

Comhairle Contae Chill Dara
Kildare County Council



Date: 18th January 2024.
Our Ref: ED/1062.

Michael Bagnall,
c/o Martijn Leenheer,
ESC Environmental Ltd,
Tobernania,
Ballintogher,
Co. Sligo.

RE: Application for a Declaration of Exempted Development under Section 5 of Planning and Development Act 2000 (as amended) for development at Allenwood North, Co. Kildare.

Dear Sir/Madam,

I refer to your correspondence received on 26th July 2023 in connection with the above.

Please find attached declaration made under Section 5 of Planning and Development Acts 2000 (as amended) in this regard.

Yours sincerely,

**Senior Executive Officer,
Planning Department.**



Declaration of Development & Exempted Development under Section 5 of the Planning and Development Act 2000 (as amended).

ED/001062.

WHEREAS a question has arisen as to whether infilling the lands with soils to facilitate of the re-contouring of lands at Allenwood North, Co. Kildare, with soils to be sourced from sites where the Economic Operator will process an Article 27 license with the EPA and where the soil will be inert from greenfield sites is exempted development,

AS INDICATED on the plans and particulars received by the Planning Authority on 26th July 2023

AND WHEREAS Michael Bagnall requested a declaration on the said question from Kildare County Council,

AND WHEREAS Kildare County Council as the Planning Authority, in considering this application for a declaration under Section 5 of the Planning and Development Act 2000 (as amended), had regard to;

- (a) Planning and Development Act 2000 (as amended);
- (b) Planning and Development Regulations 2001 (as amended) and;
- (c) Documentation received with the application;

AND WHEREAS Kildare County Council has concluded that the development comprises works to which the provisions of the following applies:

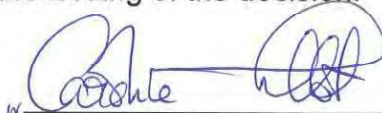
- (a) Sections 2, 3, 4 and 5 of the Planning and Development Act 2000 (as amended);
- (b) Articles 8C of the Planning and Development Regulations 2001 (as amended) and;

AND WHEREAS Kildare County Council, in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Act 2000 (as amended), hereby decides

- (a) The importation of soil for the purpose of recontouring land constitutes 'works', and 'development' as defined in Section 2 and Section 3, respectively, of the Planning and Development Act 2000 (as amended).
- (b) The importation of soil to be sourced from sites where the Economic Operator will process an Article 27 application process with the Environmental Protection Agency, and where the soil will be inert from greenfield sites, complies with the provisions set out within article Article 8C of the Planning and Development Regulations 2001 (as amended) and is therefore, exempted development.

Please note that any person issued with a declaration under subsection 2(a) of the Planning and Development Act 2000 (as amended) may on payment to the Board of the prescribed fee, refer a declaration to An Bord Pleanála within 4 weeks of the issuing of the decision.

18th January 2024.


**Senior Executive Officer,
Planning Department.**

KILDARE COUNTY COUNCIL



PLANNING & STRATEGIC DEVELOPMENT DEPARTMENT

Section 5 referral & declaration on development & exempted development
Planning & Development Act 2000 (as amended)

Reference No. ED/01062

Name Of Applicant(s): Michael Bagnall

Address Of Development: Allenwood North

Development Description: Infilling & re-contouring lands

Due date: Received out of time

Introduction

This is a request for a **DECLARATION** under Section 5(1) of the Planning and Development Act 2000 (as amended) to establish whether under Section 5 of the Act the works comprising of the infilling and re-contouring of lands is development and is exempted development.

Site Location

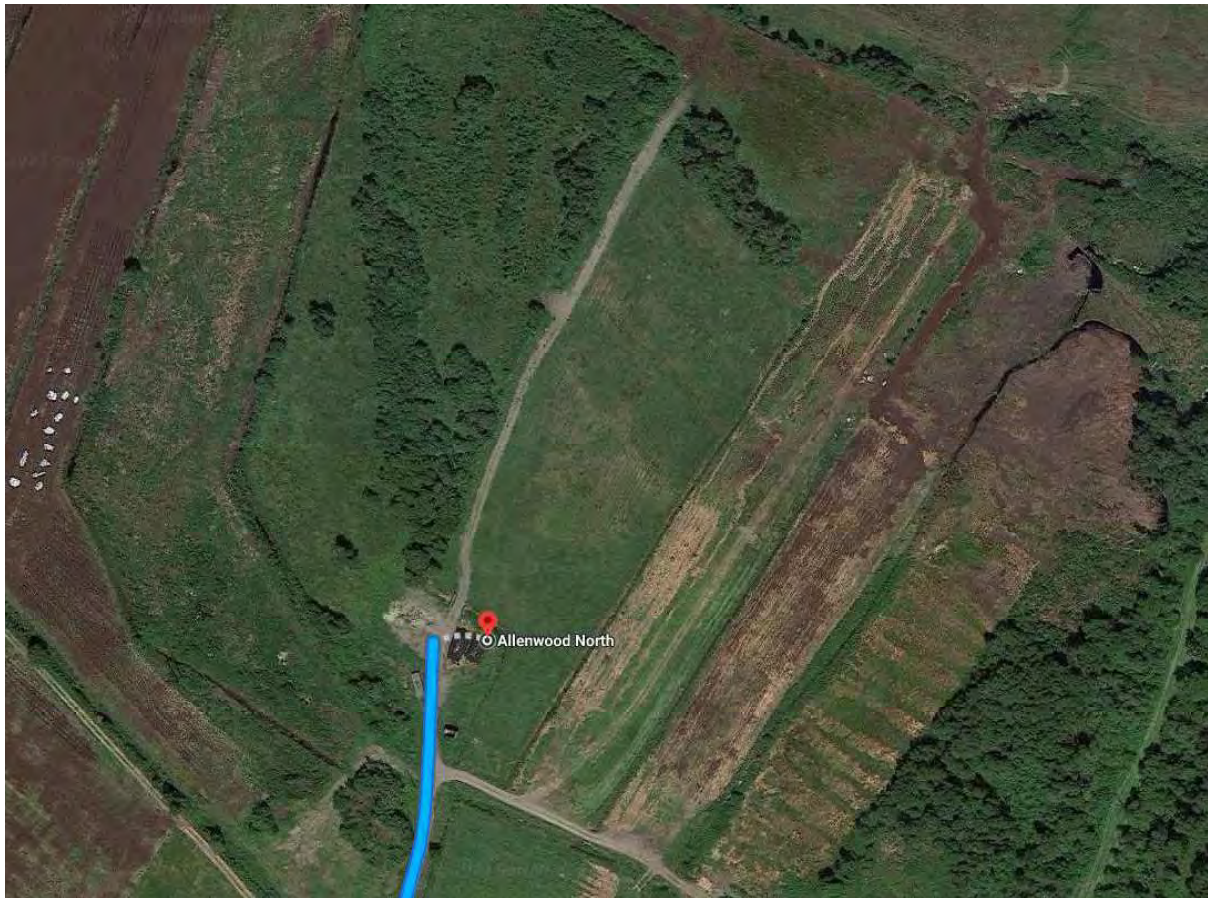


The site is part of a larger agricultural holding north of Allenwood. Site area is 1.67Ha.

Description of Proposed Development

The development is described in the application form as;

“The proposed development consists of the raising of levels by 0.7m over an area of 1.67.1 ha using inert subsoil and topsoil for the purposes of making the site suitable for the agricultural use at Allenwood North, Naas, Co. Kildare.”



Planning History

Subject site

None.

Relevant Legislative Background

Planning and Development Act 2000 (as amended)

Section 2(1)

‘works’ includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3(1)

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)

The following shall be exempted development for the purposes of the Act-

- (a) development consisting of the use of any land for the purposes of agriculture and development consisting of the use for that purpose of any building occupied together with land so used;
- (l) development consisting of the carrying out of works referred to in the Land Reclamation Act, 1949, not being works comprised in the fencing or enclosure of land which has been open to or used by the public within the ten years preceding the date on which the works are commenced.

I note that the “works” in the Land Reclamation Act 1949 refers to the following: -

- (a) field drainage;*
- (b) land reclamation;*
- (c) the construction and improvement of watercourses;*
- (d) the removal of unnecessary fences;*
- (e) the construction of new fences and the improvement of existing ones;*
- (f) improvement of hill grazing;*
- (g) reclamation of estuarine marsh land and of callows;*
- (h) any operations ancillary to the foregoing.*

In this regard, the proposed development comprises works and also therefore is considered ‘development’.

Section 5(7) EIA Screening

The proposed development is not specified in Part 2 of Schedule 5 of the Planning and Development Regulations 2001(as amended). In any event, it is considered, having regard to nature, size and location, the proposed development would not be likely to have significant effects on the environment. Therefore, EIA is not required.

Planning and Development Regulations 2001 (as amended)**Article 8(C) states**

Land reclamation works (other than reclamation of wetlands) consisting of re-contouring of land, including infilling of soil (but not waste material) within a farm holding, shall be exempted development.

Assessment**Is or is not development**

The development as set out comprises the raising and filling in of a series of natural depressions, re-contouring of lands and infilling them with soils, levelling and raising the areas by approximately 0.7m. Having regard to the statutory definition of the terms ‘works’ and ‘development’, referred to above, which define works as, amongst other things, any act or ‘operation of construction’ or ‘alteration’ and development as the ‘carrying out of works on land’, I would consider that the creation of new surface layers and the alteration of the existing land form by importation of soils would comprise both ‘works’ and ‘development’, as defined in the Planning and Development Act, 2000 (as amended).

Is or is not exempted development

Article 8C, of the Planning and Development Regulations, 2001 (as amended) states "Land reclamation works consisting of re-contouring of land, including infilling of soil (but not waste material) within a farm holding shall be exempted development." I note the Applicant has stated *"soils will be sourced from sites where the Economic Operator will process an Article 27 declaration for the material being transported. Soil will be inert from greenfield sites"*, therefore Article 8C of the Regulations applies.

I consider that the proposed development, which involves the importation of soil to pasture lands which would be re-contoured to improve soil quality and grazing conditions on the site, would be exempted development as set out in Article 8C of the Planning and Development Regulations, 2001 (as amended).

Conclusion

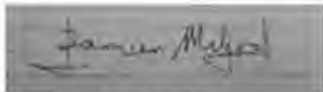
Having regard to:

- Sections 2, 3, 4 and 5 of the Planning and Development Act 2000 (as amended);
- Articles 8C of the Planning and Development Regulations 2001 (as amended) and;
- The details contained in the application form.

It is considered that the importation of inert soil on lands for agricultural use and within a farm holding for recontouring of land is development and is exempted development.

Recommendation

It is recommended that the applicant be advised that the development as described in the application is development and is exempted development.



Damien McGrath

Assistant Planner

30/11/2023



Kehinde Oluwatosin
Senior Executive Planner

11/01/2024

A. Brangan

Aoife Brangan

A/SP

17/01/24

**Declaration of Development & Exempted Development under Section 5 of the
Planning and Development Act 2000 (as amended)**

WHEREAS a question has arisen as to whether a development comprising infilling the lands with soils to facilitate of the re-contouring of lands at Allenwood North, Co. Kildare, with soils are to be sourced from sites where the Economic Operator will process an Article 27 application process with the EPA, and where the soil will be inert from greenfield sites, is or is not development and is or is not exempted development.

