



An
Coimisiún
Pleanála

Inspector's Report

ABP-321718-25

Development	Construction of 3 replacement culverts and all associated site works. A Natura Impact Statement was submitted with this application.
Location	Tawnawully Mountain, Donegal Town, Co. Donegal
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	2460495
Applicant(s)	Mid Cork Electrical Ltd.
Type of Application	Permission.
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Mid Cork Electrical Ltd.
Observer(s)	N/A.
Date of Site Inspection	27 th of April 2026.
Inspector	Stephanie Farrington

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1.0 Site Location and Description

- 1.1. The subject site comprises a stated area of 0.32ha, in the townland of Tawnawully along the N15 national primary route linking Ballybofey to Donegal town. The site comprises 3 no. unnamed streams, located to the east and west of the N15. The streams are currently culverted under the N15. These streams are tributaries of the Lowerymore River within Barnesmore Gap which runs to the east of the N15.
- 1.2. The grid reference (ITM) for the individual 3 no. proposed culvert upgrades are:
 - Culvert C1 – 602826, 885632,
 - Culvert C2 – 603264, 886120,
 - Culvert C3 – 603628, 886566.
- 1.3. A description of each of the streams and the surrounding habitat is provided within the Ecological Impact Assessment (EclA) and Appropriate Assessment Screening Report and Natura Impact Statement submitted in support of the application.

2.0 Proposed Development

- 2.1. The proposed development will consist of the construction of 3 no. new culverts to replace the existing culverts along the N15 at Tawnawully Mountains, Barnesmore Gap, Co. Donegal. The culverts are to be constructed under the N15 to accommodate tributary streams that flow into the Lowerymore River.
- 2.2. The application is accompanied by the following documentation:
 - Application Form and public notices
 - Application Cover Letter
 - Application Drawings
 - Letter of Consent from Donegal County Council
 - Letter of Consent from applicant for agent to submit application
 - Planning and Environmental Report
 - Ecological Impact Assessment Report
 - Natura Impact Statement

- Construction Environmental Management Plan
- Freshwater Pearl Mussel Survey Report.

2.3. The following documentation was submitted in response to Donegal County Council's request for further information:

- Further Information Response
- Updated Application Drawings
- Updated AA Screening Report and Natura Impact Statement
- Updated Ecological Impact Assessment Report
- Updated Construction Environmental Management Plan
- Preliminary Design Report
- Draft Traffic Management Plan

3.0 Planning Authority Decision

3.1. Decision

Donegal County Council issued a notification of decision to refuse permission for the development in accordance with the following reasons and considerations:

“Having regard to the rationale for the proposed works that is to facilitate a grid connection from Meenbog Wind Farm and to the current unauthorised nature of this large development that is the subject of ongoing legal proceedings, the Planning Authority considers that to permit the development would be premature and contrary to proper and sustainable planning”.

3.2. Planning Authority Reports

Initial Planner's Report (22/05/2024)

3.2.1. The initial planner's report recommended a request for further information. The following provides a summary of the key points raised:

- The report outlines that no rationale is given for the works and no evidence is given if the existing culverts are in poor repair, not fit for purpose or similar.

The report outlines that if the culverts were in a poor state of repair, it would be expected that works would be carried out by TII as this is a national road and not by a private company.

- The report outlines that the applicant and agent are the same persons that are currently seeking substitute consent for works within Meenbog Wind Farm to the northeast of the subject sites. As was determined in a recent court case (DCC v Planree Limited and Mid-Cork Electrical Limited) it is the position that the Meenbog site is wholly unauthorised and if the current works are to facilitate development therein, the Planning Authority would not be in a position to consider the proposed development.
- Insufficient detail is provided in relation to the siting of the proposed temporary compound and welfare station. These elements of the proposal are not addressed within the NIS and Environmental reports. Given the potential for significant hydrological impact on Lough Eske and Ardnamona Woods by silt release caused by works or hazards from a portaloo, it is essential that these areas are included in all assessments and mitigation measures as needed are incorporated into all documentation. Further clarity is also necessary in relation to the stockpiles of materials and mitigation measure set out within the Natura Impact Statement.
- The report outlines that work is proposed outside the limits of the public road. Necessary third-party consents are required.
- Appropriate Assessment: The Planner's Report refers to the Natura Impact Statement has been submitted in support of the application. The report outlines that clarity is necessary on some aspects of the proposal and therefore the Planning Authority is not in a position to carry out Appropriate Assessment Screening.
- Environmental Impact Assessment: The report outlines that having regard to the limited scale of the proposed development and location of the site, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

