



An  
Bord  
Pleanála

## Inspector's Report ABP-307777-20

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<b>Development</b>	Extraction and processing of materials and replacing with inert fill associated with the N5 road infrastructure project
<b>Location</b>	Aughadrinagh townland, Castlebar, County Mayo
<b>Planning Authority</b>	Mayo County Council
<b>Planning Authority Reg. Ref.</b>	P20/152
<b>Applicant(s)</b>	Tom Gannon
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third-Party
<b>Appellant(s)</b>	Abaigéal Smyth
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	16 <sup>th</sup> October 2020
<b>Inspector</b>	Colm McLoughlin

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## **1.0 Site Location and Description**

- 1.1.** The appeal site is located in the rural townland of Aughadrinagh, approximately 2.5km south west of Castlebar town centre in County Mayo. It is stated on the submitted application form to measure 4.5ha and is situated adjoining the northwest side of the proposed route for the N5 national road project, which is currently under construction and will connect Westport with the existing N5 route east of Castlebar, including a south side bypass of Castlebar. The site itself originally formed part of a larger agricultural field, part of which has been sectioned off to facilitate the road project. This is one of three concurrent planning appeals with the Board for similar extraction and fill development proposals associated with the N5 road project. There are several other recently permitted and proposed extraction and fill developments in the vicinity of the road project. It is set off the L5756 local road at Cloondeash by 160m. The boundaries of the subject field are marked by a timber post and rail fence along the southern boundary with the remainder marked by mature hedgerows. There are open drains running along the western and eastern boundaries of the site flowing north towards lower-lying ground and the Castlebar river.
- 1.2.** The surrounding area is characterised by a patchwork pattern of agricultural fields interspersed with low-lying wetland and one-off housing setback and fronting onto local roads. Ground levels drop steadily from the centre of the site to the site boundaries, including a 12m drop to the northeast corner.

## **2.0 Proposed Development**

- 2.1.** The proposed development comprises the following:
- extraction and processing of road construction materials amounting to 259,738m<sup>3</sup>, to an average stated depth of 6m over a stated area of 4.5ha for the N5 Westport to Turlough Road project;
  - replacement of excavated materials with surplus inert soil and subsoil (peat and alluvium) not exceeding 200,000 tonnes and amounting to an estimated volume of 138,020m<sup>3</sup>, to allow the land to revert to agricultural use;

- vehicular access to the site would be solely off the adjoining N5 Westport to Turlough Road construction works site.

**2.2.** In addition to the standard documentation and drawings, the planning application was accompanied by an Archaeology Strategy document, as well as correspondence addressing environmental impact assessment (EIA) screening and appropriate assessment (AA) screening.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

3.1.1. The planning authority decided to grant permission for the proposed development, subject to 20 conditions of a standard nature, including the following:

- condition 2 – works to be carried out in accordance with the relevant provisions of the EIA report, the Environmental Operating Plan, project management plans, risk assessments and method statements for the N5 road project;
- condition 3 – no extraction to take place below the water table;
- condition 5 – works to cease following opening of the new N5 road;
- condition 6 – no works without a waste facility permit;
- condition 8 – measures shall be implemented to prevent sedimentation of surface waters;
- condition 15 – pre-development testing and archaeological monitoring is required;
- condition 20 – during the three-year project lifespan the developer shall pay €1,000 per annum towards specific exceptional costs to the local community.

### **3.2. Planning Authority Reports**

3.2.1. Planning Reports

The planning authority requested the following further information in their initial report (June 2020):

- an archaeological assessment should be undertaken, to include details of any follow-up action, if necessary.

The recommendation within the final planning authority report (July 2020) reflects the decision of the planning authority and noted the following:

- development contributions apply based on a percentage of the tonnage of the excavated materials;
- the applicant's response to further information, highlights that the site is within the overall EIA project boundary for the N5 Westport to Turlough Road project and a condition can be attached to require adherence to the findings and mitigation within the EIAR for the road project;
- information for the purposes of Schedule 7a has been submitted;
- the proposed development would be subthreshold for the purposes of EIA and there would be no concerns relating to environmentally-sensitive receptors.

### 3.2.2. Other Technical Reports

- Area Engineer – no response;
- Environment Section (flood risk) – no objection, subject to a drainage condition addressing flood risk;
- Water Services – no response;
- Mayo National Roads Office – no issues raised;
- Regional Road Design Office – no response;
- Environment Section (ecology) – key ecological receptors noted, the project is subthreshold for EIA and the project mitigation measures, including those for the N5 road project, should be implemented;
- Archaeology Section – further information initially requested and subsequently conditions should be attached in the event of permission being granted;
- Architecture/Landscaping – reinstatement should allow for indigenous plant species.