AS INDICATED on the plans and particulars received by the Planning Authority on 26/07/2023

AND WHEREAS Michael Bagnall has requested a declaration on the said question from Kildare County Council,

AND WHEREAS Kildare County Council as the Planning Authority, in considering this application for a declaration under Section 5 of the Planning and Development Act 2000 (as amended), had regard to;

- Planning and Development Act 2000 (as amended);
- Planning and Development Regulations 2001 (as amended) and;
- Documentation received with the application;

AND WHEREAS Kildare County Council has concluded that the proposed works comprise development to which the provisions of the following applies:

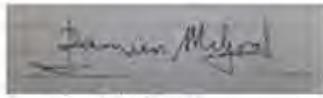
- Sections 2, 3, 4 and 5 of the Planning and Development Act 2000 (as amended);
- Articles 8C of the Planning and Development Regulations 2001 (as amended) and;

AND WHEREAS Kildare County Council, in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Act 2000 (as amended), hereby decides

- (a) The importation soil for the purpose of recontouring land constitutes 'works', and 'development' as defined in Section 2 and Section 3, respectively, of the Planning and Development Act, 2000, as amended.
- (b) The importation of soil to be sourced from sites where the Economic Operator will process an Article 27 application process with the Environmental Protection Agency, and where the soil will be inert from greenfield sites, do comply with the provisions set out within article Article 8C of the Planning and Development Regulations, 2001, and is therefore, comprise exempted development.

NOW THEREFORE conferred on it by section 5(4) of the 2000 Act, hereby decides that the said infilling the lands with soils to facilitate of the re-contouring of lands at Allenwood North, Co. Kildare with soils which are to be sourced from sites where the Economic Operator will process an Article 27 application process with the EPA, where the soil will be inert from greenfield sites, is exempted development.

Please note that any person issued with a declaration under subsection 2(a) of the Planning and Development Act 2000 (as amended) may on payment to the Board of the prescribed fee, refer a declaration to An Bord Pleanála within 4 weeks of the issuing of the decision


A rectangular box containing a handwritten signature in dark ink. The signature appears to read 'Damien McGrath'.

Damien McGrath

Signed: Assistant Planner

Date: 11/01/2024

Appendix 1: Appropriate Assessment Screening

	APPROPRIATE ASSESSMENT SCREENING REPORT AND DETERMINATION
---	--

(A) Project Details	
Planning File Ref	ED1062
Applicant name	Michael Bagnall
Development Location	Allenwood North, Co. Kildare
Site size	1.67ha
Application accompanied by an EIS (Yes/NO)	No
Distance from Natura 2000 site in km	Ca. 5.3km east of Ballynafagh Lake SAC
Description of the project/proposed development – Infilling & re-contouring lands	

(B) Identification of Natura 2000 sites which may be impacted by the proposed development			
			Yes/No If answer is yes, identify list name of Natura 2000 site likely to be impacted.
1	Impacts on sites designated for freshwater habitats or species. <u>Sites to consider:</u> River Barrow and Nore, Rye Water/Carton Valley, Pollardstown Fen, Ballynafagh lake	<i>Is the development within a Special Area of Conservation whose qualifying interests include freshwater habitats and/or species, or in the catchment (upstream or downstream) of same?</i>	No
2	Impacts on sites designated for wetland habitats - bogs, fens, marshes and heath. <u>Sites to consider:</u> River Barrow and Nore, Rye Water/Carton	<i>Is the development within a Special Area of Conservation whose qualifying interests include wetland habitats (bog,</i>	No

	Valley, Pollardstown Fen, Mouds Bog, Ballynafagh Bog, Red Bog, Ballynafagh Lake	<i>marsh, fen or heath), or within 1 km of same?</i>	
3	Impacts on designated terrestrial habitats. <u>Sites to consider:</u> River Barrow and Nore, Rye Water/Carton Valley, Pollardstown Fen, Ballynafagh Lake	<i>Is the development within a Special Area of Conservation whose qualifying interests include woodlands, dunes or grasslands, or within 100m of same?</i>	No
4	Impacts on birds in SPAs <u>Sites to consider:</u> Poulaphouca Reservoir	<i>Is the development within a Special Protection Area, or within 5 km of same?</i>	No

Conclusion:

If the answer to all of the above is **No**, significant impacts can be ruled out for habitats and bird species.

No further assessment in relation to habitats or birds is required.

If the answer is **Yes** refer to the relevant sections of **C**.

(G) SCREENING CONCLUSION STATEMENT		
<i>Selected relevant category for project assessed by ticking box.</i>		
1	AA is not required because the project is directly connected with/necessary to the conservation management of the site	<input checked="" type="checkbox"/>
2	No potential significant affects/AA is not required	<input type="checkbox"/>
3	Significant effects are certain, likely or uncertain. Seek a Natura Impact Statement Reject proposal. (Reject if potentially damaging/inappropriate)	<input type="checkbox"/>
Justify why it falls into relevant category above (based on information in above tables)		
Having regard to nature of the proposed works and the distance from the nearest Natura 2000 site, it is considered there would not be potential for significant effects on the Natura 2000 network.		
Name:	Damien McGrath	
Position:	Assistant Planner	
Date:	30/11/2023	

Appendix 2: Environmental Impact Assessment Screening

ENVIRONMENTAL IMPACT ASSESSMENT SCREENING REPORT		
STAGE 1: PRE-SCREENING		
<i>For use when establishing if the proposal is a 'sub-threshold development' requiring Preliminary Examination</i>		
Planning Register Reference:	ED/1062	
Development Description Summary:	Infill and levelling of land	
Was a Screening Determination carried out under Section 176A-C:	<input type="checkbox"/> Yes, no further action required <input checked="" type="checkbox"/> No, proceed to Part A	
Part A. Is the development a project listed in Schedule 5, Part 1, of the Planning & Development Regs 2001 (as amended)?		
<input type="checkbox"/>	Yes, specify class: <i>[insert class here]</i>	EIA is mandatory No Screening required CS1
X	No	Proceed to Part B
Part B. Does the development comprise a project listed in Schedule 5, Part 2, of the Planning & Development Regulations 2001 (as amended) and does it meet/exceed the thresholds?		
<input type="checkbox"/>	Yes the project is listed in Schedule 5, Part 2 and meets/exceeds the threshold, specify class (including threshold): <i>[Insert class & threshold here]</i>	EIA is mandatory No Screening required CS1
X	No, the development is not a project of a type listed in Schedule 5, Part 2	No Screening required CS2
<input type="checkbox"/>	Yes the project is of a type listed but is <i>sub-threshold</i> : <i>[Insert class & threshold here]</i>	Proceed to Part C
PART C. Has Schedule 7A information/screening report been submitted?		
<input type="checkbox"/>	Yes, Schedule 7A information/screening report has been submitted by the applicant	Screening Determination required
<input type="checkbox"/>	No, Schedule 7A information/screening report has not been submitted by the applicant	Preliminary Examination required Proceed to Stage 2
Name:	Damien McGrath	
Position:	Assistant Planner	
Date:	30/11/2023	

COMHAIRLE CONTAE CHILL DARA

KILDARE COUNTY COUNCIL

Director of Services Order



I, Alan Dunney, Director of Services, am duly authorised and delegated by Chief Executive's Order number: CE48043 to make the following Order in accordance with Section 154 of the Local Government Act, 2001, as amended.

ORDER NO: DO50873

Section: Planning

SUBJECT: ED1062.
Application for a Declaration of Exempted Development under Section 5 of Planning and Development Act 2000 (as amended) for development at Allenwood North, Co. Kildare.

SUBMITTED: File Ref. ED1062 with recommendation from the A/Senior Planner and reports from the Council's Technical Officers.

ORDER: I hereby order the following Kildare County Council, in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Act 2000 (as amended) hereby decides that the proposed development is development and is exempted development.

MADE THIS 18th DAY
OF January YEAR 2024

SIGNED: Alan Dunney

DIRECTOR OF SERVICES

Kildare County Council
Declaration of Exempt Development under Section 5,
of the Planning and Development Act 2000



Incomplete application forms will
be deemed invalid and returned

All responses must be in block
letters

Section 1	Details of Applicants
------------------	------------------------------

1. Name of Applicant(s) A. Surname : Michael..... Forenames: Bagnall
 Phone No: [REDACTED] Fax No: [REDACTED]
2. Address: Allanwood North, County Kildare W91 D2N1

Section 2	Person/Agent acting on behalf of applicant (if applicable)
------------------	---

1. Name of Person/Agent: Surname: Leenheer Forenames: Martijn
 Phone No: 087 7643 923 Fax No:
 2. Address: ESC Environmental Ltd, Tobermania, Ballintogher, County Sligo

Section 3	Company Details (if applicable)
------------------	--

1. Name of Company ...Not Applicable.....
 Phone No..... Fax No.....
 2. Company Reg. No.....
 3. Address.....

Section 4	Details of Site
------------------	------------------------

1. Planning History of Site...No planning history on Kildare County Council site. Site is an agricultural field

2. Location of Proposed Development...Allanwood North, County Kildare ITM 674087,727811

3. Ordnance Survey Sheet No...3381A 3381B 3381C and 3381 D
4. Please state the Applicants interest in the site: Owner

5. Please state the extent of the proposed development: 5 years

6. Under what Section of the Planning and Development 2000 and/or what provision of the Planning and Development Regulations 2001 is exemption sought: The planning regulations (as amended) outline in Article 8C that "Land reclamation works (other than reclamation of wetlands) consisting of recontouring of land, including infilling of soil (but not waste material) within a farm holding, shall be exempted development. .

7. Please give a detailed description of the Proposed Development (*Use separate page if necessary*).....

The proposed development consists of the raising of levels of by 0.7m over an area of c. 1.67.1 ha using inert subsoil and topsoil for the purposes of making the site suitable for the agricultural use at Allenwood North, Allenwood, Naas, Co. Kildare.

Section 5	The following must be submitted for a valid application
------------------	--

(Please Tick)

1.	Site Location Map (1:2500 Rural Areas) (1:1000 Urban Areas)	√
2.	A Site Layout Plan (Scale 1:500) in full compliance with Article 23 of Planning and Development Regulations 2001	√
3.	Drawings of the development (Scale 1:50) in full compliance with Article 23 of Planning and Development Regulations 2001	√
4.	All drawings to differentiate between the original building, all extensions and proposed development	√
5.	Fee of 80 Euro	√

