



An
Bord
Pleanála

Inspector's Report PL92.248132.

Development

Permission to amend a hydro-electric scheme on the Glasha River permitted by planning permission PD11/314 and PD 13/261. The amendments comprise rerouting the pipeline from the water abstraction weir for a distance of 550m and alterations to the turbine house to accommodate the generating equipment, an extension to the turbine house for a transformer and ESB substation and all associated site works. An EIS accompanied the original application PD 11/314.

Location

Glasha River, Toor, Glen Upper and Glen Lower, Co Waterford.

Planning Authority

Waterford City and County Council.

Planning Authority Reg. Ref.

16/623

Applicant(s)

Hydrocity Ltd.

Type of Application

Permission.

Planning Authority Decision

Grant Permission subject to conditions

Type of Appeal	Third Party
Appellant(s)	Patrick and Maura Derivan, John Geraghty, Mrs Ann O Brien, Ms Gillian O Brien, Ms Mary Ann O Brien, Ms Yvonne O Brien, The Personal Representatives of the Estate of Alphonsus O Brien Deceased. ¹
Observer(s)	None.
Date of Site Inspection	6 th September 2017.
Inspector	Bríd Maxwell.

¹ I note correspondence from Paul Shanahan, Ashtown House Ballypatrick received by the Board on 20th September 2017 withdrawing himself as an appellant in the case.

1.0 Site Location and Description

- 1.1. The appeal site is located at the Glasha River which flows through high gradient hilly sylvan terrain on the northern side of the Comeragh Mountains in County Waterford and feeds into the River Suir. The Glasha and Suir confluence is near Kilsheelan Co Tipperary approximately 5km downstream of the Suir and Anner rivers' confluence. Kilsheelan Village which is 11km from Clonmel on the Main Waterford to Limerick Road N24 is the nearest village.
- 1.2. The appeal site is in two parts the first being the permitted location of a turbine house an area of 0.0454 hectares within an agricultural field adjacent to the Glasha River and approximately 280m from its confluence with the River Suir. The second site area refers to a linear site extending to 0.27 hectares which comprises the rerouted pipe proposal. The pipeline section incorporates forest track and also crosses from the western to the eastern bank of the Glasha River. The linear site is approximately 250m south of the designated Lower River Suir SAC boundary (Site Code 002137) whilst the turbine house site is partially within the SAC boundary.
- 1.3. The Glasha River is characterised by an eroding upland river dominated by riffle and pool habitats. The fast flowing eroding nature of the watercourse situated within the Coillte Kilsheelan forestry plantation which is managed for the production of Spruce, Douglas Fir and Larch. As the Glasha River is contained within the landscape context of an old estate plantation there are non-native broadleaf species including beech, sweet chestnut and sycamore while the invasive rhododendron is also well established. The semi-natural woodland is recorded along the riparian woodland corridor of the Glasha broadly corresponds to Fossit 2000 WN2 Wodland Category ash being dominant with abundant ivy, alder, willow, hazel, holly and oak.

2.0 Proposed Development

- 2.1 The proposed development relates to amendments to a permitted hydro electrical power installation comprising a high head *run of the river* system which draws water through a pipeline at high vertical drop intake to a turbine further downstream. The height, distance and water volume allows sufficient power to be achieved. The

scheme is designed on the basis of vertical fall to operate most of the time but not during times of low flow. The permitted development includes a crump weir designed in consultation with the Southern Regional Fisheries Board to accommodate adequate fish passage provisions, smolt screening procedures. Water is gradually reintroduced to the river through an electric pulse screen.

2.2 The development proposed as part of the current appeal involves the rerouting of approximately 550m of pipeline permitted by PD 11/314 and PD13/261 and permission to develop a larger turbine house with transformer room and ESB substation attached. The application outlines that the pipeline route permitted by PD13/261² envisaged the pipeline connecting to the relocated Intake Weir at the east side of the Glasha River and taking a direct route to the pipeline permitted by PD 11/314. However, this route would result in pipeline depths of up to 6 metres between the intake and original pipeline route. A more favourable route has now been identified which will minimise trench depths for the pipeline and allows for a safer and more constructible pipeline. The revised route is described as follows:

- Connection to the intake weir at the west side of the Glasha River.
- Laying pipeline along an existing forest track from the Intake Weir for a distance of 375m approximately.
- An additional river crossing 400m downstream of the abstraction weir.
- Laying the pipeline through the forest from the Glasha River for a distance of 150m approximately to the route permitted by PD11/314.

2.3 In response to the Council's request for additional information it was clarified that the annualised output is expected to be approximately **2.8GWH**. Monthly output will vary depending on rainfall amounts. No change is proposed to the operation of the completed hydroelectric scheme. It is asserted that the proposed development involves no significant change in terms of resources, residues and emissions, risks hazards and accidents.

