



An  
Bord  
Pleanála

## Inspector's Report ABP-303860-19

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### Development

Construction of two storm manholes and tree & vegetation removal from flood embankments on the River Finn and geotechnical investigation works.

### Location

Townlands of Ballybofey and Stranorlar, Co. Donegal.

### Local Authority

Donegal County Council

### Type of Application

Application for approval made under Section 177(AE) of the Planning and Development Act, 2000 (local authority development requiring appropriate assessment)

### Observer(s)

Ballybofey & Stranorlar Integrated Community Company.

### Date of Site Inspection

8<sup>th</sup> June 2019

### Inspector

Sarah Lynch.



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## 1.0 Introduction

- 1.1. Donegal County Council is seeking approval from An Bord Pleanála to undertake works including the construction of two storm manholes and tree and vegetation removal from flood embankments on the River Finn and geotechnical investigation works within/adjacent to the River Finn SAC which is a designated European site. There are several other designated European sites (SPAs and SACs) in proximity to the proposed works (see further analysis below). A Natura Impact Statement (NIS) and application under Section 177AE was lodged by the Local Authority on the basis of the proposed development's likely significant effect on a European site.
- 1.2. Section 177AE of the Planning and Development act 2000 (as amended) requires that where an appropriate assessment is required in respect of development by a local authority the authority shall prepare an NIS and the development shall not be carried out unless the Board has approved the development with or without modifications. Furthermore, Section 177V of the Planning and Development Act 2000 (as amended) requires that the appropriate assessment shall include a determination by the Board as to whether or not the proposed development would adversely affect the integrity of a European site and the appropriate assessment shall be carried out by the Board before consent is given for the proposed development.

## 2.0 Proposed Development

- 2.1. The proposal includes the construction of two new storm manholes on the existing 900mm storm lines at the bottom of the flood embankments behind Aldi in Ballybofey. These manholes will allow for over pumping when the level of the Finn rises such that the outlets from the existing drainage can no longer operate successfully. These works will include 2 no. 5m x 5m x 0.25m concrete hardstands for the mobile pumps. Excavation of c. 3 metres deep, concrete works, manhole construction and backfilling are proposed.
- 2.2. In addition to the manhole construction, the removal of c. 1.74 hectares of selected vegetation including c. 81 trees and bushes for flood relief along the banks of the River Finn is proposed.

2.3. Access routes are proposed along with ground investigation works along the top of the flood embankment.

2.4. **Accompanying documents:**

- NIS.
- Plans and particulars demonstrating location and details of proposed works.
- Planning notices.

**Further Information**

2.5. A request for further information was submitted addressing issues relating to the following:

- Mapped location of all invasive species.
- Invasive species management plan.
- Details of the following items
  - access routes
  - storage and disposal of any contaminated material.
  - trial holes, silt trenches including in relation to any invasive species.
  - the level of site use by otter and location of resting holts.
  - settlement tank and silt sock.
  - vegetated area to which water from settlement tank is to be discharged.
  - Mitigation measures to prevent pollution of river.
- A revised NIS has been submitted as part of the response to the further information request and the application was re-advertised.

3.0 **Site and Location**

3.1. The development works are located on the river banks of the River Finn SAC and will occur both upstream and downstream of the Ballybofey Stranorlar bridge along the

N15. The River Finn is part of the Finn (Donegal)\_60 river sub basin and the Finn Donegal\_SC\_030 sub catchment which is within the Foyle catchment.

- 3.2. As mentioned above, this area of the river is within the development boundary of Ballybofey and Stranorlar. The works area is bounded to the north west by MacCumhail Park GAA club and to the south west by a car park and open grasslands and to the north east by St. Marys National school and St. Marys Church. A number of commercial buildings are present at the riverbank directly to the east, south of the main bridge.
- 3.3. The riverbanks are largely grassed with various vegetation present on both sides. A number of large trees are present along the south western bank separating the river from existing development at this location. The bank is also populated on both sides by tall stands of Japanese Knotweed and Himalayan Balsam.
- 3.4. The land levels are significantly higher on both sides of the river channel as it moves through the town.

## 4.0 Planning History

- 4.1. There is no recently recorded history for this site.

## 5.0 Policy Context

### 5.1. National Policy

#### **Implementing the National Flood Risk Policy 2018**

Ballybofey / Stanorlar is identified as a relief scheme that is planned.

#### **National Planning Framework**

The National Planning Framework – Ireland 2040, which seeks to ensure flood risk management in accordance with best practice.

#### **Draft Regional Spatial and Economic Strategy for the Northern and Western Regional Assembly.**

- **Objective 21** Local Authorities, DHPLG, OPW, and other relevant Departments and agencies to work together to implement the recommendation of the

CFRAM programme to ensure that flood risk management policies and infrastructure are progressively implemented.

- **Objective 197** Support the delivery of flood defence works planned by OPW to be implemented in the short-term.
- **Objective 206** Prioritising investment to improve storm water infrastructure to improve sustainable drainage and reduce the risk of flooding in the urban environment.

