



An
Bord
Pleanála

Inspector's Report ABP301801-18

Development	Construction of new watermain at 4.92km of roadway.
Location	Townlands of Kincrum, Lettermacaward, Cleengort, Derryloughan, Doochary, Glenties, County Donegal.
Planning Authority	Donegal County Council.
Planning Authority Reg. Ref.	17/50424.
Applicant	Irish Water.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party -v- Grant.
Appellants	Gweebarra Conservation Group.
Observers	None.
Date of Site Inspection	17 th October, 2018.
Inspector	Paul Caprani.

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1.0 Introduction

ABP301801-18 relates to a third party appeal against the decision of Donegal County Council to issue notification to grant planning permission for the construction of a new watermain at 4.92km of roadway. The grounds of appeal argue that the proposed development should have been subject to EIA and would have an unacceptable impact on the ecology of the area including Natura 2000 Sites in the vicinity.

2.0 Site Location and Description

The new watermain is to be located within the confines of an existing narrow third class road runs eastwards from the N56 National Secondary Route, just south of the Gweebarra Estuary and the small settlement of Lettermacward in West Donegal. The local road which is to accommodate the subject development eventually links up with the R250, a regional route which links up with the town of Glenties to the south west. The local road runs along the northern foothills of a number of upland areas including Cleengort Hill and Derkbeg to the south of the roadway. The northern side of the local road slopes towards the Gweebarra Estuary and River. Lands to the north of the roadway are characterised by denser woodland area including riparian woodland along the southern bank of the river. Much of this area at the western end of the roadway forms part of the west of Ardragh/Mass Road Special Area of Conservation (Site Code 00197).

- 2.1. The roadway itself is narrow and undulating. The western of the roadway is characterised by dense deciduous planting along the roadside. The middle section of the roadway accommodates less dense planting and there are approximately a dozen houses located along this section of the roadway. The central and more eastern parts of the road is for the most part surrounded by upland bog and heath. There are also areas of coniferous forest adjacent to the roadway particularly at the eastern end of the alignment (see photographs attached).
- 2.2. The proposed water supply pipeline ends approximately 1 kilometre north of the junction of the local road and the regional route R250 which runs south-westwards to the town of Glenties. Most of the local roadway along its alignment incorporates deep ditches and embankments on either side of the road. On the whole the

roadway is narrow (circa 3 metres in width) and is poorly surfaced although some sections of the alignment have been recently resurfaced and improved possibly to facilitate forestry activities along the alignment.

3.0 Proposed Development

- 3.1. Planning permission is sought to lay a water supply pipeline within the centre of the local roadway. The water supply pipeline is to facilitate a water supply connection between Lettermacaward, a small settlement on the N56 to the immediate north of the Gweebarra River, to a new reservoir at the eastern end of the supply scheme at Derryloughan. This reservoir has yet to be built but has the benefit of planning permission (see file attached). At the western end of the proposed pipeline, it is also proposed to connect a section of pipe to a new booster station at Kilcrum which is located along the alignment of the proposed pipeline. As in the case reservoir referred to above, Donegal County Council granted planning permission for the proposed booster station under a separate planning application Reg. Ref. 16/50917 on the 6th April, 2017. The booster station is to be located approximately 626m from the western end of the pipeline at the junction of the local road and the N56, immediately south of Gweebarra Bridge.
- 3.2. The remainder of the proposed pipeline is to be laid within the local road for a distance of approximately 4.3 kilometres from the Kilcrum booster station to the proposed Derryloughan reservoir which is located at the eastern end of the proposed pipeline. The application for the water storage reservoir was the subject of a separate planning application and appeal (see Planning History below) which was granted planning permission on 27th September, 2017.
- 3.3. All pipelines associated with the development will be laid underground and will comprise of a 180 millimetre diameter polyethylene (PE) pipe. It is proposed that the majority of the pipeline will be laid within the centre of the public road by open cut trenches. The survey carried out as part of the planning application indicates that there will be four stream crossings and three drains crossing along the route. Directional drilling technology will be used to lay the pipes at these locations.

3.4. At the western section of the appeal site approximately 760 metres of pipe is located either within or on the periphery of the Ardragh/Mass SAC. Three of the stream crossings and three of the drain crossings are located within the SAC boundary.

4.0 **Planning Authority's Decision**

4.1. **Decision**

4.1.1. Donegal County Council issued notification to grant planning permission subject to two conditions.

4.2. **Documentation Submitted with the Planning Application**

4.2.1. A covering letter was submitted by Irish Water setting out details of the proposed development. It states that the pipelines will be installed within the boundary of the public road and will be subject to a road opening licence from the Roads Authority of Donegal County Council.

4.2.2. A Stage 2 Appropriate Assessment (NIS) was also prepared and submitted with the application. A Stage 1 screening exercise resulted in the determination that the proposed development could have potential to have significant effects on the Ardragh/Mass SAC. An NIS was prepared on foot of this determination. The NIS goes on to set out a series of mitigation measures and concludes on the basis of these measures that there will be no significant impact on the qualifying species or habitats within the said SAC will occur as a result of the proposed development.

4.3. **Observations**

4.3.1. Observations was submitted by the Gweebarra Conservation Group and Monica Miller. The contents of both observations have been read and noted.

4.3.2. A letter on behalf of the applicant on 16th May, 2017 stated that the applicant hereby consents to an additional 12 months and an extension of the period for making the decision on the subject application.

4.3.3. A further letter dated 25th January, 2018 on behalf of the applicant notes that the extenuating matter for which the extension of the period for making the decision was

required has now been resolved and it is considered that the extension of the period for making the decision is no longer required.

- 4.3.4. The **planner's report** notes that the third party observations contained on file and addresses the concerns raised in the observations. It is noted that no inter-department report of statutory referrals were received in respect of the proposed development. The report goes on to note relevant objectives set out in Donegal County Council's Development Plan in respect of water and water infrastructure projects. Based on the policy statement contained in the development plan, it is stated that there is no objection in principle to the proposed development. It is noted that the development is not located in an area where special high scenic amenity or any archaeological monuments. Accordingly, there is no objection in principle to the proposed development. It is noted that the proposed pipeline development is an integral part of the overall network improvements to the regional water supply scheme in the area. While the proposed development is partially located within a designated Natura 2000 site, it is clear on the basis of the appropriate assessment report submitted with the application that the proposed development would not have a significant effect on Natura 2000 sites.
- 4.3.5. A separate appropriate assessment determination report is also contained on file (dated 9/5/2018).
- 4.3.6. On the basis of the planner's report Donegal County Council issued notification to grant planning permission for the proposed development subject to 2 conditions.

5.0 Planning History

- 5.1. Details of one history file is attached. Under **PL05E.248131** the Board upheld the decision of Donegal County Council to grant a 10-year planning permission for the construction of a 464 cubic metre water storage reservoir together with a 34 square metre chlorine control building together with access roads, ancillary works as part of the improvements to the regional water supply scheme at Derryloughan. This water supply reservoir is located at the eastern end of the pipeline which is the subject of the current application before the Board. The decision of Donegal County Council to grant planning permission was the subject of two third party appeals and two observations support the third party appeals. In its decision dated 21st September,

2017 An Bord Pleanála upheld the decision of Donegal County Council and granted planning permission for the proposed development. The Board will note that one of the third party appellants in respect of PL05D.248131 was the Gweebarra Conservation Group, the appellants in the case of the current application before the Board.

- 5.2. Also attached in a pouch to the rear of the current appeal file are details of Reg. Ref. 16/509157. This application was not subject to any third-party appeals relating to a grant of planning permission for a period of 10 years for a new pumping station located in the townland of Kincrum on the northern side of the road which is the subject of the current application for the water supply pipeline. The site is located approximately 600 metres to the east of the junction of the local road and the N56. The pumping station is to occupy a rectangular area of approximately 570 square metres.

6.0 Grounds of Appeal

- 6.1. The decision was the subject of a third-party appeal by Gweebarra Conservation Group. The grounds of appeal are outlined below.

- The proposed development would directly impact on the west of Ardragh/Mass Natura 2000 site, the Gweebarra and Owenea River SAC and the Derkmore Nature Reserve.
- Irish Water's integrated proposals should have been submitted as one planning application which would have necessitated the rigorous of an EIS given the status of the lands and the species the lands support. Instead Irish Water have split the project into numerous planning applications and drip fed the public who are unable to respond to the sum of the unknown parts.
- The NIS submitted with the application is wholly inadequate and incorporates an assessment of the booster pumping station and the reservoir. These elements of the proposal should have been included in the current application as they are directly related to the planning application.
- The information submitted as part of the planning application clearly makes reference to the pipeline from "Cleengort to Shallogans" however, the pipeline

in questions does not extend as far as Shallogans. It is noted that the Townland at Shallogans accommodates the Freshwater Pearl Mussel catchment and this is not considered in the NIS. Numerous references are made to the proposed Derryloughan reservoir and the chlorine treatment plant which are omitted from the planning application for the reservoir. It is suggested that the appellants are receiving information in a piecemeal and contradictory fashion.

- Irish water does not show any figures for present usage or future needs on which the proposed water supply scheme is predicated. The risk of piping water treated with chlorine and fluoride through such a sensitive landscape gives rise to potential pollution. No industrial development should occur within the SAC or zone of influence of the Freshwater Pearl Mussel and this pipeline will clearly impact on this habitat.
- Public consultation is imperative and is legally binding. It is a requirement that the public are able to participate in environmental decision making under the Aarhus Convention.
- There is no mention what types of pipes will be used in the construction and the potential of leaks from the water supply infrastructure. If Irish Water were committed to a meaningful consultation process all these issues could have been teased out.
- Reference is also made throughout the grounds of appeal to the works intended to be carried out by Irish Water on Lough Derkmore which is not subject of the current application before the Board.
- Instead of augmenting the water systems at Finnstown, Portnoo and Glenties, Irish Water have chosen the cheapest solution and intend to lay pipelines carrying treated water over long distances without the courtesy of public consultation.
- The proposed pipeline is to be installed under the public road and this requires a road opening licence. However, no such licence was presented in the current application.

- It is argued that the proposed development is contrary to the O’Grianna versus An Bord Pleanála judgement in that the entirety of the application is not being provided for the purposes of EIA. It is argued that a large project cannot be divided up into separate projects for the purposes of avoiding a detailed environmental impact assessment.
- The existing ditches on either side of the road in question would be destroyed and the potential to pollute local rivers will be high. The proposal will destroy the tourist potential along the road.
- The planning application and NIS submitted suggest that silt mats will mitigate against all potential pollution problems. This is not accepted. In the appellants’ experience works undertaken by ESB Networks in the area did not result in the protection of the environment through silt mats.
- It is argued that the proposed works at Lough Derkmore will destroy important woodland in the area. The sand flats and estuary receive only a cursory mention in the NIS yet these are vital habitats in the overall status of the Natura 2000 sites.
- It is suggested that Irish Water have downplayed a long list of flora and fauna which inhabit the pipeline route and which could be impacted as a result of the proposal. The Stage 2 assessment submitted with the application is not specific as no bird, frog or bat surveys were undertaken. The proposal does not adequately assess the potential impact of the proposed development on the Geyer’s Whorlsnail or the Marsh Fritillary.
- Neither Inland Fisheries Ireland nor Northern Ireland Department of Environment have commented on Irish Water’s plans which is required under the Water Framework Directive.
- It is stated that the Gweebarra River is a good salmonid fishery and there is a potential to pollute this river. The proposal could also upset the otter habitat along the Gweebarra River. The precautionary principle should apply and no development should be allowed which threatens the size and diversity of SACs in the area.

- It is stated that an unnamed stream of approximately 80 metres to the south of the proposed reservoir is hydrologically connected with the Owenea River just south of Glenties and this river forms a habitat for the Freshwater Pearl Mussel. Any silt laden run-off from the pipeline or any hydrocarbon or wastewater spillage could cause significant effects on aquatic habitats, tidal mudflats and sand flats.
- The grounds of appeal go on to highlight the various potential pollution which could arise as a result of spills either from work being carried out as part of the pipeline or transportation of materials to the site in question. Pollution could also occur from on-site refuelling of machinery.
- Chemically treated water which will be transported into the pipes in question if leaked could cause untold damage to surrounding rivers and streams.
- The grounds of appeal go on to argue in detail that the proposal is contrary to the provisions of the Aarhus Convention.
- It is stated that the chlorine commonly used in water pipes have been shown to cause cancers. Irish Water's top priority seems to be incorporating the most "cost effective" measures to provide water supply. There was no mention of any other alternative water treatment such as UV treatment or reverse osmosis filtration for water supply system. Using chlorine and other chemicals is not sustainable for a rural environment and will prove to be detrimental to the biodiversity of the area.
- It is argued that the proposed development does not constitute a sustainable approach to development and is therefore contrary to many of the policies and provisions contained in the Donegal County Development Plan. It is surprising that stakeholders such as Inland Fisheries Ireland have not commented on the current application before it. It is the appellants' belief that if an EIS had have been submitted with the application, various members of the public and stakeholders and other State bodies such as An Taisce would have been able to fully participate in the process.
- It is argued that a health impact assessment should have been submitted with the application as this is integral to the environmental assessment. It has been conclusively proven through studies (see top of page 24 of appeal for

reference to the said studies) that leaking pipes can provide pathways for contamination. Reference is made to a judgement where Irish Water were convicted of polluting a river in County Cavan in 2015. The grounds of appeal go on to highlight the toxic nature of chlorine gas and its potential health impacts. A review carried out in the US has found that people who drink chlorinated drinking water are more likely to contract rectal and bladder cancers. The grounds of appeal go on to highlight health concerns in relation to chlorinated water.

- The applicants make no assessment of the likely impacts of the proposed pipeline on geology and hydrogeology of the surrounding area. It is suggested that the pipeline will be overlaid above karstified limestone. It is stated that there are mapped regional faults in the vicinity of the pipeline and there are sites of archaeological heritage along the pipeline route.
- Furthermore, there is no cost benefit analysis or future costing included in the application and no plan as to how the network will be maintained in the future. There are household wells and groundwater protection zones identified in the National Groundwater Database within the catchment area of the pipeline route. Leaking pipes could potentially interfere with natural drainage and water quality.
- Finally, reference is made to Councillor Mark McSharry proposed motion in Seanad Eireann to abolish Irish Water. Concerns are expressed that Irish Water could be completely privatised.

6.2. Applicant's Response to the Grounds of Appeal

- A response was received by Irish Water. A response was received on 9th July on behalf of Irish Water by Jennings O'Donovan Consulting Engineers.
- It is stated that there are a number of non-material planning considerations raised by the appellants and these are listed in the response.
- The first section of the appeal sets out background to the planning appeal and planning history. It is stated that Irish Water is carrying out improvements to all of the water supplies in the south-west area of County Donegal and there are five separate water supplies in the region. It is stated that three of the five

supplies in Donegal are on the EPA's Remedial Action List. It is stated that the Lettermacaward water treatment plant requires an upgrade to create spare capacity and headroom following the connection of the Portnoo - Nairn water supply.

- With regard to project splitting it is stated that the systematic approach to upgrading each of the individual water supply schemes does not constitute a larger project that has been split into smaller sections. The same argument could be made for all of Irish Water's proposed work under the Capital Investment Programme. It is commonplace where practical to provide interconnections between adjoining schemes to provide security and supply. This has become all the more apparent during the drought conditions experienced during the summer of 2018. The primary purpose of the interconnector is to provide a long-term sustainable connection to the Finntown water supply scheme which has recently been connected to the Glenties – Ardragh water supply scheme. It also seeks to facilitate the provision of a storage reservoir in an area which is currently deficient of storage. The response makes reference to the application for the reservoir and the booster station (see planning history above as well as detailing the current scheme before the Board). It is argued that the proposed development fully complies with the National Policy Framework and the policies contained in the local development plan.
- It is argued that pre-planning discussions occurred with Donegal County Council where it was decided that it was appropriate to group the various elements of the project in the catchment area for assessment purposes and in the screening for appropriate assessment.
- With regard to the requirement for environmental impact assessment, it is stated in this case that the overall regional water supply scheme does not exceed any limits in quantity or threshold for this class of development and therefore there is no requirement for an EIA. As there is no requirement for the EIA it cannot be reasonably argued that the O'Grianna versus An Bord Pleanála case is irrelevant. This case related to a windfarm project requiring a grid connection and the requirement to include all aspects of the development for EIA. There is no EIA requirement in this instance.

- With regard to the NIS submitted, it is stated that this document considers the potential and cumulative impacts of the overall scheme on the waterbodies of the catchment area in relation to the existing and proposed elements of the network improvements. While the proposed development impinges on an SAC with very high level of habitat diversity, it is argued that the NIS has established beyond all reasonable doubt that the proposal will not have any adverse effect on the qualifying interest associated with the SAC.
- In relation to health and safety procedures, the health and safety procedures for the delivery of this project will be in accordance with Safety, Health and Welfare at Work (Construction) Regulations 2013 and in accordance with Irish Water Code of Practice for Water Infrastructure.
- It is stated that Section 5 of the NIS provides further information with regard to best practice construction methods. Health and safety requirements have also been addressed in a number of planning conditions attached to the grant of planning permission issued by Donegal County Council.
- The area in which the planning application relates has been fully described in the planning notices submitted with the application. Any reference to the road opening licence is not a consideration under the Planning and Development Act and is dealt with under separate legislation.
- Irish Water has complied with public participation requirements in accordance with the Planning and Development Regulations and the planning process is one of the statutory implements used to transpose the Aarhus Convention in Ireland.
- It is argued that the proposal constitutes sustainable development and complies with the broad principles of sustainable development as defined in the United Nations General Assembly. The proposal complies with the criteria in respect of sustainability in relation to economic, social and environmental considerations. It also fully complies with National Strategic Outcome 9 of the National Planning Framework to ensure that sustainable water services solutions are progressively implemented in the development of new rural settlement.

- Contrary to what is suggested in the grounds of appeal, it is argued that the proposed development will have a negligible impact on the visual amenities of the area.
- With regard to the health implications of the pipeline, it is stated that the proposal will have a positive impact on health by providing a supply of drinking water in compliance with the Drinking Water Regulations and all essential quality standards at EU level.
- With regard to geology and hydrology, it is argued that the proposed development will not have any significant impact on water resources subject to the implementation of site specific mitigation measures.
- The provision of a safe and secure potable water supply in compliance with EU Regulations will be of benefit to tourism in the area.
- In respect of archaeology, it is stated that there are a total of 17 recorded monuments located within approximately 2 kilometres of the water treatment plant. It is stated that none of the sites in question will be impacted upon by the appeal proposals.
- Finally, it is argued that the wider public benefits of the development shall not be overlooked in adjudicating on the application. The overall objective of the project is to provide appropriate supply of drinking water in compliance with the Drinking Water Regulations to all consumers in the area. This important consideration has been overlooked by the appellant.
- In conclusion therefore, it is considered that the proposed development complies with all relevant planning policies, will not adversely impact on the environment and is therefore in accordance with the proper planning and sustainable development of the area.
- **Planning Authority's Response to the Grounds of Appeal**
- It appears that Donegal County Council have not submitted a response to the grounds of appeal.

7.0 Observations

7.1. Observation by Inland Fisheries Ireland

- 7.1.1. This observation states that it is recommended that the mitigation measures identified in the NIS accompanying the application be fully complied with. Specific reference is made to the Construction Method Statement and the Construction Environmental Management Plan as described in the NIS. In respect of stream and drain crossings, it is stated that directional drilling will be the preferred option. The overall works must comply with the requirements for the protection of fisheries habitat during the construction and development works at river sites. In the event that the planning application is successful, the above points should be specifically included by way of condition.

8.0 Planning Policy Guidance

8.1. National Planning Framework

- 8.1.1. Section 9.4 of the National Planning Framework specifically relates to creating a clean environment for a healthy society. The NPF states that it is essential that we have a resilient water supply to serve the existing population for the additional 1 million people projected by 2040. The Plan seeks the development of a new rural settlement investment approach, co-ordinating Irish Water, local authority, developer and community led solutions to ensuring that sustainable water solutions are progressively implemented.

8.2. Donegal County Development Plan 2018-2024

- 8.2.1. Chapter 5 specifically details with infrastructure and Section 5.2 with water and environmental services. The plans states that it is the aim of Donegal County Council to ensure a sufficient infrastructural services for the provision of a reliable, clean water supply, and the efficient management of waste to sustain a targeted strategic economic and population growth of the county thereby providing for the protection of the environment.
- 8.2.2. The development plan notes that the Water Services Strategic Plan sets out strategic objectives for the delivery of water services over the next 25 years up to 2040.

- 8.2.3. Objective WES-0-1 seeks to support Irish Water in the implementation of strategic objectives outlined in the Water Services Strategic Plan 2015 for the delivery of water services over the next 25 years up to 2040.
- 8.2.4. WES-0-2 seeks to work closely with Irish Water to identify and facilitate the timely delivery of water services required to realise the development objectives of the plan in accordance with the core strategy and the settlement structure of this plan.
- 8.2.5. WES-0-3 to support and facilitate Irish Water to ensure a satisfactory level of service through sustainable systems in respect of
- (a) water supply – an adequate and secure supply of clean and wholesome drinking water to existing areas of supply and those areas identified for growth in the core strategy and settlement structure,
 - (b) to protect and improve the quality of existing drinking water supply in accordance with current Drinking Water Regulations,
 - (c) to provide an adequate supply of water for industrial and commercial need where appropriate to partnership with the private sector, and
 - (d) protecting and conserving the county’s water resource through the minimisation of leakage and the promotion of public awareness and involvement in water conservation.

9.0 Planning Assessment

9.1. Introduction

- 9.1.1. I have read the entire contents of the file and have had particular regard to the issues raised in the grounds of appeal. The Board is required to deliberate on the application before it namely the construction of a 4.92 kilometres pipeline. Many of the issues raised in the grounds of appeal do not specifically relate to the application before the Board but rather make references to other applications which have already been determined by either Donegal County Council in the case of the booster pump at Kincrum granted permission under Reg. Ref. 16/50917 or the proposed water storage reservoir at Derryloughan which was granted planning permission by the Board under Reg. Ref. PL05E.248131. Reference is also made to works undertaken by Irish Water at Derkmoores Lake which is located to the south of

Cleengort Hill which is located over a kilometre to the south of the subject site and does not relate to any of the works carried out as part of the current application.

9.1.2. I therefore consider that any issues raised in relation to:

- Methods of water treatment including the use of chlorine in the treatment of water were matters for consideration under the previous application PL05E.248131 which has already been determined by the Board.
- Any issues with regard to the environmental impact arising from the construction of the booster pump at Kincrum have also been adjudicated and evaluated under the previous determination by Galway County Council.
- Any impacts arising from works to be undertaken at Derkmore Lough and potential implications on the nature reserve surrounding the Lough are not issues which should be determined under the current application.
- References to the visual impact arising from the proposed reservoir are not a matter of the subject application.
- Nor are issues regarding the storage or potential leakage of hazardous chemicals associated with water treatment associated with the reservoir.

9.1.3. The grounds of appeal also make reference to alternative methods of water treatment which should be considered by the Board in determining the application. I would argue that these issues are of little or no relevance to the application currently before the Board namely the construction of a 4.92 kilometre pipeline for the supply of water to the proposed reservoir at Derryloughan as part of the regional water supply scheme. The current application does not relate to any matters concerning water treatment.

9.1.4. For the purposes of appropriate assessment, it is important that the Board take into consideration in combination effects or cumulative effects arising from the entirety of the works to be carried out and these will be assessed under a separate heading in my report. It is appropriate in my view that the Board would not revisit for the purposes of the current application and appeal before it specific issues or concerns in the wider area which are not related to the current application before the Board.

9.2. I consider the following issues to be relevant in terms of assessing the current application and appeal before the Board.

- Strategic Considerations and Principle of Development
- EIA Requirement and Project Splitting
- Public Consultation and Participation
- Tourism and Visual Impact Issues
- Archaeology Issues
- Health Issues
- Other Issues

9.2.1. **Strategic Considerations and Principle of Development**

Irish Water in its response to the grounds of appeal has set out the overall strategic context to water and water supply issues in the region. The response points out that a number of water supply treatment plants are listed on the EPA's Remedial Action List due to various risks or issue in respect of water supply. The response indicates that there is a need for the upgrading and increase in capacity in the water supply schemes to deal with peak demands and to ensure that water supplies in the region are secure. This involves the provision and upgrading of a network of pumping station rising mains, provision of reservoir together with trunk mains and distribution mains so as to ensure an effective and efficient water supply infrastructure in the area. It is pointed out that it is commonplace where practicable, to provide interconnections between adjoining schemes in order to augment security of supply. The current proposal seeks to provide a connection between the Lettermacaward Regional Water Supply Scheme and the Glenties/Ardragh and Finntown Water Supply Schemes. The interconnector between the schemes will also provide a storage reservoir in an area which is described as being deficient in storage. The strategic aims of the interconnector pipeline between the Lettermacaward Regional Water Supply Scheme and the additional network storage at Derryloughan appears reasonable in my view in order to augment the water supply provision in the area.

The National Planning Framework highlights the need to provide clean water and to provide a resilient water supply to serve the existing population and the proposed increase in population by 2040. The proposal is fully in accordance with this national objective.

On a more local level there are numerous policy objectives contained in the Donegal County Development Plan which seeks to support Irish Water in the implementation of the strategic objectives set out in the Water Service Strategic Plan of 2015 for the delivery of water services in the area. Objective WES-0-3 specifically seeks to support and facilitate Irish Water to ensure a satisfactory level of service through sustainable systems including providing an adequate and secure supply of clean and wholesome drinking water to existing areas of supply and to those areas identified for growth in the core strategy and settlement structure. The objective also seeks to ensure an adequate supply of water for industrial and commercial need and to protect and conserve the county's water resources through minimisation of leakage and promotion of public awareness in the involvement of water conservation.

There can be little doubt in my opinion based on the statements referred to above, that the proposed development is acceptable in principle and is in accordance with strategic objectives both nationally and locally in order to augment and secure water supply services in the area.

9.2.2. EIA Requirement and Project Splitting

The grounds of appeal argue that the proposed development should have been the subject of an environment impact assessment. The grounds of appeal however do not specify under what class of development under Schedule 5 of the Planning and Development Regulations would attract the requirement for an EIAR. Under Part 1 of Schedule 5 under Class 12A works for the transfer of water resources between river basins, where this transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic metres per year would attract a mandatory EIA. 100 million cubic metres per year, I estimate would service the demands for approximately 1.7 million people (based on a per capita consumption of 160 litres per day). The proposed water supply scheme in this instance would fall well short of this. Under Part 2 of Schedule 5, Class 10(m) would necessitate the submission of an EIAR for works for the transfer of water resources between river basins not included in Part 1 of the Schedule where the annual volume of water abstracted or recharged would exceed 2 million cubic metres. Again such a volume would service the population equivalent of approximately 35,000 people which is well in excess of the catchment area intended for supply in this instance.

Furthermore, the works in question do not relate to the transfer of water resources between river basins as envisaged under the Water Framework Directive and it cannot be reasonably argued in my view that any transfer of water from the Lettermacaward Regional Supply Scheme and the Finntown Water Supply Scheme constitutes a transfer of water resources between river basins. Both Lettermacaward and Finntown are located within the same river basin under both the old and new cycle of RBMP's. I can only conclude therefore that the provision of the pipeline in question does not constitute a class of development which necessitates or requires EIA.

With regard to the issue of project splitting, project splitting occurs where an overall project is subdivided into separate applications in order to avoid or circumvent the requirement for EIA under the Directive. As the development in this instance does not constitute a class of development for which EIA is required, it cannot be reasonably argued in my opinion that the proposal constitutes project splitting.

While it was open to the applicant to submit an overall planning application for the works intended (i.e. the booster station, the pipeline and the reservoir), there is nothing in the legislation which precludes the applicant from submitting three separate applications in respect of the works proposed to be undertaken. It is incumbent upon the Planning Authority or the Board in assessing the application to have regard to the cumulative impacts particularly in relation to appropriate assessment issues. The Board in my opinion can adequately carry out such an assessment on the basis of the information in respect of the three applications contained on file.

9.2.3. **Public Consultation and Participation**

It is argued throughout the grounds of appeal that Irish Water have failed to involve the community with regard to the public consultation process and this is contrary to the Aarhus Convention. The Aarhus Convention lays down a set of basic rules to promote citizen's involvement in environmental matters and to improve enforcement of environmental law. It is based on three pillars:

- access to information,
- public participation in the decision making process, and

- access to justice.

Under Article 4 of the Convention, members of the public are entitled to request environmental information from all public authorities. It is clear in this instance that Donegal County Council have made all information available to the local community, including the appellants, in respect of the current application. This is a requirement under the Planning and Development Acts.

The public also have a right to participate in the decision-making process in relation to environmental matters. In this regard the Aarhus Convention states that arrangements should be made by public authorities to enable the public to comment on and object to proposed development and that these comments be taken into consideration in the decision-making process. The appellants in this instance have been afforded the opportunity to making observations to the Planning Authority and through the third-party appeal process to comment on the current application before the Board.

The final pillar relates to access to justice. Article 9 of the Aarhus Convention allows the public to the right to seek redress when environmental law is infringed and the right to access review procedures to challenge decisions that have been made. This avenue is of course open to the applicant through a Court of Law should it disagree with any determination made by An Bord Pleanála in respect of the current application.

Based on the above assessment I do not consider that the procedure adopted by the Planning Authority or the Board in this instance in any way impinges upon public participation rights set out under the Aarhus Convention.

9.2.4. Tourism and Visual Impact Issues

The grounds of appeal argue that the proposed development will have a material and adverse impact on the visual amenities of the area which could undermine and impact upon the tourist potential of this very scenic area. I would agree with the grounds of appeal that the proposed pipeline is located in an area of scenic beauty. It should be noted however that in terms of scenic amenity designations contained in the development plan, the roadway in which it is proposed to install the pipeline is afforded the lowest scenic amenity designation on Map 7.1.1. Notwithstanding this point the proposed development involves the provision of a pipeline within the road

surface of a local road which will be reinstated and therefore will have no impact whatsoever on the scenic amenities or tourism potential of the area. As already mentioned above any visual impact arising from other constituent elements of the proposal which have been the subject of separate applications have already been determined and therefore cannot be adjudicated upon in the case of the current application.

9.2.5. **Archaeology Issues**

According to the Departmental website in respect of recorded monuments (RMP sites), there are no recorded monuments within or adjacent to the alignment of the proposed pipeline. The nearest recorded monuments are in excess of 0.8 kilometres from the western end of the proposed pipeline. There are no recorded monuments within 4 kilometres of the eastern end of the proposed pipeline route. Based on this information it is unreasonable to suggest in my opinion that the proposed development should be refused on archaeological grounds. If the Board consider it appropriate it can put in a standard condition in respect of archaeological monitoring during the excavation works to be carried out in laying the pipeline.

9.2.6. **Health Issues**

As already mentioned above in my assessment, any reference which is made in the grounds of appeal in respect of health, primarily relate to the proposed methods of water treatment namely chlorination and fluoridation. The issue of health was addressed in the inspector's report with regard to the proposed reservoir under Reg. Ref. PL05E.248131. The Board have already determined that the proposed reservoir and chlorine treatment facility was in accordance with the proper planning and sustainable development of the area. There is no proposal for a water treatment facility under the current application which merely relates to the construction of a pipeline for the transportation of water. Therefore, health issues in relation to water treatment or not pertinent to the current application before the Board. It is however sufficient to state that any regional water supply scheme must comply with the requirements of the Drinking Water Regulations under law.

9.2.7. **Other Issues**

A number of miscellaneous issues were raised in the grounds of appeal which are briefly commented on below. It is argued that the applicant should have provided a

cost benefit analysis in relation to the proposed development. I do not consider it necessary or appropriate that the Board would require such information in determine the current application before it. The Water Services Policy Statement 2018 – 2025 sets out the strategic approach for the delivery of water services. It sets out national strategic policies in relation to infrastructural investment and day to day expenditure on water services. The overall cost benefit analysis of the infrastructural investment programme has in my view already been determined at a higher strategic level.

The grounds of appeal suggest that the location of development has not been adequately described in the public notices on the grounds that the townland of Kincrum is not locally used in the area. I have investigated this issue and noted that Kincrum is an officially designated townland at which the western end of the proposed pipeline. I further consider that the applicant in describing the development has made references to all the townlands in which the proposed pipe is to be located. I am therefore satisfied that the proposed development adequately describes the location of the proposal in accordance with the requirements of the Planning and Development Regulations.

10.0 Appropriate Assessment

- 10.1. As in the case of other aspects of the grounds of appeal the appellant makes reference to a number of developments including the booster pump station and the reservoir as well as work at Derkmore Lough in the context of appropriate assessment. It is argued in the grounds of appeal that many of the developments in question could give rise to significant environmental and ecological consequences which could in turn impact on the integrity of qualifying interests associated with European sites in the area.
- 10.2. It is not proposed for the purposes of this evaluation to address all of the numerous issues raised in the grounds of appeal in the context of appropriate assessment. It is proposed to assess in this section of my report, the adequacy of the NIS submitted with the application and to carry out an independent assessment as to whether or not the works proposed under the current application is likely to adversely impact on the integrity of Natura 2000 sites in the vicinity. The assessment will also examine

potential in-combination effects and indirect effects which may arise as a result of the proposed development on the integrity of the Natura 2000 sites in question.

- 10.3. A Stage 1 Appropriate Assessment Screening Report was included as part of the NIS. It concluded specifically in relation to the West Ardragh/Maam Road SAC (Site Code: 000197) in which part of the proposed pipeline is located that the qualifying interest associates with this SAC specifically the Atlantic Salmon and Otter and also aquatic habitat associated with the tidal mudflats, sandflats and estuaries are at risk of experiencing likely significant effects. For this reason, it was concluded that a Stage 2 Appropriate Assessment (NIS) was required.
- 10.4. The Stage 2 Appropriate Assessment describes the potential impact on key species and habitat that could potentially be affected. The qualifying interests that could potentially be affected are identified in the NIS as salmon, otter and tidal mudflats and sandflats. The main threat identified to these habitats as a result of the proposed development are an adverse impact on water quality through pollution as a result of spillage of hazardous materials associated with the construction process and excessive siltation through surface run-off associated with the excavation process. Section 5 of the NIS sets out mitigation measures including:
- the incorporation of best practice construction methods,
 - the management of site drainage during construction and operation and
 - the protection of water quality during the excavation of the pipeline and at watercourse crossings.
- 10.5. Measures will also be put in place to prevent the release of polluting substances which could impact on the aquatic environment. The NIS concludes that with the incorporation of the mitigation measures set out, there will be no significant impacts on qualifying species or habitats within the Natura 2000 site in question.
- 10.6. In terms of my own independent evaluation I would agree with the conclusions set out in the NIS that the west of Ardragh/Maam Road SAC is the only Natura 2000 site which could potentially be affected as a result of the works to be undertaken as part of the construction of the pipeline. The west of Ardragh/Maam Road SAC comprises of a mosaic of designated areas to the west and south of the subject site. Other Natura 2000 sites in the vicinity include the Lough Neilan Bog SPA (Site Code 004110) which is located c.8 kilometres to the south-east of the subject site, the

Gannivegil Bog SAC (Site Code: 000142) which is located c.3 kilometres to the north of the subject site and the River Finn SAC (Site Code: 002301) and Derryveagh and Glendowan Mountains SPA (Site Code 004039) which are located between 5 and 6 kilometres east of the subject site.

- 10.7. Having regard to the relatively minor nature of the works in question together with the separation distance between the proposed pipeline and the SACs in question I think the Board could reasonably rule out any potential adverse impacts on surrounding Natura 2000 sites other than the west of Ardragh/Mass Road SAC.
- 10.8. Approximately 760 metres of the western part of the pipeline is located adjacent to, contiguous to or within the west of Ardragh/Mass Road SAC. The qualifying interests associated with this SAC are as follows:

The Geyer's Whorlshell

The Freshwater Pearl Mussel

The Marsh Fritillary

Atlantic Salmon

Otter

Common Seal

Petalwort

The Slender Naiad

Estuaries

Tidal Mudflats and Sandflats

Large Shallow Inlets and Bays

Atlantic Salt Meadows

Mediterranean Salt Meadows

Marron Dunes

Fixed Dunes (Priority Habitat)

Decalcified Empetrum Dunes (Priority Habitat)

Decalcified Dune Heath (Priority Habitat)

Dunes with Creeping Willow

Humid Dune Stacks

Machairs (Priority Habitat)

Oligotrophic Waters containing very few minerals

Wet Heath

Dry Heath

Alpine and Sub-Alpine Heaths

Juniper Scrub

Orchid Rich Calcareous Grassland (Priority Habitat)

Molinia Meadows

Lowland Hay Meadows

Blanket Bogs (Active) (Priority Habitat)

Rhynchosporion

Alkali Fens

10.9. It is clear that there are a large amount of habitats and species which form the qualifying interests associated with the SAC. Many of these habitats, particularly the coastal habitat such as sand dune formations etc. will not be adversely impacted as a result of the proposed development. The potential impact arising from the laying and construction of the pipeline relate to potential pollution and contamination of waters as a result of any accidental spillage of contaminants or hydrocarbons associated with plant and machinery used in the laying of the pipeline. The other potential adverse impact which could arise relates to the discharge of silt laden waters from the excavation process into surrounding surface waters. Having inspected the site, I note that there are a number of streams and ditches in the vicinity of the road which could potentially be contaminated and could provide conduits and hydrological links with the Gweebarra River and Estuary which forms part of the SAC. There is therefore the potential for negative impacts on the water quality and this in turn could impact on the aquatic habitats associated with the qualifying interests of the SAC including the Freshwater Pearl Mussel, Atlantic

Salmon, the Otter, the Common Seal and habitats associated with tidal mudflats and sandflats and large shallow inlets and bays.

10.10. I do not consider that the nature of the works to be undertaken and the potential contamination that could possibly result, would adversely impact on wider habitats in the area such as Atlantic Salt Meadows, Mediterranean Salt Meadows, the various dune formations specified or the heath bog or meadow habitats listed as qualifying interests.

10.11. In terms of potential impacts on qualifying interests, I consider that the Board can restrict its deliberations to impacts on aquatic species and habitats. Any decrease in the water quality resulting from the works to be undertaken has the potential to alter the ecological status of the waters which in turn could undermine the favourable conservation status of the species in question. In order to mitigate against potential impacts, it is proposed to incorporate best practice construction methods as part of a Construction Environmental Management Plan. It is stated that the construction design will be of the highest standards to ensure that no sedimentation or pollution to surface waters will occur. Run-off from the construction area of the proposed pipeline will be managed through the construction of silt fences and silt mats and that site run-off will not discharge directly to watercourses. Any storage of topsoil for reinstatement purposes will be stored and covered so as no run-off results. Revegetation and reinstatement of the site will occur as soon as possible to stabilise any bare soil. This will reduce the potential for soil erosion.

10.12. All machinery will be refuelled off-site to ensure that hydrocarbons or other toxic substances do not enter the watercourses through potential spillages. Biosecurity measures will be undertaken to prevent the importation of evasive species from contaminated areas.

10.13. Excavations will only take place following the implementation of drainage treatment and flow attenuation provisions. Small working areas will be excavated for the better control of sedimentation and all works within the excavation areas shall cease during periods of high rainfall.

10.14. Prior to the construction of the work of pipeline stream crossings double silt fences shall be placed immediately downgradient and downstream of the construction area for the duration of the construction phase of the pipeline. The silt fencing shall be

inspected regularly during the on-going works. Water quality downstream of the crossing points shall be monitored regularly. A water quality monitoring plan shall be included in the Construction Environmental Management Plan detailing sampling locations parameters and frequencies of water samples.

10.15. In terms of storage of fuels, oils and chemicals, all fuel brought onto the site shall be contained in a double banded fuel bowser, oil booms and oil soakage pads shall be maintained on site to enable a rapid and effective response to any accidental spillage or discharge. It is also proposed to incorporate an emergency contingency plan to deal with any pollution event.

10.16. The main potential impact arising from the works to be undertaken are on the whole confined to the construction phase. During the operational phase when the road reinstatement has been undertaken the potential for any contamination through spillage of hydrocarbons, fuels, oils or toxic materials will not exist other than in the case of very infrequent maintenance to be undertaken to the pipeline. The only potential risk arising from the operational phase relates to leakage. However, the water within the pipe will be uncontaminated and will not pose a risk to any environmental receptor including the qualifying interests associated with the SAC in question.

10.17. In terms of in combination effects, I note that the NIS submitted with the current application assesses the potential impacts arising from the pipeline in question together with the Kincrum Pumping Station. I will be satisfied that with the mitigation measures set out above which relate to both the construction of the pipeline and the pumping station that the proposed in combination effects would be extremely unlikely to have a significant impact on the integrity of any of the qualifying interests associated with the Natura 2000 site. With regard to the reservoir at Derryloughan which has the benefit of planning permission, this reservoir is located a significant distance c.2.5 kilometres outside the boundary of the SAC. This development was the subject of a Stage 1 screening for appropriate assessment. It concluded that there will be no significant effects on the habitats and species of any of the SACs or SPAs within the zone of influence and therefore no significant adverse effects will occur on the integrity of the Natura 2000 site. This conclusion was the subject of an independent assessment by the Board and the Board is satisfied having regard to the nature, location and scale of the subject development and in light of the normal

construction practice to be incorporated into the works in question, that the construction of the proposed development will not be likely to have a significant effect either individually or in combination with other plans and projects on any of the European sites in view of their conservation objectives. In light of this conclusion, together with the NIS submitted with the current application which assesses in combination effects with the booster station, I can only conclude that the potential for in combination effects on the integrity of any of the European sites in the vicinity is negligible.

10.18. With regard to indirect effects I acknowledge that in the case that pollution of surface waters were to occur this could potentially impact on feeding habitats associated with various bird species associated with surrounding SPAs. However, I am satisfied that, with the inclusion of mitigation measures set out in the NIS, that the proposed development in combination with other plans and projects in the area will not result in any pollution of surface waters which could have consequential impacts on feeding grounds associated with bird populations in the area or indeed will have any adverse impact on the feeding grounds associated with any terrestrial fauna associated with the subject site and its surroundings.

10.19. Therefore, on the basis of the information provided with the application and appeal including the Natura Impact Statement and in the light of the assessment carried out above, that the proposed development individually or in combination with others plans or projects would not adversely affect the integrity of European Site 000197 or any other European site in view of the site's conservation objectives.

11.0 Conclusions and Recommendation

Arising from my assessment above I consider the proposed development to be acceptable and in accordance with the proper planning and sustainable development of the area and I therefore recommend that the Board uphold the decision of the planning authority and grant planning permission for the proposed development.

12.0 Decision

Grant planning permission in accordance with the plans and particulars lodged based on the reasons and considerations set out below.

13.0 Reasons and Considerations

Having regard to the development plan objective to provide an adequate and secure supply of clean and wholesome drinking water to existing areas of supply and those identified for growth in the settlement hierarchy together with the limited scale of the proposed development, it is considered that the proposed development would not adversely impact on the visual or residential amenities of the area and would not impact on the natural environment nor be prejudicial to public health. Therefore, subject to the following conditions it is considered that the proposed construction of a new watermain would be in accordance with the proper planning and sustainable development of the area.

14.0 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 such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to the commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall –
 - (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation relating to the proposed development,
 - (b) employ a suitably qualified archaeologist who shall monitor site investigations, removal of the stone wall and all excavation works, and
 - (c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

In default of agreement on 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 site and to secure the preservation and protection of any remains that may exist within the site.

3. All mitigation measures outlined in the Natura Impact Statement submitted with the application shall be implemented in full. Details of the construction method statement, the construction environmental management plan and the environmental incident emergency response plan set out in Section 5 of the NIS shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interest of protecting the environment

4. Site preparation and construction works shall adhere to best practice and shall conform to the Inland Fisheries Ireland requirements for the protection of fisheries habitat during the construction and development works at river sites.

Reason: In the interest of protecting the environment

5. All works associated with the development shall be confined to the carriageway of the public road throughout the alignment of the proposed watermains.

Reason: In the interest of environmental protection and preserving the integrity of the west of Ardragh/Mass Road Special Area of Conservation Site Code: 000197.

Paul Caprani,
Senior Planning Inspector.

6th November 2018.