² 13/261 Permission for Relocation of the water abstraction weir granted as part of the hydroelectric scheme on the Glasha River under Planning Permission PD:11/314 plus all ancillary works.

2.4 It is noted that the environmental benefit of the renewable energy generated will be slightly less due to the reduction in vertical drop from intake to turbine house that accompanies the reduction in pipe length. However, as the gradient is not so steep in this first kilometre the reduction is not a pro rata one quarter as might have been supposed. Moreover, moving the intake point downriver also increases catchment area further mitigating loss of power due to reduction in vertical drop.

3.0 Planning Authority Decision

3.1 Decision

3.1.1 By order dated 7 February 2017 Waterford City and County Council decided to grant permission and 6 conditions were attached which included the following:

- Condition 2. Conditions of 11/314 and 13/261 to be complied with. Water intake, discharge and minimum compensation flow rates and all planning conditions relating to same shall be as per planning permission ref PD11/314.
- Condition 3. Revised specification of stream crossing and fish pass.
- Condition 4. Prior to commencement of development a geo-referenced tree audit to be submitted detailing all trees for removal/ replacement planting of 3 for every 1 removed.
- Condition 5. Archaeological monitoring.
- Condition 6. Method statement of works.

3.2 Planning Authority Reports

3.2.1 Planning Reports

Initial planner's report recommended seeking additional information including:

- A revised environmental report updating original EIS.
- Geo referenced tree audit indicating oak and holly trees to be removed / replaced.
- Details of output.

- Stream crossing details.
- Drawings indicating relocated weir water intake and fish pass structure.³
- Confirmation of sufficient legal interest.
- Confirmation of consultation with NPWS.
- Confirmation that bat and otter survey included townlands of Landscape and Coolishal.

Second Planner's report asserts that the amendments do not necessitate a full EIS or NIS. Permission was recommended subject to conditions.

3.2.2 Other Technical Reports

Heritage Officer's report notes no loss of habitat footprint from within the SAC or pNHA areas. Notes no impact on bats from tree loss which comprises young mixed plantation forest and long term significant impact on Otter is not envisaged. The key environmental receptor of concern is the potential for sedimentation and run off to the River Glasha and consequent impact on fisheries habitat. The design and timing of works to be agreed with NPWS and IFI and in compliance with Guidance. Works should ensure no adverse impact on the riparian zone of the River Glasha. Tree audit is required to identify trees to be removed and replaced.

3.3 Prescribed Bodies

Inland Fisheries Ireland submission asserts that the application should include revised drawings for the relocated weir, water intake and fish pass structure. Request that the applicant should provide details (including drawings) of stream crossing methods / proposals. Instream works are permitted during the period July to September inclusive and only following consultation and agreement with IFI.

Second submission further to information submission notes that following meeting with the applicant a number of amendments were proposed including provision for a minimum layer of 300mm of rounded stone to be placed on top of the concrete base encasing the pipe (ref Drawing P807 – Proposed plan and sections of stream

³ I note that the weir water intake and fish pass structure do not form part of the development proposed within the appeal and are located outside the boundaries of the appeal site.

crossing) and in relation to drawing P8-9 proposed weir water intake and fish pass section 1 indicated that the selected boulder height at base of the fish pass is 111.05m. IFI recommend that this level be increased to 111.35m.

3.4 Third Party Observations

- 3.4.1 Submission from Katja Machleidt submits that inconsistencies in the application documentation suggests that the project has not been properly studied or assessed by relevant stakeholders.
- 3.4.2 Patrick & Maura Derivan Glen, Kilsheelan express concern regarding the size of the development, intensification of use and noise generation.
- 3.4.3 John P Geraghty, Geraghty Consulting submission asserts that the development is at variance with principles and policies of biodiversity and nature conservation outlined in the County Development Plan 2011-2017. Proposal is a significant change and the original EIS is no longer relevant. Full and complete environmental screening, ecological and hydrological survey and analysis required.
- 3.4.4 Derivan, Sexton and Co Solicitors made observations as personal representatives of Alphonsus O Brien, late of Landscape House and separately on behalf of Mrs Ann O Brien and her daughters Gillian O Brien, Mary Ann O Brien and Yvonne O Brien Landscape House and owners of the land adjoining the lands subject of the application. Submissions note that an ownership of the Glasha River is comprised within the title of the adjoining lands. Accordingly, any development affecting the Glasha River will interfere with property rights and entitlements. Site notice at Coolishal contravenes requirements. As the applicant of the governing permission is different⁴ this represents a material change. Otter and bat survey incomplete. Townlands of Coolishal and Landscape are not identified.
- 3.4.5 Submission by Paul Shanahan, Ashtown House. Concerns to be noted and would seek to research the application further.
- 3.4.6 Submissions following further information submission from the third parties deem the information to be inadequate noting in particular absence of tree audit and surveys,

