile density of brook/river lamprey at least 2/m^2	Juveniles burrow in areas of fine sediment in still water. Attribute and target based on data from Harvey and Cowx (2003) who state 10/m^2 in optimal conditions and more than 2/m^2 on a catchment basis
Extent and distribution of spawning habitat	m^2 and occurrence	No decline in extent and distribution of spawning beds	Attribute and target based on spawning bed mapping by Inland Fisheries Ireland (IFI). Lampreys spawn in clean gravels. Artificial barriers are currently preventing lamprey from accessing suitable spawning habitat. See King (2006), Sullivan (2007) and CFB and Compass Informatics (2008) for further information
Availability of juvenile habitat	Number of positive sites in 2nd order channels (and greater), downstream of spawning areas	More than 50% of sample sites positive	Artificial barriers are currently preventing juvenile lampreys from accessing the full extent of suitable habitat. See King (2006), Sullivan (2007) and CFB and Compass Informatics (2008) for further information

1103 Twaite shad *Alosa fallax*

To restore the favourable conservation condition of Twaite shad in the River Barrow and River Nore SAC, which is defined by the following list of attributes and targets:

Attribute	Measure	Target	Notes
Distribution: extent of anadromy	% of river accessible	Greater than 75% of main stem length of rivers accessible from estuary	In some catchments, artificial barriers block twaite shads' upstream migration, thereby limiting species to lower stretches and restricting access to spawning areas
Population structure: age classes	Number of age classes	More than one age class present	Regular breeding has been confirmed in the River Barrow in recent years, but not in the Nore
Extent and distribution of spawning habitat	m^2 and occurrence	No decline in extent and distribution of spawning habitats	
Water quality: oxygen levels	Milligrammes per litre	No lower than 5mg/l	Attribute and target based on Maas, Stevens and Briene (2008)
Spawning habitat quality: Filamentous algae; macrophytes; sediment	Occurrence	Maintain stable gravel substrate with very little fine material, free of filamentous algal (macroalgae) growth and macrophyte (rooted higher plants) growth	See Maitland and Hatton-Ellis (2003) for further information

1106 Atlantic salmon (*Salmo salar*) (only in fresh water)

To restore the favourable conservation condition of Salmon in the River Barrow and River Nore SAC, which is defined by the following list of attributes and targets:

Attribute	Measure	Target	Notes
Distribution: extent of anadromy	% of river accessible	100% of river channels down to second order accessible from estuary	Artificial barriers block salmons' upstream migration, thereby limiting species to lower stretches and restricting access to spawning areas. See Sullivan (2007) and CFB and Compass Informatics (2008) for further information on artificial barriers
Adult spawning fish	Number	Conservation Limit (CL) for each system consistently exceeded	A conservation limit is defined by the North Atlantic Salmon Conservation Organisation (NASCO) as "the spawning stock level that produces long-term average maximum sustainable yield as derived from the adult to adult stock and recruitment relationship". The target is based on the Standing Scientific Committee of the National Salmon Commission's annual model output of CL attainment levels. See SSC (2010). Stock estimates are either derived from direct counts of adults (rod catch, fish counter) or indirectly by fry abundance counts. The Nore is currently exceeding its CL, while the Barrow is below its CL
Salmon fry abundance	Number of fry/5 minutes electrofishing	Maintain or exceed 0+ fry mean catchment-wide abundance threshold value. Currently set at 17 salmon fry/5 min sampling	Target is threshold value for rivers currently exceeding their conservation limit (CL)
Out-migrating smolt abundance	Number	No significant decline	Smolt abundance can be negatively affected by a number of impacts such as estuarine pollution, predation and sea lice (*Lepeophtheirus salmonis*)
Number and distribution of redds	Number and occurrence	No decline in number and distribution of spawning redds due to anthropogenic causes	Salmon spawn in clean gravels. Artificial barriers are currently preventing salmon from accessing suitable spawning habitat
Water quality	EPA Q value	At least Q4 at all sites sampled by EPA	Q values based on triennial water quality surveys carried out by the Environmental Protection Agency (EPA)

1130 Estuaries

To maintain the favourable conservation condition of Estuaries in the River Barrow and River Nore SAC, which is defined by the following list of attributes and targets:

Attribute	Measure	Target	Notes
Habitat area	Hectares	The permanent habitat area is stable or increasing, subject to natural processes. See map 2	Habitat area was estimated using OSI data and the defined Transitional Water Body area under the Water Framework Directive as 3856ha. See marine supporting document for further details
Community distribution	Hectares	The following sediment communities should be maintained in a natural condition: Muddy estuarine community complex; Sand to muddy fine sand community complex; Fine sand with *Fabulina fabula* community. See map 4	The likely area of sediment communities was derived from a combination of intertidal and subtidal surveys undertaken in 2008 (ARMS, 2008; ASU, 2008). See marine supporting document for further details
Community extent	Hectares	Maintain the natural extent of the Sabellaria alveolata reef, subject to natural process. See map 4	The likely area of this community is derived from a survey undertaken in 2010 (NPWS, 2010). See marine supporting document for further details

1140 Mudflats and sandflats not covered by seawater at low tide

To maintain the favourable conservation condition of the Mudflats and sandflats not covered by seawater at low tide in the River Barrow and River Nore SAC, which is defined by the following list of attributes and targets:

Attribute	Measure	Target	Notes
Habitat area	Hectares	The permanent habitat area is stable or increasing, subject to natural processes. See map 3	Habitat area was estimated using OSI data as 926ha. See marine supporting document for further details
Community distribution	Hectares	The following sediment communities should be maintained in a natural condition: Muddy estuarine community complex; Sand to muddy fine sand community complex. See map 4	The likely area of sediment communities was derived from a combination of intertidal and subtidal surveys undertaken in 2008 (ARMS, 2008; ASU, 2008). See marine supporting document for further details

1310 *Salicornia* and other annuals colonizing mud and sand

To maintain the favourable conservation condition of *Salicornia* and other annuals colonizing mud and sand in the River Barrow and River Nore SAC, which is defined by the following list of attributes and targets:

Attribute	Measure	Target	Notes
Habitat area	Hectares	Area stable or increasing, subject to natural processes, including erosion and succession. For the one sub-site mapped: Ringville - 0.03ha. See map 5	Based on data from the Saltmarsh Monitoring Project (McCorry and Ryle, 2009). The Ringville sub-site was mapped and no additional areas of potential Salicornia mudflat were identified from an examination of aerial photographs, giving a total estimated area of 0.03ha. NB futher unsurveyed areas maybe present within the site. See coastal habitats supporting document for further details
Habitat distribution	Occurrence	No decline, subject to natural processes. See map 5	See coastal habitats supporting document for further details
Physical structure: sediment supply	Presence/absence of physical barriers	Maintain or where necessary restore natural circulation of sediments and organic matter, without any physical obstructions	See coastal habitats supporting document for further details
Physical structure: flooding regime	Hectares flooded; frequency	Maintain natural tidal regime	See coastal habitats supporting document for further details
Physical structure: creeks and pans	Occurrence	Maintain/restore creek and pan structure, subject to natural processes, including erosion and succession	Based on McCorry and Ryle (2009). See coastal habitats supporting document for further details
Vegetation structure: zonation	Occurrence	Maintain range of saltmarsh habitat zonations including transitional zones, subject to natural processes including erosion and succession. See map 5	Based on McCorry and Ryle (2009). See coastal habitats supporting document for further details
Vegetation structure: vegetation height	Centimetres	Maintain structural variation within sward	Based on McCorry and Ryle (2009). See coastal habitats supporting document for further details
Vegetation structure: vegetation cover	Percentage cover at a representative sample of monitoring stops	Maintain more than 90% of area outside creeks vegetated.	Based on McCorry and Ryle (2009). See coastal habitats supporting document for further details
Vegetation composition: typical species and sub-communities	Percentage cover at a representative sample of monitoring stops	Maintain range of sub-communities with typical species listed in Saltmarsh Monitoring Project (McCorry & Ryle, 2009).	See coastal habitats supporting document for further details
Vegetation structure: negative indicator species: *Spartina anglica*	Hectares	No significant expansion of *Spartina*. No new sites for this species and an annual spread of less than 1% where it is already known to occur	Based on McCorry and Ryle (2009). See coastal habitats supporting document for further details

1330 Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*)

To restore the favourable conservation condition of Atlantic salt meadows in the River Barrow and River Nore SAC, which is defined by the following list of attributes and targets:

Attribute	Measure	Target	Notes
Habitat area	Hectares	Area stable or increasing, subject to natural processes, including erosion and succession. For sub-sites mapped: Dunbrody Abbey - 1.25ha, Killowen - 2.59ha, Rochestown - 17.50ha, Ringville - 6.70ha. See map 5	Based on data from the Saltmarsh Monitoring Project (McCorry and Ryle, 2009). Four sub-sites were mapped and additional areas of potential saltmarsh were identified from an examination of aerial photographs, giving a total estimated area of Atlantic salt meadow of 35.07ha. NB futher unsurveyed areas maybe present within the site. See coastal habitats supporting document for further details
Habitat distribution	Occurrence	No decline, subject to natural processes. See map 5	See coastal habitats supporting document for further details
Physical structure: sediment supply	Presence/absence of physical barriers	Maintain/restore natural circulation of sediments and organic matter, without any physical obstructions	See coastal habitats supporting document for further details
Physical structure: flooding regime	Hectares flooded; frequency	Maintain natural tidal regime	See coastal habitats supporting document for further details
Physical structure: creeks and pans	Occurrence	Maintain/restore creek and pan structure, subject to natural processes, including erosion and succession	Based on McCorry and Ryle (2009). See coastal habitats supporting document for further details
Vegetation structure: zonation	Occurrence	Maintain range of saltmarsh habitat zonations including transitional zones, subject to natural processes including erosion and succession. See map 5	Based on McCorry and Ryle (2009). See coastal habitats supporting document for further details
Vegetation structure: vegetation height	Centimetres	Maintain structural variation within sward	Based on McCorry and Ryle (2009). See coastal habitats supporting document for further details
Vegetation structure: vegetation cover	Percentage cover at a representative sample of monitoring stops	Maintain more than 90% of area outside creeks vegetated	Based on McCorry and Ryle (2009). See coastal habitats supporting document for further details
Vegetation composition: typical species and sub-communities	Percentage cover at a representative sample of monitoring stops	Maintain range of sub-communities with typical species listed in Saltmarsh Monitoring Project (McCorry & Ryle, 2009)	See coastal habitats supporting document for further details
Vegetation structure: negative indicator species: *Spartina anglica*	Hectares	No significant expansion of *Spartina*. No new sites for this species and an annual spread of less than 1% where it is already known to occur	Based on McCorry and Ryle (2009). See coastal habitats supporting document for further details

1355 Otter *Lutra lutra*

To restore the favourable conservation condition of Otter in the River Barrow and River Nore SAC, which is defined by the following list of attributes and targets:

Attribute	Measure	Target	Notes
Distribution	Percentage positive survey sites	No significant decline	Measure based on standard otter survey technique. FCS target, based on 1980/81 survey findings, is 88% in SACs. Current range in south-east estimated at 73% (Bailey and Rochford, 2006)
Extent of terrestrial habitat	Hectares	No significant decline. Area mapped and calculated as 122.8ha above high water mark (HWM); 1136.0ha along river banks / around ponds	No field survey. Areas mapped to include 10m terrestrial buffer along shoreline (above HWM and along river banks) identified as critical for otters (NPWS, 2007)
Extent of marine habitat	Hectares	No significant decline. Area mapped and calculated as 857.7ha	No field survey. Area mapped based on evidence that otters tend to forage within 80m of the shoreline (HWM) (NPWS, 2007; Kruuk, 2006)
Extent of freshwater (river) habitat	Kilometres	No significant decline. Length mapped and calculated as 616.6km	No field survey. River length calculated on the basis that otters will utilise freshwater habitats from estuary to headwaters (Chapman and Chapman, 1982)
Extent of freshwater (lake) habitat	Hectares	No significant decline. Area mapped and calculated as 2.6ha	No field survey. Area mapped based on evidence that otters tend to forage within 80m of the shoreline (NPWS, 2007)
Couching sites and holts	Number	No significant decline	Otters need lying up areas throughout their territory where they are secure from disturbance (Kruuk, 2006; Kruuk and Moorhouse, 1991)
Fish biomass available	Kilograms	No significant decline	Broad diet that varies locally and seasonally, but dominated by fish, in particular salmonids, eels and sticklebacks in freshwater (Bailey and Rochford, 2006) and wrasse and rockling in coastal waters (Kingston et al., 1999)

1410 Mediterranean salt meadows (*Juncetalia maritimi*)

To restore the favourable conservation condition of Mediterranean salt meadows in the River Barrow and River Nore SAC, which is defined by the following list of attributes and targets:

Attribute	Measure	Target	Notes
Habitat area	Hectares	Area stable or increasing, subject to natural processes, including erosion and succession. For sub-sites mapped: Dunbrody Abbey - 0.08ha, Rochestown - 0.04ha, Ringville - 6.70ha. See map 5	Based on data from the Saltmarsh Monitoring Project (McCorry and Ryle, 2009). Three sub-sites were mapped and no additional areas of potential saltmarsh were identified from an examination of aerial photoraphs, giving a total estimated area of Mediterranean salt meadow of 6.82ha. NB further unsurveyed areas maybe present within the site. See coastal habitats supporting document for further details
Habitat distribution	Occurrence	No decline, subject to natural processes. See map 5	See coastal habitats supporting document for further details
Physical structure: sediment supply	Presence/absence of physical barriers	Maintain or where necessary restore natural circulation of sediments and organic matter, without any physical obstructions	See coastal habitats supporting document for further details
Physical structure: flooding regime	Hectares flooded; frequency	Maintain natural tidal regime	See coastal habitats supporting document for further details
Physical structure: creeks and pans	Occurrence	Maintain/restore creek and pan structure, subject to natural processes, including erosion and succession	Based on McCorry and Ryle (2009). See coastal habitats supporting document for further details
Vegetation structure: zonation	Occurrence	Maintain range of saltmarsh habitat zonations including transitional zones, subject to natural processes including erosion and succession. See map 5	Based on McCorry and Ryle (2009). See coastal habitats supporting document for further details
Vegetation structure: vegetation height	Centimetres	Maintain structural variation within sward	Based on McCorry and Ryle (2009). See coastal habitats supporting document for further details
Vegetation structure: vegetation cover	Percentage cover at a representative sample of monitoring stops	Maintain more than 90% of area outside creeks vegetated.	Based on McCorry and Ryle (2009). See coastal habitats supporting document for further details
Vegetation composition: typical species and sub-communities	Percentage cover at a representative sample of monitoring stops	Maintain range of sub-communities with typical species listed in Saltmarsh Monitoring Project (McCorry & Ryle, 2009)	See coastal habitats supporting document for further details
Vegetation structure: negative indicator species: *Spartina anglica*	Hectares	No significant expansion of *Spartina*. No new sites for this species and an annual spread of less than 1% where it is already known to occur	Based on McCorry and Ryle (2009). See coastal habitats supporting document for further details

1421 Killarney fern *Trichomanes speciosum*

To maintain the favourable conservation condition of Killarney Fern in the River Barrow and River Nore SAC, which is defined by the following list of attributes and targets:

Attribute	Measure	Target	Notes
Distribution	Location	No decline. Three locations known, with three colonies of gametophyte and one sporophyte colony. See map 7	Data from NPWS rare and threatened species database
Population size	Number	Maintain at least three colonies of gametophyte, and at least one sporophyte colony of over 35 fronds	Data from NPWS rare and threatened species database
Population structure: juvenile fronds	Occurrence	At least one of the locations to have a population structure comprising sporophyte, unfurling fronds, 'juvenile' sporophyte and gametophyte generations	'Juvenile' sporophytes, which appear as small entire fronds, are known from this site. However, it is unknown whether they are due to apogamous growth or sexual reproduction. Based on Kingston and Hayes (2005) and Ni Dhuill (pers. Comm.)
Habitat extent	m^2	No loss of suitable habitat, such as shaded rock crevices, caves or gullies in or near to, known colonies. No loss of woodland canopy at or near to known locations	Based on Kingston and Hayes (2005) and Ni Dhuill (pers. Comm.)
Hydrological conditions: visible water	Occurrence	Maintain hydrological conditions at the locations so that all colonies are in dripping or damp seeping habitats, and water is visible at all locations	Based on Kingston and Hayes (2005) and Ni Dhuill (pers. Comm.)
Hydrological conditions: humidity	Number of dessicated fronds	No increase. Presence of dessicated sporophyte fronds or gametophyte mats indicates conditions are unsuitable	Based on Kingston and Hayes (2005) and Ni Dhuill (pers. Comm.)
Light levels: shading	Percentage	No changes due to anthropogenic impacts	Based on Kingston and Hayes (2005) and Ni Dhuill (pers. Comm.)
Invasive species	Occurrence	Absent or under control	NPWS and EHS-NI (2008) provides further details

1990 Nore freshwater pearl mussel *Margaritifera durrovensis*

To restore the favourable conservation condition of the Nore freshwater pearl mussel in the River Barrow and River Nore SAC, which is defined by the following list of attributes and targets:

Attribute	Measure	Target	Notes
Distribution	Kilometres	Maintain at 15.5km. See map 7	The population stretches from Poorman's Bridge (S407859) to Lismaine Bridge (S442660), with most of the population found between Poorman's Bridge and the Avonmore Creamery above Ballyragget (S 440 722) (Moorkens, 1996)
Population size: adult mussels	Number	Restore to 5,000 adult mussels	The extant wild population of Nore freshwater pearl mussel is estimated as 300 adult individuals (Moorkens, 2009)
Population structure: recruitment	Percentage per size class	Restore to at least 20% of population no more than 65mm in length; and at least 5% of population no more than 30mm in length	Mussels of no more than 65mm are considered 'young mussels' and may be found buried in the substratum and/or beneath adult mussels. Mussels of no more than 30mm are 'juvenile mussels' and are always buried in the substratum. This species is known not to have reproduced successfully in the River Nore since 1970 (Moorkens and Costello, 1994; Moorkens, 2004; Government of Ireland, 2009 [S.I. 272 of 2009])
Population structure: adult mortality	Percentage	No more than 5% decline from previous number of live adults counted; dead shells less than 1% of the adult population and scattered in distribution	5% is considered the cut-off between the combined errors associated with natural fluctuations and sampling methods and evidence of true population decline. 1% of dead shells is considered to be indicative of natural losses
Habitat extent	Kilometres	Restore suitable habitat in length of river corresponding to distribution target (15.5km; see map 7) and any additional stretches necessary for salmonid spawning	The species habitat is a stretch of large lowland river and is a combination of 1) the area of habitat adult and juvenile mussels can occupy and 2) the area of spawning and nursery habitats the host fish can occupy. Fish nursery habitat typically overlaps with mussel habitat. Fish spawning habitat is generally adjacent mussel habitat, but may lie upstream of the generalised mussel distribution. Only those salmonid spawning areas that could regularly contribute juvenile fish to the areas occupied by adult mussels should be considered. The availability of mussel habitat and fish spawning and nursery habitats are determined by flow and substratum conditions. The habitat for the species is currently unsuitable for the survival of adult mussels or the recruitment of juveniles

1990 Nore freshwater pearl mussel *Margaritifera durrovensis*

To restore the favourable conservation condition of the Nore freshwater pearl mussel in the River Barrow and River Nore SAC, which is defined by the following list of attributes and targets:

Attribute	Measure	Target	Notes
Water quality: Macroinvertebrates and phytobenthos (diatoms)	Ecological quality ratio (EQR)	Restore water quality-macroinvertebrates: EQR greater than 0.90; phytobenthos: EQR greater than 0.93	These EQRs correspond to high ecological status for these two Water Framework Directive biological quality elements. They represent high water quality with very low nutrient concentrations (oligotrophic conditions). The habitat of the Nore pearl mussel failed both standards during 2009 sampling for the Sub-basin Management Plan (DEHLG, 2010). See also The European Communities Environmental Objectives (Surface Water Objectives) Regulations 2009
Substratum quality: Filamentous algae (macroalgae), macrophytes (rooted higher plants)	Percentage	Restore substratum quality-filamentous algae: absent or trace (<5%); macrophytes: absent or trace (<5%)	High abundance of macroalgae was recorded during 2009 sampling for the Sub-basin Management Plan (DEHLG, 2010). Recruitment of juvenile mussels is being prevented by the poor quality of the river substrate
Substratum quality: sediment	Occurrence	Restore substratum quality-stable cobble and gravel substrate with very little fine material; no artificially elevated levels of fine sediment	The habitat for the species is currently unsuitable for the survival of adult mussels or the recruitment of juveniles owing to sedimentation of the substratum. Significant sedimentation has been recorded during all recent mussel monitoring surveys. Recruitment of juvenile mussels is being prevented by the poor quality of the river substrate
Substratum quality: oxygen availability	Redox potential	Restore to no more than 20% decline from water column to 5cm depth in substrate	Differences in redox potential between the water column and the substrate correlate with differences in oxygen levels. Juvenile mussels require full oxygenation while buried in gravel. In suitable habitat, there should be very little loss of redox potential between the water column and underlying gravels. The redox potential loss in 2009 was 58-64% at 5cm depth (DEHLG, 2010)
Hydrological regime: flow variability	Metres per second	Restore appropriate hydrological regimes	The availability of suitable Nore freshwater pearl mussel habitat is largely determined by flow (catchment geology being the other important factor). In order to restore the habitat for the species, flow variability over the annual cycle must be such that: 1) high flows can wash fine sediments from the substratum, 2) low flows do not exacerbate the deposition of fines and 3) low flows do not cause stress to mussels in terms of exposure, water temperatures, food availability or aspects of the reproductive cycle

1990 Nore freshwater pearl mussel *Margaritifera durrovensis*

To restore the favourable conservation condition of the Nore freshwater pearl mussel in the River Barrow and River Nore SAC, which is defined by the following list of attributes and targets:

Attribute	Measure	Target	Notes
Host fish	Number	Maintain sufficient juvenile salmonids to host glochidial larvae	Salmonid fish are host to the larval form of freshwater pearl mussels and thus, they are essential to the completion of the life cycle. 0+ and 1+ fish are typically used, both because of the habitat overlaps and the development of immunity with age in the fish. Fish presence is considered sufficient, as higher densities and biomass of fish is indicative of enriched conditions in mussel rivers. Geist et al. (2006) found that higher densities of host fish coincided with eutrophication, poor substrate quality for pearl mussels and a lack of pearl mussel recruitment, while significantly lower densities and biomass of host fish were associated with high numbers of juvenile mussels. Fish movement patterns must be such that 0+ fish in the vicinity of the mussel habitat remain in the mussel habitat until their 1+ summer. As native brown trout appear to be favoured by the Nore freshwater pearl mussel, it is particularly important that these are not out-competed by stocked fish

3260 Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitricho-Batrachion* vegetation

To maintain the favourable conservation condition of Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitricho-Batrachion* vegetation in the River Barrow and River Nore SAC, which is defined by the following list of attributes and targets:

Attribute	Measure	Target	Notes
Habitat distribution	Occurrence	No decline, subject to natural processes	The full distribution of this habitat and its sub-types in this site is currently unknown. The basis of the selection of the SAC for the habitat is the presence of an excellent example of the vegetation community (nutrient-rich type) associated with extensive tufa deposits on the river bed in the Kings tributary of the Nore (Heuff, 1987). Other examples of this or other sub-types may be present within the SAC
Habitat area	Kilometres	Area stable or increasing, subject to natural processes	The full extent of this habitat in this site is currently unknown. See above
Hydrological regime: river flow	Metres per second	Maintain appropriate hydrological regimes	Due to regular disturbance (through variations in flow), river macrophytes rarely reach a climax condition but frequently occur as transient communities. A natural (relatively unmodified) flow regime is required for both plant communities and channel geomorphology to be in favourable condition, exhibiting typical dynamics for the river type (Hatton-Ellis and Grieve, 2003). For most of the sub-types of this habitat, high flows are required to maintain the substratum (see below) necessary for the characteristic species. Flow variation is particularly important, with high and flood flows being critical to the hydromorphology
Hydrological regime: groundwater discharge	Metres per second	The groundwater flow to the habitat should be permanent and sufficient to maintain tufa formation	This attribute refers to sub-types with tufa formations. Groundwater discharges to this habitat throughout the year
Substratum composition: particle size range	Millimetres	The substratum should be dominated by large particles and free from fine sediments	The tufaceous sub-types develop on relatively stable substrata such as bedrock, boulders and cobbles, where tufa can deposit and accumulate. Tufa deposition is believed to be biologically mediated, by algae and bryophytes. The substratum must remain free of fine sediments such as clay, silt and fine sand, which would adversely affect the growth of algae and mosses

3260 Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitricho-Batrachion* vegetation

To maintain the favourable conservation condition of Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitricho-Batrachion* vegetation in the River Barrow and River Nore SAC, which is defined by the following list of attributes and targets:

Attribute	Measure	Target	Notes
Water chemistry: minerals	Milligrammes per litre	The groundwater and surface water should have sufficient concentrations of minerals to allow deposition and persistence of tufa deposits	The tufaceous sub-types require mineral-(typically calcium-) rich groundwaters to allow deposition of tufa. Surface water must also be sufficiently base-rich to prevent chemical erosion. Alkalinity and/or total hardness data may also be relevant
Water quality: suspended sediment	Milligrammes per litre	The concentration of suspended solids in the water column should be sufficiently low to prevent excessive deposition of fine sediments	See substratum composition above. Turbidity data may also be relevant
Water quality: nutrients	Milligrammes per litre	The concentration of nutrients in the water column should be sufficiently low to prevent changes in species composition or habitat condition	Phosphorus (MRP) is typically the limiting nutrient, however increased nitrogen (NO3-) negatively impacts upon the N-fixing blue-green algal communities that frequently contribute to tufa deposition. Nutrient enrichment of the habitat typically leads to increased filamentous-green-algal biomass, and consequent changes in other algae, bryophyte and macrophyte species composition and abundance. Water quality should reach a minimum of Water Framework Directive good status, in terms of nutrient standards, and macroinvertebrate and phytobenthos quality elements
Vegetation composition: typical species	Occurrence	Typical species of the relevant habitat sub-type should be present and in good condition	The sub-types of this habitat are poorly understood and their typical species have not yet been defined. Typical species and appropriate targets may emerge to be site-specific. The typical species of the tufaceous sub-type in the Kings tributary of the Nore are identified in Heuff (1987). The typical species may include higher plants, bryophytes, macroalgae and microalgae
Floodplain connectivity	Area	The area of active floodplain at and upstream of the habitat should be maintained	River connectivity with the floodplain is essential for the functioning of this habitat. The site of the tufaceous sub-type in the King's River is within an area of floodplain, with further large floodplains upstream. Floodplains regulatefine sediment deposition within the channel. See substratum composition above

4030 European dry heaths

To maintain the favourable conservation condition of European dry heaths in the River Barrow and River Nore SAC, which is defined by the following list of attributes and targets:

Attribute	Measure	Target	Notes
Habitat distribution	Occurrence	No decline from current habitat distribution, subject to natural processes	Spatial extent currently unmapped but indicated as occurring on the steep, free-draining, river valley sides especially the Barrow and tributaries in the foothills of the Blackstairs Mountains (based on NPWS NHA Survey - 1997/98 Site Notes; Natura 2000 Form Explanatory Notes - May 2006; The above NHA survey was prior to the extensions to the SAC that included river habitat and estuary at Ballyhack which may have incorporated additional dry heath habitat)
Habitat area	Hectares	Area stable or increasing, subject to natural processes. Habitat area is not known but estimated as less than 400ha of the area of the SAC, occurring in dispersed locations	Based on NPWS NHA Survey Site Notes (1997/98); Natura 2000 Form Explanatory Notes - May 2006
Physical structure: free-draining, acid, low nutrient soil; rock outcrops	Occurrence	No significant change in soil nutrient status, subject to natural processes. No increase or decrease in area of natural rock outcrop	Based on NPWS NHA Survey Site Notes - 1997/98; Natura 2000 Form Explanatory Notes - May 2006
Vegetation structure: sub-shrub indicator species	Percentage cover	Cover of characteristic sub-shrub indicator species at least 25%: gorse (*Ulex europaeus*) and where rocky outcrops occur bilberry (*Vaccinium myrtillus*) and woodrush (*Luzula sylvatica*). Some rock outcrops support English stonecrop (*Sedum anglicum*), sheep's bit (*Jasione montana*) and wild madder (*Rubia peregrina*) as well as important moss and lichen assemblages	Dry heath in this SAC occurs on free-draining nutrient poor soils and is often characterised by gorse and open acid grassland areas. A characteristic coastal dry heath of the southeast also occurs. Several rare plants occur including two species listed in the Red Data Book (Curtis and McGough, 1988). The species occurring on the site are listed in NPWS NHA Survey Site Notes - 1997/98. A brief overview of the principal characteristics of the dry heath habitat of this SAC is given in the Natura 2000 Explanatory Notes - May 2006
Vegetation structure: senescent gorse	Percentage cover	Cover of senescent gorse less than 50%	Based on NPWS NHA Survey Site Notes and Natura 2000 Form Explanatory Notes - May 2006 and on a modified version of the dry heath condition assessment methodology of Perrin et al. (2010)
Vegetation structure: browsing	Percentage cover	Long shoots of bilberry with signs of browsing collectively less than 33%	Based on NPWS NHA Survey Site Notes and Natura 2000 Form Explanatory Notes - May 2006 and on a modified version of the dry heath condition assessment methodology of Perrin et al. (2010)

4030 European dry heaths

To maintain the favourable conservation condition of European dry heaths in the River Barrow and River Nore SAC, which is defined by the following list of attributes and targets:

Attribute	Measure	Target	Notes
Vegetation structure: native trees and shrubs	Percentage cover	Cover of scattered native trees and shrub less than 20%	Based on NPWS NHA Survey Site Notes - 1997/98; Natura 2000 Form Explanatory Notes - May 2006 and on a modified version of the dry heath habitat condition assessment methodology of Perrin et al. (2010). From the NHA survey notes the main threats appear to be reclamation or invasion by scrub woodland
Vegetation composition: positive indicator species	Number	Number of positive indicator species at least 2 e.g. gorse and associated dry heath/ acid grassland flora	Dry heath in this SAC occurs on free-draining nutrient poor soils and is characterised by gorse and acid grassland areas. It corresponds to Annex I sub-type "heaths rich in gorse (*Ulex*) of the Atlantic margins" (European Commission, 2007). Based on NPWS NHA Survey Site Notes -1997/98; Natura 2000 Form Explanatory Notes - May 2006 and a modified version of the dry heath habitat condition assessment methodology of Perrin et al. (2010)
Vegetation structure: positive indicator species	Percentage cover	Cover of positive indicator species at least 60%. This should include plant species characterisitic of dry heath in this SAC including gorse, bilberry and associated acid grassland flora	Dry heath in this SAC is characterised by gorse and acid grassland areas and locally bilberry and woodrush. Based on NPWS NHA Survey Site Notes and Natura 2000 Form Explanatory Notes - May 2006 and a modified version of the dry heath habitat condition assessment methodology of Perrin et al. (2010)
Vegetation composition: bryophyte and non-crustose lichen species	Number	Number of bryophyte or non-crustose lichen species present at least 2	Based on NPWS NHA Survey Site Notes and Natura 2000 Form Explanatory Notes - May 2006 and on a modified version of the dry heath habitat condition assessment methodology of Perrin et al. 2010
Vegetation composition: bracken (*Pteridium aquilinum*)	Percentage cover	Cover of bracken less than 10% - however see 'Notes'	Based on NPWS NHA Survey Site Notes and Natura 2000 Form Explanatory Notes - May 2006 and on a modified version of the dry heath habitat condition assessment methodology of Perrin et al. (2010). Bracken appears to be quite dense in places and before any management action is considered its rate of spread needs to be established as well as its threat, if any, to other dry heath species and its potential value to important fauna (e.g. Twite)

4030 European dry heaths

To maintain the favourable conservation condition of European dry heaths in the River Barrow and River Nore SAC, which is defined by the following list of attributes and targets:

Attribute	Measure	Target	Notes
Vegetation structure: weedy negative indicator species	Percentage cover	Cover of agricultural weed species (negative indicator species) less than 1%	Based on NPWS NHA Survey Site Notes and Natura 2000 Form Explanatory Notes - May 2006 and on a modified version of the dry heath habitat condition assessment methodology of Perrin et al. (2010)
Vegetation composition: non-native species	Percentage cover	Cover of non-native species less than 1%.	Based on NPWS NHA Survey Site Notes and Natura 2000 Form Explanatory Notes - May 2006 and on a modified version of the dry heath habitat condition assessment methodology of Perrin et al. (2010)
Vegetation composition: rare/scarce heath species	Location, area and number	No decline in distribution or population sizes of rare, threatened or scarce species, including Greater Broomrape (*Orobanche rapum-genistae)* and the legally protected clustered clover (*Trifolium glomeratum*)	Broomrape is dependent on gorse at this site as it is parasitic on gorse roots. It is recorded as occurring on steep slopes above New Ross. A small area of excellent dry coastal heath at Ballyhack is interspersed with patches rock and of dry lowland grassland and has a high species diversity. Notably there is an excellent range of Clover (*Trifolium*) species including the legally protected clustered clover, a species known only from one other site in Ireland. Also *T. ornithopodiodes*, *T. striatum* and *Torilus nodosa*. Based on Natura 2000 Form Explanatory Notes May 2006, Irish Red Data Book (Curtis and Mc Gough, 1988) and on the NPWS database of rare and threatened vascular plants. Other areas of coastal heath may also occur
Vegetation structure: disturbed bare ground	Percentage cover	Cover of disturbed bare ground less than 10% (but if peat soil less than 5%)	Based on NPWS NHA Survey Site Notes and Natura 2000 Form Explanatory Notes - May 2006 and on a modified verison of the dry heath habitat condition assessment methodology of Perrin et al. (2010)
Vegetation structure: burning	Occurrence	No signs of burning within sensitive areas	Perrin et al. (2010) defines sensitive areas

6430 Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels

To maintain the favourable conservation condition of Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels in the River Barrow and River Nore SAC, which is defined by the following list of attributes and targets:

Attribute	Measure	Target	Notes
Habitat distribution	Occurrence	No decline, subject to natural processes	Distribution of this habitat in this site is currently unknown. Considered to occur in association with some riverside woodlands, unmanaged river islands and in narrow bands along the floodplain of slow-flowing stretches of river (Natura 2000 Form Explanatory Notes)
Habitat area	Hectares	Area stable or increasing, subject to natural processes	Extent of this habitat in this site is currently unknown. See above
Hydrological regime: Flooding depth/height of water table	Metres	Maintain appropriate hydrological regimes	This habitat requires winter inundation, which results in deposition of naturally nutrient-rich sediment
Vegetation structure:sward height	Centimetres	30-70% of sward is between 40 and 150cm in height	Bare ground, due to natural indundation processes, may often be present. Attribute and target based on the Irish Semi-natural Grassland Survey (O'Neill et al., 2010)
Vegetation composition: broadleaf herb: grass ratio	Percentage	Broadleaf herb component of vegetation between 40 and 90%	Attribute and target based on O'Neill et al. (2010)
Vegetation composition: typical species	Number	At least 5 positive indicator species present	List of positive indicator species identified by O'Neill et al. (2010)
Vegetation composition: negative indicator species	Occurrence	Negative indicator species, particularly non-native invasive species, absent or under control- NB Indian balsam (*Impatiens glandulifera*), monkeyflower (*Mimulus guttatus*), Japanese knotweed (*Fallopia japonica*) and giant hogweed (*Heracleum mantegazzianum*)	Species listed as being present in the site (Natura 2000 Form Explanatory Notes)

7220 * Petrifying springs with tufa formation (*Cratoneurion*)

To maintain the favourable conservation condition of Petrifying springs with tufa formation (*Cratoneurion*) in the River Barrow and River Nore SAC, which is defined by the following list of attributes and targets:

Attribute	Measure	Target	Notes
Habitat area	Square metres	Area stable or increasing, subject to natural processes	Extent of this habitat in this site is currently unknown. An area ("Tens of square metres") has been described at one location (Natura 2000 Form Explanatory Notes; internal NPWS files), see below
Habitat distribution	Occurrence	No decline. See map 6 for recorded location	Full distribution of this habitat in this site is currently unknown. It has been described in woodlands at Dysart, between Thomastown and Inistioge (Natura 2000 Form Explanatory Notes; internal NPWS files). NB futher areas are likely to occur within the site
Hydrological regime: height of water table; water flow	Metres; metres per second	Maintain appropriate hydrological regimes	Current hydrological regimes are unknown. Petrifying springs rely on permanent irrigation, usually from upwelling groundwater sources or seepage sources
Water quality	Water chemistry measures	Maintain oligotrophic and calcareous conditions	Water chemistry is currently unknown. Water supply to petrifying springs is characteristically oligotrophic and calcareous
Vegetation composition: typical species	Occurrence	Maintain typical species	The bryophytes *Cratoneuron commutatum* and *Eucladium verticillatum* are diagnostic of this habitat. Both are found at the location described above. Natura 2000 Form Explanatory Notes and internal NPWS files also list other typical species

91A0 Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles

To restore the favourable conservation condition of Old oak woodland with Ilex and Blechnum in the River Barrow and River Nore SAC, which is defined by the following list of attributes and targets:

Attribute	Measure	Target	Notes
Habitat area	Hectares	Area stable or increasing, subject to natural processes, at least 85.08ha for sub-sites surveyed: see map 6	Minimum area, based on 13 sites surveyed by Perrin et al. (2008) - site codes 14, 20, 49, 73, 125, 508, 509, 510, 514, 515, 518, 519, 521, and other sources. NB further unsurveyed areas maybe present within the site
Habitat distribution	Occurrence	No decline. Surveyed locations shown on map 6	Distribution based on Perrin et al. (2008). NB further unsurveyed areas maybe present within the site
Woodland size	Hectares	Area stable of increasing. Where topographically possible, "large" woods at least 25ha in size and "small" woods at least 3ha in size	The sizes of at least some of the existing woodlands need to be increased in order to reduce habitat fragmentation and benefit those species requiring 'deep' woodland conditions (Peterken, 2002). Topographical and land ownership constraints may restrict expansion
Woodland structure: cover and height	Percentage and metres	Diverse structure with a relatively closed canopy containing mature trees; subcanopy layer with semi-mature trees and shrubs; and well-developed herb layer	Described in Perrin et al. (2008); Browne et al. (2000). See woodland habitats supporting document for further details
Woodland structure: community diversity and extent	Hectares	Maintain diversity and extent of community types	Described in Perrin et al. (2008); Browne et al. (2000). See woodland habitats supporting document for further details
Woodland structure: natural regeneration	Seedling:sapling:pole ratio	Seedlings, saplings and pole age-classes occur in adequate proportions to ensure survival of woodland canopy	Oak regenerates poorly. In suitable sites ash can regenerate in large numbers although few seedlings reach pole size
Woodland structure: dead wood	m^3 per hectare; number per hectare	At least $30m^3$/ha of fallen timber greater than 10cm diameter; 30 snags/ha; both categories should include stems greater than 40cm diameter	Dead wood is a valuable resource and an integral part of a healthy, functioning woodland ecosystem.
Woodland structure: veteran trees	Number per hectare	No decline	Mature and veteran trees are important habitats for bryophytes, lichens, saproxylic organisms and some bird species. Their retention is important to ensure continuity of habitats/niches and propagule sources

91A0 Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles

To restore the favourable conservation condition of Old oak woodland with Ilex and Blechnum in the River Barrow and River Nore SAC, which is defined by the following list of attributes and targets:

Attribute	Measure	Target	Notes
Woodland structure: indicators of local disctinctiveness	Occurrence	No decline	Includes ancient or long-established woodlands, archaeological and geological features as well as red-listed and other rare or localised species. Perrin and Daly (2010) list sites 14, 20, 73, 125, 508, 509, 510, 514, 515, 518, 521 as potential ancient/long established woodlands
Vegetation composition: native tree cover	Percentage	No decline. Native tree cover not less than 95%	Species reported in Perrin et al. (2008); Browne et al. (2000)
Vegetation composition: typical species	Occurrence	A variety of typical native species present, depending on woodland type, including oak (*Quercus petraea*) and birch (*Betula pubescens*)	Species reported in Perrin et al. (2008); Browne et al. (2000)
Vegetation composition: negative indicator species	Occurrence	Negative indicator species, particularly non-native invasive species, absent or under control	The following are the most common invasive species in this woodland type: beech (*Fagus sylvatica*), rhododendron (*Rhododendron ponticum*), cherry laurel (*Prunus laurocerasus*)

91E0 * Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion, Alnion incanae, Salicion albae*)

To restore the favourable conservation condition of Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion, Alnion incanae, Salicion albae*) in the River Barrow and River Nore SAC, which is defined by the following list of attributes and targets:

Attribute	Measure	Target	Notes
Habitat area	Hectares	Area stable or increasing, subject to natural processes, at least 181.54ha for sites surveyed: see map 6	Minimum area, based on 16 sites surveyed by Perrin et al. (2008) - site codes 10, 15, 17, 126, 127, 262, 282, 287, 511, 516, 517, 518, 520, 608, 1021; Coillte LIFE project and other sources. NB further unsurveyed areas maybe present within the SAC
Habitat distribution	Occurrence	No decline. Surveyed locations shown on map 6	Distribution based on Perrin et al. (2008). NB further unsurveyed areas maybe present within the site
Woodland size	Hectares	Area stable of increasing. Where topographically possible, "large" woods at least 25ha in size and "small" woods at least 3ha in size	The sizes of at least some of the existing woodlands need to be increased in order to reduce habitat fragmentation and benefit those species requiring 'deep' woodland conditions (Peterken, 2002). Topographical and land ownership constraints may restrict expansion
Woodland structure: cover and height	Percentage and metres	Diverse structure with a relatively closed canopy containing mature trees; subcanopy layer with semi-mature trees and shrubs; and well-developed herb layer	Described in Perrin et al. (2008); Browne et al. (2000). See woodland habitats supporting document for further details
Woodland structure: community diversity and extent	Hectares	Maintain diversity and extent of community types	Described in Perrin et al. (2008); Browne et al. (2000). See woodland habitats supporting document for further details
Woodland structure: natural regeneration	Seedling:sapling:pole ratio	Seedlings, saplings and pole age-classes occur in adequate proportions to ensure survival of woodland canopy	Alder and oak regenerate poorly. Ash often regenerates in large numbers although few seedlings reach pole size
Hydrological regime: Flooding depth/height of water table	Metres	Appropriate hydrological regime necessary for maintenance of alluvial vegetation	Periodic flooding is essential to maintain alluvial woodlands along river flood plains but not for woodland around springs/seepage areas
Woodland structure: dead wood	m^3 per hectare; number per hectare	At least $30m^3$/ha of fallen timber greater than 10cm diameter; 30 snags/ha; both categories should include stems greater than 40cm diameter (greater than 20cm diameter in the case of alder)	Dead wood is a valuable resource and an integral part of a healthy, functioning woodland ecosystem

91E0 * Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion, Alnion incanae, Salicion albae*)

To restore the favourable conservation condition of Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion, Alnion incanae, Salicion albae*) in the River Barrow and River Nore SAC, which is defined by the following list of attributes and targets:

Attribute	Measure	Target	Notes
Woodland structure: veteran trees	Number per hectare	No decline	Mature and veteran trees are important habitats for bryophytes, lichens, saproxylic organisms and some bird species. Their retention is important to ensure continuity of habitats/niches and propagule sources
Woodland structure: indicators of local disctinctiveness	Occurrence	No decline	Includes ancient or long-established woodlands, archaeological and geological features as well as red-listed and other rare or localised species. Perrin and Daly (2010) list sites 10, 15, 17, 127, 282, 516, 517, 518, 608 as potential ancient/long established woodlands
Vegetation composition: native tree cover	Percentage	No decline. Native tree cover not less than 95%	Species reported in Perrin et al. (2008); Browne et al. (2000)
Vegetation composition: typical species	Occurrence	A variety of typical native species present, depending on woodland type, including ash (*Fraxinus excelsior*) alder (*Alnus glutinosa*), willows (*Salix* spp) and locally, oak (*Quercus robur*)	Species reported in Perrin et al. (2008); Browne et al. (2000)
Vegetation composition: negative indicator species	Occurrence	Negative indicator species, particularly non-native invasive species, absent or under control	The following are the most common invasive species in this woodland type: sycamore (*Acer pseudoplatanus*), beech (*Fagus sylvatica*), rhododendron (*Rhododendron ponticum*), cherry laurel (*Prunus laurocerasus*), dogwood (*Cornus sericea*), Himalayan honeysuckle (*Leycesteria formosa*) and Himalayan balsam (*Impatiens grandiflora*)

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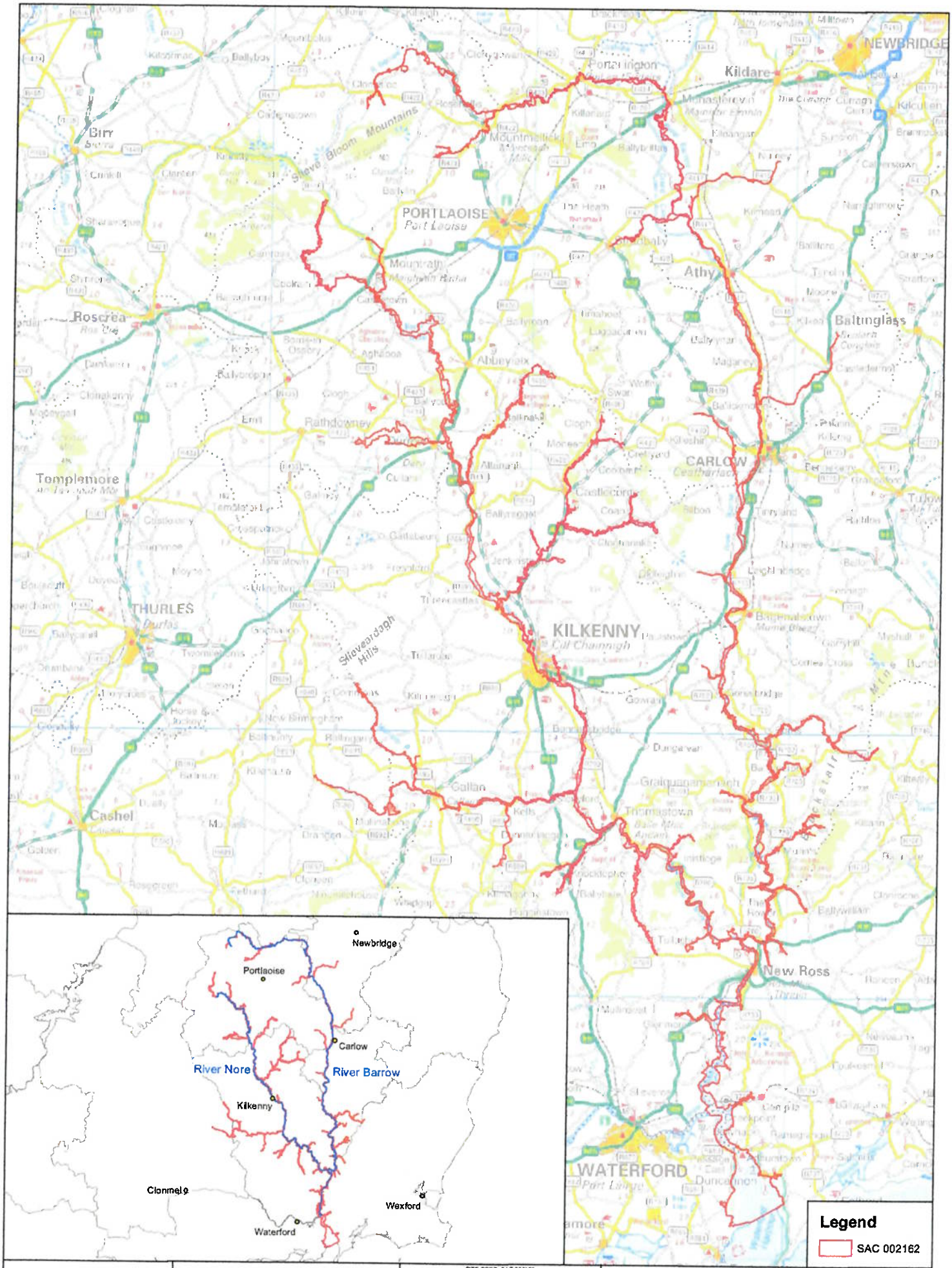
Citation:
NPWS (2011) Conservation Objectives: River Barrow and River Nore SAC 002162. Version 1.0. National Parks and Wildlife Service, Department of Arts, Heritage and the Gaeltacht.

Series Editors: Rebecca Jeffrey & Naomi Kingston
ISSN 2009-4086



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MAP 1:
RIVER BARROW AND RIVER NORE CONSERVATION OBJECTIVES SAC DESIGNATION

Map to be read in conjunction with the NPWS Conservation Objectives Document

SITE CODE: SAC 002162
CO. CARLOW; version 1.03, CO. KILDARE; version 1.04, CO. KILKENNY; version 1.1, CO. LAOIS; version 1.07, CO. OFFALY; version 1.01, CO. TIPPERARY; version 1.01, CO. WATERFORD; version 1.01, CO. WEXFORD; version 1.01

0 5 10 15 km

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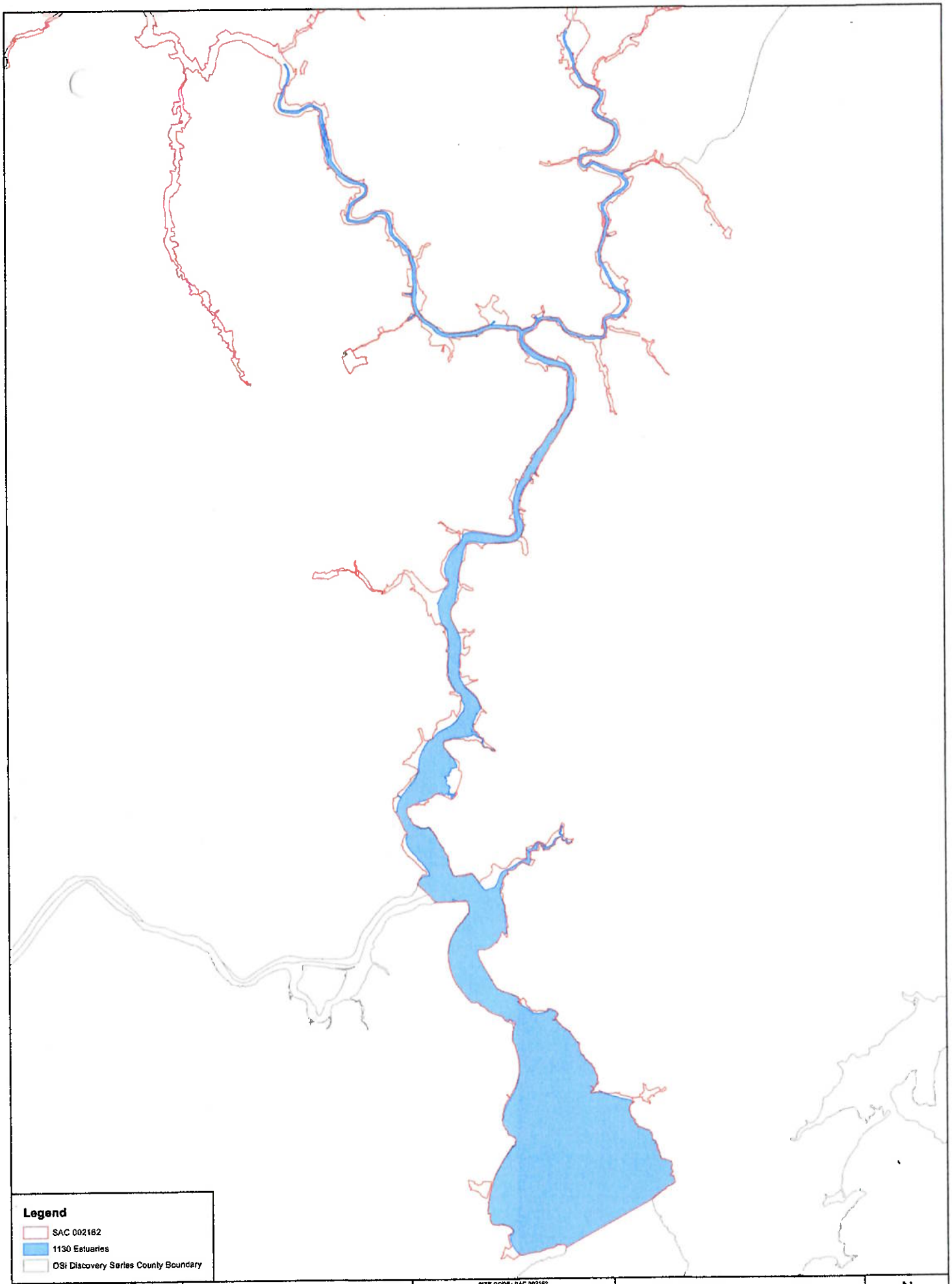
Ní sna teorainneacha ar na léarscáileanna ach ná garshuíomhach ginearálta. Féadfar athbreithniú a déanamh ar theorainneacha na gceantar comhartheiba. Measeamhail d'ábhar na Suirbhéireachta Ordonáis le cead ón Rialtas (Ceadúnas Uimh. EN 0059206)

N

Map Version 1
Date: April 2011



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MAP 2:
RIVER BARROW AND RIVER NORE CONSERVATION OBJECTIVES ESTUARIES

Map to be read in conjunction with the NPWS Conservation Objectives Document

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CO. KILKENNY; version 1.1, CO. LAOIS; version 1.07,
CO. OFFALY; version 1.01, CO. TIPPERARY; version 1.01,
CO. WATERFORD; version 1.01, CO. WEXFORD; version 1.01

0 1 2 3 4 5 km

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Féadfar athbhreithnithe a déanamh ar theorainneacha na gceantar comhartha'the. Macasamhail d'ábhar na Suirbhéireachta Ordonáis le cead ón Rialtas (Ceadúnas Uimh. EN 0059206)

