



An  
Bord  
Pleanála

## Inspector's Report ABP-317993-23

### Development

Retention permission for: (1) Creation of access road; (2) Regrading/levelling of site and creation of platforms and berms; (3) Installation of water and electrical infrastructure and connections from the site; (4) Construction of a shed with hardstand area and all associated works. A Natura Impact Statement (NIS) accompanies this application.

### Location

Grange, Inch, Co. Donegal.

### Planning Authority

Donegal County Council

### Planning Authority Reg. Ref.

2350459

### Applicant(s)

Michael McDaid.

### Type of Application

Retention

### Planning Authority Decision

Grant Retention Permission

### Type of Appeal

Third Party

### Appellant(s)

Noel Jones and others.

### Observer(s)

None.

**Date of Site Inspection**

02<sup>nd</sup> May 2024

**Inspector**

Ronan O'Connor

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## 1.0 Site Location and Description

- 1.1. The subject site comprises a stated area of 1.95ha, in the townland of Grange. The site gradually slopes down to the seashore from the public road. Access to the site is off the adjoining local county road. On site is a shed structure and associated hardstanding, an access road and a levelled/gravelled area, all of which are the subject to this application for retention permission.

## 2.0 Proposed Development

- 2.1. Retention Permission for: (1) Creation of access road; (2) Regrading/levelling of site and creation of platforms and berms; (3) Installation of water and electrical infrastructure and connections from the site; (4) Construction of a shed with hardstand area and all associated works. A Natura Impact Statement (NIS) accompanies this application.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. Grant Retention Permission [decision date 10<sup>th</sup> August 2023]. Conditions of note include:
- Condition No. 4 (a) shed to be used solely for agricultural purposes ancillary to the agricultural use of the land (b) levelled hardcore area allowed to vegetate (c) no vehicles stored overnight on the levelled hardcore area/grant of permission not an authorisation of a new farmyard complex.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The first Planner's Report [dated 23<sup>rd</sup> May 2023] is summarised below:

- It is stated that there clearly appears to be an intention to seek to building a dwelling on this site in the future/application is judged on its merits.
- Would require a further application for permission for a dwelling.

- Shed has an electric meter box/water connections/ww plumbing installed.
- Floor area of only 22 sq. m/not a regular or conventional in terms of agricultural sheds.
- FI is required in relation to use.
- Details and drawings are deficient in terms of identifying what infrastructure it is proposed to retain on the site.
- Details of footprints of works relative to SAC/SPA boundaries required.

#### Site and Design

- Shed integrates into the environment from a visual perspective.
- Large portion of cut and fill terrace has been created has been surfaced with hardcore and has potential to have significant visual impact/FI required in relation to same.
- Note contents of the NIS.

3.2.2. Further Information was requested on the 25<sup>th</sup> May 2023 in relation to the following items:

1. Details of service connections/electric and water infrastructure
2. Details of the intended use of the shed/levelled hardcore area
3. Site plan detailing extent of works relative to the SAC/SPA

3.2.3. Further Information was submitted on 19<sup>th</sup> June 2023.

3.2.4. The second Planner's report [dated 8<sup>th</sup> August 2023] is summarised below:

- Clear from the revised report development is outside the SAC and the SPA.
- Shed to be used for farming activity/levelled hardcore platform would be used for parking heavy goods vehicles.
- Should be conditioned to restrict use of hardcore platform.
- Not considered there would be any material intensification of traffic using entrance/upgrade of entrance not required.
- Need for a Stage 2 AA screened out [PA Screening on file].

Recommendation was to Grant permission.

### 3.2.5. Other Technical Reports

None.

### 3.3. Prescribed Bodies

An Taisce (dated 10<sup>th</sup> May 2023)

- Application for retention permission cannot be determined as it was deemed to require a Stage 2 Appropriate Assessment.

Department of Housing, Local Government and Heritage (Development Applications Unit) (dated 29<sup>th</sup> May 2023)

- Acknowledges submission of an NIS with the application/considers there are some critical gaps in the data, information and analyses that have been presented.
- The exact location of the works for retention is unclear/a proper assessment is not possible.

### 3.4. Third Party Observations

- 3.4.1. 6 no. third party submissions were received. The issues raised are summarised in the first Planner's report. I would note the issues raised as similar to those raised in the third-party grounds of appeal, as summarised in Section 6.1 below.