⁴ Permissions 11/314 and 13/261 were granted to Ecotricity Ltd. Application details indicated that following discovery of a green energy company of that name, based in Gloucestershire since 1996, the applicant decided to change the name from Ecotricity Ltd to Hydrotricity Ltd. The Company has the name CRO number and same shareholders and directors.

failure to assessment of the development in terms of the principles of sustainable forest management. Negative impact of works within riparian zone buffer. No evidence of consultation with NPWS. Issue of property rights are not addressed. Turbine house invasive structure. Impact of increased noise. Release of water in floodplain. Impact on surface and subsurface water and “high” river body water status of Glasha river. Impact on Landscape House. Inadequacy of public notices. AA screening required. Insufficient data on monitoring of riverine environment, during and post construction and operation. Effects on Atlantic salmon. No detail on maintenance requirements for the proposed facility. These issues not addressed in the original or current application. Reference is made to High Court Judicial Review Proceedings in respect of PL11/314 PD13/261, 16/661, 16/662 and PD16/623

4 Planning History

16/662 Permission granted 24th November 2016 Extension of duration of Planning Ref No PD 13/261 to 22 November 2021, for Relocation of the Water Abstraction Weir granted as part of the hydroelectric scheme on the Glasha River under Planning permission ref PD11/314 plus ancillary works. Water is to be extracted 1.2km below Glengarry Bridge to serve the permitted development. An EIS accompanied the previous application DP 11/314.

16/661 Permission granted 24th November 2016 for extension of duration of planning file 11/314 for permission for a hydroelectric scheme on the Glasha River, 4.2km upstream of its confluence with the River Suir. Water is to be abstracted below Glenpatrick Bridge and directed through 4.2km of pipe to the proposed turbine house just below Glen Bridge, from where the water will be gradually reintroduced into the river.

PD 13/261 Permission granted 4/9/2013 for relocation of the water abstraction weir, granted as part of the Hydro Electric scheme on the Glasha River under Planning permission ref PD 11-314 plus all ancillary works. Water is to be abstracted 1.2km below Glenpatrick Bridge to serve the permitted development. An EIS accompanied the previous application DP 11/314. Condition 2 specified expiry date 22 November 2016. Condition 3 all conditions 11-314 to be complied with.

11/314 Permission granted for a hydroelectric scheme on the Glasha River, 4.2km upstream of its confluence with the River Suir. Water is to be abstracted below Glen Patrick Bridge and directed through 4.2km of pipe to the proposed turbine house just below Glen Bridge, from where the water will gradually be reintroduced into the river. The permission was subject to 27 conditions of which I note the following:

- Condition 2. Condition prior permission for connection to National Energy Grid.
- Condition 3. Reuse of all excavated material and existing ground levels not be altered by more than 1m.
- Condition 4. Archaeological monitoring.
- Condition 6. Construction hours 8am -7pm and between July and September inclusive.
- Condition 7. Prevention of leakage. Minimum compensation flow of 0.076m³/s. Gauges in agreement with IFI.
- Condition 8. Noise levels limit. Monitoring.
- Condition 9, Construction management plan.
- Condition 10 Oil and petrol fuel separators, bunding.
- Condition 11. Prevention of run off to watercourse.
- Condition 12. Traffic management plan, road opening license & method statement.
- Condition 17. Monitoring programme over 12-month period in relation to water discharge temperature change.
- Condition 18. All existing mature trees and hedgerows retained and supplemented. Photographic record of planting.
- Condition 19. Bond to secure reinstatement.
- Condition 22. Prevention of spread of Invasive species.
- Conditions 23 & 24. Pre development inspection by ecologist for otter holts and bats.
- Condition 25. Waste permit for importation of soil.
- Condition 27. Development contribution €1,054.64.

11/291 Incomplete application

09/468 Application for run of the river hydroelectric scheme deemed withdrawn.

5 Policy Context

5.1 Development Plan

5.1.1 The Waterford County Development Plan 2011-2017 refers.

Policy ECD 15 is *“To facilitate appropriate renewable energy infrastructure and promote the use of renewable energy among businesses and households throughout County Waterford”*.

Objective INF 15 *“To support the development of hydro electricity in appropriate areas of the County. Hydroelectric plants shall generally be favoured in agricultural/greenbelt lands or on other land uses which the Planning Authority may deem suitable.”*

Policy ENV 15 *“To continue to work effectively with the Waterford Energy Bureau (WEB) to reduce green house gas emissions and to support the objectives of the National Climate Change Strategy.”*

Policy INF 26

1. *To facilitate improvements in energy infrastructure and encourage the expansion of the infrastructure at appropriate locations within the County.*
2. *To support and facilitate the future expansion of the natural gas pipeline.*
3. *To facilitate, where appropriate, future alternative renewable energy developments throughout the County that are located in close proximity to the National Grid Strategy improvements so as to minimise the length and visual impact of grid connections.*
4. *To collaborate with EirGrid in accordance with the Grid 25 Strategy to facilitate the delivery of quality connection, transmission and market services to electricity generators, suppliers and customers utilising the high voltage electricity system at appropriate locations within County Waterford.*

