



An
Bord
Pleanála

Inspector's Report

ABP-313154-22

Development	Proposed Fáilte Ireland Platforms for Growth - shared community facilities
Location	Proposed site at East End, Kilkee, Co. Clare
Local Authority	Clare County Council
Type of Application	Application for approval made under Section 177(AE) of the Planning and Development Act, 2000 (local authority development requiring appropriate assessment)
Prescribed Bodies	Faillte Ireland
Observer(s)	Mary O'Dowd & Michael Nolan.
Date of Site Inspection	2022.06.21
Inspector	Jimmy Green

Contents

1.0 Introduction.....	3
2.0 Proposed Development	3
3.0 Site and Location	5
4.0 Planning History.....	6
5.0 Legislative and Policy Context.....	6
6.0 The Natura Impact Statement.....	14
7.0 Consultations	15
8.0 Assessment	18
9.0 The likely significant effects on a European site:	29
10.0 Recommendation	47

1.0 Introduction

- 1.1. Clare County Council is seeking approval from An Bord Pleanála to construct a WC, Shower, and Changing Room facility and all ancillary works and services at East End, Kilkee Co. Clare. The site of the proposed development is adjacent to the Kilkee Reefs SAC which is a designated European site. There are several other designated European sites (SPAs and SACs) within the wider area of the proposed works (see further analysis below). A Natura Impact Statement (NIS) and application under Section 177AE was lodged by the Local Authority on the basis of the proposed development's likely significant effect on a European site.
- 1.2. Section 177AE of the Planning and Development Act 2000 (as amended) ("the Act") requires that where an appropriate assessment is required in respect of development by a local authority the authority shall prepare an NIS and the development shall not be carried out unless the Board has approved the development with or without modifications. Furthermore, Section 177V of the Act requires that the appropriate assessment shall include a determination by the Board as to whether or not the proposed development would adversely affect the integrity of a European site and the appropriate assessment shall be carried out by the Board before consent is given for the proposed development.

2.0 Proposed Development

- 2.1. The proposed works constitute the provision of the following:
 - Single storey toilet, shower and changing room building, with solar panels on roof,
 - Single storey Plant/Condenser store building
 - Provision of kerbing and upgrading two no. accessible car parking spaces,
 - Repositioning of existing memorial and benches,
 - Removal of existing walls kerbing and concrete paths,
 - New and upgraded footpaths and accessible ramps to link to existing ramps to beach,
 - Bike racks,

- Site drainage works,
- Landscaping, and
- Connection to all ancillary services, including connections to the public foul drainage network and provision of additional public lighting.

2.2. The proposed development will provide indoor and outdoor showers, serviced toilets, external and internal seating, communications workspace (to facilitate multi-media education/induction and learning area for the operators of, and visitors to, the facilities), lockers for secure storage, and washdown areas. The proposed changing/shower/toilet facility itself is a single storey contemporary design and has a wedged angular shape with various openings along the external panelled walls, leaving it open to public access, a sloped sedum clad roof with solar panels is also incorporated. The changing facility will also accommodate bench seating, lockers, accessible toilet/shower facilities and an informal meeting/discussion area. A second smaller building (plant/condenser store) is also proposed, this is single storey, flat roofed with timber panelled external cladding and will not be open to access from the public. Other works include provision of accessible car parking spaces access footpaths and ramps, bike racks, relocation of existing memorial, landscaping, and all associated civils works.

2.3. **Accompanying documents:**

The application is accompanied by the following documents:

- Project Explanatory Report,
- Natura Impact Statement (NIS),
- Ecological Impact Assessment (EclA),
- Environmental Impact Assessment Screening Report (EIASR),
- Letter from Irish Water (March 2022) confirming water and wastewater connection is feasible and there is sufficient capacity to cater for the proposed development,
- Site Ownership and Site Selection Statement,
- List of Prescribed bodies and copies of letters issued,
- Construction and Environmental Management Plan (CEMP)

- Design Drawings
- Site location map
- Site and Newspaper notices
- Architects Concept Statement
- Photomontages

3.0 Site and Location

- 3.1. The site of the proposed development is located at East End, Kilkee, Co. Clare, a popular seaside resort with a large sandy beach onto Moore Bay. The site is located on a site which is currently in use as an amenity parkland and overlooks the Kilkee beach onto Moore Bay (the beach is located immediately to the south/southwest). The site is located at a higher elevation than the beach and is separated from it by the tiered sea wall which also functions as a terraced amenity/seating area. The site is occupied by an existing memorial (which is proposed to be relocated as part of the proposed development) and is traversed by pedestrian paths and ramps which provide connectivity from the northern part of Kilkee to the beach via steps and ramps. There is a large car park located to the northwest, the site occupies a part of this car park on which it is proposed to provide additional accessible carparking. The public road at East End runs along the northeast boundary of the site with Kilkee Waterworld located on the opposite side of the road. The extensive beach lies to the to the south and southwest and a residual area of amenity grassland is to the southeast. The harbour and pier facilities including coastguard station are located further to the west of the proposed site.
- 3.2. The site itself slopes slightly towards the beach and is at present a well-maintained grassed area providing for passive amenity overlooking the beach which is the primary focal point of the built environment along the seafront at this location. The closest watercourse is the Atlantic Stream which runs onto the beach (under and) immediately to the south of the proposed development site. The Atlantic Stream is culverted to the east of the site (immediately to the east of the Waterworld site) and travels underground until it reaches the shore at the seawall to the southwest of the proposed development site.

4.0 Planning History

4.1. The pertinent previous planning applications are listed below:

- PI. Ref. 21/884 – Permission granted by the Planning Authority for the demolition of the existing Dive Centre Building, and construction of a new dive centre including RIB storage, change areas, toilets, office and briefing room. Permission granted October 2021 on a site to the east of the proposed development (south of Waterworld).
- Part VIII permission (Pl. Ref. 14/8004) – consent issued December 2014 for the reconstruction of 45m of seawall, stabilisation works (incl. beachside terrace) new pedestrian access points new steel railings and all associated works to the south of the current proposal.
- Part VIII permission (Pl. Ref. 12/8003) – consent for the renewal of public lighting to include the erection of 39 Lamp Standards and the removal of 21 no, lights that were in place at Marine Parade, Victoria Place, Strand Lane, Esplanade, Minister Place and the Public Car Park opposite the Marine Rescue Centre. Consent issued in September 2012. The site of the current application was within the application boundary of this consent which extended over the majority of the waterfront of Kilkee onto Moore Bay.
- PI. Ref. 94/168 – Permission granted to Kilkee Waterworld to construct an indoor water leisure centre on a site to the northeast of the proposed development site on the opposite side of the public road.

5.0 Legislative and Policy Context

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

- 5.1.1. This Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Articles 6(3) and 6(4) require an appropriate assessment of the likely significant effects of a proposed development on its own and in combination with other plans and projects which may have an effect on a European Site (SAC or SPA).

5.2. European Communities (Birds and Natural Habitats) Regulations 2011 as amended:

5.2.1. These Regulations consolidate the European Communities (Natural Habitats) Regulations 1997 to 2005 and the European Communities (Birds and Natural Habitats) (Control of Recreational Activities) Regulations 2010, as well as addressing transposition failures identified in CJEU judgements. These Regulations in particular require in Reg. 42(21) that where an appropriate assessment has already been carried out by a 'first' public authority for the same project (under a separate code of legislation) then a 'second' public authority considering that project for appropriate assessment under its own code of legislation is required to take account of the appropriate assessment of the first authority.

5.3. National Nature Conservation Designations:

5.3.1. The Department of Housing, Local Government and Heritage and the National Parks and Wildlife Service (NPWS) are responsible for the designation of conservation sites throughout the country. The three main types of designation are Natural Heritage Areas (NHA), Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) and the latter two form part of the European Natura 2000 Network.

5.4. European sites located in the vicinity of the subject site include the following:

- Kilkee Reefs SAC [Site Code:002264],
- Illaunonearaun SPA [Site Code: 004114],
- Lower River Shannon SAC [Site Code: 002165],
- River Shannon and River Fergus Estuaries SPA [Site Code: 004077],
- Tullaher Lough and Bog SAC [Site Code:002343],
- Carrowmore Dunes SAC [Site Code: 002250],
- Mid Clare Coast SPA [Site Code: 004182],
- Carrowmore Point to Spanish Point and Islands SAC [Site Code:001021]

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

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

5.6. National Planning Framework

- 5.6.1. The Project Ireland 2040 National Planning Framework (NPF) is the Government's high-level strategic plan for shaping the future growth and development of Ireland to 2040. It is a framework to guide public and private investment, to create and promote opportunities and to protect and enhance the Irish environment. The NPF creates a shared set of goals for every community across the country which are expressed as 10 no. National Strategic Outcomes. The Seventh National Strategic Outcome is "*Enhanced Amenity and Heritage*", which is described as follows:

“This will ensure that our cities, towns and villages are attractive and can offer a good quality of life. It will require investment in well-designed public realm, which includes public spaces, parks and streets, as well as recreational infrastructure. It also includes amenities in rural areas, such as national and forest parks, activity-based tourism and trails such as greenways, blueways and peatways. This is linked to and must integrate with our built, cultural and natural heritage, which has intrinsic value in defining the character of urban and rural areas and adding to their attractiveness and sense of place.”

5.6.2. The objectives listed under this strategic outcome include the following:

- We will conserve, manage and present our heritage for its intrinsic value and as a support to economic renewal and sustainable employment.
- Open up our heritage estates to public access, where possible.
- Invest in and enable access to recreational facilities, including trails networks, designed and delivered with a strong emphasis on conservation, allowing the protection and preservation of our most fragile environments and provided a wellbeing benefit for all.

5.7. National Maritime Planning Framework

5.7.1. The National Maritime Planning Framework (NMPF) sets out the framework for the forward planning and decision-making components of our marine planning system and represents the key consideration for decision makers on all marine authorisations.

5.7.2. In relation to sport and recreation the NMPF includes objectives to:

- Support the increased participation in water-based sports for the benefit of public health/wellbeing as well as developing Irelands tourism offering,
- Protect and enhance unique natural resources which attract visitors (e.g., Blue Flag Beaches),
- Increase provision of physical activity recreation amenities in Irelands coastal and marine environment,

- Sustainably develop outdoor recreation facilities promoting access for people of all abilities, age and background and encouraging sharing facilities where appropriate.

5.7.3. The NMPF also contains planning policies to support sustainable development of water-based sports and marine recreation while considering environmental carrying capacities and tourism pressures and to support proposals that improve access to marine and coastal resources for tourism activities (Sport and Recreation policies 1 and 4 refer). Furthermore, the NMPF notes that any proposals should be considered in the context of potential impacts on existing clubs and other recreational users as well as potential interference with access to the shore/water and impacts on the natural environment (Sport and Recreation Policy 2 refers).

In relation to Tourism the NMPFs objectives include positioning Ireland as a world-class coastal and marine tourism destination through the sustainable development of coastal and marine recreational activities, and the continued and improved access to marine coastal resources. Towards this end the NMPF contains planning policies which support appropriate proposals facilitating sustainable tourism, consideration of potential impacts of proposals on tourism, and optimising the use of facilities/space for multiple activities and minimising adverse impacts on the natural environment.

5.8. **Regional Spatial and Economic Strategy (RSES) for the Southern Region**

5.8.1. The site of the proposed development is in Kilkee, County Clare which is within the Southern Regional Assembly (SRA) area. The RSES supports the NPF objectives and contains a wide range of Regional Policy Objectives (RPOs) in this regard. Furthermore, the RSES acknowledges that further promotion and development of attractions and capacity to capitalise on latent potential in tourism and local enterprise is essential to ensure the sustainable development of the region. The RSES RPOs include the following:

- RPO 50 – supports the development of a diverse base of smart economic specialisms across the rural region including tourism to leverage the opportunities from the Wild Atlantic Way, Irelands ancient East and Irelands hidden heartlands brands.
- RPO 53 – states it is an objective to inter alia (a) enhance provision of tourism and leisure amenities to cater for increased population, (b) promote activity

tourism, and (c) sustainably develop facilities and connectivity networks for improved visitor access and foster longer dwell times.

- RPO 54 – states that the development of new tourism facilities should include relevant environmental reporting and assessment.
- RPO 181 – seeks to promote disability awareness and improve equal access for all through universal design in relation to transport, housing, social, cultural and recreational facilities.

5.9. Clare County Development Plan 2017-2023

5.9.1. Clare County Development Plan 2017-2023 (CDP) is the relevant local planning policy document. The site is located within the town of Kilkee which is classified as a small town in the settlement hierarchy within the CDP. In broad terms, the settlement of Kilkee is located within a heritage landscape and is also an area under strong urban pressure. The most pertinent provisions of the CDP in relation to the proposed development are noted below:

- CDP 2.1 – relates to Appropriate Assessment, Strategic Environmental Assessment and Strategic Flood Risk Assessment and states that all applications for development must be fully informed by the strategic assessments in the CDP and by ecological and environmental constates at the earliest stage.
- CDP 9.2 – states that it is an objective to promote tourism in Co. Clare and work with all local, national, and international bodies and groups to ensure a cohesive approach and support is provided.
- CDP 9.4 – relates to Tourism Developments and facilities and 9.4(a) states that it is an objective to permit tourism related development and facilities inside existing settlements where the scale and size of the proposal is appropriate, 9.4(c) notes that development proposals must comply with the considerations of CDP 2.1 and should address the implications of any disturbance on European designated sites.
- CDP 9.8 states it is an objective to (a) work with local communities and relevant agencies to achieve the sustainable development of Clare as a world-class destination for sports and recreation-related tourism, (b) support appropriate

development of low-impact experiential tourism to diversify the range of tourist activities available and expand the tourist season and

“(c) To support the sustainable development of watersports, surfing, sailing and water-related events at appropriate locations in the County, subject to analysis of their potential environmental impact.”

- CDP 9.12 – relates to Coastal tourism and notes it is an objective to encourage the development of coastal tourism in areas such as water-sports and water related activities and events, as well as supporting tourism development in coastal areas where it can be demonstrated that there will be no negative impacts on the amenities of the area, natural environment or value of the coastline and beaches.
- CDP 9.19 relates to accessible tourism and notes that the CDP will facilitate and support the provision of accessible facilities including access to water-based activities.
- CDP 9.25 relates to Tourism in West Clare and states that it is an objective inter-alia to (A) further develop and enhance opportunity for tourism products in particular coastal and cliff walks in Kilkee and Loop Head areas, cycling and niche tourism, as well as (B) promote and market the area building on the cultural amenities and entertainment facilities of Kilrush, Kilkee and Doonbeg. This objective also notes the need to ensure full compliance with objective CDP2.1.
- CDP 13.5 relates to Heritage landscapes and notes that it is an objective that all proposed developments in such areas must demonstrate that every effort has been made to reduce visual impact, sites must avoid visually prominent locations, avail of existing topography and vegetation to minimise visual impact and building heights must be minimised.
- CDP 14.7 relates to European designated sites and notes that it is an objective to afford the highest level of protection to such sites and require all necessary reporting (i.e., provision of an NIS) to be submitted as appropriate.
- The site is also located within a Flood Zone A/B location - as identified in the Strategic Floodrisk Assessment included in the CDP.

- The West Clare Municipal District Local Area Plan which includes a settlement plan for Kilkee (in Section 2 “Small Towns”) is included in Volume 3 of the CDP, the following points are of note:
- The plan notes that there is inadequate wastewater treatment in Kilkee and that all future development in the settlement will be contingent upon the provision of adequate wastewater treatment.
 - The general objectives for Kilkee include: to safeguard and maintain the area of open space and outdoor recreation as important amenity areas within the town, and to support and facilitate the development of additional sports and recreational facilities.
 - The site of the proposed development has been zoned as Maritime/Harbour, this provision stretches from the site of the proposed development to the west to include the existing carpark and pier/harbour area. The Plan states that this area is reserved for the future development of the pier, land-based facilities associated with the development of water-based commercial activities and for tourism and leisure uses. The plan also notes that “...it is important that development proposals for water-based commercial activities are not detrimental to the tourism and leisure potential of the area.” The proximity of these lands to the Kilkee Reefs SAC is also acknowledged as is the need for any future development to demonstrate that there will be no adverse impacts on the conservation status of the Qualifying Interests of the habitats for which the SAC is designated.

5.10. Draft Clare County Development Plan 2023-2029

5.10.1. The Draft Clare County Development Plan 2023-2029 was placed on public display between December 2021 and March 2022, with the Chief Executives report on submissions to the Draft Plan currently being prepared. Under the published draft plan the site remains subject to similar provisions as the existing CDP. The objectives and policies of the Draft Plan remain consistent with those of the current plan. The Draft Plan retains the tourism policies discussed above (CDP 9.2, 9.4, 9.8, 9.12, 9.19 and 9.25). The Draft plan also contains policy objectives consistent with those of the existing CDP (cited above) in relation to the protection of the landscape,

designated sites, and biodiversity albeit the numbering scheme for the various policies has been altered.

5.10.2. Similar to the current plan the Draft CDP also includes a settlement plan for Kilkee in the West Clare Municipal plan. In the draft plan the site of the current proposal is zoned as Maritime/Harbour with broadly the same development objectives as the current CDP. The Draft Plan states the following in relation to the public wastewater treatment facilities *“There is currently limited wastewater treatment in Kilkee, however, a new wastewater treatment plant, pumping station and rising main are planned for the town. Work is due to commence in late 2023 with completion in 2025”* before noting (similar to the current plan) that all future development will be contingent upon the provision of adequate wastewater treatment.

5.10.3. The Strategic Floodrisk assessment included as an appendix of the Draft plan continues to designate the site of the proposed development as being within floodzone A/B, while acknowledging that a flood relief scheme is ongoing and at early optioning stage.

5.11. Other relevant Policy Guidance

5.11.1. There are a number of tourism policy documents at national and local level such as “People, Place and Policy: Growing Tourism to 2025” (Department of Transport, Tourism and Sport) and the County Clare Tourism Strategy 2030 (Clare County Council) which both provide broad support for the provision of additional facilities and improved facilities to further support the development of the tourism product both nationally and locally within the county.

6.0 The Natura Impact Statement

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

- 6.2. The NIS provides an overview and description of the proposed development and is based on desktop study as well as surveys that were conducted between August 2020 and April 2021. The surveys conducted included a habitat assessment, mammal survey, and a winter bird survey assessment, with specific attention placed on recording birds of special conservation interest (SCI) relating to SPAs within commuting range. The NIS identifies and characterises the potential effects arising from the proposed development (construction activities, operational impacts arising from facilitating water-based activities) and sets out a detailed suite of mitigation measures including the provision of a Construction and Environmental Management Plan (CEMP), ecological signage, grey water management, as well as visitor and litter management. The submitted NIS concludes that subject to the adherence to the various mitigation measures proposed that it is not envisioned that the proposed development will give rise to any significant adverse effects on any designated European sites either alone or in combination with other plans or projects.
- 6.3. The NIS was accompanied by the documents and drawings listed previously above in Section 2.3 of this recommendation.

7.0 Consultations

- 7.1. The application was circulated to the following bodies:
- The Minister for Department of Housing Local Government and Heritage,
 - The Minister for the Department of the Environment, Climate and Communications,
 - An Taisce,
 - Inland Fisheries Ireland,
 - Clare County Council,
 - National Parks and Wildlife Service (NPWS),
 - The Heritage Council,
 - Fáilte Ireland, and
 - Waterways Ireland

One response was received from Failte Ireland, this is discussed below.

7.2. Fáilte Ireland:

7.2.1. The submission from Failte Ireland is in support of the proposed development and can be summarised as follows.

- There is a shortfall in quality and quantity of adequate visitor facilities to support high quality outdoor activities in Ireland.
- In April 2021 Fáilte Ireland announced a €19 million investment to develop facilities to support outdoor water-based activities, falling under the Governments Project Ireland 2040 strategy.
- The subject facilities will; support the local economy and the outdoor activity sector by enhancing visitor experience, providing new business opportunities in the local community, and facilitate the extension of the tourism season beyond the summer months.
- Fáilte Ireland is currently preparing a Destination Experience Development Plan for West Clare and North Kerry, a component of that plan “Developing Kilkee” seeks to maximise local tourism opportunity through the development of year-round outdoor recreational facilities such as the current proposal. A recurring theme in the community consultation found that use of the water and outdoors activities present a strong opportunity for Kilkee to develop into a more sustainable destination beyond the current 10-week season.
- The proposed development complies with the County Clare Tourism Strategy 2030, as well as being consistent with and support the policies/objectives of national, regional and county level planning policy.
- One team was appointed to bring forward universal standardised high-quality design options for all activity design centres to be delivered while allowing for adaptations depending on local site conditions.
- The scheme proposes that once constructed the facility will be owned and operated by the Local Authority.
- The proposed development will strengthen the appeal of the county with strong high quality outdoor water-based activities and facilities while satisfying all environmental requirements.

7.3. Public Submissions:

7.3.1. There has been one public submission lodged in relation to the proposed development, by Mary O'Dowd and Michael Nolan. I have reviewed in full the submission that has been lodged which objects to the proposed development along a variety of grounds, the relevant planning issues raised can be summarised as follows:

- Fáilte Ireland has no knowledge of the existing facilities in Kilkee nor of the water-based facilities and therefore have no baseline evidence to base any policy or strategy.
- The Council has failed to take into account many factors in considering the likely effects on the environment of the proposed development and the potential impacts on the proper planning and sustainable development of the area.
- There has been no consultation with interested parties (B&B operators, restaurants, caravan park operators, etc.) nor is there any evidence presented of consultation with water sports activity operators. It is alleged that water-sport operators have neither supported nor sought such a facility. Furthermore, the submission states there is no evidence of support from the one Limerick-based water activity operator that is present in Kilkee.
- Site selection on the sea-ward side of public road is inappropriate and contrary to established Council practice/policy as it blocks views to the sea for the public and from established residences. The submission states that there is no reason established to depart from this accepted policy of restricted development on the seaward side of the public road.
- There is no evidence that alternative sites were considered that could use existing facilities/buildings/sites away from the seaward site of the road and/or in lieu of providing an entirely new building. Alternative sites and buildings are suggested in the submission.
- The proposed development would end up in competition with existing commercial facilities.

- Water-based activities will take place on the beach away from the location of the proposed development, and therefore the proposed development will be at an inappropriately remote location.
- The claim within the ecological report that the southern portion of the beach is inaccessible to the public due to the presence of the Victoria Stream is untrue.
- Foul drainage generated by the proposed development cannot be “treated” in the public sewerage network as there is no treatment currently at Kilkee. Foul drainage is currently discharged untreated directly to the sea at Fooagh townland and the statement within the application documentation that foul drainage will be treated by the existing Kilkee wastewater treatment system is false.

8.0 **Assessment**

8.1. **Introduction**

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

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

The structure of this report follows the above three topics. The first two are discussed in Sections 8.3 and 8.4 below, and the third in Section 9.

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

8.2.1. The background to the proposed development is that it forms part of Fáilte Ireland’s “Platforms for Growth” capital investment programme designed to support and improve facilities for visitor experience throughout Ireland. The scheme is designed for Local Authorities to provide for the delivery of an appropriate range of new activity visitor facilities. Initially Fáilte Ireland carried out a mapping exercise to identify

activity locations nationwide using a range of criteria including the presence of commercial water sports activity operators, proximity to blue flag beaches (or similar), and proximity to other visitor facilities (accommodation, dining, attractions etc.) At the beginning 136 locations were identified which was further refined to 22 no., one of which is Kilkee. It is a condition of the programme that the relevant Local Authority enters into a management agreement for the ongoing cleaning, maintenance and repair of the facilities. Prior to bringing the project/site forward and committing to the current Section 177AE application to An Bord Pleanála, Fáilte Ireland carried out an Environmental Opportunity and Constraints Assessment, Site visit and habitats assessment as well as on-site ecological surveying.

- 8.2.2. It is intended that the proposed development will consolidate and improve the existing facilities and amenity offering that is already present in Kilkee. There are a wide range of water-based amenities and facilities in the vicinity, not least of which being the substantial beach itself (which has at least one commercial water-activity operator in place and with its established blue-flag status draws a significant number of visitors to Kilkee every year), Waterworld, parkland/waterside amenities (picnic tables, seating, etc) as well as the wider dining and accommodation facilities throughout Kilkee. In this regard I accept that the proposed development will augment and provide better facilities for the activities that are already taking place at this location.
- 8.2.3. The proposed development will not be run by a specific commercial operator but will be managed by the Local Authority and it will therefore effectively be a public facility that will be open for use by independent visitors as well as those using equipment/engaged in courses being supplied by commercial operators. I accept that the proposed development will aid in prolonging the season for visitors and will augment and improve the existing beachside facilities that are currently available. The Local Authority will also be responsible for maintenance and upkeep of the facility. The ethos of the proposed development is to work with and support existing activities (and commercial operators) while protecting local amenities with the overall goal of providing best in class publicly-managed facilities for visitors which will improve accessibility to water-based activities. Accordingly it is not a facility that will compete with existing operations or established practices but will augment and improve the general facilities available.

- 8.2.4. The site of the proposed development is already in use as a public amenity space adjacent to the beach and is highly accessible to vehicles (being located immediately adjacent to an existing large car park), cyclists, and pedestrians (being well serviced by footpaths) and offers direct pedestrian access to the beach without generating conflicting pedestrian or vehicle movements (i.e. those using the proposed facility will not have to cross any roads to access the beach/coastline). Vehicular access is via the existing car park with good sight lines and road network of good quality in the immediate vicinity.
- 8.2.5. The site is within the settlement of Kilkee on lands that have been zoned for development within the West Clare Municipal District Plan (Volume 3 of the CDP). The plan states that this area is reserved for the future development of the pier, land-based facilities associated with the development of water-based commercial activities and for tourism and leisure uses. The plan also notes that “...it is important that development proposals for water-based commercial activities are not detrimental to the tourism and leisure potential of the area.” The zoning of the site has identified it as being a suitable location for the provision of communal changing/shower and WC facilities. I note that concerns have been raised in a third-party submission relating to the location of the proposed development on the seaward side of a public road, however, the site of the proposed development is appropriate as it has been zoned for development and does not interfere with any designated scenic views. I consider that the proposed development supports and enhances the tourism and leisure potential of the area while promoting accessibility and therefore in my opinion the principle of the proposed development is consistent with the zoning provisions of the plan.
- 8.2.6. I note that the proposed development will improve and augment existing facilities in the vicinity and will support the continued development of Kilkee as a sustainable tourism destination. The CDP contains a wide range of policies and objectives that support the provision of improved and better tourism facilities in general, as well as supporting the provision of such facilities within settlements where appropriate (CDP 9.4(a) refers), and specifically supporting the improvement of facilities at Kilkee subject to adequate environmental controls and sensitive site selection (CPD9.25 refers). While additional environmental matters, biodiversity, visual impact and protection of designated sites are discussed in further detail below, in summary I

consider that the proposed development is sensitively designed and sited on appropriately zoned land within an existing managed amenity area with good existing direct pedestrian connectivity to the beach and the other amenities of Kilkee. I therefore consider that the proposed development is compliant with the tourism policies of the County Development Plan.

- 8.2.7. I acknowledge that a third-party submission has raised potential alternative locations for the proposed (or similar) development. As the proposed development represents a use and design that is appropriate within the context of the development plan zoning provisions the consideration of alternative sites or uses does not arise. I do note, however, that the current proposal offers direct pedestrian access to the beach without having to cross any roadway. In my opinion the site selected presents the optimum solution for providing a standalone changing/shower/wc facility offering full accessibility for all to the beach and shore-side activities and amenities and is not only compliant with the provisions of the CDP but also the NMPF in this regard.
- 8.2.8. An issue was raised in the third-party submission in relation to a lack of consultation, in this regard I note that the applicant has issued all relevant statutory notices and advertisements required for the purposes of this application to the Board.
- 8.2.9. In conclusion, I consider that the proposed development complies with the relevant provisions of the CDP, including the provisions of the Settlement Plan for Kilkee contained within the West Clare Municipal Plan and is consistent with the proper planning and sustainable development of the area, and accordingly I am of the opinion that the proposed development is appropriate in principle at this location.

8.3. The likely effects on the environment

- 8.3.1. There is no provision under Section 177AE of the Act to require Environmental Impact Assessment (EIA) or to carry out a formal EIA screening of development for a local authority project which has been submitted under this section of the Act. The proposed development which is a small-scale shower/WC/changing facility that will be managed and maintained by the Local Authority at a location within the settlement of Kilkee which has been zoned for development and which is already in use as an amenity area/parkland is not of a development type for the purposes of Part 10 as listed in Schedule 5 of the Planning and Development Regulations 2001 (as amended) (“the Regulations”). Notwithstanding this, an EIA screening report has

been prepared on behalf of Clare County Council and accompanies the current application documentation. The submitted screening report considers the potential impacts of the project having regard to the characteristics of the proposed development, its location, as well as the types and characteristics of potential impacts. I note the conclusions of the submitted Screening Report which states that the environmental impacts of the proposed development are not likely to be significant within the meaning of the EIA Directive.

8.3.2. Having reviewed the application documentation and bearing in mind the small-scale nature of the proposed development I consider that the proposed development will not give rise to significant environmental impacts, however, the proposal does merit further consideration in relation to the following:

- Visual Amenity,
- Traffic/Access
- Biodiversity,
- Drainage,
- Flood risk, and
- Cultural heritage.

8.3.3. Visual Amenity:

8.3.3.1. The site of the proposed development is at a visually sensitive location adjacent to the shoreline and beach which is the focal point of the public streets and properties in the immediate vicinity and wider area. In response to this the design of the proposed development is low-impact and contemporary, consisting of two small scale single storey-buildings (the facility itself and the plant/condenser building). The shower/WC/changing room facility is single storey, with a mono-pitched sedum roof. The height of this building is minimal with a parapet height of 3.1m at its lowest (addressing the public road) rising to 4.05m on the elevation addressing the shore. The elevations use panelled cladding with large openings which gives the building a visually open effect and creates shadow/gap areas along the elevations providing depth and contrast further (visually) breaking up what is a small structure and reducing impacts.

- 8.3.3.2. The plant/condenser building is a small building as well and this to be clad in treated teak timber battens with hardwood timber/louvre door/panels and does not exceed 2.5m in height, it will therefore not create significant visual intrusion. The proposed development incorporates raised planter beds and landscaping to aid the assimilation into the amenity lands immediately adjacent as well as the wider built, and natural, environmental features.
- 8.3.3.3. The proposed development also provides for the relocation of an existing “lost at sea” memorial, moving it slightly to its own distinct area adjacent to the changing room facility, closer to the public road and backdropped against a proposed raised planter with associated landscaping. I consider this approach appropriate.
- 8.3.3.4. Interfaces with the public paths and roads are to be made good as part of the proposed development and augmented with the pathway between the facility and public road to be widened, and where removal of the existing low stone wall is required the material will be used to repair adjacent areas of wall as needed.
- 8.3.3.5. The facility will be visible when viewed from the public road network, pathways and properties in the vicinity, however, the visual impact will not be significant due to the small scale of the proposed buildings and the appropriate contemporary design that has been adopted. When viewed from the beach the proposed development will also be visible but from such vantage points it will be read against the backdrop of the surrounding built environmental of Kilkee, beyond the sea wall and will be assimilated effectively.
- 8.3.3.6. In my opinion the proposed development represents a successful design intervention at this location, minimising potential visual impact through its discrete contemporary design while maximising the facilities being provided. Accordingly in relation to visual amenity I consider that the proposed development is appropriate at this location.

8.3.4. Traffic/Access:

- 8.3.4.1. In relation to traffic/access the site is located within the settlement of Kilkee adjacent to an established car park and all accesses have adequate vehicular sight-lines. A

portion of the existing car park is to be improved through provision of two additional accessible spaces as well as the provision of a bike rack. This location is well-serviced in terms of access arrangements and will not create a traffic hazard nor bring pedestrian movements into conflict with vehicular traffic as there is direct access to the shore by foot from the proposed facility. The proposed development also provides bike stands and an external bicycle repair station, it therefore accommodates all common and relevant travel modes. I note that there will be impacts arising during the construction stage, however, these will be temporary, contained to the site working areas, and deliveries will not impede traffic or pedestrian movements in the vicinity or wider area. I, therefore, do not consider these impacts to be significant nor inappropriate. Accordingly, in relation to traffic/access I conclude that the proposed development is appropriate and will not give rise to inappropriate movement/generation of traffic nor present a traffic hazard.

8.3.5. Biodiversity:

8.3.5.1. In relation to Biodiversity the application documentation includes an Ecological Impact Assessment (EcoA). The habitats within the site footprint have been identified as Buildings and Artificial Surfaces (BL3) and Amenity Grassland (GA2). No Annex I habitats identified within the site area. I consider the habitats within the site boundary to be of low ecological importance and sensitivity. The beach/shore (classified as LS2 – Sand Shores) offers good-quality habitat for birds and insects, and the Kilkee Reefs SAC is located immediately to the south and west of the proposed site while the River Shannon and River Fergus SPA is located 3.7 km southeast. The potential for impacts on both the SAC and SPA are discussed in greater detail within Section 9 – Appropriate Assessment.

8.3.5.2. There are two streams which drain into the sea at Moore Bay along the beach. The Atlantic Stream runs into the sea to the immediate south of (and under) the proposed site subsequent to being culverted to the west of Waterworld and passing under the East End Road. The Victoria Stream drains to the sea further to the south (in excess of 600m distant of the proposed development), and for clarity I note that this stream does not cut-off public access to the southern portion of the beach despite the

assertion within the submitted Ecol that this is the case, furthermore my assessment of this project does not rely, or draw on this assertion.

- 8.3.5.3. I acknowledge that the proposed development if not managed appropriately (in terms of construction and operational phases) could give rise to adverse impacts on the beach and its associated habitats and wildlife. In response to this issue the application documentation includes a Construction and Environmental Management Plan (CEMP) which sets out a comprehensive suite of mitigation measures detailing construction good-practice and house-keeping which will protect the shoreline and sensitive habitats from inappropriate discharges (incl. sediment laden water, hydrocarbons, dust and noise). I am satisfied that the implementation of the CEMP mitigation measures will ensure that significant adverse impacts will not arise on any surrounding sensitive habitats.
- 8.3.5.4. No evidence of badger setts or otter activity were recorded on site and due to the location of the site (within the settlement of Kilkee at a location subject to significant human activity) I consider the affected habitats to be of limited use to these species, albeit the area could be used for foraging/commuting. The site does not offer any roosting opportunities for bats, and as the Atlantic stream is effectively underground (culverted) proximate to the proposed development site I consider that impacts will not arise in relation to same.
- 8.3.5.5. In relation to Birds, fifteen different species were identified in the winter bird survey, of these, six are species that are Qualifying Interests (QIs) of the River Shannon and River Fergus SPA. The bird species identified within the surveys roosting or foraging were predominantly within the coastal areas adjacent to the proposed development and not within the site footprint. I note that the grassland on site does offer grazing opportunities for certain bird species, however, this amenity area does have significant human activity and is adjacent to a car park and public road and there are a wide range of better more secluded grazing opportunities both in the vicinity and wider area. The surveys identified foraging and roosting areas in the wider area which are most in use and of more importance to bird species, these are more remote from the site of the proposed development.

8.3.5.6. I acknowledge that the operational phase will encourage additional activity and footfall at this location, however, given the established popularity of this area for water and shoreline-based activities and interactions I consider this impact to be negligible. The proposed development itself will not generate significant numbers of additional visitors but will augment and improve existing facilities and activities. Notwithstanding this, I consider it appropriate in the event of favourable consideration to require a visitor management plan to be implemented. Such a plan will require operators using the facilities to avoid any activities at ecologically sensitive locations such as reefs, roosting and foraging areas that have been identified and, in tandem, will educate the public at large through signage in relation to the sensitive habitats and species in the vicinity and to avoid inappropriate activities (such as rock-pooling).

8.3.5.7. In conclusion, in relation to Biodiversity I note that the site is already in use as an amenity area within a settlement and that there are ongoing water and shoreline-based activities that wildlife has become acclimated to. Notwithstanding the small scale of the proposed development and its appropriate design I consider that the construction and operations of the facility should be made subject to conditions requiring the implementation of all mitigation measures set out in the CEMP and Ecol including controls being applied to construction activities, provision of ecological educational signage, a visitor management plan, and litter management in the event of favourable consideration. With the implementation of such mitigation measures and conditions I consider that the proposed development will not have a significant adverse impact on biodiversity.

8.3.6. Foul Drainage:

8.3.6.1. The proposed development is to be connected to the municipal surface water and drainage networks. A potential impact that could arise from the operational period of the proposed development relates to foul drainage. Irish Water (IW) acknowledge on their website that a new wastewater treatment plant is required for Kilkee to avoid the discharge of raw sewage into the Marine Environment, which occurs at Intrinsic Bay to the West of Kilkee. (An issue which has also been raised in a third-party submission). The project is at design stage and IW expects to commence works in

2024. The application documentation includes a letter from IW agreeing that a wastewater connection is feasible and that there is sufficient capacity available. I also note that consents for smaller developments (single dwelling units) within Kilkee have continued to be granted permission by the Local Authority (for example PI. Ref.'s 21/804, and 19/402) with connections into the public foul drainage scheme.

8.3.6.2. In relation to foul drainage loadings I note that the proposed development will provide facilities within Kilkee for visitors to the town that will already be present (i.e. the proposed development augments and supports other facilities and will not generate additional visitors in its own right), and in this regard the proposed impact from additional foul drainage generated could be considered to be a neutral, albeit the intent is to prolong the water-based activity season. Viewed in isolation, should the Board be so minded, permission could be granted for the proposed development based on it having a neutral impact on foul drainage loadings and the environment. In conducting the Appropriate Assessment of this project, however, (as set out in Section 9 below), the potential in-combination effects which could arise (given that the existing discharge from the foul drainage network is into the Kilkee Reefs SAC) must be considered. In this context and having regard to the timeframe estimated by IW for the provision of an appropriate treatment plant, I recommend that a condition be imposed in the event of favourable consideration restricting the opening/use of the facility pending the provision of confirmation that adequate treatment is available within the municipal system for the foul effluent arising.

8.3.6.3. In conclusion, in relation to drainage I consider that the imposition of a condition requiring confirmation of the treatment of the foul effluent generated be provided in advance of opening the facility for use will remove any uncertainty from potential adverse effects that could arise. This approach is compliant with the provisions of the CDP which notes the inadequate wastewater treatment in Kilkee and that all future development in the settlement will be contingent upon the provision of adequate wastewater treatment.

8.3.7. Flooding:

- 8.3.7.1. In relation to floodrisk I am aware that the site of the proposed development is in an area which has been classified as being Floodzone A/B in the Strategic Flood Risk Assessment contained in the CDP. This floodzone designation arises from flooding from the Atlantic Stream (which is culverted to the west of the proposed site) which can be exacerbated in storm conditions. I note that the land on which the development is proposed has been zoned specifically for marine/harbour development in the context and knowledge of the results of the strategic flood risk assessment. I also note that a flood relief scheme is being prepared for Kilkee.
- 8.3.7.2. The settlement plan for Kilkee states that for coastal areas, given the history of flooding and known incidents of wave exacerbated storm damage that redevelopment is limited to less vulnerable uses. In this regard the provisions of “The Planning System and Flood Risk Management Guidelines for Planning Authorities” (November 2009- Department of the Environment, Heritage and Local Government), identifies amenity open space, outdoor sports and recreation and essential facilities such as changing rooms, and Water-based recreation and tourism (excluding sleeping accommodation) as water-compatible development. The Floodrisk guidelines go on to state that water compatible development is appropriate in Floodzones A, B or C.
- 8.3.7.3. Accordingly, in relation to Floodrisk, I consider that the proposed development is a water-compatible development, and its location is therefore in accordance with, and appropriate in the context of, the floodrisk guidelines as well as being consistent with the zoning provisions of the CDP.

8.3.8. Cultural Heritage:

- 8.3.8.1. The site of the proposed development is not located in the vicinity of any recorded monuments or features nor are any buildings from the record of protected structures affected. I do note that the proposed works will require the relocation of an existing lost at sea memorial which is to be moved to another location on site, still overlooking the sea, closer to the public footpath and framed by a raised planter. I consider this approach to be both acceptable and appropriate.

8.3.8.2. Although no records of archaeological features or monuments are evident and the site is behind a significant sea wall construction, I recommend in the event of a grant of permission that excavations are monitored by a suitably qualified archaeologist.

8.3.9. Conclusion in relation to likely effects on the environment:

I conclude that following review of the application documentation and site visit as informed by the discussion set out above that the proposed development would not give rise to significant residual effects on the environment having regard to its nature and scale and subject to the conditions included in the recommendation below.

9.0 **The likely significant effects on a European site:**

9.1. The areas addressed in this section are as follows:

- Compliance with Articles 6(3) of the EU Habitats Directive
- The Natura Impact Statement and associated documents
- Appropriate Assessment Screening, and
- Appropriate Assessment.

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

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

9.3. **The Natura Impact Statement**

9.3.1. The application was accompanied by an NIS which described the proposed development, the project site and the surrounding area (Section 2 of the NIS refers). The submitted NIS contained a Stage 1 Screening Assessment (Section 3 of the NIS) which concluded that a Stage 2 Appropriate Assessment was required in

relation to two European Sites, the Kilkee Reefs SAC [Site Code 002264] and the River Shannon and River Fergus Estuaries SPA [Site Code 004077]. The NIS went on to outline the methodology used for assessing potential impacts on the habitats and species within the European Sites that have the potential to be affected by the proposed development. It predicted the potential impacts for this site and its conservation objectives, it suggested mitigation measures, assessed in-combination effects with other plans and projects and it identified any residual effects on the European sites and their conservation objectives.

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

- A desk top study.
- A habitat survey of the site and its environs.
- Mammal surveys, for bats the focus was on evaluation of suitable habitats to support roosting bats, and
- Winter Bird Survey.

9.3.3. The NIS considered that potential impacts that could be arising from the proposed development on the Natura 2000 sites due to:

- Construction interactions/releases/discharges due to the proximity of the site to the boundary of the SAC resulting in presence of pathways. Impacts on the SAC could also arise from the operational period due to disturbance/visitor activity.
- While there were no direct pathways identified to the SPA potential impacts were screened-in on the basis of disturbance to QI species and habitats (outside the SPA) during construction and operational phases by introducing disturbance effects to foraging and roosting habitats.

9.3.4. The submitted NIS concludes as follows:

“Having incorporated mitigation measures, it is concluded that the Platform for Growth; Shared Community Facilities at Kilkee Bay is not foreseen to give rise to any significant adverse effects on designated European Sites, alone or in combination with other plans or projects. This evaluation is made in view of the conservation objectives of the habitats or species, for which these sites have been designated.”

9.3.5. Having reviewed the NIS and the supporting documentation, I am satisfied that it provides adequate information in respect of the baseline conditions, does clearly identify the potential impacts, and does use best scientific information and knowledge. Details of mitigation measures are provided, and they are summarised in Section 5 of the NIS. I am satisfied that the information is sufficient to allow for appropriate assessment of the proposed development (see further analysis below).

9.4. **Appropriate Assessment Screening**

- 9.4.1. Section 177AE sets out the requirements for appropriate assessment (AA) of development carried out by or on behalf of a local authority. Section 177(AE) (3) states that where a Natura Impact Statement has been prepared pursuant to subsection (1), the local authority shall apply to the Board for approval and the provisions of Part XAB shall apply to the carrying out of the AA. There is no requirement for the Board to undertake screening in these cases as it presupposed that the Local Authority has established the need for AA through its own screening process. Nonetheless, it is considered prudent to review the screening process to ensure alignment with the sites brought forward for AA and to ensure that all sites that may be affected by the development have been considered.
- 9.4.2. The submitted NIS carried out by CAAS on behalf of Clare County Council included AA Screening which concluded on the basis of objective information and in view of best scientific knowledge, the possibility of significant effects from the proposed project on European sites could not be ruled out and therefore an Appropriate Assessment was required. The AA screening section of the NIS concluded that there was potential for the proposed development to significantly impact the Kilkee Reefs SAC and River Shannon and River Fergus Estuaries SPA from construction activities (e.g., dust, site discharges) and the operational period (water activities from those using the proposed facilities) causing disturbance and direct impacts.
- 9.4.3. The Appropriate Assessment Screening included within the NIS acknowledges that there is a pathway for significant effects and potential for in-combination effects to arise from the proposed development on the Kilkee Reefs SAC, and that while there is no pathway for direct effects on the River Shannon and River Fergus SPA that there is potential for disturbance effects to Qualifying Interest (QI) Species for which it has been designated.

9.4.4. Appropriate Assessment Screening Determination

9.4.5. I consider that the proposed development of the Platform for Growth – Shared Community Facilities at Kilkee and all associated works is not directly connected with or necessary to the management of any European site.

9.4.6. Having regard to the information and submissions available, nature, size and location of the proposed development and its likely direct, indirect and cumulative effects, the source pathway receptor principle and sensitivities of the ecological receptors the following European Sites (as set out in Table 9-1) are considered relevant to include for the purposes of initial screening for the requirement for Stage 2 appropriate assessment on the basis of likely significant effects.

Table 9-1: European sites considered for Stage 1 screening:

European site (SAC/SPA) [Site Code]	Qualifying Interests (QI) [and code]	Approximate Straight-line Distance to site of proposed development
Kilkee Reefs SAC, [Site Code: 002264]	Large shallow inlets and bays [1160], Reefs [1170], Submerged or partially submerged sea caves [8330]	8m to the southwest
Illaunonearaun SPA [Site Code: 004114],	Barnacle Goose (<i>Branta leucopsis</i>) [A045]	6.3km to the southwest
Lower River Shannon SAC, [Site Code: 002165],	Sandbanks which are slightly covered by sea water all the time [1110], Estuaries [1130], Mudflats and sandflats not covered by seawater at low tide [1140], Coastal lagoons [1150], Large shallow inlets and bays [1160], Reefs [1170], Perennial vegetation of stony banks [1220], Vegetated sea cliffs of the Atlantic and Baltic coasts [1230], Salicornia and other annuals colonising mud and sand [1310], Atlantic salt meadows (<i>Glauco-Puccinellietalia maritima</i>) [1330], Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410], Water courses of plain to montane levels with the <i>Ranunculus fluitantis</i> and <i>Callitriche-Batrachion</i> vegetation [3260],	2.7km to the southeast

European site (SAC/SPA) [Site Code]	Qualifying Interests (QI) [and code]	Approximate Straight-line Distance to site of proposed development
	Molinia meadows on calcareous, peaty or clayey-silt-laden soils (Molinion caeruleae) [6410], Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (Alno-Padion, Alnion incanae, Salicion albae) [91E0], <i>Margaritifera margaritifera</i> (Freshwater Pearl Mussel) [1029], <i>Petromyzon marinus</i> (Sea Lamprey) [1095], <i>Lampetra planeri</i> (Brook Lamprey) [1096], <i>Lampetra fluviatilis</i> (River Lamprey) [1099], <i>Salmo salar</i> (Salmon) [1106], <i>Tursiops truncatus</i> (Common Bottlenose Dolphin) [1349], <i>Lutra lutra</i> (Otter) [1355]	
River Shannon and River Fergus Estuaries SPA, [Site Code: 004077],	Cormorant (<i>Phalacrocorax carbo</i>) [A017], Whooper Swan (<i>Cygnus cygnus</i>) [A038], Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046], Shelduck (<i>Tadorna tadorna</i>) [A048], Wigeon (<i>Anas penelope</i>) [A050], Teal (<i>Anas crecca</i>) [A052], Pintail (<i>Anas acuta</i>) [A054], Shoveler (<i>Anas clypeata</i>) [A056], Scaup (<i>Aythya marila</i>) [A062], Ringed Plover (<i>Charadrius hiaticula</i>) [A137], Golden Plover (<i>Pluvialis apricaria</i>) [A140], Grey Plover (<i>Pluvialis squatarola</i>) [A141], Lapwing (<i>Vanellus vanellus</i>) [A142], Knot (<i>Calidris canutus</i>) [A143], Dunlin (<i>Calidris alpina</i>) [A149], Black-tailed Godwit (<i>Limosa limosa</i>) [A156], Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157], Curlew (<i>Numenius arquata</i>) [A160], Redshank (<i>Tringa totanus</i>) [A162], Greenshank (<i>Tringa nebularia</i>) [A164], Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179], Wetland and Waterbirds [A999],	3.7km to the Southeast
Tullaher Lough and Bog SAC, [Site Code:002343],	Active raised bogs [7110], Degraded raised bogs still capable of natural regeneration [7120], Transition mires and quaking bogs [7140], Depressions on peat substrates of the Rhynchosporion [7150]	5.2km northeast

European site (SAC/SPA) [Site Code]	Qualifying Interests (QI) [and code]	Approximate Straight-line Distance to site of proposed development
Carrowmore Dunes SAC, [Site Code: 002250],	Reefs [1170], Embryonic shifting dunes [2110], Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes) [2120], Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130], <i>Vertigo angustior</i> (Narrow-mouthed Whorl Snail) [1014]	9.9km northeast
Mid Clare Coast SPA, [Site Code: 004182],	Cormorant (<i>Phalacrocorax carbo</i>) [A017], Barnacle Goose (<i>Branta leucopsis</i>) [A045], Ringed Plover (<i>Charadrius hiaticula</i>) [A137], Sanderling (<i>Calidris alba</i>) [A144], Purple Sandpiper (<i>Calidris maritima</i>) [A148], Dunlin (<i>Calidris alpina</i>) [A149], Turnstone (<i>Arenaria interpres</i>) [A169], Wetland and Waterbirds [A999]	9.4km northeast
Carrowmore Point to Spanish Point and Islands SAC, [Site Code:001021]	Coastal lagoons [1150], Reefs [1170], Perennial vegetation of stony banks [1220], Petrifying springs with tufa formation (<i>Cratoneurion</i>) [7220]	13.2km to northeast

9.4.7. Based on my examination of the NIS report and supporting information, the NPWS website, aerial and satellite imagery, the scale of the proposed development and likely effects, separation distance and functional relationship between the proposed works and the European sites, their conservation objectives and taken in conjunction with my assessment of the subject site and the surrounding area, I would conclude that a Stage 2 Appropriate Assessment is required for two of the European sites referred to above.

- Kilkee Reefs SAC, [Site Code:002264], and
- River Shannon and River Fergus Estuaries SPA, [Site Code: 004077],

- 9.4.8. Having reviewed the project and application details, I consider that there is potential for effects to arise on the Kilkee Reefs SAC due to the proximity of the site to the SAC giving rise to the presence of pathways for effects during construction and operational periods.
- 9.4.9. The River Shannon and River Fergus Estuaries SPA is located approximately 3.7km distant from the proposed development at its closest point. There are no hydrological linkages or pathways between the site of the proposed development and the SPA, therefore, I do not consider that direct impacts can arise on the habitats within the SPA. I do note, however, that QI species for which the SPA has been designated have also been identified in the bird surveys carried out in the vicinity of the site of the proposed development. Accordingly, adopting the precautionary principle (and in concurrence with the submitted NIS) I consider it appropriate to screen-in potential impacts on the QIs of the SPA due to the potential for disturbance to arise (from construction and operational phases of the proposed development) on roosting/foraging habitats in the vicinity that QI bird species could use. I am cognisant in this regard that the site of the proposed development is located within the built-up settlement of Kilkee and is already subject to substantial human activity and there are more significant suitable foraging and roosting habitats available both within the wider area and the SPA itself.
- 9.4.10. The remaining six sites can be screened out from further assessment because of the scale and character of the proposed works, the nature of the Conservation Objectives, Qualifying and Special Conservation Interests, the separation distances and the lack of a substantive linkage between the proposed works and the European sites. It is therefore reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European Site No.'s: 004114, 002165, 002343, 002250, 004182 or 001021 in view of the sites' conservation objectives and a Stage 2 Appropriate Assessment is not therefore required for these sites.
- 9.4.11. No measures designed or intended to avoid or reduce any harmful effects of the project on a European Site have been relied upon in this screening exercise.

9.5. Stage II Appropriate Assessment

9.5.1. The following is an objective scientific assessment of the implications of the proposal on the relevant conservation objectives of the European sites identified as having the potential to be affected by the proposed development using the best scientific knowledge (provided in the NIS). All aspects of the project which could result in significant effects are assessed and mitigation measures designed to avoid or reduce any adverse effects are examined and assessed for effectiveness. I have relied on the following guidance:

- DoEHLG (2009). Appropriate Assessment of Plans and Projects in Ireland: Guidance for Planning Authorities. Department of the Environment, Heritage and Local Government, National Parks and Wildlife Service.
- EC (2021) Assessment of plans and projects in relation to Natura 2000 sites. Methodological guidance on the provisions of Article 6(3) and 6(4) of the Habitats Directive 92/43/EC
- EC (2018) Managing Natura 2000 sites. The provisions of Article 6 of the Habitats Directive 92/43/EEC

9.5.2. Description of Kilkee Reefs SAC

9.5.3. The Kilkee Reefs are situated north of the River Shannon Estuary on the Co. Clare coast. The site stretches for approximately 12 km from Ballard Bay to Castle Point. The reefs are exposed to the full force of Atlantic swells from the west. A small shallow bay (Moore Bay), offers some shelter from the wave action and Kilkee beach is present on this bay. The site is of conservation importance as it has excellent examples of Reefs and includes examples of Shallow Bay and Marine Caves, all habitats listed on Annex I of the E.U. Habitats Directive.

The main aspects of the proposed development that could adversely affect the conservation objectives of the Kilkee Reefs SAC, in my opinion, arise from the potential for water pollution and sediment/hydrocarbon release to occur from construction, furthermore operational activities could have adverse impacts on habitats from unregulated visitor movements and activities along the beach, shoreline and in the water. Sediment and/or hydrocarbon release during construction activities could occur in the absence of appropriate mitigation and I also consider that should the visitors to, or operators using, the proposed development not be

appropriately managed and regulated there is potential for adverse impacts to arise from their activities. Furthermore, in my opinion, the proposed development has the potential to adversely affect water quality in a cumulative manner with existing, permitted and proposed development in the absence of clearly established foul water treatment.

9.5.4. Conservation Objectives for Kilkee Reefs SAC

The Conservation Objectives for Kilkee Reefs SAC note that the overall aim of the Habitats Directive is to maintain or restore the favourable conservation status of habitats and species of community interest. The conservation objectives of the Kilkee Reefs SAC are as follows:

- **1160 Large Shallow inlets and bays**

“To maintain the favourable conservation condition of Large shallow inlets and bays in Kilkee Reefs SAC, which is defined by the following list of attributes and targets:

- *The permanent habitat area is stable or increasing subject to natural processes*
- *Conserve the following community types in a natural condition: sediment community complex, exposed intertidal reef community complex, exposed subtidal community complex.*

- **1170 Reefs**

“To maintain the favourable conservation condition of Reefs in Kilkee Reefs SAC, which is defined by the following list of attributes and targets:

- *The permanent habitat area is stable or increasing subject to natural processes.*
- *The distribution of reefs is stable or increasing subject to natural processes*
- *Conserve the following community types in a natural condition: Exposed intertidal reef community complex; Exposed subtidal reef community complex.”*

- **8330 Submerged or partially submerged sea caves**

“To maintain the favourable conservation condition of Submerged or partially submerged sea caves in Kilkee Reefs SAC, which is defined by the following list of attributes and targets:

- *The distribution of sea caves is stable, subject to natural processes.*
- *Human activities should occur at levels that do not adversely affect the ecology of sea caves in the SAC”*

The proposed development in the absence of appropriate mitigation and management could give rise to the following effects on the SAC.

9.5.5. Potential direct effects:

- Loss/Reduction of habitat area arising from poor project design/site selection construction and operational issues.
- Potential operational impacts on habitat loss arising from visitor movements and activities (litter, rock pooling, inappropriate water-based activities at sensitive locations) causing destruction and disturbance to habitats.
- Habitat/Species fragmentation arising from habitat loss, construction activities, and/or light pollution.
- Operational and construction activities can create disturbance to key species (both protected species, their prey and/or other important species within the local ecosystem) through noise, and human activity/movement.

9.5.6. Potential indirect effects:

- Notwithstanding the small scale of the proposed development the primary indirect effect that could arise is the potential adverse impact on water quality in the SAC associated with pollution that could arise from both construction and operational stages. Poor construction practices could result in sediment and/or hydrocarbon release.
- Inappropriate drainage measures (grey and foul water) would give rise to potential pollution concerns.
- Inappropriate visitor management could also give rise to indirect pollution concerns through littering.

9.5.7. Potential in-combination effects:

- In-combination effects could arise from interactions with extant or permitted developments and/or from other plans or programmes pertaining to the area. The NIS lists the Clare County Development Plan and County Clare Tourism Strategy 2030 as plans with the potential to interact with the proposed development. Both these plans have been subject to Strategic Environmental Assessment (SEA) and Natura Impact Reports and the submitted NIS considers that there will be no in-combination effects arising with the relevant plans and programmes. I broadly agree with this conclusion and note that the current development proposal is consistent with the requirements of the County Development plan, RSES and NPF.
- The submitted NIS listed a number of planning applications in the vicinity of the proposed development. Permissions for projects in the vicinity are subject to the rigours of the planning system and the relevant policies and objectives of the CDP which provide for protection of environmentally sensitive locations and designated sites, accordingly in-combination effects should not arise. In my opinion there is an issue arising from the acknowledged deficiency in the treatment of foul effluent for Kilkee (CDP, Irish Water Website, and Draft CDP all refer) which has not yet been upgraded. The lack of treatment of extant foul drainage from Kilkee could give rise to in-combination effects on the SAC, due to direct potential hydrological connectivity with the SAC (Raw sewage discharge from Kilkee currently occurs into the SAC at Intrinsic Bay).

9.5.8. Mitigation measures:

- I note that the siting of the proposed development and associated works have avoided environmentally sensitive areas and all proposed works are being carried out in/on habitats that are classified as Buildings and Artificial Surfaces (BL3) and Amenity Grassland (GA2). The proposed development will not therefore result in the loss of any Annex I habitat, nor occur within the SAC. Mitigation by design ensures that there will be no direct loss, or fragmentation of habitat which forms part of the QIs of the SAC.
- The site of the proposed development is already subject to public lighting and while the submitted NIS states that there are no external light features, the layout drawings show the inclusion of 3 no. new lamp standards. Due to the

location of these lamp standards along the shorefront which is already subject to public lighting I do not consider this to be a significant issue, however, the nature and design of the lighting (both for operational and construction phases) will be conditioned to ensure lighting is minimised to required times only and designed to avoid light spill outside the site. This mitigation measure will reduce the potential for any disturbance to arise on the SAC from on-site activities by ensuring that unnecessary light will not spill into the SAC or alter its existing conditions.

- Construction activities will be subject to a Construction and Environmental Management Plan (a copy of which is included within the application documentation, Section 3 of the CEMP provides a detailed list of the mitigation/control measures proposed). Broadly speaking the CEMP will ensure the application of good house-keeping (Section 3.1 of the CEMP refers) and good-construction practices (Sections 3.2, 3.3, 3.4, 3.5, 3.6 and 3.7 of the CEMP refers). Controls detailed within the CEMP will ensure that:
 - All hazardous materials will be handled in an appropriate manner.
 - Dust control measures will be applied.
 - Silt fences and grassed swales/catchment ditches will be constructed around works areas, stockpiles and compounds.
 - Refuelling, if required, will be carried out by trained personnel with appropriate equipment.
 - All waste will be dealt with in accordance with the relevant legislation.
 - Industry best practice pollution control measures will be implemented by the contractor.
 - Hoarding will be provided around works areas and machinery will be prevented from idling when not in use.
 - Hours of operation will be limited, and noise generation will be monitored.

The application of the range of construction mitigation measures set out within the CEMP will ensure that the SAC will be protected from any inappropriate discharges from site during construction (e.g., dust, hydrocarbons or sediment laden water) which could potentially impact on its qualifying interests.

- The site will be subject to a visitor management plan focusing on two elements (a) any operators using the facility must uphold a code of conduct to agree to usher participants away from ecologically sensitive areas (including rocky shore areas, and sensitive reef habitats), and (b) general facility use in line with public education through signage. The visitor management plan will be monitored to ensure compliance and effectiveness. These mitigation measures will improve the education and increase the awareness of users of the facility of the sensitive habitats and species in the vicinity of their activities and will therefore improve the existing awareness of these features. Operators will have to monitor and control their activities to ensure sensitive areas are avoided, while members of the public will be made aware through the signage of the same sensitivities. I am satisfied that this will improve public and operator awareness and ensure that the QIs of the SAC are not adversely affected by the proposed development.
- Litter management will be carried out on site. In this regard I note that the proposed development itself is not likely to generate litter and the proposed development will be operated/maintained by the Local Authority. A condition requiring site-specific litter management will ensure that the QIs of the SAC will not be impacted by any litter arising from future users of the subject development.
- The foul drainage from the proposed development is to be connected to the existing municipal waste-water network, the surface water drainage system will connect to the public surface water main drain. There is documentation on file from Irish Water in response to the pre-connection query stating that there is sufficient water and waste-water capacity for the proposed development. I note that the NIS has stated that the foul drainage from the proposed development will be subject to treatment within the public sewerage scheme. I also note, however, that from documentation available on the Irish Water Website and as acknowledged in both the current and draft County Development Plans, that there is currently limited treatment of foul effluent in Kilkee and that a new treatment plant is proposed to commence in 2023. The Irish Water website notes that it is “...working to end the unacceptable practice of untreated wastewater being discharged to Intrinsic Bay near Kilkee.” IW estimates that works are expected to commence in 2024. Therefore, I

consider that in the absence of clarity in relation to the provision of an appropriate level of foul drainage treatment within the municipal system that in-combination effects could arise from the proposed development through the increase, (however incremental) of the discharge of raw sewage to the marine environment. In order to address this issue, I recommend that an appropriate condition be imposed limiting the opening/use of the proposed facility pending the confirmation that adequate treatment facilities is available for the foul effluent generated by the proposed development. The inclusion of such a condition will ensure in-combination impacts will not arise on water quality within the SAC.

I consider that the proposed mitigation measures as articulated in the NIS and detailed in the submitted CEMP, combined with the additional restriction on operations pending the confirmation of the appropriate treatment of effluent arising from the proposed development are appropriate to the risks that have been identified and if implemented correctly will be sufficient to avoid significant effects arising and will exclude adverse effects on the integrity of the SAC.

9.5.9. Residual Effects/Further Analysis:

Having considered the design of the proposed development, its scale, location and current use, as well as the detailed mitigation measures and conditions recommended to be provided in the event of favourable consideration, I am satisfied that there will be no residual impacts associated with the proposed development.

9.5.10. NIS Omissions:

The NIS did not in itself list all the detailed mitigation measures proposed, instead referring to the content of other application documentation e.g., the CEMP, and pointed to the principal requirements of a visitor management plan without including the overall detail or arrangements for any such plan. The CEMP does not state construction hours nor give proposed noise limits. Furthermore the NIS states that, *“It has been confirmed in communication with Clare County Council that the local waste water treatment plant (WWTP) has capacity to accept the additional loadings within the existing infrastructure”*, there are no details of this confirmation within the NIS, and while the application documentation includes correspondence from IW, there is no explicit details submitted confirming that the foul drainage generated will

be treated adequately prior to discharge. Furthermore, the NIS incorrectly states that there are no external light features within the proposed development and does not reference the provision of 3 additional lamp standards. These omissions are not considered to be fundamental flaws to the assessment, however, as the intent of the mitigation measures are clear, and I am satisfied that any additional required mitigation measures can be ensured by imposition of appropriate conditions in the event of favourable consideration.

9.5.11. Integrity Test

Following the appropriate assessment and having regard to the scale of the proposed development and the implementation of the mitigation measures as set out I can ascertain with confidence that the proposed development will not adversely affect the Kilkee Reefs SAC in view of its qualifying interests and conservation objectives. This conclusion has been based on a complete assessment of all implications of the proposed development alone and in combination with plans and projects.

9.5.12. Description of River Shannon and River Fergus SPA [site code: 004077]

The estuaries of the River Shannon and River Fergus form the largest estuarine complex in Ireland. The site comprises the entire estuarine habitat from Limerick City westwards as far as Doonaha in Co. Clare and Dooneen Point in Co. Kerry. The site has vast expanses of intertidal flats which contain a diverse macro-invertebrate community which provides a rich food resource for wintering birds. The SPA is an internationally important site that supports an assemblage of over 20,000 wintering waterbirds.

9.5.13. Conservation Objectives for River Shannon and River Fergus

9.5.14. The River Shannon and River Fergus SPA has a list of 22 QIs as set out in Table 9-1 above. Twenty-one of these QIs relate to species of waterbirds, and the other relates to Wetlands and Waterbirds. As set out in section 9.4.9 of this report above, due to the lack of a direct pathway-connection between the proposed development and the SPA there is no potential for direct impacts to arise in relation to the wetland habitats within the SPA. The potential for effects to arise on the SPA from the proposed development relates purely to disturbance to species that may use habitats in the vicinity of the proposed development (which lie outside the SPA designation) during

construction and operational periods. Accordingly, the relevant conservation objectives to be considered in Stage II of this Appropriate Assessment relate to the relevant waterbird species QIs.

9.5.15. The Conservation Objectives (COs) for the River Shannon and River Fergus SPA note that the overall aim of the Habitats Directive is to maintain or restore the favourable conservation status of habitats and species of community interest. The relevant conservation objectives of the SPA (excluding the wetland habitat as discussed above) all relate to the QI bird species (previously listed in Table 9-1 above) and are as follows:

“To maintain the favourable conservation condition of [Cormorant, Whooper Swan, Light-bellied Brent-Goose, Shelduck, Wigeon, Teal, Pintail, Shoveler, Scaup, Ringed/Golden/Grey Plover, Lapwing, Knot, Dunlin, Black/Bar-tailed Godwit, Curlew, Redshank, Greenshank, Black-headed Gull] in the River Shannon and River Fergus Estuaries SPA, which is defined by the following list of attributes and targets:”

The conservation objectives go on to list various attributes and targets based on a variety of measures including population trend and distribution for all species but adding the following in relation to Cormorant - breeding population abundance, productivity rate, distribution – breeding colonies, prey-biomass available, barriers to connectivity, and disturbance at the breeding site.

9.5.16. Potential direct effects:

There are no direct pathway linkages between the site of the proposed development and the River Shannon and River Fergus SPA, furthermore there is a separation distance of approximately 3.7km between both. The proposed development is small in scale and within the existing settlement of Kilkee. In the absence of any direct pathway connections, I am satisfied that there will be no direct impacts arising on the habitats within the SPA that the QI species rely on for foraging, breeding and/or roosting.

9.5.17. Potential indirect effects:

- The bird surveys carried out within the bay area of Kilkee identified 15 different bird species either foraging, roosting or flying overhead. Of the species identified six, (Blackheaded Gull, Dunlin, Greenshank, Redshank,

Ringed Plover, and Curlew) are QIs for the SPA. None of the roosting or foraging bird activity was recorded on the site of the proposed development but in the wider area along the shoreline, pier, beach and at sea. The primary potential indirect effects on these species therefore arise from disturbance from construction and visitor activity, as well as in-direct impacts on water quality affecting habitats used by the QI species, from either inappropriate construction discharges or foul drainage.

9.5.18. Potential in-combination effects:

- Potential in-combination effects have been discussed previously in Section 9.5.7 (In relation to the Kilkee Reefs SAC) and are similar for the QI species of the SPA where they could give rise to disturbance impacts. Of primary concern in relation to disturbance of the relevant bird species is the potential for in-combination impacts arising on water quality from the lack for adequate foul drainage facilities.

9.5.19. Mitigation measures:

- The mitigation measures outlined previously in Section 9.5.8 above will ensure adverse impacts do not arise on the QI species of the River Shannon and River Fergus SPA from disturbance. The relevant mitigation measures have been previously discussed in full above in relation to the SAC and these will provide the same protection to the QIs of the SPA. For ease, the mitigation measures are summarised below and their implementation will ensure that the proposed development will not give rise to disturbance of the relevant SPA QI species:
 - All construction activities/works being subject to the provisions of the CEMP,
 - The implementation of an appropriate visitor management plan and ecological signage educating visitors of sensitive areas and species (including identified bird roosting and foraging areas),
 - Construction and operational phase lighting to be designed and implemented and operated in a sensitive manner,
 - Litter management, and
 - The requirement of an appropriate level of treatment of foul drainage from the proposed development

I consider that the proposed mitigation measures as articulated in the NIS, detailed in the submitted CEMP, and set out above, combined with the additional restriction on operations pending the confirmation of the appropriate treatment of effluent arising from the proposed development are appropriate to the risks that have been identified and if implemented correctly will be sufficient to avoid significant effects arising and will exclude adverse effects on the integrity of the SPA.

9.5.20. Residual effects/Further Analysis:

Having considered the design of the proposed development, its scale, location and current use, as well as the detailed mitigation measures and conditions recommended that will be provided in the event of favourable consideration to ensure significant adverse impacts on the River Shannon and River Fergus SPA will not arise, I am satisfied that there will be no residual impacts associated with the proposed development.

9.5.21. NIS Omissions:

The same NIS omissions as noted previously in Section 9.5.11 above in discussing the Kilkee Reefs SAC are relevant. Further omissions within the NIS are apparent in relation to the River Shannon and River Fergus SPA, these include a lack of clarification/detail explaining the decision to screen-in the potential for impacts on the SPA within the screening section, as well as failure to differentiate SPA references from SAC references in Table 4.1. While these omissions are unfortunate, I do not consider them to constitute misleading or fundamental flaws in the documentation nor have they hindered the ability of the Board to complete a full Appropriate Assessment and I am satisfied that the relevant mitigation required can be ensured by imposition of appropriate conditions in the event of favourable consideration.

9.5.22. Integrity Test

Following the appropriate assessment and having regard to the scale of the proposed development and the implementation of the mitigation measures as set out I can ascertain with confidence that the proposed development will not adversely affect the River Shannon and River Fergus SPA in view of its qualifying interests and conservation objectives. This conclusion has been based on a complete assessment

of all implications of the proposed development alone and in combination with plans and projects.

9.6. Appropriate Assessment Conclusions:

- 9.6.1. The proposed Fáilte Ireland, Platform for Growth – shared community facilities at Kilkee have been considered in light of the assessment requirements of Section 177AE of the Planning and Development Act, 2000 (as amended).
- 9.6.2. Having carried out screening for Appropriate Assessment of the project, I concluded that there was potential for the project to affect the Kilkee Reefs SAC and River Shannon and River Fergus SPA. Accordingly, an Appropriate Assessment was required of the implications of the project on the qualifying interests of the SAC and SPA in light of their conservation objectives.
- 9.6.3. Following examination and review of all the material submitted within the planning application and on review of the submitted NIS, I am satisfied that the applicant has considered all the elements/features that could be affected in relation to the conservation objectives of the Kilkee Reefs SPA and River Shannon and River Fergus SPA and the information before the Board comprehensively addresses all issues and concerns regarding potential adverse effects on the SPA (subject to the implementation of mitigation measures and conditions outlined above).
- 9.6.4. On the basis of the above I consider that it is reasonable to conclude on the basis of the information on the file, which I consider adequate in order to carry out a Stage 2 Appropriate Assessment, that the proposed development, individually or in combination with other plans and projects would not adversely affect the integrity of the Kilkee Reefs SAC [European site no. 002264], River Shannon and River Fergus SPA [European Site no. 002165] or any other European site, in view of their Conservation Objectives.

10.0 Recommendation

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

Reasons and Considerations

In coming to its decision, the Board had regard to the following:

- (a) the EU Habitats Directive (92/43/EEC),
- (b) the European Union (Birds and Natural Habitats) Regulations 2011 as amended,
- (c) the likely consequences for the environment and the proper planning and sustainable development of the area in which it is proposed to carry out the proposed development and the likely significant effects of the proposed development on a European Site,
- (d) the conservation objectives, qualifying interests and special conservation interests for the River Shannon and River Fergus SPA (site code: 002165), and the Kilkee Reefs SAC (site code: 002165),
- (e) the policies and objectives of the Clare County Development Plan, 2017-2023,
- (f) the nature and extent of the proposed works as set out in the application for approval,
- (g) the information submitted in relation to the potential impacts on habitats, flora and fauna, including the Natura Impact Statement,
- (h) the submissions and observations received in relation to the proposed development, and
- (i) the report and recommendation of the person appointed by the Board to make a report and recommendation on the matter

Appropriate Assessment:

The Board agreed with and adopted the screening assessment and conclusion carried out in the Inspector's report that the Kilkee Reefs SAC [European site no. 002264], and River Shannon and River Fergus SPA [European Site no. 002165], are the only European Sites in respect of which the proposed development has the potential to have a significant effect.

The Board considered the Natura Impact Statement and associated documentation submitted with the application for approval, the mitigation measures contained therein, the submissions and observations on file, and the Inspector's assessment. The Board completed an appropriate assessment of the implications of the proposed development for the affected European Sites, namely the Kilkee Reefs SAC [European site no. 002264], River Shannon and River Fergus SPA [European Site no. 002165], in view of the site's conservation objectives. The Board considered that the information before it was adequate to allow the carrying out of an appropriate assessment. In completing the appropriate assessment, the Board considered, in particular, the following:

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

In completing the appropriate assessment, the Board accepted and adopted the appropriate assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the integrity of the aforementioned European Sites, having regard to the site's conservation objectives.

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

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

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

Conditions

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

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

2. The mitigation and monitoring measures outlined in the plans and particulars relating to the proposed development, including those set out in Section 5 of the Natura Impact Statement, shall be implemented in full or as may be required in order to comply with the following conditions. Prior to the commencement of development, details of a time schedule for implementation of mitigation measures and associated monitoring shall be prepared by the local authority and placed on file and retained as part of the public record.

Reason: In the interest of protecting the environment, the protection of European Sites and in the interest of public health.

3. The proposed development shall not be opened for use until such time as Irish Water have confirmed in writing that the foul drainage arising will be subject to adequate treatment within the municipal wastewater treatment plant/system prior to discharge. A copy of the written confirmation from Irish Water will be placed on file and retained as part of the public record.

Reason: In the interest of protecting the environment, the protection of European Sites and in the interest of public health

4. Prior to the commencement of development, the local authority, or any agent acting on its behalf, shall prepare in consultation with the relevant

statutory agencies, a Construction Environmental Management Plan (CEMP), incorporating all mitigation measures indicated in the Natura Impact Statement as well as incorporating all control measures set out in the submitted CEMP and demonstration of proposals to adhere to best practice and protocols. The CEMP shall include:

- (a) All mitigation measures indicated in the Natura Impact Statement.
- (b) All control measures set out in the CEMP submitted with the application proposals.
- (c) Hours of construction, and lights-out times during construction.
- (d) Details of protection measures to be employed to ensure that existing mature trees and vegetation will not be removed or impacted by construction.
- (e) Specific proposals as to how the measures outlined in the CEMP will be measured and monitored for effectiveness.

Reason: In the interest of protecting the environment and in the interest of public health.

5. Prior to the commencement of development, details of measures to protect fisheries and water quality of the Bay and the river systems shall be outlined and placed on file. Full regard shall be had to Inland Fisheries Ireland's published guidelines for construction works near waterways (Guidelines on Protection of Fisheries during Construction Works in and Adjacent to Waters, 2016). A programme of water quality monitoring shall be prepared in consultation with the contractor, the local authority and relevant statutory agencies and the programme shall be implemented thereafter.

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

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

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

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

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

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

8. Prior to commencement of development a Visitor Management Plan shall be prepared, generally in accordance with the commitments regarding same set out in the submitted Natura Impact Statement. A copy of the Visitor Management Plan will be attached to the file and retained as part of the public record. Upon opening of the facility here permitted the Visitor Management Plan will be implemented and will be subject to annual review prior to the commencement of each summer season to ensure new operators using the facility are identified and any updates to protection measures or guidance in relation to key ecological receptors are provided as necessary.

Reason: In the interests of nature conservation, protecting the environment and the proper planning and sustainable development of the area.

9. (a) A landscaping scheme generally in accordance with layout plans received shall be submitted to the file for public record. The landscaping scheme shall specify the nature and type of planting proposed and will

consist of indigenous species. The planting shall be carried out in accordance with the landscaping scheme and shall be completed within the first planting season following the substantial completion of external construction works.

(b) Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species.

Reason: In the interest of visual amenity

10. All lighting within the site shall be cowled to prevent overspill outside the site.

Reason: In the interests of clarity, protection of bats and visual and residential amenity.

11. The County Council and any agent acting on its behalf shall facilitate the preservation, recording, protection or removal of archaeological materials or features that may exist within the site. A suitably qualified archaeologist shall be appointed by the County Council to oversee the site set-up and construction of the proposed development and the archaeologist shall be present on-site during construction works.

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

Jimmy Green
Senior Planning Inspector
22/08/2022