



An  
Bord  
Pleanála

## Inspector's Report

### ABP-313419-22

---

<b>Development</b>	Importation of clean fill material and raising of existing ground levels to level off to provide an agricultural benefit. A Natura Impact Statement (NIS) accompanies this application.
<b>Location</b>	Drumadooey, Burnfoot, Co Donegal.
<b>Planning Authority</b>	Donegal County Council
<b>Planning Authority Reg. Ref.</b>	2150622
<b>Applicant(s)</b>	Shauna Lynch.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	To grant.
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Sean & Maria McCabe.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	17 <sup>th</sup> August 2022
<b>Inspector</b>	Deirdre MacGabhann

## Contents

1.0 Site Location and Description .....	4
2.0 Proposed Development .....	4
3.0 Planning Authority Decision .....	5
3.1. Decision .....	5
3.2. Planning Authority Reports .....	6
3.3. Prescribed Bodies .....	7
3.4. Third Party Observations .....	7
4.0 Planning History.....	7
5.0 Policy Context.....	8
5.1. Development Plan.....	8
5.2. Natural Heritage Designations .....	8
5.3. EIA Screening .....	8
6.0 The Appeal .....	9
6.1. Grounds of Appeal .....	9
6.2. Applicant Response .....	9
6.3. Planning Authority Response .....	11
6.4. Observations/Further Responses.....	11
7.0 Assessment.....	12
7.3. Flood Risk .....	13
8.0 Appropriate Assessment.....	15
8.1. Screening .....	15
8.3. Appropriate Assessment .....	19
8.4. Appropriate Assessment Conclusion .....	21

9.0 Recommendation..... 22

10.0 Reasons and Considerations ..... 22

## 1.0 Site Location and Description

- 1.1. The 2.153ha appeal site is situated at the southern end of the Inishowen Peninsula, County Donegal. It lies c.2.5km to the east of Burnfoot, in the townland of Drumadooey, approximately 1km to the west of the border with Northern Ireland.
- 1.2. The site comprises the southern part of two agricultural fields. To the west of the site is an agricultural lane which provides access to a farm building to the north of the site. To the south and south east the site is bounded by a hedgerow and the public road. To the east the site are two residential dwellings. To the north is agricultural land. To the south east of the site, on the eastern side of the public road is a residential dwelling, the appellant's property.
- 1.3. A watercourse runs along the field boundary separating the two agricultural fields that comprise the site (photograph 8). This watercourse discharges to a concrete pipe which passes under the public road (photograph 9) and through the garden of the appellant's property before discharging to the Skeogh-010 stream (photograph 11). This stream runs from north to south to the east of the appellants property. It crosses under a double arched stone bridge c.40m to the south of the appeal site and ultimately discharges into Inch Lake c.5.5km west of the appeal site. Inch Lake is designated as a Special Area of Conservation and Special Protection Area.

## 2.0 Proposed Development

- 2.1. The proposed development, as revised by way of further information submitted on the 22<sup>nd</sup> February 2022, comprises the importation of clean fill material raising of site to level it off for agricultural benefit. The works incorporate filling of lands, construction of temporary wheel wash, piping of existing watercourse and associated site works. Access to the site will be from the public road that bounds the western side of the appeal site.
- 2.2. The Site Layout Plan (drawing no. 2414 Site Layout 2 FI) indicates:
  - 70m sightlines in each direction (landowner consents provided) at the entrance to the site,
  - Piping of the stream that runs from north to south through the site,

- Provision of a new sheough along part of the south eastern boundary of the site, across two county roads (by new storm pipes) and via third party lands (consent provided), to the existing stream that runs to the south and east of the site (on the northern side of the double arched stone bridge). Sizing of sheough, storm pipes crossing the county road to be designed by engineer.
- Removal of existing boundaries on commencement of works and replacement with high board timber fence. It is stated in the letter accompanying the further information that this fence will be omitted and replaced with a post and wire fence.

