



An
Bord
Pleanála

Inspector's Addendum Report

ABP-315466-23

Development	Construction of 54 houses including all ancillary site works and connection to public services.
Location	Friarscourt, Laghtadawannagh, Killala Road, Co. Mayo
Planning Authority	Mayo County Council
Planning Authority Reg. Ref.	21793
Applicant	Thawside Ltd.
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant	Friarscourt Residents Association
Observer(s)	None
Date of Site Inspection	3 rd May 2023
Inspector	Ian Campbell

1.0 Introduction

- 1.1. This report is a second addendum report to the Inspector's report in respect of ABP-315466-23 (dated 23rd January 2024).
- 1.2. On the 31st of January 2024 the Board decided to defer consideration of this case and requested the Inspector to outline what specific additional information would be required to enable a full and comprehensive assessment and to reach definitive conclusions in respect of Appropriate Assessment.
- 1.3. Following the preparation of an addendum report (dated 14th February 2024) the applicant was afforded an opportunity to respond (by way of a Section 132 notice under the Planning and Development Act, 2000, as amended) in a Board Direction dated 21st March 2024.
- 1.4. A response to the Board's request for Further Information was received on the 16th of May 2024 and on the 16th of July 2024 the Board decided to defer consideration of the case and requested the Inspector to prepare an addendum report having regard to the submission received and to provide an assessment and definitive conclusion in relation to the Appropriate Assessment, and to provide the Board with either reasons for refusal or conditions.
- 1.5. This report considers the submission made by the applicant on foot of the request for further information.

2.0 Response to the Board's Decision to Request Further Information

- 2.1. The applicant's response to the Board's request for Further Information is set out in an Otter Survey and an revised Natura Impact Statement (NIS), both dated May 2024 and received by the Board on the 16th of May 2024.
- 2.2. **Re. Appropriate Assessment Methodology/General:**
 - 2.2.1. The applicant was requested to submit an otter survey to demonstrate whether otters, a QI of River Moy SAC, use the Sruffaunbrogue Stream and the area in the vicinity of the appeal site, the extent of any such use, and if necessary to set out mitigation measures to address the potential impact of the proposed development on otter populations.

2.2.2. The applicant submitted an Otter Survey prepared by an ecological consultant. The survey examined the site for holts and general activity and was undertaken in accordance with the methodology outlined in '*Ecological Surveying Techniques for Protected Flora and Fauna during the Planning of National Road Schemes*' (NRA, 2009). The site and suitable habitats within 150 metres of the proposed development was searched for evidence of otter (e.g. live animals, spraints, prints, resting places). The site was visited during the daytime on the 28th of April 2024 to assess habitats on site and surveys were subsequently completed on days following dry periods so that evidence of otters was not washed away by rainfall. The survey was carried out during the recommended period (i.e. April to September). No live or dead specimens were observed during the surveys and no holts were identified within the survey area. Two points along the stream were recorded as possible locations that may provide indicators of otter activity.

2.2.3. The survey notes the following;

- No confirmed holts along the River Moy will be lost or disturbed as a result of the proposed development.
- In the event that holts are discovered during construction a derogation licence will be required.
- During the construction phase there is potential for disturbance from construction activities to influence localised otter movement along the Sruffaunbrogue Stream which adjoins the development. The potential for disturbance is limited however given that no overnight working is proposed.
- Potential sources of disturbance are identified from incursion into the corridor of the Sruffaunbrogue Stream by construction personnel, vehicles or materials, and from construction noise and vibration (this will be restricted to the vicinity of the proposed construction works). Additionally, adverse changes in water quality could arise from silt-laden run-off, the use of cement and hydrocarbons and the use of other potentially-polluting chemicals or materials during construction, with resultant changes to the habitat and quality of the river, including to otter prey species such as salmonids, however given the

documented status of otter within the River Moy SAC such a change would not be significant enough to result in a significant decline in otter, and the use of standard mitigation measures during construction will avoid such adverse changes in water quality.