#### **Donegal County Development Plan 2018-2024**

- Policy F-P-6: It is a policy of the Council to consider the development of long and short-term flood remediation works, including embankments, sea defences, drainage channels, and attenuation ponds to alleviate flood risk and damage to livelihoods, property and business subject to environmental considerations including potential impact on designated shellfish water and, fresh water pearl mussel catchment areas, compliance with Article 6 of the Habitats Directive, best practice in Coastal Zone Management and the Marine Resource and Coastal Management policies of this Plan.

#### **Seven Strategic Towns Local Area Plan 2018-2024**

- Section 5.4.2 Opportunity Sites Located Within or Adjacent To The Town Centres - Opportunity Site 1 was one of a number of sites specifically assessed in more detail in the SFRA report on the LAP, owing to its strategic location within the town centre. Almost the entire site is identified as lying within Flood Zone A and reported occurrences of storm sewers surcharging during flood events on the River Finn have been referenced in the report.
- Policy SO2: To enhance and develop Ballybofey-Stranorlar by 2024 so as to enhance its reputation as a sporting centre of excellence and as a key centre of recreation and hospitality for the County. In addition, the Twin Towns will have an enhanced reputation also as an attractive place to live and work on foot of expanded residential and retail facilities and on foot also of strategic infrastructural improvements to the town.
- Policy F-P-6: It is a policy of the Council to consider the development of long and short-term flood remediation works, including embankments, sea defences, drainage channels, and attenuation ponds to alleviate flood risk and

damage to livelihoods, property and business subject to environmental considerations including potential impact on designated shellfish water and, fresh water pearl mussel catchment areas, compliance with Article 6 of the Habitats Directive, best practice in Coastal Zone Management and the Marine Resource and Coastal Management policies of this Plan.

- Policy F-P-7: It is a policy of the Council not to permit developments which would hinder the maintenance of river or drainage channels.

### **Sub Basin Catchment**

- The River Finn is part of the Finn (Donegal)\_60 river sub basin and the Finn.

## **6.0 Prescribed bodies**

### **6.1. Department of Culture, Heritage and the Gaeltacht:**

#### **Response dated 19<sup>th</sup> July 2019 in relation to application –**

- Insufficient information to assess the adequacy of the screening reports concluding statement or mitigation measures with regard to Otter. The level of site use by otter and the level of significance of that use within the context of the wider SAC should be clearly defined.
- It is not appropriate for mitigation measures to be agreed post consent. The detail of any proposed mitigation measures must be available as part of the assessment. Details are required in relation to the cofferdam construction and approach and the access routes.
- NIS should clearly assess the predicted post project change, risks and impacts to river bank and in stream habitats/species arising from works proposed.
- Electro fishing should be undertaken by a competent and experienced operator with a suitable qualification.
- Archaeology – standard Archaeology conditions

The Department submitted an additional comment in relation to Donegal County Council's response to the further information request which was received **29<sup>th</sup> November 2019**. The issues raised can be summarised as follows:

- The applicant must ensure that the appropriate knowledge and or skills are available on site to deploy spill kits and or the hydrocarbon oil boom before incidents occur.
- A buffer of 8m+ should be adopted to prevent contact with mature Himalayan Balsam seed pods. The implementation of a post works monitoring plan for the site which sets out clearly defined roles and responsibilities should be required as part of any grant of permission.

## 6.2. Observations:

- One observation was received from Ballybofey and Stranorlar Integrated Community Company. This submission supports the proposed scheme due to the damage that flood has done to the town and the businesses within it.

## 7.0 Assessment

7.1. Under the provisions of Section 177AE (6) of the Planning and Development Act, 2000 (as amended), the Board is required to consider the following in respect of this type of application:

- The likely consequences for the proper planning and sustainable development of the area;
- The likely effects on the environment; and
- The likely impact on any European sites.

### **The likely consequences for the proper planning and sustainable development of the area**

- 7.2. As outlined above consent is sought by Donegal County Council for works including the construction of two storm manholes and tree and vegetation removal from flood embankments on the River Finn and geotechnical investigation works.
- 7.3. It is stated by the applicant that Ballybofey and Stranorlar were included as an area for further assessment within the CFRAM study. The proposed works are part of a Minor Works application and are deemed as essential maintenance (embankment clearance) and providing for short term solution including sumps and mobile pumps to prevent flooding in the town as part of an overall emergency plan where the town is at risk of flooding. It is further stated that the works will still be of benefit to the final

solution for the town when a scheme from the CFRAM Final Flood Risk Management Plan is prioritised. The proposed development is a short-term measure to help prevent flooding in the town during storm events such as what occurred in December 2015.

- 7.4. It is of note that the lands within which the works are proposed are within the development boundary of Ballybofey and Stranorlar and the lands are zoned for both a Masterplan area and town centre. It is the policy of the Council under policy F-P-6 of the Seven Strategic Towns LAP 2018-2024 to protect these lands from flooding and consider flood remediation works in order to ensure that the town and associated development lands are adequately protected. The proposed works are therefore in accordance with the provisions of the local area plan for the area and compliant with the proper planning and sustainable development of the area.

