



An  
Bord  
Pleanála

# Memorandum

ABP-307674-20

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**To:** Brendan Wyse, Assistant Director of Planning  
**From:** Maeve Flynn, Inspectorate Ecologist  
**Re:** ABP 307674-20  
Lower Tinnahinch Weir on the River Barrow, Tinnahinch, Co. Carlow  
**Applicant** Waterways Ireland  
**Date:** 6<sup>th</sup> May 2022

## 1.0 Introduction

Following a Board Direction dated 7<sup>th</sup> September 2021 on ABP 307674-20 the case was deferred to the Inspector to review and clarify a number of aspects related to the Appropriate Assessment of the proposed works including the incorporation of a rock ramp fish pass at the Lower Tinnahinch Weir on the River Barrow, Tinnahinch, Co. Carlow.

At the request Brendan Wyse, Assistant Director of Planning, I was asked to review the Appropriate Assessment, in particular mitigation and monitoring measures as the Planning Inspector originally appointed to the case is currently on extended leave and the issues raised are primarily ecological (date of request 22<sup>nd</sup> April 2022).

Prior to this request, I have only had a brief, informal interaction with the planning Inspector regarding this particular case related to the conservation objectives of the River Barrow and River Nore SAC and accessibility of fish species through the system as defined in the attributes and targets for relevant qualifying interest species. For the avoidance of doubt, I have not had any formal engagement in the

case and was not requested prepare a report or memo for the inspector. In this regard, I would ask the Board to disregard Reason and Consideration (i) of the Inspectors report which references the *Inspectorate Ecologists assessment* as no such assessment was provided in this instance.

For the purpose of this memorandum, I have reviewed the Inspectors report and accessed scanned copies of the application documents and Further information via eplanning.ie <https://www.eplanning.ie/CarlowCC/AppFileRefDetails/19289/0>

I note that Canoeing Ireland and others are the only 3<sup>rd</sup> party Appellant to the planning appeal, and no issues related to biodiversity or Appropriate Assessment were raised their submission.

## 2.0 **Issues examined and suggestions for consideration by the Board**

A number of issues detailed in the Inspectors report would benefit from some further detail to address/remove points of possible uncertainty. These issues are as follows:

- Design of rock ramp in relation to its suitability for lamprey species, Eel and Twaite Shad
- Post construction monitoring of the pass-ability of different fish species through the rock ramp
- Timing of in-stream works
- Invasive species
- Pre-construction survey for Otter

I have also reviewed the Planning Conditions detailed in the Inspectors report

### 2.1. **Design of rock ramp and post construction monitoring**

#### 2.1.1. Background

As detailed in the Inspectors report, a third party submission from Ecofact on the original planning application to the local Authority raised concerns regarding the

suitability of the design of the rock ramp for various species, in particular Lamprey species, European Eel and Twaite Shad.

Following a request for further information by the Local Authority, a detailed response on fisheries issues was prepared by Dr. James King, Senior Research Officer with Inland Fisheries Ireland (IFI), Waterways Ireland and consultants MKO. The response included reference to relevant scientific publications regarding the suitability of the proposed rock ramp fish pass for movements of lamprey species and European Eel and Twaite Shad and could be considered use of best available scientific information for the NIS and to inform the Appropriate Assessment. (I note that the issues were not raised in the appeal). In addition, the further information supplied by Waterways Ireland to the local Authority included hydrometric and hydromorphological modelling carried out by JBA consultants which showed the functioning of the weir and fish pass under different flow conditions.

Post construction monitoring of the fish pass has been committed to in the construction site management incorporated into the project design and also reaffirmed as part of the suite of mitigation measures (CEMP MM17). This will be undertaken by IFI in a repeat survey of an assessment they carried out in 2016 using a standard methodology to assess obstacles to fish migration WFD111

<https://www.sniffer.org.uk/Handlers/Download.ashx?IDMF=8ad81836-e172-4365-9acb-47fa8174aa06>

#### 2.1.2. Note

The post construction monitoring proposed is designed as a repeat assessment of the pre-construction survey of fish movements at Tinnahinch weir/fish pass. It will provide valuable scientific information on the accessibility of fish species above/below the weir before and after the installation of the rock ramp fish pass and the weir strengthening works. It is a standard methodology and considered best practice to provide information on the before and after scenario of movements of various fish species. The inclusion of monitoring measures does not cast doubt or uncertainty on the proposed functioning of the rock ramp fish pass, rather it is important feedback on the effectiveness of the measures. It has been committed to at the outset in the project description and throughout the documentation including the CEMP. It will be

undertaken by Inland Fisheries Ireland to confirm that the pass is working effectively for all species over a range of river flows. I do not consider that there is an additional requirement for Waterways Ireland to undertake another survey. Therefore, in relation to the Inspectors report section 9.1.46- I consider that the monitoring suggested for Waterways Ireland should be removed as the monitoring committed to by IFI as proposed by the applicant is adequate for the purpose of monitoring the rock ramp fish pass.

I recommend that the Board disregard the final sentence from section 9.1.46: Notwithstanding, I consider it prudent to include monitoring obligations on Waterways Ireland...

Based on the above I would also suggest a slight amendment to the Inspectors recommendation in 9.1.47 as follows:

In this regard, if the Board are minded to grant permission, a suitably worded condition should be attached, requiring the monitoring programme committed to by Inland Fisheries Ireland and Waterways Ireland be undertaken to confirm that the fish pass is working effectively and efficiently across the range of river flows for which the pass was designed within 2 years of completion of the works if possible and no longer than 4 years post construction. (I note that the IFI have committed to monitoring within 4 years of completion of works). Results of the monitoring should be made publicly available by Waterways Ireland.