- Subject to the implication of mitigation measures there are no direct and/or indirect adverse effects anticipated during the operational phase of the project, the project will not impact on the distribution of otter or result in a significant decline in the distribution of otter within the River Moy SAC during construction or operation.
- Based on observations during the otter activity surveys, no confirmed couching sites or holts along the Sruffaunbrogue Stream will be lost or disturbed as a result of the construction of the project.
- The project will not result in any significant barriers to connectivity for otter.
- Regular checks should be made by the site ecologist for the presence of otter during the construction phase.
- Anthropogenic activities can cause disturbance to otters. A 10 metre buffer zone will be implemented where possible between the stream and the development works. A retaining wall (south boundary) and silt trap fencing will also be used where possible to separate the works from the river. Where 10 metre buffer zones are not possible, a retaining wall (south boundary) and silt trap fencing will be used as protection from development activities.
- During the construction phase it is essential that machinery which could harm otters is made safe or cordoned off with temporary fencing at the end of the working day.

2.2.4. The otter survey report concludes that subject to mitigation measures set out in the Otter Survey Report and the associated NIS, no adverse effects on Otters are anticipated, and that the proposed development will not affect otters as a Qualifying Interest of the River Moy SAC, relative to the applicable Conservation Objectives.

2.3. **Re. Assessment of the potential impact of the proposed development on mobile species which are QI of River Moy SAC which may use the Sruffaunbroque Stream.**

2.3.1. The applicant has submitted a revised Natura Impact Statement. The revised NIS specifically addresses the potential impact of the proposed development on mobile species which are QI of River Moy SAC and the NIS includes mitigation measures to address the potential impact on same.

2.4. **Re. Ambiguity in relation to whether the NIS has been prepared by a competent person with an ecology background.**

2.4.1. The revised NIS has been prepared by Ciara Morrin, with qualifications in Marine Science and stated experience in the preparation of Appropriate Assessments and invasive species.

2.5. **Re. consistency and a comprehensive approach in relation to confirmation of potential impacts on European sites.**

2.5.1. The applicant has submitted a revised Natura Impact Statement. The revised NIS adopts a more consistent and comprehensive approach in its examination of European Sites.

2.6. **Re. confirmation as to which European sites are being brought forward from screening stage/Stage 1 to Stage 2.**

2.6.1. The applicant has submitted a revised Natura Impact Statement. The revised NIS is unambiguous in terms of which European Sites are being examined. The revised NIS examines River Moy SAC, Killala Bay/Moy Estuary SAC and Killala Bay/Moy Estuary SPA. I am satisfied that there are no additional European Sites within the zone of influence which require consideration.

2.7. **Re. clarification in relation to the extent of flood risk as it relates to entire site, including the proposed temporary construction access route.**

2.7.1. Paragraph 4.4. of the revised NIS addresses flood risk on the site. The NIS notes that the minimum level of the temporary access road will be 21 metres (OD Malin). The

NIS refers to CFRAMS modelling at a Node located at the western boundary of the site, i.e. 34KNOC00250, with predicted/modelled water levels ranging from 22 metres OD Malin (i.e. greater than 1/100 year flood probability – Flood Zone A), 22.51 metres OD Malin (i.e. 1%, 1/100 year to 0.1 % 1/1000 year flood probability) to 22.71 metres OD Malin (i.e. less than 0.1%, 1/1000 year flood probability).

- 2.7.2. From reviewing the information on the CFRAMS website I also note modelled flood levels (Fluvial Extent) at 2 no. additional Nodes along the southern boundary of the site, i.e. 34KNOC00217, with modelled water levels which range from 21.71 metres OD Malin (i.e. 10% AEP¹), 22.33 metres OD Malin (i.e. 1% AEP) to 22.52 metres OD Malin (i.e. 0.1% AEP) and 34KNOC00207, with modelled water levels which range from 21.68 metres OD Malin (i.e. 10% AEP), 22.32 metres OD Malin (i.e. 1% AEP) to 22.51 metres OD Malin (i.e. 0.1% AEP).
- 2.7.3. I note that in the case of each Node along the boundary of the site in the vicinity of the location of the proposed temporary construction road the minimum modelled water levels exceed the stated minimum level of the proposed temporary construction road, which is stated as being 21 metres OD Malin.
- 2.7.4. I note that *Drawing PL-12A* (submitted to the PA on the 25th of October 2022) includes two cross sections along the western and southern boundary of the site and that at these particular locations the temporary construction access road is indicated with a level in excess of 24 metres OD Malin. I note however that the applicant has not submitted a chainage drawing to indicate the levels of the temporary access road over its entire length. Given that part(s) of the proposed temporary construction access road will be at a level of 21 metres, these locations would be submerged under all AEP flood scenarios.
- 2.7.5. The NIS notes that flood risk is addressed by mitigation measures and specifically refers to the erection of a silt-fence which is to be installed along the Sruffaunbrogue Stream. Page 53 of the revised NIS refers to the possibility of installing a double silt-fence at locations of increased flooding at the discretion of the Ecological Clerk of Works. I note that the silt-fence indicated on *Drawing PL-12A* (submitted to the PA on

