

WICKLOW COUNTY COUNCIL

**PLANNING & DEVELOPMENT ACTS 2000 (As Amended)
SECTION 5**

Director of Services Order No: 1414/2022

Reference Number: EX 36/2022

Name of Applicant: National Parks & Wildlife Services C/O Noel Quinn

Nature of Application: Section 5 Referral as to whether "New Agriculture Entrance at Ballytunny, Brittas Bay, Co. Wicklow" is or is not is or is not exempted development.

Location of Subject Site: Ballytunny, Brittas Bay, Co. Wicklow

RECOMMENDATION: Report from Edel Bermingham SEP

With respect to the query under Section 5 of the Planning & Development Act 2000 as to whether "New Agriculture Entrance at Ballytunny, Brittas Bay, Co. Wicklow" is or is not exempted development within the meaning of the Planning & Development Act 2000 (as amended)

Having regard to:

- i. The details submitted with the Section 5 Declaration Application.
- ii. Site Inspection on the 25th August 2022
- iii. Section 2, 3 and 4 of the Planning and Development Act 2000 (as amended)
- iv. Articles 6, 9 and Schedule 2: Part 1 of the Planning and Development Regulations 2001 (as amended).

Main Reasons with respect to Section 5 Declaration:

- The removal of existing boundary and erection of entrance/ gateway, would come within the definition of development as set out under Section 3 of the Planning and Development Act 2000(as amended).
- The construction of the entrance / gateway would come within the provisions/ description set out under Class 9 : Part 1 : Schedule 2 Planning and Development Regulations 2001(as amended).
- The entrance is to be located off the L-6177-0, this public road has a surfaced carriageway width of 3.5m.
- Given the location of the entrance and limited traffic movements on this local road, it is considered the entrance would not give rise to a traffic hazard or an obstruction on this local road.

- Having regard to the limited scale and location of the works at a distance of c. 250m from the Buckronev –Brittas Dunes and Fen SAC, and the lack of any hydrological link to this Natura 2000 site, negative impacts on the Natura 2000 site can be ruled out . Neither would the entrance works impact on the Buckronev –Brittas Dunes and Fen pNHA.

The Planning Authority considers that "New Agriculture Entrance at Ballytunny, Brittas Bay, Co. Wicklow" is development but is exempted development

J
ORDER:

That a declaration to issue stating:

That "New Agriculture Entrance at Ballytunny, Brittas Bay, Co. Wicklow" is development but is exempted development within the meaning of the Planning & Development Acts 2000 (as amended).

Signed: _____

A

Director of Services

Planning Development & Environment

Dated *29th* day of August 2022



Comhairle Contae Chill Mhantáin Wicklow County Council

**Forbairt Pleanála agus Comhshaol
Planning Development and Environment**

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

National Park & Wildlife Services

August 2022

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

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

Exemption Ref. No: EX 36/2022

Applicant: National Parks & Wildlife Services C/O Noel Quinn

Nature of Application: "New Agriculture Entrance at Ballytunny, Brittas Bay, Co. Wicklow"

Location: "New Agriculture Entrance at Ballytunny, Brittas Bay, Co. Wicklow"

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

Is mise, le meas,

**ADMINISTRATIVE OFFICER
PLANNING DEVELOPMENT & ENVIRONMENT.**



Comhairle Contae Chill Mhantáin Wicklow County Council

Forbairt Pleanála agus Comhshaol Planning Development and Environment

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

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

Applicant: National Parks & Wildlife Services C/O Noel Quinn

Location: Ballytunny, Brittas Bay, Co. Wicklow

DIRECTOR OF SERVICES ORDER NO. 1414/2022

A question has arisen as to whether "New Agriculture Entrance at Ballytunny, Brittas Bay, Co. Wicklow" is or is not exempted development.

Having regard to:

- i. The details submitted with the Section 5 Declaration Application.
- ii. Site Inspection on the 25th August 2022
- iii. Section 2, 3 and 4 of the Planning and Development Act 2000 (as amended)
- iv. Articles 6, 9 and Schedule 2: Part 1 of the Planning and Development Regulations 2001 (as amended).

Main Reasons with respect to Section 5 Declaration:

- The removal of existing boundary and erection of entrance/ gateway, would come within the definition of development as set out under Section 3 of the Planning and Development Act 2000(as amended).
- The construction of the entrance / gateway would come within the provisions/ description set out under Class 9 : Part 1 : Schedule 2 Planning and Development Regulations 2001(as amended).
- The entrance is to be located off the L-6177-0, this public road has a surfaced carriageway width of 3.5m.
- Given the location of the entrance and limited traffic movements on this local road, it is considered the entrance would not give rise to a traffic hazard or an obstruction on this local road.
- Having regard to the limited scale and location of the works at a distance of c. 250m from the Buckroney –Brittas Dunes and Fen SAC, and the lack of any hydrological link to this Natura 2000 site, negative impacts on the Natura 2000 site can be ruled out . Neither would the entrance works impact on the Buckroney –Brittas Dunes and Fen pNHA.



Comhairle Contae Chill Mhantáin Wicklow County Council

Forbairt Pleanála agus Comhshaol Planning Development and Environment

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

The Planning Authority considers that "New Agriculture Entrance at Ballytunny, Brittas Bay, Co. Wicklow" is development but is exempted development.

Signed: 

ADMINISTRATIVE OFFICER
PLANNING DEVELOPMENT & ENVIRONMENT

Dated August 2022

Section 5 Application : EX 36/2022

Date : 24th August 2022

Applicant : National Parks & Wildlife Services

Address : Ballytunny, Brittas Bay, Co. Wicklow

Exemption Whether or not :

New Agriculture Entrance at Ballytunny

constitutes exempted development within the meaning of the Planning and Development Acts, 2000(as amended).

Site Inspection : 24th August 2022.

Relevant Legislation

Planning and Development Act 2000 (as amended)

"structure" means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—

(a) where the context so admits, includes the land on, in or under which the structure is situate, and

(b) in relation to a protected structure or proposed protected structure, includes—

(i) the interior of the structure,

(ii) the land lying within the curtilage of the structure,

(iii) any other structures lying within that curtilage and their interiors, and

(iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in *subparagraph (i) or (iii)*;

"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 :

3.—(1) In this Act, "development" means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

Section 4 :

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

(4A) Notwithstanding subsection (4), the Minister may make regulations prescribing development or any class of development that is—

(a) authorised, or required to be authorised by or under any statute (other than this Act) whether by means of a licence, consent, approval or otherwise, and

(b) as respects which an environmental impact assessment or an appropriate assessment is required, to be exempted development.

Planning and Development Regulations 2001(as amended).

Article 6

(1) Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 9(1) Note see Regulations for full Article

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—

(ii) consist of or comprise 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 a traffic hazard or obstruction of road users.

(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.

Schedule 2 : Part 1

CLASS 9

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

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

Assessment :

The declaration queries whether the new agricultural entrance is or is not exempted development.

The gate is indicated to be required to access lands that the NPWS will maintain for conservation value as they form part of the SAC

The first question to be asked is whether the opening of an entrance would be development. In this regard the works would involve the removal of existing boundary and erection of gateway, and would come within the definition of works as set out in Section 2 of the Planning and Development Act 2000(as amended), and would therefore be development having regard to the provisions of Section 3 of the Planning and Development Act 2000(as amended).

The erection/ construction of gate/ gateway would come within the description of exempted development set out under Class 9 : Part 1 : Schedule 2 Planning and Development Regulations 2001(as amended). Whilst not details of the height of the gateway is submitted given it is a farm entrance , it is reasonable to assume it would not breach the 2m limitation associated with Class 9.

This exemption would be further limited by the restriction set out under Article 9 , and the main relevant restriction are assessed below.

*Article 9(1)(a) 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—*

Part (ii)

(ii) consist of or comprise 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,

From examination the public road is c. 3.5m in width, and therefore the new entrance would not breach this criteria.

Part (iii)

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

The entrance is located on a lightly trafficked route the L-6177-0, at a straight stretch, and would not it is considered give rise to a traffic hazard or obstruction on this local road

Part (viiB)

(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

The entrance is located c .250m from the edge of the Buckronev –Brittas Dunes and Fen SAC. Given the location and nature of the works, given that no no direct or indirect hydrogeological connection to the SAC is present, it is considered that the provision of an entrance would not by

itself or in combination give rise to negative impacts on the conservation value of the Natura 2000 site, and therefore the need for a Stage 2 : Appropriate Assessment can be ruled out.

Part (viiC)

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

The entrance works are located c. 250m from pNHA Buckroney –Brittas Dunes and Fen SAC. Given the location and nature of the works, given that no direct or indirect hydrological connection to the pNHA is present, it is considered that the provision of an entrance would not impact negatively on the pNHA.

Conclusion :

Having regard to the above assessment it is considered the entrance would be exempted development.

Recommendation :

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

New Agriculture Entrance at Ballytunny, Co. Wicklow

constitutes exempted development within the meaning of the Planning and Development Acts, 2000(as amended)

The Planning Authority consider that the New Agriculture Entrance **is development and is exempted development,**

Main Considerations with respect to Section 5 Declaration :

- i. The details submitted with the Section 5 Declaration Application.
- ii. Site Inspection on the 25th August 2022
- iii. Section 2 , 3 and 4 of the Planning and Development Act 2000 (as amended)
- iv. Articles 6, 9 and Schedule 2: Part 1 of the Planning and Development Regulations 2001 (as amended).

Main Reasons with respect to Section 5 Declaration :

- The removal of existing boundary and erection of entrance/ gateway, would come within the definition of development as set out under Section 3 of the Planning and Development Act 2000(as amended).

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- Having regard to the limited scale and location of the works at a distance of c. 250m from the Buckronev –Brittas Dunes and Fen SAC, and the lack of any hydrological link to this Natura 2000 site, negative impacts on the Natura 2000 site can be ruled out . Neither would the entrance works impact on the Buckronev –Brittas Dunes and Fen pNHA.

Signature
24/8/22

Report noted & agreed

Signature

29/8/2022

Carol Murphy

From: Carol Murphy
Sent: Thursday 16 June 2022 13:52
To: 'Noel Quinn'
Cc: Wesley Atkinson (Housing)
Subject: RE: Section 5 Application - Opening of an Agricultural Entrance onto the Public Road

Hi Noel,

Thank you for your application. I do not see evidence of payment of the €80 fee regarding Application Fee for Section 5. If you have arranged payment please confirm same, otherwise please arrange payment. You can call and we can put you onto our revenue section who can take payment over the phone.

Kind regards,

Carol Murphy
Staff Officer | Planning Department | Wicklow County Council
Extension: 2176

From: Noel Quinn [<mailto:quinndesignassociates@gmail.com>]
Sent: Thursday 16 June 2022 11:41
To: Planning - Planning and Development Secretariat
Cc: Wesley Atkinson (Housing)
Subject: Section 5 Application - Opening of an Agricultural Entrance onto the Public Road

Dear Sir /Madam,

The following attached documents relate to a Section 5 application on behalf of National Parks and Wildlife Service:

- Completed Section 5 application form
- Letter from the National Parks and Wildlife Service.
- Drawing 1218/01
- O.S. Map - 1218/02
- O.S. Map - 1218/03

This Section 5 application relates the opening of an agricultural entrance onto the public road at Ballytunny, Co. Wicklow. As described in the accompanying letter, the National Parks and Wildlife Service requires the new entrance to allow NPWS personnel access an area of land that they hope to purchase in the near future.

The new entrance will provide access to a proposed right-of-way shown in yellow on the attached drawing and O.S. maps. The right-of-way will not be paved and the existing field boundary hedge along the right-of-way will be retained.

Sight lines in both directions, at the point of access onto the public road, are adequate and this combined with the fact that the proposed entrance is on a low trafficked local road means that it will not pose any safety issues.

Regards,
Noel Quinn MRIA,
Quinn Design Associates,
Seven Cottage,
Dundalough,
Co. Wicklow.
Ph: 0404 45234 086 3112835
Email: quinndesignassociates@gmail.com



Carol Murphy

From: Noel Quinn <quinndesignassociates@gmail.com>
Sent: Thursday 16 June 2022 11:41
To: Planning - Planning and Development Secretariat
Cc: Wesley Atkinson (Housing)
Subject: Section 5 Application - Opening of an Agricultural Entrance onto the Public Road
Attachments: 1218-01.pdf; 1218-02.pdf; 1218-03.pdf; Letter - NPWS.pdf; Section 5 application - 2018.pdf

Dear Sir /Madam,

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- Drawing 1218/01
- O.S. Map - 1218/02
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The new entrance will provide access to a proposed right-of-way shown in yellow on the attached drawing and O.S. maps. The right-of-way will not be paved and the existing field boundary hedge along the right-of-way will be retained.

Sight lines in both directions, at the point of access onto the public road, are adequate and this combined with the fact that the proposed entrance is on a low trafficked local road means that it will not pose any safety issues.

Regards,
Noel Quinn MRAI,
Quinn Design Associates,
Glen Cottage,
Glendalough,
Co. Wicklow.
Ph: 0404 45234 086 3112835
Email: quinndesignassociates@gmail.com





**An Roinn Tithíochta,
Rialtais Áitiúil agus Oidhreacht
Department of Housing,
Local Government and Heritage**

**National Parks & Wildlife Service,
Regional Office,
Kilafin,
Laragh,
Co. Wicklow.
Ireland.
Tel. +353 015393151
E-mail.
weslev.atkinson@housing.gov.ie**

Planning Department
Wicklow County Council,
Station Road,
Wicklow.

14th June 2022

RE: Opening of an Agricultural Entrance onto the Public Road at Ballytunny Co Wicklow.

A Chara,

With reference to this application the Wicklow Region of the National Parks & Wildlife Service are currently negotiating the purchase of circa 8 Ha of Marsh/Fen land. This land is of high nature conservation and bio-diversity value and adjoins an existing NPWS landholding of circa 12 ha. Purchase of this land would facilitate the management of circa 20 Ha of Buckroneys Marsh/Fen for Conservation/Bio-diversity. The land in question is part of the larger Brittas-Buckroneys Special Area of Conservation complex (Site code 729).

In order to maintain this land in good conservation condition and increase its bio-diversity, this land will be managed through a combination of low intensity agriculture which include light summer grazing, seasonal mowing of rank vegetation and water level management. Therefore access is required periodically for agricultural vehicles, livestock and NPWS vehicles/staff to monitor and manage the lands in question to maintain it in good ecological condition.

The vendor is not offering NPWS any other ROW. This ROW is solely for NPWS and their agents. Please note the ROW is not within the SAC, and the proposed entrance from the public road is some 260 meters from the edge of the land in question and the SAC boundary. The ROW will be unsurfaced along the edge of the existing hedge-line.

Yours Sincerely

Wesley Atkinson
Regional Manager
Wicklow Region

Wicklow County Council
County Buildings
Wicklow
0404-20100

15/08/2022 12 22 35

Receipt No L1/0/299943

NOEL QUINN
QUINN DESIGN & ASSOCIATES
1 GLEN COTTAGE
GLENDALOUGH
CO WICKLOW

EXEMPTION CERTIFICATES	80 00
GOODS	80 00
VAT Exempt/Non-vatable	

Total	80 00 EUR
-------	-----------

Tendered	
Credit Card	80 00
BY PHONE	

Change	0 00
--------	------

Issued By Cashier5MW
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 _____

**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: Wesley Atkinson, Regional Manager
Address of applicant: National Parks and Wildlife Service, Wicklow Region
(including WMNP), Kilafin, Laragh, Bray, Co. Wicklow.

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

2. Agents Details (Where Applicable)

- (b) Name of Agent (where applicable) Noel Quinn MRIAI
Address of Agent: Quinn Design Associates,
Glen Cottage, Glendalough,
Co. Wicklow.

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

3. Declaration Details

- i. Location of Development subject of Declaration Ballytunny,
Brittas Bay,
Co. Wicklow
- ii. Are you the owner and/or occupier of these lands at the location under i. above ?
~~Yes~~ No. ✓
- iii. If 'No' to ii above, please supply the Name and Address of the Owner, and or occupier Mary O'Neill,
Ballytunny Farm, Ballytunny,
Brittas Bay,
Co. Wicklow.
- 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 _____

Does the creation of a new agricultural entrance onto the public road require
planning permission? See accompanying letter from the National Parks & Wildlife Service

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 _____
Class 9 Development of Schedule 2 of the Planning Regulations 2001
states that the following is exempted development:
"The construction, erection, renewal or replacement, other than within or
bounding the curtilage of a house, of any gate or gateway".

Additional details may be submitted by way of separate submission.


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 _____

Drawing No: 1218/01

O.S. Maps: 1218/02 & 03

viii. Fee of €80 Attached? Paid by credit card.

Signed :  Dated : 16/06/2022

Additional Notes:

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

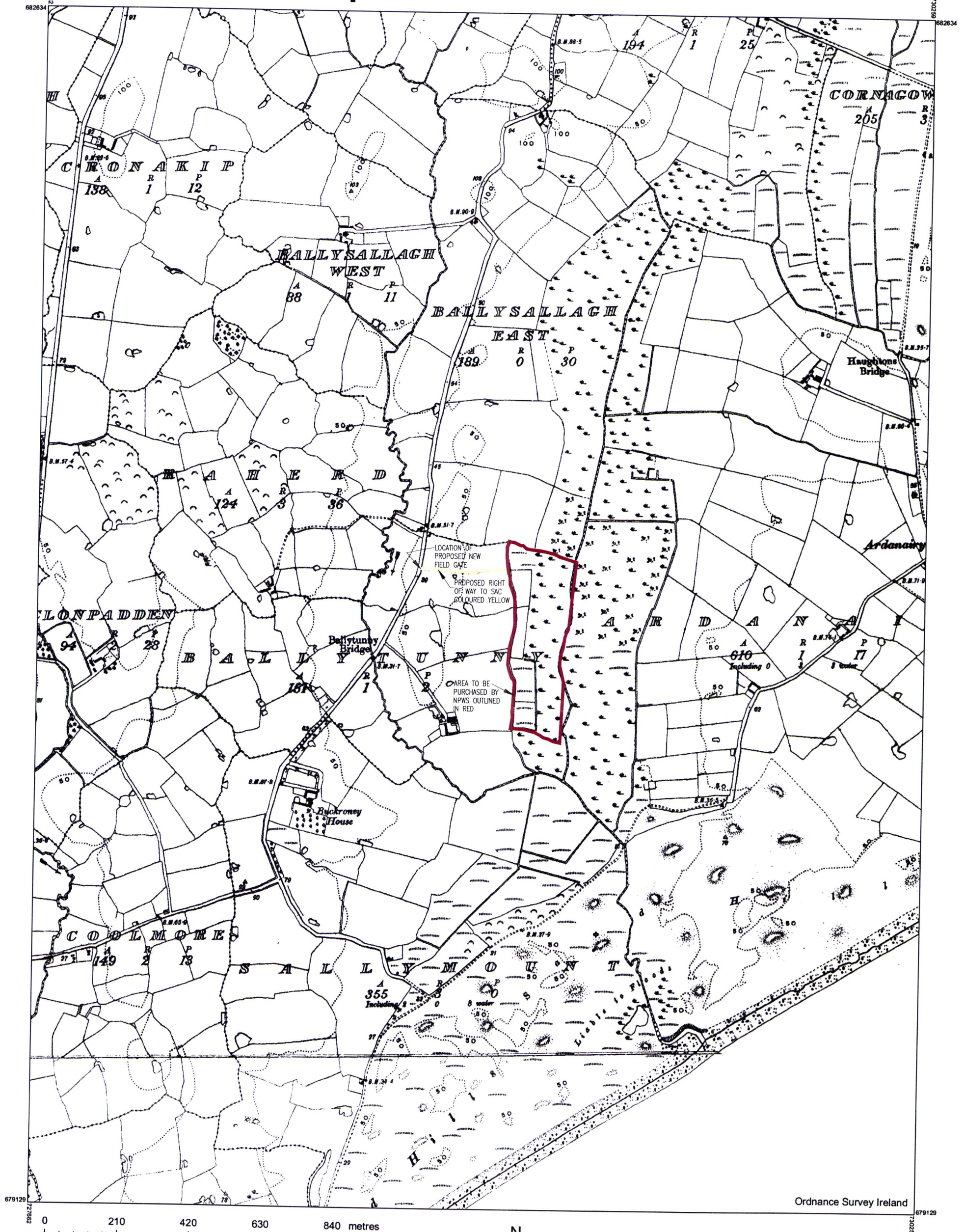
A. Extension to dwelling - Class 1 Part 1 of Schedule 2

- 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

Site Location Map



0 210 420 630 840 metres
0 640 1,280 1,920 2,560 Feet OUTPUT SCALE: 1:10,560



CENTRE
COORDINATES:
ITM 728961,680882

ORDER NO.:
50273598_1

PUBLISHED:
10/06/2022

MAP SERIES:
6 Inch Raster
6 Inch Raster

MAP SHEETS:
WW036
WW041

CAPTURE RESOLUTION:
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LEGEND:
<http://www.osi.ie>; search 'Large Scale Legend'

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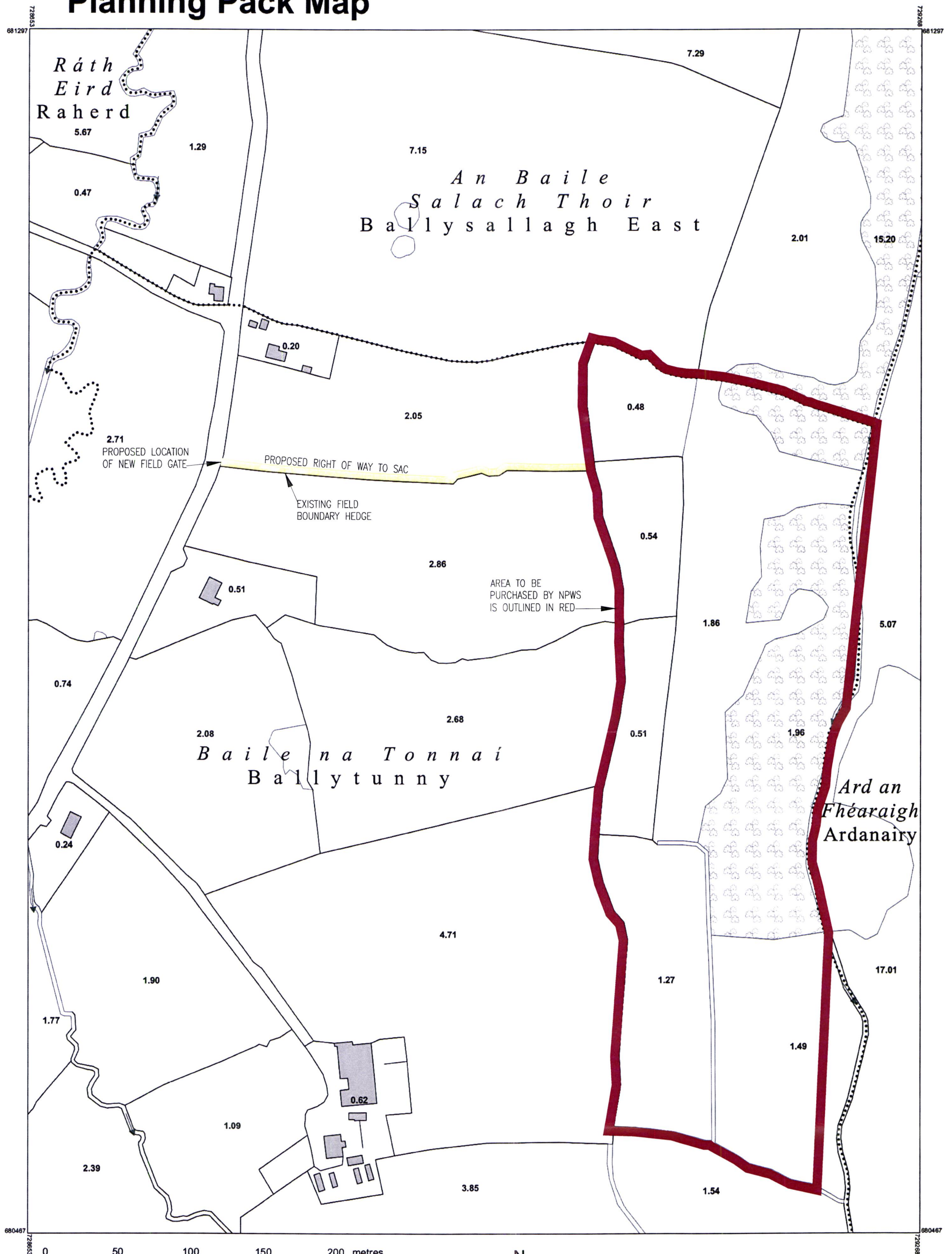
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1218/03



Planning Pack Map



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**CENTRE
COORDINATES:**
ITM 728961,680882

ORDER NO.:
50273598_1

MAP SERIES:
1:2,500
1:5,000

PUBLISHED:
10/06/2022

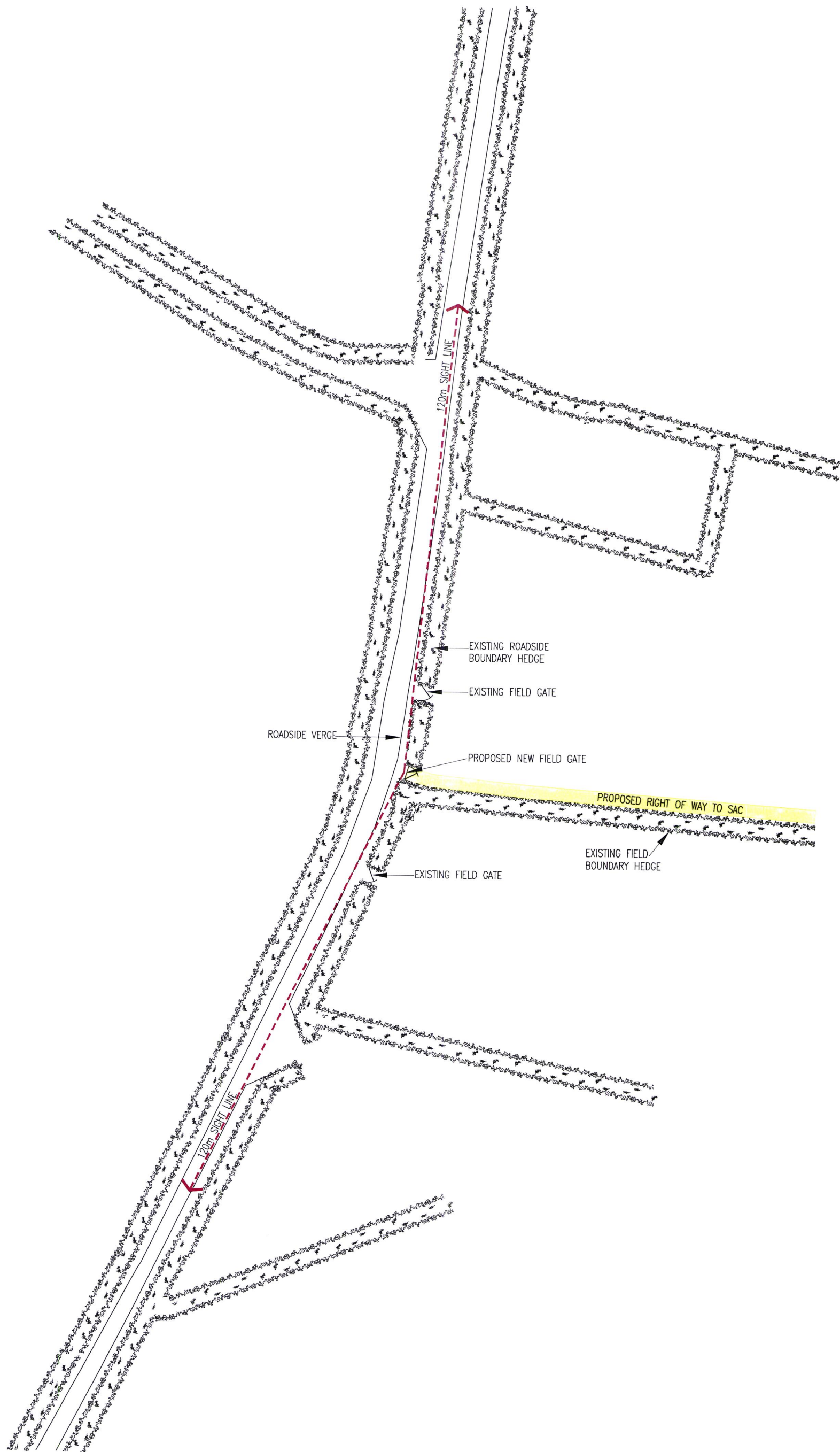
MAP SHEETS:
4255-C
4313

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:
<http://www.osi.ie>; search 'Capture Resolution'

LEGEND:
<http://www.osi.ie>; search 'Large Scale Legend'



1218/02



NEW AGRICULTURAL ENTRANCE
ONTO THE PUBLIC ROAD FOR NPWS

SITE PLAN

Scale: 1:1000 @ A3

Date: June 2022

Ph: 0404 45234 086 3112835
Email: quinnndesignassociates@gmail.com

Drawing status:

Section 5

DRG. No. 1218/01

QUINN DESIGN ASSOCIATES, ARCHITECTS
GLEN COTTAGE, GLENDALOUGH, CO WICKLOW.