



An
Bord
Pleanála

Inspector's Report

ABP-312541-22

Development	Change use of land from agriculture use to use as a golf short game practice area. A Natura Impact Statement (NIS) was submitted with this application.
Location	Dooks, Glenbeigh, Co Kerry.
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	21514
Applicant(s)	Dooks Golf Club
Type of Application	Permission
Planning Authority Decision	Grant with Conditions
Type of Appeal	Third Party
Appellant(s)	Angela Griffin
Observer(s)	None
Date of Site Inspection	04 th of April 2022
Inspector	Adrian Ormsby

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1.0 Site Location and Description

- 1.1. The appeal site has a stated site area of 3.14ha and is located directly to the south of Dooks Golf Club, Glenbeigh, County Kerry. The site is located in a rural area on a local road c.2.1km north of the N70 National Road between Glenbeigh and Killorglin.
- 1.2. The site itself appears to be in marginal agricultural use with hedgerow boundaries and a network of drainages along most of its boundaries.
- 1.3. At the time of the inspection the site was accessible from the Golf Clubs car park. The boundary bund and hedgerow has been breached and a compacted stone style bridge crossing has been constructed over the drainage ditch with a culverted pipe within. The ditch was relatively dry at the time of the inspection.

2.0 Proposed Development

- 2.1. The application comprises of-
 - the change use of land from agriculture use to use as a golf short game practice area.
 - This consists of tees and target greens formed on the existing ground contours and
 - surrounding low-level mounding and planting
 - Two access bridges/crossings over drainage ditch with culverts from vicinity of the exiting car park area
 - The NIS indicates culverting of internal field drainage ditches and 1.5m perimeter fencing.
- 2.2. The Planning Authority requested Further Information (FI) on the 05th of July 2021. This sought predevelopment archaeological testing.
- 2.3. The Applicant has submitted a report on testing on the 26th of October 2021. They also set out unsolicited further information clarifying the use of the proposed facility.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant permission on the 16/12/21 subject to 2 conditions.

- Condition 2 detailed that all mitigation measures as detailed in the NIS shall be undertaken, maintained and monitored to the satisfaction of the Planning Authority.

4.0 Planning Authority Reports

4.1. Planning Reports

The second Planners Report (undated) consequent to the further information submission generally reflects the decision of the Planning Authority.

- The report notes receipt of a positive Archaeologist Report following the FI submission.
- The Appropriate Assessment concludes the development will not have an adverse effect on the integrity of European sites.
- Following Preliminary EIA Screening an EIA is not required.

4.2. Other Technical Reports

- County Archaeologist-
 - 08/06/21- Given the scale of the development (greater than 0.5ha) pre development archaeological testing should be carried out and a report submitted prior to any grant of permission.
 - 04/11/21- No further mitigation required
- Fire Authority-
 - 14/06/21- No objection
- Biodiversity Officer-

- 30/06/21- Based on information on file and in the NIS the proposed development will not have an adverse effect on the integrity of European sites.

4.3. Prescribed Bodies

- Inland Fisheries Ireland-
 - 23/06/21- There is no fishery interest in drainage ditches on site. If they are to be cleaned mitigation measures required and ditches must not pollute receiving waters. Other matters detailed.
- Dept of Agriculture, Food & Marine-
 - 17/06/21- No observations

4.4. Third Party Observations

- One third party submission was received. Concerns raised generally include those as set out in the grounds of appeal in section 7.1 below and the following-
 - The proposed development is more akin to a driving range than a 'short game' practise area.
 - Users of the facility will treat it as a driving range and golf balls will land in the observers farm land to the west of the practise area.
 - Concerns include danger to people walking through the field.

5.0 Planning History

This Site

- None recent

Nearby Sites-

- 21/1287- to north east of application site but within the golf club grounds
 - a single storey and two storey extension to the gable ends of an existing machinery shed for the course maintenance stall office and

welfare facilities, an additional machinery shed with its roof extended over an open yard and an open sand bunker and washbay against one sidewall and for all associated works- **Grant** 14/02/2022

- 18/838- adjoining part of the sites southern boundary and to its east
 - Change house plans, and alterations to the location of the houses in a development of five holiday homes previously granted under 14/738.
Grant 19/10/2018

6.0 Policy Context

6.1. Kerry County Development Plan 2022-2028

- A Notice of Intention to Issue a Direction to Kerry County Council on the Kerry County Development Plan 2022 – 2028 issued from the Minister on the 12/08/22. The matters set out in this generally relate to wind energy and are not considered pertinent to this appeal.
- The following objectives is considered relevant-
 - *KCDP 10-35 Promote and facilitate the sustainable development of outdoor activities including winter and adventure sports, in appropriate locations, such as walking, rambling, cycling, land and sea based activities with specialised centres and facilities in association with Munster Technological University, Fáilte Ireland, National Trails Office, National Parks and Wildlife Service, Local Development Companies, Sport Ireland, Healthy Ireland, Local Development Companies, Kerry Education and Training Board and other relevant national and County based departments and agencies.*
- Volume 2- Appendices
 - Appendix 7 Landscape Review- Landscape Area Descriptions-
 - 24 Rossbeigh and Cromane- Overall Sensitivity = Medium / High

6.2. Natural Heritage Designations

- Castlemaine Harbour SAC (000343) is located c.215m west of the site
- Castlemaine Harbour SPA (004029) is located c.215m west of the site

6.3. EIA Screening

- 6.3.1. I have considered the provisions of Schedule 5 Part 1 and Part 2 of the Planning and Development Regulations 2001 (as amended) which set out mandatory and subthreshold requirements for EIA is required. I am satisfied the development as proposed does not fall within any such class.

7.0 The Appeal

7.1. Grounds of Appeal

One third party appeal has been received from Angela Griffin. The Eircode provided by the appellant indicates her home to be c.950m south east of the site. The grounds of appeal can be summarised as follows-

- There are 86 acres of land owned by the golf club that were not considered by the Planning Authority for the development.
- There is a health and safety risk relating to wayward golf balls landing in her lands. This land is grazed by animals and/or baled as silage for winter feed. If the land is mulched, topped or mowed golf balls could be broken up. Hedging on the ditch is not very dense.
- There are no conditions requiring netting of fencing and maintenance of same to provide safety for the appellants family lands.
- Concerns relating to design including the length of teeing platform, cost of club surveillance and orientation towards sun.
- Concerns if issues occur alterations may be made without planning permission causing further problems.

7.2. Applicant Response

The Applicant's response to the grounds of appeal can be summarised as follows-

- The proposal is a practice facility for short range shots from a fixed tee to various greens ranging in length from 50 metre to a maximum of 175 metres.
- If permission is granted a number of operational conditions will apply including- shots from the tee only, access beyond the tee by staff only, use of facility by club members and guests, golf instruction, iron play only with violations penalised, continuous monitoring of facility.
- The facility is overlooked from the clubs pro-shop and offices.
- The majority of alternative lands referred to by the appellant lies within the Castlemaine Harbour SAC.
- Remaining lands in the area are too small for a short game practise area.
- Householders adjoining the site have been consulted and have indicated agreement to the development.
- A letters from the Manager of the Golf club and the designer of the facility are included.
- The managers letter provides further details on usage and supervision including CCTV and club staff. Drivers and Woods will be banned from use with severe penalties applicable.
- The designer details if the facility is used as intended the appellants concerns are unfounded. The facility is designed around the concept of accuracy and precision rather than strength or sheer length. The facility allows for iron shots from 160 yards down to 80 yards with a variation of + or – 20 yards depending where on the tee the player stands.
- The two greens nearest the appellants boundary will always be 60 metres away.
- The design of the greens and roughs will produce a frame and focus on the greens. The deeper rough will have the effect of deadening and really wild shots which on shorter grass might bounce to the boundary.

- The boundary separating the site to the appellants land has a natural 6 metre high hedgerow.

7.3. **Planning Authority Response**

- None received

7.4. **Observations**

- None received

8.0 **Assessment**

8.1. **Introduction**

8.1.1. I have examined the application details and all other documentation on file, including the appeal. I have inspected the site and have had regard to relevant local/regional/national policies and guidance.

8.1.2. I consider that the main issues for this appeal are as follows-

- Principle of Development
- Matters raised in the Appeal
- Appropriate Assessment

8.2. **Principle of Development**

8.2.1. The application proposes a change use of land from agriculture to use as a golf short game practice area. The site is located directly to the south of the existing golf course and its facilities. In this regard the proposal should be considered as an extension to the existing golf course and its facilities.

8.2.2. Objective KCDP 10-35 as set out in the Kerry County Development Plan 2022-28 seeks to promote and facilitate the sustainable development of outdoor activities including winter and adventure sports, in appropriate locations. In this regard I am satisfied the proposed development as an extension to the existing golf course in this rural area is acceptable in principle.

- 8.2.3. I note concerns raised by the Appellant in relation to alternative locations within the Golf Club's landholding where the proposed development may be more suitable. The submitted drawings do not include a landholding map. The Applicants indicate other lands are located within the Castlemaine Harbour SAC.
- 8.2.4. The location of the proposed development is located adjacent to the existing club and its facilities including the existing car park. In this context and subject to the assessment as set out below I see no reason why the Applicants should be required to consider alternative sites.

8.3. **Matters raised in the Appeal**

- 8.3.1. The Appellant's principle concern would appear to relate to the proximity of the proposal to her landholding and the risk or threat of wayward golf balls impacting upon the agricultural use e.g. grazing and baling of silage as well as for the safety of people within her landholding. The information submitted in the third party submission details the Appellant's landholding is to the west of the practice area. The Applicants have not submitted information to suggest otherwise.
- 8.3.2. The proposed development is described as a short golf game practise area. This includes a teeing off box and a number of target greens. The nature of the proposal is clearly similar to that of a driving range with players not leaving the teeing off area. However the specific design and layout of five target areas is clearly aimed at honing a player's short range game rather than their driving or longer range game.
- 8.3.3. The submitted site layout plan drawing is at a scale of 1:1000. The drawing is vague on measurements within and around the site and I note the distance from a generally central point of the tee box to the general centre of the greens are indicated as ranging from 70-175 yards (c. 64-160m).
- 8.3.4. The Applicant's in their response to the Appeal detail the various greens range in length from 50 metres to a maximum of 175 metres. The letter from the Course Designer details the nearest green to the Appellant's boundary will always be 60 metres away, measured from the centre of the green to the right hand boundary at right angles to the shot line and this margin is used on course throughout Europe with sensitive boundary issues. The Appeal response also details the use of the site will be strictly regulated and managed with penalties for abuse of play such as a

players use of drivers or woods. The facility would be used for golf instruction as well.

- 8.3.5. While I acknowledge all of the above and accept the bona fides of same, the reality is a number of variables would influence the length and range of shots from the teeing area. These include the individual player's ability, age, gender, swing, the choice and type of iron selection and of course the weather conditions on the day. It is not unreasonable to suggest a longer hitting player using a lower end iron could strike a golf ball from 170-200 yards or 160-185m. A hybrid style club (mix of iron and wood) can also hit a ball slightly further.
- 8.3.6. Considering this, and allowing for a distance variation as suggested by the designer of 20 yards, a number of the site boundaries would easily be within range from the tee box. The application drawings on file do not provide a landholding map identifying lands under the control of the Applicant in blue and I note the proximity of two homes to the eastern side of the tee box at c. 120m and 145m. While I find it unlikely wayward shots would impact upon these properties there would be a risk of hooked or sliced shots as well as perhaps the odd occasion were an overzealous player may lack the accuracy or skill required and balls could land outside the site boundaries.
- 8.3.7. Much of the lands directly west of the application site easily come within the possible maximum range of 175m. Considering the layout of the proposal, I accept that it is unlikely such wayward shots would occur. However, depending on the factors discussed there remains a risk and in this context the Appellant's concerns are real.
- 8.3.8. While I appreciate there would be liability insurance needs for the Dooks Golf Course to operate the facility as proposed, I refer to the judgment of Judge Humphrey's [2022] IEHC 83 (ABP-304792-21) in which he was critical of An Bord Pleanála for failing to give reasons for rejecting submissions regarding the impact of balls on proposed apartments. While I accept, the context of the subject appeal is entirely different, for me, the Appellant or other landowners, should be entitled to enjoy the amenity of their property, whether it is used for agricultural purposes or otherwise, without undue concern over the risk of wayward golf balls from the directly adjoining property.

- 8.3.9. I acknowledge the Applicant's propose strict conditions for use of the facility and in particular banning the of use of drivers and woods with restriction of use to iron play thereby limiting the range of golf shots. They also detail the proximity of supervision from the clubhouse and use of CCTV. I note the clubhouse is located more than c. 70m from the tee with a number of obstacles including a car park. There is also no details on the location of and provision of electrical services to the CCTV and it is considered constant surveillance would be difficult to implement, maintain and most importantly enforce. I accept the use of the facility by club members and their guests only would reduce the risks. However the need for and application of strict penalties indicate breaches could occur and golf balls could enter neighbouring lands.
- 8.3.10. In principle, I have no objection to the development at this location. However, the possibility for and overall control of potentially wayward shots outside of the side boundaries and outside lands within the Applicants control, would in my opinion, require some form of security netting at the most sensitive site boundaries.
- 8.3.11. Section 3.2.3 of the Natura Impact Statement details the proposed practise area will be fenced with treated timber to form new boundaries from points identified as B,C,D,E,F,G and H and as identified on the submitted site layout plan drawing. This fencing will be 1.5m high with four rails and posts at 2.4m centres covered with plastic coated chain link fencing. There is no indication of any fencing to the sites western boundary or H, I, J and K and it appears this boundary adjoins the Appellants land. I do not consider 1.5m high chain link fencing would be sufficient to alleviate the risks. Instead golf ball stop netting and post systems specifically designed for the purpose and the actual site conditions would be required and would be more suitable.
- 8.3.12. The Board are advised that this matter could be addressed by condition e.g. the erection of security golf ball netting of a certain height along certain site boundaries. However such a condition would be inappropriate in my view given the uncertainty over who owns land adjoining all site boundaries and the likely scale and height of such netting. Also considering the Landscape Area Descriptions for the area with an 'Overall Sensitivity of Medium / High', drawings would be required to consider the visual impact.
- 8.3.13. I consider the development as proposed should be **refused**.

8.4. Appropriate Assessment

8.4.1. Introduction

- a) The application was accompanied by an Appropriate Assessment (AA) Natura Impact Statement (NIS) prepared by Southern Scientific Services Ltd dated the 20/08/20. The document includes both a Stage 1 Screening Report (SR) and a Stage 2 Natura Impact Assessment (NIS).
- b) The SR details a site inspection took place on 02nd of March 2020 to identify potential pathways for pollutants to enter the nearby watercourse and to identify habitats within and surrounding the application site.
- c) Pathways to watercourses are identified in section 1.2.3 but the report is relatively silent in terms of what habitats were observed on the site. There is minimal detail as regards to birds observed on site.

8.4.2. Stage 1 – Screening

- a) The Applicant's AA SR concludes that-

“.....due to the location and nature of the development, and its hydrological connection to the Castlemaine Harbour SAC (000343) and Castlemaine Harbour SPA (004029) it has been objectively concluded that without appropriate mitigation measures the SAC/SPA could potentially be significantly impacted by the proposed development. Further assessment is required to determine whether the proposed development is likely to adversely affect the integrity of these Natura 2000 sites. The recommendation of the screening process is to proceed to Stage 2: Natura Impact Statement (NIS).
- b) 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.

8.4.3. The Proposed Development and Receiving Environment

- a) The application site can be described as marginal agricultural land to the southern boundary of the adjoining Dooks Golf Club grounds.
- b) The proposed development is for change of use of these lands with works to provide a golf short game practice area which includes a teeing off area and a number of raised and designed greens surrounded by rough areas. The works include two bridge crossings from the existing Golf Club grounds over a drainage ditch and two access pathways from the existing car park to facilitate pedestrian and maintenance access to the site. The works also include internal field boundary removal, piping of open drains with fill and covering over.
- c) Section 1.2.3 of the SR details two hydrological connections to the nearby Castlemaine Harbour SAC and SPA. One of these is direct to the SAC and SPA via drainage ditches on the site and the second is via the ditch along the public road flowing south east to the Illaunstookagh stream which then flows directly to the Caragh River and the Castlemaine Harbour SAC/SPA. Figure 3 of the report shows an aerial photograph with drainage ditches in the receiving area displayed. Photographs presented as Figures 9, 10, 15 and 16 in the AA report show drainage ditches and the network of same around the site.
- d) Section 3.2.1 details the players access will consist of a footpath from the existing car park as far as the tee. It will be 3m wide, approx. 75m long and constructed from granular material. The maintenance access path will be constructed from the same material and will be 4m wide. Both paths will cross the drainage ditch and to facilitate same a '400m' pipe will be used at the crossing points and filled to path level. It is assumed 400m is a typing error and should read 400mm. These works will create two bridge like structures with culverts over the existing ditch. There are no section drawings or detailed specifications including fill material submitted with the application.
- e) Section 3.2.2 details field boundaries will be removed and open drains piped prior to boundary demolition with '400m' diameter pipe and covered with material levelled and reseeded. There are no detailed drawings of these works.
- f) Section 3.2.3 details fencing on some of the site boundaries.

- g) Section 3.2.4 details the tee and target greens will consist of approx. 800m³ of imported and based soil. The tee box will be raised to a height of approx. 750mm with target greens raised to approx. 450mm. They layout of greens are identified on the drawings.
- h) The site is not located within a designated European site. The site is located c. 200m east of the Castlemaine Harbour SAC and SPA but the network of drainage ditches around and within the site boundaries provides direct and indirect hydrological connectivity to the European sites.

8.4.4. European Sites

- a) Given the location of the site, and the nature and scale of the proposed development, I consider the following designated European sites as set out in Table 1 to be within the zone of influence of the application site-

Table 1-

Site Name & Code	Qualifying Interest / Special Conservation Interest	Distance
Castlemaine Harbour SAC (000343) ¹	<p>Animal and Plant Species-</p> <p>1095 Sea Lamprey <i>Petromyzon marinus</i> 1099 River Lamprey <i>Lampetra fluviatilis</i> 1106 Salmon <i>Salmo salar</i> 1355 Otter <i>Lutra</i> 1395 Petalwort <i>Petalophyllum ralfsii</i></p> <p>Natural Habitat Type</p> <p>1130 Estuaries 1140 Mudflats and sandflats not covered by seawater at low tide 1210 Annual vegetation of drift lines 1220 Perennial vegetation of stony banks 1230 Vegetated sea cliffs of the Atlantic and Baltic coasts 1310 Salicornia and other annuals colonising mud and sand 1330 Atlantic salt meadows (<i>Glauco-Puccinellietalia maritimae</i>) 1410 Mediterranean salt meadows (<i>Juncetalia maritimi</i>) 2110 Embryonic shifting dunes 2120 Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes) 2130 Fixed coastal dunes with herbaceous vegetation (grey dunes)* 2170 Dunes with <i>Salix repens</i> ssp. <i>argentea</i> (<i>Salicion arenariae</i>)</p>	c. 200m to the west.

¹ <https://www.irishstatutebook.ie/eli/2022/si/387/made/en/pdf>

	<p>2190 Humid dune slacks</p> <p>91E0 Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (Alno-Padion, <i>Alnion incanae</i>, <i>Salicion albae</i>)*</p> <p>* indicates a priority habitat type as defined in the Directive.</p>	
<p>Castlemaine Harbour SPA (004029)²</p>	<p>Bird Species</p> <p>A001 Red-throated Diver <i>Gavia stellata</i> wintering</p> <p>A017 Cormorant <i>Phalacrocorax carbo</i> wintering</p> <p>A046 Light-bellied Brent Goose <i>Branta bernicla hrota</i> wintering</p> <p>A050 Wigeon <i>Anas penelope</i> wintering</p> <p>A053 Mallard <i>Anas platyrhynchos</i> wintering</p> <p>A054 Pintail <i>Anas acuta</i> wintering</p> <p>A062 Scaup <i>Aythya marila</i> wintering</p> <p>A065 Common Scoter <i>Melanitta nigra</i> wintering</p> <p>A130 Oystercatcher <i>Haematopus ostralegus</i> wintering</p> <p>A137 Ringed Plover <i>Charadrius hiaticula</i> wintering</p> <p>A144 Sanderling <i>Calidris alba</i> wintering</p> <p>A157 Bar-tailed Godwit <i>Limosa lapponica</i> wintering</p> <p>A162 Redshank <i>Tringa totanus</i> wintering</p> <p>A164 Greenshank <i>Tringa nebularia</i> wintering</p> <p>A169 Turnstone <i>Arenaria interpres</i> wintering</p> <p>A346 Chough <i>Pyrrhocorax</i> non-breeding</p> <p>Other</p> <p>A999 Wetlands & Waterbirds</p>	<p>c. 200m to the west.</p>

b) Conservation Objectives-

- SAC- Available to view at- https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000343.pdf
- SPA- Available to view at- https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004029.pdf

c) I have considered other European Sites in the general area including those identified in Tables 1 and 2 of the Applicant's SR which sets out European sites with 15km of the application site. Section 3.5 of the SR concludes significant impacts are considered possible to only the Castlemaine Harbour SAC and SPA

d) Having considered this, I am satisfied that other European sites proximate to the appeal site can be 'screened out' on the basis that significant impacts on

² <https://www.irishstatutebook.ie/eli/2012/si/244/made/en/pdf>

such European sites could be ruled out, either as a result of the separation distance from the appeal site, the extent of marine waters or given the absence of any direct hydrological or other pathway to those sites from the appeal site.

8.4.5. Test of Likely Significant Effects

- a) The project is not directly connected to or necessary to the management of any European site. The proposed development is therefore, examined in relation to any possible interaction with European sites to assess whether it may give rise to significant effects on any European Site in view of the conservation objectives of those sites.
- b) I have reviewed the Statutory Instruments for both European Sites (footnotes 1 and 2 above), their conservation objectives as applicable and Table 2 of the submitted SR noting. These identify the particular Qualifying Interests within the identified European Sites and which the proposed development has the potential to significantly impact upon.
- c) Based on the source-pathway-receptor model and taking account of the characteristics of the proposed development in terms of its nature, location and the scale of works, the sites proximity to European sites and having regard to the NIS carried out for the County Development Plan and implications for this site, the following issues are considered for examination in terms of likely significant effects on European sites-
 - Potential for impacts on surface water quality due to hydrological connections due to proximity of SAC and SPA e.g. silt, sediment and pollutants
 - Potential for disturbance impacts on birds frequenting the site.
 - Cumulative impact with other plans and projects in the area (including planning reference number 21/1287 granted in February 2022.)
 - Potential for impact from Invasive Species.

8.4.6. Potential Effects

The SR identifies the following potential impacts-

- Habitat loss and alteration

- Habitat or species fragmentation
- Potential impairment of water quality
- Disturbance and/or displacement of protected species
- Cumulative impacts

Impacts

- Direct Impacts to Castlemaine Harbour SAC-
 - Construction Stage-
 - The site is not located within the SAC or SPA and is reasonably distant to avoid direct impacts
 - Operational Stage-
 - The site is not located within the SAC or SPA and is sufficiently distant considering the nature of use proposed. None envisaged.
- Indirect Impacts to Castlemaine Harbour SAC noting the hydrological connectivity from the drainage ditches on the site-
 - *Construction Stage-*
 - Potential for contaminated run off to drainage ditches from machinery including site spillages including oils, fluids, silt, sediment and site works run off to the ditches etc, indirect water quality impacts may arise.
 - Nature of works to the site including vibration from heavy equipment leading to potential for silt and sediment pollution entering drainage ditches, indirect water quality impacts may arise.
 - Construction of two bridge crossings directly over ditches with insertion of culvert and fill over to path level- indirect water quality impacts may arise.
 - Culverting of drainage ditches prior to removal of internal field boundaries and then covered with material, levelled and reseeded, indirect water quality impacts may arise.
 - There is potential for disturbance impacts.

- A small area of *Rhododendron Ponticum*³ an invasive species has been identified on the site. This species is difficult to eradicate and easily spread on shoes, clothes, tools and machinery etc. Potential pathway for this invasive species include via seeds in the ditches flowing to the SAC.
 - *Operational Stage-*
 - Due to the extent of drainage ditches there are potential pathways for water quality impacts from pollutants including oils/fuels from maintenance and service vehicles.
 - Due to the nature of the use I do not consider disturbance impacts to be significant.
 - Spread of identified Invasive Species by human and maintenance activities at the site possible.
- Direct Impacts to Castlemaine Harbour SPA
 - Construction Stage-
 - The site is not located within the SAC or SPA and is sufficiently distant to avoid direct impacts
 - Operational Stage-
 - The site is not located within the SAC or SPA and is sufficiently distant considered the nature of use proposed. None envisaged.
- Indirect Impacts to Castlemaine Harbour SPA noting the hydrological connectivity from the drainage ditches on the site and the proximity of site to SPA and likelihood of bird species frequenting the site and area-
 - Construction Stage-
 - Noise, vibration and light disturbance, albeit temporary
 - Potential for contaminated run off to drainage ditches from machinery silt, sediment and site works run off to the ditches etc, indirect water quality impacts may arise.

³ <https://assets.gov.ie/79136/2403570f-4730-47ed-96fe-c5a96e966f2c.pdf>

- Nature of works to the site including vibration from heavy equipment leading to potential for silt and sediment including site spillages of oils, fluids, concrete, cement, entering drainage ditches, indirect water quality impacts may arise.
 - Potential spread of identified Invasive Species
- Operational Stage-
 - Significant impacts unlikely given nature of use
 - Spread of identified Invasive Species by human and maintenance activity at the site possible.

8.4.7. In-combination Impacts

- a) The SR identifies activities that could potentially impact on ecological and water quality in combination with the proposed development including agriculture, wastewater treatment and other development in the area. The proposed development could potentially increase the numbers of people using wastewater services of the golf club I do not consider such numbers to be significant.
- b) The report refers to recent construction activity in the area of four holiday homes (18/838) likely served by onsite wwtp. I did not observe construction works in the area during my inspection. I note a grant of permission to the Golf Clubs grounds c.150m north of the site under 21/1287 extension to an existing machinery shed for the course maintenance and welfare facilities, and an additional machinery shed. Given this application was lodged and decided after the current application under appeal it is not surprising it is not included within the SR as it was not at that stage a formal plan or project. Notwithstanding same I don't consider the in-combination impact to be significant given the nature of the proposal and the separation distance between same.
- c) I have reviewed other planning applications in the immediate area and I am satisfied there are no other specific and permitted planning applications that could have significant in-combination effects with the proposed development on the identified European Sites.

- d) The SR also details water quality monitoring in the area hydraulically linked to the site indicating a satisfactory condition.
- e) The report refers to agricultural activity in the area and the requirements for compliance with the 2017 Good Agricultural Practice for Protection of Waters Regulations. Significant effects not expected to occur.

8.4.8. Conclusion

- a) 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 and having regard to the submitted SR, it has been concluded that the project individually (or in combination with other plans or projects) could potentially have significant effects on the following European Sites-
 - Castlemaine Harbour SAC (000343)
 - Castlemaine Harbour SPA (004029)

in view of these site's Conservation Objectives, a Stage 2 Appropriate Assessment to include mitigation measures is therefore required. The Applicants have submitted a NIS with the application.

8.4.9. Stage 2 – Appropriate Assessment

- a) The requirements of Article 6(3) as related to Appropriate Assessment of a project under part XAB, sections 177U and 177V of the Planning and Development Act 2000 (as amended) are considered in this section. The areas addressed are as follows:
 - Compliance with Article 6(3) of the EU Habitats Directive
 - The Natura Impact Statement and associated documents
 - Appropriate assessment of implications of the proposed development on the integrity of each European site

b) Compliance with Article 6(3) of the EU Habitats Directive

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

8.4.10. Screening- the need for Appropriate Assessment

- a) Following the screening process, it has been determined that Appropriate Assessment is required as it cannot be excluded that the proposed development individually or in-combination with other plans or projects will not have a significant effect on the following European sites-
- Castlemaine Harbour SAC (000343)
 - Castlemaine Harbour SPA (004029)

8.4.11. The Natura Impact Statement (NIS)

- a) The application includes a NIS dated 20th of August 2020, prepared by prepared by Southern Scientific Services Ltd, which examines and assesses likely effects of the proposed development on the European Sites listed above. The NIS concludes that-

“The most likely impact on the integrity of the SAC/SPA, which was identified during this assessment, is thought to arise from pollutants and silt/sediment entering the watercourses via surface water during the construction phase of the project.

The objective of the SAC and SPA is to maintain or restore the favourable conservation condition of the habitats and species for which the SAC and SPA have been selected.

Providing that all mitigation measures outlined above are adequately implemented during the project, it is considered that significant negative impacts on the quality of the Castlemaine Harbour SAC and Castlemaine Harbour SPA are unlikely to occur as a result of the proposed development”.

- b) I have reviewed the documents on file, I am satisfied that the information allows for a reasonable assessment of adverse effects of the development, on the conservation objectives of the identified European sites alone, or in combination with other plans and projects.

8.4.12. Implications of the proposed development on the integrity of European sites

- a) The NIS lists the Qualifying Interests of the two identified European Sites and considers those against potential direct and indirect impacts from the proposed development.
- b) There are no direct impacts identified in the SAC. The NIS details indirect impacts are considered possible to all other habitats and species except the following-
- i. 1095 Sea Lamprey *Petromyzon marinus*
 - ii. 1099 River Lamprey *Lampetra fluviatilis*
 - iii. 91E0 Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior*
- c) The NIS details that the above habitat and species do not occur within the 10km grid square V69 and concludes the proposed development does not pose a potential risk to the species.
- d) Having reviewed the NPWS Conservation Objectives Map 7 I am satisfied the designated Alluvial Forests are adequately remote from the site and can be excluded. However, having reviewed Biodiversity Maps⁴ I note Sea Lamprey have been recorded within grid square V79 as close as c. 1.7km east of the application site and hydrological connectivity exists between the application site and V79. In this regard drainage ditches on site flow to the he Illaunstookagh stream which then flows directly to the River Caragh. This suggests that Sea Lamprey migrate along the River Caragh to V79 and silt, sediment or other pollution build ups from tributaries further downstream such as the Illaunstookagh stream could adversely impact the conservation objectives of these species and their habitats and therefore the proposed development could have an Indirect Impact and should be considered.
- e) Therefore the identified habitats and species (and their conservation objectives), for the purpose of this assessment, that could adversely be affected as a result of indirect adverse impacts to the Castlemaine Harbour SAC are -
- 1130 Estuaries
 - 1140 Mudflats and sandflats not covered by seawater at low tide

⁴ <https://maps.biodiversityireland.ie/Map>

- 1210 Annual vegetation of drift lines
- 1220 Perennial vegetation of stony banks
- 1230 Vegetated sea cliffs of the Atlantic and Baltic coasts
- 1310 Salicornia and other annuals colonising mud and sand
- 1330 Atlantic salt meadows (*Glauco-Puccinellietalia maritima*)
- 1410 Mediterranean salt meadows (*Juncetalia maritimi*)
- 2110 Embryonic shifting dunes
- 2120 Shifting dunes along the shoreline with *Ammophila arenaria* (white dunes)
- 2130 Fixed coastal dunes with herbaceous vegetation (grey dunes)
- 2170 Dunes with *Salix repens* ssp. *argentea* (*Salicion arenariae*)
- 2190 Humid dune slacks
- 1095 Sea Lamprey *Petromyzon marinus*
- 1106 Salmon *Salmo salar*
- 1355 Otter *Lutra*
- 1395 Petalwort *Petalophyllum ralfsii*

Birds

- f) There are no direct impacts identified in the SPA. The NIS considers indirect impacts are not likely to the following-
- A001 Red-throated Diver *Gavia stellata* wintering
 - A062 Scaup *Aythya marila* wintering

The NIS details that the 'Red-throated Diver' and 'Scaup' do not forage or roost in the vicinity of the site and there is no potential impact pathway. However, having reviewed the Biodiversity Maps, I note the Red-throated Diver has been recorded within grid square V69 the same grid as the application site and the Scaup has been recorded in V79 as close as c. 1.7km east of the application site. In the absence of details of a bird survey at the

site and given the recorded proximity of both birds to the site they should be included for consideration of indirect impacts.

g) Therefore the identified habitats and species (and their conservation objectives), for the purpose of this assessment, that could adversely be affected as a result of indirect adverse impacts to the Castlemaine Harbour SPA are -

- A001 Red-throated Diver *Gavia stellata* wintering
- A017 Cormorant *Phalacrocorax carbo* wintering
- A046 Light-bellied Brent Goose *Branta bernicla hrota* wintering
- A050 Wigeon *Anas penelope* wintering
- A053 Mallard *Anas platyrhynchos* wintering
- A054 Pintail *Anas acuta* wintering
- A062 Scaup *Aythya marila* wintering
- A065 Common Scoter *Melanitta nigra* wintering
- A130 Oystercatcher *Haematopus ostralegus* wintering
- A137 Ringed Plover *Charadrius hiaticula* wintering
- A144 Sanderling *Calidris alba* wintering
- A157 Bar-tailed Godwit *Limosa lapponica* wintering
- A162 Redshank *Tringa totanus* wintering
- A164 Greenshank *Tringa nebularia* wintering
- A169 Turnstone *Arenaria interpres* wintering
- A346 Chough *Pyrrhocorax* non-breeding
- A999 Wetlands & Waterbirds

h) The potential impacts to the SAC and SPA identified by the NIS at 'Construction Stage' can be summarised as follows-

- Excavation and infilling works leading to impacts to water quality through loss of silt, sediment and other pollutants via surface runoff pathways

- Accidental pollution incidents such as hydrocarbon spillage of significant magnitude and duration
- Sediment laden runoff can potential contribute to cumulative sediment and nutrient load in the stream and bay and thus potential negative impacts for aquatic populations through elevated nutrient and dissolved oxygen demand.
- Accelerated algae and plant growth due to eutrophication within adjacent stream may lead to variations in diurnal oxygen concentrations, may lead to decrease in abundance and composition of macroinvertebrates. Thereby leading to shifts in river ecology as other invertebrates begin to dominate.
- A reduction in water quality or change in hydrological regime has the potential to negatively impact the habitats
 - Estuaries,
 - Mudflats and sandflats,
 - Atlantic salt meadows and
 - Mediterranean salt meadows

These provide foraging and resting places for otter and several bird species. A deterioration in the quality of these habitats may result in a reduction or displacement of feeding opportunities.

- Disturbance to species likely to increase with increase in human activity e.g. noise. vibration and/or light from construction activities leading to displacement e.g. otters
- i) The potential impacts to the SAC and SPA at 'Operational Stage' are not considered generally significant. However, I note the AA SR identifies the presence of an Invasive Species on site, albeit within a small area. Its location has not been identified on the drawings (even though grid coordinates are provided). It would be expected that these should be shown on a drawing with the AA or the application. *Rhododendron Penticum* have the potential to smother watercourses (see footnote 3) and could negatively impact hydrological regimes and connectivity such as the drainage ditches on site. They can be spread on shoes, clothes or machinery. Therefore, there is an

operational impact risk through play and maintenance which could indirectly impact the European Sites.

8.4.13. In-combination Effects

- a) The submitted NIS details the potential for in-combination effects on the SAC and SPA in relation to pollution to agriculture, wastewater treatment and further development in the area.
- b) Having considered these including the recent construction activity in the area of four holiday homes (18/838) likely served by onsite wwtp and a recent grant of permission to the Golf Clubs grounds c.150m north of the site under 21/1287 for an extension to an existing machinery shed etc. in-combination impacts are not likely to be significant given the nature of the proposal and the separation distance between same.

8.4.14. Mitigation Measures

- a) Section 4.6 of the NIS details proposed mitigation measures to avoid any significant impacts on aquatic life within the Castlemaine Harbour SAC and SPA, which could potentially arise from the proposed development in the absence of such measures.
- b) The measures proposed are-
 - Installing perimeter sediment controls
 - Areas of vegetation will not be disturbed
 - Best Practise Measures
 - i. Works to comply with CIRIA Guidelines- Control of Water Pollution from Construction Sites -Guide to Good Practise (2001)
 - ii. Inland Fisheries Ireland – Guidelines on Protection of Fisheries during Construction Works in and adjacent to Waters (2016).
 - The creation of crossings over drainage ditch for access to the site
 - Onsite Bunded Storage Facilities (spill trays/spill pallets)

- Construction and replanting only during favourable weather conditions
 - The access route to be maintained in good condition and regularly cleaned to minimise potential for soiled runoff
 - Site Management
- c) The Applicant propose the creation of crossings over the drainage ditch for access to the site as a mitigation measure. This requires two culverts to be constructed for pedestrian and maintenance traffic. The NIS indicates best practice will be followed and there shall be no significant changes to the hydrological regime of the drain as a result of the works. The drawings submitted with the application describe these crossings as ‘footpath/bridge’ and ‘maintenance vehicle’ access to the practise area. Section 3.2.1 of the AA SR discusses the construction of the access pathways from granular material and the culverting of the ditch crossing with a 400mm pipe and filled to the path level. Figure 16 of the NIS shows a photograph of the ditch at the time of preparation of the report and the extent of water in the ditch is noted.
- d) At the time of my site inspection it was clear that one crossing route including the culverted pipework, filling of the ditch with stone and such material, and compacting of same has already been developed at the site. These works have clearly interacted with the original drainage ditch bed and banks thereby interrupting the original hydrological regime to an extent that has not been examined in any part of the SR or NIS.
- e) Given the proximity and connectivity of the site to European Sites and the nature of materials used to develop the crossing, I would be concerned that high flows in the ditch such as those shown in Figure 16 of the NIS, would create potential for such material to wash downstream onto the European Sites and for adverse impacts to same. This is a scenario the AA mitigation measures should be proposing to avoid. Furthermore, at the time of my inspection, I did not observe any evidence to suggest other mitigation measures or best practice measures had been employed as set out in the NIS e.g. silt fencing.
- f) Section 6.2 and 9.1 of the IFI *‘Guidelines of protection of Fisheries during construction works in and adjacent to waters’* details the preferred position for

permanent crossing structures is for clear span structures (bridges), so as not to interfere in any way with the bed or bank of watercourses. Section 6.12 details pipe culverts are generally only appropriate where a drainage ditch is not significant in terms of fisheries habitat. I acknowledge the report on file from the IFI detailing there is no fishery interest in drainage ditches on site. However, I note section 7 of the Guidelines discusses the impacts of silt laden waters to fish and also the risks of loss or degradation of valuable habitat. Such habitats have been identified by the Applicant downstream within the European sites e.g. Estuaries, Mudflats & sandflats, Atlantic salt meadows etc.

- g) The culvert crossing works already carried out at the site are described within the NIS as mitigation measures for the purpose of avoiding '*any significant negative impact on aquatic life within the Castlemaine Harbour SAC/SPA*' which could otherwise occur without such measures. It is clear that some element of heavy machinery was used to fill and compact the crossing. In this context, it is not possible for me to determine what direct or indirect impacts to the SAC/SPA have already occurred or adverse effects have or have not impacted upon the integrity of the European Sites. Furthermore, residual impacts that remain after these works have not been considered as part of the NIS and in-combination with other plans and projects to determine if those impacts together could or have already resulted in adverse impacts.
- h) Section 3.2.2 of the SR discusses the piping of other existing open drains internal to the site, covering with material, levelling and reseeded. One of these ditches would appear to be c. 150m in length and another is to the south and rear of the proposed target greens. The NIS is silent in terms of specific mitigation measures in this regard. The requirement for these works have not been justified and it is questionable if the culverting or piping of such ditches is best practise considering this part of facility is not intended to be accessible to its users. Leaving such ditches in-situ with a clear span type crossing would provide access for maintenance purposes thereby removing some of the potential risks associated with culverting the ditches and impacts upon the hydrological regime and risk of pollution to same.

- i) The NIS is silent in terms of the Applicant engaging a suitably qualified ecologist to ensure mitigation measures are implemented and supervised. In this regard I am not convinced the works that have already taken place at the site to form the ditch crossing would be an acceptable measure given the materials used and the sites proximity to the European sites.
- j) Another proposed mitigation measure in the NIS details areas of vegetation that will not be disturbed. This measure is silent on how it intends to mitigate the operational impact (such as maintenance) of the spread of the identified on-site invasive species which are known to be easily spread such as by wind.
- k) Having considered all of the above I am not satisfied the development as proposed will not adversely impact upon the following habitats which are considered at risk-
- 1130 Estuaries
 - 1140 Mudflats and sandflats not covered by seawater at low tide
 - 1330 Atlantic salt meadows
 - 1410 Mediterranean salt meadows
- and therefore European Site integrity.

8.4.15. Conclusion

- a) The proposed development has been considered in light of the requirements of Sections 177U and 177V of the Planning and Development Act 2000 as amended. Following an Appropriate Assessment and inspection of the site, it has been determined that uncertainty exists as regards to the extent of works proposed and works that have taken place already to the existing drainage ditch network on site, which connect both directly and indirect to European sites and therefore there is uncertainty to the effectiveness of proposed mitigation measures to prevent adverse impacts on the following European sites-
- Castlemaine Harbour SAC (000343)
 - Castlemaine Harbour SPA (004029),

in view of those site's Conservation Objectives.

b) On the basis of the information provided with the application and appeal, including the Natura Impact Statement and the uncertainty identified, it is considered that the Board is precluded from granting permission and the application should be refused. This conclusion is based on the following:

- the inadequacy of the mitigation measures proposed,
- the proposed extensive culverting of parts of the drainage ditch network on site which directly and indirectly connect to the European sites
- the presence of an existing ditch crossing filled with stone and material to adjoining ground level and culverting of the ditches drainage flows, the construction of which is not considered best practise for such crossings and may have already led to silt, sediment and other pollutants to the watercourse and/or has the potential to contribute to such pollution
- The risk and uncertainty of adverse impacts that may have already or could potentially occur on aquatic life within the European Sites as identified within the NIS, including a reduction in water quality and/or change in hydrological regime negatively impacting the following protected habitats-
 - 1130 Estuaries
 - 1140 Mudflats and sandflats not covered by seawater at low tide
 - 1330 Atlantic salt meadows
 - 1410 Mediterranean salt meadows

c) The Board are advised that this is a '**New Issue**' and the Bord may wish to seek the views of the parties on these matter.

9.0 Recommendation

9.1. I recommend permission is refused for the following reasons-

10.0 Reasons and Considerations

1. It is considered that the development as proposed would create an unacceptable risk of wayward golf balls entering lands outside the control of the Applicant. Therefore, the Board is not satisfied that the development as proposed would not adversely impact upon the amenity and safety of neighbouring lands and as a consequence would be contrary to the proper planning and sustainable development of the area.

2. Having regard to the extent of works required to culvert drainage ditches on site, the presence of an existing culvert and crossing on site, the inevitable changes to the ditch beds and banks including the hydrological regime of same, the direct and indirect hydrological connectivity of the ditches to designated European Sites and based on the information provided with the application and its Natura Impact Statement (NIS), and notwithstanding the identified mitigation measures, the Board cannot be satisfied the development as proposed would not result in a reduction in water quality and/or change in hydrological regime which could negatively impact upon protected habitats and therefore adversely affected the integrity of the following European sites-
 - Castlemaine Harbour SAC (000343)
 - Castlemaine Harbour SPA (004029)in view of those site's Conservation Objectives. In such circumstances the Board is precluded from granting permission.

Adrian Ormsby
Planning Inspector

02nd of December 2022