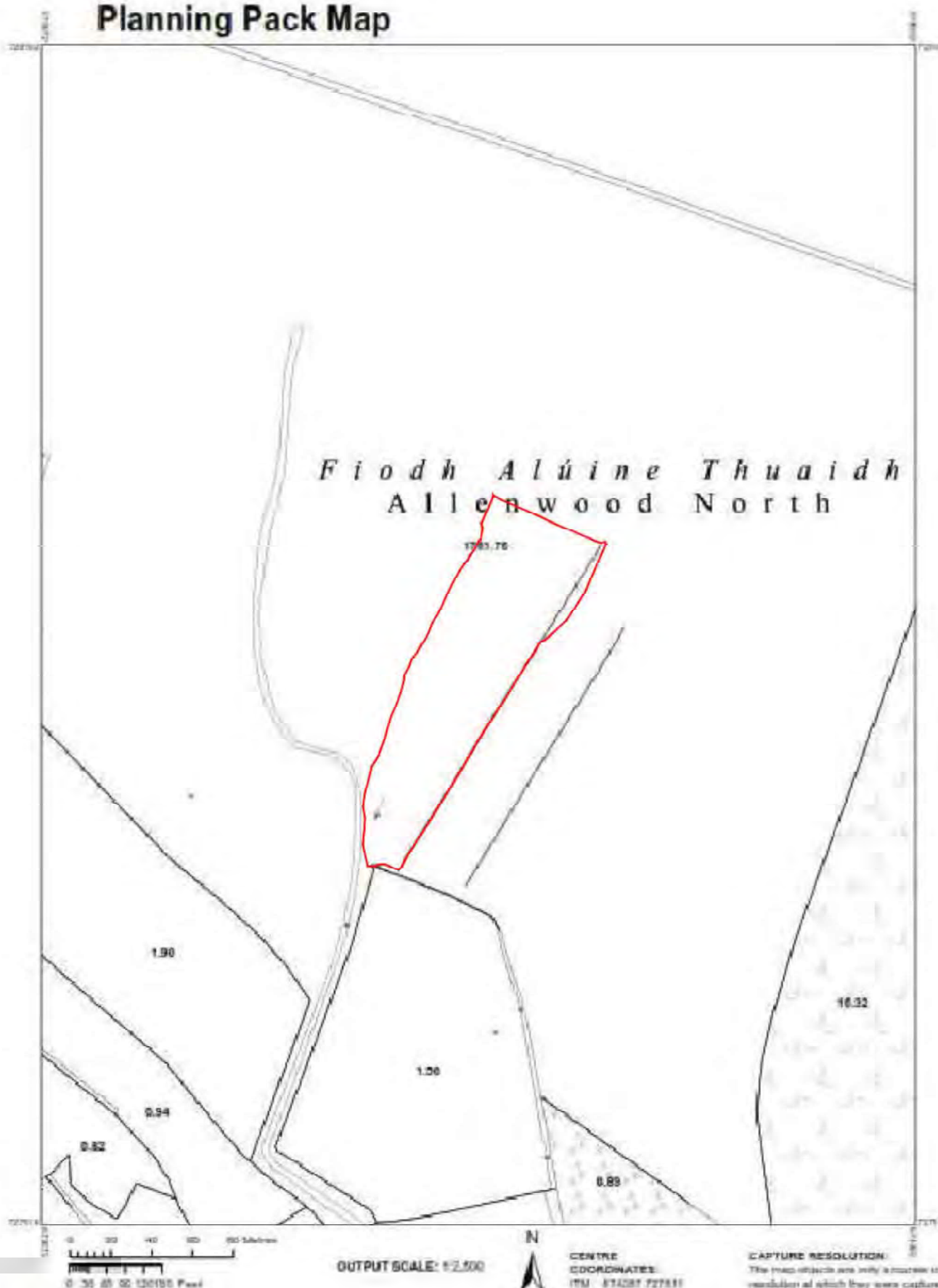
Section 6	Declaration
------------------	--------------------

I, Martijn Leenheer_ certify that all of the above information is correct and I have submitted all the required documents as outlined at Section 6 above.

Signature: _____

Date: _ 19 July 2023

Planning Pack Map



OUTPUT SCALE: 1:2,500



CENTRE
COORDINATES:
ITM 874287 727811

PUBLISHED: 15/07/2023 ORDER NO.: 60146828_1

MAP SERIES:
1:2,500 3081-A
1:2,500 3081-B
1:2,500 3081-C
1:2,500 3081-D

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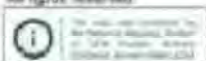
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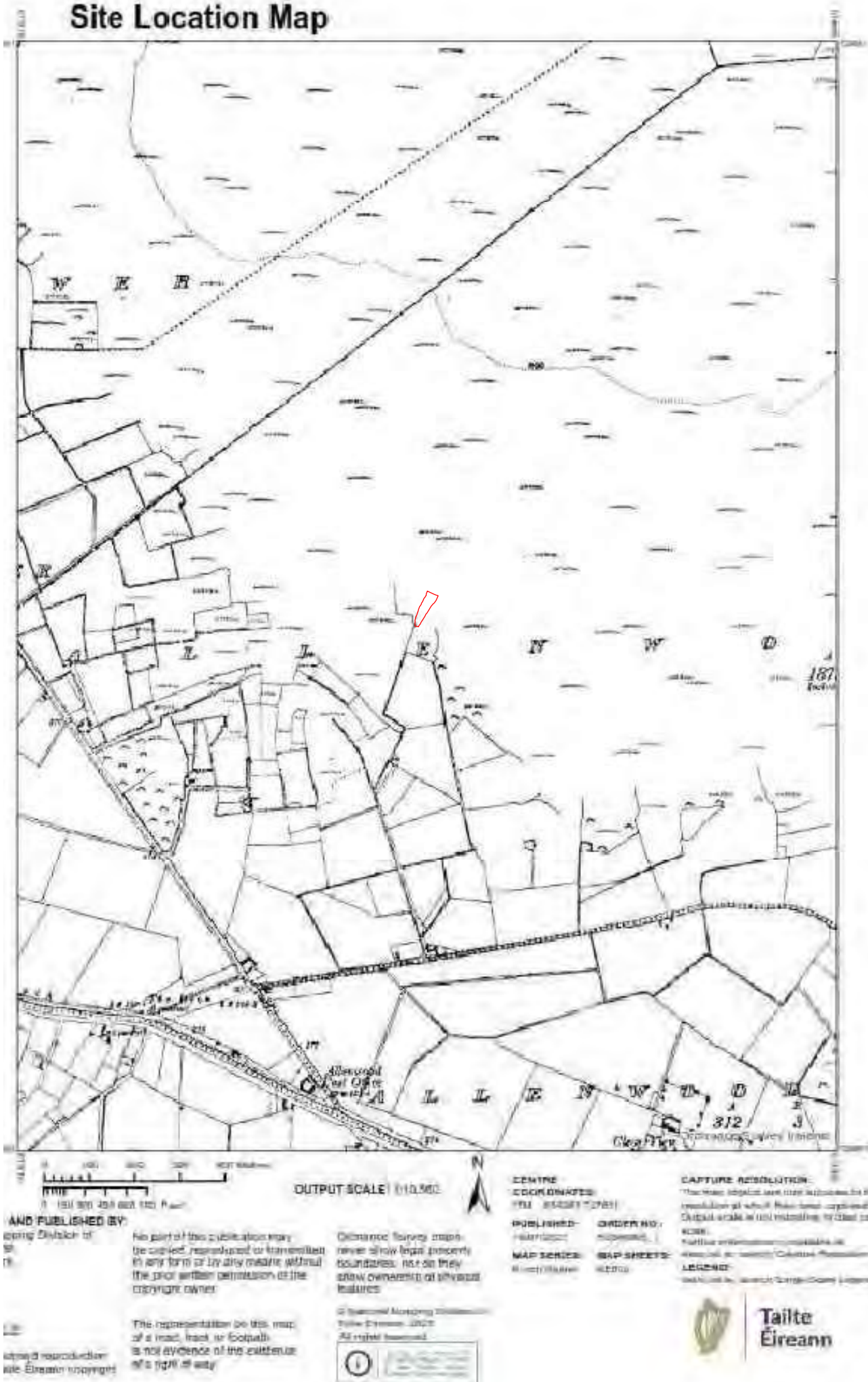
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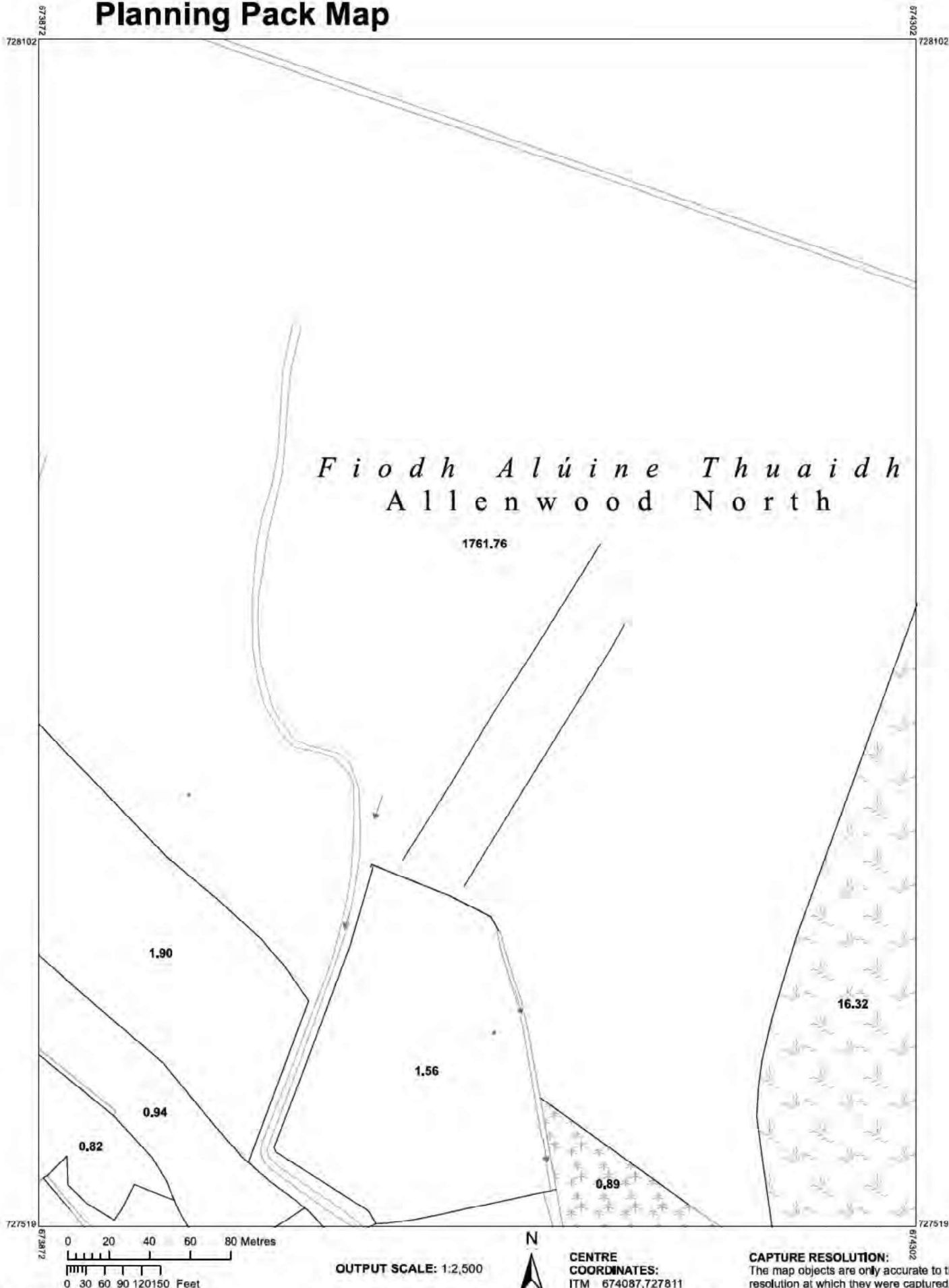