I concur with the Inspectors overall conclusion that based on the best available scientific information, the proposed in-stream works would not prevent the achievement of the key conservation objectives of the SAC and will improve the current situation at Tinnahinch Weir.

## 2.2. **Timing of instream works**

The timing of in-stream works are included in the project description and design at the outset of both Biodiversity assessment and the NIS as well as being specified in the mitigation measures for protection of fisheries habitat. There is no uncertainty

regarding the works being undertaken within the window outside of the closed season (October 1st to June 30th) to avoid any impacts on spawning habitat.

This is standard good practice for working within rivers that are host to spawning habitat for various fish species including lamprey species and Atlantic Salmon. Prior to the onset of any in-stream works, IFI will be notified as is standard practice.

## 2.3. Invasive species

### 2.3.1. Background:

During survey, Himalayan balsam was recorded as being abundant along the river banks and within the ground flora of riparian woodland.

The presence of crayfish plague was also noted to be in the River Barrow system. Stringent biosecurity measures are detailed in section 2.2.1.5 of NIS and in the EclA and mitigation measures MM16 of CEMP to counter the further spread of crayfish plague during works.

### 2.3.2. Note:

Measures to deal with invasive species present on the site (H. balsam) are included in the construction site management incorporated into the project design and also reaffirmed in the mitigation measures which are committed to being incorporated into the CEMP for the eventual contractor. Additional measures were incorporated into the CEMP as part of further information which were noted as being accepted by the NPWS/DAU.

I note some discrepancy between the biodiversity assessment and the assessment of the NIS as reported by the Inspector however, I consider that the revised CEMP which was part of the response to further information supplied to the Local Authority addresses this issue comprehensively. (See Biodiversity Section 5.2.3.3, NIS 4.2.2.3 CEMP Mitigation Measure MM2, MM3, MM16)

From my examination of the documentation, it is only if additional invasive species to those already identified in the baseline study are found at the site (pre-construction) that additional invasive species measures would be required.

## 2.4. Otter

### 2.4.1. Background:

In 2019, a dedicated otter survey was undertaken using best practice methods. While signs of otter were recorded at the weir, no otter holt (resting/ breeding place) was found 150m of the proposed works area.

### 2.4.2. Note

It is standard practice to undertake a pre-construction survey in advance of works to check if the baseline condition may have changed, particularly if the intervening time period is over 3 years. This is to confirm the baseline scenario or manage a situation where otter may have taken up a holt closer to the works area. In the event that otters have taken up a holt area in the intervening period, measures can be taken to ensure their protection during works.

There is no uncertainty in the baseline conditions and such a pre-construction survey is in line with best practice methods for working on watercourses and the protection of Otter (NRA/TII Guidelines for the treatment of otters prior to the construction of national road schemes).

## 2.5. Conditions

Based on the clarifications provided above, I consider that a number of the original conditions in the Inspectors report should be amended if the Board are minded to grant permission for the proposed development.

I note that condition 1 appears to cover *all* the mitigation measures detailed in the documents. Therefore, any other conditions are reaffirming those measures as particularly important or are additional to that proposed by the applicant.

**Condition 4** I recommend the following amendment to the first paragraph (note condition 2 deals with the timing of works also)

Prior to the commencement of development, mitigation measures specified in the CEMP for the protection of fisheries habitat and water quality shall be submitted and

agreed with Inland Fisheries Ireland and submitted to the Planning Authority. In-channel works will only be conducted during the time frame of July- September inclusive so as to avoid the closed season and avoid impacts on fish spawning habitat. Full regard shall be had... (continue with Inspectors original suggested condition)

**Condition 6-** I recommend the following amendment:

A monitoring programme will be arranged by Waterways Ireland and carried out by Inland fisheries Ireland to ensure that the fish pass is operating effectively for all target species across the range of river flows for which the pass was designed. This will be undertaken in line with standard methodology within 2 years of the construction of the fish pass if possible and no longer than 4 years post construction. Results should be made publicly available by Waterways Ireland.

I suggest removing the reference (a) to hydraulic monitoring as this is captured in the WFD111 methodology and remove (b) as it captured in the above

**Condition 10:** I suggest removal of this condition or re-word as details on the prevention of spread of invasive species are detailed in the NIS and biodiversity assessment and in the CEMP. There is no uncertainty regarding the management of invasive species.

**Condition 11:** I suggest remove or re-word this condition and only focus on otter (no significant impact predicted for trees or any rare/protected plant species).

Suggested amendment to condition 11:

A pre-construction survey for Otter will be undertaken in advance of any works at the site to confirm the baseline and in line with best practice. In the unlikely event of an otter holt being found, measures shall be implemented to ensure the protection of this species in consultation with the National Parks and Wildlife Service.

## 2.6. Conclusion

I consider that the clarifications provided should equip the Board with sufficient information to come to clear, precise, and definitive findings in relation to the

Appropriate Assessment and with the incorporation of these minor amendments and suggested changes the conditioned measures will ensure the protection of the conservation objectives of the River Barrow and River Nore SAC.



Maeve Flynn B.Sc. PhD MCIEEM

Inspectorate Ecologist

6<sup>th</sup> May 2022