



An  
Bord  
Pleanála

## Inspector's Report

### ABP-318706-23

<b>Development</b>	Remedial repair works to a bridge outside property. Natura Impact Statement (NIS) submitted with application.
<b>Location</b>	Carrickduff, Bunclody, Co. Carlow
<b>Planning Authority</b>	Carlow County Council
<b>Planning Authority Reg. Ref.</b>	22385
<b>Applicant(s)</b>	Signacare Bunclody Ltd.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant, subject to conditions.
<b>Type of Appeal</b>	Third Party
<b>Appellant</b>	Pat Finnerty.
<b>Observer</b>	Uisce Éireann.
<b>Date of Site Inspection</b>	24 <sup>th</sup> September 2024.
<b>Inspector</b>	Terence McLellan

## **1.0 Site Location and Description**

- 1.1.1. The appeal site refers to the Millrace Bridge in Carrickduff, Bunclody, which is a single span structure crossing the River Clody. The River Clody marks the boundary between Counties Carlow and Wexford, with the northern part of the bridge being in County Carlow and the southern end of the bridge being in County Wexford. The bridge forms the main access over the River Clody to the SignaCare nursing home from the N80. The bridge has been closed since 2019 due to structural issues, with access prevented by fencing and concrete blocks. Temporary support beams and props are in place underneath the northern side of the bridge to assist in securing the structure. The SignaCare nursing home is presently being accessed from another bridge c.320m west of the application site.

## **2.0 Proposed Development**

- 2.1. Planning permission is sought for remedial works to the northern support of the Millrace Bridge which spans the River Clody. The bridge is supported by reinforced earth systems along both the northern and southern banks, which consists of gabion style stone infill, secured in place with steel mesh panels. The south bank is within County Wexford.
- 2.2. The development entails remedial/repair works to the reinforced earth system beneath the bridge, which has partially collapsed on the northern bank of the river due to scour and erosion. The repair works on the northern embankment would consist of 13 no. micro piles tied into the existing bridge deck. The voids under the north abutment would be filled with shotcrete. The face of the southern abutment and embankment would be sealed with a sprayed gunite to prevent loss of the stone fill material behind the mesh.
- 2.3. The overall layout and appearance of the bridge deck itself would not be changed by the proposal. The temporary props under the bridge deck and the concrete Kelly Blocks in the river would be removed upon completion of the works.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. Notification of the Decision to Grant Permission was issued by Carlow County Council on the 24<sup>th</sup> of November 2023 subject to 12 conditions. Conditions of note include:

#### 3.1.2. Condition 4

a) Prior to the commencement of development, an estimation of the extent and severity of the scour to the riverbed shall be undertaken in accordance with the CIRIA Document "Manual on scour at bridges and other hydraulic structures, second edition" (C742). Subject to the outcome of this assessment, scour mitigation measures shall be outlined and installed, if deemed necessary, in the vicinity of the bridge in accordance with CIRIA Document C742. Details shall be submitted and receive the written approval of the Planning Authority.

b) The sections of settled parapet rails, concrete capping beams, surfacing, bedding and kerbs adjacent to the bridge shall be taken up and reinstated to the original levels and condition and shall be clearly detailed on compliance submission to the satisfaction of the Planning Authority.

c) Prior to the commencement of development, the applicant shall undertake exploratory trenches or other methods to precisely locate all services in the vicinity of the bridge in advance of undertaking the proposed remedial works. Drawings detailing the location of all services and the impact on the proposed remedial works shall be submitted to the Planning Authority.

d) The applicant shall obtain a Category 3 Check of the proposed remedial works, based on the Classification of Structures given in Section 3.4, of TII Document DN-STR-03001 "Technical Acceptance of Road Structures on Motorways and Other National Roads". The Independent Design Checker shall be proposed by the Applicant to the approval of the Planning Authority. The Design Check shall be submitted to the Planning Authority.

e) Construction drawings shall be provided and submitted to the Planning in advance of the commencement of the remedial works providing:

- (i) Details of proposed remedial works to the railings, supporting concrete beams, surfacing, bedding and kerbs adjacent to the bridge.
- (ii) Details of the extent of the proposed vegetation removal and the measures for preventing the spread of the invasive species.
- (iii) Details on location of weepholes, if any, to be installed on the north abutment.
- (iv) Details on the extent and vertical edge finish of the shotcrete to the north abutment.
- f) The appointed Contractor shall submit an "Independent Check Certificate for Temporary Works" for all proposed significant elements of temporary works to the Planning Authority. The checking organisation shall be independent of the temporary works design organisation. The check shall be carried out by a Chartered Engineer with relevant experience. The checker may not make reference to the temporary works designer's calculations in order to fulfil his/her duties.

Compliance details regarding pursuant to (a) - (f) shall be submitted a minimum of 8 weeks in advance of construction works.

**Reason:** In the interest of the protection of the environment.

### 3.1.3. Condition 5

An updated Hydraulic Analysis Report shall be submitted to the Planning Authority 8 weeks in advance of the commencement of the proposed remedial works. The report shall include the following:

- A summary of the assessed flow velocities, anticipated depths (in mOD) and flow conditions between Q5% and Q95% at the upstream and downstream ends within the pipes for the temporary works stages.
- Demonstrate that the pipes are capable of carrying the flow during the works.
- Demonstrate that the pipes permit the passage of fish at all times during the works.
- Justification for the length of fluming to be provided. The applicant shall demonstrate that the length of the flumed area is sufficient to prevent uncured concrete entering the watercourse.

- A detailed Method Statement, to address the temporary works in the event of a flood.
- Scour and siltation prevention measures.

All the above shall be agreed and approved in writing by Inland Fisheries Ireland prior to submission to the Planning Authority for formal written agreement.

**Reason:** In the interest of the protection of the environment.

#### 3.1.4. Condition 7

a) The applicant shall engage suitably qualified and experienced environmental personnel and/or an ecological clerk of works prior to the commencement of development to be on-site throughout the proposed works to ensure the embedded environmental, ecological and construction mitigation measures and monitoring commitments specified in the plans and particulars submitted with the planning application, including the Natura Impact Statement (received by the Planning Authority on 10/11/2022, and as updated or amended in the further information received on 21/07/2023, and the clarification of further information received on 09/10/2023), and the conditions of this permission are carried out and implemented in full.

b) Prior to the commencement of development, a combined and annotated schedule of all environmental, ecological and construction mitigation measures and monitoring commitments referred to in part (a) of this condition, including a programme and timescale for their implementation, shall be submitted for the written agreement of the Planning Authority.

c) A programme of water quality monitoring shall be prepared in consultation with the contractor, and relevant statutory agencies and the programme shall be implemented thereafter. Details of such monitoring shall be submitted to, and agreed in writing with, the planning authority prior to commencement of the proposed works.

d) Monitoring of the construction phase shall be carried out by the environmental personnel and/or an ecological clerk of works to ensure that all environmental and ecological mitigation measures contained in the documentation which accompany the application are fully implemented. The appointed person shall be present during site construction works. Upon completion of works, an ecological report of the site works

shall be prepared and shall be submitted to, and agreed in writing with, the planning authority.

**Reason:** To regulate the development in the interests of clarity and the protection of the environment during construction and operational phases.

3.1.5. Further conditions of note include:

3. Creation of a dry working environment.
5. Specification of mitigation measures within the Construction Environmental management Plan (CEMP) and to be agreed in writing with Inland Fisheries Ireland.
8. Compliance with CEMP and NIS

### 3.2. Planning Authority Reports

3.2.1. The first Planner's Report was issued on the 5<sup>th</sup> January 2023 and identified the requirement for Further Information on the following issues:

#### Item1 - Drawings

3.2.2. The Hydrology Assessment, NIS, and CEMP have not been informed by a topographical survey with up to date levels to mOD. There are also concerns that the stability of the riverbed may pose a risk to the proposed works. A topographical survey is required, and this should be used to update the Hydrology Assessment. Additionally, revised drawings are required clarifying the type of repairs proposed, remedial works to railings and fascia panels, location and size of weep holes, extent of vegetation removal, extent and thickness of gunite including finishes (not exhaustive).

#### Item 2 - Hydrology Assessment

3.2.3. The Hydrology Assessment lacks sufficient detail, has not been accompanied by a Topographical Survey or levels to mOD, and lacks cross sections or longitudinal sections of the riverbed and embankments (for a baseline). A revised Hydrology Assessment is required. This includes a requirement to provide flow rates and assessment, graphical outputs and calculation summaries from modelling, clarity on flood flow assessments, impacts of reduced channel width, minimum height of damming required and clarity on figures presented (not exhaustive).