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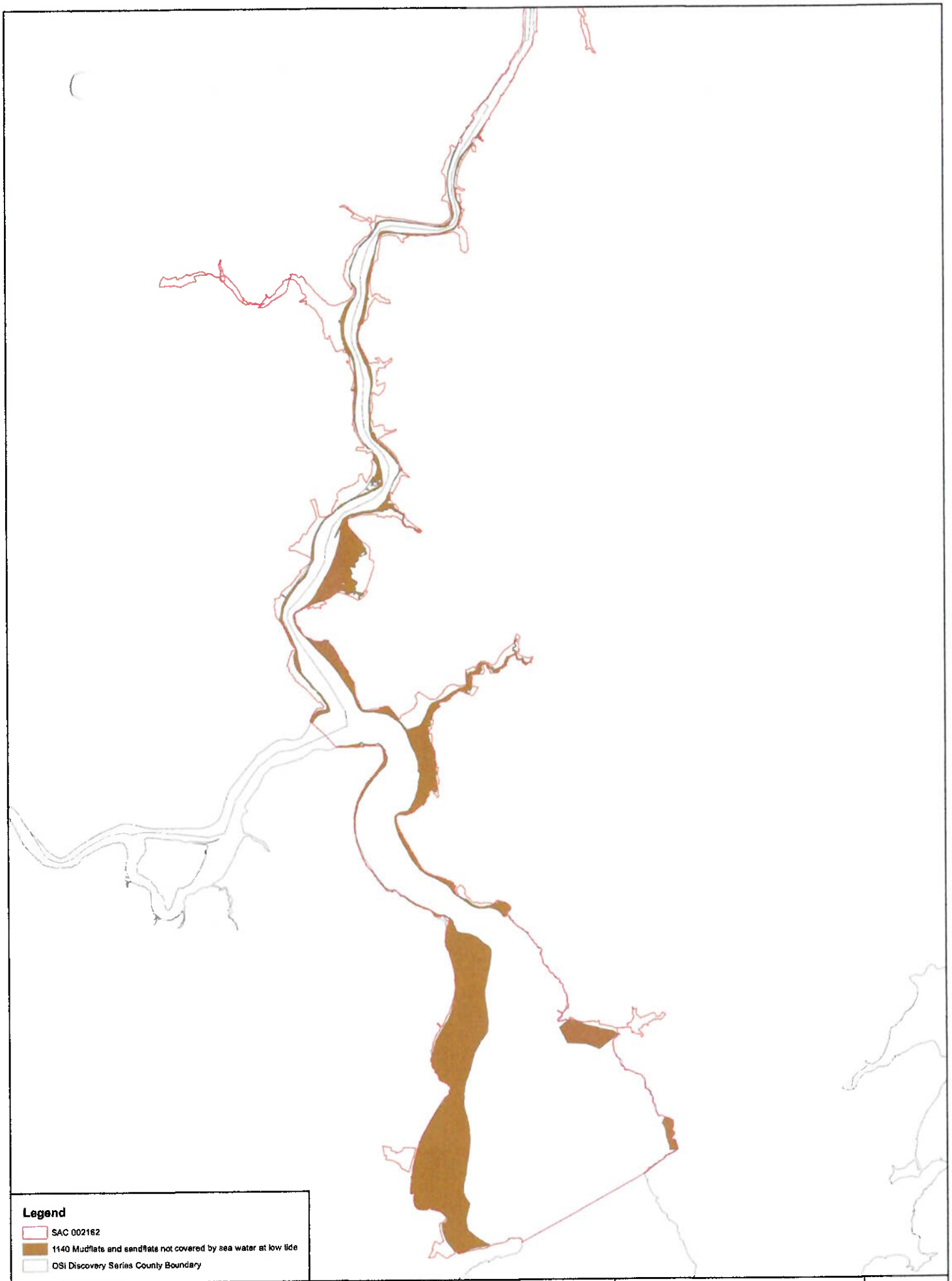
Map Version 1
Date: April 2011



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MAP 3:
RIVER BARROW AND RIVER NORE CONSERVATION OBJECTIVES TIDAL MUDFLATS AND SANDFLATS

Map to be read in conjunction with the NPWS Conservation Objectives Document

SITE CODE: SAC 002162
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CO. KILKENNY, version 1.1, CO. LAOIS; version 1.07,
CO. OFFALY; version 1.01, CO. TIPPERARY; version 1.01,
CO. WATERFORD; version 1.01, CO. WEXFORD; version 1.01

0 1 2 3 km

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Féadfar athbhreithnithe a déanamh ar theorainneacha na gceantar comhartha the. Macasamhail d'ábhar na Suirbhéarachta Ordonáis le cead ón Rialtas (Ceadúnas Uimh. EN 0059208)

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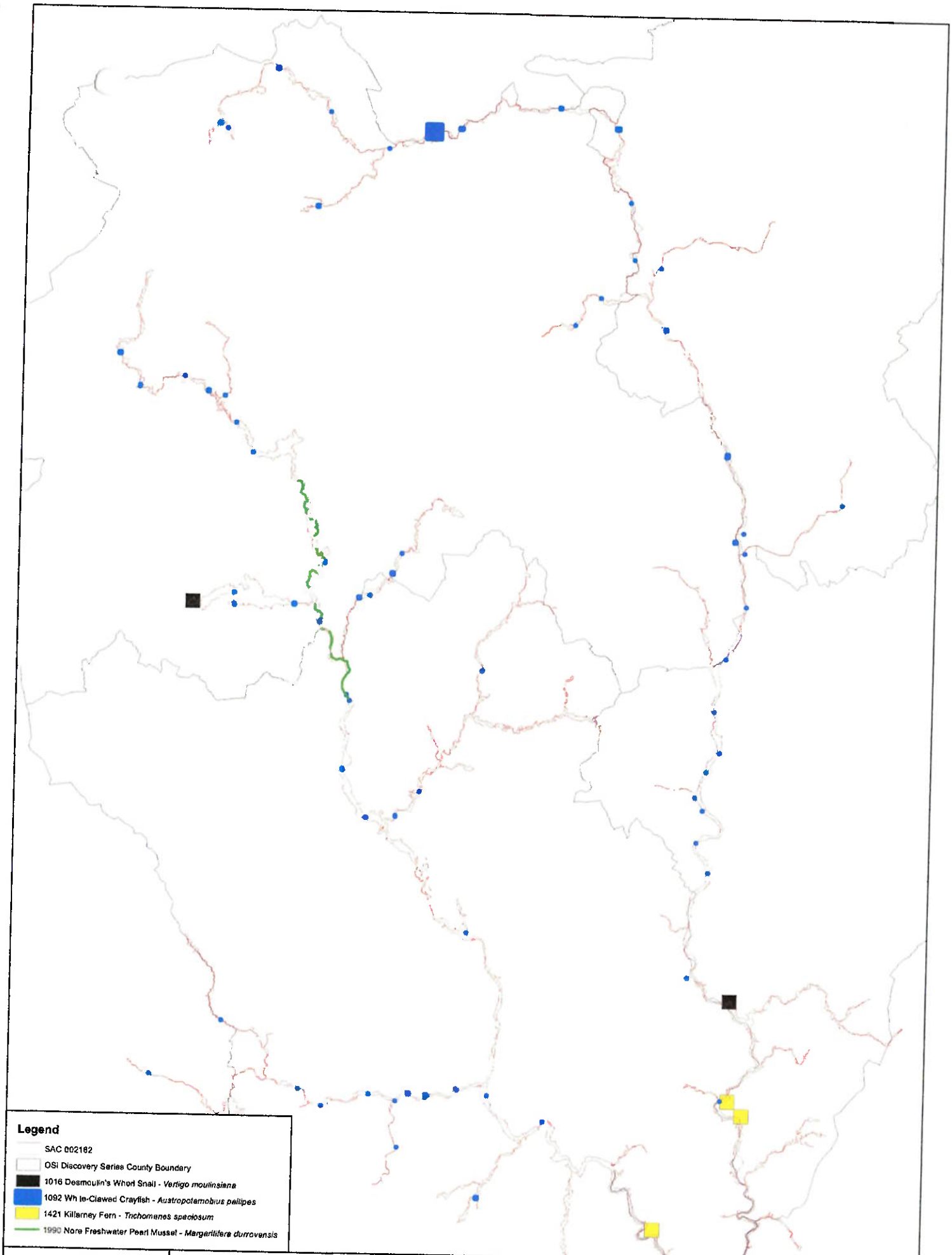
Date: April 2011



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MAP 7:
RIVER BARROW AND RIVER NORE CONSERVATION OBJECTIVES
DESMOULIN'S WHORL SNAIL, WHITE-CLAWED CRAYFISH, NORE FRESHWATER PEARL MUSSEL & KILLARNEY FERN

Map to be read in conjunction with the NPWS Conservation Objectives Document.

SITE CODE: SAC 002162
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0 2 4 6 8 10 km

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Nil ina taoslinneacha ar na léaracáiseanna ach nod gaireáitiúil gineartúla. Féadfar athbhreithnithe a déanamh ar theorainneacha na gceantar comhartha.the. Macasamhail d'ábhar na Suirbhéireachta Ordonáis le cead ón Rialtas (Ceadúnas Uimh. EN 0059206)

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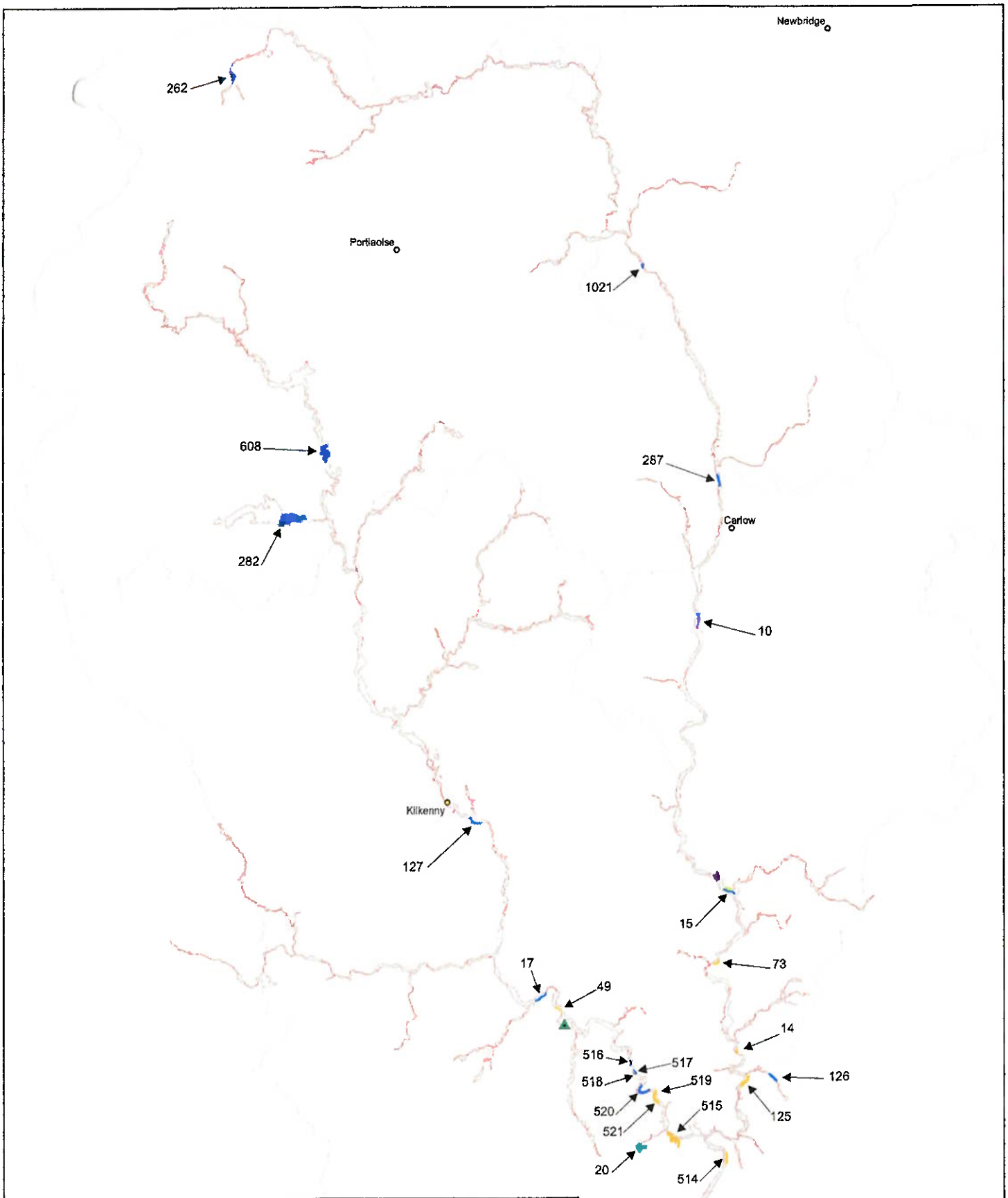
Map Version 1
Date: April 2011



Legend

- SAC 002162
- OSI Discovery Series County Boundary
- 7220 *Petrifying springs with tufa formation (Cratoneurion)

Woodland Habitats

- 91A0 Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles
- 91E0 *Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (Alno-padion, Alnion incanae, Salicion albae)
- 91A0 / 91E0 Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles / *Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (Alno-padion, Alnion incanae, Salicion albae)
- WD1 (Mixed) broadleaved woodland
- WN2 / WD1 Oak-ash-hazel woodland / (Mixed) broadleaved woodland
- WN2 / WN6 Oak-ash-hazel woodland / Wet willow-alder-ash woodland

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MAP 6: RIVER BARROW AND RIVER NORE CONSERVATION OBJECTIVES OLD OAK WOODLANDS, ALLUVIAL FORESTS & PETRIFYING SPRINGS

