



COMHAIRLE CLARE  
CONTAE AN CHLÁIR COUNTY COUNCIL

**Registered Post**

**Michael Duffy  
1 Clós na hEaglaise  
Kilfenora  
Co Clare**

RL 5660 3331 7IE

**30th June, 2022**

**Section 5 referral Reference R22-1 – Michael Duffy**

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

A Chara,

I refer to your application received on 7th January 2022 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above, and the further information received by the Planning Authority on 13<sup>th</sup> June 2022

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](http://www.pleanala.ie)

Mise, le meas

**Josephine Connors  
Staff Officer  
Planning Department  
Economic Development Directorate**

**An Roinn Pleanála  
An Stiúirtheacht 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



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

**Reference No.: R22-1**



Comhairle Contae an Chláir  
Clare County Council

**Section 5 referral Reference R22-1**

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

**AND WHEREAS, Michael Duffy** 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(1)(g) and 4(4) of the Planning and Development Act, 2000, as amended.
- b) Schedule 2, Article 6, Part 1, Class 58 of the Planning and Development Regulations 2001 as amended (Development by Irish Water) and the conditions and limitations of there under.
- c) Article 9 of the Planning and Development Regulations 2001 as amended- Restrictions on Exemptions
- d) The details and particulars as submitted with the referral application, including the Further Information response.
- e) The details, particulars and declaration as contained on a Section 5 declaration (ref R21-61) by Irish Water.
- f) The conclusions by the Court of Appeal in relation to *Narconon Trust v An Board Pleanála*.

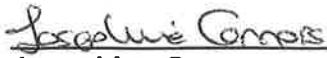
**And whereas Clare County Council has concluded:**

the information submitted under the subject Section 5 declaration and that as submitted under ref. no. R21-61 is substantially the same, and is in respect of the same land, and that there has been no evidence of any change in the planning facts or circumstances.

**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 development consisting of the replacement of the Clarecastle wastewater treatment plant by diverting wastewater arising through any new sewer to the Clareabbey wastewater

treatment plant, which discharges to an SAC, constitutes development which is considered to be exempted development, as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.

A handwritten signature in dark ink, appearing to read 'Josephine Connors', is written over a horizontal line.

**Josephine Connors**  
**Staff Officer**  
**Planning Department**  
**Economic Development Directorate**

**30th June, 2022**

**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: 80046

Reference Number: R22-1

Date Referral Received: 7th January 2022

Further Information Received: 13<sup>th</sup> June 2022

Name of Applicant: Michael Duffy

Location of works in question: Clarecastle, Co. Clare

**Section 5 referral Reference R22-1 – Michael Duffy**

Is the replacement of the Clarecastle wastewater treatment plant by diverting wastewater arising through a new sewer to the Clareabbey wastewater treatment plant, which discharges to an SAC, considered to be development 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(1)(g) and 4(4) of the Planning and Development Act, 2000, as amended.
- b) Schedule 2, Article 6, Part 1, Class 58 of the Planning and Development Regulations 2001 as amended (Development by Irish Water) and the conditions and limitations of there under.
- c) Article 9 of the Planning and Development Regulations 2001 as amended- Restrictions on Exemptions
- d) The details and particulars as submitted with the referral application, including the Further Information response.
- e) The details, particulars and declaration as contained on a Section 5 declaration (ref R21-61) by Irish Water.
- f) The conclusions by the Court of Appeal in relation to *Narconon Trust v An Board Pleanála*.

**AND WHEREAS** Clare County Council has concluded:

the information submitted under the subject Section 5 declaration and that as submitted under ref. no. R21-61 is substantially the same, and is in respect of the same land, and that there has been no evidence of any change in the planning facts or circumstances.

**ORDER:** Whereas by Chief Executive's Order No. HR 152 dated 9<sup>th</sup> 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 declare that the replacement of the Clarecastle wastewater treatment plant by diverting wastewater arising through any new sewer to the Clareabbey wastewater treatment plant, which discharges to an SAC, constitutes development which is considered to be exempted development.

**Signed:**

  
\_\_\_\_\_  
**GARETH RUANE**  
**SENIOR EXECUTIVE PLANNER**

**Date:**

**30th June, 2022**

**CLARE COUNTY COUNCIL**  
**SECTION 5 DECLARATION OF EXEMPTION APPLICATION**  
**PLANNERS REPORT**

<b>FILE REF:</b>	R22 1
<b>APPLICANT(S):</b>	Michael Duffy
<b>REFERENCE:</b>	Whether the replacement of the Clarecastle wastewater treatment plant by diverting wastewater arising through any new sewer to the Clareabbey wastewater treatment plant, which discharges to an SAC, is development and if so is exempted development
<b>LOCATION:</b>	Clarecastle/Clareabbey, Ennis, County Clare
<b>DUE DATE:</b>	30 <sup>th</sup> June 2022

**FURTHER INFORMATION REQUEST**

The following further information was requested on 2<sup>nd</sup> Feb. 2022:  
It is noted that the subject declaration is in relation to the following:

*the replacement of the Clarecastle wastewater treatment plant by diverting wastewater arising through any new sewer to the Clareabbey wastewater treatment plant, which discharges to an SAC, is development and if so is exempted development*

However limited details have been submitted with the application in relation to this development, and in this respect a full determination cannot be made. In accordance with Section 5 (2) (b) of the Planning and Development Act 2000 as amended, and in order for the Planning Authority to further consider and assess the subject declaration, you are invited to submit the following:

1. Please identify the location (including a map) of the Waste Water Treatment Plant to be replaced as referred to in the application, and full details in relation to the specification of same (i.e. capacity, etc).
2. Please submit full details, including relevant drawings, maps, specifications, etc in relation to the development which is the subject of this application, which would enable the Planning Authority to carry out a full Appropriate Assessment screening and a full Environmental Impact Assessment screening (in relation to both mandatory development and sub threshold development).

***Note to Applicant:***

You are advised to note that the Planning Authority issued a declaration to Irish Water (reference R21 61) in relation to the following development:

***Whether the construction of a new underground pumping station to grounds to the south of the existing Quay Road pumping station, diversion of existing waste water sewers to a new pumping station, internal revisions to the existing Quay Road pumping station, and the installation of a new rising main connection to the existing Clareabbey Waste water treatment plant is development and if so is exempted development***

In this declaration, the Planning Authority concluded that the construction of a new underground pumping station to grounds to the south of the existing Quay Road pumping station, at Clarecastle, diversion of existing waste water sewers to a new pumping station, internal revisions to the existing Quay Road pumping station, and the installation of a new rising main connection to the existing Clareabbey Waste water treatment plant constitutes development which is considered to be exempted development.

You are further advised to note that the Court of Appeal has clarified the status of conflicting declarations issued under Section 5 of the Planning and Development Act 2000, as amended. In *Narconon Trust v An Bord Pleanála*, the Court of

Appeal confirmed that Section 5 declarations, once issued and not challenged, are conclusive. In the case of *Narconon Trust v An Bord Pleanála*, it was determined to be unlawful for the Board to have made a conflicting decision in 2018, to that made by the planning authority in 2016, on the same facts.

A response to the further information request was received by the Planning Authority on 13<sup>th</sup> June 2022. In the cover letter the applicant has stated that he has attached as much information as he could access regarding the proposed development. The submitted documents were downloaded from the Irish Water portal, which he states, indicate that Clare Co Co are partners to Irish Water. As such, it is stated that any lacuna in specific detail unavailable to the public, will be available from the Water Services Section of CCC. In support of his response, the applicant has attached the following:

- Web published article from the Irish Water website entitled “Clarecastle to benefit from works to end the discharge of untreated sewerage”
  - Web published article from the Irish Water website entitled “Clarecastle sewerage scheme”. This article includes the following sub-articles:
    - What is involved with this project?
    - What are the benefits of this project?
    - How can I connect into the new sewerage scheme?
    - Next steps
    - We’re working to eliminate raw sewerage discharges in Ireland
  - Attachment No. 1 – Copy of Non Technical Summary
  - Attachment B. 9(i) – Population Agglomeration
  - Attachment B. 10 – Capital Investments Programme
  - Attachment C. 1 – Operational Information Requirements
  - Attachment E. 1 – “Estimation of the quantity of waste water likely to be emitted in relation to all primary and secondary discharge points applied is included in Table E. 1(i) of the Annex”
  - Attachment C. 1.1 – Stormwater Overflows
  - Attachment C.1.2 – Pumping Station Information
  - Attachment C. 2 – Outfall Design and Construction
  - Attachment E. 2 – Current Programme for Environmental Monitoring Programme at Clarecastle Pumping Station “There is no monitoring programme associated with the Pumping Station”.
- The applicant has also submitted the following maps:
- Clarecastle pumping station – Site Plan (dated Nov. 2008)
  - EPA Wastewater Discharge License Mapping – Monitoring Points; Location Map 2 (dated Feb. 2009)
  - Clarecastle pumping station – Site Location Map (dated Nov. 2008)

Assessment
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FIR No. 1 stated as follows: Please identify the location (including a map) of the Waste Water Treatment Plant to be replaced as referred to in the application, and full details in relation to the specification of same (i.e. capacity, etc).

FIR NO. 2 stated as follows: Please submit full details, including relevant drawings, maps, specifications, etc in relation to the development which is the subject of this application, which would enable the Planning Authority to carry out a full Appropriate Assessment screening and a full Environmental Impact Assessment screening (in relation to both mandatory development and sub threshold development).

### Applicant Response

The applicant has not addressed each point of the FIR individually but rather submitted a host of documentation as outlined above.

### PA Response

The map as submitted by the applicant in the FIR relates to the pumping station at Quay Road in Clarecastle. The documentation as extracted from the Irish Water website and submitted with the FIR states that the scheme (presumably this is the same one as referenced in the subject Section 5 declaration) involves the following works:

- Installation of new below ground infrastructure at the site of the existing Quay Road Pump Station
- New rising main pipeline along Quay Road, Barrack Street and the Ennis Road, to transfer sewerage from Quay Road Pumping Station for treatment at the existing Clareabbey Wastewater Treatment Plant
- Existing outfall from Quay Road Pump Station will continue to be used as an emergency storm overflow.

I note the attachments (detail / contents of same outlined above) as submitted by the applicant, and from same the following is of note:

- "There will be no sewerage treatment at this pumping station"..."There is a new wastewater treatment plant to be constructed in Ennis and this pumping station will form part of the new works..."
- "An assessment of the current population equivalent being served by the pumping station gives a current load of 1000pe"
- "The works involved will include the decommissioning of the pumping station / wastewater treatment plant in Clarecastle and Clonroadmore and that a significantly extended and augmented WWTP be constructed at Clareabbey (Capacity 50,000pe). This will cater for Ennis and Clarecastle".
- "The Clarecastle Pumping Station comprises of a pumping station.....There is no sewerage treatment associated with this pumping station"
- "Estimation of the quantity of wastewater likely to be emitted in relation to a primary and secondary discharge points is included in Table E. 1(i) of the Annex" (Table E. 1 (i) of the Annex not included in the FIR)
- "...there is no stormwater overflows at this pumping station as all flows into the pumping station is combined. It is not possible to quantify the amount of stormwater".
- "The Quay Rd pumping station (Clarecastle Pumping Station) was refurbished in 1980's and serves Clarecastle receiving both foul and combined flows. All flows arrive at the pumping station by gravity. The flow is then discharged to the River Fergus. The pumping station has a dry well / wet well configuration....The pumping station is subject to a daily inspection, record keeping and maintenance".
- "The effluent from the pumping station (sic) discharges via outfall pipe into the River Fergus".
- "There will be no monitoring programme associated with this Pumping Station".