### **3.3. Prescribed Bodies**

- Irish Water – no response;
- Transport Infrastructure Ireland (TII) – response states no observations;
- Minister for Culture, Heritage and the Gaeltacht (National Monuments Section) – no response.

### **3.4. Third-Party Observations**

- 3.4.1. During consideration of the application by the planning authority one observation was received. The issues raised in this observation are similar to those raised in the grounds of appeal and they are collectively summarised within the grounds of appeal below.

## **4.0 Planning History**

### **4.1. Appeal Site**

- 4.1.1. I am not aware of any other planning applications relating to the appeal site. According to the planning application form submitted, pre-planning discussions took place between representatives of the planning authority and the applicant in January 2020.

### **4.2. Surrounding Sites**

- 4.2.1. The following recent planning application relates to the N5 Westport to Turlough Road project, which the proposed development would serve and would tie in with:
- ABP ref. PL16.HA0042 – development approved by An Bord Pleanála in July 2014 for a 26.4km-long dual carriageway road project with a 2.1km single carriageway tie-in. The project included the excavation of peat, rock and other materials and the disposal and recovery of unacceptable material, as well as drainage works, landscaping and diversion of services and ancillary works. The appeal site adjoins the permitted road project.
- 4.2.2. The following planning applications for similar development were granted by the planning authority:

- MCC Ref. P20/126 – permission granted by the planning authority in August 2020 for the deposition of surplus fill material not exceeding 122,468 tonnes associated with the N5 road infrastructure project on a 2.9ha site at Claggernagh East townland, Castlebar, County Mayo, located 4km to the west of the appeal site;
- MCC Ref. P20/299 – permission granted by the planning authority on the 11<sup>th</sup> day of September 2020 for the extraction and processing of road construction material for the N5 road infrastructure project and replacement with inert fill material on a 2.2ha site at Cogaula townland, Clogher, Westport, County Mayo, located 8.6km to the west of the appeal site;
- MCC Ref. P20/53 – permission granted by the planning authority on the 13<sup>th</sup> day of October 2020 for the extraction and processing of road construction material for the N5 road infrastructure project and replacement with inert fill material on a 3.1ha site at Ballymacraha townland, Castlebar, County Mayo, located 1.1km to the west of the appeal site.

4.2.3. The following planning applications for similar development were recently granted by the planning authority and are currently on appeal with the Board:

- ABP-307765-20 (MCC Ref. P20/160) – extraction and processing of materials and replacing with inert fill associated with the N5 road infrastructure project on a 2.9ha site at Aughadrinagh townland, Castlebar, County Mayo, located 4.5km to the northeast of the appeal site;
- ABP-307780-20 (MCC Ref. P20/180) – extraction and processing of materials and replacing with inert fill associated with the N5 road infrastructure project on a 4.95ha site at Claggernagh East townland, Islandeady, Castlebar, County Mayo, located 4.3km to the west of the appeal site;
- ABP-308223-20 (MCC Ref. P19/623) – importation of class 5 inert material, resulting from groundworks associated with local infrastructural projects, for agricultural improvement purposes, together with ancillary site works on a 0.9ha site at Creeragh townland, Castlebar, County Mayo, located 0.8km to the south of the appeal site.

## **5.0 Policy & Context**

### **5.1. Mayo County Development Plan 2014-2020**

5.1.1. Within table 3 of the Development Plan, the N5 Westport to Turlough Road project is identified as a priority infrastructure project for the county. In relation to roads the following objective is relevant to this appeal:

- RD-02 - It is an objective of the Council to support improvements to the existing National Road and Regional Road network including road schemes and by-passes outlined in Table 3, where it can be demonstrated that the development will not have significant adverse effects on the environment, the integrity of the Natura 2000 network or visual amenity.

5.1.2. The economic development strategy for the county includes two objectives with respect to extractive industries:

- EI-01 - It is an objective of the Council to ensure that the development of aggregate resources (stone and sand/gravel deposits) is carried out in a manner which minimises effects on the environment, including the Natura 2000 network, amenities, infrastructure and the community, and has full regard to the principles of sustainability;
- EI-02 - It is an objective of the Council to ensure compliance with the Quarry and Ancillary Activities Planning Guidelines for Planning Authorities (DoEHLG, 2004) or any new or subsequent quarry guidance.