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Site Location Map



Planning Pack Map



OUTPUT SCALE: 1:2,500

CENTRE COORDINATES:
ITM 674087,727811

PUBLISHED: 19/07/2023
ORDER NO.: 50346905_1
MAP SERIES: 1:2,500
MAP SHEETS: 3381-A, 3381-B, 3381-C, 3381-D

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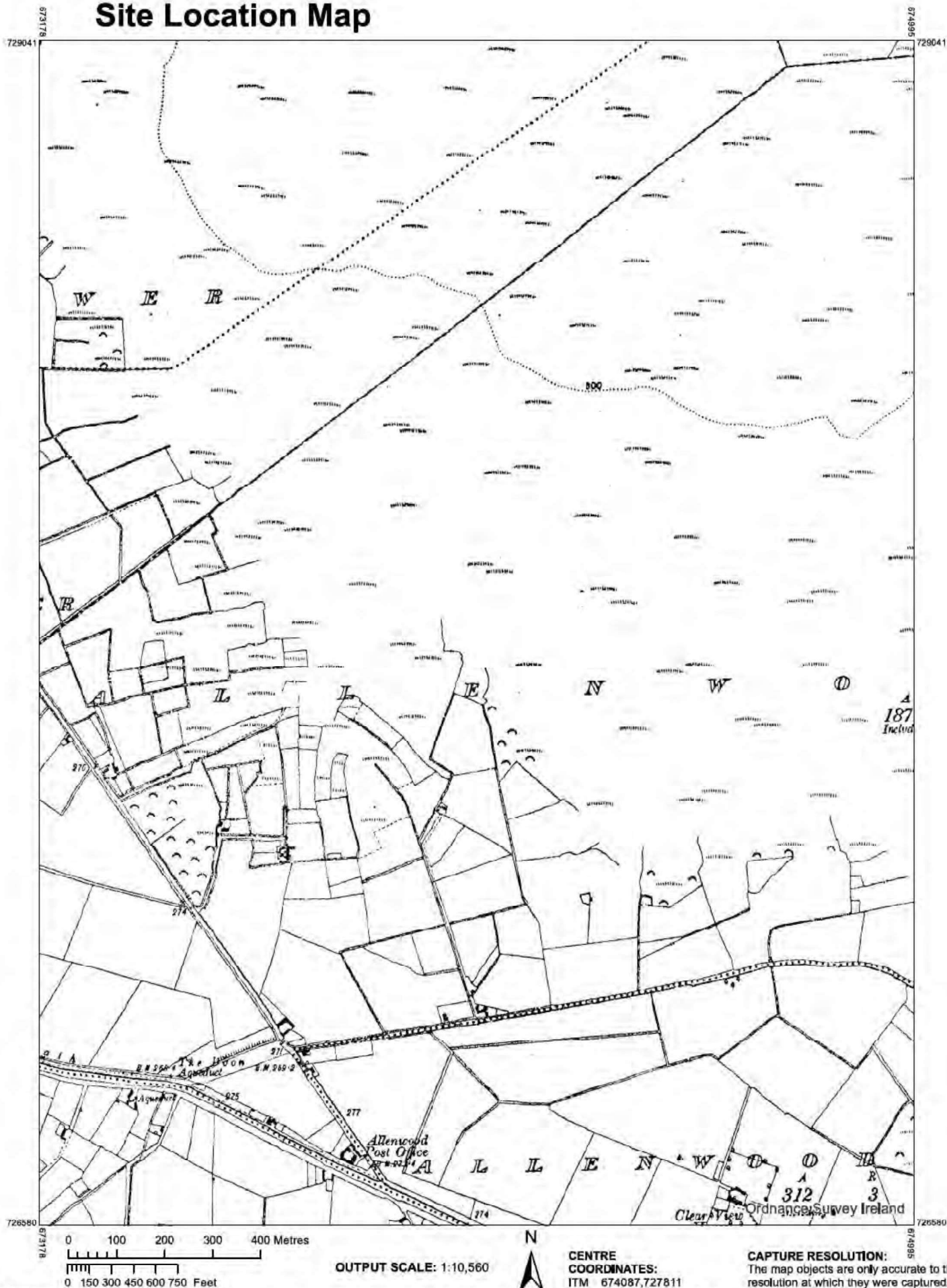


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Site Location Map



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OUTPUT SCALE: 1:10,560



**CENTRE
 COORDINATES:**
 ITM 674087,727811

PUBLISHED: 19/07/2023
MAP SERIES: 6 Inch Raster
ORDER NO.: 50346905_1
MAP SHEETS: KE012

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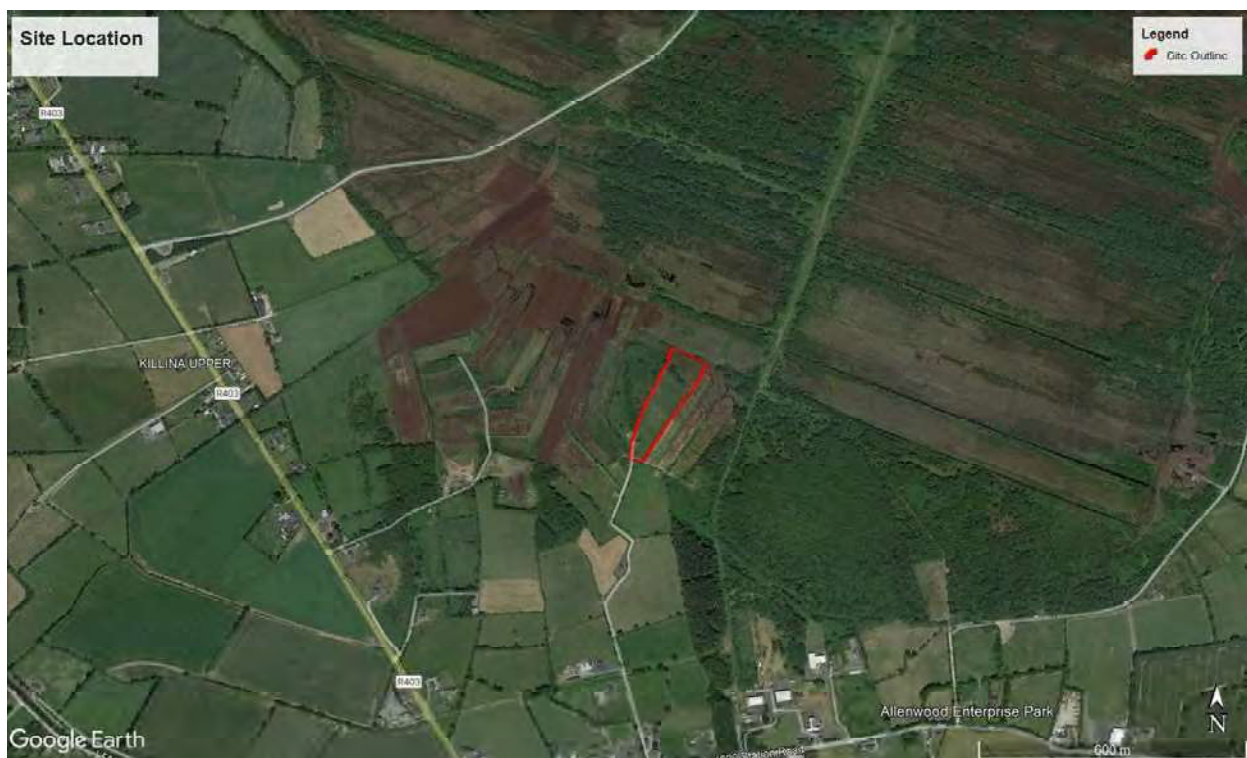
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ESC Environmental Ltd

Appropriate Assessment – Natura Impact Statement Screening

Reference no.: 2315 Appropriate Assessment – Natura Impact Statement Screening



Client Name:	Mr. Michael Bagnall
Site Address:	Allenwood North, Allenwood, Co. Kildare
Project Type:	Appropriate Assessment Screening
Date:	July 2023
Our Ref:	Michael Bagnall- Appropriate Assessment Screening

Contents

1	Introduction	1
1.1	Background.....	1
1.2	The Appropriate Assessment Process	1
2	Regulatory context.....	3
2.1	Relevant legislation.....	3
2.2	Guidance	5
2.3	Stages Involved in the Appropriate Assessment Process	6
3	Screening Assessment	7
3.1	Project and site description	7
3.2	Existing Environment	7
3.2.1	Desk Studies	7
3.2.2	Existing Environment.....	8
3.3	Overview of potential Impacts.....	8
3.4	Determination of the Likely Zone of Influence	8
3.5	Natura 2000 sites identified	9
3.5.1	Natura sites considered.....	9
4	Identification of Likely Significant Effects.....	11
4.1	Potential for Likely Significant Effects.....	11
4.2	Potential for Indirect Impacts.....	11
4.3	Potential for In-Combination Effects	11
5	Screening conclusions	11
	Appendix 1 – Supporting Maps.....	12



1 Introduction

1.1 Background

This report forms an Appropriate Assessment (AA) Screening Report which was prepared for Michael Bagnall in Allenwood, Co. Kildare. The proposed development consists of the raising of levels of by 0.7m over an area of c. 1.671 ha using inert subsoil and topsoil for the purposes of making the site suitable for the agricultural use at Allenwood North, Allenwood, Naas, Co. Kildare. This development is being applied for under a Declaration of Exempt Development under Section 5, of the Planning and Development Act 2000.

The purpose of this Screening Report is to inform the AA process, which is carried out by the competent authority. Appropriate Assessment is an assessment of whether a plan or project, alone and/or in-combination with other plans or projects, may have significant effects on a European site, collectively known as the Natura 2000 network, in view of the site's conservation objectives.

This report provides information to assist the competent authority in undertaking a Screening Assessment of the proposed development and was informed by a desktop study undertaken by competent ecologists/environmental scientists at ESC Environmental Ltd in June 2023 (Peter McCormick B.Sc. (Hons)), and senior reviewed by Senior Consultants and Environmental Scientists Martijn Leenheer and Leo Cosgrove.

1.2 The Appropriate Assessment Process

The AA process is an assessment of the potential for likely significant effects or negative effects of a plan or project, alone and/or in-combination with other plans or projects, on the conservation objectives of a European site(s). The Natura 2000 network is made up of European sites including Special Protection Areas (SPAs), established under the EU Birds Directive (2009/147/EC) (more generally referred to as the 'Birds Directive') and Special Areas of Conservation (SACs), established under the EU Habitats Directive (92/43/EEC) (more generally referred to as the 'Habitats Directive'). The Natura 2000 network helps provide for the protection and long-term survival of Europe's most valuable and threatened species and habitats.

The Screening Stage of the AA process identifies any likely significant effects upon European sites from the proposed development alone or in-combination with other projects or plans. A series of questions are asked during the Screening Stage of the AA process to determine:

- whether a plan or project can be excluded from AA requirements because it is directly connected with or necessary to the management of a European site; and
- whether the project or plan will have a potentially significant effect on a European site, either alone or in-combination with other projects or plans, in view of the site's conservation objectives or if residual uncertainty exists regarding potential impacts.

