



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Registered Post

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9 Beresford Terrace
Arklow
Co. Wicklow
Y14 PY74

12th March 2024

Section 5 referral Reference R24-14 – Jennifer Huang

1. Is the construction of a roadway on the land in question development and if so is it exempted development? 2. Is putting a farm gate at the land entrance development and if so is it exempted development? 3. Is camping in campervan development and if so is it exempted development? 4. Is tree management development and if so is it exempted development?

A Chara,

I refer to your application received on 15th February 2024 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

The Planning Authority has considered the matter and I attach herewith the Council's findings in this matter.

Where a declaration is issued by the Planning Authority, any person issued with a declaration, may on payment to an Bord Pleanála of the required fee, refer a declaration for review by An Bord Pleanála within 4 weeks of the date of the issuing of the declaration. Details on making such appeal are available on the Board's website at www.pleanala.ie

Mise, le meas

Anne O'Gorman
Staff Officer
Planning Department
Economic Development Directorate

An Roinn Pleanála
An Stiúirthóireacht Forbairt Gheilleagrach

Áras Contae an Chláir, Bóthar Nua, Inis, Co. an Chláir, V95 DXP2

Planning Department
Economic Development Directorate

Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2



CLARE COUNTY COUNCIL

SECTION 5 OF THE PLANNING AND DEVELOPMENT ACT 2000 AS AMENDED

DECLARATION ON DEVELOPMENT AND/OR EXEMPTED DEVELOPMENT

Chief Executive's Order No: 83266

Reference Number: R24-14

Date Referral Received: 15th February 2024

Name of Applicant: Jennifer Huang

Location of works in question: Muckanagh, Newmarket-on-Fergus, Co. Clare

Section 5 referral Reference R24-14 – Jennifer Huang

1. Is the construction of a roadway on the land in question development and if so is it exempted development? 2. Is putting a farm gate at the land entrance development and if so is it exempted development? 3. Is camping in campervan development and if so is it exempted development? 4. Is tree management development and if so is it exempted development?

AND WHEREAS Clare County Council, in considering this referral, had regard in particular to –

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended;
- (b) Articles 6, 8 and 9 of the Planning and Development Regulations 2001, as amended;
- (c) Schedule 2, Part 1, Classes 9 and 13 of the Planning and Development Regulations 2001 (as amended);
- (d) Schedule 2, Part 3, Class 1 of the Planning and Development Regulations 2001 (as amended);
- (e) The works as indicated in submitted documents from the referrer;
- (f) The inspection of the site by the Planning Authority.

AND WHEREAS Clare County Council has concluded:

- (a) The construction of a roadway into the land, putting a farm gate at the land and camping on the land in a campervan constitutes "works" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended;
- (b) The said works constitute "development" which comes within the scope of section 3(1) of the Planning and Development Act 2000, as amended;
- (c) The said construction of roadway into the land is development which is not exempted development having regard to:
 - a. The meanings of descriptions of the Classes of Development provided for in Schedule 2 of the Planning and Development Regulations, 2001 (as amended).

- b. The limitations of Article 8G of the Planning and Development Regulations, 2001 (as amended) which applies only to developments which are licensed or approved under Section 6 of the Forestry Act 2014.
 - c. Article 9(1)(a)(viii) of the Planning and Development Regulations, 2001 (as amended) because a section of the roadway has already been constructed and further roadway construction would therefore constitute an extension of an unauthorised structure.
- (d) Putting a farm gate at entrance to the land is development which is exempted development having regard to Schedule 2, Part 1, Class 9 of the Planning and Development Regulations 2001 (as amended).
- (e) Camping on the land in a campervan for durations not exceeding 10 days in length is development which is exempted development having regard to Schedule 2, Part 3, Class 1 of the Planning and Development Act, 2000 (as amended).
- (f) The said tree management on the land does not constitute 'works' as defined in Section 2(1) of the Planning and Development Act, 2000 (as amended) and is not therefore, 'development' for the purposes of the Act.

ORDER: Whereas by Chief Executive's Order No. HR 152 dated 9th April 2021, Pat Dowling, Chief Executive for Clare County Council, did, pursuant to the powers conferred on him by Section 154 of the Local Government Act 2001, delegate to Gareth Ruane, Senior Executive Planner, the powers, functions and duties as set out herein,

NOW THEREFORE pursuant to the delegation of the said powers, functions and duties and under Section 5(2)(a) of the Planning & Development Act 2000 (as amended) and having considered the various submissions and reports in connection with the referral described above, I, Gareth Ruane, Senior Executive Planner, hereby declares that the following listed works below at Muckanagh, Newmarket-on-Fergus, Co. Clare are considered as follows:

Now therefore Clare County Council (Planning Authority), hereby decides that:

- The construction of a roadway into the land
- Camping on the land in a campervan and proposed hard standing area

is development and is **not exempted development**.

Now therefore Clare County Council (Planning Authority), hereby decides that:

- Putting a farm gate at the entrance to the land; and

is development which is **exempted development**.

Now therefore Clare County Council (Planning Authority hereby decides that:

- Tree management on the land is **not development**.

Signed:



GARETH RUANE
SENIOR EXECUTIVE PLANNER 

Date:

12th March 2024

**DECLARATION ISSUED UNDER SECTION 5 OF THE
PLANNING & DEVELOPMENT ACT 2000 (AS AMENDED)**

Reference No.: R24-14



**Comhairle Contae an Chláir
Clare County Council**

Section 5 referral Reference R24-14

1. Is the construction of a roadway on the land in question development and if so is it exempted development? 2. Is putting a farm gate at the land entrance development and if so is it exempted development? 3. Is camping in campervan development and if so is it exempted development? 4. Is tree management development and if so is it exempted development?

AND WHEREAS, Jennifer Huang has requested a declaration from Clare County Council on the said question.

AND WHEREAS Clare County Council, in considering this referral, had regard in particular to –

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended;
- (b) Articles 6, 8 and 9 of the Planning and Development Regulations 2001, as amended;
- (c) Schedule 2, Part 1, Classes 9 and 13 of the Planning and Development Regulations 2001 (as amended);
- (d) Schedule 2, Part 3, Class 1 of the Planning and Development Regulations 2001 (as amended);
- (e) The works as indicated in submitted documents from the referrer;
- (f) The inspection of the site by the Planning Authority.

And whereas Clare County Council has concluded:

- (a) The construction of a roadway into the land, putting a farm gate at the land and camping on the land in a campervan constitutes “works” which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended;
- (b) The said works constitute “development” which comes within the scope of section 3(1) of the Planning and Development Act 2000, as amended;
- (c) The said construction of roadway into the land is development which is not exempted development having regard to:
 - a. The meanings of descriptions of the Classes of Development provided for in Schedule 2 of the Planning and Development Regulations, 2001 (as amended).
 - b. The limitations of Article 8G of the Planning and Development Regulations, 2001 (as amended) which applies only to developments which are licensed or approved under Section 6 of the Forestry Act 2014.

