



An
Bord
Pleanála

Inspector's Report ABP-314252-22

Development	Erection of a dwelling house with installation of a new wastewater treatment system and all other associated site development works.
Location	Downies, Downings, Letterkenny PO, Co. Donegal.
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	2250136
Applicant(s)	Sonia Cannon
Type of Application	Permission
Planning Authority Decision	Grant permission
Type of Appeal	Third Party
Appellant(s)	Jonathan Barry
Observer(s)	None.
Date of Site Inspection	2 nd February 2023.
Inspector	Barry O'Donnell

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 0.22ha and is located in the Downies, to the east of Na Dúnaibh (Downings) in north County Donegal. It consists of a greenfield plot that is accessed from the L-5092 and which is adjacent to the coast.
- 1.2. The site is below the level of the L-5092 and forms part of a larger field of improved grassland. It is bounded by a low level stone wall to the east, north and west.
- 1.3. The access is shared with an existing house to the north and a house undergoing construction to the south. It has a stone base and incorporates a gradient that rises from south to north.

2.0 Proposed Development

- 2.1. The proposed development entailed within the public notices comprises the construction of a house and wastewater treatment system, together with associated site works.
- 2.2. A Natura Impact Statement was submitted at the Additional Information stage.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority granted permission on 7th July 2022, subject to 16 No. conditions.
 - Condition 2 restricted occupation of the house for a period of 7 years.
 - Condition 3(a) required the access road to have a gradient not exceeding 10% generally and 4% for the first 5m from the edge of the public road.
 - Condition 3(b) required the house to be rotated by 30 degrees clockwise around a point to the western extremity of that proposed.
 - Condition 3(c) required that a finished floor level of 15.5m should be provided.
 - Condition 3(d) required the extent of grass embankment to be reduced to accommodate the revised orientation of the house.

- Condition 4 required provision of visibility splays of 2.4m x 90m in both directions from the site access.
- Condition 10 required that the access road should not be black topped and should not be defined by concrete kerbing. The condition required that the road should be surfaced with natural or coloured aggregate gravel and should incorporate a natural edge finish.
- Condition 15 required payment of a financial contribution of €1,714.53 in accordance with the adopted development contribution scheme.
- Condition 16(a) required all mitigation incorporated within the NIS to be implemented.
- Condition 16(b) required incorporation of a silt fence and silt berm, in accordance with details provided with the application.
- Condition 16(c) required all yard run-off to discharge to a sump and to pass through an interceptor prior to discharge to a watercourse.

3.2. Planning Authority Reports

3.2.1. Planning Reports dated 24th March 2022 and 1st July 2022 have been provided. The first report states that the site is located in a structurally weak rural area and expresses satisfaction that a housing need had been demonstrated, in view of a letter of Bona Fide letter from a County Councillor. Concerns are expressed regarding the proposed layout, with reference to a proposed embankment, and the gradient of the proposed access. The report also states that Stage 2 Appropriate Assessment is required. A request for additional information is requested in view of these identified issues. The second report followed receipt of the AI response. It summarises and responds to the individual AI response items and recommends that permission be granted, subject to 16 No. conditions, which are consistent with those attached to the Planning Authority's decision.

3.2.2. Other Technical Reports

A handwritten **Municipal District Engineer** report dated 4th March 2022 has been provided, which recommends conditions in relation to surface water drainage arrangements in the area of the site access.

3.3. Prescribed Bodies

- 3.3.1. Irish Water made a submission on 8th March 2022, expressing no objection to the development subject to 2 No. recommended conditions.
- 3.3.2. The Department of Housing, Local Government and Heritage made a submission on 1st March 2022, advising of the potential for significant effects on Tranarossan and Melmore Lough SAC and other protected habitats and species protected under the Wildlife Acts. The submission advised that Appropriate Assessment should be undertaken.

3.4. Third Party Observations

- 3.4.1. The Planning Report indicates no third party observations were received on the application.

4.0 Planning History

- 4.1. I did not encounter any recent planning records pertaining to the site.

Relevant recent nearby planning records

- 4.2. There are extensive recent planning records relating to housing in the surrounding area, including: -

2250917: *Site further north along the L-5092* - Permission was granted by the Planning Authority on 20th October 2022 for the construction of a house, garage and wastewater treatment system and associated site works.

2152181: *Site to the north-east on the L-1012* - Permission was granted by the Planning Authority on 29th April 2022 for the construction of a house and garage.

2150816: *Site to the north-east on the L-1012* – Permission was granted by the Planning Authority on 2nd November 2021 for the construction of a house, garage and wastewater treatment system and associated site works.

2051847: *Site to the north on the L-5112* - Permission was granted by the Planning Authority on 31st May 2021 for the construction of a house, garage and wastewater treatment system and associated site works.