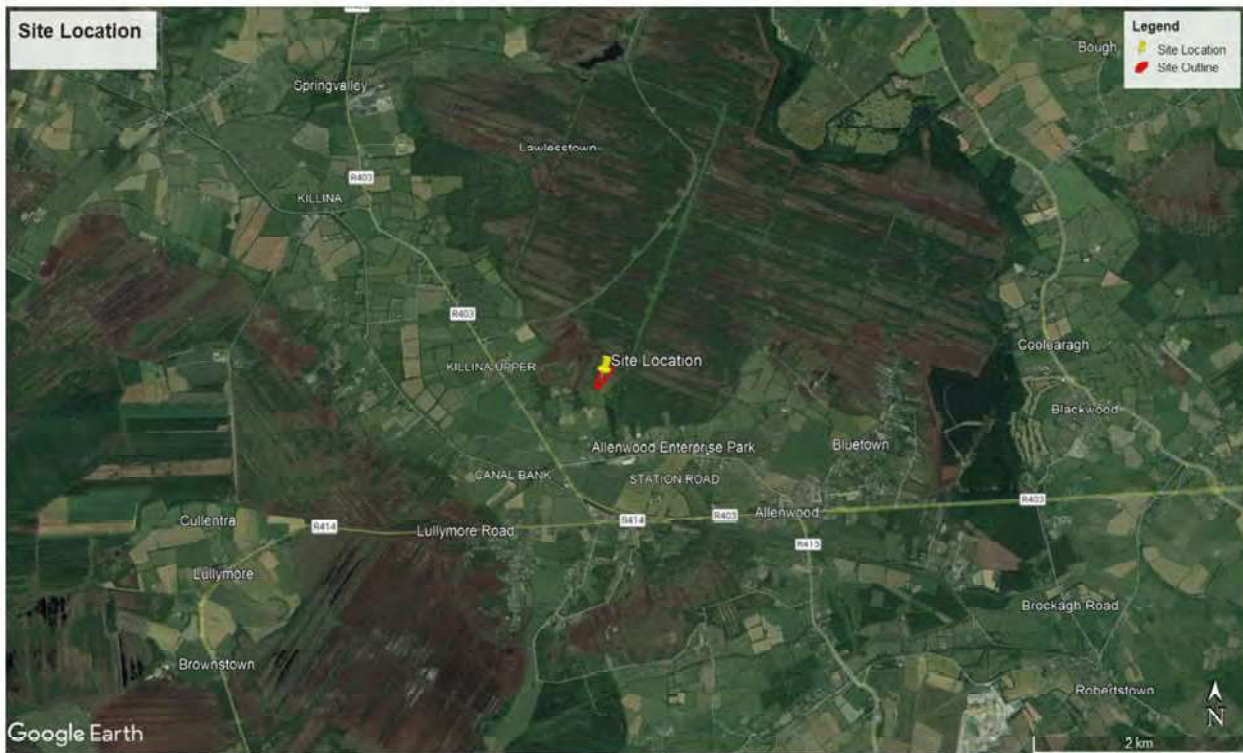


Fig. 1. Location of the Site

2 Regulatory context

2.1 Relevant legalisation

The Birds Directive (Council Directive 2009/147/EC) recognises that certain species of birds should be subject to special conservation measures concerning their habitats. The Directive requires that Member States take measures to classify the most suitable areas as Special Protection Areas (SPAs) for the conservation of bird species listed in Annex 1 of the Directive. SPAs are selected for bird species (listed in Annex I of the Birds Directive), that are regularly occurring populations of migratory bird species and the SPA areas are of international importance for these migratory birds.

The EU Habitats Directive (92/43/EEC) requires that Member States designate and ensure that particular protection is given to sites (Special Areas of Conservation) which are made up of or support particular habitats and species listed in annexes to this Directive.

Articles 6(3) and 6(4) of this Directive also call for the undertaking of an Appropriate Assessment for plans and projects not directly connected with or necessary to the management of, but which are likely to have a significant effect on any European designated sites (i.e. SACs and SPAs).

The Water Framework Directive (WFD) (2000/60/EC), which came into force in December 2000, establishes a framework for community action in the field of water policy. The WFD was transposed into Irish law by the European Communities (Water Policy) Regulations 2003 (S.I. 722 of 2003). The WFD rationalises and updates existing legislation and provides for water management on the basis of River Basin Districts (RBDs). RBDs are essentially administrative areas for coordinated water management and are comprised of multiple river basins (or catchments), with cross-border basins (i.e. those covering the territory of more than one Member State) assigned to an international RBD. The aim of the WFD is to ensure that waters achieve at least good status by 2015 and that status doesn't deteriorate in any waters.

Appropriate Assessment and the Habitats Directive

Directive 92/43/EEC on the Conservation of Natural Habitats and Wild Fauna and Flora – the 'Habitats Directive' - provides legal protection for habitats and species of European importance. Article 2 of the Directive requires the maintenance or restoration of habitats and species of European Community interest, at a favourable conservation status. Articles 3 - 9 provide the legislative means to protect habitats and species of Community interest through the establishment and conservation of an EU-wide network of sites known as Natura 2000. Natura 2000 sites are Special Areas of Conservation (SACs) designated under the Habitats Directive and Special Protection Areas (SPAs) designated under the Conservation of Wild Birds Directive (79/409/EEC).

Articles 6(3) and 6(4) of the Habitats Directive sets out the decision-making tests for plans or projects affecting Natura 2000 sites. Article 6(3) establishes the requirement for Appropriate Assessment:

"Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public."

Article 6(4) deals with the steps that should be taken when it is determined, as a result of appropriate assessment, that a plan/project will adversely affect a European site. Issues dealing with alternative solutions imperative reasons of overriding public interest and compensatory measures need to be addressed in this case.

Article 6(4) states:

"If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member States shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest."

The provision for an AA is transposed into Irish law by Part XAB of the Planning and Development Act 2010 (as amended). Section 177U (4) of the said Acts provides for screening for Appropriate Assessment as follows:

'The competent authority shall determine that an appropriate assessment of [...] a proposed development [...] is required if it cannot be excluded, on the basis of objective information, that the [...] proposed development, individually or in combination with other plans or projects, will have a significant effect on a European site.'

Section 177U (5) provides as follows:

'The competent authority shall determine that an appropriate assessment of a [...] proposed development, [...], is not required if it can be excluded, on the basis of objective information, that the [...] proposed development, individually or in combination with other plans or projects, will have a significant effect on a European site.'

An AA should be based on best scientific knowledge and the competent authority should ensure that expertise such as ecological, geological, and hydrological are utilised, where relevant.

The Court of Justice of the European Union (CJEU) has made a number of rulings in relation to AA, regarding when it is required, its purpose, and the standards it should meet. Consideration has been given to the evolution in interpretation and application of directives and national legislation arising from jurisprudence of the European and Irish courts, in respect of Article 6 of the Habitats Directive.

2.2 Guidance

This report has been carried out using the following guidance (and relevant case law):

- Communication from the Commission on the Precautionary Principle. Office for Official Publications of the European Communities, Luxembourg (European Commission [EC]2000)¹.
- Nature and biodiversity cases: Ruling of the European Court of Justice. Office for Official Publications of the European Communities, Luxembourg (EC, 2006)².
- Marine Natura Impact Statements in Irish Special Areas of Conservation: A working document, National Parks and Wildlife Service, Dublin (NPWS, 2012)³.
- Circular L8/08 – Water Services Investment and Rural Water Programmes – Protection of Natural Heritage and National Monuments. Department of Environment, Heritage and Local Government (DoEHLG, 2008)⁴.
- Managing Natura 2000 Sites – The provisions of Article 6 of the Habitats Directive 92/43/EEC. European Commission (EC, 2018)⁵.
- Interpretation Manual of European Union Habitats. Version EUR 28. European Commission (EC, 2013)⁶.
- Appropriate Assessment of Plans and Projects in Ireland, Guidance for Planning Authorities, Department of the Environment, Heritage and Local Government (DoEHLG, 2010)⁷.
- Guidance document on Article 6(4) of the 'Habitats Directive' 92/43/EEC – Clarification of the concepts of: alternative solutions, imperative reasons of overriding public interest, compensatory measures, overall coherence, opinion of the commission. Office for Official Publications of the European Communities, Luxembourg (EC, 2007)⁸.
- Assessment of Plans and Projects Significantly Affecting Natura 2000 Sites: Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC, Office for Official Publications of the European Communities, Luxembourg (EC, 2001)⁹.

Definitions of conservation status, integrity and significance used in this assessment are defined in accordance with 'Managing Natura 2000 sites: The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC' (EC, 2018):

- The conservation status of a natural habitat is defined as the coherent sum of the site's ecological structure, function and ecological processes, across its whole area, which enables it to sustain the habitats, complex of habitats and/or populations of species for which the site is designated.
- The conservation status of a species is defined as the sum of the influences acting on the species concerned that may affect the long-term distribution and abundance of its population.
- The integrity of a European site is defined as the coherent sum of the site's ecological structure, function, and ecological processes, across its whole area, which enables it to sustain the habitats, complex of habitats and/or populations of species for which the site is designated.
- Significant effect should be determined in relation to the specific features and environmental conditions of the protected site concerned by the plan or project, taking particular account of the site's conservation objectives and ecological characteristics.



2.3 Stages Involved in the Appropriate Assessment Process

There are potentially four stages in the AA process; the result of each stage determines the requirement for assessment under the next.

Stage 1: Screening / Test of Significance

This process identifies the likely significant effects upon a European site from a proposed project or plan. Its purpose is to determine, on the basis of a preliminary assessment and objective criteria, whether a plan or project which is not directly connected with or necessary to the management of the site as a European site, individually or in-combination with other plans or projects is likely to have a significant effect upon the European site, in view of its conservation objectives. A project may be 'screened-in' if there is a possibility or uncertainty of possible effects upon the European site, requiring a Stage Two AA. If there is no evidence to suggest significant effects due to the proposed plan or development the project is 'screened-out' from further assessment.

Stage 2: Appropriate Assessment

Consideration is given if potential impact(s) of a project or plan could cause likely significant effects to the integrity of surrounding European sites, either alone or in-combination with other projects or plans, with respect to the site's structure and function and its conservation objectives. Additionally, where likely significant effects have been identified, an assessment of the potential mitigation to avoid/reduce such impacts is required. A NIS is often produced at this stage to inform the AA which is undertaken by the competent authority. This stage is required where uncertainty of effect arises, or a potential effect has been defined which requires further procedures/mitigation to remove uncertainty of a defined impact.

Stage 3: Assessment of Alternatives

This stage of the potential process arises where adverse effects on the integrity of a European site cannot be excluded and examines alternative ways of achieving the objectives of the project or plan that avoid adverse impacts on the integrity of the European site. However, in circumstances where there will not be any adverse effects on any European site, the developer places no reliance upon this third stage of the process in the context of this application for planning permission for the proposed development.

Stage 4: Assessment Where Adverse Effects Remain

This is the derogation process of Article 6(4), which examines whether there are imperative reasons of overriding public interest [IROPI] for allowing a project to proceed where adverse effects on the integrity of a European site have been predicted. Compensatory measures must be proposed and assessed as part of this stage and the EU Commission must be informed of the compensatory measures. Again, the developer places no reliance upon this stage of the process in the context of the application for planning permission for the proposed development.

3 Screening Assessment

3.1 Project and site description

The Appropriate Assessment Screening is for the improvement of agricultural land being applied for under a Declaration of Exempt Development under Section 5 of the Planning and Development Act 2000. The proposed development consists of the raising of levels of by 0.7m over an area of c. 1.671 ha using inert subsoil and topsoil for the purposes of making the site suitable for the agricultural use at Allenwood North, Allenwood, Naas, Co. Kildare.

The site is situated on flat land to the northwest of Allenwood. The site is within the Barrow (Catchment ID 14) Water Framework Directive catchment area and in the Slate_SC_010 Subcatchment. The site is situated within the Kildare groundwater body (European Code: IE_SE_G_077), which has a groundwater status of "Good" and is considered "Not At Risk" in the Water Framework Directive risk categorisation. The nearest watercourse is the Killinagh Upper stream (EPA code: 14K17) located c. 250 m to the southwest. The Killinagh Upper stream flows in a south westerly direction towards Rathangan and Monasterevin. The groundwater flow from the site is in a south westerly direction downgradient towards the nearby stream.

3.2 Existing Environment

3.2.1 Desk Studies

Information on the site and the area of the proposed development was studied prior to the completion of this statement. The following data sources were accessed in order to complete a thorough examination of potential impacts:

- National Parks and Wildlife Service - aerial photographs and maps of designated sites, information on habitats and species within these sites and information on protected plant or animal species; conservation objectives, site synopses and standard data forms for relevant designated sites;
- Environmental Protection Agency (EPA)- Information pertaining to water quality, geology and licensed facilities within the area;
- Ordnance Survey of Ireland (GeoHive) - access to spatial mapping data and metadata, including historical layers.
- National Biodiversity Data Centre (NBDC) – Information pertaining to protected plant and animal species within the study area;
- Kildare County Council – Information on planning and planning history in the area, landscape characterisation;
- Water Matters – Catchment based information;
- Environmental Services Consultancy – Plans and information pertaining to the development.
- HeritageMaps.ie – general background information relating to the study area
- GSI.ie- Information on water sources, geology, and mapping



3.2.2 Existing Environment

The site is located at Allenwood North, Allenwood, Co. Kildare, at Grid Ref (ITM): 674073, 727783. The site is currently a greenfield zone which is a habitat of Wet Grassland (GS4) according to "A Guide to Habitats in Ireland" by Fossitt (2000).