- c. Article 9(1)(a)(viii) of the Planning and Development Regulations, 2001 (as amended) because a section of the roadway has already been constructed and further roadway construction would therefore constitute an extension of an unauthorised structure.
- (d) Putting a farm gate at entrance to the land is development which is exempted development having regard to Schedule 2, Part 1, Class 9 of the Planning and Development Regulations 2001 (as amended).
- (e) Camping on the land in a campervan for durations not exceeding 10 days in length is development which is exempted development having regard to Schedule 2, Part 3, Class 1 of the Planning and Development Act, 2000 (as amended).
- (f) The said tree management on the land does not constitute 'works' as defined in Section 2(1) of the Planning and Development Act, 2000 (as amended) and is not therefore, 'development' for the purposes of the Act.

THEREFORE: The Planning Authority in exercise of the powers conferred on it by Section 5 of the Planning and Development Act, 2000 (as amended), hereby decides that:

The proposed development consisting of the works listed below at Muckanagh, Newmarket-on-Fergus, Co. Clare are considered below as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.

Now therefore Clare County Council (Planning Authority), hereby decides that:

- The construction of a roadway into the land
- Camping on the land in a campervan and proposed hard standing area

is development and is **not exempted development**.

Now therefore Clare County Council (Planning Authority), hereby decides that:

- Putting a farm gate at the entrance to the land; and

is development which is **exempted development**.

Now therefore Clare County Council (Planning Authority hereby decides that:

- Tree management on the land is **not development**.


Anne O'Gorman
Staff Officer
Planning Department
Economic Development Directorate

12th March 2024

CLARE COUNTY COUNCIL
SECTION 5 DECLARATION OF EXEMPTION APPLICATION

FILE REF:	R24-14
APPLICANT(S):	Jennifer Huang
REFERENCE:	Whether (a) the construction of a roadway into the land, (b) putting a farm gate at the land entrance, (c) camping on the land in a campervan and (d) tree management on the land is or is not development and is or is not exempted development.
LOCATION:	Muckanagh, Newmarket-on-Fergus, Co. Clare
DUE DATE:	12 th March 2024

Site Location

The site is located in a rural area between Newmarket-on-Fergus and Kilmurry, on the shores of Rosroe Lough. The site is accessed via a local road which is wide enough for one car only. The site comprises fen habitat and stretches in an elongated layout from the road edge towards the lakeshore.

Planning History

No previous planning applications on the proposal site.

Background to Referral

This Referral under Section 5(3)(a) of the Planning and Development Act 2000 (as amended) has been made by Jennifer Huang who is the stated owner of the property.

The applicant is seeking a Section 5 Declaration as to whether (a) the construction of a roadway into the land, (b) putting a farm gate at the land entrance, (c) camping on the land in a campervan and (d) tree management on the land at Muckanagh, Newmarket-on-Fergus, Co. Clare is or is not development and is or is not exempted development.

Planning and Development Act, 2000 (as amended)

In order to assess this proposal, regard has to be had to the *Planning and Development Act 2000, as amended*.

S.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.

'Works' are defined in Section 2 of the *Planning and Development Act 2000*, as amended as follows:

"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.

S.3(2) For the purposes of subsection (1) and without prejudice to the generality of that subsection—

(b) where land becomes used for any of the following purposes—

(i) the placing or keeping of any vans, tents or other objects, whether or not moveable and whether or not collapsible, for the purpose of caravanning or camping or habitation or the sale of goods,

the use of the land shall be taken as having materially changed.

Planning and Development Regulations 2001 (as amended) Schedule 2, Part 1, Class 9

The construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gate or gateway.

1. *The height of any such structure shall not exceed 2 metres.*

Planning and Development Regulations 2001 (as amended) Schedule 2, Part 1, Class 13

The repair or improvement of any private street, road or way, being works carried out on land within the boundary of the street, road or way, and the construction of any private footpath or paving.

1. *The width of any such private footpath or paving shall not exceed 3 metres.*

Planning and Development Regulations 2001 (as amended) Schedule 2, Part 3, Class 1

Temporary use of any land for the placing of any tent, campervan or caravan or for the mooring of any boat, barge or other vessel used for the purpose of camping.

1. *Not more than one tent, campervan or caravan shall be placed within 100 metres of another tent, campervan or caravan at any time.*

2. *No tent, campervan, caravan or vessel shall remain on the land for a period greater than 10 days.*

3. *No tent, campervan, caravan or vessel shall be used for the storage, display, advertisement or sale of goods or for the purposes of any business.*

4. *No tent, campervan or caravan shall be placed on land within 50 metres of any public road unless the land is enclosed by a wall, bank or hedge, or any combination thereof, having an average height of not less than 1.5 metres.*

Planning & Development Regulations, 2001, as amended

Article 6 refers to Exempted Development and states that subject to Article 9, development of a class specified in column 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Schedule 2 opposite the mention of the relevant class in the said column 1.

Under Article 9 (1) of the same Regulations, 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

(ii) consist of or compromise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,

(iii) endanger public safety by reason of traffic hazard or obstruction of road users,

(iiia) endanger public safety by reason of hazardous glint and/or glare for the operation of airports, aerodromes or aircraft,

(iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

(v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies,

(vii) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan.

(vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a

development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,

(viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12(1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,

(viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.”

(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,

(ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

(x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,

(xi) obstruct any public right of way,

(xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area.

Basis of Referral

The applicant is seeking a Section 5 Declaration as to whether (a) the construction of a roadway into the land, (b) putting a farm gate at the land entrance, (c) camping on the land in a campervan and (d) tree management on the land is or is not development and is or is not exempted development.

Assessment of the following elements of the works:

- The construction of a roadway into the land.

The applicant intends to construct a new road into the landholding. It is submitted that the roadway will be approximately 58m long and 3m wide. There will be a turning area at the end of the roadway measuring c. 8m x 10m to allow vehicles to turn.

Having regard to Section 2(1) of the Planning and Development Act 2001 (as amended), I consider that this element of the proposed development comes within the scope of “works” and hence constitutes development in accordance with Section 3(1) of the Planning and Development Act 2001 (as amended).

I refer to Class 13 of the Regulations which allows for repair or improvement of an existing private roadway. However, a new roadway is proposed in this instance and the provisions of Class 13 do not apply.

