



An
Bord
Pleanála

Inspector's Report ABP-310657-21

Development	Ballybofey & Stranorlar Flood Mitigation Measures. Construction of two storm manholes and two pump hardstands behind the Flood Embankments on the River Finn.
Location	Ballybofey, Co. Donegal
Local Authority	Donegal County Council
Type of Application	Application for approval made under Section 177(AE) of the Planning and Development Act, 2000 (local authority development requiring appropriate assessment)
Prescribed Bodies	Click here to enter text.
Observer(s)	None

Date of Site Inspection

26th August 2021.

Inspector

Sarah Lynch

Contents

1.0 Introduction.....	4
2.0 Proposed Development	4
3.0 Site and Location	5
4.0 Planning History.....	5
5.0 Legislative and Policy Context.....	6
6.0 The Natura Impact Statement.....	9
7.0 Consultations	9
8.0 Assessment	10
9.0 Recommendation.....	27

1.0 Introduction

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

2.0 Proposed Development

- 2.1. The proposal includes the construction of two new storm manholes on the existing 900mm storm lines at the bottom of the flood embankment behind Aldi in Ballybofey. These manholes will allow for over pumping when the level of the Finn rises such that the outlets from the existing drainage can no longer operate successfully. These works will include 2 no. 5m x 5m x 0.25m concrete hardstands for the mobile pumps. Excavation of c. 3 metres deep, concrete works, manhole construction and backfilling are proposed.
- 2.2. **Accompanying documents:**
 - NIS.
 - Addendum I to NIS.
 - Plans and particulars demonstrating location and details of proposed works.

- Planning notices.
- Consultation document.
- List of bodies to which notice was sent.

3.0 **Site and Location**

- 3.1. The development works are located on the river banks of the River Finn SAC behind the existing embankment and will occur downstream of the Ballybofey Stranorlar bridge along the N15. The River Finn is part of the Finn (Donegal)_60 river sub basin and the Finn Donegal_SC_030 sub catchment which is within the Foyle catchment.
- 3.2. This area of the river is within the development boundary of Ballybofey and Stranorlar. The works area is bounded to the northeast by Aldi supermarket and associated car park and to the south east by Finn Park football grounds. An embankment separates the River Finn and the development site to the west. The lands comprise of scrub and do not appear to be in use.
- 3.3. The riverbanks are largely grassed with various vegetation present on both sides and is populated on both sides by tall stands of Japanese Knotweed and Himalayan Balsam.
- 3.4. The land levels are significantly higher on both sides of the river channel as it moves through the town.

4.0 **Planning History**

- ABP 303860 – Permission was refused for the construction of two storm manholes and tree & vegetation removal from flood embankments on the River Finn and geotechnical investigation works for the following reason:
 - The Board is not satisfied that the Local Authority has demonstrated that the proposal would not adversely affect the integrity of the European Site in view of the site's Conservation Objective, as this proposal would entail development which has the potential to spread invasive plant species throughout the Natura 2000 sites.

- In overall conclusion, the Board is not satisfied that the proposed development would not adversely affect the integrity of the European Site in view of the site's Conservation Objective.

5.0 Legislative and Policy Context

- 5.1. **The EU Habitats Directive (92/43/EEC):** This Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) and 6(4) require an appropriate assessment of the likely significant effects of a proposed development on its own and in combination with other plans and projects which may have an effect on a European Site (SAC or SPA).
- 5.2. **European Communities (Birds and Natural Habitats) Regulations 2011:** These Regulations consolidate the European Communities (Natural Habitats) Regulations 1997 to 2005 and the European Communities (Birds and Natural Habitats) (Control of Recreational Activities) Regulations 2010, as well as addressing transposition failures identified in CJEU judgements. The Regulations in particular require in Reg 42(21) that where an appropriate assessment has already been carried out by a 'first' public authority for the same project (under a separate code of legislation) then a 'second' public authority considering that project for appropriate assessment under its own code of legislation is required to take account of the appropriate assessment of the first authority.
- 5.3. **National nature conservation designations:** The Department of Culture, Heritage and the Gaeltacht and the National Parks and Wildlife Service are responsible for the designation of conservation sites throughout the country. The three main types of designation are Natural Heritage Areas (NHA), Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) and the latter two form part of the European Natura 2000 Network.
- 5.4. European sites located in proximity to the subject site include:
- River Finn SAC site code 002301
- 5.5. **Planning and Development Acts 2000 (as amended):** Part XAB of the Planning and Development Acts 2000-2017 sets out the requirements for the appropriate

assessment of developments which could have an effect on a European site or its conservation objectives.

- 177(AE) sets out the requirements for the appropriate assessment of developments carried out by or on behalf of local authorities.
- Section 177(AE) (1) requires a local authority to prepare, or cause to be prepared, a Natura impact statement in respect of the proposed development.
- Section 177(AE) (2) states that a proposed development in respect of which an appropriate assessment is required shall not be carried out unless the Board has approved it with or without modifications.
- Section 177(AE) (3) states that where a Natura impact assessment has been prepared pursuant to subsection (1), the local authority shall apply to the Board for approval and the provisions of Part XAB shall apply to the carrying out of the appropriate assessment.
- Section 177(V) (3) states that a competent authority shall give consent for a proposed development only after having determined that the proposed development shall not adversely affect the integrity of a European site.
- Section 177AE (6) (a) states that before making a decision in respect of a proposed development the Board shall consider the NIS, any submissions or observations received and any other information relating to:
 - The likely effects on the environment.
 - The likely consequences for the proper planning and sustainable development of the area.
 - The likely significant effects on a European site.

5.6. Policy Context

5.7. National Policy

Implementing the National Flood Risk Policy 2018

Ballybofey / Stanorlar is identified as a relief scheme that is planned.

National Planning Framework

The National Planning Framework – Ireland 2040, which seeks to ensure flood risk management in accordance with best practice.

Regional Spatial and Economic Strategy for the Northern and Western Regional Assembly.

- **Objective 22** Local Authorities, DHPLG, OPW, and other relevant Departments and agencies to work together to implement the recommendation of the CFRAM programme to ensure that flood risk management policies and infrastructure are progressively implemented.
- **Objective 197** Support the delivery of flood defence works planned by OPW to be implemented in the short-term.
- **Objective 206** Prioritising investment to improve storm water infrastructure to improve sustainable drainage and reduce the risk of flooding in the urban environment.

Donegal County Development Plan 2018-2024

- Policy F-P-6: It is a policy of the Council to consider the development of long and short-term flood remediation works, including embankments, sea defences, drainage channels, and attenuation ponds to alleviate flood risk and damage to livelihoods, property and business subject to environmental considerations including potential impact on designated shellfish water and, fresh water pearl mussel catchment areas, compliance with Article 6 of the Habitats Directive, best practice in Coastal Zone Management and the Marine Resource and Coastal Management policies of this Plan.

Seven Strategic Towns Local Area Plan 2018-2024

- Section 5.4.2 Opportunity Sites Located Within or Adjacent to The Town Centres - Opportunity Site 1 was one of a number of sites specifically assessed in more detail in the SFRA report on the LAP, owing to its strategic location within the town centre. Almost the entire site is identified as lying within Flood Zone A and reported occurrences of storm sewers surcharging during flood events on the River Finn have been referenced in the report.
- Policy SO2: To enhance and develop Ballybofey-Stranorlar by 2024 so as to enhance its reputation as a sporting centre of excellence and as a key centre

of recreation and hospitality for the County. In addition, the Twin Towns will have an enhanced reputation also as an attractive place to live and work on foot of expanded residential and retail facilities and on foot also of strategic infrastructural improvements to the town.

- Policy F-P-6: It is a policy of the Council to consider the development of long and short-term flood remediation works, including embankments, sea defences, drainage channels, and attenuation ponds to alleviate flood risk and damage to livelihoods, property and business subject to environmental considerations including potential impact on designated shellfish water and, fresh water pearl mussel catchment areas, compliance with Article 6 of the Habitats Directive, best practice in Coastal Zone Management and the Marine Resource and Coastal Management policies of this Plan.
- Policy F-P-7: It is a policy of the Council not to permit developments which would hinder the maintenance of river or drainage channels.

Sub Basin Catchment

- The River Finn is part of the Finn (Donegal)_60 river sub basin and the Finn.

6.0 The Natura Impact Statement

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

The NIS was accompanied by an Addendum (I) to NIS and the plans and particulars demonstrating location and details of proposed works. All of which will be considered

7.0 Consultations

7.1. The application was circulated to the following bodies:

- Department of Communications, Climate Action and Environment

- National Parks and Wildlife Service
- Fáilte Ireland
- An Taisce
- OPW
- The Loughs Agency

No responses have been received.

7.2. Public Submissions

- No public submissions have been received.

8.0 Assessment

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

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

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

- 8.2. As outlined above, consent is sought by Donegal County Council for works including construction of two new storm manholes on the existing 900mm storm lines at the bottom of the flood embankment behind Aldi in Ballybofey.
- 8.3. It is stated by the applicant that Ballybofey and Stranorlar were included as an area for further assessment within the CFRAM study. The proposed works are part of a Minor Works application and are deemed as essential maintenance providing for short term solution including sumps and mobile pumps to prevent flooding in the town as part of an overall emergency plan where the town is at risk of flooding. It is further stated that the works will still be of benefit to the final solution for the town when a scheme from the CFRAM Final Flood Risk Management Plan is prioritised. The

proposed development is a short-term measure to help prevent flooding in the town during storm events such as what occurred in December 2015.

8.4. It is of note that the lands within which the works are proposed are within the development boundary of Ballybofey and Stranorlar and the lands are zoned for town centre. It is the policy of the Council under policy F-P-6 of the Seven Strategic Towns LAP 2018-2024 to consider flood remediation works in order to ensure that the town and associated development lands are adequately protected. The proposed works are therefore in accordance with the provisions of the local area plan for the area and compliant with the proper planning and sustainable development of the area. I further note that there are no protected structures or recorded monuments within the vicinity of the proposed works and am satisfied that no issues arise in relation to potential impacts on built or cultural heritage. Furthermore, I am also satisfied, given the nature and location of the proposed works that no visual impacts will arise as a result of the proposed development.

8.5. **The likely effects on the environment**

Spread of Japanese Knotweed

8.6. The proposed development will be carried out along the banks of the River Finn. Concerns in relation to likely effects on the environment primarily relate to the spread of Japanese Knotweed and other invasive species throughout the River Finn and beyond, and the resultant impacts on water quality.

8.7. Of relevance to this element of the assessment is the location of the invasive plant species present on site relative to the location of the proposed works. I note from the plans submitted that the proposed works are to be located to the rear of the flood embankment on the landside and further note that the documents submitted indicate the presence of invasive species along the banks of the River Finn on the opposite side of the embankment directly adjacent to the river.

8.8. I note from the previous application ABP ref: 303860 that concerns were raised in relation to the potential for the proposed development to give rise to the spread of invasive plant species within the surrounding area. Of particular concern were previously proposed works relating to the removal of vegetation and geotechnical investigations directly adjacent to stands of Himalayan Balsam and Japanese Knotweed. It is important to note that these works are not proposed within the current

application. All works are proposed to the landside/rear of the existing embankment which is removed from the invasive plant species present in the area. An invasive species survey was carried out on the 16th September 2020 which surveyed lands in close proximity to the proposed works and for a distance of 100 metres both up and downstream. It was observed that two non-native species which are listed on the third schedule of the S.I No. 477/2011 European Communities (Birds and Natural Habitats) Regulations 2011 are present within the vicinity of the proposed works. The species present include Himalayan Balsam which is located c. 14 metres from the proposed works site and Japanese Knotweed which is located c. 20 metres from the proposed works.

- 8.9. I note that the proposed access route will enter from the north of the site via Chestnut Road which is accessed via the N15. No invasive plant species have been identified within this area and as such I am satisfied subject to standard cleaning of vehicles entering and leaving the site that such species will not be spread by construction vehicles.
- 8.10. I note from the previous application that an 8 metre buffer was proposed surrounding the identified plants which can be adequately achieved within the parameters of the proposed works and as such I am also satisfied, subject to adequate signage and the installation of protective fencing around existing stands of invasive species that the proposed works will not exacerbate the spread of invasive species within the development site or surrounding area.
- 8.11. Overall, having regard to the information submitted and the nature of the proposed works and the clear mapping submitted in relation to the location of existing stands of invasive plant species, I am satisfied that Donegal County Council have adequately addressed the concerns raised within the previous application (ABP 303860) with regard to the potential for the proposed works to spread invasive plant species within the surrounding area.
- 8.12. Works within the previous application which were directly adjacent to such plants have been omitted from the proposed scheme and the presence of invasive plant species has been adequately mapped in order to adequately demonstrate that safe separation distances can be provided for between the proposed works and these invasive plant species. I am satisfied therefore, that the proposed development will not give rise to

the spread of invasive plant species within the area and the proposed works are acceptable in this regard.

Water Quality

- 8.13. The proposed works will essentially facilitate additional land drainage at times of flood. It is stated that closed valves will be used to prevent water from entering the river during excavation of manholes, and ground water encountered will be pumped into a tank on site where it will be left to settle and then discharged via a silt sock to a vegetated area adjacent to the river to infiltrate naturally.
- 8.14. The Water Framework Directive status of the River Finn at the location of the proposed works is poor in relation to both the ecological and chemical status of the river. Risks are identified within the sub catchment assessment from overgrazing, land drainage and agriculture. The principle of the proposed development which is essentially to pump flood waters into the river channel in order to alleviate flooding of the town will not give rise to significant impacts on the environment or water quality of the River Finn. Mitigation measures in relation to both the construction and operation of the proposed development are detailed within the NIS below and are considered to adequately address any potential for adverse impacts on the environment in this context.
- 8.15. Concerns with regard to water quality also relate to the spread of invasive plant species such as Japanese Knotweed, which have the potential to give rise to increased siltation levels in rivers. As already discussed above, given that the proposed works have been altered from that previously refused by the Board the spread of such invasive species is not of particular concern to the current proposed works. I am satisfied that water quality will remain unaffected by the proposed works and the proposal is therefore acceptable with regard to the potential for impacts to arise in relation to water quality.

Access

- 8.16. The proposed works area will be accessed to the north of the Aldi car park from a local road known as Chestnut Road which is accessed via the N15 to the north. Sight visibility at this access point is adequate and unobstructed. As mentioned above, the proposed access route indicated does not appear to conflict with the location of

invasive plant species identified on the plans submitted. The lands are currently under grass and scrub, and are stated to be used periodically for sheep grazing.

8.17. **The likely significant effects on a European site:** The areas addressed in this section are as follows:

- Compliance with Articles 6(3) of the EU Habitats Directive
- The Natura Impact Statement
- Appropriate Assessment

8.18. **Compliance with Articles 6(3) of the EU Habitats Directive:** The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal will not adversely affect the integrity of the European site.

8.19. **The Natura Impact Statement**

8.20. The application was accompanied by an NIS which described the proposed development, the project site and the surrounding area. The NIS contained a Stage 1 Screening Assessment which concluded that a Stage 2 Appropriate Assessment was required. The NIS outlined the methodology used for assessing potential impacts on the habitats and species within several European Sites that have the potential to be affected by the proposed development. It predicted the potential impacts for these sites and their conservation objectives, it suggested mitigation measures, assessed in-combination effects with other plans and projects and it identified any residual effects on the European sites and their conservation objectives.

8.21. The NIS was informed by the following studies, surveys and consultations:

- A desk top study.
- An examination of aerial photography and maps.
- A survey of the proposal site and surroundings including:

- A detailed terrestrial invasive species survey and otter survey which were both carried out on the 16th September 2020. Two types of invasive species were observed; Himalayan Balsam is located c. 14m from the works site and Japanese Knotweed is c. 20m away. The area is considered to be used by commuting otter but is too urban to accommodate a holt.

8.22. The report concluded that, taking into account the project design and the implementation of mitigation measures identified in the NIS, the proposed development will not result in adverse effects on the integrity of any Natura 2000 site.

8.23. Having reviewed the NIS and the supporting documentation, I am satisfied that it provides adequate information in respect of the baseline conditions, does clearly identify the potential impacts, and does use best scientific information and knowledge. Details of mitigation measures are provided, and they are summarised in Section 7 of the NIS. I am satisfied that the information is sufficient to allow for appropriate assessment of the proposed development (see further analysis below).

8.24. Appropriate Assessment

8.25. I consider that the proposed development of two storm manholes and two pump hardstands behind the Flood Embankments on the River Finn adjacent to the River Finn SAC is not directly connected with or necessary to the management of any European site.

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

Table 1 European sites considered for Stage 1 screening:

European Site Name & Code	Distance	Qualifying Interest	Source-pathway-receptor	Considered further in screening

River Finn SAC 002301	c.22m	<p>Oligotrophic waters containing very few minerals of sandy plains (<i>Littorelletalia uniflorae</i>) [3110]</p> <p>Northern Atlantic wet heaths with <i>Erica tetralix</i> [4010]</p> <p>Blanket bogs (* if active bog) [7130]</p> <p>Transition mires and quaking bogs [7140]</p> <p><i>Salmo salar</i> (Salmon) [1106]</p> <p><i>Lutra lutra</i> (Otter) [1355]</p>	Adjacent to site.	Yes - Potential for significant effects arising from the spread of invasive plant species, contaminated surface water runoff from construction and potential to disturb otters.
Croaghonagh Bog SAC 000129	C. 10km south east	Blanket Bogs (Active) [7130]	No pathway exists	No
Lough Foyle SPA 004087	44km	<p>Red-throated Diver (<i>Gavia stellata</i>) [A001]</p> <p>Great Crested Grebe (<i>Podiceps cristatus</i>) [A005]</p> <p>Bewick's Swan (<i>Cygnus columbianus bewickii</i>) [A037]</p> <p>Whooper Swan (<i>Cygnus cygnus</i>) [A038]</p> <p>Greylag Goose (<i>Anser anser</i>) [A043]</p> <p>Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046]</p> <p>Shelduck (<i>Tadorna tadorna</i>) [A048]</p> <p>Wigeon (<i>Anas penelope</i>) [A050]</p> <p>Teal (<i>Anas crecca</i>) [A052]</p> <p>Mallard (<i>Anas platyrhynchos</i>) [A053]</p> <p>Eider (<i>Somateria mollissima</i>) [A063]</p>	River Finn discharges to River Foyle	No The potential for impact arising from the spread of invasive species is unlikely given the distance from the SPA.

		<p>Red-breasted Merganser (Mergus serrator) [A069]</p> <p>Oystercatcher (Haematopus ostralegus) [A130]</p> <p>Golden Plover (Pluvialis apricaria) [A140]</p> <p>Lapwing (Vanellus vanellus) [A142]</p> <p>Knot (Calidris canutus) [A143]</p> <p>Dunlin (Calidris alpina) [A149]</p> <p>Bar-tailed Godwit (Limosa lapponica) [A157]</p> <p>Curlew (Numenius arquata) [A160]</p> <p>Redshank (Tringa totanus) [A162]</p> <p>Black-headed Gull (Chroicocephalus ridibundus) [A179]</p> <p>Common Gull (Larus canus) [A182]</p> <p>Herring Gull (Larus argentatus) [A184]</p> <p>Wetland and Waterbirds [A999]</p>		
<p>North Inishowen Coast SAC</p> <p>002012</p>	c. 72km	<p>Mudflats and sandflats not covered by seawater at low tide [1140]</p> <p>Perennial vegetation of stony banks [1220]</p> <p>Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]</p> <p>Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]</p> <p>Machairs (* in Ireland) [21A0]</p> <p>European dry heaths [4030]</p> <p>Vertigo angustior (Narrow-mouthed Whorl Snail) [1014]</p> <p>Lutra lutra (Otter) [1355]</p>	<p>River Finn discharges to the Inishowen Coast</p>	<p>No</p> <p>No potential for effects given the separation distance of the works from the SAC.</p>

Hempton's Turbot Bank SAC 002999	c.84km	Sandbanks which are slightly covered by sea water all the time [1110]	River Finn discharges to the Inishowen Coast	No No potential for effects given the separation distance of the works from the SAC.
Inishtrahull SAC & SPA 000154 & 004100	c.77km	SPA Shag (<i>Phalacrocorax aristotelis</i>) [A018] Barnacle Goose (<i>Branta leucopsis</i>) [A045] Common Gull (<i>Larus canus</i>) [A182] SAC Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]	River Finn discharges to the Inishowen Coast.	No No potential for effects given the separation distance of the works from the SAC & SPA and the dilution and dispersion factor provided by the sea.
Cloghernagore bog and Glenveagh National Park SAC 002047	C. 21km	Oligotrophic waters containing very few minerals of sandy plains (<i>Littorelletalia uniflorae</i>) [3110] Water courses of plain to montane levels with the <i>Ranunculus fluitantis</i> and <i>Callitriche-Batrachion</i> vegetation [3260] Northern Atlantic wet heaths with <i>Erica tetralix</i> [4010] European dry heaths [4030] Alpine and Boreal heaths [4060] Molinia meadows on calcareous, peaty or clayey-silt-laden soils (<i>Molinion caeruleae</i>) [6410] Blanket bogs (* if active bog) [7130] Depressions on peat substrates of the <i>Rhynchosporion</i> [7150]	No pathway exists as this SAC is upstream of the proposed works.	No

		<p>Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0]</p> <p>Margaritifera margaritifera (Freshwater Pearl Mussel) [1029]</p> <p>Salmo salar (Salmon) [1106]</p> <p>Lutra lutra (Otter) [1355]</p> <p>Trichomanes speciosum (Killarney Fern) [1421]</p>		
Derryveagh and Glendownan Mountains SPA 004039	C. 23km	<p>Red-throated Diver (Gavia stellata) [A001]</p> <p>Merlin (Falco columbarius) [A098]</p> <p>Peregrine (Falco peregrinus) [A103]</p> <p>Golden Plover (Pluvialis apricaria) [A140]</p> <p>Dunlin (Calidris alpina schinzii) [A466]</p>	This SPA is up stream of the proposed works.	No
Foyle and Tributaries SAC (NI) UK0030320	c. 14.7km	<p>Lutra lutra (Otter)</p> <p>Salmo salar (Salmon)</p> <p>Water courses of plain to montane levels with the Ranunculus fluitantis and Callitriche-Batrachion vegetation</p>	River Finn discharges to River Foyle	Yes - There is potential for impact arising from the spread of invasive species.
Magilligan SAC (NI) UK0016613	64km	<p>2130 "Fixed coastal dunes with herbaceous vegetation ("grey dunes")"</p> <p>2170 Dunes with Salix repens ssp. argentea (Salicion arenariae)</p> <p>2190 Humid dune slacks</p> <p>110 Embryonic shifting dunes</p> <p>2120 "Shifting dunes along the shoreline with Ammophila arenaria ("white dunes")"</p>	Hydrological Link present	No potential for impact due to separation distance of works from SAC.

		1065 Marsh fritillary butterfly <i>Euphydryas</i> (<i>Eurodryas</i> , <i>Hypodryas</i>) <i>aurinia</i>		
		1395 Petalwort <i>Petalophyllum ralfsii</i>		

8.27. Based on my examination of the NIS report and supporting information (including the plans and particulars submitted with the application), the NPWS website, aerial and satellite imagery, the scale of the proposed development and likely effects, separation distance and functional relationship between the proposed works and the European sites, their conservation objectives and taken in conjunction with my assessment of the subject site and the surrounding area, I would conclude that a Stage 2 Appropriate Assessment is required for two of the designated European sites referred to above, the River Finn SAC and the Foyle and Tributaries SAC (NI) UK0030320.

8.28. The remaining Natura 2000 sites can be screened out from further assessment because of the scale of the proposed works, the nature of the Conservation Objectives, Qualifying and Special Conservation Interests, the separation distances and the lack of a substantive linkage between the proposed works and the European sites. It is therefore reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European Site No's: UK0016613, 004039, 002047, 000154, 004100, 002999, 002012, 004087 in view of the sites conservation objectives and a Stage 2 Appropriate Assessment is not therefore required for these sites.

8.29. **Relevant European site:** The Conservation Objectives and Qualifying Interests, including any relevant attributes and targets for these sites, are set out below.

Site Name	Qualifying Interests	Distance
1. River Finn SAC	Oligotrophic waters containing very few minerals of sandy plains (<i>Littorelletalia uniflorae</i>) [3110]	c.22 metres

Site Name	Qualifying Interests	Distance
	Northern Atlantic wet heaths with Erica tetralix [4010] Blanket bogs (* if active bog) [7130] Transition mires and quaking bogs [7140] Salmo salar (Salmon) [1106] Lutra lutra (Otter) [1355]	
2. Foyle and Tributaries SAC (NI)	Lutra lutra (Otter) Salmo salar (Salmon) Water courses of plain to montane levels with the Ranunculus fluitantis and Callitriche-Batrachion vegetation	c.14.7km

1. River Finn SAC site code: 002301

Description of site:

- 8.30. It is important to note at this juncture that the River Finn is one of the Country's most important salmonid rivers and salmon is a qualifying interest of the River Finn SAC. A number of salmon redds have been identified within the River Finn adjacent to the proposed works. These spawning gravels are identified within the Site's Conservation Objectives as attributes of the SAC and the conservation objective target for this particular attribute is stated as 'no decline'.
- 8.31. Similarly, otters are a qualifying interest of the River Finn SAC and are present in the vicinity of the proposed works. Prints were observed along the riverbanks and a resting holt or crouching area was noted on the northern bank of the river. Crouching areas are an attribute of this SAC and the target for these attributes is also for no decline to occur.

Conservation Objectives

To maintain or restore the favourable conservation status of habitats and species of community interest.

2. River Foyle and Tributaries SAC

- 8.32. The SAC includes the River Foyle and its tributaries i.e. that part of the River Finn which lies within Northern Ireland, the River Mourne and its tributary the River Strule (up to its confluence with the Owenkillew River) and the River Derg, along with two of its sub-tributaries, the Mourne Beg River and the Glendergan River. In total, the area encompasses 120km of watercourse.
- 8.33. Of particular importance is the population of Atlantic Salmon *Salmo salar*, which is one of the largest in Europe. Research has indicated that each sub-catchment within the system supports genetically distinct populations.
- 8.34. The River Foyle below Strabane is slow-flowing and is influenced by a tidal regime, rising and falling with the tidal cycle. Aquatic plants in the channel are extremely limited, particularly in the more saline areas; here, fucoids make up the main component. Otter *Lutra lutra* is found throughout the system and is a qualifying interest of this SAC.

Conservation Objectives

- 8.35. To maintain (or restore where appropriate) the
- Atlantic Salmon *Salmo salar*,
 - Water courses of plain to montane levels with the *Ranunculus fluitans* and *Callitriche-Batrachion* vegetation,
 - Otter *Lutra lutra* to favourable condition.
- 8.36. 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.
- 8.37. **Potential direct effects:**
- 8.38. Due to the location and nature of the proposed works and having regard to the qualifying interests of the River Finn SAC and the River Foyle SAC I consider that Salmon and Otter specifically are the qualifying interests at risk from the proposed development. Given that the River Finn flows into the River Foyle and the qualifying

interest identified as being at risk are the same, I consider it prudent to consider both of the designated sites together hereunder.

8.39. The conservation objectives for both the River Finn SAC and the River Foyle SAC aim to maintain or restore the favourable conservation condition for habitats and/or species at this site. The maintenance of habitats and species within the Natura 2000 sites at favourable condition will contribute to the overall maintenance of favourable conservation status of those species at a national level.

8.40. The NIS submitted acknowledges that the proposed works will give rise to a potential for both direct and indirect significant impacts and proposes measures to mitigate these impacts.

8.41. Having regard to the NIS submitted, the nature and scale of the proposed work and the location of the above qualifying interests relative to the proposed works I consider that the development has the potential to give rise to the following direct and indirect effects:

- i) Production of suspended solids within the water column during construction works,
- ii) Spread of invasive plant species throughout the Natura 2000 network,
- iii) The potential for deterioration in water quality as a result of the release of hydrocarbon /cement-based products and other pollutants during construction works.
- iv) Temporary disturbance to otters during construction,
- v) Water quality impacts during over pumping during flood events.

8.42. The impact of these effects will be discussed in detail in the context of proposed mitigation measures within the integrity test below.

Potential in-combination effects:

8.43. In combination effects are examined within section 6 of the NIS submitted. Current and planned development was examined in the context of in combination effects. A number of projects were identified which were examined for the potential to give rise to significant effects and are outlined in Table 3 of the NIS.

8.44. It is noted that the proposed works associated with these projects with mitigation will not result in any in poor water quality or habitat loss/damage. The NIS submitted,

therefore concluded that there would be no cumulative / in-combination effects arising from the proposed development.

- 8.45. I have reviewed the proposed development in the context of the Donegal Development Plan 2018-2024 and the Seven Strategic Towns Local Area Plan 2018-2024 for Ballybofey/Stranorlar and I am satisfied that no significant cumulative impacts are predicted as the plan has a range of environmental and natural heritage policy safeguards in place.
- 8.46. Having regard to the foregoing, I do not consider that the potential for in-combination effects are likely to arise.

Mitigation measures:

- 8.47. Mitigation measures are outlined in Section 7 of the NIS submitted and include standard best practice in relation to construction. It is stated within the NIS that good site management, environmental buffer zones, housekeeping and an environmental emergency response plan will ensure that no impacts arise. The project has been designed to avoid adverse impacts to water quality. Existing storm drains connected to the River Finn have non-release valves fitted on the outflow and will be in a closed position before excavations begin.
- 8.48. Silt fence are proposed around the works area and if dewatering is required this will be pumped to a settlement tank fitted with a silt sock before being discharged to a vegetated area, identified within the NIS, to naturally filter back to the river. The proposed tank will have a capacity of 5000 litres and a connection of 150mm. Discharge rates associated with the vegetated area are considered to be no more than 50m³ per hour.
- 8.49. No stockpiling will be permitted on site and all material excavated and required for backfill will be taken off site until required. The existing embankment is identified as an additional barrier to prevent sediment entering the river.
- 8.50. Strict management of fuels and oils, chemicals to be stored in sealed containers, use of drip trays for refuelling, use of bunded storage areas, maintenance of plant are all proposed within the mitigation measures outlined within the NIS.
- 8.51. Measures proposed by the applicant within the NIS submitted also include strict management of concrete delivery and installation.

- 8.52. Mitigation measures to prevent the spread of invasive plant species are also proposed within the NIS submitted and refer to the implementation of biosecurity measures which are outlined within the Invasive Species Management Plan (Appendix 4 of the NIS submitted). No works are to occur within 9 metres of the invasive plant species identified and an ECoW will check the locations prior to works commencing to determine if any new growth has occurred.
- 8.53. All mitigation measures will be examined in relation to the potential for likely significant effects on the River Finn SAC and River Foyle and Tributaries SAC within the following integrity test.
- 8.54. **Integrity Test**
- 8.55. I have considered the NIS along with the information submitted with the application and have had regard to the mitigation measures outlined. Potential for impacts to arise in relation to the leakage of oils and diesels or other such contaminants from construction vehicles has been dealt with within the mitigation measures outlined in Section 7 of the NIS submitted and the appended Invasive Species Management Plan. All machinery will be checked prior to entering the works area and all fuel, lubricants and hydraulic fluids will be kept in a secure bunded area removed from the river.
- 8.56. These mitigation measures are standard in nature and are known to be effective. I am therefore satisfied that the mitigation measures outlined in relation to hydrocarbon contamination of soils and waters are acceptable.
- 8.57. It is important to reiterate at this juncture that there will be no instream works and all works will occur on the land side of the existing embankment. The location of the works coupled with the proposed mitigation measures such as the use of a settlement tank, silt sock, silt fences and the prevention of stockpiling will prevent harmful sedimentation of the river channel. Sedimentation of the river channel has the potential to significantly affect both salmon and otter. Increases in sediment negatively impact food sources for both salmon and otter and also reduce the accessibility of gravels used as spawning grounds by salmon. Increased sedimentation levels also reduce oxygen levels within the river and therefore reduce the viability of salmon and other fish life. Impacts to salmon and fish life result in a reduction of prey for otter and therefore have a direct effect on the viability of otter populations.

- 8.58. Based on the mitigation measures proposed in relation to prevention of sedimentation of the river I am satisfied that the proposed works will not give rise to significant effects to the River Finn SAC or the River Foyle and Tributaries SAC.
- 8.59. It is of note that surveys carried out in the vicinity of the proposed works considered that the river banks are utilised by commuting otter population. Otters are sensitive to noise disturbance, the site is located within an urban setting which is frequented by walkers and directly adjacent to a football grounds and supermarket. Otters utilising the site would therefore be habituated to noise disturbance in this area. Given that construction works are for a temporary period and given the urban setting of the proposed development site I am satisfied that the proposed development would not be likely to give rise to significant effects to otter populations in the area in view of the River Finn SAC or the River Foyle and Tributaries SAC conservation objectives for this species.
- 8.60. With regard to the spread of invasive plant species the applicants have submitted an invasive species management plan in which mitigation measures are outlined to prevent the disturbance to existing plants in the vicinity of the site and to prevent the spread of such species to both the River Finn SAC and the River Foyle and Tributaries SAC. As mentioned above a separation distance of 14-20 metres will be provided from the proposed development to existing plants. All vehicles will be inspected and cleaned prior to entering and leaving the site and all construction workers will be briefed on the biosecurity measures required and outlined within the NIS and associated appendix. Workers will be required to clean footwear prior to leaving the site and will be made aware of the separation distances required for works within the area. Based on the information submitted within the NIS and appended documents and the location of the works which are set back from the existing stands of Himalayan Balsam and Japanese Knotweed I am satisfied that the proposed development will not give rise to the spread of invasive plant species and as such I am satisfied that the proposed works will not give rise to significant effects to the River Finn SAC or the River Foyle and Tributaries SAC in this regard.
- 8.61. Given the mitigation measures proposed no residual effects are expected.
- 8.62. **NIS Omissions:** None noted.
- 8.63. **Suggested related conditions:**

- All mitigation and environmental commitments identified in the Natura Impact Statement shall be implemented in full as part of the proposed development. **Reason:** In the interest of development control, public information and clarity.
- A pre-construction survey shall be carried out to determine the presence of any invasive plant species. In the event that invasive plant species are found prior to or during works at the development site, the applicant shall submit an Invasive Management Species Action Plan to be put on the file of the planning authority which shall include full details of the eradication of the such invasive species from the development site as soon as is practicably possible. **Reason:** In the interest of nature conservation and mitigating ecological damage associated with the development.

8.64. **Conclusion**

8.65. Overall having regard to the location of the site removed from the River Finn, the nature and limited scale of the proposed works and the mitigation measures outlined within the NIS submitted, I consider that it is reasonable to conclude on the basis of the information on the file, which I consider adequate in order to carry out a Stage 2 Appropriate Assessment, that the proposed development, individually or in combination with other plans and projects would not adversely affect the integrity of the European site no. 002301 or site no. UK0030320, or any other European site, in view of the site's Conservation Objectives.

9.0 **Recommendation**

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

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, qualifying interests and special conservation interests for the River Finn SAC (site code:002301), the Foyle and Tributaries SAC (site code: UK0030320),
- (e) the policies and objectives of the Donegal Development Plan, 2018-2024 and the Seven Strategic Towns LAP 2018-2024,
- (f) the nature and extent of the proposed works as set out in the application for approval,
- (g) the information submitted in relation to the potential impacts on habitats, flora and fauna, including the Natura Impact Statement,
- (h) the report and recommendation of the person appointed by the Board to make a report and recommendation on the matter.

Appropriate Assessment:

The Board agreed with and adopted the screening assessment and conclusion carried out in the Inspector's report that the River Finn SAC (site code:002301), the Foyle and Tributaries SAC (site code: UK0030320), 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, the mitigation measures contained therein, the submissions and observations on file, and the Inspector's assessment. The Board completed an appropriate assessment of the implications of the proposed development for the affected European Sites, namely the River Finn SAC (site code:002301), the Foyle and Tributaries SAC (site code: UK0030320), in view of the

sites conservation objectives. The Board considered that the information before it was adequate to allow the carrying out of an appropriate assessment. In completing the 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 sites conservation objectives.

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

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

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

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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. All mitigation and environmental commitments identified in the Natura Impact Statement shall be implemented in full as part of the proposed development.

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

3. Prior to the commencement of development, the local authority, or any agent acting on its behalf, shall prepare in consultation with the relevant statutory agencies, a Construction Environmental Management Plan (CEMP), incorporating all mitigation measures indicated in the Natura Impact Statement and demonstration of proposals to adhere to best practice and protocols. The CEMP shall include:

- a) location of the site and materials compound including area identified for the storage of construction refuse,
- b) details of site security fencing and hoardings,
- c) details of on-site car parking facilities for site workers during the course of construction,
- d) measures to obviate queuing of construction traffic on the adjoining road network,
- e) measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network,
- f) containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained; such bunds shall be roofed to exclude rainwater,

- g) off-site disposal of construction / demolition waste and details of how it is proposed to manage excavated soil
- h) details of on-site re-fuelling arrangements, including use of drip trays,
- i) details of how it is proposed to manage excavated soil,
- j) means to ensure that surface water run-off is controlled such that no deleterious levels of silt or other pollutants enter local surface water drains or watercourses.

Reason: In the interest of environmental protection, amenities, public health and safety.

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

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

5. A pre-construction survey shall be carried out to determine the presence of any invasive plant species. In the event that invasive plant species are found prior to or during works at the development site, the applicant shall submit an Invasive Management Species Action Plan to be put on the file of the planning authority which shall include full details of the eradication of the such invasive species from the development site as soon as is practicably possible.

Reason: In the interest of nature conservation and mitigating ecological damage associated with the development.

6. The County Council and any agent acting on its behalf shall ensure that all plant and machinery used during the works should be thoroughly cleaned

and washed before delivery to the site to prevent the spread of hazardous invasive species and pathogens.

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

7. A suitably qualified ecologist shall be retained by the local authority to oversee the site set up and construction of the proposed development and implementation of mitigation measures relating to ecology set out in the NIS. The ecologist shall be present during site construction works. Upon completion of works, an ecological report of the site works shall be prepared by the appointed ecologist to be kept on file as part of the public record.

Reason: In the interest of nature conservation and the protection of terrestrial and aquatic biodiversity.

Sarah Lynch Senior Planning
Inspector

4th October 2021