



An
Bord
Pleanála

Inspector's Report

ABP-317444-23

Development	Development of Amenity Looped Paths
Location	Peninsula Point, Kenmare, Co. Kerry.
Local Authority	Kerry County Council
Type of Application	Environmental Impact Assessment (EIA) Screening Determination under Article 120(3)(b) of the Planning and Development Regulations 2001, as amended.
Applicant	Martin Arthur
Date of Site Inspection	04/09/2023.
Inspector	Auriol Considine

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1.0 Introduction

- 1.1. The purpose of this report is to recommend to the Board on whether it should issue a direction to Kerry County Council that the proposed development, comprising amenity looped paths at Peninsula Park, Kenmare should be subject to Environmental Impact Assessment (EIA), which would require the preparation and submission of an Environmental Impact Assessment Report (EIAR).
- 1.2. Under the provisions of Article 120(3)(b) of the Planning and Development Regulations 2001 (as amended), Mr. Martin Arthur has sought direction from the Board as to whether or not an EIA Screening is required for the proposed works. A concurrent and separate application for an Appropriate Assessment (AA) Screening Determination is being considered under ABP-317440-23.
- 1.3. The proposed development comprises a local authority project, under the provisions of Part XI of the Planning and Development Act, as amended, and does not comprise a direct application to the Board. Kerry County Council is of the opinion that the proposed development would not likely have significant effects the environment and an EIA is not required. In support of this opinion, the Council prepared an EIA Screening Report submitted to the Board. The applicants question this conclusion and contend the proposed development would likely have significant effects on the environment.

2.0 Background

- 2.1. The subject site comprises approximately 2.03ha of an overall land holding, extending to 13.7 acres, which were purchased by Kerry County Council in 2018. The development of the land was included as an action in the Kenmare Socio-Economic Plan 2019-2023. In 2021, a Feasibility Analysis and Masterplan was prepared by Kenmare Chamber of Commerce and Tourism CLG, trading as Kenmare Marketing and Events Group for the potential development of the land, specifically to include facilities for water sports, walking and short cycling trails, along with all-weather sports facilities and possibly an adventure park.
- 2.2. The works proposed under the subject Part 8 project comprises solely the provision of looped walks at the Peninsula lands on a site of 2.03ha. The proposed trails will

generally follow the existing desire lines of existing recreational users, and for the most part, will follow the existing paths on the Peninsula lands. It is indicated that the route and finishes have been designed and located so as to provide a more comfortable and diverse range of experience for recreational users and for a broad range of people. The route of the proposed trail will require the removal of a small amount of scrub and will follow the natural desire line to the coast, avoiding the need for large scale cut/fill or engineering works.

- 2.3. The Council's EIA Screening determined that, the proposed development is below mandatory EIA thresholds, there are no potential cumulative or in-combination effects likely to arise and there is no real likelihood of significant effects on the environment arising from the proposed development. As such, EIA Screening nor EIA are required in this instance. The applicant in this instance does not agree with this determination.

3.0 Site and Location

- 3.1. The subject site is located approximately 650m to the south-west of the Main Street in Kenmare and in an area known as Peninsula Lands. The site lies to the end of Pier Road, where it becomes a walking trail and lies to the west of the existing trail which connects back into the town of Kenmare via Pound Lane and Market Street. The Kenmare Wastewater treatment plant and a quarry are located circa 100 - 265m to the north of the site, and the walking trail becomes accessible by cars in the vicinity of the quarry and the WWTP.
- 3.2. The overall site area is noted to be 2.03ha and the subject development area comprises a pathway of approximately 1km in total. The site is already well used as a recreational walking trail and the desire lines of the trail are clearly evident on the site. The site comprises part of a wider holding which extends northwards and is included within the Kenmare Peninsula Land – Feasibility Analysis & Master Plan area. The site is bound by extensive trees and hedgerows, with some gaps which offer views over Kenmare Bay to the south.

4.0 Proposed Development

4.1. Description of the development:

The proposed development includes (as described in the public notices in compliance with Part XI of the Planning and Development Act 2000, as amended, as set down in Part 8 of the Planning and Development Regulations 2021, as amended:

- The construction of 643m of bituminous macadam paths 3m wide.
- Construction of 447m of grassed paths 3m wide
- All associated ancillary and accommodation works.

4.2. Accompanying documents:

Kerry County Council included the following documents following the application my Mr. Arthur under Article 250(3)(b) of the Regulations:

- Cover letter
- Public Notices – Part 8
- Relevant plans and maps
- AA Screening Report, dated April 2023
- PA Habitats Directive Assessment Screening Determination Statement, dated April 2023
- Observations / Supplemental information to AA Screening Exercise undertaken, dated July 2023
- Preliminary EIA Screening Examination Report, dated April 2023
- Preliminary EIA Screening Examination Conclusion Statement, dated April 2023
- Schedule 7A Report, dated July 2023.

5.0 Planning History

5.1. The following is the relevant planning history noted in relation to the subject site.

PA ref: 98/1020: Outline permission granted to construct 8 dwellings on the western area of the current site by Mr. Joseph Arthur.

PA ref: 06/2077: Permission refused for the construction of 300 residential units, 19 retail units, 10 office units, creche, bar/restaurant, treatment plant and 4 car public car parks.