I further note the date on the submitted drawings (2008 / 9) and it is not clear whether such drawings refer to the development which is the subject of this Section 5 declaration.

From the information submitted, it is not clear as to how the information submitted with the FIR refers to the question as posed in the subject Section 5 declaration referral. However I would reference R21 61 as submitted by Irish Water. In this Section 5 Declaration (R21 61), Irish Water posed the following question:



*Whether the construction of a new underground pumping station to grounds to the south of the existing Quay Road pumping station, diversion of existing waste water sewers to a new pumping station, internal revisions to the existing Quay Road pumping station, and the installation of a new rising main connection to the existing Clareabbey Waste water treatment plant is development and if so is exempted development*

From the information submitted with the subject Section 5 declaration, including the information submitted with the FIR, I would consider it reasonable to conclude that the facts of the subject Section 5 declaration do not substantially differ from those (insofar as they are relevant to the replacement of the Clarecastle wastewater treatment plant and diversion of wastewater through a new sewer to the Clareabbey wastewater treatment plant) from those as presented Under R21 61. Under R21 61 Clare County Council made a declaration in relation to the following:

*Is the construction of a new underground pumping station to grounds to the south of the existing pumping station at Quay Road, Clarecastle, County Clare, diversion of existing wastewater sewers to a new pumping station, internal revisions to the existing pumping station at Quay Road, Clarecastle, County Clare, and the installation of a new rising main connection to the existing Clareabbey Wastewater Treatment Plant development and if so, is it exempted development*

Clare County Council concluded the following:

- i. The construction of a new underground pumping station to grounds to the south of the existing Quay Road pumping station, at Clarecastle, diversion of existing waste water sewers to a new pumping station, internal revisions to the existing Quay Road pumping station, and the installation of a new rising main connection to the existing Clareabbey Waste water treatment plant, is considered to constitute 'development' having regard to the definition of 'development' as contained in the Planning and Development Act 2000, as amended
- ii. The said development is considered to constitute development which is considered exempted development under Class 58 Schedule 2 of Part 1 of the Planning and Development Regulations 2001 as amended
- iii. The said exempted development does not require an Appropriate Assessment or an Environmental Impact Assessment
- iv. The said development does not constitute "project splitting" having regard to the definition of same as construed in Irish Case Law, namely *O'Grianna and others v. An Bord Pleanála* [2014] IEHC 632

Clare County Council decided the following:

*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 declare that the proposed development consisting of the construction of a new underground pumping station to grounds to the south of the existing Quay Road pumping station, at Clarecastle, diversion of existing waste water sewers to a new pumping station, internal revisions to the existing Quay Road pumping station, and the installation of a new rising main connection to the existing Clareabbey Waste water treatment plant constitutes development which is considered to be exempted development.*

In a recent case *Narconon Trust v An Board Pleanála*, the court of appeal ruled that a Section 5 Declaration is an authoritative ruling on an issue and parties must be entitled to rely upon unchallenged authoritative decisions. In this regard, it was noted that a series of conflicting decisions is not conducive to an authoritative ruling. If parties cannot rely on a Section 5 Declaration as an authoritative ruling, it could lead to injustice – to include potential enforcement proceedings – particularly in circumstances where a person acted bona fide in reliance on its validity.

The Court concluded that whilst the Board had jurisdiction to receive the referral, once it became apparent that the question referred was the same, or substantially the same, and in respect of the same land, and that there was no evidence of any change in the planning facts or circumstances, it ought to have concluded that:

- a) the referral by the Notice Parties amounted to an impermissible attack on the 2016 Declaration, which, in substance, questioned the validity of the 2016 Declaration other than by way of judicial review under section 50 of the PADA; and
- b) the 2018 Declaration issued in breach of section 50(2) of the PADA and was ultra vires.

Accordingly, the Court of Appeal dismissed the Board's appeal.

Having regard to all the available information, including that as submitted with the subject Section 5 referral and the information as submitted with the Section 5 referral under R21 61 (by Irish Water), I am satisfied that the information submitted under both declarations is substantially the same, and is in respect of the same land, and that there have been no evidence of any change in the planning facts or circumstances. Therefore I would consider that the validity of the Section 5 declaration as issued under ref. no. R21 61 cannot be challenged under the subject Section 5 declaration / Section 5 of the Planning and Development Act 2000, as amended. As a result I would consider it reasonable to rely the AA screening conclusions as reached under R21 61.

### **Recommendation**

The following questions have been referred to the Planning Authority:

*Whether the replacement of the Clarecastle wastewater treatment plant by diverting wastewater arising through any new sewer to the Clareabbey wastewater treatment plant, which discharges to an SAC, is development and if so is exempted development*

**The Planning Authority in considering this referral had regard to:**

- a) Sections 2, 3 and 4(1)(g) and 4(4) of the Planning and Development Act, 2000, as amended.
- b) Schedule 2, Article 6, Part 1, Class 58 of the Planning and Development Regulations 2001 as amended (Development by Irish Water) and the conditions and limitations of there under.
- c) Article 9 of the Planning and Development Regulations 2001 as amended- Restrictions on Exemptions
- d) The details and particulars as submitted with the referral application, including the Further Information response.
- e) The details, particulars and declaration as contained on a Section 5 declaration (ref R21 61) by Irish Water.
- f) The conclusions by the Court of Appeal in relation to *Narconon Trust v An Board Pleanála*.

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

the information submitted under the subject Section 5 declaration and that as submitted under ref. no. R21 61 is substantially the same, and is in respect of the same land, and that there have been no evidence of any change in the planning facts or circumstances.

### **Now therefore**

Clare County Council hereby decides the replacement of the Clarecastle wastewater treatment plant by diverting wastewater arising through any new sewer to the Clareabbey wastewater treatment plant, which discharges to an SAC constitutes development which is considered to be exempted development.



**Fiona Barry**  
Executive Planner  
Date: 27.06.2022




**Garreth Ruane**  
Senior Executive Planner  
Date: 28/06/22

**Clare County Council**  
**Screening for Appropriate Assessment & Determination**

1. Table 1 to be filled in for all development applications.
2. Where proposed development is within a European site(s) site, go directly to table 3.
3. For all other development proposals, fill in table 2, and if required, table 3.
4. A Habitats Directive Screening Statement should be sought for all developments regardless of location which require an EIS

**Table 1: Project Details**

<b>Planning File Reference</b>	R22 1
<b>Applicant Name</b>	M. Duffy
<b>Development Location</b>	Clareabbey & Clarecastle
<b>Application accompanied by an EIS</b>	No
<b>Application accompanied by an NIS</b>	No
<b>Description of the project (To include a site location map):</b>	
As per Section 5 referral	
	

**Table 2: Identification of European sites which may be impacted by the proposed development.**

This section identifies the European Sites within the likely zone of impact of the plan or project. For plans an initial 15km zone of influence (NPWS-DAHG)<sup>1</sup> is recommended. For 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. Qualifying Interests/Special conservation Interests for each site and the distance relevant to the proposal are listed (Table 2 (a)).

**Table 2 (a): European Sites within 15km of Applicant Site**

European Sites <sup>2</sup>	Qualifying Interests (QIs)/Special Conservation Interests (SCIs) and conservation objectives (either generic or detailed) (available on <a href="http://www.npws.ie/protectedsites">www.npws.ie/protectedsites</a> ) or through Intranet.	Distance to Applicant Site (km)
Lower River Shannon SAC	<p>Sandbanks which are slightly covered by sea water all the time [1110]</p> <p>Estuaries [1130]</p> <p>Mudflats and sandflats not covered by seawater at low tide [1140]</p> <p>Coastal lagoons [1150]</p> <p>Large shallow inlets and bays [1160]</p> <p>Reefs [1170]</p> <p>Perennial vegetation of stony banks [1220]</p> <p>Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]</p> <p>Salicornia and other annuals colonising mud and sand [1310]</p> <p>Atlantic salt meadows (<i>Glauco-Puccinellietalia maritima</i>) [1330]</p> <p>Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410]</p> <p>Water courses of plain to montane levels with the <i>Ranunculus fluitans</i> and <i>Callitriche-Batrachium</i> vegetation [3260]</p> <p>Molinia meadows on calcareous, peaty or clayey-silt-laden soils (<i>Molinia caerulea</i>) [6410]</p> <p>Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i>, <i>Alnus incana</i>, <i>Salix alba</i>) [91E0]</p> <p><i>Margaritifera margaritifera</i> (Freshwater Pearl Mussel) [1029]</p> <p><i>Petromyzon marinus</i> (Sea Lamprey) [1095]</p> <p><i>Lampetra planeri</i> (Brook Lamprey) [1096]</p> <p><i>Lampetra fluviatilis</i> (River Lamprey) [1099]</p> <p><i>Salmo salar</i> (Salmon) [1106]</p> <p><i>Tursiops truncatus</i> (Common Bottlenose Dolphin) [1349]</p> <p><i>Lutra lutra</i> (Otter) [1355]</p>	Adjacent
River Shannon & River Fergus Estuaries	Cormorant ( <i>Phalacrocorax carbo</i> ) [A017]	Adjacent

<sup>1</sup> European Sites that are more than 15km from the proposal may have to be considered. For example in the case of sites with water dependent habitats or species and where a proposal could affect water quality or quantity it may be necessary to consider the full extent of the upstream and/or downstream catchment.

<sup>2</sup> European Site details are available on <http://webgis.npws.ie/npwsviewer/> or maybe obtained from internal mapping systems.