### Item 3 - Design Approach and proposed Solution

- 3.2.4. The Planner's Report notes the unevenness of the riverbed below the bridge and large scour holes. Details on how the riverbed would be regraded and scour protection measures are required. Further details are required on support arrangements for the beams to the new piled foundation, clarity on the articulation arrangement at the north embankment, location of services through and in the vicinity of the bridge and submission of a category 3 check of the proposed remedial works. It is also requested that the impact of coring through the bridge deck is assessed in terms of strength and durability.

### Item 4 - Method Statement

- 3.2.5. A Method Statement for the instream works is required which takes account of the requirements of Inland Fisheries Ireland.

### Item 5 - Traffic Management

- 3.2.6. There are concerns regarding the possible impact of the works on pedestrian and vehicular movement along the N80, where closing the public footpath is not an option and it is noted that the CEMP does not include a traffic management plan. A clear traffic management plan is required for the construction period.
- 3.2.7. Following the submission of Significant Further Information, the second Planner's Report was issued on the 21<sup>st</sup> September 2023. This report raised concerns regarding the response to Items 2 and 4. With regard to Item 2, it was noted that a complete assessment of the river flows at the bridge location had not been provided. In terms of Item 4, the Method Statement failed to include sufficient measures to prevent shotcrete and gunite entering the watercourse.
- 3.2.8. The report notes that provision needs to be made for the design of the required pipe(s) size and damming required for fluming the river during the construction phase. Alternative methods and additional mitigation also need to be considered within the scope of a revised and updated Natura Impact Assessment, Preliminary Method Statement, revised drawings and a revised Construction Environmental Management Plan to ensure the proposal does not impact on the SAC. It is further stated that scour protection measures have not been addressed.

- 3.2.9. Following this, the Planning Authority requested Clarification of Further Information in order to address the outstanding issues. This was considered in the third Planner's Report which was issued on 21<sup>st</sup> November 2023. This report noted that the additional information provided for the Hydraulic Analysis Report was satisfactory and concluded that the remaining technical details could be secured by condition. In terms of the amendments to the Method Statement, the Applicant is now proposing to flume the river in alignment with the requirements of IFI. The Planner's Report considers that the outstanding requirements of IFI can be dealt with by condition.
- 3.2.10. The report concludes that the reopening of the bridge would have a positive impact on the area by improving access, safety, and appearance and that permission should be granted subject to conditions.
- 3.2.11. **Other Technical Reports**
- 3.2.12. **Environment Section (08.12.2022, 02.08.2023, 29.08.2023):** The Environment Section advised that the CEMP and NIS have been reviewed. Conditions have been recommended with regards to the Construction Environmental Management Plan (including conditions relating to flood risk, including a specific reference to avoidance of scouring), and the Technical Acceptance Report. In terms of Appropriate Assessment, having considered the NIS, the Environmental Section have concluded that the project would not adversely affect the integrity of the Slaney River Valley SAC.
- 3.2.13. Further Conditions recommended by the Environment Section relate to the implementation of the CEMP and the mitigation measures of the NIS in addition to the submission of a report from a suitably qualified, chartered and indemnified Structural Engineer to verify that the bridge is not considered to be a dangerous structure.
- 3.2.14. **MM Consult Ltd. (13.12.2022, 19.09.2023, 10.11.2023):** Mark Murphy Consulting Ltd. (Bridge and Structural Engineers) were engaged by the Planning Authority in order to review the planning application. Their initial findings raised a number of issues that were required to be addressed by way of Further information including the design approach and proposed solution, drawing details, further details on the temporary works and concerns that the information in the hydrology report were inadequate. Following receipt of Further Information and the Clarification of Further Information, MM Consult Ltd. concluded that there remained concerns regarding the following:



- Fluming of the river is not long enough and that there may still be a path for uncured concrete to enter the river.
- Ability of fish to traverse the piping at all times.
- Contradictory nature of the methodology for dealing with the temporary works in the event of flood flows.
- Concerns regarding the updated Hydraulic Analysis Report, including that it contradicts the NIS, Preliminary Method Statement, and CEMP in relation to the status of the sandbag dams and piping during a flood event whereby the Hydraulic Analysis Report states that these would be left in place whereas the other documents state that all potential contaminants and loose material should be removed from the river.
- No scour protection measures are included, and some erosion is likely.
- The upstream dam is square to the river and should be splayed to reduce and prevent siltation upstream of the works area.

3.2.15. MM Consult Ltd. recommend that this is addressed by condition (to be approved by Inland Fisheries Ireland) and a further condition is recommended for mitigation measures relating to:

- Creation of a dry working environment and timing of works.
- Regard to Inland Fisheries Ireland guidance.
- Water quality monitoring.
- Construction phase monitoring by a qualified Ecologist.

3.2.16. **Traffic (30.08.2023):** Recommend conditions relating to construction access, clarity on access, car park use and provisions for pedestrians, position and access of drill rig, wash out restrictions, and details of maintenance requirements. Concerns were also raised that no information was provided in Section 10 of the Technical Acceptance Report which relates to road design, including interface with roads and separate construction of structures.

### 3.3. Prescribed Bodies

3.3.1. **Inland Fisheries Ireland (13.01.2023, 20.10.2023):** The initial responses from Inland Fisheries Ireland raised various concerns that the Planning Authority sought to address by way of Further Information, including that the river should be flumed in order to protect water quality. Following the submission of Further Information and a subsequent clarification, Inland Fisheries Ireland continued to raise concerns including:

- The use of silt settlement ponds (or similar) will not address the elevated pH of water that has come into contact with uncured concrete.
- The need to address the likelihood that significant volumes of water may bypass the sandbag dam as water levels will be raised and there is potential for flow through the bank infill in the vicinity of the upstream works on both banks.
- Imperative that the section of channel through the proposed works is dried out.
- An Environmental Manager needs to be on site through the works to monitor the situation on the dried out section of channel and to safeguard against problems here and in the SAC.
- It is important that fluming of the channel is extended upstream and downstream to protect the watercourse. Clarification on the extent of fluming is required.
- Measures need to be put in place in the event of waters entering the dried out section of channel during the works. These waters need to be pumped from the site and treated to address suspended solids and elevated pH.

3.3.2. The Planner's Report concludes that these issues can be addressed by way of condition.

3.3.3. **Transport Infrastructure Ireland (25.11.2022, 04.08.2023):** No observations.

3.3.4. **Uisce Éireann (04.08.2023):** No objection raised however observations were made that the application contains no reference to connections to water or wastewater but that it is assumed the cross the bridge and details are needed of connections and construction work contingencies. It is also stated that the Applicant is to confirm what services exist in the bridge structure, if any, and measures for their protection.

### 3.4. Third Party Observations

- 3.4.1. One observation was received to the planning application, this reflects the grounds of appeal set out in detail at Section 6.0 below.

## 4.0 Planning History

### Subject Site

- 4.1. **Planning Authority Reference 21/250:** Application withdrawn following FI. Permission for the carrying out of remedial/repair works to the northern bridge support within County Carlow, including installation of scour protection to the base of the reinforced bridge support and associated site works at the entrance to our premises. A Natura Impact Statement (NIS) will be submitted to the planning Authority with the application.
- 4.2. **Planning Authority Reference Section 5 21/05:** Section 5 application received from the applicant regarding 'the carrying out of remedial/repair works to the northern bridge support within County Carlow, involving restraining the remains of the existing stone packed in gabion basket supports and backfilling over to the underside of the bridge in concrete layers where the remainder of the bridge support stones that have been eroded away by the River Clody and, thereafter, applying a granite topping. Also, following completion of these works, creating a concrete block or rock armour scour protection buttress to the base of the reinforced bridge support'. Declaration issued stating that the proposal is development and is not exempted development on the basis of the following:
- 'Proposal does not come within the scope of Section 4(1)(h) of the Planning and Development Act 2000 (as amended) having regard to the restrictions listed in Section 4(4) of the Planning and Development Act 2000 (as amended) whereby the proposed development works require a stage 2 Appropriate Assessment (Natura Impact Statement).'*
- 4.3. **Planning Authority Reference 06/380:** Permission GRANTED for (1) Change of use of 2 no. previously granted retail units (previous planning reference no. 04/247) to use as a library building, (2) to construct single storey extension to the rear incorporating

staff room and toilet facilities, and (3) all other minor alterations to elevations and associated site works.

- 4.4. **Planning Authority Reference 04/247:** Permission GRANTED to retain extensions and modifications to that which was previously granted. (PL ref no. 03/470) i.e. to construct (a) 2 no. offices (b) 12 no. apartments (c) a vehicular bridge across the River Clody. Now to construct 15 no. apartments, 3 no. shop units & 1 no. office, vehicular bridge across River Clody and all associated site works.
- 4.5. **Planning Authority Reference 03/470:** Permission GRANTED to construct (1) 2 no. offices (2) 12 apartments, and (3) a vehicular bridge across the river Clody and associated site works.