5.0 Policy Context

5.1. Donegal County Development Plan 2018-2024

5.1.1. The site is in a rural, unzoned part of County Donegal. Map 6.2.1 'Rural Area Types' identifies that the site is in a 'structurally weak area.'

5.1.2. Section 6.3 contains the rural housing strategy and of relevance to the appeal, Policy RH-P-4 states that in structurally weak areas, proposals for new one-off housing from applicants with a need for a dwelling house (urban or rural generated need) will be considered, provided applicants demonstrate that they can comply with all other relevant policies of this Plan, including RH-P-1 and RH-P-2. Relevant rural housing policies include: -

5.1.3. Relevant rural housing policies and objectives are: -

RH-P-1: It is a policy of the Council that the following requirements apply to all proposals for rural housing:

1. Proposals for individual dwellings shall be subject to the application of Best Practice in relation to the siting, location and design of rural housing as set out in Appendix 4 and shall comply with Policy RH-P-2;
2. Proposals for individual dwellings shall be sited and designed in a manner that enables the development to assimilate into the receiving landscape and that is sensitive to the integrity and character of rural areas as identified in Chapter 7 and Map 7.1.1 of this Plan. Proposals for individual dwellings shall also be located in such a manner so as not to adversely impact on Natura 2000 sites or other designated habitats of conservation importance, prospects or views including views covered by Policy NH-P-17;
3. Any proposed dwelling, either by itself or cumulatively with other existing and/or approved development, shall not negatively impact on protected areas defined by the North Western International River Basin District plan;
4. Site access/egress shall be configured in a manner that does not constitute a hazard to road users or significantly scar the landscape, and shall have regard to Policy T-P15;

5. Any proposal for a new rural dwelling which does not connect to a public sewer or drain shall provide for the safe and efficient disposal of effluent and surface waters in a manner that does not pose a risk to public health and accords with Environmental Protection Agency codes of practice;
6. Proposals for individual dwellings shall be subject to the flood risk management policies of this Plan;
7. In the event of a grant of permission the Council will attach an Occupancy condition which may require the completion of a legal agreement under S47 of the Planning and Development Act 2000 (as amended).

RH-P-2: It is a policy of the Council to consider proposals for a new rural dwelling which meets a demonstrated need (see Policies RH-P-3–RH-P-6) provided the development is of an appropriate quality design, integrates successfully into the landscape, and does not cause a detrimental change to, or further erode the rural character of the area. In considering the acceptability of a proposal the Council will be guided by the following considerations:-

1. A proposed dwelling shall avoid the creation or expansion of a suburban pattern of development in the rural area;
2. A proposed dwelling shall not create or add to ribbon development (see definitions);
3. A proposed dwelling shall not result in a development which by its positioning, siting or location would be detrimental to the amenity of the area or of other rural dwellers or would constitute haphazard development;
4. A proposed dwelling will be unacceptable where it is prominent in the landscape; and shall have regard to Policy T-P-15;
5. A proposed new dwelling will be unacceptable where it fails to blend with the landform, existing trees or vegetation, buildings, slopes or other natural features which can help its integration. Proposals for development involving extensive or significant excavation or infilling will not normally be favourably considered nor will proposals that result in the removal of trees or wooded areas beyond that necessary to accommodate the development. The extent of excavation that may be considered will depend upon the circumstances of the case, including the extent to which the development of the

proposed site, including necessary site works, will blend in unobtrusively with its immediate and wider surroundings (as elaborated below).

RH-P-4: It is a policy of the Council to consider proposals for new one-off housing within structurally weak rural areas from any prospective applicants with a need for a dwelling house (urban or rural generated need), provided they demonstrate that they can comply with all other relevant policies of this Plan, including RH-P-1 and RH-P-2. New holiday home development will not be permitted in these areas.

RH-O-3: To ensure that new residential development in rural areas provides for genuine rural need.

RH-O-5: To promote rural housing that is located, designed and constructed in a manner that is sustainable and does not detract from the character or quality of the receiving landscape having particular regard to the Landscape Classifications illustrated on Map 7.1.1 and contained within Chapter 7 of this Plan.

5.1.4. According to Map 7.1.1 'Scenic Amenity' the site is in an area of 'Especially High Scenic Amenity'. Section 7.1.1 of the development plan discusses landscape designations. For areas of Especially High Scenic Amenity it states that the areas '*are sublime natural landscapes of the highest quality that are synonymous with the identity of County Donegal. These areas have extremely limited capacity to assimilate additional development.*'

5.1.5. Policies NH-P-6 is relevant to the development. It states: -

NH-P-6: It is a policy of the Council to protect areas identified as Especially High Scenic Amenity on Map 7.1.1: 'Scenic Amenity'. Within these areas, only developments assessed to be of strategic importance or developments that are provided for by policy elsewhere in this Plan shall be considered.