## 4.0 Planning History

- 4.1.1. There are no previous planning applications referred to in the Planner's report.

- 4.1.2. There is a reference to the following in the Planner's Report

Section 5

Ref. S.5 22/17 – The PA issued a s.5 Declaration that the erection of a shed for storage of agricultural equipment was development and was exempted development (at a location in close proximity to the smaller shed the subject of this application)

Enforcement

UD20227 – S.154 Enforcement Notice served in relation to unauthorised development at this site.

## 5.0 Policy Context

### 5.1. Development Plan

The relevant plan is the County Donegal Development Plan 2024-2030. The site lies within an Area under Strong Urban Influence (with reference to Map 6.3.1).

Objective and Policies of relevance are as follows:

- Objective L-O-1 : To protect, manage and conserve the character, quality and value of the Donegal landscape.
- Policy L-P-1 - To protect areas identified as ‘Especially High Scenic Amenity’ on Map 11.1 ‘Scenic Amenity’. Within these areas, only developments of strategic importance, or developments that are provided for by policy elsewhere in this Plan may be considered.
- Policy L-P-2 To protect areas identified as ‘High Scenic Amenity’ and ‘Moderate Scenic Amenity’ on Map 11.1 ‘Scenic Amenity’. Within these areas, only development of a nature, location and scale that integrates with, and reflects the character and amenity of the landscape may be considered, subject to compliance with other relevant policies of the Plan.
- Policy L-P-3 To safeguard the scenic context, cultural landscape significance, recreational/tourism amenities, and environmental amenities of the County’s coastline from inappropriate development, save for strategic infrastructure provision of overriding regional or national public interest. This policy will be implemented by the Council in so far as same can be practicably and reasonably achieved within the context of Strategic Infrastructure Projects including, but not restricted to, the TEN-T Priority Route Improvement Project, Donegal, the Bridgend to County border project scheme, the Bunrana Inner Relief Road and Greenways.
- Policy L-P-8 To preserve scenic views between public roads and the sea, lakes and rivers. Such developments shall be considered on the basis of the following



criteria. a. whether the integrity of the view has been affected to-date by development; b. whether the development would intrude significantly on the view; and c. whether the development would materially alter the view.

In operating this policy, a reasonable and balanced approach shall be implemented so as to ensure that the policy does not act as a blanket ban on developments between the road and the sea, lakes and river but also seeks to maintain existing landscape qualities in the area.

## Chapter 16 Technical Standards

### 5.2. Natural Heritage Designations

- 5.2.1. The site lies partly within the Lough Swilly SAC (site code 002287), the Lough Swilly SPA (site code 004075) and Lough Swilly Including Big Isle, Blanket Nook & Inch Lake pNHA (site code 000166).

### 5.3. EIA Screening

- 5.3.1. The proposed development is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended. No mandatory requirement for EIA therefore arises and there is also no requirement for a preliminary examination or screening assessment. I refer the Board to Appendix 1.

### 5.4. AA Screening

- 5.4.1. I refer the Board to Appendix 2 which contains an AA Screening Report. In summary, I have concluded therein that, notwithstanding the submission of a Natura Impact Statement (NIS) with the application, there is insufficient information on file to allow the Board to carry out an AA Screening Determination, and I have recommended that the application for retention be refused on this basis. However, should the Board disagree with same and consider that a Stage 2 Appropriate Assessment is, in fact, required, I refer the Board to the provisions of s.34(12) of the Planning and Development Act 2000 (as amended) which states that: *'A planning authority shall refuse to consider an application to retain unauthorised development of land where it decides that either or both of the following was required or is required in respect of*

*the development:(a) an environmental impact assessment; (b) an appropriate assessment.'*

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. 1 no. appeal has been submitted on behalf of Noel Jones, Christopher Jones, Calvin Jone, Olivia Jones and Ciaran Mulholland. I have summarised the ground of appeal below:

- Flooding would not occur from the road from the site and vice versa (re Schedule 2).
- There are 4 no levelled hardcore areas next to track/roadway.
- Water supply is from the public mains/was never previously a water connection.
- Retention permission was never granted.
- Roadway now facilities driving directly onto the beach/Part of the SAC & SPA.
- Industrial sized waste/septic tank bunkered on the site/not shown on the plans/2 no septic tanks on site.
- Removal of wetland/shrub land buried beneath soil and hard-core.
- Removal of thousands of tons of soil.
- Opinion of an Taisce and of the DHLG not taken into consideration.
- Shed/Garage has waste piping installed more consistent with a small domestic kitchen and toilet facility.
- Decision does not consider submissions made at application stage.
- Health and Safety issues.
- Removal of topsoil from the site/changed the landscape/were EPA regulations complied with.
- Roadway directly onto Lough Swilly shoreline/increase of same by both pedestrians and vehicles to gain access to the beach.

