



An
Bord
Pleanála

Inspector's Report

ABP-305521-19

Development	Installation of Phase 2 of a surface water drainage network to the R445 Dublin Road.
Location	Nenagh, Co. Tipperary.
Local Authority	Tipperary 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)
Prescribed Bodies	Irish Water
Observer(s)	None
Date of Site Inspection	15 th November 2019
Inspector	Donal Donnelly

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1.0 Introduction

- 1.1. Tipperary County Council is seeking approval from An Bord Pleanála for the installation of Phase 2 of a surface water drainage network to the R445 Dublin Road, Nenagh. The site of the works is adjacent to the Nenagh River which flows into the Lough Derg (Shannon) SPA. 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 a 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. Permission is sought for the installation of Phase 2 of a surface water drainage network on the R445 Dublin Road, Nenagh to include the following:
 - Storm sewer infrastructure ranging from 600mm diameter to 750mm diameter;
 - Petrol interceptor with oil alarm;
 - Reconstruction of an existing headwall to suit the upgraded infrastructure along with associated wing walls/ non-return valve; and
 - Decommissioning and removal of existing under capacity surface water infrastructure in the works area.
- 2.2. Phase 1 works have been completed along the R445 to the west of the site. This is the second phase of an infrastructural development aimed at addressing a recurring flooding problem at this location. The existing under capacity drainage network that

outfalls to the Nenagh River will be replaced by the proposed drainage works. The construction period is expected to take ten weeks.

2.3. **Accompanying documents:**

- Natural Impact Assessment;
- Appropriate Assessment Screening Report;
- Ecological Impact Assessment;
- Construction and Environmental Management Plan;
- Civil Stage 2B Report; and
- Preliminary Safety & Health Plan.

3.0 **Site and Location**

- 3.1. The subject site is located along an approximate 300m section of the R445 Dublin Road to the east of Nenagh, Co. Tipperary. The R445 commences at its junction with Pearse Street (R497) and continues approximately 5.4km east to Junction 24 of the M7. This road provides one of three accesses to the town from the motorway.
- 3.2. The subject site is located on the edge of Nenagh either side of the welcoming signage to the town and commencement of the 50 kph zone. The census town boundary is delineated by the Nenagh River to the east of the site and the development boundary is located further east.
- 3.3. The R445 comprises single carriageway in both directions along the length of the subject site from Bennetts Bridge over the River Nenagh to the access to Nenagh Leisure Centre. There is a footpath along the northern side at the location of the subject site and cycle lanes in both directions at the eastern end of the road. Solid white lines continue along the centre and there are broken yellow lines on both sides of the road. Amenity land use zonings are located either side of the subject site and alongside the river.

4.0 Planning History

- 4.1. Phase 1 of the surface water drainage network comprised the laying of a 300mm diameter storm sewer to the west of the subject site along Dublin Road.

5.0 Legislative and Policy Context

- 5.1. **The EU Habitats Directive (92/43/EEC):** This Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) and 6(4) require an appropriate assessment of the likely significant effects of a proposed development on its own and in combination with other plans and projects which may have an effect on a European Site (SAC or SPA).
- 5.2. **European Communities (Birds and Natural Habitats) Regulations 2011:** These Regulations consolidate the European Communities (Natural Habitats) Regulations 1997 to 2005 and the European Communities (Birds and Natural Habitats) (Control of Recreational Activities) Regulations 2010, as well as addressing transposition failures identified in CJEU judgements. The Regulations in particular require in Reg. 42(21) that where an appropriate assessment has already been carried out by a 'first' public authority for the same project (under a separate code of legislation) then a 'second' public authority considering that project for appropriate assessment under its own code of legislation is required to take account of the appropriate assessment of the first authority.
- 5.3. **National nature conservation designations:** The Department of Culture, Heritage and the Gaeltacht and the National Parks and Wildlife Service are responsible for the designation of conservation sites throughout the country. The three main types of designation are Natural Heritage Areas (NHA), Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) and the latter two form part of the European Natura 2000 Network.
- 5.4. European sites located in proximity to the subject site include:
 - Lough Derg (Shannon) SPA (Site code: 004058);
 - Slievefelim to Silvermines Mountains SPA (Site code: 004165);
 - Silvermines Mountain SAC (Site code: 000939);

- Silvermines Mountain West SAC (Site code: 002258);
- Bolingbrook Hill SAC (Site code: 002124);
- Lough Derg, North-east Shore SAC (Site code: 002241);
- Lower River Shannon SAC (Site code: 002165); and
- Keeper Hill SAC (Site code: 001197).

5.5. **Planning and Development Acts 2000 (as amended):** Part XAB of the Planning and Development Acts 2000-2017 sets out the requirements for the appropriate assessment of developments which could have an effect on a European site or its conservation objectives.

