



Comhairle Contae Chill Mhantáin Wicklow County Council

**Pleanáil, Forbairt Eacnamaíochta agus Tuaithe
Planning, Economic and Rural Development**

Áras An Chontae / County Buildings
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Elevated Surveys Ltd,
Unit 14,
Scurlockstown Business Park,
Co. Meath.
C15 H008

17th of September 2026

**RE: Declaration in accordance with Section 5 of the Planning & Development Acts
2000 (As Amended) -EX101/2026**

A Chara,

I enclose herewith Declaration in accordance with Article 5 (2) (A) of the Planning & Development Act 2000.

Where a Declaration is used under this Section any person issued with a Declaration under subsection (2) (a) may, on payment to An Coimisiún Pleanála of such fee as may be prescribed, refer a declaration for review by the Coimisiún within four weeks of the date of the issuing of the declaration by the Local Authority.

Is mise, le meas,

pp. Stannie Byrne.

**ADMINISTRATIVE OFFICER
PLANNING DEVELOPMENT & ENVIRONMENT.**



Gairneoireacht le h-ádh eacnamaíochta agus tuaithe
This document is for planning and development purposes only

Ba choir gach comhfhreagras a sheoladh chuig an Stiúrthóir Seirbhísí, Pleanáil, Forbairt Eacnamaíochta agus Tuaithe
All correspondence should be addressed to the Director of Services, Planning, Economic and Rural Development





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DECLARATION IN ACCORDANCE WITH ARTICLE 5 (2) (A) OF THE PLANNING & DEVELOPMENT ACT 2000 AS AMENDED

Applicant: Dempsey Quarries Ltd

Location: Ballinabarney North, Co. Wicklow

Reference Number: EX101/2026

CHIEF EXECUTIVE ORDER NO. CE/PERD/2026/1139

A question has arisen as to whether *"the placement and spreading of topsoil over an area of 1.58ha"* at Ballinabarney North, Co. Wicklow is or is not exempted development.

Having regard to:

- The details received with the Section 5 Declaration on the 25/08/2026,
- Wicklow County Development Plan 2022-2028,
- County Wicklow Wetlands Survey 2012 : Site Code 338 KILMACREA TRANSITION MIRE
- Sections 2, 3 and 4 of the Planning & Development Act 2000 (as amended),
- Articles 6, 8 and 9 of the Planning and Development Regulations 2001 (as amended),
- Planning Register Reference PRR 21/250
- An Coimisiún Pleanála Declarations RL3540 & RL3604

Main Reasons with respect to Section 5 Declaration:

- The works are within an area that has been identified in the County Wicklow Wetlands Survey as a wetland: Site code-338 KILMACREA TRANSITION MIRE-
- Planning Register Reference PRR 21/250 identified that a determination was required as to whether an environmental impact assessment was required.
- The works the subject of this declaration are to a large extent located on the area the subject of the retention under PRR 21/250.
- Land reclamation is not defined by the Land Reclamation Act 1949 but is one of the identified works. Article 8C of the Planning and Development Regulations 2001 (as amended) identifies Land reclamation as works (other than reclamation of wetlands) consisting of re-contouring of land, including infilling of soil (but not waste material) within a farm holding, shall be exempted development. The current works would not come within the provisions of Section 4(1)(l) as it involves as identified the reclamation of lands which have been identified as wetlands. Neither would the works come within the meaning of Article 8C as it does not involve infilling of soil within a farm holding.
- Schedule 2 : Part 1 : CLASS 41(f) identifies that works consisting of or incidental to the carrying out of development in compliance with a notice under section



W I C K L O W

55 of the Waste Management Act, 1996 (No. 10 of 1996) shall be exempted development, however this exemption is not applicable given that the works are required to topsoil lands which have been reclaimed for which no permission exists and which would it is considered given the sensitive location on a wetland area as identified in the County Wicklow Wetlands Survey required Environmental Impact Assessment. Therefore, the provisions of Section 4(4) of the Planning and Development Act 2000(as amended) are applicable.

The Planning Authority considers that

The placement and spreading of topsoil over an area of 1.58ha is development and is **not exempted development** at Ballinabarney North, Co. Wicklow,

Signed: Deanne Byrne.

Date: 16/09/2026

PP ADMINISTRATIVE OFFICER
PLANNING DEVELOPMENT & ENVIRONMENT

WICKLOW COUNTY COUNCIL

PLANNING & DEVELOPMENT ACTS 2000 (As Amended)
SECTION 5

CHIEF EXECUTIVE ORDER NO. CE/PERD/2026/1139

Reference Number: EX101/2026

Name of Applicant: Dempsey Quarries Ltd

Nature of Application: Section 5 Referral as to whether "*the placement and spreading of topsoil over an area of 1.58ha*" is or is not development and is or is not exempted development.

Location of Subject Site: Ballinabarney North, Co. Wicklow

Report from: Holly O'Connor E.P.

With respect to the query under Section 5 of the Planning & Development Act 2000 as to whether "*the placement and spreading of topsoil over an area of 1.58ha*" at Ballinabarney North, Co. Wicklow is or is not exempted development within the meaning of the Planning & Development Act 2000 (as amended)

Having regard to:

- a) The details received with the Section 5 Declaration on the 25/08/2026,
- b) Wicklow County Development Plan 2022-2028,
- c) County Wicklow Wetlands Survey 2012 : Site Code 338 KILMACREA TRANSITION MIRE
- d) Sections 2, 3 and 4 of the Planning & Development Act 2000 (as amended),
- e) Articles 6, 8 and 9 of the Planning and Development Regulations 2001 (as amended),
- f) Planning Register Reference PRR 21/250
- g) An Coimisiún Pleanála Declarations RL3540 & RL3604

Main Reasons with respect to Section 5 Declaration:

- i. The works are within an area that has been identified in the County Wicklow Wetlands Survey as a wetland : Site code-338 KILMACREA TRANSITION MIRE-
- ii. Planning Register Reference PRR 21/250 identified that a determination was required as to whether an environmental impact assessment was required.
- iii. The works the subject of this declaration are to a large extent located on the area the subject of the retention under PRR 21/250 .
- iv. Land reclamation is not defined by the Land Reclamation Act 1949 but is one of the identified works. Article 8C of the Planning and Development Regulations 2001 (as amended) identifies Land reclamation as works (other than reclamation of wetlands) consisting of re-contouring of land, including infilling of soil (but not waste material) within a farm holding, shall be exempted development. The current works would not come within the provisions of

Section 4(1)(l) as it involves as identified the reclamation of lands which have been identified as wetlands. Neither would the works come within the meaning of Article 8C as it does not involve infilling of soil within a farm holding.