The Board will note that the applicant for the Direction also referred to the following applications for permission in the vicinity of the site which were subject to EIA and AA requests by Kerry County Council:

ABP Ref: ABP-302796 (PA ref: 17/1050): Permission sought for the construction of a motorhome park with associated reception / facilities building, toilets, showers and laundry room, connections to public services and all other associated site works. This development site lies approximately 550m to the north east of the current site, with its western boundary following the banks of the Finnihy River, which forms part of the Kenmare River SAC.

Kerry County Council granted permission for this development and the decision was overturned on appeal to the Board for 2 reasons relating the lack of capacity in the Kenmare WWTP and the absence of a NIS.

ABP ref: ABP-302604-18 (PA ref: 17/1242): Permission was sought for the demolition of a house and the construction of 50 houses on a site approximately 170m to the east of the subject site. Kerry County Council granted permission for the scheme, and this was overturned on appeal to the Board for 2 reasons relating the lack of capacity in the Kenmare WWTP and the inadequate density of development on serviced lands. It is noted that the Inspectors report advised that an NIS would be required for the development.

Two referral cases to the Board which relate to the lands to the north of the current proposed site are also cited:

ABP-307488-20: Whether the alleged unauthorised quarrying activity constitutes development or is or is not exempted development. The Board concluded that the information before it was not sufficient to enable a determination as to whether the development would require an Environmental Impact Assessment and/or an Appropriate Assessment which would exclude

it from any exemption by reference to Section 4(4) of the Planning and Development Act 2000 (as amended).

ABP-311192-21: Whether the stripping back and removal of all of the topsoil and trees to create an extension of 2.75 hectare to an existing quarry for storage in the existing quarry is or is not development and is or is not exempted development.

6.0 Legislative and Policy Context

6.1. Roads Act 1993, as amended:

- 6.1.1. The development the subject of this EIA Direction request comprises solely the provision of looped walks at the Peninsula lands. The proposed trails will generally follow the existing desire lines of recreational users, and for the most part, will follow the existing paths on the Peninsula lands.
- 6.1.2. **Section 68(1) of the Roads Act** references a cycleway and states that a ‘cycleway’ means “a public road or proposed public road reserved for the exclusive use of pedal cyclists or pedal cyclists and pedestrians”. As the reference to ‘cycleway’ in the legislation also includes pedestrians, I am satisfied that the provision of looped walks at the Peninsula lands would constitute a ‘cycleway’, as defined in the Roads Act.
- 6.1.3. **Section 50(1)(a) of the Roads Act, 1993 (as amended)**, lists road developments in respect of which there is a mandatory requirement to carry out Environmental Impact Assessment (EIA) as follows-
- (i) the construction of a motorway,
 - (ii) the construction of a busway,
 - (iii) the construction of a service area, or
 - (iv) any prescribed type of proposed road development consisting of the construction of a proposed public road or the improvement of any existing public road.

With regard to category (iv), I note that Article 8 of the Roads Regulations 1994 (S.I. 119 of 1994) states that: “The prescribed types of proposed road development for the purpose of subsection (1)(a)(iii) of section 50 of the Act shall be –

- a) the construction of a new road of four or more lanes, or the realignment or widening of an existing road so as to provide four or more lanes, where such new, realigned or widened road would be eight kilometres

or more in length in a rural area, or 500m or more in length in an urban area;

- b) the construction of a new bridge or tunnel which would be 100m or more in length.”

6.1.4. Under **Section 50(1)(b)**, if An Bord Pleanála considers that any road development proposed (other than development to which Section 50(1)(a) applies) would be likely to have significant effects on the environment it shall direct that the development be subject to an Environmental Impact Assessment.

6.1.5. Under **Section 50(1)(d)**, a road authority is required to decide whether or not a proposed road development would be likely to have significant effects on the environment, where it would be located on a European Site, a nature reserve, land designated as a refuge for fauna or land designated a natural heritage area. Kerry County Council (as the road authority) has carried out an EIA Screening determination under the provisions of section 50(1)(d) of the Roads Act 1993, as amended and concluded that the proposed development is **not** likely to have significant effects on the environment.

6.1.6. Section 50(1A)(a) states that unless the Board is satisfied that a proposed road development (other than development to which section 50(1)(a) applies):

- (i) would not be likely to have significant effects on the environment, or
- (ii) would be likely to have significant effects on the environment,

the Board shall require the road authority to provide it with information on the characteristics of the road development proposed and its likely effects on the environment.

6.2. **EIA Directive 2014/52/EU:**

6.2.1. This directive, amends Directive 2011/92/EU (the EIA Directive) on the Assessment of the Effects of Certain Public and Private Projects on the Environment and came into force on 15th May 2014. The EIA Directive 2014/52/EU reaffirms that ‘Annex I projects’ shall be subject to EIA and that for ‘Annex II projects’, Member States shall determine whether the project should be subject to EIA on a case-by-case basis or subject to thresholds or other criteria set by the Member State. The screening determination must be based on the information provided by the developer and if

mitigation measures are influential to a screening determination, these must be stated by An Bord Pleanála, as the competent authority, in a screening determination.

