



An  
Bord  
Pleanála

## Inspector's Report

### ABP-318282-23

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<b>Development</b>	Enclosed seating area with bar servery to the rear and side of the premises known as McCafferty's Bar.
<b>Location</b>	Main Street, Meenmore, Dungloe, Co. Donegal
<b>Planning Authority</b>	Donegal County Council
<b>Planning Authority Reg. Ref.</b>	23/51150
<b>Applicant(s)</b>	Michael Boyle Of Atlantic Drive Ltd
<b>Type of Application</b>	Retention permission
<b>Planning Authority Decision</b>	Grant, subject to 6 conditions
<b>Type of Appeal</b>	Third Party -v- Decision
<b>Appellant(s)</b>	Paul & Rosemary Gallagher
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	20 <sup>th</sup> March 2024
<b>Inspector</b>	Hugh D. Morrison

# Contents

1.0 Site Location and Description .....	3
2.0 Proposed Development .....	4
3.0 Planning Authority Decision .....	4
3.1. Decision .....	4
3.2. Planning Authority Reports .....	4
3.3. Prescribed Bodies .....	5
3.4. Third Party Observations .....	5
4.0 Planning History.....	5
5.0 Policy Context.....	7
5.1. Development Plan.....	7
5.2. Natural Heritage Designations .....	7
5.3. EIA Screening .....	7
6.0 The Appeal .....	7
6.1. Grounds of Appeal .....	7
6.2. Applicant Response .....	8
6.3. Planning Authority Response.....	9
6.4. Observations.....	9
6.5. Further Responses .....	9
7.0 Assessment.....	9
8.0 Recommendation.....	14
9.0 Reasons and Considerations.....	14
Appendix 1 – Form 1: EIA Pre-Screening	

## 1.0 Site Location and Description

- 1.1. The site is located at the northern end and on the eastern side of Main Street (R259) in Dungloe town centre. To the south and west lie predominantly retail and commercial uses, while to the north lie predominantly residential uses. The local Garda station lies to the north, too, in a prominent position looking south along Main Street.
- 1.2. The site is of elongated form, and it extends from the N56 in the east to the R259 in the west over an area of 0.53 hectares. Its northern boundary is of curved alignment and its southern boundary is of meandering alignment. The former boundary abuts the extensive grounds of two detached dwelling houses, which are sited in elevated positions. An embankment spans the difference in levels between these grounds and the site. Along its top is a hedgerow and a line of trees and along its bottom is a wire mesh fence. The latter boundary abuts the Dungloe River.
- 1.3. The applicant's bar and restaurant are sited in the western portion of the site. They comprise a traditional two-storey building, the principal elevation of which faces onto Main Street. This building has been the subject of single storey and two-storey rear extensions, and, more recently, the subject single storey extension, which wraps around the side and rear of these extensions. The total floorspace arising is 868 sqm, i.e., 619.5 sqm comprised in the pre-existing extended building and 248.5 sqm comprised in the subject single storey extension. In the central and eastern portions of the site lie a car park and a lawned area. The car park is accessed off the N56 to the east.
- 1.4. On the northern side of the traditional two-storey building is a short lane off Main Street which affords access to a gated informal seating area in front of the entrance to the subject single storey extension. This seating area is enclosed by a high wall on its northern side, behind which is a one-and-half storey building that is used for holiday lettings. Forward of this building is a two-storey building, the principal elevation of which faces south over the wide section of pavement in front of the traditional two-storey building. This building has a vacant retail/commercial unit at ground floor level and residential accommodation at first floor level. A gated yard lies between it and the one-and-a-half storey building.

## 2.0 Proposed Development

- 2.1. The proposal seeks the retention of a 248.5 sqm enclosed seating area, which wraps around the northern and eastern sides of the pre-existing extended building on the site. This enclosed seating area was formerly an open surfaced area within the grounds of the applicant's public house. It has a timber structure, which incorporates along its northern elevation pre-existing walls, and it has lean-to and double pitched roofs, which are clad in corrugated sheeting. Externally the elevations are clad in timber and internally they are clad in plasterboard.
- 2.2. The enclosed seating area is laid out around bar serveries at either end of the area and a raised stage in the north-eastern corner. The floor rises at a gentle gradient towards the east. Entrances/exits are sited in the western elevation and in the south-eastern corner. A separate corridor has been provided to serve a pre-existing rear fire escape staircase from the first floor of the two-storey rear extension to an exterior fire escape door.