The documents received refer to Article 8G(a) of the Planning and Development Regulations, 2001 (as amended) which states *inter alia* that the construction, maintenance or improvement of a road (other than a public road within the said meaning), that serves a forest or woodland shall be exempted development. However, Article 8G only applies to developments that are licensed or approved under Section 6 of the Forestry Act 2014. The applicant has not indicated that a license has been obtained from the Department of Agriculture, Food and the Marine for the works proposed on the site. The exemption under Article 8G does not apply in this instance.

The proposed roadway turning area does not fall within any of the classes and limitations set out in the Planning and Development Regulations.

The construction of a roadway into the land is development and is not exempted development.

Assessment of the following elements of the works:

- Putting a farm gate at the land entrance

The submitted information indicates that there was an overgrown entrance to the land which has recently been cleared and a 3m wide farm gate was put in place.

Having regard to Section 2(1) of the Planning and Development Act 2001 (as amended), I consider that this element of the proposed development comes within the scope of “works” and hence constitutes development in accordance with Section 3(1) of the Planning and Development Act 2001 (as amended).

Under Schedule 2, Part 1, Class 9 of the Planning and Development Regulations 2001, as amended the erection, other than within or bounding the curtilage of a house, of any gate or gateway, is exempted development provided the height of any such structure does not exceed 2 metres.

The applicant has indicated that the gate is a *3m wide farm gate*. No other details are provided. The gate was observed on the site, and I am satisfied that the 2m height limitation has not been exceeded.

Putting a farm gate at the land entrance is development which is exempted development having regard to Schedule 2, Part 1, Class 9 of the Planning and Development Regulations, 2001 (as amended).

Assessment of the following elements of the works:

- Camping on the land in a campervan

The applicant has stated that the land was purchased to protect, improve and provide a safe habitat for wildlife. It is their intention to camp on the land during the summer months to observe and learn the local ecosystem. The campervan is self-contained with batteries for electricity and composting toilet. There will be no connection to services required. The applicant does not intend to park the campervan on the site for more than a week at a time, which will primarily be during the summer months.

Under Section 3(a) of the Planning and Development Act, *development* is defined as *the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structure situated on the land.*

Section 3(2)(b) of the Act further clarifies that, where land becomes used for the placing or keeping of any vans, tents or other objects, whether or not moveable and whether or not collapsible, for the purpose of caravanning or camping or habitation or the sale of goods, the use of the land shall be taken to have materially changed,

Having regard to the foregoing, camping on the land in a campervan, constitutes development, in accordance with the definition provided in Section 3 of the Planning and Development Act.

A development of this nature could generally avail of the exemption under Schedule 2, Part 3, Class 1 of the Planning and Development Regulations 2001, as amended. However, the access road and hardstanding area required to facilitate the parking of the campervan are not exempted development. Therefore, the applicant cannot avail of the Schedule 2, Part 3, Class 1 exemption on this instance.

Assessment of the following elements of the works:

- Tree management on the land

The applicant has indicated that activities such as trimming and coppicing existing trees in the Willow, Birch and Alder Species will be carried out on the site. In the future, more Oak, Beech, Hazel and Aspen species will be planted to increase biodiversity.

The documents received refer to Article 8F of the Planning and Development Regulations, 2001 (as amended). However, Article 8F only applies to developments that are licensed or approved under Section 6 of the Forestry Act 2014. The applicant has not indicated that a license has been obtained from the Department of Agriculture, Food and the Marine for the works proposed on the site. The exemption under Article 8F does not apply in this instance.

However, I do not consider trimming / coppicing of existing trees and the planting of additional tree species on a non-commercial scale to meet the definition of *works* as contained in Section 2 of the Planning and Development Act, 2000 as amended. Tree management on the subject land is not therefore development.

Article 9 of the Planning and Development Regulations 2001, as amended

Under Article 9 (1) of the same Regulations, *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 proposal does not contravene a condition of any previous permission

(ii) consist of or compromise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,

The public road was measured at the time of the site inspection and the surfaced carriageway in the vicinity of the gateway was 3.1m wide.

(iii) endanger public safety by reason of traffic hazard or obstruction of road users,

The proposal does not create a traffic hazard or obstruct road users in the area.

(iiia) endanger public safety by reason of hazardous glint and/or glare for the operation of airports, aerodromes or aircraft,

The proposal site is not located in a solar safeguard zone.

(iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

No applicable to the proposal

(v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies

Not applicable to this proposal

(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan.

The works will not interfere with the character of the landscape.

(vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,

Not applicable to this proposal

(viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12(1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,

There are no known archaeological features in the vicinity of the proposal site.

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,

Having regard to the nature and scale of the proposed development, the likely zone of impact is no greater than 3km.

There are no European sites within 3km of the proposed development location.

In the absence of proximity or connectivity to a European Site, no Appropriate Assessment issues arise and I do not consider that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects, on a European Site. Appropriate assessment is not therefore required.

(viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.”

The development works are located within Rosroe Lough pNHA. The submitted documents indicate that the proposed developments will support and enhance biodiversity on the site. However, during the site inspection it was noted that a small section of access road has been constructed inside the entrance gate. This required tree and vegetation clearance that appears to have been carried out in a very unsympathetic manner. The further extension of the access road as proposed in this referral would require further tree clearance and infilling of *rich fen and flush* habitat (Habitat Type PF1). The creation of a roadway also has the potential to interfere with the hydrology of the fen habitat.

Rosroe Lough is a proposed Natural Heritage Area and is not as yet afforded protection under Section 18 of the Wildlife (Amendment) Act, 2000. However, it should be noted at this juncture that the extension of the access road as observed on the site would raise serious concerns in relation to impacts on the natural heritage assets of the area.

(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,

A new entrance gate has been erected and stone has been put in place in the vicinity of the entrance to facilitate access, as was described in the submitted documents.

However, upon inspection it was noted that the first section of internal access road has also been constructed. Approximately 20m of the access road has been constructed. As outlined earlier in this assessment, the construction of the access road is considered to be development which is not exempted development. The works carried out are therefore unauthorized and the further extension of the access road would constitute an extension of an unauthorized structure.

(ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

Not applicable in this instance

(x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,

Not applicable in this instance

(xi) obstruct any public right of way,

Not applicable in this instance

(xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area.

The development site is not within an Architectural Conservation Area.

Recommendation

The following questions have been referred to the Planning Authority:

Whether (a) the construction of a roadway into the land, (b) putting a farm gate at the land entrance, (c) camping on the land in a campervan and (d) tree management on the land at Muckanagh, Newmarket-on-Fergus, Co. Clare is or is not development and is or is not exempted development.

The Planning Authority in considering this referral had regard to:

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended;
- (b) Articles 6, 8 and 9 of the Planning and Development Regulations 2001, as amended;
- (c) Schedule 2, Part 1, Classes 9 and 13 of the Planning and Development Regulations 2001 (as amended);
- (d) Schedule 2, Part 3, Class 1 of the Planning and Development Regulations 2001 (as amended);
- (e) The works as indicated in submitted documents from the referrer;
- (f) The inspection of the site by the Planning Authority.