European Sites <sup>2</sup>	Qualifying Interests (QIs)/Special Conservation Interests (SCIs) and conservation objectives (either generic or detailed) (available on <a href="http://www.npws.ie/protectedsites">www.npws.ie/protectedsites</a> ) or through Intranet.	Distance to Applicant Site (km)
SPA	Whooper Swan ( <i>Cygnus cygnus</i> ) [A038] Light-bellied Brent Goose ( <i>Branta bernicla hrota</i> ) [A046] Shelduck ( <i>Tadorna tadorna</i> ) [A048] Wigeon ( <i>Anas penelope</i> ) [A050] Teal ( <i>Anas crecca</i> ) [A052] Pintail ( <i>Anas acuta</i> ) [A054] Shoveler ( <i>Anas clypeata</i> ) [A056] Scaup ( <i>Aythya marila</i> ) [A062] Ringed Plover ( <i>Charadrius hiaticula</i> ) [A137] Golden Plover ( <i>Pluvialis apricaria</i> ) [A140] Grey Plover ( <i>Pluvialis squatarola</i> ) [A141] Lapwing ( <i>Vanellus vanellus</i> ) [A142] Knot ( <i>Calidris canutus</i> ) [A143] Dunlin ( <i>Calidris alpina</i> ) [A149] Black-tailed Godwit ( <i>Limosa limosa</i> ) [A156] Bar-tailed Godwit ( <i>Limosa lapponica</i> ) [A157] Curlew ( <i>Numenius arquata</i> ) [A160] Redshank ( <i>Tringa totanus</i> ) [A162] Greenshank ( <i>Tringa nebularia</i> ) [A164] Black-headed Gull ( <i>Chroicocephalus ridibundus</i> ) [A179] Wetland and Waterbirds [A999]	

1	Impacts on designated rivers, streams, lakes and fresh water dependant habitats and species.	<i>Is the development in the catchment of or immediately upstream of a watercourse that has been designated as a European site?</i>	Yes
2	Impacts on terrestrial habitats and species.	<i>Is the development within 1km of a European site with terrestrial based habitats or species?</i>	Yes
3	Impacts on designated marine habitats and species.	<i>Is the development located within marine or intertidal areas and within 5 km of a European site whose qualifying habitats or species include the following: Mudflats, sandflats, saltmarsh, shingle, reefs, sea cliffs</i>	No
4	Impacts on birds in SPAs	<i>Is the development within 1km of a Special Protection Area</i>	Yes
5	Indirect effects	<i>Is the development, in combination with other existing or proposed developments likely to impact on an adjacent European site? Is any emission from the</i>	No

		<i>development (including noise) likely to impact on an adjacent habitat or species?</i>	
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**Conclusion:** If the answer to all of the above is no, significant impacts on European sites are unlikely. No further assessment is required; go directly to the conclusion statement.  
If the answer is “unknown” or “yes” proceed to Table 3 and refer to the relevant sections of Table 3.

**Table 3: Identification of potential impacts.**

<b>1</b>	<b>Impacts on designated rivers, streams, lakes and fresh water dependant habitats and species.</b> <i>Please answer the following if the answer to question 1 in table 2 was “yes” or “unknown”.</i> <i>Does the development involve any of the following:</i>	
1.1	Removal of or interference with habitat within a European site. This may include any element of a project liable to interfere with breeding, nesting or roosting sites of birds, bats, water based species	NA
1.2	Discharges either directly (via pipe from the development) or indirectly (via sewer) to surfacewater or groundwater What is the likely volume of the discharge?	NA
1.3	Abstraction from surfacewater or groundwater in or adjacent to a European site, where hydrology is a critical element in the protection of habitat and species at the site? What is the likely volume of the abstraction?	NA
1.4	Is removal of topsoil proposed within 500m of watercourses? What transportation requirements are provided? Does the removal involve reduction in area, population density or fragmentation of area of any habitat or species?	NA
1.5	Infilling or raising of ground levels within 500m of watercourses? What transportation requirements are provided? Does the infilling or raising involve interference with area, population density or fragmentation of area of any habitat or species?	NA
1.6	Construction of drainage ditches - (scale?) Where the run off is directed to? Is the drainage run off directed to a European site where species are identified and whose conservation status may be impacted by this drainage?	NA
1.7	Installation of waste water treatment systems; percolation areas; septic tanks within 500m of watercourses?	NA
1.8	Construction within a floodplain or within an area liable to flood (See <a href="http://www.floodmaps.ie">www.floodmaps.ie</a> , internal flood risk maps, County Development Plan SFRA and <a href="http://www.cframs.ie">www.cframs.ie</a> )	Portion of the route of the sewer falls within FRZA
1.9	Crossing or culverting of rivers or streams, installation of weirs, temporary watercourse crossings or any interference with a watercourse.	NA

1.10	Storage of chemicals or hydrocarbons (including oils and fuels) within 500m of a watercourse	NA
1.11	Development within catchment of a European site of a scale or type which involves the production of an EIS	NA
1.12	Consideration of effects in combination with existing development?	NA
2	<b>Impacts on terrestrial habitats and species.</b> <i>Please answer the following if the answer to question 2 in table 2 was yes.</i> <i>Does the development involve any of the following:</i>	
2a	Removal of or interference with habitat within the European site. This includes reduction in habitat area or fragmentation of habitat. Is the timing of this interference liable to impact on the nesting or breeding period of any protected species?	NA
2b	Construction of roads or other infrastructure on peat habitats within 1km of bog, marsh, fen or heath habitat within a European site	NA
2c	Is the development liable to impact on water quality in the European site, or liable to give rise to any change in a key indicator of water quality, including salinity. If yes, is the site designated for any bird species or other plant species whose feeding ground or life cycle may be affected by changes in water quality?	NA
2d	Development within 1km of terrestrial European site of a scale or type which involves the production of an EIS.	NA
3	<b>Impacts on designated marine habitats and species.</b> <i>Please answer the following if the answer to question 3 in table 2 was yes.</i> <i>Does the development involve any of the following:</i>	
3a	Removal of or interference with habitat within the European site. This includes timing of the project if there is potential to interfere with nesting or breeding periods, either directly or indirectly (e.g. by noise emission) or any aspect of the life cycle of a protected species. This also includes potential fragmentation, size reduction of habitat, or reduction in species density.	NA
3b	Coastal protection works on intertidal or marine habitats within 5km of a European site supporting coastal or marine habitats or species. This includes any works which may give rise to potential changes in hydrology or salinity of these areas.	NA
3c	Development of piers, slipways, marinas, pontoons or any other infrastructure within 5km of a European site that was designated because it supports marine habitats and/or species.	NA
3d	Dredging within 5km of a European site supporting coastal or marine	NA

	habitats or species.	
3e	Removal of topsoil or infilling within 100m of marine habitats within the designated site.	NA
3f	Land based development within 1km of a European site of a scale or type which involves the production of an EIS.	NA
3g	Marine or intertidal based development within 5km of a European site of a scale or type which involves the production of an EIS.	NA



4	<p align="center"><b>Impacts on birds in SPAs</b></p> <p align="center"><i>Please answer the following if the answer to question 5 in table 2 was yes.</i></p> <p align="center"><i>Does the development involve any of the following:</i></p>	
4a	Removal of or interference with habitats within an SPA. This includes consideration of indirect and in combination effects on the feeding, breeding and nesting grounds of Annex 1 birds	NA
4b	Erection of wind turbines within 1km of an SPA.	NA
4c	All construction works within 100m of intertidal areas – Coastal SPAs, including indirect and in combination effects on the feeding, breeding and nesting grounds of Annex 1 birds	NA
4d	Infilling of coastal habitats within 500m of SPA, including indirect and in combination effects on the feeding, breeding and nesting grounds of Annex 1 birds	NA
4e	Discharges to coastal SPA, including any element of a discharge liable to give rise to disturbance of this habitat, either by direct, indirect, or in combination effects	NA
4f	Development of cycleways or walking routes within 100m of intertidal areas. This includes consideration of indirect and in combination effects on the feeding, breeding and nesting grounds of Annex 1 birds	NA
4g	Development within 1km of SPA of a scale or type which involves the production of an EIS. This includes consideration of indirect and in combination effects on the feeding, breeding and nesting grounds of Annex 1 birds	NA

**Conclusion:**

- If the answer to all of the above is *no*, significant impacts on European sites are unlikely. No further assessment is required; go directly to the conclusion statement.
- If the answer to any of the above is *yes*, or *unknown* effects on the European sites need to be assessed and a Natura Impact Statement will be required

Appropriate Assessment Screening Determination	
Planning File Reference	R22 1
Proposed Development	Section 5 referral
Development Location	Clarecastle and Clareabbey
European sites within impact zone	As above
Description of the project:	
As above	
Qualifying Interests (QIs)/Special Conservation Interests (SCIs) of European site	
See above	
Describe how the project or plan (alone or in combination) is likely to affect the European site(s).	
<ul style="list-style-type: none"> <li>The construction of a new underground wastewater pumping station on lands to the front of the existing Quay Road pumping station, consisting of a pump sump, valve chamber and meter chamber to pump untreated wastewater to Clareabbey Wastewater Treatment Plant to undergo secondary treatment</li> <li>The diversion of the existing combined gravity network to discharge to the new wastewater pumping station</li> <li>The construction of new pipework, fitted with a 10mm perforated fixed storm water overflow screen within the new wastewater pump sump, to discharge flows in excess of the new wastewater pumping station capacity to the wet well of the existing Quay Road pumping station, and</li> <li>The construction of approx. 1750m of 280mm OD wastewater rising main and associated fittings to connect the new wastewater pumping station to the proposed new inlet works at Clareabbey Wastewater Treatment Plant</li> <li>The existing Quay Road pumping station and associated infrastructure will be maintained in situ to operate as a stormwater pumping station to pump stormwater overflow to outfall to the River Fergus.</li> <li>There are no above ground structures proposed as part of the works.</li> </ul>	
If there are potential negative impacts, explain whether you consider if these are likely to be significant, and if not, why not?	
<p>Under the information submitted with Section 5 declaration R21 61, an AA screening report and EIA screening report was prepared and submitted to the PA in relation to the proposed development.</p> <p>No potential negative impacts are envisaged.</p> <p>Two previous reports were carried out in respect to a broadly similar Section 5 referrals (Ref. R19 39 and R19 62) which advised that:</p> <ul style="list-style-type: none"> <li>The current discharge from the Quay Road pumping station in Clarecastle is being discharged untreated with the current WFD status at this location reflecting the impact as it is currently classified as being at "Poor" status and "at risk" of failing to achieve "good" status in accordance with the WFD Objectives.</li> <li>The provision of a rising main sewer transporting raw sewage from Clarecastle to Clareabbey WWTP at Clareabbey, Clarecastle, Co.Clare will provide an overall improvement in water quality and therefore provide a direct benefit to the Qualifying Interest Features of the SAC and Special Conservation Interests of the SPA.</li> <li>While the primary purpose of the provision of the sewer is not for nature conservation management of the Natura 2000 site, it cannot be ignored that the upgrade will benefit water quality in the River Fergus and therefore provide a direct benefit to the associated European Sites and the Special Interest Features and further be seen as a project which is directly connected with and necessary to the management of a</li> </ul>	

European site.	
<b>Documentation reviewed for making this statement</b>	
<ul style="list-style-type: none"> <li>- County Development Plan (including Flood Maps, SEA &amp; AA)</li> <li>- NPWS website</li> <li>- Documents received as part of the planning application</li> <li>- EPA Code of Practice</li> </ul>	
<b>Conclusion of assessment (a, b, c or d)</b>	
<b>(a) The proposed development is directly connected with or necessary to the nature conservation management of a European Site(s)<sup>3</sup></b>	
<b>(b) There is no potential for significant effects to European Sites<sup>3</sup></b>	✓
<b>(c) The potential for significant effects to European Site(s) cannot be ruled out<sup>4</sup></b>	
<b>(d) Significant effects to European sites are certain or likely or where potential for significant effects to European sites remains following receipt of Further Information requested under S177U of the Planning and Development (Amendment) Act 2010<sup>5</sup></b>	
<b>Completed By</b>	Fiona Barry, Executive Planner
<b>Date</b>	27.06.2022

<sup>3</sup> Appropriate Assessment is not required and therefore Planning permission may be granted at this stage subject to all other planning considerations. However, no material changes may be made to the proposed development after this conclusion has been reached as this would invalidate the findings of the screening exercise.