6.3. **Planning and Development Act 2000, as amended**

- 6.3.1. Section 172(1) states that an EIA shall be carried out in respect of certain applications for consent for proposed development. This includes applications for 'sub threshold' development, namely those which are of a Class specified in Part 2 of Schedule 5 of the PDR, but do not exceed the relevant quantity, area or other limit specified and the competent authority determines that the proposed development would be likely to have significant effects on the environment.
- 6.3.2. Section 172(1A) specifies that the above is relevant to development that may be carried out by the local authority under Part X.

6.4. **Planning & Development Regulations**

- 6.4.1. **Schedule 5** of the Regulations sets out the classes of development where EIA is required.

Part 1: Sets out the development classes which are subject to mandatory EIA.

Part 2: Sets out development classes subject to EIA where they exceed a certain threshold in terms of scale or where the development would give rise to significant effects on the environment.

- 6.4.2. The applicant for the Direction suggests that the subject proposed works fall under Schedule 5, Part 2, Class 15 of the Planning and Development Regulations with regard to the requirement for EIA. This Class is as follows:

Any project listed in this Part which does not exceed a quantity, area or other limit specified in this Part in respect of the relevant class of development, but which would be likely to have significant effects on the environment, having regard to the criteria set out in Schedule 7.

- 6.4.3. **Schedule 7** of the Regulations sets out the criteria for determining whether a development would, or would not be likely to have significant effects on the environment, under the following three headings:

1. Characteristics of the proposed development.
2. Location of the proposed development.
3. Types and characteristics of potential impacts.

6.4.4. **Schedule 7A** relates to information to be provided by the applicant or developer for the screening of sub-threshold development for the purposes of EIA.

6.5. **Other guidance:**

- European Commission, 'EIA of Projects - Guidance on Screening' (2017) - Presents a stepped approach to the screening process for competent authorities, as well as including two checklists to assist in case-by-case screening.
- Department of the Environment, Heritage and Local Government, 'Environmental Impact Assessment Guidance for Consent Authorities regarding Sub-threshold Development' (2003) - states that the criteria for deciding whether or not a proposed development is likely to have significant effects on the environment are set out in the EC (Environmental Impact Assessment) (Amendment) Regulations, 1999 (S.I. No. 93 of 1999) and in Schedule 7 of the Planning and Development Regulations, 2001 (as amended) (S.I. No 600 of 2001).
- Department of Housing, Planning and Local Government, 'Guidelines for Planning Authorities and An Bord Pleanála on carrying out Environmental Impact Assessment' (2018).
- The Office of the Planning Regulator - Practice Note PN02 - 'Environmental Impact Assessment Screening', June 2021.

6.6. **National Planning Framework – Project Ireland 2040, DoHP&LG 2018**

6.6.1. The National Planning Framework – Project Ireland 2040 is a high-level strategic plan for shaping the future growth and development of Ireland to 2040. Key objectives of the Framework are to ensure the promotion of compact urban development, sustainable mobility and transition to a low carbon and climate resilient society. Embedded in these objectives is the promotion of recreational infrastructure,

including investment in and enabling access to recreational facilities (Strategic Outcome 7). National Policy Objective 22 seeks to facilitate tourism development.

6.7. County Development Plan

6.7.1. The Kerry County Development Plan 2022-2028 is the relevant policy document pertaining to the subject site. The site lies within the settlement boundary of the regional town of Kenmare. The site lies to the western boundary of the zoned area and the Board will note that the Draft Kenmare MD LAP 2023-2029 includes site as Open Space / Park. I also note that the indicative walkway, as proposed in the current Part 8 project is also included on the relevant draft zoning map for the town. In terms of the Kenmare Functional Area Local Area Plan 2010-2018, I note that the development of a promenade/walkway along the seashore of the Peninsula lands was identified as an opportunity for the town.

7.0 Request for EIA Direction

7.1. Applicants Request

7.1.1. Mr. Martin Arthur, through his agent Cunnane Stratton Reynolds, made an application under the provisions of Article 250(3)(b) requesting the Board make an AA Screening determination. The submission sets out the detail of the site and location, as well as the detail of the proposal under assessment, including the construction works, and is summarised as follows:

- The applicant refers the scheme to the Board as there is significant ecology in the area, including bats, otters etc and many Natura 2000 sites in the vicinity.
- The proposed development involves a large scope of work and disturbance to the area.
- The spatial scope of the project is limited, but is general practice that when screening for AA, sites within 15km if the proposal are identified.
- There are 12 SACs and 2 SPAs included for preliminary assessment.
- It is believed that the sites in close proximity will be unduly impacted by the construction phase and the applicant has therefore requested a determination

to identify if AA or EIA is required in order to implement or assess the need for mitigation measures at the site.

- Applications in the area have been subject to EIA previously.
- The AA Screening Report submitted by Kerry County Council identifies the following potential impacts:
 - Reduction in water quality from construction and or operational phases.
 - Disturbance of Otter and / or Lesser Horseshoe Bat
 - Loss / fragmentation of key habitat
 - No in-combination effects are identified.

It is considered that these impacts are high impacts.