- v. Schedule 2 : Part 1 : CLASS 41(f) identifies that works consisting of or incidental to the carrying out of development in compliance with a notice under section 55 of the Waste Management Act, 1996 (No. 10 of 1996) shall be exempted development, however this exemption is not applicable given that the works are required to topsoil lands which have been reclaimed for which no permission exists and which would it is considered given the sensitive location on a wetland area as identified in the County Wicklow Wetlands Survey required Environmental Impact Assessment. Therefore, the provisions of Section 4(4) of the Planning and Development Act 2000(as amended) are applicable.

Recommendation

The Planning Authority considers that the placement and spreading of topsoil over an area of 1.58ha is development and is NOT exempted development at Ballinabarney North, Co. Wicklow as recommended in the planning reports.

Signed: Joanne Byrne.

Date: 16/09/2026

ORDER:

I HEREBY DECLARE: That the placement and spreading of topsoil over an area of 1.58ha is development and is NOT exempted development at Ballinabarney North, Co. Wicklow within the meaning of the Planning & Development Acts 2000 (as amended).

Signed: Eddie Cunningham

T/Senior Planner

Planning, Economic & Rural Development

Date: 16/9/2026

**WICKLOW COUNTY COUNCIL
PLANNING DEPARTMENT****PLANNING REPORT SECTION 5 APPLICATION**

TO: EDEL BIRMINGHAM S.P/ PATRICE RYAN S.E.P
FROM: HOLLY O'CONNOR E.P.
SUBJECT REF: EX 101/2026
DECISION DATE: 21/09/2026
APPLICANT: DEMPSEY QUARRIES LTD
ADDRESS: BALLINABARNY NORTH, CO. WICKLOW
EXEMPTION QUERY: PLACEMENT AND SPREADING OF TOPSOIL TO A MAX DEPTH OF 300MM
OVER 1.58HA COMPRISES EXEMPT DEVELOPMENT

Site Location:

The subject site is located in the rural townland of Ballinabarney North, c.4km to the west of the Level 7 settlement of Barndarrig. The site appears to be accessed via a private laneway off the local road L5155-0. The L5155 is a listed prospect, with views towards the Avonmore River Valley. The site forms part of the Kilmacrea Transition Mire Wetland identified during the 2012 Wetland Survey. To the immediate north-west of the site there is a registered sand and gravel quarry- ID 39/ Quarry ref: QY/39, S261A/QY39-S3Notice.

Planning History:

21/250: Deposition of soil and stone over an area of c.2.0 ha for the purposes of land improvement with an agricultural end use.
Decision: Permission cannot be considered in accordance with S.34(12) of the P&D Act 2000 (as amended) as required determination as to whether EIA was required.

Adjoining site to south:

18/39: PP GRANTED for land improvement works including the recontouring of land by infilling with inert material and the installation of land drainage.

Adjoining site to west:

22/278: PP GRANTED for consists of the continuation of use of an existing Waste Recycling Facility (previously approved under planning reg ref 12/6015 and 16/1434) to include acceptance, recovery and recycling of construction and demolition waste by crushing and screening of soils, stone, concrete and tarmacadam materials with a maximum annual throughput of 25,000 tonnes per annum. Permission is also sought for the continued use of mobile crushing and screening plant, stockpile areas, skip storage area, portable office and chemical toilet, and wheelwash and all ancillary activities necessary for the continuation of use of the development. The continued use of development will be subject to a waste facility permit.

16/1434: PP GRANTED for continuation of use of an existing Waste Recycling Facility (previously approved under planning permission ref 12/6015) to include recovery & recycling of construction & demolition wastes by crushing and screening of soils, stone, concrete

& tarmacadam materials at a maximum rate of 25,000 tonnes per annum including mobile crushing / screening plant, portable office / chemical toilet & ancillary site development works including stockpiling area, site drainage, fencing & landscaping. The development is / will be subject of a Waste Facility Permit.

12/6015: PP GRANTED for Waste recycling facility to include recovery & recycling of construction & demolition wastes by crushing & screening of soils, stone, concrete & tarmacadam materials at a maximum rate of 25,000 tonnes per annum including mobile crushing/screening plant, portable office / chemical toilet & ancillary site development works including stockpiling area, site drainage, fencing & landscaping

Relevant ACP/ABP Referrals:

ABP Ref.RL3540 – in January 2018 the Board decided in the question of the recovery of surplus excavated inert soil and the importing of that soil for infilling low lying area at Dunancory, Virginia, Co. Cavan:

- The importation of soil for the purpose of infilling a low lying area of land constitutes ‘works’ and alteration of that land, and therefore ‘development’ as defined in Section 2 and Section 3, respectively, of the Planning and Development Act, 2000, as amended;
- The development does not come within the scope of the exemption set out under section 4(1)(l) of the Planning and Development Act 2000, as amended by the Environment (Miscellaneous Provisions) Act 2011;
- The development does not come within the scope of the exemption set out in Article 8C of the Planning and Development Regulations, 2001, in respect of Land Reclamation, because it is proposed to import material from outside the landholding in order to carry out the development, and furthermore the material proposed to be imported is a waste material (noting that the recovery of excavated inert soil, for the purpose of the improvement or development of land, is identified as a waste activity in the Waste Management (Facility Permit and Registration) Regulations 2007 (as amended));
- The development does not come within the scope of Class 11 of Part 3 of Schedule 2 to the of the Planning and Development Regulations, 2001, as amended, (Land Reclamation - infilling of wetlands) because of non- compliance with the conditions and limitations no. 1 of that Class, as the area in question exceeds the 0.1 hectares.

The Board therefore decided that the recovery of surplus excavated inert soil and the importing of that soil for infilling low-lying area is development and is not exempted development.

ABP Ref. RL3479 – in May 2018 the Board decided that the importation of inert soil for the purposes of site restoration, and restoration works using imported inert soil, in respect of a quarry at Powerstown, County Carlow, is development and is not exempted development.

- The works the subject of this referral are development within the meaning of Sections 2 and 3 of the Planning and Development Act 2000, as amended,
- the subject works involves the importation and deposition on land of inert soil (whether or not it is deemed to comprise a waste or a by product) and therefore, pursuant to section 3(2)(b)(iii), the use of the land has materially changed and this constitutes development,

- the permission granted under An Bord Pleanála appeal reference number PL 01.129838 has expired and the conditions of that permission were not complied with to the satisfaction of the planning authority, and
- the works are not directly connected with or necessary to the management of a European Site in accordance with article 6(3) of the Habitats Directive. It has not been established, to the satisfaction of the Board, that there is not a hydrological relationship between the site and the River Barrow and River Nore Special Area of Conservation (Site Code: 002162) and, therefore, it cannot be established, beyond reasonable scientific doubt, that the subject works would not have significant effects on this European Site and, in the absence of a Natura impact statement, that the subject works would not have adverse effects on the integrity of the European Site. Therefore, the works are not exempted development in accordance with Section 4(4) of the Planning and Development Act 2000, as amended.