## 3.0 Planning Authority Decision

### 3.1. Decision

Permission was granted subject to 6 conditions, including the following ones:

- Condition No. 2: Within 3 months, the submission of revised floor plans showing an adequate means of escape.
- Condition No. 3: Within 3 months, the submission of a revised site layout plan showing 12 no. additional car parking spaces.
- Condition No. 4: The roofed outdoor bar/beer garden to be used by patrons of the public house only between the hours of 10.30 and 24.00 daily with no music after 23.00 hours daily.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

See decision.

### 3.2.2. Other Technical Reports

Donegal County Council

- Chief Fire Officer: Objects, as regularisation certificate needed, adequate water supply for firefighting purposes needed, and adequate means of escape from existing building needed.
- Building Control: Comments that the building regulations need to be complied with, and a disabled access certificate and a fire certificate may be required.

### 3.3. Prescribed Bodies

TII: No observations

### 3.4. Third Party Observations

See grounds of appeal.

## 4.0 Planning History

- 97//1442: RETENTION OF EXTENSION TO LOUNGE BAR, RETENTION OF CONVERSION OF STORE TO SNOOKER ROOM AND RETENTION OF UPGRADING OF REAR ENTRANCE. Retention permission granted.
- 06/31221: 1. CONSTRUCTION OF NEW ENTRANCE TO THE FRONT WITH NEW FRONT FACADE ONTO MAIN STREET, EXTENSION TO THE SIDE FOR A DISABLED TOILET, EXTENSION TO THE SIDE FOR STAIRS AND TOILETS. EXTENSION TO THE REAR FOR DELIVERY STAIRS TO KITCHEN 2. CHANGE STORE AREA ON FIRST FLOOR TO A KITCHEN AREA 3. CHANGE SNOOKER ROOM TO FORM PART OF BAR AREA & TOILETS AND LOWER THE FLOOR LEVEL 4. CHANGE EXISTING KITCHEN AND LIVING ROOM ON GROUND FLOOR TO FORM PART OF BAR AREA 5. AN EXTENSION OF THE ROOF SPACE AT THE REAR FOR KITCHEN USE 6. INSTALL VELUX ROOF LIGHTS TO KITCHEN AREA 7. NEW SIGNAGE. Permitted.