2.3. A Natura Impact Statement (NIS) and Land Report are submitted with the planning application. The NIS concludes that the development individually or in combination with other plans or projects will have no significant adverse effects on the integrity of any European site if all mitigating measures outlined in the report (Table 6.1) are implemented.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. On the 7<sup>th</sup> April 2022 the planning authority decided to grant permission for the development subject to 9 conditions, including:

- C1(b) – All mitigation measures prescribed in Table 6.1 of the NIS to be implemented in full.
- C2 – Provision of 70m visibility splays in each direction to be provided at the entrance to the site prior to commencement.
- C3 – Removal of existing roadside boundary along southern road frontage, replacement with post and wire livestock proof fence and back planted with hedgerow of species native to area. Specifically precludes high board timber fencing along site boundaries.
- C5(a) - Prior to commencement (filling), full eastern and southern frontage to be piped with concrete pipes of adequate size or otherwise to be agreed with PA.

- C5(b) – Prior to commencement (filling), details of flood relief drainage works to be submitted to PA for written agreement and implementation of works to the satisfaction of the PA (unless PA carry out all or part of works).
- C8 - All sound trees, shrubs and hedgerow along the non-public road frontage to be retained.
- C9 – Site preparation works and construction to adhere to best practices and IFI standards (protection of fisheries during construction and development works).

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

- 25<sup>th</sup> May 2021 – Appropriate Assessment Determination – Concludes that the development on its own or in combination with other existing and planned development would not adversely affect the integrity of a European site (Lough Swilly SAC or Lough Swilly SPA).
- 26<sup>th</sup> May 2021 – Planning Report – Refers to the nature and location of the development, internal reports, reports by prescribed bodies and planning history of the site. It comments on the matters raised in observations and considers the merits of the development under a number of headings including principle, siting and design, access and surface water, public health and appropriate assessment. It considers the development consistent with the established use but raises concerns in respect of removal of existing site boundaries and replacement with stepped high board timber fence (rationale), vision lines and flood risk impact assessment. The report recommends further information in respect of these matters.
- 6<sup>th</sup> April 2022 – Planning Report (subsequent to FI) – Considers that the matters raised have been addressed. Recommends granting permission subject to conditions.

### 3.2.2. Other Technical Reports

- EE Roads (4<sup>th</sup> May 2021) – No objections. Report subsequent to FI (4<sup>th</sup> March 2022), no objections and states that all in order to proceed subject to condition in respect of storm issue to be finalised later.
- EE Roads and Transportation (30<sup>th</sup> April 2021) – Recommends further information, flood study.

### 3.3. Prescribed Bodies

- Inland Fisheries Ireland (IFI) (30<sup>th</sup> April 2021) – If permission is granted request specific reference to the mitigation measures in Table 6.1 of NIS in respect of site preparation and construction in accordance with ‘Guidelines on Protection of Fisheries During Construction Works in and Adjacent to Waters’.

### 3.4. Third Party Observations

3.4.1. There is one observation on file, made by the appellant:

- Work commenced in advance of planning permission.
- History of flooding of the public road and observer’s property (severe flooding in 2017).
- Further risk of flooding of observer’s property as a consequence of the development.
- No rationale for agricultural improvement, fields are already above public road level.