Adjacent site within County Wexford

- 4.5.1. **Planning Authority Reference 2018/0770:** Permission was granted in July 2018 for change of use from the hotel to a 59 bedroom nursing home with various internal alterations and the construction of a four storey extension incorporating a lift and sluice rooms. This application was accompanied by a Natura Impact Statement.
- 4.5.2. **Planning Authority Reference 2004/1604:** In April 2005, Wexford County Council granted permission (subject to conditions), for: Retention and completion for the following modifications and extensions to 50 bedroom apart hotel and 15 no. Apartments (previous planning reference 20031752). Hotel ground floor - relocation of covered car parking; and extension to external car parking modifications and additions to kitchen, bar and service areas modifications to lifts and stairs arrangements; additional function room toilets; two additional entrance porches. First floor - additional meeting room toilets; modifications to internal arrangement including lifts and stairs layout and provision of meeting rooms in lieu of restaurant and treatment area, office and linen store converted to three additional ensuite bedrooms. Second floor - additional link between hotel and leisure centre; modifications to internal arrangement including conversion of meeting rooms and associated areas to treatment centre and conversion of office and linen store to two additional ensuite bedrooms. Third floor - additional space for toilet and to accommodate modifications to stairs and lifts arrangement; modifications to internal arrangement including conversion of conference room and associated areas to three bedroom suites and conversion of office and linen store to two additional ensuite bedrooms. Fourth floor - additional

space for kitchen and to accommodate modification to stairs and lift arrangements; modifications to internal arrangement including conversion of penthouse to restaurant. Elevations - general alterations to fenestration with the granite arches to north elevation; addition of 2 storey toilet block to east elevation; change of finish to rear wall of swimming pool (south elevation) from plastered block work to metal cladding. Riverside apartments - general alterations to fenestration, including enlargement of windows and addition of new windows to end elevations; alterations to roof consisting of removal of the steeply pitched roof with flat centre section; replaced with a traditional style roof with 35 pitch.

- 4.5.3. **Planning Authority Reference 2003/1752:** Permission was granted in September 2003 for construction of the following: (1). A 50-bedroom apart-hotel including restaurant, bar, utility area, car park and leisure centre & associated site works, and (2). 15 number apartments & associated site works, and (3). A vehicular bridge across the River Clody. (4) demolition of existing dwelling.

## 5.0 Policy Context

### **Carlow County Development Plan 2022-2028**

- 5.1.1. Chapter 6 – Infrastructure and Environmental Management. This chapter seek the provision and maintenance of high quality infrastructure networks and environmental services in conjunction with other statutory bodies which seeks to complement the overall economic and settlement strategy, contributes to sustainable development and is in accordance with the proper planning and sustainable development of the area.
- 5.1.2. Chapter 10 – Natural and Built Heritage. This chapter seeks to protect, conserve, manage and enhance the natural and built heritage features of the County, to ensure the survival of their intrinsic value for future generations and to ensure they contribute to the future sustainable development of the County. The relevant policies of this chapter include:
- NH. P2: Ensure, as far as is practicable, that development does not adversely impact on wildlife habitats and species, and that biodiversity is conserved for the benefit of future generations in the interests of sustainability. This will

include moving towards no net loss of biodiversity from plans adopted by and projects granted permission/authorised by the Council.

- NH. P6: Protect and enhance the natural environment of County Carlow and recognise the important role of the natural heritage through its diversity, quality and integrity, in terms of enhancing the image of the County and contributing to quality of life, economic growth, tourism and recreation.
- NH. P9: To promote the carrying out of ecological/habitat assessments to inform the layout and design of development proposals and ensure they integrate the protection and enhancement of biodiversity and landscape features wherever possible, by minimising adverse impacts on existing habitats (whether designated or not) and by including mitigation and/or compensation measures, as appropriate.
- NS. P1: Support the conservation and enhancement of Natura 2000 Sites, and to protect the Natura 2000 network from any plans and projects that are likely to have a significant effect on the coherence or integrity of a Natura 2000 Site, in accordance with relevant EU Environmental Directives and applicable National Legislation, Policies, Plans and Guidelines.
- NS. P2 Screening for Appropriate Assessment and if required Appropriate Assessment is undertaken for all plans to be adopted and projects to be granted permission/authorised by the Council. Where likely significant effects have been identified in respect of any plan or project not directly connected with or necessary to the management of a Natura 2000 site, either individually or in combination with other plans or projects, ensure appropriate assessment, in accordance with Article 6(3) of the Habitats Directive. The Council shall only agree to the plan or project after having ascertained that it will not adversely affect the integrity of the site concerned, unless the plan or project is subject to the provisions of Article 6(4) of the Habitats Directive.
- NS. P4: Maintain or restore the favourable conservation status of County's Natura 2000 sites qualifying interest habitats and species.

## **Ministerial Guidelines**

- Appropriate Assessment of Plans and Projects in Ireland: Guidance for Planning Authorities 2009 (revised in 2010).

## **5.2. Natural Heritage Designations**

- 5.2.1. The appeal site is within and immediately adjacent to the Slaney River Valley SAC (site reference – 000781) and the Slaney River Valley proposed natural heritage area (pNHA).

## **5.3. EIA Screening**

- 5.3.1. The proposal is not a class of development specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

- 6.1.1. A Third Party appeal has been received from Pat Finnerty of Bolegh, Shillelagh, Co. Wicklow. The grounds of appeal can be summarised as follows:

- Request that the Board overturn the decision to grant permission on the basis that Carlow County Council is attempting to retrospectively reconstruct a permission that was never granted.
- Carlow County Council have failed to adhere to the process and procedures governing planning and have failed to deal with a development that has been erected in an SAC.
- The application is for the repair and remedial works on a bridge which is supported by gabions that do not have planning permission. On that basis the bridge is unauthorised and has not been assessed for its structural integrity to support traffic and pedestrian use.
- Carlow County Council are now attempting to circumvent the planning process as a way to mitigate against legal action that may be taken against them by the Applicant.

- This is piecemeal development within an SAC.
- The use of several pre-commencement conditions indicates that the Natura Impact Statement was inadequate and did not satisfactorily demonstrate conclusively, with scientific evidence, that the development would not have an impact on the SAC.
- Works required by condition that were never covered within the NIS would contravene the directive. Exploratory trenches or methods to locate services should be in the NIS and not conditioned.
- The reasons given for the conditions is inadequate given that there is no planning permission.
- The Planning Authority took no action on the construction of the bridge and failed to register enforcement complaints. The Council opted to deal with it as a Dangerous Structure.
- It is unclear why Carlow County Council withheld the structural condition of the bridge during the application to Wexford County Council for a change of use from hotel to nursing home.
- The bridge does not benefit from planning permission and to grant permission for remedial works/repair to an unauthorised bridge is clearly against case law.

## **6.2. Applicant Response**

6.2.1. A First Party response has been received from SCA Planning of 17A Bridgecourt Office park, Walkinstown Avenue, Dublin 12 for an on behalf of the Applicant, Signacare Bunclody Limited. This includes an Ecological Response from Dr Ross Donnelly Swift, Ecological Consultant. The First Party response is summarised as follows:

- Every aspect of the development was assessed for potential impacts on the environment, expert consultants were engaged, and their robust assessments are evident.
- The proposed works are important to the viability of the town, local community, the nursing home and general public health and safety.



- The target of the appeal is the original developer and Carlow County Council, as opposed to the proposed development, with the Appellant dissatisfied with the Planning Authority's past performance.
- It is requested that the Board consider the appeal under Section 138(1)(i) of the Planning and Development Act 2000 (as amended) in order to dismiss the appeal as being vexatious.
- The Appellant lives c.14km away and raises issues of no relevance to the proposal, which could significantly delay the remedial works and reopening of the bridge.
- The Bridge was granted by Carlow County Council under references 03/470 and 04/247, and by Wexford County Council under reference 2003/1752. The bridge is authorised and claims contrary to this are groundless.
- The appeal speculates on legal issues and historic malpractice by the Planning Authority that have not been tested in any Court of Law. The appeal should be dismissed.
- The application of conditions is standard practice. The Appellant presents this as a failure of process, on the contrary the conditions serve to strengthen the Planning Authority's role in ensuring the development is properly and safely implemented and is strongly supported by Section 34(5) of the Planning and Development Act.
- The grounds of appeal on an ecological basis are without substance.