<sup>4</sup> In accordance with S177U of the Planning and Development (Amendment) Act 2010, the applicant should be requested to submit an 'Appropriate Assessment Screening Matrix' completed by a suitably qualified ecologist, by way of Further Information. Following receipt of this information a new Appropriate Screening Report should be completed. The requested 'Appropriate Assessment Screening Matrix' should be in accordance with the template outlined in Annex 2, Figure 1 of the EU (2001) guidance document 'Assessment of plans and projects significantly affecting European Sites – Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC. This guidance document is available from [http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/natura\\_2000\\_assess\\_en.pdf](http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/natura_2000_assess_en.pdf) Alternatively, where other planning concerns arise the proposal could be refused planning permission.

<sup>5</sup> The proposed development must either by refused planning permission or alternatively an 'Appropriate Assessment' (AA) should be carried out by the Planning Authority. In order to facilitate the preparation of an AA the applicant should be requested to submit a Natura Impact Statement (NIS) in accordance with S177 (T) of the Planning and Development (Amendment) Act 2010. However, in the case of an application to retain unauthorised development of land and where the authority decides that an 'appropriate assessment' should have been carried out prior to the commencement of development, the application is required to be invalidated by the Planning Authority as per S34 (12) of the Planning and Development (Amendment) Act 2010 and accordingly an NIS should not be requested in such instances.



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**Michael Duffy**  
**1 Clós na hEaglaise**  
**Kilfenora**  
**Co Clare**

**13/06/2022**

**Section 5 referral Reference R22-1 – Michael Duffy**

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

A Chara,

I refer to your application received on 7th January 2022 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

I acknowledge receipt of your correspondence on the 13<sup>th</sup> June 2022, responding to the Planning Authority's request for further information.

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

Mise, le meas



**Tadhg Holmes**  
**Planning Department**  
**Economic Development Directorate**

**An Roinn Pleanála**  
**An Stiúrthóireacht 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



1 Clós na hEaglaise,  
Kilfenora,  
Co. Clare.

12<sup>th</sup> June 2022

**Section 5 referral R22-1**

A Chara,

Please find attached as much information as I can access regarding this proposed development.


You will note that documents downloaded from the Irish Water web portal indicate that Clare County Council are its partners so presumably any lacuna in specific details unavailable to the public will be available from your water services section.

I trust this addresses the queries raised in your request dated 2<sup>nd</sup> February 2022. I look forward to your decision in due course.


Yours Sincerely,

  
Michael Duffy.





# Clarecastle to benefit from works to end the discharge of untreated sewage

 / [News](#) / Clarecastle to benefit from works to end th...

21 DECEMBER 2020

Irish Water, working in partnership with Clare County Council, is progressing with works to upgrade the sewerage infrastructure in Clarecastle, Co. Clare. This will help eliminate the discharge of untreated wastewater into the River Fergus and the greater Shannon Estuary, bringing significant environmental, social and economic benefits to the area.

This project involves the construction of 2.1km of new wastewater pipelines and upgrades to the existing Quay Road wastewater pump station.

The first phase of works involve the construction of 311m of sewer main between Clarecastle Church and Quay Road are due to get underway on January 4th 2021 for a period of five weeks. These works have been brought forward in order to facilitate the Clarecastle Streetscape Rejuvenation Plan which is being supported by Clare County Council, Clarecastle Community Development Committee and the local Tidy Towns group and which will lead to significant enhancements in the heart of the village. This project is due to get underway in February 2021.

The construction of the remaining works including sewer rising main and upgrades to the pumping station are expected to get underway in early 2022.

Seamus Glynn, Irish Water's Regional Infrastructure Lead, said: *"Safeguarding our precious water resources and protecting the environment are the highest priorities for Irish Water. We are very pleased to be starting construction works on this important*

project for Clarecastle which will lead to improvements in the water quality in the River Fergus and the Shannon Estuary and the protection of its waters for recreation, fishing, swimming and boating.

"This will also provide a platform for social and economic development in the area into the future as the new infrastructure will be designed to accommodate ongoing population growth.

"We are particularly happy to be in a position to support the local community's streetscape improvement plans by bringing forward the timeline for the completion of the initial phase of works."

The works are being carried out by Ward & Burke Construction Ltd on behalf of Irish Water. Traffic Management will be in place during the course of these works and will include a stop and go traffic system. The works are due to start on Monday 4 January 2021 from 08:00 for an expected duration of 5 weeks.

Irish Water is working at this time, with our local authority partners, contractors and others to safeguard that the health and well-being of staff and the public and to ensure the continuity of drinking water and wastewater services.

We will continue to provide updates to the local community in advance and during these works. Further information is available from the project team at [ClareUWW@water.ie](mailto:ClareUWW@water.ie).

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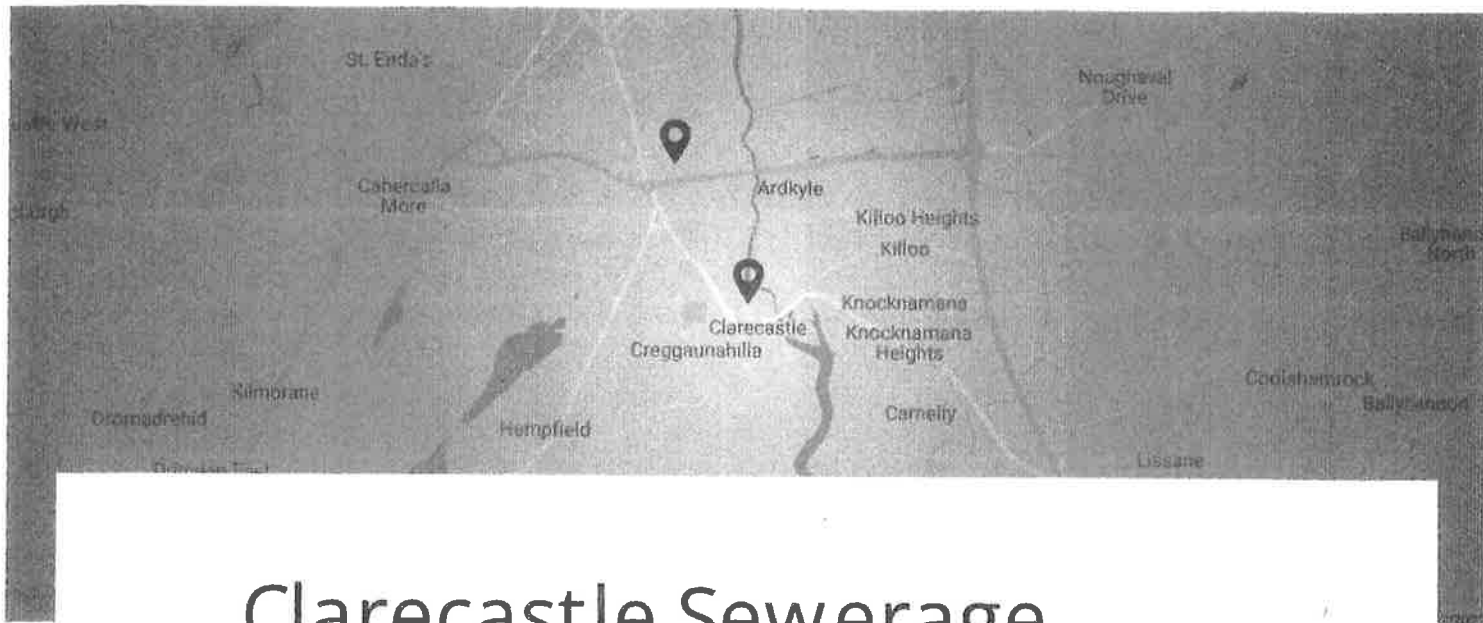
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# Clarecastle Sewerage Scheme

## Wastewater Project

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Irish Water is progressing plans for Clarecastle Sewerage Scheme and a Contractor has now been appointed.

Irish Water, working in partnership with Clare County Council, is progressing plans to deliver the Clarecastle Sewerage Scheme, to end the discharge of raw sewage into the River Fergus and Shannon Estuary from Clarecastle. Irish Water have appointed Shareridge as the Contractor to carry out these works.

Wastewater from the public sewer network in Clarecastle is currently discharged untreated into the River Fergus and the Shannon Estuary. The discharge of untreated wastewater is unacceptable, threatens water quality and detracts from the amenity value of the area.



Location  
Clare



Status  
Planned

Type  
Wastewater

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## What is involved with this project?

The scheme will involve the design and construction of the following works:

- Installation of new below ground infrastructure at the site of the existing Quay Road Pump Station
- New rising main pipeline along Quay Road, Barrack Street and the Ennis Road, to transfer sewage from Quay Road Pumping Station for treatment at the existing Clareabbey Wastewater Treatment Plant
- Existing outfall from Quay Road Pump Station will continue to be used as an emergency storm overflow.

## What are the benefits of this project?

The provision for treatment of wastewater from Clarecastle will ensure:

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# How can I connect into the new sewerage scheme?

Any person or business wishing to get a new connection to public wastewater collection infrastructure must contact Irish Water. You can make a pre-connection enquiry in order to establish whether a connection to the public network is feasible, where the connection can be made and any associated charges. For more information please visit [www.water.ie/connections](http://www.water.ie/connections).

## Next Steps

- Works are expected to commence in the coming months and temporary traffic management will be required along public roads
- We will endeavor to keep the local community informed as this essential project progresses and further details on the timelines shall be provided in the coming weeks and months

## We're working to eliminate raw sewage discharges in Ireland

- Work is now complete in 17 areas around the country where there was no sewage treatment before. 60% of raw sewage is now being treated for the equivalent of 100,000 people
- This year we have 13 locations under construction across the country, prioritising the areas where it can make the biggest impacts first
- We are on track to eliminate the majority of raw sewage discharges by the end of 2025, with a total investment of €650 million
- In Clare, plans are also well progressed to construct wastewater treatment infrastructure in Liscannor and Kilrush with works already underway. Works are also planned to end the discharge of raw sewage in Ballyvaughan and Kilkee.

Irish Water would like to thank the community in Clarecastle for their cooperation on this essential project.

For further information, please visit [www.water.ie/clarecastle](http://www.water.ie/clarecastle) or contact the Project Team at [ClareUWW@water.ie](mailto:ClareUWW@water.ie).

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## **Attachment No. A.1**

### **Non-Technical Summary**

Clare County Council New Road, Ennis, County Clare, operates the water services in Clarecastle in the County. Map No 1 shows the general area, which the Pumping Station serves and the overall agglomeration served.

The pumping station associated with the application, Clarecastle, Pumping Station is located in Clarecastle in the Townland of Clarecastle, County Clare.

The Clarecastle Pumping Station comprises of a combined foul and storm water collection system. The combined sewers gravitate to the pumping station where it is pumped for discharge to the River Fergus. The National Grid Reference for the Primary Discharge Point P(SW1) at the end of the outfall pipe is (E135,274 N174,028).

There is no sewerage treatment at this pumping station. There is a part-time caretaker that supervises the pumping station and there is back up generator on standby.

There is a new wastewater treatment plant to be constructed in Ennis and this pumping station will form part of the new works and details of which are included in Attachment B10.

The current wastewater treatment plant in Clarecastle does not comply with Urban Waste Water Regulations.

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## **Attachment B.9(i)**

### **Population Agglomeration:**

An assessment of the current population equivalent being served by the pumping station gives a current load of 1000PE. This figure was calculated following an examination of the Geo Directory for the area. There is no meter at this pumping station so no more information is available on the Population Agglomeration.

