



An
Bord
Pleanála

Inspector's Report 315359-22

Development	R585 Road Realignment Scheme
Location	Dromdeegy and Cooranig, Dunmanway, Co. Cork
Local Authority	Cork 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	Dept. Housing, Local Government & Heritage, Inland Fisheries Ireland.
Observer(s)	None
Date of Site Inspection	14 th April 2023
Inspector	Alaine Clarke

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1.0 Introduction

- 1.1. Cork County Council is seeking approval from An Bord Pleanála to undertake road realignment and improvement works on the R585 at Dromdeegy and Cooranig, Co. Cork. The site of the proposed works is c. 4km north west of the Bandon River and is c. 2.8km upstream of the Bandon River SAC, a designated European site. A Natura Impact Statement (NIS) and application under Section 177AE was lodged by the Local Authority based on the proposed development's likely significant effect on a European site.
- 1.2. Section 177AE of the Planning and Development Act 2000 (as amended) requires that where an appropriate assessment is required in respect of development by a local authority the authority shall prepare a 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 Planning and Development Act 2000 (as amended) 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. Cork County Council has identified the need to carry out road safety and realignment improvement works to the R585 regional road at Dromdeegy, Dunmanway, Co. Cork. The existing road is substandard because of its inadequate width and poor horizontal and vertical alignment geometry. The realignment works will run over a length of approximately 410m and will tie-in to the existing road at both ends. The alignment and overall cross section width of the road is to be improved thereby providing improved driver visibility.
- 2.2. The proposed works comprise the following:
 - Alteration to existing road alignment to improve road safety.
 - Site clearance.

- Road construction, resurfacing, road lining, signage and road studs, which entails an increase of hard standing area from 2,125sqm to 5,700sqm over the realignment length of 410m.
- Relocation of overhead line.
- Constructing earth berms and fencing.
- All ancillary works

2.3. No land take is required to deliver the scheme. The project will be delivered on/within the footprint of the existing road and adjoining lands that are in the ownership of the Local Authority.

2.4. The application is accompanied by the following documents:

- Natura Impact Statement (NIS);
- Ecological Impact Assessment (EclA) Report;
- Archaeological Impact Assessment Report;
- Planning Report;
- Environmental Impact Assessment (EIA) Screening Report and Determination;
- Appropriate Assessment (AA) Screening Report;
- design drawings; and,
- a list of Prescribed Bodies and copies of public notices;

3.0 **Procedural Matters**

3.1. The application as applied for specifically seeks permission for a proposed development to consist of an alteration to existing road alignment, site clearance, road construction, earth berms and associated development works.

3.2. Following a site inspection and following a review of the accompanying reports with the application, I am satisfied that the works are partially complete. To this end the following is noted:

- An area of land to the south west of the existing road has been cleared;

- Rock, possibly from the site, has been crushed and is laid to form the base of the extended road surface;
- There is a noticeable level difference in sections between the recently laid subsurface and the natural ground level;
- The culvert under the road was extended under the recently laid crushed stone;
- Plastic barriers have been erected along the length of the section of road to be realigned;
- The accompanying reports prepared by DixonBrosnan Environmental Consultants, the Ecological Impact Assessment and the AA Screening Report and NIS are titled “*Completion of Road Realignment and Improvement Works.*”

3.3. Having regard to the foregoing, I am satisfied that the description of the development is inaccurate as it fails to capture the fact that development has commenced. I note that the application is not one of retention and completion but one of ‘permission’, however it is clear to me that works have commenced for the development as described in the public notices.

3.4. I draw the Board’s attention to s.34(12) of the Planning and Development Act 2000, as amended, which states that a planning authority shall refuse to consider an application to retain unauthorised development of land where the authority decides that if an application for permission had been made in respect of the development concerned before it was commenced the application would have required that an EIA, a determination as to whether an EIA is required or an AA. Where a Planning Authority refuses to consider the application, the application shall return the application to the applicant, together with the fee. As the application is not seeking retention permission, on the face of the wording of the s.34(12), it appears that returning the application under this provision may not be open to the Board.

3.5. The implications for assessment of the application are explored in greater detail at section of this report. Owing to the fundamental difficulty with the description of the works and the fact some works have been undertaken which are the subject of the permission application, it is not considered appropriate to request further information

in this instance as the issues arising cannot be corrected by way of a request for further information.

4.0 Site Location and Description

- 4.1. The site measures an area of just 0.57ha and is located in a rural area circa 6.5km north of Dunmanway Town Centre. The R585 is a Regional road which runs from Kealkill Village to its Junction with the N22, National Primary Road, east of Crookstown.
- 4.2. The length of road scheduled for improvement runs slightly uphill from east to west through rocky outcrops interspersed with boggy hollows. A stream flows from the east on the southern side of the road and is culverted under the road and outfalls immediately to the north of the existing road. There is oligotrophic lake habitat to the south of the works area. Trees have been felled to the east along part of the site and further east and south beyond the site. A shallow drain flows along the road and southern boundary to the east of the site.
- 4.3. Crushed rock has been spread over the surface to create a hardcore layer on the southern side of the road and generally follows the road realignment as applied for. There is an uneven level difference between the crushed stone and ground level to the south.
- 4.4. The road is a busy rural road which is used as one of the main routes for motorists travelling from West Cork especially from the Beara Peninsula. There are high volumes of Heavy Goods Vehicles (HGV's) using this route travelling to and from the busy fishing Port of Castletownbere.
- 4.5. The site of the proposed works is located c. 100m southwest of the Caha River, which flows in a southerly direction into the Bandon River SAC (site code 002171), c. 2.6km hydrologically. The R585 crosses the Caha River at the Poul naberry Bridge, c 100m to the east. An area of flood risk is associated with the Caha River and is located to the north east towards Poul naberry Bridge.