- 177(AE) sets out the requirements for the appropriate assessment of developments carried out by or on behalf of local authorities.
- Section 177(AE) (1) requires a local authority to prepare, or cause to be prepared, a Natura impact statement in respect of the proposed development.
- Section 177(AE) (2) states that a proposed development in respect of which an appropriate assessment is required shall not be carried out unless the Board has approved it with or without modifications.
 - Section 177(AE) (3) states that where a Natura impact assessment has been prepared pursuant to subsection (1), the local authority shall apply to the Board for approval and the provisions of Part XAB shall apply to the carrying out of the appropriate assessment.
 - Section 177(V) (3) states that a competent authority shall give consent for a proposed development only after having determined that the proposed development shall not adversely affect the integrity of a European site.
 - Section 177AE (6) (a) states that before making a decision in respect of a proposed development the Board shall consider the NIS, any submissions or observations received and any other information relating to:
 - The likely effects on the environment.
 - The likely consequences for the proper planning and sustainable development of the area.

- The likely significant effects on a European site.

5.6. **Nenagh Town & Environs Development Plan 2013-2019 (as varied)**

- 5.6.1. This plan will remain the statutory plan for Nenagh until the review and preparation of a local area plan for the town takes place. The following objectives are contained in the plan:

Strategic Objective 6:

To ensure that wastewater infrastructure meets requirements set out in European and National legislation, is maintained to the highest environmental standard and meets the development needs of the town.

Strategic Objective 7:

To ensure that the water quality of the Nenagh River and its tributaries, groundwater and public sources of drinking water, are improved and protected from pollution.

Objective WS6: Water Framework Directive / River Basin Management Plan

It is an objective of the Councils' to implement the Shannon River Management Plan by seeking to achieve, subject to resources, the water quality targets set out under the plan.

Objective WS9: Flood Relief Measures

It is an objective of the Councils' to co-operate with the OPW and seek the implementation of flood relief measures which will serve to protect the town for potential flood events.

5.7. **North Tipperary County Development Plan, 2010 (as varied)**

- 5.7.1. It is stated in this plan that the Council will seek to ensure that surface and ground waters are protected when considering applications for development and will seek measures, as appropriate, to improve the integrity of such water sources. It is also a policy of the Council (LH12) “...to protect and improve the county’s water resources and support an integrated and collaborative approach to local catchment

management in order to ensure the successful implementation of the River Basin Management Plans (or any review thereof).”

6.0 The Natura Impact Statement

- 6.1. Tipperary County Council’s application for the proposed development was accompanied by a Natural Impact Statement (NIS) which scientifically examined the proposed development and the European sites. The NIS identified and characterised the possible implications of the proposed development on the European site, in view of the site’s conservation objectives, and provided information to enable the Board to carry out an appropriate assessment of the proposed works.
- 6.2. The NIS describes the elements of the project (alone or in combination with other projects or plans) that are likely to give rise to significant effects on the European Site. Potentially significant impacts are set out, as well as an assessment of their effect and the mitigation measures that are to be introduced to avoid, reduce or remedy the adverse effects on the integrity of the European Site.
- 6.3. The conclusion reached in the NIS is that an assessment of all potential direct or indirect adverse effects on European Sites has been provided and the pathway by which any such effects may occur has been robustly blocked through the use of avoidance, appropriate design and mitigation measures to ensure that the construction and operation of the proposed surface water drainage upgrade, in combination with other plans or projects, does not adversely affect the integrity of the European Site.

7.0 Consultations

- 7.1. The application was circulated to the following bodies:
 - Bus Éireann
 - Inland Fisheries Ireland
 - Irish Water
- 7.2. A response was received from Irish Water.

7.3. Notice of the proposed development was also sent to the Planning Section and Water Services Section of Tipperary County Council, as well as Nenagh Municipal District Customer Services Desk and District Engineer's Office.

7.4. **Irish Water**

7.4.1. The following comments were received from Irish Water:

- Request early engagement to ensure no conflict with Irish Water infrastructure and adequate protection and access to existing infrastructure is maintained at all times.
- Developer will need to survey the site to determine the exact location of the water and wastewater networks.
- Diversion of truck watermain and foul rising main within boundary of development is not allowed – crossing of these assets will require adequate protection and separation distances.
- Any proposals to build over or divert existing water or wastewater services (excluding truck watermain and foul rising main) shall be submitted to Irish Water prior to works commencing.
- Applicant must sign connection agreement where connection to a public water/ wastewater network is proposed.
- Proposed connection will be subject to the constraints of the Irish Water Capital Investment Programme.