¹ Annual Exceedance Probability.

the 25th October 2022) is c. 1 metre in height. I am not satisfied that a silt-fence(s) would be effective at locations where the level of the road is 21 metres OD Malin, and noting the modelled water levels relative to the level of the road at location(s) where it has a level of 21 metres OD Malin I note that such is the extent of modelled water levels in each AEP scenario that the silt-fence(s) could be over-topped by water which could be laden with silt and potentially contaminated by hydrocarbons. I have further concerns in relation to the efficacy of silt-fencing at location(s) where the road level is 21 metres OD Malin noting that the flooding would likely cause the silt-fence(s) to fail as a result of the pressure on the fence(s) from flood water. In both scenarios potentially polluted and silt laden water could be released into the Sruffaunbrogue Stream, with downstream implications for Killala Bay/Moy Estuary SAC.

2.8. Re. Appropriate Assessment Mitigation Measures:

- 2.8.1. Re. provision of clear/specific mitigation measures for the construction of the retaining wall along the western boundary of the development site.** The applicant has submitted a revised Natura Impact Statement. Section 6 outlines mitigation measures which include, the installation of silt-traps along the Sruffaunbrogue Stream; the suspension of excavation works during periods of extreme rainfall; the dispatch of concrete directly from truck to trench/foundation; and procedures for accidental spillages.
- 2.8.2. Re. clarity in respect of the extent of flooding on the site, specifically the proposed temporary construction access road, and an assessment of the implications of same on European sites and on the efficacy of mitigation measures proposed in the NIS.** See paragraph 2.7 (above).
- 2.8.3. RE. map indicating the location of all proposed mitigation measures where they relate to specific locations within the development site.** The applicant has submitted a revised Natura Impact Statement. A map indicating the location of mitigation measures, specifically silt fences, is indicated on page 54 of the revised NIS.
- 2.8.4. Re. definitive approach in relation to proposed mitigation measures.** The applicant has submitted a revised Natura Impact Statement which adopts a more consistent approach in terminology in relation to mitigation measures.

- 2.8.5. **Re. clarity in relation to the location of silt fences with reference to the Sruffaunbrogue Stream.** The applicant has submitted a revised Natura Impact Statement. A map indicating the location of mitigation measures, specifically silt fences, is indicated on page 54 of the revised NIS.
- 2.8.6. **Re. Japanese Knotweed.** The applicant has submitted a revised Natura Impact Statement. Paragraph 6.3 includes a subsection on invasive species control, in particular Japanese Knotweed. The procedure for eradicating Japanese Knotweed, including mitigation measures is set out, and includes excavation of the plants and contaminated soil, the loading of the material into bio secure trucks and transportation off-site, the use of pesticide in a controlled manner so as to prevent it entering the adjacent watercourse, the use of buffer zones between the watercourse and the areas to be treated, the use of physical barriers to prevent run-off of pesticide, monitoring and record keeping.
- 2.8.7. **Re. oversight of mitigation measures.** The applicant has submitted a revised Natura Impact Statement. Paragraph 6.2.1. confirms that an Environmental Site Officer/Ecologist Ecological, who will be independent of the main contractor, will be appointed to oversee the implementation of the mitigation measures.
- 2.8.8. **Re. failure of mitigation measures.** The applicant has submitted a revised Natura Impact Statement. Paragraph 6.2.3 sets out a protocol for the failure of silt fences. In addition, paragraph 6.2.1. confirms that an Environmental Site Officer/Ecologist Ecological will be appointed to oversee the implementation of the mitigation measures.

3.0 **Assessment**

- 3.1. Appropriate Assessment – Stage 1 Screening (see paragraph 7.4.1. of initial Inspector's report).
- 3.2. Appropriate Assessment – Stage 2
- 3.2.1. Article 6(3). The requirements of Article 6(3) as related to appropriate assessment of a project under part XAB, sections 177U and 177V of the Planning and Development Act, 2000, as amended, are considered fully in this section. The areas addressed in this section are as follows:

- Compliance with Article 6(3) of the EU Habitats Directive.
- Screening the need for appropriate assessment.
- The Natura Impact Statement and associated documents.
- Appropriate assessment of implications of the proposed development on the integrity each European site.

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

3.2.3. Screening The Need for Appropriate Assessment. Following the screening process, it has been determined that Appropriate Assessment is required as it cannot be excluded on the basis of objective information that the proposed development, individually or in-combination with other plans or projects will not have a significant effect on the following European sites:

- Killlala Bay/Moy Estuary SAC (Site Code: 000458)
- Killlala Bay/Moy Estuary SPA (Site Code: 004036)
- River Moy SAC (Site Code: 002298)

The possibility of significant effects on other European sites has been excluded on the basis of objective information and noting that there is no possible ecological connection or pathway between the appeal site and other Natura 2000 sites surrounding the proposed development. Measures intended to reduce or avoid significant effects have not been considered in the screening process.

3.2.4. The Natura Impact Statement. A revised NIS, prepared by Ciara Morrin, examines and assesses potential adverse effects of the proposed development on Killala Bay/Moy Estuary SAC, Killala Bay/Moy Estuary SPA and River Moy SAC. Habitats on the site were surveyed and found to comprise spoil and bare ground, exposed sand, gravel or till and recolonising bare ground. Small areas of the site comprise wetland grassland, scrub and lowland depositing rivers. Japanese Knotweed is identified as being present within the site. The revised NIS is accompanied by an Otter Survey (see paragraph 2.2. above). The NIS notes the following;

- No SCI of Killala Bay/Moy Estuary SPA were observed on the site and the site was not found to provide suitable habitat for breeding, roosting or foraging for birds species listed as SCI for Killala Bay/Moy Estuary SPA.
- Killala Bay/Moy Estuary SAC and River Moy SAC are identified as being potentially susceptible to pollution and sedimentation which could enter the Sruffaunbrogue Stream affecting aquatic dependent QI's.
- Salmon, Sea Lamprey and Brook Lamprey are identified as being found in the River Moy and its tributaries. The revised NIS notes the potential for impacts on these species from the deposition of sediment, concrete or hydrocarbons and that mitigation measures are required.
- The revised NIS notes evidence of otter in the Sruffaunbrogue Stream adjoining the site.
- In relation to River Moy SAC, the revised NIS sets out mitigation measures for Sea Lamprey, Brook Lamprey, Salmon and Otter. Mitigation measures are also proposed for Sea Lamprey associated with Killala Bay/Moy Estuary SAC.
- The site is noted as being outside the foraging range for Lesser horseshoe bat associated with the nearest SAC of which the species is a QI of (i.e. Lough Carra/Mask Complex SAC).

- White-Clawed Crayfish are stated in the revised NIS as not occurring adjacent to or downstream of the site.
- Mitigation measures are proposed for 'Estuaries' and 'Mudflats and Sandflats Not Covered By Seawater At Low Tide', QI's of Killala Bay/Moy Estuary SAC to address potential impacts from polluted run-off and silt-laden runoff. The provision of a 10 metre buffer and a retaining wall is identified as providing a physical barrier at operational phase and therefore no direct/indirect effects are anticipated during this phase on these two QI's.
- Mitigation measures are also noted as being required at construction phase for Narrow-Mouthed Whorl Snail and Harbour Seal, QI's of Killala Bay/Moy Estuary SAC.
- The revised NIS includes an examination of recent planning applications where permission has been granted in the vicinity of the appeal site. I note that there are no recent planning applications for the surrounding area that share a direct link with the subject site. A review of plans is also included in the revised NIS. The revised NIS states that there is no potential for the proposal to contribute to any potential cumulative impacts, when considered in combination with other developments in the locality.

3.2.5. The revised NIS includes mitigation measures which will be adhered to. Measures proposed for the construction and operational phase of the proposed development are set under the following headings and include;

Suspended Solids Pollution:

- There will be no direct discharge of surface water from any element of the works without suitable attenuation and treatment.
- Silt fences, silt traps or settlement ponds shall be provided for the protection of the watercourse during construction.
- Silt control measures will be installed correctly and monitored.