5.2. National Planning Policy Framework

5.2.1. National Policy Objective 19 is of relevance to the proposed development. It requires the following:

'Ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and elsewhere:

- *In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements;*
- *In rural areas elsewhere, facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements’.*

5.3. Sustainable Rural Housing Guidelines for Planning Authorities

- 5.3.1. The Guidelines identify a number of rural area typologies and accompanying Map 1 provides an indicative outline of these area typologies. According to this indicative map, the subject site is in a ‘predominantly dispersed settlement area’. It is noted from the Guidelines that this map is an indicative guide to the rural area types only and that the development plan process should be used to identify different types of rural area.
- 5.3.2. The Guidelines require a distinction to be made between urban and rural generated housing needs, in the different rural area types. In relation to the identification of people with rural generated housing needs, the Guidelines refer to ‘Persons who are an intrinsic part of the rural community’ and ‘Persons working full-time or part-time in rural areas. Of relevance to this appeal, ‘Persons who are an intrinsic part of the rural community’ are identified as having “*spent substantial periods of their lives, living in rural areas as members of the established rural community. Examples would include farmers, their sons and daughters and or any persons taking over the ownership and running of farms, as well as people who have lived most of their lives in rural areas and are building their first homes.*”

5.4. Natural Heritage Designations

- 5.4.1. The site is not located within a designated European site. Tranarossan and Melmore Lough SAC (Site Code 000194) lies to the south and encroaches to within c.30m of the site.

5.4.2. Tranarossan and Melmore Lough is also designated as a proposed Natural Heritage Area (Site Code 000194) and its boundary is identical to the SAC boundary in the area of the site.

5.5. EIA Screening

5.5.1. An Environmental Impact Assessment Screening report was not submitted with the application.

5.5.2. Class (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:

- Construction of more than 500 dwelling units,

5.5.3. The proposed development consists of one house, the installation of a wastewater treatment system and associated site works. It falls well below both of the applicable threshold for mandatory EIA, as set out above.

5.5.4. In respect of sub-threshold EIA, having regard to the limited nature and scale of the proposed development, it is considered that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The grounds of appeal can be summarised as follows: -

- The development is contrary to the development plan, which seeks to safeguard and protect the landscape and seascape, by ensuring that new development does not impact on character or integrity.
- The development would be an intrusion in the landscape.
- The proposed development lies at the entrance to an area of especially high scenic amenity.

- Construction on the seaward side of the Atlantic Drive was prohibited 30 years ago and is accepted by local people.
- The development will lead to other similar developments.
- Additional development should not be considered on the seaward side of coastal roads and not in areas of especially high scenic amenity or special areas of conservation.
- Corncrake were observed in the area in the past. If suitable conditions are restored, it is predicted they would return to the area.
- An oral hearing was requested.

6.2. Applicant Response

- 6.2.1. The applicant responded to the appeal on 30th August 2022. The submission is lengthy and contains numerous references to case law and legislation. I have given consideration to the contents of the submission in my assessment of the appeal.

6.3. Planning Authority Response

- 6.3.1. The Planning Authority made a submission on the appeal on 31st August 2022, advising that issues raised within the appeal were addressed in its assessment of the application.

6.4. Observations

- 6.4.1. None.

6.5. Prescribed Bodies

- 6.5.1. The appeal was circulated to The Heritage Council and An Taisce.

7.0 Assessment

- 7.1. Having inspected the site and considered the contents of the appeal in detail, I consider the main planning issues to be considered are:

- Compliance with the rural housing strategy,
- Design and residential amenity,
- Access,
- Drainage,
- Other issue; and
- Appropriate assessment.

7.2. Compliance with the Rural Housing Strategy

- 7.2.1. The subject site is in a rural area designated by the development plan as a 'structurally weak area.' The designation encompasses all of the rural area surrounding the urban area of Na Dúnaibh (Downings) and much of the northern part of the Fanad peninsula. The site is also located in a gaeltacht area. In such locations development plan policy RH-P-4 states that proposals for one-off housing will be facilitated, for both rural and urban generated need, subject to other planning policies.
- 7.2.2. NPO19 of the National Planning Framework seeks, for rural areas outside of those under urban influence, to facilitate single houses in the countryside subject to the proviso '*having regard to the viability of smaller towns and settlements*'.
- 7.2.3. The Rural Housing Guidelines also state that in these areas, rural housing proposals should be accommodated, subject to good practice in matters such as design, location and the protection of important landscapes and any environmentally sensitive areas.
- 7.2.4. Notwithstanding the site's location in a structurally weak area and the development plan's favourable approach to rural housing proposals, I have concerns regarding the extent of one-off housing development in the area. Na Dúnaibh (Downings) is identified as a Layer 3 settlement by the development plan Core Strategy and the surrounding rural area has evidently experienced considerable pressure for rural housing. The Planning Authority's GIS planning records database indicates extensive grants of permission for proposed housing in the area, including a number of recent grants of permission which I have listed in Section 4. I acknowledge that the NPF supports rural housing development in areas not under urban influence, but the support is subject to the important proviso '*having regard to the viability of smaller*

towns and settlements'. In my view, the proposed development contributes to an unsustainable pattern of development in the area.