ENV 10 *“To facilitate and encourage sustainable development proposals for alternative energy sources and energy efficient technologies.”*

ENV 5 (a) *It is an objective of the development plan to encourage, where appropriate, proposals for renewable energy developments and ancillary facilities;*

(c) To facilitate, where appropriate, the development of small scale hydroelectric power generation, in particular when developed in combination with other forms of energy infrastructure such as wind farms;”

5.1.2 Waterford City and County Renewable Energy Strategy 2016-2030

Chapter 6 Hydroelectric power. The Renewable Energy Strategy has identified an energy target of 3.1MW from Hydropower in Waterford by 2030.

5.2 Natural Heritage Designations

The Glasha River is designated in part as the Lower River Suir cSAC (Site Code 002137) and the site of the proposed turbine house is partly within the designated site. The Lower River Suir SAC consists of the freshwater stretches of the River Suir immediately south of Thurles, the tidal stretches as far as the confluence with the Barrow/Nore immediately east of Cheekpoint in Co. Waterford, and many tributaries including the Clodiagh in Co. Waterford, the Lingaun, Anner, Nier, Tar, Aherlow, Multeen and Clodiagh in Co. Tipperary. The Suir and its tributaries flow through the counties of Tipperary, Kilkenny and Waterford.

The site is a Special Area of Conservation (SAC) selected for the following habitats and/or species listed on Annex I / II of the E.U. Habitats Directive (* = priority; numbers in brackets are Natura 2000 codes):

[1330] Atlantic Salt Meadows

[1410] Mediterranean Salt Meadows

[3260] Floating River Vegetation

[6430] Hydrophilous Tall Herb Communities

[91A0] Old Oak Woodlands

[91E0] Alluvial Forests*

[91J0] Yew Woodlands*

[1029] Freshwater Pearl Mussel (*Margaritifera margaritifera*)

[1092] White-clawed Crayfish (*Austropotamobius pallipes*)

[1095] Sea Lamprey (*Petromyzon marinus*)

[1096] Brook Lamprey (*Lampetra planeri*)

[1099] River Lamprey (*Lampetra fluviatilis*)

[1103] Twaite Shad (*Alosa fallax*)

[1106] Atlantic Salmon (*Salmo salar*)

[1355] Otter (*Lutra lutra*)

6 The Appeal

6.1 Grounds of Appeal

6.1.1 The appeal is submitted by Derivan Sexton & Co Solicitors on behalf of Patrick Derivan, Maura Derivan, John Gerraghty, Mrs Ann O Brien, Ms Gillian O Brien, Ms Mary Ann O Brien, Ms Yvonne O Brien, The Personal Representatives of the Estate of Alphonsus O Brien, Deceased.⁵ The grounds of appeal are compiled by Peter Thompson, Planning Solutions, and are summarised as follows:

- Environmental and ecological impacts of the development are inadequately assessed. Inadequate EIS and lack of NIS - No record of AA screening.
- Third party appellants were not afforded adequate time to make submissions following EIS and EIS updated report.
- Original permission 11/314 was defective in that it did not include details of grid connection.
- Site notices and public consultations inadequate in this and previous applications.

⁵ I note correspondence from Paul Shanahan, Ashtown House Ballypatrick received by the Board on 20th September 2017 withdrawing himself as an appellant in the case.

- In reference to 13/261 the Senior Engineer, Planning and Environment was of the view that the application should have been accompanied by an EIS and NIS however this was not requested.
- Reports on extension of duration permissions 16/661 and 16/662 incorrectly referred to an accompanying EIS and NIS.
- It is notable that the Waterford City and County Renewable Energy Strategy 2016-2030 came into force in September 2016 and identified the river networks within the County that were suitable to hydroelectric schemes. The Glasha River does not appear as a suitable river.
- 11/314 – Original application included an AA screening report which concluded that a Stage 2 NIS was not required. In accordance with the provisions of Section 42(1)(ii) of the Planning and development Acts 2000-2016 the Planning Authority would have been precluded from granting the extension of duration application if a NIS had been required which had not been previously submitted and agreed.
- Permission granted on 7th February 2017 with an expiry of 6th February 2022 slightly beyond the dates of the extension of duration (22nd November 2021)
- In the absence of grid connection details proposal represents project splitting.
- Appellants and public not properly informed of the application either in 2011 when no site notice was erected in the northern end of the application site nor in September 2016 when the site notice posted at the southern end of the site was defective.
- Referrals were inadequate.
- Original EIS, a 13-page document was entirely inadequate and the updated environmental report could not overcome the failings.
- Third parties were not afforded the statutory 5-week period to properly address the findings of the EIS submitted as further information.
- No robust assessment of the European National and Development Plan policies, impact on fish life.