- Suspended solids in any discharges to fisheries waters shall not exceed 25mg/133 nor result in the deposition of silts on gravels or any element of aquatic flora and fauna.
- Soil excavation will not be completed during periods of prolonged/heavy rain.
- Any stockpiles will be located greater than 100 metres from a watercourse until reinstatement. Stockpiles within 200 metres of a watercourses will be covered.
- Clearly defined working areas, delineated by temporary protective fencing where required will be implemented between the working area and nearby watercourses. A vegetated buffer zone of 10 metres shall be implemented where possible to further stop sediment and nutrients from entering local watercourses.
- Storing heavy machinery or materials in the buffer zone will be avoided.
- Any ground damage to buffer areas will be remediated.
- Construction processes that pose a risk of activating sediment laden runoff will be halted during periods of extreme rainfall. A review of all work practices for periods of heavy rainfall will be undertaken.
- The crossing of watercourses at natural fords will not be permitted.
- Run-off from stockpiles will be collected via a shallow toe drain which will discharge to a settlement pond. Temporary settlement ponds will be designed and sized to adequately attenuate suspended solid run-off from stockpile areas.
- An Environmental Incident and Emergency Response Plan detailing the steps to be undertaken in the event of a spillage of chemical, fuel or other hazardous wastes (e.g. concrete) will be in place.
- The contractor will monitor weather forecasts.

Pollution Control:

- The storage of oils, fuel, chemicals, hydraulic fluids etc. will not occur within 100 metres of watercourses and will be undertaken on an impervious base within a bund and appropriately secured.
- Machinery will be cleaned in advance of works and routinely checked.

- Fuelling of machinery will be undertaken at least 100 metres from watercourses.
- Wash down water from exposed aggregate surfaces, cast-in-place concrete and from concrete trucks will be trapped on-site to allow sediment to settle out and reach neutral pH before clarified water is released to the stream or drain system or allowed to percolate into the ground.
- Any spillage of fuels etc. will be immediately contained, and the contaminated soil removed from the site and properly disposed of.
- Oil booms and oil soakage pads will be kept on site to deal with any accidental spillage.
- The contractor will ensure that all construction equipment is mechanically sound to avoid leaks of oil, fuel, hydraulic fluids and grease.
- Fuel, hydraulic oils and lubricants will be stored in designated bunded areas. Refuelling of construction equipment and the addition of hydraulic oil or lubricants to vehicles/equipment will take place in designated bunded areas away from drains and other watercourses.
- Spill-kits and hydrocarbon absorbent packs will be stored in the cabin of vehicles working near watercourse and operators trained in the use of this equipment.

Cement:

- Concrete will be delivered to the closest point in to reduce movement within the site.
- Plant operating close to the water will require special consideration of the transport of concrete from the point of discharge from the mixer to final discharge into the delivery pipe (tremie). Care will be exercised when slewing concrete skips or mobile concrete pumps near surface waters.
- The preferred method for delivering concrete during construction is to dispatch the concrete directly from the concrete truck into the foundation or trench

excavation. Where this is not possible, concrete may need to be transferred from the concrete truck to a smaller 6T dumper truck.

- There will be no hosing of concrete, cement, grout or similar material spills into surface water bodies/ drains. Such spills shall be contained immediately and runoff prevented from entering the watercourse.
- Machinery and equipment participating in concreting operations on site will require washout and clean up after use. A dedicated concrete washout area will be provided at the site compound and shall be maintained regularly.
- Washout will be carried out at designated locations only.
- Washout locations will be provided with appropriate designated, contained impermeable area and treatment facilities including adequately sized settlement tanks.
- Raw or uncured waste concrete will be disposed of by removal from the site.

Dust:

- Use of wheel washes (self-contained systems that do not require discharge of the wastewater to water bodies) and water misting or sprays for dusty activities.
- A speed limit of 20km/h will be introduced for all relevant plant and machinery.
- Site roads shall be cleaned and maintained as appropriate. Hard surface roads shall be swept and unsurfaced roads shall be restricted to essential site traffic only.
- Any site roads with the potential to give rise to dust will be watered.
- Stockpiling of materials shall be designed to minimise exposure to wind.

Noise:

- All works will be compliant with British Standard 5228: Code of Practice for Noise Control on Construction and Demolition Sites, as well as the Safety, Health and Welfare at Work (General Application) Regulations 2007.
- All plant and machinery used during the works will be the quietest of its type and maintained in good condition.

- Construction practices will take place only within daylight hours (or if works are required outside these hours by agreement from the Local Authority).
- Speed limit of 20 kmph for all construction traffic.
- The contractor will ensure the use of quiet working methods.
- Mechanical plant will be fitted with effective exhaust silencers.
- Vehicle reverse alarms will be silenced.
- If required, compressors will be of the "noise reduced" variety.
- All pneumatic percussive tools will be fitted with mufflers and static mechanical construction plant will be enclosed by acoustic screens.
- Employees working on the site will be informed about the requirement to minimise noise and undergo training.
- Noise monitoring in the event of complaints.

Incidents/Accidents:

- An emergency-operating plan will be established to deal with incidents or accidents during construction that may give rise to pollution in watercourses, including means of containment.
- All hazardous materials on site will be stored within secondary containment designed to retain at least 110% of the storage contents.
- Temporary bunds for oil/diesel storage tanks will be used.
- Safe handling of all potentially hazardous materials will be emphasised and an emergency response plan shall be in place in case of accidental spillage.
- Raw or uncured waste concrete will be disposed of by removal from the site and any spillage of fuels, lubricants or hydraulic oils will be immediately contained and the contaminated soil removed from the site and properly disposed of.
- There will be no discharge of un-attenuated water to watercourses proximal to the works.

- In the event of a significant oil spill occurring, an appropriate licenced contractor will be employed.
- Material will be removed and disposed of in accordance with the Waste Management Plan.
- If the spill is hazardous or toxic in nature a licenced contractor to carry out remediation works.

Plant Management:

- All plant will be checked and monitored.
- Stationary plant machinery will have drip trays located beneath if located within an environmentally sensitive area.
- Where feasible, refuelling will take place at least 50-100 metres away from watercourses.
- All waste generated on site will be transported by a permitted waste carrier and suitably disposed of at a licensed waste facility.
- No waste will be buried, burnt, dumped on-site.
- In the event of the death of any faunal species, species details, photographs and any other available information will be recorded, the EcCoW and a county council representative informed of the incident and the NPWS notified.

Lighting:

- Lighting used during the operational phase will be directional.
- High-power LEDs warm white (3000K) will be used to reduce blue light component.
- No lighting will be necessary during the construction phase because works will be confined to daylight hours.

Japanese Knotweed:

- Pesticide will be used in a controlled manner so as to prevent it entering the adjacent watercourse.

- The type of pesticide used will be chosen on the basis of toxicity to water habitats.
- Pesticide will be used during favorable weather conditions.
- Plants and material will be removed from the site in bio-secure trucks.
- Buffer zones will be employed between the watercourse and the areas to be treated.
- Physical barriers will be used when pesticides are being used to prevent run-off.

Buffer Zones:

- A 10 metre buffer zone will be implemented where possible along the western site boundary where the development adjoins the Suffaunbrogue Stream (10m is the minimum distance recommended by National Roads Authority (Ireland) Guidelines). The purpose of the buffer zone is to protect otters and local wildlife species from disturbance during the construction and operational phases. Vegetation in buffer zones helps to filter pollutants from surface runoff before they enter the river. This includes sediments, nutrients (such as nitrogen and phosphorus), and other contaminants, which can degrade water quality and harm aquatic life. Additionally, buffer zones act as natural barriers that can absorb excess rainfall and runoff, thereby reducing the risk and severity of flooding. A retaining wall occurs along the southern boundary and will serve the same protective purposes. Silt trap fencing will be erected before any construction occurs with regards to the retaining wall or otherwise.

Silt Fencing:

- Silt fences will be installed downgradient of the potential source of the silt/ sediment.
- The silt curtain will contain the area where silted waters are being generated and shall terminate on high ground.
- They shall be constructed using permeable filter fabric (Hy-Tex Terrastop silt fence or similar rather than a mesh material).

- Its base shall be embedded at least 15cm into the ground and staked at 2m intervals.
- The vegetated turves shall be peeled back and not detached from the ground, the materials inserted and the turves replaced to hold the base in place.
- The bottom of the fabric will be folded and backfill will be placed over it. Each section of fence turned up wards to prevent runoff from the end cutting.
- The silt fence will be inspected regularly by the ECoW and contractor during the working day and weekly during construction, and in particular following heavy rainfall.
- Silt fences shall remain in-situ until the vegetation on the disturbed ground is re-established.
- The fence shall not be pulled from the ground but cut at ground level and the stakes / posts removed.
- Should water build up behind the fences, the sediment will settle to the bottom. Water can be released, but sediments will remain.
- Areas which may be subject to increased sediment deposition should be noted. If significant runoff or sediment deposition is anticipated, or in areas of increased flood risk, a second fence parallel to the original one for added capacity will be installed. This will follow a judgement call by the ECoW.
- Additional silt trap fencing should be added if necessary at locations which should be decided by the ECoW. Additional fencing may be required during the treatment of Japanese knotweed on site. The ECoW will oversee all control actions relation to the eradication of invasive species.
- Checks and maintenance in these areas will be carried out daily.
- Silt fences will not be a replacement for good housekeeping and measures to minimise runoff from the site will be carried out, e.g. covering of materials and spoil, checking and maintaining equipment, working in dry weather conditions etc.

- Silt-fence systems will provide sufficient room for sediment to be deposited behind the silt fence and for sediment removal equipment to access the deposits.
- A record of its installation, inspection and removal must be maintained by the ECoW.
- The silt fence will remain until all the site has been stabilised or until such as time as agreed with an Ecological Clerk of Works for the project.
- Upon failure of the silt trap fence to prevent materials generated on site (e.g sediment, concrete hydrocarbons) by means of a tear, lack of proper installation, or other, the incident will be reported to the Site Ecologist, who will notify the NPWS and the relevant planning authority if and when it occurs and appropriate and incident-specific remedial measures will be taken.

3.2.6. The revised NIS concludes² that with proper construction practice and adherence to the mitigation measures, no significant negative effects on the integrity of the Natura 2000 network are likely to occur as a result of the proposed development.

3.2.7. Having reviewed the documents, submissions and consultations, I am satisfied that the information allows for a complete assessment of any adverse effects of the development on the conservation objectives of the following European sites alone, or in combination with other plans and projects:

- Killlala Bay/Moy Estuary SAC (Site Code: 000458)
- Killlala Bay/Moy Estuary SPA (Site Code: 004036)
- River Moy SAC (Site Code: 002298)

The applicant's NIS was prepared in line with current best practice guidance and provides an assessment of the potential impacts on Killlala Bay/Moy Estuary SAC, Killlala Bay/Moy Estuary SPA and River Moy SAC.

3.2.8. Appropriate Assessment of implications of the proposed development. The following is a summary of the objective scientific assessment of the implications of the project

² The conclusion of the NIS (page 55) refers to a CEMP however I note that no such document was submitted with the planning application/appeal.

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.

3.2.9. The following sites are subject to Appropriate Assessment:

- Killlala Bay/Moy Estuary SAC (Site Code: 000458)
- Killlala Bay/Moy Estuary SPA (Site Code: 004036)
- River Moy SAC (Site Code: 002298)

A description of the sites and their Conservation and Qualifying Interests/Special Conservation Interests are set out in Table 7.1 of the initial Inspector's report. I have also examined the Natura 2000 data forms as relevant and the Conservation Objectives supporting documents for these sites available through the NPWS website (www.npws.ie).

3.2.10. The main aspects of the proposed development that could adversely affect the conservation objectives of the European sites include;

- Impacts on water quality from the discharge of contaminated surface water run-off during the construction phase of the proposed development to ground water and surface water, affecting aquatic QIs and SCI-supporting habitat.
- The release of Japanese Knotweed to Killlala Bay/Moy Estuary SAC.
- Disturbance to mobile species which are QI's of River Moy SAC in the Sruffaunbrogue Stream, should they be present.

3.2.11. Assessment of proposed Mitigation Measures - The NIS outlines a number of mitigation measures, including the provision of silt-fencing along the Sruffaunbrogue Stream. The land to the south and west of the Sruffaunbrogue Stream, where the applicant proposes a temporary construction traffic access, is indicated on floodinfo.ie as being within the 10% AEP Fluvial Flood Extent (i.e. High Probability) and the 1% AEP Fluvial Flood Extent (i.e. Medium Probability) respectively and there is therefore potential for contaminated run-off from the temporary construction access route to enter the Sruffaunbrogue Stream, with implications for European sites downstream in a flood event. The NIS notes that the minimum level of the temporary access road will