The site is on the boundary of Nodular & muddy limestone & shale from the Boston Hill Formation and Massive unbedded lime-mudstone from the Waulsortian Limestones bedrock formations. The groundwater vulnerability is classed as Low while it is also classed as a Locally Important aquifer in which the bedrock is moderately productive only in Local Zones. The soil is classed as Cutaway/cutover peat in the Basin Peat and Blanket Peat soil group, with a subsoil of cutover raised peat.

3.3 Overview of potential Impacts

The proposed development site is not located within or directly adjacent to any designated European site. The Appropriate Assessment is for the importing of soil to raise the ground and improve the site for agricultural use. There is very little potential for direct impact on any European sites as a result of the proposed development as the nearby streams and drains have no hydrogeological links to any Natura 2000 sites within 15km.

The site does not have many potential emissions or indirect impacts with the potential to cause likely significant effects. The significance of these impacts depends on the scale of the impact as well as the ecological condition and the sensitivities of the qualifying interests. Due to the nature of the development, there is not much scope for potential impacts on nearby Natura 2000 sites.

3.4 Determination of the Likely Zone of Influence

Guidance in AA of plans and projects in Ireland notes that a distance of 15km is recommended for the identification of relevant European sites in the case of plans. For some projects the distance could be much less than 15km, and in some cases less than 100m, but this must be evaluated on a case-by-case basis with reference to the nature, size and location of the project, and the sensitivities of the ecological receptors, and the potential for in-combination effects.

Using the source-receptor-pathway model an examination of the potential effects of the proposed development was undertaken (alone and/or in-combination) to identify what European sites, and which of their qualifying interests or special conservation interest species were potentially at risk. This was required to determine the Zone of Influence (Zoi) for the proposed development.

It is vital that an assessment of potential source-pathway-receptor links is undertaken to assess potential impact links between the receptor (European sites) and source (proposed development) to establish the risk of any likely significant effects. Additional designated sites including proposed Natural Heritage Areas (pNHA's), Natural Heritage Areas (NHA's) and RAMSAR sites were also reviewed, as although they do not form part of the AA, they often provide important supporting functions to European sites.

With regards potential habitat degradation effects associated with the release of sediment and other pollutants to surface water, the Zoi of the proposed development is considered to include receiving waterbodies adjacent to or downstream of the site. The distance downstream is associated with the current biological condition of the accepting waterbody and its capacity to accept and assimilate sediment and other pollutants.



3.5 Natura 2000 sites identified

In compliance with the Departmental Guidance, this screening assessment includes any Natura 2000 sites within or adjacent to the plan area, any sites within 15 km of the area (see Appendix 1) and depending on the likely impacts of the plan and the sensitivities of the receptors, could be further than 15 km away. Due to the size of the site the Natura sites identified within a 15 km range of the site are listed in Table 1 with reference to full spatial illustration available in Appendix 1. Sites were evaluated for the potential of impacts arising, as an individual development or in combination with other plans or projects.

Table 1. List of Special Areas of Conservation within 15km of the site

Special Area of Conservation (SAC)	Evaluation	Potential Impact
Ballynafagh Lake SAC IE0001387 (Proximity: 5.3 km SE)	No hydrological/geographical pathways or connections	None
Ballynafagh Bog SAC IE0000931 (Proximity: 6.39 km E)	No hydrological/geographical pathways or connections	None
The Long Derries, Edenderry SAC IE0000925 (Proximity: 7.01 km NW)	No hydrological/geographical pathways or connections	None
Mouds Bog SAC IE 0000396 (Proximity: 8.45 km S)	No hydrological/geographical pathways or connections	None
Pollardstown Fen SAC IE0000396 (Proximity: 10.94 km S)	No hydrological/geographical pathways or connections	None

There are five SACs within the 15km range of the site. All have no hydrological/geographical pathways or connections as the nearby watercourse flows in a southwesterly direction, away from any SACs within 15 km and are therefore beyond the Zone of Influence. Thus, there is no potential for likely significant effects on these sites as a result of the proposed development as there is no impact pathway.

3.5.1 Natura sites considered

Natura sites identified and considered in this screening assessment are presented in Table 2.

Table 2. List of Natura sites considered for appropriate assessment screening, including distance to the proposed site and respective site qualifying interests.

Site name/code	Dist. to site (km)	Description of Potential Impacts	Site qualifying interests
Ballynafagh Lake SAC IE0001387	5.3 km SE	None, due to size and scale of the site	<p>Annex I Habitats</p> <p>Transition mires and quaking bogs (4425) Alkaline fens (7230)</p> <p>Annex II Species</p> <p>Teal (<i>Anas crecca</i>) Mallard (<i>Anas platyrhynchos</i>) Whooper Swan (<i>Cygnus cygnus</i>) Marsh Fritillary (<i>Euphydryas aurinia</i>) Curlew (<i>Numenius arquata</i>) Lapwing (<i>Vanellus vanellus</i>) Vertigo moulinsiana</p>



Ballynafagh Bog SAC IE0000931	6.39 km E	None, due to size and scale of the site	<p><u>Annex I Habitats</u></p> <p>Active raised bogs (7110) Degraded raised bogs still capable of natural regeneration (7120) Depressions on peat substrates of the Rhynchosporion (7150)</p> <p><u>Annex II Species</u></p> <p>Merlin (<i>Falco columbarius</i>) Snipe (<i>Gallinago gallinago</i>) Curlew (<i>Numenius arquata</i>)</p>
The Long Derries, Edenderry SAC IE0000925	7.01 km NW	None, due to size and scale of the site	<p><u>Annex I Habitats</u></p> <p>Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (*important orchid sites) (4249)</p> <p><u>Annex II Species</u></p> <p>Nightjar (<i>Caprimulgus europaeus</i>)</p>
Mouds Bog SAC IE 0000396	8.45 km S	None, due to size and scale of the site	<p><u>Annex I Habitats</u></p> <p>Active raised bogs (7110) Degraded raised bogs still capable of natural regeneration (7120) Depressions on peat substrates of the Rhynchosporion (7150)</p>
Pollardstown Fen SAC IE0000396	10.94 km S	None, due to size and scale of the site	<p><u>Annex I Habitats</u></p> <p>Active raised bogs (7110) Degraded raised bogs still capable of natural regeneration (7120) Alkaline Fens (7230)</p> <p><u>Annex II Species</u></p> <p>Sedge Warbler (<i>Acrocephalus schoenobaenus</i>) Teal (<i>Anas crecca</i>) Mallard (<i>Anas platyrhynchos</i>) Coot (<i>Fulica atra</i>) Snipe (<i>Gallinago gallinago</i>) Grasshopper Warbler (<i>Locustella naevia</i>) Whinchat (<i>Saxicola rubetra</i>) <i>Vertigo angustior</i> <i>Vertigo geyeri</i> <i>Vertigo moulinsiana</i></p>

4 Identification of Likely Significant Effects

4.1 *Potential for Likely Significant Effects*

There are no direct hydrological/geographical pathways or connections for all Natura 2000 sites within the 15km radius of the ZOI. As the scale and nature of the site is small, there is limited potential for significant effects. Due to the nature of the site, the distance and location of the identified European Sites from the site there are no likely significant impacts on any European site.

4.2 *Potential for Indirect Impacts*

Due to the nature of the site, and the distance to the identified European sites there is no significant indirect impact on any European site identified.

4.3 *Potential for In-Combination Effects*

The characteristics of existing, proposed, or other approved plans or projects, which may result in in-combination effects with the proposed development and have likely significant effects on European site(s), were assessed. As there are no emissions that can have any impact on any European Site, there is no significant potential for in-combination effects.

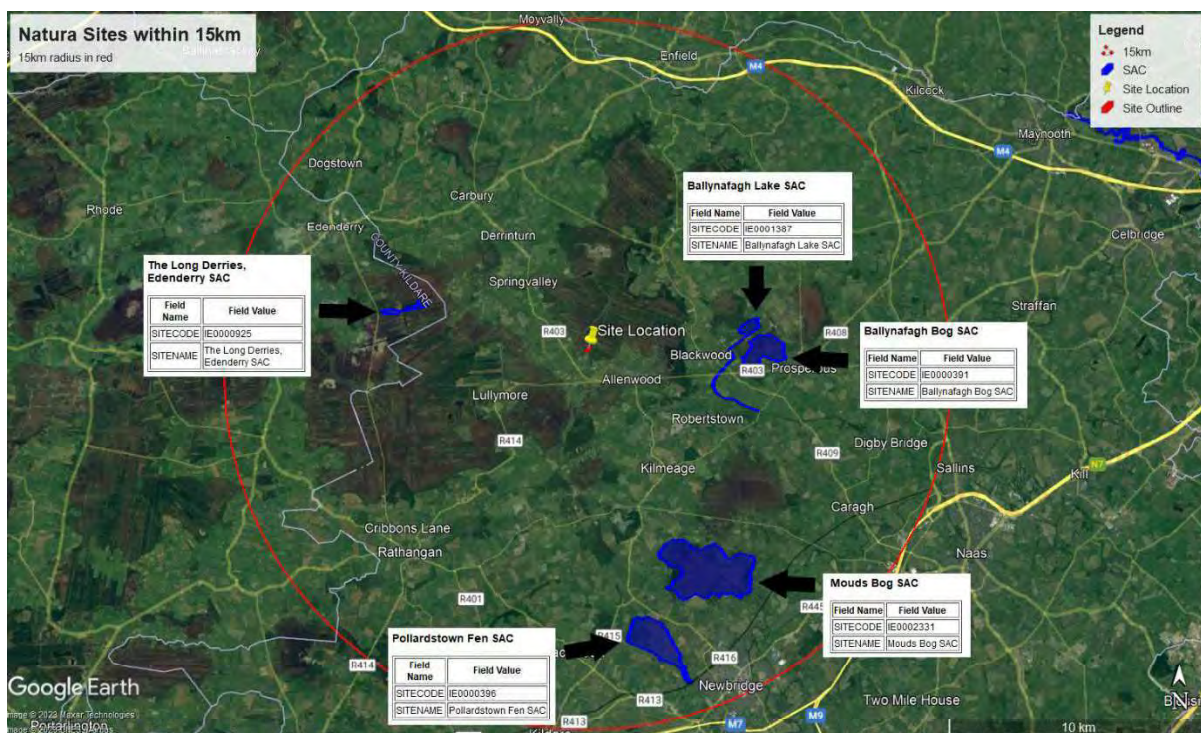
5 Screening conclusions

It is not likely that there would be any significant impacts either directly or indirectly on the identified Natura sites with respect to the activities carried out on site.