And whereas Clare County Council (Planning Authority) has concluded:

- (a) The construction of a roadway into the land, putting a farm gate at the land and camping on the land in a campervan constitutes "works" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended;
- (b) The said works constitute "development" which comes within the scope of section 3(1) of the Planning and Development Act 2000, as amended;
- (c) The said construction of roadway into the land is development which is not exempted development having regard to:
 - a. The meanings of descriptions of the Classes of Development provided for in Schedule 2 of the Planning and Development Regulations, 2001 (as amended).
 - b. The limitations of Article 8G of the Planning and Development Regulations, 2001 (as amended) which applies only to developments which are licensed or approved under Section 6 of the Forestry Act 2014.
 - c. Article 9(1)(a)(viii) of the Planning and Development Regulations, 2001 (as amended) because a section of the roadway has already been constructed and further roadway construction would therefore constitute an extension of an unauthorised structure.
- (d) Putting a farm gate at entrance to the land is development which is exempted development having regard to Schedule 2, Part 1, Class 9 of the Planning and Development Regulations 2001 (as amended).
- (e) Camping on the land in a campervan for durations not exceeding 10 days in length is development which is normally exempted development having regard to Schedule 2, Part 3, Class 1 of the Planning and Development Act, 2000 (as amended). However, the exemption does not apply in this instance by reason of the location of the campervan on a proposed hardstanding area (8m x 10m) which in itself is not exempt development.
- (f) The said tree management on the land does not constitute 'works' as defined in Section 2(1) of the Planning and Development Act, 2000 (as amended) and is not therefore, 'development' for the purposes of the Act.

Now therefore Clare County Council (Planning Authority), hereby decides that:

- The construction of a roadway into the land
 - Camping on the land in a campervan *and proposed hard standing area*
- is development and is not exempted development.

Now therefore Clare County Council (Planning Authority), hereby decides that:

- Putting a farm gate at the entrance to the land; and
- is development which is exempted development.

Now therefore Clare County Council (Planning Authority hereby decides that:

- Tree management on the land is not development.



Name: Caroline Balfe

Executive Planner

Date 11/03/2024



Name: Garreth Ruane

Senior Executive Planner

Date 11/03/2024

R24-14







COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Jennifer Huang
9 Beresford Terrace
Arklow
Co. Wicklow
Y14 PY74

16/02/2024

Section 5 referral Reference R24-14 – Jennifer Huang

1. Is the construction of a roadway on the land in question development and if so is it exempted development? 2. Is putting a farm gate at the land entrance development and if so is it exempted development? 3. Is camping in campervan development and if so is it exempted development? 4. Is tree management development and if so is it exempted development?

A Chara,

I refer to your application received on 15th February 2024 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

Please note that the Planning Authority is considering the matter and a reply will issue to you in due course.

Mise, le meas

Brian Fahy
Planning Department
Economic Development Directorate

An Roinn Pleanála
An Stiúrtóireacht Forbairt Gheilleagrach

Áras Contae an Chláir, Bóthar Nua, Inis, Co. an Chláir, V95 DXP2

Planning Department
Economic Development Directorate

Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2



AN CHLÁIR

Clare County Council
Aras Contae an Chlair
New Road
Ennis
Co Clare



15/02/2024 09:17:45

Receipt No. : L1CASH/0/360531
***** REPRINT *****

JENNIFER HUANG
9 BERESFORD TERRACE
ARKLOW
CO WICKLOW

SECTION 5 REFERENCES 80.00
GOODS 80.00
VAT Exempt/Non-vatable

Total : 80.00 EUR

Tendered :
Cash 80.00

Change : 0.00

Issued By : L1CASH- Noilin Hayes
From : MAIN CASH OFFICE LODGEMENT AF
Vat reg No.0033043E

P07

**CLARE COUNTY COUNCIL
COMHAIRLE CONTAE AN CHLÁIR**

Planning Department,
Economic Development Directorate,
Clare County Council,
New Road, Ennis,
Co. Clare.
V95DXP2

Telephone No. (065) 6821616
Fax No. (065) 6892071
Email: planoff@clarecoco.ie
Website: www.clarecoco.ie

R24-14



**REQUEST FOR A DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT
(Section 5 of the Planning & Development Act 2000 (as amended))**

FEE: €80

This following form is a non-statutory form which has been prepared by Clare County Council for the purpose of obtaining the necessary information required for a declaration to be made under Section 5 by the Planning Authority

1. CORRESPONDENCE DETAILS.	
(a) Name and Address of person seeking the declaration	Jennifer Huang 9 Beresford Terrace, Arklow Co. Wicklow Eircode: Y14PY74
(b) Telephone No.:	
(c) Email Address:	
(d) Agent's Name and address:	N/A EIRCODE:

2. DETAILS REGARDING DECLARATION BEING SOUGHT

(a) PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT
 Note: only works listed and described under this section will be assessed.

Sample Question: Is the construction of a shed at 1 Main St., Ennis development and if so is it exempted development?

1. Is the construction of a roadway on the land in question development and exempted development.
 2. Is putting a farm gate at the land entrance development and exempted development. 3. Is camping in camper van development or exempted development or exempted from planning. 4. Is tree management exempted from planning permission.

(b) Provide a full description of the question/matter/subject which arises wherein a declaration of the question is sought.

I'm a nature lover, I'm involved in many rewilding projects in Co. Wicklow through Rewild Wicklow group. I bought this piece of land hoping to protect, improve and provide a safe habitat for wildlife. In order to achieve that, I'll need to extend a roadway into the land. There is an overgrown entrance on the land. The road in question is 58m long, 3m wide with a small patch at the end of the road for cars to turn around. The patch is 8m x 10m. The road entrance is recently cleared and put down stone, and a 3m wide farm gate is put in.

The land is currently wildgrown shrubs and trees, when the road is constructed, I'd like to camp on the land during the summer months to observe and learn the current ecosystem, and see what improvement is needed from an ecology perspective. The camper van is self-contained with 2 leisure battery for electricity and a composting toilet. I'm not intending to connect services and not intending to park more than a week at a time, and I'm only intend to carry out the tree maintenance work and camping activities during the summer months. (tree maintenance work will respect bird nesting season) The type of tree maintenance work I can think of now are trimming, coppicing existing trees in the Willow, Birch, Alder species, then I'll plant more Oak, Beech, Hazel and Aspen species to increase biodiversity.

