



An
Bord
Pleanála

Inspector's Report ABP-308488-20

Development

Works to Boherboy Bridge including vegetation clearance, installation of grout bags, masonry repointing, concrete repair, masonry repair, installation of rubbing strips and resurfacing.

Location

Boherboy Bridge, Cloghane, Co. Kerry.

Local Authority

Kerry County Council

Type of Application

Application for approval made under Section 177(AE) of the Planning and Development Act, 2000 (local authority development requiring appropriate assessment)

Prescribed Bodies

Department of Culture Heritage and the Gaeltacht.

Irish Water

Transport Infrastructure Ireland

Department Environment, Climate and
Communications.

Observer(s)

None.

Date of Site Inspection

6th November 2020

Inspector

Sarah Lynch.

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1.0 Introduction

- 1.1. Kerry County Council is seeking approval from An Bord Pleanála to undertake repairs at the Boherboy Bridge which is in the Tralee Bay and Magharees Peninsula, West to Cloghane SAC which is a designated European site. There are several other designated European sites (SPAs and SACs) in proximity to the proposed works (see further analysis below). A Natura Impact Statement (NIS) and application under Section 177AE was lodged by the Local Authority on the basis of the proposed development's likely significant effect on a European site.
- 1.2. Section 177AE of the Planning and Development act 2000 (as amended) requires that where an appropriate assessment is required in respect of development by a local authority the authority shall prepare an NIS and the development shall not be carried out unless the Board has approved the development with or without modifications. Furthermore, Section 177V of the Planning and Development Act 2000 (as amended) requires that the appropriate assessment shall include a determination by the Board as to whether or not the proposed development would adversely affect the integrity of a European site and the appropriate assessment shall be carried out by the Board before consent is given for the proposed development.

2.0 Proposed Development

- 2.1. The proposed development will comprise of the following:

- Water Management
- Clearing of site of all vegetation and loose material
- Installation of tie bars and grout bags
- Masonry Repair and repointing
- Concrete repairs

- 2.2. **Accompanying documents:**

- Notices
- 2 no. drawings – 19100-1001, 19100-0001
- Appropriate Assessment Screening
- Natura Impact Statement

- Freshwater Pearl Mussel Survey Report
- Bat and Bird Survey
- Planning Report
- List of prescribed bodies to which notice was sent.

3.0 **Site and Location**

- 3.1. The proposed works are to be carried out at the Boherboy Bridge. The bridge is located over the Owenmore River which is in the Tralee Bay and Magharees Peninsula, West to Cloghane SAC. The R550 passes over the Boherboy Bridge and is the only access route to Cloghane and Brandon villages. The bridge is not a protected structure and has been repaired previously in the form of a concrete apron under the western eye of the bridge and concrete parapet capping.
- 3.2. The bridge is a stone construction with a large wet arch and a smaller dry arch to the west of the structure. The surrounding lands are largely undeveloped apart from an existing dwelling to the south west of the bridge and an old garda station to the north west of the structure. Lands adjacent to the river are riparian habitat and further out from these lands the predominant use of land is agriculture.

4.0 **Planning History**

- 4.1. There is no recorded history pertaining to the bridge.

Surrounding area

305033 Permission was refused for a flow measuring weir on the River Owennafeana River.

5.0 **Legislative and Policy Context**

- 5.1. **The EU Habitats Directive (92/43/EEC):** This Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) and 6(4) require an appropriate assessment of the likely significant effects of a proposed development on its own and in combination with other plans and projects which may have an effect on a European Site (SAC or SPA).

- 5.2. **European Communities (Birds and Natural Habitats) Regulations 2011:** These Regulations consolidate the European Communities (Natural Habitats) Regulations 1997 to 2005 and the European Communities (Birds and Natural Habitats) (Control of Recreational Activities) Regulations 2010, as well as addressing transposition failures identified in CJEU judgements. The Regulations in particular require in Reg 42(21) that where an appropriate assessment has already been carried out by a 'first' public authority for the same project (under a separate code of legislation) then a 'second' public authority considering that project for appropriate assessment under its own code of legislation is required to take account of the appropriate assessment of the first authority.
- 5.3. **National nature conservation designations:** The Department of Culture, Heritage and the Gaeltacht and the National Parks and Wildlife Service are responsible for the designation of conservation sites throughout the country. The three main types of designation are Natural Heritage Areas (NHA), Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) and the latter two form part of the European Natura 2000 Network.
- 5.4. **European sites located in proximity to the subject site include:**
- Tralee Bay and Magharees Peninsula, West to Cloghane SAC
 - Mount Brandon SAC
- 5.5. **Planning and Development Acts 2000 (as amended):** Part XAB of the Planning and Development Acts 2000-2017 sets out the requirements for the appropriate assessment of developments which could have an effect on a European site or its conservation objectives.
- 177(AE) sets out the requirements for the appropriate assessment of developments carried out by or on behalf of local authorities.
 - Section 177(AE) (1) requires a local authority to prepare, or cause to be prepared, a Natura impact statement in respect of the proposed development.
 - Section 177(AE) (2) states that a proposed development in respect of which an appropriate assessment is required shall not be carried out unless the Board has approved it with or without modifications.

- Section 177(AE) (3) states that where a Natura impact assessment has been prepared pursuant to subsection (1), the local authority shall apply to the Board for approval and the provisions of Part XAB shall apply to the carrying out of the appropriate assessment.
- Section 177(V) (3) states that a competent authority shall give consent for a proposed development only after having determined that the proposed development shall not adversely affect the integrity of a European site.
- Section 177AE (6) (a) states that before making a decision in respect of a proposed development the Board shall consider the NIS, any submissions or observations received and any other information relating to:
 - The likely effects on the environment.
 - The likely consequences for the proper planning and sustainable development of the area.
 - The likely significant effects on a European site.

6.0 Policy Context

Kerry County Development Plan 2015-2021

- Map 12.1d of the development plan indicates that the lands to the north of the bridge are identified as a Secondary Special Amenity area and a listed view. The land to the south of the bridge is located within a rural general development zoning.
- Section 11.4 Architecture - Kerry has a rich architectural heritage which not only comprises buildings of national importance, including country houses, churches, bridges.
- Section 10 Natural Environment and Flood risk –
 - Objective NE-1 - Work with all stakeholders in order to conserve, manage and where possible enhance the County's natural heritage including all habitats, species, landscapes and geological heritage of conservation interest and to promote increased understanding and awareness of the natural heritage of the County.

- Objective NE-11 Ensure that all projects likely to have a significant effect on a Natura 2000 / European site will be subject to Habitats Directive Assessment prior to approval.