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## **Attachment B.10.**

### **Capital Investment Programme**

The Preliminary Report for the Ennis Clarecastle Sewerage Scheme has been finalised and approved by the Department of Environment Local Government and Heritage. Under Clare County Council's Water Services Investment Programme 2007-2009 The start date of 2009 will not be achieved but Clare County Council expect a commencement date of 2010 to be achieved. A copy of the current Water Services Investment Programme for 2007-2009 is attached also. The total cost of the works are estimated at €57,800,000.

The works involved will include the decommissioning of the pumping station/wastewater treatment plant in Clarecastle and Clonroadmore and that a significantly extended and augmented WWTP be constructed at Clareabbey (Capacity 50,000P.E). This will cater for Ennis and Clarecastle.

Treated effluent disposal will be transferred via an outfall pipeline to the Fergus Estuary, downstream of the Clarecastle Tidal Barrage. It is recommended that the location for the Ennis outfall is 2.9km downstream of Clarecastle Bridge and 1.6km downstream of the Roche Ireland Limited plant outfall.

Reconstruct and refurbish some pumping stations and decommission others, laying of new rising mains, new sewer networks etc.

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## **Attachment C.1**

### **Operational Information Requirements**

The Clarecastle Pumping Station comprises of a pumping station. The domestic treatment process is shown on attached Map No 11 Treatment Process in this attachment. Also attached Drg No 09 is a flow diagram.

There is no sewerage treatment associated with this pumping station.

The Quay Rd pumping station (Clarecastle Pumping Station) was refurbished in 1980's and serves Clarecastle receiving both foul and combined flows. All flows arrive at the pumping station by gravity. The flow is then discharged to the River Fergus. The pumping station has a dry well/wet well configuration. Each of the two "Swallowguide SRA8 foul pumps" has a design capacity of 135litres/sec. A diesel powered standby generator, with automatic changeover and a running time of 20hours has been installed.

The pumping station is subject to a daily inspection, record keeping and maintenance.

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## **Attachment C.1.1**

### **Stormwater Overflows**

Please note that there is no stormwater overflows at this pumping station as all flows into the pumping station is combined. It is not possible to quantify the amount of stormwater.

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## **Attachment C.1.2**

### **Pumping Station Information**

The Quay Rd pumping station (Clarecastle Pumping Station) was refurbished in 1980's and serves Clarecastle receiving both foul and combined flows. All flows arrive at the pumping station by gravity. The flow is then discharged to the River Fergus. The pumping station has a dry well/wet well configuration. Each of the two "Swallowguide SRA8 foul pumps" has a design capacity of 135litres/sec. A diesel powered standby generator, with automatic changeover and a running time of 20hours has been installed.

The pumping station is subject to a daily inspection, record keeping and maintenance. The volume of the pumping station is 26.79m<sup>3</sup>

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## **Attachment C.2**

### **Outfall Design and Construction**

The effluent from the pumping station discharges via an outfall pipe into the River Fergus. The National Grid Reference for the Primary Discharge Point P(SW1) at the end of the outfall pipe is (E135,274 N174,028).

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## **Attachment E.1**

Estimation of the quantity of waste water likely to be emitted in relation to all primary and secondary discharge points applied is included in Table E.1(i) of the Annex.

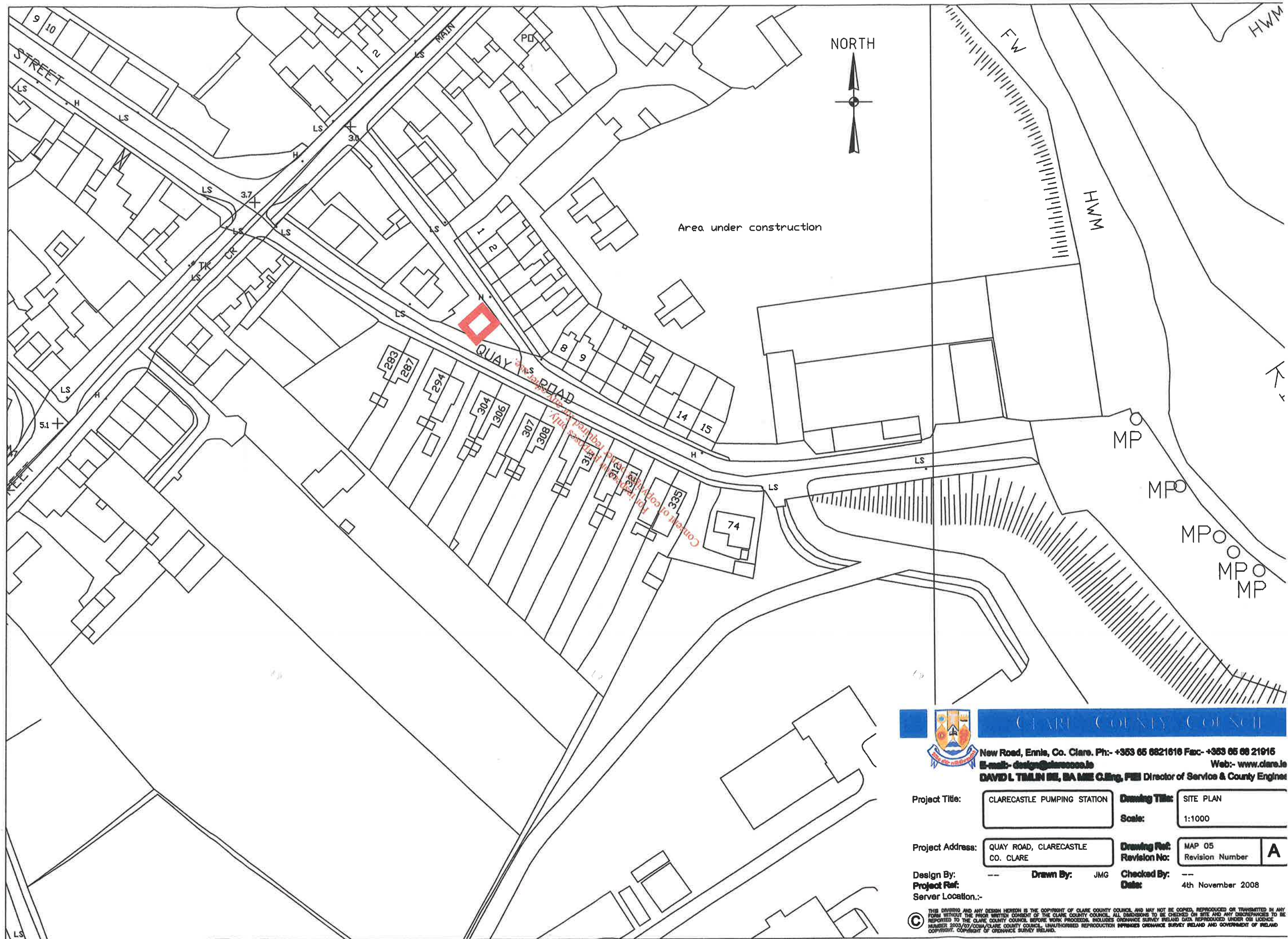
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## **Attachment E.2**

### **Current Programme for Environmental Monitoring Programme at Clarecastle Pumping Station**

**There is no monitoring programme associated with this Pumping Station.**

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New Road, Ennis, Co. Clare. Ph:- +353 65 6821616 Fax:- +353 65 68 21916  
E-mail:- [design@clarecc.ie](mailto:design@clarecc.ie) Web:- [www.clarecc.ie](http://www.clarecc.ie)  
DAVID L. TILLY, BA MSc CEng, FIE Director of Service & County Engineer

Project Title:	CLARECASTLE PUMPING STATION	Drawing Title:	SITE PLAN
		Scale:	1:1000
Project Address:	QUAY ROAD, CLARECASTLE CO. CLARE	Drawing Ref:	MAP 05
		Revision No:	Revision Number
Design By:	---	Drawn By:	JMG
Project Ref:	---	Checked By:	---
Server Location:-	---	Date:	4th November 2008

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**Treatment Plant**  
**X: 135,060**  
**Y: 174,059**

**aSW1u**  
**E: 135,273**  
**N: 174,048**

**SW1**  
**E: 135,274**  
**N: 174,028**

**aSW1d**  
**E: 135,285**  
**N: 174,010**

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EPA Waste Water Discharge Licence Mapping  
Monitoring Points  
Location Map 2

Checked by: Declan O Regan (SE)  
Date: February 2009  
Scale 1cm = .03435 km

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**Registered Post**

**Michael Duffy  
1 Clós na hEaglaise  
Kilfenora  
Co Clare**

RL 4096 6281 51E

**2nd February, 2022**

**Section 5 referral Reference R22-1 – Michael Duffy**

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

A Chara,

I refer to your application received on 7th January 2022 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

It is noted that the subject declaration is in relation to the following:

*the replacement of the Clarecastle wastewater treatment plant by diverting wastewater arising through any new sewer to the Clareabbey wastewater treatment plant, which discharges to an SAC, is development and if so is exempted development*

However limited details have been submitted with the application in relation to this development, and in this respect a full determination cannot be made. In accordance with Section 5 (2) (b) of the Planning and Development Act 2000 as amended, and in order for the Planning Authority to further consider and assess the subject declaration, you are invited to submit the following:

1. Please identify the location (including a map) of the Waste Water Treatment Plant to be replaced as referred to in the application, and full details in relation to the specification of same (i.e. capacity, etc).
2. Please submit full details, including relevant drawings, maps, specifications, etc in relation to the development which is the subject of this application, which would enable the Planning Authority to carry out a full Appropriate Assessment screening and a full Environmental Impact Assessment screening (in relation to both mandatory development and sub threshold development).

**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





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**Note to Applicant:**

You are advised to note that the Planning Authority issued a declaration to Irish Water (reference R21 61) in relation to the following development:

*Whether the construction of a new underground pumping station to grounds to the south of the existing Quay Road pumping station, diversion of existing waste water sewers to a new pumping station, internal revisions to the existing Quay Road pumping station, and the installation of a new rising main connection to the existing Clareabbey Waste water treatment plant is development and if so is exempted development*

In this declaration, the Planning Authority concluded that the construction of a new underground pumping station to grounds to the south of the existing Quay Road pumping station, at Clarecastle, diversion of existing waste water sewers to a new pumping station, internal revisions to the existing Quay Road pumping station, and the installation of a new rising main connection to the existing Clareabbey Waste water treatment plant constitutes development which is considered to be exempted development.

You are further advised to note that the Court of Appeal has clarified the status of conflicting declarations issued under Section 5 of the Planning and Development Act 2000, as amended. In *Narconon Trust v An Bord Pleanála*, the Court of Appeal confirmed that Section 5 declarations, once issued and not challenged, are conclusive. In the case of *Narconon Trust v An Bord Pleanála*, it was determined to be unlawful for the Board to have made a conflicting decision in 2018, to that made by the planning authority in 2016, on the same facts.