- Lesser Horseshoe Bat are known to locate along the western and southern coast of Ireland and a bat survey is required to identify roosts, flight paths and any other impacts.
- The Lesser Horseshoe Bat is a QI of the Glengarriff Harbour and Woodlands SAC (located approximately 10.5km from the site).
- The applicant submitted the Kenmare Peninsula Land Feasibility Analysis & Master Plan 2021, which was prepared for the subject site, with extracts from same included.
- References are made to other applications in the area which were subject to EIS requests by way of FI from Kerry County Council, including references to 2 referrals to the Board.
- It is requested that the Board carry out an assessment and it is believed that the result will indicate that an AA Screening Stage 2, EIS and NIS should be completed.
- It is further considered that EIA Screening Determination will result in the project requiring EIA under Schedule 5, Part 2 Class 15, having regard to the criteria set out in Schedule 7.

7.2. Kerry County Council EIA Screening Report

7.2.1. The planning authority submitted the details, including drawings, the Preliminary EIA Screening Examination Report and conclusion statement, as well as the Preliminary AA Screening Report and Stage 1 AA Screening Statement, relating to the Part 8 application. In addition to these documents, the PA also submitted observations / supplemental information to the AA screening exercise, dated July 2023 and a Schedule 7A report.

7.2.2. The report is set out in 5 sections as follows:

- **Section 1** – presents an introduction to the project, the legislative context and the methodology employed in the preparation of the report.
- **Section 2** – presents a description of the project and sets out its characteristics in terms of:
 - **Size, scale, area** – the proposal is to provide for a footpath/grassed trail a total length of approximately 1.1km on Peninsula Lands which are currently used as a local walking trail. The development will include a bituminous paved surface, 3m in width for a length of 650m and a grassed trail for 450m. The layout will provide for a looped walk within an overall site of 2.03ha.
 - **Site clearance & preparation** – the construction of the footpaths will include the removal of topsoil for a depth of 200mm along the footprint of the path. The trail works will be permanently delineated by routine low-level mowing. The topsoil removed from the area of the pavement will be used to level areas of the trail where necessary. A small amount of scrub will be removed at the western area of the proposed path to open vistas to Kenmare Bay. There is an existing route through the scrub which will be used to avoid the need for large scale cut/fill or engineering works. There will be no other alterations to the landscape.
 - **Key resource requirements** – materials required will include aggregate and bituminous macadm surfacing. Details of machinery to be employed are also noted, with 3-6 employees on site daily for the duration of the works.

- **Timescale** – it is expected that the works will take 5 weeks.
- **Waste details** – all waste material will be managed as per an Integrated Waste Management Plan
- **Services required** – no additional services required due to the small scale nature of the works.
- **Other details** – the works will give rise to a moderate increase in noise and human presence during the construction phase, which will only occur during daylight hours. The development will facilitate greater use of the paths, but it is expected that the operational phase impacts will be similar to existing.
- **Section 3** – sets out the legislative and mandatory EIA requirements and includes an assessment as to whether an EIS is required based on the project type and stated criteria of the legislation. It is concluded that the scheme has been assessed and is considered to be a project to which the EIA Directive may be applicable, as a subthreshold roads project, but not one which requires mandatory EIA.
- **Section 4** – In considering the potential for significant effects on the environment, the Source-Pathway-Receptor model was used to review the characteristics and location of the proposed development and the characteristics of the potential impacts.
 - The development is small scale and substantially below the threshold for mandatory EIA.
 - The works are small scale which will not create significant emissions, pollution or waste, risk of major accidents or risk to human health and will occur over a short period of time. No impacts on archaeology, built or architectural heritage, natural resources, landscape or residential properties are envisaged.
 - A small amount of semi-natural grassland will be lost but will not constitute a significant effect and the works will facilitate greater access to the remaining habitat. There are no designated habitats, watercourses, riparian habitats or wetlands within the site or impacted – AA Screening has been

undertaken in this regard. There is no realistic potential for significant impacts to biodiversity.

- No significant cumulative impacts are likely to arise in view of the small scale and contained nature of the works and no permitted developments were noted which would give rise to in-combination effects.
- On completion of the works, the recreational experience and usage of the lands would be improved.
- **Section 5** – The report concludes that there is no significant and realistic doubt in regard to the likelihood of significant effects on the environment arising from the proposed development. EIA Screening or EIA are not required. No mitigation measures are required.

7.3. Schedule 7A Information (EIA)

7.3.1. Schedule 7A of the Planning and Development Regulations, 2001 (as amended), relates to information to be provided for the screening of sub-threshold development for the purposes of EIA. The planning authority submitted a Schedule 7A report following the request for the determination in order to provide the required information to the Board to facilitate a determination as to whether or not the proposed development requires EIA. The report submits that the development comprises a small-scale recreational path upgrade proposal on the edge of the town of Kenmare and sets out what the works will entail, noting that minimum intervention works are required for the provision of the proposal.

7.3.2. The report includes the information previously included in the Preliminary EIA Screening Examination Report with certain headings expanded and included to reflect those of Schedule 7A, and I don't propose to restate the same information here. The following additional information included in the Schedule 7A report is summarised as follows:

1. Characteristics of the project –

1(d) The use of natural resources, in particular land, soil, water and biodiversity:

- **Land** – the impact is minor in terms of area of greenfield land take with the footprint of the paved pathway 0.2ha.

- **Soil & Geology** – the site is underlain by Walsortian limestone which are massive, unbedded lime-mudstone. The dominant soil type is coarse loamy drift with siliceous stones. There are no features of geological interest / importance on the site.
- **Water** - no watercourse runs through the site. The River Finnihy estuarine waters join the site to the north west and the Kenmare River estuary to the south. The Inner Kenmare River Estuary is classified as ‘not at risk’ under the WFD and has been assigned ‘good’ status. The site overlies a locally important aquifer and no groundwater wells are located within the area. The development does not require water abstraction and the site is not located within a flood zone A.
- **Biodiversity** – the development will result in the loss of a small amount of semi-natural grassland which is not significant. No designated habitats etc will be impacted and there are no invasive species or areas of high biodiversity importance located within the site. No element of the proposed works presents a threat or risk to protected species including Lesser Horseshoe Bat or Otter.

1(e) & (f) There is little potential for **waste, pollution** or **nuisances** to arise due to the small nature of the development. No lighting is proposed as part of the project and construction will take place in daylight hours.

1(g) Risk of major accidents or disasters which are relevant to the project concerned, including those caused by climate change, in accordance with scientific knowledge:

- There are no SEVESO sites in the vicinity of the project and the proposed development does not pose a risk of accidents having regard to the substance or technologies used.
- Climate Change is likely to result in more extreme weather events. A small area of the Peninsula Lands are vulnerable to coastal flooding, although not within Flood Zone A and the

proposed development has no potential to cause or increase flood risk elsewhere.

1(h) The development poses no risk to **human health** and will facilitate improving the quality of life and human health.

2. Location of the project – The environmental sensitivity of geographical areas likely to be affected by the proposed development:

2(a) The Peninsula Lands are accessible to the public and are used for recreational purposes.

2(b) The amount of natural resources lost can be characterised as minor. No resources are likely to be impacted to any significant degree.

2(c) The absorption capacity of the natural environment is considered with particular reference to natural environment types as follows:

- Wetlands, riparian areas, river mouths
- Coastal zones and the marine environment
- Mountain and forest areas
- Nature reserves and parks
- Nationally protected areas and Natura 2000 sites
- Areas where there has been a failure to meet EU environmental quality standards - WFD
- Densely populated areas
- Landscapes and sites of historical, cultural or archaeological significance

It is not considered that the proposed development will have a significant impact on the above landscapes and natural environments.

3. Types and characteristics of Potential Impacts:

Population & Human Health: The proposal does not pose a risk to population or human health, nor are major disasters / accidents likely to result or interact with the project.

The pathways connect to the town of Kenmare and the upgrading of the amenity pathways will impact positively on population and human health by facilitating outdoor recreation.

No in-combination effects are likely to arise, and no mitigation measures are required.

Biodiversity: A small amount of semi-natural grassland will be lost as it corresponds to the footprint of the proposed path. No designated habitats or are impacted by the development and no invasive species are recorded on the site.

No in-combination effects are likely to arise, and no mitigation measures are required.

Land, Soil, Water, Air & Climate: The project will result in some small impacts on land and soil, which is considered minor in the context of the scale of the project. No watercourses are to be impacted by the development and no in-stream works are proposed. There will be no impacts on ground or surface waters. The proposal is not vulnerable to flooding and will not cause or increase flooding elsewhere.

No in-combination effects are likely to arise, and no mitigation measures are required.

Material Assets, Cultural Heritage, Landscape: The project will not impact on protected views or landscape designations, and seaward views will not be impaired. The development will not impact on the essential landscape character or attributes of the peninsula. The development will improve accessibility to the recreational facilities, thereby impacting positively on the towns material assets. The proposal is unlikely to significantly impact archaeology, built or architectural heritage, natural resources or landscape of importance.

No in-combination effects are likely to arise, and no mitigation measures are required.

Interaction between the above factors: The interactions include habitat loss and visual impacts associated with the land use.

Interactions are considered minor and will not result in significant impacts on the environment.

The Schedule 7A report concludes that taking into account the nature, scale and location of the development, it is considered that significant effects on the environment are not likely, and that the preparation of an EIA is not warranted.

8.0 Assessment

8.1. Introduction

8.1.1. The works proposed under the Part 8 project comprises solely the provision of looped walks at the Peninsula lands on a site of 2.03ha. The proposed trails will generally follow the existing desire lines of recreational users, and for the most part, will follow the existing paths on the Peninsula lands, which extend to approximately 1.1km in total. Approximately 650m will comprise a 3m wide bituminous paved footpath and 450m will comprise a grassed trail.

8.1.2. It is indicated that the route and finishes have been designed and located so as to provide a more comfortable and diverse range of experience for recreational users and for a broad range of people. The route of the proposed trail will require the removal of a small amount of scrub (3m) and will follow the natural desire line to the coast, avoiding the need for large scale cut/fill or engineering works.

8.2. Requirement for EIA

8.2.1. The Planning Authority has submitted that the project is considered to be a type to which the EIA Directive may be applicable, as a subthreshold roads project, but is not one which requires mandatory EIA. The proposed development is directly listed as a type of infrastructure development under Part II of Schedule 5 of the Planning and Development Regulations, 2001 (as amended) or Roads Act 1993 (as amended).

8.2.2. **Section 68(1) of the Roads Act** references a cycleway and states that a 'cycleway' means "a public road or proposed public road reserved for the exclusive use of pedal cyclists or pedal cyclists and pedestrians". As the reference to 'cycleway' in the legislation also includes pedestrians, I am satisfied that the provision of looped walks at the Peninsula lands would constitute a 'cycleway', as defined in the Roads Act.

8.3. EIA Screening Criteria

8.3.1. Section 50(1)(e) of the Roads Act requires that, in deciding whether a proposed road development would or would not be likely to have significant effects on the environment, the Board shall take into account the criteria specified in Annex III of the EIA Directive. Annex III groups criteria for determining whether projects listed in Annex II of the Directive should be subject to an EIA under three headings, as follows:

1. Characteristics of projects.
2. Location of projects
3. Type and characteristics of the potential impact.

8.3.2. These criteria are addressed in my assessment below.

8.4. Characteristics of Proposed Development

Size and Design of Proposed Project:

8.4.1. The proposed development comprises works on lands with a stated area of c. 2.03ha. The proposal is to improve the existing looped walking trail on Peninsula Lands, which cover a distance of approximately 1.1km, located to the south west of the town of Kenmare. The development will include a bituminous paved surface, 3m in width for a length of 650m and a grassed trail for 450m. The scale, size and design of the development would not justify the need for an environmental impact assessment being significantly below the threshold for mandatory EIA set out in the Roads Act.

Potential for Cumulative Impacts with Other Projects:

8.4.2. The development site is located approximately 650m to the south west of Kenmare Town Centre and in an area which is known as Peninsula Lands. The immediate surroundings comprise green fields, a former quarry and the municipal WWTP to the north and Kenmare Bay to the south. The area is already used as a recreational space for walkers with an existing walking loop from the town via Kenmare Bay through the eastern side of the subject site.

8.4.3. The nature and scale of the proposed works are minimal and will be contained within the footprint of the proposed footpaths. As such, no significant cumulative impacts

are likely to arise to any magnitude which would warrant the need for EIA and no permitted developments in the vicinity of the site were noted which would give rise to in-combination effects.

Nature of any Demolition Works:

- 8.4.4. No demolition works are proposed.

Use of Natural Resources, Production of Waste, Pollution and Nuisances, Risk of Major Accidents and Risk to Human Health:

- 8.4.5. The nature, use and scale of development is such that it would not result in a significant use of natural resources. The works proposed are minimal and are proposed to improve accessibility to the existing walking trail.
- 8.4.6. In terms of waste, I consider that the scale of the development is such that any waste generated by the development process will be insignificant in terms of impacts on the environment.
- 8.4.7. The construction period for the development is short, approximately 5 weeks, and the nature of plant and machinery which will be used in the construction phase will give rise to potential pollution and nuisance due to possible fuel, lubricant, oil and hydraulic fuel spills and increased noise associated with the construction process. However, I consider that the potential for impacts on the environment are not at all significant such as to warrant the need for EIA.
- 8.4.8. The site lies adjacent to Kenmare Bay and there are no SEVESO sites within the vicinity. The nature and scale of the development is not such that it would lead to a likely creation of an accident risk or have an adverse impact on human health. The provision of improved recreational facilities may improve the quality of life and health of residents and users of the amenity and may encourage a modal shift towards active travel. From the view of climate change, such impacts, although likely to be small, are positive.

Conclusion on Characteristics of Proposed Development

- 8.4.9. Having regard to the nature, scale and design, I am satisfied that the characteristics of the proposed development would not give rise to significant adverse impacts on the environment and therefore, the need for an environmental impact assessment would not be justifiable.

8.5 Location of Proposed Development

Existing & Approved Land Use:

8.5.1 The proposed development site lies to the south west of the urban area of the town of Kenmare, within the settlement boundary and on lands currently used for amenity purposes. The proposed works will improve the accessibility to the existing walking trails and does not propose a change of use to the site. I am satisfied that no significant adverse impacts in relation to land use are likely to arise such as to warrant the need for EIA.

Relative Abundance, Availability, Quality and Regenerative Capacity of Natural Resources:

8.5.2 A small amount of semi-natural grassland will be lost within the footprint of the proposed paved footpath. This habitat is noted to be plentiful within the wider site and the loss amounts to the 3m wide path which will have a length of 647m in total. There are no designated habitats, watercourses, riparian habitats or wetlands within the site or such areas impacted by the proposed project, and no invasive species were identified within the site. The Board will note that AA Screening has been undertaken for the project and that it was concluded that there is no realistic potential for significant impacts to biodiversity.

8.5.3 The site is currently used for recreational purposes with existing informal trails present on the site from frequent use. The proposed works will formalise the existing trails and provide a surface which will make them more accessible and will involve the loss of a small amount of semi-natural grassland within the footprint of the proposed paved path. The works will also include the removal of a small area of scrub, approximately 3m in width, at the western side of the site in order to open the vista to Kenmare Bay. The Board will note that there is an existing desire line to the north which is frequently used by people and the gap currently extends to approximately 0.5-1m in width. There is an abundance of the scrub and semi-natural grassland which will be affected by the proposed development in the immediate vicinity would have significant regenerative capacity.