- No provision for regulation of water abstraction rates when river level is low will result in negative impact on fish life including salmon swimming upstream to spawn.
- Discharge location in a floodplain. No assessment of impact.
- Inadequate assessment of electricity substation previously not part of the scheme and larger turbine housing. Potential noise emissions. Impact on otter. No mitigation for otter disturbance during works. Pre development survey for otter holts and bat roost unclear.
- No assessment of impact of excavation works.
- No detailed tree survey along the route of the pipeline.
- No visual impact assessment
- No detailed consideration of alternatives.
- In the absence of a stage 2 NIS and mitigation measures to deal with potential impacts on the SAC which extends from the River Suir into the site it has to be assumed that the development as originally permitted and now proposed has the potential to have significant negative impacts on the conservation interest of the SAC and therefore must be refused.
- Flooding. – Turbine housing and outfall are clearly within an area prone to flooding. No justification test. OPW CFRAM mapping shows location within a 1/100-year flood zone.
- Impact on adjoining property. Rights to natural water flow levels in the river. No consent to application. Land in the ownership of Landscape House and Cottage extends to the centre line of the river.
- Owner of the 3.5m laneway over which it proposed to lay pipes and access to turbine housing is Paul Shanahan⁶ who does not consent to use this laneway for construction purposes. Applicants legal right to access lands only extends to use for agricultural purposes. Lane is not suitable for nature and volume of traffic arising.

⁶ I note correspondence from Paul Shanahan, Ashtown House Ballypatrick received by the Board on 20th September 2017 withdrawing himself as an appellant in the case.

- The depth of excavation required along the length of rerouted pipeline has not been quantified or assessed. The environmental impacts of works have not been assessed.
- Pipeline generally within 10m of the river where development plan policy NH15 states that riparian corridors are required to protected aquatic habitats and facilitation of public access to waterways and no development within buffer zone of 15m measured from the top of the river bank. Proposal represents a material contravention of the development plan.
- There are numerous locations throughout the county where rivers designated as suitable to hydroelectric development coincide with “strategic” and “preferred areas” for windfarm development where combined schemes can be considered.
- Little consideration of extent of tree loss. It is estimated that over 200 trees will have to be removed. Potential impact to holly and oak root systems. Unavoidable in area south of Glasha bridge.
- No specific assessment of impact of additional river crossing.
- Impact on scenic landscape and designated scenic route and on sylvan character of walks.
- No information on emergency repairs potential consequences of pipe break.

6.2 Applicant Response

The response by Simon Clear and Associates, Planning and Development Consultants on behalf of the applicant is summarised as follows:

- Development has been subject to considerable consultation with IFI.
- Agent for the appellant attempts to question the fundamentals of the existing permission granted six years ago however this permission cannot be subject to collateral or retrospective challenge.
- An Bord Pleanála must deal with the application as a modification to a permitted development and should not be attracted into a review of the processing of the previous applications.

- In 2011 it was advice of the Board that laying of underground cables was exempted development.
- It is not a matter for An Bord Pleanála to assess the site notice issue. Submission of appeal by numerous appellants demonstrates that they were not misinformed about the nature and extent of the development.
- EIA carried out in 2011 cannot be re-assessed by An Bord Pleanála.
- AA screening report carried out on the applicant's behalf in response to the request for further information was properly carried out by a qualified person.
- Any body cannot predetermine the need or not for an NIS.
- The issue in this application, a modification by reduction can be considered as 'de minimus' having regard to the extent of the River Suir SAC and the findings of An Bord Pleanála in regard to RL3436.⁷
- By their nature hydroelectric proposals and associated plant and machinery will be located within flood zones of potent rivers.
- Matters of legal claim to waterbody not relevant to considerations of An Bord Pleanála which is not a property arbitration body.
- Tree loss will involve young mixed species commercial trees.
- Alleged impact on visual amenity is significantly exaggerated.
- Issues of principle raised by the appellants have been dealt with comprehensively by the High Court in case - Southwest Regional Shopping Centre etc v ABP (2015 JR No 282)
- It is clear from the Environmental Report that all details submitted with the application and in further information that the proposal is less invasive than the permitted development.
- Planning Authority followed proper procedures

⁷ RL3436 Board considered the question of whether the laying of underground 20kv electrical cables and ancillary works to link Turraheen Windfarm to Glencarbry Windfarm is or is not development and is or is not exempted development. The Board decided that the proposal is development and is exempted development.

6.3 Planning Authority Response

The Planning Authority did not respond to the grounds of appeal.

6.4 Observations

6.5 Prescribed Bodies.

6.5.1 The application was referred by the Board to the following prescribed bodies.

- An Taisce
- The Heritage Council
- Department of Arts, Heritage Regional Rural and Gaeltacht Affairs
- Commission for Energy Regulation
- Department of Communications Climate Action and Environment
- Inland Fisheries Ireland
- The Office of Public Works.

No responses were received within the specified period

6.5.2 The file was also referred by the Board to Tipperary County Council on basis of the location of the site's proximity to the County Boundary. In its submission, Tipperary County Council refers to its reliance on Waterford City and County Council to abide by the Waterford County Council Development Plan Policy, Ministerial Guidelines and Best Practice. It further notes that South Tipperary County Development Plan 2009 as varied and Clonmel and Environs Development Plan 2013 are available at www.tipperarycoco.ie.

7 Assessment

7.1 From my review of the file, inspection of the site and assessment of the relevant local, regional and national policies, I conclude that the key issues raised in the appeal can be addressed under the following broad headings:

- **Scope of the current appeal**

- **Impact of the amendments on the various aspects of the receiving environment**
- **Principle of development**
- **Environmental Impact Assessment**
- **Appropriate Assessment**
- **Legal and Procedural issues**

7.2 Scope of the Current Application

7.2.1 It is appropriate to again describe the scope of the current application which involves amendments to the permitted Hydro Electric Scheme PD11/314 and PD13/261. The amendments comprise rerouting of the pipeline from the water abstraction weir for a distance of 550 metres and alterations to the turbine house to accommodate generating equipment, an extension to the turbine house for a transformer room and an ESB substation and all associated site works.

7.2.2 The application outlines that the permitted pipeline route 13/261 envisaged the pipeline connecting to the relocated intake weir at the east side of the Glasha River and taking a direct route to the pipeline permitted by PD 11/314. However, this would involve pipeline depths up to 6m between the intake and the original pipeline. The proposed route will minimise trench depths for the pipeline and allows for a safer and more constructible pipeline. The revised route involves

- Connection to the intake weir at the western side of the river.
- Laying of the pipeline along the forest track for a distance of 375m approximately.
- An additional river crossing 400m downstream of the abstraction weir. The proposed stream crossing involves laying of pipeline in a trench excavated through the bed of the stream, surrounded in 300mm of concrete and the bed of the stream reinstated with stone.
- Laying of the pipeline through the forest from the Glasha River for a distance of 150m approximately to the route permitted by PD11/314

7.2.3 As the current proposal represents an amendment of an extant permission, it is not appropriate to revisit the wider merit and overall principle of development which has been established by the extant permissions on the site namely PD11/314 and PD13/261 both of which have been subject to extension of duration permissions 16/661 and 16/662 respectively and which extend permission for the development of a hydro-electric scheme on the overall site to 22nd November 2021. In light of this planning history on the site, therefore it is appropriate to examine the main planning issues arising from the proposed amendments in their detail.

7.3 Main Planning Issues - Impact on the various aspects of the receiving environment arising from the proposed amendments.

7.3.1 I note that the first party submission is that the proposal represents a modification by reduction and represents a more favourable pipeline route, minimising trench depths and disturbance. However, this is somewhat of a misrepresentation as the proposal involves a third river crossing and changes to the turbine house to accommodate a substation and turbine connected to generators.

7.3.2 In relation to the turbine house the third parties have raised concerns regarding the visual impact arising and potential for noise nuisance. I have noted the amendments to design and consider that in visual terms the additional impact is not significant. The proposed turbine house remains a modest structure with 7.7m ridge height and I consider that that landscaping will be required to mitigate visual impact. As regards any noise arising I consider that this can be appropriately mitigated. On the issue of flood impact assessment, I note that the location is in the permitted location. In the context of the Flood Risk Guidelines and the sequential approach to flood risk management, I note location within Flood Zone A - High Probability of Flooding. However, given the nature of the proposed development which is water compatible, I consider that a flood risk assessment is not warranted.

7.3.3 As regards the third river crossing this involves the laying of a pipe in a trench excavated in the bed of the river. Detailed design has been agreed in consultation with Inland Fisheries Ireland. On the issue of the relocated pipeline given that the proposal results in a more constructible pipeline minimising trench depths it represents a modification by reduction in terms of the impacts arising. As regards the loss of trees the first party has committed to replacement planting. I conclude that the impacts arising on the various aspect of the environment are lessened and the negative impacts arising can be mitigated.

7.4 Environmental Impact Assessment

7.4.1 The subject proposal involves the amendment of two approved permissions and in this respect it is of relevance to note that the original 'parent' permission as issued under PA Ref. No. 11/314 concerned a class of development which was prescribed for the purposes of Section 176 of the Planning and Development Act, 2000, as amended, and that said application was accompanied by an Environmental Impact Statement on the basis that it exceeded the relevant threshold as set out in Class 3(h) of Part 3 of Schedule 5 of the Planning and Development Regulations, 2001, as amended.

Class 3 (h) Energy Industry' states:

'Installations for hydroelectric energy production with an output of 20 megawatts or more, or where the new or extended superficial area of water impounded would be 30 hectares or more, or where there would be a 30 per cent change in the maximum, minimum or mean flows in the main river channel'.