Mise, le meas

**Anne O'Gorman**  
Staff Officer  
Planning Department  
Economic Development Directorate

An Roinn Pleanála  
An Stiúrthóireacht 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 DECLARATION OF EXEMPTION APPLICATION**  
**PLANNERS REPORT**

<b>FILE REF:</b>	R22 1
<b>APPLICANT(S):</b>	Michael Duffy
<b>REFERENCE:</b>	Whether the replacement of the Clarecastle wastewater treatment plant by diverting wastewater arising through any new sewer to the Clareabbey wastewater treatment plant, which discharges to an SAC, is development and if so is exempted development
<b>LOCATION:</b>	Clarecastle/Clareabbey, Ennis, County Clare
<b>DUE DATE:</b>	3 <sup>rd</sup> Feb. 2022

**DESCRIPTION OF PROPOSED WORKS**

Limited details have been provided in relation to the scope of the proposed works, save to state that same will be carried out mostly in the public realm. A copy of the map contained within the Route Appraisal Report has also been submitted with the application.

**LAND OWNERSHIP / LEGAL INTEREST**

It would appear, based on the submitted map that the area where the proposed development is to be constructed is currently in use as a public road (from Clarecastle village to Clareabbey roundabout, before diverting in an easterly direction).

It would also appear that majority of the proposed works are to be constructed along the R458 regional road. It would further appear that the final section of the proposed sewer is to be constructed in Greenfield lands parallel to the N85 national secondary road. From a review of this Greenfield section, it would partly appear to be in third party property, and partly on lands in the ownership of Clare County Council.

Regarding the undertaking of works on third party property, I note from the ABP website that CPO was confirmed by ABP on 22<sup>nd</sup> May 2019. A Notice to Treat has been submitted to the landowner.

The applicant's legal interest in any of the aforementioned lands has not been disclosed, save to say he has an "environmental interest".

**BASIS OF THE REFERRAL**

Michael Duffy, pursuant to Section 5 of the Planning and Development Act 2000, as amended, is requesting a declaration on the following:

*the replacement of the Clarecastle wastewater treatment plant by diverting wastewater arising through any new sewer to the Clareabbey wastewater treatment plant, which discharges to an SAC, is development and if so is exempted development*

**STATUTORY PROVISIONS**

**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*

Section 4 (1) (g) states the following shall be exempted developments for the purposes of the act developments consisting of the varying out by any local authority or statutory under taken of any works for the purpose of inspection, repairing, renewing, altering or removing any sewer, mains, pipes, cables, over head wires or other apparatus including the excavation of any street, or other land for that purpose. This section is relevant to the subject application, as while not stated in the subject declaration application, such works would be under the remit of a statutory body, namely Irish Water.

Section 4(4) of the Act states that notwithstanding paragraphs (a), (i) (ia) and (l) of subsection 1 and any regulations under subsection 2 , development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required (i.e. amended by the Environment (Miscellaneous Provisions) Act 2011).

#### Planning and Development Regulations 2001, as amended

##### Class 58 – Development by Irish Water

*Development by Irish Water, for the purpose of the provision of water services, consisting of one or more of the following:*

*(a) the inspection, maintenance, repair, renewal or removal of pipes, cables, water mains, sewers, including associated accessories, service connections, boundary boxes, kiosks ,intakes, overhead wires, meters and other apparatus, including the excavation of any street or other land for that purpose;*

*(b) the installation of either or both—*

*(i) underground pipes, cables, water mains, sewers, including associated accessories, service connections, boundary boxes and meters, and,*

*(ii) above ground kiosks, meters and over head wires including the excavation of any street or other land for that purpose;*

*Conditions and limitation:*

*The volume above ground level of any such other apparatus and overhead kiosk, meter or other apparatus shall not exceed 13 cubic metres in rural areas (being areas as defined in Article 6(3)) or 2 cubic metres in order areas measured externally.*

*(c) The construction or erection of either or both.*

*(i) below ground pumping or booster stations and, where appropriate, above ground kiosks, and*

*(ii) below ground holding tanks ore reservoirs*

*Conditions and limitations*

1. *The volume above ground level of any (ii) below ground holding tanks or such kiosk, meter or other apparatus shall not exceed 500 cubic metres measured externally*
2. *The volume above ground level of any such kiosk, metre or other apparatus shall not exceed 13 cubic metres in rural areas (being areas as defined in Article 6(3)) or 2 cubic metres in other areas, measured externally.*

#### Article 9 – Restrictions on Exemption

*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,*

*(iv) 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.*

## **PLANNING HISTORY**

R21 61      Application by Irish Water for a declaration on the following:  
Whether the construction of a new underground pumping station to grounds to the south of the existing Quay Road pumping station, diversion of existing waste water sewers to a new pumping station, internal revisions to the existing Quay Road pumping station, and the installation of a new rising main connection to the existing Clareabbey Waste water treatment plant is development and if so is exempted development.

Clare County Council decided that the works constituted development which is exempted development

R19 62      Application by Brain Barry for a declaration on the following:  
Whether development of a sewer to transport wastewater arising in the agglomeration of Clarecastle for treatment in the Clareabbey WWTP and which discharges to waters in and / or connected to European Sites from Clarecastle to Clareabbey, Ennis, Co. Clare is or is not development and is or is not exempted development.

Clare County Council decided that the works constituted development which is exempted development

Note: The decision of Clare County Council was appealed by the first party to ABP, however the appeal was deemed invalid.

R19 39      Application by Brain Barry for a declaration on the following:  
Whether the installation of a rising main sewer transporting raw sewerage from Clarecastle to Clareabbey WWTP at Clareabbey, Clarecastle, Co. Clare is or is not development and is or is not exempted development.

Clare County Council decided that the works constituted development which is exempted development

Note: The decision of Clare County Council was appealed by the first party to ABP, however the appeal was deemed invalid.

P18 1004      Application by Irish Water for planning permission for development consisting of upgrading the existing waste water treatment plant, by demolishing the existing inlet works, construction of a new inlet works, storm tank, ESB substation and all ancillary site works. Permission granted

<b>Assessment</b>
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## **The Requirement For An Environmental Impact Assessment**

### **Mandatory**

Having regard to the nature of the proposed works and the list of projects set out under schedule 5 Development for the purposes of part 10 Article 93, of the Planning and Development Regulations as amended, and the details as provided for in the submitted application, it is not clear whether the proposed development falls within the mandatory requirements for an EIA as stated in EU Directive 85/337/EEC (as amended by Directive 97/11/EC, 2003/31/EC and 2009/31/EC). In this regard, I have considered the following:

- Schedule 5, Part 2, Item 11 (c) of the Planning and Development Regulations 2001, as amended:

*Waste water treatment plants with a capacity greater than 10,000 population equivalent as defined in Article 2, point (6), of Directive 91/271/EEC not included in Part 1 of this Schedule.*

- Schedule 5, Part 2, Item 13 (c) of the Planning and Development Regulations 2001, as amended:

*Any change or extension of development already authorised, executed or in the process of being executed(not being a change or extension referred to in Part 1 )which would:-*

- (i) result in the development being of a class listed in Part 1 or paragraphs 1 to 12 of Part 2 of this Schedule, and*
- (ii) result in an increase in size greater than —25 per cent, or-an amount equal to 50 per cent of the appropriate threshold, whichever is the greater.*

The subject application is specifically in relation to the following:

*the replacement of the Clarecastle wastewater treatment plant by diverting wastewater arising through any new sewer to the Clareabbey wastewater treatment plant, which discharges to an SAC, is development and if so is exempted development*

No substantive details have been provided with the application, and therefore based on same, it is not possible to make a full assessment in relation to the mandatory requirement or otherwise for EIA to be carried out.

While I note the documentation as submitted under a separate Section 5 declaration (by Irish Water - R21 61) I cannot conclusively state, based on the information submitted with the subject application, that the development referred to under the subject application is the same as that referred to under application with reference number R21 61.

#### Sub Threshold

I further note that the requirement for a sub-threshold EIA was screened out under P18-1004, R19 62 and R19 39, however I consider it prudent to carry out a sub-threshold screening in respect of the subject Section 5 declaration. The subject application is deficient in respect of information contained therein to allow for a full EIA screening assessment to be carried out.

#### The Requirement For Appropriate Assessment

No details have been submitted under the subject application to allow for an AA screening to be carried out.

#### Considerations

##### ***Planning and Development Act 2000, as amended***

##### Is or is not development?

Having regard to section 2 of the Planning and Development Act 2000, as amended, 'works' is defined as 'any act or operation of construction or excavation'. I refer to section 3 of said Act which defines 'development' as 'The carrying out of any works on, over or under land or the making of any material change in the use of any structures or other land'.

Having regard to the definition of works, it would appear that the proposed works being the laying and installation of sewers underground and ancillary works constitutes both 'works' and 'development'.

##### Is or is not exempted Development?

Section 4 (1) (g) of the Planning and Development Act 2000, as amended, states the following shall be exempted developments for the purposes of the Act: 'Developments consisting of the carrying out by any local authority or statutory undertaker of any works for the purpose of inspection, repairing, renewing, altering or removing any sewer, mains, pipes, cables, over head wires or other apparatus including the excavation of any street, or other land for that purpose'. While not stated in the application, works such as those outlined in the submitted application are typically carried out by a statutory undertaker, namely Irish Water.

Section 4(4) of the Act states 'Notwithstanding paragraphs (a), (i) (ia) and (l) of subsection 1 and any regulations under subsection 2, development shall not be exempted development if an environmental impact assessment or an

appropriate assessment of the development is required. In this regard insufficient information has been submitted with the subject application in order for the Planning Authority to make a conclusive determination in relation to same.

It is noted that section 4 (1) (g) of the Act does not expressly state the **installation** or laying of a new sewer/ rising main is exempted development, but only refers to inspection, repairing, renewing, altering or removing.

Section 5 (7) of Planning and Development Act 2000, as amended

Under Section 5 (7) of the Act, a planning authority, before making a declaration under this section, shall consider the record forwarded to it in accordance with subsection (6)(c) by An Bord Pleanala.

I have examined similar section 5 declarations as issued by An Bord Pleanala (304236, 305749) however the circumstances in those cases are different to the current section 5 which I am assessing.

***Planning and Development Regulations 2001 as amended***

Class 58 – Development by Irish Water

Column 1 Description of Development	Column 2 Conditions and Limitations
<p><b>Class 58</b> Development by Irish Water, for the purpose of the provision of water services, consisting of one or more of the following:</p> <p>(a) the inspection, maintenance, repair, renewal or removal of pipes, cables, water mains, sewers, including associated accessories, service connections, boundary boxes, kiosks, intakes, overhead wires, meters and other apparatus, including the excavation of any street or other land for that purpose;</p> <p>(b) the installation of either or both—</p> <p>(i) underground pipes, cables, water mains, sewers, including associated accessories, service connections, boundary boxes and meters, and,</p> <p>(ii) above ground kiosks, meters and other apparatus and overhead wires,</p> <p>including the excavation of any street or other land for that purpose;</p> <p>(c) The construction or erection of either or both—</p> <p>(i) below ground pumping or booster stations and, where appropriate, above ground kiosks, and</p> <p>(ii) below ground holding tanks or reservoirs;</p>	<p>The volume above ground level of any such kiosk, meter or other apparatus shall not exceed 13 cubic metres in rural areas (being areas as defined in Article 6(3)) or 2 cubic metres in other areas, measured externally.</p> <p>1. The volume of any such below ground level pumping or booster station and any such holding tank or reservoir shall not exceed 500 cubic metres, measured externally.</p> <p>2. The volume above ground level of any such kiosk, meter or other apparatus shall not exceed 13 cubic metres in rural areas (being areas as defined in Article 6(3)) or 2 cubic metres in other areas, measured externally.</p>



The subject application specifically refers to the replacement of "Clarecastle waste water treatment plant". Further details are required from the applicant in order to provide a specific assessment on the proposed development under Class 58.