8.5.4 The site is bound to the west and south by the Kenmare River SAC, which is so designated for a variety of species and habitats, none of which occur within the subject site. The works do not propose the loss of any trees, or Annex I habitats and

no invasive species are noted to be present within the site. The proposed development will not result in the loss of any high value habitats, notwithstanding them being a resource for various species of flora and fauna.

8.5.5 Given the nature of the development and the location of the site in the context of Kenmare town centre together with the current use of the site where there is already a high usage of the site from walkers, I am satisfied that there would no significant adverse impacts in terms of the relative abundance, availability, quality and regenerative capacity of natural resources. The natural resources used in the proposed development are limited and there is no potential for significant effects as to warrant EIA.

Absorption Capacity of the Natural Environment:

8.5.6 The absorption capacity of the environment refers to the ability of the proposed development to be accommodated with particular reference to a number of natural environment types as identified in Annex III of the EIA Directive as follows:

8.5.7 **Wetland, riparian areas, river mouths** – the subject site lies at the mouth of the Rier Finnihy and adjoins the Kenmare River estuary. The site does not include any wetland habitat. The site boundaries, which may be considered as constituting riparian areas due to the existing vegetation providing an interface with the adjoining water bodies, will not be affected by the proposed development. The proposed works are to be undertaken on the landward side of the existing vegetation and on semi-natural grassland only with no impacts on any important ecology.

8.5.8 **Coastal zones and the marine environment** – as above. The site lies adjacent to the coastal zone and marine environment associated with the Kenmare River estuary. No works are proposed to be undertaken within the coastal zone or marine environment.

8.5.9 **Mountain and forest areas** – the site is not located within or adjacent to a mountain. There are pockets of wooded areas beyond the boundary of the subject site, particularly to the north, with the existing field boundaries comprising the majority of trees at the subject site. The proposed development does not include the removal of any existing trees. The Mucksna Wood SAC lies approximately 650m to the south of the subject site, and across the estuary from the subject site. This SAC

is so designated for 1 QI - Old sessile oak woods with Ilex and Blechnum in the British Isles. The proposed development will have no effect on this QI.

8.5.10 Nature reserves and parks – there are no designated nature reserves or national parks within the vicinity of the subject site. The existing use of the site is primarily recreational, and the proposed works will improve accessibility to the existing amenity.

8.5.11 Areas Classified or Protected under National Legislation; Natura 2000 areas designated by Member States pursuant to Directive 92/43/EEC and Directive 2009/147/EC – the subject site does not lie proximate to any Ramsar sites, Biospheres, Nature Reserves or Natural Heritage Areas that could be impacted by the proposed development. The site does however, lie immediately adjacent to the Kenmare River SAC which has been so designated for the following qualifying interests:

Large shallow inlets and bays [1160]

Reefs [1170]

Perennial vegetation of stony banks [1220]

Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]

Atlantic salt meadows (*Glauco-Puccinellietalia maritima*) [1330]

Mediterranean salt meadows (*Juncetalia maritimi*) [1410]

Shifting dunes along the shoreline with *Ammophila arenaria* (white dunes) [2120]

Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]

European dry heaths [4030]

Juniperus communis formations on heaths or calcareous grasslands [5130]

Calaminarian grasslands of the *Violetalia calaminariae* [6130]

Submerged or partially submerged sea caves [8330]

Vertigo angustior (Narrow-mouthed Whorl Snail) [1014]

Rhinolophus hipposideros (Lesser Horseshoe Bat) [1303]

Lutra lutra (Otter) [1355]

Phoca vitulina (Harbour Seal) [1365]

8.5.12 The subject site, however, does not include any part of the SAC and no habitats included above are present on the site. I would acknowledge that there is potential for impacts to arise due to the proximity of the SAC to the site in terms of disturbance to species due to noise and increased usage, release of pollutants/contaminants to waterbodies, removal of breeding and feeding habitats, introduction of invasive species or changes to drainage patterns. Of particular interest, in the context of the subject site, are bats and otter, both of which are noted to be vulnerable to disturbance. In this regard, I would note that the proposed development does not propose lighting and the use of the path and trail will be during daylight hours. As both species are generally nocturnal, I do not foresee any impacts arising due to disturbance to either species as a result of the proposed development.

8.5.13 The Board will note that a Screening for Appropriate Assessment report has been prepared by the local authority for the project. This proposed development is also the subject of an NIS Direction application, currently being considered by the Board – ABP-317440-23 refers. This report concluded that the proposed development is not likely to have a significant effect on any European Site in terms of habitats or species.

8.5.14 **Areas in which there has already been a failure to meet the environmental quality standards, laid down in Union legislation and relevant to the project, or in which it is considered that there is such a failure** – the Inner Kenmare Bay transitional waterbody has been assigned ‘Good Status’ in the WFD. This status is based on monitoring and the proposed development is unlikely to have any negative impact on this status.

8.5.15 **Densely Populated Areas** – the site lies on the south western extent of the town of Kenmare, which is identified as a regional town in the Kerry County Development Plan. It is a heritage town located on the internationally recognised Ring of Kerry route and is a town that is well served in terms of shops, services, facilities and amenities. It is home to a permanent population of approximately 2,400 people. As such, the town would not be described as being densely populated. The subject site lies removed from the town centre.