- 07/31452: 1. ERECTION OF 10 NO. DWELLINGS IN ONE BLOCK COMPRISING 5 NO. 2 BED APARTMENTS AT GROUND FLOOR LEVEL WITH 5 NO. 3 BED DUPLEX DWELLINGS AT FIRST AND SECOND FLOOR LEVELS. 2. ALL ANCILLARY CAR PARKING AND SITEWORKS ASSOCIATED WITH THE DEVELOPMENT INCLUDING RIVERSIDE AMENITY FOOTWALK. 3. CONNECTION TO EXISTING PUBLIC FOUL SEWER ALONG DUNGLOE MAIN STREET AND PUBLIC WATERMAIN. Refused at appeal (PL05B.229561) on the grounds that the proposal would be over development of the site, which would be out of character with its context, it would be visually obtrusive and, due to its proximity to the adjoining river, its construction would pose a pollution risk, the site is at risk of flooding, and there is inadequate capacity in the public WWTP to ensure that it would be capable of being serviced satisfactorily.
- 18/50031: (A) DEMOLITION OF PART OF THE EXISTING BAR AND STORE AREAS TO THE EXISTING BUILDING, (B) CONSTRUCTION OF A NEW EXTENSION TO REAR OF THE EXISTING BUILDING CONSISTING OF A NEW BAR AREA, RESTAURANT AREAS, TOILET BLOCKS, KITCHEN AND STORES ON GROUND AND FIRST FLOOR AREAS, (C) CHANGE OF USE FROM EXISTING STORES AT FIRST FLOOR LEVEL TO RESTAURANT AREA, (D) ASSOCIATED SIGNAGE TO THE BUILDING, (E) CONSTRUCTION OF NEW REAR ENTRANCE FOYER, (F) CONSTRUCTION OF A NEW SIDE STORE TO THE GABLE END OF THE EXISTING BUILDING, (G) EXTERNAL SMOKING & BAR AREA AND (H) ADDITIONAL CARPARKING AREA TOGETHER WITH ALL ASSOCIATED SITE DEVELOPMENT WORKS. Permitted at appeal (ABP-301814-18), subject to conditions, which included the omission of the external bar area, and the prohibition of the playing of music outside, in the interests of residential amenity.
- 21/50130: (1) REMOVAL OF PORCH TO THE FRONT ELEVATION (2) INSTALLATION OF TWO WINDOWS TO THE NORTH SIDE ELEVATION (3) ENCLOSURE OF PORCH TO THE NORTH SIDE ELEVATION CREATING AN ADDITIONAL FLOOR AREA OF 4.6M<sup>2</sup> (4) TWO STOREY EXTENSION TO THE NORTH SIDE ELEVATION TO CREATE AN ESCAPE STAIRWELL

(5) BAR EXTENSION INTO EXISTING ATTIC SPACE TO REAR FORMING A MEZZANINE AREA AND INSTALLATION OF TWO ROOFLIGHTS.

Retention permission granted at appeal (ABP-309988-21).

## 5.0 Policy Context

### 5.1. Development Plan

Under the Donegal County Development Plan 2018 – 2024, the site is shown as lying within Dungloe town centre, where the zoning objective is to “Sustain and strengthen town centres as the core for commercial, retail, healthcare and amenity purposes.”

### 5.2. Natural Heritage Designations

Rutland Island and Sound SAC (002283)

### 5.3. EIA Screening

See appendices.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- The appellants’ roadside property adjoins the site to the north. It comprises a shop with residential accommodation above and holiday let accommodation to the side, which was granted retention permission under 19/51241. The adjacent unauthorised development, which is the subject of the current application, has been a source of dis-amenity.
- The planning history of the site is cited, including two cases that were the subject of Board decisions.
- The appellants understand that the PA has taken enforcement action against the applicant for non-compliance with conditions attached to retention permission (21/50130 & ABP-309988-21).

- The inspector reporting on ABP-301814-18 recognised the risk of dis-amenity. Conditions attached to the permission granted may have been contravened, for example:
  - The external bar area was to be omitted, and yet the footprint of the current proposal overlaps with it and extends beyond it,
  - Outdoor music was prohibited, and yet speakers installed within the roofed in bars would be audible externally,
  - External lighting was prohibited, and yet such lighting has been installed, and
  - Surface water drainage arrangements were to be satisfactory, and yet rainwater run-off from the roofed in bars discharges to neighbouring properties.
- The proposal is not set back from the appellant's holiday let accommodation. It is enclosed with no windows, only doors at either end. This proposal could have been sited elsewhere within the extensive grounds to the applicant's public house.
- The proposal needs to comply with the building regulations, and it needs to be the subject of fire and disabled access certificates.
- The footpath at the front of the applicant's public house is obstructed by tables and chairs, and access to the appellants' property is often impeded by traffic generated by this public house.
- The case planner's report incorrectly states that no third-party objections were received.

## 6.2. Applicant Response

The applicant's response was received outside the statutory time period.



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

The PA considers that the grounds of appeal were addressed in the case planner's report. It also considers that, as evidenced by the assessment in this report, the appellants original objections were taken into account.

### 6.4. **Observations**

None

### 6.5. **Further Responses**

None

## 7.0 **Assessment**

7.1. I have reviewed the proposal in the light of the County Donegal Development Plan 2018 – 2024, relevant planning history, the submissions of the parties, and my own site visit. Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) The Development Plan and planning history,
- (ii) Amenity and other matters,
- (iii) Traffic, access, and parking,
- (iv) Water, and
- (v) Appropriate Assessment.