ABP Ref. RL06S.RL3609 – in July 2018 the Board decided that the spreading of clean topsoil and subsoil, on the lands for agricultural use and the importing of that soil for recontouring of land at Oldcourt Lane, Oldcourt Ballycullen, Dublin 24 is development and is exempted development.

- The works the subject of this referral are development within the meaning of Sections 2 and 3 of the Planning and Development Act 2000, as amended,
- the importation and spreading of soil for the purpose of recontouring land constitutes works, and is, therefore, development as defined in Section 2 and Section 3, respectively, of the Planning and Development Act, 2000, as amended,
- the proposed works would not comply with Condition and Limitation number 1 of Class 11 of Part 3 of Schedule 2 (Land Reclamation) and with the provisions set out within Article 6(3) of the Planning and Development Regulations, 2001, as amended. The proposed works would not, therefore, comprise exempted development under Article 6(3).
- Having regard to the nature of the proposed development, which entails the importation of material to the site which the Board is not satisfied is not waste material, the development does not come within the scope of the provisions of Article 8C of the Planning and Development Regulations, 2001, as amended, in respect of Land Reclamation, and does not, therefore, comprise exempted development under Article 8C, and
- Noted that land reclamation comes within the scope of works referred to in the Land Reclamation Act, 1949, and would normally constitute exempted development as set out in section 4(1)(l) of the Planning and Development Act, 2000, as amended. However, the works in question, comprising infilling of land, by imported material which the Board is not satisfied is not waste material, do not come within the meaning ascribed to land reclamation, as set out in article 8C of the Planning and Development Regulations, 2001, as amended, and therefore, do not constitute exempted development under section 4(1)(l) of the Act.

Relevant legislation:**Planning and Development Act 2000 (as amended)****Section 2:**

"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.

Development -Section 3:

"development" means—

(a) the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land, or

Exempted Development Section 4:

(1) The following shall be exempted developments for the purposes of this Act—

(i) development consisting of the carrying out of any of the works referred to in the Land Reclamation Act, 1949, not being works comprised in the fencing or enclosure of land which has been open to or used by the public within the ten years preceding the date on which the works are commenced F54[or works consisting of land reclamation or reclamation of estuarine marsh land and of callows, referred to in section 2 of that Act.

(3); A reference in this Act to exempted development shall be construed as a reference to development which is—

(a) any of the developments specified in subsection (1), or

(b) development which, having regard to any regulations under subsection (2), is exempted development for the purposes of this Act.

(4) 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.

Planning & Development Regulations 2001 (as amended)

Article 6(1) states that certain classes of development which are specified in Schedule 2 shall be exempted development for the purposes of the Act, subject to compliance with any associated conditions and limitations;

Article 8 (c) Land reclamation works (other than reclamation of wetlands) consisting of re-contouring of land, including infilling of soil (but not waste material) within a farm holding, shall be exempted development.

Article 9(1) (a) and (b) details a number of circumstances under which the development to which Article 6 relates shall not be exempted development for the purposes of the Act.

(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

Schedule 2, Part 3, Exempted Development – Rural

Development for amenity or recreational purposes	1. The area to be affected shall not exceed 0.1 hectares.
<i>Land Reclamation</i> CLASS 11 Development consisting of the carrying out of drainage and/or reclamation of wetlands.	2. Where development has been carried out within a farm holding under this class, the total area of any such development taken together with the area of any previous such development within the farm holding shall not exceed the limits set out in 1. above.

Declaration details submitted:

Whether the placement and spreading of clean topsoil to a maximum depth of 300mm over an area of 1.58ha for the purpose of completing the topsoiling and re-instatement of the lands, at Ballinabarny, Redcross, constitutes development, and if so, whether such works constitutes exempt development.

Assessment:

The first assessment must be whether or not the proposal outlined above constitutes development within the remit of Section 3 of the Planning and Development Act 2001. In this regard, Section 2 of the Act defines works as “works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure. Section 3 of the Planning and Development Act provides that: “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. I am satisfied that the placement (importing) and spreading of 300mm of soil over 1.58ha is the construction or alteration being both works and development on land that does constitute development.

The second stage of the assessment is to determine whether or not the proposal would be exempted development under the Planning and Development Act 2000 (as amended) or it’s associated Regulations.

Section 4 of the P&D Act 2000 (as amended):

4 (1) (I) Section 4(1)(I) provides that development consisting of the carrying out of any of the works referred to in the Land Reclamation Act, 1949, not being works comprised in the fencing or enclosure of land which has been open to or

used by the public within the ten years preceding the date on which the works are commenced F54[or works consisting of land reclamation or reclamation of estuarine marsh land and of callows, referred to in section 2 of that Act.]

The LAND RECLAMATION ACT, 1949-Section 1 of the Land Reclamation Act, 1949 sets out what the term 'works', in the Act, refers to and the list of activities referred to includes the term 'land reclamation'.

"works" refers to the following or any of them:—

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

The proposal involves the type of development that is categorised as land reclamation. Therefore S.4(1)(l) is applicable. However, S.4(4) of the Act sets out 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. In this regard, an EIA screening determination is required given the sites location within a designated wetland.

Article 8 of the Planning and Development Regulations, 2001 (as amended), specifically, article 8C states: Land reclamation works (other than reclamation of wetlands) consisting of recontouring of land, including infilling of soil (but not waste material) within a farm holding, shall be exempted development'. Topsoil is an organic material and not a waste material, however, the subject site is within a designated wetland – Site code-338 KILMACREA TRANSITION MIRE. The proposed development, therefore, would not benefit of the exempted development provisions set out in Section 4(1)(l) of the Planning and Development Act, 2000 (as amended).

With respect to Schedule 2, Part 3, Class 11, the proposal is for an area that is greater than 0.1ha therefore, would not benefit from the exempt development provisions under this class. The proposal would also alter a feature of ecological interest, a designated wetland that is protected in the development plan, therefore shall not be exempt as per Article 9.

Appropriate Assessment:

Having regard to the location of the subject site which is not located within or directly adjoining a designated Natura 2000 site, it is not considered that the proposed development, would give rise to any adverse impacts on the qualifying interests and conservation objectives of any natura sites and therefore the proposed development would not necessitate the carrying out of an Appropriate Assessment in accordance with the requirements of Article 6(3) of the EU Habitats Directive.