7.5. **Public Submissions:**

- None received

8.0 **Assessment**

8.1. **The likely consequences for the proper planning and sustainable development of the area:**

8.1.1. Tipperary County Council is seeking permission from the Board for the installation of Phase 2 of a surface water drainage network to the R445 Dublin Road, Nenagh, Co. Tipperary. The purpose of the project is to address a recurring flooding problem at

this location. Phase 1 drainage works have been completed along the R445 to the west of the site.

- 8.1.2. The proposal will include the decommissioning and removal of existing under capacity surface water infrastructure in the works area and the construction of a new storm sewer ranging in diameter from 600mm and 750mm from the Phase 1 works to an outfall to the Nenagh River. An existing headwall will be reconstructed and upgraded and will include associated wing walls/ non-return valve. A petrol interceptor will be installed at a point between the road and river.
- 8.1.3. I consider that the proposed works appear to be essential and necessary to complete the upgrade of surface water drainage in the area and alleviate the potential flooding issue. The proposal is also in accordance with the relevant policies and objectives of the current Nenagh Town Development Plan and the North Tipperary County Development Plan. Subject to an assessment of the proposal on the surrounding environment and European sites, I consider that the proposed surface water upgrade is acceptable in principle.

8.2. The likely effects on the environment

- 8.2.1. There is no provision under Section 177AE of the Planning and Development Act, 2000 (as amended) to require Environmental Impact Assessment or to carry out a formal EIA Screening Determination for a Local Authority Project, which was submitted to the Board under this section of the Act.
- 8.2.2. Having regard to the nature and scale of the proposed development, I consider that the main environmental effects to be assessed, other than those covered under the Appropriate Assessment, are as follows:
- Biodiversity
 - Traffic and access
 - Archaeology
 - Flooding

Biodiversity

- 8.2.3. The application is accompanied by an Ecological Impact Assessment which quantifies any potential effects relating to flora/ fauna and identifies measures required to avoid, reduce and mitigate likely significant effects. A multi-disciplinary ecological walkover survey was conducted on the 1st July 2019. Habitats were identified and otter and bat surveys were carried out. Incidental sightings of birds and other fauna were also recorded. The New Flora Atlas, NPWS records, Biodiversity Ireland Database, Breeding and Winterbirds Atlas 2007-2011, Bat records, the EPA web-mapper (water quality and status of the river), and Inland Fisheries Ireland records were interrogated as part of the desk studies.
- 8.2.4. It is stated in the Ecological Impact Assessment that the majority of the proposed development is located within habitats categorised as being of Lower Importance (Lower Value), such as Improved Agricultural Grasslands (GA1), Amenity Grasslands (GA2) and Buildings. Works near the river will be located within Depositing/ Lowland River (FW2) and Reed and Large Sedge Swamps (FS1), which are classified as Lower Importance (Higher Value).
- 8.2.5. A number of bird species were recorded that are typical of riverine, woodland and agricultural grassland habitat and which are classified as Local Importance (Lower Value). No suitable nesting habitat for Kingfisher was recorded. The River Nenagh provides suitable foraging and commuting habitat for otter and bats. The river also provides suitable habitat for white-clawed crayfish, Salmonids and Lamprey.
- 8.2.6. In terms of the assessment of impacts, it is stated in the Ecological Impact Assessment that the loss of habitat connected with the construction of the headwall and Reno-mattress will be negligible. Grassland habitat will reinstate after construction works and there will be no loss of linear landscape features or habitat fragmentation.
- 8.2.7. A pre-commencement crayfish survey will be undertaken and any species discovered will be removed by hand under licence from the NPWS. IFI will also be notified prior to commencement of the headwall works. There will be increased noise and activity during construction; however, the headwall installation works will be completed within a day.

- 8.2.8. Preventative measures will be incorporated in a Construction Environmental Management Plan (CEMP) for potential emissions to surface water. Small scale excavations may be required along the riverbank and this will necessitate the creation of a bund and erection of a silt fence along the river edge either side of the proposed headwall. It is stated that the potential for significant run-off of sediment will be greatly reduced and slight residual impacts are anticipated. Mitigation measures will also be put in place to avoid the potential for accidental hydrocarbon contamination from the use of machinery.
- 8.2.9. It is recognised that the movement of soil and disturbed ground could be subject to colonisation by invasive species. Preventative measures outlined in the CEMP include thorough cleaning and disinfecting of machinery prior to arrival and departure to/ from the site and sourcing of materials from stock/ quarry that is free from invasive species.
- 8.2.10. During the operational phase of the proposed development, all surface water will be directed through a petrol interceptor before being discharged to the river. It is considered that the proposed surface water drainage network will be an improvement to the current situation.
- 8.2.11. Having regard to the above, I would be in agreement with the conclusion of the Ecological Impact Assessment that following incorporation of best practice measures and implementation of mitigation measures, the proposal will not result in significant effects on biodiversity.