(c) List of plans, drawings etc. submitted with this request for a declaration:
 (Note: Please provide a site location map to a scale of not less than 1:2500 based on Ordnance Survey map for the areas, to identify the lands in question)

1. Location Map
2. Plan drawing map and Plan drawing on satellite image.
3. Pictures of land entrance, farm gate example and the camper van that will park on the land from time to time.
4. Reference from Rewild Wicklow.
5. Previous email sent on this topic.

3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT	
(a) Postal Address of the Property/Site/Building for which the declaration sought:	Muckanagh, Newmarket on Fergus Ennis Co. Clare Directly across the road from V95NYF4 Folio : _____ + _____ (partial)
(b) Do the works in question affect a Protected Structure or are within the curtilage of a Protected Structure? If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 (as amended) been requested or issued for the property by the Planning Authority?	No affect on protected structure
(c) Legal interest in the land or structure in question of the person requesting the declaration (Give Details):	Land owner Land was purchased on: 19/10/2023 via Casey Solicitors LLP Ennis
(d) If the person in (c) above is not the owner and/or occupier, state the name and address of the owner of the property in question: <i>Note: Observations in relation to a referral may be requested from the owner/occupier where appropriate.</i>	
(e) Is the owner aware of the current request for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended)?:	Yes
(f) Are you aware of any enforcement proceedings connected to this site? <i>If so please supply details:</i>	No enforcement Proceedings
(g) Were there previous planning application/s on this site? <i>If so please supply details:</i>	No previous planning application
(h) Date on which 'works' in question were completed/are likely to take place:	Before 01/03/2024

SIGNED:  _____

DATE: 06/02/2024

GUIDANCE NOTES

This following are non-statutory advice notes prepared by Clare County Council for the purpose of advising people what information is required for a decision to be made under Section 5 by the Planning Authority

- (i) The request for a declaration under Section 5 must be accompanied by 2 copies of site location map based on the Ordnance Survey map for the area of a scale not less than 1:1000 in urban areas and 1:2500 in rural areas and should clearly identify the site in question.
- (ii) The request for a declaration under Section 5 must be accompanied by the required fee of €80.00.
- (iii) If submitting any additional plans/reports etc. as part of the request for a declaration, please submit 2 copies.
- (iv) The request for a declaration should be sent to the following address:

Planning Department,
Economic Development Directorate,
Clare County Council
Aras Contae an Chlair,
New Road,
Ennis,
Co. Clare
V95DXP2

- (v) Notwithstanding the completion of the above form, the Planning Authority may require the submission of further information with regard to the request in order to enable the Authority to issue a declaration on the question.
- (vi) The Planning Authority may also request other persons to submit information on the question which has arisen and on which the declaration is sought

FOR OFFICE USE ONLY

Date Received:	.....	Fee Paid:	.....
Date Acknowledged:	.....	Reference No.:	.....
Date Declaration made:	.....	CEO No.:	.....
Decision:	.....	



Jennifer Huang <

Clarify whether planning permission is needed

4 messages

Jennifer
To: planoff@clarecoco.ie

31 January 2024 at 15:22

Hi

I bought 0.88 acres of land recently in East Clare, Folio Number: [redacted] and part of

<https://maps.app.goo.gl/LQXRUmMGimr6ey18>

The land is beside Rosroe lough, it's currently wild-grown shrubs and trees.

I'm a nature lover, I'm into wild habitat conservation, have been a volunteer of the Rewild Wicklow group for the past two years, and involved in many projects like Snapshot Europe wildlife surveys, tree planting, peatland restoration, etc where I accumulated knowledge and experience in habitat restoration and management. Having a piece of forest with thriving biodiversity has always been a dream of mine and it's the reason I bought this land.

I intend to improve the current vegetation on the land by trimming and coppicing some trees and planting more diverse native tree species such as oak, beech, hazel, etc. Documenting and cataloging wildlife on the land, and being able to enjoy and keep a safe haven for all living beings that decide to make it their habitat.

The land has an overgrown entrance, but to carry out the tree management and planting work I'll need to extend a roadway into the land.

I've done some research on planning requirements, according to the Planning and Development Act 2000, section 4, F31, F32, it sounds like the work I'm doing is considered exempt development.

Exempt Development:

F31[(I) development consisting of the thinning, felling or replanting of trees, forests or woodlands or works ancillary to that development, but not including the replacement of broadleaf high forest by conifer species;]

F32[(ia) development (other than where the development consists of provision of access to a public road) consisting of the construction, maintenance or improvement of a road (other than a public road) or works ancillary to such road development, where the road serves forests and woodlands;]

I'd like to find out whether I need planning for the following activities, or what's the proper process to get this verified.

- to extend this road into the land, 3m wide, 50m long, and a patch at the end of the road for vehicles to turn around.
- To put in a farm gate at the entrance.
- To trim and coppice existing trees, and plant new native trees
- To park a campervan on the land, this is for recreation purposes and accommodation while carrying out habitat management works.

Any questions please let me know.

Jennifer Huang
9 Beresford Terrace,
Arkiow
Co. Wicklow

Best regards,
Jennifer

5th February, 2024

To whom it may concern:

Jennifer Huang, 9 Beresford Terrace, Sea Road, Arklow, Co. Wicklow has been a volunteer of the ReWild Wicklow group since June 2022.

She's been involved in Wildlife surveys, peatland restoration, tree planting, and woodland maintenance projects.

I've no doubt she's a nature lover and enthusiastic about wild habitat conservation.

