



An
Bord
Pleanála

Inspector's Report

ABP-311514-21

Development	Installation of a bulk LPG storage tank and road tanker filling facilities, fire suppression gantry with associated water storage tank and pump house and ancillary site services.
Location	Bunnagee, Letterkenny, Co. Donegal.
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	2150032
Applicant(s)	Flogas Ireland Limited.
Type of Application	Permission.
Planning Authority Decision	Grant permission
Type of Appeal	Third Party
Appellant(s)	Bernard Whoriskey.
Observer(s)	None.
Date of Site Inspection	3 rd February 2022.
Inspector	Barry O'Donnell

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 0.385ha and is located at Bunnagee, east of Letterkenny Town Centre, in an area characterised by commercial and industrial uses. The subject site forms part of a larger commercial site that is operated by Barry Fuels Limited (t/a Tinney's Oil). The Tinney's Oil site contains a forecourt area and fuel dispensing pumps, open storage of materials and a number of buildings.
- 1.2. The subject site is located toward the north end of the commercial site, in an existing yard area. At the time of my site visit, the site contained a bunded area, that housed a number of fuel tanks, and an amount of open storage. The site is partly set on an area of concrete hardstanding and partly on an area of stone/gravel and is enclosed by palisade fencing to the east. The site also incorporates part of a drainage channel/swale on the east side of the palisade fence that runs along the eastern site boundary and follows the route of the adjacent river.
- 1.3. The River Swilly lies to the east of the site and is separated from the drainage swale by a raised flood protection embankment.

2.0 Proposed Development

- 2.1. The proposed development entailed within the public notices comprises installation of a bulk LPG storage tank and road tanker filling facilities, fire suppression gantry with associated water storage tank and pump house and ancillary site services.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority granted permission on 2nd September 2021, subject to 9 No. conditions.

Condition No. 2 required the development to comply with the requirements of IS3216:2010.

Condition No. 3 required the developer to provide security to the council in order to ensure compliance with condition No. 2, in the form of a bond, cash deposit or other security.

Condition No. 8 required provision of a B.S. 750 round threaded outlet fire hydrant on a minimum 100mm minimum diameter watermain, within 50m of the development along the road verge.

Condition No. 9(a) required provision of a minimum 7m clear and level access/egress along the bank of the River Swilly

Condition No. 9(b) required the applicant to enter into an agreement with the Office of Public Works drainage division in relation to access to the site for drainage and preservation of the embankment.

3.2. Planning Authority Reports

3.2.1. Planning reports dated 1st March 2021 and 1st September 2021 have been provided, which reflect the Planning Authority's decision to grant permission. The first report states that the proposed development is acceptable in principle, in the context of the pattern of development in the area and the need for such facilities to service the wider area. The report also states that the proposed siting and design are acceptable. No concerns are expressed regarding access proposals or public health aspects and it is noted that the site is not located within Flood Zones A or B. A small portion of the site is stated to fall within the fluvial 1% risk area, but that the proposed development is sited outside of this flood extent. In respect to appropriate assessment, the report states that in the absence of details regarding construction methods and surface water drainage, no screening for appropriate assessment could be carried out. Further information is recommended in relation to the following aspects of the development: -

1. Applicant to submit revised proposals for the pumphouse and storage tank, indicating the extent of foundations required.
2. Applicant to submit revised site layout plan and section drawings, indicating (a) make-up of foundation for pouring concrete for the concrete apron, (b) gradient of extended concrete apron and existing concrete aprons to gullies (c) proposals for surface water drainage

3. Applicant to submit an ecological report, which considers proximate Natura 2000 sites and risks associated with the development, to assist appropriate assessment screening

3.2.2. The second report follows submission of the additional information response and recommends that permission be granted, subject to 9 No. conditions. The recommended conditions are consistent with the Planning Authority's decision. A separate appropriate assessment screening is appended to the report, which determines that appropriate assessment is not required.

3.2.3. Other Technical Reports

Handwritten comments from the **Roads Department** have been provided, dated 20th July 2021, which advise of significant road alterations to the N14. The comments request that a contribution of €40,000 be sought toward maintenance of the road and drainage along the main access road, in view of the impact of HGV deliveries to the site, and recommend that a one-way system within the depot should be maintained and that 'no right turn' signage should be erected at the access onto the N14.

A submission from the **Chief fire Officer** was received dated 10th February 2021, which recommends a number of conditions as part of a grant of permission.

Emailed comments from the county council **National Roads Office** dated 5th February 2021 have been provided, which advised that the development is sufficiently removed from the TEN-T priority road improvement project, Donegal and will not impact its progression.

A **Building Control** report dated 2nd February 2021 has been provided, which recommends a number of conditions as part of a grant of permission.

3.3. Prescribed Bodies

3.3.1. Transport Infrastructure Ireland made a submission dated 5th February 2021, indicating that it had no observations on the application.

3.3.2. The Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media (DAU) made a submission dated 25th February 2021, which advised that the development has the potential to cause an adverse effect on a significant area of the habitats and local species which are listed under Annex IV of the EU Habitats Directive and protected

under the Wildlife Acts 1976-2018 and that it is not possible to assess the impact of the development in the absence of additional information. The submission recommends that, in order to mitigate potential adverse effects and adequately assess the application for comment, screening for appropriate assessment should be undertaken.

- 3.3.3. An Taisce made a submission dated 18th February 2021, which advised that screening for Appropriate Assessment is required, in view of the proximity of the site to Lough Swilly Special Area of Conservation and Special Protection Area, and which also submitted that further information should be sought regarding the amount of LPG to be brought, stored and distributed from the site. An assessment of climate impacts of the sourcing, processing and burning of LPG was also submitted as being required.

3.4. Third Party Observations

- 3.4.1. A single third-party observation was received, the issues raised within which can be summarised as follows: -
- Development is premature pending finalisation of the route of the Ten-T preferred option corridor.
 - Flood risk.
 - Site is located within a special area of conservation and adjacent to a proposed natural heritage area

4.0 Planning History

2150424 - Application for erection of a waste transfer station contained within an existing building (1,856sqm), having an annual waste intake of up to 24,500 tonnes, construction of a civic amenity bring centre (408sqm) to the east of the existing building and associated site works including footpaths, upgraded site access and boundary fence, cycle parking, additional car parking and landscaping. Planning Authority records indicate that a request for further information issued on 29th April 2021 in

relation to a number of aspects of the development and an extension was subsequently agreed, in respect of the further information response.

1480008 - Permission granted on 30th May 2014 for 8 No. fuel dispensing pumps on 3 No. pump islands, for sale of fuel to the public, revised boundary fencing and egress road.

Permission was granted for continued use of the dispensing pumps for a further 3-years, under Reg. Ref. 1750954.

5.0 Policy Context

5.1. Donegal County Development Plan 2018-2024

- 5.1.1. Part C of the development plan contains objectives and policies for the towns within the county, including Letterkenny. It also includes land-use zoning maps for each of the towns, with Map 12.1B relating to Letterkenny.
- 5.1.2. The subject site is identified on the zoning map as primarily subject to the 'Established Development' zoning, with an objective '*To conserve and enhance the quality and character of the area, to protect residential amenity and allow for development appropriate to the sustainable growth of the settlement subject to all relevant material planning considerations, all the policies of this Plan, relevant National/ regional policy/guidance including environmental designations and subject to the proper planning and sustainable development of the area.*'
- 5.1.3. The eastern-most part of the site falls within the 'Open Space' zoning, with an objective '*To conserve and enhance land for formal and informal open space and amenity purposes, and to make provision for new recreation, leisure and community facilities.*'
- 5.1.4. The zoning map also identifies that the site lies partially within the route corridor for the Ten-T road improvement project preferred route, where there is an objective '*To conserve and enhance the quality and character of the area, to protect residential amenity, to allow for development appropriate to the sustainable growth of the settlement and to provide for the development of the TEN-T Priority Route Improvement Project, Donegal.*'

5.1.5. Relevant policies include: -

T-P-10: It is a policy of the Council not to permit development that would prejudice the implementation of a transport scheme identified in the Development Plan.

LK-T-P-6: The Council seeks to improve access into, through and around Letterkenny through the further upgrade and development of Urban Roads and the identification and provision of new Strategic Relief Road Corridors (Map 12.3: 'Transport Map' contained in this part of the Plan refers). The roads and corridors identified are an indicative width of 20 metres.

For planning purposes, in terms of Development Management, all identified Strategic Relief Road Corridors shall be subject to National Roads Standards. Those lands adjacent to and affected by Strategic Relief Road Corridors have been identified for special consideration (Map 12.3: 'Transport Map' that accompanies this part of the Plan). Development proposals which are located within the lands identified shall:

- Consult with the Council Transport Authorities, namely the Roads and Transportation Service, Town Engineer and the National Roads Design Office (NRDO), prior to the submission of any planning application.
- Be required to demonstrate and satisfy that the proposal will not inhibit the future development of the corridor.
- Achieve excellence in road corridor landscaping, including avenue planting in order to develop attractive entrances to and views of the town.
- Provide for the development of public transport 'pick up'/'drop off' points, shelter facilities and future road widening to accommodate increased capacity and/or the provision of public transport corridors to the satisfaction of the Council.

The Strategic Relief Road Corridors are:

- Southern Strategic Relief Corridor, joining the Leck East, Leck West and Swilly Diversion Routes.
- Western Strategic Relief Corridor, connecting Ballymacool and Glencar via Rodgers Burn.
- Northern Strategic Relief Corridor encompassing the Windyhall Route.

- Eastern Strategic Relief Corridor, joining the N56 (New Link Road) and Bonagee Diversion Routes.

Urban Road programmes include the upgrading and rationalisation of the Cullion Road, strengthening to sections of the R250 (Glenties) and strengthening of the R245 (Ramelton) and the development of new roads as appropriate (Map 12.3: 'Transport Map,' contained in this part of the Plan, refers).

5.2. Natural Heritage Designations

- 5.2.1. The site is partly located within Lough Swilly SAC (Site Code 002287) and is within c.0.01km of Lough Swilly SPA (Site Code 004075). The River Swilly is also identified as a proposed Natural Heritage Area, known as Lough Swilly Including Big Isle, Blanket Nook and Inch Lake (Site Code 000166).

5.3. EIA Screening

- 5.3.1. An Environmental Impact Assessment Screening report was not submitted with the application.
- 5.3.2. Class 3(c) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:
- Installations for surface storage of natural gas, where the storage capacity would exceed 200 tonnes.
- 5.3.3. The proposed bulk LPG storage tank is identified as having a 60-tonne capacity and is thus below the threshold for mandatory EIA.
- 5.3.4. I have considered the requirement for sub-threshold EIA and note that the site lies within an established commercial site (Tinney's Oil). There are also a variety of other commercial and industrial uses in the immediate area. The proposed development will not have an adverse impact, in environmental terms, on surrounding land uses. The site is not designated for the protection of the landscape or of natural or cultural heritage. The proposed development would not give rise to waste, pollution or nuisances that differ from that arising from other development in the neighbourhood. It would not give rise to a risk of major accidents or risks to human health.

5.3.5. Having regard to: -

- The nature and scale of the proposed development, which is under the mandatory threshold in respect of Class 3(c) – Energy Industry of the Planning and Development Regulations 2001-2021,
- The location of the site outside of any sensitive location specified in Article 109 of the Planning and Development Regulations 2001 (as amended),
- The existing pattern of industrial and commercial development on the wider site and in the vicinity,
- The guidance set out in the “Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development”, issued by the Department of the Environment, Heritage and Local Government (2003), and
- The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended),

5.3.6. I have concluded that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment and that on preliminary examination an environmental impact assessment report for the proposed development was not necessary in this case.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal can be summarised as follows: -

- The proposed development is premature pending finalisation of the route of the Ten-T preferred option corridor.
- The site is located within a flood risk area.
- The site is located within a special area of conservation and is adjacent to a proposed natural heritage area

6.2. Applicant Response

6.2.1. A first party response to the appeal was submitted on 18th October 2021 on behalf of the applicant, by TS McLoughlin Structural Engineers. The contents of this submission can be summarised as follows: -

- It is incorrect to state that the subject site is on the preferred Ten-T route option.
- Regarding other grounds of appeal issues, these issues were taken into consideration by the Planning Authority in its assessment.

6.3. Planning Authority Response

6.3.1. The Planning Authority made a submission on 28th March 2021, the contents of which can be summarised as follows: -

- Part of the site is within the indicative area of the Ten-T route, but this area includes a buffer of over 300m wide. The proposed development is located outside the buffer area and the National Roads Office has confirmed that the development will not impact on progression of the project. Transport Infrastructure Ireland also confirmed it had no comments on the application.
- A small portion of the site is located within the 1% fluvial flood risk area, which comprises the embankment, and the proposed development is located outside of this flood risk extent. The development is therefore not at risk of flooding.
- The site is not within the Lough Swilly SAC or SPA. An appropriate assessment screening exercise has been undertaken and it determined that appropriate assessment was not required.
- Regarding the proposed natural heritage area designation, protections afforded to the SAC and SPA duplicate that which may be given to a pNHA. Given the conclusions reached in respect of the appropriate assessment screening, it is considered the matter has been satisfactorily addressed.
- Other matters raised are addressed within the planner's reports.
- The Board is requested to uphold the Planning Authority's decision to grant permission.

6.4. Observations

6.4.1. None received.

6.5. Further Responses

6.5.1. None received.

7.0 Assessment

7.1. Having inspected the site and considered the contents of the appeal, I consider the main planning issues in the assessment of the proposed development are as follows:

- Principle of development;
- Impact on the Ten-T priority route improvement project;
- Surface Water Drainage;
- Flood Risk; and
- Appropriate Assessment.

7.2. Principle of Development

7.2.1. The proposed development is located on land that is subject to the 'Established Development' zoning, the objective for which identifies that development appropriate to the sustainable growth of the settlement will be allowed, subject to material planning considerations.

7.2.2. The commercial use of the wider site is established and although the proposal is unrelated to the existing business, its scale, nature and form are consistent with the established use of the site, comprising a facility for bulk storage and distribution of LPG. I note in this respect that the application documents identify that the development will be typically unmanned, other than for safety and maintenance inspections, and will generate low-level vehicle movements, associated with replenishment (2 trips per week) and distribution trips (1 trip per day, rising to 2 trips per day in Winter).

7.2.3. I consider the development is acceptable under the zoning.

7.3. Impact on the Ten-T Priority Route Improvement Project

- 7.3.1. The appellant states that the proposed development is premature pending finalisation of the route of the Ten-T preferred option corridor.
- 7.3.2. The development plan zoning map identifies that the subject site falls partly within the route corridor for the Ten-T priority route improvement project preferred route, Section 2 - N56/N13 Letterkenny to Manorcunningham. Development plan map 5.1.6 identifies the preferred route corridor for this project.
- 7.3.3. The applicant states that it is incorrect to state that the subject site is on the preferred Ten-T route option and that they are in detailed discussion with Donegal County Council National Roads Design Office (NRDO) regarding other lands connected to the Ten-T project, but that the subject site is not affected.
- 7.3.4. In its submission on the appeal, the Planning Authority advises that the indicative Ten-T route includes a buffer, which provides for a route over 300m in width. The subject site is stated to be outside this buffer and reference is made to the NRDO submission on the application, which confirms this.
- 7.3.5. I have considered submissions from the appellant, applicant and in particular the NRDO submission dated 8th February 2021, in relation to the issue of the impact of the development on the Ten-T project. The submission states that the proposed development is sufficiently removed from the progressing design of the preferred option corridor and is within a cluster of development and that it does not impact the progression of the Ten-T project or any other national road project.
- 7.3.6. The appellant has not provided any information which undermines this position and I note that in its submission on the appeal, the Planning Authority restates that the development does not impact the progression of the Ten-T project. I also note that Transport Infrastructure Ireland did not identify any concerns with the proposed development, in its submission.
- 7.3.7. From the information available to me, I am satisfied that the development does not impact the progression of the Ten-T project.

7.4. Surface Water Drainage

- 7.4.1. The existing surface water drainage system is not clearly identified on the site layout drawing, but I note that the digital topographical survey provided at the further information stage identifies that a surface water pipe runs through the site, which

incorporates an interceptor and which discharges to the drainage swale adjacent to the eastern boundary of the yard. The Screening Report for Appropriate Assessment submitted at the further information stage states that surface water is discharged to the drainage swale via a sluice along the eastern boundary of the yard.

7.4.2. The drainage swale lies within the Lough Swilly SAC and I have concerns regarding the adequacy of the surface water drainage system, in view of the close and direct connection to the European site. I noted on my site inspection that the east site boundary comprises a palisade fence and there is no barrier in place to restrict surface water from discharging directly into the swale and the European site.

7.4.3. Given the close proximity of the proposed development and direct connection to the European site, I consider the existing surface water drainage system is inadequate. It gives rise to a potential situation whereby suspended solids or pollutants may be discharged directly to the European site, leading to potential pollution of surface waters. Should the Board decide to grant permission, I recommend a condition be attached requiring the applicant to submit and agree proposals regarding the drainage of surface water from the site and that any such system should include appropriate measures to prevent surface water discharges containing suspended solids or pollutants. This aspect of the development also gives rise to issues in respect of appropriate assessment, as is discussed in further detail at Section 7.6 of my report.

7.5. Flood Risk

7.5.1. The appellant raises concerns within the appeal that the subject site is located within a flood risk area. No flood risk assessment was submitted with the application.

7.5.2. In its submission on the appeal, the Planning Authority states that a portion of the site is located within the 1% fluvial flood risk area, but that this consists of the embankment area, and the area of the proposed development is located outside of the flood risk extent.

7.5.3. Available CFRAMS mapping¹ for the area identifies that the part of the drainage swale that is within the application site boundary falls within the 0.1% fluvial risk area and the 0.1% tidal risk area, which equate to Flood Zone B and a moderate risk of

¹ <https://www.floodinfo.ie/map/floodmaps/>

flooding. I note from this CFRAMS mapping that the proposed development is located outside of this flood zone, on land that is at low risk of flooding.

- 7.5.4. I am satisfied that, from the information available to me, the subject site is at low risk of flooding and I consider it would be unjustifiable to refuse the proposed development on the basis of flood risk. I also note that the Planning Authority's submission on the appeal states that the proposed development is located outside of the flood risk extent.

7.6. Appropriate Assessment

Compliance with Article 6(3) of the Habitats Directive

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

Background on the Application

- 7.6.2. The applicant submitted a Screening Report for Appropriate Assessment, prepared by Greentrack Environmental Consultants, at the further information stage, following a request from the Planning Authority. The Screening Report provides a description of the proposed development, identifies European sites within a possible zone of influence and identifies potential impacts.
- 7.6.3. Having reviewed the documents and submissions on the file, I am satisfied that the information allows for a complete examination and identification of any potential significant effects of the development, alone, or in combination with other plans and projects on European sites.

Need for Stage 1 Appropriate Assessment Screening

- 7.6.4. Under Article 6(3) of the Habitats Directive, an Appropriate Assessment must be undertaken on any plan or project not directly connected with or necessary to the management of a European site but likely to have a significant effect on the site in view of its conservation objectives.
- 7.6.5. The proposed development is not directly connected with or necessary to the management of a European site and accordingly is subject to the provisions of Article 6(3).

Brief description of the development

- 7.6.6. A description of the proposed development is provided at Section 3 of the Screening Report. The development is also described at Section 2 of this Report. In summary, permission is sought for installation of a bulk LPG storage tank and road tanker filling facilities, fire suppression gantry with associated water storage tank and pump house and ancillary site services, on an existing commercial site with a stated area of 0.385ha at Bunnagee, east of Letterkenny Town Centre. The site is located partly within Lough Swilly SAC (Site Code 002287) and is within c.0.01km of Lough Swilly SPA (Site Code 004075). Surface water is identified as being drained to an existing drainage swale to the east of the site, that lies within the SAC.
- 7.6.7. The submissions from the appellant and Planning Authority are summarised as Section 6 of this Report. A submission was also received from the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media (DAU) and is summarised at Section 3 of this report.
- 7.6.8. Taking account of the characteristics of the proposed development, in terms of its location and the scale of works, I consider the following impact mechanisms require examination:
- Potential loss of qualifying habitat within a European site,
 - Disturbance of species of conservation interest within a European site,
 - Potential impacts on water quality within a European site arising from surface water discharges from the site.

European Sites

- 7.6.9. The Screening Report states that the site is partly located within Lough Swilly SAC and is within c.0.01km of Lough Swilly SPA. The following European sites are stated to fall within 15km: -
1. Lough Swilly SAC (Site Code 002287),
 2. Lough Swilly SPA (Site Code 004075),
 3. Leannan River SAC (Site Code 002176), 7.9km north-west,
 4. Ballyarr Wood SAC (Site Code 000116) 8.31km north,
 5. Lough Fern SPA (Site Code 004060) 9.69km north,

6. Derryveagh and Glendowan Mountains SPA (Site Code 004039) 13.78km north-west, and

7. River Finn SAC (Site Code 002301) 14.81km south-west

7.6.10. For sites 3-7 above, which are identified as being between 7.9km-14.81km from the site, the Screening Report states that there is no connectivity between sites and on this basis does not consider these sites further in the screening assessment.

7.6.11. In the case of Leannan River SAC, Ballyarr Wood SAC and River Finn SAC, in the absence of a hydrological connection to the subject site I agree that the potential for significant effects on these sites can be excluded. Regarding Lough Fern SPA and Derryveagh and Glendowan Mountains SPA, both are remote from the subject site and are very unlikely to be significantly affected by the proposed development. I am therefore satisfied that the potential for significant effects on these sites can be excluded.

7.6.12. A summary of Lough Swilly SAC and Lough Swilly SPA are presented in the table below.

European Site (code)	List of Qualifying interest /Special conservation Interest	Distance from proposed development (Km)	Connections (source, pathway receptor)
<u>SAC</u>			
Lough Swilly SAC (Site Code 002287)	Estuaries, Coastal lagoons, Atlantic salt meadows, Molinia meadows on calcareous, peaty or clayey-silt-laden soils, Old sessile oak woods with Ilex and Blechnum in the British Isles, Otter	Subject site located partly within	Direct
<u>SPA</u>			
Lough Swilly SPA (Site Code 004075)	Great Crested Grebe, Grey Heron, Whooper Swan, Greylag Goose, Shelduck, Wigeon, Teal, Mallard, Shoveler, Scaup, Goldeneye, Red-breasted Merganser, Coot, Oystercatcher,	c.0.01km	Connection via surface water

	Knot, Dunlin, Curlew, Redshank, Greenshank, Black-headed Gull, Common Gull, Sandwich Tern, Common Tern, Greenland White-fronted Goose, Wetland and Waterbirds		
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7.6.13. In respect of Screening, the Screening Report concludes that: -

'It is concluded that the project, either individually or in combination with other plans or projects will have no significant adverse effects on any European sites. The conclusion was reached on the basis that no habitat loss or degradation will occur as result the proposed development and associated surface water drainage proposals.

This conclusion was reached based on objective information and in view of best scientific knowledge. In light of this conclusion, it is considered that the consent authority, in completing its AA Screening in respect of the proposed project, should find that the project, either individually or in combination with other plans and projects, is not likely to have a significant effect on any European Site and that and a Stage 2 Appropriate Assessment is not required.'

Potential loss of qualifying habitat within a European site

7.6.14. As I have stated previously, the subject site is located partly within Lough Swilly SAC. The SAC encompasses the drainage swale but does not encroach onto the commercial yard, where the proposed development is to be located. The proposed development does not involve extension of the yard to the east and the existing palisade fence at the eastern boundary of the yard is identified as being retained. Accordingly, I am satisfied that there will be no loss of habitat within the SAC arising from the development.

Disturbance of species of conservation interest within a European site

7.6.15. Lough Swilly SPA lies in close proximity to the subject site, encroaching to the eastern side of the flood embankment and within c.0.1km of the site. The construction phase will generate noise and activity in proximity to the SPA, but species of conservation interest are already likely to experience and be habituated to some disturbance associated with commercial uses and human activity in the wider

area, given the presence of a number of commercial and industrial businesses in the immediate vicinity of the site. I also note that the proposed development is located within an existing commercial yard, in an area where there is already ongoing activity associated with the Tinney's Oil business. Taken together with the smallscale nature of the development, which does not require any specialist construction methods, I am satisfied that the potential for likely significant disturbance effects on SCI bird species of the SPA is low and can be excluded.

Potential impacts on water quality within a European site arising from surface water discharges from the site

- 7.6.16. As I have outlined previously, the existing surface water drainage system is not clearly identified on the site layout drawing but, from the information provided, I note that a surface water pipe runs under the site, which incorporates an interceptor and which discharges to the drainage swale via a sluice.
- 7.6.17. I noted on my inspection of the site that the eastern boundary of the yard comprises a palisade fence and there is no barrier in place to restrict surface water from discharging directly into the swale and Lough Swilly SAC. The proposed development therefore has the potential to result in deterioration of water quality within the SAC, on foot of direct surface water discharges containing suspended solids or pollutants during construction and operational phases. The Screening Report identifies the presence of palisade fencing along the boundary and identifies the risk that contaminated surface water poses to qualifying interests of the SAC but does not acknowledge the route for surface water discharges from the site, into the SAC.
- 7.6.18. Lough Swilly SPA encroaches to the eastern side of the flood embankment but is hydrologically connected to the SAC via drainage channels within the embankment. Impacts on water quality within the SAC may affect the feeding habitat of SCI bird species of the SPA.
- 7.6.19. In view of the above, the proposed development may have significant effects on Lough Swilly SAC and Lough Swilly SPA, and therefore, the carrying out of an Appropriate Assessment of the proposed development is necessary.

Screening Determination

7.6.20. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that Appropriate Assessment is required as it cannot be excluded on the basis of objective information that the proposed development, individually or in combination, will have a significant effect on the following European sites.

- Lough Swilly Special Area of Conservation (Site Code 002287)
- Lough Swilly Special Protection Area (Site Code 004075)

Stage 2 Appropriate Assessment

7.6.21. 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.

7.6.22. No Natura Impact Statement was submitted with the application.

European Sites

7.6.23. The relevant European sites for Stage 2 Appropriate Assessment are Lough Swilly SAC and Lough Swilly SPA. This Stage 2 assessment will consider whether or not the proposed development would adversely affect the integrity of this European site, either individually or in combination with other plans and projects in view of the site's conservation objectives. The main aspects of the development that could adversely affect the conservation objectives of European sites relate to: -

- Potential impacts on water quality within Lough Swilly SAC and SPA arising from surface water discharges from the site

Evaluation of Effects

7.6.24. The conservation objectives for Lough Swilly SAC are: (1) To maintain the favourable conservation condition of Estuaries in Lough Swilly SAC, (2) To restore the favourable conservation condition of Lagoons in Lough Swilly SAC, (3) To restore the favourable conservation condition of Atlantic salt meadows in Lough Swilly SAC, (4) To restore the favourable conservation condition of Otter in Lough

Swilly SAC, (5) To restore the favourable conservation condition of Old oak woodland with Ilex and Blechnum in Lough Swilly SAC.

- 7.6.25. There is a uniform conservation objective for the SCI bird species within Lough Swilly SPA, which seeks to 'maintain the favourable conservation condition' of each species.
- 7.6.26. In my opinion, given the direct connection to the European site and the characteristics of the subject site, where there is no barrier in place to restrict surface water from discharging directly into the swale and Lough Swilly SAC, there is the possibility of suspended solids or pollutants being discharged directly into the SAC. I also note that the development incorporates a 300m³ firefighting deluge water storage tank and emergency fire suppression measures. Implementation of emergency measures is likely to result in contaminated water which may, similar to surface waters, be discharged directly to the SAC.
- 7.6.27. The site is located adjacent to 'estuaries' habitat and a transitional waterbody and I note that the conservation objectives document identifies the presence of sand/silt/sediment in this habitat. The area is therefore likely to be somewhat robust to some suspended solid content within surface waters. However, in saying this, a pollution event may affect the wider ecological functioning of the site, affecting the feeding habitat of SCI of both the SAC and SPA.
- 7.6.28. The Screening Report identifies that contaminated surface water poses a risk to qualifying interests of the SAC and SPA but does not acknowledge the route for surface water discharges from the site, into the SAC. As such, no mitigation is incorporated as part of the proposed development, which would address this identified potential impact.
- 7.6.29. In combination effects may also arise, given the entire east site boundary for the Tinney's Oil yard is enclosed by palisade fencing, with no barrier in place to restrict surface water from that site discharging directly into the swale and Lough Swilly SAC.

Appropriate Assessment Conclusion

- 7.6.30. The proposed development has been considered in light of the assessment requirements of Sections 177U and 177V of the Planning and Development Act 2000, as amended.
- 7.6.31. Having carried out screening for Appropriate Assessment of the project, it was concluded that it may have a significant effect on Lough Swilly SAC (Site Code 002287) and Lough Swilly SPA (Site Code 004075). Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of those sites, in light of their conservation objectives.
- 7.6.32. Following an Appropriate Assessment, it has not been ascertained beyond a reasonable doubt that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of European site Nos 002287 and/or 004075, in view of the sites' Conservation Objectives. This conclusion is based on:
- An identified route between the subject site and Lough Swilly SAC and Lough Swilly SPA that allows for uncontrolled discharge of surface water containing suspended solids and/or pollutants from the site to the European sites, along the east side boundary.
- 7.6.33. Appropriate assessment identified that site characteristics, in particular the absence of an enclosed east site boundary, has the potential for significant effects on the European sites, arising from direct discharge of surface waters containing suspended solids and/or pollutants.

8.0 Recommendation

- 8.1. I recommend that planning permission is refused for following reasons and considerations set out hereunder.

9.0 Reasons and Considerations

The proposed development is located partly within Lough Swilly Special Area of Conservation (Site Code 002287) and is in close proximity to Lough Swilly Special Protection Area (Site Code 004075) to the east. On the basis of the information provided with the application and appeal, and in light of the Stage 2 Appropriate

Assessment undertaken, the Board cannot be satisfied that the development, individually, or in combination with other plans or projects, would not be likely to have a significant effect on Lough Swilly Special Area of Conservation or Lough Swilly Special Protection Area, in view of the sites' conservation objectives, by reason of the open nature of the east site boundary that allows for direct discharge of surface waters containing suspended solids and/or pollutants to the SAC. In such circumstances, the Board is precluded from granting permission.

Barry O'Donnell
Planning Inspector

4th March 2022.