5.0 Planning History

- 5.1. There is no planning history of relevance associated with the site.

6.0 Legislative and Policy Context

6.1. The EU Habitats Directive (92/43/EEC)

- 6.1.1. 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).

6.2. European Communities (Birds and Natural Habitats) Regulations 2011

- 6.2.1. 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. The 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.

6.3. National nature conservation designations

- 6.3.1. The Department of Housing, Local Government and Heritage and the National Parks and Wildlife Service 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.
- 6.3.2. The proposal is proximate to the following designated sites:
- Bandon River SAC (site code 002171) (2.2km to the southeast)
 - Proposed NHA Lough Allua (site code 001065) (6.2km to the north)
 - Proposed NHA Bandon Valey South of Dunmanway (site code 001035) (6.6km to the south east).

6.4. Planning and Development Act 2000 (as amended)

6.4.1. Part XAB of the Planning and Development Act 2000, as amended, 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 (NIS) 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 NIS 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.

6.5. Appropriate Assessment of Plans and Projects in Ireland – Guidance for Planning Authorities

- 6.5.1. Guidance is provided for the competent authority to assess any plan or project. The impact of any plan or project alone or in combination with other projects on the integrity of the Natura 2000 site is considered with respect to the conservation objectives of the site and the structure and function.

6.6. National Planning Framework (NPF)

- 6.6.1. National Strategic Outcome 3 - Strengthened Rural Economies and Communities – under the heading Rural Development: Invest maintaining regional and local roads and strategic road improvement projects in rural areas to ensure access to critical services such as education, healthcare and employment.

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

- 6.7.1. Section 6.3.3.1 of the RSES deals with The Role of Transport. It is an objective of the RSES to “support improved strategic and local connectivity” and to “provide for the safe and most efficient movement of people and goods.” The following principles are relevant:

- Protecting the strategic capacity and safety of the Region’s transport network;
- Meeting the safe travel requirements of all people, irrespective of age or mobility and transport mode.

6.8. Cork County Development Plan 2022-2028

- 6.8.1. The Cork County Development Plan 2022-2028 sets out the overall planning and sustainable development strategy for the County. Chapter 12 relates to Transport and Mobility. Objective TM 12-13 relates to the national, regional and local road network and includes a list of investment projects to be supported including (g) support upgrading of the R585 Regional Road between Cork City and Bantry via Crookstown, Cappeen and Kealkill, while (n) states it is an objective to ensure that all route upgrades are planned, designed and constructed to be compliant with EU

environmental directives and to minimise impacts on biodiversity, built heritage and landscape.

6.8.2. The following biodiversity and environment objectives are relevant:

- BE15-2:
 - a) Protect all natural heritage sites which are designated or proposed for designation under European legislation, National legislation...
 - b) Provide protection to species listed in the Flora Protection Order 2015, to Annexes of the Habitats and Birds Directives, and to animal species protected under the Wildlife Acts in accordance with relevant legal requirements...
- BE15-4 b): Fulfil Appropriate Assessment and Environmental Impact Assessment requirements and carry out Ecological Impact Assessment in relation to Local Authority plans and projects as appropriate.

6.8.3. The following water management objectives are relevant:

- WM 11-15, WM11-16 and WM11-17 are relevant and relate to the overall approach to flood risk and development in flood risk areas.

6.8.4. Volume One, Appendix F of the development plan contains the Landscape Character Assessment of County Cork. The site is within the character type 'Rolling Marginal Middleground' with a local landscape importance, medium landscape value and medium landscape sensitivity.

7.0 EIA Screening

7.1. An EIA Screening report has been prepared by Cork County Council to determine whether an EIAR is warranted for the proposed project. This document investigates whether the project is one which requires an EIA, either a mandatory or sub-threshold EIA. The report includes a sub-threshold screening for EIA using criteria in Schedule 7 of Planning and Development Regulations, 2001, as amended. The report concludes that the project is not one which requires a mandatory EIA, nor, having regard to Schedule 7 criteria is there a real likelihood of significant impact on the environment arising from the proposed development having regard to its

characteristics, location and type and characteristics of the potential impact. The EIA Screening Report concludes that there is no real likelihood of significant effects on the environment arising from the proposed development and that an EIA is not required. A Screening Determination Statement supports the EIA Screening conclusion.