### **(i) The Development Plan and planning history**

7.2. Under the CDP, Dungloe is identified as a Layer 2A town and its town centre includes the western half of the site and the entirety of the subject enclosed seating area. The northern boundary of the town centre coincides with the northern boundary of the site and the northern boundary of the appellants' adjoining property. Within the town centre the zoning objective is to "Sustain and strengthen town centres as the core for commercial, retail, healthcare and amenity purposes." Under this zone, a public house is an appropriate use.

- 7.3. The planning history of the site is summarised under Section 4.0 of my report. This history indicates that the original building on the site has been the subject of multiple extensions and alterations over recent years.
- 7.4. The appellants cite application 18/50031, which included, amongst other things, a proposal for an external bar area. This application was the subject of appeal ABP-301814-18, which led to the application being granted, subject to conditions, which included the omission of the external bar area, and the prohibition of the playing of music outside, in the interests of residential amenity. The appellants draw attention to the siting of the external bar, which would have been within the footprint of the enclosed seating area now proposed for retention and next to their property. They also draw attention to the playing of live or recorded music within this enclosed seating area. The cited conditions are thus instructive in assessing the current proposal. The appellants contend that there is ample room within the site for the applicant's premises to be extended further to the rear in a manner that would not adversely affect residential amenity, as exemplified by the overall proposal granted under the aforementioned application/appeal.
- 7.5. I note that the application/appeal cited by the appellants has not been implemented. I note, too, the conditions that they have flagged. While these conditions addressed an outdoor scenario, they do testify to the Board's concern to safeguard the residential amenities of the area.
- 7.6. I conclude that the public house use of the site within the town centre is appropriate. I conclude, too, that, in the light of the planning history of the site, the intensification of this use needs to be informed by the proximity of residential uses to the site.

**(ii) Amenity and other matters**

- 7.7. The appellants state that they own the property that adjoins the site to the north-west, i.e., the two-storey building comprising a shop and residential accommodation above and the one-and-a-half storey building comprising holiday accommodation that is let out on a short-term basis. They further state that the subject proposal has led to dis-amenity at their property, essentially in the form of noise nuisance at anti-social hours.
- 7.8. Clearly, the amenities of the appellants property, which lies in the town centre and in a position next to the applicant's public house, are affected by the proximity of this

public house to it. That said, the applicant's original building and its subsequent extensions exhibit a permanent form of construction, which inherently have significant sound attenuation properties. By contrast, the subject seating area is enclosed by plasterboard/timber and corrugated sheeting, which inherently have limited sound attenuation properties. Furthermore, this seating area includes a stage, where live music is played, and so it is capable of being used for events on a scale that would be greater than the pre-existing public house. While it is a windowless space, the entrance/exit door in the western elevation nearest to the appellants' property has no lobby and so, when used, would result in unrestricted noise breakout.

7.9. The PA's permission was granted, subject to conditions, including one that seeks to address dis-amenity by means of restricting the hours of usage and the playing of music within the enclosed seating area, i.e., in relation to the former, between the hours of 10.30 and 24.00 and, in relation to the latter, between 10.30 and 23.00. The applicant's website indicates that its premises are open as follows:

Monday – Thursday: 10.30 – 23.30,

Friday & Saturday: 10.30 – 00.30, and

Sunday: 12.00 – 23.30.

Accordingly, the conditioned hours are out of step with the current operational hours, and so, given the interconnected nature of the pre-existing public house with the enclosed seating area, their enforceability is doubtful.

7.10. Beyond the appellants' property, residential properties adjoin the site to the north. These properties lie outside the recognised town centre, and they comprise substantial detached dwelling houses, which are elevated and set back within their own grounds from the site. The risk that noise from the enclosed seating area may be affecting their amenities exists, too, although to a lesser extent than with respect to the appellants' property.