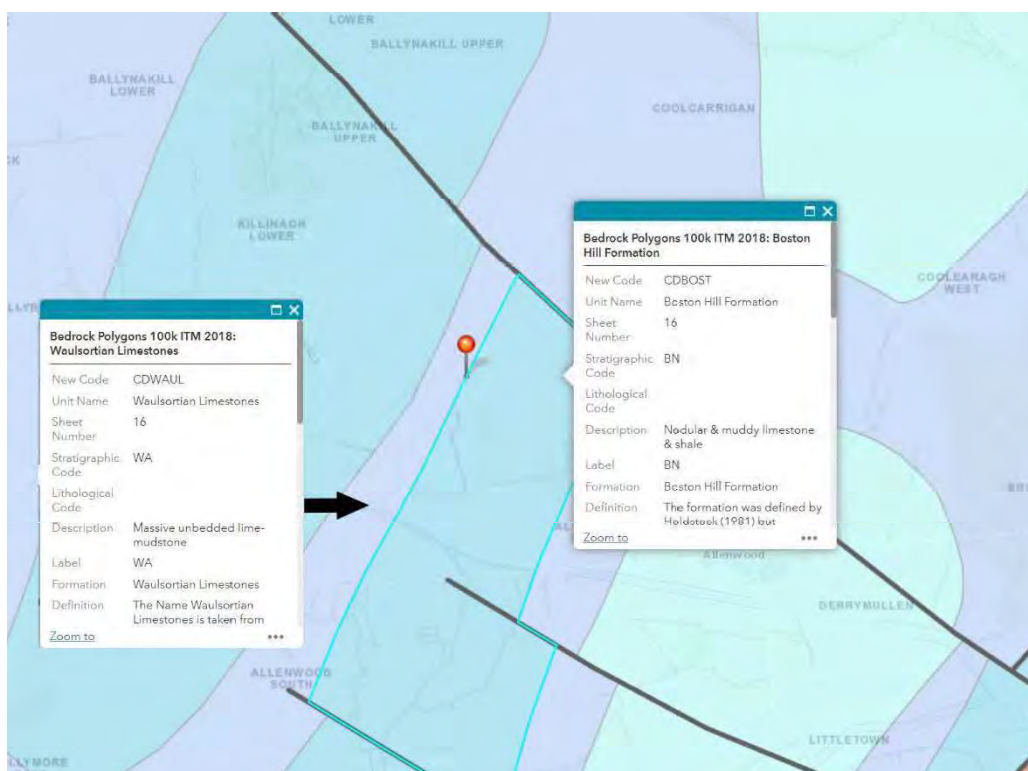
The location, scale and nature of the works is such that it will not directly or indirectly impact on any of the habitats or species of the Natura sites considered, nor will it contravene their conservation objectives, plans or targets. The development location consists of non-annexed habitat. The proposed development does not require water abstraction or direct discharge to surface water, land or air. No changes to surface water quality (microbiologically, chemically, physically or quantitatively) are anticipated given that there are no direct discharges or abstraction from surface water.



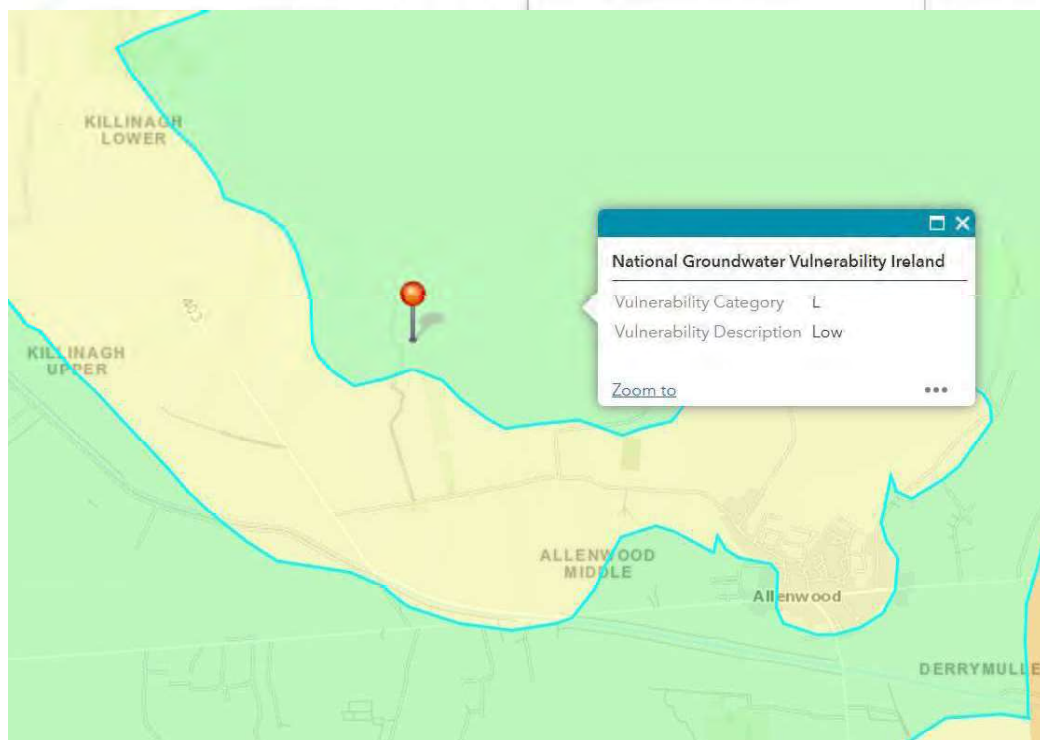
Appendix 1 – Supporting Maps



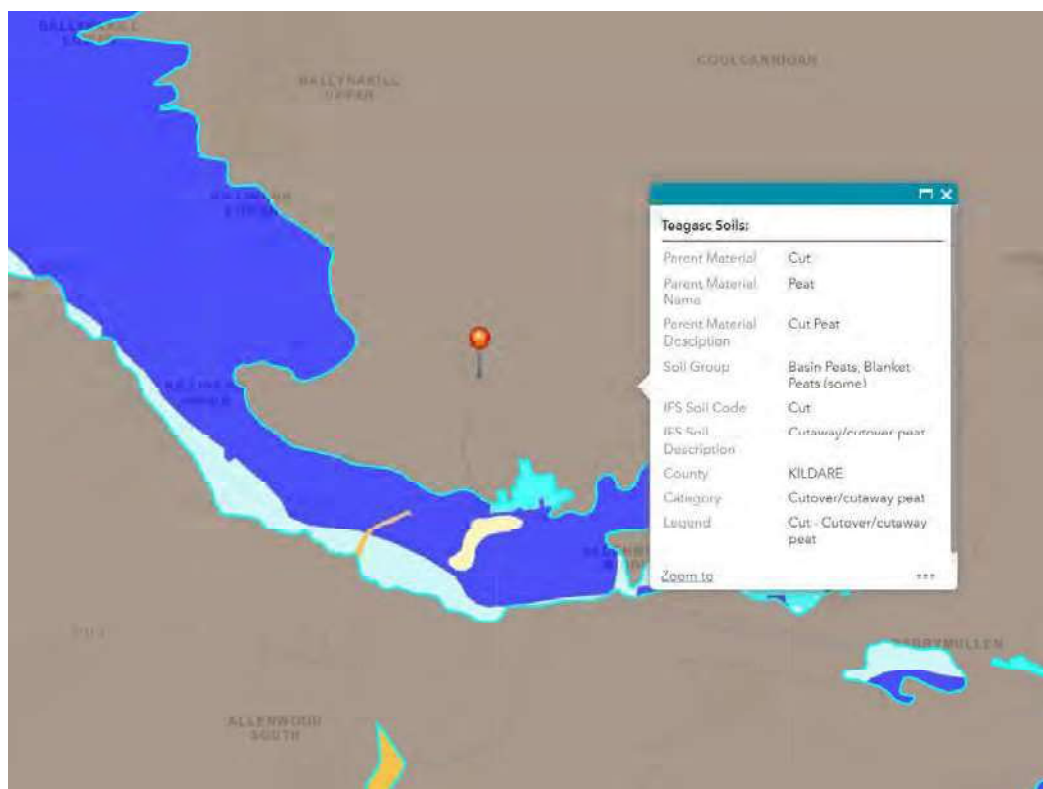
SACs and SPA relative to the site location
15km radius in red