- 7.2.5. Regarding the matter of rural housing need, I note that the applicant provided a Supplementary Rural Housing Need Application Form with the application, which states that they have lived in the area for 20+ years and in this regard relies on a Bone Fide letter from an Elected Member of Donegal County Council dated 25th January 2022 , which asserts the applicant's compliance with development plan policies RH-P-1, RH-P-2 and RH-P-4. The Planning Authority deemed this to constitute adequate demonstration of a rural housing need.
- 7.2.6. From the information provided, I do not consider the applicant has demonstrated any rural housing need. I do not consider a letter of support from an Elected Member to be sufficient evidence to this effect.
- 7.2.7. To conclude, notwithstanding its designation as a structurally weak area, Na Dúnaibh (Downings) has experienced considerable pressure for rural housing in the past and I consider the development of further housing, without adequate justification, serves to extend an unsustainable pattern of development in the area and serves to undermine the delivery of the development plan core strategy. I thus recommend that permission be refused on this basis.
- 7.2.8. Regarding claims within the appeal that construction on the seaward side of the Atlantic Drive is prohibited, I would advise the Board that I am unaware of any such provision within the development plan. The development falls to be considered on its merits, in particular rural housing and siting and design policies, which I am satisfied deal with the appellant's substantive concern.

7.3. **Design and Residential Amenity**

- 7.3.1. The house has a contemporary single storey design, incorporating a flat roof that is partly concealed from public view by a raised soil embankment that effectively leans on the north side of the house. The house contains an open-plan kitchen/living/dining area, 3 No. bedrooms (1 No. en-suite), bathroom and a utility/plant/pantry area internally, occupying a gross floor area of 161m². I note that a number of CGIs were provided with the application, which model the appearance of the house.

- 7.3.2. Condition No. 3(b) of the Planning Authority's decision required that the house should be reoriented by 30 degrees clockwise around a point to the western extremity of that currently proposed.
- 7.3.3. I have no objection to the contemporary design proposed, which is of its time and which provides for a low-key addition to the site. The effective leaning soil wall contains the building's massing in views along the L-5092, to the north and east. The requirements of Condition No. 3(b) of the Planning Authority's decision would have the effect of further concealing the building in these views and I note that the applicant did not object to this required revision to the proposed layout. Should the Board decide to grant permission, I recommend this condition be retained.
- 7.3.4. The internal layout also appears to accord with the recommendations of the *Quality Housing for Sustainable Communities (2007)* guidelines, as referenced by the development plan.

7.4. Access

- 7.4.1. Access is proposed from an existing access from the L-5092, to the north, which provides access to an existing house and other plots in the vicinity of the site. The track incorporates a stone surface and rises in a south-to-north direction. Sightlines of 2.4m x 120m north-west and 2.4m x 90m south-east are identified on the site layout drawing as being available from the access.
- 7.4.2. As part of its decision on the application, the Planning Authority attached condition No. 3, which required that the access should incorporate a gradient not exceeding 10% generally and 4% for the first 5m from the edge of the public road.
- 7.4.3. The subject site is below the level of the L-5092, with the site layout drawing identifying that the point of the site access is c.13m below the level of the road. Regarding the requirements of condition No. 3, the Board will note that the access is not contained within the red line site boundary and is only identified by the applicant as a right of way. I am therefore unclear as to whether improvements to it as part of the development can be provided by the applicant. As I am recommending refusal of permission on other substantive grounds, I have not pursued the issue further. Should the Board be minded to grant permission, they may wish to clarify the issue with the applicant.

7.4.4. Regarding sightlines, I noted on my site visit to the site lies within the 50km/h zone, where minimum sightlines of 2.4m x 45m are required. The identified sightlines exceed the minimum requirement in this area.

7.5. **Drainage**

Surface Water Drainage

7.5.1. Surface water is proposed to be collected in gullies on the site and piped to an open drain at the eastern site boundary. No further details of the drain or its suitability to accommodate run-off from the site have been provided, however; I would advise the Board that as the site abuts the coast and as land levels fall towards the coast through the site, it is likely that surface waters are quickly discharged from the drain to the sea. The Planning Authority did not express any concern in relation to the proposed drainage system and there is nothing within the appeal that would lead to me question this aspect of the development.