- Insufficient visibility from site – requires visibility splays of 160m.

[copy of original observations attached]

## 6.2. Applicant Response

6.2.1. A first party response was received on 9<sup>th</sup> October 2023. This is summarised below:

- Planning History on the application site includes a Section 5 Declaration that the erection of a shed for storage of agricultural equipment was development and was exempted development (at a location near to the shed subject to the planning application).
- Reference is made to relevant policies of the Donegal Development Plan 2018-2024.
- Applicant has provided a Natura Impact Statement with the planning application and demonstrated that the proposal will have no significant impact on nearby Natura 2000 sites (Lough Swilly SPA and SAC)/mitigating actions will be adhered to in full.
- Any future application to change the use of the shed would need to satisfy the requirements specific to that development activity.
- Development that sits outside of the redline boundary is not applicable to this appeal.
- Hardstanding used by the applicant is permeable/was chosen to prevent pooling of water/discharging to the shore.
- Applicant is permitted to carry out ground investigations if appropriate guidelines are followed.
- Unaware of any works within a Natura 2000 designation.
- Unaware of any unauthorised septic tanks within the application boundary.
- PA were satisfied with the site notice.
- Applicant's residency status has no bearing on the suitability of the application for retention permission.
- The impact on any view is negligible.

- Placement of electricity poles is a matter entirely for ESB and not the applicant.
- Proposed development does not encroach upon the shore and there has been no evidence of any erosion as a direct result of development works carried out at the application site.
- Visibility from the access is sufficient.
- Conditions will ensure that the development will be carried out to sufficient standards.
- Potable water supply will be from the public watermains once a suitable supply has been delivered.

### 6.3. **Planning Authority Response**

6.3.1. A response from the PA was received on 10<sup>th</sup> October 2023. This is summarised below:

- Decision of the PA as the competent authority in relation to assessment under the Habitats Directive was consistent with the position taken by the DAU.
- Satisfied to rely on the contents of the Planner's Reports and AA Screening Report.

### 6.4. **Observations**

6.4.1. None.

## 7.0 **Assessment**

7.1. I consider the main issues in determining the appeal are as follows-

- Principle of the Development
- Design/Visual Impact/Impact on Landscape
- Other Issues

### 7.2. **Principle of Development**

7.2.1. The development is to retain an agricultural shed and associated works. The application documentation detail that the shed is to be used for the storage of agricultural machinery. In principle, a shed that is associated with the agricultural use is acceptable in this rural area.

### **Design/Visual Impact/Impact on the Landscape**

7.2.2. With reference to Map 11.1 of the County Donegal Development Plan 2024-2030, the site is located within an Area of Especially High Scenic Amenity (EHSA) (the northern most portion of the site) and an Areas of High Scenic Amenity (HSA) (the majority of the site). There is a band of 'Moderate Scenic Amenity' to the north of the site also (I have placed a copy of the relevant mapping on file for the Board's perusal). The shed proposed for retention is located within an Area of High Scenic Amenity with the level platform area and berms proposed for retention located with an 'Area of Especially High Scenic Amenity'.

7.2.3. In terms of the design and appearance of the agricultural shed proposed for retention, I am of the view that this is not a traditional or appropriate design, and in my view is an incongruous addition within this agricultural and high scenic amenity landscape. While I acknowledge that the application is for the retention of an agricultural shed, the appearance of the shed is more akin to a dwelling house. In relation to the proposed hardstanding and berm areas, to the northern end of the site, I note that this is located within the more sensitive Area of Especially High Scenic Amenity, and I am of the view that the alterations that have been carried out here are detrimental to the appearance of same, and have altered the landscape so as to diminish the value of same.