5.1.3. Section 4 of Volume 1 to the Development Plan addressing the environment, heritage and amenity strategy for the county, includes objectives relating to flooding, water quality, landscape protection, natural heritage and archaeological heritage.

5.1.4. Section 57 of Volume 2 to the Development Plan briefly outlines matters for consideration with respect to extraction industries.

### **5.2. National Guidelines**

5.2.1. The following planning guidance documents are relevant:

- Project Ireland 2040 – National Planning Framework;



- River Basin Management Plan 2018-2021;
- Guidelines on Protection of Fisheries during Construction Works in and Adjacent to Waters (Inland Fisheries Ireland, 2016);
- Connacht-Ulster Waste Management Plan 2015-2021;
- Spatial Planning and National Roads Guidelines (2012)
- The Planning System and Flood Risk Management: Guidelines for Planning Authorities (including the associated Technical Appendices) (2009);
- Environmental Protected Agency (EPA) Guidelines on Environmental Management in the Extractive Industry (2006);
- Quarries and Ancillary Activities – Guidelines for Planning Authorities (2004).

### 5.3. Natural Heritage Designations

5.3.1. The nearest designated European sites to the appeal site, including Special Areas of Conservation (SACs) and Special Protection Areas (SPAs), are listed in table 1 below.

**Table 1.** Natural Heritage Designations

Site Code	Site Name	Distance	Direction
002298	River Moy SAC	6.3km	northeast
001774	Lough Carra / Mask Complex SAC	8.7km	south
004051	Lough Carra SPA	8.8km	south
002144	Newport River SAC	9.7km	northwest
002081	Ballinacfad SAC	10km	southeast
000463	Balla Turlough SAC	12.8km	east
002179	Towerhill House SAC	14.9km	southeast
000527	Moore Hall (Lough Carra) SAC	14km	southeast
004062	Lough Mask SPA	14.9km	south

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

6.1.1. A third-party appeal has been lodged by a resident of Dublin, and, in conjunction with their third-party observation, the grounds of appeal can be collectively summarised as follows:

- the proposed development should be subject to EIA based on the level of extraction alone, the level of soil recovery and the cumulative activities proposed in conjunction with other similar projects as part of the N5 Westport to Turlough Road project;
- waste recovery for inert soil (25,000 tonnes per annum) would trigger a mandatory EIA and an upper annual limit has not been specified in the application;
- there are other current applications for identical development that should also be refused planning permission;
- the classification of the fill materials has not been determined, and they should be classified as either 'inert waste LOW 17 05 04' or a by-product and, as such, the materials should be considered as 'waste';
- a licence from the EPA is required given that the proposed backfilling would have a depth of greater than 2m and as the development has the potential to impact on the water table;
- due consideration with respect to the potential for archaeology, including alternatives, has not been undertaken as part of the process;
- the planning authority's decision does not address the proximity of the works site and potential connectivity to European sites.

### **6.2. Applicant's Response**

6.2.1. The applicant did not respond to the grounds of appeal.

### **6.3. Planning Authority Response**

6.3.1. The planning authority did not respond to the grounds of appeal.

## **6.4. Observations**

6.4.1. None received.

## **6.5. Further Submissions**

6.5.1. Following consultation by An Bord Pleanála with An Taisce, the Minister for Culture, Heritage and the Gaeltacht (National Monuments Service), the Heritage Council, Inland Fisheries Ireland (IFI), the EPA and the Minister for Communications, Climate Action and Environment, a response was received from IFI, which can be summarised as follows:

### IFI

- the site is adjacent to two streams that flow into Lough Lannagh via Saleen Lough. Lough Lannagh is popular for trout and pike angling, while Saleen Lough provides habitat for pike and coarse fish. The stream off Saleen Lough also provides habitat for eel, which are a critically-endangered species;
- the site is hydrologically connected with the River Moy SAC, which is designated for the protection of Atlantic salmon, white-clawed crayfish and lamprey species;
- the catchment is under environmental pressure having been allocated a 'poor' ecological status in the River Basin Management Plan 2018-2021;
- groundwater vulnerability at this location is 'high' according to the Geological Survey of Ireland (GSI);
- excessive suspended solids entering surface waters would have potential to impact on fish gills, aquatic plants and invertebrates, as well as sedimentation of stream beds;
- details with respect to potential dewatering, sediment control, drainage, surface water discharge, work timing, stockpiling and wheel washing are required;
- the project requires a fenced-off aquatic buffer zone of 10m in width, no change in surface water run-off rates, operation with a waste management licence, a pollution prevention plan, an emergency response plan, measures

to contain hydrocarbons, deposition records, measures to address the potential spread of invasive species, compliance with IFI guidance and water-quality monitoring;