- 7.2. The proposed development, described as road realignment and improvement scheme (over a length of 410m), is not of a development type for the purposes of Part 10 listed in Schedule 5 of the Planning and Development Regulations, 2001 (as amended) i.e., development for which mandatory EIA is required, nor is it integral to any project that is of a type included in Schedule 5. Notwithstanding that the applicant prepared and submitted a screening assessment based on the criteria of Schedule 7 of the Planning and Development Regulations, 2001 as amended, as no element of the development the subject of this application falls into a class of development contained in Schedule 5, Parts 1 or 2 of the Regulations, I am satisfied that the development does not therefore constitute sub-threshold development and neither a mandatory EIA, nor an EIA screening determination, is required.
- 7.3. Furthermore, the proposal does not fall under any prescribed type of road development pursuant to Section 50 of Roads Act, 1993 (as amended) that requires the preparation of an Environmental Impact Assessment Report.

8.0 The Natura Impact Statement

- 8.1. Cork County Council's application for the proposed development was accompanied by a Natura Impact Statement (NIS) prepared by Dixon Brosnan Environmental Consultants, which scientifically examined the proposed development and the European site (Bandon River SAC). The NIS identified and characterised the possible implications of the proposed development (i.e., completion works) on the European site, in view of the site's conservation objectives.
- 8.2. The NIS describes the elements of the project that are likely to give rise to significant effects on the European site, however, it does not consider the works already completed in considering the in-combination effects with other projects and plans. Potential impacts are set out as well as an assessment of their possible adverse effects on the conservation objectives of qualifying interest features and the

mitigation measures that are to be introduced to avoid, reduce or remedy any adverse effects on the integrity of the European site.

- 8.3. The assessment of impacts presented in the NIS found that there is potential for significant effects from the proposed development to significantly impact the Bandon River SAC, via surface water runoff during construction and operation. However, with implementation of mitigation measures in full. The NIS concludes that with the implementation of the mitigation measures proposed, that the construction, operation and decommissioning of the proposed development will not adversely affect (either directly or indirectly) the integrity of any European site, either alone or in combination with other plans or projects, and that there is no reasonable scientific doubt in relation to this conclusion.

9.0 Consultations

- 9.1. The application was circulated to the following bodies:

- Department of Housing, Local Government and Heritage.
- Inland Fisheries Ireland (IFI)
- An Chomhairle Ealaíon
- The Heritage Council
- An Taisce
- Irish Water

Responses were received from the Department of Housing, Local Government and Heritage and IFI.

9.1.1. Department of Housing, Local Government and Heritage

- Note the proximity of the site to the Caha River, c. 2.5km upstream of the Bandon River SAC;
- Juvenile freshwater pearl mussels live for several years within the gravels of high quality rivers such as the Caha and are particularly sensitive to silt

deposits blocking oxygen access into the gravel; silt is a significant threat to the species;

- Noting the conclusion of the NIS that there will be no adverse effects following the implementation of the mitigation measures, the silt fencing proposed is not suitable for channels and ditches and recommends an appropriate condition (to be attached in the event of a grant of permission).

9.1.2. IFI

- The IFI recognises the importance of the proposed development though it is essential it is undertaken in a manner that does not result in negative impacts on fisheries or water quality.
- The proposed works are situated in close proximity to the Caha River a significant salmonoid spawning and nursery water.
- Recommends conditions in the event of a grant.

10.0 **Assessment**

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

10.1.1. The matters of relevance in this section are firstly, compliance with planning policy and secondly, design and layout, which I will address in turn.

10.1.2. Compliance with Planning Policy

10.1.3. With regard to the principle of the proposed development, as outlined in Section 6 of this report, the National Planning Framework, the Regional Spatial and Economic Strategy for the Southern Region and the Cork County Development Plan 2022-2028 all support the continued investment in maintaining regional routes.

10.1.4. I note Objective TM 12-13 of the development plan relates to the national, regional and local road network and includes a list of investment projects to be supported including (g) support upgrading of the R585 Regional Road between Cork City and Bantry via Crookstown, Cappeen and Kealkill, while (n) states it is an objective to ensure that all route upgrades are planned, designed and constructed to be

compliant with EU environmental directives and to minimise impacts on biodiversity, built heritage and landscape.

10.1.5. Having regard to the foregoing, I am satisfied that the proposed development is in accordance with the policies and objectives of the Cork County Development Plan 2022-2028 and all other relevant National and Regional Plans as outlined above and would contribute towards enhanced safety of the R585.

10.1.6. Design and Layout

10.1.7. The Planning Report prepared by CCC and submitted with the application states that the R585 is a busy regional rural road which is used as one of the main routes for motorists travelling from West Cork especially from the Beara Peninsula noting that there are high volumes of HGVs using this route. The report states that several accidents, including a fatality, have occurred along the section of road the subject of this application.

10.1.8. The Planning Report notes the proposed scheme will improve the R585 road alignment and width over the extent of the site including removing/ reducing crest and sags. The scheme will improve driver visibility and road safety for all road users over the extent of the site.

10.1.9. The existing tarmac road surface on the section of the R585 to be replaced covers an area of 2,125m². Following development, the total road area (new and existing road) will cover an area of 5,700m². That section of the existing road which will no longer be in active usage will not be excavated. It is expected that this will be colonised by a mixture of early successional species and scrub over time. This will minimise the earthworks/waste storage requirements of the project. Once this area has recolonised, the total road surface will be 3,575m² which will represent a minor increase in hard surfaces.

