



An  
Bord  
Pleanála

**Inspector's Report - Addendum**  
**ABP 308423-20**

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| <b>To:</b>         | The Board  |
| <b>From:</b>       | Planning Inspector - Máire Daly  |
| <b>Re:</b>         | Board Direction – BD-007580-21   |
| <b>Date:</b>       | 23 <sup>rd</sup> February 2021   |
| <b>Development</b> | Construct 6 self-contained eco pods, amenity/shower facility building with associated site works |
| <b>Location</b>    | Mallranny, Westport, Co. Mayo.   |

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## 1.0 Background

- 1.1.1. This report is an addendum to an original report dated the 27<sup>th</sup> January 2021, in respect of an appeal against a Notification of Decision to Grant Permission issued by Mayo County Council for the construction of 6 self-contained eco pods, amenity/shower facility building with associated site works.
- 1.1.2. The original report recommended that permission be refused for the proposed development for 2 no. reasons for refusal, as follows;
1. The proposed development is in an area which is deemed to be at risk of coastal flooding, by reference to the current Development Plan for the area, documentation on file and available Office of Public Works data. Having regard to the provisions of Policy FS-01 and Appendix 5 of the Development Plan in relation to development proposals in areas at risk of flooding, it is

considered that, in the absence of adequate information relating to the risk of flooding, analysis of such risk, and appropriate mitigating measures to address any risk, the proposed development would be contrary to the proper planning and sustainable development of the area.

2. Having regard to the location of the site, together with adjoining land which is within the Clew Bay Complex Special Area of Conservation, it is considered that the proposed eco pod development would give rise to increased access and disturbance to Atlantic salt meadow habitat, which is included on Annex I of the European Union Habitats Directive of 1992 from human activity in what was formerly a relatively undisturbed area.

Notwithstanding the above the Board is not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, that adequate information has been provided on the impact of the proposed development on hydrological conditions within adjoining SAC and the resulting implications for wildlife and flora.

It is therefore considered that the Board is unable to ascertain, as required by Regulation 27(3) of the European Communities (Natural Habitats) Regulations, 1997, that the proposed development will not adversely affect the integrity of a European Site and it is considered that the proposed development would be contrary to the proper planning and sustainable development of the area.

- 1.1.3. The submissions on this file and the Inspector's report were considered at a Board meeting held on 10<sup>th</sup> February 2021. The Board decided to defer consideration of this case and to issue a Section 132 and a Section 137 notice to the applicant regarding the following:

1. **Section 132**

The Board noted that the proposed development is located within an area which is deemed to be at risk of coastal flooding, by reference to the current Mayo Development Plan 2014 – 2020 for the area, documentation on file and available Office of Public Works data. The applicant has not submitted a Site Specific Flood Risk Assessment which is a requirement of Policy FS-01 of the Mayo County Development Plan for planning applications located within (or

within 50m) of Flood Zone A and B. In accordance with the provisions of section 132 of the Planning and Development Act 2000 as amended, the Board requests the applicant to submit a Site Specific Flood Risk Assessment for the proposed development which addresses the risk of flooding, an analysis of such risk, and mitigating measures to address any residual flood risk

## **2. Section 137**

The Board noted that the submitted Natura impact statement (NIS) identified the potential for indirect operational impacts arising from increased access by walkers to the adjacent Atlantic salt meadows habitat (included on Annex 1 of the European Union Habitats Directive of 1992 and is a Qualifying Interest of the Clew Bay Special Area of Conservation (Site Code: 001482)), via a gate to the beach/saltmarsh from the proposed development site. Mitigation, including restricted access to the gate is proposed within the submitted NIS. However, the Board considered that there is a lack of certainty around the effectiveness of the proposed mitigation as the identified access gate is not shown or detailed on the submitted plans for the proposed development. In conjunction with inadequacies in the information provided in relation to the management of invasive species, and the management of construction on site, and in line with the precautionary principle, the Board may not be able to ascertain that the proposed development, individually or in combination with other plans or projects, would not adversely affect the integrity of the Clew Bay Special Area of Conservation (Site Code 001482). In such circumstances the Board would be precluded from granting permission for the development.