Recommendation:

With respect to the query under Section 5 of the Planning and Development Act 2000 (as amended), as to whether:

the placement and spreading of clean topsoil to a maximum depth of 300mm over an area of 1.58ha for the purpose of completing the topsoiling and re-instatement of the lands

at Ballinabarny North, Co. Wicklow, constitutes exempted development within the meaning of the Planning and Development Acts, 2000(as amended).

The Planning Authority considers that:

The placement and spreading of topsoil over an area of 1.58ha **is development** and **is not exempted development**.

Main Considerations with respect to Section 5 Declaration:

- a) The details received with the Section 5 Declaration on the 25/08/2026,
- b) Wicklow County Development Plan 2022-2028,
- c) County Wicklow Wetlands Survey 2012 : Site Code 338 KILMACREA TRANSITION MIRE
- d) Sections 2, 3 and 4 of the Planning & Development Act 2000 (as amended),
- e) Articles 6, 8 and 9 of the Planning and Development Regulations 2001 (as amended),
- f) Planning Register Reference PRR 21/250
- g) An Coimisiún Pleanála Declarations RL3540 & RL3604

Main Reasons with respect to Section 5 Declaration

- i. The works are within an area that has been identified in the County Wicklow Wetlands Survey as a wetland : ~~proposed development is located within a designated wetland Site code-338 KILMACREA TRANSITION MIRE as per the County Wicklow wetlands survey 2012.~~
- ii. Planning Register Reference PRR 21/250 identified that a determination ~~was required~~ as to whether an environmental impact assessment was required.
- iii. The works the subject of this declaration are to a large extent located on the area the subject of the retention under PRR 21/250 .
- iv. Land reclamation is not defined by the Land Reclamation Act 1949 but is one of the identified works. Article 8C of the Planning and Development Regulations 2001 (as amended) identifies Land reclamation as works (other than reclamation of wetlands) consisting of re-contouring of land, including infilling of soil (but not waste material) within a farm holding, shall be exempted development. The current works would not come within the provisions of Section 4(1)(l) as it involves ~~as identified~~ the reclamation of lands which have been identified as wetlands. Neither would the works come within the meaning of Article 8C as it does not involve infilling of soil within a farm holding.
- v. Schedule 2 : Part 1 : CLASS 41(f) identifies that works consisting of or incidental to the carrying out of development in compliance with a notice under section 55 of the Waste Management Act, 1996 (No. 10 of 1996) shall be exempted development, however this exemption is not applicable given that the works are required to topsoil lands which have been reclaimed for which no permission exists and which would it is considered given the

sensitive location on a wetland area as identified in the County Wicklow Wetlands Survey required Environmental Impact Assessment. Therefore the provisions of Section 4(4) of the Planning and Development Act 2000(as amended) are applicable.

~~proposal involves land reclamation which is provided for in S.4 (1) (I) of the Planning & Development Act (2000) as amended.~~

- i. ~~An EIA Screening determination is required and therefore the development shall not be exempt as per S.4 (1) (I) of the Planning & Development Act (2000) as amended.~~
- ii. ~~Article 8c of the Planning and Development Regulations, 2001 (as amended), specifically precludes the reclamation of wetlands.~~
- iii. ~~The proposal is for an area that is greater than 0.1ha therefore, would not benefit from the exempt development provisions under Schedule 2, Part 3, Class 11 of the Planning and Development Regulations, 2001 (as amended),~~
- iv. ~~The proposal would alter a feature of ecological interest, a designated wetland that is protected in the development plan, therefore shall not be exempt as per Article 9 of the Planning and Development Regulations, 2001 (as amended).~~

Holly E. Connor

Date: 15/09/2026

Holly O'Connor E.P

15/9/2026.

The assessment of the Ex Planner is noted , and the following is highlighted. The following An Coimisiún Pleanála declarations are considered pertinent to the current assessment i.e RL 3540 and RL3604 i.e.

RL 3540

An Bord Pleanála, has concluded that the recovery of surplus excavated inert soil and the importing of that soil for infilling low lying area at Dunancory, Virginia, County Cavan is development and is not exempted development for the following reasons :

- (a) the importation of soil for the purpose of infilling a low lying area of land constitutes 'works' and alteration of that land, and therefore 'development' as defined in section 2 and section 3, respectively, of the Planning and Development Act, 2000, as amended.
- (b) the development does not come within the scope of the exemption set out under section 4(1)(I) of the Planning and Development Act 2000, as amended by the Environment (Miscellaneous Provisions) Act 2011,
- (c) the development does not come within the scope of the exemption set out in Article 8C of the Planning and Development Regulations, 2001, as amended, in respect of Land Reclamation,

because it is proposed to import material from outside the landholding in order to carry out the development, and furthermore the material proposed to be imported is a waste material (noting that the recovery of excavated inert soil, for the purpose of the improvement or development of land, is identified as a waste activity in the Waste Management (Facility Permit and Registration) Regulations 2007 (as amended),

- (d) the development does not come within the scope of Class 11 of Part 3 of Schedule 2 of the Planning and Development Regulations, 2001, as amended, (Land Reclamation - infilling of wetlands) because of non compliance with the Conditions and Limitations Column 1 of that Class, as the area in question exceeds the 0.1 hectares, and
- (e) as no exemptions are available for the development in question, it is not necessary for the Board to examine whether appropriate assessment issues or traffic hazard issues arise.

RL3604

An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the reinstatement of land by the importation of 94,683 cubic metres of non-waste/by-product soil and stones, consisting of 43,900 cubic metres of topsoil and 50,783 cubic metres of subsoil, sourced from greenfield development sites in the Dublin Region at Basketstown, Summerhill, County Meath is development and is not exempted development as

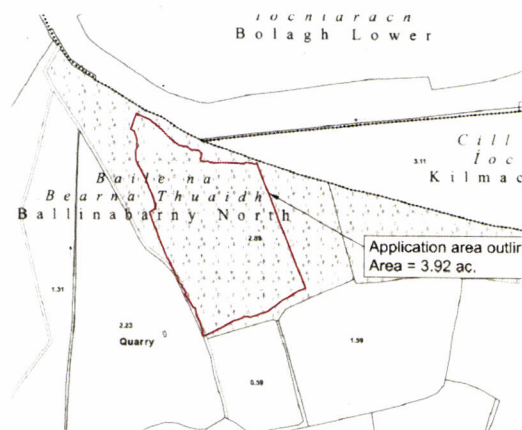
- (a) the importation of soil and subsoil for infilling on lands constitutes 'works' as defined in Section 2(1) of the Planning and Development Act, 2000, as amended and is, therefore, development,
- (b) it has not been established that the soil and subsoil does not constitute 'waste' and, therefore, the development does not fall within the scope of Section 4 (1)(l) of the Planning and Development Act, 2000, as amended, and does not come within the meaning of the term 'land reclamation' as set out in Article 8 of the Planning and Development Regulations, 2001, as amended,
- (c) in such circumstances, the development would require environmental impact assessment and would come within the scope of Section 4 (4) of the Planning and Development Act, 2000, as amended, and would, therefore, not be exempted development,
- (d) if it could be established that the soil and subsoil was not waste, then the development in question would be classified as land reclamation, but would not come within the scope of Article 8C of the Planning and Development Regulations, 2001, as amended, because this exemption relates only to land reclamation works including infilling of soil within a farm holding and does not provide an exemption for importation of soil to a farm holding for the purposes of re-contouring of land from external sources (as in the current case), and, therefore, the development in question would not be exempted development.

In both the issue of the works being exempt by reference to Section 4(1)(l) . As identified the land reclamation is not defined by the Land Reclamation Act 1949 but is one of the identified works. However, Article 8C of the Planning and Development Regulations 2001 (as amended) identifies Land reclamation as works (other than reclamation of wetlands) consisting of re-contouring of land, including infilling of soil (but not waste material) within a farm holding, shall be exempted development. Therefore, the current works would not come within the provisions of Section 4(1)(l) as it involved as identified the reclamation of wetlands. Neither would the works come within the meaning of Article 8C as it does not involve infilling within a farm holding.

PRR 21/250 which was refused was for the retention of the deposition of soil and stone over an area of c.2.0 ha for the purposes of land improvement with an agricultural end use.



The area the subject of this referral is identified below



It is evident to a large extent the lands the subject of this referral encompasses those set out in PRR21/250, which was refused due to the provisions of Section 34(12) of the Planning and Development Act 2000(as amended). Therefore, the infilling that already took place upon which the current works are to be located would have required EIA, as environmental impacts could not be ruled out given the designation of the area under the Wicklow Wetlands Survey 2012 as Site code- 338 KILMACREA TRANSITION MIRE.

Therefore the provisions of Section 4 (4) of the Act are applicable i.e. 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

The documents submitted indicate that the works are being undertaken to comply with a Section 55 Notice, as set out in the letter on file date the 21st February 2024.

Schedule 2 : Part 1 : Class 41 (f) provides that the following is exempted development i.e.

CLASS 41

Works consisting of or incidental to—

(f) the carrying out of development in compliance with a notice under section 55 of the Waste Management Act, 1996 (No. 10 of 1996), or

because it is proposed to import material from outside the landholding in order to carry out the development, and furthermore the material proposed to be imported is a waste material (noting that the recovery of excavated inert soil, for the purpose of the improvement or development of land, is identified as a waste activity in the Waste Management (Facility Permit and Registration) Regulations 2007 (as amended),

- (d) the development does not come within the scope of Class 11 of Part 3 of Schedule 2 of the Planning and Development Regulations, 2001, as amended, (Land Reclamation - infilling of wetlands) because of non-compliance with the Conditions and Limitations Column 1 of that Class, as the area in question exceeds the 0.1 hectares, and
- (e) as no exemptions are available for the development in question, it is not necessary for the Board to examine whether appropriate assessment issues or traffic hazard issues arise:

RL3604

An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the reinstatement of land by the importation of 94,683 cubic metres of non-waste/by-product soil and stones, consisting of 43,900 cubic metres of topsoil and 50,783 cubic metres of subsoil, sourced from greenfield development sites in the Dublin Region at Basketstown, Summerhill, County Meath is development and is not exempted development as

- (a) the importation of soil and subsoil for infilling on lands constitutes 'works' as defined in Section 2(1) of the Planning and Development Act, 2000, as amended and is, therefore, development,
- (b) it has not been established that the soil and subsoil does not constitute 'waste' and, therefore, the development does not fall within the scope of Section 4 (1)(l) of the Planning and Development Act, 2000, as amended, and does not come within the meaning of the term 'land reclamation' as set out in Article 8 of the Planning and Development Regulations, 2001, as amended,
- (c) in such circumstances, the development would require environmental impact assessment and would come within the scope of Section 4 (4) of the Planning and Development Act, 2000, as amended, and would, therefore, not be exempted development,
- (d) if it could be established that the soil and subsoil was not waste, then the development in question would be classified as land reclamation, but would not come within the scope of Article 8C of the Planning and Development Regulations, 2001, as amended, because this exemption relates only to land reclamation works including infilling of soil within a farm holding and does not provide an exemption for importation of soil to a farm holding for the purposes of re-contouring of land from external sources (as in the current case), and, therefore, the development in question would not be exempted development:

In both the issue of the works being exempt by reference to Section 4(1)(l) . As identified the land reclamation is not defined by the Land Reclamation Act 1949 but is one of the identified works. However, Article 8C of the Planning and Development Regulations 2001 (as amended) identifies Land reclamation as works (other than reclamation of wetlands) consisting of re-contouring of land, including infilling of soil (but not waste material) within a farm holding, shall be exempted development. Therefore, the current works would not come within the provisions of Section 4(1)(l) as it involved as identified the reclamation of wetlands. Neither would the works come within the meaning of Article 8C as it does not involve infilling within a farm holding.

MEMORANDUM

WICKLOW COUNTY COUNCIL

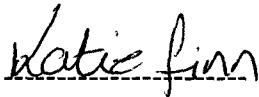
TO: Holly O'Connor
Executive Planner

FROM: Katie Finn
Clerical Officer

RE:- EX101/2026 - Declaration in accordance with Section 5 of the Planning & Development Acts 2000 (as amended)

I enclose herewith for your attention application for Section 5 Declaration received 25/08/2026.

The due date on this declaration is the **21/09/2026**.



Clerical Officer
Planning, Development & Environment



Comhairle Contae Chill Mhantáin Wicklow County Council

**Pleanáil, Forbairt Eacnamaíochta agus Tuaithe
Planning, Economic and Rural Development**

Áras An Chontae / County Buildings
Cill Mhantáin / Wicklow
Guthán / Tel. (0404) 20148
Faics / Fax (0404) 69462
Rphost / Email. plandev@wicklowcoco.ie
Suíomh / Website: www.wicklow.ie

Elevated Surveys,
Unit 14,
Scurlockstown Business Park,
Co. Meath
C15 H008

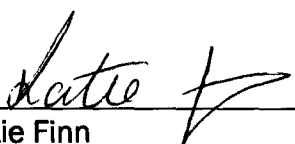
25th of August 2026

**RE: Application for Certificate of Exemption under Section 5 of the Planning and
Development Acts 2000 (as amended) – EX101/2026**

A Chara

I wish to acknowledge receipt on 25/08/2026 full details supplied by you in respect of the above Section 5 application. A decision is due in respect of this application by 21/09/2026.

Mise, le meas

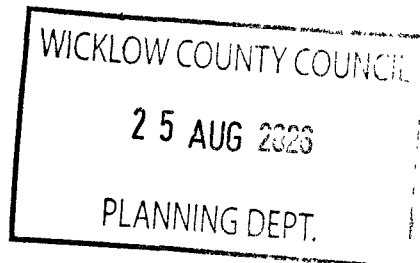

Katie Finn
Clerical Officer
Planning, Economic & Rural Development



Elevated Surveys LTD
Unit 14 Scurlockstown Business Park
Trim, Co. Meath
C15H008
T: +353 46 9030102 | E: Info@rec.ie

20/08/2026

Planning Department
Wicklow County Council
County Buildings
Wicklow
Co. Wicklow



Re: Section 5 Declaration – Proposed Topsoiling and Reinstatement Works at Ballinabarny, Redcross, Co. Wicklow

Dear Sir/Madam,

We act on behalf of the applicant in relation to the enclosed request for a declaration pursuant to Section 5 of the Planning and Development Act 2000, as amended.

The application relates to proposed topsoiling, and reinstatement works over an area of approximately 1.58 hectares (3.9 acres) at Ballinabarny, Redcross, Co. Wicklow, as delineated on the accompanying drawings.

The lands were previously the subject of Section 55 Notice 03/2021 under the Waste Management Act 1996.

Wicklow County Council has subsequently confirmed in correspondence from its Climate, Environment, Recreation & Amenity Directorate that remediation works previously carried out on the site had been completed to the satisfaction of the relevant Council official and that the remaining works required comprise the topsoiling of the site.

The Council's correspondence further states that, following completion of the topsoiling to the satisfaction of Wicklow County Council, the Waste Management Section would be in a position to lift Section 55 Notice 03/2021. A copy of this correspondence is enclosed with this application for reference.

The works now proposed comprise the placement and spreading of clean topsoil to a maximum depth of 300mm over an area of approximately 1.58 hectares (3.9 acres), followed by grading and reinstatement of the lands. The extent of the proposed works is shown on the accompanying Site Layout Plan.

The purpose of the proposed works is to complete the topsoiling and reinstatement of the lands following the remediation works previously undertaken. No material other than clean topsoil is proposed as part of the works which are the subject of this Section 5 referral.

Accordingly, the declaration sought from Wicklow County Council is:

Whether the placement and spreading of clean topsoil to a maximum depth of 300mm over an area of approximately 1.58 hectares (3.9 acres) at Ballinabarny, Redcross, Co. Wicklow, for the purpose of completing the topsoiling and reinstatement of the lands, constitutes development and, if so, whether such works constitute exempted development within the meaning of the Planning and Development Act 2000, as amended, and the Planning and Development Regulations 2001, as amended.

The application is accompanied by the relevant site location and layout drawings identifying the extent of the proposed works, together with a copy of Wicklow County Council's correspondence concerning the remaining topsoiling works.

We respectfully request that Wicklow County Council issue a declaration pursuant to Section 5 in respect of the above works.

Yours faithfully,

Colin Donnelly
Elevated Surveys Ltd.
Agent on behalf of the Applicant

Wicklow County Council
County Buildings
Wicklow
0404 20100

25/08/2026 11:44:52

Receipt No L1/0/368758

DEMPSEY QUARRIES LTD
BALLINABARNY NORTH
BALLINABARNEY
CO WICKLOW
A67X027

PLANNING APPLICATION FEES	80.00
GOODS	80.00
VAT Exempt/Non vatiable	

Total	80.00 EUR
-------	-----------

Tendered	
Credit Card	80.00

Change	0.00
--------	------

Issued By Nicola Byrne
From Customer Service Hub
Vat reg No 0015233H



Wicklow County Council
County Buildings
Wicklow
Co Wicklow
Telephone 0404 20148
Fax 0404 69462

Office Use Only

Date Received _____

Fee Received _____

WICKLOW COUNTY COUNCIL

25 AUG 2026

PLANNING DEPT.

APPLICATION FORM FOR A
DECLARATION IN ACCORDANCE WITH SECTION 5 OF THE PLANNING &
DEVELOPMENT ACTS 2000 (AS AMENDED) AS TO WHAT IS OR IS NOT
DEVELOPMENT OR IS OR IS NOT EXEMPTED DEVELOPMENT

1. Applicant Details

- (a) Name of applicant: Dempsey Quarries LTD
Address of applicant: Ballinabarny North, Ballinabarney, Co. Wicklow, A67
X027

Note Phone number and email to be filled in on separate page.

2. Agents Details (Where Applicable)

- (b) Name of Agent (where applicable) Elevated Surveys LTD.
Address of Agent: Elevated Surveys, Unit 14, Scurlockstown Business Park, Co.
Meath C15H008

Note Phone number and email to be filled in on separate page.

Attention: Edel Birney
Birney
Tom Byrne - ~~Waste~~
Waste.

3. Declaration Details

i. Location of Development subject of Declaration: **Ballinabarney North, Redcross, Co. Wicklow**

ii. Are you the owner and/or occupier of these lands at the location under i. above?
Yes

iii. If 'No' to ii above, please supply the Name and Address of the Owner, and or occupier

iv. Section 5 of the Planning and Development Act provides that: If any question arises as to what, in any particular case, is or is not development and is or is not exempted development, within the meaning of this act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question. You should therefore set out the query for which you seek the Section 5 Declaration:

Whether the placement and spreading of clean topsoil to a maximum depth of 300mm over an area of approximately 1.58 hectares (3.9 acres) at Ballinabarney, Redcross, Co. Wicklow, for the purpose of completing the topsoiling and reinstatement of the lands, constitutes development and, if so, whether such works constitute exempted development within the meaning of the Planning and Development Act 2000, as amended, and the Planning and Development Regulations 2001, as amended.

Additional details may be submitted by way of separate submission.

v. Indication of the Sections of the Planning and Development Act or Planning Regulations you consider relevant to the Declaration:

Section 5 of the Planning and Development Act 2000 (as amended), and Articles 6, 8 and 9 of the Planning and Development Regulations 2001 (as amended), insofar as they relate to exempted development and land reclamation works.

