



Xx June 2020

NPWS Ref: xxxx

(Please quote the above reference in all relevant correspondence)

Re: Application for derogation consent to carry out an operation or activity in the townland of [REDACTED] within the River Barrow and River Nore Special Area of Conservation (SAC) (Site Code: 002162) a European Site to which the European Communities (Birds & Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011) apply, and also within the River Nore Special Protection Area (SPA) (Site Code 004233), a European Site to which the European Communities (Conservation of Wild Birds (River Nore Special Protection Area 004233)) Regulations 2012 (S.I. No. 193/2012) apply

Dear [REDACTED]

I refer to your application (received by email 4/6/20) to carry out water abstraction works at [REDACTED], within the River Barrow and River Nore Special Area of Conservation (SAC, site code 002162) and the River Nore Special Protection Area (SPA, site code 004233). I also refer to further email clarifications provided to local staff on the nature of the proposed works (received by email 5/6/20).

The proposed activity, being “extracting water for irrigation or other purposes” in river habitat in the SAC, constitutes an activity requiring consent under Regulation 28 (10) of the above 2011 Regulations. It is also ‘water abstraction’ which constitutes an activity requiring consent under Regulation 5 of the above 2012 Regulations.

The Minister has considered your application and has formed the opinion that the proposed works, alone or in combination with other activities, may cause likely significant effects on the river habitat and a range of aquatic and river-dependent qualifying interest habitats and species. The proposed works would therefore require Appropriate Assessment.

Under Section 4 of the Planning and Development Act 2000 (as amended), exempted development which requires an Appropriate Assessment is no longer exempted and therefore requires planning permission.

Under Regulation 31 (1) of the 2011 Regulations, where the Minister is considering an application for consent and she forms the opinion that the application relates to a development within the meaning of the Planning and Development Acts , and that the development may not be an exempted development because it would require an Appropriate Assessment under the Habitats Directive, she shall, if the applicant wishes to pursue the application, refer the matter to An Bord Pleanála under Section 5(8) of the Planning and Development Act 2000, for a determination on the matter.

You are therefore requested to indicate if you wish to proceed with a referral of this application to An Bord Pleanála.

The Board may to seek additional information from you, for the Board to make a determination as to whether the proposed development requires planning permission.

Should you so wish, while awaiting an outcome of the above referral, you may also liaise directly with the local planning authority (Kilkenny County Council) on this matter.

Please note that under Regulation 31 (9), a person proposing to carry out a development requiring referral to An Bord Pleanála, shall not carry out any works on the development unless the Minister has informed the applicant of her decision to grant consent or, where appropriate, planning permission has been obtained. It is an offence to contravene Regulation 31(9).

For the avoidance of doubt, please note that the Minister does not and cannot give consent for the proposed development in the absence of a determination by An Bord Pleanála.

Please contact xxxxxxxxxxxxxxxx for any further advice or assistance in relation to this matter .