Traffic and access

- 8.2.12. The proposed development will involve pipelaying works along the road carriageway of the R445 Dublin Road. A full traffic management plan will be approved by the Council and design team prior to commencement of works. Safety measures including signage, PPE and speed restrictions will be put in place by a suitably qualified person.
- 8.2.13. It is expected that the proposed works will be completed within ten weeks, after which the existing road layout and operation will be reinstated. The proposed development will give rise to temporary disruption to road users; however, the traffic management plan will ensure that road continues to operate in a safe manner and as efficiently as possible.

8.2.14. It should be noted that lands along the road and river are zoned for amenity purposes. Works are proposed on the western bank of the river and therefore the Nenagh River Walk along the eastern riverbank will not be affected. The traffic management plan should also make provision for pedestrians and cyclists along Dublin Road during construction works.

Archaeology

8.2.15. I consider that a condition can be attached to any grant of permission to facilitate the preservation, recording, protection and removal of any archaeological materials/features that may exist on site. The Board may also consider it appropriate to condition a riverine assessment prior to commencement of development to include terrestrial, riverbank and intra-riverine assessment. This can also be facilitated by way of condition.

Flooding

8.2.16. The majority of the site is within Flood Zone C with a portion adjacent to the River within Flood Zone B. The proposal does not comprise a type of development that would be considered high risk. Indeed, the primary purpose of the proposed development is to address a recurring flooding problem at this location. It should also be noted that a non-return valve is proposed at the outfall to the river and this will prevent flood water from the river from entering the drainage system.

8.3. The likely significant effects on a European site

8.3.1. 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

8.3.2. **Compliance with Articles 6(3) of the EU Habitats Directive:** 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.

8.3.3. **The Natura Impact Statement:** The application was accompanied by a NIS which describes the proposed development, the project site and the surrounding area. The NIS contains a Stage 1 Screening Assessment which concluded that a Stage 2 Appropriate Assessment was required. The NIS outlined the methodology used for assessing potential impacts on the habitats and species within the European Site that have the potential to be affected by the proposed development. It predicted the potential impacts for the site and its conservation objectives, suggested mitigation measures, assessed in-combination effects with other plans and projects and identified any residual effects on the European site and its conservation objectives.

8.3.4. The NIS was informed by the following studies, surveys and consultations:

- Ecological baseline survey including a multidisciplinary walkover survey undertaken on 1st July 2019 in line with the NRA (2009) Guidelines (Ecological Surveying Techniques for Protected Flora and Fauna during the Planning of National Road Schemes).
- Standard habitats classifications within/ adjoining works area (Fossitt, 2000).
- An examination of the most up to date GIS spatial datasets for European designated sites and water catchments.
- Assessment of catchment mapping to establish or discount potential hydrological connectivity.
- Consultation and review of site synopsis and conservation objectives of relevant European Sites as per NPWS website.

8.3.5. The report concluded that, subject to appropriate design and implementation of the recommended mitigation measures, it is objectively concluded that the proposed surface water upgrade, individually or in combination with other plans or projects, will not adversely affect the integrity of any European Site.

8.3.6. Having reviewed the NIS and the supporting documentation, I am satisfied that it provides adequate information in respect of the baseline conditions, clearly identifies

the potential impacts, and uses best scientific information and knowledge. Details of mitigation measures are provided, and they are summarised in the NIS and CEMP. I am satisfied that the information is sufficient to allow for appropriate assessment of the proposed development (see further analysis below).

8.4. Stage 1: Appropriate Assessment Screening

8.4.1. I consider that the proposed development comprising of the installation of Phase 2 of a surface water drainage network to the R445 Dublin Road in Nenagh, Co. Tipperary is not directly connected with or necessary to the management of any European site.

8.4.2. Having regard to the information and submissions available, the 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 are 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.