10.1.10. Although not referenced in other reports such as the NIS, the EIAR Screening report notes that soil will be removed from the land area required to complete the road and used as a berm on the north side of the road to cordon off the remaining part of the old road. No significant quantities of imported material are required, and no significant quantities will be exported from the site as all of the excavated rock will be retained on site and the rock excavated will be used as fill material for the realigned carriageway. The EIAR Screening Report states that the project requires

excavation and removal of existing road surface material and the layout down of new surface, and that excavated material will be retained on site and the rock excavated will be used as fill material for the realigned carriageway. This statement, however, contradicts the NIS which states that the existing road which will no longer be in active usage will not be excavated.

10.1.11. The NIS sets out mitigation measures and advises that construction best practice measures will be implemented throughout the project. It is stated that the mitigation measures take into account the CIRIA Guidelines *Control of Pollution from Construction Sites* and CIRIA 2010 *Environmental Good Practice on Sites CIRIA UK*.

10.1.12. In my opinion, the drawings provided are lacking in detail. The proposed layout plan, at a scale of 1:1000 and is absent of details on levels and/or contours, culverts, outfalls, drainage and existing watercourses adjacent to the site. The layout plan fails to differentiate between works undertaken to date and works to be completed. It is unclear from a review of drawings and associated documents where the material for the proposed berm will be taken from and whether the existing road will remain in situ or be excavated. This information is relevant to the project and in my opinion needs to be considered in the environmental assessments accompanying the application. There is a level difference between the road (including the recently laid road sub-surface) and the existing ground levels, however, this is not apparent from a review of drawings.

10.1.13. In conclusion, I note that the proposed road realignment will replace part of an existing road, and its purpose is to improve the road conditions and road user safety at this location and I consider that the principle of the proposed works is in accordance with the provisions of both the national and local plans for the area. The application, including both drawings and environmental reports would benefit from enhanced detail to include more detailed drawings, an accurate description of the works and an outline Construction Environmental Management Plan. This detail would assist with an assessment of the design and layout of the works.

10.2. **The likely effects on the environment**

10.2.1. The development the subject of this application is not one which requires EIA/requires an EIAR to be submitted with the application (refer to section & of this

report). I note too the conclusion reached by Cork County Council that mandatory EIA is not required for the subject development as it does not fall within the criteria outlined in the Roads Act, 1993, as amended or the criteria set out in Schedule 5 of the Planning and Development Regulations, 2001, as amended.

10.2.2. Notwithstanding the anomaly between the EIAR Screening Report and the NIS regarding excavation or not of the existing road (refer to section 10.1.10 of this Inspector's Report), I consider that while the proposed development would not give rise to significant environmental impact, the proposed works have the potential to give rise to a number of environmental effects largely related to archaeology, biodiversity, traffic and flood risk. These effects are explored in greater detail below. The Appropriate Assessment Section of this report will also consider these impacts in relation to the qualifying interests of the surrounding European designated sites.

10.2.3. Archaeology

10.2.4. The application is accompanied by an Archaeological Assessment Report (AAR) prepared by Maurice Hurley, Consultant Archaeologist. There are no known Recorded Monuments within the boundary of the road-take nor on adjoining lands. The AAR presents a comprehensive list of all monuments within 1.6km from the site, the nearest being a Barrow (monument ref. CO093-045), c. 0.5km to the north.

10.2.5. According to the AAR the section of road proposed for realignment and improvement is located in an area of West Cork where archaeological sites and monuments are known, particularly those dating from the late prehistoric period. The report notes that while the development will not have any direct impact on known Recorded Monuments, the road is in an area of marginal land where rock outcrops and poorly drained hollows and streams characterise the landscape, such locations may contain sub-surface remains of Bronze Age *fulacht fiadh* or burnt mounds. The nearest known *fulacht fiadh* is 1.4km away. Prehistoric monuments of funerary/ritual nature are also recorded in the wider area these include a ring barrow and two standing stones, also notes that the most numerous monuments in the immediate landscape of the road in question is the Ringfort.

10.2.6. The AAR notes that cutaway and broken rock has been spread over the ground surface (south of the existing road) to form a hardcore layer where the road alignment is proposed. The AAR states that no significant subsurface excavations

are likely to occur. The AAR concludes that the existing situation on this length of proposed realignment negates the need for specific archaeological mitigation in the case of the proposed works. No reference is made, however, to excavations required to make the earth berm, having regard to the rocky nature of the adjoining lands and the existing variation in levels of the realigned road and the existing ground level.

10.2.7. Notwithstanding the Archaeological Assessment Report submitted with the application which states that no subsurface works are required, following a site inspection and having regard to the full extent of the works proposed i.e., berm construction, I cannot conclude that there is no archaeological impact arising from the proposed development nor that there is no requirement for specific archaeological mitigation in the case of the proposed works.