## **7.0 Assessment**

### **7.1. Introduction**

7.1.1. From the outset I note that the proposals are intended to solely serve the N5 Westport to Turlough Road project, which was approved by the Board in July 2014 (ABP ref. PL16.HA0042). Construction works for this project are understood to have commenced in January 2020 with the overall project estimated to take two years. The proposed temporary use of the site for extraction and filling would not appear to conflict with adjoining agricultural land uses and the proposed works would be a sufficient minimum distance of 160m from the nearest sensitive receptors, to avoid undue impacts on residential amenities, including via dust, noise and vibration. While the proposed development is intended to solely serve and integrate with the adjoining permitted road project, it has been presented within a standalone application and the individual merits of the proposals must be assessed with respect to current planning provisions and the nature of the existing receiving environment.

7.1.2. I address the ecological implications of the proposed development insofar as they relate to European sites under the heading 'Appropriate Assessment' below. Consequently, I consider the substantive planning issues arising from the grounds of appeal and in the assessment of the application and appeal, relate to:

- Drainage & Water;
- Landscape & Visual Amenities;
- Traffic Safety;
- Waste;
- Archaeology.

## 7.2. Drainage & Water

- 7.2.1. Given the nature and scale of the proposed development, an assessment of the potential impact of the development on neighbouring ground and surface water bodies and the resultant impacts is required. There are existing open drains situated along the western and eastern boundaries of the site draining north to Milebush stream, which flows east to Saleen Lough, prior to entering Lough Lannagh and the Castlebar river located approximately 2.5km to the north east of the appeal site. Castlebar river is a tributary of the river Moy. The Water Framework Directive (WFD) risk classification for the section of the Castlebar river downstream of the site is assigned as 'at risk' and with a 'poor' water quality status. The site is situated on grey brown podzolics and brown earth soils, limestone till subsoils and a bedrock of limestones and shale, which are estimated by the applicant to be situated between 1m to 3m below the site surface levels. A regionally-important karstified limestone bedrock aquifer dominated by conduit flow (Rkc) underlies this site. The WFD classification for the underlying Swinford groundwater body is assigned as being of 'high' risk, while the water quality status of this waterbody is assigned as 'good'. Maps for this area, do not identify the site as being at risk of flooding ([www.floodinfo.ie](http://www.floodinfo.ie)), although a downstream flood risk area has been identified along the Milebush stream, 500m to the northeast of the site. The planning authority assert that flood risk is not an issue, as the lands are not in a flood risk area and as the lands adjacent to the east and west of the site are maintained by the Office of Public Works.
- 7.2.2. The existing ground levels, the proposed extraction levels and the reinstated site levels for the site are identified on the drawings submitted. It is estimated that the proposed development would facilitate the extraction of 259,738m<sup>3</sup> of materials and filling of 138,020m<sup>3</sup> of peat and alluvium. A ten metre buffer would be maintained from all land drains according to the applicant, as illustrated in the section drawing (no. 03-405 Revision P02), although this buffer with the western boundary drain is not replicated in the proposed borrow pit site level drawing (no.02-404 Revision P01). As part of the application, the applicant outlined various mitigation measures that would be undertaken as part of the project to address sediment control, accidental spillages, the removal of bedrock, dewatering, groundwater vulnerability, contaminated soils and flood risk. The applicant asserts that the activities on site

would be managed as part of the environmental management plans, including runoff and sediment control plans, for the N5 road project and the project stormwater management would be designed to emulate current greenfield runoff rates. The planning authority reported that the site is within the overall EIA project boundary for the N5 Westport to Turlough Road project and their decision includes a condition requiring the development to be carried out in accordance with the provisions of the EIAR and other plans submitted as part of the N5 Westport to Turlough Road project.

- 7.2.3. The applicant relies extensively on information and measures, included as part of the previously permitted N5 road project, in addressing how the subject development would be undertaken. In assessing the previous application for the roads infrastructure project, the Board's Inspector stated that the total volume of peat to be excavated for the project was estimated at 149,000m<sup>3</sup> and that eight restoration areas were identified for the deposition of excavated material. It is further noted by the Board's Inspector for this permitted road project that the earthworks involved in the construction of the development would be subject to standard mitigation techniques to avoid the release of soils to surface waters.
- 7.2.4. The grounds of appeal note the potential for the development to impact on neighbouring biodiversity via works below the water table. In the interests of groundwater protection, the planning authority attached a condition requiring no extraction below the water table without notification and prior agreement of mitigation measures with the planning authority. The water table has not been identified as part of the planning application.
- 7.2.5. The Guidelines for Planning Authorities on Quarries and Ancillary Activities acknowledge that extractive operations can give rise to land use and environmental issues that require mitigation and control through the planning system. An understanding of the drainage regime on site is required to allow the preparation of an evidence-based conceptual model to address anticipated changes in drainage, which would then allow for a suitable suite of appropriate controls and detailed drainage proposals to be formulated, including the location of attenuation elements. The applicant has provided limited information as part of the application regarding the existing drainage regime operating on site. Furthermore, the proposed measures detailed to address drainage are not specific to the subject extraction and

fill project with no proposals provided to show methods or means of addressing drainage during the operation phase relative to the likely infiltration rates based on the site characteristics and the type of inert peat and alluvium materials to be imported to the site. Proper and satisfactory management of the volume of groundwater and surface water to be generated cannot be arrived at and there is potential for the development to increase flood risk downstream of the site. In the absence of an evidence-based conceptual model of how drainage at the site would be likely to interact with the existing and future water environment, a scientific basis to reduce or avoid risks to the receiving water environment cannot be arrived at.

7.2.6. In accordance with the WFD, proposals that have the potential to impact 'waterbodies' are required to demonstrate that actions would not result in a deterioration in 'ecological status' and would not result in the relevant waterbodies, including the Castlebar river, being unable to achieve the relevant target ecological status. The River Basin Management Plan 2018-2021 require improvements to the existing 'at risk' waterbodies in the catchment to 'good' status and I am not satisfied that the proposed development would not lead to a deterioration in the ecological status of the receiving river waterbody and the achievement of the relevant target ecological status, based upon the observations and findings set out above.

7.2.7. There is uncertainty regarding the significance of the effects on surface waters as a result of the impacts arising from the proposed operations, which in the absence of a complete assessment has the potential to be to the detriment of aquatic ecology. In conclusion, I am satisfied that the proposed development should be refused permission for this reason. The Board may wish to consider this matter a new issue and seek further information in this regard. The potential impact of the development on the aquatic ecology of receiving waters, as related to European sites and specifically to their conservation objectives, is addressed further below under the heading 'Appropriate Assessment'.

### **7.3. Landscape & Visual Amenities**

7.3.1. Objectives LP-01, LP-02 and LP-03 of the Mayo County Development Plan 2014-2020 seek to preserve and protect the scenic amenity of the county. The Development Plan outlines that the visual impact of developments should be assessed with respect to the Landscape Appraisal for County Mayo, which

categorises the appeal site and immediate area as being within the East-Central Drumlin Spine, featuring undulating topography, which is considered to be of medium sensitivity or vulnerability in terms of accommodating excavation or quarrying works. The appeal site is not situated in an area with conservation status and the Development Plan does not identify protected views in the vicinity of the site.

7.3.2. The site is set back over 160m from the nearest neighbouring public road and other sensitive receptors, including housing. Initially the proposed extraction and fill works would be viewed as part of the wider N5 road project and the final filled site would be highly visible from the new road and the higher ground along the local road to the west. It is intended that the land would revert to agricultural use following the fill works and the reinstatement drawing (no.02-405) reveals that the natural flow of the ground would be reinstated and allowed to assimilate into the landscape.

7.3.3. When viewed alongside the ongoing road project works, I am satisfied that the proposed development of a temporary duration, would not substantially interfere with the landscape and the proposed development would not be incongruous or out-of-character with the surrounding area. Accordingly, permission for the proposed development should not be refused for reasons relating to impacts on the visual amenities of the area.

#### **7.4. Traffic Safety**

7.4.1. The applicant states that access to the site would be from the road project site only and, therefore, the proposed development would not substantially increase traffic movements in the surrounding road network. Neither the roads engineers within the planning authority nor TII had any specific comments to make with regards to traffic safety arising from the proposed development. The planning authority decision included conditions requiring all works to cease following opening of the new N5 road and for access only to be available from the N5 construction works site. The applicant did not object to same and such conditions would appear reasonable given the project rationale. Consequently, I am satisfied that an increased risk to traffic safety along the public roads would not arise from the proposed development and permission should not be withheld for this reason.



## **7.5. Waste**

- 7.5.1. The nature of the development would require the applicant to seek some form of authorisation under the Waste Management Act 1996, as amended. The type of authorisation required is dependent on the class of waste activity proposed, the waste types and the quantity. The applicant states that the project would comprise the recovery of excavation or dredge spoil, comprising natural materials of clay, silt, sand, gravel or stone, and their deposition for the purposes of the improvement or development of land amounting to less than 200,000 tonnes. The applicant states that they have applied for a waste permit from the Local Authority. The EPA did not respond following consultation.

## **7.6. Archaeology**

- 7.6.1. In response to a request for further information the applicant outlined a strategy for the protection and recording of archaeological heritage, including testing under licence from the Department of Culture, Heritage and the Gaeltacht. The nearest Recorded Monument and Place is situated 670m to the northeast of the appeal site and this relates to a 'redundant record' (RMP ref. MA04655). The Department of Culture, Heritage and the Gaeltacht (National Monuments Service) did not respond following consultation by the planning authority and An Bord Pleanála. Due to the possibility of the survival of previously unknown sub-surface archaeological deposits or finds within areas subject to extraction, as a mitigation measure, any topsoil-stripping should be monitored by a qualified archaeologist. In the event of a grant of permission, this measure and measures to facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site should be secured by way of the attachment of an archaeological-monitoring planning condition.

## **8.0 Screening for EIA**

- 8.1.1. The grounds of appeal assert that the proposed development should be subject to EIA based on the level of extraction alone, the level of soil recovery and the cumulative activities proposed in conjunction with other similar borrow pit projects and the N5 Westport to Turlough Road project. The planning authority was satisfied

that the proposed development would be subthreshold for the purposes of EIA and that concerns relating to environmentally-sensitive receptors did not arise. The site is not a wetland site, although a wetland fen area is identified immediately to the east of the site by the Environment Section of the planning authority. The appeal site is not proximate to Natural Heritage Areas (NHAs). Proximity and connectivity to European sites is addressed in section 9.0 of this assessment below.

8.1.2. The applicant has addressed the issue of EIA within correspondence to the planning authority dated the 3<sup>rd</sup> day of July, 2020, and I have had regard to same in this screening assessment. This correspondence provided information in line with Schedule 7A of the Planning and Development Regulations, 2001-2020 (hereinafter 'the Regulations'). This proposed extraction and fill development, is of a class of development included in Schedule 5 to the Regulations. The information submitted by the applicant, identifies and describes adequately the direct, indirect, secondary, and cumulative effects of the proposed development on the environment. The applicant asserts that the project does not require the preparation of EIA, as it would be within the study area for the N5 Westport to Turlough Road project, which was subject to EIA, and as it would be subject to the provisions of the EIAR previously submitted for this permitted road project. I am satisfied that the project, as described in the public notices, is for a standalone development and not for an amendment to the road scheme itself. I also note that the development description refers to 'processing' of materials, although no details with respect to same have been provided with the application.

8.1.3. Part 1 to Schedule 5 of the Regulations provides that mandatory EIA is required for the following class of development:

class 19 - Quarries and open-cast mining where the surface of the site exceeds 25 hectares.

8.1.4. Part 2 to Schedule 5 of the Regulations provides that mandatory EIA is required for the following classes of development:

class (2)(b) - extraction of stone, gravel, sand or clay, where the area of extraction would be greater than 5 hectares.

class (11)(b) - installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of this Schedule.

- 8.1.5. EIA would be required for subthreshold development proposals of a class specified in Parts 1 or 2 of Schedule 5, where the Board determines that the proposed development is likely to have a significant effect on the environment.
- 8.1.6. The proposed development would comprise extraction of soil and stone on a 4.5ha site, although I note that the applicant has often referred to this as a 4.95ha site within the application documentation. Nevertheless, it is subthreshold in terms of EIA having regard to class 19 of Part 1 and class 2(b) of Part 2 to Schedule 5 of the Regulations. In initially applying for planning permission the applicant stated that the materials on site would be replaced with surplus inert soil and subsoil not exceeding 200,000 tonnes solely from the N5 Westport to Turlough Road project and the site would only be used for the duration of this road project. The surplus inert soil and subsoil would be a waste material. Construction work for this project are understood to have commenced in January 2020 with the overall project estimated to take two years, bringing its completion to the end of 2021 or January 2022. The planning authority refer to a three-year lifespan for the project in their final planning report, which if permitted would potentially run two years beyond the road completion stage. The planning authority also recommended attachment of a condition, which the applicant has not objected to, restricting the lifespan of the proposed development until the opening of the new road, which would be reasonable to attach. The annual tonnage of waste intake has not been established, however, based on the road project lifespan, the stated maximum potential deposition tonnage and volumes (138,020m<sup>3</sup>), it is clear that the waste intake could be well above the threshold triggering the need to prepare an EIAR for the project, as set out in class 11(b) of Part 2 to Schedule 5 of the Regulations. It is considered, therefore, that the requirement for EIA cannot be ruled out.
- 8.1.7. Having regard to;
- (a) the nature and scale of the proposed development, including the deposition of surplus inert soil and subsoil waste potentially amounting to 200,000 tonnes and to a maximum volume of 138,020m<sup>3</sup>, solely from the N5 Westport to Turlough Road project and,
  - (b) the limited two to three-year duration of the N5 Westport to Turlough Road project,

it is concluded that, the proposed development would fall within a class of development set out in class 11(b) of Part 2 to Schedule 5 of the Planning and Development Regulations 2001-2020, referring to installations for the disposal of waste with an annual intake of greater than 25,000 tonnes and not included in Part 1 of the aforementioned Schedule 5. It is, therefore, considered that an environmental impact assessment report for the proposed development is necessary in this case.

## **9.0 Appropriate Assessment**

### **9.1. Stage 1 - Screening**

- 9.1.1. The site location is described in section 1 of this report above. A description of the proposed development is provided in section 2 of this report and expanded upon below where relevant. Correspondence screening the proposed development for the requirement for an appropriate assessment was submitted with the application. I note the contents of the submission from IFI, as referenced above in section 6.5.

### **9.2. Is the Project necessary to the Management of European sites?**

- 9.2.1. Relevant European sites proximate to the appeal site and in the wider area are listed in section 5.3 above. The project is not necessary to the management of a European site.

### **9.3. Direct, Indirect or Secondary Impacts**

- 9.3.1. The potential direct, indirect and secondary impacts that could arise as a result of the proposed works and which could have a negative effect on the qualifying interests of European sites, include the following:
- alterations to water quality, for example, through accidental spills or the release of suspended solids to ground and/or surface water;
  - alterations to the hydrological regime and hydromorphology;
  - loss, disturbance or fragmentation of habitat and/or species.

## 9.4. Description of European Sites

- 9.4.1. The site is connected via an open drain and tributaries with the River Moy SAC. With the exception of the River Moy SAC, I am satisfied that the other neighbouring European sites can be ‘screened out’ on the basis that significant impacts on these European sites could be ruled out as a result of the nature of the proposed development, the separation distance from the appeal site and given the absence of a pathway to the appeal site.
- 9.4.2. The River Moy SAC comprises a substantial area of the freshwater element of the river Moy and its tributaries. Qualifying interests and conservation objectives for this SAC are set out in table 2 below.

**Table 2.** River Moy SAC

<b>Qualifying Interests</b>	<b>Conservation Objectives</b>
7110 – Active raised bogs	To restore the favourable conservation condition of active raised bogs
7120 - Degraded raised bogs still capable of natural regeneration	The long-term aim for Degraded raised bogs still capable of natural regeneration is that its peat-forming capability is re-established; therefore, the conservation objective for this habitat is inherently linked to that of Active raised bogs (7110) and a separate conservation objective has not been set in River Moy SAC
7150 - Depressions on peat substrates of the Rhynchosporion	Depressions on peat substrates of the Rhynchosporion is an integral part of good quality Active raised bogs (7110) and thus a separate conservation objective has not been set for the habitat in River Moy SAC
7230 - Alkaline fens	To maintain the favourable conservation condition of Alkaline fens
91A0 - Old sessile oak woods with Ilex and Blechnum in the British Isles	To maintain the favourable conservation condition of Old sessile oak woods with Ilex and Blechnum in the British Isles

91E0 - Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (Alno-Padion, <i>Alnion incanae</i> , <i>Salicion albae</i> )	To maintain the favourable conservation condition of Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (Alno-Padion, <i>Alnion incanae</i> , <i>Salicion albae</i> )
1092 - White-clawed Crayfish ( <i>Austropotamobius pallipes</i> )	To maintain the favourable conservation condition of White-clawed Crayfish
1095 - Sea Lamprey ( <i>Petromyzon marinus</i> )	To maintain the favourable conservation condition of Sea Lamprey
1096 Brook Lamprey ( <i>Lampetra planeri</i> )	To maintain the favourable conservation condition of Brook Lamprey
1106 - Salmon ( <i>Salmo salar</i> )	To maintain the favourable conservation condition of Salmon
1355 - Otter ( <i>Lutra lutra</i> )	To maintain the favourable conservation condition of Otter

9.4.3. The Site Synopsis for the River Moy SAC identifies agriculture, including spreading of slurry and fertiliser, fishing, tourism, afforestation, forestry and dredging, as posing the greatest threats to the SAC rivers and lakes.

9.4.4. Based on the source-pathway-receptor model, there is potential for indirect effects via alterations to ground and surface water discharge from the extraction and fill area on downstream waters in the river Moy catchment, including those forming part of the River Moy SAC (Site Code: 002298). Measures are required to address this, otherwise the proposed development would pose an unacceptable risk to surface waters within the River Moy SAC. A suite of measures are listed by the applicant to address the environmental impacts of the proposed development. Conditions are also attached by the planning authority to address the environmental impact of the development, including condition 8, which is intended to prevent any deterioration in the water quality status of the adjoining watercourse. While I acknowledge that the appeal site is a reasonable distance of 7km upstream of the River Moy SAC, measures intended to reduce or avoid the harmful effects of a plan or project cannot be taken into account in (Stage 1) AA Screening, in order to determine whether the plan or project would be likely to have a significant effect on a European site. The

applicant asserts that the Natura Impact Statement (NIS) for the N5 Westport to Turlough Road project can be relied on for this project. I am not satisfied that this would circumvent the need to provide an NIS for the subject extraction and fill project, which is the proposal now before the Board.

## **9.5. Stage 1 – Screening Conclusion**

- 9.5.1. On the basis of the information provided with the application and in response to the appeal, and in the absence of a Natura Impact Statement, the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on the River Moy SAC (Site Code: 002298), in view of the sites' conservation objectives. In such circumstances, the Board is precluded from granting permission. It is open to the Board to request a Natura Impact Statement in these circumstances

## **10.0 Recommendation**

- 10.1. I recommend that permission be refused for the proposed development, for the reasons and considerations, as set out below.

## **11.0 Reasons and Considerations**

1. On the basis of the submissions made in connection with the planning application and appeal, the Board is not satisfied that the overall water management and drainage system as proposed, based on the baseline information as presented by the applicant, is adequate and at a level of detail to draw satisfactory conclusions in relation to the proper and satisfactory management of the volume of groundwater and surface water to be generated, on a site with downstream hydraulic connectivity from the site to receiving surface waters that are 'at risk' and to a neighbouring downstream fluvial flood risk area along the Milebush stream. The proposed development would pose an increased flood risk downstream of the site and an increased threat of water pollution, with potential to result in receiving waterbodies not being able to achieve the relevant 'good' ecological status, as required under the provisions of the River Basin Management Plan 2018-2021. The proposed development

would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Having regard to the nature and scale of the proposed development, including the maximum potential deposition waste of surplus inert soil and subsoil not exceeding 200,000 tonnes and to a maximum volume of 138,020m<sup>3</sup>, to the limited two to three year duration of the N5 Westport to Turlough Road project, which the development would solely serve, and to the thresholds set down in Class 11(b) of Part 2 to Schedule 5 of the Planning and Development Regulations 2001-2020, it is considered that the proposed development would be likely to have significant effects on the environment and should be subject to an environmental impact assessment within the meaning of Part X of the Planning and Development Act 2000, as amended. The proposed development would, therefore, require an Environmental Impact Assessment Report, which should contain the information set out in Schedule 6 of the said Regulations. In these circumstances, it is considered that the Board is precluded from giving further consideration to the granting of permission for the development the subject of the application.
3. On the basis of the information submitted with the planning application and the appeal and in the absence of a Natura Impact Statement, the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on the River Moy SAC (Site Code: 002298), or any other European site, in view of the sites' conservation objectives. In such circumstances, the Board is precluded from granting permission.

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Colm McLoughlin  
Planning Inspector

30<sup>th</sup> October 2020