### **The likely effects on the environment**

#### **Spread of Japanese Knotweed**

- 7.5. The proposed development will be carried out along the banks of the River Finn. Concerns in relation to likely effects on the environment primarily relate to the spread of Japanese Knotweed and other invasive species throughout the River Finn and beyond, and the resultant impacts on water quality. Of relevance to this element of the assessment is the location of the invasive plant species present on site relative to the location of the proposed works and the provision of an 8 metre exclusion zone surrounding these plants, in particular Himalayan Balsam as per the submission of the Department of Culture, Heritage and the Gaeltacht received on 29<sup>th</sup> November 2019.
- 7.6. Donegal County Council were requested by way of further information to provide plans which identified the location of all invasive plant species present within the application site relative to the proposed works in order to determine whether adequate separation distance could be provided on site. An Invasive Species Management Plan was also requested in order to ensure that appropriate controls would be provided for in order to prevent the spread of such plants. It is important to note that the spread of invasive plant species such as Japanese Knotweed, can have a direct effect on the water quality of a river due to increased sedimentation. Japanese Knotweed plants die back during winter months and the residual canes of the plant destabilise soils which is then washed into the river during times of flood.

- 7.7. In response to the further information request the applicant submitted aerial images whereby the location of all invasive plant species present throughout the site and the proposed vegetation to be removed were identified by way of a coloured dot on the image. No plans were submitted as requested and no Invasive Species Management Plan was submitted. The identification of invasive plants by way of a dot on aerial photography fails to provide an adequate level of detail in relation to the coverage of the plants. It is not possible, to accurately determine whether the required exclusion zone can be provided for due to the nature of the information i.e dots on an aerial photo and the lack of scaled drawings.
- 7.8. The applicant states that Japanese Knotweed is present on the banks of the river but would not be interfered with as part of the proposed works. The Department of Culture, Heritage and the Gaeltacht submission states that an 8 metre buffer is to be provided.
- 7.9. Whilst carrying out a site inspection I noted discrepancies in the information submitted on the aerial images. Locations identified for the removal of vegetation within the images submitted, as part of the NIS, were grassed and the vegetation identified for removal were located closer to the river's edge. I also noted large stands of Japanese Knotweed in locations directly adjacent to areas identified for the removal of vegetation, whereby no separation distances could be provided for.
- 7.10. As such, based on the information provided, the applicant has failed to adequately demonstrate, with any degree of certainty, that separation distances of 8 metres can be achieved in all instances where works are to be carried out proximate to these invasive species. The provision of appropriate exclusion zones is imperative to prevent the spread of such invasive plant species within the site and throughout the adjacent Natura 2000 site.
- 7.11. In addition, the access routes identified on the aforementioned images appear to conflict with the location of invasive plant species. This raised the risk that invasive species could be spread beyond the site by the wheels of vehicles. It is therefore likely, based on the information provided, that proposed works would have significant potential to spread invasive plant species throughout the Natura Site and as such are considered to be unacceptable.

## **Water Quality**

- 7.12. The proposed works will essentially facilitate additional land drainage at times of flood. It is stated that closed valves will be used to prevent water from entering the river during excavation of manholes, and ground water encountered will be pumped into a tank on site where it will be left to settle and then discharged via a silt sock to a vegetated area adjacent to the river to infiltrate naturally.
- 7.13. The Water Framework Directive status of the River Finn at the location of the proposed works is poor in relation to both the ecological and chemical status of the river. Risks are identified within the sub catchment assessment from overgrazing, land drainage and agriculture. The principle of the proposed development which is essentially to pump flood waters into the river channel in order to alleviate flooding of the town will not give rise to significant impacts on the environment or water quality of the River Finn. Mitigation measures in relation to both the construction and operation of the proposed development are detailed within the NIS below and are considered to adequately address any potential for adverse impacts on the environment in this context.
- 7.14. However, as mentioned above I have serious concerns in relation to the spread of invasive plant species throughout the application site and beyond. The spread of invasive species such as Japanese Knotweed, would result in a significant increase in siltation to the river which will directly impact the water quality and therefore fish life and other organisms within the river.
- 7.15. The Water Framework Directive seeks to protect/enhance all waters (surface, ground and coastal waters) and achieve "good status" for all waters in the country and prohibits development that would prevent this from being achieved or would result in the degradation of water quality. I consider that the proposed works would give rise to the spread of invasive plant species such as Japanese Knotweed and as such have significant potential to negatively impact water quality of the River Finn by way of increased siltation. The proposed development would therefore be contrary to the provisions of the Water Framework Directive 2000/60/EC, by way of deteriorating water quality of the River Finn and preventing the achievement of good status in the future.

Therefore, in the absence of an invasive species management plan and based on the information submitted, I consider that the proposed works have an unacceptable potential to impact on the water quality and surrounding environment of the River Finn.

### **Access**

- 7.16. The proposed works will be carried out at various locations to both the east and west of the river. Access to the north east area of works will be gained through the existing access road at the Sean Mac Cumhails GAA grounds. An access route to the south east of the river is shown via a car park at the Ballybofey and Stranorlar Community Gardens which is accessed via a local road known as Chestnut Road to the south of the N15. An additional entrance is proposed further to the south of Chestnut road while access to lands and works to the north west of the river will be obtained from the church car park to the north of the N15.
- 7.17. Sight visibility at all access points is adequate and unobstructed. I consider that the proposed access points are acceptable. However, whilst access points are noted within the plans submitted, I note that in some instances machinery will operate and travel past clusters of invasive plant species, as outlined above the quality and detail provided within the plans submitted prevents a detailed assessment in relation to the potential for interactions and conflicts with access routes and these plants.
- 7.18. Whilst I consider the access points to be acceptable in terms of sight visibility, as mentioned above, insufficient detail has been submitted in relation to the access routes and the potential to spread the invasive plant species present on site.
- 7.19. **The likely significant effects on a European site:** The areas addressed in this section are as follows:
- Compliance with Articles 6(3) of the EU Habitats Directive
  - The Natura Impact Statement
  - Appropriate Assessment
- 7.20. The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of

its implications for the site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal will not adversely affect the integrity of the European site.

7.21. The likely significant effects on the two Natura 2000 sites is dealt with under the AA section below.

## 8.0 **Appropriate Assessment**

8.1. The NIS dated 18<sup>th</sup> October 2019 has been prepared by Woodrow Consultants on behalf of Donegal County Council.

8.2. The NIS prepared by Woodrow Consultants describes the proposed development, its receiving environment and relevant European Sites in the zone of influence of the development. It was informed by surveys, a desk top study, maps and ecological and water quality data from a range of sources. Section 3.1.2 of the NIS details that the following surveys were carried out as follows:

- A detailed terrestrial invasive species survey was carried out on the 27<sup>th</sup> & 28<sup>th</sup> September 2018. An aquatic invasive species survey was carried out on the 24<sup>th</sup> September 2018. The survey revealed that four non-native species are present and include, Himalayan Balsam, Himalayan Knotweed, Japanese Knotweed, and Rhododendron.
- Macroinvertebrate sampling took place in the areas upstream and downstream of the proposed works.
- Suitability surveys for Qualifying Interests such as Salmon and Otter were also carried out on the 24<sup>th</sup> and 25<sup>th</sup> September 2018.
- An Otter survey was carried out on the 28<sup>th</sup> September using standard surveying techniques. The survey discovered prints and a potential holt, it was considered likely that Otter may forage in this area but not construct breeding holts due to the urban nature of the area. The potential nesting holt is located to the north of the GAA across the river on the northern bank.
- River habitat surveys were also carried out to determine the general characteristics of the river.

- 8.3. The report concluded that, taking into account the project design and the implementation of mitigation measures identified in the NIS, the proposed development will not result in adverse effects on the integrity of any Natura 2000 site.
- 8.4. Having reviewed the NIS and the supporting documentation, I am generally satisfied that it provides adequate information in respect of the baseline conditions, identifies the potential impacts, uses best scientific information and knowledge and provides details of mitigation measures. I am satisfied, that the information provided is generally sufficient to allow for appropriate assessment of the development.

### Stage 1 Screening

- 8.5. There is no obligation on the Board to undertake screening for AA for 177AE cases as the application is presupposed on the fact that AA is required. None the less it is prudent to review the screening process to ensure alignment with the sites brought forward for AA and to ensure that all sites that may be affected by the development have been considered.
- 8.6. Having regard to the information and submissions available, nature, size and location of the proposed development and its likely direct, indirect and cumulative effects, the source pathway receptor principle and sensitivities of the ecological receptors, the following European Sites were considered relevant to include for the purposes of initial screening for the requirement for Stage 2 appropriate assessment on the basis of likely significant effects.

**Table 1 European sites considered for Stage 1 screening:**

European Site Name & Code	Distance	Qualifying Interest	Source-pathway-receptor	Considered further in screening
River Finn SAC 002301	26.8 m	Oligotrophic waters containing very few minerals of sandy plains (Littorelletalia uniflorae) [3110]  Northern Atlantic wet heaths with Erica tetralix [4010]  Blanket bogs (* if active bog) [7130]	Direct hydrological link.	<b>Yes -</b>  Potential for significant effects arising from the spread of invasive plant

		<p>Transition mires and quaking bogs [7140]</p> <p>Salmo salar (Salmon) [1106]</p> <p>Lutra lutra (Otter) [1355]</p>		<p>species, contaminated surface water runoff from construction and potential to disturb otters.</p>
<p>Croaghonagh Bog SAC</p> <p>000129</p>	<p>C. 10km south east</p>	<p>Blanket Bogs (Active) [7130]</p>	<p>No pathway exists</p>	<p><b>No</b></p>
<p>Lough Foyle SPA</p> <p>004087</p>	<p>44kkm</p>	<p>Red-throated Diver (<i>Gavia stellata</i>) [A001]</p> <p>Great Crested Grebe (<i>Podiceps cristatus</i>) [A005]</p> <p>Bewick's Swan (<i>Cygnus columbianus bewickii</i>) [A037]</p> <p>Whooper Swan (<i>Cygnus cygnus</i>) [A038]</p> <p>Greylag Goose (<i>Anser anser</i>) [A043]</p> <p>Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046]</p> <p>Shelduck (<i>Tadorna tadorna</i>) [A048]</p> <p>Wigeon (<i>Anas penelope</i>) [A050]</p> <p>Teal (<i>Anas crecca</i>) [A052]</p> <p>Mallard (<i>Anas platyrhynchos</i>) [A053]</p> <p>Eider (<i>Somateria mollissima</i>) [A063]</p> <p>Red-breasted Merganser (<i>Mergus serrator</i>) [A069]</p> <p>Oystercatcher (<i>Haematopus ostralegus</i>) [A130]</p> <p>Golden Plover (<i>Pluvialis apricaria</i>) [A140]</p> <p>Lapwing (<i>Vanellus vanellus</i>) [A142]</p>	<p>River Finn discharges to River Foyle</p>	<p><b>No</b></p> <p>The potential for impact arising from the spread of invasive species is unlikely given the distance from the SPA.</p>

		<p>Knot (<i>Calidris canutus</i>) [A143]</p> <p>Dunlin (<i>Calidris alpina</i>) [A149]</p> <p>Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157]</p> <p>Curlew (<i>Numenius arquata</i>) [A160]</p> <p>Redshank (<i>Tringa totanus</i>) [A162]</p> <p>Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179]</p> <p>Common Gull (<i>Larus canus</i>) [A182]</p> <p>Herring Gull (<i>Larus argentatus</i>) [A184]</p> <p>Wetland and Waterbirds [A999]</p>		
<p>North Inishowen Coast SAC</p> <p>002012</p>	c. 72km	<p>Mudflats and sandflats not covered by seawater at low tide [1140]</p> <p>Perennial vegetation of stony banks [1220]</p> <p>Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]</p> <p>Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]</p> <p>Machairs (* in Ireland) [21A0]</p> <p>European dry heaths [4030]</p> <p>Vertigo angustior (Narrow-mouthed Whorl Snail) [1014]</p> <p>Lutra lutra (Otter) [1355]</p>	River Finn discharges to the Inishowen Coast	<p><b>No</b></p> <p>No potential for effects given the separation distance of the works from the SAC.</p>
<p>Hemptons Turbot Bank SAC</p> <p>002999</p>	c.84km	<p>Sandbanks which are slightly covered by sea water all the time [1110]</p>	River Finn discharges to the Inishowen Coast	<p><b>No</b></p> <p>No potential for effects given the separation distance of the</p>

				works from the SAC.
Inishtrahull SAC & SPA 000154 & 004100	c.77km	SPA  Shag ( <i>Phalacrocorax aristotelis</i> ) [A018]  Barnacle Goose ( <i>Branta leucopsis</i> ) [A045]  Common Gull ( <i>Larus canus</i> ) [A182]  SAC  Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]	River Finn discharges to the Inishowen Coast.	<b>No</b>  No potential for effects given the separation distance of the works from the SAC & SPA and the dilution and dispersion factor provided by the sea.
Cloghernagore bog and Glenveagh National Park SAC 002047	C. 21km	Oligotrophic waters containing very few minerals of sandy plains ( <i>Littorelletalia uniflorae</i> ) [3110]  Water courses of plain to montane levels with the <i>Ranunculus fluitans</i> and <i>Callitriche-Batrachion</i> vegetation [3260]  Northern Atlantic wet heaths with <i>Erica tetralix</i> [4010]  European dry heaths [4030]  Alpine and Boreal heaths [4060]  Molinia meadows on calcareous, peaty or clayey-silt-laden soils ( <i>Molinia caerulea</i> ) [6410]  Blanket bogs (* if active bog) [7130]  Depressions on peat substrates of the <i>Rhynchosporion</i> [7150]  Old sessile oak woods with <i>Ilex</i> and <i>Blechnum</i> in the British Isles [91A0]  <i>Margaritifera margaritifera</i> (Freshwater Pearl Mussel) [1029]  <i>Salmo salar</i> (Salmon) [1106]	No pathway exists as this SAC is up stream of the proposed works.	<b>No</b>

		Lutra lutra (Otter) [1355] Trichomanes speciosum (Killarney Fern) [1421]		
Derryveagh and Glendownan Mountains SPA 004039	C. 23km	Red-throated Diver ( <i>Gavia stellata</i> ) [A001] Merlin ( <i>Falco columbarius</i> ) [A098] Peregrine ( <i>Falco peregrinus</i> ) [A103] Golden Plover ( <i>Pluvialis apricaria</i> ) [A140] Dunlin ( <i>Calidris alpina schinzii</i> ) [A466]	This SPA is up stream of the proposed works.	<b>No</b>
Foyle and Tributaries SAC (NI) UK0030320	c. 14.7km	Lutra lutra (Otter) Salmo salar (Salmon) Water courses of plain to montane levels with the <i>Ranunculus fluitantis</i> and <i>Callitriche-Batrachion</i> vegetation	River Finn discharges to River Foyle	<b>Yes -</b> There is potential for impact arising from the spread of invasive species.
Magilligan SAC (NI) UK0016613	64km	2130 "Fixed coastal dunes with herbaceous vegetation ("grey dunes")" 2170 Dunes with <i>Salix repens</i> ssp. <i>argentea</i> ( <i>Salicion arenariae</i> ) 2190 Humid dune slacks 110 Embryonic shifting dunes 2120 "Shifting dunes along the shoreline with <i>Ammophila arenaria</i> ("white dunes")" 1065 Marsh fritillary butterfly <i>Euphydryas</i> ( <i>Eurodryas</i> , <i>Hypodryas</i> ) <i>aurinia</i> 1395 Petalwort <i>Petalophyllum ralfsii</i>	Hydrological Link present	No potential for impact due to separation distance of works from SAC.