Foul Drainage

7.5.2. The development includes the provision of a secondary treatment system and soil polishing filter. The Site Suitability Assessment Report submitted with the application identifies that the category of aquifer as 'poor', with a vulnerability classification of 'Extreme'. Table E1 (Response Matrix for DWWTSs) of the EPA Code of Practice Domestic Wastewater Treatment Systems identifies an 'R2¹' response category i.e., acceptable subject to normal good practice. The Code of Practice also states under the response category that where domestic water supplies are located nearby, particular attention should be given to the depth of subsoil over bedrock such that the required minimum depths are met and the likelihood of microbial pollution is minimised.

7.5.3. A trial hole with a depth of 1.3m encountered 500mm of clay/loam and 800mm of gravelly clay/silt, with bedrock stated to have been encountered at the base of the hole. The water table is stated to have not been encountered. In relation to the percolation characteristics of the soil, a sub-surface percolation value (T-test) of 30.83 min/25mm was returned. The Report concludes that the suitable for the installation of a secondary or tertiary treatment system and, in this context, proposes a secondary treatment system and 75sqm soil polishing filter.

7.5.4. The assessment has shown that the required minimum soil depth is available on the site, in accordance with the requirements of the EPA Code of Practice Domestic Waste Water Treatment Systems (Population Equivalent ≤10). In view of the above and having regard to the results of the site assessment, I consider it has been demonstrated that the site can accommodate a wastewater treatment system. Should the Board decide to grant permission, I recommend a condition be attached requiring the applicant to agree the detailed specification of the on-site wastewater treatment system and polishing filter with the Planning Authority.

7.6. Other Issue

7.6.1. The appellant claims that corncrake were previously observed in the area and that suitable conditions would allow for their return. No ecological assessment was submitted with the application and the issue was not addressed by the Planning Authority.

7.6.2. Available information from Birdwatch Ireland¹ indicates that Corncrake have suffered population decline and that the decline is due in most part to intensive farming. Birdwatch Ireland further advises that Corncrake are now confined to areas where difficult terrain precludes the use of machinery.

7.6.3. The subject site is greenfield in nature and appeared at the time of my inspection to be maintained. It therefore appears to me to be unsuitable for Corncrake. I would also advise the Board that the site is not subject to any environmental designation. Thus, from the information available to me I consider it would be unjustified to refuse permission on this basis.

7.7. Appropriate Assessment

Appropriate Assessment Screening

Compliance with Article 6(3) of the Habitats Directive

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

Background on the Application

¹ <https://birdwatchireland.ie/birds/corncrake/>

- 7.7.2. The applicant submitted a Natura Impact Statement (NIS) at the Additional Information stage, prepared by Greentrack Environmental Consultants. It provides a description of the proposed development, identifies European sites within a possible zone of influence and identifies potential impacts in relation to Sheephaven SAC (Site Code 001190), Horn Head to Fanad Head SPA (Site Code 004194) and Tranarossan and Melmore Lough SAC (Site Code 000194).
- 7.7.3. Having reviewed the appeal documents provided and submissions, I am satisfied that there is adequate information in relation to the European sites to allow for a complete examination and identification of any potential significant effects of the development, alone, or in combination with other plans and projects on European sites.

Need for Stage 1 Appropriate Assessment Screening

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

Brief Description of the Development

- 7.7.6. The applicant provides a description of the proposed development at Section 1 of the NIS. The development is also described at Section 2 of this Report. In summary, permission is sought for the construction of a house and wastewater treatment system, together with associated site works on a site with a stated area of 0.22ha at Downings, Co. Donegal. Surface water drainage is proposed to be collected in gullies on the site and piped to an open drain at the eastern site boundary. Foul water is proposed to drain to a secondary treatment system and soil polishing filter. The site is in close proximity to Tranarossan and Melmore Lough SAC, which encroaches to within c.30m to the south.
- 7.7.7. Taking account of the characteristics of the proposed development in terms of its location and the scale of works, I consider the following potential impact mechanisms require examination:

Construction phase

- The impact of potential surface water discharges from the site on water quality within a European site.

Operational Phase

- The impact of surface water discharges from the site on water quality within a European site.
- The impact of foul water discharges from the site on water quality within a European site.

Submissions and Observations

- 7.7.8. The submissions from the appellant, applicant and Planning Authority are summarised as Section 6 of my Report.

European Sites

- 7.7.9. The development site is not located in or immediately adjacent to a European site. The closest European site is Tranarossan and Melmore Lough SAC, which encroaches to within c.30m to the south. The Appropriate Assessment Screening Report contained within the NIS identifies the following additional sites as falling within a 15km search zone: -

- Sheephaven SAC (Site Code 001190), c.0.4km east,
- Horn Head to Fanad Head SPA (Site Code 004194), c.0.6km north-west,
- Mulroy Bay SAC (Site Code 002159), c.2.6km east,
- Lough Nagreany Dunes SAC (Site Code 000164), c.4.5km north-east,
- Sessiagh Lough SAC (Site Code 000185), c.5.4km south-west,
- Horn Head and Rinclevan SAC (Site Code 000147), c.6.1km west,
- Cloghernagore Bog and Glenveagh National Park SAC (Site Code 002047), c.7.6km south,
- Derryveagh and Glendowan Mountains SPA (Site Code 004039), c. 7.6km south,
- Ballyhoorisky Point to Fanad Head SAC (Site Code 001975), c.8km north-east,
- Kindrum Lough SAC (Site Code 001151), c.8.4km north-east,

- Greers Isle SPA (Site Code 004082), c.8.6km north-east,
- Muckish Mountains SAC (Site Code 001179), c.9.1km south-west,
- Fanad Head SPA (Site Code 004148), c.12.5km north-east, and
- Ballyness Bay SAC (Site Code 001090), c.14km west.

7.7.10. With the exception of Tranarossan and Melmore Lough SAC, Sheephaven SAC and Horn Head to Fanad Head SPA the Screening Report states that there is no direct connection to the subject site and thus excludes these sites from further consideration. I concur with this conclusion and, further, would note the distance to each site which I consider it is adequate for smallscale development such as this.

7.7.11. I am also satisfied that Horn Head to Fanad Head SPA is distant from the site, in the context of the smallscale nature of the development, and there is no real likelihood of significant effects on the SPA arising from the proposed development.

7.7.12. Summaries of Tranarossan and Melmore Lough SAC and Sheephaven SAC are presented in the table below.

European Site (code)	List of Qualifying interests /Special Conservation Interests
<u>SAC</u>	
Tranarossan and Melmore Lough SAC (Site Code 000194)	<ul style="list-style-type: none"> • Mudflats and sandflats not covered by seawater at low tide. • Annual vegetation of drift lines • Perennial vegetation of stony banks • Vegetated sea cliffs of the Atlantic and Baltic coasts • Embryonic shifting dunes • Shifting dunes along the shoreline with <i>Ammophila arenaria</i> • Fixed coastal dunes with herbaceous vegetation. • Decalcified fixed dunes with <i>Empetrum nigrum</i>. • Dunes with <i>Salix repens</i> ssp. <i>argentea</i> • Humid dune slacks • Machairs • Hard oligo-mesotrophic waters with benthic vegetation of <i>Chara</i> spp. • European dry heaths • Alpine and Boreal heaths • Petalwort
Sheephaven SAC (Site	<ul style="list-style-type: none"> • Mudflats and sandflats not covered by seawater at low tide. • Annual vegetation of drift lines

Code 001190)	<ul style="list-style-type: none"> • Vegetated sea cliffs of the Atlantic and Baltic coasts • Salicornia and other annuals colonising mud and sand. • Atlantic salt meadows • Mediterranean salt meadows • Embryonic shifting dunes • Shifting dunes along the shoreline with <i>Ammophila arenaria</i> • Fixed coastal dunes with herbaceous vegetation. • Humid dune slacks • Machairs • Old sessile oak woods with <i>Ilex</i> and <i>Blechnum</i> in the British Isles • Marsh Fritillary • Petalwort
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7.7.13. In respect of Screening, the report concludes as follows: -

'Following the assessment as detailed in this AA Screening Report, it is concluded that significant effects on the Natura 2000 network arising from the proposed development, either individually or in combination with other plans or projects, cannot be excluded at this stage. Therefore Stage 2 Appropriate Assessment is required.'

This conclusion was reached based on objective information and in view of best scientific knowledge.'

Evaluation of effects

7.7.14. As has been outlined already, I consider the impact of potential surface water discharges from the site during construction and operational phases on water quality within a European site and the impact of foul water discharges from the site on water quality within a European site require consideration.

7.7.15. Sheephaven SAC is connected to the site via coastal waters. The Screening Report states that in view of the connection between sites, potential significant effects cannot be ruled out and Stage 2 appropriate assessment is required. This determination appears to be based solely on the direct connection between the sites.

7.7.16. The site lies in relatively close proximity to Sheephaven SAC but the hydrological connection involves traversing a considerable waterbody. I am satisfied that there is no real likelihood of suspended solid and/or pollutant content being transferred to the

SAC and, thus, the potential for likely significant effects on qualifying interests within the SAC can be excluded at this stage.

- 7.7.17. Regarding Tranarossan and Melmore Lough SAC, the Screening Report determines that significant effects cannot be ruled out in respect of the issue of surface water drainage.
- 7.7.18. The site is set back from the SAC boundary and there is grassland in the intervening area that provides a buffer between the site, but there is a drain along the east site boundary, which drains into the SAC. Development works will encroach to within c.5m of this drain and there is potential for surface water containing suspended solids and/or pollutants to be discharged from the site into the SAC. From the information available to me, I consider there is a risk of significant effects arising from potential surface water discharges from the site and the issue therefore cannot be excluded at this stage.
- 7.7.19. For the operational phase, surface water is proposed to be collected in gullies on the site and piped to an open drain at the eastern site boundary. The site layout drawing indicates that the drain flows southward, into the SAC. There is potential for small quantities of suspended solid and/or pollutants to be discharged from the site, but I am satisfied that it is unlikely to be of such quantity that would give rise to significant effects on the SAC. I would also note that the NIS identifies that a bypass separator will be installed, through which surface waters will pass prior to discharge from the site. This basic infrastructure is, in my view, a standard element of a surface water drainage system and I am satisfied that it will ensure suspended solids or pollutants are not discharged from the site. As such, I am satisfied that the issue can be excluded at this stage.
- 7.7.20. Foul drainage is proposed to drain to a secondary treatment system and 75sqm soil polishing filter, prior to discharge to groundwater. The polishing filter is adjacent to the south corner of the site and is c.55m from the SAC boundary. The application is supported by a Site Suitability Assessment Report, which contains the results of site-specific testing and which justifies the proposed WWTP. The EPA Code of Practice does not specify an absolute minimum setback distance from a heritage feature or NHA/SAC/SPA but I note that it requires a setback of 50m from a lake or foreshore should be maintained. Such a distance is exceeded in this instance.

7.7.21. A Site Suitability Assessment Report was submitted with the application and it identifies that the site is suitable for installation of a packaged treatment plant and polishing filter. Where such site-specific testing has shown the site to be suitable for the treatment of foul waste in this manner and given the separation distance between the system and the SAC, I am satisfied that the potential for likely significant effects on water quality within the SAC is low and can be excluded at this stage.

Screening Determination

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

- Tranarossan and Melmore Lough SAC (Site Code 000194)

Appropriate Assessment

7.7.23. The NIS examines and assesses potential adverse effects of the proposed development on the SAC. It concludes that: -

'The proposed project as detailed, either individually or in combination with other plans or projects, will have no significant adverse effects on the integrity of any European sites if all mitigating measures as outlined in Section 6 are implemented.'

The proposed development as described will not alter the structure or function of any Natura 2000 site or negatively impact the conservation of any qualifying interest / special conservation interest therein.'

Appropriate Assessment of Implications of Proposed Development

7.7.24. The following is a summary of the objective scientific assessment of the implications of the project on the qualifying interest features of the European sites using the best scientific knowledge in the field. All aspects of the project which could result in significant effects are assessed and mitigation measures designed to avoid or reduce any adverse effects are considered and assessed.

European Sites

- 7.7.25. The relevant European site for Stage 2 Appropriate Assessment is Tranarossan and Melmore Lough SAC. This Stage 2 assessment will consider whether or not the project would adversely affect the integrity of this European site, either individually or in combination with other plans and projects in view of the site's conservation objectives.
- 7.7.26. The main aspects of the development that could adversely affect the conservation objectives of European sites relate to: -
- Impacts on water quality arising from surface water discharges which contain suspended solids and/or pollutants, at the construction stage.

Evaluation of Effects

- 7.7.27. The conservation objectives for Tranarossan and Melmore Lough SAC are as follows: (a) To maintain the favourable conservation condition of Mudflats and sandflats not covered by seawater at low tide in Tranarossan and Melmore Lough SAC, (b) To maintain the favourable conservation condition of Annual vegetation of drift lines in Tranarossan and Melmore Lough SAC, (c) To maintain the favourable conservation condition of Perennial vegetation of stony banks in Tranarossan and Melmore Lough SAC, (d) To maintain the favourable conservation condition of Vegetated sea cliffs of the Atlantic and Baltic coasts in Tranarossan and Melmore Lough SAC, (e) To maintain the favourable conservation condition of Embryonic shifting dunes in Tranarossan and Melmore Lough SAC, (f) To maintain the favourable conservation condition of Shifting dunes along the shoreline with *Ammophila arenaria* ('white dunes') in Tranarossan and Melmore Lough SAC, (g) To maintain the favourable conservation condition of Fixed coastal dunes with herbaceous vegetation ('grey dunes') in Tranarossan and Melmore Lough SAC, (h) To maintain the favourable conservation condition of Decalcified fixed dunes with *Empetrum nigrum* in Tranarossan and Melmore Lough SAC, (i) To maintain the favourable conservation condition of Dunes with *Salix repens* ssp. *argentea* (*Salicion arenariae*) in Tranarossan and Melmore Lough SAC, (j) To maintain the favourable conservation condition of Hard oligo-mesotrophic waters with benthic vegetation of *Chara* spp. in Tranarossan and Melmore Lough SAC, (k) To maintain the favourable conservation condition of European dry heaths in Tranarossan and Melmore Lough SAC, (l) To maintain the favourable conservation condition of Alpine and Boreal

heaths in Tranarossan and Melmore Lough SAC and (m) To maintain the favourable conservation condition of Petalwort in Tranarossan and Melmore Lough SAC.

7.7.28. According to the NPWS Conservation Objectives document, the *vegetated sea cliffs of the Atlantic and Baltic coasts* habitat type lies in closest proximity to the subject site.

7.7.29. The NIS contains a brief assessment of the potential impact of surface water discharges that contain suspended solids and/or pollutants, but it identifies that silt can affect various properties of water quality including levels of organics and turbidity.

Proposed mitigation

7.7.30. Section 6 of the NIS contains proposed mitigation, which can be summarised as follows:

- Earth works
 - A silt fence to be erected along south and west site boundaries.
 - Construction run-off to be collected in a settlement/attenuation pond, with outflow routed through the silt fence.
 - Clearance works to cease in periods of heavy rainfall.
 - Control of site boundaries to be enforced by the site manager, including minimal land clearance and restrictions on the use of machinery near waterbodies.
 - Materials/stockpiles to be located as far as possible from sensitive properties and ecological receptors.
 - Overburden not being reused on the site to be removed off-site.
- Plant maintenance
 - A bunded/impermeable storage area to be provided for the storage of oils, fuels, and other hazardous materials.
 - Plant to be inspected each day, with repair and refuelling to take place in designated areas. A spill kit also to be provided.

7.7.31. The provision of a silt fence is likely to ensure that no suspended solids or other pollutants will be discharged from the site during construction but I do not consider the extent of the fenced area as shown in Figure 6.1 of the NIS is adequate. I consider the fence should be extended along the entirety of the east site boundary, in addition to the south and west site boundaries. This can be controlled by condition, should the Board decide to grant permission.

In-combination effects

7.7.32. There are houses in the area surrounding the subject site, which are likely to be discharging surface waters that ultimately drain into the SAC. Subject to implementation of the proposed mitigation, I am satisfied that the development will not give rise to the release of suspended solid or pollutant content during construction. In-combination effects will therefore not arise.

Integrity Test

7.7.33. Following the appropriate assessment and the consideration of mitigation measures, I am able to ascertain beyond reasonable scientific doubt that the project would not adversely affect the integrity of Tranarossan and Melmore Lough SAC (Site Code 000194), in view of the Conservation Objectives for the site. This conclusion has been based on a complete assessment of all implications of the project alone and in combination with plans and projects.

Appropriate Assessment Conclusion

7.7.34. The proposed development has been considered in light of the assessment requirements of Sections 177U and 177V of the Planning and Development Act 2000, as amended.

7.7.35. Having carried out screening for Appropriate Assessment of the project, it was concluded that it may have a significant effect on Tranarossan and Melmore Lough SAC (Site Code 000194). Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of those sites, in light of their conservation objectives.

7.7.36. 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 site, or any other European site, in

view of its conservation objectives. This conclusion is based on a complete assessment of all aspects of the proposed development.

8.0 Recommendation

8.1. I recommend that permission be refused for the following reasons and considerations set out hereunder.

9.0 Reasons and Considerations

1. Having regard to:

- The location of the site within a structurally weak area as identified by the Donegal County Development Plan 2018-2024,
- The provisions of the Donegal County Development Plan 2018-2024, which facilitates rural housing proposals in structurally weak areas from prospective applicants with a need for a dwelling house (RH-P-4), provided they demonstrate that they can comply with all other relevant policies of the plan including policies RH-P-1 and RH-P-2,
- National Policy Objective 19 of the National Planning Framework which, for rural areas outside of those under urban influence seeks to facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements,
- The pattern of development in the surrounding rural area, where there is evidence of pressure for rural housing, and
- The documentation on file provided as part of the application and appeal

The Board considers that, in the absence of a demonstrated housing need at this location, the proposed development would result in a haphazard and unsustainable form of development, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and

infrastructure. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

Barry O'Donnell
Planning Inspector

1st March 2023.