7.11. The applicant has submitted no noise survey to inform any assessment of the enclosed seating area. Likewise, he proposes no noise attenuation measures. Given the above cited construction of this enclosed seating area and its usage, I consider that, in the absence of any evidence to the contrary, I can only conclude that the risk

of noise nuisance from the enclosed seating area to residential and holiday accommodation within its vicinity is appreciably greater than that arising from the pre-existing public house. While this noise nuisance could notionally be allayed by condition, the interconnected nature of the enclosed seating area with the pre-existing public house militates against the effectiveness of such a condition in practise. Consequently, significant dis-amenity arises that warrants objection to the proposed retention of the seating area.

- 7.12. The appellants raise concerns over the enclosed seating area from fire safety and disabled access perspectives. These concerns are shared by the PA's fire officer and building control consultees. They fall to be addressed under legal codes that are separate from the planning system. Nevertheless, compliance with these codes may entail alterations to the enclosed seating area that would need planning permission.
- 7.13. The appellants also raise concerns about the use of the paved area in front of the applicant's premises on Main Street. These concerns relate to the possible obstruction of the public footpath, and, again, they are capable of being addressed under separate legal codes from that of the planning system.
- 7.14. I conclude that, due to the construction and pattern of use of the enclosed seating area, it leads to significant noise nuisance to residential and holiday accommodation in the vicinity of the site, to the serious injury of amenity.

### **(iii) Traffic, access, and parking**

- 7.15. The enclosed seating area has led to a significant increase in the floorspace of the applicant's premises, i.e., it has increased by 248.5 sqm (40%), from 619.5 sqm to 868 sqm. Consequently, scope exists for a higher number of patrons to be accommodated with implications for traffic generation, access, and parking.
- 7.16. Vehicular access to the site is available from the N56 to the east. The access point in question is off a 50 kmph urban section of this national secondary road, which is of straight alignment. Consequently, its sightlines are good and so its intensification of use is in order.
- 7.17. During my site visit, I observed that there is an extensive parking area to the rear of the applicant's premises. This parking area is unlined for spaces, militating against

its efficient use. If the Board is minded to grant, then a condition should be attached requiring that it be formally laid out for parking.

7.18. I conclude that traffic generated by the enclosed seating area would be capable of being satisfactorily accommodated in the applicant's existing car park, which is accessed from the east off the N56, provided this car park is formally laid out to ensure its efficient use.

#### **(iv) Water**

7.19. The applicant's pre-existing premises are connected to the public water mains and the public foul and surface water sewerage system. The enclosed seated area would be ancillary to these premises for the purposes of water supply and foul drainage.

7.20. The appellants draw attention to the expanse of roofspace that encloses the seating area, and how the majority of this expanse falls to the north. They have submitted a photograph that shows the absence of a downpipe from the western end of the gutter on the northern eaves. Consequently, rainwater discharges freely near to their property.

7.21. The applicant's submitted plans do not show surface water drainage arrangements. In these circumstances, if the Board is minded to grant, then a condition should be attached requiring that a plans of these arrangements should be submitted, along with a timeline for any completion/remedial works.

7.22. Under the OPW's flood maps, the southern portion of the site is identified as being the subject of fluvial and coastal flood risks. Significantly, the extent of the site depicted as being affected does not overlap with either the footprint of the applicant's pre-existing premises, the enclosed seated area, or the vehicular means of access to the car park.

7.23. I conclude that, subject to clarification on surface water drainage arrangements, the proposal would raise no water issues.

#### **(v) Appropriate Assessment**

7.24. The site is neither in nor beside a European site. The nearest such site is to the west of Dungloe, i.e., Rutland Island and Sound SAC (002283). This site is a fully serviced urban one. It is bound by the Dungloe River to the south, which flows into the bay to the west, which is partially designated by the said SAC. Nevertheless, the enclosed

seated area lies in the north-western portion of the site at some remove from this River, and so it would be capable of having been constructed without affecting it. I, therefore, conclude that, under the proposal, no appropriate assessment issues arise.