7.2.4. In terms of the roadway, I accept that some access would need to be provided in relation to the shed, and in relation to the hardstanding area, which the applicant has stated is required to allow the parking of heavy goods vehicles which will be used on the farm. However, I am of the view that development that is proposed for retention, considered in its entirety, has altered this sensitive landscape in a detrimental way, and is not in accordance with the provisions of the County Donegal Development Plan 2024-2030, in relation to the protection of landscape, namely Objective L-0-1 (as relates to the protection of the landscape) and Policies L-P-1 (as relates to areas

of Especially High Scenic Amenity), L-P-2 (as relates to areas of High and Moderate Scenic Amenity) and L-P-3 (as relates to Donegal's coastline).

- 7.2.5. In relation to the extent of the roadway, there appears to be access to the beach via a roadway/track, although the area of roadway/track between the coastline and the hardstanding area to the north is not gravelled. This additional roadway/track is not indicated on the plans, with the extent of the roadway (as shown on the submitted plans) appearing to terminate just beyond the hardstanding. The Planning Authority has acknowledged this (in the First Planner's Report) and have stated that this is not an issue as it does not fall within the development description. I would have a concern that the plans as submitted with the application do not reflect what has been constructed on the ground (in relation to the extent of the roadway), and in this regard I am of the view it is not possible to assess the entire impact of the development, as constructed.

### **7.3. Transport Issues/Visibility**

- 7.3.1. The third-party appellants have stated that there is insufficient visibility from the access point, and state that a visibility of 150m is required. The first party has stated that the access is sufficient. The Planning Authority did not consider there would be any material intensification of traffic using entrance/upgrade of entrance not required.
- 7.3.2. The drawings indicate that visibility of 50m in either direction is achievable from the access.
- 7.3.3. I share the view of the Planning Authority that there is unlikely to be a material intensification of the access point and the visibility from the access is sufficient, and no material road safety issues are raised as a result of this retention application.

### **7.4. Other Issues**

- 7.4.1. Flooding – I note the third-party appellant has raised an issue in relation to the appropriateness of Condition No. 2 of the Planning Authority's decision, as relates to surface water. I would note that this is a standard condition that seeks to prevent surface water from entering the site from the roadway and vice versa and I would not have a concern in relation to the imposition of same.
- 7.4.2. EPA Regulations – The third-party appellants have stated that EPA regulations were not complies with when significant volumes of soil were removed from the site. I

would note that compliance or otherwise with same, is not a matter for the Board to adjudicate upon.

## 8.0 Recommendation

I recommend that permission for retention be **REFUSED** as per the reasons and considerations below.

## 9.0 Reasons and Considerations

1. The development proposed for retention has resulted in significant alterations to the coastal landscape, within an area of Area of Especially High Scenic Amenity, and within an Area of High Scenic Amenity, with resultant negative impacts on same. Furthermore, the appearance of the agricultural shed proposed for retention is not considered to be a traditional or appropriate design, and as a result it appears as an incongruous addition within the landscape. The development proposed for retention is therefore considered contrary to Objective L-0-1 (as relates to the protection of the landscape) and Policies L-P-1 (as relates to areas of Especially High Scenic Amenity), L-P-2 (as relates to areas of High and Moderate Scenic Amenity) and L-P-3 (as relates to Donegal's coastline) of the County Donegal Development Plan 2024-2030.
2. Notwithstanding the submission of a Natura Impact Statement, the Board is of the view that there is insufficient information provided with the application in order to carry out a Stage 1 Appropriate Assessment Screening. As such, the Board cannot be satisfied that the development proposed for retention, has not resulted in, and will not result in, likely significant impacts on Lough Swilly SAC (site code 002287) and Lough Swilly SPA (site code 004075) and as such, in such circumstances, the Board is precluded from granting permission for retention of the development.

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Rónán O'Connor  
Senior Planning Inspector

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5<sup>th</sup> July 2024



## Appendix 1 – Form 1 - EIA Pre-Screening

**[EIAR not submitted]**

<b>An Bord Pleanála Case Reference</b>	317993-23		
<b>Proposed Development Summary</b>	Retention Permission for (1) Creation of access road; (2) Regrading/levelling of site and creation of platforms and berms; (3) Installation of water and electrical infrastructure and connections from the site; (4) Construction of a shed with hardstand area and all associated works. A Natura Impact Statement (NIS) accompanies this application.		
<b>Development Address</b>	Grange, Inch, Co. Donegal.		
<b>1. Does the proposed development come within the definition of a ‘project’ for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)	<b>Yes</b>	X	
	<b>No</b>		
<b>2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?</b>			
<b>Yes</b>			
<b>No</b>	X		Proceed to Q.3
<b>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]?</b>			
		<b>Threshold</b>	<b>Comment (if relevant)</b>
<b>No</b>	X		No applicable class.
<b>Yes</b>			<b>Conclusion</b>
			No EIAR or Preliminary Examination required

**4. Has Schedule 7A information been submitted?**

<b>No</b>		<b>Preliminary Examination required</b>
<b>Yes</b>		<b>Screening Determination required</b>

**Inspector:** \_\_\_\_\_

**Date:** \_\_\_\_\_

## Appendix 2 – AA Screening

### Screening for Appropriate Assessment Screening Determination

#### Description of the project

I have considered the proposed development in light of the requirements of S177U of the Planning and Development Act 2000 as amended.

The development comprises of the following:

Retention of: 1) Creation of access road; (2) Regrading/levelling of site and creation of platforms and berms; (3) Installation of water and electrical infrastructure and connections from the site; (4) Construction of a shed with hardstand area and all associated works.

A Natura Impact Statement (NIS) accompanies this application.

The site lies partially within the Lough Swilly SAC (Site Code 002287) and the Lough Swilly SPA (004075). The next closest Natura 2000 sites are as follows:

- Leannan River SAC (002176) approximately c11km south-west of the site
- Horn Head to Fanad Head SPA (004194) c11.6km north-west of the site
- Mulroy Bay SAC (002159) c12.2km west of the site
- North Inishowen Coast SAC (002012) c12.9km north of the site
- Lough Fern SPA (004060) c13.3km south-west of the site
- Ballyarr Wood SAC (000116) c14.3 km south-west of the site

Section 2.2 of the applicant's NIS sets out a description of the receiving environment and it is noted that there are no rivers or streams adjacent to the site, but there is a stream bordering the neighbouring land with an area of woodland to the east (Lacken Forest). The main habitats within the site are described as 'artificial surfaces' and 'rough and amenity grassland'. It is stated that the whole site drains to the north towards the shore, with a number of mature trees on the site. Ground water vulnerability is described as moderate to high, with the soil type described as metamorphic till with good draining capacity.

Table 1 of the NIS sets out that the proposed development may indirectly impact on the quality of habitats required by birds which are species of conservation interest for Lough Swilly SPA. It is further set out that there may be direct and indirect impacts of habitats of conservation interest for Lough Swilly SPA, and that indirect water pollution impacts may occur via hydrological pathways (surface/groundwater flows) from runoff and discharge. Section 2.8 of the NIS states that the proposed works have the potential to impact on Lough Swilly SAC and Lough Swilly SPA and that a full Appropriate Assessment is required. Section 3 is the Appropriate Assessment. Section 3.4 of same states that surface water from the from the site enters the Intertidal habitat of Lough Swilly via the beach located at the bottom of the site, and therefore may impact on this habitat.

In relation to otter habitat, it is stated that the development will not damage or deteriorate any potential habitats on the shore of Lough Swilly and that mitigation measures with respect to water quality will ensure that there are no significant negative impacts on otter. It is later stated that there is no water runoff from the site that would impact on otter habitat and that no mitigation is needed.

In relation to birds, it is states within the NIS that noise and light disturbance is a potential negative impact associated with the development. However, this is later ruled out as a potential impact as it is stated that construction would take place outside the wintering/breeding season for birds, with the increase level of noise during the operation of the development (farming activities) would be insignificant, given that farming activities are common in the area.

It is further set out that the development site, consisting of existing agricultural grassland is not used by populations of bird species for which Lough Swilly SPA is designated.

The NIS later states, in relation to water quality, that there are no hydrological source-receptor pathways identified between the development and the Lough Swilly SPA/SAC.

The impact of the shed is not considered in the NIS as it is stated that this does not require planning permission.

### Submissions/Observations

I note the grounds of the third-party appeal which state that *inter alia* the roadway now facilitates vehicle and pedestrian access directly onto the beach which is part of the Lough Swilly SAC and Lough Swilly SPA. It is further stated that there is a removal of wetland/shrub land buried beneath the soil and hard-core. It is also stated that the opinion of an Taisce and of the DHLG was not taken into consideration.