- 8.7. The NIS screens out all Natura 2000 sites except River Finn SAC, on the grounds that they are removed from the development and will not be affected by disturbance. The lack of any hydrological linkages (i.e. they are located in a different groundwater body) is cited for Croaghonagh Bog SAC thus precluding any impacts on water quality. This approach seems reasonable. However, I consider there is a potential to impact the Foyle and Tributaries SAC through the spread of invasive species.
- 8.8. Therefore, based on my examination of the NIS report and supporting information, the scale of the proposed development, its likely effects by way of potential to spread invasive species throughout the River Finn SAC, and Foyle and Tributaries SAC and potential to contaminate the River Finn SAC by way of water pollution and sedimentation from surface water runoff, I would conclude that a Stage 2 Appropriate Assessment is required for River Finn SAC and Foyle and Tributaries SAC.

### **Stage II Appropriate Assessment**

- 8.9. The following Appropriate Assessment of the implications of the proposed works alone and in combination with other relevant plans and projects will be carried out in relation to the following European sites in view of their conservation objectives:
- River Finn SAC
  - Foyle and Tributaries SAC.
- 8.10. Notwithstanding that the Foyle and Tributaries SAC is not assessed in the NIS, I note that the conservation objectives for both include salmon and otter. The River Finn flows into the Foyle, as such the impacts identified in relation to the River Finn SAC also apply to the Foyle and Tributaries SAC. Therefore, no further information is required to inform the Appropriate Assessment on the Foyle and Tributaries SAC.
- 8.11. The NIS submitted by Donegal County Council concluded that the proposal will not beyond reasonable scientific doubt, adversely affect the integrity of any European Site either directly or indirectly.
- 8.12. The following is a summary of the objective scientific assessment of the implications of the project on the qualifying interest features of the European sites using the best scientific knowledge in the field. All aspects of the project which could result in significant effects are assessed and mitigation measures designed to avoid or reduce any adverse effects are considered and assessed.

**8.13. Potential for direct and indirect effects**

- 8.14. It is important to note at this juncture that the River Finn is one of the Country's most important salmonid rivers and salmon is a qualifying interest of the River Finn SAC. A number of salmon redds have been identified within the River Finn adjacent to the proposed works. These spawning gravels are identified within the Site's Conservation Objectives as attributes of the SAC and the conservation objective target for this particular attribute is stated as 'no decline'.
- 8.15. Similarly, otters are a qualifying interest of the River Finn SAC and are present in the vicinity of the proposed works. Prints were observed along the riverbanks and a resting holt or crouching area was noted on the northern bank of the river. Crouching areas are an attribute of this SAC and the target for these attributes is also for no decline to occur.
- 8.16. Due to the location and nature of the proposed works and having regard to the qualifying interests of both the River Finn SAC and the Foyle and Tributaries, I consider that Salmon and Otter specifically are the qualifying interests at risk from the proposed development.
- 8.17. The conservation objectives for both the River Finn SAC and Foyle and Tributaries SAC aim to maintain or restore the favourable conservation condition for habitats and/or species at these sites. The maintenance of habitats and species within the Natura 2000 sites at favourable condition will contribute to the overall maintenance of favourable conservation status of those species at a national level.
- 8.18. The NIS submitted acknowledges that the proposed works will give rise to a potential for both direct and indirect significant impacts and proposes measures to mitigate these impacts.
- 8.19. Having regard to the NIS submitted, the nature and scale of the proposed work and the location of the above qualifying interests relative to the proposed works I consider that the development has the potential to give rise to the following direct and indirect effects:
- i) the risk of spreading invasive plant species throughout the Natura 2000 network and,

- ii) the potential for deterioration in water quality as a result of construction works on site and /or as a result of spreading invasive plant species such as Japanese Knotweed.

8.20. The impact of these effects will be discussed in detail in the context of proposed mitigation measures within the integrity test below.

**8.21. Potential in-combination effects.**

8.22. An existing storm water outflow is present at Water lane immediately adjacent to the main Ballybofey bridge which is proposed to undergo reconstruction to accommodate a large 525mm diameter outflow pipe that discharges to the River Finn. This project is scheduled for construction in 2020. There is currently an application for flood relief works within the River Finn. These works will comprise the removal of silt, gravels and boulder deposits at three locations within the river and a NIS has been prepared for these works. It is stated within the NIS submitted that it is considered that all in-combination impacts have been taken account of, and any potential for in-combination impacts will be mitigated either as part of the future proposals or within the mitigation for this project and associated projects such as the in-stream works.

8.23. The in-combination assessment deals only with the proposed reconstruction of the existing storm water outflow and flood relief works but does not include other plans or projects which may be relevant for example the development of masterplan areas as identified within the Seven Strategic Towns Local Area Plan (Ballybofey -Stranorlar) 2018-2024.

8.24. The NIS submitted, concluded that there would be no cumulative / in-combination effects arising from the proposed development.

8.25. Having regard to the foregoing, I consider that in-combination effects have not been properly assessed. In the absence of such information I cannot adequately determine whether the potential for in-combination effects are likely to arise.

**8.26. Mitigation Measures**

8.27. It is of note that standard mitigation measures are outlined within the NIS submitted, such measures include the provision of a 7-8 metre separation zone to be provided around stands of invasive plant species within the site, however as outlined above in the assessment section of this report the applicant has not adequately demonstrated

that these separation distances can be achieved. All mitigation measures will be assessed in relation to the potential for likely significant effects on the River Finn SAC and Foyle and Tributaries SAC within the following integrity test.

### **The integrity Test**

- 8.28. I have considered the NIS along with the information submitted with the application and have had regard to the mitigation measures outlined. Potential for impacts to arise in relation to the construction phase of the development relate to the movement of soils within the site and the leakage of oils and diesels or other such contaminants from construction vehicles. It is proposed by the applicants to provide silt curtains and fences to prevent any material from entering the site. Plant and machinery will be regularly checked for leaks and the bunded areas will be provided for refuelling away from the works area. Machines will not enter the SAC and dewatering will be directed to a 5000l tank and passed through a silt sock prior to discharge to a vegetated area for natural infiltration to occur. Spill kits and hydrocarbon nappies will be in place for machines that are operating within the site.
- 8.29. These mitigation measures are standard in nature and are known to be effective. I am therefore satisfied that the mitigation measures outlined in relation to hydrocarbon contamination of soils and waters and siltation in relation to excavation and dewatering works are acceptable.
- 8.30. However, as mentioned above I have concerns in relation to the spread of invasive species along the riverbank and beyond.
- 8.31. I acknowledge that the NIS attempts to address the potential for spread of such plants during construction and clearance works through the provision of a 7-8 metre exclusion zone around any stands of invasive plants such as Japanese knotweed, Himalayan Balsam and Himalayan Knotweed and Rhododendron.
- 8.32. However, no plans have been submitted by the applicant which adequately demonstrate that these exclusion zones can be provided for. The applicant was requested by way of further information to provide plans of an adequate scale to accurately demonstrate the location and extent of invasive species within the application site in relation to the proposed works and failed to do so.
- 8.33. The spread of invasive species such as Himalayan Knotweed weed and Japanese Knotweed results in a significant potential for increased levels of siltation arising during

winter months due to the instability in riverbanks created by the presence of these plants.

- 8.34. This increase in siltation has the potential to significantly impact salmon which are highly susceptible to changes in siltation and water quality. As mentioned above Salmon are a qualifying interest of both the River Finn SAC and the Foyle and Tributaries SAC and there are a significant number of breeding redds present within the River Finn directly adjacent to the proposed works. Based on the information submitted, I consider that the proposed development has the potential to seriously adversely affect salmon within the River Finn.
- 8.35. Therefore, based on the information submitted within the NIS, I consider that the applicant has failed to accurately demonstrate the location of vegetation to be removed and as a consequence any impact that this process would have in relation to the spread of invasive species within the SACs and surrounding area. Based on my findings at the time of site inspection, I am not satisfied that adequate separation distances can be achieved in all instances. In order to properly assess and mitigate against the spread of invasive plant species, a full and detailed invasive species survey and management plan is required as requested by the Board within the further information request to the applicant.
- 8.36. Disturbance to Otter was noted as a potential impact, as otters are a qualifying interest of the River Finn SAC and the Foyle and Tributaries SAC. The NIS states within Section 5.5 that an Otter survey was carried out and revealed some signs of Otter using the area for commuting and foraging. A potential resting holt was detected north of the football field across the river on the northern side. No works are proposed in the areas of the potential resting holt.
- 8.37. It is further stated within this section that use of the area proximate to the proposed works by Otter would be limited due to the urban nature of the site. The works area is also used by walkers and therefore the level of disturbance created would discourage otters.
- 8.38. The NIS also discusses the potential for indirect impacts on the Otter via negative impacts on water quality. Such impacts on water quality would lessen the availability of aquatic species for Otters to feed on. Whilst I acknowledge and am satisfied that impacts arising from excavation of trial holes and the manholes and the installation of

the concrete stands can be adequately mitigated for. However, I have serious concerns in relation to the spread of invasive plant species within the application site and beyond and the potential for indirect impacts to arise in relation to the Otter within both the River Finn SAC and the Foyle and Tributaries SAC by way of loss of resting areas and loss of food supply such as salmon.

## Conclusion

8.39. On the basis of the information provided with the application, including the Natura Impact Statement, and in light of the assessment carried out, I cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on European site No. 002301 and UK0030320, in view of the site’s Conservation Objectives. In such circumstances the Board is precluded from granting approval/permission.

**Table 2 AA summary matrix – River Finn SAC**

<p><b>River Finn SAC, site code: 002301</b></p> <p><b>Summary of likely significant effects</b></p> <ul style="list-style-type: none"> <li>• <b>Habitat Loss</b></li> <li>• <b>Water Quality and water dependant habitats</b></li> <li>• <b>Disturbance</b></li> </ul> <p><b>Conservation Objectives: To maintain or restore the favourable conservation status of habitats and species of community interest</b></p>					
		<b>Summary of Appropriate Assessment</b>			
<b>Qualifying Interest feature</b>	<b>Conservation Objectives Targets and attributes</b>	<b>Potential adverse effects</b>	<b>Mitigation measures</b>	<b>In-combination effects</b>	<b>Can adverse effects on integrity be excluded?</b>
Salmo salar (Salmon) [1106]  Otter	Number and distribution of redds	Increase in siltation due to spread of invasive plant species.	Exclusion zone surrounding invasive plants.	Additional in channel work such as dredging and additional development in the area.	No
<p><b>Overall conclusion: Integrity test</b></p> <p>Following the implementation of mitigation, the construction and operation of this proposed development may adversely affect the integrity of this European site and reasonable doubt remains as to the absence of such effects due to the lack of certainty regarding the provision of an adequate</p>					

buffer zone between the proposed works and the existing invasive species on the river bank and the lack of an Invasive Species Management Plan.

**Table 3. AA summary matrix – Foyle and Tributaries SAC**

<p><b>Foyle and Tributaries SAC, site code: UK0030320</b></p> <p><b>Summary of likely significant effects</b></p> <ul style="list-style-type: none"> <li>• <b>Habitat Loss</b></li> <li>• <b>Water Quality and water dependant habitats</b></li> <li>• <b>Disturbance</b></li> </ul> <p><b>Conservation Objectives: To maintain or restore the favourable conservation status of habitats and species of community interest</b></p>					
		<b>Summary of Appropriate Assessment</b>			
<b>Qualifying Interest feature</b>	<b>Conservation Objectives Targets and attributes</b>	<b>Potential adverse effects</b>	<b>Mitigation measures</b>	<b>In-combination effects</b>	<b>Can adverse effects on integrity be excluded?</b>
Salmo salar (Salmon) [1106]	To maintain favourable conditions.	Increase in siltation due to spread of invasive plant species.	Exclusion zone surrounding invasive plants.	Additional in channel work such as dredging and additional development in the area.	No
<p><b>Overall conclusion: Integrity test</b></p> <p>Following the implementation of mitigation, the construction and operation of this proposed development may adversely affect the integrity of this European site and reasonable doubt remains as to the absence of such effects due to the lack of certainty regarding the provision of an adequate buffer zone between the proposed works and the existing invasive species on the river bank and the lack of an Invasive Species Management Plan.</p>					

## 9.0 Recommendation

Having regard to the foregoing assessment, I consider that based on the information submitted and in particular the absence of an Invasive Species Management Plan, the Local Authority has failed to adequately demonstrate that the proposed development would not give rise to the spread of invasive species present within the works areas proposed and has not adequately demonstrate that the proposed development would not adversely affect the integrity of the European Sites no. 002301 and UK0030320,

in view of the sites Conservation Objectives. I therefore consider the proposal to be unacceptable in this regard and recommend that permission is refused.

### **Reasons and Considerations**

In coming to its decision, the Board had regard to the following:

- (a) the EU Habitats Directive (92/43/EEC),
- (b) the Water Framework Directive (2000/60/EC)
- (c) the European Union (Birds and Natural Habitats) Regulations 2011-2015,
- (d) the likely consequences for the environment and the proper planning and sustainable development of the area in which it is proposed to carry out the proposed development and the likely significant effects of the proposed development on a European Site,
- (e) the conservation objectives, qualifying interests and special conservation interests for the River Finn SAC (002301), the Foyle and Tributaries SAC (NI)(UK0030320).
- (f) the policies and objectives of the Donegal Development Plan, 2013-2019, and the Seven Strategic Towns Local Area Plan 2018-2024.
- (g) the nature and extent of the proposed works as set out in the application for approval,
- (h) the information submitted in relation to the potential impacts on habitats, flora and fauna, including the Natura Impact Statement,
- (i) the submissions and observations received in relation to the proposed development, and
- (j) the report and recommendation of the person appointed by the Board to make a report and recommendation on the matter

### **Appropriate Assessment:**

The Board agreed with and adopted the screening assessment and conclusion carried out in the inspector's report that the River Finn SAC (site code: 002301) and the Foyle and Tributaries SAC (site code: UK0030320) are the European sites for which there is a likelihood of significant effects.

The Board considered the Natura Impact Statement and all other relevant submissions and carried out an appropriate assessment of the implications of the proposal for the River Finn SAC (site code: 002301) and the Foyle and Tributaries SAC (site code: UK0030320), in view of the Sites Conservation Objectives.

In completing the assessment, the Board considered, in particular, the

- i. Likely direct and indirect impacts arising from the proposal both individually or in combination with other plans or projects, specifically upon the River Finn SAC (site code: 002301) and the Foyle and Tributaries SAC (site code: UK0030320),
- ii. Mitigation measures which are included as part of the current proposal,
- iii. Conservation Objective for these European Sites, and
- iv. Views of the Department of Culture Heritage and the Gaeltacht.

In completing the AA, the Board accepted and adopted the Appropriate Assessment carried out in the inspector's report in respect of the potential effects of the proposal on the integrity of the aforementioned European Sites, having regard to these sites Conservation Objectives.

Thus, the Board is not satisfied that the Local Authority has demonstrated that the proposal would not adversely affect the integrity of the European Site in view of the site's Conservation Objective, as this proposal would entail development which has the potential to spread invasive plant species throughout the Natura 2000 sites.

In overall conclusion, the Board is not satisfied that the proposed development would not adversely affect the integrity of the European Site in view of the site's Conservation Objective.

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Sarah Lynch  
Planning Inspector

14<sup>th</sup> February 2020