Danny Alvey

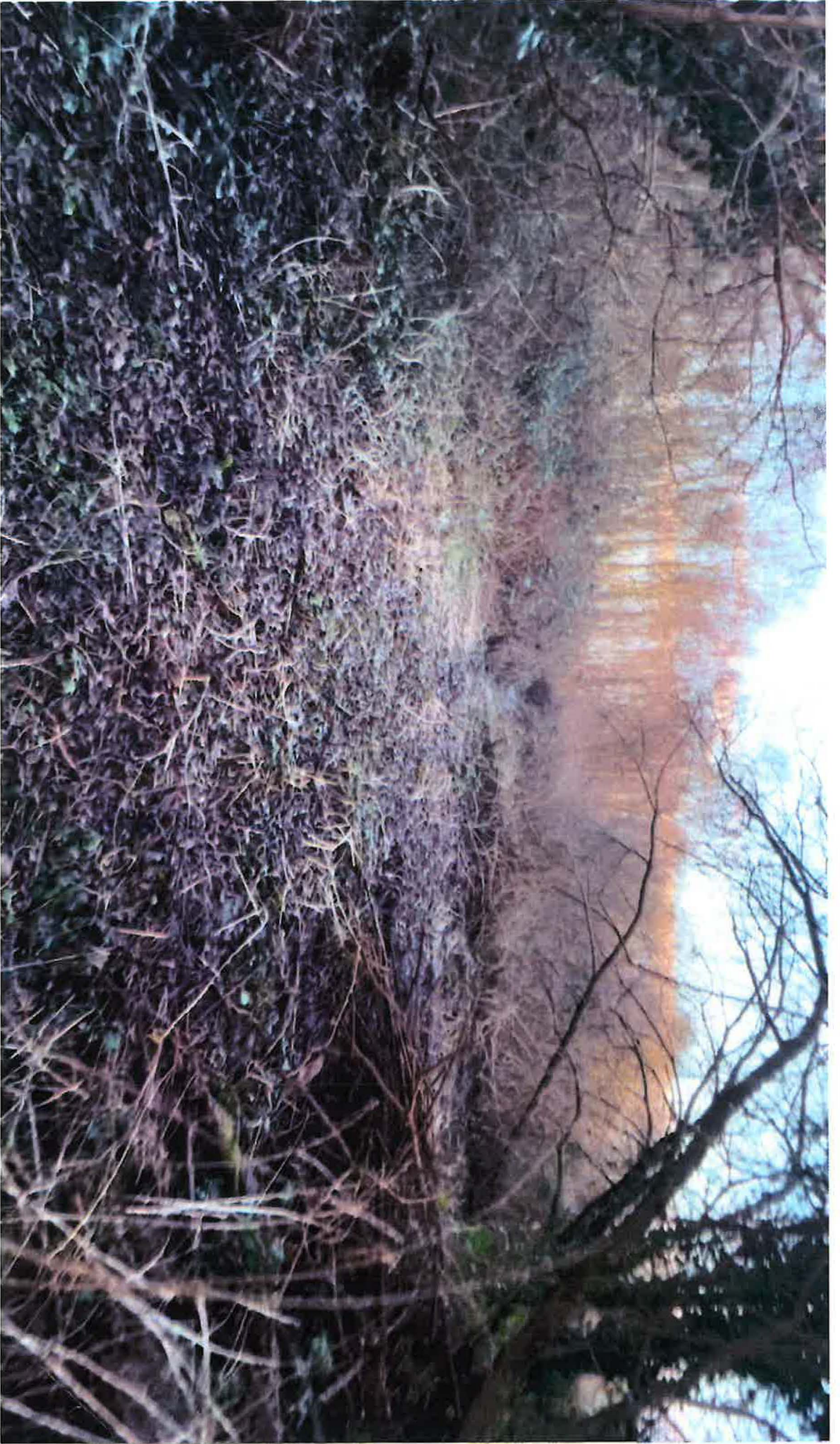
Chairperson

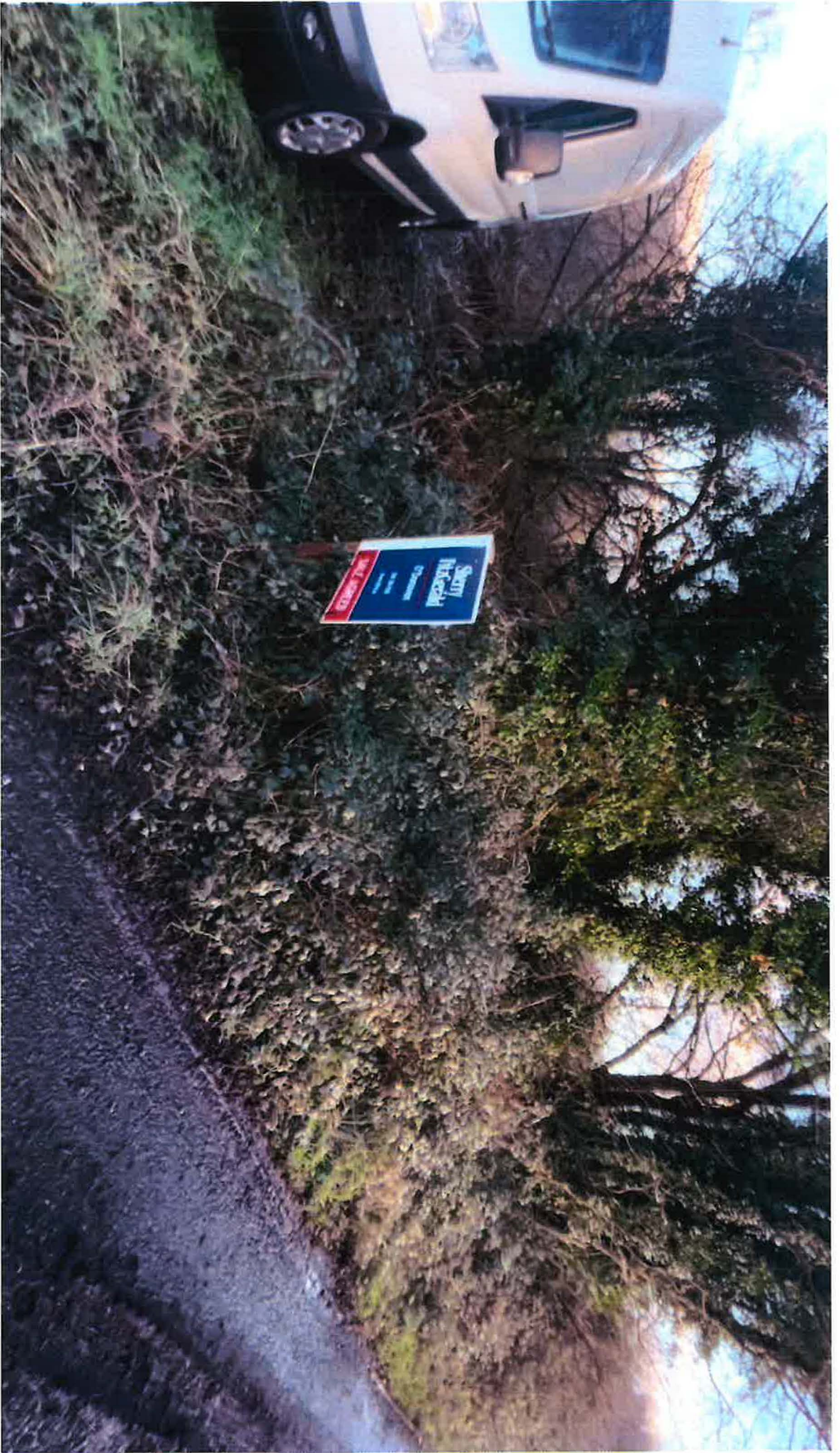
ReWild Wicklow

<https://rewildwicklow.ie/>



Land Entrance.