The applicant, in the response to the appeal, notes that a Natura Impact Statement (NIS) has been submitted with the planning application which demonstrates that the proposal will have no significant impact on nearby Natura 2000 sites (Lough Swilly SPA and SAC). It is stated that mitigating actions will be adhered to in full. It is further stated that the applicant is unaware of any works within the Natura 2000 designation.

The PA have stated that the decision of the PA as the competent authority in relation to assessment under the Habitats Directive was consistent with the position taken by the DAU and that the PA were satisfied to rely on the contents of the Planner's Reports and AA Screening Report.

I note the submission (at application stage) from An Taisce (dated 10<sup>th</sup> May 2023) which states that an application for retention permission cannot be determined as it was deemed to require a Stage 2 Appropriate Assessment. The submission (at application stage) from the Department of Housing, Local Government and Heritage (Development Applications Unit (dated 29<sup>th</sup> May 2023) acknowledges the submission of an NIS with the application. However, this submission refers to critical gaps in the data, information and analyses that have been presented, and that the exact location of the works for retention is unclear. It is concluded that a proper assessment is not possible.

### **Potential impact mechanisms from the project**

With reference to EPA mapping<sup>1</sup>, there is no named watercourse running through or directly adjacent to the site. The nearest EPA mapped watercourses are 2 no. unnamed surface water bodies, which lie approximately 20m to the east of the site

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<sup>1</sup> <https://gis.epa.ie/EPAMaps/AAGeoTool>

and 90m to the west of the site respectively, at their closest points. Both of these watercourses drain to Lough Swilly.

The elements of the development proposed for retention that would have potentially generated a source of impact are:

- The construction of the shed and associated hardstanding.
- The construction of the access road.
- The releveling of the site and the creation of the platform/berms.
- The operation of the shed and associated movements of machinery on the site.
- Anthropogenic impacts as a result of increased activity on the site.

### European Sites at risk

Table 1 European Sites at risk from impacts of the proposed project

Effect mechanism	Impact pathway/Zone of influence	European Site(s)	Qualifying interest features at risk
Surface water pollution	Surface Water run off at construction/operational stage.	Lough Swilly SAC Lough Swilly SPA	<u>Lough Swilly SAC</u> Estuaries [1130] Coastal lagoons [1150]
Anthropogenic impacts	Increased activity on the site		Atlantic salt meadows ( <i>Glauco-Puccinellietalia maritimae</i> ) [1330] Molinia meadows on calcareous, peaty or clayey-silt-laden soils

			(Molinion caeruleae) [6410]  Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0]  Phocoena phocoena (Harbour Porpoise) [1351]  Lutra lutra (Otter) [1355]  <u>Lough Swilly SPA</u>  Bird species listed as qualifying interests for the Lough Swilly SPA <sup>2</sup>
<i>Ex-situ</i> impacts on habitat	Groundworks associated with the construction levelled areas/access road	Lough Swilly SAC	Lutra lutra (Otter) [1355]  Phocoena phocoena (Harbour Porpoise) [1351]

Lough Swilly SAC (site code 002287)

With reference to the relevant Site Synopsis document on the NPWS website, Lough Swilly SAC is a large site, situated in the northern part of Co. Donegal and comprises the inner part of Lough Swilly. It extends from below Letterkenny to just north of Bunrana. Lough Swilly is a long sea lough, cutting through a variety of metamorphic rocks on the west side of Inishowen. The main rivers flowing into the

<sup>2</sup> See list in Appendix 3 of this report and at <https://www.npws.ie/protected-sites/spa/004075>

site are the Swilly, Lennan and Crana. At low tide, extensive sand and mudflats are exposed, especially at the mouths of the Swilly and Lennan rivers. The site is estuarine in character, with shallow water and intertidal sand and mudflats being the dominant habitats..<sup>3</sup>

Lough Swilly SPA (site code 004075)

With reference to the relevant Site Synopsis document on the NPWS website, Lough Swilly is a long sea inlet cut through a variety of metamorphic rocks, situated on the west side of the Inishowen Peninsula in north Co. Donegal. The SPA comprises the inner part of Lough Swilly from just east of Letterkenny northwards to Killygarvan (c. 2 km north of Rathmullan) on the west side and to c. 2 km south of Buncrana on the east side; it includes the adjacent Inch Lough. Also forming part of the site is a series of improved pasture and arable fields on the south side of Lough Swilly between Farsetmore and Inch Levels – these are of importance to geese and swans. It includes sections of the estuaries of the River Swilly, the River Leannan and the Isle Burn and the predominant habitat is a series of extensive sand and mud flats which are exposed at low tide - both estuaries and sand/mud flats are listed on Annex I of the E.U. Habitats Directive. Other habitats represented in the site are salt marshes, lagoons (at Inch Lough and Blanket Nook), rivers and streams, sand and shingle beaches, lowland wet and dry grasslands, drainage ditches, reedbeds and scrub. Inch Lough, whilst artificial in origin, is one of the largest and best examples of a shallow, low salinity lagoon in the country; it supports what is probably the largest population in the country of the Red-listed charophyte *Chara canescens*. A small sandy island, used by nesting terns, swans and gulls, occurs in the southern part of the lagoon.<sup>4</sup>

**Step 4: Likely significant effects on the European site(s) ‘alone’**

Table 2: Could the project undermine the conservation objectives ‘alone’		
European Site and qualifying features	Conservation objective	Could the conservation objectives be undermined (Y/N)?

<sup>3</sup> A full synopsis is available at <https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY002287.pdf>

<sup>4</sup> A full synopsis is available at <https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY004075.pdf>



	(summary)	Surface water pollution	Indirect groundwater pollution
<b>Lough Swilly SAC (Site Code 002287)</b>			
Estuaries [1130] Coastal lagoons [1150] Atlantic salt meadows (Glaucopuccinellietalia maritimae) [1330] Molinia meadows on calcareous, peaty or clayey-silt-laden soils (Molinion caeruleae) [6410] Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0] Phocoena phocoena (Harbour Porpoise) [1351] <sup>5</sup>	To maintain the favourable conservation condition of: <ul style="list-style-type: none"> <li>• Estuaries [1130]</li> </ul> To restore the favourable conservation condition of: <ul style="list-style-type: none"> <li>• Coastal lagoons [1150]</li> <li>• Atlantic salt meadows (Glaucopuccinellietalia maritimae) [1330]</li> <li>• Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0]</li> <li>• Lutra lutra (Otter) [1355]</li> </ul>	Insufficient information on file to determine. See discussion below.	Insufficient information on file to determine. See discussion below.

<sup>5</sup> I note that the Harbour Porpoise was added as a new Qualifying Interest in March 2023 with reference to [https://www.npws.ie/sites/default/files/protected-sites/amendment\\_notifications/AN002287.pdf](https://www.npws.ie/sites/default/files/protected-sites/amendment_notifications/AN002287.pdf). I would further note that there is no specific conservation objective relating the harbour porpoise.

Lutra lutra (Otter) [1355]			
<b>Lough Swilly SPA (004075)</b>			
Bird species listed as qualifying interests for the Lough Swilly SPA <sup>6</sup>	To maintain the favourable conservation condition of bird species of special conservation interest.	Insufficient information on file to determine. See discussion below.	Insufficient information on file to determine. See discussion below.

Habitat Loss/Disturbance/Ex-situ Impacts

The shed, the associated hardstanding, the level platform area and the associated berms and the access road are not within the boundary of the Lough Swilly SPA or SAC. As such, it would appear unlikely that there was any habitat loss within the SPA or SAC itself. However, the construction of these elements, on lands within close proximity to the SPA and the SAC would have had the potential to result in disturbance to bird species associated with the SPA, or disturbance to otter or harbour porpoise species associated with the SAC. In relation to the latter two no. species, there is insufficient information on file to determine if the shoreline within or close to the site provides suitable habitat for otter or harbour porpoise and, as such, there is insufficient information to determine if there was, or would be, likely significant impacts on either of these two species. There is also insufficient detail on file to determine if the site is, or was previously used, by bird species associated with the SPA, therefore it is not possible to determine if *ex-situ* impacts either have occurred, or are likely to occur in the future, and it is not possible to determine the significance of same, in the absence of information in relation to same.

Deterioration of Water Quality

Potential impact mechanisms include those from surface water pollution from construction works (silt/ hydrocarbon/ construction related), resulting in a

<sup>6</sup> See list in Appendix 3 of this report and at <https://www.npws.ie/protected-sites/spa/004075>

deterioration of water quality. I would note that the landscaping works to the north of the site appear to be relatively close to the boundaries of the SPA and the SAC so potential impacts may have occurred as a result of the works. However, I am of the view that there is insufficient information on file to determine the significance or likelihood of such impacts.

At operational stage, contaminated surface water runoff from the hard standing areas near the shed proposed for retention could reach the shoreline via the surface water network, noting that Drawing No. 2575 Site Layout 2 indicates that storm water is piped to a ditch which runs along the western boundary of the site and is discharged to the shore. Contaminated run-off from parking of heavy goods vehicles on the hardstanding could also enter the SAC/SPA. However, there is a lack of information on file in relation to this issue, and as such the likelihood or significance of any impacts on water quality is not possible to determine, in my view.

#### Anthropogenic Impacts

The development proposed for retention would see increased activity on the site, *albeit* associated with agricultural activities. Notwithstanding, the access road now makes it possible to access the shore both by vehicle and by foot, with the resultant potential of increased anthropogenic activity, with resultant impacts from same. There is no discussion of same within the NIS. However, in the absence of any discussion of same within the application documentation, and in the absence of sufficient information on the habitats on or close to the shoreline that have the potential to be impacted upon, I am of the view that there is insufficient information on file to determine the likelihood or significant of any impacts associated with increased anthropogenic activity on the site.

There are no other readily apparent impact mechanisms that could arise as a result of this project and I am satisfied that other Natura 2000 sites as referred to above are sufficiently far removed from the application site so as to ensure that there would be no likely significant impacts on same.

**Likely significant effects on the European site(s) 'in-combination with other plans and projects'**

There is no evidence on file of any plans or projects that are proposed or permitted that could impact in combination with the proposed development and as such no in-combination issues arise.

I conclude, therefore, that the proposed development would have no likely significant effect in combination with other plans and projects on the qualifying features of any European sites. No further assessment is required for the project.

### **Overall Conclusion- Screening Determination**

In accordance with Section 177U(4) of the Planning and Development Act 2000 (as amended) and on the basis of objective information, and, notwithstanding the submission of a Natura Impact Statement, I am of the view that there is insufficient information on file in order to carry out a Stage 1 Appropriate Assessment Screening. As such, I cannot be satisfied that the development proposed for retention has not resulted in, or will not result in, in likely significant impacts on Lough Swilly SAC (site code 002287) and the Lough Swilly SPA (site code 004075) and as such, in such circumstances, the Board is precluded from granting permission for retention of the development.

However, should the Board disagree with same, and consider that a Stage 2 Appropriate Assessment is, in fact, required, I refer the Board to the provisions of s.34(12) of the Planning and Development Act 2000 (as amended) which states that:

*‘A planning authority shall refuse to consider an application to retain unauthorised development of land where it decides that either or both of the following was required or is required in respect of the development: (a) an environmental impact assessment; (b) an appropriate assessment.’*

### **Appendix 3 – Bird Species of Qualifying Interest (Lough Swilly SPA)**

Great Crested Grebe (*Podiceps cristatus*) [A005]

Grey Heron (*Ardea cinerea*) [A028]

Whooper Swan (*Cygnus cygnus*) [A038]

Greylag Goose (*Anser anser*) [A043]

Shelduck (*Tadorna tadorna*) [A048]

Wigeon (*Anas penelope*) [A050]

Teal (*Anas crecca*) [A052]

Mallard (*Anas platyrhynchos*) [A053]

Shoveler (*Anas clypeata*) [A056]

Scaup (*Aythya marila*) [A062]

Goldeneye (*Bucephala clangula*) [A067]

Red-breasted Merganser (*Mergus serrator*) [A069]

Coot (*Fulica atra*) [A125]

Oystercatcher (*Haematopus ostralegus*) [A130]

Knot (*Calidris canutus*) [A143]

Dunlin (*Calidris alpina*) [A149]

Curlew (*Numenius arquata*) [A160]

Redshank (*Tringa totanus*) [A162]

Greenshank (*Tringa nebularia*) [A164]

Black-headed Gull (*Chroicocephalus ridibundus*) [A179]

Common Gull (*Larus canus*) [A182]

Sandwich Tern (*Sterna sandvicensis*) [A191]

Common Tern (*Sterna hirundo*) [A193]

Greenland White-fronted Goose (*Anser albifrons flavirostris*) [A395]

Wetland and Waterbirds [A999]