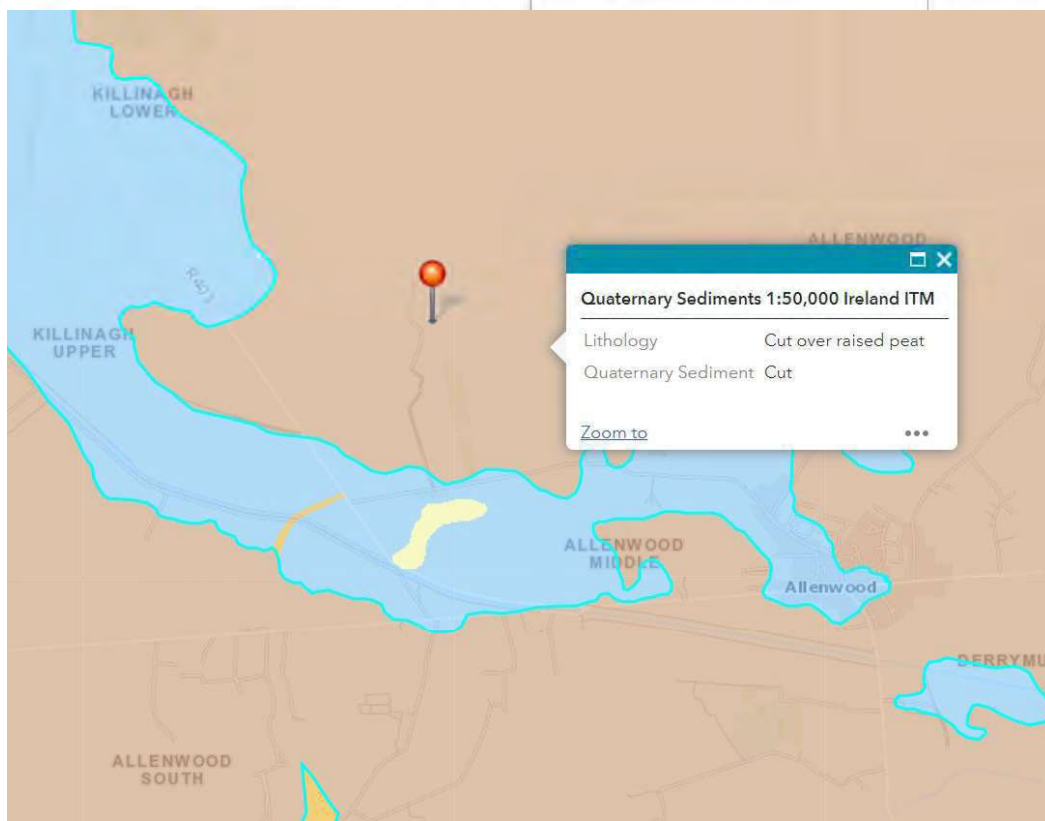
Bedrock map



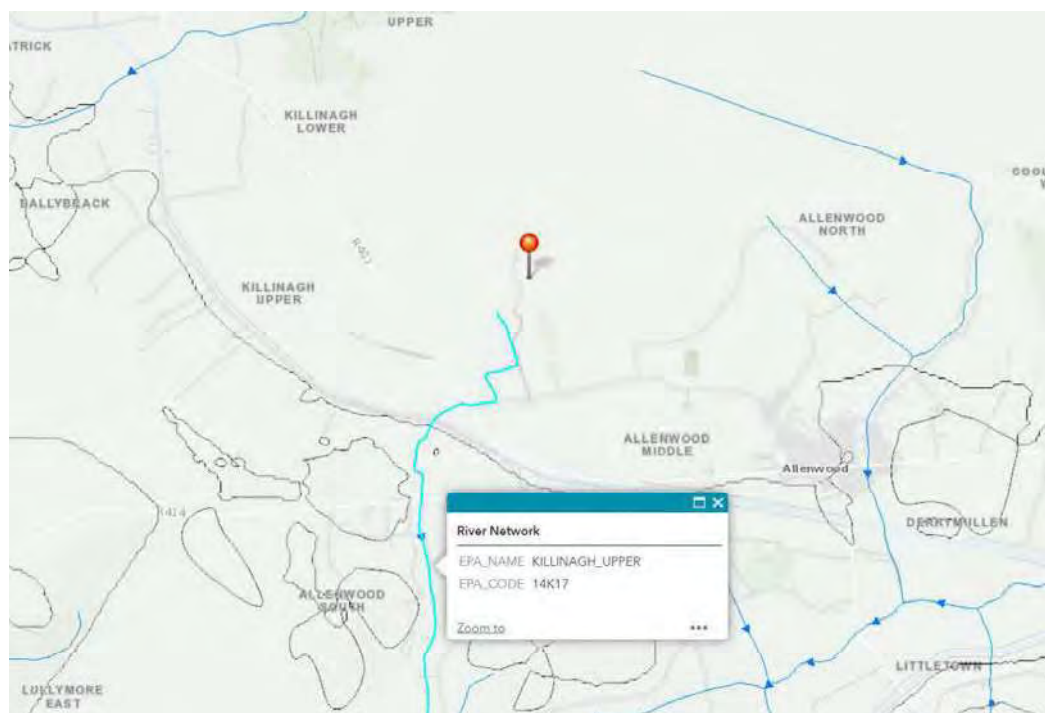
Groundwater Vulnerability



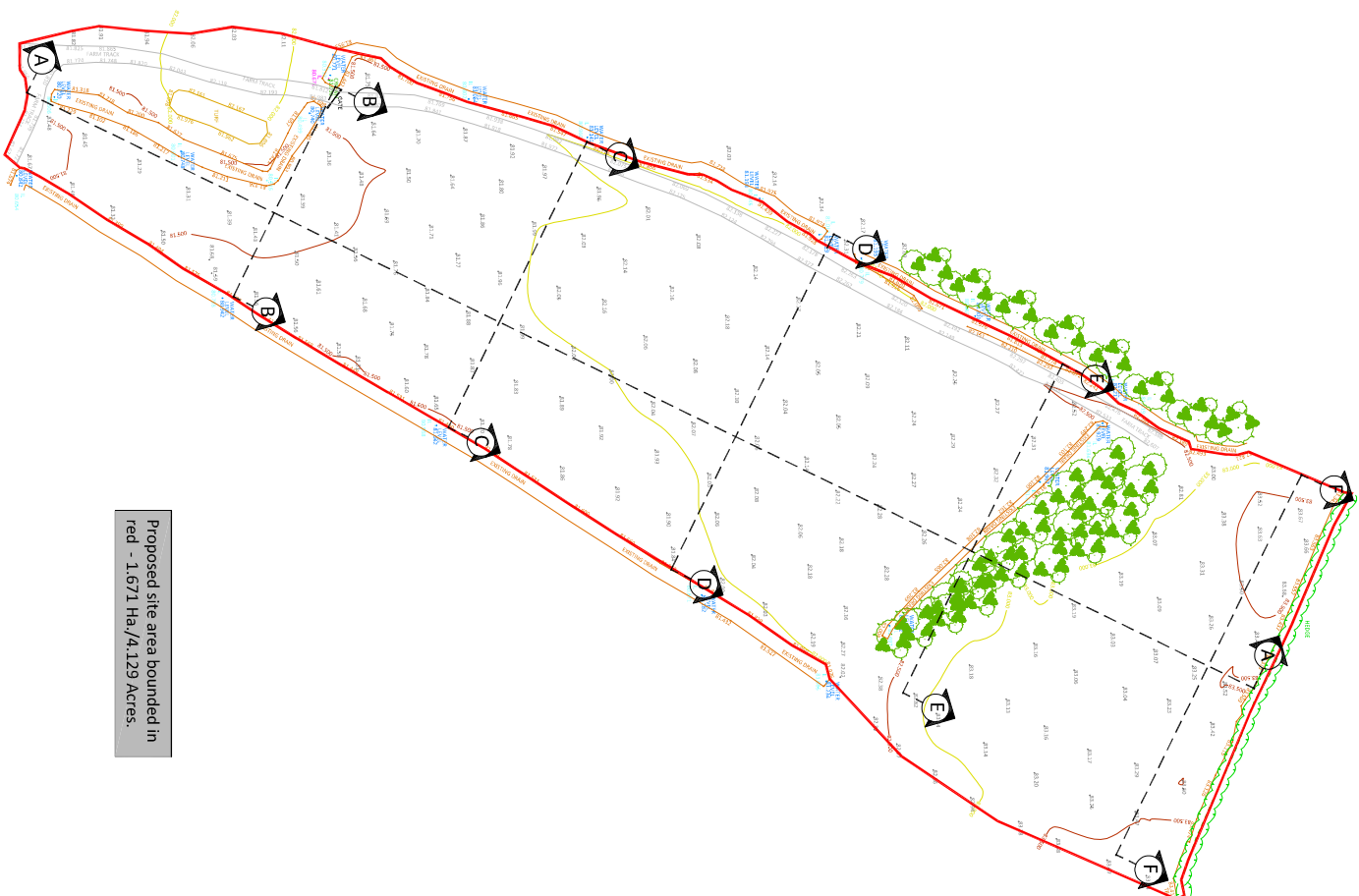
Soil map



Sub soil map



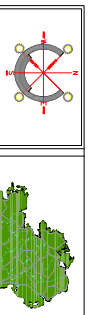
Surface water map




SURVEY LEGEND

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Drainage notes:
Significant care has been exercised with all reasonable steps taken in surveying & identifying drainage features. All surface and foul water layouts/drainage levels must be verified with a GPR Survey or Irish Water maps where available. No liability shall attach to the surveyor.



Datum	OSI
Grid System	ITM
Orthance Survey map ref.	N/A



Site location

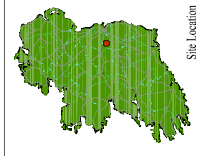
J Weir Land Surveying Ltd.
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[illegible]

Project		Proposed development at Allenwood, Co. Kildare.	
Client	Mr. Michael Bagnall	Survey Date	10-05-23
Drawing No.	2306-480-01	Sheet No.	NA
Scale	1:500 at A1	Drawn by	CR
		Issue Date	14-06-23

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Rev.	Date	Description
Drawing Title		
Proposed Site Layout and Contours		

Project

Proposed development at Allenwood. Co. Kildare.

Client	Mr. Michael Bagnall		Survey Date	10-05-23
	Drawing No	2306-480-02	Drawing Date	17-05-23
	Scale:	1:500 at A1	Drawn by	CR
			Issue Date	14-06-23

This drawing is copyright and is the property of J. Weir Land Surveying Ltd.
The recording of all numerical data collected on this data must be accompanied by a written statement.

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Proposed site area bounded in red - 1.671 Ha./4.129 Acres.

SURVEY LEGEND

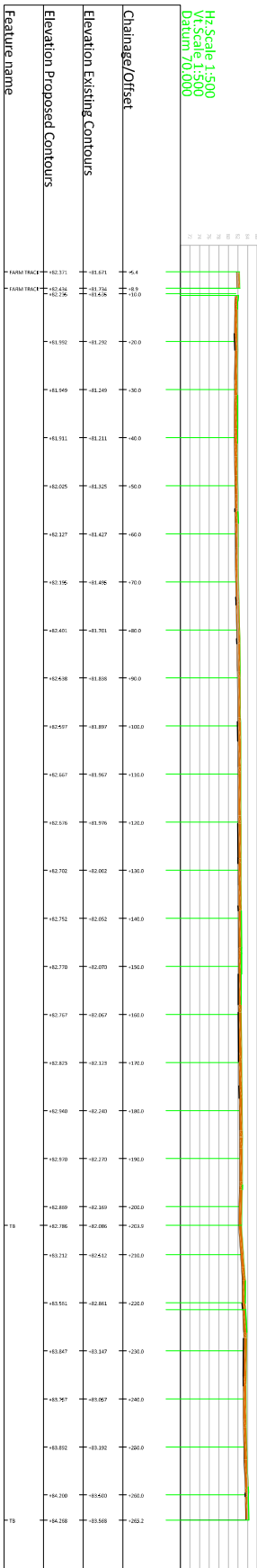
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Drainage notes: Significant care has been exercised with all reasonable steps taken in surveying & identifying drainage features. All surface and foul water (above/drainage levels must be verified with a GPR Survey or Irish Water maps where available. No liability shall attach to the surveyor.

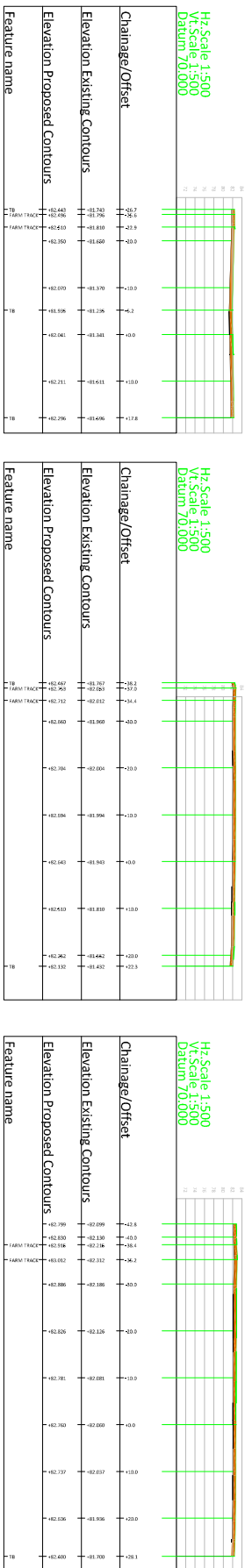
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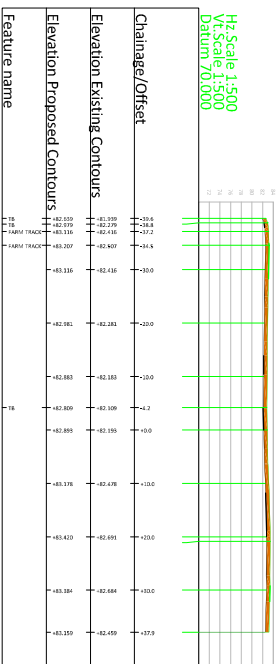
Topographic surveys ● Measure/building surveys Setting out ● Digital ground modelling ● As-built surveys Volumetric reports ● Legal Mapping ● Automated facilities			
Rev.	Date	Description	
Drawing title	Cross Sections A-A to F-F		
Project			
Proposed development at, Allenwood, Co. Kildare.			
Client		Survey Date	
M. Michael Bagnall		10-05-20	
Drawing No.	Sheet No.	Drawing Date	
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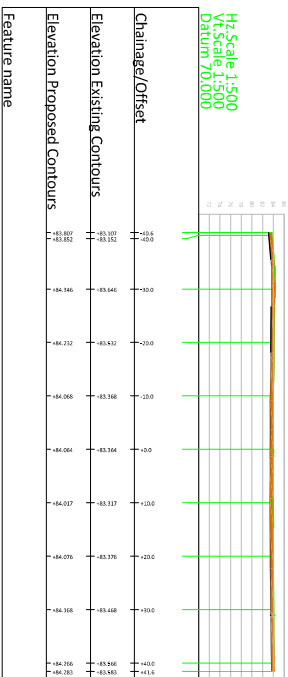
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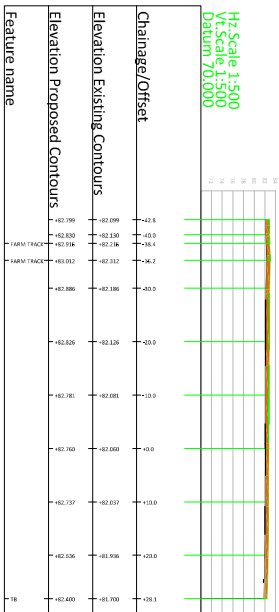
SECTION B-B:



SECTION E-E:



SECTION F-F:



SECTION D-D: