



An  
Bord  
Pleanála

## Inspector's Report ABP-301890-18

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<b>Development</b>	Retention and completion of road widening of the R478, removal of infill and re-establishment of wetlands.
<b>Location</b>	Ballyellery, Liscannor, Co. Clare
<b>Planning Authority</b>	Clare County Council
<b>Applicant(s)</b>	Clare County Council
<b>Type of Application</b>	Substitute Consent.
<b>Date of Site Inspection</b>	11 <sup>th</sup> of September 2018.
<b>Inspector</b>	Karen Hamilton

## **1.0 Introduction**

- 1.1. This application is for substitute consent for retention and completion of road widening and removal of infill from lands along the R478, Ballyellery, Co. Clare.
- 1.2. In 2013, Clare County Council entered into an agreement with a landowner for the removal of a portion of land (0.318ha) to widen the road. The council agreed to use the spoil from the road to raise the lands by stripping the topsoil, backfilling with spoil and recovering with topsoil.
- 1.3. In January 2015, An Taisce made an application to Clare County Council under Section 5 of the Planning and Development Act 2000, as amended as to whether the infilling and reclamation of these lands was development. A declaration issued by Clare County Council in February 2015, stated that the work constituted exempt development.
- 1.4. In May 2015, An Taisce requested ABP review a second Section 5 Declaration for the infilling of lands and it was declared that the works were development and were classified as wetlands.
- 1.5. Leave to apply for substitute consent (03.LS.0029) was granted on the 16th of January 2018 and an extension of time on the 12-week period for lodging the substitute application was granted on the 04th of April 2018. The final date for lodgement of the application for leave to apply for substitute consent was the 01st of June 2018, the site notice was erected on the 01st of June 2018 and the newspaper notice published on the same date.
- 1.6. A Remedial Natura Impact Statement (rNIS) and a Remedial Environmental Impact Assessment Report (rEIAR) accompany the proposed development.

## **2.0 Site Location and Description**

- 2.1. The site is located in the townland of Ballyellery between the towns of Liscannor and Lahinch, Co. Clare. It lies on the northern side of the R478 between the bridge (O' Briens) over the Inagh River at Lahinch and Kilmacrehy Graveyard at Liscannor. To the south of the regional road there is a pitch and putt course backed by sand dunes.

- 2.2. The site has a frontage of c.0.9km along the regional road. It comprises a flat low lying area c. 13ha, rural in nature. There is evidence of deposited hard core material on the west of the site while the remainder includes a number of large open drains traversing through the site. These open water channels interlink with the Laghvally Stream which runs along the north of the site and flows into the Inagh Estuary. Works have been undertaken along the site frontage including the construction of a wall and a footpath which remain to be completed.
- 2.3. The Inagh River Estuary SAC lies further south and Liscannor Bay lies beyond the estuary.

### 3.0 Proposed Development

- 3.1. The proposed development would comprise of the following:
- The realignment, upgrade and completion of works along the R478, Lahinch to Liscannor Road (0.9km),
  - The removal of infill from lands in Areas A-D and the re-establishment of wetlands.

### 4.0 Planning Authority Report

The proposed development is accompanied by the following documents:

4.1. A Non-Technical Summary

This provides a background to the proposed development, reasoning for the Substitute Consent application and Summary of the rEIAR.

4.2. Remedial Environmental Impact Assessment Report (rEIAR)

The findings in the report are noted and the main considerations are as follows:

#### **Populations and Human Health**

The population of the Ballyellery townland, location of the pitch and putt course and 18 hole golf course and movement of traffic along the Wild Atlantic Way may all be impacted and are detailed as not significant.

## **Biodiversity**

The area includes wetland habitats with a mosaic of grassland and infill following significant modification over time. The wetland is frequented by migratory wintering birds. The infilling and contouring of the site has a direct impact on the loss of wetland and the re-establishment will have a positive impact on the habitats.

## **Soils and Geology**

The removal of the soil and subsoil in the past have increased the vulnerability of the groundwater due to the removal of the protective cover over the bedrock. The works to the road removed soil causing a negative permanent impact. The removal of soil for the proposal will make the groundwater more susceptible to pollutants causing a slight negative impact. The re-establishment of the wetlands will have a significant positive impact for soils and hydrology.

## **Hydrology and Hydrogeology**

There are a series of drainage ditches throughout the site which flow into the Laghavally Stream and into the Inagh River. The site is within Milltown Malbay groundwater body which is poorly productive bedrock with a vulnerability classification from low to high (high along the road). Suspended solids and contaminants may have entered groundwater although would have been adequately diluted before reaching the Laghavally Stream and therefore not significant. The re-establishment of the wetlands and further works to the road are accompanied by Construction Environmental Management Plan (CEMP) which include silt curtains as a mitigation measure. In conjunction with other mitigation measures an Ecologist would be present on site. There should be no significant impact on waterbodies or groundwater.

## **Landscape**

Ballyellery is within Landscape Character Area: No 3- Cliffs of Moher and Lahinch and the Seascape Character No.4- Liscannor Bay. The R478 is recognised as a Scenic Route in the development plan. The placement of fill and stockpiles has an overall negative visual impact in the area and the re-establishment of wetlands will have a positive long-term impact on the visual landscape of the area.

## **Archaeology and Cultural Heritage**

There are three National Monuments in the townland of Ballyellery and two Records of Protected Structure, none of which are on the site. No archaeology monitoring was carried out as part of the works undertaken and it is not envisaged that additional excavation is required to complete the wall and footpath. It is unlikely that the works will impact the archaeology or cultural heritage.

## **Air and Climate**

The ambient air quality in Ballyellery is good. The increase in dust levels from the proposed development is not seen as significant. The improvement of the R478 will accommodate cyclists, reduce traffic volumes and will have long-term positive impact on climate change.

## **Traffic**

The R478 is a busy Regional Road from Lahinch which serves the Cliff of Moher and the Wilf Atlantic coastal route. The works during construction will require additional movement of construction traffic although will not increase the number of vehicles along the road in the long term.

## **Interaction of the foregoing**

While the potential impacts may have arisen prior to any assessment, the interaction of possible impacts is identified in Table 2-1 ( summarised below in Figure I of the assessment) which mainly consist of visual impact of stockpiles, increase in noise, dust, possible disturbance of unrecorded archaeological features, impacts to surface and groundwater and loss of wetland.

### **4.3. Remedial Natural Impact Statement (rNIS)**

#### **Project Details**

The rationale for the project is linked to the increase in the number of cyclists and the need to accommodate them by repairing the damaged road. The project is described as the upgrade of the R478 by retention of existing works and completion of boundary wall and footpath and the removal of infill from Areas A-D and re-establishment of wetland area within the same areas.

#### **Ecology Baseline Natura 2000 sites and Zone of Influence**

Various impact assessment surveys were undertaken on the site including those listed below which in addition to a walkover survey in Feb 2017 and a bird survey in Feb 2018 and winter 2018/19 informed the collation of current site conditions:

- A site inspection by Michael Gill on the hydrological conditions of the site (2016),
- An assessment of the impact on Laghvally Stream as a result of contouring and infilling of lands at Ballyellery by Conservation Services for Wetlands Surveys Ireland (2016),
- An assessment of impacts on the wetland habitat by Wetlands Surveys Ireland (2016).

Desk studies showed that species such as Marsh Fritillary and Narrow-mouthed snail may have occurred at the site or near this site in the past (National Biodiversity Centre records), however no evidence was found during recent surveys. Wintering bird species recorded at the site included Curlew, Lapwing and Oystercatcher.

### **Appropriate Assessment**

6 no. Natura 2000 sites were identified within 15km of the site and it was determined that the Inagh River Estuary SAC (000036) was the only site with any pathway. The site has a hydrological link to the Inagh River Estuary SAC and given the nature of the work on the site and using the precautionary principle, it can be assumed that impacts could potentially occur or have occurred, through groundwater, land and surface water pathways only.

#### Identified possible impacts

Section 5.1.1- Key species within the SAC indirectly affected due to changes in nutrient or sedimentation via surface or groundwater pathways. The pouring of concrete for gate posts may impact groundwater. Accidental spills from machinery can impact.

Potential Cumulative Impacts include agricultural, such as land reclamation, recreational activities associated with the coast and various planning permissions on the surrounding area.

### **Impacts and Avoidance, Remedial and Mitigation Measures.**

Impact evaluation is included for each of the habitats listed as qualifying criteria in the Inagh River Estuary SAC.

Increase in suspended solids and sediment can increase the erosion process in the Saltmarsh habitat and disturbance of wetland can cause a large volume of mobile sediment, block drainage channels and impact the Laghvally River. Sedimentation can also impact the Dune habitat

Increase in suspended solids through groundwater pathways impact the Saltmarsh habitat as it is Groundwater Dependant Terrestrial Ecosystem (GWDTE).

#### Mitigation Measures

- No works in the SAC.
- Use of an Ecological Clerk of works advising the extent of works and depth of soil stripping.
- Use of weather forecasting and avoidance of works during extreme weather.
- Use of locally sourced, native species for re-establishment.
- Vehicle access in wetland areas shall be undertaken on sleepers or mats.
- Use of a silt curtain buried 0.5m into the ground and a 0.5m high earthen embankment on the west side of Laghavalley Stream for removal of soil in Areas A and C.
- Stockpiling will be kept to a minimum, records retained of soil/sub-soil leaving the site
- The site compound will be outside the SAC.
- Refuelling will not be undertaken within 50m from a watercourse.
- During erection of access gateways, no concrete or other pollutants will be allowed to enter the watercourse, foundations will not go to groundwater level.
- Drip trays will be underneath machinery.
- Operators will check vehicles.
- All staff will be provided with environmental site training.

## 5.0 Prescribed Bodies

A list of prescribed bodies notified of the proposed development are included in Appendix 1. The Department of Agriculture, Food and Marine acknowledged receipt of application and one submission was received from the Department of Culture, Heritage and the Gaeltacht (DoCHG) and the issues raised are summarised below:

### Nature Conservation

- The rEIAR and rNIS are based on a site visit and ecological survey carried out on February 17 and further bird surveys in December 18.
- Earlier wetland surveys have been submitted (March 2016) which are based on vegetation and habitat surveys in 2015.

### Limitations of project description

- The development has included an incomplete section of the cycleway or path way and it is unclear if this is to be included.
- The cycleway / path way is not interlinked at either end and may represent a traffic safety risk or necessitate further works.
- A detailed project description, accompanied by drawings is required.
- There are discrepancies between the project description on the rEIAR and the rNIS.
- There is insufficient information to detail what has been carried out, yet to be carried out, seeking permission for retention and/ or completion.
- The length of the scheme is given as 900m although cannot be ascertained from any drawing.
- The width of the scheme is not given although estimated to be 6-7m which leads to an area greater than the quoted 0.318ha which has been infilled and is seeking retention along the carriage way.
- The details of the lands and wetlands that were infilled and are to be restored and reinstated as wetlands is unclear.
- There are discrepancies between figures in the ecological reports prepared in March 2016 (Figures 2& 3, mapped areas of 'spoil and bare ground' and



Table 1 of the Wetlands Survey) and those in the submitted rEIAR and rNIS in 2018.

- It is also noted what appears to be recent infilling in a number of locations from Goggle Earth, 24/03/17, which is in the rEIAR and the rNIS, and post-dates the main ecological surveys carried out.

#### Cumulative/ in combination effects

- Linkages between the proposed development and the Cliffs of Moher development and Wild Atlantic Way are identified in the rEIAR but not examined in detail.
- Other projects in the vicinity, coastal protection works, including the recent strengthening and repair works, and improved access to the beach between O'Briens Bridge and Lahnich, in and adjacent to Inagh River Estuary SAC also merit consideration.
- These in combination effects are not addressed in the rNIS.

#### Limitations of ecological Surveys

- There are limitations to ecological information submitted and all habitat and vegetation surveys where carried out at suboptimal times.
- Despite the suboptimal timings there was widespread occurrence of wetlands recorded and brackish elements or saline influences.
- Winter bird surveys where carried on 22/02/17 and 07/02/18 although the results are not presented.
- Restoration and rehabilitation should not cause disturbance for breeding birds.
- No breeding bird survey is carried out.
- There is some unsubstantiated text in the rEIAR about the presence of Annex 1 habitats. The presence is unlikely although would require surveys during the plant season with necessary scientific analysis and justifications to reach definitive conclusions.
- No surveys of invertebrates where carried out.

## Wetlands Restoration

- There are some mixed and inconsistent recommendations in the different reports as to how restoration should be achieved after infilling has been removed.
- It is recommended that cleared areas (where infilling has been removed) should be allowed to regenerate naturally and be protected from grazing livestock in the first growing season.
- Ecological monitoring of restoration is required and monitoring of recovery after 6 years.
- Monitoring of birds is required although the baseline is limited.

### 5.1. **Third Party Observations**

None received.

## 6.0 **Planning History**

### **LS03.LS0029**

Application for Leave to Apply for Substitute Consent under the provisions of Section 177C (2)(b) of the Planning and Development Act, as amended, granted for Road widening at the R478 and the removal of waste and holding of waste on adjacent lands.

### **RL.03.RL3359**

An Tasice referred a question to the Board in accordance with Section 5 of the Planning and Development Act, 2000, in respect of these lands. The Board concluded that the infilling/reclamation of land adjacent to the R478 between Lahinch and Liscannor, Co Clare (and adjacent to the Inagh River Estuary Special Area of Conservation Site Code 000036) is development and is not exempted development.

## 7.0 Policy Context

### 7.1. National Policy

National Cycle Network Scoping Study- Smarter Travel

Guidance for Planning Authorities on Drainage and Reclamation of Wetlands (Draft) 2011

Guidelines for Planning Authorities and An Bord Pleanála on carrying out Environmental Impact Assessment (DoHPLG, 2018).

Guidance on Appropriate Assessment for Planning Authorities (DoEHLG (2009)

Guidelines on Procedures for Assessment and Treatment of Geology, Hydrology and Hydrogeology for National Road Schemes (NRA)

Guidelines on Protection of Fisheries during Construction works in and adjacent to Waters (Inland Fisheries Ireland, 2016)

### 7.2. Clare County Development Plan 2017-2023

The site is located on lands designated as “*Rural Areas under Strong Urban Pressure*”.

#### Infrastructure

##### **Section 9.3.5-** Wild Atlantic Way

**CDP 8.5-** It is an objective to upgrade and improve, where necessary, the Regional Roads in the County as outlined in Table 8.1 and Table 8.2.

##### **Table 8.1-** Strategic Regional Roads

R478 Lahnich to Lisdoonvarna

##### **Table 8.2** Proposed projects identified for future projects

R478 not included in proposed projects.

**CDP 8.6-** It is an objective to provide and/or facilitate the projects identified in Table 8.2 where necessary, and to ensure that such road infrastructure is designed and constructed to fulfil its intended purpose;

##### **Section 8.2.9** Cycling and Walking

**CDP 8.1-** It is an objective to support the development and enhancement of long-distance cycling routes in County Clare, in accordance with the National Cycle Network Scoping Study 2010.

#### Wetlands

**CDP 8.22** – It is an objective ensure that developments that would have an unacceptable impact on water resources, including surface water and groundwater quality and quantity, designated sources protection areas, coastal and transitional waters, river corridors and associated wetlands are not permitted.

#### **Section 14.3.18** Wetlands

The County Clare Wetlands Survey (2008) identified wetlands within the county.

**CDP 14.19-** It is an objective to manage, enhance and protect the wetlands in County Clare having regard to the ‘County Clare Wetlands Survey (2008)’, the ‘Planning and Development Regulations 2001 (as amended)’ and ‘Drainage and Reclamation of Wetlands – Draft Guidelines for Planning Authorities, 2011’ and any subsequent guidance documents.

#### Landscape

The site is located in landscape character area 3- Cliffs of Moher and Lahinch.

Scenic Route Map Reference 13A- Landscape Designations include the road as a Scenic Route.

**CDP 13.5** requires all development to minimise visibility from scenic routes, trails etc. to reduce visual impact.

### 7.3. **Natural Heritage Designations**

The site is located adjacent to the Inagh River Estuary SAC (side code 00036) and 5.2km to the east of the Cliff of Moher SPA (004005).

## 8.0 Further Information

Further information was requested by An Bord Pleanála on 19<sup>th</sup> of October 2018 on a range of issues as summarised below:

- Additional drawings and details to distinguish between the remedial and proposed works and detailed topography drawings for the entire site.
- Reference to the DoCHG comments on wintering bird surveys, in particular no breeding birds surveys were carried out on the Heron, Little Egret and Mallard.
- Inclusion of other plans and projects and the cumulative impact on any features of interest in the Inagh Estuary SAC.
- Additional information within the rEIAR required the following:
  - Identification of any additional areas of wetland which will be filled as part of the overall development proposal (Section 5.4.12).
  - Information on sedimentation of areas and the remediation works undertaken.
  - Detail of drainage ditches and the re-establishment of those within the overall scheme.
- Inclusion of a statement of significant effects, if any, which occur or are expected to occur on the European Site and the period of time which the proposed remedial or mitigation measures shall be carried out on or behalf of the applicant. This shall be included in both the rNIS and the rEIAR.

### 8.1. Submission by the Local Authority.

A response to the further information was submitted to the Board on the 27<sup>th</sup> of March 2019 by an agent on behalf of the Local Authority and includes the following:

- Plans and particulars detailing the road realignment for retention, the infill locations, the proposed wall and cycle path, typical sections and contractors compounds.
- Updated rEIAR and rNIS including areas of land subject to infill and columns of areas to be removed.

- Submission of winter bird surveys.
- Updated rEIAR and rNIS to include in-combination and cumulative impacts.
- Details of limitations of ecological surveys including the presence of species and habitats under the infill, presence of breeding birds and the use of the precautionary principle.
- Review of the re- establishment plan and establishment of baseline information for monitoring and the use of avoidance and compensatory measures.

## 8.2. Further Response

1. A submission on the further information was received by the Department of Culture, Heritage and the Gaeltacht (DoCHG) and the issues raised have been summarised below:

### Nature Conservation

- It is noted that the proposed development relates to the retention of works already in place and the permission for other elements including the removal of infill and the re-establishment of wetlands.
- It has been confirmed that all infill areas will be subject to mitigation and rehabilitation so that the original pre-fill conditions are reinstated.
- The cycle lane will not be interlinked to any cycle lanes on either side.
- The rEIAR, the rNIS and the *“Preliminary Construction and Environmental Plan”* have been updated whilst the document *“Re-establishment Plan for Wetlands at Ballyellery”* has not.
- It is requested that any inconsistencies and uncertainties are addressed by condition.
- Consideration should be given to making monitoring data and reports available.
- Details on lands/ wetlands that are infilled or are to be restored and re-established have been clarified ( Drwg 006; 2017s5564-006 pl.dwg).

- No information has been provided as to the disposal or recovery of the fill material.
- All integral parts and associated impacts of the final development should be included in the environmental assessments and covered by the project, as appropriate.

#### Limitations of ecological surveys.

- There are some limitations within the submitted ecological information.
- All habitat and vegetation surveys were carried out at sub-optimal times i.e. 02/12/15 (initial wetland surveys), 14/03/16 (aquatic habitat appraisal) 22/02/17 (rEIAR ecological surveys).
- There have been no subsequent updates to better reflect the baseline conditions of the site during the growing season.
- Additional bird surveys were carried out at three roadside locations in December 2018 and January and February 2019 as available in Appendix 7 (rEIAR vol. 3).
- No breeding bird surveys have been carried out meaning the basis for future monitoring is poorly established.
- Restoration or rehabilitation works should be timed to avoid disturbance of breeding birds and should not cause disturbance to wintering populations.

#### Wetland Restoration

- The removal of infill and restoration of functioning wetlands is a desired outcome.
- The re-establishment plan submitted should be implemented.
- All restoration works should be supervised by a qualified Ecological Clerk of Works (ECoW) who should have the powers to make decisions in inconsistencies between the reports and works on site.
- It is recommended that all cleared areas (infill has been removed) should be allowed to regenerate naturally and protected from grazing livestock in the first growing season.

- Aftercare and ecological monitoring of the restoration works are required and should be undertaken as set out i.e. for six years.
- Consideration should be given to making monitoring data and reports available.
- The baseline information on vegetation, habitats and birds is limited at present and does not suffice as a basis for future monitoring.

2. The submission from Department of Culture, Heritage and the Gaeltacht was circulated to the Local Authority for comment. A response was received from an agent on behalf of the LA as summarised below:

- The document “Re-establishment Plan for Wetlands at Ballyellery, Co. Clare” was updated in May 2019.
- Section 3, sub-section 3.1.2 (Stage 2) of the re-establishment report includes a destination for the removed infill material which will be brought to a permitted/ licenced waste disposal/recovery facility.
- Figure 5.1 of the rEIAR illustrates 4 sampling locations A, B, C and D and many counts where undertaken at mid-tide during the 08<sup>th</sup> of Feb 2019 which represents the worst case scenario with strong winds. Birds using the estuary were counted at Location D.
- Bird surveys found the dominant bird species was Lapwing, Curlew, Mallard, Teal, Oystercatcher and Egret. The northern site boundary was frequently used for feeding. The areas around C was used by Curlew and Lapwing. High numbers of grey plover were recorded strong the January sampling event.
- The rEIAR and rNIS highlight that mitigation measures are included to ensure the birds are not disturbed and further measures are not required. These are detailed in Section 5.6 of the rEIAR.
- Section 2.1.2 of the Preliminary Construction and Environmental Management Plan mentions the role of the Ecological Clerk of Works.
- The aftercare and monitoring of the restored areas is proposed for 6 years.
- In relation to the limitations on vegetative data, it is noted that once the deposit material is removed from the site there will be bare soil. The ECoW



will record the natural re-vegetation of these patches of ground. The remainder of the site will remain and natural succession of vegetation will reoccur. There will be no excavations carried out on other areas of the site.

## 9.0 **Legislative Provisions**

- 9.1. Part XA of the Planning and Development Act 2000 (as amended) specifically deals with substitute consent applications.
- 9.2. Section 177K(2) states that when making its decision in relation to an application for substitute consent, the Board shall consider the proper planning and sustainable development of the area having regard to the following matters:
- (a) The provisions of the development plan and any local area plan for the area.
  - (b) The provisions of any special amenity area order relating to the area.
  - (c) The remedial environmental impact statement or remedial Natura Impact Statement or both of these statements as the case may be, submitted with the application.
  - (d) The significant effects on the environment or on a European site, which have occurred or which are occurring or could reasonably be expected to occur because the development concerned was carried out.
  - (e) The report and opinion of the Planning Authority under Section 177L.
  - (f) Any submissions or observations made to it in accordance with the Regulations made under Section 177N.
  - (g) Any report or recommendation prepared in relation to the application on or behalf by the Board including the report of the person conducting any oral hearing on behalf of the Board.
  - (h) If the area or part of the area is in a European site or an area prescribed for the purposes of Section 10(2)(c).
  - (i) Conditions that may be imposed in relation to a grant of planning permission under Section 34(4).
  - (j) The matters referred to in Section 143 of the Act.

- (k) The views of a member state where the member state is notified in accordance with the regulations under this Act.
- (l) Any relevant provisions of this Act and Regulations made thereunder.

## 10.0 Assessment

10.1. The Substitute Consent application is submitted, on foot of a Leave to Apply for Substitute Consent (LS03.LS0029) by an Bord Pleanála on the 01<sup>st</sup> of June 2018 and was accompanied by the following:

- Plans and particulars,
- Non-technical summary of the proposal,
- Assessment of Impacts on Wetland Habitat “Contouring and Infilling of Lands at Ballyellery;
- Remedial Environmental Impact Assessment Report (rEIAR)
- Remedial Natural Impact Statement (rNIS).

One submission was received from the DoCHG and An Bord Pleanála requested the submission of additional information from Claire County Council on the 18<sup>th</sup> of October 2018, regarding bird surveys, topography surveys, assessment of cumulative impacts, additional plans to support proposed works detailed in the rEIAR and the submission of a statement of significant effects on any European Site.

10.2. A submission on the further information request was received on the 27<sup>th</sup> of March 2019 which included updated drawings, rNIS and rEIAR. This information was recirculated to the DoCHG and further responses were received. The following assessment has regard to the additional information.

10.3. The main issues of the appeal can be dealt with under the following headings:

- Development Description
- Proper Planning and Sustainable Development.
- Environmental Impact Assessment
- Appropriate Assessment

## Development Description

10.4. The subject site is c. 13ha, includes road frontage of 0.9km onto the R478. For the purposes of the application and proposed development the site has been split into 4 sections, A-C, which have already been subjected to infill for both widening the road, by Clare County Council, and fill of wetlands by the land owner. It is estimated that 425m<sup>3</sup> of waste was deposited in Area A, used as a set down during the construction of the road. No materials were imported to B, C or D although it is estimated the c. 1,800m<sup>3</sup> of topsoil and subsoil was excavated and used to re-contour the different parts of the site including Areas B, C and D.

10.5. For the purpose of this assessment I consider the proposed development would comprise of 3 main sections as summarised below and detailed in Section 10.6-10.8:

- The retention and completion of upgrade of the R478, along the west of the site;
- the removal of the unauthorised fill, waste removal and re-contouring; and
- the re-establishment of the wetlands.

10.6. Retention and Upgrade of the R478.

A typical cross section plan of the road illustrates a 7m wide carriage way, 3m wide footpath and wall along the north of the road comprising of:

- Construction 1.2m foundation for the retention and completion of 700m of double sided natural stone wall with associated entrance gates,
- Retention and completion of 3m wide cycle lane along the north of the road,
- Provision of one line of electric fence 1m inside the wall,
- Topsoil and reseed of roadway embankments,
- Level and compact sub base of the footpath,
- Overlay footpath with 400mm of macadam,
- Remove existing temporary fence.

10.7. Removal of Infill, Waste Removal and Re-contouring

It is estimated that approximately 1,800m<sup>3</sup> of topsoil was excavated and used to contour different areas of the site of which 1,200m<sup>3</sup> of this was used for A, C and D

as detailed below, the remainder was used for the road widening works. Figure 1 below, provides a breakdown of the areas which have been infilled, taken from Table 2.1 of the rNIS and Section 2.4 of the rEIAR.

Figure 1: Description of areas, habitat loss and the quantities of material moved within the site.

<b>Area</b> <b>(ha)</b>	<b>Description of habitats (Table 2.1 of the RNIS)</b>	<b>Material</b>	<b>Volume (m<sup>3</sup>)</b>
<b>A</b> 0.4	Material imported to accommodate compound area with infill estimated at 0.5m in depth.  Materials derived from storm waste at Liscannor.  Some soil, stone and concrete products etc. pipes  c. 1.0 habitat loss	Subsoil	330
		Topsoil	190
<b>B</b> 0.62	Infilled with material excavated during the construction of the road upgrade.  Grassed and returned to agricultural use.  c. 0.4 habitat lost	Subsoil	220
		Topsoil	350
<b>C</b> 1.44	Infill spread, depth 0.5m, stockpiles remain on the site.  c. 0.4 ha of wet grassland and freshwater saltmarsh lost.	Subsoil	0
		Topsoil	200
<b>D</b> 0.11	Mound of stockpile of material estimated depth 0.5m.  c. 1.0 ha of freshwater, marsh and wetland lost.	Subsoil	0
		Topsoil	0

Both the rEIAR and the rNIS state that much of the material in Area A was not imported by the Council (c. 520m<sup>3</sup>) and is describe it as construction and demolition waste. The plans and particulars with the further information indicate a stockpile height of c.3m at Area A, greater than the stated height as per above, in the rEIAR.

## 10.8. Re-establishment of the wetlands

Appendix 1 of the rEIAR “*Contouring and infilling of lands at Ballyellery. Assessment if impacts on wetland habitat*” and Appendix 2 of “*Contouring and infilling of Lands at Ballyellery. Assessment of the impacts on the Laghvalley Stream*” both included detailed analysis of the works undertaken on the site. Topographical surveys submitted as part of the further information illustrate the most significant removal of waste from Area A (c. 3 m in height) with the removal of stockpiled topsoil from the remaining areas C, D and B c. 250mm – 300mm.

The main stages involved for the re-establishment of the wetlands include:

1. Place rumble strips at entrances and erection of silt curtain and small earth berm around working areas.
2. Removal of topsoil from away from Laghvalley Stream.
3. Topsoil and infill material stripped at four areas and removed off-site to a licenced waste facility.
4. Weekly water sampling.
5. Raking natural soil to encourage natural recolonization supplemented with seed sowing and implementation of surface water run-off control mechanisms.
6. Planting of the re-established area with wetland mix sourced from a supplier providing native wetland species.
7. On-going management of planted wetland.

### **Proper Planning and Sustainable Development**

10.9. The site is within an area designated as a Rural Area under Strong Urban influence in the Clare County Development Plan 2017-2023. The proposed development will upgrade the R478, connecting Lahinch to the Cliffs of Moher permitting additional tourist buses. The road is classified as a scenic route in the development plan. The cycle path which radiates along the side of the road does not extend outside the site boundary, nor are there any proposals by the LA to extend this cycle way in either direction. Further details of in combination impacts on the surrounding area are addressed in both the rEIA and the rNIS, with the upgrade of sea defence walls at Lahinch currently underway.

10.10. Having regard to the scale of the works, I am satisfied that the proposed development is generally in accordance with the policies and objectives of the Development Plan and that it will not give rise to significant adverse impacts on the amenities of the area. Accordingly, I consider that the development accords with the proper planning and sustainable development of the area.

### **Environmental Impact Assessment**

10.11. A remedial Environmental Impact Statement and non-technical summary, prepared by JBA Consulting, accompanied the application. An overview of the information contained within rEIAR is summarised above in Section 4.0. I have carried out an examination of the information presented by the applicant, including the remedial EIAR, and the submissions made during the course of the application. A summary of the results of the submissions made by the planning authority and DoCHG has been set out at previously in this report. The main issues raised specific to EIA can be summarised as follows:

- Limitations of the ecological baseline data and potential for habitats and species on the site.
- Potential impact on the surface water quality and the Inagh Estuary SAC.

These issues are addressed below under the relevant headings, and as appropriate in the reasoned conclusion and recommendation, including conditions.

I am satisfied that the remedial EIAR has been prepared by competent experts to ensure its completeness and quality, and that the information contained in the remedial EIAR and supplementary information provided by the developer, adequately identifies and describes the direct, indirect and cumulative effects of the proposed development on the environment and complies with article 94 of the Planning and Development Regulations 2000, as amended.

10.12. In accordance with the EIA Directive I have included an assessment of the direct and indirect effects of the proposed development on the following:

- a) Population and Human Health
- b) Biodiversity
- c) Land, soil, water, air and climate

- d) Material assets, cultural heritage and the landscape,
- e) The interaction between the factors above.

### Population and Human Health

10.13. The potential impacts of the proposed development on population and human health relate to the impact on land use and changes to socio economic circumstances. In the short term, during construction, the works will provide employment leading to an indirect positive impact. During construction, traffic management measures will be in place and permitted noise levels at the façade of the adjoining dwellings (nearest c. 500m) will be between 60-70 LAeq (1hr). Section 2.2 of the Construction and Environment and Management Plan (CEMP) states it is estimated that the road works will take between 2 months and 1 year whilst the re-establishment of the wetland will take up to 5 years. Noise levels of works adjacent to sensitive noise receptors (dwellings) are generally restricted to 55 dB(A) and having regard to the location of the adjoining dwellings within the vicinity of the site, I consider it reasonable to include a condition restricting the levels on any grant of permission.

In the long term the removal of waste fill and re-contouring of the lands for the reestablishment of the wetlands will not change the land use or the economics of the community. The works to the R478 will not alter the land use of the site in so far as it can no longer be used as a road although it will provide and upgrade and provision of a cycle lane which can promote cycling, albeit on a restricted route. The provision of a cycle route will provide a positive impact on human health.

### Biodiversity

10.14. Ecological walkover surveys were conducted during February 2017 and wintering bird surveys, requested as additional information, were undertaken during the winter period 2018/2019.

Limitations of the ecological surveys are on the baseline data which is unknown before the infilling took place. The use of the precautionary principle and the presence of indicator species and the physiological features on the site meant that the presence of potential presence of Annex I or Annex II habitats or species, occurring before the infilling took place, could not be ruled out, although none were recorded on site.

The key issues relating to the biodiversity on the site are summarised below:

- The area includes wetland habitats with a mosaic of grassland and infill following significant modification over time.
- It is estimated that 2.8ha of both wet grassland (1.8ha) and freshwater marsh (1ha) have been lost.
- Otters were not identified on the site although desktop surveys indicate their likely occurrence as opposed to presence.
- The presence of non-native species was not evident although it is possible it remains on the site within the imported fill.
- The presence of the Marsh Fritillary was not identified although it has been recorded in the vicinity of the site and the habitats previously on site would have potentially supported these species.
- The presence of Narrow-mouthed Whorl Snail was not found although habitat requirements are specific and are often found on the edges of wetlands near the coast, similar to the subject site.
- The Inagh River and Laghvally stream have a high ecological value for the potential for Eel, Salmon and Sea Trout.
- The wintering bird survey identified a wide range of bird species which feed and rest on the site, mainly Curlew and Lapwing, although Herring Gull and Oystercatcher also frequented the site.
- Mallard and Teal were found in the west areas whilst Snipe and Little Egret were found in smaller numbers.

Potential Impact:

- The infilling and contouring of the site has a direct impact on the loss of wetland and the re-establishment will have a positive impact on the habitats.
- Sedimentation from waste removal will cause a moderate negative impact on water dependant habitats listed in the qualifying criteria of the Inagh River Estuary SAC, in the absence of mitigation.
- Construction and use of the site for agricultural purposes will cause disturbance to feeding and breeding birds.



- The removal of fill will have a significant positive impact on the biodiversity on the site.

Mitigation Measures:

- Specific planting in the seed mix is required to re-establish the Whorl Snail.
- The reintroduction of Devils Bit Scabious in any proposed planting to support the Marsh Fritillary.
- Construction works will not be undertaken during the wintering period to prevent disturbance on any breeding bird species.
- Silt curtains above and below ground levels will prevent sedimentation of watercourse.
- Environmental considerations within the construction work practices, listed in the Construction Environmental Management Plan (CEMP) such as the location of the compound, spillages, bio-security measures etc.).

Conclude:

The submission from the DoCHG, references the lack of baseline data and the limitations of the ecological information. It stated the restoration of the site, including the use of lands for grazing, should avoid disturbance to breeding birds. Additional wintering bird surveys were undertaken following a request for further information with no breeding birds recorded. It is proposed to undertake works outside winter season to avoid any significant impact on breeding or wintering birds, which I consider reasonable.

The restrictions and limitations of baseline ecological information are acknowledged and I consider the remedial EIA report has identified those species which would normally be present on species typical to a wetland site along the coast. I consider the removal of fill, re-establishment of the wetlands and the mitigation measures listed, including appropriate planting, will provide an environment specific to support those habitats and species which would normally be found at this location. I note Areas A- D will be fenced for one year prior to the re-establishment although the DoCHG requires a restriction of grazing on the site until after the first growing season to support breeding birds and a condition can be attached to any grant of permission. The re-establishment of wetlands is detailed in stages and will include yearly monitoring report. Section 3 of the wetlands re-establishment plan (Appendix

B) includes mitigation measures and plant mix which will support biodiversity and any grant of permission should include a condition requiring monitoring data to be available for the public. The re-establishment of wetlands will lead to a significant long-term direct positive impact on the site and supporting environment.

Land, soil, water, air and climate

10.15. Land & Soil: The groundwater classification for the Mal Bay Catchment is good and the near surface nitrate susceptibility for the groundwater is very high. A source-pathway – feature has been identified as the Laghvally Stream which flows into the Inagh River and into the estuary.

Potential Impact:

- The main risk from cut and fill include leaks from hydrocarbons, increase surface run-off, sediment loading and dust emissions.
- The impacts will be significant although the re-establishment of the wetlands will be significant, and remedial work will have a positive long term impact on the site.
- The use of construction machinery on compacted topsoil/ subsoil will have a short term negative impact.

Mitigation Measures:

- The use of a licenced waste facility to dispose of the waste material.
- Use of siltation curtains buried 0.5m and 0.5m high.

Conclude:

I consider the potential risk to land & soil from the removal of the soil can be reduced through stringent construction management practices as detailed in both the remedial EIA and the CEMP. These mitigation measures are relevant to the control of significant negative impacts from the re-establishment of the wetlands. An Ecological Clerk of Works (ECoW) will be employed for the duration of the construction.

10.16. Water: The main hydrological features on the site include the Laghvally stream a tributary of the Inagh River which flows into the Inagh River Estuary, both have a high ecological value. EPA identify water quality as good with the main threats

defined as anthropogenic. Rock is defined as a Locally Important Bedrock and the GSI groundwater vulnerability for the site varies from high to low and the near surface nitrate susceptibility is very high, the sub surface is low, which suggests that nitrates can be transported through soils overland and less through groundwater. An assessment carried out by Hydro Environmental Services (2016) contained in Appendix 3 of the rEIA report, “*Contouring and Infilling of Lands at Ballyellery. Assessment of Impacts on hydrogeology*” suggested that the infill on the site would have little consequence to flood attenuation volume and stated the groundwater pathway is of low concern as the contribution to flow (volume) into the SAC is negligible and the sand is not deemed transmit sediment. This report informs the information contained in the rEIA, which I consider reasonable and I consider the main pathway for any contamination is via the surface water.

Potential Impact:

Figure 2: Likely impact on hydrology from removal of waste at each of the four areas and re-establishment of site.

<i>Area</i>	<i>Description</i>	<i>Impact</i>
<i>ha</i>		
<i>A</i> 0.4	Overburden thickness is between 3-10m <0.5m of fill was deposited Finer silt material will settle in a drainage ditch before meeting Laghvally Stream	Imperceptible
<i>B</i> 0.62	Excavate and remove fill and re-establish wetland. Suspended solids likely into Laghvally Stream Tidal movements from the Inagh Estuary will inundate the lower section and increase the suspended solids in the river.	Significant and temporary.
<i>C</i> 1.44	Recreate an elevated hill and wetland, by excavating and stockpiling. Silt laden runoff into Laghvally Stream, heavier deposits closer to the site	Significant impact on the stream from silt.
<i>D</i> 0.11	A mound of stockpiled vegetation has re-vegetated, Depth is c. 0.5m, area c. 0.11ha The site is located 22m from an arterial drain	Significant impact form spill

Significant possible impact on the Estuary from diesel spill due to location beside the Laghvally Stream

#### Mitigation Measures:

- Use of siltation curtains buried 0.5m and 0.5m high.
- Environmental considerations within the proposed works practices, listed in the Construction Environmental Management Plan (CEMP) such as the location of the compound, spillages, bio-security measures etc.).

#### Conclude:

The subject site has been highly modified over time with man-made drains and having regard to the location of Laghvally Stream and the distance from the Estuary, I consider the greatest impact from the proposed works relate to the presence of suspended solids, dissolved nutrient or other soluble pollutants in watercourses from run-off from infilled areas. The biological sampling downstream indicates moderate pollution and whilst the reason for this is unexplained, there remains a possibility the waste disposal on the site has increased water pollution. The most significant deposit of construction waste is at Area A west of the site. Having regard to those mitigation measures relating to the minimisation of suspended solids entering the surface water via the use of siltation curtains around the areas adjacent to the stream (B & C) I consider the impact on the hydrology, (stream, river, estuary) through sedimentation and suspended solids release will not be a significant direct long-term impact. In the event of any levels of suspended solids exceeding 30 mg/l downstream, monitored by the ECoW, works will cease and the methods of construction revised. I consider this a reasonable mitigation to prevent a significant negative impact on the water quality and can be reasonably conditioned.

10.17. Air and Climate: The site is located along a busy R478, used for tourism traffic along the Wild Atlantic Way and access to the Cliffs of Moher. The proposed works will allow two way traffic to pass. The works to the road would increase the amount of stones/ gravels being deposited on the site leading to more air borne particles. The removal of waste from the site will all increase air borne particles where the greatest impact relates to levels of dust which is a road nuisance. This is a short term minor

impact and a road sweeper will be used during periods of extended dry weather. The re-establishment of the wetlands will be a long term positive impact on the climate.

Material assets, cultural heritage and the landscape

10.18. Material Assets & Cultural Heritage: The upgrade of the road and extension of the cycle path will lead to the enhancement of the Wild Atlantic Way for tourist, as stated above this upgrade may lead to increase in traffic volume. There are no national monuments in the vicinity of the site and O' Brien's Bridge and Birchfield House Estate are the closest protected structures. Both protected structures are outside the site and will not be impacted by any of the proposed development.

10.19. Landscape and Visual: The site is located along the coastline, within Landscape Character Area: No 3- Cliffs of Moher and Lahinch and the Seascape Character No.4- Liscannor Bay and the R478 is designated as a Scenic route in the development plan. The proposal to remove the large stockpiled waste and soil in Areas A- D will have a long-term positive impact on the character of the area. The construction works will have a short term negative impact on the visual amenity due to stockpiling of soil for the reestablishment of wetlands.

Conclude:

No mitigation measures are proposed as the upgrade of the road, removal of waste and re-establishment of the wetlands will have a positive long-term impact on the visual landscape of the area and having regard to the absence of any sites of archaeological or cultural interest within the vicinity of the site.

**10.20. Reasoned Conclusion on Significant Effects**

Having regard to the examination of the environmental information contained above, and in particular to the remedial EIAR and supplementary information provided by the applicant at Further Information stage, and the submission from the prescribed body, it is considered that the main significant direct and indirect effects of the proposed development on the environment are as follows:

- **Population and Human Health:** These impacts on population and human health are substantially avoided by the limited number of sensitive receptors in close proximity to the site and mitigation measures including environmentally conscious construction management practices.

- **Biodiversity:** There is a significant absence of ecological data on the site and the impact of previous works on habitats and species. There will be a continued disturbance during construction and works will be restricted outside winter to prevent any impact on wintering birds. Impacts on biodiversity will be mitigated mainly through the re-establishment of wetlands, mitigation measures outlined in the Construction and Environmental Management Plan, the remedial Environmental Impact Report and the appointment of a Project Ecologist.
- **Lands, Soil, Water, Air and Climate:** Inappropriate handling of waste and stockpiling of soil could increase suspended solids and sedimentation in streams with a direct impact on water quality and those habitats in the watercourses. Mitigation measures are detailed for the removal of waste and re-establishment of the wetlands in Section 4 of the preliminary Construction and Environmental Management Plan, Section 3 of the Reestablishment Plan for the wetlands and Section 6 of the remedial Natura Impact Report. Specific mitigation measures relating to the management of suspended solids are included.
- **Material Assets, Cultural Assets and Landscape:** Localised visual impact from waste fill along the R478, and on local properties therein, of the development will be removed leading to a long-term positive impact on the surrounding area.

Notwithstanding the concerns raised in the submission by the Department of Culture Heritage and the Gaeltacht, relating to the absence of significant ecological baseline data, it is considered that the proposed works, included the removal of waste and the re-establishment of wetlands, and those mitigation measures involving specific planting, will provide an appropriate environment to support the re-establishment of species which have potentially been impacted by previous fill on the site.

### **Appropriate Assessment**

10.21. The site is located adjacent to the Inagh River Estuary SAC (side code 00036) and 5.2km to the east of the Cliff of Moher SPA (site code 004005). The application was accompanied by remedial Natura Impact Statement (rNIS) which reasonably concludes in my view, that these two European Sites, given their proximity to the site

and the nature of the works undertaken on site for which substitute consent is sought, are the most likely Natura 2000 sites which could be potentially affected by the development undertaken. The r NIS only takes the Inagh River Estuary into the assessment as potential impact to all other sites, including the Cliffs of Moher SPA, are excluded. The proposed development is not linked to the management of either European Site.

10.22. The following habitats are listed as features of interest for the Inagh River Estuary SAC (side code 00036).

- Salicornia and other annuals colonising mud and sand [1310]
- Atlantic salt meadows (*Glauco-Puccinellietalia maritima*) [1330]
- Mediterranean salt meadows (*Juncetalia maritimi*) [1410]
- Shifting dunes along the shoreline with *Ammophila arenaria* (white dunes) [2120]
- Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]

10.23. The following species are listed as features of interest for the Cliffs of Moher SPA (site code 004005).

- Fulmar (*Fulmarus glacialis*) [A009]
- Kittiwake (*Rissa tridactyla*) [A188]
- Guillemot (*Uria aalge*) [A199]
- Razorbill (*Alca torda*) [A200]
- Puffin (*Fratercula arctica*) [A204]
- Chough (*Pyrrhocorax pyrrhocorax*) [A346]

10.24. Potential impact: The bird survey, submitted as part of the further information, did not record any of those bird species listed as features of interest of the Cliffs of Moher SPA within the site, nor any of the national data presented in Appendix C of the rNIR. The potential for significant impacts on the Conservation Objectives of the SPA site have been ruled out. Based on the scientific information presented I concur with the applicants conclusion that there a no likely significant effects to the SPA due to the proposed works.

Table 6.1 of the rNIR includes an “Impact evaluation table for Inagh River Estuary SAC” and having regard to the distance of the site from the Inagh River Estuary SAC and the presence of a hydrological connection, via the Laghvally Stream which borders the north of the subject site, and those water dependant habitats listed as features of interest, I consider the most significant potential impacts associated with the proposed development are:

- Sedimentation and surface and groundwater contamination.
- Introduction of pollutants and indirect water quality pollutants

The identification of other cumulative and in-combination impacts include:

- Increase in tourism, use of the beach and the associated dunes
- Coastal protection works between O-Brien’s Bridge and Lahinch,

The rNIS determined that considering the scale of the works of those other projects in the vicinity, the in-combination impact would not be significant to have negative impact on the Inagh River SAC, which I consider reasonable.

10.25. Mitigation measures: Section 6 of the rNIS includes a list of remedial and mitigation measures to address the potential impact of the works on the SAC and include the control of sedimentation through the use of silt curtains and impermeable membranes, minimising stockpiles, the employment of an Ecological Clerk of Works (ECoW) for the duration of the remedial measures. In addition, good construction methods are listed as mitigation for preventing surface and ground water contamination. A condition requiring the use of silt curtains and impermeable membrane around all construction works will ensure sufficient protection of water quality within the site and in the vicinity. The duration of the works are expected to take between 6 weeks and 2 months and will not occur during the winter months.

10.26. Further to the above, I consider that the remedial NIS submitted provides an adequate analysis of the potential impact arising from the works and activity which is being undertaken on the subject site. In summary, the integrity of the site could be indirectly affected by the proposal through changes to water turbidity and water quality affecting aquatic habitats and species from suspended solids, pollutants and nutrient release. However, those mitigation measures integrated into the proposal will ensure potential no significant residual impacts. On this basis I consider it



reasonable to conclude on foot of the information contained on file and specifically in the remedial Natura Impact Statement, which I consider adequate in order to carry out a screening and a Stage 2 Appropriate Assessment, that the proposed development individually or in combination with other plans or projects would not adversely affect the integrity of the Inagh River Estuary SAC (00036) or the Cliffs of Moher SPA (004005) or any other European Site in view of the site's conservation objectives.

## 11.0 Recommendation

Approve, subject to conditions, the proposed development based on the reasons and considerations set out below.

### 11.1. Reasons and Considerations

In coming to my decision, I have had regard to the following:

a) EU legislation including in particular:

- The relevant provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU (EIA Directive) on the assessment of the effects of certain public and private projects on the environment,
- Directive 92/43/EEC (Habitats Directive) and Directive 79/409/EEC as amended by 2009/147/EC (Birds Directives) which set the requirements for Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union.

b) National Legislation including in particular:

- Section 175 of the Planning and Development Act 2000 (as amended) which sets out the provisions in relation to local authority projects which are subject to Environmental Impact Assessment (EIA).

c) Local Planning Policy including in particular:

- The provisions of the Clare County Development Plan 2017-2023.

d) The following matters:

- The planning history on the site,

- the nature, scale and design of the proposed works as set out in the application for approval and the pattern of development in the vicinity,
- the documentation and submissions of the Local Authority, including the remedial environmental impact assessment report , remedial Natural Impact Statement and associated documentation submitted with the application, and the range of mitigation and monitoring measures proposed,
- other relevant guidance documents,
- the submissions and observations made to An Bord Pleanála in connection with the application and the further submission received from the Local Authority,
- the likely consequences for the environment and the proper planning and sustainable development of the area in which it is proposed to carry out the proposed development and the likely significant effects of the proposed development on European sites.

### **Environmental Impact Assessment**

The Board completed an environmental impact assessment of the proposed development, taking into account:

- The nature, scale and extent of the proposed development;
- The remedial environmental impact assessment report and associated documentation submitted in support of the application;
- The submissions from the Planning Authority and the prescribed body in the course of the application; and
- The Inspector's report.

The Board considered that the remedial environmental impact assessment report, supported by the documentation submitted by the applicant, adequately considers alternatives to the proposed development and identifies and describes adequately the direct, indirect, secondary and cumulative effects of the proposed development on the environment.

The Board agreed with the examination, set out in the Inspector's report, of the information contained in the environmental impact assessment report and associated documentation submitted by the applicant and submissions made in the course of the application.

The Board considered, and agreed with the Inspectors reasoned conclusions, that the main significant direct and indirect effects of the proposed development on the environment are as follows:

- **Population and Human Health:** These impacts on population and human health are substantially avoided by the limited number of sensitive receptors in close proximity to the site and mitigation measures including environmentally conscious construction management practices.
- **Biodiversity:** There is a significant absence of ecological data on the site and the impact of previous works on habitats and species. There will be a continued disturbance during construction and works will be restricted outside winter to prevent any impact on wintering birds. Impact on biodiversity will be mitigated mainly through the re-establishment of wetlands, mitigation measures outlined in the Construction and Environmental Management Plan, the remedial Environmental Impact Report and the appointment of a Project Ecologist.
- **Lands, Soil, Water, Air and Climate:** Inappropriate handling of waste and stockpiling of soil could increase suspended solids and sedimentation in streams with a direct impact on water quality and those habitats in the watercourses. Mitigation measures are detailed for the removal of waste and re-establishment of the wetlands in Appendix 8.1 and the outline Construction and Environmental Management Plan. Specific mitigation measures relating to the management of hydrocarbons are included.
- **Material Assets, Cultural Assets and Landscape:** Localised visual impact from waste fill along the R478, and on local properties therein, of the development will be removed leading to a long-term positive impact on the surrounding area.

The Board concluded that, subject to the implementation of the mitigation measures set out in the remedial environmental impact assessment report and, subject to

compliance with the conditions set out below, the effects on the environment of the proposed development, by itself and in combination with other development in the vicinity, would be acceptable. In doing so, the Board adopted the report and conclusions of the Inspector.

### **Appropriate Assessment**

The Board completed an Appropriate Assessment exercise in relation to the potential effects of the proposed development on the affected Natura 2000 site, namely the Inagh River Estuary SAC (00036) and in doing so took into account the nature, scale and location of the proposed development, the remedial Natura Impact Statements submitted with the application, the submissions on file and the report of the Inspector's assessment. In completing the Appropriate Assessment, the Board adopted the report of the Inspector and concluded that the proposed development would not be likely to have a significant effect individually or in combination with other plans and projects on the environment, on the amenities of the area or on the European sites referred to. The Board concluded that the proposed scheme would not have an adverse effect on the integrity of the European sites, having regard to the Conservation Objectives for the sites.

### **CONDITIONS**

1. The proposed development shall be carried out and completed in accordance with the plans and particulars, including the remedial Ecological Impact Assessment and remedial Natural Impact Statement and other associated documentation, lodged with An Bord Pleanála on the 27<sup>th</sup> of March 2019, except as may otherwise be required in order to comply with the conditions set out below. Where any mitigation measures set out in the Ecological Impact Assessment and Natural Impact Statement or any conditions of this Approval require further details to be prepared by or on behalf of the Local Authority, these details shall be placed on the file and retained as part of the public record.

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

2. The noise level shall not exceed 55 dB(A) rated sound level at the nearest dwelling between 0800 and 2000 hours, Monday to Friday inclusive, and shall not exceed 45 dB(A) at any other time.

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

3. The Local Authority and any agent acting on its behalf shall comply with the mitigation measures and associated monitoring outlined in the plans and particulars submitted with the application, including the remedial Environmental Impact Assessment (March 2019) and remedial Natural Impact Statement (March 2018), shall be carried out in full except as may otherwise be required in order to comply with other conditions.

**Reason:** In the interest of clarity and the proper planning and sustainable development and to ensure the protection of a European site during construction.

4. Prior to commencement of development, a detailed environmental management plan for the construction and re-establishment stage shall be submitted and agreed with the Project Ecologist, generally in accordance with the proposals set out in the Environmental Impact Assessment Report. The environmental management plan shall incorporate the following:

- a) detailed plan for the construction phase incorporating, inter alia, construction programme, supervisory measures, noise management measures, construction hours, the management of construction waste, use of silt curtains and impermeable membrane around all construction works;
- b) a comprehensive programme for the implementation of all monitoring commitments made in the application and supporting documentation during the construction period and re-establishment of the wetlands;
- c) proposed procedures in the event of any levels of suspended solids exceeding 30 mg/l downstream;

d) proposals in relation to public information and presentation of monitoring information. Monitoring reports should be made available on the Council webpage and any records of species of note should be sent to the National Biodiversity Data Centre.

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

**Reason:** In the interest of environmental protection and orderly development.

5. Prior to commencement of the development, details of measures to protect fisheries and the water quality of the river systems shall be outlined and placed on file.

Full regard shall be had to the IFI's published updated guidelines for construction works near waterways (Guidelines on Protection of Fisheries during Construction Works in and Adjacent to Waters, 2016). A programme of water quality monitoring shall be prepared in consultation with the Contractor, the Local Authority and relevant statutory agencies and the programme shall be implemented thereafter.

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

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Karen Hamilton  
Planning Inspector  
27<sup>th</sup> of June 2019

## **Appendix 1**

Prescribed Bodies notified.

Department of Culture, Heritage and the Gaeltacht

Transport Infrastructure Ireland (TII)

The Heritage Council

National Transport Authority

Inland Fisheries Ireland

Development Applications Unit

Department of Communications, Climate Action and Environment

Department of Agriculture, Food and the Marine

An Taisce