7.4.2 On the basis that the approved development has been subject to EIS pursuant to the requirements of the regulations and as the proposal is an amendment to the permitted development, and is not being assessed from first principles, the submission of an EIS pursuant to Class 3(h) is not mandatory. Furthermore, I note that the amendments do not involve an extension to a development which would result in an increase in size greater than 25% or an amount equal to 50 per cent of the appropriate threshold (whichever is the greater) in reference to Class 13 (a) of Part

2 of Schedule 5 of the Regulations and thus would not necessitate the preparation of an EIS. Accordingly having regard to the nature, scale and context of the works proposed, and to the planning history of the site, it is my view that the proposed development does not necessitate the preparation of an environmental impact statement.

7.5 Appropriate Assessment

7.5.1 The obligation to undertake appropriate assessment derives from Article 6(3) and 6(4) of the Habitats Directive. Essentially it involves a case by case examination for a Natura 2000 site and its conservation objectives. Appropriate Assessment involves consideration of whether the plan or project alone or in combination with other projects or plans will adversely affect the integrity of a European site in view of the site's conservation objectives and includes consideration of any mitigation measures to avoid reduce or offset negative effects. This determination must be carried out before a decision is made or consent given for the proposed plan or project. Consent can only be given after having determined that the proposed development would not adversely affect the integrity of a European Site in view of its conservation objectives.

7.5.2 At this point it is appropriate to again focus on the limited nature of the current appeal which relates solely to the rerouted pipeline, the additional river crossing and alterations to the turbine house. This is nevertheless appropriately viewed within the context of the extant permission for a hydro electrical power installation.

7.5.3 The First party refers to the appropriate assessment (AA) screening document submitted with PD 11/314 and update submitted with modifying permission PD13/261. Using the source pathway receptor model the report identified three SACs within 10km of the site namely the Comeragh Mountains SAC and Nier Woodland SAC and the Lower River Suir SAC. The Screening report concluded that based on the distances involved and the species and habitat listed as their qualifying interests, and the nature of the proposed development, no potential impacts on the

Comeragh Mountains SAC and Nier Woodland SAC is envisaged and I consider this to be reasonable. As regards the Lower River Suir SAC the report noted the potential for impact on the relevant qualifying interests.

7.5.4 I note the conclusions of the AA screening document which determined that *“overall there is no evidence to indicate that works will cause significant deterioration of the habitats of the qualifying species and species of special conservation interest or significant disturbance to these species thus ensuring the integrity of the site is maintained. Provided all standard and specific mitigation measures are effectively implemented, the impact should be low and localised during the construction period. Post construction impacts should also be low and no significant long-term impact on aquatic ecology is envisaged.*

7.5.5 I note in relation to crossing points on the river the screening document identified potential for impact on Annex I habitat Water courses of plain to montane levels with the Ranunculion fluitantis and Callitighio-Batrachion vegetation (Code 3260). Based on a worst case scenario approach the original two crossing points were assumed to impact on areas of the Annex I habitat area of 45m² of a poor example of this habitat type. This was calculated to represent 0.63% of the total amount of this habitat type within the SAC and it was noted that the impact will be temporary and not significant. The additional river crossing is not therefore considered significant in the overall lower river suir SAC provided all standard mitigation measures are implemented.

7.5.6 As regards impact on otter, a qualifying interest of the Lower River Suir SAC, an updated survey was carried out along the proposed development route in July 2016. It noted spraints at four locations indicating the presence of Otter along the Glasha River however no holts were recorded. On the basis that there may be some minor disturbance during works however the long term impact on otter will be imperceptible. Therefore, no impact on the integrity of the Natura site is predicated to occur.

7.5.7 Having regard to the nature of the application it is reasonable to conclude that based on 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 and projects would not be likely to have a significant effect on the Lower River Suir SAC or any other European Site in view of the site's conservation objectives and a Stage 2 Appropriate Assessment and submission of an NIS is not therefore required.

7.6 Legal and Procedural Issues

7.6.1 The third party submissions question the applicant's legal entitlement to carry out the proposed works and raise issues in regard to the nature of the right of way over the access road to the proposed turbine house and issues of rights to natural flow levels in the river to relevant landowners. I note the restricted nature of the red line boundary of the current appeal site which does not include the access road to the proposed modified turbine house and again note that the proposal constitutes a modification of a permitted hydroelectric scheme. In my opinion property issues are beyond the remit of the Board and can only be resolved by the Courts and in any event the provisions of Section 34(13) of the Planning and Development Act 2000 would apply.

7.6.2 As regards issues raised in respect of the change of name of the applicant⁸, I note that the planning permission relates to the site not the applicant therefore this issue does not affect the assessment of the planning merit of the development proposed.

7.6.3 On the question of procedural matters, the procedures adopted by the Planning Authority in its deliberations and in relation to referrals and submissions cannot be reviewed the Board as any such review is the preserve of the Courts. As regards the

⁸ Permissions 11/314 and 13/261 were granted to Ecotricity Ltd. Application details indicated that following discovery of a green energy company of that name, based in Gloucestershire since 1996, the applicant decided to change the name from Ecotricity Ltd to Hydrotricity Ltd. The Company has the name CRO number and same shareholders and directors.

positioning of site notices it is not possible to verify the exact circumstances of the public notices retrospectively. As regard the wording of the public notices, I acknowledge that the wording of the public notices does not specifically refer to the townlands of Coolishal and Landscape within which the works are proposed. Public notice refers to “amendments to the Hydro Electric Scheme on the Glasha River at Toor, Glen Upper and Glen Lower Co Waterford”. I note that the public notices submitted are consistent with the notices of previous permissions 11/314 and 13/261.

7.2.4 A significant element of the case put forward within the submissions on behalf of the third party appellants seek to fundamentally revisit the previous permissions PD11/314 and PD13/261, which, as correctly observed by the agent for the first party in the response to the appeal, cannot be subject of retrospective challenge through the current appeal process. Rather, it is the role of the Board to address the current appeal, as a modification of the permitted development, on its own merit.

7.2.5 As regards allegations of project splitting, I acknowledge the third party appellant's difficulties in terms of navigating the documentation submitted on the appeal file and in attempting to decipher the exact nature of the permitted and proposed development and the frustrations arising from multiple applications, however I do not consider that the apparently piecemeal advance of the project necessarily depletes the effectiveness of the proper impact assessment of the environmental effects of the proposed development.

8.0 Recommendation

8.1 In light of the foregoing I recommend that permission be granted subject to the following conditions.

REASONS AND CONSIDERATIONS

Having regard to :

- (a) national policy with regard to the development of sustainable energy sources,
 - (b) the Planning History on the site in particular grant of permission PD11/314 and PD13/261
 - (c) the character of the landscape in the area and the topography surrounding the site,
 - (d) the provisions as set out in the current Waterford County Development Plan 2011-2017, including those regarding renewable energy development,
 - (e) the submissions made in connection with the planning application and the appeal,
- It is considered that, subject to compliance with the conditions set out below, the proposed development would not adversely affect the landscape, would not seriously injure the visual or residential amenities of the area and would not give rise to any significant impacts on the natural heritage of the area or affect the integrity of any European Site or any protected species. 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 in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted to the planning authority on, 12th January 2017 except where otherwise may be required in order to comply with the following conditions.

Reason: In the interest of clarity.

2. Apart from the departures specifically authorised by this permission, the development shall be carried out and completed in accordance with the terms and conditions of the permissions granted under PD11/314 and PD13/261 and ant agreements entered into thereunder.

Reason: In the interest of clarity and to ensure the overall development is carried out in accordance with the previous permissions.

3. The stream crossing shall provide for a 300mm layer of rounded stone placed on top of the concrete base encasing the pipe.

Reason: To ensure the preservation and protection of flora and fauna within the site.

4. An accurate tree survey which shall be carried out by an arborist or landscape architect, shall be submitted to the planning authority prior to the commencement of development. The survey shall show the location and species of trees to be removed and detail mitigation by replacement planting.

Reason: In the interest of visual and rural amenity.

5. A landscaping scheme in respect of the turbine house shall be submitted for the written agreement of the planning authority prior to the commencement of development.

Reason: In order to screen the development and assimilate it into the surrounding rural landscape in the interest of visual amenity.

6. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall

(a) notify the planning authority in writing at least four weeks prior to commencement of any site operation relating to the proposed development, and

(b) employ a suitably qualified archaeologist, with experience in riverine archaeology, prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

- (i) The nature and location of archaeological material on the site

(ii) The impact of the proposed development on such archaeological material.

A report containing the results of the assessment shall be submitted to the planning authority and arising from this assessment the developer shall agree in writing with the planning authority details regarding and further archaeological requirements (including if necessary, archaeological excavation) prior to commencement of construction works.

In default of agreement of any of these requirements the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the area and to secure the preservation (in situ or by record) and protection of any archaeological remains that may exist within the site.

7. A method statement of works developed in consultation with the National Parks and Wildlife Service of the Department of Culture Heritage and the Gaeltacht and Inland Fisheries Ireland and in compliance with Guidelines on the construction and operation of small scale hydroelectric schemes and fisheries shall be submitted to the planning authority and agreed in writing.

Reason To ensure the preservation and protection of flora and fauna within the site.

8. The operational noise level arising from the turbine house shall not exceed 55dB(A) rated sound level, as measured at the nearest dwelling. Procedures for the purpose of determining compliance with this limit shall be submitted to, and agreed in writing, with the planning authority prior to the commencement of development.

Reason: To protect the residential amenities of property in the vicinity of the site.

Brid Maxwell
Planning Inspector
6th November 2017