#### Ecological Response from Dr Ross Donnelly-Swift

- The development has been ecologically assessed and mitigation measures are proposed in the NIS, including water quality, invasive species and biosecurity measures.
- The site was assessed on 9<sup>th</sup> February 2021 and 21<sup>st</sup> July 2022 with the habitats along the banks of the River Clody classified as modified.
- A major mitigation measure will be the piping of the River Clody during construction works to ensure no adverse effect on the River Slaney SAC during the construction phase.

- Condition 3 restricts timing of the works to comply with the conservation of a Salmonid River.
- Condition 7 requires a qualified Ecological Clerk of Works on site during the construction phase to ensure adherence to mitigation measures.
- A Construction Environmental Management Plan (CEMP) outlines the methodology and will outline the procedures to be strictly followed.
- Condition 6 relates to Inland Fisheries Ireland (IFI), who have been requested to review and approve the revised CEMP. No works will be undertaken onsite without the approval of IFI or the Planning Authority.
- Both the NIS and CEMP reference the Technical Acceptance Report, Hydraulic Analysis Report and Preliminary Reference Statement, as per Condition 10, national guidance will be complied with in full.
- Additional construction measures to locate services within the vicinity of the bridge will not require additional mitigation measures.
- There are a significant number of mitigation measures to protect the River Clody and River Slaney. Any additional works would be carried out in the presence of an Ecological Clerk of Works in compliance with national guidelines and with the significant number of mitigation measures in place to protect the River Slaney SAC.

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

- 6.3.1. The position of the Planning Authority remains as set out in the Planner's Report Recommendation and the Board are directed to the details set out in the planning reports and internal department reports for the planning application.

### **6.4. Observations**

- 6.4.1. An observation was received from Uisce Éireann on the 16<sup>th</sup> January 2024 noting that watermains and foul sewer pipes run along the N80 in close proximity to the proposed works and recommending conditions regarding compliance with Uisce Éireann's standard details and codes of practices.

## **6.5. Further Responses**

6.5.1. None.

## **7.0 Assessment**

7.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, the report/s of the local authority, and having inspected the site, and having regard to the relevant local/regional/national policies and guidance, I consider that the substantive issues in this appeal to be considered are as follows:

- Principle of Development
- Other Matters
- Appropriate Assessment

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

7.2.1. The core issue raised in this Third Party appeal is that the subject bridge does not benefit from planning permission. It is further stated that the bridge is supported by gabions that do not have planning permission. On that basis the Appellant considers that the bridge is unauthorised and has not been assessed for its structural integrity to support traffic and pedestrian use. The grounds of appeal state that the Council have failed to deal with the enforcement complaint, instead opting to deal with the matter as a dangerous structure and that the proposal represents piecemeal development within an SAC.

7.2.2. At the outset it should be made clear that the Board do not have an enforcement function. The matter of enforcement falls under the jurisdiction of the Planning Authority and I note that retention permission is not being sought. It is however important to establish that the planning status of the bridge, given that remedial works are being sought to the existing structure

7.2.3. Both Carlow and Wexford County Council granted planning permission to the immediately adjoining developments on either side of the River Clody under planning references 03/470 and 04/247 (County Carlow), and 2003/1752 (County Wexford). All of these permissions included planning consent for a bridge in the same location as

the subject bridge. However, from my site inspection, it is clear that the subject bridge differs in appearance and form from the bridge that was granted permission.

- 7.2.4. The bridge that has been constructed is a single span concrete deck supported at the riverbanks, with metal railings on the roadway/footpath. The bridge that has permission, whilst still single span in nature, has the appearance of a masonry arch bridge and differs significantly where it meets the riverbank due to the stone arches. I also note that the permitted bridge has masonry walls alongside the roadway/footpath, as opposed to metal railings. I also note that the approved plans do not make reference to the altered riverbanks. In my view the bridge is materially different to that which has permission and would be in breach of the conditions set out in the relevant parent planning permissions.
- 7.2.5. Whilst a bridge has clearly been approved in this location, for the reasons set out above, I am of the view that the current bridge does not reflect that which has permission and as such remedial works are being sought to an unauthorised structure. It is my view that the planning status of the existing bridge will need to be regularised before permission can be granted for the remedial works. Ordinarily, this would involve an application for retention permission.
- 7.2.6. The European Court of Justice (ECJ) decision in the case of C-215/06 resulted in the removal of the facility to apply for retention of planning permission for development which requires EIA. Under the amended Section 34(12) of the Planning and Development Act (2000), a retention application cannot be accepted by the Planning Authority for a development which would have required EIA (screening for EIA) or Appropriate Assessment under the Habitats Directive. This would apply to the subject bridge and as such, both the Planning Authority and the Board on appeal would be precluded from considering an application for retention permission.
- 7.2.7. The provisions of 177C of the Planning and Development Act 2000 permits an application for leave to apply for substitute consent where a Court has found that there was procedural error in the original consent or where the Board grants leave to a developer to apply for substitute consent in other exceptional circumstances. In my opinion, in order to regularise the development, the Applicant will need to seek leave to apply for substitute consent (both Carlow and Wexford).

7.2.8. Having regard to the unauthorised nature of the subject bridge and the restrictions placed on the Planning Authority and the Board with regard to retention applications for development which would have required Appropriate Assessment under the Habitats Directive, it is my opinion that the Board is precluded from granting permission in such circumstances.

### **7.3. Other Matters**

- 7.3.1. In my opinion there are various other deficiencies with the application relating to proposed works and mitigation measures that sit outside of the red line boundary. Firstly, the application drawings and documents refer to works that would be required to the southern abutment of the bridge, notably, the application of gunite. The southern abutment sits outside of the red line boundary but within the blue line, indicating that it is under the control of the applicant. Regardless, the southern abutment lies within County Wexford and as such the works proposed to the southern abutment are outside the jurisdiction of County Carlow, the subject application, and appeal. As these works would require Appropriate Assessment and mitigation measures, they would not be exempt and an application would need to be made to County Wexford. There is no information on file or on the County Wexford planning register to indicate that this has taken place.
- 7.3.2. Furthermore, the application includes the removal of the Kelly Blocks that sit immediately upstream of the Millrace Bridge. The invasive species Himalayan/Indian Balsam has been noted within the Kelly Blocks as described in the NIS and mitigation is proposed. However, the Kelly Blocks sit outside the red and blue line boundary.
- 7.3.3. Finally, the principal mitigation measure identified in the Natura Impact Statement is for the damming of both sides of the River Clody, with the river being flumed along the central river channel through two 900mm pipes between the two dams. These dams would extend both upstream and downstream of the bridge and beyond the red line plan of the application/appeal, and in terms of the southern dam, outside the jurisdiction of County Carlow. On the basis of the information submitted with the planning application and appeal, it is noted that the proposed development would be reliant on works to stabilise the bridge, remove the Kelly Blocks, and provide mitigation which are outside of the appeal site (red line) boundary. This is a new issue, and the Board may wish to take the views of the parties.

## 7.4. Appropriate Assessment

### Stage 1 – Screening

#### *Compliance with Article 6(3) of the Habitats Directive*

- 7.4.1. The requirements of Article 6(3) as related to appropriate assessment of a project under part XAB, sections 177U and 177V [or S 177AE] of the Planning and Development Act 2000 (as amended) are considered fully in this section. The areas addressed in this section are as follows:

#### *Background on the Application*

- 7.4.2. The Applicant has submitted a screening report for Appropriate as part of the planning application. This is incorporated into the Natura Impact Statement (dated 2023) prepared by Panther Environmental Solutions. The Applicant's Stage 1 screening exercise has been prepared in line with current best practice guidance and provides a description of the proposed development. The report identified four European Sites within a potential zone of influence of the appeal site, however three of these were screened out due to the lack of hydrological connection or excessive distance.
- 7.4.3. The site is located within the Slaney River Valley SAC (Site Code: 000781) and the Applicant's report identified the potential for significant effects on qualifying interests and conservation objectives as a result of impacts on water quality and the spread of invasive species during the construction phase. The Applicant undertook a site survey (site characterisation) on the 9th February 2021 and the 21st July 2022 in order to assess the ecological context of the site, by systematically walking the site, adjacent land, and boundaries, and determining the habitats present. The report notes that particular attention was given to the possible presence of habitats and/or species, which are legally protected under Irish and European legislation and to assessing any potential ecological connectivity with Natura 2000 sites or supplementary or steppingstone habitats of relevance to Natura 2000 sites. Five habitats were identified:
- BL3 – Buildings and artificial surfaces
  - FW2 – Depositing lowland rivers
  - GA2 – Amenity grassland<sup>1</sup>

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<sup>1</sup> Given as GA1 in the Applicant's report, this is assumed to be a typo.

- WS2 – Ornamental/non-native shrub<sup>2</sup>
- WS1 - Scrub

7.4.4. The presence of invasive species was noted on the river bank both upstream and downstream of the site, but no plant species of conservation significance were noted at the bridge. In terms of protected species, otter spraints were noted under the bridge and it is also noted that waterfowl and garden bird species would be present in the area due to the watercourse. No bird species protected under Annex 1 were noted during the site survey and the report states that the artificial river bank would not offer suitable nesting habitat for Kingfisher.

7.4.5. Relevant supplementary reports submitted with the application include:

- Construction Environmental Management Plan – This plan includes measures regarding environmental management and mitigation of environmental impacts such as air quality, surface water, ground water and soil impacts, terrestrial biodiversity, noise, traffic, waste management, dust management, chemical and hazardous materials, biosecurity, and an emergency management plan.
- Hydraulic Assessment Report – This report provides details of hydrology and flow estimation in addition to a hydraulic analysis and a proposed sequence of works. This is broken down into six stages with stages 2-5 relating to the construction works, provision of a sandbag dam and fluming of the river. The conclusions include timing of the proposed works as well as measures to be undertaken in the event for forecasted flood events.

7.4.6. The Applicant's screening exercise concludes that during construction works, the proposed development has the potential to impact upon the qualifying interests / special conservation interests of Slaney River Valley SAC due to a potential deterioration in water quality and the presence of invasive species and that a Natura Impact Statement is required.

7.4.7. Having reviewed the documents and submissions, I am satisfied that the information allows for a complete examination and identification of all the aspects of the project

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<sup>2</sup> Given as WS3 in the Applicant's report, this is assumed to be a typo.

that could have an effect, alone, or in combination with other plans and projects on European sites.

*Screening for Appropriate Assessment- Test of likely significant effects*

- 7.4.8. The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on a European site(s).
- 7.4.9. The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site.

*Brief Description of the Development*

- 7.4.10. The appellant provides a description of the project in Section 4.1 Description of Proposed Development, at page 9 of the report. In summary, the development comprises:
- Remedial/repair works to the reinforced earth system beneath the bridge, which has partially collapsed on the northern bank of the river due to scour and erosion.
  - The repair works on the northern embankment would consist of 13 no. micro piles tied into the existing bridge deck. The voids under the north abutment would be filled with shotcrete. The face of the southern abutment and approach embankment will be sealed with a sprayed gunite to prevent loss of the stone fill material behind the mesh.
  - The overall layout and appearance of the bridge deck itself will not be changed by the proposal. The temporary props under the bridge deck and the concrete Kelly Blocks in the river would be removed upon completion of the works.
- 7.4.11. The development site is described in detail in Section 4.2 which is on page 12 of the report. A site description is also provided in Section 1 above.
- 7.4.12. Taking account of the characteristics of the proposed development in terms of its location and the scale of works, the following issues are considered for examination in terms of implications for likely significant effects on European sites:



- Disturbance to protected habitats and species.
- Construction related impacts on water quality, the river bed and spawning sites/aquatic species associated with the construction phase. This includes pollution and/or sedimentation of the watercourse due to cement residues or hydrocarbons entering the water during construction works on the bridge, in addition to contaminants from the construction site in general.
- The spread of invasive species.

7.4.13. Details of submissions from relevant prescribed bodies and the Appellant are set out in sections 3.3 and 6.1.1 above.

#### *European Sites*

7.4.14. The development site is located within a European site, the Slaney River Valley SAC. A summary of European Sites that occur within a possible zone of influence of the proposed development is presented in the table below. Where a possible connection between the development and a European site has been identified, these sites are examined in more detail.

European Sites within a possible zone of influence of the proposed development.				
European Site (code)	List of Qualifying interest /Special conservation Interest	Distance from proposed development (Km)	Connections (source, pathway receptor	Considered further in screening Y/N
Slaney River Valley SAC  000781	Freshwater Pearl [1029] Mussel <i>Margaritifera margaritifera</i> [1029]  Sea Lamprey <i>Petromyzon marinus</i> [1095]  Brook Lamprey <i>Lampetra planeri</i> [1096]  River Lamprey <i>Lampetra fluviatilis</i> [1099]  Twaite Shad <i>Alosa fallax</i> [1103]  Atlantic Salmon <i>Salmo salar</i> (only in fresh water) [1106]  Estuaries [1130]  Mudflats and sandflats not covered by seawater at low tide [1140]	0 km	The appeal site is located within the SAC, with the subject bridge crossing the River Clody and works required to the riverbank. There is therefore a direct likelihood of significant effects.	<b>Y</b>

	<p>Otter <i>Lutra lutra</i> [1355]</p> <p>Harbour Seal <i>Phoca vitulina</i> [1365]</p> <p>Water courses of plain to montane levels with the <i>Ranunculus fluitantis</i> and <i>Callitriche-Batrachion</i> vegetation [3260]</p> <p>Old sessile oak woods with <i>Ilex</i> and <i>Blechnum</i> in the British Isles [91A0]</p> <p>Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (Alno-Padion, <i>Alnus incanae</i>, <i>Salix alba</i>) [91E0]</p>			
<p>Blackstairs Mountains SAC</p> <p>000770</p>	<p>Northern Atlantic wet heaths with <i>Erica tetralix</i> [4010]</p> <p>European dry heaths [4030]</p>	5.4 km South west of the site.	The Blackstairs Mountains SAC is located upstream of the appeal site and does not contain habitats associated with wet [4010] or dry heath [4030].	<b>N</b>
<p>River Barrow and River Nore SAC</p> <p>002162</p>	<p>Estuaries [1130]</p> <p>Mudflats and sandflats not covered by seawater at low tide [1140]</p> <p>Reefs [1170]</p> <p><i>Salicornia</i> and other annuals colonising mud and sand [1310]</p> <p>Atlantic salt meadows (<i>Glaucium Puccinellietalia maritima</i>) [1330]</p> <p>Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410]</p> <p>Water courses of plain to montane levels with the <i>Ranunculus fluitantis</i> and <i>Callitriche-Batrachion</i> vegetation [3260]</p> <p>European dry heaths [4030]</p> <p>Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels [6430]</p> <p>Petrifying springs with tufa formation (<i>Cratoneurion</i>) [7220]</p> <p>Old sessile oak woods with <i>Ilex</i> and <i>Blechnum</i> in the British Isles [91A0]</p> <p>Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (Alno-Padion, <i>Alnus incanae</i>, <i>Salix alba</i>) [91E0]</p>	12.3 km	There is no hydrological connection between the appeal site and the River Nore and River Barrow SAC.	<b>N</b>

	<p><i>Vertigo moulinsiana</i> (Desmoulin's Whorl Snail) [1016]</p> <p><i>Margaritifera margaritifera</i> (Freshwater Pearl Mussel) [1029]</p> <p><i>Austropotamobius pallipes</i> (White-clawed Crayfish) [1092]</p> <p><i>Petromyzon marinus</i> (Sea Lamprey) [1095]</p> <p><i>Lampetra planeri</i> (Brook Lamprey) [1096]</p> <p><i>Lampetra fluviatilis</i> (River Lamprey) [1099]</p> <p><i>Alosa fallax fallax</i> (Twaite Shad) [1103]</p> <p><i>Salmo salar</i> (Salmon) [1106]</p> <p><i>Lutra lutra</i> (Otter) [1355]</p> <p><i>Trichomanes speciosum</i> (Killarney Fern) [1421]</p>			
<p>Wexford Harbour and Slob SPA</p> <p>004076</p>	<p>Little Grebe (<i>Tachybaptus ruficollis</i>) [A004]</p> <p>Great Crested Grebe (<i>Podiceps cristatus</i>) [A005]</p> <p>Cormorant (<i>Phalacrocorax carbo</i>) [A017]</p> <p>Grey Heron (<i>Ardea cinerea</i>) [A028]</p> <p>Bewick's Swan (<i>Cygnus columbianus bewickii</i>) [A037]</p> <p>Whooper Swan (<i>Cygnus cygnus</i>) [A038]</p> <p>Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046]</p> <p>Shelduck (<i>Tadorna tadorna</i>) [A048]</p> <p>Wigeon (<i>Anas penelope</i>) [A050]</p> <p>Teal (<i>Anas crecca</i>) [A052]</p> <p>Mallard (<i>Anas platyrhynchos</i>) [A053]</p> <p>Pintail (<i>Anas acuta</i>) [A054]</p> <p>Scaup (<i>Aythya marila</i>) [A062]</p>	<p>19 km South east of the site.</p>	<p>The hydrological distance between the site and the Wexford Harbour and Slob SPA is c.25 km which is considerable. The site lacks suitable nesting and favourable foraging habitat for birds associated with the SPA.</p>	<p><b>N</b></p>

	Goldeneye ( <i>Bucephala clangula</i> ) [A067]			
	Red-breasted Merganser ( <i>Mergus serrator</i> ) [A069]			
	Hen Harrier ( <i>Circus cyaneus</i> ) [A082]			
	Coot ( <i>Fulica atra</i> ) [A125]			
	Oystercatcher ( <i>Haematopus ostralegus</i> ) [A130]			
	Golden Plover ( <i>Pluvialis apricaria</i> ) [A140]			
	Grey Plover ( <i>Pluvialis squatarola</i> ) [A141]			
	Lapwing ( <i>Vanellus vanellus</i> ) [A142]			
	Knot ( <i>Calidris canutus</i> ) [A143]			
	Sanderling ( <i>Calidris alba</i> ) [A144]			
	Dunlin ( <i>Calidris alpina</i> ) [A149]			
	Black-tailed Godwit ( <i>Limosa limosa</i> ) [A156]			
	Bar-tailed Godwit ( <i>Limosa lapponica</i> ) [A157]			
	Curlew ( <i>Numenius arquata</i> ) [A160]			
	Redshank ( <i>Tringa totanus</i> ) [A162]			
	Black-headed Gull ( <i>Chroicocephalus ridibundus</i> ) [A179]			
	Lesser Black-backed Gull ( <i>Larus fuscus</i> ) [A183]			
	Little Tern ( <i>Sterna albifrons</i> ) [A195]			
	Greenland White-fronted Goose ( <i>Anser albifrons flavirostris</i> ) [A395]			
	Wetland and Waterbirds [A999]			

7.4.15. The Conservation objectives for the Slaney River Valley SAC are to maintain (1130, 1140, 1365, 3260) or restore (1095, 1096, 1099, 1103, 1106, 1355, 91A0, 91E0) the favourable conservation condition of the qualifying interests.

7.4.16. Following an examination of sites within the zone of influence, and upon an examination of the connectivity between the appeal site and these sites, only the

Slaney River Valley SAC has been screened in, given the site's location within the SAC and the proposed in stream and riverbank works.

*Identification of Likely Effects*

- 7.4.17. In light of the above Conservation Objectives, the main elements of the proposal which may give rise to impacts on the Slaney River Valley SAC is as follows;
- 7.4.18. Disturbance to protected Habitats and Species – Despite the site location within the SAC, the development would not be expected to have any in-situ effects through loss or destruction of habitat, fragmentation of habitat or direct reduction in species density or diversity on the basis that it is unlikely that the bridge structure and highly modified/artificial banks would contain suitable habitats or the species for which the Slaney River Valley SAC has been designated. No areas of woodland are located at the bridge. Woodlands are located downstream and across the N80. While Ash (*Fraxinus excelsior*) is a species found in Alluvial Forests [91E0] and is present along the banks, this area is considered to be modified and therefore it is not considered to have any potential links to this qualifying interest.
- 7.4.19. The development site is a considerable distance from the tidal stretches of the River Slaney and as such, qualifying interests associated with saltwater and tidal conditions would not be present. There was evidence of otter (spraints and tracks) under the bridge and otter is likely to be foraging along the River Clody. However, the banks of the River Clody at the Millrace Bridge would not offer suitable habitat for otter holts therefore, the proposed development would not have a significant potential impact upon otter due to habitat loss or fragmentation.
- 7.4.20. The use of artificial lighting during the construction phases has the potential to negatively impact upon nocturnal species such as otter, however works would not be undertaken outside of established working hours. Potential disturbance to habitats and species due to dust and noise during the construction phase would not be considered significant due to the transient and short term nature of the works, works being undertaken within established daytime working hours, and the existing noise/disturbance levels associated with this site within a town and adjacent to the N80. It is therefore considered that the proposed development would not result in any significant risk to the protected habitats and species of the Slaney River Valley SAC

due to habitat fragmentation or loss, disturbance or reduction in species density or diversity.

- 7.4.21. Invasive Species –Japanese Knotweed (*Fallopia japonica*), Indian Balsam (*Impatiens glandulifera*), Canadian Waterweed (*Elodea canadensis*), and Three-cornered Garlic (*Allium triquetrum*) (*Rhododendron ponticum*) were recorded by the NBDC within the 2km square within which the appeal site is located. More specifically, Indian Balsam (*Impatiens glandulifera*) was recorded along the banks of the River Clody within the Kelly Blocks on the River Clody beside the Millrace Bridge. The report notes that it is also likely to be in the general area as it has been recorded both up and downstream of the Millrace Bridge. Invasive species are a threat to riparian habitat there is therefore a risk of spread during construction works and removal of the Kelly Blocks.
- 7.4.22. Water Quality – During the construction phase of the project, water quality could be compromised through the release of suspended solids during bank disturbance works, the release of concrete products (shotcrete and gunite), and the release of hydrocarbons (fuels and oils). A deterioration in water quality has the potential to have an adverse impact upon the qualifying interests of the Slaney River Valley SAC, particularly qualifying interests which have conservation objectives relating to water quality, such as protected species of fish. The impact on the water quality from the operational phase of the bridge is not considered to be significant and therefore would not impact on the water quality of the Slaney River Valley SAC.
- 7.4.23. In terms of the potential for ex-situ effects, the appeal site is located within an urban area and the riverbank in this location is significantly modified and as such does not represent a favourable habitat for bird species connected with any European Sites. In the event that bird species connected with SPA's occasionally use the site there are ample alternative sites in the vicinity.
- 7.4.24. In combination effects have been considered and there are no recent planning applications likely to contribute to significant effects. This is considered in further detail below. No measures designed or intended to avoid or reduce any harmful effects of the project on a European Site have been relied upon as part of the screening exercise.

Screening Determination.

- 7.4.25. In the absence of mitigation, the proposed development has the potential to result in negative impacts on the Slaney River Valley SAC. I consider that such impacts could be significant in terms of the stated conservation objectives when considered on their own in relation to reductions in water quality and the potential for the spread of invasive species, with consequent potential impacts for water sensitive habitat.
- 7.4.26. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act, 2000, as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually could have a significant effect on the Slaney River valley SAC in view of the conservation objectives of these sites, and Appropriate Assessment is therefore required.

#### Stage 2 – Appropriate Assessment

##### *Article 6(3).*

- 7.4.27. The requirements of Article 6(3) as related to appropriate assessment of a project under part XAB, sections 177U and 177V of the Planning and Development Act, 2000, as amended, are considered fully in this section. The areas addressed in this section are as follows:

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

##### *Compliance with Article 6(3) of the EU Habitats Directive.*

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

European site before consent can be given. The proposed development is not directly connected to or necessary to the management of any European site and therefore is subject to the provisions of Article 6(3).

*Screening The Need for Appropriate Assessment.*

- 7.4.29. Following the screening process, it has been determined that Appropriate Assessment is required as it cannot be excluded on the basis of objective information that the proposed development, individually or in-combination with other plans or projects will not have a significant effect on the Slaney River Valley SAC (Site Code 000781).
- 7.4.30. The possibility of significant effects on other European sites has been excluded on the basis of objective information and noting that there is no possible ecological connection or pathway between the appeal site and other Natura 2000 sites surrounding the proposed development. Measures intended to reduce or avoid significant effects have not been considered in the screening process.

*The Natura Impact Statement*

- 7.4.31. A Natura Impact Statement, prepared by Panther Environmental Solutions Limited, examines and assesses potential adverse effects of the proposed development the Slaney River Valley SAC. The NIS identifies the main potential impact from the proposed development on the SAC as being the potential for impacts on water quality and for the spread of invasive species. The NIS includes an examination of recent planning applications where permission has been granted in the vicinity of the appeal site. One of these shares a direct link with the subject site, comprising a change of use of the Millrace Hotel to a nursing home. This permission has been completed and the nursing home is now in operation. The NIS states that the proposed development, by itself or in combination with other plans or projects, in light of best scientific knowledge, will not result in a significant impact on the Slaney River Valley SAC or any other Natura 2000 site.
- 7.4.32. It is not anticipated that there would be any significant effects on the SAC as a result of the completed and operational development. During construction works, there is potential for the spread of invasive species as seeds from invasive species entrained in soil sediment have the potential to migrate and colonise downstream areas. It is noted that there are invasive species within the Kelly Blocks which are just upstream of the bridge and which are proposed to be removed as part of the development.



7.4.33. In terms of water quality, there is the potential for water quality deterioration due to the release of suspended solids during soil disturbance works. Suspended solids could become entrained in surface water run-off and could affect aquatic qualifying interests through deposition. The NIS notes that nutrients can be bound in suspended solids and that a significant increase in suspended solids could result in excessive eutrophication, resulting in the deoxygenation of waters and asphyxia of aquatic species.

7.4.34. An increase in sediments has the potential to impact upon fish species by damaging gravel beds required for spawning, smothering fish eggs, and interfering with the gills of fish. An increase in suspended solids also has the potential to reduce water clarity, which can impact the light penetration of water and may also affect certain behaviours of aquatic fauna such as foraging success. I would note that there could be resultant impacts on prey resources.

7.4.35. Hydrocarbons could be released from construction plant and equipment, resulting in chemical contamination of the water and resultant impacts on water quality. This could result in toxic conditions for aquatic flora and fauna. Oil films on the water surface can disrupt oxygen diffusion from the atmosphere, resulting in de-oxygen of waters. Another potential source of contamination would be the release of uncured concrete. In the event of uncured concrete entering a waterbody, the pH would be altered locally, potentially leading to the death of aquatic flora and fauna and an alteration to the waterbody substrate.

7.4.36. The NIS refers to mitigation measures which will be adhered to. Measures are proposed for the construction phase of the proposed development and include:

7.4.37. Invasive Species

- Soil or material should not be imported to the site if the presence of any invasive species is found, in particular Himalayan/Indian balsam (*Impatiens glandulifera*) and Japanese Knotweed (*Fallopia japonica*).
- An invasives species survey of the site will be carried out by an ecologist prior to works commencing and recommendations to be followed for the control of invasive species.
- An invasive species management plan must be put in place such as Best Practice Management Guidelines on Himalayan Balsam (Kelly, Maguire, and

Cosgrove, 2008). See accompanying CEMP (Document Ref. PES\_CEMP\_21661) for ID and the methodology for the treatment of Himalayan/Indian balsam (*Impatiens glandulifera*).

- Himalayan/Indian balsam (*Impatiens glandulifera*) has a very shallow root system with control by hand an easier option over herbicide use. Pulling by hand must be done prior to flower development as seed dispersal will occur if plant is disturbed.
- Uprooted plants can be left to air dry and decompose on a non-permeable membrane. This method is highly suited to dealing with initial outbreaks of the species and in areas with sensitive native species.
- Re-seeding of bare soil would be undertaken as soon as possible, where required, to promote the rapid stabilisation of soils.
- Appropriate weed management plan should be put in place to help establish any landscaped areas.
- Any vegetation cutting would only occur once control of Himalayan balsam (*Impatiens glandulifera*) has occurred or approved by an Ecologist (See accompanying CEMP).
- The construction works contractor would ensure that all equipment and plant is inspected for the presence of invasive species and thoroughly washed prior to arriving to, and leaving from, the development site.
- Cognisance would be taken of the National Roads Authority's Guidelines on "The Management of Noxious Weeds and Non-Native Invasive Plant Species on National Roads".
- Herbicide application should only be carried out by suitably qualified contractors or operators with strict reference to the product label, local land use, health and safety considerations and any pertinent regulations. All herbicide treatment must comply with the pesticide regulations S.I. No. 155/2012 - European Communities (Sustainable Use of Pesticides) Regulations 2012 or any amended or current regulations at the time of use.

#### 7.4.38. Biosecurity Measures

- Check all equipment and remove of any plant and animal matter before leaving a site and again before entering a new site.

- Disinfect all equipment with an approved disinfectant, this must not be done beside a watercourse.
- Items difficult to soak can be sprayed or wiped down with disinfectant.
- Ensure equipment is allowed to dry before entering a new site and any residual is drained from boats etc before leaving a site.
- Sandbags must not have been used in different watercourse before their use in the River Clody or they must be disinfected and dried before use in the River Clody.
- Any use of an absorbent boom must be disinfected before use in any watercourse.
- Any rope or absorbent material to be disinfected and dried before use; Footwear to be disinfected and dried before use within the River Clody and other watercourses.
- If clothing worn previously at a different watercourse it must be washed at 65°C and/or disinfected.

#### 7.4.39. Water Quality and Sediment/Silt Control

- Daily visual inspections would be undertaken of Millrace Bridge and access roads during the construction phase.
- All in-stream works must be carried out in accordance with the direction of Inland Fisheries Ireland (IFI) personnel. See accompanying letter to IFI (13th January 2023).
- Should water be encountered during any construction works (outside the main River Clody channel), water will be pumped to a constructed silt control feature, such as a suitable tank or tanker. A filter will be provided at the pump inlet. Water from the tank/tanker will not be discharged directly to any watercourse, drainage ditch, or manhole. Pumping operations will be supervised at all times.
- Silt mats should be placed on any manholes or drains located along the local road network adjacent the rising main. They must be inspected daily and only removed when there is no significant risk of sediments from construction machinery.
- Provision of silt control features where appropriate, such as silt fencing.

- Silt fencing (comprising of a porous filter fabric which detains sediment) would be provided along the boundary of the site and construction contractor's compound. Silt fencing would remain in place until the completion of construction works.

#### 7.4.40. Fluming of River and Dry Working Area

- A temporary sandbag dam will be placed upstream and downstream of the proposed development works. Sandbags to be double bagged and of sufficient height (1.4m) to allow for changes in River Clody volume. The sandbags will be a mix of 1 tonne and 25kg bags.
- For works at the River Clody a pump will be used to take water out of the proposed working area surrounded by sandbag berm (1.4m in height), this pump would be fitted with a filter, to prevent entry of aquatic fauna into the pump and to limit the potential disturbance to the watercourse bed due to sediments.
- Two 900mm diameter twin walled pipes between the dams to flume the river flow through the works area.
- Pumping operations would be supervised at all times and will be done to keep the working area dry.
- Sandbags to be double bagged and of sufficient height (1.4m) for to allows changes in River Clody volume.
- Electro fishing of the water that remains within the working area will be done to remove any aquatic species from this area. This will only be done by suitability qualified personal and upon approval by IFI.
- Any infiltration of water in the works area will be pumped into a filtration tank before the resultant clean water is discharged back into the river.
- Additional silt fencing will be placed adjacent to storage areas of stockpiled soil, until such time as any excavated material has been used in re-instatement works or removed offsite by a licenced waste contractor.
- Silt control features will be inspected on a daily basis and maintained as appropriate.
- Where spoil is generated, this will only be stored temporarily and away from surface waters. Where possible, spoil will be covered or alternatively, graded to avoid ponding or water saturation.

- Extra precautions such as placing an absorbent boom along the River Clody, that is securely and closely anchored to the banks.

#### 7.4.41. Weather Conditions/Flooding

- Works at the bridge are only to be carried out when there is no risk of flood waters.
- Water levels in River Clody to be taken daily and daily monitoring of the weather forecast to ensure there is no risk of flooding during construction works.
- If there is a potential flood risk, then all works to stop and removal of any potential contaminants from the River Clody working area.
- If the working dry area requires further water removal this will be pumped to a constructed silt control feature, such as a suitable tank or tanker as outlined above.
- All activities will be planned outside periods of heavy rainfall, to limit the potential for suspended solids to become entrained within surface water run-off.
- Daily water levels will be taken, and weather forecasts would be monitored to ensure no potential for a flood during the works.
- No gunite or shotcrete works will begin if river levels are too high. This is to ensure if in the unlikely event of a flood there is sufficient height of sandbags to enable removal of any machinery or material that can impact on water quality.

#### 7.4.42. Habitat/Species Protection

- If any woody scrub vegetation is cut it should be undertaken during the autumn period to avoid impacting on breeding birds. However, if required during nesting season it should be inspected by an ecologist for any nests and advise on the necessary course of action.
- Additional otter-proof fencing to be used along boundary of the working area to prevent any otter from accessing.

#### 7.4.43. Construction Methods, Materials, and Hydrocarbon Storage

- All construction plant machinery and equipment will be maintained in good working order and regularly inspected.

- The temporary site compound will be used for the storage of all machinery and plant when not in use, the re-fuelling of plant and the storage of all associated oils and fuels for plant.
- Any fuels, oils or chemicals will be stored in accordance with the EPA guidance on the storage of materials, in designated bunded areas at the temporary site compound, with adequate bund provision to contain 110% of the largest drum volume or 25% of the total volume of containers.
- The designated area for the storage of hydrocarbons will be inspected on a regular basis.
- Deliveries of fuels and oils to the site would be supervised.
- All loading and unloading of hydrocarbons will take place within the bunded area where possible.
- Fuels / oils will be handled and stored with care to avoid spillage or leakage.
- Where appropriate, small construction plant equipment would be placed on drip trays.
- Any diesel generator will be suitably bunded.
- Any waste fuel / oils would be collected in bunded containers at designated areas (i.e. temporary construction compound for rising main works) and properly disposed of to an authorised waste contractor.
- Spill kits, adequately stocked with spill clean-up materials such as booms and absorbent pads, would be readily available onsite.
- In the unlikely event of a hydrocarbon spillage, contaminated spill clean-up material will be properly disposed of to an authorised waste contractor.
- Where re-fuelling of construction plant is required to take place onsite, re-fuelling would take place within a bunded area. Under no circumstances will re-fuelling take place within the immediate vicinity of any watercourses, including drainage systems.
- Re-fuelling onsite would only be undertaken by experienced and trained personnel.
- Where construction plant shows signs of hydrocarbon leakage, site personnel would cease the operation of the item in plant in question. Any defective plant would be kept out of service until the necessary repairs are undertaken.
- The use of pre-cast concrete where possible.

- The delivery and use of shotcrete and gunite would be supervised at all times.
- Shotcrete and gunite must not be used extreme weather conditions.
- The use of shotcrete and gunite will be avoided during periods of rainfall.
- The wash-out of any concrete drums will not be permitted onsite, in the environs of the site, or at a location which could result in a discharge to surface water.
- Any bagged cement onsite will be stored in a dry, secure area when not in use.
- Machinery with the potential to adversely impact on water quality will not be used within the SAC with the contractor prioritising the use of hand tools where possible while working within the River Clody.
- Limited construction staff to be permitted within the River Clody at any one time.
- All construction works within the River Clody would stop at least 1 hour before dusk and not commence again until at least 1 hour after sunrise. This construction timeframe would only apply when daylight hours are shorter (October to March) otherwise 7am - 7pm would be adhered to.
- To minimise any potential impacts on salmonid fish, works would be undertaken in the July to September period where possible, which would avoid the salmonid spawning season. Should works be required outside the July - September timeframe, works would only commence upon prior agreement with IFI.
- Cognisance would be taken of the IFI's "Guidelines on Protection of Fisheries During Construction Works in and adjacent to Waters".
- Monitoring of receiving water for suspended solids would be undertaken daily while works are in the vicinity of the River Clody; In the unlikely event of a suspected deterioration in water quality within any of the watercourses due to construction works at the development site, works would immediately cease, an investigation into the cause undertaken and the relevant NPWS and Inland Fisheries Ireland personnel informed.

7.4.44. The NIS concludes that risks to the integrity of the qualifying interests and conservation objectives of Natura 2000 sites have been addressed by the inclusion of mitigation measures which reduce and eliminate potential impacts.

7.4.45. Having reviewed the documents, submissions and consultations, I am satisfied that the information allows for a complete assessment of any adverse effects of the

development on the conservation objectives of the Slaney River Valley SAC alone, or in combination with other plans and projects.

7.4.46. I have reviewed the mitigation measures proposed and I have concerns regarding a number of measures/lack of information on which basis I would consider the NIS to be deficient. The issues include:

- The principal method of mitigation is the construction of two temporary sandbag dams and fluming of the river through two 900mm pipes. There are no plans appended to the NIS showing this specific mitigation measure nor are there any annotated maps showing the location of the dam or the other water quality control measures being proposed such as silt fences.
- The NIS does not contain any information with regards to the proposed sequence of works. I note from the submitted plans and documents that the sequence of works includes the installation of the dams and flume as Stage 2, with removal of the Kelly Blocks at Stage 4. From my site inspection and my review of the submitted drawings/document, it is likely that this sequence of works will need to be revisited as there is clearly conflict between the position of the required sandbag dam on the north bank and the Kelly Blocks which site immediately upstream of the bridge.
- In terms of invasive species, the NIS notes that Himalayan/Indian Balsam is found within the Kelly Blocks located just upstream of the Millrace Bridge. The Kelly Blocks are proposed to be removed from the river as part of the development. In my opinion, the NIS lacks sufficient detail and specific mitigation measures to address the presence and removal/eradication of Himalayan/Indian Balsam, instead leaving the details to condition. The application was not accompanied by a Preliminary Invasive Species Management Plan, and the Construction Environmental Management Plan applies the same generic measures as the NIS with no specific detail on location, extent or mitigation required.
- In the absence of information on detailed mitigation measures required to deal with the removal of Himalayan/Indian Balsam, it is not clear if herbicides would be required, and the NIS does not contain any mitigation measures to address the potential release of herbicides into the River Clody and potential impacts on water quality.



- Some of the documents submitted with the application state that works will be undertaken either in a dry environment or stagnant water. The NIS states that works will be undertaken in a dry environment, and this is also a requirement of Inland Fisheries Ireland. In any event, water found within the sandbag dam area will need to be pumped in order to achieve a dry working environment and the NIS contains no information as to how the pumped water would be treated, this is particularly relevant regarding the raised pH levels of water that has come into contact with uncured concrete.
- The issue of scouring and potential mitigation remains unresolved. Scouring was raised by the Planning Authority but has not been addressed by the Applicant and is not addressed in the NIS. I note that the Planning Authority have attempted to deal with this matter by way of condition, however, given the finding of the Planning Authority that scouring was previously present in the riverbed and the potential need for instream mitigation measures, I consider that a precautionary approach should have been adopted and it should have been covered in the NIS, with any required mitigation measures set out in full.
- There remain a number of unresolved issues such as exploratory trenches, location of services, the length and form of the sandbag dam (which should be splayed and is currently square to the river), confirmation that the pipes can accommodate the passage of fish at all times, and outstanding issues regarding flow velocities. I note that conditions have been applied to address these issues however, I share the concern of the Appellant and in many cases the unresolved issues relate to and impact on the principal mitigation method and in my opinion, they should have been fully resolved in the NIS.
- As noted previously, a number of the mitigation measures lie outside of the red line boundary.

7.4.47. For the reasons set out above and on the basis of the information submitted with the appeal, I am not satisfied that the mitigation measures are sufficient to fully address potential impacts on water quality and the spread of invasive species during the construction phase of the proposed development.

### *Conclusion*

7.4.48. The proposed development has been considered in light of the assessment requirements of Sections [177U and 177V] of the Planning and Development Act, 2000, as amended. Having carried out screening for Appropriate Assessment of the project, it was concluded that it may have a significant effect on the Slaney River Valley SAC. Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of those sites in light of their conservation objectives. Following an Appropriate Assessment, it has been ascertained that the proposed development, individually or in combination with other plans or projects could adversely affect the integrity of the Slaney River Valley SAC in view of the conservation objectives of these sites.

7.4.49. I consider that there remains a reasonable scientific doubt as to the absence of adverse effects on the integrity of the Slaney River Valley SAC and as such the Board is precluded from granting permission for the proposed development.

## **8.0 Recommendation**

8.1.1. Having regard to the above, I recommend that the Board refuse permission for the following reasons:

## **9.0 Reasons and Considerations**

1. Having regard to the unauthorised nature of the subject bridge and the restrictions placed on the Planning Authority and the Board with regard to retention applications for development which would have required Appropriate Assessment under the Habitats Directive, the Board is precluded from granting permission in such circumstances.
2. On the basis of the information submitted with the planning application/appeal documentation and the Natura Impact Statement, the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on the Slaney River Valley SAC (Site Code: 000781), or any other European site, in view of the site's conservation objectives. In such circumstances, the Board is precluded from granting permission.

3. On the basis of the information submitted with the planning application and appeal, it was noted that the proposed development would be reliant on works and mitigation measures which are outside of the appeal site (red line) boundary. In such circumstances the Board cannot be satisfied that the relevant works and mitigation measures can be implemented in full.

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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Terence McLellan  
Senior Planning Inspector

29<sup>th</sup> November 2024

# Form 1

## EIA Pre-Screening

<b>An Bord Pleanála</b> <b>Case Reference</b>	ABP-318706-23		
<b>Proposed Development Summary</b>	Remedial repair works to a bridge outside property. Natura Impact Statement (NIS) submitted with application.		
<b>Development Address</b>	Millrace Bridge, Carrickduff, Bunclody, Co. Carlow		
<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)?</b>			
<b>Yes</b>			Proceed to Q3.
<b>No</b>	X		No further action required
<b>3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?</b>			
<b>Yes</b>			EIA Mandatory EIAR required
<b>No</b>			Proceed to Q4

4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			
Yes			Preliminary examination required (Form 2)

5. Has Schedule 7A information been submitted?		
No		Screening determination remains as above (Q1 to Q4)
Yes		Screening Determination required

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