- vi. Does the Declaration relate to a Protected Structure or is it within the curtilage of a Protected Structure (or proposed protected structure)?: NO
- vii. List of Plans, Drawings submitted with this Declaration Application Site Location Maps and Site Layout Plan
- viii. Fee of € 80 Attached ? _____

Signed : *John Shanley* Dated : 20/08/2026

Additional Notes :

As a guide the minimum information requirements for the most common types of referrals under Section 5 are listed below :

- A. Extension to dwelling - Class 1 Part 1 of Schedule 2
- Site Location Map
 - Floor area of structure in question - whether proposed or existing.
 - Floor area of all relevant structures e.g. previous extensions.
 - Floor plans and elevations of relevant structures.
 - Site Layout Plan showing distance to boundaries, rear garden area, adjoining dwellings/structures etc.
- B. Land Reclamation -

The provisions of Article 8 of the Planning and Development Regulations 2001 (as amended) now applies to land reclamation, other than works to wetlands which are still governed by Schedule 2, Part 3, Class 11. Note in addition to confirmation of exemption status under the Planning and Development Act 2000(as amended) there is a certification process with respect to land reclamation works as set out under the European Communities (Environmental Impact Assessment) (Agriculture) Regulations 2011 S.I. 456 of 2011. You should therefore seek advice from the Department of Agriculture, Fisheries and Food.

Any Section 5 Declaration should include a location map delineating the location of and exact area of lands to be reclaimed, and an indication of the character of the land.

C. Farm Structures - Class 6 -Class 10 Part 3 of Schedule 2.

- Site layout plan showing location of structure and any adjoining farm structures and any dwellings within 100m of the farm structure.
- Gross floor area of the farm structure
- Floor plan and elevational details of Farm Structure and Full details of the gross floor area of the proposed structure.
- Details of gross floor area of structures of similar type within the same farmyard complex or within 100metres of that complex.



Comhairle Contae Chill Mhantáin Wicklow County Council

Comhshaoil, Áineasa agus Conláistí
Climate, Environment, Recreation & Amenity

Seirbhísí Comhshaoil - Environmental Services
Guthán / Tel: (0404) 20236
Bainistiú Dramhalola - Waste Management
Guthán / Tel: (0404) 20127

Áras An Chontae / County Buildings
Cill Mhantáin / Wicklow
Guthán / Tel: (0404) 20236
Faics / Fax: (0404) 67792
Rphost / Email: env@wicklowcoco.ie
Suíomh / Website: www.wicklow.ie

Mr Vincent Cousins, C/O Mr Maurice Cousins

21st February 2024

Re: Waste Management Act 1996
Section 55 Notice 03/2021 – Waste at Ballinabarney, Redcross, Co. Wicklow

A Chara,

Letter dated 21st October 2024 and the subsequent meeting held on 21st February 2025 in Wicklow County Buildings refers.

The meeting on the 21st February was attended by the Following:

Maurice Cousins, Michael Kelly (friend of Maurice Cousins)

Theresa O'Brien, Mary Cahill, Tom Byrne, Wicklow County Council.

I wish to confirm that, despite no written records, Wicklow County Council accepts the claims of Maurice Cousins that an official of Wicklow County Council, verbally stated that the remediation works carried out on the unauthorised site at Ballinabarney, Co. Wicklow, prior to May 2024, were completed to his satisfaction and the only remaining works to be carried out would be to topsoil the site.

As a result, it was agreed at the meeting of the 21st February 2025 that following the completion of the top soiling of the site, to the satisfaction of Wicklow County Council, the Waste Management Section would be in a position to lift the Section 55 Notice 03/2021. The extent of the area to be top soiled should be agreed with Tom Byrne, Wicklow County Council in advance of work commencing.

A decision as to which party will carry out the top soiling to be agreed between Maurice Cousins and the current owner.

Mise, le meas,

Theresa O'Brien

T/Director of Service

Climate Environment Recreation and Amenity



Site Location Map



Tailte
Éireann

CENTRE
COORDINATES:
ITM 722680,686041

PUBLISHED:
17/08/2026

ORDER NO.:
50553521_1

MAP SERIES:
6 Inch Raster
6 Inch Raster

MAP SHEETS:
WW030
WW035

COMPILED AND PUBLISHED BY:
Tailte Éireann,
Phoenix Park,
Dublin 8,
Ireland.
D08F6E4

www.tailte.ie

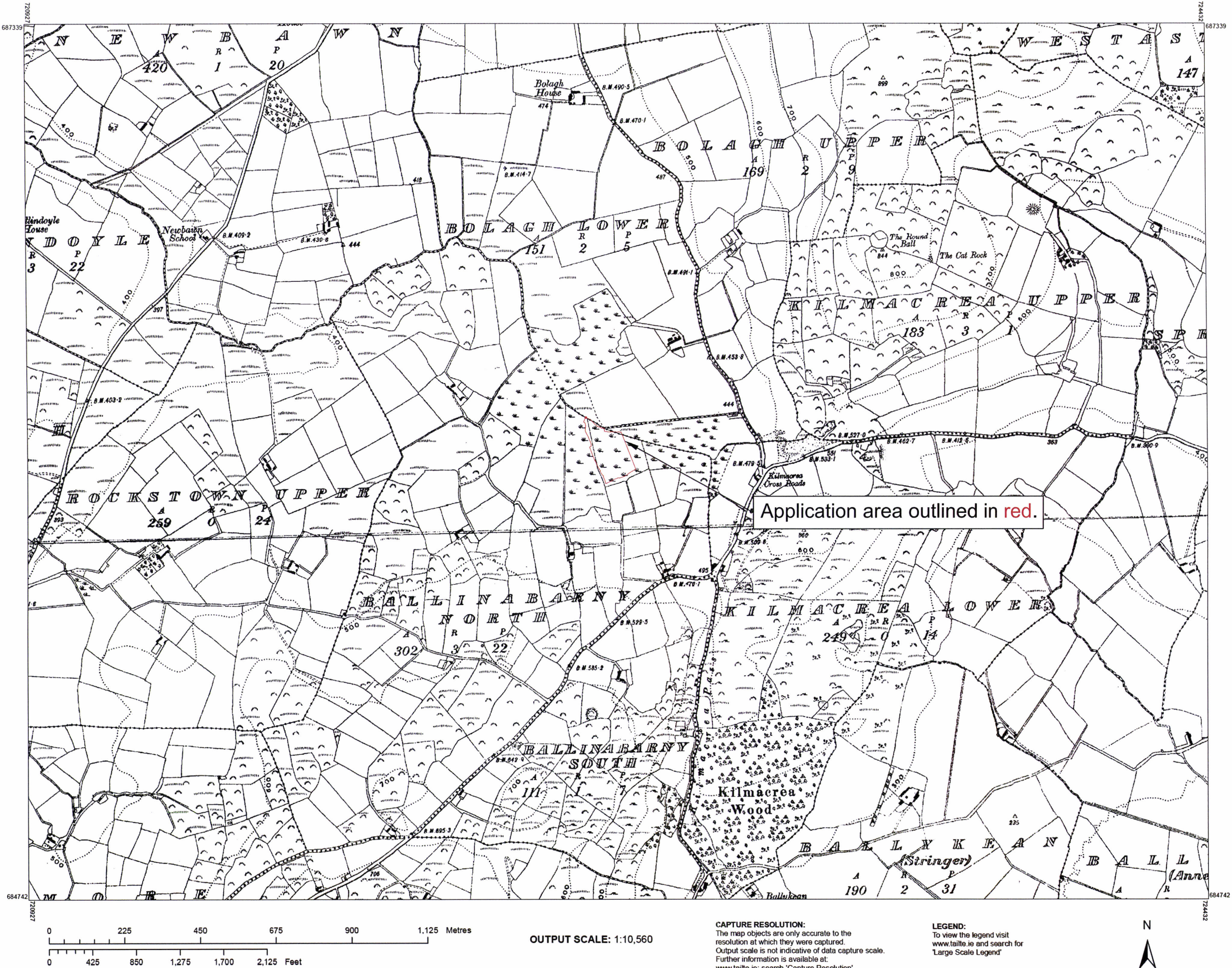
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Planning Pack Map



Tailte
Éireann

CENTRE
COORDINATES:
ITM 722680,686041

PUBLISHED:
17/08/2026

ORDER NO.:
50553521_1

MAP SERIES:
1:5,000

MAP SHEETS:
4195

COMPILED AND PUBLISHED BY:
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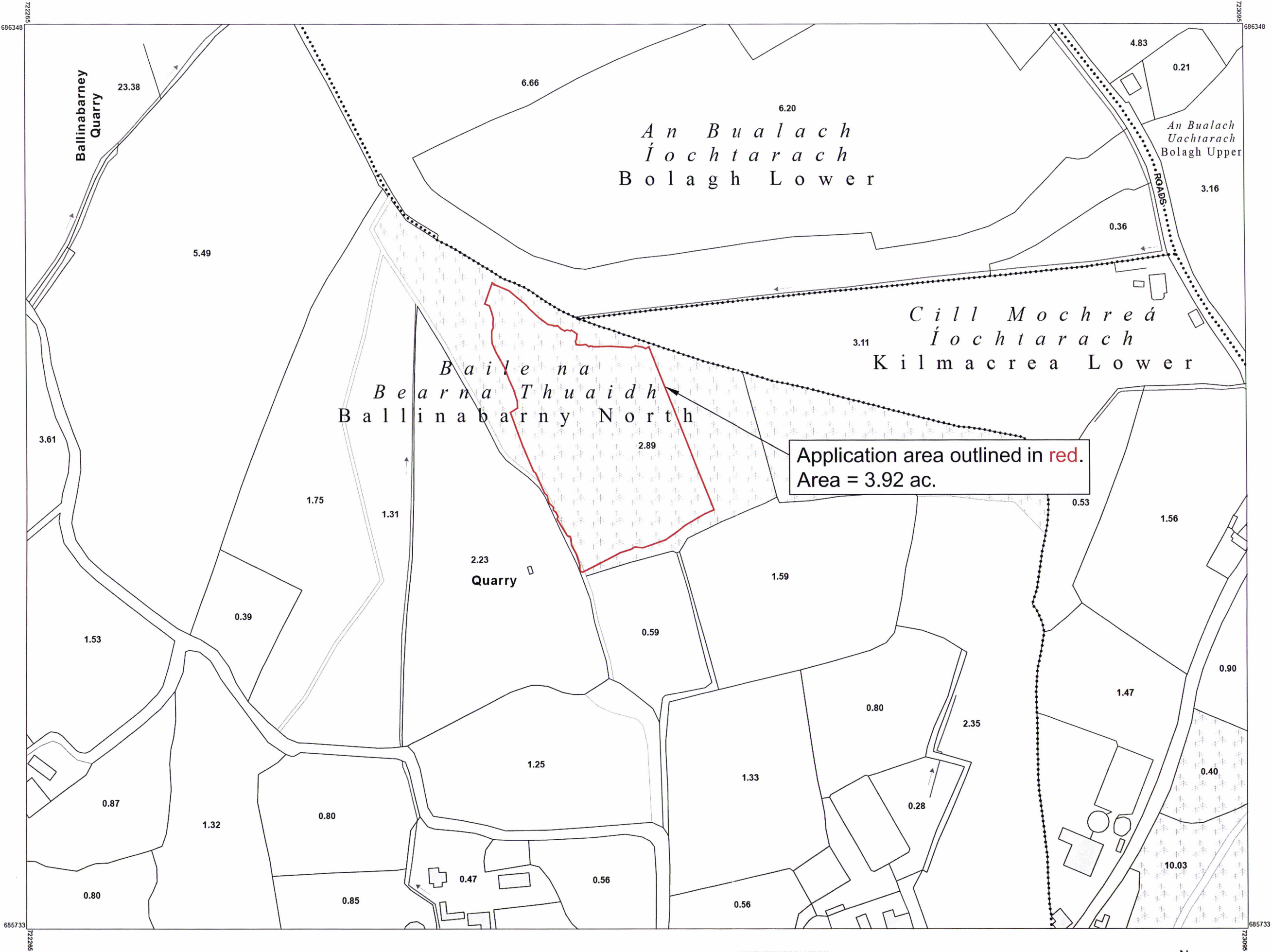
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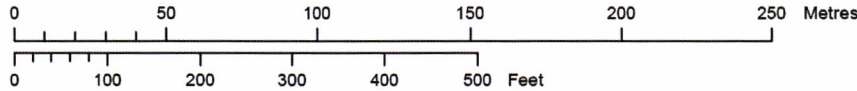
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Application area outlined in red.
Area = 3.92 ac.



OUTPUT SCALE: 1:2,500

CAPTURE RESOLUTION:
The map objects are only accurate to the
resolution at which they were captured.
Output scale is not indicative of data capture scale.
Further information is available at:
www.tailte.ie; search 'Capture Resolution'

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

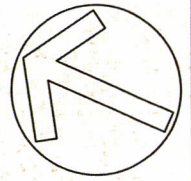


Application Area shown as —

Area to be topsoiled and seeded = 3.92 ac

Original levels shown in green

Proposed levels shown in red



1:650

0 20 40 Meters

SITE_LAYOUT_PLAN

BALLINABARNY_NORTH

KEVIN_DEMPSEY



REV_A

ITM
17/08/2026
DWG-001