#### Article 9

*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. It would appear, that there are no conditions attached to pl. ref. no. p18 1004 which would be inconsistent with the proposed development.*

*(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, N/A*

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

*(iv) 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. N/A*

*(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, N/A*

*(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, N/A*

*(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. Due to the limited details submitted with the application, an AA screening report cannot be carried out.*

*(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." N/A*

*(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, N/A*

*(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, N/A*

*(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, N/A*

*(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. N/A*

## **Conclusion**

Insufficient information has been submitted with the application to enable to full and proper assessment to be carried out in relation to the subject declaration. While it would appear that the map as submitted with the application is broadly similar to certain documents submitted by Irish Water in relation to R21 61, the questions posed under both applications are substantially different.

I note that having regard to the provisions of Section 4 of the Planning and Development Act 2000, as amended, Class 58 and Article 9 of the Planning and Development Regulations 2001, as amended, which refers to restrictions on exemptions, while the laying or installation of a sewer would generally be considered exempted development, it is not clear on the requirement for AA / EIA having regard to schedule 7 and 7 (a) of the Planning and Development Regulations 2001 as amended.

In order for the Planning Authority is fully consider the question as posed under the subject application, I recommend that Further Information is sought from the applicant.

## **Recommendation**

It is noted that the subject declaration is in relation to the following:

*the replacement of the Clarecastle wastewater treatment plant by diverting wastewater arising through any new sewer to the Clareabbey wastewater treatment plant, which discharges to an SAC, is development and if so is exempted development*

However limited details have been submitted with the application in relation to this development, and in this respect a full determination cannot be made. In accordance with Section 5 (2) (b) of the Planning and Development Act 2000 as amended, and in order for the Planning Authority to further consider and assess the subject declaration, you are invited to submit the following:

1. Please identify the location (including a map) of the Waste Water Treatment Plant to be replaced as referred to in the application, and full details in relation to the specification of same (i.e. capacity, etc).
2. Please submit full details, including relevant drawings, maps, specifications, etc in relation to the development which is the subject of this application, which would enable the Planning Authority to carry out a full Appropriate Assessment screening and a full Environmental Impact Assessment screening (in relation to both mandatory development and sub threshold development).

## **Note to Applicant:**

You are advised to note that the Planning Authority issued a declaration to Irish Water (reference R21 61) in relation to the following development:

*Whether the construction of a new underground pumping station to grounds to the south of the existing Quay Road pumping station, diversion of existing waste water sewers to a new pumping station, internal revisions to the existing Quay Road pumping station, and the installation of a new rising main connection to the existing Clareabbey Waste water treatment plant is development and if so is exempted development*

In this declaration, the Planning Authority concluded that the construction of a new underground pumping station to grounds to the south of the existing Quay Road pumping station, at Clarecastle, diversion of existing waste water sewers to a new pumping station, internal revisions to the existing Quay Road pumping station, and the installation of a new rising main connection to the existing Clareabbey Waste water treatment plant constitutes development which is considered to be exempted development.

You are further advised to note that the Court of Appeal has clarified the status of conflicting declarations issued under Section 5 of the Planning and Development Act 2000, as amended. In *Narconon Trust v An Bord Pleanála*, the Court of Appeal confirmed that Section 5 declarations, once issued and not challenged, are conclusive. In the case of *Narconon Trust v An Bord Pleanála*, it was determined to be unlawful for the Board to have made a conflicting decision in 2018, to that made by the planning authority in 2016, on the same facts.



**Fiona Barry**  
**Executive Planner**  
**Date: 01.02.2022**




**Garreth Ruane**  
**Senior Executive Planner**  
**Date: 02/02/22.**

**Clare County Council**  
**Screening for Appropriate Assessment & Determination**

1. Table 1 to be filled in for all development applications.
2. Where proposed development is within a European site(s) site, go directly to table 3.
3. For all other development proposals, fill in table 2, and if required, table 3.
4. A Habitats Directive Screening Statement should be sought for all developments regardless of location which require an EIS

**Table 1: Project Details**

<b>Planning File Reference</b>	R22 1
<b>Applicant Name</b>	M. Duffy
<b>Development Location</b>	Clareabbey & Clarecastle
<b>Application accompanied by an EIS</b>	No
<b>Application accompanied by an NIS</b>	No
<b>Description of the project (To include a site location map):</b>	
As per Section 5 referral	
	

**Table 2: Identification of European sites which may be impacted by the proposed development.**

This section identifies the European Sites within the likely zone of impact of the plan or project. For plans an initial 15km zone of influence (NPWS-DAHG)<sup>1</sup> is recommended. For 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. Qualifying Interests/Special conservation Interests for each site and the distance relevant to the proposal are listed (Table 2 (a)).

**Table 2 (a): European Sites within 15km of Applicant Site**

European Sites <sup>2</sup>	Qualifying Interests (QIs)/Special Conservation Interests (SCIs) and conservation objectives (either generic or detailed) (available on <a href="http://www.npws.ie/protectedsites">www.npws.ie/protectedsites</a> ) or through Intranet.	Distance to Applicant Site (km)
Lower River Shannon SAC	<p>Sandbanks which are slightly covered by sea water all the time [1110]</p> <p>Estuaries [1130]</p> <p>Mudflats and sandflats not covered by seawater at low tide [1140]</p> <p>Coastal lagoons [1150]</p> <p>Large shallow inlets and bays [1160]</p> <p>Reefs [1170]</p> <p>Perennial vegetation of stony banks [1220]</p> <p>Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]</p> <p>Salicornia and other annuals colonising mud and sand [1310]</p> <p>Atlantic salt meadows (<i>Glauco-Puccinellietalia maritimae</i>) [1330]</p> <p>Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410]</p> <p>Water courses of plain to montane levels with the <i>Ranunculus fluitantis</i> and <i>Callitriche-Batrachion</i> vegetation [3260]</p> <p><i>Molinia</i> meadows on calcareous, peaty or clayey-silt-laden soils (<i>Molinion caeruleae</i>) [6410]</p> <p>Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i>, <i>Alnion incanae</i>, <i>Salicion albae</i>) [91E0]</p> <p><i>Margaritifera margaritifera</i> (Freshwater Pearl Mussel) [1029]</p> <p><i>Petromyzon marinus</i> (Sea Lamprey) [1095]</p> <p><i>Lampetra planeri</i> (Brook Lamprey) [1096]</p> <p><i>Lampetra fluviatilis</i> (River Lamprey) [1099]</p> <p><i>Salmo salar</i> (Salmon) [1106]</p> <p><i>Tursiops truncatus</i> (Common Bottlenose Dolphin) [1349]</p> <p><i>Lutra lutra</i> (Otter) [1355]</p>	Adjacent

<sup>1</sup> European Sites that are more than 15km from the proposal may have to be considered. For example in the case of sites with water dependent habitats or species and where a proposal could affect water quality or quantity it may be necessary to consider the full extent of the upstream and/or downstream catchment.

<sup>2</sup> European Site details are available on <http://webgis.npws.ie/npwsviewer/> or maybe obtained from internal mapping systems.

European Sites <sup>2</sup>	Qualifying Interests (QIs)/Special Conservation Interests (SCIs) and conservation objectives (either generic or detailed) (available on <a href="http://www.npws.ie/protectedsites">www.npws.ie/protectedsites</a> ) or through Intranet.	Distance to Applicant Site (km)
River Shannon & River Fergus Estuaries SPA	Cormorant ( <i>Phalacrocorax carbo</i> ) [A017] Whooper Swan ( <i>Cygnus cygnus</i> ) [A038] Light-bellied Brent Goose ( <i>Branta bernicla hrota</i> ) [A046] Shelduck ( <i>Tadorna tadorna</i> ) [A048] Wigeon ( <i>Anas penelope</i> ) [A050] Teal ( <i>Anas crecca</i> ) [A052] Pintail ( <i>Anas acuta</i> ) [A054] Shoveler ( <i>Anas clypeata</i> ) [A056] Scaup ( <i>Aythya marila</i> ) [A062] Ringed Plover ( <i>Charadrius hiaticula</i> ) [A137] Golden Plover ( <i>Pluvialis apricaria</i> ) [A140] Grey Plover ( <i>Pluvialis squatarola</i> ) [A141] Lapwing ( <i>Vanellus vanellus</i> ) [A142] Knot ( <i>Calidris canutus</i> ) [A143] Dunlin ( <i>Calidris alpina</i> ) [A149] Black-tailed Godwit ( <i>Limosa limosa</i> ) [A156] Bar-tailed Godwit ( <i>Limosa lapponica</i> ) [A157] Curlew ( <i>Numenius arquata</i> ) [A160] Redshank ( <i>Tringa totanus</i> ) [A162] Greenshank ( <i>Tringa nebularia</i> ) [A164] Black-headed Gull ( <i>Chroicocephalus ridibundus</i> ) [A179] Wetland and Waterbirds [A999]	Adjacent

1	Impacts on designated rivers, streams, lakes and fresh water dependant habitats and species.	<i>Is the development in the catchment of or immediately upstream of a watercourse that has been designated as a European site?</i>	Not clear
2	Impacts on terrestrial habitats and species.	<i>Is the development within 1km of a European site with terrestrial based habitats or species?</i>	Not clear
3	Impacts on designated marine habitats and species.	<i>Is the development located within marine or intertidal areas and within 5 km of a European site whose qualifying habitats or species include the following: Mudflats, sandflats, saltmarsh, shingle, reefs, sea cliffs</i>	Not clear
4	Impacts on birds in SPAs	<i>Is the development within 1km of a Special Protection Area</i>	Not clear
5	Indirect effects	<i>Is the development, in combination with other existing or proposed developments likely to impact on an adjacent European site?</i>	Not clear

		Is any emission from the development (including noise) likely to impact on an adjacent habitat or species?	
--	--	------------------------------------------------------------------------------------------------------------	--

**Conclusion:** If the answer to all of the above is no, significant impacts on European sites are unlikely. No further assessment is required; go directly to the conclusion statement.

If the answer is "unknown" or "yes" proceed to Table 3 and refer to the relevant sections of Table 3.