10.2.8. Biodiversity

10.2.9. The project area and adjacent land cover a variety of habitats and the wider landscape habitats include a mixture of immature and semi-mature conifer plantations, areas of wet heath with exposed bedrock and semi-intensive grassland. The Caha River is the most prominent potential ecological receptor in the wider landscape. Drainage ditches in the immediate vicinity drain to the Caha River. I note that the Caha River has a Water Framework Directive status of 'good' downstream of the Poul naberry bridge, located c. 100m northeast of the site. Upstream of the Bridge the Caha River has a 'high' status.

10.2.10. Along with the Natura Impact Statement (NIS), the application is also accompanied by an Ecological Impact Assessment (EclA) prepared by qualified ecologists from Dixon Brosnan, Environmental Consultants. Impact on Natura 2000 sites is considered in section 10.3 of this Inspector's Report. The EclA was supported by walkover surveys in March, July and November 2022. No rare species of flora or fauna were found and the ecological value of the habitats was deemed to be of local importance varying from lower to higher importance.

10.2.11. The EclA concludes that the road alignment and improvement works will impact on habitats of low local value and that habitats to be impacted are almost exclusively manmade, with the exception of a small area of recolonising bare ground and grassland. There are no trees or significant areas of vegetation within the works area which could provide nesting/roosting habitat for birds or bats.

- 10.2.12. During construction there is potential for runoff of construction materials such as fuel and oil into the Caha River. These materials will be used for a short period of time, refuelling will take place off site and vehicles and machinery will be stored off-site. According to the EclA, design measures and mitigation to protect water quality will ensure that no adverse impact on aquatic ecology will occur during construction or operation. This includes the construction of an earth berm along part of the northern boundary of the existing road to prevent diffuse runoff to the northern drainage ditch and fencing of the pond (oligotrophic lake habitat) to the south of the works area will be securely fenced to protect this habitat during construction works.
- 10.2.13. The temporary duration of works (i.e., 2-3 weeks) will result in a short-term slight increase in noise and disturbance which could potentially impact on birds and mammals. Emissions, including from noise and vibration, dust and surface water runoff, will be localised and of limited duration; best practice measures will ensure that adequate controls are in place to avoid pollution and excessive noise. There will be no new or additional sources of emissions during the operational phase. All sources of nuisance (including noise, vibration, dust, lighting, waste and litter) will be minimised through the implementation of a Construction and Environmental Management Plan, Waste and Resource Management Plan and Traffic Management Plan.
- 10.2.14. The EclA notes that surface water runoff from the works area drains through an area of wet woodland before meeting the Caha River. Large areas of this woodland are flooded and this creates a buffer that filters out silt before the discharge to the river. Given the existing drainage at the site and the minor change from baseline conditions during operation, no significant impact on hydrological regimes or water quality within the Caha River are predicted during the operational phase. The most vulnerable element to be protected on the site is the Caha River to the northeast of the site and the drainage ditches connecting to the river.
- 10.2.15. Mitigation measures are addressed in section 13 of the EclA. Silt fencing along the existing drains will be upgraded as required and the need for additional silt fencing within the drainage network will be assessed. Terrastop Premium Silt Fence (or similar) will be used. No operational mitigation measures are required.

10.2.16. The Submission from the IFI states it is essential the works are undertaken in a manner that does not result in negative impacts on fisheries or water quality and request appropriate conditions to be attached in the event of a grant of permission. The submission from the Department states the silt fencing proposed is not suitable for channels and ditches and recommends an appropriate condition. I note that it is specifically proposed to upgrade silt fencing within the drains, however, the silt fences are not designed to be placed within channels. In my opinion and having regard to the pre-existence of silt fencing within the channels I am not satisfied that the measures to reduce silt will be effective.

10.2.17. In addition, pending clarification of where material will be taken from to construct the berm, and noting the rocky outcrop surrounding the site, and the surface water features either side of the road, I cannot state that adequate information has been submitted regarding the baseline ecological conditions and potential impacts. In the absence of such accurate information, I cannot complete an assessment as to the impact on biodiversity arising from the proposed development.

10.2.18. Traffic

10.2.19. The proposed road improvement scheme will have benefits to all road users in terms of road safety, capacity, accessibility and connectivity through an improved road alignment, increased width of road, improved driver visibility and improved safety for all road users. The temporary duration of works (i.e., 2-3 weeks) will result in a short-term slight disruption to traffic on the local road network.

10.2.20. In conclusion, I consider that the proposed development will result in temporary disruption to traffic on the local road network affected by the project and would not result in any long-term negative traffic impacts. The proposed development, in my opinion, will create a safer local traffic environment and will assist in facilitating an increase in active travel.

10.2.21. Flood Risk

10.2.22. Flooding is not addressed in the documentation received by the Board, however, owing to the proximity of the site to an area of flood risk, I consider it appropriate to address this matter.

10.2.23. The Caha River, a tributary of the Bandon River, is located c.100m northeast of the site at the Poul naberry Bridge. The closest point of the Bandon River SAC is

located approximately 2.8km downstream of the bridge. Based on the most recent available data, (www.floodinfo.ie) and the Cork County Development Plan 2022-2028 which included a Strategic Flood Risk Assessment (SFRA), I note that fluvial flooding is a source of risk along this section of the Caha River and is identified as Flood Zone A – high probability of flooding i.e., more than 1% probability annual exceedance probability (AEP) event. Flood Zone A extends to the north of the most easterly part of the site, radiating from the Caha River. I note that a stream to the south of the section of road to be realigned, which is culverted under the recently extended hardcore area and the existing road, with an outfall to the north of the road, flows towards the Caha River and flood risk area.

