



An
Bord
Pleanála

Inspector's Report ABP-308824-20.

Development	N77 Ballyragget Village to Ballynaslee Road Improvement Scheme
Location	North of Ballyragget in the townlands of Ballyconra and Ballynaslee, Co. Kilkenny.
Local Authority	Kilkenny County Council
Type of application	Application for approval made under Section 177(AE) of the Planning and Development Act, 2010
Observers	Irish Water
Date of site inspection	22 April 2021
Inspector	Mairead Kenny

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1.0 Overview

- 1.1. This report concerns the N77 Ballyragget to Ballynaslee Road Improvement Scheme. The proposed development consists of the realignment of a 2.44 km section of the N77 at and to the north of a large Glanbia plant and the village of Ballyragget. The works comprise online widening and 700m off-line realignment. The proposed development will tie into the recently completed N77 Ballynaslee Realignment Scheme, which is to the north of the proposed scheme.
- 1.2. The application for approval is being made under section 177(AE) of the Planning and Development Act 2000 as amended.
- 1.3. The Board received an application for Compulsory Purchase Order No. 1 of 2020 – N77 Ballyragget Village to Ballynaslee Road Improvement Scheme. No objections were made.

2.0 Site Location and Description

- 2.1. The N77 is a national secondary road which links Kilkenny City to the M7 motorway at junction 17 and to Portlaoise by way of the village of Ballyragget and the towns of Durrow and Abbeyleix. The subject site comprises under 3 km of this section of the road between Ballyragget village to the south and the townland of Ballynaslee to the north. The landscape character, land uses, and settlement pattern are rural in nature at the northern end of the site. The context for the southern 500m of the proposed development is very different due to the presence of a major milk processing facility.
- 2.2. The main Glanbia milk processing plant is to the west of the N77. At eastern side of the N77 is the associated wastewater treatment plant and ancillary services. The facility is described in the applicant's documents as a major employer in the region and one of Europe's largest integrated dairy processing facilities. The applicant also references the nature of the operation and the fact that a high degree of heavy vehicle trip movements is generated by the plant at various times during the year.
- 2.3. Along the subject section of the N77 there are also 2 no. local road accesses, 2 no. private road accesses, 5 no. domestic accesses, 4 no. farm accesses and 19 no. field accesses. There is a sharp bend located to the north of the Glanbia plant, roughly in the centre of the proposed development site.

- 2.4. The natural environment is dominated by the nearby presence of the River Nore to the east. At the northern and southern extremities of the site the N77 and the river are closely aligned.
- 2.5. Photographs which were taken by me at the time of my site inspection are attached.

3.0 **Proposed Development**

- 3.1. The development will consist of realignment of the 2.44 km section of the N77 to remove a bend to the north of the Glanbia plant and extend northwards to tie into a recently completed N77 Ballynaslee Realignment Scheme. The scheme will commence at a point 250m south of the Glanbia plant.
- 3.2. The scheme objectives include:
- addressing deficiencies in road alignment, cross-section width, curvature and visibility
 - providing a suitable structural pavement
 - improving the access arrangement to the Glanbia plant
 - avoiding, reducing and if possible, remedying any significant adverse impacts on the environment
 - provision of an improved road drainage system which is environmentally sustainable
 - provision of safer and more efficient accessibility for the local community and all road users including pedestrians and cyclists
 - minimising disturbance and severance
 - providing a project which is consistent with or fulfils the objectives within local, regional and national policies.
- 3.3. The works involved comprise:
- 1740m of on-line realignment
 - 700m of off-line realignment works
 - Associated drainage including attenuation pond and swales

- Fencing, safety barriers, kerb line and signage
- All site development and landscaping works.

3.4. The application to the Board was accompanied a range of documents including:

- Natura Impact Statement
- Planning Construction and Environmental Report
- Kilkenny County Council Habitats Directive Project Screening Report
- Screening for Appropriate Assessment Report
- Kilkenny County Council EIA Screening Statement
- Route Options Report
- Project Appraisal Plan
- Preliminary Design Report
- Flood Risk Assessment
- Public notices and application drawings.

3.5. The response to a request for further information include the following:

- construction phase mitigation drawings
- details of water quality monitoring and assessment
- maintenance plan for surface water drainage infrastructure
- clarification with respect to hours of construction.

4.0 **Planning History**

4.1. There is a long planning history associated with the Glanbia factory and wastewater treatment system. The most significant recent decisions are summarised below.

4.2. Reg. ref. P17/73 - Permission granted for a milk powder processing building. Also, for works at the wastewater treatment plant to ensure continued compliance with industrial emissions licence.

4.3. Reg. ref. 17/817 – Permission granted for extension to processing building.

4.4. Reg. ref. 20/516 - Permission granted for a packaging intake building and butter despatch.

4.5. There is no other recent relevant planning history of significance.

5.0 **Observations**

5.1. **Prescribed Bodies**

The prescribed bodies notified by the applicant are:

- An Taisce
- Arts Council
- Commission for The Regulation of Utilities
- Failte Ireland
- Inland Fisheries Ireland
- Irish Water
- Kilkenny County Council
- Minister for Culture Heritage and the Gaeltacht
- National Parks and Wildlife Service
- The Heritage Council
- Transport Infrastructure Ireland
- Health Service Executive.

TII acknowledged receipt of referral.

Irish Water set out standard requirements relating to works and infrastructure.

5.2. **Third-Party Observations**

No third-party observations were received.

6.0 Legislative, Guidance and Policy Context

6.1. The EU Habitats Directive (92/43/EEC):

Article 6(3) and 6(4) of this requires 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.

6.2. European Communities (Birds and Natural Habitats) Regulations 2011:

These Regulations are relevant in terms of the transposition of the Directive in Ireland.

6.3. Planning and Development Acts 2000 (as amended):

Part XAB of the Planning and Development Acts 2000-2017 presents 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) refers to preparation of a Natura Impact Statement in respect of proposed local authority developments.
- Section 177(AE)(3) states that where a Natura Impact Statement 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.
- Under section 177AE(6)(a) 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.

6.4. Appropriate Assessment of Plans and Projects in Ireland – Guidance for Planning Authorities

The guidance addresses the requirement to consider the possible nature conservation implications of plans and projects on the Natura 2000 site network and sets out the process known as appropriate assessment. The guidance emphasises the avoidance of mitigation in the screening phase, the need to record the process and to rely on best scientific knowledge.

6.5. The Planning System and Flood Risk Management Guidelines

The guidance addresses the requirement to assess flood risk in applications for development and sets out the level of assessment warranted in particular situations. In considering proposals for development which may be vulnerable to flooding a number of criteria may be considered under a Justification Test. These include that the proposal has been subject to a flood risk assessment that demonstrates measures to ensure that residual risks can be managed to an acceptable level.

6.6. The Climate Action Plan

The National Mitigation Plan 2017 – 2022 was published in 2017 but was subsequently quashed in 2020 by the Supreme Court. Consultation is ongoing in relation to the 2021 Climate Action Plan.

The Climate Bill embeds the process of setting binding and ambitious emissions reductions targets in law. It provides that in the first two carbon budgets a total reduction of over 51% should be achieved.

6.7. TII Project Appraisal Guidelines

These translate the requirements of the Common Appraisal Framework for Transport Projects and Programmes 2019 published by the Department of Transport, Tourism and Sports. Under the TII guidance the requirement is to prepare a Project Appraisal

Plan to address the scheme need, consideration of alternatives and options, methodology, sensitivity analysis and appraisal scenarios.

This project scheme would be classified by TII as a Minor Project of cost between €5m and €20m .

6.8. Road Safety Authority Road Safety Strategy 2013-2020

This sets out targets to be achieved in terms of road safety and the policy to achieve these targets. The primary target is a reduction of road collision fatalities on Irish roads to 25 per million population or less by 2020 and a provisional target for the reduction of serious injuries to 61 per million population or less by 2020.

6.9. National Planning Framework – Project Ireland 2040

National Strategic Outcome 2 refers to Enhanced Regional Accessibility particularly relating to connectivity between centres of population of scale. This will support the objectives of the NPF. NSO2 references maintaining the strategic capacity and safety of national roads including planning for future capacity enhancements and improving journey times targeting an average inter-urban speed of 90kph.

National Strategic Outcome 3 relates to strengthening rural economies and communities. Continued investment in the agri-food sector will underpin sustainable growth. Investing and maintaining regional and local roads and strategic road improvement projects in rural areas will ensure access to critical services.

6.10. National Development Plan 2018 – 2027.

Arising from the NPF the National Development Plan identifies the national road network as one of its strategic investment priorities.

There is no listing for the N77 under the associated Capital Investment Tracker.

6.11. Regional Spatial and Economic Strategy for the Southern Region 2020.

RPO 167 sets out priorities for identified strategic road network improvements that are not included in the NDP. Improvements to national roads identified at regional and local level will be done in consultation with and subject to agreement with TII.

The provision of a number of projects are supported as strategic regional priorities to achieve the NPF objective NSO2, Enhanced Regional Accessibility.

Improvements to the N77 corridor are identified as a project of relevance in this respect.

6.12. Kilkenny County Development Plan 2014-2020

Under the development plan there are various objectives relating to the N 77.

Section 11.7.3 states the intention to develop and agree a policy for the Glanbia site at Ballyconra, Ballyragget on the N77.

Objective 11E is to develop and agree an appropriately planned policy response to access to the Glanbia site.

Objective 11G is to support the implementation of the NRA projects.

Consultation is ongoing in relation to the preparation of a new development plan.

I later reference landscape designations and protected structures.

7.0 Environmental Impact Assessment Screening

- 7.1. Section 50(1)(a) of the Roads Act, 1993 sets out the types of road development that require the preparation of an EIAR. This includes any prescribed type of proposed road development consisting of the construction of a proposed public road or the improvement of an existing public road. Article 8 of the Roads Regulations, 1994 sets out the prescribed types of proposed road in this respect. The proposed single carriageway road realignment over a distance of 2.44 km does not fall within the categories of development for which a mandatory EIA is required.
- 7.2. When making a decision with respect to the requirement for subthreshold EIA the Board is required to have regard to criteria which are transposed into Irish legislation under Schedule 7 of the PDR 2001 as amended.
- 7.3. An environmental impact assessment screening report dated November 2020 was submitted. Schedule 7A information is included. The scheme has been screened against the criteria in section 50(1)(b) of the Roads Act in order to determine if an EIAR is required.

- 7.4. The proposed development is as described in section 3.2.1. The proposed development would largely consist of realignment within the road corridor and a short section of off-line construction. Upgrades to the surface water drainage are incorporated.
- 7.5. The aspects of the environment likely to be significantly affected by the proposed development are described in section 3.2.2 including in relation to the archaeological features, the drainage scheme, the proximity to the river, the air quality and noise impacts and mitigations proposed.
- 7.6. The development is assessed in the document in terms of the likely significant effects with respect to the topics of expected residues and emissions and production of waste and use of natural resources.
- 7.7. In terms of the sensitivity of the environment the nearby European sites and proposed natural Heritage areas are described. In addition, the unassigned WFD status of this section of the river, which is identified as 'at risk' are noted. There have been no significant or persistent failure is in meeting environmental quality standards. The impact on archaeological features and features of archaeological potential is described and the scheme is stated not to result in any significant negative impacts on recorded monuments and will have localised direct negative impacts on features identified during geophysical survey. It is noted that such impacts are typically ameliorated through preservation by record.
- 7.8. The types and characteristics of potential impacts are described in section 3.3.3. The small spatial extent of the scheme is noted. There is considered to be no significant impact on the receiving environment during construction or operation phases and the probability of impacts is low subject to mitigation described as supplemented by the further information. No significant cumulative impacts with other developments are anticipated. The soil and waste generated during construction is not considered likely to have a significant impact.
- 7.9. It is concluded that due to the size, nature and characteristics of the proposal, no significant effects on the receiving environment are expected and preparation of a subthreshold EIAR is not required. I agree with this conclusion. I consider that subject to compliance with the plans and particulars and the specific mitigation documentation there is no real likelihood of significant effects on the environment

arising from the proposed development. I therefore conclude that there is no requirement for EIA in this case.

8.0 Assessment

8.1. Introduction

8.1.1. The Board in making a decision in respect of an application under Section 177AE shall consider:

- The likely effects on the environment,
- The likely consequences for the proper planning and sustainable development in the area, and
- The likely significant effects of the proposed development upon a European site.

8.1.2. The structure of my report follows the above three topics.

8.2. The likely effects on the environment

8.2.1. Having regard to the nature of the proposed development on the site context I consider that the likely effects of the proposed development on the environment can be assessed under the following headings:

- Hydrology and Hydrogeology
- Biodiversity
- Air Quality and Climate
- Noise and Vibration
- Population and Human Health
- Cultural heritage
- Other issues

8.2.2. Hydrology and Hydrogeology

- 8.2.3. The Nore dominates the local hydrology and at the southern end of the scheme it is only 35m from the road carriageway. The existing environment also includes houses which are served by private wells. Groundwater vulnerability is high, and the scheme is underlain by a regionally important aquifer. There are two source protection zones in the general vicinity of the scheme, one associated with the deep wells which supply the Glanbia plant and the other with a group water scheme. I consider that the likely effects on the environment could include water quality impacts to the Nore and on water supplies. I also consider the matter of flood risk below.
- 8.2.4. The potential **construction phase risks** due to spillages, slope stability or contaminated land issues will be addressed through implementation of standard construction mitigation measures including adherence to CIRIA guidance, measures relating to storage and refuelling and to stockpiling. The Design Environmental Management Plan which is presented in Chapter 15 of the Construction, Planning and Environmental Report refers. This incorporates the mitigation measures within the Outline Environmental Operating Plan. The construction phase mitigation drawings and surface water monitoring details submitted by way of further information demonstrate that there are sufficient suitable lands for the site compound and that due consideration has been given the necessary surface water mitigation. The location of silt fences and water sampling points are included. The applicant has reiterated that there will be no direct surface water discharges to the Nore during construction period I refer further under the appropriate assessment section to the standards for water quality discharge during construction. I consider that due to the nature of these measures there can be a high degree of confidence in their successful implementation.
- 8.2.5. Relating to the specific issue of **mitigation relevant to water supply**, this include a preconstruction well survey to be carried out at all properties within 150m of the scheme and greater distance in the case of wells which supply the group water scheme. Based on that survey appropriate measures will be designed and implemented to protect any vulnerable groundwater supplies.
- 8.2.6. Subject to the above, I consider that it may be concluded that the scheme will not result in significant adverse effects on surface water or groundwater resources as a result of construction phase activities.

- 8.2.7. Regarding **operational phase impacts** the improvement of drainage was identified as one of the objectives of the scheme. Presently surface water from the southernmost section of the existing carriageway connects by a network of road gullies and is conveyed in a southerly direction within a closed system. The remainder of the existing carriageway is not fitted with a surface water drainage system. Surface water runs across the carriageway and onto the grassed verges and infiltrates over time. On completion the upgraded road would provide for discharges to existing networks to the north and south of the scheme, provision of bypass petrol interceptors, filter drains, conventional gully to closed network systems, an attenuation pond to cater for the one in 100 year flood event, and infiltration trench, spillway and open swale. A damaged culvert towards the northern end of the scheme will be replaced.
- 8.2.8. The design is based on attenuation of discharge to the river to greenfield rates. It may be concluded therefore taking into account the other elements of the scheme as described above that the proposed development will contribute to ongoing improvement of water quality and reduction of peak run-off. A maintenance plan for the surface water drainage system has been submitted.
- 8.2.9. There is potential for adverse water quality effects due to spillages or as a result of maintenance. As the scheme incorporates storm water attenuation and pollution control methods including interceptors and a manual shut-off valve it is considered that there are no likely significant effects due to accidental spillages on the road. The use of de-icing materials is established and will not change. Any maintenance works would be likely to be minor and of short duration. The risks to private wells, if any, are to be mitigated as identified earlier including through preconstruction survey and design of appropriate measures.
- 8.2.10. Having regard to the above I consider it may be concluded that there is no likelihood of adverse water quality impacts in the operational phase.
- 8.2.11. The potential for **flood risk** has been assessed under a separate Flood Risk Assessment report submitted with the application. I accept that in view of the proposals for surface water drainage it is reasonably concluded that the only possible flooding mechanism which might be relevant is river flooding. Based on the information provided by the applicant I am satisfied that there are no other significant

possible flooding mechanisms. It may be concluded also that the proposed development would not contribute to flooding of adjacent lands.

8.2.12. Regarding the risk that the road itself would be subject to flooding the flood risk report notes a historic event in the village of Ballyragget which led to closure of the N77. That location is outside of the subject scheme and appears to be close to a bridge. The road level at the southern extent of the scheme is 2.3m above the downstream 1 in 1000-year flood level. At a location close to the centre of the scheme there is a proposed 200m local access route and 350 m spillway and open swale which would be developed as part of the scheme – these elements are close to but parallel with an isolated area of flooding. At the northern end the floodplain extent is defined by a 70mOD contour line and the existing road is significantly elevated above this. Having regard to all of the above the subject scheme is not at risk of fluvial flooding or any other source of flooding.

8.2.13. In conclusion I consider that the proposed development would not give rise to adverse water quality impacts on the river Nore or on groundwater resources. I consider that the proposed development will not contribute to flooding and indeed the design contains elements which address a localised flooding issue and provide for more controlled discharges. The development would result in improvements in the quality and rate of discharges to the river.

8.2.14. **Biodiversity**

8.2.15. The ecological impact assessment which is presented in chapter 11 of the Construction, Planning and Environmental Report overlaps significantly with the NIS. Regarding matters relevant to European sites and qualifying interests, I address these matters under the appropriate assessment section of this report below.

8.2.16. Within the zone of influence of the scheme the ecological features include proposed Natural Heritage Areas including the River Nore / Abbeyleix Woods Complex, which is directly adjacent the scheme and 2 no. areas of wetland habitat, the closest of which is 0.6km from the scheme. Mammal activity noted in surveys included pine marten and badger. Bat surveys undertaken did not record potential bat roosting habitat which could be impacted. A number of birds which are listed as Annex I species are reported as well as other birds of conservation value.

8.2.17. The potential for impacts in the construction and operation phases is assessed in section 11.3. It is noted that there is no suitable foraging or nesting habitats within the footprint of the proposed scheme and no recorded rare or protected habitats. The new realignment will impact on habitats of low ecological importance comprising agricultural habitats, improved grassland and hedgerows which are reported as being in poor condition. In the operation phase the route has the potential to impact foraging and commuting routes of terrestrial and volant species as the physical road will cause a barrier and also there will be a loss of hedgerows and trees. The mammal surveys undertaken indicate that there are no established trails across the N77 and mortality due to mammals crossing are therefore considered unlikely.

8.2.18. As mitigation I consider that the early the appointment of a site ecologist and the implementation of an Environmental Operating Plan are significant measures. As further discussed below under appropriate assessment it is noted that the site drainage measures are carefully considered and there are anticipated to be no significant impacts on water quality.

8.2.19. In conclusion the direct impacts are restricted to habitat loss and loss of trees and hedgerows of local importance. Further preconstruction bat surveys are proposed which will mitigate any changes in circumstances. There are no direct impacts on habitats of significant ecological value or likely impacts on birds or mammals. I consider that it may be concluded that the impact on biodiversity is acceptable.

8.2.20. **Air Quality and Climate**

8.2.21. An air quality assessment presented as part of the application assesses the construction and operation phase impacts on air quality and climate. For the purposes of local air quality impact 4 no. sensitive receptors were identified and incorporated in modelling. A high-growth traffic scenario is utilised to ensure worst case approach is modelled with an assumed speed of 100 kph. The climate impact is assessed based on the UK carbon calculator for highways. With regard to the air quality impact on ecological sites the TII requirement for assessment due to nitrogen deposition refers in relation to ecological sites within 200 m of the scheme and where over 5% AADT flows arises. An assessment of ambient NO_x concentrations for the SAC and pNHA for 2023 was modelled. The baseline environment is as described in section 4.3, which is based on use of zone D EPA data, including use of long-term

good quality data from nearby locations. I consider that the baseline information and general approach to assessment is adequate.

- 8.2.22. The most significant **construction phase air emission** is dust emissions there is potential for dust and PM₁₀ and PM_{2.5} emissions which could give rise to soiling effects. There are a number of sensitive receptors within the area where the majority of deposition of dust will occur. A series of mitigation measures are set out in section 4.6.1.1 which relate to adherence to IAQM guidance in the minimisation, suppression, monitoring and recording of dust. Community engagement will be put in place including a communications plan. The construction phase dust impacts will be short-term and not significant and subject to implementation of mitigation as set out will not cause a nuisance at nearby sensitive receptors.
- 8.2.23. In the construction phase the **potential for emissions relevant to climate** relate to use of materials with embedded carbon dioxide and transport emissions and these have been assessed. The worst-case approach assumed that raw materials would be taken from a site at a location 60 km away, but it is considered that materials will mainly be sourced locally. The embedded greenhouse gas emissions as presented in table 4 – 10 results in a total construction phase emission of 12,952 CO₂ equivalent, amounting to 0.039 % of Ireland's National GHG emissions targets for 2030. Mitigation measures which can be introduced are limited to prevention of leaving engines idling and minimising waste. I consider that the applicant's assessment of the predicted climate impact during the construction phase is reasonable namely that it is short term, negative but overall, not significant.
- 8.2.24. **Operational phase air quality** impact has been assessed for potential effects on local air quality due to NO₂, PM 10 and PM 2.5 in accordance with TII guidance. The modelled results are that the overall impact for these air quality parameters is long-term and imperceptible. There would be no exceedances of ambient air quality standards. There is no predicted change to traffic flows in terms of AADT. The regional air quality impact is considered negative long-term and imperceptible due to very small increases in NO_x and VOCs concentrations, as a result of increased vehicle speeds. The levels for NO_x and VOCs remain significantly less than limit values and targets.

- 8.2.25. The assessment of air quality impacts on sensitive receptors is based on a worst-case location and having regard to the increased average speed. The predicted annual average NOX concentration within the SAC and pNHA is in compliance with the limit value of 30 µg/m³. Concentrations increase from (at most) 65% of the annual limit value within the designated sites to 68% as a result of the scheme. This is an increase of at most 1.03 µg/m³ at the worst-case location which is less than the TII recommendation for assessment of habitat sensitivity by the project ecologist. The change in NO₂ dry deposition rate is also well below the critical load for inland and surface water habitats.
- 8.2.26. I note that IFI and NPWS both identified a range of issues during pre-application consultation, which I have summarised under the appropriate assessment section. No comments were made in response to the application. I consider that the overall application documentation is robust, and, in this regard, I refer to the comprehensive nature of the air quality assessment and the involvement in the team of a recognised freshwater ecology specialist. For the purposes of air quality, the assessment on ecology is thorough and I accept the conclusion that the air quality impact is negative, long-term but imperceptible.
- 8.2.27. In the operation phase no site-specific mitigation measures are required in relation to air quality or climate. National efforts including fiscal and legal strategies are outlined in section 4.62. As the operational phase air quality and climate impacts are imperceptible, I consider that this matter is properly addressed in the application documentation and I accept the conclusions.

In conclusion, I consider that the development is acceptable in terms of air quality and climate effects.

8.2.28. **Noise and Vibration**

- 8.2.29. The noise impact assessment undertaken includes a prediction of construction traffic noise based on BS 5228 and an assessment of operational noise impacts based on a noise model which was developed and noise surveys which were undertaken.
- 8.2.30. The construction phase noise impacts set out incorporate a 5dB correction for screening which it is assumed will be in place. The assessment concludes that the construction daytime noise limit of 70 DB L_{Aeq} can be complied with at distances

beyond 30m for the works. For closer locations there is potential for exceedances of the noise criteria and a commitment was given to employ screening and best practice mitigation to ensure the construction noise limits are not exceeded. The working hours will be as set out namely 07:00 to 19:00 Monday to Saturday.

8.2.31. The modelled results for noise consider the effect on 20 locations and take into account first floor levels of dwellinghouses. An assessment is provided for various scenarios, different years and percentages of HGV traffic. The noise assessment indicates that for one receptor mitigation is required in order to reduce traffic noise levels to the TII criteria. The relevant location is to the rear of an existing house where the route realignment is proposed (CH 2280 – CH 2500). A noise barrier which is proposed to be put in place is described in terms of the technical specification required. This will be a 3 m high barrier and its effect will be to reduce the traffic noise levels to within the TII level of 60dB_{L_{den}} up to 2053. I note that the acoustic environment to the front of the same house will be significantly positively impacted.

8.2.32. In terms of the impact of the scheme overall I note that a neutral noise impact assessment will be experienced at the majority of assessment locations and that houses close to the proposed realigned section are likely to experience a reduction in noise levels.

8.2.33. Regarding vibration the assessment relies on actual recorded vibration measurements taken during other construction works. These are stated to provide some context in relation to typical ranges of vibration which would be generated by construction breaking activity. A commitment is given that the construction activities will be required to operate below the recommended vibration criteria set by TII. I consider that this is achievable.

8.2.34. I consider that the assessment of noise and vibration impacts demonstrates that subject to mitigation there would be no significant adverse residual effects on residential receptors in the vicinity of the scheme.

8.2.35. **Population and Human Health**

- 8.2.36. I consider that the significant potential impacts on population and human health related to road safety and accessibility including provision for vulnerable road users, construction phase impacts and visual effects.
- 8.2.37. With respect to the existing **road safety** of this section of the N77 the RSA indicates that six minor collisions occurred between 2007 and 2014. Thus, while the road is undoubtedly substandard it has not been identified as an area of concern. Baseline air quality and land uses are typical of a rural area served by a national road. Presently no public transport is available along this stretch of road. Margins are narrow and conditions for pedestrians and cyclists are poor. With the improved road to the possibility of improved public transport service in the area could arise. The widened margins will provide for safe conditions for local residents, pedestrians and cyclists. In terms of road safety and general accessibility, the scheme constitutes a benefit to population and human health. I note in addition that the proposed development incorporates shared accesses and other features which will give rise to improved safety, better journey times and conditions for road users including ease of access for local residents. I consider that the proposed development would result in positive effects in terms of road safety and accessibility including provision for vulnerable road users.
- 8.2.38. The development could give rise to adverse **construction phase impacts** for negative impacts on local residents. Such impacts would include temporary increases in noise and vibration, potential for some dust emissions and potential impacts on groundwater quality. In the operation phase the predicted air quality impacts would be imperceptible. The assessment of air, noise and vibration above indicates that any exceedances of accepted criteria can be suitably mitigated. As the standards for emissions are set to protect public health, the development should be considered acceptable in terms of the impacts on population and human health.
- 8.2.39. The assessment of **landscape and visual effects** undertaken provides a detailed assessment of the manner in which individual residential receptors will be impacted, the magnitude of that impact and the significance of the visual effect after mitigation. A number of the roadside dwellinghouses currently have views which are screened by vegetation. The loss of roadside trees and hedgerows will give rise to moderate adverse impacts in some cases. Some of the residential receptors are identified as experiencing moderate beneficial effects after mitigation in the form of planting of

roadside trees and hedgerows. As planting matures there will be a noticeable improvement in views from the opening year. In general, as planting matures by 2038 the impacts on individual residential receptors vary from neutral to slight adverse in general. There are no significant landscape impacts and there are no special scenic amenity values associated with this section of the Nore Valley.

8.2.40. In conclusion, the scheme through provision of shared access and other features will give rise to improved safety, improved journey times and conditions for road users and ease of access for local residents. Potential impacts related to air quality, noise and vibration, lands, soils and geology and water will be mitigated under specific sectoral measures. The visual impacts which will affect residential receptors will be mitigated in time as landscaping matures. I conclude therefore that there would be a positive long-term impact on population and human health for road users and for local residents and a slight adverse / neutral effect in terms of visual effects and construction related impacts.

8.2.41. **Cultural heritage**

8.2.42. The archaeological Impact assessment reported that there are 40 known archaeological sites and monuments in the environs of the scheme the nearest of which is a ring ditch which is 90m to the east of the realigned section of the N77. This site forms part of a group of five ring ditches possibly associated with the coaxial field system. The nonintrusive surveys undertaken in 2018 identified likely archaeological sites within the direct line of the realigned road including sites referenced G8 15/31 and G8 37 which are enclosures with possible pits and are directly in the line of the scheme. These will be subject to direct significant negative impacts. Pending further investigation, the significance of the sites is unknown, but they may form part of the remains of levelled sites associated with the Bronze Age/Iron Age Cemetery formed by the known cluster of ring ditch sites to the east. There is predicted to be no impact on recorded archaeological monuments other than indirect and imperceptible impacts on the ring ditch (KK 004 – 040) which is 90 m to the east of the scheme. The associated potential archaeological sites that partially extend into the road take and may be associated with this recorded monument are subject to recommendations presented in section 9.6.1. Test excavations representing a 12% sample coverage of the area and use of a metal

detector are the main elements. The test trench excavation is recommended to be undertaken well in advance of the construction to provide adequate time for full analysis. Subject to mitigation as proposed I accept the applicant's statement that preservation by record of identified archaeological sites/features is an appropriate and reasonable mitigation. In the context where the alignment of the road seems to me to be reasonable and having regard to the presence of other archaeological monuments to the east and a dwellinghouse to the west, I am satisfied that the route is suitable notwithstanding the potential impact on archaeological sites.

8.2.43. The scheme would not result in any substantial or direct impacts on protected structures or structures which are listed under the NIAH. I consider that the identified direct impacts on undesignated cultural heritage sites are acceptable. In this regard I note that the main impact would be on the roadside walls associated with Ballyconra House. That house is included on the National Inventory of Historic Landscapes and Designed Gardens. A number of its significant features including roadside walls have already been subject to unsympathetic modern repair. In addition, the setting of the house and layout of the garden is much modified and affected by the adjacent Glanbia factory.

8.2.44. There are no reported geological heritage sites in the vicinity of the scheme.

8.2.45. In conclusion, I consider that the archaeological, architectural and cultural heritage impacts are acceptable.

8.2.46. **Other issues**

Material Assets and related

8.2.47. To facilitate the scheme there is a requirement to divert and/or alter a number of utilities which are outlined in the application documentation and some of which have been agreed with the relevant utility providers. I consider that no significant issues arise in this respect.

8.2.48. The development will involve a maximum excavation depth of approximately 5 m below ground and a site-specific C&D management plan will be prepared. Excavated soils will include some made ground. Native soils will be used within the scheme where possible. Any unsuitable material and any made ground/waste soil would be classified, transported and disposed of in accordance with all relevant waste

management legislation. The amount to be disposed of is estimated at 39,000 m³. Standard construction waste management measures will be implemented as part of the general construction works. It may be concluded that waste generated will not have a significant effect on the environment.

8.2.49. There is a low likelihood that the bedrock will be encountered during the construction phase. There is no indication of any impact on aggregates of value.

8.2.50. The loss of agricultural land in the amount of less than 5ha and the temporary use of a 1ha of land and small impacts on a farmyard would not give rise to significant impacts on agricultural activity. The scheme intercepts a total of 40 no. agricultural land parcels. There are other potential impacts relating to impacts on access points, severance and related. I consider that the recommended measures presented are suitable and sufficient to mitigate the impacts on the agricultural land holdings. There would be no significant residual effect on agronomy.

8.2.51. In conclusion I consider that the development is acceptable in terms of material assets and there would be no significant adverse effects.

8.2.52. **Conclusion**

8.2.53. I consider that it may be concluded that the likely significant effects on the environment can be suitably mitigated. In particular I note the noise and archaeological mitigation measures described and the recommendation for preconstruction bat surveys and management of the surface water system. Subject to these measures and the other measures set out in the application documentation I conclude that the development would not give rise to significant adverse residual effects on the environment.

8.3. **The likely consequences for the proper planning and sustainable development of the area**

I address this topic under the following relevant headings:

- scheme need
- road safety and transportation.

8.3.1. **Scheme Need**

- 8.3.2. The scheme need is stated to be rooted in the deficiencies associated with the existing network together with the national, regional and local policies. The deficiencies are discussed in more detail in the next section below. They include sub-standard bends, narrow and inconsistent road widths, multiple direct entrances and issues at the Glanbia factory entrances. Accordingly, a section of the existing road would have an above-average rate of road collisions and observed speeds which would be below optimal levels for the national road network. The author of the Project Appraisal Plan observed numerous instances of inappropriate overtaking on the section of the N77 in front of the Glanbia plant. I am satisfied that based even on a preliminary consideration of the facts, there is clear evidence of the need for a scheme to address the deficiencies in this section of the N77.
- 8.3.3. In terms of the policy context I refer to the earlier section of my report which outlines a range of national, regional and county policy provisions which are relevant. I would refer in particular to the Regional Policy Objectives in the RSES for the Southern region, notably RPO 167. I also note the inclusion in the development plan of specific reference to the Glanbia site at Ballyragget in the intention to agree a policy for the site in conjunction with the NRA.
- 8.3.4. I consider that it may be concluded that there is a prima facie case for the scheme and that it accords with planning policy.
- 8.3.5. **Road safety and transportation**
- 8.3.6. The scheme criteria and objectives as set out in the Project Appraisal Plan include:
- Economy - journey times, capacity and efficiency.
 - Safety – low collision rankings, mainline visibility and overtaking opportunities, reduced private access, better access to Glanbia.
 - Environment – reduced emissions, avoidance of adverse effects on SAC.
 - Integration – complement and be consistent with planning policy.
 - Physical activity – improve facilities for vulnerable users.
- 8.3.7. I consider that the impetus for the scheme is to address the restricted capacity and other deficiencies of this section of the national road network which provides access to a major industrial facility. The relevant section of the N77 road is described as

having a restricted capacity due to its limited cross-section and substandard horizontal alignment. The carriageway north of Glanbia is a single carriageway road with lane widths of 3.5 m to 3.6 m wide and hard strips of between 0.2 and 0.5 m wide for a length of about 1 km. There are particular issues related to the design of the junction at the Glanbia factory in addition. The existing arrangement leads to inconsistent traffic flow and reduced overtaking opportunities and gives rise to possible conflicts in traffic movement. I assess below the aspects of the scheme and the extent to which it addresses the identified deficiencies.

- 8.3.8. The scheme primarily comprises online upgrades and there is one section (Ch 2300 to Ch 2800) where the route diverts offline, passing through agricultural lands. An online upgrade option was also assessed as described in the Route Options Report. That option (Option 2) included retaining and upgrading an existing substandard bend. The multi-criteria analysis undertaken concluded that the off-line option was preferable. The latter provides a straight alignment diverting away from the sharp bend at the existing road. The selected option involving the off-line section would appear to me to be a suitable approach to the design. In addition to providing a suitable alignment it has the secondary advantage of also avoiding a large farm holding and a dwellinghouse which has direct access to the road. From my inspection of the site I consider that driver frustration leading to dangerous overtaking is a characteristic of the existing road conditions. The provision of this realigned section as part of the overall upgrade will provide for improved overtaking opportunities and result in a more efficient section of national road.
- 8.3.9. The scheme incorporates improvements to the Glanbia factory entrance. The existing ghost island is not in compliance with DMRB standards. The present arrangements also give rise to a safety concern as vehicles using the direct taper from the single carriageway on the southern approach may reduce the visibility from vehicles exiting right from Glanbia. The provision of a new segregated taper outside the visibility envelope from the entrance will address the latter issue and comply with DMRB. The northern approach to the Glanbia factory is also substandard and will be replaced with a new ghost island junction with sufficient taper and width.
- 8.3.10. A significant change is also proposed for the existing entrance to the Glanbia site at the eastern side of the N77 and north-east of the main factory entrance. At that location there are presently 2 no. plant accesses and a farm access. The scheme

provides for a single entrance to serve the Glanbia facility and other lands. Drawing number KK1613402–P3–GA–002F8 refers. I am satisfied that these works at the southern section of the scheme in the vicinity of the Glanbia factory sites, a location where there is significant movement of HGVs and other vehicles, will provide greatly enhanced road safety conditions.

8.3.11. As part of the scheme overall it is also proposed to reduce the number of direct accesses on to the N 77 where possible. A number of direct field and out farm accesses have substandard approach gradients, and these will be addressed and the required stopping site distance from direct accesses provided where possible. At the northern end of the scheme it incorporates similar interventions, which will aid safe manoeuvres onto and off the main carriageway.

8.3.12. In recognition of the number of dwellinghouses in the area the scheme includes as an objective the avoidance of increased severance and the provision of better facilities for vulnerable road users. The surveys undertaken indicate that there may be a small number of people cycling to work at the Glanbia plant but that overall the number of cyclists recorded is low. On that basis the provision of cycle tracks within the scheme was not considered appropriate. I note the reasons given as set out in section 5.4 of the PAP, including low traffic volumes on the N77 and absence of cycle track facilities north and south of the scheme. I consider that the scheme will adequately contribute to the goal of providing for vulnerable users by provision of an increased hard shoulder width.

8.3.13. The improved access arrangements from dwellinghouses will benefit the local community in terms of providing safer accessibility to the road.

8.3.14. **Conclusion**

8.3.15. Having regard to all of the above I am satisfied that the proposed scheme will provide for a significant upgrade to the road resulting in increased overall consistency and efficiency and providing for road safety. I consider that the selected option and the general thrust of the design as well as the consideration of details including with respect to surface water are appropriately described and sufficient. The scheme will improve conditions for vulnerable road users and for the local community and provide for improved access to a major industrial facility.

8.3.16. I conclude that the development would constitute a positive intervention and would be in accordance with the proper planning and sustainable development of the area.

9.0 **Appropriate Assessment**

9.1. **Introduction**

9.1.1. The requirements of Article 6(3) as related to appropriate assessment of a project under part XAB, sections 177U and S 177AE of the Planning and Development Act 2000 (as amended) are considered fully in this section. The areas addressed in this section are as follows:

- Compliance with Article 6(3) of the EU Habitats Directive
- Screening the need for appropriate assessment
- The Natura Impact Statement and associated documents
- Appropriate assessment of implications of the proposed development on the integrity each European site

9.2. **Compliance with Article 6(3) of the EU Habitats Directive**

9.2.1. 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 before consent can be given.

9.2.2. The proposed development is not directly connected to or necessary to the management of any European site and therefore is subject to the provisions of Article 6(3).

9.3. **Appropriate Assessment- Screening**

9.3.1. The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U of the Planning and Development Act 2000 (as amended) are considered fully in this section.

9.3.2. **Background on the Application**

9.3.3. The applicant has submitted a screening report entitled Screening for Appropriate Assessment Report – N77 Ballyragget Village to Ballynaslee Road Improvement Scheme dated 24th September 2019.

9.3.4. The applicant's Stage 1 AA Screening Report was prepared by Ecofact Environmental Consultants. It is in line with current best practice guidance and provides a description of the proposed development and identifies European Sites within a possible zone of influence of the development. I am satisfied that the report was prepared by a suitably qualified and experienced specialist with expertise relevant to the ecological receptors. The other reports with the application notably the 177AE Application Report (also referenced as the Construction, Planning and Environmental Report) present a range of supporting information including in relation to air, noise and vibration, soils and geology, water and biodiversity impacts.

9.3.5. The applicant's AA Screening Report concluded that:

The proposed development of the N77 Ballyragget to Ballynaslee Improvement Scheme has the potential to result in impacts on the qualifying interests of the River Barrow and River Nore SAC and the River Nore SPA. Although the scheme is not located directly within the SAC, direct impacts were identified regarding potential disturbance on Otter as part of the SAC. Indirect impacts on both the SAC and SPA are identified as water quality impacts that may arise during the construction phase of the proposed development. Given the sensitivity of FPM to changes in water quality, for which the River Barrow and River Nore SAC is designated, this impact has the potential to be significant in the absence of mitigation. As the proposed scheme is located adjacent to the River Nore, in some parts as close as c.30m,

there is the potential for non-native invasive species impacts and mitigation is required.

It is considered that the operational phase of the development will give rise to a positive impact as the new drainage designs will incorporate treatment and attenuation including a bypass petrol interceptor before discharge to receiving waters. Potential operational impacts on both the SAC and SPA were identified in relation to spillages on the new road leading to water quality impacts. Cumulative impacts are identified in relation to FPM and water quality and are considered to have the potential to be significant, in the absence of mitigation measures.

From examination of the information available, it is assessed that there is the potential for direct, indirect and cumulative impacts on the Natura 2000 network, specifically in relation to the River Barrow and River Nore SAC and the River Nore SPA. Therefore, it is concluded that the proposed development does require a Natura Impact Statement (Appropriate Assessment).

9.3.6. Having reviewed the documents and submissions, I am satisfied that the information allows for a complete examination and identification of any potential significant effects of the development, alone, or in combination with other plans and projects on European sites.

9.3.7. Screening for Appropriate Assessment- Test of likely significant effects

9.3.8. 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.

9.3.9. The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site.

9.3.10. Description of the development

9.3.11. The applicant provides a description of the project on page 10 of the AA Screening Report and elsewhere in other documents accompanying the application notably in section 2.2, 2.5 and 2.6 of the 177AE Application Report. I consider that the development may be described as follows:

- Works along a 2.44 km length of the N77.
- To include a junction upgrade for the Glanbia factory with carriageway and verge widening as well as approximately 700 m realignment.
- To require land take and hedgerow removal.
- A new drainage scheme is proposed for the scheme between CH1950 and CH3300 including the new realignment section. This includes provision of a road drainage bypass petrol interceptor which outfalls to an attenuation pond and adjacent soak way.
- Surface water from adjacent lands between CH 2350 and CH 2990 will be piped and discharged directly to a proposed spillway and grassed swale with wetland area. The gradient of the swale and wetland area will promote discharge of sediment from surface water run-off.
- Existing road drainage systems will be utilised on the northern and southern ends of the scheme with provision of new road drainage and bypass petrol interceptors.
- To involve establishment of the site compound in an area which will minimise potential impacts to the environment and the public in accordance with the site compound location requirements set out in section 2.6.1 of the 177AE Application Report.
- Diversion and alteration of utilities and traffic management measures will be required.
- Road construction activities will include excavation and removal of soil to proposed design levels along the scheme to be undertaken by mechanical means - spoil arising will be loaded onto HGV tipper trucks for removal of site or used within the scheme if testing confirms suitability.

- Pavement construction involving laying the subbase and laying asphalt materials.
- Finished surface course to be swept using a mechanical road sweeper following which road markings will be applied using a vehicle mounted road.
- Following completion of road formation works will include landscaping, safety barrier installations and installation of public lighting and signage. Testing and commissioning phase will follow.
- The contractor will be obliged to abide with requirements set out in the Environmental Operating Plan (EOP) during the construction phase. The EOP will outline the site procedures to deliver the mitigation measures listed in the NIS and EclA for the scheme.

9.3.12. The submitted further information includes:

- construction phase mitigation drawings
- details of water quality monitoring and assessment including the locations, parameters and information with respect to the standard to be achieved prior to discharge to the Nore
- maintenance plan for surface water drainage infrastructure including the aspects of this work and the frequency
- clarification with respect to hours of construction after dark.

9.3.13. **Submissions and Observations**

9.3.14. I consider it relevant to refer to the detailed pre-application submissions of DAU and IFI, which are presented in Appendix 2 of the NIS and summarised below.

9.3.15. The submission of DAU sets out **nature conservation recommendations** in its submission dated 30 October 2018. In summary the comments relevant to appropriate assessment are:

- The proposed development lies adjacent to the habitat for the critically endangered Nore Freshwater Pearl Mussel (NPFM).
- Of particular concern is the impact of the mobilisation of silt and other pollutants during construction phase of this project. Water quality monitoring

during construction will be required and an on-site ecologist with the authority to halt or review work practices should water quality impacts be detected must be appointed to oversee the construction works.

- Complete project details including an outline CEMP needs to be provided in order to allow adequate appropriate assessment to be undertaken. The applicants need to be able to demonstrate that the CEMP and other such plans are adequate and effective mitigation supported by scientific information and analysis and that they are feasible within the physical constraints of the site.
- The CEMP should also include methods to ensure invasive alien species are not introduced or spread.
- Noting the proximity of a major factory, the NIS must assess impacts of any leakages of fuels, lubricants or other chemical additives from HGVs and mitigation measures included to avoid impacts. The NIS must assess the impact of spillage of liquid milk cargo, including large-scale, unforeseen accidental spillages due to road traffic collisions or other accidents. Such risks should be outlined and mitigated in the NIS.
- The impact of use of road salt in winter must be considered.
- Mitigation measures including reed bed filtration systems should be considered.
- The NIS should include details on proposals for surface water attenuation, its treatment and proposed discharge.
- To comply with regulations the emission limit values in respect of this development must aim to achieve the ecological quality objectives for FPM habitat outlined in SI number 296/2009.
- The project has potential to have significant effects on otters and impacts must be assessed. Full details of the surveys undertaken should be given. Requirements relating to avoidance of risk completely or if necessary, consideration of a derogation licence are set out.
- The second draft of the FPM Nore sub basin and other guidance applies.

9.3.16. **Inland Fisheries Ireland** consultation response set out in a document dated 7 September 2018 includes the following comments:

- The improvements to road drainage are welcomed. We would be interested in the adequacy of sizing of the attenuation pond and details of the hydrobrake system (if any) that will control the outflow.
- Bypass interceptors only work if they are correctly maintained and IFI would like to see details of an inspection regime by the Council.
- The interactions between the existing discharge points on the river and the proposed development are of interest. Potential discharges from construction activity would be a major concern. A very strict method statement and plan of works would need to be in place.
- General requirements in relation to uncured concrete are set out.
- Silt traps should be constructed at locations that intercept run-off to streams. They should not be immediately adjacent to natural water courses. A buffer zone should remain between the silt trap and the watercourse with natural vegetation left intact so as to assist silt interception.
- All oils and fuels should be stored in bunded areas and particular care and attention taken during refuelling and maintenance operations on plant and equipment. Where site works involve discharge of drainage water to receiving rivers and streams, temporary oil interceptor facilities should be installed and maintained.

9.3.17. **European Sites**

9.3.18. The development site is immediately adjacent to a European site, River Barrow and River Nore SAC. The closest European sites are:

- River Barrow and River Nore SAC (002162)
- River Nore SPA (004233).

River Barrow and River Nore SAC (002162)

9.3.19. The boundary of the designated area of the European site adjoins the site of the proposed development at a number of locations as shown in figure 2 of the AA

screening report. This section of the River Nore is within the distribution of the Nore Pearl Mussel *Margaritifera durrovensis*. Section 4.2.1.1 of the AA screening report presents information in relation to this species and notes that small numbers of large old individuals are thought to still occur here. The main population is restricted to the section of main river channel from Poorman's Bridge to Lismaine Bridge and most of the population being found between Poorman's Bridge and the Glanbia factory above Ballyragget.

- 9.3.20. There is a sub-basin management plan (NS2, 2010) for the catchment area upstream of Ballyragget. A section of this report is quoted. This refers to the lack of successful reproduction in the River Nore since 1970 and the fact that recruitment of juvenile mussels is being prevented by the poor quality of the river substrate arising from excessive siltation and nutrient enrichment. The single extant *Margaritifera durrovensis* population is unviable and on the verge of extinction. Expert opinion has indicated that the current 300 adults cannot sustain into the future and that assisted breeding is the only method by which the current population can be increased in the medium to long term. The project is ongoing, and it is hoped that juvenile mussels will be translocated to suitable habitat within the Nore catchment.
- 9.3.21. On the basis of this report the AA screening report acknowledges that the proposed scheme is located adjacent to the sub basin plan area and that the adjoining stretch of river is therefore existing or potential mussel habitat and any works which have the potential to introduce silt or other pollutants into this stretch has to be assessed as working against the conservation objectives of the SAC. The trigger for an NIS for this site is described as being at a very low level.
- 9.3.22. I am in agreement with the conclusion that proposed development could give rise to impacts which would have a significant effect on this European site.

River Nore SPA (004233)

- 9.3.23. This European site is at its nearest point about 40m to the east of the proposed development. The single conservation interest is the Annex I species Kingfisher *Alcedo atthis*. The site comprises the river channel and marginal vegetation in the river Nore. Other species which occur within the site include mute swan, mallard, cormorant, grey heron, moorhen, snipe and sand martin. I consider that proposed

development could give rise to impacts which would have a significant effect on this European site.

Other European sites.

9.3.24. The other European Sites that occur within 15km of the proposed development are:

- Lisbegney Bog SAC (000869) - 5.3 km north-east of scheme.
- Cullahill Mountain SAC (000831) – 8.9 km west of scheme.
- Spahill and Clonmantagh Hill (000849) – 10.9 km south-west of scheme.
- Loughans SAC (000407) – 14.3 km south-west of scheme.
- Galmoy Fen (001858) – 13.5 km east of scheme.

9.3.25. Table 1 in the AA Screening Report presents a summary of these European sites, their conservation interests and the potential for effects on those conservation interests. All of the sites are over 5km from the proposed scheme. The conservation interests are terrestrial or groundwater dependent (calcareous fens, grasslands, turloughs and alkaline fens) or relate to species which are dependent on terrestrial habitats (*vertigo moulinsiana*). At this distance I consider that there would be no possibility of potential effects on these habitats or species due to the construction or operation of the scheme.

Having regard to the conservation interests of those sites and the separation or absence of pathways, these European sites are ruled out from further consideration. I agree with this assessment.

9.3.26. Mitigation measures

No measures designed or intended to avoid or reduce any harmful effects of the project on a European Site have been relied upon in this screening exercise.

9.3.27. Screening Determination

The proposed development was considered in light of the requirements of 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually (or in combination with other plans or projects) could have a significant

effect on the European Sites River Nore SPA (004233) and River Barrow and River Nore SAC (002162) in view of the sites' Conservation Objectives, and Appropriate Assessment is therefore required.

9.4. Appropriate Assessment – Stage 2

9.4.1. Following the screening process, it has been determined that Appropriate Assessment is required as it cannot be excluded on the basis of objective information that the proposed N77 Ballyragget to Ballynaslee Road Improvement Scheme individually or in-combination with other plans or projects will have a significant effect on the River Barrow and River Nore SAC and River Nore SPA.

9.4.2. The Natura Impact Statement

9.4.3. The application included a NIS entitled N77 Ballyragget Village to Ballynaslee Road Improvement Scheme Natura Impact Statement dated 5 June 2020, which examines and assess potential adverse effects of the proposed development on the following European Sites:

- River Nore SPA (004233)
- River Barrow and River Nore SAC (002162).

9.4.4. I consider that the information supplied is adequate. It is clear that the NIS was prepared in line with current best practice and utilising appropriate expertise. It provides an assessment of potential impacts and pathways which I consider is comprehensive. The information provided also sets out considerable detail relating to the nature of the proposed development and the relevant construction and operation phase impacts.

9.4.5. Appropriate Assessment of implications of the proposed development

9.4.6. 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.

9.4.7. In the foregoing I have regard to relevant guidance including the publication of DoEHLG (2009), Appropriate Assessment of Plans and Projects in Ireland: Guidance for Planning Authorities. Department of the Environment, Heritage and Local Government, National Parks and Wildlife Service. Dublin and the document of EC (2002), Assessment of Plans and Projects significantly affecting Natura 2000 sites. Methodological Guidance on the provisions of Article 6(3) and 6(4) of the Habitats Directive 92/43/EC.

9.5. European Sites

River Barrow and River Nore SAC

The conservation objectives for the River Barrow and River Nore SAC (Site Code 002162) are as set out in the publication of NPWS of 19 July 2011 (Version 1.0).

The qualifying interests of the River Barrow and River Nore SAC (Site Code 002162) are as follows.

[1130] Estuaries

[1140] Tidal Mudflats and Sandflats

[1170] Reefs

[1310] Salicornia Mud

[1330] Atlantic Salt Meadows

[1410] Mediterranean Salt Meadows

[3260] Floating River Vegetation

[4030] Dry Heath

[6430] Hydrophilous Tall Herb Communities

[7220] Petrifying Springs*

[91A0] Old Oak Woodlands

[91E0] Alluvial Forests*

[1016] Desmoulin's Whorl Snail (*Vertigo moulinsiana*)

[1029] Freshwater Pearl Mussel (*Margaritifera margaritifera*)

[1092] White-clawed Crayfish (*Austropotamobius pallipes*)

[1095] Sea Lamprey (*Petromyzon marinus*)

- [1096] Brook Lamprey (*Lampetra planeri*)
- [1099] River Lamprey (*Lampetra fluviatilis*)
- [1103] Twaite Shad (*Alosa fallax*)
- [1106] Atlantic Salmon (*Salmo salar*)
- [1355] Otter (*Lutra lutra*)
- [1421] Killarney Fern (*Trichomanes speciosum*)
- [1990] Nore Freshwater Pearl Mussel (*Margaritifera durrovensis*)

The **site-specific conservation objectives** are:

To maintain the favourable conservation condition of

- [1016] Desmoulin's Whorl Snail (*Vertigo moulinsiana*)
- [1092] White-clawed Crayfish (*Austropotamobius pallipes*)
- [1130] Estuaries
- [1140] Tidal Mudflats and Sandflats
- [1310] Salicornia Mud
- [1421] Killarney Fern (*Trichomanes speciosum*)
- [3260] Floating River Vegetation
- [4030] Dry Heath
- [6430] Hydrophilous Tall Herb Communities
- [7220] Petrifying Springs*

which is defined by a list of attributes and targets.

To restore the favourable conservation condition of

- [1095] Sea Lamprey (*Petromyzon marinus*)
- [1096] Brook Lamprey (*Lampetra planeri*)
- [1099] River Lamprey (*Lampetra fluviatilis*)
- [1103] Twaite Shad (*Alosa fallax*)
- [1106] Atlantic Salmon (*Salmo salar*)
- [1330] Atlantic Salt Meadows
- [1355] Otter (*Lutra lutra*)
- [1410] Mediterranean Salt Meadows

[1990] Nore Freshwater Pearl Mussel (*Margaritifera durrovensis*)

[91A0] Old Oak Woodlands

[91E0] Alluvial Forests*

which is defined by a list of attributes and targets.

With respect to the qualifying interest

[1029] Freshwater Pearl Mussel (*Margaritifera margaritifera*)

the status of the species and the conservation objective is under review.

This is an extensive site which is selected for a range of habitats including priority habitats and species notably the Nore Pearl Mussel. It is relevant at this time to provide further description of the conservation interests in terms of the potential for effects given the large-scale and diverse nature of the European site. I note that the AA screening report screened out certain conservation interests in stage I. I have taken a different approach and consider the entirety of the European site as part of the stage II appropriate assessment. I have had reference to the applicant's screening report in my considerations below.

<p>[1130] Estuaries [1140] Tidal Mudflats and Sandflats [1170] Reefs [1310] Salicornia Mud [1330] Atlantic Salt Meadows [1410] Mediterranean Salt Meadows</p>	<p>These habitats are located significantly downstream of the proposed development and may be excluded from further consideration notwithstanding the hydrological pathway. The distances involved are over 50 km in all cases.</p>
<p>[3260] Floating River Vegetation</p>	<p>There is potential for effects on this habitat, which is not present in the immediate area but likely to be present downstream.</p>

[4030] Dry Heath	This terrestrial habitat is not found in the vicinity of the scheme and there is no connectivity and no potential for effects.
[6430] Hydrophilous Tall Herb Communities	There is potential for this habitat to be present in the vicinity of the scheme and there is a hydrological pathway.
[7220] Petrifying Springs*	There is no potential for effects due to the separation distance of almost 50km.
[91A0] Old Oak Woodlands [91E0] Alluvial Forests*	These terrestrial habitats are not found in the vicinity of the scheme and there is no connectivity and no potential for effects.
[1016] Desmoulin's Whorl Snail (<i>Vertigo moulinsiana</i>)	There is no potential for effects on this species which is not found within 10km of the proposed development.
<p>[1029] Freshwater Pearl Mussel (<i>Margaritifera margaritifera</i>)</p> <p>[1990] Nore Freshwater Pearl Mussel (<i>Margaritifera durrovensis</i>)</p> <p>[1092] White-clawed Crayfish (<i>Austropotamobius pallipes</i>)</p> <p>[1095] Sea Lamprey (<i>Petromyzon marinus</i>)</p> <p>[1096] Brook Lamprey (<i>Lampetra planeri</i>)</p> <p>[1099] River Lamprey (<i>Lampetra fluviatilis</i>)</p> <p>[1103] Twaite Shad (<i>Alosa fallax</i>)</p> <p>[1106] Atlantic Salmon (<i>Salmo salar</i>)</p> <p>[1355] Otter (<i>Lutra lutra</i>)</p>	<p>There is potential for effects on all of these species.</p> <p>Freshwater Pearl Mussel / Nore Freshwater Pearl Mussel is present in the vicinity of the scheme as shown on map 7 of the NPWS version 1.0 conservation objectives. The subbasin management plan applies. The adjoining stretch of river is existing or potential mussel habitat.</p> <p>White-clawed Crayfish - unlikely that species is present in the vicinity of the scheme.</p> <p>All three species of lamprey are present. Twaite Shad may be present.</p>

	<p>Atlantic salmon is considered likely to be present in the study area and spawning habitat is downstream of Ballyragget.</p> <p>Otter use the river for commuting although the N77 restricts the movement of otters. No established trails or holts were identified.</p> <p>Water quality effects during construction or operation could adversely impact these species directly or indirectly. FPM/NFPM would be very susceptible to even small levels of silt.</p>
<p>[1421] Killarney Fern (<i>Trichomanes speciosum</i>)</p>	<p>This is not present in the area and there is no potential for effects.</p>

River Nore SPA

- 9.5.1. The conservation objective is to maintain or restore the favourable bird species listed as Special Conservation Interests for this SPA:

[A229] Kingfisher *Alcedo atthis*

- 9.5.2. The presence and activity of Kingfisher along this stretch of the road would be limited by the existing environment and absence of suitable habitat. Water quality impacts during construction and the potential for spillage in the operational phase could give rise to effects on the species, which require assessment.

9.6. Aspects of the proposed development.

- 9.6.1. The main potential for effects related to the proposed development that could adversely affect the conservation objectives of European sites are considered below:
- Direct impacts during construction phase including disturbance of otters using the area would not be likely to be significant as there are no holts close to the

works and the N77 and associated activity related to the busy road would cause a degree of customisation. No work is planned to be carried out after dark except at locations over 150 m from the river. It is considered that there would be no perceptible impacts on otter related to noise and disturbance during construction or operation of the scheme.

- There is no potential for direct impacts on mammals during the operational phase. The change to the road alignment is not significant in the sense of crossing routes. Otters are understood to cross at the bridge in the village and otter and mammals generally have not been identified as crossing the N77.
- There is potential for water quality impacts which could affect FPM/NFPM, lamprey, White clawed crayfish, otter, and Atlantic salmon, Twait shad and Kingfisher. Any alteration in water quality status caused by the scheme could affect the conservation objectives for FPM/NFPM.
- Water quality impacts on floating river vegetation habitat and Hydrophilous tall herb habitat could arise in the event of spillages or poor management of construction.
- Introduction of non-native invasive species. None have been identified in the area but could be easily imported.
- In the operation phase adverse water quality impacts would be expected to be reduced due to the provision of treatment and attenuation for road run-off. The potential for spillages on the road including milk, fuels, lubricants and chemical additives has to be considered as the road comes within 30 m of the river. This matter was raised by DAU in pre-application consultation. The risk to the river water and dependent species from spillages will be reduced including by reason of the proposed attenuation pond which will have a manual shut-off valve fitted to the outfall and will allow for containment of spillages in the operational phase and the attenuation of run-off prior to discharge. This will also assist in dealing with existing and / or potential water quality effects such as from de-icing salts.
- I consider that the positive water quality effects of the road drainage scheme, which were noted and welcomed by IFI are supportive of the conservation objectives for FPM/NFPM, lamprey, White clawed crayfish, otter, and Atlantic

salmon, Twait shad and Kingfisher and for downstream aquatic habitats which are qualifying interests. Water quality impacts on floating river vegetation habitat and Hydrophilous tall herb habitat similarly would be likely to benefit from positive changes in water quality.

- Potential cumulative water quality impacts are assessed as imperceptible negative and to relate to the upgrading of the existing N77 pavement south of the current proposed scheme.

9.7. Mitigation

9.7.1. The proposed mitigation measures are as follows:

- The implementation of the EOP, which will incorporate all mitigation identified in the NIS and EclA.
- The engagement of the site ecologist who will approve the EOP, ensure that it incorporates all mitigation from the NIS and EclA, oversee its implementation and ensure that silt fences and bunding are in place as per the EOP.
- The works area will be limited, and suitable standard measures implemented in relation to the operation of site compounds. The compound will not be within 50m of any watercourse and will be fenced with silt fences the location of which are set out in the outline EOP and detailed on the further information drawings.
- The strict water quality protection measures will include Terrastop premium silt fences or an equivalent which will intercept any run-off from these areas. The site compound will have bunded storage areas. No stockpiling will take place within 50 m of any watercourse and stockpiles will be provided with bunding and silt fences.
- Any mixing of cement will be within the site compound and all wash water and wastewater securely stored on site. The EOP Appendix 5 again refers.
- As no non-native invasive species were recorded in the study area it is considered that adherence to relevant guidance is sufficient measure to avoid introduction of non-native invasive species.

- As requested by NPWS the applicant notes that the site ecologist will carry out water quality monitoring on the river upstream and downstream of the works area. Further information has been presented on this aspect of the construction phase monitoring and a satisfactory.
- With respect to the target to be achieved the applicant states in the response to further information that all analytical results must be screened against the General Assessment Criteria under the Surface Water Regulations as amended and any relevant statutory or best practice requirements taking account of the sensitivity of the river Nore. Further, more any assessment of the surface water results to take account of the analytic result from baseline monitoring events as well as upstream and downstream water quality during these events. The results of all surface water monitoring events during construction will therefore be assessed by the site ecologist, in the context of relevant statutory requirements (the surface water regulations and any additional relevant statutory/best practice requirements) and in the context of the background surface water quality in the river Nore in the vicinity of the scheme.

I refer the Board to the applicants initial consultation with NPWS which is reported in appendix 2 of the NIS. NPWS notes that the project area lies within a sensitive catchment under European Communities Environmental Objectives (Freshwater Pearly Mussel) Regulations 2009 (SI 296/2009) and that emission limit values that aim to achieve the ecological quality objectives set out in the fourth schedule of the regulations are relevant when a public authority is considering an application for authorisation of discharge to waters governed by this regulation.

I note that NPWS states that in order to comply with Regulation 12, emission limit values in respect of the development must aim to achieve the ecological quality objectives for Freshwater Pearl Mussel Habitat outlined in SI 296/2009. The applicant submission does not give a firm commitment in this respect but does not rule out attaining those levels either depending on background levels. It appears to me that the recommendation of NPWS (made prior to lodgement of the application) is onerous and depending on background levels may be without practical benefit to the ecology and the river. Nevertheless, having regard to SI 296/2009 in the requirements of appropriate assessment and the designation of this stretch of the

river as a Freshwater Pearl Mussel Habitat, there may be no alternative but to require that the applicant aim to achieve the ecological quality objectives outlined therein. I have drafted a condition for consideration by the Board in this context.

9.7.2. To conclude, I note that the application documentation includes a range of mitigation, monitoring and long-term maintenance measures for the scheme. These are suitably detailed in terms of the location of activities which will take place during the construction period, which removes any lack of clarity about what exactly is proposed. In addition, I am satisfied that the nature of the measures which are relatively standard uncommonly applied are capable of being successfully implemented.

9.7.3. Subject to the mitigation measures and the condition recommended with respect to SI 296/2009 , I support the conclusion in the NIS that there would be no residual impacts on the following conservation interests of the River Barrow and River Nore SAC.

- Floating River Vegetation
- Hydrophilous Tall Herb Communities
- Freshwater Pearl Mussel
- Nore Freshwater Pearl Mussel
- White-clawed Crayfish
- Sea Lamprey
- Brook Lamprey
- River Lamprey
- Twaite Shad
- Atlantic Salmon
- Otter

I have previously discounted any potential for effects on the remaining conservation interests of that European site.

9.7.4. Subject to the mitigation measures above I support the conclusion in the NIS that there would be no residual impacts on the conservation interests of the River Nore SPA.

9.8. Integrity test

9.8.1. Following the appropriate assessment and the consideration of mitigation measures, I am able to ascertain with confidence that the project would not adversely affect the integrity of the River Barrow and River Nore SAC and River Nore SPA in view of the Conservation Objectives of this site.

9.8.2. This conclusion has been based on a complete assessment of all implications of the project alone and in combination with plans and projects.

9.9. Appropriate Assessment Conclusion

9.9.1. 'The N77 Ballyragget to Ballynaslee Road Improvement Scheme has been considered in light of the assessment requirements of Sections 177U and 177AE of the Planning and Development Act 2000 as amended.

9.9.2. Having carried out screening for Appropriate Assessment of the project, it was concluded that it may have a significant effect on the River Barrow and River Nore SAC and River Nore SPA. Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of the sites in light of their conservation objectives.

9.9.3. Following an Appropriate Assessment, it has been ascertained that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the River Barrow and River Nore SAC (002162) and River Nore SPA (004233), or any other European site, in view of the site's Conservation Objectives.'

9.9.4. This conclusion is based on:

- A full and detailed assessment of all aspects of the proposed project including proposed mitigation measures in relation to the Conservation Objectives of River Barrow and River Nore SAC and River Nore SPA.

- No reasonable scientific doubt as to the absence of adverse effects on the integrity of River Barrow and River Nore SAC and River Nore SPA.

10.0 Recommendation

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

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 European Union (Birds and Natural Habitats) Regulations 2011-2015,
- (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 of the European sites River Barrow and River Nore SAC (002162) and River Nore SPA (004233),
- (e) the policies and objectives Kilkenny County Development Plan 2015-2021,
- (f) the nature and extent of the proposed works set out in the application for approval,
- (g) 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 reached in the Inspector's report that the European sites River Barrow and River Nore SAC (002162) and River Nore SPA (004233) are the only European Sites in respect of which the proposed development has the potential to have a significant effect.

The Board considered the Natura Impact Statement and associated documentation submitted with the application for approval, including the further information received on 1 July 2021, the mitigation measures contained therein and the submissions and observations on file. The Board completed an appropriate assessment of the implications of the proposed development for European sites River Barrow and River Nore SAC (002162) and River Nore SPA (004233), in view of the sites' conservation objectives. The Board considered that the information before it was adequate to allow for a complete assessment of all aspects of the proposed development and enable them reach complete, precise and definitive conclusions for appropriate assessment.

In completing the appropriate assessment, the Board considered, in particular, the following:

- i. the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects,
- ii. the mitigation measures which are included as part of the current proposal, and
- iii. the conservation objectives for the European Sites.

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 site's 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 and there is no reasonable scientific doubt remaining as to the absence of such effects.

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 contribute to downstream flooding, would not seriously injure the amenities of property in the vicinity, would not adversely impact on the cultural, archaeological and built heritage of the area and would be

acceptable in terms of traffic safety and convenience. The proposed development is in accordance with the stated objectives of the Kilkenny County Development Plan 2014-2020. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further information received on 1 July 2021 and the information contained in the Natura Impact Statement, except as may otherwise be required in order to comply with the following conditions. Where any mitigation measures or any conditions of approval require further details to be prepared by or on behalf of the local authority, these details shall be placed on the file and retained as part of the public record.

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

2. The local authority and any agent acting on its behalf shall comply with the mitigation measures contained in the application documentation as amended by the further information received on 1 July 2021 and in the Natura Impact Statement submitted with the application.

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

3. The discharge of surface water during the construction phase shall be in accordance with emission limit values that aim to achieve the ecological quality objectives set out in the Fourth Schedule of European Communities Environmental Objectives (Freshwater Pearl Mussel) Regulations 2009 (SI 296/2009).

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

4. A suitably qualified ecologist shall be appointed by the local authority to oversee the site set-up and construction of the proposed development and the

ecologist shall be present on site during construction works. Upon completion of works, an audit report of the site works shall be prepared by the appointed ecologist and submitted to the local authority to be kept on record.

Reason: In the interest of nature conservation, to prevent adverse impacts on the European sites and to ensure the protection of the Annex I habitats and Annex II species and their Qualifying Interests for which the sites were designated.

5. The design and construction of culverts shall have regard to the provisions of NRA publication 'Guidelines for the Crossing of Watercourses during the Construction of National Road Schemes' and the Eastern Regional Fisheries Board publication 'Requirements for the Protection of Fisheries Habitat during Construction and Development Work at River Sites'.

Reason: In the interests of ecological protection.

6. The local authority and any agent acting on its behalf shall facilitate the preservation, recording, protection or removal of archaeological materials or features that may exist within the site. In this regard, the County Council shall:
 - a) employ a suitably qualified archaeologist prior to commencement of the development who shall assess the site and monitor all site investigations and other excavation works, and
 - b) provide suitable arrangements acceptable to the Department of Culture, Heritage and the Gaeltacht for the recording and removal of any archaeological materials which is considered appropriate to remove.

Reason: In order to conserve the archaeological heritage of the site and secure the preservation and protection of any remains that may exist within the site.



Mairead Kenny
Senior Planning Inspector

20 July 2021