8.5.16 **Landscapes and Sites of Historical, Cultural or Archaeological Significance –**

the Kerry County Development Plan identifies the area of the subject site as having a landscape character which is of good quality which has a medium sensitivity to change. This suggests that the landscape of the site is highly valued and has an ability to tolerate small changes. I do not consider that the proposed works will negatively affect this landscape character.

8.5.17 Kenmare is noted to have a wealth of protected structures and buildings listed in the NIAH, as well as an Architectural Conservation Area. However, there are no such structures located within or immediately adjacent to the site which would be impacted by the proposed development. The closest recorded monument is the Children's Burial Ground, which is located approximately 400m to the north of the site, and which is not visible from the site due to the existing treelined field boundaries and woods. The likely impact of the development on the landscape, archaeology and heritage is therefore considered to be negligible to low.

8.5.18 **Conclusion** - Having regard to the nominal nature, scale and location of the proposed development on lands currently used for recreational purposes, the absence of sensitive natural or built heritage features within the footprint of the works, and the nature of the works to be undertaken, significant adverse impacts are unlikely in terms of the absorption capacity of the natural environment or built heritage.

8.6 **Characteristics of the Potential Impact**

Nature, Magnitude and Extent of the Impact

8.6.1 Having regard to the very limited nature and scale of the development proposed, together with the existing uses associated with the subject site, I am satisfied that the geographical extent of any potential impacts is limited. In terms of **population and human health**, during the short construction phase of the works, there will be limited impacts on local residents and users of the existing amenity due to noise, possibly minor dust emissions and possibly access to the walking trail. I am satisfied that such impacts will be short term and can be mitigated by way of good construction practices. There is no potential for major disasters / accidents likely to result from the development.

8.6.2 There may also be some localised short term and temporary impacts on **biodiversity** and ecology at the site during the construction phase. However, I consider that subject to good construction practices, and daylight working hours only, the impacts are of low significance to habitats and species. I note that the applicant for this determination has raised concerns regarding the impacts on bats and otters. I would disagree that the proposed development involves a large scope of work or disturbance to the area which might impact these species in terms of population numbers. The developments referenced in the request for a direction related to significantly larger developments which would have had the potential to give rise to significant impacts warranting assessment under EIA. The proposal before the Board is clearly not of such a scale.

8.6.3 Given the nominal scale of the proposed works I am satisfied that the development is unlikely to give rise to any significant negative impacts in terms of **land, soils, water quality, air, climate, material assets, cultural heritage and the landscape**. I do not consider any significant **interactions** or in-combination impacts are likely to arise such to significantly impact the environment.

Probability, Intensity and Complexity of Impacts

8.6.4 The proposed development will result in the loss of a small area of semi-natural grassland habitat. The potential effects of the construction phase are considered to be limited, short-term and temporary and I would consider that the nature of the impacts is not intense or complex.

Expected Onset, Duration, Frequency and Reversibility of the Impact

8.6.5 No significant impacts are considered likely to arise as a result of the proposed works. The construction phase of the work will be limited, short-term and temporary while the positive impacts of improved accessibility to the existing walking trail amenity will be long-term and permanent. The works proposed are reversible should it be deemed appropriate in the future with the removal of the 647m of paved footpath from the site.

Transboundary Nature of Impact

8.6.6 There will be no transboundary impacts associated with the proposed development.

Cumulation of Impacts

8.6.7 Having regard to the above assessment, and based on the information available, including the nature and scale of the proposed development, the existing site context and the separation distance and lack of any functional connection with the other projects in Kenmare, I do not consider that impacts associated with the proposed development in cumulation with other projects would be sufficiently significant as to require EIA.

Possibility of Effectively Reducing the Impact

8.6.8 Implementation of standard best practice methodologies during the construction phase of the proposed development will result in a reasonable probability of effectively reducing potential impacts.

9.0 Recommendation

Having regard to the above assessment, I consider that the proposed development of a public amenity looped paths at Peninsula Park, Kenmare, Co. Kerry, would not be likely to have significant effects on the environment. I therefore recommend that Kerry County Council be advised that the preparation and submission of an environmental impact assessment report is not required in respect of the proposed development.

10.0 Reasons and Considerations

Having regard to the following:

- (a) The location of the site within the identified settlement boundary of the town of Kenmare and to the existing pattern of development in the vicinity, including the existing use of the subject site as an amenity walkway,
- (b) The criteria set out in Schedule 7 and the information provided in Schedule 7A of the Planning and Development Regulations 2001, as amended,

- (c) The development does not fall under Schedule 5, Part 2, Class 15 of the Planning and Development Regulations 2001, as amended, having regard to the criteria set out in Schedule 7.
- (d) The limited nature and scale of the proposed development which is significantly under the threshold in respect of Class 10b(iv) (Infrastructure – Urban Development) of the Planning and Development Regulations 2001, as amended,
- (e) The limited potential for significant impacts arising from the proposed development,
- (f) The submissions made by the applicant requesting a determination and by the local authority, and
- (g) The report and recommendation of the Inspector,

It is considered that the proposed development would not be likely to have significant effects on the environment and, accordingly, that the preparation and submission of an environmental impact assessment report is not, therefore, required.

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.

A. Considine
Inspectorate
06th October 2023