**Table 3: Identification of potential impacts.**

<b>1</b>	<b>Impacts on designated rivers, streams, lakes and fresh water dependant habitats and species.</b> <i>Please answer the following if the answer to question 1 in table 2 was "yes" or "unknown".</i> <i>Does the development involve any of the following:</i>	
1.1	Removal of or interference with habitat within a European site. This may include any element of a project liable to interfere with breeding, nesting or roosting sites of birds, bats, water based species	Not clear
1.2	Discharges either directly (via pipe from the development) or indirectly (via sewer) to surfacewater or groundwater What is the likely volume of the discharge?	Not clear
1.3	Abstraction from surfacewater or groundwater in or adjacent to a European site, where hydrology is a critical element in the protection of habitat and species at the site? What is the likely volume of the abstraction?	Not clear
1.4	Is removal of topsoil proposed within 500m of watercourses? What transportation requirements are provided? Does the removal involve reduction in area, population density or fragmentation of area of any habitat or species?	Not clear
1.5	Infilling or raising of ground levels within 500m of watercourses? What transportation requirements are provided? Does the infilling or raising involve interference with area, population density or fragmentation of area of any habitat or species?	Not clear
1.6	Construction of drainage ditches - (scale?) Where the run off is directed to? Is the drainage run off directed to a European site where species are identified and whose conservation status may be impacted by this drainage?	Not clear
1.7	Installation of waste water treatment systems; percolation areas; septic tanks within 500m of watercourses?	NA Not clear
1.8	Construction within a floodplain or within an area liable to flood (See <a href="http://www.floodmaps.ie">www.floodmaps.ie</a> , internal flood risk maps, County Development Plan SFRA and <a href="http://www.cframs.ie">www.cframs.ie</a> )	Not clear
1.9	Crossing or culverting of rivers or streams, installation of weirs, temporary watercourse crossings or any interference with a	Not clear



	watercourse.	
1.10	Storage of chemicals or hydrocarbons (including oils and fuels) within 500m of a watercourse	Not clear
1.11	Development within catchment of a European site of a scale or type which involves the production of an EIS	Not clear
1.12	Consideration of effects in combination with existing development?	Not clear
2	<p align="center"><b>Impacts on terrestrial habitats and species.</b>  <i>Please answer the following if the answer to question 2 in table 2 was yes.</i>  <i>Does the development involve any of the following:</i></p>	
2a	Removal of or interference with habitat within the European site. This includes reduction in habitat area or fragmentation of habitat. Is the timing of this interference liable to impact on the nesting or breeding period of any protected species?	Not clear
2b	Construction of roads or other infrastructure on peat habitats within 1km of bog, marsh, fen or heath habitat within a European site	Not clear
2c	Is the development liable to impact on water quality in the European site, or liable to give rise to any change in a key indicator of water quality, including salinity. If yes, is the site designated for any bird species or other plant species whose feeding ground or life cycle may be affected by changes in water quality?	Not clear
2d	Development within 1km of terrestrial European site of a scale or type which involves the production of an EIS.	Not clear
3	<p align="center"><b>Impacts on designated marine habitats and species.</b>  <i>Please answer the following if the answer to question 3 in table 2 was yes.</i>  <i>Does the development involve any of the following:</i></p>	
3a	Removal of or interference with habitat within the European site. This includes timing of the project if there is potential to interfere with nesting or breeding periods, either directly or indirectly (e.g. by noise emission) or any aspect of the life cycle of a protected species. This also includes potential fragmentation, size reduction of habitat, or reduction in species density.	Not clear
3b	Coastal protection works on intertidal or marine habitats within 5km of a European site supporting coastal or marine habitats or species. This includes any works which may give rise to potential changes in hydrology or salinity of these areas.	Not clear
3c	Development of piers, slipways, marinas, pontoons or any other infrastructure within 5km of a European site that was designated because it supports marine habitats and/or species.	Not clear



3d	Dredging within 5km of a European site supporting coastal or marine habitats or species.	Not clear
3e	Removal of topsoil or infilling within 100m of marine habitats within the designated site.	Not clear
3f	Land based development within 1km of a European site of a scale or type which involves the production of an EIS.	Not clear
3g	Marine or intertidal based development within 5km of a European site of a scale or type which involves the production of an EIS.	Not clear

4	<p align="center"><b>Impacts on birds in SPAs</b></p> <p align="center"><i>Please answer the following if the answer to question 5 in table 2 was yes.</i></p> <p align="center"><i>Does the development involve any of the following:</i></p>	
4a	Removal of or interference with habitats within an SPA. This includes consideration of indirect and in combination effects on the feeding, breeding and nesting grounds of Annex 1 birds	Not clear
4b	Erection of wind turbines within 1km of an SPA.	Not clear
4c	All construction works within 100m of intertidal areas – Coastal SPAs, including indirect and in combination effects on the feeding, breeding and nesting grounds of Annex 1 birds	Not clear
4d	Infilling of coastal habitats within 500m of SPA, including indirect and in combination effects on the feeding, breeding and nesting grounds of Annex 1 birds	Not clear
4e	Discharges to coastal SPA, including any element of a discharge liable to give rise to disturbance of this habitat, either by direct, indirect, or in combination effects	Not clear
4f	Development of cycleways or walking routes within 100m of intertidal areas. This includes consideration of indirect and in combination effects on the feeding, breeding and nesting grounds of Annex 1 birds	Not clear
4g	Development within 1km of SPA of a scale or type which involves the production of an EIS. This includes consideration of indirect and in combination effects on the feeding, breeding and nesting grounds of Annex 1 birds	Not clear

**Conclusion:**

- If the answer to all of the above is *no*, significant impacts on European sites are unlikely. No further assessment is required; go directly to the conclusion statement.
- If the answer to any of the above is *yes*, or *unknown* effects on the European sites need to be assessed and a Natura Impact Statement will be required

Appropriate Assessment Screening Determination	
Planning File Reference	R22 1
Proposed Development	Section 5 referral
Development Location	Clarecastle and Clareabbey
European sites within impact zone	As above
Description of the project:	
<i>the replacement of the Clarecastle wastewater treatment plant by diverting wastewater arising through any new sewer to the Clareabbey wastewater treatment plant, which discharges to an SAC, is development and if so is exempted development</i>	
Qualifying Interests (QIs)/Special Conservation Interests (SCIs) of European site	
See above	
Describe how the project or plan (alone or in combination) is likely to affect the European site(s).	
<ul style="list-style-type: none"> <li>No details provided</li> </ul>	
If there are potential negative impacts, explain whether you consider if these are likely to be significant, and if not, why not?	
<ul style="list-style-type: none"> <li>Unable to make an assessment based on the limited details submitted with the application</li> </ul>	
Documentation reviewed for making this statement	
<ul style="list-style-type: none"> <li>County Development Plan (including Flood Maps, SEA &amp; AA)</li> <li>NPWS website</li> <li>Documents received as part of the planning application</li> <li>EPA Code of Practice</li> </ul>	
Conclusion of assessment (a, b, c or d)	
(a) The proposed development is directly connected with or necessary to the nature conservation management of a European Site(s) <sup>3</sup>	
(b) There is no potential for significant effects to European Sites <sup>3</sup>	

<sup>3</sup> Appropriate Assessment is not required and therefore Planning permission may be granted at this stage subject to all other planning considerations. However, no material changes may be made to the proposed development after this conclusion has been reached as this would invalidate the findings of the screening exercise.

<b>(c) The potential for significant effects to European Site(s) cannot be ruled out<sup>4</sup></b>	✓
<b>(d) Significant effects to European sites are certain or likely or where potential for significant effects to European sites remains following receipt of Further Information requested under S177U of the Planning and Development (Amendment) Act 2010<sup>5</sup></b>	
<b>Completed By</b>	Fiona Barry, Executive Planner
<b>Date</b>	01.02.2022

<sup>4</sup> In accordance with S177U of the Planning and Development (Amendment) Act 2010, the applicant should be requested to submit an 'Appropriate Assessment Screening Matrix' completed by a suitably qualified ecologist, by way of Further Information. Following receipt of this information a new Appropriate Screening Report should be completed. The requested 'Appropriate Assessment Screening Matrix' should be in accordance with the template outlined in Annex 2, Figure 1 of the EU (2001) guidance document 'Assessment of plans and projects significantly affecting European Sites – Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC. This guidance document is available from [http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/natura\\_2000\\_assess\\_en.pdf](http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/natura_2000_assess_en.pdf) Alternatively, where other planning concerns arise the proposal could be refused planning permission.

<sup>5</sup> The proposed development must either by refused planning permission or alternatively an 'Appropriate Assessment' (AA) should be carried out by the Planning Authority. In order to facilitate the preparation of an AA the applicant should be requested to submit a Natura Impact Statement (NIS) in accordance with S177 (T) of the Planning and Development (Amendment) Act 2010. However, in the case of an application to retain unauthorised development of land and where the authority decides that an 'appropriate assessment' should have been carried out prior to the commencement of development, the application is required to be invalidated by the Planning Authority as per S34 (12) of the Planning and Development (Amendment) Act 2010 and accordingly an NIS should not be requested in such instances.



COMHAIRLE | CLARE  
CONTAE AN CHLÁIR | COUNTY COUNCIL

**Michael Duffy**  
**1 Clós na hEaglaise**  
**Kilfenora**  
**Co Clare**

**07/01/2022**

**Section 5 referral Reference R22-1 – Michael Duffy**


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

A Chara,

I refer to your application received on 7th January 2022 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



**Tadhg Holmes**  
**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

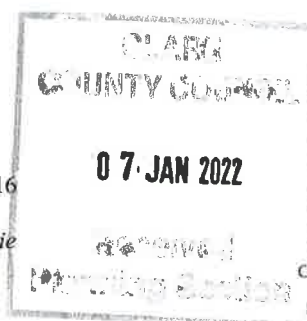


P07

**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](mailto:planoff@clarecoco.ie)  
Website: [www.clarecoco.ie](http://www.clarecoco.ie)



**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	Michael Duffy 1 Clós na hEaglaise, Kilfenora, Co. Clare.
(b) Telephone No.:	
(c) Email Address:	
(d) Agent's Name and address:	n/a

## 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?

Is the replacement of the Clarecastle wastewater treatment plant by diverting wastewater arising through a new sewer to the Clareabbey wastewater treatment plant, which discharges to an SAC, development and if so is it exempt development?

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

Section4(4) of the PDA states that the normal exemption is void if EIA or AA is required.

Public participation is enshrined in matters which may have an impact on the environment or European Sites and the public is entitled to have its say.

- (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)*

Plan of project attached.

**3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT**

(a) Postal Address of the Property/Site/Building for which the declaration sought:	Clarecastle, Co. Clare. _____ _____ _____ _____
(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. _____ _____ _____
(c) Legal interest in the land or structure in question of the person requesting the declaration (Give Details):	Environmental interest _____ _____
(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>	Mostly in public realm. _____ _____ _____
(e) Is the owner aware of the current request for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended)?:	not applicable - public realm
(f) Are you aware of any enforcement proceedings connected to this site? <i>If so please supply details:</i>	No. _____
(g) Were there previous planning application/s on this site? <i>If so please supply details:</i>	Not aware of any _____
(h) Date on which 'works' in question were completed/are likely to take place:	March 2022

SIGNED:



DATE: 6th January 2022



### **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:.....	



# AN CHLÁIR

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

07/01/2022 15:23:18

Receipt No. : L1CASH 0.326943

REPRINT

MICHAEL DUFFY  
1 CLOS NA HEAGLAISE  
KILFENORA  
CO. CLARE



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

Total : 80.00 EUR

## COMHAIRLE

Tendered :

CREDIT CARDS 80.00

## CONTAE

Change : 0.00

## AN CHLÁIR

Issued By : L1CASH - DEIRDRE FRENCH  
From : MAIN CASH OFFICE LODGEMENT AREA  
Vat reg No.0033043E