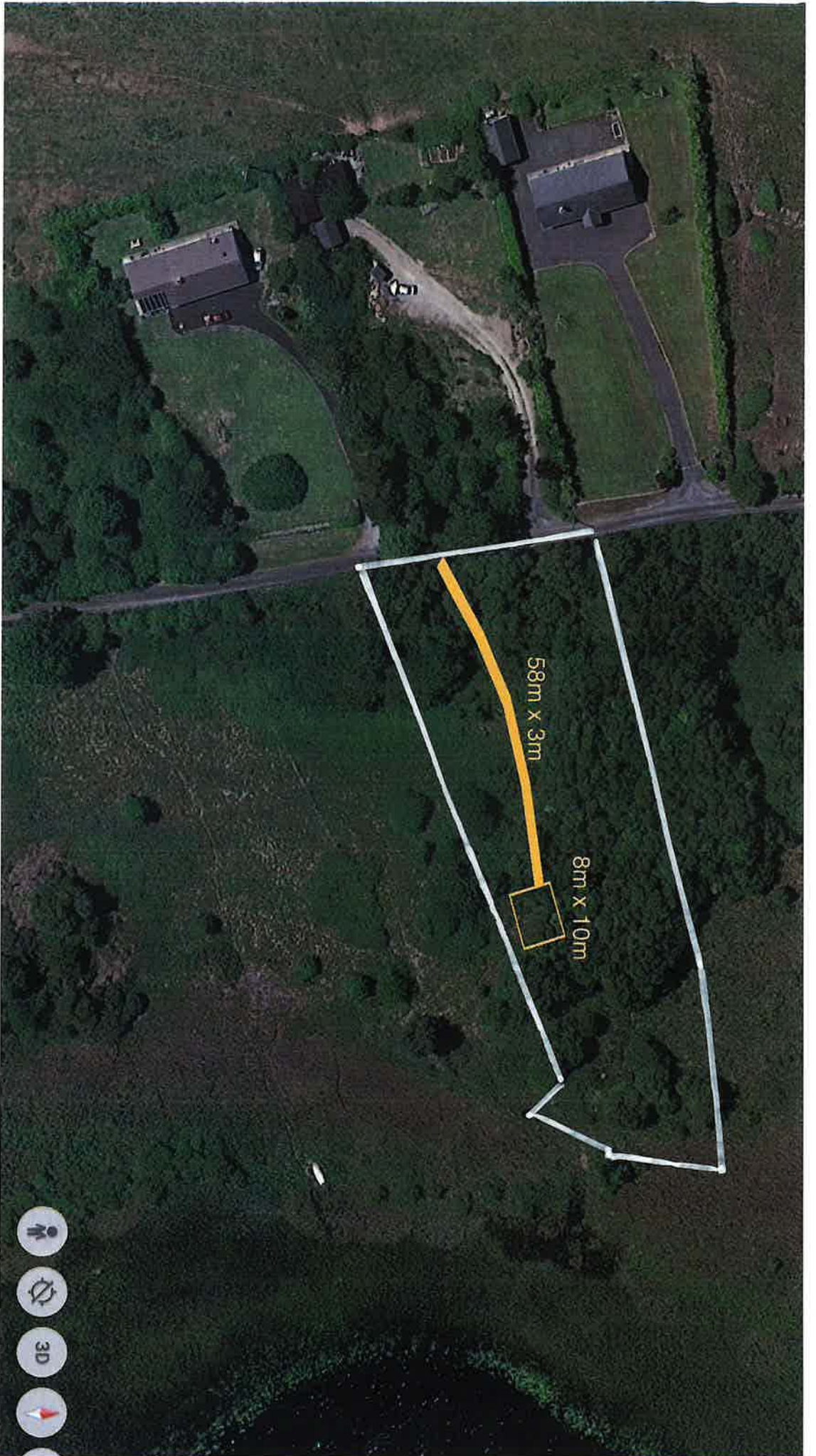


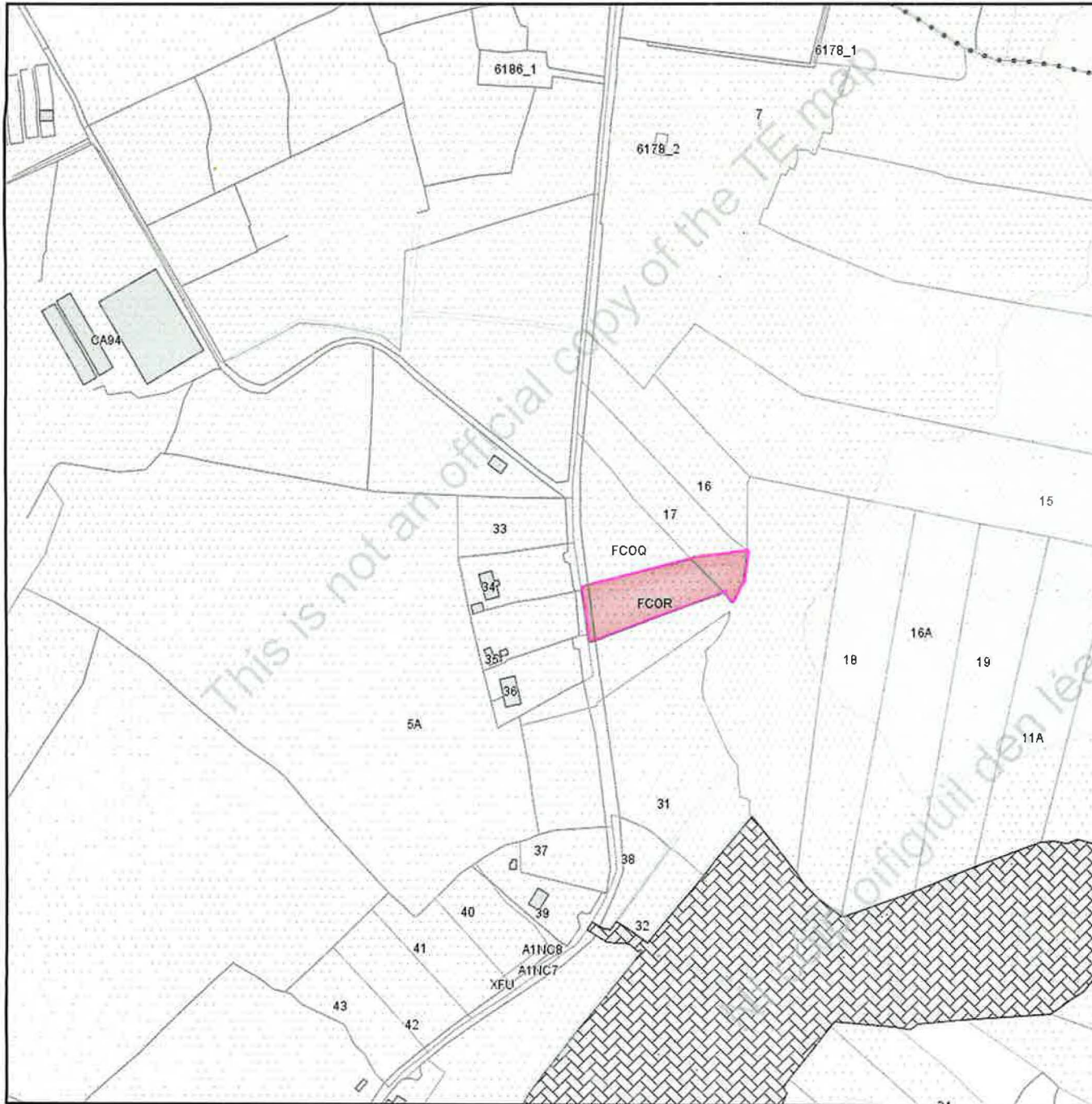


Land entrance + road



The camper 2 intend to park on the land





Tailte Éireann

Clárúchán, Luacháil,
Suirbhéireacht
Registration, Valuation,
Surveying

Official Tailte Éireann Registration Map

This map should be read in conjunction with the folio.

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(centre-line of parcel(s) edged)

- Freehold
- Leasehold
- SubLeasehold
- 'S' Register

My land

(see Section 8(b)(II) of Registration of Title Act 1964 and Rule 224 & 225 Land Registration Rules 1972 - 2010).

Burdens (may not all be represented on map)

- Right of Way / Wayleave
- Turbary
- Pipeline
- Well
- Pump
- Septic Tank
- Soak Pit

A full list of burdens and their symbology can be found at: www.landdirect.ie