- 1.1.4. Notice under section 132 was issued to the applicant on 01<sup>st</sup> March 2021 and notice under section 137 was issued to the applicant, Mayo County Council and both 3<sup>rd</sup> Party Appellants, Joseph Carey and Cathal Hanley both care of Michael Quinn of Quinn Associates. Submissions and observations were invited to be received on or before the 29<sup>th</sup> March 2021.
- 1.1.5. Both appellants responded to the section 137 notice on 29<sup>th</sup> March 2021. The applicant responded to the section 132 and section 137 notices also on 29<sup>th</sup> March 2021. The response from the applicant contained various reports including a revised

Natura Impact Statement. The Board noted that there was a requirement for the case to be readvertised having regard to the submission of a revised NIS. A revised notice was published and erected on site on 25<sup>th</sup> May 2021 and submissions were welcomed for a 5-week period. A further response from the third-party appellants was received on 28<sup>th</sup> June 2021.

## **2.0 Responses to section 132 and section 137 Notices**

### **2.1. First Party Response**

2.1.1. Gavin Joyce, Building Surveyor and Engineer, responded on behalf of the applicant Padraic Doherty to the section 132 and section 137 Notice, and included the following documents as part of same response;

- A Site Specific Flood Risk Assessment for the proposed development
- A Revised Natura Impact Statement
- An Invasive Species Control Plan
- A Construction and Environmental Management Plan

### **2.2. Third Party Response**

2.2.1. The third-party appellants Mr. Cathal Hanley and Mr. Joseph Carey responded jointly to the section 132 and section 137 Notice, in two separate responses detailing (inter alia) the following;

2.2.2. Initial response received by ABP on 29<sup>th</sup> March 2021:

- The Board has justifiably highlighted the lack of information pertaining to an access gate located on the southern boundary of the subject site. This gate provides direct access to the Clew Bay SAC (Site Code:001482).
- The lack of information as to the precise location of this gate on the submitted plans clearly indicated that there was little or no concern for protecting the SAC.
- A gate in this location will only encourage patrons to cross onto the SAC regardless of locks, signage/notices etc.

- Concerns regarding the applicant's possible future plans to expand the eco pod business to include outdoor activities and that this access gate could offer an entrance onto the foreshore for these activities.

2.3. Response received by ABP on 28<sup>th</sup> June 2021 (in response to additional information received as per revised notices/readvertisement):

- Eco Pods are not self-contained – revised notices are misleading.
- The Flood Risk Assessment does not recognise that the Murrevagh River is a 'spate' river.
- The FRA does not expand on the historical downstream flooding.
- The anecdotal evidence submitted in relation to local flooding is biased and is submitted by a relative of the applicant and is therefore in favour of the proposed development.
- A serious flood event occurred in 2013 which saw extreme flooding from the Murrevagh River. Since this event Mayo County Council have subsequently reinforced the riverside bank on the wastewater plant side, thus raising the bank and resurfaced the access road following the flooding. Photographic evidence of this flooding event and the work to the bank has been submitted with the appellants' response.
- The reinforced riverbank installed by MCC was constructed on the western bank only and no measures were put in place on the eastern bank (proposed site side).
- The FRA has not considered the flood mitigation measures installed by MCC on the western bank. The water level associated with the Murrevagh riverbanks breach back in 2013 was c.10.5mOD and the measures implemented by MCC will inevitably cause issues along the east bank and on the proposed site assuming the flood conditions of 2013 reoccur.
- A drawing has been submitted with the response illustrating the approx. outline of the 2013 flooding extent and the location of the submitted photographs.
- The applicant's proposals to raise the eco pods c. 940mm above existing ground levels in Section 3 of the site as per submitted drawing in Appendix C,

Flood Zones A and B is totally inappropriate. There would also appear to be contradictory statements in the submitted NIS and the FRA. The NIS states no site levelling or disturbance to soil is anticipated, whereas the FRA proposes floor levels as being c.940mm above ground level.