be 21 metres (OD Malin). The revised NIS refers to CFRAMS modelling at a Node located at the western boundary of the site, i.e. 34KNOC00250, with predicted/modelled flood levels ranging from 22 metres OD Malin (i.e. greater than 1/100 year flood probability – Flood Zone A), 22.51 metres OD Malin (i.e. 1%, 1/100 year to 0.1 % 1/1000 year flood probability) to 22.71 metres OD Malin (i.e. less than 0.1%, 1/1000 year flood probability). From reviewing the information on the CFRAMS website I also note modelled water levels at 2 no. additional Nodes along the southern boundary of the site, 34KNOC00217 and 34KNOC00207. In the case of each Node along the boundary of the site the minimum modelled water levels exceed the minimum stated level of the proposed temporary construction road. The revised NIS proposes the erection of silt-fencing which is to be installed along the Sruffaunbrogue Stream running aside the edge of the temporary construction access. Given that the part(s) of the access route which have levels of 21 metres would be submerged in all three AEP scenarios I am not satisfied that a silt-fence (or double silt-fence) would be effective at this location. I note that such is the extent of modelled water levels in each AEP that the silt-fence(s) could be over-topped by flood water allowing silt-laden water and water potentially contaminated by hydrocarbons to enter the Sruffaunbrogue Stream. I have further concerns in relation to the efficacy of silt-fencing at this location noting that the flooding could cause silt-fencing to fail/burst through the pressure on the fence from flood water. In both scenarios potentially polluted and silt-laden water could be released into the Sruffaunbrogue Stream, with downstream implications for Killala Bay/Moy Estuary SAC and Killala Bay/Moy Estuary SPA. On the basis of the foregoing I am not satisfied that the mitigation measures, specifically silt-fencing is sufficient to address potential impacts from pollution and sedimentation during the construction phase of the proposed development, nor am I satisfied that the potential for deterioration of habitats and species identified within the European Sites is not likely.

- 3.2.12. Integrity test. Following the appropriate assessment and the consideration of mitigation measures, I am unable to ascertain with confidence that the project would not adversely affect the integrity of Killala Bay/Moy Estuary SAC, Killala Bay/Moy Estuary SPA and River Moy SAC in view of the Conservation Objectives of these sites. This conclusion has been based on a complete assessment of all implications of the project alone and in combination with plans and projects.

3.2.13. Appropriate Assessment Conclusion. 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. Having carried out screening for Appropriate Assessment of the project, it was concluded that it may have a significant effect on Killala Bay/Moy Estuary SAC, Killala Bay/Moy Estuary SPA and River Moy SAC. 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. Following an Appropriate Assessment, it has been ascertained that the proposed development, individually, or in combination with other plans or projects, could adversely affect the integrity of Killala Bay/Moy Estuary SAC, Killala Bay/Moy Estuary SPA and River Moy SAC in view of the Conservation Objectives of these sites. This conclusion is based on:

- A full and detailed assessment of all aspects of the proposed project including proposed mitigation measures in relation to the Conservation Objectives of Killala Bay/Moy Estuary SAC, Killala Bay/Moy Estuary SPA and River Moy SAC.
- Detailed assessment of in combination effects with other plans and projects including historical projects, current proposals and future plans.

I consider that there remains a reasonable scientific doubt as to the absence of adverse effects on the integrity of on Killala Bay/Moy Estuary SAC, Killala Bay/Moy Estuary SPA and River Moy SAC and as such the Board is precluded from granting permission for the proposed development.

4.0. **Recommendation**

Having regard to the above it is recommended that permission should be refused for the reason set out below.

5.0. **Reasons and Considerations**

1. The land to the south and west of the Sruffaunbrogue Stream, where the applicant proposes a temporary construction traffic access road, is indicated on floodinfo.ie as being within the 10% AEP Fluvial Flood Extent (i.e. High Probability) and the 1% AEP Fluvial Flood Extent (i.e. Medium Probability)

respectively and there is therefore potential for contaminated run-off from the temporary construction access route to enter the Sruffaunbrogue Stream during a flood event. In the case of the modelled water levels for each of the three AEP scenarios, the temporary construction access route would at its minimum level be 21 metres OD Malin, as stated in the revised NIS submitted to the Board on the 16th of May 2024, and would therefore be submerged at this/these location(s). The efficacy of silt-fencing along the edge of the temporary construction access, which is intended as a mitigation measure to protect the Sruffaunbrogue Stream from pollutants and sediment laden run-off, would therefore be compromised. On the basis of the information submitted with the planning application/appeal documentation and the revised Natura Impact Statement, the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on Killala Bay/Moy Estuary SAC (Site Code: 000458), Killala Bay/Moy Estuary SPA (Site Code: 004036) or River Moy SAC (Site Code: 002298), or any other European site, in view of the site's conservation objectives. In such circumstances, the Board is precluded from granting permission.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Ian Campbell
Planning Inspector

7th August 2024