8.4.3. European sites considered for Stage 1 screening:

Table 1

European site (SAC/SPA)	Site code	Distance	Qualifying Interests
Lough Derg (Shannon) SPA	004058	7.7km	See below
Slievefelim to Silvermines Mountains SPA	004165	8.7km	Hen Harrier (<i>Circus cyaneus</i>) [A082]
Silvermines Mountain SAC	000939	9.5km	Northern Atlantic wet heaths with <i>Erica tetralix</i> [4010] Species-rich <i>Nardus</i> grasslands, on siliceous substrates in mountain areas (and submountain areas, in Continental Europe) [6230]
Silvermines Mountain West SAC	002258	9.9km	Northern Atlantic wet heaths with <i>Erica tetralix</i> [4010] European dry heaths [4030] Calaminarian grasslands of the <i>Violetalia calaminariae</i> [6130]

European site (SAC/SPA)	Site code	Distance	Qualifying Interests
Bolingbrook Hill SAC	002124	10.2km	<p>Northern Atlantic wet heaths with <i>Erica tetralix</i> [4010]</p> <p>European dry heaths [4030]</p> <p>Species-rich <i>Nardus</i> grasslands, on siliceous substrates in mountain areas (and submountain areas, in Continental Europe) [6230]</p>
Lough Derg, North-east Shore SAC	002241	10.4km	<p><i>Juniperus communis</i> formations on heaths or calcareous grasslands [5130]</p> <p>Calcareous fens with <i>Cladium mariscus</i> and species of the <i>Caricion davallianae</i> [7210]</p> <p>Alkaline fens [7230]</p> <p>Limestone pavements [8240]</p> <p>Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i>, <i>Alnion incanae</i>, <i>Salicion albae</i>) [91E0]</p> <p><i>Taxus baccata</i> woods of the British Isles [91J0]</p>
Lower River Shannon SAC	002165	11.5km	<p>Sandbanks which are slightly covered by sea water all the time [1110]</p> <p>Estuaries [1130]</p> <p>Mudflats and sandflats not covered by seawater at low tide [1140]</p> <p>Coastal lagoons [1150]</p> <p>Large shallow inlets and bays [1160]</p> <p>Reefs [1170]</p> <p>Perennial vegetation of stony banks [1220]</p> <p>Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]</p> <p><i>Salicornia</i> and other annuals colonising mud and sand [1310]</p> <p>Atlantic salt meadows (<i>Glauco-Puccinellietalia maritimae</i>) [1330]</p> <p>Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410]</p> <p>Water courses of plain to montane levels with the <i>Ranunculion fluitantis</i> and <i>Callitriche-Batrachion</i> vegetation [3260]</p> <p><i>Molinia</i> meadows on calcareous, peaty or clayey-silt-laden soils (<i>Molinion caeruleae</i>) [6410]</p>

European site (SAC/SPA)	Site code	Distance	Qualifying Interests
			<p>Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (Alno-Padion, Alnion incanae, Salicion albae) [91E0]</p> <p>Margaritifera margaritifera (Freshwater Pearl Mussel) [1029]</p> <p>Petromyzon marinus (Sea Lamprey) [1095]</p> <p>Lampetra planeri (Brook Lamprey) [1096]</p> <p>Lampetra fluviatilis (River Lamprey) [1099]</p> <p>Salmo salar (Salmon) [1106]</p> <p>Tursiops truncatus (Common Bottlenose Dolphin) [1349]</p> <p>Lutra lutra (Otter) [1355]</p>
Keeper Hill SAC	001197	12km	<p>Northern Atlantic wet heaths with <i>Erica tetralix</i> [4010]</p> <p>Blanket bogs (* if active bog) [7130]</p>

8.4.4. Based on my examination of the NIS report and supporting information, the NPWS website, aerial and satellite imagery, the scale of the proposed development and likely effects, separation distances and functional relationships between the proposed works and the European sites, their conservation objectives and taken in conjunction with my assessment of the subject site and the surrounding area, I would conclude that a Stage 2 Appropriate Assessment is required for Lough Derg (Shannon) SPA (Site code: 004058).

8.4.5. The remaining sites can be screened out from further assessment because of the scale of the proposed works, the nature of the Conservation Objectives, Qualifying and Special Conservation Interests, the separation distances and the lack of a substantive linkage between the proposed works and the European sites. The habitat for which a number of the sites are designated are terrestrially based and therefore no pathway exists. Other sites are located up-catchment or of a significant hydrological distance from the subject site. The subject site is also located outside the 2km core foraging range of the Hen Harrier associated with the Slievefelim to Silvermines Mountains SPA.

8.4.6. It is therefore reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, 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 Nos: 004165, 000939, 002258, 002124, 002241, 002165 and 001197 in view of the sites' conservation objectives and a Stage 2 Appropriate Assessment for these sites is not therefore required.

Relevant European site: Lough Derg (Shannon) SPA (Site code: 004058)

8.4.7. Qualifying Interests, including any relevant attributes and targets, for the Lough Derg (Shannon) SPA set out below.

Table 2

Conservation objective	Special Conservation Interests	Relevant attribute and target	Potential pathway
To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA:	Cormorant (A017) Tufted Duck (A061) Goldeneye (A067) Common Tern (A193)		No – project footprint located entirely outside European Site (7.7km at the closest point).
To maintain or restore the favourable conservation condition of the wetland habitat at Lough Derg (Shannon) SPA as a resource for the regularly-occurring migratory waterbirds that utilise it.		- its natural range, and area it covers within that range, are stable or increasing, - the specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future, and - the conservation status of its typical species is favourable.	Yes – Hydrological connectivity via Nenagh River – potential for deterioration of surface water quality affecting the supporting habitat.