## 4.0 Planning History

- PA ref. 08/70778 – Planning application in respect of subject site, deemed withdrawn, for importation of clean fill to lands, raising ground levels by c.1.7m, for agricultural benefit.
- PA ref. 18/50123 – Planning permission granted in respect of dwelling to the south east of the appeal site for the relocation of existing vehicular entrance and construction of reinforced cast in situ concrete wall along part of the roadside boundary.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. The appeal site lies in an Area of High Scenic Amenity. These are described as landscapes of *'significant aesthetic, cultural, heritage and environmental quality that are unique to their locality and are a fundamental element of the landscape and identity of County Donegal. These areas have the capacity to absorb sensitively located development of scale, design and use that will enable assimilation into the receiving landscape and which does not detract from the quality of the landscape, subject to compliance with all other objectives and policies of the plan'*.
- 5.1.2. In Chapter 4, Economic Development, the Plan recognises the important role traditional activities such as farming play in the rural economy of the County. Policy ED-P-9 supports Farm Diversification Schemes, subject to compliance with criteria set out in Policy ED-P-14. This policy, Policy ED-P-14, states that any proposal for economic development use will be required to meet stated criteria (see attachments) which include that it is not located in an area at flood risk and/or will not cause or exacerbate flooding elsewhere.

### 5.2. Natural Heritage Designations

- 5.2.1. The appeal site lies upstream of and c.5km to the east of Lough Swilly Special Area of Conservation (SAC) (site code 002287) and c.2.5km to the east of Lough Swilly Special Protection Area (SPA) (site code 004075). [See attachments].

### 5.3. EIA Screening

- 5.3.1. Having regard to the modest nature and scale of the proposed development, it would not result in a real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required. Issues in respect of European sites can be dealt with under appropriate assessment.



## 6.0 The Appeal

### 6.1. Grounds of Appeal

#### 6.1.1. Grounds of appeal are:

- Severe flooding of property in 2017, after significant rainfall, as a result of runoff from applicant's field. Public road also flooded. Ground floor of property had significant water damage and uninhabitable. Property refurbished. No insurance against flooding/storm damage.
- Absence of flood risk assessment (FRA). Concerns, therefore, that lands will be flooded again. House also has Mica and will need to be demolished. Do not wish for rebuilt house to be affected by flooding. Need indemnity from neighbours and council.
- Inadequate scanned documentation on PA website. No details of proposed works (size of pipes etc), proposed elevation of field.
- Illegal dumping that has taken place in advance of planning application.
- Underground pipe under appellant's land from neighbours open stream to the east of appellant's boundary and from applicant's land where a piped road crossing exists. Both exit at stream on appellant's land. Manhole at crossing adjacent to applicant's land. No evidence of any legal entitlement for these on the appellant's land.
- Current pipe not fit for purpose, suitability of proposed works and risk of future flooding of lands.

6.1.2. The applicant sought an oral hearing in respect of the appeal. On the 31<sup>st</sup> May 2022, the Board decided that there was sufficient written evidence on file to enable an assessment of the issues raised and that an oral hearing should not be held.

### 6.2. Applicant Response

#### 6.2.1. The applicant makes the following response to the appeal:

- Decision - The decision by the planning authority is considered reasonable and in response to condition no. 5(b) a report on flood relief drainage works

has been completed by a suitably qualified Civil Engineer and has been submitted to the PA (Drainage Summary Report, Appendix B).

- Development plan context – Objective ED-P-9 of the Donegal County Development Plan 2018-24 supports farm diversification.
- Adequacy of works/absence of flood risk assessment – Details of flood relief works submitted to PA (Drainage Summary Report).
- Access to documents, information on pipe sizes – All documents and drawings submitted have been scanned in full on PA website, including Site Sections (included with response documents is Site Layout Plan 3 – Appendix A). Pipe sizes were conditioned to be submitted to PA.
- Unauthorised activity – Applicant accepts undertook unauthorised development, was unaware of need for permission. When issued with Warning letter, removed small bit of fill placed on site and prepared planning application.
- Easement for existing underground storm pipe – This pipe has been in existence for several years and agreement would have been sought from previous landowners.
- Current pipe not fit for purpose – Acknowledge that current pipe may not be fit for purpose and are proposing a new system of storm drainage along eastern site boundary to carry surface waters from site and exit the site at south eastern corner. The Drainage Summary Report confirms that the new pipe installed will ensure the stormwater on the proposed site can still discharge if there are issues with storm waters discharging via the existing pipe.
- Indemnity – It is unfair to request indemnify against flooding that may occur in the future. PA has conditioned that the works are designed by a suitably qualified person and agreed by PA prior to commencement. The proper design of works will prevent flooding and will rule out need for indemnity.
- Conclusion – No additional loadings of surface water within the existing drain will occur as a result of the proposed development. The applicant has received verbal confirmation that the proposals are acceptable to the PA.