Map to be read in conjunction with the NPWS Conservation Objectives Document

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CO. CARLOW: version 1.03, CO. KILDARE: version 1.04, CO. KILKENNY: version 1.1, CO. LAOIS: version 1.07, CO. OFFALY: version 1.01, CO. TIPPERARY: version 1.01, CO. WATERFORD: version 1.01, CO. WEXFORD: version 1.01

0 2 4 6 8 10 km

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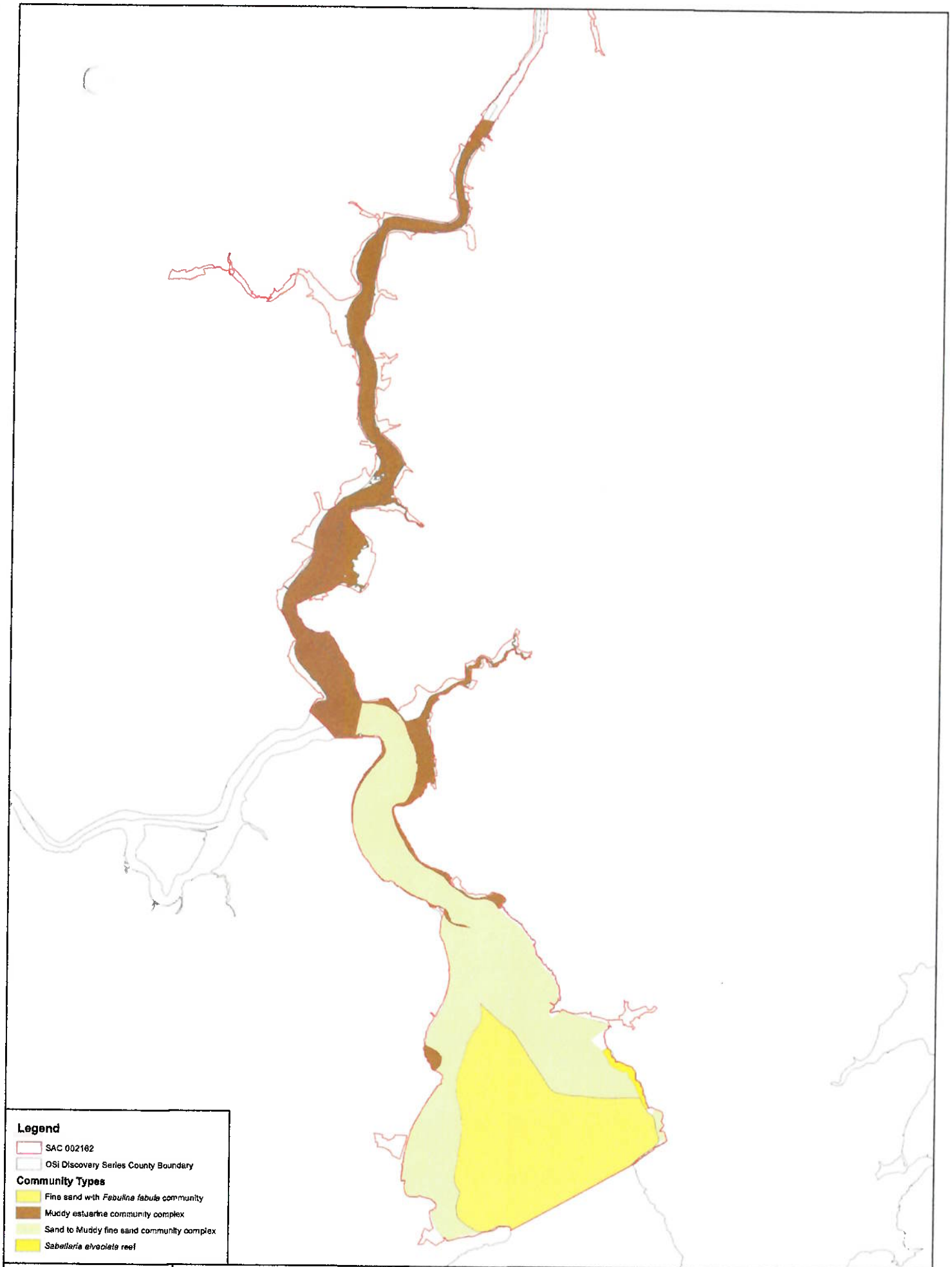
N

Map Version 1
Date: April 2011



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MAP 4:
RIVER BARROW AND RIVER NORE CONSERVATION OBJECTIVES MARINE COMMUNITY TYPES

Map to be read in conjunction with the NPWS Conservation Objectives Document

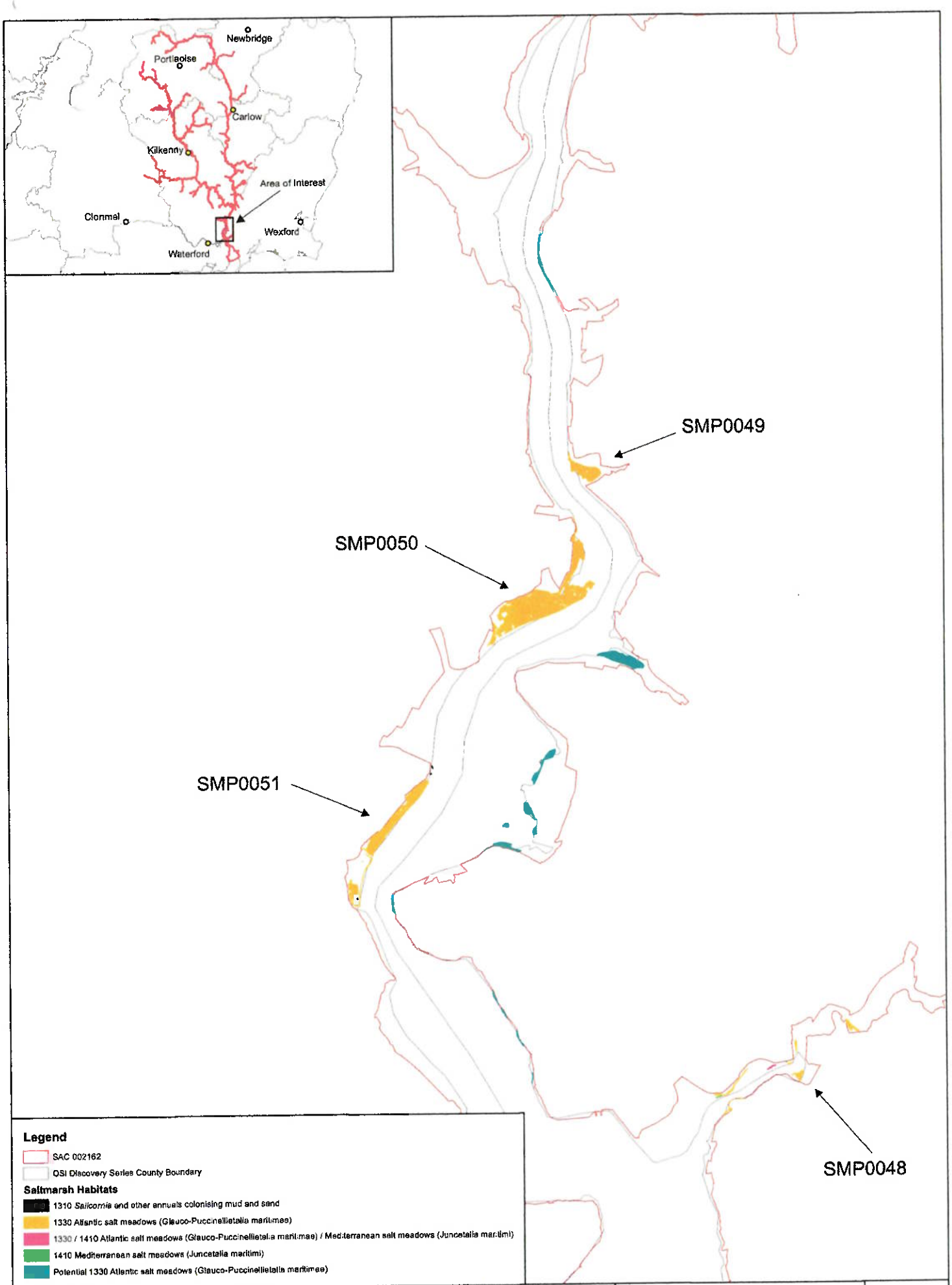
SITE CODE: SAC 002162
CO. CARLOW: version 1.03, CO. KILDARE: version 1.04, CO. KILKENNY: version 1.1, CO. LAOIS: version 1.07, CO. OFFALY: version 1.01, CO. TIPPERARY: version 1.01, CO. WATERFORD: version 1.01, CO. WEXFORD: version 1.01

0 1 2 3 km

The mapped boundaries are of an indicative and general nature only. Boundaries of designated areas are subject to revision. Reproduced from Ordnance Survey material by permission of the Government (Permit number EN 0059208).
Nil sna teorainneacha ar na léarscáileanna seo nod garshuíomhach ghearáilte. Féadfar athbhreithnithe a déanamh ar theorainneacha na gceantar comhartha. Measeamhail d'ábhar na Suirbhéireachta Ordonáis le cead ón Rialtas (Ceadúnas Uimh. EN 0059208)

N

Map Version 1
Date: April 2011



Ealaíon, Oidhreachta agus Gaeltachta
Department of
Arts, Heritage and the Gaeltacht

MAP 5:
RIVER BARROW AND RIVER NORE CONSERVATION OBJECTIVES SALTMARSH HABITATS

Map to be read in conjunction with the NPWS Conservation Objectives Document.

SITE CODE: SAC 002162
CO. CARLOW; version 1.03, CO. KILDARE, version 1.04, CO. KILKENNY, version 1.1, CO. LAOIS; version 1.07, CO. OFFALY; version 1.01, CO. TIPPERARY; version 1.01, CO. WATERFORD; version 1.01, CO. WEXFORD; version 1.01

0 0.25 0.5 0.75 1 km

The mapped boundaries are of an indicative and general nature only. Boundaries of designated areas are subject to revision. Reproduced from Ordnance Survey material by permission of the Government (Permit number EN 0058208).
Níl sna teorainneacha ar na léarscáileanna ach nod garshúlmhach ginearálta. Féadfar athbhreithnithe a déanamh ar theorainneacha na gceantar comharthaithe. Macasamhail d'ábhar na Suirbhéireachta Ordonáis le cead ón Rialtas (Ceadúnas Uimh. EN 0058208)

N

Map Version 1
Date: April 2011

Conservation objectives for River Nore SPA [004233]

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

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

The maintenance of habitats and species within Natura 2000 sites at favourable conservation condition will contribute to the overall maintenance of favourable conservation status of those habitats and species at a national level.

Favourable conservation status of a habitat is achieved when:

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

The favourable conservation status of a species is achieved when:

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

Objective: To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA:

Bird Code	Common Name	Scientific Name
A229	Kingfisher	*Alcedo atthis*

Citation: *NPWS (2022) Conservation objectives for River Nore SPA [004233]. Generic Version 9.0. Department of Housing, Local Government and Heritage.*

15

BYRNE + McCABE DESIGN LTD
architecture and engineering services

Planning Enforcement,
Kilkenny County Council,
County Hall,
John Street,
Kilkenny

22nd August 2022

RE: Unauthorised Mast and Foundation at Kells Exchange, Kells, Co Kilkenny: REF ENF 21112

Dear Sir/ Madam,

On behalf of our clients, Peter and Doreen Thomson we have reviewed the Construction Management Plan (CMP dated 20/07/22) and plans submitted in response to the Enforcement Notice to Eircom concerning the unauthorised telecommunication mast and foundation at The Kells Exchange, Kells, County Kilkenny.

We note that Eircom propose to remove the existing 1.4m high reinforced concrete foundation constructed to the wrong height, which currently supports the 15m high metal mast structure, and to replace it with a 1m deep reinforced concrete foundation.

Having inspected the documents submitted to the Council and copied to my clients, we can see no structural engineers report justifying the change and confirming the reduced foundation can support such a large mast. As engineers we would have serious concerns that the proposed revised foundation will be unable to support the mast structure and/ or withstand any uplift forces and over turning forces due to wind. The mast will be within falling distance of two habitable dwellings. Without seeing the detailed design, we are unable to comment further.

We would also be of the opinion, such a change in the design of the foundation to that permitted, would be a material change.

Yours sincerely,

Philip Byrne

Philip Byrne | DIRECTOR
Byrne + McCabe Design Ltd.

Directors. P. Byrne, T. McCabe, S. Murphy
Company Reg No. 610777
VAT No. IE34913659UH

Upper Main Street, Graiguenamanagh, Co. Kilkenny
059 972 5684
info@bmccdesign.ie

Comhairle Chontae Chill Chainnigh
Halla an Chontae Sraid Eoin Cill Chainnigh
R95 A39T
Pobail agus Áiteanna Inbhuanaithe a Chruthú

Kilkenny County Council
County Hall John Street Kilkenny
R95 A39T
Creating Sustainable Communities and Places

16

REF: **ENF21112**

DATE: 5th September 2022

REGISTERED POST

RECEIVED
15 SEP 2022

FP Logue Solicitors
FAO Eoin Brady, Partner
8-10 Coke Lane
Smithfield
Dublin 7

Dear Sir,

We refer to your letter dated 31st August 2022 and note your request. The Planning Authority will however not be withdrawing the Enforcement Notice at this time.

Please note that in accordance with the Source Pathway Receptor model, which forms the basis of all its screening decisions, the Planning Authority screened out any potential for the works proposed in compliance with our Enforcement Notice to significantly impact any proximate Natura 2000 site. Subsequently Focus + was advised that the Method Statement and further Construction Management Plan represents a reasonable way forward towards compliance with the requirements of permission PL Reg Ref 20/394 (ABP PL. 10.308931).

Your Sincerely,

Angela Mockler

Una Kealy
Administrative Officer
Planning

Kilkenny County Council
Planning Report

Planning & Development Acts 2000 -2021
Planning & Development Regulations 2001 - 2021

Declaration and Referral on Development and Exempted Development under Section 5 of the Planning & Development Acts 2000, as amended

Kilkenny County Council Reference Dec 694

WHEREAS a question has arisen *"Whether the telecommunication support structure, including its foundation, with the foundation constructed to an overall height of c. 15.771 metres above ground level, is within the scope of planning permission reference 20/394 (ABP ref. Pl.10.308931) and, therefore the deviations in height of c. 0.771 metres and in design are not development or whether the deviations are development and not exempted development?"* at the Eircom Exchange, Haggard Road, Kells, Co. Kilkenny.

AND WHERAS the said question was referred to Kilkenny County Council by Doreen and Peter Thomson, C/o Bluett and O' Donoghue, 2 John Street, Kilkenny,

AND WHEREAS the Planning Authority in considering this referral, had regard to
(i) the planning history for the site ref. 20/394 (ABP ref. Pl.10.308931),
(ii) the information submitted with the application documents,
(iii) submissions received
(iv) Section 2 and 3 of the *Planning and Development Acts 2000,* as amended
(v) Section 4 (1)(h) of the Planning and Development Acts 2000, as amended,
(vi) Schedule 2, Article 6, Part 1, Class 31 of the *Planning and Development Regulations 2001,* as amended,
(vii) Article 9 of the *Planning and Development Regulations 2001,* as amended,

AND WHEREAS :-

1. The provisions of Pt.1 S.4 (1)(h) of the Planning and Development Act 2000, as amended do not apply to the subject development as such works were not carried out to an existing structure, but to a structure under construction, and

2. Part 2 Article 9(1)(a)(i) of the Planning & Development Regulations, 2001-2021 'Restrictions on exemption', apply as the development contravenes condition 1 of Planning Permission ref. 20/394 (ABP ref. Pl.10.308931),

3. The Council considers that the question under consideration is too specific as regards reference to deviations in height and levels to be the subject of a statement of fact declaration,

NOW THEREFORE Kilkenny County Council, in exercise of the powers conferred on it by Section 5 of the 2000-2021 Acts, hereby decides that in relation to the question raised only the following declaration should issue:

The telecommunications support structure, including its foundation as constructed at the Eircom Exchange, Haggard Road, Kells, Co. Kilkenny, constitutes development which is not exempt development.

MATTERS CONSIDERED

In making its decision, the Planning Authority has regard to those matters to which, by virtue of the Planning and Development Acts 2000, as amended made thereunder, it was required to have regard.

U Kealy

U. Kealy
Administrative Officer

31/05/2022
Date

Footnote:

Section 5 (3)(a) of the Planning & Development Acts 2000 as amended states '*Where a declaration is issued under this section, any person with a declaration under subsection 2 (a) may, on payment to the Board of such fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration*'.

An Bord Pleanala, 64 Marlborough Street, Dublin 1, Tel. 01 8588100 or LoCall 1890 275175.

RL 8429 6258 0IE

Our Ref.: DEC 694

31/05/2022

Doreen and Peter Thomson
c/- Cormac O'Sullivan,
Bluett & O'Donoghue,
2 John Street,
Kilkenny.
R95 EY22

Re: Application for Declaration under Section 5 of the Planning & Development Acts 2000- as amended

A Chara,

I refer to the above application and now attach Declaration relating to same.

Mise le meas,

Úna Kealy
Administrative Officer
Planning Section

Kilkenny County Council
Planning Report

Planning & Development Acts 2000 -2021
Planning & Development Regulations 2001 - 2021

Declaration and Referral on Development and Exempted Development under Section 5 of the Planning & Development Acts 2000, as amended

Kilkenny County Council Reference Dec 694

WHEREAS a question has arisen *"Whether the telecommunication support structure, including its foundation, with the foundation constructed to an overall height of c. 15.771 metres above ground level, is within the scope of planning permission reference 20/394 (ABP ref. Pl.10.308931) and, therefore the deviations in height of c. 0.771 metres and in design are not development or whether the deviations are development and not exempted development?"* at the Eircom Exchange, Haggard Road, Kells, Co. Kilkenny.

AND WHERAS the said question was referred to Kilkenny County Council by Doreen and Peter Thomson, C/o Bluett and O' Donoghue, 2 John Street, Kilkenny,

AND WHEREAS the Planning Authority in considering this referral, had regard to

(i) the planning history for the site ref. 20/394 (ABP ref. Pl.10.308931),
(ii) the information submitted with the application documents,
(iii) submissions received
(iv) Section 2 and 3 of the *Planning and Development Acts 2000,* as amended
(v) Section 4 (1)(h) of the Planning and Development Acts 2000, as amended,
(vi) Schedule 2, Article 6, Part 1, Class 31 of the *Planning and Development Regulations 2001,* as amended,
(vii) Article 9 of the *Planning and Development Regulations 2001,* as amended,

AND WHEREAS :-

1. The provisions of Pt.1 S.4 (1)(h) of the Planning and Development Act 2000, as amended do not apply to the subject development as such works were not carried out to an existing structure, but to a structure under construction, and

2. Part 2 Article 9(1)(a)(i) of the Planning & Development Regulations, 2001-2021 'Restrictions on exemption', apply as the development contravenes condition 1 of Planning Permission ref. 20/394 (ABP ref. Pl.10.308931),

3. The Council considers that the question under consideration is too specific as regards reference to deviations in height and levels to be the subject of a statement of fact declaration,

NOW THEREFORE Kilkenny County Council, in exercise of the powers conferred on it by Section 5 of the 2000-2021 Acts, hereby decides that in relation to the question raised only the following declaration should issue:

The telecommunications support structure, including its foundation as constructed at the Eircom Exchange, Haggard Road, Kells, Co. Kilkenny, constitutes development which is not exempt development.

MATTERS CONSIDERED

In making its decision, the Planning Authority has regard to those matters to which, by virtue of the Planning and Development Acts 2000, as amended made thereunder, it was required to have regard.

_____	**31/05/2022**
U. Kealy	**Date**
Administrative Officer	

Footnote:

Section 5 (3)(a) of the Planning & Development Acts 2000 as amended states '*Where a declaration is issued under this section, any person with a declaration under subsection 2 (a) may, on payment to the Board of such fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration*'.

An Bord Pleanala, 64 Marlborough Street, Dublin 1, Tel. 01 8588100 or LoCall 1890 275175.

Comhairle Chontae Chill Chainnigh
Kilkenny County Council
Planning Report

Planning & Development Acts 2000 -2021
Planning & Development Regulations 2001 - 2021

Section 5 Declaration
Reference No. Dec 694

Applicant: **Doreen and Peter Thomson c/o Cormac O' Sullivan, Bluett & O' Donoghue**

Subject: **"Whether the telecommunication support structure, including its foundation, with the foundation constructed to an overall height of c. 15.771 metres above ground level, is within the scope of planning permission reference 20/394 (ABP ref. Pl.10.308931) and, therefore the deviations in height of c. 0.771 metres and in design are not development or whether the deviations are development and not exempted development?" at the Eircom Exchange, Haggard Road, Kells, Co. Kilkenny.**

Due Date: **31st May 2022**

Introduction
This Section 5 Declaration application was submitted by Doreen and Peter Thomson, C/o Bluett and O' Donoghue, 2 John Street, Kilkenny, under Section 5 of the Planning and Development Acts 2000 – 2021, seeking a declaration "Whether the telecommunication support structure, including its foundation, with the foundation constructed to an overall height of c. 15.771 metres above ground level, is within the scope of planning permission reference 20/394 (ABP ref. Pl.10.308931) and, therefore the deviations in height of c. 0.771 metres and in design are not development or whether the deviations are development and not exempted development?" at the Eircom Exchange, Haggard Road, Kells, Co. Kilkenny.

Location/Site description:
The subject site is located in the village of Kells, approx. 15km south of Kilkenny City. The site comprises the existing Eircom Exchange premises on the northern side of the Haggard Road (L1026), and approx. 80m southwest of the village centre. The Eircom property accommodates the exchange building, a rectangular flat roofed utilities structure. The existing pole is sited behind the exchange structure, approx.16.5m from the road.

Planning History

- 20/394 – Permission granted for the replacement of an existing 10m wooden pole for a 15 metre high free standing communications structure with its associated antennae, communication dishes, ground equipment and all associated site development works. The development will form part of Eircom Ltd existing telecommunications and broadband network.
  Appeal Granted 10/06/2021 (Ref PL10.308931)

  Condition 1
  The development shall be carried out and completed in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.
  Reason: In the interest of clarity.

Description of the proposed works
The Declaration seeks to determine "Whether the telecommunication support structure, including its foundation, with the foundation constructed to an overall height of c. 15.771 metres above ground level, is within the scope of planning permission reference 20/394 (ABP ref. Pl.10.308931) and, therefore the deviations in height of c. 0.771 metres and in design are not development or whether the deviations are development and not exempted development?" at the Eircom Exchange, Haggard Road, Kells, Co. Kilkenny.

Legislative Framework
Section 2 of the Planning & Development Act 2000 (as amended) states:
"Works" includes any act or operation of construction, excavation, demolition, extension or alteration, repair or renewal.
"structure" means any building, structure, excavation, or other thing constructed or made on, in or under land, or any part of a structure so defined."

Section 2 (1) of the Act defines a statutory undertaker as:
"statutory undertaker" means a person, for the time being, authorised by or under any enactment or instrument under an enactment to—
(a) construct or operate a railway, canal, inland navigation, dock, harbour or airport, (b) provide, or carry out works for the provision of, gas, electricity or telecommunications services, or
(c) provide services connected with, or carry out works for the purposes of the carrying on of the activities of, any public undertaking;"

Section 3 (1) of the Planning and Development Act, 2000 (as amended), states:
In this act "development'' 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 the use of any structures or other land.
Section 4 (1) sets out various forms and circumstances in which development is exempted development for the purposes of the Act.
Section 4 (2)(a) of the Act enables certain classes of development to be deemed exempted development by way of regulation.

Pt.1 S.4 (1)(h) of the Planning and Development Act 2000, as amended states:
4.—(1) The following shall be exempted developments for the purposes of this Act—
(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

The *Planning and Development Regulations 2001-2021*, Schedule 2, Article 6, Part 1 'Exempted Development – General', 'Development within the curtilage of a house' states:

Part 2 Article 9(1)(a)(i) of the Planning & Development Regulations, 2001-2021 'Restrictions on exemption', states the following:
Development to which article 6 relates shall not be exempted development for the purposes of the Act—
(a) if the carrying out of such development would—
(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act

Schedule 2, Part 1, Class 31 of the Planning & Development Regulations 2001 (as amended), stipulates the requirements for exempted development in relation to the carrying out of works by a statutory undertaker authorised to provide a telecommunications service.

CLASS 31

Column 1 - Description of Development	Column 2 - Conditions and Limitations
The carrying out by a statutory undertaker authorised to provide a telecommunications service of development consisting of the provision of—	
(b) overhead telecommunications including the erection of poles or other support structures or the use of existing poles or other support structures,	*1. Poles or other support structures carrying overhead lines shall not exceed 12 metres in height.* *2. Poles or other support structures carrying other equipment shall not exceed 12 metres in height and 0.6 metres in diameter measured at the widest point, where "other equipment" means 2 transmitting or receiving dishes (the diameter of which shall not exceed 0.6 metres), or 1 panel antenna (the dimensions of which shall not exceed 0.85 metres in length x 0.65 metres in width x 0.2 metres in depth) used for the provision of a specific telecommunications service and the provision of which would otherwise require an additional pole route carrying overhead wires.* *3. Where a pole or poles or other support structures carry radio transmitting or receiving apparatus, the field strength of the non-ionising radiation emissions*

Documentation relevant to this Section 5 Declaration

- Section 5 Declaration application received 25th April 2022.
  The documentation submitted outlines the construction timeframe of the telecommunications structures on site, including construction of a foundation in a position which varied from the permission, and subsequent construction of an additional foundation in the permitted location without the removal of the unauthorised foundations. The submission documents state that imported material 'was spread and ground level raised to just below the level of the most recent section of foundation. The original unauthorised foundation buried and ground levels raised by 0.671 metres giving the impression the most recent section of foundation is at ground level'.

- Email submission lodged from Stephen O' Brien, FocusPlus Ltd. on behalf of Eircom Ltd. via email on 17th May, 2022, which also states that the submission was sent by registered post; states:
  The planning drawings lodged with the application indicate that the rear of the EIR exchange is taken to be ground level and is used as the datum for the construction of the monopole.
  The overall height of the monopole is 15m above the ground level datum. Please refer attached original planning drawing "KK-2168-01-P 06 North-East Elevation View A-A".'
  The EIR exchange is built on sloping ground, that slopes from the rear of the exchange to the front of the exchange and street level. The monopole construction is not related to the ground level at the front of the exchange. The drawings clearly indicate the construction datum as the ground level at the rear of the exchange.
  The proposed monopole foundation was to be constructed level with the bottom of the western boundary fence of the EIR exchange. We have included before construction and after construction photos for the monopole build. The marked-up drawings provided with the section 5 application indicates that the monopole foundation is 771mm above the bottom of the western boundary fence (we have attached this drawing to this letter). The post construction photo indicates this is not the case.'

- Email submission received on 18th May 2022 from Cormac O' Sullivan on behalf of Doreen and Peter Thomson which states:
  In the interests of fair procedures, I would request that agreement is reached on the method of measuring to confirm the site levels based on those stipulated on the plans and sections submitted with Eircom's planning application.
  I would also advise that my client has had a second survey of the levels undertaken following the erection of the mast which confirmed the results in the submitted report.
  Before a decision is made, my client would like the opportunity to submit these further survey findings which can be made available on foot of a further information request.
  If the Council agrees that this would be in the interests of fair procedures, I would ask that such a further information request issues prior to the decision date deadline of Friday 20th May 2022.

- Letter issued by the Planning Authority to Doreen and Peter Thomson c/o Cormac O' Sullivan on 20th May 2022:
  In accordance with Section 5(2)(ba) of the Planning and Development Act 2000 -2021, the Planning Authority hereby gives notice that it is awaiting an independent survey of the mast which the subject of the Section 5 declaration and hence a decision cannot issue until such

survey has been completed. The Planning Authority intends to make a decision on the declaration on or before the 31st of May 2022.

- Submission received via email 23rd May 2022 from Cormac O' Sullivan on behalf of Doreen and Peter Thomson
  Further to my submission of 18th May last, please find attached supplementary information provided by my client's surveyor, Cardinal Surveys
  Please note the temporary benchmark which Cardinal has shown is at the location of the datum level (-0.8m) shown on the Eircom permitted planning application plans.

- Results of survey carried out on 23rd May 2022 by Roads Design Office of Kilkenny County Council received by the Planning Authority on 24th May 2022

Observations

Planning Drawings for application ref. P.20/394 - ABP ref. Pl.10.308931

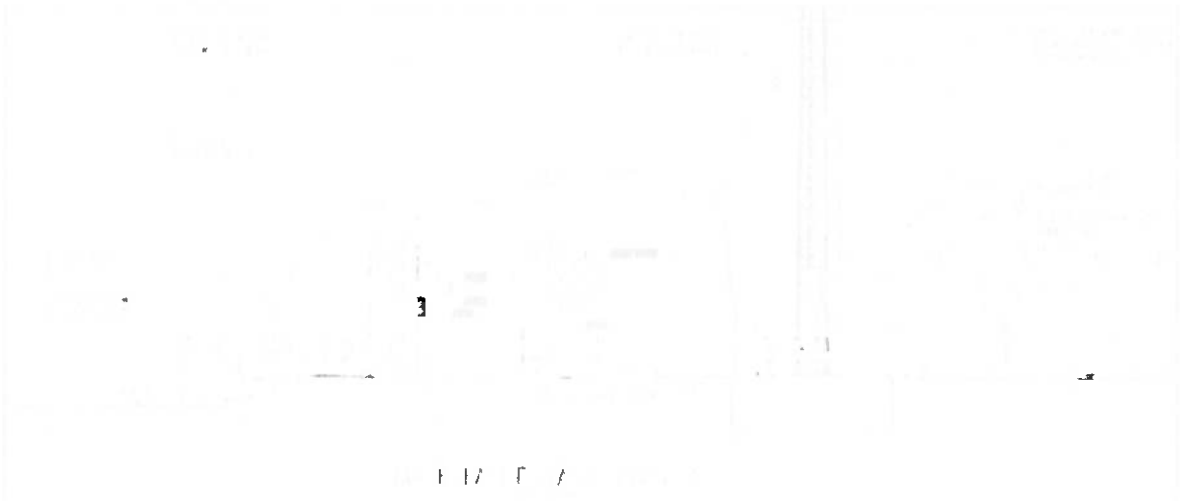
As per drawing no. KK-2168-01-P 06 'North East Elevation View A-A' submitted with the application a level of '-0.80 AGL' is indicated to the east/ front of the site' on the road; 'Ground Level' is indicated to the rear/ west of the site and shown at the same ground level as the proposed site of the telecommunications structure. The indicated height of the monopole is proposed as '15000 AGL' relative to the aforementioned levels, and 'antennas to be installed on headframe support poles at top of monopole'.

The difference between the 'ground level' at the proposed position of the telecommunications structure and the road level is +0.80m as per the planning drawings submitted with the application, and this difference between the road level and the ground level at the proposed position of the structure is the same as per sections B-B, C-C, and D-D submitted.

The 'Site Layout Plan' submitted as part of the planning application drawing no. KK-2168-01-05 shows a spot height level to the east of the gate accessing the site as +53.2m Asl, relative to a level of +54m Asl to the north of the proposed position of the pole structure.

In accordance with the drawings submitted permission was granted for the structure to be constructed at a ground level 0.80m relative to the level taken to the front of the site.

As per the planning drawing submitted for application P.20/394 the 'ground level' for the proposed position of the pole is shown to be level with what appears to be the finished floor level base of the wall of the 'existing Eir exchange building'.



Site section submitted as per planning application P 20 394

Photographs of levels on site

As per site inspection the ground level to the rear of the 'existing eir exchange building' currently slopes upwards from the base of the wall of the eir exchange building to the position of the base of the pole structure which is elevated above the ground level at the base of the wall of the eir building structure.

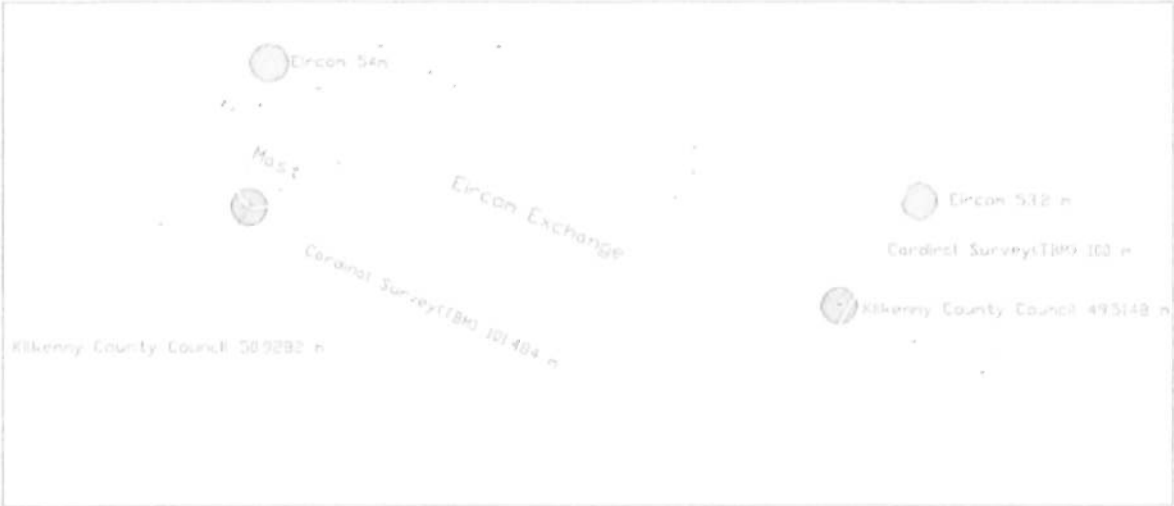
Photo of ground levels on site as at May 2022 showing Eir Exchange Building on the foreground left of the photo, with the telecommunications structure in the centre back-ground.

Photo 1 - Photo taken of wooden pole before construction.

Photo prior to construction as per email submitted on 17th May by Stephen O' Brien FocusPlus Ltd. on behalf of Eir

Surveys submitted

The survey carried out by the Roads Design Office of Kilkenny County Council on 23rd May 2022 is set out below:



The survey shows levels taken to the east of the site on what appears to be the public road, and to the west of the site – the KCC and Cardinal levels show the levels close to the south of the mast location, and the Eircom level is shown to the north of the mast position.

Surveyor	*Level to the east of the site*	*Level towards the west of the site*	*Difference in levels*
Eircom	53.2m	54m	+0.800m
Cardinal	100m	101.484m	+1.484m
Kilkenny County Council	49.5148m	50.9282m	+1.413

The date of the Eircom survey is unclear. The permission granted shows the level of the base of the Eir Exchange Building to be at the same ground level as the position of the proposed pole structure as per the site sections submitted. Site inspections, and the Cardinal survey and Roads Design Office of Kilkenny County Council survey indicate the ground level at the base of the pole is raised above the level at the base of the Eir Exchange Building, and not in accordance with the levels as per the permission granted.

Planning Considerations

The works which form the subject of this application constitute development.

The development cannot avail of the exemptions of class 31 of the *Planning and Development Regulations, 2001, as amended*, as the height of the structure is in excess of 12 metres.

The development which is the subject of this Declaration does not constitute maintenance, improvement or other alteration to a structure as such development was not carried out to an existing structure, but rather carried out as alterations during construction and therefore is not considered exempt under Pt.1 S.4 (1)(h) of the Planning and Development Act 2000, as amended.

Part 2 Article 9(1)(a)(i) of the Planning & Development Regulations, 2001-2021 'Restrictions on exemption', states the following:

Development to which article 6 relates shall not be exempted development for the purposes of the Act—

(a) if the carrying out of such development would—
(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act

The development contravenes Condition 1 of Planning Permission ref. P.20/394, and does not constitute exempt development having regard to the 'Restrictions on exemption' as set out in Part 2 Article 9(1)(a)(i) of the Planning & Development Regulations, 2001, as amended.

Conclusion
Having regard to the planning history for the site, the documentation submitted, submissions received and the relevant legislation, it considered that the development which forms the subject of this application does not constitute exempt development.

Impact on Natura 2000 site
A Screening exercise was completed, which showed that no significant environmental impact is likely on any Natura 2000 site.

Dec 694 Recommendation
Having regard to
(i) the planning history for the site ref. 20/394 (ABP ref. Pl.10.308931),
(ii) the information submitted with the application documents,
(iii) submissions received
(iv) Section 2 and 3 of the *Planning and Development Acts 2000,* as amended
(v) Section 4 (1)(h) of the Planning and Development Acts 2000, as amended,
(vi) Article 6, Schedule 2, Part 1, Class 31 of the *Planning and Development Regulations 2001,* as amended,
(vii) Article 9 of the *Planning and Development Regulations 2001,* as amended,
It is considered that the subject development relating to the question raised:
"*Whether the telecommunication support structure, including its foundation, with the foundation constructed to an overall height of c. 15.771 metres above ground level, is within the scope of planning permission reference 20/394 (ABP ref. Pl.10.308931) and, therefore the deviations in height of c. 0.771 metres and in design are not development or whether the deviations are development and not exempted development*?" at the Eircom Exchange, Haggard Road, Kells, Co. Kilkenny,
is development and <u>does not constitute exempted development</u> and therefore, <u>planning permission is required</u>.

31st May 2022

C. Kelly, Executive Planner

I note that the Council's measurements differ from those of Eircom and those made on behalf of the applicant. As such, the declaration requested, being very particular in reference to the deviations in height and levels, is considered to be too specific to be the subject of a statement of fact. The Planning Authority considers that having had regard to those matters generally which would render a development either exempt or not exempt, a declaration can only issue as regards the general principles (deviation from condition 1 of 20/394 (ABP ref. Pl.10.308931) and not the specifics. The Council is however of the opinion that the ultimate height of the

structure is at variance to that approved. I would consider that the following declaration should issue which omits details referring the extent of deviations. The extent to which the levels differ will ultimately be a matter to be consider at regularisation.

31/05/'22

N. Louw, Senior Executive Planner.

Declaration and Referral on Development and Exempted Development under Section 5 of the Planning & Development Acts 2000, as amended

Kilkenny County Council Reference Dec 694

WHEREAS a question has arisen "Whether the telecommunication support structure, including its foundation, with the foundation constructed to an overall height of c. 15.771 metres above ground level, is within the scope of planning permission reference 20/394 (ABP ref. Pl.10.308931) and, therefore the deviations in height of c. 0.771 metres and in design are not development or whether the deviations are development and not exempted development?" at the Eircom Exchange, Haggard Road, Kells, Co. Kilkenny.

AND WHERAS the said question was referred to Kilkenny County Council by Doreen and Peter Thomson, C/o Bluett and O' Donoghue, 2 John Street, Kilkenny,

AND WHEREAS the Planning Authority in considering this referral, had regard to

(i) the planning history for the site ref. 20/394 (ABP ref. Pl.10.308931),
(ii) the information submitted with the application documents,
(iii) submissions received
(iv) Section 2 and 3 of the *Planning and Development Acts 2000,* as amended
(v) Section 4 (1)(h) of the Planning and Development Acts 2000, as amended,
(vi) Schedule 2, Article 6, Part 1, Class 31 of the *Planning and Development Regulations 2001,* as amended,
(vii) Article 9 of the *Planning and Development Regulations 2001,* as amended,

AND WHEREAS :-

1. The provisions of Pt.1 S.4 (1)(h) of the Planning and Development Act 2000, as amended do not apply to the subject development as such works were not carried out to an existing structure, but to a structure under construction, and

2. Part 2 Article 9(1)(a)(i) of the Planning & Development Regulations, 2001-2021 'Restrictions on exemption', apply as the development contravenes condition 1 of Planning Permission ref. 20/394 (ABP ref. Pl.10.308931),

5. The Council considers that the question under consideration is too specific as regards reference to deviations in height and levels to be the subject of a statement of fact declaration,

NOW THEREFORE Kilkenny County Council, in exercise of the powers conferred on it by Section 5 of the 2000-2021 Acts, hereby decides that in relation to the question raised only the following declaration should issue:

The telecommunications support structure, including its foundation as constructed at the Eircom Exchange, Haggard Road, Kells, Co. Kilkenny, constitutes development which is not exempt development.

MATTERS CONSIDERED

In making its decision, the Planning Authority has regard to those matters to which, by virtue of the Planning and Development Acts 2000, as amended made thereunder, it was required to have regard.

U. Kealy
Administrative Officer

Footnote:

Section 5 (3)(a) of the Planning & Development Acts 2000-2015 states '*Where a declaration is issued under this section, any person with a declaration under subsection 2 (a) may, on payment to the Board of such fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration*'.

An Bord Pleanala, 64 Marlborough Street, Dublin 1, Tel. 01 8588100 or LoCall 1890 275175.