6.1. Kerry Tourism Strategy and Action Plan 2016-2022

- Further development of the Wild Atlantic Way and connected loops is highlighted as a key aim of the plan. More locally actions 1.1.1, 1.1.2, 1.1.7, 1.8.3 and 4.2 of the plan seek to improve tourism facilities at Brandon / Cloghane and it is stated that all of which would be dependent on the structural stability of the Boherboy Bridge.

6.2. East Dingle Peninsula Settlements Local Area Plan 2006-2014

- The plan seeks to utilise and optimise the use of existing infrastructure.

6.3. Draft Daingean Electoral Area LAP 2020 – 2026

- Objective D-RL-8 – supports the sustainable repair and upgrading of road infrastructure including bridges in the plan area
- D-AP-03 – Ensure that bridge upgrade proposals are undertaken in accordance with the requirements of the County Archaeologist. In certain instances, depending the nature, scale, and location of the works a full archaeologist assessment may be required.

7.0 The Natura Impact Statement

7.1. Kerry County Council's application for the proposed development was accompanied by a Natura Impact Statement (NIS) which scientifically examined the proposed development and the European sites. The NIS identified and characterised the possible implications of the proposed development on the European sites, in view of the sites conservation objectives, and provided information to enable the Board to carry out an appropriate assessment of the proposed works.

7.2. The NIS was accompanied by details of habitats and species assessments.

8.0 Consultations

8.1. The application was circulated to the following bodies:

- An Chomhairle Ealaíon
- Fáilte Ireland
- Department of Culture, Heritage and the Gaeltacht
- Inland Fisheries Ireland
- The Heritage Council
- An Taisce
- Transport Infrastructure Ireland
- Department of Agriculture, Food and the Marine
- Department of Climate, Communications, and the Environment
- Department Housing, planning and Local Government.

Responses were received from Department of Culture, Heritage and the Gaeltacht and Irish Water.

8.2. Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media – Development Applications Unit.

- Freshwater Pearl mussel observed outside of the Mount Brandon SAC should be treated as part of the upstream SAC, as (a) the conservation objective is to restore the population to densities from which it has declined (by over 80%) since the coming into force of the EU Habitats Directive (1994), and (b) even the loss of these individuals could be significant given the very poor state of the subpopulation above the bridge.
- The receiving site for the three mussels identified for translocation is appropriate habitat in terms of substrate, flow and water quality, and that the translocation is carried out by, or under the direction of, an ecologist familiar with freshwater pearl mussel translocation.
- Any herbicides used in the riparian zone are products which are recommended by a pesticide advisor as having the lowest available aquatic toxicity.

- It is recommended that the works are completed before 1st October in any year, as the risk of flash-flooding overtopping the barrier dams increases considerably after this period.
- It is important that the pumping area is sufficiently bunded to avoid release to flowing water in the event of an accidental leak. It is recommended that the ecological clerk-of-works is on-site during grout-pumping.
- It is recommended that the location of the cement washings at the Temporary Site Compound, and the proper laying of the textile to catch grout and debris at and under the scaffolding, is approved by the ecological clerk-of-works prior to cement or grout being used.
- Areas of Dry and Wet Heath to be identified near temporary compound and fenced off.

8.3. Irish Water:

- Proposed development is located over existing Irish Water Infrastructure. Any proposals to build over or divert existing water or wastewater services shall be submitted to Irish Water for assessment. Further information is requested in this regard.

8.4. Transport Infrastructure Ireland

- No observations to make.

8.5. Department Environment, Climate and Communications – Waste Policy and Efficiency Division

- Applicant should consult directly with their respective Regional Waste Management Planning office.

8.6. Public Submissions:

- No public submissions were received.

9.0 Assessment

- 9.1. Under the provisions of Section 177AE (6) of the Planning and Development Act, 2000 (as amended), the Board is required to consider the following in respect of this type of application:

- The likely consequences for the proper planning and sustainable development of the area;
- The likely effects on the environment; and
- The likely impact on any European sites.

9.2. The likely consequences for the proper planning and sustainable development of the area:

- 9.3. As outlined above consent is sought by Kerry County Council for repair works to the Boherboy Bridge. It is stated within the information provided that the bridge has been identified as being in need of remedial works in order to safeguard the structure and to prevent its collapse into the Owenmore River. The Council states that a scoured void has been identified underneath an upstream pier. Given that the bridge is the only access to the Villages of Brandon and Cloghane, the Council contends that the bridge is of critical importance to those communities, it also provide a tourist function in that it forms part of the Dingle Way and for walking and car-based tourism.
- 9.4. It is the policy of the Council as set out in the Kerry County Development Plan to repair and preserve such structures and to maintain critical infrastructure subject to Habitats Directive Assessment prior to approval. The principle of the proposed works is therefore in accordance with the requirements of the Development plan for the area.
- 9.5. The bridge is described as an attractive masonry structure but as mentioned above, is not a protected structure. I have reviewed the list of Protected Structures for the area and note that the former Garda Station located to the west of the bridge is included within it. This property has been converted to residential use and is sited at a location removed from the proposed works. Given the nature of the proposed works and the separation from this property I am satisfied that the repairs will not impact the integrity of this structure in any way. I further note that there are no recorded monuments within the immediate vicinity of the site.
- 9.6. As stated within the documents submitted the majority of works will be out of sight from the public road. It is contended that the removal of the concrete capping will improve the visual amenity of the bridge and will therefore have a positive impact on the surrounding area.
- 9.7. Given the nature of the works and the use of the surrounding lands I am satisfied that visual impacts will not arise.

- 9.8. It is of note that Irish Water within their submission request details in relation to any removal or diversion of their infrastructure. I note from the plans submitted that the works related solely to the repair of the bridge and do not interfere with the existing service pipe located above the bridge arches. I consider based on the information submitted, should the Board be of a mind to grant permission, that the concerns of Irish Water can be adequately addressed by way of condition.
- 9.9. Having regard to the foregoing I consider that the proposed development would be in accordance with the proper planning and sustainable development of the area.
- 9.10. **The likely effects on the environment**
- 9.11. The proposed works will include the removal of vegetation and loose material from the existing bridge and repair works to the bridge and carriageway and has the potential to give rise to a number of environmental impacts which are largely related to water quality, increases in sediment, changes to the velocity and flows of the river, impacts arising from noise and disturbance and impacts to habitat and species.
- 9.12. Given the location and scale of the proposed works, impacts arising from construction related activity in terms of noise and disturbance will be short term and are not considered to be significant. Such impacts will be considered in detail within the Appropriate Assessment Section of this report in relation to the qualifying interests of the surrounding European designated sites.
- 9.13. The applicants have submitted a planning assessment report in which the likely effects of the environment are examined. The need for an EIAR was considered within this report and is excluded on the basis that the development was not of a class for the purpose of Schedule 5 of the Planning and Development Regulations, 2001-2020. I have examined the proposed development in relation to Schedule 5 of the Planning and Development Regulations and am satisfied that the proposed works are not of a class for the purpose of EIAR and as such I do not consider an EIAR to be required in this instance.
- 9.14. I note that the proposed works will involve the removal of vegetation which has grown on the sides of the bridge. The removal of such vegetation has the potential to dislodge material from the structure and impact the water quality of the river below. Impacts to water quality are examined in detail below within the Appropriate Assessment section of this report and will not be repeated within this section.