Geographical Scope and Main Characteristics

8.4.8. The proposed development comprises the installation of Phase 2 of a surface water drainage network to the R445 Dublin Road, Nenagh, Co. Tipperary. Phase 1 of the surface water drainage network included the laying of a 300mm diameter storm sewer to the west of the subject site along Dublin Road. The proposed development will connect the Phase 1 storm sewer, via pipework ranging from 300mm to 750mm

in diameter eastwards over a distance of 305m, to an outfall pipe and constructed headwall into the Nenagh River. The outfall pipe will continue over a distance of 35m through an agricultural field where a petrol interceptor will be installed. Excavation of trenches for the new pipeline and connecting road gullies will be carried out to depths of between 1.6m and 3.5m and the trench width will be between 0.85m and 1.5m.

- 8.4.9. The new headwall will be partially below the level of the river and will require instream works. A silt fence will be erected either side of the proposed headwall works consisting of wooden posts and geotextile membrane approximately 250mm below ground level. A sandbag bund will be constructed out from the riverbank to create a dry working area. It is anticipated that the proposed works will take ten weeks.
- 8.4.10. The western bank of the river at this location contains a reed fringe and the Nenagh River is categorised as a depositing/ lowland river with gravel and pebble substrate and some large boulders downstream of the proposed works. There is glide habitat at the location of the works area and pool and riffle areas further downstream. The Nenagh River flows roughly on a north-western direction towards Lough Derg. Lough Derg is designated as a SPA where the Nenagh River enters the lake. The subject site is approximately 11.4km upstream of this point. No supporting wetland habitat for the special conservation interest species of the Lough Derg (Shannon) SPA (Site code: 004058) was recorded at the subject site. The Lough Derg, North-east Shore SAC is located further north within and adjoining the lake at a distance of approximately 10.4km from the subject site.

Potential direct/ indirect effects:

- *Impact on wetlands and waterbirds*
 - Potential for indirect impacts with regards to surface water pollution during the construction phase given the need for instream works during installation of the headwall.
- *Deterioration of water quality (Lough Derg (Shannon) SPA) resulting from surface water upgrade works and headwall installation.*

- Entry of suspended sediment and associated nutrients into surface waters from excavation and earthworks.
- Entry of sand or other construction materials into surface waters.
- Release of hydrocarbons from refuelling, fuel and hazardous materials storage.
- Inappropriate handling of waste arisings and spill control measures.
- Generation of construction dust from on-site activities.

Potential in-combination effects with other plans and projects:

- North & South Tipperary County Development Plans (as varied) contain policies to ensure the protection, integrity and conservation of existing and candidate Natura 2000 sites and Annex I and II species listed in EU Directives.
- Lough Derg Blueway – multi-activity recreational trail on or alongside lakes, canals and rivers.
- Lough Derg Canoe Trail – developed around the shores of the lake and has undergone its own NIS.
- National Biodiversity Action Plan, 2017-2021 – includes measures to achieve good ecological and environmental status of marine and coastal habitat.
- There were a number of planning applications in the vicinity of the subject site in the last five years including a licenced discount foodstore and a number of other more minor developments.
- Fisheries enhancement works took place in the upper Nenagh River for Atlantic Salmon to cater for increased numbers of salmonids – included the introduction of spawning gravels and stone vertex weirs with rubble mats to provide hydraulic diversity to the river.
- River bank protection works using rock armour at sites within the River Nenagh and provision of 200 willows to stabilise rock armour. Instream structures including random boulders and V-notched weirs and scour pools installed at some sites.

- Phase 1 of Nenagh surface water drainage upgrade works commissioned in 2018.

8.4.11. I am satisfied that no additional sites other than that assessed in the NIS (Lough Derg (Shannon) SPA) need to be brought forward for Appropriate Assessment.

8.5. **Stage 2: Appropriate Assessment**

8.5.1. Having regard to the potential impacts on the conservation objectives identified above, the NIS and CEMP propose a number of mitigation measures which must be assessed in order to determine if the proposed development would adversely affect the integrity of the European Site.