10.2.24. According to the drawings submitted with the application, I note that it is not proposed to extend the road northward along the extent of the lands the subject to flood risk. I note too, that the proposed 1.2m high berm along part of the northern section of the proposed realigned road is to be installed “to prevent diffuse runoff to the northern drainage ditch” and not for purposes of flood risk management. The proposed berm would be c. 100m from the flood zone.

10.2.25. Notwithstanding that the proposed works are outside the flood risk zone, they are proximate to it and noting the drain that runs along the north of the section of road to be realigned, I consider it prudent that ordinarily a CEMP is required which would, inter-alia, include (i) reference to the proximity of the proposed works to the lands the subject of flood risk, (ii) measures to ensure that the existing drain to the north of the section of road to be realigned is not interfered with and (iii) that works shall be confined to the within the redline boundary.

10.2.26. In conclusion, having regard to the foregoing, I am satisfied that the proposed works, as described and which are outside the flood risk zone will not lead to or contribute to flood risk in the area subject to appropriate conditions including that a CEMP is prepared that has regard to the matters raised at para. 9.2.25 of this report.

10.3. **The likely significant effects on a European site:**

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

- Compliance with Articles 6(3) of the EU Habitats Directive
- The Natura Impact Statement

- Appropriate Assessment

10.3.2. Compliance with Articles 6(3) of the EU Habitats Directive

10.3.3. 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.

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

10.3.5. The Natura Impact Statement

10.3.6. As stated, the application was accompanied by an AA Screening and NIS Report, referring to 'Completion of Road Realignment and Improvement Works' on the title page. Section 3.2 of this report states:

"Part of the works have already been completed i.e. site clearance and laying of hardcore in new road footprint. This report deals with the completion of the works i.e. construction of earth berms and fencing, signage, road lining, road studs and all ancillary work."

10.3.7. The AA Screening and NIS Report, dated December 2022, was prepared by Dixon Brosnan, Environmental Consultants. The Report contains a Stage 1 Screening Assessment which concluded that a Stage 2 Appropriate Assessment was required on the basis that there is potential for the proposed development, alone or in combination with other projects, to significantly impact the Bandon River SAC via impacts on water quality (surface water run off). The Stage 1 Screening Assessment screened in three of the four qualifying interests for assessment in the NIS. Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* was screened out as there no such habitats in the vicinity of the proposed development site. The NIS identifies and assesses the potential for adverse impacts on remaining qualifying interest features

and mitigation measures are detailed and described and in-combination effects assessed.

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

- A desk top study
- Habitat surveys (carried out in March, July and November 2022)
- Reference to a number of publications, data and datasets.

10.3.9. The NIS considers the main impacts to water quality can arise from surface water emissions associated with the construction phase of the proposed development including increased silt levels in surface water run-off, inadvertent spillages of hydrocarbons from fuel and hydraulic fluid and spillage of cement and thus could impact on water quality within the Caha River and downstream within the Bandon River SAC. There will be no direct impacts on the SAC and no loss of habitat associated with the road upgrade works.

10.3.10. The report concluded that, subject to the implementation of mitigation measures, that the construction, operation and decommissioning of the proposed development will not adversely affect (either directly or indirectly) the integrity of any European site, either alone or in combination with other plans or projects. Details of mitigation measures are provided, and they are summarised in Section 6 of the NIS and will be implemented with the use of detailed method statements.

10.3.11. Having reviewed the NIS and supporting documentation, I am not satisfied that it provides adequate information in respect of baseline conditions, identifies the potential impact of the totality of works concerned or uses best scientific information and knowledge to inform the NIS as it fails to assess the works already carried out being based on an assessment of works which remain to be undertaken as part of the overall project.

10.3.12. A key requirement of the Habitats Directive is that the effects of any plan or project, which is not directly connected with or necessary to the management of a European Site, but which alone, or in combination with, other plans or projects, are likely to have a significant effect on a European Site, should be assessed before any decision is made to allow that plan or project to proceed. The obligation to undertake a screening for AA, and if necessary, an AA, derives from Article 6(3) of the Habitats

Directive and both involve a number of steps and tests that need to be applied in sequential order.

10.3.13. Domestic planning legislation envisages that the screening exercise for AA will be carried out, prior to the commencement of any development works, in the context of a conventional planning application (as distinct from a substitute consent application). In my opinion, a screening exercise ought to have been carried out prior to the commencement of the development concerned.

10.3.14. Submissions and Observations

10.3.15. Submissions received are summarised in Section 9.0 of this report. Matters raised by the Department of Housing, Local Government and Heritage and considered to be relevant in the context of the Appropriate Assessment are summarised below:

- Juvenile freshwater pearl mussels live for several years within the gravels of high quality rivers such as the Caha and are particularly sensitive to silt deposits blocking oxygen access into the gravel; silt is a significant threat to the species;
- Noting the conclusion of the NIS that there will be no adverse effects following the implementation of the mitigation measures, the silt fencing proposed is not suitable for channels and ditches and recommends an appropriate condition (to be attached in the event of a grant of permission).

10.3.16. Appropriate Assessment Screening

10.3.17. 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 (unless issues arise as to the adequacy or otherwise of the screening determination by the applicant). Nonetheless, it is considered prudent to review the

screening process to ensure alignment with the site(s) brought forward for AA and to ensure that all sites that may be affected by the development have been considered.

10.3.18. I note that a screening statement from Cork County Council was not provided with the application. Screening for AA was undertaken by Dixon Brosnan, Environmental Consultants (on behalf of Cork County Council) and presented as part of a report with the NIS.

10.3.19. The AA screening report concluded “on the basis of objective information and in view of best scientific knowledge, the possibility of significant effects from the proposed project on Bandon River SAC could not be ruled out and therefore an Appropriate Assessment is required”. The AA screening concluded that there was potential for the proposed development to significantly impact the Bandon River SAC, via surface water runoff.

10.3.20. Screening Determination

10.3.21. 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 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.

European site(s) considered for Stage 1 screening are listed in table 9.1.

10.3.22. **Table 9.1: European sites considered for Stage 1 screening**

3. European site (SAC/SPA)	4. Qualifying Interests and conservation objectives 5. M: maintain favourable conservation condition 6. R: restore favourable conservation condition	7. Distance
8. Bandon River SAC	9. Water courses of plain to montane levels with the Ranunculus fluitans and Callitriche-Batrachion vegetation [3260] R	10. 2.2km (2.8km hydrologically)

<p>3. European site (SAC/SPA)</p>	<p>4. Qualifying Interests and conservation objectives</p> <p>5. M: maintain favourable conservation condition</p> <p>6. R: restore favourable conservation condition</p>	<p>7. Distance</p>
<p>9. Site Code</p> <p>002171</p>	<p>1. Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i>, <i>Alnion incanae</i>, <i>Salicion albae</i>)* [91E0] R</p> <p>2. Freshwater Pearl Mussel [1029] R</p> <p>3. Brook Lamprey [1096] M</p>	<p>2. southeast of the proposed development.</p>
<p>5. The Gearagh SAC</p> <p>6. Site Code</p> <p>000108</p>	<p>7. Water courses of plain to montane levels with the <i>Ranunculion fluitantis</i> and <i>Callitriche-Batrachion</i> vegetation [3260] M</p> <p>8. Rivers with muddy banks with <i>Chenopodium rubri</i> p.p. and <i>Bidention</i> p.p. vegetation [3270] M</p> <p>9. Old sessile oak woods with <i>Ilex</i> and <i>Blechnum</i> in the British Isles [91A0] M</p> <p>0. Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> [91E0] M</p> <p>1. Otter [1355] M</p>	<p>2. 11.6km</p>
<p>3. The Gearagh SPA</p> <p>4. Site Code</p> <p>004109</p>	<p>5. Wigeon [A050] M or R</p> <p>6. Teal [A052] M or R</p> <p>7. Mallard [A053] M or R</p> <p>8. Coot [A125] M or R</p>	<p>0. 13.3km</p>

3. European site (SAC/SPA)	4. Qualifying Interests and conservation objectives 5. M: maintain favourable conservation condition 6. R: restore favourable conservation condition	7. Distance
	9. Wetland and Waterbirds [A999] M or R	

10.3.51. Neither The Gearagh SPA nor The Gearagh SAC have any pathway to or from the proposed development site and therefore there is no possibility of a significant affect from the proposed development arising and they are not considered any further in this screening and are screened out at this point.

10.3.52. The screening determination must be based on scientific information relevant to the likely effects on the conservation objectives of the relevant European sites. The information should be up-to-date and based on the best available techniques and methods to estimate the presence and extent of effects. This is because if there is any scientific uncertainty as to the absence of significant effects, the project must be screened in for appropriate assessment.

10.3.53. 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 and works completed to date, I would concur that a Stage 2 Appropriate Assessment is required for the Bandon River SAC.

10.3.54. Appropriate Assessment

10.3.55. Bandon River SAC - Description of Bandon River SAC

10.3.56. The Bandon River SAC consists of relatively short adjoining stretches of the Bandon and Caha Rivers. The predominant rock formations are Old Red Sandstone to the north and Carboniferous slate stretching south of Dunmanway. Soils in the

northern section consist of peats, podzols and skeletal soils. The southern section consists of alluvial soils and Brown Podzolics. The east-west exposure of Old Red Sandstone to the north of Dunmanway displays distinct ridgelines of bare rock with poor pasture and scrub, below this the river widens and meanders through a fertile floodplain, beyond which the main channel splits into braided streams forming islands.

10.3.57. This site contains good examples of two habitats listed on Annex I of the E.U. Habitats Directive - alluvial forest and floating river vegetation - and supports populations of four Annex II species - Otter, Salmon, Brook Lamprey and Freshwater Pearl Mussel. The presence of a number of Red Data Book plant and animal species adds further interest to the site.

10.3.58. Bandon River SAC – Conservation Objectives

10.3.59. The Conservation Objectives for Bandon River SAC notes 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 NPWS has prepared site specific conservation objectives, attributes and targets for the qualifying interests (QI) associated with the Bandon River SAC, which can be found online at the NPWS website.

10.3.60. It is a conservation objective for Bandon River SAC to restore the favourable conservation condition of Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation; Alluvial forests with Alnus glutinosa and Fraxinus excelsior, and the Freshwater Pearl Mussel in Bandon River SAC. It is also a conservation objective to maintain the favourable conservation condition of Brook Lamprey in Bandon River SAC. I am satisfied that the qualifying interests are at risk of potential impact from the proposed development.

10.3.61. Bandon River SAC – Potential Direct Impacts

10.3.62. I am not satisfied, based on lacunae in the NIS regarding impact of works already completed as part of the project that there will be no potential direct impacts (i.e., through habitat loss) on the qualifying interest habitats or species of the Bandon River SAC.

10.3.63. Bandon River SAC – Potential Indirect Effects

10.3.64. The NIS notes that given the proximity of the proposed development site to the SAC boundary, potential effects could occur. The NIS considered the following potential impacts:

- Impacts from surface water runoff during construction and operation;
- In-combination impacts.

10.3.65. The NIS does not consider or assess the impact of works already undertaken as part of the overall project and is concerned only with potential impacts arising from remaining works to be undertaken.

10.3.66. Potential in-combination effects

10.3.67. The NIS considers relevant plans and development proposals in the area that could result in cumulative effects, including clear-felling of forestry adjacent to the development site. The NIS (not being remedial in nature) fails to consider or assess the impact of works already undertaken as part of the overall project. The NIS states that no potential in-combination impact from the proposed works has been identified. I am not satisfied that potential in-combination effects have been adequately assessed given that impact arising from works already undertaken are not considered in the NIS.

10.3.68. Mitigation measures

10.3.69. Section 7 of the NIS details mitigation measures to be employed during construction, including environmental management, duties, and responsibilities of personnel. The mitigation measures include:

- Establishing a site boundary and containing works within same;
- Storing machinery to an off-site location;
- Silt fencing along existing drains will be upgraded and the need for additional silt fencing assessed;
- An earth berm along northern boundary to prevent diffuse runoff to northern drainage ditch;
- Soil excavation will be completed during dry periods and undertaken with excavators and dump trucks.

- Excavated material will be removed on an ongoing basis and storage of excavation is unlikely to be required.
- Proprietary foul water storage facilities which shall be tankered away on a regular basis.
- A hydrocarbon spill kit will be kept on site.

10.3.70. In my view, it cannot be stated that the mitigation measures are appropriate or sufficient to avoid significant impacts and exclude adverse effects on site integrity given that works have commenced and the impact of same has not been assessed. For this reason, I am unable to conclude that no residual impact is anticipated as part of the proposal.

10.3.71. NIS Omissions

10.3.72. In my opinion the NIS is incomplete and inadequate as it fails to consider or assess the impact of works already undertaken as part of the overall project for which development consent is sought.

10.3.73. Appropriate Assessment Overall Conclusion

10.3.74. The proposed R585 Road Realignment and Improvement Scheme has been considered in light of the assessment requirements of Section 177AE of the Planning and Development Act 2000, as amended. Having carried out screening for Appropriate Assessment of the project, it was concluded that the project may have a significant effect on Bandon River SAC. Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of this site in light of its conservation objectives.

10.3.75. The AA screening report (and the NIS) does not consider or assess works already completed as part of the overall project i.e., site clearance, laying of hardcore in new road footprint, extension of surface water drainage system, and installation of silt fencing. On the basis of the information provided with the application, including the Natura Impact Statement, and in light of the assessment carried out above, I am not satisfied that the proposed development individually, or in combination with other plans or projects would not adversely affect the integrity of European site No. 002171 (Bandon River SAC), in view of the site's Conservation Objectives.

10.3.76. In my opinion, the Board, therefore, cannot be satisfied, beyond reasonable scientific doubt, that the proposed development, either individually or in combination with other plans and projects, would not adversely affect the integrity of European site No. 002171 (Bandon River SAC), in view of the site's conservation objectives and qualifying interests. The Board is, therefore, precluded from granting planning permission for the proposed development.

11.0 Recommendation

On the basis of the above assessment, I recommend that the Board refuse the proposed development subject to the reasons and considerations below.

1. On the basis of information submitted with the application, it appears to the Board that the description of the development is inaccurate as works have been undertaken for which permission is sought. Accordingly, it is considered that it would be inappropriate for the Board to consider the grant of a permission for the proposed development in such circumstances.
2. Having regard to the information provided with the application, including the Natura Impact Statement, a description of the proposed development and works completed to date, the Board cannot be satisfied, beyond reasonable scientific doubt, that the proposed development, either individually or in combination with other plans and projects, would not adversely affect the integrity of Bandon River SAC (site code 002171), in view of the site's conservation objectives and qualifying interests. In such circumstances the Board is precluded from granting planning permission for the proposed development.

Alaine Clarke
Senior Planning Inspector

16th October 2023