- 9.15. It is of note that the proposed works will alter the flows of the river for a temporary period whilst water is redirected via the dry channel of the bridge. Such works will also be examined in detail within the Appropriate Assessment section of the report in relation to the potential for impacts to arise in relation to designated European sites.
- 9.16. I note from the documents submitted that a Bat survey was carried out and no bats were found to be roosting within the bridge structure. It is stated within the report submitted that the structure lacks deep crevices which are favoured by bats.
- 9.17. A submission has been received from The Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media in which it is acknowledged that the applicant has appropriately considered the potential for impacts to arise in relation to habitats and species in the vicinity of the works and raises no objections to the development subject to a number of conditions being imposed. Conditions relate to the appropriateness of habitat in the event that relocation of Freshwater Pearl Mussel is required, such works are required to be carried out by a suitably qualified person familiar with such relocation.
- 9.18. Additional conditions require the use of herbicides with the lowest aquatic toxicity, the employment of an ecological clerk of works to oversee works and the implementation of mitigation measures and the use of bunded areas and geotextile membranes to protect soil and water quality. It is also a submission of the Department that the applicant identifies and fences off areas of dry and wet heath in the vicinity of the works.
- 9.19. It is of note that many of the requirements outlined in the Department's submission are proposed within the mitigation measures outlined within the NIS submitted. However, items not specified such as the identification of dry and wet heath can be adequately dealt with by condition should the Board be of a mind to grant permission.
- 9.20. I note that in stream works will be carried out in dry conditions and the diversion of the stream will occur in a manner whereby sediment levels in the river will be unaffected thus protecting existing aquatic species and habitats both up and downstream of the proposed works. I have reviewed the process proposed for the phased installation of dams within the river and am satisfied that significant changes to the velocity and flows of the river will not arise given the size of the area to be dammed and the time of year in which works are to be carried out.

- 9.21. Construction noise arising from the proposed works, as mentioned above, will be short term in duration and can be adequately controlled in terms of construction hours in order to protect the amenity of nearby properties.
- 9.22. Having regard to the foregoing I am satisfied that the proposed development will not give rise to any significant environmental impacts and I consider the proposed development to be acceptable in this regard. Impacts in relation to the qualifying interests of the surrounding Natura 2000 sites in particular the Tralee Bay and Magharees Peninsula, West to Cloghane SAC and Mount Brandon SAC will be examined within the following Appropriate Assessment Section.
- 9.23. **The likely significant effects on a European site:** The areas addressed in this section are as follows:
- Compliance with Articles 6(3) of the EU Habitats Directive
 - The Natura Impact Statement
 - Screening the need for appropriate assessment
 - Appropriate Assessment
- 9.24. **Compliance with Articles 6(3) of the EU Habitats Directive:** The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal will not adversely affect the integrity of the European site.
- 9.25. **The Natura Impact Statement**
- 9.26. The NIS dated January 2020 has been prepared by Malachy Walsh and Partners Engineering and Environmental Consultants on behalf of Kerry County Council.
- 9.27. The NIS prepared by Malachy Walsh and Partners describes the proposed development, its receiving environment and relevant European Sites in the zone of influence of the development. It was informed by desk top study of maps and ecological and water quality data from a range of sources as outlined in Section 9.2 of

the NIS submitted. A number of surveys including a fresh water pearl mussel survey undertaken on the 30th July 2018 which identified a total 36 live freshwater pearl mussels within the Owenmore River within 170 metres reach of the bridge. No mussels were observed directly under the bridge, 1 mussel was found c. 1 metre downstream of the bridge embedded in fine gravel and 2 mussels were found c. 6 metres downstream near to the right bank.

- 9.28. The survey also considered habitat suitable for spawning salmon, under the bridge comprises of large cobbles and boulders and is not considered suitable habitat for such species.
- 9.29. A habitat survey was also completed on the 29th August 2019, and detailed the river habitat and the riparian habitat within the development site and the surrounding area. It is stated within the report that the river habitat comprised of boulders, cobbles, gravels and elevated levels of siltation. During the time of the survey the river was peat stained and was characteristic of a spate river. In stream vegetation comprised mainly of filamentous algae and patches of mosses were also observed in stream.
- 9.30. The riverbank habitat is stated to be reverting from one time improved grassland and is dominated by rushes. Willow, alder, bramble and gorse were observed to the northeast of the river.
- 9.31. The otter spraint was observed during the survey under the bridge which confirms their presence in the area. No bats were encountered at the bridge. A wagtail nest and a dipper nest was observed at the bridge.
- 9.32. The habitat survey also included the recording of any invasive species listed in the third schedule of the European Communities (Birds and Natural Habitats) Regulations 2011. None were observed at the time of site inspection and none are referred to within the survey reports.
- 9.33. The report concluded that, taking into account the project design and the implementation of mitigation measures identified in the NIS, the proposed development will not result in adverse effects on the integrity of any Natura 2000 site.
- 9.34. Having reviewed the NIS and the supporting documentation, I am generally satisfied that it provides adequate information in respect of the baseline conditions, identifies the potential impacts, uses best scientific information and knowledge and provides details of mitigation measures. I am satisfied that the information allows for a complete

examination and identification of all the aspects of the project that could have an effect, alone, or in combination with other plans and projects on European sites.

9.35. **Stage 1 Screening**

9.36. The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on a European site(s).

9.37. Notwithstanding the submission of a NIS, it is necessary to review the screening process to ensure alignment with the sites brought forward for AA and to ensure that all sites that may be affected by the development have been considered.

9.38. Having regard to the information and submissions available, nature, size and location of the proposed development and its likely direct, indirect and cumulative effects, the source pathway receptor principle and sensitivities of the ecological receptors, I consider the following European Sites relevant to include for the purposes of initial screening for the requirement for Stage 2 appropriate assessment on the basis of likely significant effects.

Table 1. European sites considered for Stage 1 screening

European Site Name & Code	Distance	Qualifying Interest	Source-pathway-receptor	Considered further in screening
Mount Brandon SAC 000375	7 metres	<p>Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]</p> <p>Oligotrophic waters containing very few minerals of sandy plains (Littorelletalia uniflorae) [3110]</p> <p>Oligotrophic to mesotrophic standing waters with vegetation of the Littorelletea uniflorae and/or Isoeto-Nanojuncetea [3130]</p> <p>Northern Atlantic wet heaths with Erica tetralix [4010]</p> <p>European dry heaths [4030]</p> <p>Alpine and Boreal heaths [4060]</p>	The Owenmore River passes through the SAC.	Yes, potential for significant effects arising from construction and potential disturbance to fresh water pearl mussel during the operation due to changes in water quality

		<p>Species-rich <i>Nardus</i> grasslands, on siliceous substrates in mountain areas (and submountain areas, in Continental Europe) [6230]</p> <p>Blanket bogs (* if active bog) [7130]</p> <p>Siliceous scree of the montane to snow levels (<i>Androsacetalia alpinae</i> and <i>Galeopsietalia ladani</i>) [8110]</p> <p>Calcareous rocky slopes with chasmophytic vegetation [8210]</p> <p>Siliceous rocky slopes with chasmophytic vegetation [8220]</p> <p><i>Margaritifera margaritifera</i> (Freshwater Pearl Mussel) [1029]</p> <p><i>Trichomanes speciosum</i> (Killarney Fern) [1421]</p>		and sedimentation.
<p>Tralee Bay and Magharees Peninsula, West to Cloghane SAC 002070</p>	<p>Bridge is within the SAC</p>	<p>Estuaries [1130]</p> <p>Mudflats and sandflats not covered by seawater at low tide [1140]</p> <p>Coastal lagoons [1150]</p> <p>Large shallow inlets and bays [1160]</p> <p>Reefs [1170]</p> <p>Annual vegetation of drift lines [1210]</p> <p>Perennial vegetation of stony banks [1220]</p> <p><i>Salicornia</i> and other annuals colonising mud and sand [1310]</p> <p>Atlantic salt meadows (<i>Glauco-Puccinellietalia maritima</i>) [1330]</p> <p>Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410]</p> <p>Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes) [2120]</p>	<p>Works are being carried out in the SAC</p>	<p>Yes, potential for significant effects arising from sedimentation and contamination of the river from run off from construction. Potential for works to disturb qualifying interests of the site such as otters that may feed near to development site.</p>

		<p>Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]</p> <p>Dunes with <i>Salix repens</i> ssp. <i>argentea</i> (<i>Salicion arenariae</i>) [2170]</p> <p>Humid dune slacks [2190]</p> <p>Molinia meadows on calcareous, peaty or clayey-silt-laden soils (<i>Molinion caeruleae</i>) [6410]</p> <p>Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i>, <i>Alnion incanae</i>, <i>Salicion albae</i>) [91E0]</p> <p>Lutra lutra (Otter) [1355]</p> <p><i>Petalophyllum ralfsii</i> (Petalwort) [1395]</p>		
Dingle Peninsula SPA 004153	6.2km	<p>Fulmar (<i>Fulmarus glacialis</i>) [A009]</p> <p>Peregrine (<i>Falco peregrinus</i>) [A103]</p> <p>Chough (<i>Pyrrhocorax pyrrhocorax</i>) [A346]</p>	The Owenmore river flows into the sea at Brandon Bay.	No, given the minor nature of the proposed works and the dilution and dispersion action of the sea significant effects are not likely.
Tralee Bay Complex SPA 004188	8.5 km	<p>Whooper Swan (<i>Cygnus cygnus</i>) [A038]</p> <p>Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046]</p> <p>Shelduck (<i>Tadorna tadorna</i>) [A048]</p> <p>Wigeon (<i>Anas penelope</i>) [A050]</p> <p>Teal (<i>Anas crecca</i>) [A052]</p> <p>Mallard (<i>Anas platyrhynchos</i>) [A053]</p> <p>Pintail (<i>Anas acuta</i>) [A054]</p> <p>Scaup (<i>Aythya marila</i>) [A062]</p>	The Owenmore river flows into the sea at Brandon Bay.	No, given the minor nature of the proposed works and the dilution and dispersion action of the sea significant effects are not likely.

		<p>Oystercatcher (<i>Haematopus ostralegus</i>) [A130]</p> <p>Ringed Plover (<i>Charadrius hiaticula</i>) [A137]</p> <p>Golden Plover (<i>Pluvialis apricaria</i>) [A140]</p> <p>Grey Plover (<i>Pluvialis squatarola</i>) [A141]</p> <p>Lapwing (<i>Vanellus vanellus</i>) [A142]</p> <p>Sanderling (<i>Calidris alba</i>) [A144]</p> <p>Dunlin (<i>Calidris alpina</i>) [A149]</p> <p>Black-tailed Godwit (<i>Limosa limosa</i>) [A156]</p> <p>Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157]</p> <p>Curlew (<i>Numenius arquata</i>) [A160]</p> <p>Redshank (<i>Tringa totanus</i>) [A162]</p> <p>Turnstone (<i>Arenaria interpres</i>) [A169]</p> <p>Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179]</p> <p>Common Gull (<i>Larus canus</i>) [A182]</p> <p>Wetland and Waterbirds [A999]</p>		
Magharee Islands SAC 002261	c.12.7km	Reefs [1170]	The Owenmore river flows into the sea at Brandon Bay.	No, given the minor nature of the proposed works and the dilution and dispersion action of the sea significant effects are not likely.

Magharee Islands SPA 004125	c.12.5km	<p>Storm Petrel (<i>Hydrobates pelagicus</i>) [A014]</p> <p>Shag (<i>Phalacrocorax aristotelis</i>) [A018]</p> <p>Barnacle Goose (<i>Branta leucopsis</i>) [A045]</p> <p>Common Gull (<i>Larus canus</i>) [A182]</p> <p>Common Tern (<i>Sterna hirundo</i>) [A193]</p> <p>Arctic Tern (<i>Sterna paradisaea</i>) [A194]</p> <p>Little Tern (<i>Sterna albifrons</i>) [A195]</p>	The Owenmore river flows into the sea at Brandon Bay.	No, given the minor nature of the proposed works and the dilution and dispersion action of the sea significant effects are not likely.
Castlemaine Harbour SAC 000343	16.7km	<p>Estuaries [1130]</p> <p>Mudflats and sandflats not covered by seawater at low tide [1140]</p> <p>Annual vegetation of drift lines [1210]</p> <p>Perennial vegetation of stony banks [1220]</p> <p>Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]</p> <p>Salicornia and other annuals colonising mud and sand [1310]</p> <p>Atlantic salt meadows (<i>Glauco-Puccinellietalia maritima</i>) [1330]</p> <p>Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410]</p> <p>Embryonic shifting dunes [2110]</p> <p>Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes) [2120]</p> <p>Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]</p> <p>Dunes with <i>Salix repens</i> ssp. <i>argentea</i> (<i>Salicion arenariae</i>) [2170]</p>	The Owenmore river flows into the sea at Brandon Bay.	No, given the minor nature of the proposed works and the dilution and dispersion action of the sea significant effects are not likely.

		<p>Humid dune slacks [2190]</p> <p>Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (Alno-Padion, <i>Alnion incanae</i>, <i>Salicion albae</i>) [91E0]</p> <p><i>Petromyzon marinus</i> (Sea Lamprey) [1095]</p> <p><i>Lampetra fluviatilis</i> (River Lamprey) [1099]</p> <p><i>Salmo salar</i> (Salmon) [1106]</p> <p><i>Lutra lutra</i> (Otter) [1355]</p> <p><i>Petalophyllum ralfsii</i> (Petalwort) [1395]</p>		
Castlemaine Harbour SPA	C.13km	<p>Red-throated Diver (<i>Gavia stellata</i>) [A001]</p> <p>Cormorant (<i>Phalacrocorax carbo</i>) [A017]</p> <p>Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046]</p> <p>Wigeon (<i>Anas penelope</i>) [A050]</p> <p>Mallard (<i>Anas platyrhynchos</i>) [A053]</p> <p>Pintail (<i>Anas acuta</i>) [A054]</p> <p>Scaup (<i>Aythya marila</i>) [A062]</p> <p>Common Scoter (<i>Melanitta nigra</i>) [A065]</p> <p>Oystercatcher (<i>Haematopus ostralegus</i>) [A130]</p> <p>Ringed Plover (<i>Charadrius hiaticula</i>) [A137]</p> <p>Sanderling (<i>Calidris alba</i>) [A144]</p> <p>Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157]</p> <p>Redshank (<i>Tringa totanus</i>) [A162]</p> <p>Greenshank (<i>Tringa nebularia</i>) [A164]</p>	The Owenmore river flows into the sea at Brandon Bay.	No, given the minor nature of the proposed works and the dilution and dispersion action of the sea significant effects are not likely.

		Turnstone (<i>Arenaria interpres</i>) [A169] Chough (<i>Pyrrhocorax pyrrhocorax</i>) [A346] Wetland and Waterbirds [A999]		
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Screening Determination

- 9.39. The NIS submitted screens out all Natura 2000 sites except the Tralee Bay and Magharees Peninsula, West to Cloghane SAC and Mount Brandon SAC, on the grounds that they are removed from the development. This approach seems reasonable **and I do not consider that significant effects will arise in relation to the remaining Natura 2000 sites.**
- 9.40. Therefore, based on my examination of the NIS report and supporting information, the scale of the proposed development, its potential to contaminate the Owenmore River, I conclude that a stage 2 Appropriate Assessment is required for the Tralee Bay and Magharees Peninsula, West to Cloghane SAC and Mount Brandon SAC.
- 9.41. It is important to note that mitigation measures have not been considered in the Appropriate Assessment Screening.

Stage II Appropriate Assessment

- 9.42. The following Appropriate Assessment of the implications of the proposed works alone and in combination with other relevant plans and projects will be carried out in relation to the following European sites in view of their conservation objectives:
- Tralee Bay and Magharees Peninsula, West to Cloghane SAC
 - Mount Brandon SAC
- 9.43. The NIS submitted by the applicant concluded that the proposal will not beyond reasonable scientific doubt, adversely affect the integrity of any European Site either directly or indirectly.
- 9.44. The following is a summary of the objective scientific assessment of the implications of the project on the qualifying interest features of the European sites using the best scientific knowledge in the field. All aspects of the project which could result in

significant effects are assessed and mitigation measures designed to avoid or reduce any adverse effects are considered and assessed.

9.45. Potential for direct and indirect effects

- 9.46. It is important to note at this juncture that the Tralee Bay and Magharees Peninsula, West to Cloghane SAC is a large complex stretching from Tralee town westwards to Fenit Harbour and Cloghane, encompassing Tralee Bay, Brandon Bay and the Magharees Peninsula. It includes extensive mudflats at the eastern end, the beaches of Derrymore Island, the sand dunes and lagoons of the Magharees Peninsula, as well as the rocky headlands at its end.
- 9.47. Both the Tralee and Brandon (Owenmore) estuaries feature wide expanses of sheltered intertidal flats, often fringed with saltmarsh vegetation. Plant species are typically scarce on the flats, although there are some eelgrass (*Zostera* spp.) beds and patches of green algae (e.g. *Ulva* spp. and *Enteromorpha* spp.) Otters regularly feed within this extensive site though it is not known if they breed. Otter is listed on Annex II of the E.U. Habitats Directive.
- 9.48. Agricultural run-off from areas of fertilised dune grasslands in the vicinity of Lough Gill pose a continued threat to the nutrient status of the lagoon; algal blooms and fish kills have occurred in the past. Removal of sand has also occurred and poses a threat to the integrity of the system. Generally, the intertidal areas are relatively robust, although certain communities are vulnerable. For example, *Spartina* has spread widely, and may oust less vigorous colonisers of mud and may also reduce the area of mudflat available to feeding birds. Other activities, such as land reclamation and aquaculture, pose potential threats in terms of damage to habitats and potential disturbance to wintering birds.
- 9.49. This site is of considerable ecological and conservation significance for the excellent diversity of habitats it contains, many of which are listed on Annex I of the E.U. Habitats Directive. The occurrence of a species listed on Annex II of the E.U. Habitats Directive adds further importance to the site. The presence of a number of Red Data Book species, including the largest population of Natterjack Toads in Ireland, is also notable, as is the occurrence of several species listed on Annex I of the E.U. Birds Directive.
- 9.50. The Mount Brandon SAC comprises the central and north-western parts of the Dingle Peninsula. It is a mountainous area that encompasses several peaks including Mount

Brandon (952 m), which is the highest peak outside of the Macgillycuddy's Reeks, Brandon Peak (840 m), and the Stradbally range which includes Beenoskee (826 m). The site includes the high sea cliffs of Brandon Head, as well as low-lying areas such as the Owenmore River/Cloghane River valley.

- 9.51. The most common habitats within the site are heath, upland grassland and blanket bog. Areas of blanket bog occur on level or gently sloping ground. There are three main areas of particular interest: two upland bogs and a lowland, valley bog.
- 9.52. A population of Freshwater Pearl Mussel (*Margaritifera margaritifera*) occurs within the site. This is an endangered species that is listed on Annex II of the E.U. Habitats Directive. Other fauna of interest recorded from the site includes Large Heath (*Coenonympha tullia*), a vulnerable butterfly, and Arctic Char (*Salvelinus alpinus*), a Red Data Book fish species found recently in Anascaul Lough. The Dingle Peninsula supports some of the highest densities in Ireland of breeding Chough, a Red Data Book species that is listed on Annex I of the E.U. Birds Directive.
- 9.53. The main land use within the site is sheep grazing. The serious effects of overgrazing are widespread and are exacerbated by the upland, exposed nature of the site. Other threats come from turbary and afforestation. Part of the site is state owned, the Mount Brandon Nature Reserve. The site is of high conservation value due to the presence of good quality examples of 11 habitats that are listed on Annex I of the E.U. Habitats Directive, as well as populations of two species that are listed on Annex II of this Directive. The presence of the E.U. Birds Directive Annex I species, Chough and Peregrine, as well as of populations of a suite of rare Red Data Book plant species, adds considerably to the significance of the site.
- 9.54. The general conservation objectives for the qualifying interests of these sites seek to maintain or restore the favourable conservation condition for habitats and/or species at these sites. The maintenance of habitats and species within the Natura 2000 sites at favourable condition will contribute to the overall maintenance of favourable conservation status of those species at a national level.
- 9.55. The NIS submitted acknowledges that the proposed works will give rise to a potential for both direct and indirect significant impacts. Such impacts relate to only a limited number of qualifying interests as follows.

Qualifying interests at risk within the Tralee Bay and Magharees Peninsula, West to Cloghane SAC

9.56. Having regard to the NIS submitted, the nature and scale of the proposed work and the location of the following qualifying interests of the Tralee Bay and Magharees Peninsula, West to Cloghane SAC relative to the proposed works, I consider that these are the specific qualifying interests that are at risk of potential impact. Impacts have the potential to arise from the deterioration of water quality and/or increased levels of sedimentation and habitat disturbance.

- Otter
- Estuaries
- Tidal Mudflats and Sandflats
- Large Shallow Inlets and Bays

9.57. An Otter was observed during surveys of the site. Otters are known to utilise this SAC for feeding but as outlined in the site synopsis it is not known if they breed within it. One Otter was observed during the survey carried out on the 13th August 2018, no resting places were observed during the survey and it was considered that Otters utilise this stretch of the river for commuting or foraging. It was considered unlikely that Otters would utilise the lands within the immediate vicinity of the site given the existing residential uses and recreational fishing activities that occur at the bridge and nearby riverbanks.

9.58. Otters are sensitive to disturbance from construction activities and changes in water quality which would impact feeding. The proposed works could potentially result in displacement of Otters due to a loss of aquatic prey and / or foraging routes.

9.59. Estuaries comprise of interdependent mosaic of subtidal and intertidal habitats and are sensitive to changes in water quality as are Tidal Mudflats and Sandflats and Large Shallow Inlets and Bays. Potential impacts relate to the construction phase of the development and as aforementioned relate to an increase in sedimentation and/or changes to water quality.

Qualifying Interests at risk within the Mount Brandon SAC

9.60. It is of note that the majority of the qualifying interests of the Mount Brandon SAC are found within the cliff faces and mountainous areas of the SAC. In addition, it is

important to note that the Mount Brandon SAC is upstream of the proposed works and as such impacts are unlikely to all of the qualifying interests with the exception of one.

- 9.61. The SAC is designated for the protection of the Freshwater Pearl Mussel which habituates fast flowing streams and rivers where it buries itself in the fine gravel and coarse sand of the riverbed. As aforementioned in this report a survey for this mussel was carried out by the applicant. The survey observed a number of mussels within the river downstream of the bridge which is outside of the confines of the Mount Brandon SAC boundary. A submission from the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media acknowledges the location of these mussels outside of the SAC boundary but nonetheless requires that these specimens are treated as though they were located within the boundary of the SAC as the department contends that their origin is clearly the Owenmore River.
- 9.62. Whilst I note the Departments contentions in relation to the Freshwater Pearl Mussel and acknowledge the origins of this population of mussels, I also draw the Board's attention to Annex II and V of the Habitats Directive in which the Freshwater Pearl Mussel is listed as a species for protection. Given the status of the Freshwater Pearl Mussel and that they are significantly endangered with no viable populations within the Country, it is essential that any impacts are appropriately examined in the context of the development and adequate mitigation measures provided for in order to adequately protect the species. As such it is important to consider the impacts of the proposed development on these mussels in the context of the Appropriate Assessment.
- 9.63. The applicant considered within the NIS submitted that the Freshwater Pearl Mussel is within the zone of influence of the project and identified that there is a potential for significant effects to arise as result of deterioration of water quality and/or an increase in sedimentation and habitat disturbance or displacement of species during the construction phase of the development.
- 9.64. The impact of these effects will be discussed in detail in the context of proposed mitigation measures within the integrity test below.
- 9.65. **Potential in-combination effects.**
- 9.66. In combination effects are examined within section 11.6 of the NIS submitted. The proposed works were considered in combination with the Kerry County Development

Plan 2015-2021 and the East Dingle Peninsula Settlements Local Area Plan 2008-2014. No significant cumulative impacts are predicted as each plan has a range of environmental and natural heritage policy safeguards in place.

- 9.67. Current development was examined in the context of in combination effects and a search of planning applications permitted within the last 5 years within the townlands of Slievadrehid and Drom West were also examined as were all activities within the surrounding area such as forestry, peat extraction and agriculture. It is noted that the proposed works with mitigation will not result in any in poor water quality or habitat loss/damage. The NIS submitted, therefore concluded that there would be no cumulative / in-combination effects arising from the proposed development.
- 9.68. Having regard to the foregoing, I do not consider that the potential for in-combination effects are likely to arise.

9.69. **Mitigation Measures**

- 9.70. Mitigation measures have been set out within Section 12 of the NIS submitted and include standard best practice in relation to construction. It is stated within these documents that good site management, frequent inspections and ongoing vigilance will ensure that no impacts arise. The project has been designed to avoid adverse impacts to water quality. It is stated that preconstruction Freshwater Pearl Mussel and Otter surveys will be completed prior to any works being carried out on site and dams will not be installed until these are complete. Should species be found within the works area or at locations whereby there is a risk of disturbance the NPWS will be consulted and relevant mitigation /relocation carried out prior to the commencement of work. Such works are required to be carried out under licence from the NPWS. Dams will be installed to provide a dry works area in order to prevent any material from entering the river and being conveyed downstream. It is important to note in this context that Section 34 (13) of the Planning and Development Act, states that the granting of permission does not entitle a person to carry out development and covers the eventuality that the development cannot be implemented for legal reasons, should issues arise from the preconstruction surveys.
- 9.71. It is stated within Section 12.1.1 of the NIS that dams will comprise of 25kg sandbags and aqua barriers which will be slowly lowered into position in order to prevent

excessive sediment disturbance. The dams will be carried out in sections/phases and will not dam large volumes of water.

- 9.72. Notwithstanding that no invasive species were encountered at the site and surrounds during surveys, it is nonetheless proposed to carry out a preconstruction survey in this regard. In the event that invasive species are found at the site a site-specific management plan will be prepared in order to ensure that no spread occurs.
- 9.73. Method statements will be prepared for each element of the work in order to provide clarity for construction workers. A toolbox talk will be given to contractors and a project ecologist will be employed for the duration of the works. A temporary site compound will be set up a minimum distance of 25 metres from the works and will include a bunded area for storage of materials, equipment and small plant.
- 9.74. Access routes to the bridge will be clearly defined and no other access will be permitted. A footbridge will be installed in order to prevent erosion of the bank.
- 9.75. Scaffolding will be monitored in order to ensure that it is not at risk from a flood event. It is proposed to line the scaffolding from the deck up to hand rail height at the sides with a geotextile membrane to prevent fine material from entering the river. The geotextile barrier will be reinforced with an impermeable material which will control any mortar spoil from entering the river. Any spoil will be collected in the dry works area and removed accordingly from the site.
- 9.76. Vegetation will not be removed from the site prior to the completion of all surveys and will be caught within the scaffold membranes and also removed off site.
- 9.77. All machinery and equipment will be sterilised and cleaned prior to use in order to prevent contamination to the site. A fuel management plan will be prepared and implemented prior to any works being carried out. Fuelling and lubrication will not be carried out within 25m of watercourses and shall only be undertaken in designated bunded areas within the compound. Spill kits will be available at site work locations and any oils or hydraulic fluids will be stored in leak proof containers and checked for leaks on a regular basis.
- 9.78. Grout required for grout bags will be handled in contained and controlled circumstances and will not be exposed to river flow during the course application. The material will be brought on site as required and grouting operations will be short term

and completed in dry weather conditions. All grout operations will be supervised for spills and leaks at all times.

- 9.79. I note that mitigation measures proposed, such as the use of bunded areas and the lining of scaffolding are in line with the requirements of the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media as set out in their submission received by the Board.
- 9.80. Other mitigation includes the use of settlement areas to prevent any wash waters from entering the site and the removal of all solid waste from the site by licenced contractors.
- 9.81. Drainage controls will be put in place to prevent any waters from entering the river, gullies on the bridge will be blocked and flows will be diverted away from these during works.
- 9.82. Section 12.11.5 outlines that any dewatering required within the works site arising from leaks or residual water from the installation of dams will be directed to a sediment pond to the west of the bridge. Details will be agreed with the onsite ecologist. In the case of heavy siltation, water will be tankered off site and disposed of at a licenced landfill.
- 9.83. An emergency response plan will be prepared in the case of a possible incident arising during the repair works. All personnel are to be inducted in the provisions of the plan and will be made aware of their individual responsibilities.
- 9.84. All mitigation measures will be examined in relation to the potential for likely significant effects on the Magharees Peninsula, West to Cloghane SAC and the Mount Brandon SAC within the following integrity test.
- 9.85. **Integrity Test**
- 9.86. I have considered the NIS along with the information submitted with the application and have had regard to the mitigation measures outlined. Potential for impacts to arise in relation to the leakage of oils and diesels or other such contaminants from construction vehicles has been dealt with within the mitigation measures outlined in Section 12 of the NIS submitted. All machinery will be checked prior to entering the works area and all fuel, lubricants and hydraulic fluids will be kept in a secure bunded area removed from the river.

- 9.87. These mitigation measures are standard in nature and are known to be effective. I am therefore satisfied that the mitigation measures outlined in relation to hydrocarbon contamination of soils and waters are acceptable.
- 9.88. It is important to note at this juncture that works will only be carried out within the dry areas at any one time. Access routes will be demarcated and footbridges provided in order to prevent any damage or erosion to the riverbanks. This will ensure that increases in sediment to the river arising from soil dislodgement does not occur.
- 9.89. It is of further note in relation to sedimentation and water quality, that the proposed works are to be carried out during summer months and will be restricted to the specific dry area being worked. Any material or vegetation removed or dislodged from the bridge will be caught by the geotextile membrane attached to the scaffolding and will be disposed of accordingly. All works to the floor of the bridge will be carried out whilst dry and all grout and cement to be used will be fully set prior to the removal of the dams.
- 9.90. It is of importance to also note that the proposed dams will be lowered into the river slowly comprising of three phases in order to reduce the volume of water to be held back at any one time. Given the time of year and the phasing of the dams I consider that the proposed mitigation measures will adequately control the flow and velocity of the river in such a manner that will protect existing species and habitats from significant impacts. Freshwater Pearl Mussel are sensitive to changes in water turbidity, the phasing and control of the proposed river dams will ensure that significant impacts do not arise in this regard.
- 9.91. As mentioned above a preconstruction survey will be carried out in relation the presence of Freshwater Pearl Mussels, should species be found within the works area or should a need arise for the relocation of existing mussels in the vicinity, these works will require a licence from the NPWS and will be managed in accordance with the conditions of the licence.
- 9.92. I note that the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media have raised no objections to the potential relocation of these mussels and merely requests that such works are carried out by an appropriately qualified ecologist who is familiar with such relocation works.

9.93. With regard to the potential for impacts to arise in relation to Otters I note that no resting areas were observed during the habitat surveys. I also note that existing activity along the riverbank would discourage the use of the lands by Otters within the immediate vicinity of the proposed works. As impacts to water quality are unlikely and the Otter food source is therefore protected, the remaining potential for impacts arise from disturbance during the construction works. Given the current level of human and agricultural activity within the immediate vicinity of the works site and the lack of any resting or breeding sites observed in this area I consider that the likelihood of significant effects to arise to be insignificant. Otters utilising this site would be habituated to noise arising from the current use of the land and given the short duration of the proposed works disturbance is not considered likely.

9.94. Thus having regard to the information submitted in relation to sediment transportation, water pollution and habitat disturbance I am satisfied that the mitigation measures outlined are acceptable and will adequately prevent impacts arising in this regard.

9.95. **Overall Conclusion**

9.96. I have considered the location of the qualifying interests of both the Tralee Bay and Magharees Peninsula, West to Cloghane SAC and Mount Brandon SAC in relation to the proposed works and the existing context of the site within agricultural lands and the activities and noise associated with such activities and I consider, on the basis of the information provided with the application, including the Natura Impact Statement, and in light of the assessment carried out, I am satisfied that the proposed development individually, or in combination with other plans or projects would not adversely effect the European site Nos. **002261 and 000375** in view of these sites Conservation Objectives.

Table 2 AA summary matrix – Tralee Bay and Magharees Peninsula, West to Cloghane SAC

<p>Tralee Bay and Magharees Peninsula, West to Cloghane SAC, site code: 002261</p> <p>Summary of likely significant effects</p> <ul style="list-style-type: none"> • Water Quality deterioration • Sedimentation • Habitat Disturbance <p>Conservation Objectives: To maintain or restore the favourable conservation status of habitats and species of community interest</p>

		Summary of Appropriate Assessment			
Qualifying Interest feature	Conservation Objectives Targets and attributes	Potential adverse effects	Mitigation measures	In-combination effects	Can adverse effects on integrity be excluded?
Estuaries, Tidal Mudflats and Sandflats, Large Shallow Inlets and Bays, Otter	Area stable or increasing. No significant decline	Increase in siltation and pollution due to construction works could have an impact on water quality and could effect all QI listed and reduce availability of aquatic prey for otters. Noise arising from construction could also disturb otters.	Use of designated bunded areas for refueling, works to be carried out in dry area protected by dams, and works area lined by membrane. Storage of materials in designated contained area 25 m from works.	Additional development in area.	Yes
Overall conclusion: Integrity test Following the implementation of mitigation, the construction and operation of this proposed development will not adversely affect the integrity of this European site.					

Mount Brandon SAC, site code: 000375 Summary of likely significant effects <ul style="list-style-type: none"> • Water Quality deterioration • Sedimentation • Habitat Disturbance Conservation Objectives: To maintain or restore the favourable conservation status of habitats and species of community interest					
		Summary of Appropriate Assessment			
Qualifying Interest feature	Conservation Objectives Targets and attributes	Potential adverse effects	Mitigation measures	In-combination effects	Can adverse effects on integrity be excluded?

Freshwater Pearl Mussel <i>Margaritifera margaritifera</i>	Restore suitable habitat and restore Owenmore population to at least 3,100 adult mussels	Increase in siltation and pollution due to construction works could have an impact on water quality	Use of designated bunded areas for refueling, works to be carried out in dry area protected by dams, and works area lined by membrane. Storage of materials in designated contained area 25 m from works	Additional development in area	Yes
<p>Overall conclusion: Integrity test</p> <p>Following the implementation of mitigation, the construction and operation of this proposed development will not adversely affect the integrity of this European site.</p>					

10.0 Recommendation

10.1. On the basis of the above assessment, I recommend that the Board approve the proposed development subject to the reasons and considerations below and subject to conditions including requiring compliance with the submitted details and with the mitigation measures as set out in the NIS.

11.0 Reasons and Considerations

Reasons and Considerations

In coming to its decision, the Board had regard to the following:

- a) the EU Habitats Directive (92/43/EEC),
- b) the Water Framework Directive (2000/60/EC)
- c) the likely consequences for the environment and the proper planning and sustainable development of the area in which it is proposed to carry out the proposed development and the likely significant effects of the proposed development on a European Site,

- d) the conservation objectives, qualifying interests and special conservation interests for the Mount Brandon SAC site code 000375 and the Tralee Bay and Magharees Peninsula, West to Cloghane SAC, site code 002261
- e) the policies and objectives of the Kerry County Development Plan, 2015-2021,
- f) the nature and extent of the proposed works as set out in the application for approval,
- g) the information submitted in relation to the potential impacts on habitats, flora and fauna, including the Natura Impact Statement,
- h) the submissions and observations received in relation to the proposed development, and
- i) the report and recommendation of the person appointed by the Board to make a report and recommendation on the matter

Appropriate Assessment:

The Board agreed with and adopted the screening assessment and conclusion carried out in the inspector's report that the Mount Brandon SAC site code 000375 and the Tralee Bay and Magharees Peninsula, West to Cloghane SAC, site code 002261, are the European sites for which there is a likelihood of significant effects.

The Board considered the Natura Impact Statement and all other relevant submissions and carried out an appropriate assessment of the implications of the proposal for the Mount Brandon SAC site code 000375 and the Tralee Bay and Magharees Peninsula, West to Cloghane SAC, site code 002261, in view of the Sites Conservation Objectives. The Board considered that the information before it was adequate to allow the carrying out of an appropriate assessment.

In completing the assessment, the Board considered, in particular, the

- i. Likely direct and indirect impacts arising from the proposal both individually or in combination with other plans or projects, specifically upon the Mount Brandon SAC site code 000375 and the Tralee Bay and Magharees Peninsula, West to Cloghane SAC, site code 002261
- ii. Mitigation measures which are included as part of the current proposal,
- iii. Conservation Objective for these European Sites, and
- iv. Views of the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media, (DAU) and all other submissions received.

In completing the appropriate assessment, the Board accepted and adopted the appropriate assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the integrity of the aforementioned European Sites, having regard to the sites conservation objectives.

In overall conclusion, the Board was satisfied that the proposed development, by itself or in combination with other plans or projects, would not adversely affect the integrity of the European Sites, in view of the sites conservation objectives.

Proper Planning and Sustainable Development/Likely effects on the environment:

It is considered that, subject to compliance with the conditions set out below, the proposed development would not have significant negative effects on the environment or the community in the vicinity, would not give rise to a risk of pollution, would not be detrimental to the visual or landscape amenities of the area, would not adversely impact on the cultural, archaeological and built heritage of the area and would not interfere with the existing land uses in the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

12.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application except where otherwise may be required in order to comply with the following conditions.

Reason: In the interest of clarity.

2. All mitigation and environmental commitments identified in the Natura Impact Statement shall be implemented in full as part of the proposed development.

Reason: In the interest of development control, public information and clarity.

3. In the event that relocation of Freshwater Pearl Mussels is required to be carried out, the receiving site identified for translocation shall be appropriate habitat in terms of substrate, flow and water quality, the translocation shall be carried out by, or under the direction of, an ecologist familiar with freshwater pearl mussel translocation.

Reason: In the interest of species protection

4. Herbicides of the lowest available aquatic toxicity shall only be used within the riparian zone.

Reason: In the interest of safeguarding water quality.

5. All works shall be completed before the 1st October in any year.

Reason: To ensure the protection of the European sites

6. Prior to the commencement of works the ecological clerk-of-works shall identify areas of dry and wet heath habitat near the Temporary Site Compound. These areas shall be avoided and fenced off from machinery and works infrastructure

Reason: To ensure the protection of the European sites

7. Kerry County Council and any agent acting on its behalf shall ensure that all plant and machinery used during the works should be thoroughly cleaned and washed before delivery to the site to prevent the spread of hazardous invasive species and pathogens.

Reason: In the interest of the proper planning and sustainable development of the area and to ensure the protection of the European sites.

8. All works shall have regard to Inland Fisheries Ireland's published guidelines for construction works near waterways (Guidelines on Protection of Fisheries during Construction Works in and Adjacent to Waters, 2016). A programme of water quality monitoring shall be prepared in consultation with the contractor, the local authority and relevant statutory agencies and the programme shall be implemented thereafter.

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

Sarah Lynch

Senior Planning Inspector

11th December 2020