



An  
Bord  
Pleanála

## Inspector's Report ABP-311213-21

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<b>Development</b>	Resurface & upgrade amenity footways (c.1250m) & ancillary works.
<b>Location</b>	Corry's Field, Loughrea, Co. Galway
<b>Local Authority</b>	County Council
<b>Type of Application</b>	Application for approval made under Section 177(AE) of the Planning and Development Act, 2000 (local authority development requiring appropriate assessment)
<b>Prescribed Bodies</b>	DHLG&H (DAU) TII
<b>Observer(s)</b>	Cathal Spellman
<b>Date of Site Inspection</b>	20 <sup>th</sup> September 2021
<b>Inspector</b>	Karla Mc Bride

## 1.0 Introduction

- 1.1. Galway County Council is seeking approval from An Bord Pleanála to undertake amenity works at the existing public park at Corry's Field on the N shore of Lough Rea. The existing park is located adjacent to and drains into the Lough Rea SAC and SPA, and there are several other designated European sites in the wider area. 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 development.

## 2.0 Site and Location

- 2.1. The Corry's Field amenity area is located on the SW side of Loughrea town in County Galway, and to the S of the R380 Gort Road and N of Lough Rea. The lands to the N are characterised by dwelling houses and the area to the E comprises a public car park and recreational facilities which extend back towards the town. The N boundary of Corry's Field is defined by a stone wall along the R380 and here are several pedestrian crossing points which provide access to the amenity area. The S boundary is defined by the shores of Lough Rea with the Slieve Aughty Mountains beyond.
- 2.2. The amenity area is low-lying and relatively exposed. There is an existing circular footpath around the entire perimeter which originates at the public car park to the E, along with one N-S footpath which is defined by trees and hedgerows. There are several benches and an information panel located along the S section of the footpath close to the lake.

- 2.3. The amenity area ultimately discharges to the adjacent lake which forms part of the Lough Rea SAC, SPA and pNHA, and the amenity area and lake may also be important for mobile species from other further afield European sites. There are several features of historic and cultural heritage interest in the wider area related to the historic development of Loughrea as Gaelic and Norman settlements, and there is evidence of crannog settlements on the lake which date back to the 6th century.
- 2.4. Photographs & maps in Appendix 1 describe the site & surroundings in more detail.

### **3.0 Proposed Development**

#### **3.1. Project elements**

Galway County Council proposes to carry out the following amenity works:

- Resurface and upgrade the existing footpaths (c.1250m),
- Widen the footpaths from 2.150m to 2.825m.
- Install new pre-cast concrete kerbs (c.250mm).
- Upgrade or replace the street furniture (benches)
- Associated amenity works.

#### **3.2. Accompanying documents**

The application was accompanied by the following documents:

- Project particulars
- Drawings & photographs
- Appropriate Assessment Screening report
- Natural Impact Statement
- List of Prescribed Bodies
- Copies of Public Notices.

### **4.0 Planning History**

- 4.1. Several planning cases in the vicinity, none of which are relevant to the proposed development.

## 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. Articles 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 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 within the Zone of Influence (0-15km) of the subject site include:
- Lough Rea SAC & SPA
  - Slieve Aughty Mountains SPA
  - Sonnagh Bog SAC
  - Peterswell Turlough SAC
  - Rahasane Turlough SAC & SPA
  - Castletaylor Complex SAC
  - Lough Coy SAC

5.5. **Planning and Development Acts 2000 (as amended):** Part XAB of the Planning and Development Acts 2000-2017 sets out the requirements for the appropriate assessment of developments which could have an effect on a European site or its conservation objectives.

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

## 5.6. National and Regional Planning policy

### ***National Planning Framework, 2018-2040***

This Plan sets out a high-level strategic plan for shaping future growth and development to 2040. It seeks to develop a region-focused strategy to manage growth and environmentally-focused planning at a local level. It contains several National Strategic Outcomes (NSOs) which include seeking to achieve empowered rural economies and communities, enhanced amenity and heritage, and a transition to a low-carbon and climate resilient society.

### ***National Development Plan, 2018-2027***

This Plan underpins the National Planning Framework 2018-2040. It contains several priorities which include investment in regional growth potential and increasing investment in in national, regional and local roads.

### ***Northern & Western Regional Economic & Spatial Strategy 2020 - 2033:***

The RSES supports the delivery of the programme for change set out in the National Planning Framework and the National Development Plan. It sets out a strategic vision and policy objectives for urban and rural areas, people, the economy, the environment, connectivity, amenities and utilities. It states that Local authorities should seek to enhance biodiversity and amenities and ensure the protection of environmentally sensitive sites and habitats.

### ***Climate Action Plan, 2019***

This plan seeks to tackle climate breakdown and achieve net zero greenhouse gas emissions by 2050. It identifies several risks as a result of climate change including rising sea-levels, extreme weather, further pressure on water resources and food production systems, and increased chance and scale of river and coastal flooding.

### ***River Basin Management Plan for Ireland, 2018 -2021:***

The plan outlines the measures the State and other sectors will take to improve water quality in Ireland's groundwater, rivers, lakes, estuarine and coastal waters over the next four years. The Government aims to protect and improve water quality in 726 of Ireland's 4,829 water bodies over the next four years. The Plan is in fulfilment of requirements under the Water Framework Directive (WFD). The status of Lough Rea has improved from "Moderate" to "Good" but remains "At Risk" (EPA).