- No site levels have been indicated on any of the drawings submitted.
- The erection of a 4m high solid picket fence along the southern boundary of the site in this visually sensitive area would be contrary to the amenity and proper planning.
- It would not appear the FRA submitted was reviewed by the author of the NIS, ISC or CEMP.
- The location of the vehicular access would have a major impact on the current amenities enjoyed by the appellant and his family. This entrance road should be relocated away from the rear boundary of the appellant's land.
- Other issues not addressed include land usage between the pods and amenity building, proposed signage, site illumination, legal entitlement to improve visibility at access points, ownership of lands and water supply connection.

## **2.4. Planning Authority Response**

2.4.1. No response received from Mayo County Council.

## **3.0 Assessment**

3.1. Having regard to the above submissions provided on foot of the section 132 Notice issued to the applicant and the section 137 Notice issued to all parties, the main issues for consideration are as follows;

- Flood Risk Assessment
- Revised NIS
- Invasive Plant Species
- Construction and Environmental Management Plan (CEMP)

These are addressed below.

### **3.2. Site Specific Flood Risk Assessment (SSFRA)**

- 3.2.1. The applicant has submitted a Flood Risk Assessment specific to the proposed site (dated March 2021) in response to the Section 132 notice issued by the Board. The SSFRA notes the proximity of the Murrevagh River which flows in a southerly direction along the western boundary of the site.
- 3.2.2. The SSFRA indicates that according to historical mapping there is no reference to historical flooding downstream of the proposed site. Available historical flood maps and reports from floodmaps.ie and floodinfo.ie were consulted. One flood event was noted in the vicinity of the proposed site, this is a reoccurring localised flood event at a local depression in the N59, approx. 150m northwest of the site, the report states that this is not hydraulically linked to the proposed development lands.
- 3.2.3. The author of the report also states that anecdotal evidence was collected for the site from a local resident in the vicinity. No history of flooding on site was identified as part of these discussions and same person stated that he understands that there is no flood history on the wastewater plant site to the west. It was also noted that the highest coastal flood level was thought to have occurred at a point at a gate to the south east of the subject site approx. 5 years ago. The local area engineer of Mayo County Council was also contacted in an attempt to retrieve further local knowledge on flood risk on the site. No response was received.
- 3.2.4. The SSFRA notes that the Mulranny public wastewater plant is located on the riverbank opposite the proposed location of the amenity building, with ground levels within the plant area c. 7.2mOD. The report states that land elevations within the site range between +2.6 -+ 10.0mOD.
- 3.2.5. The information regarding historical flooding in the area as per the submitted SSFRA would appear to be at odds with that of the information received from the 3<sup>rd</sup> party appellants in their submitted response (received by the Board on 28<sup>th</sup> June 2021). I note the submitted photographic records shows evidence of flooding to the adjacent property located to the immediate north of the proposed site and also within the area where the Mulranny public wastewater treatment plant is located. The appellants state that this flooding occurred in 2013 (as a 'spate' incident) and following same flood event Mayo County Council constructed a reinforced concrete-based wall along the western bank of the river to raise the bank level and protect the wastewater plant

from future flooding (this reinforced bank wall is evidenced in the submitted photos). The appellants claim that these flood alleviation works, which were carried out on the western bank, will in turn inevitably push any future flood waters further east and into the area of the proposed site.

- 3.2.6. Regarding coastal flooding, the SSFRA examines the available information from the National Coastal Protection Strategy Study (ICPSS). The mapping relevant to the site shows the area to the sites southwest is located within the 0.5% AEP Flood Extent (1 in 200 chance in any given year). As required under the Strategic Flood Risk Assessment for the county, lands that are identified within an area of flood risk require a SSFRA, therefore a detailed assessment is presented in the submitted report.
- 3.2.7. The upstream catchment for the Murrevagh River has been calculated at approx. 1.14sq km. Minimal urban area is located in this catchment. The catchment associated with the proposed development is ungauged, therefore the study used flow modelling and design flow estimates for the 1 in 100 year and 1 in 1000 year return period design flows for the subject stream catchment. As the river has a sharp gradient the site was modelled based on four cross sections. Modelling shows that the maximum estimated flood waters for the analysed storm return period is significantly below the existing bank levels at cross sections 1, 2 and 3. Table 4.3 of the report contains the flood level estimates (incl. climate change). The results from the modelling, together with the site-specific topographical survey data was used to establish flood zoning at the proposed development lands. These results are illustrated on the Flood Risk Assessment Zone Map contained in Appendix C, showing the site divided into Sections 1, 2 and 3. I again here note the contradictory information submitted by the appellants, in which the photographic evidence demonstrated that the existing banks to the north of Section 1 and partially within Section 1 have been breached previously, yet all this area is located in Flood Zone C according to the submitted map.

#### Flood Risk Assessment on site

- 3.2.8. The following potential flood risk sources were identified in the SSFRA at the site:
- a) Fluvial flooding from adjacent watercourse
  - b) Pluvial flooding from rainfall and surface water run-off; and



c) Coastal flooding from adjacent coastal water.

3.2.9. The primary flood source to the site was identified as the fluvial from the Murrevagh River which runs along the western side of the majority of the proposed site. A secondary flood risk exists from the storm water generated within the proposed development. The report states that storm water design and management of surface water will be the critical factor in the mitigation of this type of flood risk on site, however I note that no details of same have been submitted in response to the Section 132 Notice.

3.2.10. Section 5.2.2 of the submitted report contains the results of the flood zone levels calculated for the site. These results are then mapped and illustrated on drawing no.21034-DG-2301 in Appendix C. The proposed development lands have been zoned based on the OPW "The Planning System and Flood Risk Management Guidelines, November 2009". The mapped flood zones are based on the levels outlined in table 5.1 and use the 1 in 1000 year flood level, including climate change scenarios. As can be seen from drawing no.21034-DG-2301 the majority of the proposed development lands is classified as within Zone C, however a portion of the southern part of the site is located within Flood Zone A and B.

3.2.11. As can be seen from drawing no.21034-DG-2301 in Appendix C, the southwestern portion of the site is predicted to be the potentially worst impacted by future flood events. Two eco pods (Pod no.2 and Pod no.4) are proposed to be located within this Flood Zone A area. Pod no. 2 and Pod no. 5 (marginally) are proposed within the Flood Zone B area and Pod no. 1 and Pod no.6 are proposed within Flood Zone C on site. I note that Section 3.5 of the 2009 Guidelines states the following regarding the planning implications for Flood Zone A:

*"Zone A - High probability of flooding. Most types of development would be considered inappropriate in this zone. Development in this zone should be avoided and/or only considered in exceptional circumstances, such as in city and town centres, or in the case of essential infrastructure that cannot be located elsewhere, and where the Justification Test has been applied. Only water-compatible development, such as docks and marinas, dockside activities that require a waterside location, amenity open space, outdoor sport and recreation, would be considered appropriate in this zone". (Underline, my emphasis added)*

Regarding developments within Flood Zone B, the following is stated:

- 3.2.12. *“Zone B - Moderate probability of flooding. Highly vulnerable development such as hospitals, residential care homes, Garda, fire and ambulance stations, dwelling houses and primary strategic transport and utilities infrastructure, would generally be considered inappropriate in this zone, unless the requirements of the Justification Test can be met. Less vulnerable development, such as retail, commercial and industrial uses, sites used for short-let for caravans and camping and secondary strategic transport and utilities infrastructure, and water-compatible development might be considered appropriate in this zone. In general however, less vulnerable development should only be considered in this zone if adequate lands or sites are not available in Zone C and subject to a flood risk assessment to the appropriate level of detail to demonstrate that flood risk to and from the development can or will adequately be managed.”* (Underline, my emphasis added). Table 3.1 of the Guidelines, 2009 sets out Classification of vulnerability of different types of development and lists “Land and buildings used for holiday or short-let caravans and camping, subject to specific warning and evacuation plans” under the “Less vulnerable development” class. In accordance with Table 3.2 of the Guidelines the proposed use is considered to be ‘appropriate’ in Flood Zones B and C, however there is a need for a Justification Test to be met in Zone A.
- 3.2.13. Section 5.2.2 of the SSFRA refers to the flood zone levels on site and shows a mOD level for Section 3 of the site, for the area covered by Flood Zone A at below +3.59mOD. The adjacent area to the southwest of the site covered by Flood Zone B within Section 3 has a mOD level of +3.59 to 3.93. The Design Flood Level is presented in drawing no. 21034-DG-2301 in Appendix C and is given as +4.43 mOD. The SSFRA states that this figure incorporates the 1 in 1000 year flood level, including climate change, a freeboard factor and an uncertainty factor to provide a margin of safety in design. A damp-proof membrane (dpm) is then recommended at 0.1 metres above this safe design flood level. Taking all this into account it would appear that the pods located in Zone A and Zone B of Section 3 of the site would require a raised base of approx. 940mm minimum (i.e. 840mm plus 100mm for dpm level). Other than reference to infilling and concrete pads, no precise details (or dimensions) of how this additional clearance of nearly 1 metre is to be provided has been submitted with the response to the Board’s notices.

- 3.2.14. Notwithstanding the additional flood design level clearance that would be required, I would also have serious concerns regarding the development of eco pods no. 3 and 4 within the Flood Zone A area when assessing same under the 2009 Guidelines. These Guidelines are clear that development in this zone should be avoided and/or only considered in exceptional circumstances and also that water compatible development only would be appropriate in this zone. Section 5.15 of the Guidelines 2009, outlines that a Justification Test is required when considering proposals for new development in areas at a high or moderate risk of flooding that include types of development that are vulnerable to flooding and that would generally be inappropriate as set out in Table 3.2. Box 5.1 of same Guidelines outlines the details of this test which it states are to be submitted by the applicant. Although the Justification Test is not specifically referenced in the SSFRA, I have used the information submitted to determine if the criteria outline in Box 5.1 have been met. In response to Point no.1 – the subject lands are not zoned or otherwise designated for the particular use. In response to Point no.2 – I am not satisfied that the applicant has included measures to ensure that residual risks to the area and the proposed development can be managed to an acceptable level, in particular, I would consider there is a lack of information presented in relation to existing drainage channels, surface water management and Sustainable Drainages Systems (SuDs) (Section 3.2.17 of this report discusses further).
- 3.2.15. The applicant in my opinion has not provided sufficient justification for locating the pods in this area when the majority of the remainder of the site is located within a Flood Zone C (See Flood Zone Map drawing no.21034-DG-2301 in Appendix C). In order to accommodate the pods in this Flood Zone A area, a significant increase in ground level would be required i.e via infilling or laying of concrete pads on which the pods would be located, which would need to be of a sufficient height above ground level as discussed under section 3.2.13 above. I would consider the proposed infilling/placement of excessive concrete pads within Flood Zone A (to accommodate these two no. eco pods) an indication of the unsuitability of this area of the site for development. With reference to the 2009 Guidelines, proposed eco pods no. 3 and no.4 would not be considered an appropriate form of development within a Flood Zone A area. In addition, neither would I consider that a tourism development such as that proposed would qualify under the exceptional circumstances referred to in

the Guidelines. The Guidelines include regard to the sequential approach and investigation of alternatives and avoiding or minimising the risk (Section 3.1 Planning Principles). In this case, I am not convinced having visited the site and having regard to the documentation submitted that relative to the potential for flooding and the precautionary approach that this is the most suitable or desirable location for the proposed development

3.2.16. The remainder of the pods are located within Flood Zones B and C. The guidelines allow for “less vulnerable development”, such as sites used for short-let for caravans and camping within Flood Zone B, however in general they require this type of development to be located on Zone C lands where available (Section 3.5 of the guidelines refers). In addition, I note that no details have been submitted by the applicant nor does the SSFRA refer to any specific warning or evacuation plans that would be required for any development in this area in accordance with Table 3.1 of the Guidelines, 2009. Again, I would query the location of Pods 2 and 5 within this area of the site, these pods would also require a minimum Flood Design Level of greater than +4.43 ODM, which would entail raising same pods by a minimum of 600mm to 940mm in this area. As I have discussed before, no details in relation to how this freeboard/elevation is to be achieved have been presented in the response to the Board. The originally submitted elevational drawings of the pods give no indication of their actual height on site when elevation of same pods is required, and no cross sections of the site have been submitted to show these level differences or the possible impacts that these may have visually on the area.

3.2.17. I note that Section 5.4 of the SSFRA states that any residual risk on site will be mitigated through freeboard and adequate design and maintenance of drainage networks and flood defences. However, I note no details of flood defences have been submitted with the application. Section 5.1 of the SSFRA identifies stormwater generated as a secondary flood risk on site and states that *‘storm water design and management of surface water will be a critical factor in the mitigation of this type of flood risk on site’*. The site contains numerous drainage channels and yet no assessment of these has been included in the SSFRA, or the possible impacts that future flooding of the Murrevagh River may have on same. I note from the site layout and site visit, that the main drainage channel which flows in an east to west direction across Section 2 of the site connects directly into the Murrevagh River. Any flooding

of this channel may impact on access to the south of the site where the eco pods are proposed to be located. Section 5.9 of the 2009 Guidelines states that a site-specific flood risk assessment should provide the information detailed in Appendix A but in general should include '*Proposals for surface water management according to sustainable drainage principles*'. Section 1.6.1 of the 2009 Guidelines Technical Appendices states that '*An assessment of how surface water run-off will be managed should be addressed in most FRAs. Drainage is a material consideration at the planning stage of a development and due consideration must be given to the impact of the proposed development on the catchment area*', it further goes on to state '*The FRA should demonstrate that the surface water drainage system takes account of SuDS principles*' and '*Where SuDS solutions are not possible the FRA should identify the principles behind the chosen approach and demonstrate that the method that gives the best environmental protection available at the site has been adopted*'. I note that no details of same have been submitted with the SSFRA or in response to the Boards notices.

- 3.2.18. The proposed service building is to be located within Flood Zone C, on the north western portion of the site. While this use is considered appropriate within this Zone C area in accordance with the 2009 Guidelines, I would have concerns regarding the flood design levels of same building. The site to the immediate north of this proposed building's location has a ODM of +11.0 and I noted on site visit that the subject site slopes downward towards the bay from this area. The flood design level required for the amenity building in this area would be greater than +7.01 ODM, however as ground levels are not given for this area, it is not possible to determine what works would be required in this area or what type of infilling/raising of finished floor levels may be required on site and the consequent impacts that this may have on the buildings design and height. I am also cognisant of the appellants submitted photographic evidence which shows flooding to this area during a 2013 flood event and the fact that Mayo County Council has since constructed a raised bank on the western side of the Murrevagh River, which I would agree could impact on the future distribution of flood waters should the river go into such a severe spate again in the future. The SSFRA noted no historical flood records in this area which clearly is not the case. The general principles of flood risk assessment outlined under Section 1.2 of the Technical Appendices to the 2009 Guidelines highlights the importance of

supporting information such as historical information on previous flood events. The lack of consideration of this previous flood event is in my opinion a serious oversight, particularly given the severe flooding evidenced on the site and in the vicinity (as evidenced in the photos submitted by the appellant) and also given the lengths that the local authority went to at the time to ensure the adjacent wastewater treatment plant, which the SSFRA states has a ground level of 7.2mOD was protected from future flood events.

- 3.2.19. In summary, I am not satisfied that the applicant has provided sufficient information to demonstrate compliance with the planning principles in section 3.1 of the Guidelines 2009 or to justify the location of the proposed development on the subject site.

### 3.3. Revised NIS

- 3.3.1. The applicant has submitted a revised NIS dated 21/03/2021. The southern boundary of the proposed site is located adjacent to the Clew Bay Complex SAC (site Code: 001482) and approximately half of the western boundary of the site follows the Murrevagh River which flows into the SAC. This revised report details the works proposed on site which include the construction of the Service Building on the northern portion of the site and the placement of the preconstructed Eco Pods on the southern portion of the site. Concrete pre-cast bases will be positioned in the areas where the eco pods are to be located, these will be brought onto site via truck and lifted into place by a crane. The NIS states that no site levelling or disturbance of soil is envisaged towards the south of the site other than pipes for electricity connection, however this statement would appear to be contrary to the conclusion of the SSFRA which states that '*pods proposed in Flood Zone A require infilling*'. The pathways to the pods will be constructed using Ecogrid supplemented with gravel if required.
- 3.3.2. The report also highlights that there are Rhododendron located on the site, which are mapped in the report on Invasive Species Control, which was submitted as part of the response to the Board. This species is listed on the Third Schedule of the 2011 European Communities (Birds and Natural Habitats) Regulations and is a species for which it is an offense to disperse, spread or otherwise cause to grow in any place. Failure to comply with the legal requirements set down within the regulations can result in either civil or criminal prosecution. Section 6.3 of the submitted Revised NIS

lists the control of Rhododendron on site as a proposed physical mitigation measure, however on this issue I would highlight to the Board that the eradication of such infestation (in line with the recommendations of the submitted report on Invasive Species Control) is a mandatory requirement irrespective of proximity to any European Site and is not therefore regarded as a mitigation measure. Please refer to section 3.5 below for further details on this.

- 3.3.3. The initial submitted NIS (dated July 2020) identified an indirect impact at operational phase involving “*access to saltmarshes enabled through this development. Increased walkers in this area could have an impact on the saltmarsh vegetation*”, in response to this indirect impact section 6.3 of the initial report contained physical mitigation measures which included a ‘*gate to beach/saltmarsh from pod site to be locked October to March to prevent disturbance of wintering birds*’. However, the submitted drawings/plans identified no access gate (as referred to in the NIS) to the saltmarsh/beach from the pod area on site. This was identified as a major omission given that disturbance by increased human/recreational activity is highlighted as a potential effect on the SAC. As part of the revised NIS submitted (dated March 2021) a revised mitigation measure has been included under section 6.1. This measure seeks to avoid any adverse impacts on the qualifying interests of the adjoining SAC, in particular impacts on the existing saltmarsh and otter species. Point no.1 of the listed avoidance measures states “*There is to be no access to saltmarsh from the glamping site. The gate to be removed and opening fenced. The stake and wire fencing on the southern boundary to be replaced by a solid picket fence no lower than 4m high. This will avoid any impact on the saltmarsh from holiday makers and will also eliminate any potential disturbance to wintering birds or otters from dogs originating from the site (see Map 7)*”. Map 7 of the revised NIS identifies the location of the existing gate to be removed and replaced with picket fencing. The extent of the existing fencing to be removed and replaced by the 4m high picket fencing is also indicated. In my opinion, this proposed 4-metre-high picket fence for a distance of c. 50 metres along the southwestern boundary of the site would be excessive in height and I believe that such a structure would also not be visually conducive to the area. If the Board are minded to grant permission, I would suggest that a fence of height 3 metres would be sufficient in this area to deter any visitors accessing the SAC to the west. I would also suggest that the eastern side of this new boundary

fence should be appropriately landscaped with native tree species to integrate this feature more sensitively into the surrounding landscape and provide additional screening of the adjoining SAC.

3.3.4. As mentioned previously the SSFRA states that the pods proposed in Flood Zone A will require infilling, however the NIS states under section 2.0 that '*no site levelling or disturbance of soil is envisaged towards the south of the site other than pipes for electricity*'. Notwithstanding this contradiction, I am satisfied that the NIS includes details of good construction management practices which will be implemented on site to minimise the risk of pollution of soil, storm water run-off or groundwater. These measures, as well as the presence of a qualified ecologist on site during construction works are considered acceptable.

3.3.5. In summary, I consider the revisions proposed to the south western boundary of the site will address the indirect operational impacts previously identified as a concern and that the removal of the access gate in this area and replacement of same with picket fencing of a sufficient height along the south western boundary will restrict any future access to the SAC to the west. Therefore, I consider it reasonable to conclude on the basis of the information on the file, which I consider adequate in order to carry out 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 Clew Bay Complex SAC (Site Code:001482) or any other European site, in view of the sites' Conservation Objectives.

#### **3.4. Construction and Environmental Management Plan (CEMP)**

3.4.1. A CEMP has also been submitted in response to the Board's section 137 Notice. This report outlines the sensitive environmental measures required given the proximity of the proposed development to the SAC. The report states that a supervising ecologist will be part of the site management team and that the contractor and team will incorporate all mitigation measures within the NIS. The report also outlines water protection measures for both sediments and chemical and fuels. In addition, the report also details measures to be implemented for the safe storage of materials and site compound details, as well as staff welfare facilities. I am satisfied that the measures proposed within the CEMP (dated March 2021) are appropriate



and that compliance with same can be addressed by way of condition should the Board be minded to grant the proposed development.

### **3.5. Invasive Plant Species**

- 3.5.1. As part of the response to the section 137 notice the applicant has submitted a report detailing Invasive Species Control for the proposed development. Just one invasive species was recorded on site, this was Rhododendron. The invasive species was identified at 4 separate locations on site, one on the north western boundary close to the location of the service building, two on the north eastern boundary and one on the south western boundary close to the location of the proposed eco pods. The report notes that although this species is not listed in the Birds and Natural Habitats Regulations 2011 it still poses a significant threat to the ecology of the west of Ireland. The Board should note that this statement is incorrect, as this plant is in fact listed under the Third Schedule of the European Communities (Birds and Natural Habitats) Regulations, 2011 (S.I. No. 477 of 2011) as a non-native species subject to restrictions under Regulations 49 and 50. Under Regulation 49(2) any person who plants, disperses, allows or causes to disperse, spreads or otherwise causes any of the invasive plants listed in the Third Schedule of the European Communities (Birds and Natural Habitats) Regulations, 2011 (S.I. No. 477 of 2011) shall be guilty of an offence. Furthermore, Sections 52(7) and (8) of the Wildlife Act, 1976, as amended, make it an offence to plant or otherwise cause to grow in a wild state exotic species of plants.
- 3.5.2. Notwithstanding the fact that the report states the invasive species is not listed under the 2011 regulations, I note that the author of the report nonetheless proposes measures (outlined in the report) to address the rhododendron on site and their ongoing eradication. Measures proposed include manual control and herbicide use, and that ongoing eradication will involve having an invasive species management plan in place on site and annual inspections and monitoring. The report concludes that given the low number of rhododendron plants on site that these will be easily controlled and addressed as per the measures outlined in the submitted report. I am satisfied with the measures proposed within the report (dated March 2021) and that compliance with same and the implementation of an invasive species management plan can be addressed by way of condition.

## **4.0 Recommendation**

- 4.1. Having regard to the above assessment, I recommend that planning permission should be refused for the reasons and considerations below.

## **5.0 Reasons and Considerations**

1. Having regard to the location of the site, in an area which is prone to coastal and fluvial flooding and on the basis of the submissions made in connection with the planning application, appeal and other responses received, it is considered that there remains an absence of adequate information relating to drainage on site, the risk of flooding, analysis of such risk, and appropriate mitigating measures to address any risk, and that notwithstanding the flood design levels proposed, the Board is not satisfied that the applicant has provided sufficient information to demonstrate compliance with the planning principles in section 3.1 of 'The Planning System and Flood Risk Management Guidelines for Planning Authorities, November 2009', to apply the precautionary approach and to show that alternative more reasonable locations are available in areas at lower flood risk. The proposed development, which is not water compatible, in that it includes sleeping accommodation, would therefore constitute an unacceptable risk of flooding, to future occupants, which would be prejudicial to public health and safety, would conflict with the said Ministerial Guidelines and would be contrary to the proper planning and sustainable development of the area.

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Máire Daly  
Planning Inspector

16<sup>th</sup> August 2021