### 6.3. Planning Authority Response

6.3.1. The planning authority make the following response:

- Existing situation is one in which flooding risk arises.
- It is arguable that a right only exists that development will not aggravate existing situation, as opposed to remedy it.
- Storm water from the appeal site exits the site via a culvert that runs under the public road into the adjoining property. It has insufficient capacity in extreme rainfall events. In such circumstances, water builds up on the application side of the culvert and if sustained long enough, migrates across the public road, instead of under it, and into the residential property on the other side of the road. Applicant's agent met with Council Engineer prior to responding to FI request for Flood Risk Impact Assessment. Proposals subsequently made for an overflow escape pipe instead of submitting FRI. Roads Engineer considered proposals acceptable, with exact details to be agreed by condition. Board is asked to apply similar condition should it decide to uphold the PA decision. If permission is granted it will reduce the risk of flooding of the residential property across the road by providing additional outflow capacity.

### 6.4. Observations/Further Responses

6.4.1. On the 2<sup>nd</sup> June 2022 and subsequently 15<sup>th</sup> June 2022, the Board circulated a copy of the applicant's response to the appeal to the appellant and planning authority, with submissions/observations due by the 11<sup>th</sup> July 2022 and 5<sup>th</sup> July 2022 respectively.

The following additional comments are made on the appeal:

- Appellant – Appellant's site and adjacent lands are situated in an area which is subject to flooding. Proposed works would have potential to significantly alter flood pathways and impact flood risk to surrounding areas. No site specific flood risk assessment (SSFRA) carried out. Unclear if OPW section 50 consent required for culverting of an open watercourse has been applied for. Drainage Summary Report:
  - Estimation of peak flows uses outdated flood estimation methodology.

- Hydraulic assessment is overly simplistic and not proportionate to the complexity of the hydraulic processes at the site.
- No assessment of the effect of flood flows, which will result from works, on flooding downstream.

In accordance with the OPWs' guidelines (The Planning System and Flood Risk Management), a Stage 3 SSFRA should have been carried out, including to ensure that residual risks are sufficiently quantified and successfully managed. In the absence of a SSFRA, to determine a planning application favourably at the site is premature, in particular the risk of flooding elsewhere.

- Planning authority – Whilst the objectors are understandably doing their best to protect their property, a refusal of permission would see the current scenario where flooding occurs at heavy rainfall event continue. A grant of permission should secure implementation of a remedy that would protect the objector's property.

## 7.0 Assessment

7.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, and inspected the site, and having regard to relevant local and national policies and guidance, I consider that the main issue in this appeal is flood risk.

7.2. In addition, I comment briefly on the following matters briefly below:

- Availability of documents. This is a matter for the planning authority. However, I note that all plans and drawings submitted with the planning application are available on the planning authority's website and that the applicant has had the opportunity to comment on these in the appeal.
- Easements and indemnities. These are legal matters which lie outside the scope of this appeal.
- Unauthorised development. This is a matter for the planning authority. I note that the application comes forward on the foot of enforcement action.

- Section 50 consent. This matter is dealt with by another code and therefore lies outside the scope of this appeal.

### 7.3. Flood Risk

- 7.3.1. From my inspection of the appeal site and information on file, it is evident that the stream that divides the appeal site drains the low lying areas of the site and the more elevated land to the north of the site. The stream discharges to a stated 450mm pipe at the southern end of the site. This pipe discharges under the public road (L-1931-2) and appellant's property, to the stream that runs to the eastern side of the appellant's property (Skeoge\_010). From the information on file, I understand that this discharge point is the pipe shown in photograph 11 (see attachments) and in the appellant's photograph (top left).
- 7.3.2. With the proposed development, the fill material will raise the low lying areas of the site and reduce the current flood plain that is associated with it and therefore increase the volume of water discharging from the site in high rainfall events. Further, the culverting of the existing open drain/stream will increase the velocity of flows.
- 7.3.3. The applicant's Drainage Summary Report sets out the following calculations:
- Catchment area for the stream that passes through the appeal site is c.29.14ha.
  - Greenfield run off rate (1 in 100 year) is 192.49l/s.
  - Discharge capacity of 450mm concrete pipe with gradient of 1:134 is 323l/s.
  - Greenfield rate is < discharge capacity, therefore pipe should discharge freely.
  - Discharge is impeded by double arched stonework bridge 40m downstream of where concrete pipe discharges to Skeoge\_010 i.e. during previous extreme rainfall events flow in stream has surcharged at this bridge restricting discharge from the 450mm pipe.
- 7.3.4. In order to remedy the current situation, the Drainage Summary Report proposes a second stormwater drainage channel to provide an additional discharge point on the downstream side of the bridge i.e. a pipe from the appeal site along the northern side

of the public road to discharge to the Skeogh\_010 downstream of the bridge. Details are:

- Proposed pipe size for the culverted stream (within the appeal site) is 1200mm diameter. This is stated to provide a discharge capacity equal to or greater than the minimum cross section discharge capacity of the existing stream.
- Construction of a swale along the proposed southern site boundary to intersect where the existing stream discharges to the 450mm pipe. Swale to continue along site's southern boundary and flow into a new 900mm diameter culvert under the L-7631-1 local road, join swale in third party lands into newly constructed 900mm diameter culvert under private access lane, with discharge via 900mm diameter pipe 5-10m downstream of arched bridge (see Site Layout Plan, drawing no. 2414 Site Layout 3, Site Plan, drawing no. F2765-01 and Drainage & Site Details Plan, drawing no. F2765-02).

7.3.5. The applicant's proposals to redirect water discharged from the appeal site and wider catchment (which the ditch serves) are not unreasonable in that by redirecting flows along the northern side of the public road, to discharge downstream of the arched bridge, they would provide flood waters with an alternative route from the appeal site, to avoid overtopping of the public road and flooding of the appellant's property.

7.3.6. However, I am concerned that the Drainage Summary Report is confined to the immediate area of the site and does not examine the consequence of the proposed development downstream of the site. In this regard I note that there are residential dwellings close to the banks of the Skeoge\_010 immediately downstream of the proposed discharge point (photograph 14). There is no information on the capacity of the stream at this point, or likely flow levels in storm conditions or information on whether or not increased discharge at this point would exacerbate surcharging upstream of the bridge and flood water arising on the appellant's lands directly from Skeoge\_010.

7.3.7. A key principle of the Government's Guidelines for Planning Authorities on Flood Risk Management is to avoid new development that increases flood risk elsewhere, including that which may arise from surface water runoff. I am not satisfied that the

applicant has adequately demonstrated the consequences for downstream sites of the proposed development. The Board may wish to seek further information in this regard or to refuse permission for the development on this ground.

## 8.0 **Appropriate Assessment**

### 8.1. **Screening**

#### *Compliance with Article 6(3) of the Habitats Directive*

- 8.1.1. The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U of the Planning and Development Act 2000 (as amended) are considered fully in this section.
- 8.1.2. The applicant has submitted a Natura Impact Assessment (March 2021) It describes the proposed development, identifies European sites that may be affected by the development and assesses the likely effect of the development on these. With the implementation of mitigation measures the report concludes that the development, individually or in combination with other plans and projects, would have no significant adverse effects on the integrity of any European site.
- 8.1.3. Having reviewed the document I am satisfied that the information allows for a complete examination and identification of any potential significant effects of the development, alone, or in combination with other plans and projects on European sites.

#### *Brief Description of the Development*

- 8.1.4. The applicant provides a description of the project in section 1.1.1 of the NIS. It comprises the importation of clean fill material to recontour and improve agricultural lands and includes a new access point and wheel wash and arrangements for removal of site boundaries and replacement with post and rail fence and hedgerow. Approximately 24,000m<sup>3</sup> of soil and stone will be imported to regrade the site.

#### *Submissions and Observations*

- 8.1.5. None.

#### *European Sites*

- 8.1.6. The appeal site is situated upstream of two European sites and hydrologically connected to these, Lough Swilly SAC and Lough Swilly SPA (see Table 1). Other sites can be screened out on the basis of distance and lack of connectivity (see Table 3.1 of NIS).
- 8.1.7. Lough Swilly SAC is a large site, situated in the northern part of Co. Donegal, comprising the inner part of Lough Swilly. It extends from below Letterkenny to just north of Bunrana. Lough Swilly is a long sea lough, cutting through a variety of metamorphic rocks on the west side of Inishowen. The main rivers flowing into the site are the Swilly, Lennan and Crana. At low tide, extensive sand and mudflats are exposed, especially at the mouths of the Swilly and Lennan rivers. The site is estuarine in character, with shallow water and intertidal sand and mudflats being the dominant habitats. The site is an SAC selected for habitats and species shown below.
- 8.2. The SPA comprises the inner part of Lough Swilly from just east of Letterkenny northwards to Killygarvan (c. 2 km north of Rathmullan) on the west side and to c. 2 km south of Bunrana on the east side; it includes the adjacent Inch Lough. Also forming part of the site is a series of improved pasture and arable fields on the south side of Lough Swilly between Farsetmore and Inch Levels – these are of importance to geese and swans. It includes sections of the estuaries of the River Swilly, the River Lennan and the Isle Burn and the predominant habitat is a series of extensive sand and mud flats which are exposed at low tide. Other habitats represented in the site are salt marshes, lagoons (at Inch Lough and Blanket Nook), rivers and streams, sand and shingle beaches, lowland wet and dry grasslands, drainage ditches, reedbeds and scrub. The site supports an excellent diversity of waterfowl species in autumn and winter as well as breeding terns, gulls and ducks. The shallow waters provide suitable habitat for grebes and diving duck, while the intertidal flats are used by an abundance of wildfowl and waders. At high tide, the duck and wader species roost on the salt marshes and shorelines, with some species moving to the adjacent pasture and arable fields. The combination within this site of extensive feeding areas and safe resting and roosting sites makes this one of the most important wetlands in the north-west of the country for wintering waterfowl. Qualifying interests of the site are shown below.



**Table 1: Summary Table of European Sites within a possible zone of influence of the proposed development**

European Site (code)	List of Qualifying interest /Special conservation Interest	Distance (Km)	Connections	Considered further in screening Y/N
Lough Swilly SAC (002287)	<ul style="list-style-type: none"> <li>• Estuaries [1130]</li> <li>• Coastal lagoons [1150]</li> <li>• Atlantic salt meadows (Glauco-Puccinellietalia maritimae) [1330]</li> <li>• Molinia meadows on calcareous, peaty or clayey-silt-laden soils (Molinion caeruleae) [6410]</li> <li>• Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0]</li> <li>• Lutra lutra (Otter) [1355]</li> </ul>	4.92km	Hydrological connection.	Yes.
Lough Swilly SPA (004075)	<ul style="list-style-type: none"> <li>• Great Crested Grebe (Podiceps cristatus) [A005]</li> <li>• Grey Heron (Ardea cinerea) [A028]</li> <li>• Whooper Swan (Cygnus cygnus) [A038]</li> <li>• Greylag Goose (Anser anser) [A043]</li> <li>• Shelduck (Tadorna tadorna) [A048]</li> <li>• Wigeon (Anas penelope) [A050]</li> <li>• Teal (Anas crecca) [A052]</li> <li>• Mallard (Anas platyrhynchos) [A053]</li> <li>• Shoveler (Anas clypeata) [A056]</li> <li>• Scaup (Aythya marila) [A062]</li> <li>• Goldeneye (Bucephala clangula) [A067]</li> <li>• Red-breasted Merganser (Mergus serrator) [A069]</li> <li>• Coot (Fulica atra) [A125]</li> </ul>	2.45km	Hydrological connection.	Yes.

	<ul style="list-style-type: none"> <li>• Oystercatcher (Haematopus ostralegus) [A130]</li> <li>• Knot (Calidris canutus) [A143]</li> <li>• Dunlin (Calidris alpina) [A149]</li> <li>• Curlew (Numenius arquata) [A160]</li> <li>• Redshank (Tringa totanus) [A162]</li> <li>• Greenshank (Tringa nebularia) [A164]</li> <li>• Black-headed Gull (Chroicocephalus ridibundus) [A179]</li> <li>• Common Gull (Larus canus) [A182]</li> <li>• Sandwich Tern (Sterna sandvicensis) [A191]</li> <li>• Common Tern (Sterna hirundo) [A193]</li> <li>• Greenland White-fronted Goose (Anser albifrons flavirostris) [A395]</li> <li>• Wetland and Waterbirds [A999]</li> </ul>			
--	---	--	--	--

### *Conservation objectives*

8.2.1. Conservation objectives are:

- Lough Swilly SAC (site code 002287) – To maintain or restore the favourable conservation condition of the qualifying interest, by reference to specified attributes, measures and targets.
- Lough Swilly SPA (site code 004075) – To maintain or restore the favourable conservation condition of the qualifying interest, by reference to specified attributes, measures and targets

### *Identification of Likely Effects*

8.2.2. The appeal site is reasonably removed from downstream European sites i.e. c.5km from Lough Swilly SAC and c.2.5km from Lough Swilly SPA. At this distance, with the effects of settlement, dispersion and dilution adverse effects on water quality in the European sites may not arise. However, as significant earthworks and instream

works are proposed, the applicant's NIS adopts a precautionary approach and, in the absence of mitigation measures, assumes a likelihood of adverse effects arising from the following features of the development. This approach is not unreasonable.

- Uncontrolled pollution of surface water during site clearance and infilling of lands, for example, excessive siltation of surface water from earthworks or contamination by hydrocarbons (accidental spillages from heavy machinery). This may have direct adverse effects on qualifying interests of the European site, for example with impacts on community distribution or condition, or indirect effects arising from adverse effects on supporting habitat, for example, affecting bird species of conservation interest.
- Accidental importation of invasive species to the site with imported materials.

8.2.3. There is also potential for in combination effects, with other development in the area, having an adverse effect on water quality. Effects of disturbance are unlikely due to the distance of the site from European sites.

#### *Mitigation measures*

8.2.4. 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.

#### *Screening Determination*

8.2.5. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually (or in combination with other plans or projects) could have a significant effect on European Site Nos. 002287 and 004075, in view of the site's Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is therefore required.

### **8.3. Appropriate Assessment**

8.3.1. The following sites are subject to Appropriate Assessment:

- Lough Swilly SAC (site code 002287).
- Lough Swilly SPA (site code 004075).

- 8.3.2. A description of the sites and their Conservation and Qualifying Interests/Special Conservation Interests, including any relevant attributes and targets for these sites, are set out in the NIS and are summarised above as part of my assessment.

*Aspects of the Proposed Development with potential for Adverse Effects.*

- 8.3.3. As stated above, the proposed development that could adversely affect the conservation objectives of the European sites by way of water pollution from increased siltation or hydrocarbons in surface water runoff. There is also potential for importation of invasive species (and risk of downstream effects) and in combination effects, with other development in the area, having an adverse effect on water quality.

- 8.3.4. Table 5.1 of the NIS adopts a precautionary approach and identifies qualifying interests in proximity to the appeal site that could be affected by water pollution (see also Figure 3.3). These include for Lough Swilly SAC estuaries [1130], coastal lagoons [1150], Molina meadows [6410] and Otter [1355] and for Lough Swilly SPA, the species that utilise these habitats i.e. Shoveler [A056], Teal [A052], Widgeon [A050], Mallard [A053], Heron [A028], Scaup [A062], Goldeneye [A067], Dunlin [A149], Knot [A143], Common Coot [A125], Oystercatcher [A130], Common Gull [A182], Black headed Gull [A179], Red breasted Merganser [A069], Curlew [A160], Great crested Grebe [A005], Common Tern [A193], Sandwich Tern [A191], Shelduck [A048], Greenshank [A164] and Redshank [A162].

*Mitigation Measures*

- 8.3.5. Mitigation measure for site clearance, infilling and restoration to agricultural use are set out in Table 6.1 of the NIS. These include appointment of an Ecological Clerk of Works, erection of silt fences, construction of attenuation pond (with run off from each cell directed to pond – see Figure 3.1 of Land Report), progressive sectioning of pipework, provision and use of wheel wash, appropriate storage and use of pollutants, arrangements for refuelling etc., sourcing of material from an area that is free of invasive species, management of dust generating activities and rapid reseeded of regraded works.
- 8.3.6. Mitigation measures are reasonable having regard to the nature and scale of the proposed development. If implemented in full, I am satisfied that the proposed development would not give rise to adverse effects on downstream water quality.

*In combination Effects*

- 8.3.7. Section 4.7 of the NIS considers in combination effects. It identifies developments in the area of the site that may give rise to adverse effects on water quality. Having regard to the nature of the permissions granted, the conditions associated with these and the completed status of developments, the risk of in combination effects is ruled out.
- 8.3.8. Given the rural location of the proposed development, limited development in the area of the site and conditions imposed by way of permission granted, this conclusion is not unreasonable.

*Integrity Test*

- 8.3.9. Following the appropriate assessment and the consideration of mitigation measures, I am able to ascertain with confidence that the project would not adversely affect the integrity of Lough Swilly SAC or Lough Swilly SPA in view of the sites Conservation Objectives. This conclusion has been based on a complete assessment of all implications of the project alone and in combination with plans and projects.

**8.4. Appropriate Assessment Conclusion**

- 8.4.1. The proposed development has been considered in light of the assessment requirements of Sections 177U and 177V of the Planning and Development Act 2000 as amended.
- 8.4.2. Having carried out screening for Appropriate Assessment of the project, it was concluded that it may have a significant effect on Lough Swilly SAC (002287) and SPA (004075). Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of these sites in light of their conservation objectives.
- 8.4.3. Following an Appropriate Assessment, it has been ascertained that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the European sites, nos. 002287 and 004075, or any other European site, in view of the site's Conservation Objectives. This conclusion is based on a complete assessment of all aspects of the proposed project and proposed mitigation measures and there is no reasonable doubt as to the absence of adverse effects.

## 9.0 Recommendation

- 9.1. I recommend that the Board seek a full Flood Risk Assessment from the applicant or refuse permission for the development for the reasons and considerations set out below.

## 10.0 Reasons and Considerations

Having regard to the location of the site in an area which is prone to flooding, the arrangements for discharging of flood water and on the basis of the submissions made in connection with the planning application and appeal, the Board is not satisfied that the proposed development would not give rise to an increased risk of flooding of property in the vicinity. The proposed development would, therefore, be prejudicial to public health and safety and contrary to the proper planning and sustainable development of the area.

---

Deirdre MacGabhann  
Planning Inspector

8<sup>th</sup> September 2022