***The Planning System and Flood Risk Management, 2009:***

These Guidelines seeks to avoid inappropriate development in areas at risk of flooding and avoid new developments increasing flood risk elsewhere and they advocate a sequential approach to risk assessment and a justification test.

**5.7. Local Planning policy**

The site is located within a suburban area which is covered by the policies and objectives contained in the current Galway County Development Plan and Loughrea Local Area Plan.

**Galway County Development Plan, 2015 - 2021**

The current Development Pan contains policies and objective for the protection and enhancement of the environment, biodiversity (incl. SPAs, SACs & pNHAs), water quality, cultural heritage (incl. archaeology, protected structures & NIAH listings), tourism and recreation.

**Loughrea Local Area Plan 2012 - 2022**

**Zoning:**

- Site is zoned OS for Open Space, Recreation & Amenity.
- Lands to W are zoned EM for Environmental Management.
- Lands to N are zoned R for residential uses.
- Site lies within Flood Zone C.

**Policies & Objectives:**

**Obj. ED4:** seeks to facilitate the development of the tourism potential of Loughrea.

**Obj. CF6:** seeks to protect existing open spaces from inappropriate developments.

**Pol. BH1 & 2:** seek to protect build & cultural heritage.

**Obj. UD4:** seeks to support the development of a network of amenities, open spaces and natural areas that support biodiversity.

**Pol. UI2:** deals with flood risk management.

**Obj. UI10:** seeks to support the protection of water quality (incl. Lough Rea).

**Obj. UD7:** seeks to protect the landscape character, values, sensitivities, focal points and views in the Plan Area (incl. Lough Rea & surrounds).

**Pol. NH1:** seeks to protect natural heritage and biodiversity.

**Obj. DS3:** seeks to protect the network of European sites.

**Obj. LU7:** seeks to promote the development of open spaces & recreational activities and to avoid flood risks in the OS zone.

**Obj. LU9:** seeks to protect lands with high biodiversity value and/or environmental sensitivity and promote their sustainable management and use (incl. SPAs & SACs).

**Objs. NH1-9:** seek to protect European sites & NHAs, protected habitats & species, biodiversity & ecological networks, water resources, trees, parkland, woodland & hedgerows, and geological systems.

**Obj. NH10:** seeks to control of Invasive and Alien Invasive Species.

## 6.0 Consultations

### 6.1. Prescribed Bodies:

The Council circulated the project details to the following Prescribed Bodies:

- Dept. of Housing, Local Government & Heritage (NPWS & Archaeology),
- Dept of Agriculture, Food & the Marine
- NW Regional Assembly
- EPA, OPW, HSA, HSE,
- TII, IFI & IW
- An Garda Síochána
- An Taisce & Fáilte Ireland

The concerns raised by the Prescribed Bodies are summarised below:



**Dept. of Housing, Local Government & Heritage (DAU):**

The following nature conservation conditions should be attached.

- Attach condition which requires strict compliance with NIS & CEMP mitigation measures (notes that mitigation in AA Screening not carried through to NIS).
- Attach condition which requires that works are undertaken from 15<sup>th</sup> August to 30<sup>th</sup> September if possible, and failing that 1<sup>st</sup> March to 15<sup>th</sup> April as an alternative (balance between disturbing nesting birds & wintering waterbirds).
- No storage of machinery or materials within or close to the SAC/SPA.
- Refuelling should take place off-site & not within a designated area on-site.
- Locate site compound in N section far away from lake & drainage channels.
- Ensure that invasive species are not imported to the site.

Request Further Information in relation to the following nature conservation matters:

- Clarify relationship with SAC site boundary in NE section.
- Clarify if the path over the 2 x stone bridges will be widened or resurfaced.
- Clarify if the section of pathway adjacent to the main drainage ditch is to be widened & resultant water quality protection measures.
- Clarify if a section of footpath that runs to the lake edge is to be widened & resurfaced & resultant water quality protection measures.
- Clarify retrenchment of silt fence.
- Explain measures to prevent concrete dust reaching habitats.
- Clarify status of 2018 lighting scheme.

Other concerns are summarised below:

- An EclA or Environmental report may be required for non-European sites areas affected by the works (incl. Marsh habitat, hedgerow, wintering & breeding birds, and amphibian breeding & resting sites).
- Provide context to preventing loss of biodiversity in line with Government policy & National Biodiversity Action Plan.
- Review relevant nature conservation aspects of National Greenway Strategy.

- Note overall importance of wetland habitats which is reflected in the County Dev. Plan, and in particular Policy NHB 4 (water resources), Objective NHB 2 (Biodiversity & ecological networks) & Objective NHB 3 (water resources).
- Note overarching Environmental Regional Policy Objectives (RPOs) in the RSES with regard to EA requirements, All-Ireland Pollinator Plan, EU Flood Directive, National Biodiversity Plan, use of Environmentally Sensitive Mapping and integration of biodiversity considerations.
- In relation to EIA Screening, the PA/ABP has to assess whether the project would be likely to have a significant effect on the environment.

***Transport Infrastructure Ireland:***

- No concerns.

**6.2. Public Submissions:**

One submission received from Cathal Spellman:

- Support proposed development.
- Note dimensions on submitted plans (existing & proposed widths).
- Note the presence of Gunnera (invasive species) close to the main entrance and within footprint of widening works (Landscape report attached).
- The spread of this species could adversely impact on the SAC & SPA.
- The certified eradication & removal of all the Gunnera should be undertaken prior to commencement of works (by way of a condition).
- A number of dog waste bins (c.3) should be provided so as to prevent/reduce organic waste entering the SAC/SPA.
- A number of litter bins (c.3) should be provided so as to prevent/reduce litter entering the SAC/SPA.

**6.3. Council Response**

***Response to DAU/NPWS:***

- The works do not infringe on the SAC, the works will come no closer than 10m of the water's edge and can widen path to W if required.
- No changes proposed to stone bridges.

- Propose to install a silt fence to mitigate impacts on the SAC during construction on a section of pathway adjacent to the main drainage ditch.
- Section of the path that runs to the lakeshore will not be widened or repaved.
- Silt fence will be a permeable geotextile barrier installed vertically on support posts & entrenched in the ground.
- Most preparation works will be carried out in the works compound to minimize the spread of dust.
- The lighting scheme already implemented on the site will not be altered.

***Response to Mr. Spellman:***

- Do not consider the species referred to is the invasive species Gunnera and it has been identified by the Botanist as Butterbur.
- Do not propose to install any new dog waste or litter bins as signage makes it clear that dog owners and park users are responsible for such matters.

***Response to TII:***

- Note submission.

## 7.0 Assessment

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

The proposed footpath upgrade works would comply with national, regional and local policy in respect of climate change, residential amenity, cultural and natural heritage, and the environment. The Council states that the works are justified as they would improve the amenity value and wheelchair accessibility of Corry's Field. The submissions received from Prescribed Bodies are summarised in section 6.0 above. The main concerns raised by NPWS relate to potential adverse effects on European sites, water quality and lakeshore biodiversity. One public submission was received from Mr. Spellman who raised concerns about the management of invasive species and the need for litter facilities for dogs and humans.

#### ***Design and layout:***

The location and design of the proposed upgrade works are described in sections 2.0 and 3.0 above. The existing footpath would be widened and resurfaced, and new kerbs would be installed, and the existing street furniture would be replaced. Given that the project would seek to upgrade an existing amenity footpath, the design and layout of the proposed works are considered acceptable.

#### ***Residential & visual amenity:***

The existing amenity area at Corry's Fields is located to the W of Loughrea town and the surrounding area is characterised by a mix of residential, open space and recreational uses. The lands to the N are characterised by dwelling houses, the lands to the E comprise a public car park and recreational areas, there is a lake habitat to the W which is connected with the adjacent Lough Rea to the S. The views S from the existing amenity area across Lough Rea are identified for protection in the Development Plan and Local Area Plan, and there are several features of cultural heritage interest within the lake and the wider area to the E in Loughrea town.

The site and environs are defined by open grassland, wooded areas, trees of mixed species in various stages of maturity and lakeshore vegetation, all of which contribute to the overall character of the area. Several policies and objectives in the Loughrea Local Area Plan seek to protect the environment, designated sites,

biodiversity, tree and hedgerows, water quality and views. However, it is noted that the proposed development does include any significant removal of trees or hedgerows or any physical incursion into the lake, and the visual amenities of the area would not be adversely affected by the proposed works having regard to the low-lying linear nature of the project.

In terms of general residential amenity, the proposed works would not overlook, overshadow, result in a loss of privacy or otherwise adversely affect the amenity of any nearby dwelling houses. However, any localised removal of hedgerow vegetation in the vicinity of the works would have a minor adverse impact on the visual amenities and wilderness character of the area in the short term.

Notwithstanding these concerns, the proposed works will not give rise to an adverse visual impact on the character of the area or the amenities of nearby houses in the long term.

***Biodiversity:***

The site and environs are characterised by an area of amenity open space that is located to the N of Lough Rea. The site is fringed by lakeshore habitats and traversed/bordered by 3 x drainage ditches that discharge to the lake, and a N-S footpath which is defined by trees and hedgerow. The site and its immediate environs are identified as open space and an environmental management area in the Loughrea LAP. Lough Rea is covered by several sensitive natural heritage designations (incl. SAC, SPA & pNHA), and some areas of reed swamp, wet grassland and wet woodland have been recorded on the sheltered W and SE shores. The lake, project site and environs may also be of value to mobile species from further afield European sites. Issues related to Appropriate Assessment will be addressed below.

Several desk top studies and a field survey were undertaken which were used to describe the receiving environment and to assess potential impacts on habitats and species. This includes an Appropriate Assessment Screening Report and Natural Impact Statement (NIS) which examined the relationship between the proposed footpath upgrade works and several European sites. The NIS contains construction phase mitigation measures which would serve to protect Lough Rea (and other sensitive ecological features) from any adverse effects.

The ecological characteristics of the site include rank grassland, wet grassland, marsh, hedgerows and drainage ditches. These areas may provide a habitat, refuge, foraging area or resting place for a variety of terrestrial and aquatic animal species, which have been described in the submitted documents. The desk top studies and field surveys noted that the site did not contain any protected habitats or plant species. However, the NPWS submission noted the possible presence of Annex 1 marsh habitats and constituent species in the NE section of the site close to the lakeshore. No scheduled invasive species were recorded during the survey. Although the possible presence of *Gunnera* was noted by Mr. Spellman in the NE section of the site, the Council has confirmed that the species is Butterbur which is not an invasive species. The field survey recorded the presence of bird species (incl. Mallard, Mute Swan & Black-headed gull) and I observed a varied abundance of waterbirds on the lake during my site inspection.

Lough Rea is designated as an SAC for one QI habitat (Hard oligo-mesotrophic waters), the project site borders this SAC to the S, and it has a direct aquatic connection via the on-site and perimeter drainage ditches. The southern section of the proposed upgrade works would mainly be located between c.10m and c.40m of the lakeshore, except for a small section in the NE corner that be located closer to shore (the extent of this relationship varies in the submitted plans). The upgrade works would traverse the main drainage ditches via existing bridge structures along the footpath. However, the Council has confirmed that the proposed footpath upgrade works would not extend to the lakeshore. Lough Rea is also designated as an SPA for several SCI species of waterbird. As previously stated, issues related to Appropriate Assessment will be addressed below.

Lough Rea is of considerable ornithological interest for several **bird species** including internationally important numbers of overwintering Shoveler and nationally important numbers of Tufted Duck. Coot have also been reported along with several species of waterfowl in regionally or locally important numbers. Several bird species were noted in the desk top study and field survey of the site and surrounding area (incl. Shoveler & Coot, Wetland & waterbirds) as well as more common species and passerines, however none were recorded nesting close to footpath. The NPWS submission noted that the works had the potential to disturb nesting and wintering birds and requested the attachment of a condition which requires that works are

undertaken from 15<sup>th</sup> August to 30<sup>th</sup> September if possible, and failing that 1<sup>st</sup> March to 15<sup>th</sup> April as an alternative (to strike a balance between disturbing nesting birds & the early arrival of wintering waterbirds). This is a reasonable request given that the Council has stated that the works should take approximately 4 to 6 weeks to complete.

The agricultural lands and the linear wooded area to the far W along the lake may provide suitable foraging habitat for **bats** however no evidence of their presence was detected within the site and environs in the desk top studies or field survey.

Lough Rea provides suitable habitat for several species of **fish** (incl. Brown trout) and it is possible that the drainage ditches may contain suitable habitat for prey species of aquatic invertebrates which form part of the food supply for fish species in the lake. Several **aquatic plant species** (incl. stonewort, pondweed & other aquatic plants characteristic of calcareous waters) have been recorded in the lake. The drainage ditches also have the potential to convey deleterious construction materials downstream in the absence of appropriate safeguards which could adversely affect **water quality** (incl. changes to water chemistry, pH & turbidity) and fisheries (incl. lakebed smothering, clogging fish gills & habitat degradation). The proposed works therefore have the potential to affect water quality, aquatic invertebrates and plants, and fisheries, along with general noise and disturbance. However, the mitigation measures contained in the NIS would ensure that appropriate protection measures are put in place during the upgrade works (incl. adherence to best construction, surface water management plan, buffer zones, and protection of the watercourses from accidental spills and leaks). No vehicle refuelling, concrete mixing or vehicle washing should take place on site which could be addressed by way of a condition.

The proposed works would not require the significant removal of **trees, hedgerows or lakeshore vegetation** with no adverse impacts on biodiversity anticipated, although there would be some short term, temporary localised disturbance to foraging areas, resting places and refuges. The NPWS note that the NE section of the site may contain an area of semi-natural **Marsh habitat** (incl. possibly Annex 1 Tall herb communities) that could be affected by the proposed upgrade works. This concern would be addressed by the proposal to undertake works in this area only take place during dry conditions. The NPWS also requested the attachment of a

condition which requires that no machinery or materials are stored within or close to the SAC/SPA site boundaries, that refuelling should take place off-site and not within a designated area on-site, and that any site compounds should be located as far as possible from the lake shore and drainage ditches. This is a reasonable request.

**Invasive plant species** was noted by Mr. Spellman in the NE section of Corry's Field in the vicinity of entrance from the public car park, however the council has confirmed that this species is non-invasive (Butterbur). However, a biosecurity condition should be attached to ensure that the works (and vehicles) do not spread or introduce invasive species to the area.

A **Project Ecologist** should be appointed to oversee the works and the mitigation measures contained in the NIS report in order to protect sensitive animal and plant species. The removal of vegetation during the bird nesting and early bird overwintering seasons should be avoided, as per the NPWS submission.

In relation to the **other concerns** raised by NPWS which are summarised in section 6.1 above, having regard to the small scale and linear nature of the proposed works, which comprise the resurfacing and modest widening of an existing long-established footpath within a public amenity area, I am satisfied that the proposed development would not have a significant adverse impact on biodiversity, and that no additional surveys or further impact assessments are required.

**In conclusion**, having regard to all of the above, I am satisfied that the proposed development would not have a significant adverse impact on biodiversity. Any impacts would be temporary and short term as most species will return to the area after the works are complete. It is noted that NPWS had no objections to the proposed development subject to the avoidance of works during the bird breeding and early overwintering seasons, the implementation of water quality protection measures, and the avoidance of disturbance to the lakeshore habitats.

#### ***Cultural heritage:***

Corry's Field and its environs are not covered by any sensitive heritage designations however there is evidence of archaeological remains (crannogs) within the lake and the surrounding area may contain archaeological heritage. The proposed



development would not adversely affect the character or setting of any Recorded Monuments, Protected Structures, NIAH features of ACAs in Loughrea. However, it is possible that as yet undiscovered artefacts may be uncovered during the works and archaeological monitoring should be required. This concern could be addressed by way of a planning condition.

It is noted that several policies and objectives in the Local Area Plan (incl. Policies BH1 & BH2) seek to secure the protection and conservation of historic items of archaeological and cultural heritage interest, and the proposed development would comply with these policies.

***Need, effectiveness & alternatives:***

I am satisfied that the applicant has provided adequate background information to justify the need for the proposed works which seek to upgrade an existing amenity footpath and that the proposed works will function effectively and allow for greater accessibility by persons with disabilities. I am also satisfied, on the basis of my examination of the submitted documents and assessment of the upgrade works, that the proposed development would constitute an appropriate and proportionate response to the existing condition of the footpath and amenity area.

**Conclusions:**

Having regard to the foregoing, I am satisfied that the proposed development is acceptable in principle and that the footpath upgrade and associated amenity works are justified.

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

In relation to screening for Environmental Impact Assessment (EIA), I note that there is no specific provision under Section 177AE of the Act to require EIA or to carry out a formal EIA Screening Determination for a local authority project submitted under this section of the Act. Nonetheless, the Board, in making its decision, is required to consider the likely effects on the environment in respect of the proposed development.

The project is not of a type included in Schedule 5 Part 1 or Part 2 of the Planning and Development Regulations 2001 (as amended) or in the Roads Act 1993 (as amended). Furthermore, it does not meet any of the criteria set out in Schedule 7 of the Regulations for determining whether a sub-threshold development would be likely to have significant effects on the environment, with regard to the characteristics of the works, its location and the characteristics of potential impacts.

Having regard to the nature and scale of the proposed development, which would comprise and upgrade of an existing footpath and associated amenity works, and the characteristics of the receiving environment which is not densely developed or covered by any sensitive heritage designations, and notwithstanding its proximity of the works to the Lough Rea SAC, SPA and pNHA, and the presence of designated protected views from the amenity area across Lough Rea, I am satisfied that the proposed low lying linear works, would not have any significant adverse effects on population and human health, biodiversity, land, soil or water, air and climate, material assets, cultural heritage or the landscape, and the need for environmental impact assessment can, therefore, be excluded.

Notwithstanding this conclusion, it is noted that the surrounding area has a rich ecological and cultural heritage related to the lake, and the hedgerow and lakeshore habitats provide a refuge and foraging opportunities for a range of species (incl. mammals, fish & birds). As such the Council should ensure that the NIS ecological mitigation measures and any recommended conditions are fully implemented, that the works avoid the lakeshore habitats, and that the works do not take place during the bird nesting/wintering or fish spawning seasons.

### **7.3. 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

#### 7.4. **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.

#### 7.5. **The Natura Impact Statement**

The application was accompanied by a Screening for Appropriate Assessment report and Natural Impact Statement (NIS) which scientifically examined the proposed works and European sites and was informed by desk top studies and field survey.

***The desk top studies and field survey*** described the site and surrounding area. This included details of potential connections between the proposed works and several European sites (incl. Lough Rea SAC & SPA). The reports assessed the receiving environment for aquatic, terrestrial and mobile species of Qualifying Interest for the European sites. The ecological characteristics of the lakeshore site, which includes rank grassland, wet grassland, marsh, hedgerows & drainage ditches, were described. The desk studies and field survey noted that the site did not contain any protected plant species and no scheduled invasive species were recorded in the vicinity during the surveys. (The possible presence of Annex 1 Marsh habitat and an invasive species was raised by NPWS & Mr. Spellman, although the Council has confirmed that the species is not invasive). Kilcogan and Carrowmore Streams are located to the E and NW, and the site is traversed by 3 x drainage ditches that discharge to the lake.

***The AA Screening report*** identified 9 x European sites located within the Zone of Influence of the proposed works, which ranged from 1km for noise and 10km for air to 15km for surface water and mobile species. It concluded that significant effects could not be ruled out for 2 x sites (Lough Rea SAC & SPA) and that an NIS was

required in order to assess the potential impacts resulting from the construction works. All other European sites were ruled out from further examinations due either to distance or absence of pathways with the project site.

**The NIS report** also described the receiving environment and the proposed development. It described the Lough Rea SAC and SPA, listed the SAC Qualifying Interest (QI) habitats and the SPA Special Conservation Interest (SCI) bird species for the sites, and it described the nature of the connection between the proposed footpath upgrade works and the European sites. It was informed by several desk top studies (incl. NPWS & EPA websites, River Basin Management Plans, NBDC Biodiversity Maps & Catchment studies) and a detailed field survey. It characterised the potential effects on the European sites in view of the site's Conservation Objectives, and with respect to any listed NPWS Targets, Measures and Attributes. The identified effects relate to general disturbance during the works (incl. noise & dust) and water pollution resulting from the release of construction pollutants and delivery of silt into the water at Lough Rea SAC and SPA. It also examined potential cumulative impacts in-combination with other plans and projects and listed a series of construction phase mitigation measures. The NIS formally concluded that provided the mitigation measures are strictly adhered to, adverse effects are not likely to occur from the works involved with the proposed upgrade to the footpath in-combination with other projects and plans on the Lough Rea SAC and SPA.

- 7.6. 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, and details of mitigation measures are provided. I am satisfied that the information is sufficient to allow for appropriate assessment of the proposed development (see further analysis below).

### 7.7. **Appropriate Assessment**

7.8. The proposed development, which would comprise the re-surfacing and widening of an existing footpath, is not directly connected with or necessary to the management of any European sites in the surrounding area.

7.9. 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.

7.10. The potential likely significant impacts that could arise during the construction and operational phases of the proposed development on the European site's QI habitats and species, or SCI species are:

- Release of sediment & pollutants to surface & ground water during the upgrade works.
- Loss of or damage to habitat/resting/foraging places used by QI/SCI species.
- Noise and disturbance to QI/SCI species during construction.
- Dispersal of invasive species with resultant impacts on QI habitats and species, and SCI species during the upgrade works.

### ***Stage 1 Screening Assessment.***

The European sites within the Zone of Influence (i.e the area over which an impact can have a potential effect in relation to proximity of European sites and the mobility of faunal species from further afield sites) of the proposed works and approximate separation distances are set out below.

European Site	Qualifying Interests	Distance to works	Link
Lough Rea SAC	Hard oligo-mesotrophic waters	Adjacent	Yes
Lough Rea SPA	Shoveler & Coot, Wetland & waterbirds	Adjacent	Yes
Slieve Aughty Mountains SPA	Hen Harrier	5km	No
Sonnagh Bog SAC	Blanket bogs	8km	No
Rahasane Trough SAC	Turloughs	12km	No
Peterswell Trough SAC	Turloughs	12km	No
Castletaylor Complex SAC	Turloughs, Alpine & Boreal heaths Juniperus communis formations Semi-natural dry grasslands & scrubland facies on calcareous substrates Limestone pavements	15km	No
Lough Coy SAC	Turloughs	15km	No

7.11. Based on my examination of the NIS report and supporting information (incl. the desktop studies & field survey), NPWS website, aerial and satellite imagery, and other documents, the scale of the proposed works and nature of the likely effects, the substantial separation distance and functional relationship between the proposed works and the European sites, their conservation objectives and site specific characteristics, and taken in conjunction with my assessment of the site and environs, I conclude that a Stage 2 Appropriate Assessment is required for two of the European sites referred to above which I consider to be within the Zone of Influence by reason of a direct aquatic and mobile connection (Lough Rea SAC & SPA).

7.12. **Stage 2 Appropriate assessment:**

**Lough Rea SAC (000304):**

Lough Rea SAC lies within the Zone of Influence of the proposed works as it has a direct aquatic connection to the site of the upgrade works via the on-site and perimeter drainage ditches. The southern section of the proposed works would mainly be located between c.10m and c.40m of the lakeshore, except for a small section in the NE corner that may be located closer to shore (the extent of this relationship varies in the submitted plans). However the Council has confirmed that all of the works would be located at least 10m from the lakeshore.

**European site description:**

Lough Rea is a hard water lake directly situated S of Loughrea. The underlying geology of the area comprises Carboniferous limestone, water transparency is very high, and the lake is fed by springs and a stream. Several species of stonewort, pondweed and other aquatic plants characteristic of calcareous waters have been recorded in the lake. Some areas of reed swamp, wet grassland and wet woodland have been recorded on the sheltered W and SE shores. Lough Rea is of considerable ornithological interest for several species of bird including internationally important numbers of overwintering Shoveler and nationally important numbers of Tufted Duck. Coot have also been reported along with several species of waterfowl in regionally or locally important numbers, and Brown Trout are present in the lake. The site is largely surrounded by intensively farmed pasture and consequently the main threat to the lake comes from agricultural run-off. It is also vulnerable to nutrient input from Loughrea, and disturbance from boating activities.

**Qualifying Interest habitats and species:**

This SAC is designated for its importance to one habitat comprising Hard oligo-mesotrophic waters with benthic vegetation of Chara spp.

**Conservation Objectives:**

The Conservation Objectives for this habitat seeks to maintain the favourable conservation condition of this habitat, which is defined by the following list of attributes and targets:

**Attributes, measures & targets:**

The attributes measures and targets are set out below.

Attribute	Measure	Target
Habitat area	Hectares	Area stable or increasing.
Typical species	Occurrence	Typical species present, in good condition, and demonstrating typical abundances & distribution.
Vegetation composition: characteristic zonation	Occurrence	All characteristic zones should be present, correctly distributed & in good condition.
Vegetation distribution: maximum depth	Metres	Maintain maximum depth of vegetation, subject to natural processes.

Attribute	Measure	Target
Hydrological regime: water level fluctuations	Metres	Maintain appropriate hydrological regime necessary to support the habitat.
Lake substratum quality	Various	Maintain appropriate substratum type, extent and chemistry to support the vegetation.
Water quality: transparency	Metres	Maintain appropriate Secchi transparency with no decline.
Water quality: nutrients	Njg/l P; mg/l N	Maintain/restore the concentration of nutrients in the water column to sufficiently low levels.
Water quality: phytoplankton biomass	Njg/l chlorophyll a	Maintain appropriate water quality to support the habitat, including high chlorophyll a status.
Water quality: phytoplankton composition	EPA metric	Maintain appropriate water quality to support the habitat, incl. high phytoplankton composition status.
Water quality: attached algal biomass	Algal cover	Maintain trace/absent attached algal biomass.
Water quality: macrophyte status	EPA metric	Maintain high macrophyte status.
Acidification status	pH units; mg/l	Maintain appropriate water and sediment pH, alkalinity & cation concentrations.
Water colour	mg/l PtCo	Maintain appropriate water colour.
Dissolved organic carbon (DOC)	mg/l	Maintain appropriate organic carbon levels.
Turbidity	Nephelometric turbidity units/ mg/l SS	Maintain appropriate turbidity.
Fringing habitat: area and condition	Hectares	<p>Maintain the area &amp; condition of fringing habitats necessary to support the natural structure and functioning of lake habitat.</p> <p><b>Note:</b> Most lake shorelines have fringing habitats that intergrade with and support the structure and functions of the lake habitat. Equally, fringing habitats are dependent on the lake, particularly its water levels, and support wetland communities and species of conservation concern. Many of the fringing wetland habitats support higher invertebrate and plant species richness than the lake habitats themselves. The shoreline of Lough Rea is relatively simple, with a short transition between open water and surrounding grassland, with reedbed, freshwater marsh and wet grassland in between, as well as some more extensive areas of fen, particularly in the SW, and some wet woodland.</p>



**Potential direct effects:** The proposed development would not be located within a European site, and it is not relevant to the maintenance of any European site. No potential for direct effects having regard to the location and scale of the proposed footpath upgrade works and to the separation distance between the works and the European site and its QI habitat.

**Potential indirect effects:** There is potential for indirect effects on this European site during the **construction phase** as a result of: - water pollution from the unmitigated release of fine sediments in runoff during upgrade works and hydrocarbons by way of accidental spillages from machinery which could give rise to water pollution, chemical contamination, increased turbidity and lake bed smothering, with resultant impacts on the attributes and targets for the QI habitat, in the absence of mitigation. Further potential indirect effects relate to the uncontrolled introduction of invasive species from works vehicles which could give rise to the colonisation of habitats by invasive species, with resultant impacts on water quality and the attributes and targets for the QI habitat, in the absence of mitigation. There is no potential for any additional significant indirect adverse effects during the **operational phase** as the proposed works comprise repairs to an existing long-established footpath.

**Mitigation measures:** The NIS contains a list of mitigation measures which would serve to protect the SAC and its QI habitat from adverse effects, and these include: -

- Adherence to best construction practice.
- Temporary boundary fencing.
- Works compound within site boundary and set back from waterbodies.
- Surface water management measures to protect water quality to include:
  - Silt fences & buffer zones around lakeshore vegetation.
  - Protection of the lake and drainage ditches from contamination.
  - Designated concrete mixing or washing out areas on site.
- Storage of fuel & chemicals within secure areas on site.
- Waste management & emergency spill kits.

- Vehicle refuelling off-site (AA Screening & NIS reports section 2.3) or refuelling within secure areas on site (NIS report section 6.3).
- Timing and seasonality of works (to protect birds & wet marsh areas).
- Appointment of an Environmental Manager to oversee works.

Most of the mitigation measures would serve to protect the SAC from adverse impacts. However, there is a conflict in the submitted documents in relation to vehicle refuelling will should take place off-site. The mitigation measures also provide for the concrete mixing on-site, albeit within secure areas inside the works compound, which is not a suitable mitigation measure, and such works should take place off-site. These concerns could be addressed by way of a planning condition. I noted the presence of a public car park to the immediate E of the site and given the short duration of the works, the Council should consider using park of this area for the aforementioned works.

**Conclusion:** Having regard to the foregoing and taking account of the small scale and nature of the proposed works which relate to the upgrade of an existing footpath, it can be reasonably concluded on the basis of best scientific knowledge therefore that the proposed development will not adversely affect the integrity of the Lough Rea SAC in view of the sites' Conservation Objectives, subject to the implementation of the NIS mitigation measures and any recommended conditions.

**Potential in-combination effects:** Potential indirect in-combination effects relate to damage to the QI habitat because of accidental spillages and sediment run off during the footpath upgrade works, and the poorly managed removal or introduction of invasive species. This could give rise to pollution, contamination and/or colonisation with resultant impacts on water quality, having regard to the various plans or projects in wider area which mainly include agricultural practices, residential and town centre developments, and recreational boating activity on the lake, in the absence of mitigation. However, having regard to the implementation of the aforementioned mitigation measures, I am satisfied that there would be no adverse cumulative effects on the European site or its QI habitat.

**Residual effects:** None anticipated post mitigation.

**NIS Omissions:** None noted but conflicts between mitigation measures evident.

**Suggested conditions:** The works should be undertaken outside of the bird breeding and early overwintering seasons. The site compounds should be located a substantial distance from the lakeshore and drainage ditches. No concrete mixing, vehicle washing or refuelling on site. All plant and machinery should be thoroughly cleaned and washed before delivery to the site to prevent the spread of hazardous invasive species and pathogens. Having regard to the cultural heritage of the area and given the proximity of the site to the Lough Rea which contains crannogs, the works should be carried out under the supervision of an archaeologist.

**Conclusion:** I am satisfied that the proposed development individually or in combination with other plans or projects would not adversely affect the integrity of this European site in light of its Conservation Objectives, subject to the implementation of mitigation measures outlined above, and any recommended conditions.

**Lough Rea SPA (004134):**

Lough Rea SPA lies within the Zone of Influence of the proposed works as it has a direct aquatic and mobile connection to the site of the upgrade works.

***European site description:***

As for Lough Rea SAC above.

***Special Conservation Interest species:***

This SPA is designated for its importance to Shoveler, Coot and Wetland & Waterbirds.

***Conservation Objectives:***

1. To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA (Shoveler & Coot).

2. To maintain or restore the favourable conservation condition of the wetland habitat at Lough Rea SPA as a resource for the regularly-occurring migratory waterbirds that utilise it.

***Attributes, measures & targets:***

There are no attributes, measures and targets for the SCI species in this SPA.

**Potential direct effects:** The proposed development would not be located within a European site, and it is not relevant to the maintenance of any European site. No potential for direct effects having regard to the location and scale of the proposed upgrade works and to the separation distance between the works and the European site and its SCI species.

**Potential indirect effects:** As for Lough Rea SAC above in relation to temporary disturbance during the upgrade works from construction noise and dust, and potential adverse effects on water quality in the absence of mitigation. Water quality impacts could arise from the unmitigated release of fine sediments in runoff during the upgrade works and hydrocarbons by way of accidental spillages from machinery, with resultant impacts on the freshwater habitat and prey species (incl. aquatic invertebrates) for waterbirds. Having regard to the small scale and nature of the proposed works there would be no significant resultant loss of support habitat (incl. resting, nesting or foraging areas). There is no potential for any additional significant indirect adverse effects during the ***operational phase*** as the proposed works comprise repairs to an existing long-established footpath.

**Mitigation measures:** As for Lough Rea SAC above.

**Conclusion:** Having regard to the foregoing, it can be reasonably concluded on the basis of best scientific knowledge therefore that the proposed development will not adversely affect the integrity of the Lough Rea SPA in view of the sites' Conservation Objectives, subject to the implementation of mitigation measures outlined above, and any recommended conditions.

**Potential in-combination effects:** As for Lough Rea SAC above in relation to adverse effects on water quality, and resultant impacts on prey species.

**Residual effects:** None anticipated post mitigation.

**NIS Omissions:** None noted but conflicts between mitigation measures evident.

**Suggested conditions:** As for Lough Rea SAC above.

**Conclusion:** I am satisfied that the proposed development individually or in combination with other plans or projects would not adversely affect the integrity of this European site in light of its Conservation Objectives, subject to the implementation of mitigation measures outlined above, and any recommended conditions.

#### 7.13. **Appropriate Assessment Conclusions:**

Having regard to the foregoing 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 nos. 004134 and 000304 or any other European site, in view of the site's Conservation Objectives.

### 8.0 **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 those 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 Government of Ireland Climate Action Plan, 2019,
- (d) the Northern & Western Regional Economic & Spatial Strategy 2020 – 2033,
- (e) 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,
- (f) the conservation objectives, qualifying interests and special conservation interests for the Lough Rea SAC and SPA (site codes: 004134 & 000304),
- (g) the policies and objectives of the Galway County Development Plan 2015 to 2021,
- (h) the policies and objectives of the Loughrea Local Area Plan 2012 – 2022,
- (i) the nature and extent of the proposed works as set out in the application for approval,
- (j) the information submitted in relation to the potential impacts on habitats, flora and fauna, including the Natura Impact Statement, and
- (k) 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 Lough Rea SAC and SPA (site codes: 004134 and 000304), 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 Lough Rea SAC and SPA, in view of the site's 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 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 site's conservation objectives.

**Proper Planning and Sustainable Development and 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 and it would not give rise to likely effects on the environment.

## 9.0 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.

**Reason:** In the interest of clarity.

2. The mitigation and monitoring measures outlined in the plans and particulars relating to the proposed development or as may be required in order to comply with the following conditions shall be implemented. Prior to the commencement of development, details of a time schedule for implementation of mitigation measures and associated monitoring shall be prepared by the local authority and placed on file and retained as part of the public record.

**Reason:** In the interest of protecting the environment and European Sites.

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.

**Reason:** In the interest of protecting the European Sites and biodiversity.

4. The following nature conservation requirements shall be complied with:

(a) The works shall be undertaken from 15<sup>th</sup> August to 30<sup>th</sup> September if possible, and failing that 1<sup>st</sup> March to 15<sup>th</sup> April as an alternative.

(b) No machinery or materials shall be stored within or close to the Lough Rea SAC and SPA site boundaries.

(c) Refuelling, concrete mixing and vehicle washing shall take place off-site and not within any designated area on-site.



(d) The construction works compound shall be located a substantial distance from the boundary with the Lough Rea SAC and SPA site boundaries and the on-site drainage channels.

**Reason:** In the interest of nature conservation and biodiversity.

5. 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. The ecologist shall be present during repair and remediation 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 biodiversity.

6. The County Council 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. A suitably qualified archaeologist shall be appointed by the County Council to oversee the site set-up and construction of the proposed development and the archaeologist shall be present on-site during construction works.

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

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Karla Mc Bride  
Senior Planning Inspector  
21<sup>st</sup> December 2021