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(see Section 85 of the Registration of Title Act, 1964). As Inserted by Section 62 of the Registration of Deed and Title Act 2006.

Creation Date: 31 January 2024 18:53:57



Land Registry Compliant Map



Tailte Éireann

CENTRE COORDINATES:
ITM 544072,669404

PUBLISHED: 23/08/2023
ORDER NO.: 50353000_1

MAP SERIES: 1:5,000, 1:2,500, 1:5,000, 1:2,500
MAP SHEETS: 4440, 4440-D, 4441, 4441-C

COMPILED AND PUBLISHED BY:
National Mapping Division of Tailte Éireann, Phoenix Park, Dublin 8, Ireland. D08F6E4

www.tailte.ie

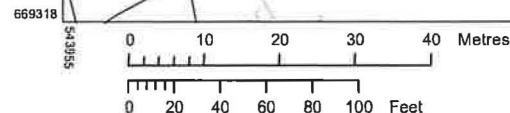
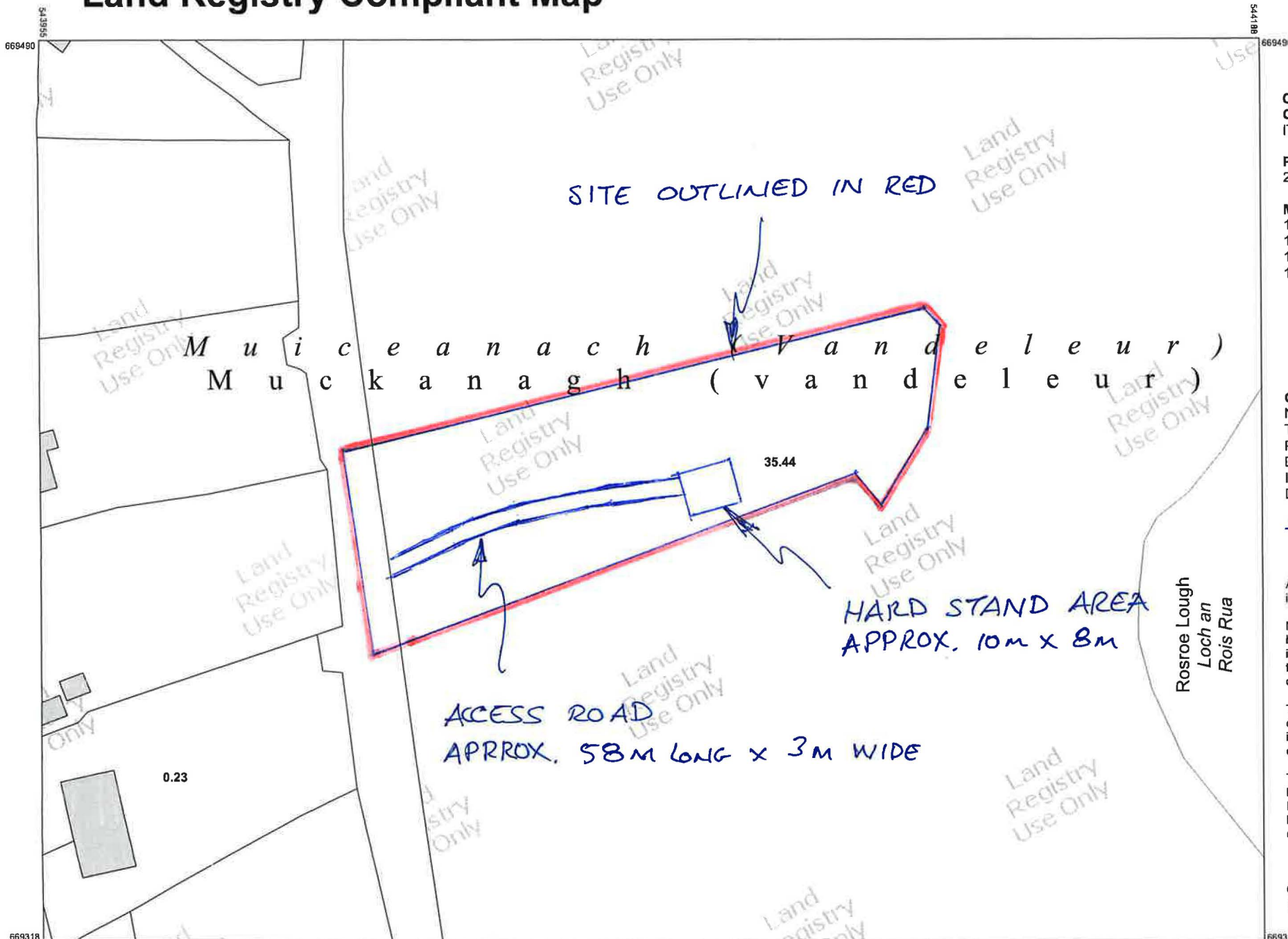
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OUTPUT SCALE: 1:1,000

CAPTURE RESOLUTION:
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LEGEND:
To view the legend visit www.osi.ie and search for 'Large Scale Legend'



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