Mitigation measures:

- Secure site compound to be established in car park immediately west of site.
- Notification of IFI prior to commencement of headwall construction.
- Timing of instream works to be in accordance with IFI (2016) Guidelines on the Protection of Fisheries during Construction Works in and adjacent to water.
- Erection of silt fence either side of headwall works comprising wooden posts with geotextile membrane approx. 250mm below ground level.
- Laying of drainage pipes in short sections to minimise ground disturbance and potential for drainage run-off to pick up silt or suspended solids.
- Removal of excavated material not reused off site – stockpiling to be short term to reduce potential for silt run-off.
- As per the CEMP, all works associated with the headwall construction will be supervised by an Ecological Clerk of Works. Ecological Clerk of Works will be responsible for the protection of sensitive habitat and species and will report to Environmental Manager.
- Sandbags for bund to be filled at least 30m away from watercourse.
- Sandbags will not be used in another watercourse to prevent potential spread of crayfish plague or other aquatic invasive species.

- Fitting of pump for bund with screen and silt bag on discharge point.
- Carrying out of landscaping works on each side of headwall and area reseeded.
- Erection of silt fencing around any stockpiling of material associated with headwall construction
- Plant machinery limited to works area and turned off when not in use. Repairs to take place off site.
- Refuelling procedures shall be detailed in contractor's method statements.
- Fuels, lubricants and hydraulic fluids to be carefully handled to avoid spillage, properly secured against unauthorised access or vandalism and provided with spill containment. Spill kits to be kept in designated areas and fuels and oils to be contained in bunded containers in designated area within compound.
- On site refuelling will only take place at distances greater than 50m from the nearest watercourse or site drainage infrastructure.
- Installation of Klargestor or similar EPA approved petrol interceptor.
- All machinery to be thoroughly cleaned, dried and disinfected prior to arrival and before relocating to another site post works. Biosecurity measures to be strictly adhered to in accordance with IFI (2010) Biosecurity Protocol for Field Survey Work.
- No batching of wet cement products and no washing out of any plant used in concrete transport or concreting operations will occur on site.
- Works shall not take place in periods of high rainfall.
- Plant will travel slowly across bare ground at a maximum speed of 5km/hr and all machinery operations shall take place from the stream bank.
- Site track will be regularly inspected by management for cleanliness and cleaned as necessary.
- Transport of materials with significant potential to cause dust, will be undertaken in tarpaulin-covered vehicles. Sections of road will be swept and/or damped down when necessary.

- Noise mitigating measures will be implemented for machinery.
- Construction works limited to daylight hours and no artificial lighting permitted.
- CEMP will be updated and reviewed prior to commencement of construction, and also as required thereafter during the construction phase.

8.5.2. I am satisfied that with full and proper implementation of the above mitigation measures, it can be determined, beyond all reasonable scientific doubt, that the proposed development will not have significant effects on the European Site. The mitigation measures will address the source of any potential impacts and are adequate, in particular, to protect against sedimentation, nutrient input and pollutants arising from surface water run-off to the Nenagh River.

8.5.3. Having regard to the above, I am satisfied that the proposed development individually or in combination with other plans or projects would not adversely affect the integrity of this European site in light of its conservation objectives subject to the implementation of mitigation measures outlined above.

8.5.4. **Appropriate Assessment Conclusions:** Having regard to nature of the proposed surface water drainage works with outfall to the Nenagh River, together with the significant distance of the nearest European Site, {Lough Derg (Shannon) SPA}, which is located approximately 11.4km downstream, and with the proposed mitigation measures to prevent the deterioration of water quality within the Nenagh River resulting from surface water upgrade works and headwall installation, I consider that it is reasonable to conclude on the basis of the information on the file, which I consider adequate in order to carry out a Stage 2 Appropriate Assessment, that the proposed development, individually or in combination with other plans and projects would not adversely affect the integrity of the European site no. 004058 or any other European site, in view of the sites' Conservation Objectives.

9.0 Recommendation

On the basis of the above assessment, I recommend that the Board approve the proposed development subject to the reasons and considerations below and subject to conditions including required compliance with the submitted details and with the mitigation measures as set out in the NIS.

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 European Union (Birds and Natural Habitats) Regulations 2011-2015,
- (c) 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,
- (d) the conservation objectives, qualifying interests and special conservation interests for the Lough Derg (Shannon) SPA (site code: 004058),
- (e) the policies and objectives of the North Tipperary Development Plan, 2010 (as varied) and the Nenagh Town & Environs Development Plan, 2013-2019 (as varied),
- (f) the nature and extent of the proposed works as set out in the application for approval,
- (g) the information submitted in relation to the potential impacts on habitats, flora and fauna, including the Natura Impact Statement,
- (h) the submissions and observations received in relation to the proposed development,
- (i) 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 Lough Derg (Shannon) SPA is the only European Site in respect of which the proposed development has the potential to have a significant effect.

The Board considered the Natura Impact Statement and associated documentation submitted with the application for approval, the mitigation measures contained therein, the submissions and observations on file, and the Inspector's assessment.

In completing the appropriate assessment, the Board accepted and adopted the appropriate assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the integrity of the aforementioned European Site, having regard to the site's conservation objectives.

In overall conclusion, the Board was satisfied that the proposed development, by itself or in combination with other plans or projects, would not adversely affect the integrity of the European Site, in view of the site's conservation objectives.

Proper Planning and Sustainable Development/Likely effects on the environment:

It is considered that, subject to compliance with the conditions set out below, the proposed development would not have significant negative effects on the environment in the vicinity, would not give rise to a risk of pollution, would not adversely impact on the cultural, archaeological and built heritage of the area, would not interfere with the existing land uses in the area and would be acceptable in terms of traffic safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where any mitigation measures or any conditions of approval require further details to be prepared by or on behalf of the local authority, these details shall be placed on the file and retained as part of the public record.

Reason: In the interest of clarity and the proper planning and sustainable development of the area and to ensure the protection of the environment.

2. Prior to commencement of development, the applicant shall enter into water or wastewater connection agreements with Irish Water and engage with Irish Water to ensure that adequate protection and access to existing infrastructure is maintained at all times.

Reason: In the interest of public health.

3. The mitigation and monitoring measures outlined in the plans and particulars relating to the proposed development, including those set out in Natura Impact Statement and Construction Environmental Management Plan (CEMP), shall be implemented in full or as may be required in order to comply with the following conditions. Prior to the commencement of development, details of a time schedule for implementation of mitigation measures and associated monitoring shall be prepared by the local authority and placed on file and retained as part of the public record.

Reason: In the interest of protecting the environment, the protection of European Sites and in the interest of public health.

4. Prior to the commencement of development, the local authority, or any agent acting on its behalf, shall prepare/ update in consultation with the relevant statutory agencies, the Construction Environmental Management Plan (CEMP), incorporating all mitigation measures indicated in the Natura Impact Statement and demonstration of proposals to adhere to best practice and protocols.

Reason: In the interest of protecting the environment, the landscape, European Sites, sensitive receptors and in the interest of public health.

5. Prior to the commencement of development, details of measures to protect fisheries and water quality of the river systems shall be outlined and placed on file. In-channel works shall adhere to the timing restrictions to avoid damage to spawning and juvenile fish. Full regard shall be had to Inland Fisheries Ireland's published guidelines for construction works near waterways (Guidelines on Protection of Fisheries during Construction Works in and Adjacent to Waters, 2016). A programme of water quality monitoring shall be prepared in consultation with the contractor, the local authority and relevant statutory agencies and the programme shall be implemented thereafter.

Reason: In the interest of the protecting of receiving water quality, fisheries and aquatic habitats.

6. The County Council and any agent acting on its behalf shall ensure that all plant and machinery used during the works should be thoroughly cleaned and washed before delivery to the site and upon removal from the site to prevent the spread of hazardous invasive species and pathogens.

Reason: In the interest of the proper planning and sustainable development of the area and to ensure the protection of the European sites.

7. A suitably qualified ecologist shall be retained by the local authority to oversee the site set up and construction of the proposed development and implementation of mitigation measures relating to ecology set out in the Natura Impact Statement, Ecology Impact Assessment and CEMP. The ecologist shall be present during site construction works. Upon completion of works, an ecological report of the site works shall be prepared by the appointed ecologist to be kept on file as part of the public record.

Reason: In the interest of nature conservation and the protection of biodiversity.

8. The County Council and any agent acting on its behalf shall facilitate the preservation, recording, protection or removal of archaeological materials or features that may exist within the site. This shall include a terrestrial, riverbank and intra-riverine assessment. A suitably qualified archaeologist shall be appointed by the County Council to oversee the site set-up and construction of the proposed development and the archaeologist shall be present on site during construction works.

Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

9. The construction of the development shall be managed in accordance with a Construction and Traffic Management Plan, which shall be placed on the file and retained as part of the public record. This plan shall provide details of intended construction practice for the development, including:

- (a) Location of the site and materials compound(s) including area(s) identified for the storage of construction refuse;
- (b) Location of areas for construction site offices and staff facilities;
- (c) Details of site security fencing and hoardings;
- (d) Details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site;
- (e) Measures to obviate queuing of construction traffic on the adjoining road network;
- (f) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;
- (g) Alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works;
- (h) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;
- (i) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;
- (j) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;
- (k) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.

A record of daily checks that the works are being undertaken in accordance with the Construction & Traffic Management Plan shall be kept for inspection by the planning authority.

Reason: In the interest of amenities, public health and safety.

Donal Donnelly
Senior Planning Inspector

7th February 2020