- 7.25. Having regard to the nature, scale, and location of the proposal, the nature of the receiving environment, and the proximity to the nearest European Site, it is concluded that no appropriate assessment issues arise as the proposal would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 8.0 Recommendation

- 8.1. That retention permission be refused.

## 9.0 Reasons and Considerations

Having regard to the proximity of the residential and holiday accommodation within the vicinity of the site, it is considered that, due to the form of construction exhibited by the enclosed seating area, its access arrangements, its use, and its operating hours, significant noise nuisance arises from this seating area resulting in serious injury to the amenities of nearby properties. In these circumstances, to grant retention permission for the enclosed seating area would be contrary to the proper planning and sustainable development of the area.

*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.*

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Hugh D. Morrison  
Planning Inspector

5<sup>th</sup> April 2024

## Appendix 1 - Form 1

### EIA Pre-Screening

**[EIAR not submitted]**

<b>An Bord Pleanála Case Reference</b>	ABP-318282-23		
<b>Proposed Development Summary</b>	Enclosed seating area with bar serverly to the rear and side of the premises known as McCafferty's Bar.		
<b>Development Address</b>	Main Street, Meenmore, Dungloe, Co. Donegal.		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> <small>(that is involving construction works, demolition, or interventions in the natural surroundings)</small>	<b>Yes</b>	x	
	<b>No</b>	No further action required	
<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>		Class.....	EIA Mandatory EIAR required
<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>		N/A	<b>Conclusion</b>
<b>Yes</b>	x	Class 10(b)(iv) 2 hectares	No EIAR or Preliminary Examination required
			Proceed to Q.4

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

<b>No</b>	<input checked="" type="checkbox"/>	<b>Preliminary Examination required</b>
<b>Yes</b>	<input type="checkbox"/>	<b>Screening Determination required</b>

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

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



## Appendix 2: EIA Preliminary Examination

<b>An Bord Pleanála Case Reference</b>	ABP-318282-23	
<b>Proposed Development Summary</b>	Enclosed seating area with bar servery to the rear and side of the premises known as McCafferty's Bar.	
<b>Development Address</b>	Main Street, Meenmore, Dungloe, Co. Donegal	
<p><b>The Board carries out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations.</b></p>		
	<b>Examination</b>	<b>Yes/No/ Uncertain</b>
<b>Nature of the Development</b> <ul style="list-style-type: none"> <li>• <b>Is the nature of the proposed development exceptional in the context of the existing environment?</b></li> <li>• <b>Will the development result in the production of any significant waste, emissions or pollutants?</b></li> </ul>	<p>Extension to an existing public house in the town centre.</p> <p>No significant waste, emissions or pollutants would ensue.</p>	<p>No</p> <p>No</p>
<b>Size of the Development</b> <ul style="list-style-type: none"> <li>• <b>Is the size of the proposed development exceptional in the context of the existing environment?</b></li> <li>• <b>Are there significant cumulative considerations</b></li> </ul>	<p>Extension to an existing public house in the town centre.</p> <p>No significant waste, emissions or pollutants would ensue in combination with any other permitted projects.</p>	<p>No</p> <p>No</p>

<p>having regard to other existing and/or permitted projects?</p>		
<p><b>Location of the Development</b></p> <ul style="list-style-type: none"> <li>• Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location?</li> <li>• Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?</li> </ul>	<p>Apart from Rutland Island and Sound SAC (002283), no other ecologically sensitive sites in the surrounding area.</p> <p>Apart from Rutland Island and Sound SAC (002283), no other ecologically sensitive sites in the surrounding area.</p>	<p>No</p> <p>No</p>
<p><b>Conclusion</b></p>		
<p><b>There is no real likelihood of significant effects on the environment.</b></p> <p>EIA not required.</p>	<p><del>There is significant and realistic doubt regarding the likelihood of significant effects on the environment.</del></p> <p><del>Schedule 7A Information required to enable a Screening Determination to be carried out.</del></p>	<p><del>There is a real likelihood of significant effects on the environment.</del></p> <p>EIAR required.</p>

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

Date: