Inspector's Report

ABP-317607-23

Development	Construction of an Integrated Constructed Wetland (ICW) with treatment system, pumping station and all associated site development works. An NIS has been prepared in respect of this development.
Location	Cloghane, Co Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	22949
Applicant(s)	Comharchumann Forbartha An Leith Triuigh Teo
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Grainne Ni Chonchuir and Jeremiah Greaney & Others
Observer(s)	None

Date of Site Inspection	16th November 2023
Inspector	Rachel Gleave O'Connor

Contents

1.0 Site Location and Description

1.1. The bulk of the subject site redline boundary is situated to the north of Church Road, set back from, and west of the R550 for Cloghane Village Co. Kerry. Part of the subject site is located within the village boundary itself, and adjacent to the shoreline of Brandon Bay to the east of the village. The site is formed of hilly scrub type land, generally of low agricultural value on the slopes of Mount Brandon. The site is formed of 1.5 hectares.

1.2. There are a few one-off houses dispersed along Church Road. Church Road itself is narrow, lacks footpaths and is not formally laid out. Dense overgrown vegetation bounds the edges of the road. The R550 for the village is a more formally laid out road, with footpaths along some parts and populated by regular blocks and terraces of housing, as well as some other commercial uses for the village.

2.0 Proposed Development

2.1. The proposed development comprises the following:

- Construction of an Integrated Constructed Wetland (ICW) for the upgrading of municipal wastewater treatment and management for the village. A 5 cell ICW treatment system (southwest of the village) and associated pump station and infrastructure (east of the village) where wastewaters will be pumped from the existing collection network to the ICW for treatment. Flow through, and from the system, will be operated by gravity and final discharge will be to the existing outfall in Brandon Bay.

2.2. The existing wastewater infrastructure dates back to the 1930s and provides negligible wastewater treatment prior to discharge into Brandon Bay. The design of the proposed ICW has been developed to cater for the current full-time population of 60 PE, with capabilities of treating up to 600 PE. The design accommodates seasonal population variation and allows for future expansion of the network.

2.3. The proposed ICW is a series of 5 treatment cells, interconnected by pipework, with wastewater pumped to the site and into the initial cell, before gravity flow through the system, and the existing outfall chamber at Brandon Bay.

Table 2.1: ICW Cell Areas

Cell no.	Cell area (sqm)
Cell 1	1880
Cell 2	3206
Cell 3	2190
Cell 4	3550
Cell 5	1473
Total ICW area	12,299

2.4. Proposed works to form the ICW include the following:

- Stripping of topsoil from the wetland area and retained for later use;
- Excavation of sub-soil and creation of embankments;
- Layering and compaction of soils for cell base (minimum depth of soil base 0.5mm);
- Creation of embankments:
    - Sloping embankments 1:4 to 1:2,
    - Height of embankment >1.0m,
    - Width of top embankments min.3m wide (stability and access around the wetland).
- Re-distribution of top-soil and organic material over the base of each cell;
- Installation of new pump station including rising main;
- Pipe laying to wetland and pipelines between cells;
- Placement of stones/chippings beneath inlet pipes;
- Planting each cell with emergent vegetation – each cell planted with 1-2 plants/sqm;
- Provision of monitoring pints to the inlet and outlet locations;

- Installation of Outfall manhole to new discharge pipe and connection to existing outfall;
- Connecting of rising main to ICW distribution chamber; and
- Construction of access road to the site and grass access between the cells.

2.5. Access is proposed from Church Road to the ICW site, with additional access around the ICW site and between the cells to allow for monitoring and maintenance activities.

2.6. Works include the intercepting of the existing outfall pipe and relaying wastewaters to the new pumpstation, including a new rising main to the ICW and installation of discharge pipe from the ICW to the existing outfall chamber.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority decided to grant planning permission subject to conditions. 5no. conditions are set out; conditions of note include condition no.2 concerning pre-development ecological surveys and conditions no.'s 3 and 4 concerning approval and commitment from Uisce Éireann to the ICW.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The main points of the planner's report can be summarised as follows:

- Reports received from the Environment Department and Biodiversity Officer seeking FI.
- 2 no. third party submissions received in objection, which should be addressed by the FI request from Environment and Biodiversity.
- The visual impact is rated as low and acceptable.
- Appropriate Assessment: Following the screening of the application for possible significnat effects on European sites, significant effects on European sites were identified for the following reasons:

- Notwithstanding the existing discharges to the Brandon Bay Coastal Waterbody from untreated wastewater from Cloghane village, in-combination and/or accumulative impacts on water quality from the construction phase and the operational phase of the proposed development requires further assessment, and
- The proposed ICW's location upstream of the Tralee Bay and Magharees Peninsula, West to Cloghane SAC and the direct connectivity between the proposed ICW site and the SAC;
- The request for FI made by the Environment Department of KCC, and
- Measures are required to reach a conclusion on likely significant effects.
- Appropriate Assessment required.

Further to an Appropriate Assessment and with reference to the FI request by the Environment Department, notwithstanding the existing conditions where untreated wastewater is discharging directly into Brandon Bay coastal waterbody from Cloghane village, an AA cannot be completed until the FI requested has been reviewed.

- EIA Preliminary Examination: Note that if the proposed ICW site contains 2.5ha of wet heath, that this implies that habitat is 'wetlands' as per Article 5 of the Planning and Development Regs and therefore the development would result in the drainage/reclamation of wetlands, albeit for their replacement with other wetland habitats. Therefore, the works could be development consisting of the carrying out of drainage and/or reclamation of wetlands. The threshold area affected is greater than 2ha and as such the development could require an EIAR as per Schedule 5, Part 2, Class 1(c). FI to be sought on this matter.

3.2.2. On 1st November a Further Information Request was issued to the applicant for the following 3no. reasons as summarised below:

- Details of volume and characteristics of discharge from the ICW to receiving waters, to determine and assess potential pollution loading to receiving waters at Brandon Bay. Water quality sampling of receiving waters. Evidence

to show how wastewater/effluent will be managed to ensure that odours are not generated. A waste management plan to be submitted.

- An archaeological assessment to be submitted.
- An Ecological Impact Assessment to be submitted. Including assessment of any impact to aquatic habitats. Further ecological assessment of surface waterbody within the site. Address queries with respect to the presence of wetland habitat on the site and provisions of Schedule 5, part 2, Class 1(c) of the Planning and Development Regulations with respect to EIA.

3.2.3. A report was received from the Flooding & Coastal Protection Unit after the issuing of the request for further information. The applicants responded to the report in their FI response.

3.2.4. On 28th April 2023 Further Information was submitted by the applicant. The FI detail received included an updated Appropriate Assessment (AA) Screening Report and Natura Impact Statement (NIS), an Ecological Impact Assessment (EcIA), and an Archaeology Report. On the basis of the information provided, it was concluded that adverse effects on the integrity of a European site, namely the Tralee Bay and Magharees Peninsula, West to Cloghane SAC, can be excluded.

3.2.5. Conclusion: the existing system serving the village is outdated and overburdened. The proposal will offer biodiversity opportunities including wetland dependent flora and fauna providing educational and amenity resources to the area which is welcomed. No objections and conditions recommended by the Environment Department, Biodiversity, Flooding & Coastal Assessment Unit and County Archaeologist. Recommend that permission is granted subject to conditions.

3.2.6. <u>Other Technical Reports</u>

The main points of department technical reports can be summarised as follows:

- Biodiversity Officer: There is potential for significant effects on a European site (Tralee Bay and Magharees Peninsula, West to Cloghane SAC), in view of the sites' conservation objectives, and an appropriate assessment is required. In order to complete the appropriate assessment, the FI requested by the Environment Department is required. With regards to habitats, contest whether the entire area mapped as west grassland and wet heath, would be

classed as wet heath, as it would appear more mosaic of habitat types. If it is classed as wet heath / wetlands, query requirements regarding EIA. In relation to surface waters, the applicant states that there are none on the site, however a water feature was noted during a site visit. FI requested in relation to these matters. Following receipt of FI, note that Environment are satisfied, having reviewed the amended NIS and supporting documentation, this is sufficient information to now allow an appropriate assessment of the application. On the basis of the information provided, including revised NIS, EcIA, other FI and KCC's Environment Report, it is concluded that adverse effects on the integrity of a European site, namely the Tralee Bay and Magharees Peninsula, West to Cloghane SAC, can be excluded.

- Nitrates and Biodiversity Division: No comments to make.
- Environment Section: Following further information requested:
    - The applicant must provide additional details concerning the volume and characteristics of the discharge from the ICW to the receiving waters. This information must include flow (dry weather flow m3/d).
    - The applicant must provide details on the characteristics of the proposed discharge to determine the potential pollution loading to the receiving waters – Brandon Bay.
    - As assessment of the impact of the proposed discharge on receiving waters must be provided. This must include the assimilative capacity of the receiving waters and water quality monitoring.
    - There is no baseline or background water quality data submitted with this application. Recommend that water quality sampling is carried out of the proposed receiving waters.
    - Evidence required to show how wastewater/effluent from the pumping chamber/chambers is managed to ensure that odours are not generated.
    - A waste management plan is required, evaluating and quantifying all construction and excavation waste likely to arise during all phases of development/construction, and a plan for disposal.

Following receipt of FI on 28th April 2023, no objections to the grant of permission, subject to conditions, including that approval and commitment be sought from Uisce Éireann, application of environmental mitigation measures, submission of a noise management plan, bunds to be installed around oil containment facilities, no silt/sediment to be discharged, final evaluation and quantification of construction waste, odour nuisance complaints to be investigated, noise nuisance complaints to be investigated, appointment of an environmental manager and dust suppression.

- County Archaeologist: The proposed development is located partly within the zone of notification around the recorded monument Ke004 013 listed as a ringfort. As such an archaeological impact assessment should be requested and should include pre-development archaeological testing. It should also address the current condition of the recorded monument and the issue of long-term management of the monument. Following receipt of FI, no further mitigation is required.

3.3. **Prescribed Bodies**

3.3.1. The following responses were received to the application prior to the issuing of the Request for Further Information from the Local Authority and subsequent further information submitted by the applicant.

3.3.2. Uisce Éireann: The applicant has not provided the information required to enable Irish Water to make a full assessment of the development proposal and ensure that there is no impact to Irish Water assets / deterioration in the water quality and / or treatability of any other Irish Water abstraction point(s) and/or watercourse(s) hydrologically and/or hydrogeological connected to Irish Water abstraction point(s) arising form any preconstruction, construction or post construction, decommissioning and/or operational phases of this development proposal. Request that further information is sought confirming detailed design proposals to be submitted to Irish Water for approval, that the applicant identify and confirm the proposed management, operation and management plans, and that details of decommissioning of existing public infrastructure is confirmed.

3.3.3. Heath Service Executive: Recommend that the proposal comply with all the legal limits, as appropriate, and ensure that all necessary control measures using the best available technology are undertaken during the proposed development. Measures to control all waste, water pollution, public health nuisances, light pollution, traffic impacts, interruption to services and emissions. Recommended that a system or procedure be provided by the applicant to effectively deal with complaints during the development. Important that best practice measures in terms of on-site environmental impact control, mitigation measures and appropriate monitoring are implemented during development.

3.3.4. No additional response received following further information submitted and received by the Local Authority on 28th April 2023.

3.4. **Third Party Observations**

3.4.1. Two third party objections were received to the application. Matters raised reflect similar issues set out in the grounds of appeal as summarised in section 6 below, focusing on potential impact upon private water supply, proximity of the ICW to adjacent dwellings, the road to use for access being unsuitable, privacy impact if the ICW is to be used as a public amenity, odours and ecological concerns.

4.0 **Planning History**

4.1. Subject site

4.2. None of relevance on the subject site itself.

4.3. Adjacent area

4.4. Cloghane Village, Co. Kerry, Cloghane Village: Reg. Ref. 074516 – Planning permission GRANTED on 24th June 2008 for construction of a wastewater treatment system to serve the existing bar / guesthouse and seven dwellings and permission to retain the existing development within revised site.

5.0 **Policy and Context**

5.1. **National**

5.1.1. National Guidance

'Code of Practice, Domestic Waste Water Treatment Systems, (Population Equivalent ≤ 10)', Environmental Protection Agency, March, 2021.

'Wastewater Treatment Manual, Treatment Systems for Small Communities, Business, Leisure Centres and Hotels', Environmental Protection Agency, 1999.

'Integrated Constructed Wetlands, Guidance Document for Farmyard Soiled Water and Domestic Wastewater Applications', Department of the Environment, Heritage and Local Government, 2010.

5.1.2. The National Planning Framework – Project Ireland 2040

The National Planning Framework 2018-2040 (NPF) sets ten strategic outcomes.

National Strategic Outcome 9 'Sustainable Management of Water and other Environmental Resources' states the need to 'Eliminate untreated discharges from settlements in the short-term, while planning strategically for long-term growth'.

5.2. **Regional**

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

5.2.2. Regional planning policy is set out in the Regional Spatial and Economic Strategy for the Southern Region. Section 2 of the strategy relates to 'Protecting conserving and enhancing our natural capital', RPO 112 concerns 'Water Quality'. Section 8 concerns 'Water & Utilities' and objectives of relevance include RPO 210 'Drinking Water Protection Plans', RPO 214 'Eliminating Untreated Discharges and Long-term Planning', RPO 213 'Rural Wastewater Treatment Programmes'

5.3. **Local**

5.4. Kerry County Council Development Plan 2022-2028

5.4.1. The following relevant sections and policies/objectives under the Development Plan are noted (not an exhaustive list):

5.4.2. The site is zoned 'Rural Areas Under Urban Influence' in map 5.1 of Volume 4 of the Plan. Objective 5-15 under the Rural Settlement Policy for the Plan applies to housing proposals.

5.4.3. The site is in a 'Visually Sensitive Area' with designated 'Views and Prospects' towards and from Brandon Bay, as set out in Map D of Volume 4 of the Plan.

5.4.4. Section 13.2.1.3 'Wastewater Treatment Systems and Private Wells' of the Development Plan states that 'Many private wells are at risk of contamination from sources such as wastewater treatments systems. Recommended separation distances are specified in Table B.3 of the EPA Code of Practice. Distances may be increased where the bedrock is shallow, preferential flow paths are present or the effluent and bacteria enter the bedrock rapidly.' This refers to the document '2009 Code of Practice: Wastewater Treatment Systems for Single Houses'. The EPA also set out guidance in the document 'Code of Practice: Domestic Waste Water Treatment Systems 2021'.

5.4.5. Objective KCDP 13-15 'Facilitate and support the sustainable provision of new and the upgrading of existing wastewater infrastructure to accommodate the future growth of settlements in the county in line with the Core Strategy.'

5.4.6. Objective KCDP 13-16 'Facilitate and support Irish Waters Investment Plan 2020-2024 and Small Towns and Villages Growth Programme (STVGP) and any other successor capital plans / strategies in the county including the consideration of Integrated Constructed Wetlands (ICW), at appropriate locations, which have the added benefits of providing any amenity area for the public and enhance biodiversity.'

5.4.7. Section 11.6 sets out policies and objectives in relation to landscape, including Objectives KCDP 11-77 and KCDP 11-78 concerning the protection of landscape. The subject site is located in a Visually Sensitive Area as described under section 11.6.3.1 of the Plan and identified in Volume 4 Maps. These are areas comprising outstanding landscape that are sensitive to alteration. Section 11.6.4 concerns 'Development in Designated Areas.' The following provisions apply to development in Visually sensitive landscapes areas:

- There is no alternative location for the proposed development in areas outside of the designation.
- Individual proposals shall be designed sympathetically to the landscape and the existing structures and shall be sited so as not to have an adverse impact on the character, integrity and distinctiveness of the landscape or natural

environment. Any proposal must be designed and sited so as to ensure that it is not unduly obtrusive. The onus is, therefore, on the applicant to avoid obtrusive locations. Existing site features including trees and hedgerows should be retained to screen the development.

- Any proposal will be subject to the Development Management requirements set out in this plan in relation to design, site size, drainage etc.
- The new structure shall be located adjacent to, or a suitable location as close as possible to, the existing farm structure or family home. Individual residential home units shall be designed sympathetically to the landscape, the existing structures and sited so as not to have an adverse impact on the character of the landscape or natural environment. Existing site features including trees and hedgerows shall be retained to form a part of a comprehensive landscaping scheme. Consideration must also be given to alternative locations.
- Extending development into unspoilt coastal areas is to be avoided.

5.5. Natural Heritage Designations

5.5.1. The following Special Protection Areas (SPA), Special Conservation Areas (SAC) and Natural Heritage Areas / proposed Natural Heritage Areas (NHA/pNHA) are most proximate to the site with approximate distance indicated in brackets: -

- Mount Brandon SAC (515m southeast and 587m southwest);
- Tralee Bay and Magharees Peninsula, West to Cloghane SAC (approx. 40sqm of the proposed development is located in this SAC, and remaining is 210m east);
- Magharee Islands SAC (11.62km northeast);
- Castlemaine Harbour SAC (15km southeast);
- Dingle Peninsula SPA (3.6km north, 6.5km east and 5km south);
- Tralee Bay Complex SPA (8.2km east northeast);
- Magharee Islands SPA (12.6km northeast);
- Castlemaine Harbour SPA (11.1km southeast);

- Tralee Bay and Magharees Peninsula, West to Cloghane pNHA (approx. 40sqm of the proposed development is located in this pNHA, and remaining is 220m east);
- Mount Brandon pNHA (548m south east);
- Gurrig Island (Magharees) pNHA (12.5km);
- Smerwick Harbour Sandhills and Marshes pNHA (12.7km southwest);
- Burnham Inlet pNHA (13.5km southwest);
- Emlagh East Salt Marshess pNHA (10.2km south southwest);
- Castlemaine Harbour pNHA (13.8km southeast);
- Inishtooskert and Illaunimmil (Magharees) pNHA (13.9km northeast); and
- Illauntannig (Magharees) pNHA (14.6km northeast).

5.5.2. An Appropriate Assessment of the proposed development has been carried out in Section 8 of this report below in relation to potential impacts on designated European sites.

5.6. Environmental Impact Assessment Considerations

5.6.1. The requirements for Environmental Impact Assessment (EIA) are outlined in Part X of the Planning and Development Act 2000 (as amended) and Part 10 of the Planning and Development Regulations 2001, as amended. Schedule 5 of the Regulations sets out the various classes and thresholds of development which require mandatory EIA. Part 1 of Schedule 5 lists projects for which mandatory EIA is required on the basis of their type while Part 2 of the same schedule lists projects on the basis of their relevant scale/size threshold that requires EIA.

5.6.2. There are no classes of development within Schedule 5 of the Regulations, that are applicable to the proposed development.

5.6.3. I note that the Planning Authority queried whether the site was a ‘wetland’ for the purposes of Schedule 5, Part 2, Class 1(c) of the Regulations, which concerns ‘Agriculture, Silviculture and Aquaculture’, and relates to ‘Development consisting of the carrying out of drainage and/or reclamation of wetlands where more than 2

hectares of wetlands would be affected.' The proposal includes the removal of approximately 2.11 hectare of wet grassland habitat. The submitted EcIA Report confirms that the proposed development area does not consist of qualifying 'wetland' habitats for the purposes of Schedule 5.

5.6.4. The Regulations define 'wetlands' as meaning 'natural or artificial areas where biogeochemical functions depend notably on constant or periodic shallow inundation, or saturation, by standing or flowing fresh, brackish or saline water'. With reference to Fossitt, wet grassland habitat (GS4) is defined as grassland occurring 'on wet or waterlogged mineral or organic soils that are poorly-drained or, in some cases, subjected to seasonal or periodic flooding… includes areas of poorly-drained farmland that have not recently been improved, seasonally-flooded alluvial grasslands such as the River Shannon callows, and wet grasslands of turlough basins'. The existing wet grassland habitat on the subject site forms part of agricultural land with grazing activity that is poorly drained, rather than sitting in water as would be the case with a wetland area as defined under the regulations. With reference to the preceding definitions, I am satisfied that the subject site does not comprise wetland area for the purposes of Schedule 5.

5.6.5. The proposed development which constitutes the provision of an Integrated Construction Wetland at this location, does not fall into a class of development contained in Schedule 5, Parts 1 or 2. Class 15 of the Schedule 5 states that EIA can be required in the case of a development listed in Part 2 that does not exceed a limit specified if it is considered that it that would be likely to have significant effects on the environment having regard to the criteria set out in Schedule 7 of the Regulations (Sub-threshold EIA). As the proposed development is not of a class listed there is no threshold for EIA and accordingly a subthreshold EIA is not applicable.

5.6.6. Furthermore, having regard to the nature and scale of the proposed development it is considered that any issues arising from the proximity to European Sites can be adequately dealt with under the Habitats Directive (Appropriate Assessment).

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. A third party appeal of the Planning Authority's decision to grant permission has been submitted.

6.1.2. The main points of the appeal are summarised below:

- Previous letters of objection to the planning application have not been fully addressed.
- Primary concern is surface water pollution and the impact it may have on private wells which are in close proximity to the proposed ICW. Reference to extracts from the submitted Environmental report with regards to potential contamination of surface waters.
- In the grant of permission, conditions are included relating to odour and noise, but not with regards to potential disruption/damage to water quality in nearby homes.
- Private well were put in by adjacent occupiers at considerable cost as it was not possible to access the mains water supply. These are also maintained at occupier cost.
- Concerned that effluent from the cells will make its way to the wells and pollute the water, being a threat to health.
- There are a lot of natural springs in the area, concern that seepage from the cells could contaminate the water table and ultimately drinking water.
- Query how the ICW will cope with water levels in future due to climate change.
- According to the EPA website, the recommendation is that if you have a private well and a septic tank in the same property, that the well should be at least 30m away from the treatment system.
- Concern regarding use of the local road for access, as it is not suitable for construction traffic.

- Reference to the submitted Environmental Report and extracts that highlight potential for detrimental effects on biodiversity during construction, as well as works to culvert and divert an undocumented system flow, which has a high probability of adverse effects leading to a pollution event.
- Concern regarding odours.
- Concern regarding noise.
- Welcome the upgrading of the wastewater treatment system but not to the detriment of the health of adjacent occupiers.

Enclosures: original letters of objection; extract from Irish Examiner news article concerning increased rainfall; copy of submitted proposed site layout plan with two stickers indicating location of private wells labelled 1 and 2.

6.2. Applicant Response

6.2.1. A response from the applicant to the grounds of appeal has been submitted and is summarised below. The response includes a covering letter from the stated community group Comharchumann Forbartha An Leith Triúigh and detailed response to the grounds of appeal prepared by the agent for the application VESI Environmental Ltd.

- The appellant refers to potential impacts, that could arise in the absence of mitigation measures. Section 7 of the submitted EcIA report with the application lists measures to be implemented in order to ensure that any and all potential impacts listed in section 6 are avoided. With the implementation of mitigation measures, it is not envisaged that ecologically significant residual effects will remain post construction.
- With regards to water quality concerns and private wells, the private wells are more than 200ft deep (as noted by the appellant in their objection). It is the opinion of VESI that the existing drainage ditches within the proposed development area share no feasible impact pathway with the private wells in question as these surface water features do not share an observable hydrological pathway with the private wells. It is not a reasonable assumption to believe that waters within these drains would infiltrate through over 200ft of

material and influence water quality within the wells. It was observed during the field-based assessment of the proposed development area that some of the drainage ditches expressed significant levels of nutrient pollution and did not appear to be adequately maintained in recent times. If there was an element of hydrological connectivity between the drainage network and any private wells, there would have already been an observable change in water quality within the wells due to the current condition of the drainage network.

- The base of each treatment cell is designed to be sealed using on-site clays with a minimum thickness of 500mm cohesive material, in accordance with guidance for ICWs (2010). (Detailed in section 4 of the Planning Report).
- Any springs within the ICW site, will be intercepted and diverted away from the ICW, to prevent ingress of additional flows to the ICW. These flows will be directed to existing surface waters and directed away from the ICW.
- The ICW design incorporates embankments which generate freeboard, which acts as a buffer capacity within the ICW cell to accommodate increased flows due to extreme rainfall events and responds to climatic trends. There has not been any ICW where water levels within a treatment cell has overtopped the surrounding embankments. There is a proportion of waters entering the ICW that are attenuated, simply by the hydraulic impedance that the design allows. This means that flows entering the ICW, and intercepted rainfall, are released slowly from each cell, rather than increasing velocities. This slow release provides additional protections to both surface waters and surround landscapes.
- With reference to the EPA guidance and separation distance of 30m, this reference is to the EPA Code of practice, Domestic wastewater treatment systems (PE<10). A minimum setback distance of 60m (in accordance with Department of the Environment, Heritage and Local Government Integrated Constructed Wetlands Guidance Document for Farmyard Soiled Water and Domestic Wastewater Applications and the EPA code of practice) has been applied to safeguard the integrity of the domestic wells as provided in the supplied drawing.

- In relation to concerns regarding use of the local road, any potential damages to Bothar a Leasa would be incurred during the construction phase of the ICW. A Traffic Management Plan will be developed, a road survey will be carried out.
- In relation to potential detrimental effect on local biodiversity, with the appropriate implementation of mitigation measures and monitoring, an impact on the receiving environment would not be envisaged. In addition, appropriate mitigation measures will ensure the protection of Otter and their commuting habitat with no residual effect envisaged.
- With respect to potential odour, the first treatment cell and distribution chamber is positioned furthest from the village and nearby dwellings (approx. 185m). Cells are densely planted with specific plant species and cell water levels maintained at 150-200mm to mitigate odours. Additionally, existing hedgerows and treelines are planned to be retained where possible to provide additional screening between the ICW and local properties. In respect to Lixnaw, irregular odour incidents have been reported. This is not an issue in any other ICWs (approx. 150 in total) and the matter is currently being reviewed to provide a solution.
- In relation to potential noise pollution, there are no features during operation that would result in noise generation. The only noise would be that of visitors to the site. Visitors are during daytime hours and do not extend beyond conversational level and laughter from children. During construction, works will be carried out in line with legislative working practices and time.
- An Archaeological Report is included and there is a setback to the nearby recorded monument.
- The dwelling at Eircode V92H684 is located approximately 70m form the nearest design embankment of Cell 2. Once wastewaters have entered Cell 2, they have already received substantial treatment.
- In relation to privacy, the elevation and landscaping of the ICW will provide privacy screening for nearby occupiers. The site will be landscaped and

provide privacy buffer. There will be several dividing hedgerows between neighbouring dwellings and the ICW cells.

- In relation to European sites (natural heritage) with the implementation of mitigation measures, ecologically significant residual effects are not envisaged. Proposed Natural Heritage Areas (pNHAs) will not be negatively influenced by the proposed development and will actively benefit from it.
- The NIS states that the proposed wetland is not considered suitable Otter habitat. While approximately 40sqm of the site extends into a European site, and by extension into potentially suitable Otter commuting habitat, with the implementation of appropriate mitigation measures, any potential impact on Otter will not occur.
- Maintaining current land use would not help to sustain local biodiversity.
- There is almost negligible ecological value situated on the Bothar a Leasa road. The only habitats of note are the road itself (no value), the treeline/hedgerows (limited value due to small scale) and the adjacent land use (primarily agricultural low value). With the exception of a small section of treeline/hedgerow to be removed to facilitate access to the proposed development area, habitats along the road will remain.
- The implementation of the wastewater treatment solution would improve the quality of discharge to Brandon Bay, which has multiple designations.
- The ICW will be open to the public and would act as a rich educational tool for children and adults to become closer to nature in a safely accessible environment.

7.0 **Assessment**

7.1. I consider that the main issues of the appeal can be dealt with under the following headings:

- Principle of development;
- Water contamination;
- Access arrangements;

- Amenity impact: odour and noise; and
- Biodiversity.

7.2. Principle of development

7.2.1. The proposed development is for an Integrated Constructed Wetland for Cloghane Village. An 'Integrated Constructed Wetland' (ICW) is a series of shallow, interconnected, emergent-vegetated, surface-flow wetland compartments that receive/intercept waterflows from a variety of sources, allowing effective treatment of polluted water while promoting biodiversity (DEHLG ICW Guidance Document 2010).

7.2.2. Currently, Cloghane Waste Water Treatment Plant (WWTP) is categorised as 'Red' in Uisce Éireann's Wastewater Treatment Capacity Register which means that there is no spare capacity to treat wastewater. In addition, the existing WWTP is outdated, with untreated discharges into the Brandon Bay Coastal Waterbody.

7.2.3. National, regional and local planning policy all support the elimination of untreated discharges from settlements. As such, the proposed development to improve wastewater treatment in Cloghane and remove untreated discharges through operation of an ICW for the village is supported in principle and in accordance with Objective KCDP 13-15 of the plan, if its construction and/or operation does not result in adverse environmental or amenity impact as considered further below.

7.3. Water contamination

7.3.1. I have undertaken an Appropriate Assessment of the proposed development in section 8 below which also considers potential impact upon water quality with respect to European sites, and that section should be read in conjunction with this part of my planning assessment.

7.3.2. The third party grounds of appeal highlight that the primary concern raised is with respect to surface water pollution and any resultant impact upon private wells and drinking water sources in the area of the proposed ICW. The location of existing private wells are highlighted to the south of the proposed ICW (refer to drawing no.20368_2_02 Rev.A).

7.3.3. Section 13.2.1.3 'Wastewater Treatment Systems and Private Wells' of the Kerry County Council Development Plan 2022-2028 refers to recommended separation distances specified in Table B.3 of the EPA Code of Practice. This refers to the

document ‘2009 Code of Practice: Wastewater Treatment Systems for Single Houses’. The EPA also set out guidance in the document ‘Code of Practice: Domestic Waste Water Treatment Systems 2021’.

7.3.4. The Department of the Environment, Heritage and Local Government Integrated Constructed Wetlands Guidance Document for Farmyard Soiled Water and Domestic Wastewater Applications 2010 states on page 28 restrictions on construction of an ICW, which include that a proposed ICW should not be considered for sites within 60m up-gradient of any well or spring used for portable water; in the inner protection zone of a public groundwater supply source where vulnerability rating is extreme; or within 300m up-gradient of a public supply borehole. Table 6.2 of the EPA code of Practice for Domestic Waste Water Treatment Systems (DWWTS) 2021 sets out minimum distances between domestic wells and DWWTS, which range between 30m and 60m.

7.3.5. The applicant’s response to the appeal states that separation distances for the proposed ICW conform with the EPA Code of Practice and the DEHLG Guidance Document, with a minimum set-back distance of 60m to private wells. A site layout plan indicating the location of private wells proximate to the site has been provided. From cross referencing this with the submitted site layout plan (drawing no. 20368_3_05), I have determined that ‘Private Well 1’ is a minimum of 60m from the treatment area of the closest proposed cell, being Cell no.2, and ‘Private Well 2’ is well over 60m from all cell areas.

7.3.6. With respect to the potential for contamination of surface waters as highlighted by the appellant, the applicant has provided a drainage layout plan (drawing no. 20368_3_07) which demonstrates that there is no hydrological link between the cell treatment areas and the adjacent properties where private wells are situated. The applicant also refers to the existing poor quality of water draining from the site, which would adversely impact any linked water supply from these private wells in the current condition, if a hydrological link did exist, and this does not appear to be the case, thereby supporting a conclusion that there is no link. Reference is also made to the substantial depth of the existing private wells. The submitted drainage plan shows the proposed ICW pipework, rising mains and gravity outfalls which channel towards the northeast. While field drains are located between the cells and adjacent properties to the south, these do not directly link with the proposed cell treatment

areas. The applicant also confirms that the base of each cell is sealed, any springs within the ICW site will be diverted away, and that cells incorporate embankments with freeboard, acting as a buffer which accommodates increased flows due to extreme rainfall events in response to climate change. I am satisfied that all of these integrated design measures ensure that the proposed ICW will not contaminate existing private wells proximate to the site. While the appellant states dissatisfaction with the Local Planning Authority's decision which did not include any conditions relating to potential disruption/damage to water quality in nearby homes, I am satisfied that such conditions are not required in light of the proposed design which does not pose such a risk and integrates sufficient mitigation by design, without the need for additional measures by condition.

7.3.7. I note that the appellant references the submitted Environmental Report with regards to potential contamination of surface waters, however as I understand it, this pertains to the assessment of potential risks with respect to European sites, which I deal with separately in section 8 below, and not in relation to existing private wells. In response to the Local Authority's Request for Further Information, background water quality test results at both Brandon Bay and for undocumented surface water drain on the site was provided (Table 3 and Figure 7 of the further information document submitted). The submitted NIS (as assessed in section 8 below of this report) and EcIA also consider the potential impact of the proposed development upon water quality and have informed my assessment. As outlined in section 8 below, drainage mitigation measures and construction management measures are intended to protect the quality of surface waters. The proposed ICW itself also forms a water quality management measure in itself and will improve the quality of receiving waters.

7.3.8. Overall, I am satisfied that the proposed ICW meets Government and EPA standards as set out in relevant Guidance documents highlighted above and is designed appropriately, specifically in consideration of existing private wells serving dwellings proximate to the site.

7.4. Access arrangements

7.4.1. The appellant's grounds highlight concern regarding the use of Church road for access and that this road is not suitable for construction traffic.

7.4.2. The applicant states that a Traffic Management Plan will be developed including a road survey, which would address the potential for damage to the road.

7.4.3. From my site visit, I observed that Church Road is a local access road to the houses situated along it. It is narrow, approximately one vehicle in width, and its edges are largely occupied by dense hedgerow/tree planting. It lacks footpaths and is not formally laid out. While the applicant confirms that access will be from Church Road and the location of the access is set out on submitted plans, specific measures will be required to ensure safe and appropriate construction movements associated with the proposed ICW development on the site. The detail of construction movements into / from the site and use of Church Road for HGVs and other construction vehicles, can be adequately outlined through the submission of details which can be secured by condition.

7.4.4. While Church Road is narrow, I am satisfied that it can accommodate access to the site, which during operation will attract limited vehicle movements associated with inspections and maintenance, as set out in the submitted Operations and Maintenance Plan. During construction, vehicle movements associated with the proposed ICW development will cause temporary disruption that can be managed to limit adverse effect. The submitted EcIA confirms the expected parameters of the construction phase of the development, including a construction period that could extend to 9 months, but with most works being undertaken and a 3-4 month period (section 5.3 of the EcIA). In light of the short-term period of the construction phase, and the long-term ecological and public health benefits of the proposed development, namely through removal of untreated wastewater discharges into coastal waters, I am satisfied that the proposed construction access to the site from Church Road can be suitably managed. As such, I have included a condition with respect to this matter as part of my recommendation below. With this condition, I am satisfied that access to the site via Church Road is acceptable.

7.5. Amenity impact: odour and noise

7.5.1. The appellant's grounds of appeal highlight concerns regarding odours and noise arising from the ICW.

7.5.2. The Department of the Environment, Heritage and Local Government Integrated Constructed Wetlands Guidance Document for Farmyard Soiled Water and

Domestic Wastewater Applications 2010 states that there is the potential for minor odours associated with the wetland and that this impact should be assessed (table 2.2). Table 3.2 of the Guidance identifies possible odours as a key issue, to be addressed through set back distances and design features. As outlined above with respect to water quality, the Guidance outlines minimum separation distances, which the proposed ICW complies with. The applicant also confirms the following design measures, including that the first treatment cell and distribution chamber is positioned furthest from the village and nearby dwellings, the use of dense planting of specific plant species and maintenance of water levels at 150-200mm to mitigate odours.

7.5.3. I also note the Local Authority's condition no.3(h) which states that in the event of complaints being received regarding alleged odour nuisance, these will be investigated with remediation measures implemented if necessary. I have included the same condition in my recommendation below.

7.5.4. Furthermore, in relation to odour, I note that the Request for Further Information issued by the Local Authority sought clarification on how odour would be managed with respect to the proposed pumping station. The applicant's further information submission confirmed the following (page 8):

"The proposed pumping station will be fitted with a screen to remove solids (rags, wipes etc) prior to conveying to the ICW. Pumping is necessary to convey flows to the ICW. The operation (water level controls) and maintenance will ensure waters are conveyed to the ICW continually and now [sic] allowed to sit in the tank, therefore minimising specific conditions, which could otherwise lead to malodours at the tank. Vegetation screen around the tank (without restricting access for maintenance will be included). Routine maintenance will be undertaken to manage waters and odours."

7.5.5. With respect to the potential for adverse amenity impact from noise, the operation of the proposed ICW does not in itself generate potential for significant noise levels. There is however the potential for noise and general disturbance during the construction of the proposed ICW. However, such impact can be appropriately mitigated through construction management. In this regard, I note the Local Authority's condition no.3(d) requiring submission of a Noise Management Plan with

respect to identification of potential construction related noise impacts and how these will be mitigated.

7.5.6. I also note the Local Authority's condition no.3(i) which states that in the event of complaints being received regarding alleged noise nuisance arising from the development, these will be investigated with remediation measures implemented if necessary. I have included a similar requirement as part of a construction management condition in my recommendation below.

7.5.7. Overall, I am satisfied that the proposed development details conform with minimum separation distances set out in Guidance and incorporates design features to limit the potential for odour nuisance. In addition, planning conditions can also be incorporated to ensure appropriate mitigation of noise during construction (which would be for a short-term temporary period) and the implementation of any necessary remediation should the need arise with respect to noise or odour.

7.6. **Biodiversity**

7.6.1. The grounds of appeal make reference to the applicants Environmental Report which outlines potential for detrimental effect upon biodiversity during construction, as well as works to culvert and divert an undocumented system flow with high probability of a pollution event.

7.6.2. The applicant states that mitigation measures are intended which will ensure no adverse impact upon the receiving environment with respect to biodiversity.

7.6.3. I undertake an Appropriate Assessment of the proposed development in section 8 below which also considers potential impact upon European sites, and that section should be read in conjunction with this part of my planning assessment.

7.6.4. Following the request for further information from the Local Authority, an Ecological Impact Assessment (EcIA) was submitted with the application. This identified the main habitats on the site as comprising mixed broadleaved woodland (WD1), wet grassland (GS4), hedgerows (WL1), treeline (WL2), stone walls and other stonework (BL1), improved agricultural grassland (GA1), buildings and artificial surfaces (BL3), eroding/upland rivers (FW1), and drainage ditches (FW4). The proposed development will result in the permanent loss of 2.17ha of woodland habitat within the boundary of the site. A maximum 2.11ha of wet grassland habitat will also be

removed. Damage and some removal of hedgerow is required to facilitate access to the site and construction of cells. Loss of a section of treeline habitat will also result, as well as removal of a section of stone wall through the site. No other habitats of ecological value are proposed for removal. The potential for sediment loading and/or contamination of surface waters is identified. In terms of species present on the site, whilst no Killarney Fern or Kerry Slug specimens were observed, habitats present opportunity for these species to be present on the site. No species of note were observed on the site; however the removal of habitats has the potential to effect a range of fauna. The site was found to have low suitability for bats with respect to existing habitats. While the site is considered to have low habitat suitability for bats, the presence of invertebrate species within the site could support feeding bats, and some bat species will roost in trees. As such, their presence is not ruled out in the EcIA. No invasive plant species were observed on the site.

7.7. The EcIA outlines mitigation in sections 7 and 11, including a range of drainage management measures, construction management measures, and safeguarding of nesting birds. Enhanced mitigation includes the relocation of rocks from the old stone wall to another location within the development area, the implementation of bird/bat boxes, and establishment of a wetland habitat as part of proposed landscaping of the site. The nature of the proposed ICW itself also provides compensation for potential environmental disturbance through improved environmental quality by increased water quality, habitat provision and enhanced biodiversity. The EcIA concludes that with the implementation of mitigation, no ecologically significant residual effects will remain post construction.

7.8. I note that the Local Authority includes condition no.2 with respect to pre-construction surveys of the site for Kerry Slug and Killarney Fern, with works to be carried out in accordance with NPWS requirements in the event that these species are discovered on the site.

7.9. The main ecological impact of the proposed ICW relates to the loss of habitats on the site, most notably being woodland, hedgerows and trees. This habitat supports birds and other fauna, although no species of conservation concern were observed on the site. The proposed development is formed of a wetland area that will establish new habitat which will support enhanced biodiversity on the site. While the potential for adverse impact upon water quality is identified, mitigation is outlined in the form

of drainage measures and construction management, protecting against residual impact. Section 5.2.3 of the EcIA identifies that an undocumented surface water system will be culverted and diverted, however there is no residual adverse impact in relation to water quality identified. Section 8 of this report below also addresses the potential for adverse impact upon water quality. With the implementation of mitigation measures described in the EcIA, impact of the development upon fauna, including birds will be limited, and water quality will be protected. Construction management measures will also reduce impact upon biodiversity overall. I also consider it appropriate that a Project Ecologist be required to oversee the project and pre-construction surveys, which can include investigation for the presence of bats on the site. This can be secured by condition.

7.10. With the implementation of the mitigation set out in the EcIA, as well as conditions set out in the Local Authority decision and as per my above assessment, I am satisfied that while short-term negative biodiversity impact will result from the proposed development, this impact will be localised and within acceptable parameters (not at a population or regional/national/international level), and will be appropriately compensated through the establishment of the proposed ICW on the site.

8.0 **Appropriate Assessment**

8.1. This section of the report considers the likely significant effects of the proposal on Natura 2000 European sites with each of the potential significant effects assessed in respect of each of the European sites considered to be at risk and the significance of same. The assessment is based on the submitted Appropriate Assessment Screening & Natura Impact Statement submitted with the application.

8.2. I have had regard to the submissions of the appellant, prescribed bodies and the Planning Authority in relation to the potential impacts on European sites, as part of the Natura 2000 Network of sites.

8.3. <u>The Project and Its Characteristics</u>

8.4. See the detailed description of the proposed development in section 2.0 above.

8.5. <u>The European Sites Likely to be Affected (Stage I Screening)</u>

8.6. The subject site is situated in County Kerry and rural in character, located to the north of Church Road and west of Cloghane Village Co. Kerry. The surrounding area comprises one-off dwellings, agricultural lands and concentrations of single dwellings dispersed along the R550 for Cloghane Village. The subject site itself is comprised of agricultural lands with grazing activity and it is bounded by agricultural lands and Mount Brandon, with some residential dwellings also present. Boundaries comprise hedgerows and treelines typical of the area. The site is approximately 4.8132 hectares in total, with approximately 40sqm of the site overlapping the Tralee Bay and Magharees Peninsula, West to Cloghane pNHA. The closest European site is the Mount Brandon SAC circa 500m away.

8.7. I have had regard to the submitted Screening Report to Inform the Appropriate Assessment Process Screening and Natura Impact Statement, which identifies that the site directly overlaps the Tralee Bay and Magharees Peninsula, West to Cloghane SAC by 40sqm and that there are a number of other European sites sufficiently proximate or linked to the site to require consideration of potential effects, including in consideration of hydrological connections. These are listed below with approximate distance to the application site indicated:

- Mount Brandon SAC (515m southeast and 587m southwest);
- Tralee Bay and Magharees Peninsula, West to Cloghane SAC (approx. 40sqm of the proposed development is located in this SAC, and remaining is 210m east);
- Magharee Islands SAC (11.62km northeast);
- Castlemaine Harbour SAC (15km southeast);
- Dingle Peninsula SPA (3.6km north, 6.5km east and 5km south);
- Tralee Bay Complex SPA (8.2km east northeast);
- Magharee Islands SPA (12.6km northeast); and
- Castlemaine Harbour SPA (11.1km southeast).

8.8. The specific qualifying interests and conservation objectives of the above sites are described below. In carrying out my assessment I have had regard to the nature and scale of the project, the distance from the site to European sites, and any potential pathways which may exist from the development site to a European site, as well as

the information on file, including the appeal grounds, appeal submissions and observations on the application made by prescribed bodies, and I have also visited the site.

8.9. The qualifying interests of all European sites considered are listed below:

Table 8.1: European Sites/Location and Qualifying Interests

Site (site code) and Conservation Objectives	Qualifying Interests/Species of Conservation Interest (Source: EPA / NPWS)
Mount Brandon SAC (000375) To maintain or restore the favourable conservation condition of qualifying interests/species of conservation interest for which the SAC has been selected.	Vegetated sea cliffs of the Atlantic and Baltic coasts [1230] Oligotrophic waters containing very few minerals of sandy plains (Littorelletalia uniflorae) [3110] Oligotrophic to mesotrophic standing waters with vegetation of the Littorelletea uniflorae and/or Isoeto-Nanojuncetea [3130] Northern Atlantic wet heaths with Erica tetralix [4010] European dry heaths [4030] Alpine and Boreal heaths [4060] Species-rich Nardus grasslands, on siliceous substrates in mountain areas (and submountain areas, in Continental Europe) [6230] Blanket bogs (* if active bog) [7130] Siliceous scree of the montane to snow levels (Androsacetalia alpinae and Galeopsietalia ladani) [8110] Calcareous rocky slopes with chasmophytic vegetation [8210] Siliceous rocky slopes with chasmophytic vegetation [8220] Margaritifera margaritifera (Freshwater Pearl Mussel) [1029] Trichomanes speciosum (Killarney Fern) [1421]

Tralee Bay and Magharees Peninsula, West to Cloghane SAC (002070); To maintain or restore the favourable conservation condition of qualifying interests/species of conservation interest for which the SAC has been selected.	Estuaries [1130] Mudflats and sandflats not covered by seawater at low tide [1140] Coastal lagoons [1150] Large shallow inlets and bays [1160] Reefs [1170] Annual vegetation of drift lines [1210] Perennial vegetation of stony banks [1220] Vegetated sea cliffs of the Atlantic and Baltic coasts [1230] Salicornia and other annuals colonising mud and sand [1310] Atlantic salt meadows (Glauco-Puccinellietalia maritimae) [1330] Mediterranean salt meadows (Juncetalia maritimi) [1410] Embryonic shifting dunes [2110] Shifting dunes along the shoreline with Ammophila arenaria (white dunes) [2120] Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130] Dunes with Salix repens ssp. argentea (Salicion arenariae) [2170] Humid dune slacks [2190] Molinia meadows on calcareous, peaty or clayey-silt-laden soils (Molinion caeruleae) [6410] Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) [91E0] Lutra lutra (Otter) [1355] Petalophyllum ralfsii (Petalwort) [1395]
Magharee Islands SAC (002261);	Reefs [1170]

To maintain the favourable conservation condition of qualifying interests/species of conservation interest for which the SAC has been selected.	
Castlemaine Harbour SAC (000343); To maintain or restore the favourable conservation condition of qualifying interests/species of conservation interest for which the SAC has been selected.	Estuaries [1130] Mudflats and sandflats not covered by seawater at low tide [1140] Annual vegetation of drift lines [1210] Perennial vegetation of stony banks [1220] Vegetated sea cliffs of the Atlantic and Baltic coasts [1230] Salicornia and other annuals colonising mud and sand [1310] Atlantic salt meadows (Glauco-Puccinellietalia maritimae) [1330] Mediterranean salt meadows (Juncetalia maritimi) [1410] Embryonic shifting dunes [2110] Shifting dunes along the shoreline with Ammophila arenaria (white dunes) [2120] Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130] Dunes with Salix repens ssp. argentea (Salicion arenariae) [2170] Humid dune slacks [2190] Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) [91E0] Petromyzon marinus (Sea Lamprey) [1095] Lampetra fluviatilis (River Lamprey) [1099] Salmo salar (Salmon) [1106] Lutra lutra (Otter) [1355]

	Petalophyllum ralfsii (Petalwort) [1395]
Dingle Peninsula SPA (004153); To maintain or restore the favourable conservation condition of qualifying interests/species of conservation interest for which the SPA has been selected.	Fulmar (Fulmarus glacialis) [A009] Peregrine (Falco peregrinus) [A103] Chough (Pyrrhocorax pyrrhocorax) [A346]
Tralee Bay Complex SPA (004188); To maintain or maintain/restore the favourable conservation condition of qualifying interests/species of conservation interest for which the SPA has been selected.	Whooper Swan (Cygnus cygnus) [A038] Light-bellied Brent Goose (Branta bernicla hrota) [A046] Shelduck (Tadorna tadorna) [A048] Wigeon (Anas penelope) [A050] Teal (Anas crecca) [A052] Mallard (Anas platyrhynchos) [A053] Pintail (Anas acuta) [A054] Scaup (Aythya marila) [A062] Oystercatcher (Haematopus ostralegus) [A130] Ringed Plover (Charadrius hiaticula) [A137] Golden Plover (Pluvialis apricaria) [A140] Grey Plover (Pluvialis squatarola) [A141] Lapwing (Vanellus vanellus) [A142] Sanderling (Calidris alba) [A144] Dunlin (Calidris alpina) [A149] Black-tailed Godwit (Limosa limosa) [A156] Bar-tailed Godwit (Limosa lapponica) [A157] Curlew (Numenius arquata) [A160] Redshank (Tringa totanus) [A162]

	Turnstone (Arenaria interpres) [A169] Black-headed Gull (Chroicocephalus ridibundus) [A179] Common Gull (Larus canus) [A182] Wetland and Waterbirds [A999]
Magharee Islands SPA (004125); To maintain or restore the favourable conservation condition of qualifying interests/species of conservation interest for which the SPA has been selected.	Storm Petrel (Hydrobates pelagicus) [A014] Shag (Phalacrocorax aristotelis) [A018] Barnacle Goose (Branta leucopsis) [A045] Common Gull (Larus canus) [A182] Common Tern (Sterna hirundo) [A193] Arctic Tern (Sterna paradisaea) [A194] Little Tern (Sterna albifrons) [A195]
Castlemaine Harbour SPA (004029). To maintain or restore the favourable conservation condition of qualifying interests/species of conservation interest for which the SPA has been selected.	Red-throated Diver (Gavia stellata) [A001] Cormorant (Phalacrocorax carbo) [A017] Light-bellied Brent Goose (Branta bernicla hrota) [A046] Wigeon (Anas penelope) [A050] Mallard (Anas platyrhynchos) [A053] Pintail (Anas acuta) [A054] Scaup (Aythya marila) [A062] Common Scoter (Melanitta nigra) [A065] Oystercatcher (Haematopus ostralegus) [A130] Ringed Plover (Charadrius hiaticula) [A137] Sanderling (Calidris alba) [A144] Bar-tailed Godwit (Limosa lapponica) [A157] Redshank (Tringa totanus) [A162] Greenshank (Tringa nebularia) [A164] Turnstone (Arenaria interpres) [A169] Chough (Pyrrhocorax pyrrhocorax) [A346]

	Wetland and Waterbirds [A999]

8.10. The above Table 8.1 reflects the EPA and National Parks and Wildlife Service (NPWS) list of qualifying interests for the SAC/SPA areas requiring consideration.

8.11. Potential Effects on Designated Sites

8.12. The submitted report identifies any pathways or links from the subject site to European Sites considered in this screening assessment, and I summarise this below.

8.13. In terms of hydrology, the subject site is located in the Owenmore sub-catchment (Owenmore[Kerry]_SC_010) of the Tralee Bay-Feale catchment (catchment ID: 23). The Tralee Bay-Feale catchment spans an area of 1780.1sqm. Discharge form the proposed ICW is directly to Brandon Bay, at the same point that the current treatment solution discharges. This final discharge point is located within Tralee Bay and Magharees Peninsula West to Cloghane SAC. There is an undocumented eroding/upland river flowing in a west to east direction through the subject site and discharging into Brandon Bay. There are two undocumented systems adjacent to the subject site also discharging into Brandon Bay. These systems are impacted by agricultural runoff. Brandon Bay is described as being in good ecological quality and its risk status is not available. The aforementioned systems feeding into Brandon Bay that are fed by agricultural drainage ditches, are at risk of a decline in quality.

8.14. In terms of potential impacts, Otter is a QI of the Tralee Bay and Magharees Peninsula West to Cloghane SAC and is assumed to be present in the area. As the system passing through the subject site is culverted, it is not envisaged that Otters travel into the proposed development area from Brandon Bay and therefore there is no potential for destruction of Otter habitat. However, there is potential for significant negative impact on Otter feeding habitat through hydrological pathways in the event of contaminants entering the SAC. No other potential impacts upon this SAC are envisaged due to the small scale of the proposed development and the dilution effect within Brandon Bay.

8.15. For the remaining European sites highlighted in table 8.1 above, there is no direct hydrological connection, or any other connection to Castlemaine Harbour SPA, Castlemaine Harbour SAC and Dingle Peninsula SPA. There is no direct

hydrological connection to Magharee Islands SPA and Tralee Bay Complex SPA, while the proposed development will discharge into the same body of water (the Atlantic Ocean) as sections of these SPAs, there is considerable distance between them and any potential contaminants would be diluted to negligible concentrations. Due to the distance between the subject site and Magharee Islands SAC and there specific QI for that SAC relating only to Reefs, there is no potential for adverse negative effect on the conservation objectives of this SAC as a result of the proposed development. Finally, while there is an element of hydrological connectivity between the subject site and Mount Brandon SAC, the SAC is situated upstream of the subject site and significant dilution would occur within Brandon Bay, rendering potential contaminates negligible in concentration.

8.16. AA Screening Conclusion

8.17. I concur with the conclusion of the applicant's screening, with respect to the possibility for significant effects on the European site at Tralee Bay and Magharees Peninsula West to Cloghane SAC with respect to the following:

- Due to hydrological connection, the potential for contaminants to enter the SAC during construction and result in negative impact upon Otter feeding habitat.

8.18. Due to dilution effect within Brandon Bay and the characteristics of the proposed development, no other effects are anticipated upon this SAC. No potential effects are identified during operational phase.

8.19. The specific conservation objectives for the Otter in the Tralee Bay and Magharees Peninsula West to Cloghane SAC is to restore its favourable condition, with attributes relating to distribution, habitat extent, prey availability and barriers to connectivity. Potential effect is highlighted arising from the potential for emissions associated with the proposed development and impact upon feeding habitat, which have the potential to affect the conservation objectives supporting the qualifying interest / special conservation interest of the European site identified. As such, likely effects on Tralee Bay and Magharees Peninsula West to Cloghane SAC cannot be ruled out, having regard to the sites' conservation objectives, and a Stage 2 Appropriate Assessment is required. The potential impacts are expanded upon in further detail as part of a Stage 2 Appropriate Assessment below.

8.20. In relation to the remaining European sites considered, taking into consideration the distance between the proposed development site to these designated European sites, the lack of a direct hydrological pathway with the potential to facilitate significant effect, or any other pathway or link to these European sits, or dilution and dispersal effects, it is reasonable to conclude that on the basis of the information on file, which I consider adequate in order to issue a screening determination, that the construction and operation of the proposed development, individually or in combination with other plans or projects, would not be likely to have an adverse effect on the conservation objectives or features of interest of Castlemaine Harbour SPA, Castlemaine Harbour SAC, Dingle Peninsula SPA, Magharee Islands SPA, Magharee Islands SAC, Tralee Bay Complex SPA and Mount Brandon SAC. Therefore, I agree with the applicant's submitted screening report that a Stage 2 Appropriate Assessment is not required with respect to these aforementioned European sites.

8.21. Stage 2 – Appropriate Assessment

8.22. The submitted NIS identifies the potential for negative effects upon the Tralee Bay and Magharees Peninsula West to Cloghane SAC as a result of the proposed development and I concur that an Appropriate Assessment of the proposed development is required with respect to these aforementioned European site.

8.23. The site-specific conservation objectives and qualifying interests / species of conservation interests of Tralee Bay and Magharees Peninsula West to Cloghane SAC are summarised above in table 8.1. A summary of this European sites' characteristics as set out on the NPW website is set out in the subsequent paragraph. The NIS provides a description of the potential effects of the proposed development, alongside any required mitigation to avoid adverse effects. A conclusion on residual impact is then provided. A summary of this assessment is set out below.

8.24. Tralee Bay and Magharees Peninsula West to Cloghane SAC: This SAC stretches from Tralee town westwards to Fenit Harbout and Cloghane, encompassing Tralee Bay, Brandon Bay and the Magharees Peninsula. This site is of considerable ecological and conservation significance for the excellent diversity of habitats it contains, many of which are listed on Annex I of the E.U. Habitats Directive. The

occurrence of a species listed on Annex II of the E.U. Habitats Directive adds further importance to the site. The presence of a number of Red Data Book species, including the largest population of Natterjack Toads in Ireland, is also notable, as is the occurrence of several species listed on Annex I of the E.U. Birds Directive. Otters regularly feed within the site, though it is not known if they breed. Otter is listed on Annex II of the EU Habitats Directive. Potential threats relate to intensive farming practices / agricultural run-off, recreational use by visitors, land reclamation, aquaculture and domestic / industrial waste discharges.

8.25. The submitted report identifies that there is a direct hydrological connection between the subject site and Tralee Bay and Magharees Peninsula West to Cloghane SAC. Otters are widespread in Ireland and will be found near most river systems that provide aquatic prey and safe refuge. The submitted report highlights that it is not considered that the subject site provides suitable habitat for Otter. While Otters are known to utilise freshwaters from estuaries to headwaters, it is expected that the presence of a busy road and culverted sections of the system would act as significant barriers, rendering the surface water features within the proposed development unsuitable.

8.26. Potential effects:- The potential for a pollution event resulting from construction activities could result in localised fish kill, reducing food availability for Otter. Negative impact upon Otter feeding habitat is also possible through nutrient enrichment and sedimentation due to construction activities. In terms of physical habitat, there is potential for limited disturbance during construction, as a result of approximately 40sqm of the proposed development extending into the boundary of the SAC, and by extension, into potentially suitable Otter commuting habitat. This would be part of the construction of pipework at the proposed discharge point to Brandon Bay, which may result in noise and surface water pollution, disturbing nearby Otters.

8.27. In-combination/Cumulative effects:- Section 6 of the submitted report addresses in-combination effects. The report concludes that based upon a review of planning applications within the vicinity of the proposed development, there is no risk of a cumulative / in-combination effect on the receiving environment as a result of the proposed development. I am satisfied that in consideration of surrounding plans and project activity in the area, and in light of the characteristics of the proposed

development, with the application of mitigation to control potential effects during construction of the proposed development (as set out below), there is no potential for cumulative negative impact upon European sites in combination with the proposed development and surrounding projects/plans.

8.28. Mitigation:- Section 7 of the submitted report outlines proposed mitigation measures and this is summarised below:

- Safeguarding of aquatic receptors to be achieved through:
    - Drainage management pre-construction and during construction, utilising silt traps, clearance of vegetation and sediment, postponement of works during rainfall events and protection of drains from heavy machinery;
    - Undertaking works at final outlet point during low tide and outside of periods of rainfall. Where possible, construction machinery will operate from the land to the east, rather than within the tidal zone.
- Management of construction machinery.
- Use of materials and storage away from aquatic zones/watercourses. Mixing of concrete off-site. Use of locally sourced soils if required and no removal of any materials from European sites.
- Management of waste.
- Management of dust levels though implementation of speed limits to construction vehicles, suppression of dust through light watering at access roads, use of tarpaulin during transportation of materials and inspection/maintenance of public roads immediately adjacent to the site.
- Management of noise levels.
- Management of light levels.
- Management of invasive species, i.e. preventing introduction though the importation of soils.
- Safeguarding of nesting birds.
- Safety and security measures during construction works.

- Construction of the ICW is itself considered to be an environmental mitigation measures, as it will improve environmental quality through increased water quality, habitat provision and enhanced biodiversity. With net positive impact expected to outweigh any potential impacts during its construction.

8.29. With the application of the mitigation measures outlined in the NIS and summarised above, the NIS concludes that the project will not, alone or in-combination with other plans or projects, result in adverse effects to the integrity and conservation status of Tralee Bay and Magharees Peninsula West to Cloghane SAC. I am satisfied with the data presented in the submitted NIS and concur with the conclusions reached with regard to the proposed mitigation measures and the overall potential significance of impact to Tralee Bay and Magharees Peninsula West to Cloghane SAC. I note that during operation, the proposed development of an ICW forms a water management feature in itself. As a result, positive impact upon the hydrological regime in the area would be expected to result due to an improvement in the quality of wastewater discharges, with associated positive effect upon Brandon Bay and Tralee Bay and Magharees Peninsula West to Cloghane SAC.

8.30. AA determination – Conclusion

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

8.32. Having carried out a Stage 1 Appropriate Assessment Screening of the proposed development, it was concluded that likely adverse effects on Brandon Bay and Tralee Bay and Magharees Peninsula West to Cloghane SAC could not be ruled out, due to proximity to that European site and potential hydrological links. Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of that European site in light of its conservation objectives.

8.33. Following a Stage 2 Appropriate Assessment, with submission of a NIS, it has been determined that subject to mitigation (which is known to be effective) relating to measures to control construction impact, relating primarily to measures to control and manage potential emissions and biodiversity enhancement, the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the European site at Brandon Bay and Tralee Bay

and Magharees Peninsula West to Cloghane SAC, or any other European site, in view of the sites Conservation Objectives.

8.34. This conclusion is based on a complete assessment of all aspects of the proposed project, both alone and in combination with other plans and projects, and it has been established beyond scientific reasonable doubt that there will be no adverse effects.

9.0 **Conclusion**

9.1. Cloghane Waste Water Treatment Plant (WWTP) is categorised by Uisce Éireann as 'Red' meaning that there is no spare capacity to treat wastewater and there are currently untreated discharges into the Brandon Bay Coastal Waterbody. National, regional and local planning policy all support the elimination of untreated discharges from settlements. The proposed development is for an Integrated Constructed Wetland (ICW) for Cloghane Village, comprising the treatment of wastewater while promoting biodiversity. The proposed development will remove untreated discharges in accordance with Objective KCDP 13-15 of the Kerry County Council Development Plan 2022-2028.

9.1.1. In addition, the proposed development conforms with the separation distances set out in the Department of the Environment, Heritage and Local Government Integrated Constructed Wetlands Guidance Document for Farmyard Soiled Water and Domestic Wastewater Applications 2010 and EPA code of Practice for Domestic Waste Water Treatment Systems (DWWTS) 2021.

9.1.2. The proposal is designed to limit the potential for odour nuisance and planning conditions can also be incorporated to ensure appropriate mitigation of noise during construction (which would be for a short-term, temporary period). Access to the site from Church Road during construction can also be suitably managed and is acceptable in light of the overall benefits of the proposed development.

9.1.3. No significant adverse impact with respect to ecology is identified, and short-term adverse effect at the local level, will be suitably compensated through provision of the ICW on the site and the inherent biodiversity benefits this will bring. Following a Stage 2 Appropriate Assessment, it has been determined that subject to mitigation the proposed development would not adversely affect the integrity of the European sites.

10.0 **Recommendation**

10.1. I recommend permission be GRANTED for the reasons and considerations set out below and subject to the following conditions.

11.0 **Reasons and Considerations**

11.1. Having regard to:

a. The 'Code of Practice, Domestic Waste Water Treatment Systems, (Population Equivalent ≤ 10)', Environmental Protection Agency, March, 2021 and 'Integrated Constructed Wetlands, Guidance Document for Farmyard Soiled Water and Domestic Wastewater Applications', Department of the Environment, Heritage and Local Government, 2010.

b. The governments Project Ireland 2040 National Planning Framework.

c. The Regional Spatial and Economic Strategy for the Southern Assembly.

d. The Kerry County Council Development Plan 2022-2028.

e. The nature, scale, and extent of the proposed development.

f. Documentation submitted with the proposed application including further information received on 28th April 2023, as well as submissions and observations from prescribed bodies, the planning authority and any third parties.

g. The separation distances between the proposed development and dwellings or other sensitive receptors.

h. The likely consequences for the environment and the proper planning and sustainable development of the area in which it is proposed to carry out the proposed development and the absence of likely significant effects of the proposed development on European Sites.

It is considered that subject to compliance with the conditions set out below the proposed development would accord with European, national, regional and local planning and related policy, it would not have an unacceptable impact on the environment or ecology, it would not seriously injure the residential amenities of the

area or of property in the vicinity, and it would be acceptable in terms of water quality, traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.2. Appropriate Assessment – Stage 1

11.2.1. The Board completed an Appropriate Assessment screening exercise in relation to the potential effects of the proposed development on designated European Sites, taking into account the nature, scale and location of the proposed development, zoning of the site, the Screening for Appropriate Assessment and Natura Impact Statement Report submitted with the application, the Inspector's report, and submissions on file. In completing the screening exercise, the Board adopted the report of the Inspector and concluded that, by itself or in combination with other development in the vicinity, the proposed development would not be likely to have an adverse effect on any European site in view of the conservation objectives of such sites, other than Brandon Bay and Tralee Bay and Magharees Peninsula West to Cloghane SAC, which was a European site where the likelihood of adverse effects could not be ruled out.

11.3. Appropriate Assessment – Stage 2

The Board considered the Natura Impact Statement and all other relevant submissions on the file and carried out an Appropriate Assessment of the implications of the proposed development on Brandon Bay and Tralee Bay and Magharees Peninsula West to Cloghane SAC, in view of that sites conservation objectives. The Board considered that the information before it was adequate to allow the carrying out of an Appropriate Assessment.

In completing the appropriate assessment, the Board considered, in particular, the following:

a) the site-specific conservation objectives for the European site,

b) the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects, and in particular the risk of impacts on water quality,

c) the mitigation measures which are included as part of the current proposal.

In completing the Appropriate Assessment, the Board accepted and adopted the Appropriate Assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the aforementioned European Site, having regard to the site's conservation objectives.

In overall conclusion, the Board was satisfied that the proposed development, by itself or in combination with other plans or projects, would not adversely affect the integrity of the European site in view of the site's conservation objectives. This conclusion is based on a complete assessment of all aspects of the proposed project and there is no reasonable scientific doubt as to the absence of adverse effects.

This conclusion is based on the measures identified to control the quality of water discharges which provide for the interception of silt and other contaminants prior to discharge from the site during construction and operation phase, and measures to limit disturbance during construction phase.

12.0 **Conditions**

1.	The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, including further information submission received on 28th April 2023, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development, or as otherwise stipulated by conditions hereunder, and the development shall be carried out and completed in accordance with the agreed particulars. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination. **Reason:** In the interest of clarity.
2.	Mitigation and monitoring measures outlined in the plans and particulars, including the NIS submitted with this application, shall be carried out in full.

	Reason: In the interest of protecting the environment.
3.	(a) Prior to the commencement of the development, the developer shall obtain approval from Uisce Éireann for the design of the development project and for connection of the development to existing wastewater infrastructure. (b) Prior to commencement of the development, confirmation to be provided to the Local Authority that upon completion Uisce Éireann will take the development in charge. **Reason**: In the interest of protecting the environment and in the interest of public health.
4.	The construction of the development shall be managed in accordance with a Construction and Environmental Management Plan, including Construction Stage Traffic Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including: a) The appointment of a full-time, appropriately qualified environmental manager for the duration of the construction and development phases of the project, responsible for implementation of environmental control measures. b) The appointment of a full-time, appropriately qualified project ecologist to oversee the construction and development phases of the project, including pre-construction surveys. c) Pre-construction surveys for Bats, Kerry Slug and Killarney Fern with any necessary remedial measures to be agreed with the NPWS. d) A Noise Management Plan identifying the potential noise impacts and mitigation of the same. e) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains, and a site-specific water management plan providing details of measures to in accordance with the submitted NIS; f) A Construction and Demolition Resource Waste Management Plan as set out in the Best Practice Guidelines for the Preparation of Resource and Waste Management Plans for C&D projects (EPA 2021); g) Location of the site and materials compound(s) including area(s) identified for the storage of construction refuse;

	h) Details of the management of construction traffic accessing the construction site, with Traffic Marshall on Church Road or equivalent management proposals; i) In the event that complaints are received regarding noise, measures to facilitate investigation by Kerry County Council and abate the nuisance; j) Details for the suppression of dust; k) Details of site hoarding; l) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained; m) A record of daily checks that the works are being undertaken in accordance with the Construction and Environmental Management Plan shall be kept for inspection by the planning authority. **Reason**: In the interest of amenities, environmental protection and safety.
5.	In the event of complaints being received regarding odour nuisance arising from the development to which this permission relates, and upon investigation by the Kerry County Council such complaints are found to be justifiable, the applicant shall upon written advise by the Council, retain the services of a specialist to establish the cause of the odour nuisance and outline remediation to abate the nuisance, to be implemented and maintained at the operators expense. **Reason**: In the interest of residential amenity and public health.
6.	Landscaping and retention of boundary screening (hedgerows/treelines) to be carried out in accordance with the details which accompanied the application submitted, unless otherwise agreed in writing with, the planning authority prior to commencement of development. **Reason**: In the interest of residential and visual amenity
7.	All fencing within the site shall be dark green in colour. **Reason**: To integrate with surroundings.

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.

Rachel Gleave O'Connor
Senior Planning Inspector

03 January 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	317607-23
Proposed Development Summary	Construction of an Integrated Constructed Wetland (ICW) with treatment system, pumping station and all associated site development works. An NIS has been prepared in respect of this development.
Development Address	Cloghane, Co Kerry

1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)	**Yes**	✓
	No	No further action required

2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) or does it equal or exceed any relevant quantity, area or limit where specified for that class?

Yes			EIA Mandatory EIAR required
No	✓		Proceed to Q.3

3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?

		Threshold	**Comment (if relevant)**	**Conclusion**
No	✓	N/A		No EIAR or Preliminary Examination required
Yes				Proceed to Q.4

4. Has Schedule 7A information been submitted?		
No		**Preliminary Examination required**
Yes		**Screening Determination required**

Inspector: _____ **Date:** _____