3.2.2. The report recommends a request for further information as summarised below:

- Item 1: The applicant was requested to provide the rationale and need for the proposed development including inter alia, any demonstrated deficit in the existing culverts that necessitate replacement.
- Item 2: Applicant to clarify if there is any connectivity between the proposed works and the Meenbog wind farm to the northeast.
- Item 3: Written consent to be provided from all third-party landowners for all works shown to occur outside the bounds of the national roadway.
- Item 4: Applicant to submit revisions that illustrate extent and detail of proposed temporary compounds and welfare stations at all 3 sites, details any stockpiling of material within the application site boundary.
- Item 5: Amendments to the Natura Impact Statement which includes reference to the temporary compounds and welfare stations at each site and revisions to the mitigation measures that provide for all works to be completed when streams are dry.
- Item 6: Applicant to submit a Preliminary Design Report providing for all proposed changes that may affect the current operations of the N15 having regard to all currently TII publications and guidelines.
- Item 7: Submission of a Traffic Management Plan which includes maintenance of single lane traffic at all times.

Further Information Planner's Report (10/12/2024)

3.2.3. The planner's report provides a summary and assessment of the applicant's response to the request for further information. The report recommends that permission is refused for the development in accordance with the reason cited within the planning authority's decision. The following provides a summary of the key points raised:

- The report outlines that the applicant has successfully responded to all technical aspects of the Further Information with regard to environmental impact and appropriate mitigation measures.

- Areas of concern still remain with regard to the principle of the development and appropriate third-party consents for the proposed works.
- The report refers to the history of Meenbog windfarm which was granted permission from An Bord Pleanála and works ceased on foot of a landslide. A judicial review found that all works were unauthorised. Substitute consent from ACP is necessary to complete the development.
- The report outlines that presently all works relating to Meenbog are found to be unauthorised and until such times as permission is granted, any proposed works to facilitate the overall development such as the subject of this application, shall be found to be premature. Refusal is recommended for reasons of prematurity.
- The report refers to the FI response which outlines that the proposed works are to be undertaken on behalf of DCC and take place beneath the public roadway. In this regard the FI response outlines that third party consent is not needed. The planner's report outlines that this is contrary to the extent of works shown on the revised plans where it is very evident that works are shown outside the public roadway and therefore on private lands. Through Land Direct it is indicated that land outside the roadway is commonage with multiple ownership. It is therefore concluded that the applicant has failed to demonstrate sufficient interests in the lands outside the roadside boundary to permit development there in the absence of any consent from same. Consent has not been submitted for any works outside the area of the public road and verge.
- The report refers to the proposed works at Culvert no. 2, the report outlines that the works to install a prefabricated wingwall on lower ground as indicated are c. 10m outside the existing road edge and on third party land. No consent has been submitted for works outside of the public roadway and associated verge area.
- The report cites extracts from Section 34 (13) of the Planning and Development Act 2000 (as amended) which outlines that "a person shall not be entitled solely by reason of a permission under this section to carry out any development" and refers to the Guidance set out within Section 5.3 of the

Development Management Guidelines (2007) which outlines that the planning system is not designed to resolve disputes about title to land.

- The report outlines that, for these reasons, lack of clarity with regard to land ownership and/or encroachment cannot be considered as reason for refusal of permission, and should permission be forthcoming, the applicant shall be advised under Section 34 (13) that sufficient legal interest is required to carry out the proposed development.
- The planner's report refers to lack of consultation within Transport Infrastructure Ireland TII and outlines that a design submission has not been made to TII in respect of the proposed works.

3.2.4. Other Technical Reports

Reports on Initial Application

- Roads Office (11/04/2024) – The report from the roads office outlines that (1) all works shall be done in accordance with TII guidelines, standards and specifications (2) third party consent is required for any works that are necessary beyond the extent of the public road (3) single lane traffic must be maintained at all times during the construction phase (4) temporary traffic management plans shall be submitted to the area roads office in advance of commencing any works.
- National Roads Office (NRO) (15/05/2024) – The submission from the NRO outlines that Donegal County Council are bringing forward a proposed Greenway from Donegal Town to Ballybofey, and a potential route may follow the N15. Infrastructure associated with the development could impact on the proposed greenway. The submission furthermore notes that the proposal does not document a design/design report to TII publications informing all the proposed changes which have potential to impact on the operation of the N15.
- Road Design (20/05/2024) – The report outlines the following:
 - Works should be carried out in accordance with TII Publications,
 - A Preliminary Design Report should be submitted to TII in relation to the application which has potential to impact on the operation of the N15,

- The applicant shall be aware of the proposed greenway from Ballybofey to Donegal Town and consult with the greenway section of DCC,
- A Temporary Traffic Management Plan shall be submitted to the local roads office,
- A road closure application shall be submitted and approved prior to any works commencing.

Reports in FI Response

- Stephen McConnell DCC (11/12/2024) – The applicant should ensure that there is a suitably solid and secure area available to park plant with safe access and egress for operatives accessing and maintaining the culverts.
- Road Design Office (11/12/2024) – The submission outlines that the applicant shall submit a Preliminary Design Report to TII in accordance with TII Publication DN-GEO-03030. The submission furthermore outlines that the applicant is advised to consult with the NRDO Greenway Section in relation to the proposed Barnesmore Gap Greenway Project.
- Roads Office (10/12/2024) – The submission provides a background to the application and outlines the following:
 - The provision of the three culverts are works that are being undertaken by Mid Cork Electrical LTD as part of the grid connection works from the Meenbog wind farm to the sub-station at Clogher. These grid connection works did not form part of the planning permission associated with the Meenbog Wind Farm and were sought by the applicant by means of a road opening licence.
 - Upon receipt of this application the Area Roads Office conditioned this licence application to future proof the existing culverts that were crossing the N15 from the impact the grid connection works. New similarly sized culverts were requested with grid connection cables installed under the new culverts.
 - the applicant made a proposal to leave all the existing culverts in place with the cables laid over the top of them and install 3 large new culverts

that have the capacity to deal with the surface water crossing the road in the existing culverts.

- The Area Roads Office agreed to the proposal but outlined that planning permission would be required for the provision of the culverts. The applicant was advised that DCC would not be applying for the planning permission for the culverts on their behalf as the works were only required because of the grid connection works.

3.3. Prescribed Bodies

Submissions on initial application

Inland Fisheries Ireland (26/04/2024):

- The report outlines that the Lowerymore River provides important habitat and spawning habitat for various species of freshwater fish, macroinvertebrates and molluscs and the area of the proposed development is hydrologically connected to the Lough Eske and Ardnamona Wood SAC (Site Code: 000163).
- It is of paramount importance that water quality instream and the riparian habitat is maintained throughout the life span of this project.
- Fish and Mollusc species present in the Lowerymore River include Atlantic Salmon, Brown Trout, Sea Trout, Eel, Freshwater Pearl Mussel. The submission sets out recommendations and guidance which must be adhered to throughout the entirety of the project.

Transport Infrastructure Ireland (10/05/2024):

- The Authority requests that the Council has regard to the provisions of Chapter 3 of the DoECLG Spatial Planning and National Roads Guidelines in the assessment and determination of the subject planning application.
- All works impacting the national road network shall comply with TII Publications.
- TII recommends that the planning authority consult with the local design teams in relation to any greenway schemes in the vicinity.

Submissions on FI response

Inland Fisheries Ireland (09/12/2024):

- The report cross refers to the contents of the submission dated 26th April 2024, and outlines that this remains valid, with the exception of Recommendation 1, which should be replaced with the following:
 - All mitigation measures and procedures outlined in the following updated documents: Natura Impact Statement, Ecological Impact Statement, and Construction Environmental Management Plan, pertaining to this development must be adhered to.

Transport Infrastructure Ireland (09/12/2024):

The submission outlines the following:

- The Authority requests that the Council has regard to the provisions of Chapter 3 of the DoECLG Spatial Planning and National Roads Guidelines in the assessment and determination of the subject planning application.
- As noted in TII's initial submission on this application, all works impacting the national road network shall comply with TII Publications. It is noted that the design includes the provision of new Vehicle Restraint System (VRS) which requires the submission of a Design Report under TII Publications DN-GEO-03030. TII has not received a Design Report associated with this application for assessment in accordance with TII Publications DN-GEO-03030 and TII considers that this matter requires resolution.
- TII recommends that the Planning Authority consults with the Barnesmore Gap Greenway project team at Donegal National Roads Office.

Department of Housing Local Government and Heritage (11/12/2024)

- The submission outlines that neither the updated NIS, Ecological Impact Assessment (EclA) nor Construction Environmental Management Plan (CEMP) refer to the most recent guidance for the protection of Freshwater Pearl Mussel (*Margaritifera*) 2023ii.

- As the proposed works are within the Eske catchment, one of the top ten priority catchments for Margaritifera in Ireland, the works must ensure that this guidance is adhered to. In particular, the guidance must be included in the CEMP, with a one-page summary of the mitigation measures for protection of the river to be shown all contractors during induction. The works must be overseen by a qualified ecologist, experienced in Freshwater Pearl Mussel protection. Extract from Atkinson, S., Magee, M., Moorkens, E.A. & Heavey, M. (2023). Guidance on Assessment and Construction Management in Margaritifera Catchments in Ireland.
- Populations of the freshwater pearl mussel can be damaged in a number of ways. Direct damage to the mussel and its habitat can occur in various ways, for example through the removal of river boulders and gravels, or through the construction of bridges, weirs or bank reinforcements within the mussel's habitat.
- The submission outlines that, actions in areas outside the immediate habitat of the mussel may also be damaging. This damage may result from a range of activities but occurs in four main ways including physical river works outside the mussel habitat, changes in river flow, addition of chemicals and nutrients, inputs of sediment and biotic factors.
- The approach to management and elimination of risk depends on the nature and scale of the activity itself and on the level of protection that has been afforded to the catchment. However, it must be clearly understood that this guidance is not a prescriptive solution to elimination of risk or prevention of impact on pearl mussels that may result from any development, operation or activity. The very high sensitivity of Margaritifera means that every potential aspect of every activity needs to be assessed to ensure that it will not pose a risk to the mussel population or prevent its restoration. In addition, it is essential that all other relevant planning and regulatory requirements are strictly observed.
- The Department reminds the council that an Appropriate Assessment carried out under Article 6(3) of the Habitats Directive must contain complete, precise and definitive findings and conclusions, in the light of the best scientific

knowledge in the field. It should be capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned. The conclusions of the appropriate assessment must clearly relate to the integrity of the site.

- In the light of the conclusions of the assessment of implications for the site, the competent national authorities shall agree to the project only after having ascertained (i.e. made certain) that it will not adversely affect the integrity of the site concerned. That is the case where no reasonable scientific doubt remains as to the absence of such effects. Where doubt remains as to the absence of adverse effects on the integrity of the site linked to the plan or project being considered, the competent authority must reject the application for authorisation.

3.4. Third Party Observations

None received.

4.0 Planning History

4.1. The following planning history is of relevance to the appeal site and wider area.

PA Ref: 11/20064:

- Permission granted by Donegal County Council in May 2011 for the Clogher 110kV Substation.

ABP Ref: 05.PA0040

- An Bord Pleanála refused permission in March 2016 for 49-x turbine windfarm, 2 x met masts, 2 x substations & associated works at two interconnected sites (c.3481ha) at Meenbog and other townlands, County Donegal.

ABP Ref: 300460-17

- ABP granted a ten-year planning permission on 25th of June 2018 for the construction of wind farm comprising 19 No. wind turbines, grid connection

and all associated site works. Permission was granted subject to 20 no. planning conditions.

- The development included 100kV underground grid connection cabling to Clogher substation. The proposed grid connection was included within the EIAR Site Boundary. Section 4.3.7 of the EIAR submitted in support of the application outlined that *“The current application seeks permission for underground cabling to link with the underground grid connection cabling from the Drumnahough substation, currently proposed under PI. Ref 17/50543, ABP Ref. PL05E.248796 (“the Drumnahough Cable”). This is the preferred method of connection to Clogher substation, however, an independent underground cabling connection from the Proposed Development to the Clogher substation is also assessed in this EIAR”*.

- Condition no. 1 of the Board’s decision outlined the following:

The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. For the purposes of clarity the board considered and is granting permission for the proposed independent underground cabling grid connection from the Proposed Development at Cashelnaveen to connect to the Clogher substation that was included in the EIAR. Where conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

PA Ref: 1750543, ABP Ref: PL05E.248796

- The appeal site was located within the application boundary for PA Ref: 1750543, ABP Ref: PL05E.248796. The application sought 10 year planning permission for development consisting of (1) 110kv electricity substation in the townland of Cark to replace 2 no. substations previously permitted as part of the Drumnahough Wind Farm and the Lanalea windfarm (2) 33KV underground electricity cabling from permitted Lenalea wind farm to the proposed substation in the townland of Cark (3) 100kv underground electricity

cabling and ancillary works from the proposed substation at cark to existing substation at Clogher (4) demolition of existing shed and replacement with new shed. Permission was refused by An Bord Pleanála for the development in July 2018 in accordance with the following reasons and considerations:

1. *The Board had regard to the following;*

- *Substantial excavation proposed for the substation was not accompanied by an adequate peat stability assessment.*
- *Over reliance on general design methodologies, in particular on local service roads and in areas of peat soils.*

The Board agreed with the screening assessment and conclusion carried out in the Inspector's report that the Special Area of Conservation Site Code No. 002301 (River Finn SAC) and Special Area of Conservation Site Code No. 000163 (Lough Eske and Ardnamona Wood SAC) are the European sites for which there is a likelihood of significant effects.

The Board considered the Natura Impact Statement and all other relevant submissions and in light of the assessment carried out, the Board is not satisfied that the proposed development individually, or in combination with other plans or projects would not adversely affect the integrity of the European site No. 002301 (River Finn SAC) in view of the sites' Conservation Objectives. In such circumstances the development would be contrary to the proper planning and sustainable development of the area.

2. *The proposed cable route extends for a significant length along public roads of varying widths and conditions, and involves numerous crossings of culverts and watercourses. It is considered that existing ground conditions, the condition of the roads and the condition of the bridges have not been adequately documented, and that insufficient design details have been provided to demonstrate how the works would be carried out and road reinstated, in particular with regard to sections of road traversing ramparts and adjacent to bogland. Given the overall length of the route the Board is not satisfied that the proposed development would not adversely impact, to a significant extent, the future development and long term maintenance of these*

roads for their use as roads and the proposed development would therefore be contrary to the proper planning and sustainable development of the area.

Note on Board's Order:

The Board's Order included the following note in relation to the Lough Eske and Ardnamona Wood SAC:

Note: In relation to the Lough Eske and Ardnamona Wood SAC European site No. 000163, the Board identified that the main likely impact arising from the proposed development would be on the Fresh water Pearl Mussel, oligotrophic waters containing very few minerals of sandy plains, and salmon. It is a conservation objective of the Lough Eske and Ardnamona Wood SAC to maintain or restore the favourable conservation status of habitats and species of community interest. Having regard to • Results of the surveys • Nature and characteristics of the watercourse • Technical details and methodology for construction including drilling beneath the river to avoid instream works • Mitigation measures with respect to the relevant section of works

The Board considered that proposed development would not adversely affect the Fresh Water Pearl Mussel, oligotrophic waters containing very few minerals of sandy plains, and salmon. The Board considered the NIS conclusions with respect to this SAC were robust and that the level of detail provided in relation to works including cable laying and river crossings were sufficiently detailed. The Board concluded that the integrity of the SAC would not be adversely affected in view of the sites' conservation objectives.

ABP Ref: 303729-19

- Under Section 146(B) of the Act, the Board varied the permission by Order dated 5th of June 2019, in relation to: Lengthening of the blades of the proposed turbines while remaining within the previously permitted tip height of 156.5 metres.

ABP Ref: 314062-22

- Permission for Leave to Apply for Substitute Consent for alterations to the permitted Meenbog Wind Farm granted on the 13th of October 2023.

ABP Ref: 319466-24

- Application for Substitute Consent for 25 no. deviations from the permitted Meenbog Windfarm development (granted under ABP PA05E.300460) lodged with An Bord Pleanála on the 2nd of April 2024. This application was withdrawn on 21st of February 2025.

ABP Ref: 321426-24

- The appeal site is located within the boundary of ABP Ref: 321426-24 which relates to a request to enter into pre-application consultation pursuant to Section 177E(1A) of the Planning and Development Act, 2000, as amended in respect of Meenbog Windfarm at Meenbog, Croaghonagh, Cashelnavean, Tawnawully Mountains, Friarsbush, Ardinawark, Keadew Upper, Keadew Lower and Cullionboy townlands, near the twin towns of Ballybofey and Stranolar, Co. Donegal.
- Pre application meetings were held at the offices of An Coimisiún Pleanála in February 2025 and January 2026.

Peat Slide, Enforcement and Legal Cases

- 4.2. Construction work commenced Meenbog Wind Farm as permitted under ABP Ref: 300460-17 in November 2019. A peat slide occurred on the site on the 12th of November 2020, and work associated with the development ceased.
- 4.3. An enforcement case was opened by Donegal County Council in respect of the windfarm development. Section 160 proceedings were initiated by Donegal County Council in respect of unauthorised development on the site.
- High Court Judgement [2024] IEHC 193 – deemed that the entire windfarm development is unauthorised development. The decision of the High Court was appealed by the applicant to the Court of Appeal.
 - Court of Appeal Judgement [2024] IECA 300 Donegal County Council and Planree Limited and Mid Cork Electrical Limited – deemed that the entire wind-farm development is unauthorised development.

5.0 Policy Context

5.1 Development Plan

County Donegal Development Plan 2024-2030

5.1.1. The operative Development Plan for the area is the County Donegal Development Plan 2024-2030 which was adopted by Donegal County Council on the 16th of May 2024 and came into effect on the 26th of June 2024 except for those parts of the Plan which are subject to a Draft Ministerial Direction. The Draft Ministerial Direction was issued on the 26th of June 2024 and relates to land use zonings in a number of settlements and separately to text relating to national / regional road access. I am satisfied that the Draft Ministerial Direction has no direct implications for the appeal site and the proposed development.

Chapter 8- Infrastructure

5.1.2. Donegal's strategic road network is identified on Map 8.1.2 and in the Core Strategy. It comprises Trans European Transport Network roads (TEN-T), other National roads and a number of regional roads recognised by the Council as being of strategic importance as these roads facilitate high volumes of vehicular traffic, allowing for the efficient movement of traffic between settlements within and outside of the County. The replacement culverts are proposed along the N15 from Donegal town to Ballybofey/Stranorlar. The N15 forms part of the national road network and the TEN-T network.

5.1.3. The following provisions of the plan are of relevance:

- Policy T-P-10: It is a policy of the Council to support and facilitate the appropriate development, extension and improvement of the TEN-T network (Map 8.1.1 refers) within Donegal in accordance with the Core Strategy and subject to environmental, safety and other planning considerations....
- Objective T-O-14: To provide for high quality connectivity within the County in line with the Core Strategy through the promotion of a quality Strategic Road Network as identified on Map 8.1.2.
- Objective T-O-15A: To safeguard the capacity and efficiency of the National Road network drainage system for National road drainage purposes.
- Policy WW-P-2: Ensure that new developments:

- a. do not have an adverse impact on surface and ground water quality, drinking water supplies, Bathing Waters and aquatic ecology (including Water dependent qualifying interests within Natura 2000 sites); and
- b. do not hinder the achievement of, and are not contrary to:
 - i. The objectives of the EU Water Framework Directive.
 - ii. EU Habitats and Bird Directives.
 - iii. The associated Programme of Measures in the River Basin Management Plan 2022-2027 including any associated Water Protection or Restoration Programmes.
 - iv. Drinking Water Safety Plan.
 - v. The Guidelines on the Protection of Fisheries During Construction Works In and Adjacent To Waters (IFI, 2016)

Chapter 9: Natural Resource Development

- Policy E-P-6: It is a policy of the Council that when designing, planning and consenting for new electricity grid infrastructure, opportunities to use the existing roads and rail network for such development will be considered in accordance with any protocols developed between ESB/Eirgrid, TII, DECC/DOT and Local Authorities.

Chapter 11: Natural, Built and Archaeological Heritage

- BIO-O-1 To preserve and enhance the biodiversity of the County in accordance with the relevant EU policies and national legislation.
- BIO-P-1 To require all developments to comply with the requirements of the EU Habitats Directive and EU Bird Directive, including ensuring that development proposals:
 - a. Do not adversely affect the integrity of any European/Natura 2000 site (i.e. Special Areas of Conservation and Special Protection Areas) including effects on ex-situ but functionally linked habitats, and species (e.g. Pearl Mussel) save where a plan must be carried out for imperative reasons of overriding public interest (IROPI).
 - b. Provide for the protection of animal and plant species listed in Annex IV of the EU Habitats Directive and the Flora Protection Order.
 - c. Protect and enhance features of the landscape (such as rivers, riverbanks, field boundaries, ponds and small

woods) which are of major importance for wild fauna and flora and the ecological coherence of the Natura 2000 network.

5.1.4. Section 11.2 relates to Landscape. The Plan identifies three separate Landscape Classifications for the county, namely: Areas of Especially High Scenic Amenity (EHSA), Areas of High Scenic Amenity (HSA) and Areas of Moderate Scenic Amenity (MSA) as identified on Map 11.1 Scenic Amenity. The application site is located within an area of Especially High Scenic Amenity. The Plan sets out the following guidance in respect of these areas: *“These are sublime natural landscapes of the highest quality that are synonymous with the identity of County Donegal. These areas have extremely limited capacity to assimilate additional development”*.

5.1.5. The following policies and objectives are of relevance:

- L-O-1 To protect, manage and conserve the character, quality and value of the Donegal landscape.
- L-P-1 To protect areas identified as ‘Especially High Scenic Amenity’ on Map 11.1 ‘Scenic Amenity’. Within these areas, only developments of strategic importance, or developments that are provided for by policy elsewhere in this Plan may be considered.
- L-P-7 To preserve the views and prospects of special amenity value and interest as identified on Map 11.1.

Chapter 16: Technical Standards

Variation no. 1 of the County Development Plan 2024-2030

5.1.6. Proposed Variation no. 1 of the County Donegal Development Plan 2024-2030 was published for public consultation between the 16th of January 2024 and the 13th of February 2026. The proposed variation includes New Plans for An Clochán Liath, Ballyshannon, Bridgend, Carndonagh, Donegal Town and Killybegs to replace the current Local Area Plans in the Seven Strategic Towns Local Area Plan 2018-2024. The variation also includes amendments to the Buncrana Area Plan, Letterkenny Plan and Ballybofey/ Stranorlar Area Plan.

5.2. Development Management Guidelines

5.2.1. Section 5.13 of the Development Management Guidelines relates to title of land. This outlines the following:

“The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. In this regard, it should be noted that, as section 34(13) of the Planning Act states, a person is not be entitled solely by reason of a permission to carry out any development. Where appropriate, an advisory note to this effect should be added at the end of the planning decision. Accordingly, where in making an application, a person asserts that he/she is the owner of the land or structure in question, and there is nothing to cast doubt on the bona fides of that assertion, the planning authority is not required to inquire further into the matter. If, however, the terms of the application itself, or a submission made by a third party, or information which may otherwise reach the authority, raise doubts as to the sufficiency of the legal interest, further information may have to be sought under Article 33 of the Regulations. Only where it is clear from the response that the applicant does not have sufficient legal interest should permission be refused on that basis. If notwithstanding the further information, some doubt still remains, the planning authority may decide to grant permission. However, such a grant of permission is subject to the provisions of section 34(13) of the Act, referred to above. In other words the developer must be certain under civil law that he/she has all rights in the land to execute the grant of permission”.

5.3. Natural Heritage Designations

The appeal site is not located within any designated European site. The nearest designated European sites to the appeal site include the following:

- Barnesmore Bog NHA (Site Code 002375) – 0.2km
- Cashelnavean Bog NHA (Site Code 000122) – 1km
- Croaghonagh Bog SAC (Site Code 000129) - 1.3km
- Croaghonagh Bog pNHA (Site Code 000129) – 2.7km
- Lough Eske and Ardnamona Wood SAC (Site 000163) – 2.5km
- Lough Eske and Ardnamona Wood pNHA (Site 000163) – 5.3km
- Donegal Bay (Murvagh) SAC (Site Code 000133) – 12.3 km
- Donegal Bay (Murvagh) pNHA (Site Code 000133) – 12.3km
- Donegal Bay SPA (Site Code 004151) – 12.3km
- Dunragh Loughs/Pettigo Plateau SAC (Site Code 001125) -7.4km

- Dunragh Loughs/Pettigo Plateau p NHA (Site Code 001125) -7.4km
- Pettigo Plateau Nature Reserve SPA (Site Code 004099) – 9.6km

6.0 EIA Screening

The proposed development has been subject to preliminary examination for environmental impact assessment (refer to Form 1 and Form 2 in Appendices of this report). Having regard to the characteristics and location of the proposed development and the types and characteristics of potential impacts, it is considered that there is no real likelihood of significant effects on the environment. The proposed development, therefore, does not trigger a requirement for environmental impact assessment screening and an EIAR is not required.

7.0 The Appeal

7.1. Grounds of Appeal

A first party appeal was submitted in respect of Donegal County Council's notification of decision to refuse permission for the development. The following provides a summary of the grounds of appeal:

- The first party appeal provides a background to the development, a review of National and Local Planning Policy and a response and rebuttal to Donegal County Council's notification of decision to refuse permission for the development.
- The appeal outlines that regardless of the planning status of Meenbog Windfarm, grid connection underground cabling which runs along this section of the N15 is fully installed and energised. It is misguided to suggest that the proposed development will facilitate Meenbog Windfarm grid connection.
- The appeal refers to the planner's assessment of the proposed development and cross refers to reports from internal departments in DCC and prescribed bodies (including TII and IFI). The appeal outlines that these reports did not recommend a refusal of planning permission for the proposed development. The appeal outlines that the planner's report prepared in respect of the FI

response outlined that the applicant had addressed all technical aspects of the request for further information. The development was therefore deemed acceptable in principle and refused on grounds relating to prematurity pending the resolution of the status of Meenbog windfarm.

- The appeal outlines that the approach taken by DCC ignores the fact that the culverts at this location require upgrading, irrespective of the outcome of the Meenbog wind farm development.
- Each application should be considered on their individual merits and the application under consideration relates to upgrade works to 3 no. culverts. The works are deemed necessary due to current inadequacies of the culverts, prevent potential structural failures and protect the associated watercourses from pollution thereby ensuring the long-term sustainability and functionality of the drainage system.
- The appeal outlines that the proposed development arises from a request from the roads section in DCC. The appeal outlines that the existing culverts in place are considered to be substandard, too small for stormwater flows at certain times of the year. It is stated that the existing culverts play a vital role in facilitating the drainage of the surrounding landholdings to the Lowerymore River, ensuring efficient flow of water below the N15 National Route. Replacing the culverts will improve water flow, reducing the risk of potential flooding during periods of heavy rainfall which is crucial for safeguarding both public safety and property.
- The appeal outlines that the proposal does not depend on any other external development including the Meenbog Windfarm.
- The appeal outlines that DCC's reason for refusal on grounds of prematurity is unjustified. The legal case in relation to Meenbog windfarm is entirely unrelated to the improvements to the infrastructure proposed within the application.
- It is requested that the proposed development is assessed on its individual merits and its potential impacts on the area.

- The Commission is requested to overturn the Planning Authority's decision and grant permission for the proposed development.

Appendices

The appeal is accompanied by the following appendices:

- Appendix 1: Notification of Decision to Refuse Planning Permission by Donegal County Council.
- Appendix 2: First Planner's Report dated 22nd of May 2024
- Appendix 3: Second Planner's Report dated 10th December 2024.

7.2. Planning Authority Response

Donegal County Council provided a response to the grounds of appeal. The following provides a summary of the key points raised:

- The appeal response refers to the contention in the first party appeal that the application arises from a request from the Roads Section in DCC. The appeal response outlines that it is reiterated and stressed in the planning report that the initial request came from the applicant to the Roads Section of DCC and was at that time clearly to facilitate a grid connection to Meenbog Windfarm.
- The report outlines that it is disingenuous of the first party to suggest otherwise given that the road opening licence was initially refused.
- The report outlines that given that the wind farm has gone through legal challenge and is currently halted pending resolution, the Planning Authority considers that all works associated with the wind farm are premature and cannot be considered until the windfarm application has been fully resolved.
- The report furthermore notes that the proposed works impact on the N15 national route and there has been no interaction between the applicant and TII.
- The report outlines that it is unclear if the applicant has the required third-party consent for works proposed outside the national route boundary.
- The appeal response outlines that the details of the application have been thoroughly assessed and site inspection undertaken. The report cross refers

to the Planner's Reports dated the 22nd of May and 10th of December 2024 and the Planning Authority wishes to rely on the contents of same in response to the appeal.

7.3. Further Responses

- 7.3.1. By correspondence dated the 14th of April 2025 the Commission requested the applicant to readvertise the application and submit revised public notices in accordance with section 132 of the Planning and Development Act, 2000 (as amended) ('the Act').
- 7.3.2. The applicant submitted a response to the Section 132 request on the 25th of April 2025. No further observations were received during the consultation period.

8.0 Assessment

8.1. Having examined the application details and all other documentation on file, including all of the observations received in relation to the appeal, and inspected the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Reason for Refusal – Prematurity
- Land Ownership and Consultation (New Issue)
- Appropriate Assessment (New Issue)
- Water Framework Directive (New Issue)

I address the issue of Appropriate Assessment Screening within Section 9.0 and Appendices 3 and 4 of this report and the Water Framework Directive in Section 10 and Appendices 5 and 6 of this report.

8.2. Reason for Refusal – Prematurity pending resolution of Meenbog Windfarm

- 8.2.1. Donegal County Council issued a notification of decision to refuse permission for the development in accordance with the following reasons and considerations:

“Having regard to the rationale for the proposed works that is to facilitate a grid connection from Meenbog Wind Farm and to the current unauthorised nature of this large development that is the subject of ongoing legal proceedings, the Planning

Authority considers that to permit the development would be premature and contrary to proper and sustainable planning”.

- 8.2.2. The application seeks permission for 3 no. replacement culverts along the N15 national route. Donegal County Council’s reason for refusal outlines that the proposed works are to facilitate a grid connection to Meenbog windfarm. I refer to the planning history pertaining to the windfarm as summarised in Section 4 of this report. I note that under ABP Ref: 300460-17 permission was granted for a 19-turbine development at Meenbog. The development as permitted included a grid connection to Clogher substation along the N15. The grid connection was included within the EIAR study area. Condition no. 1 of the Board’s decision is of relevance as follows:

Condition 1:

“The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. For the purposes of clarity the board considered and is granting permission for the proposed independent underground cabling grid connection from the Proposed Development at Cashelnaveen to connect to the Clogher substation that was included in the EIAR. Where conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars”.

- 8.2.3. Construction commenced at Meenbog wind farm as permitted under ABP Ref: 300460-17 in November 2019. A peat slide occurred on site on the 12th of November 2020 and works associated with the development ceased. An enforcement case was opened by Donegal County Council and Section 160 proceedings were initiated in respect of unauthorised development on the site. I refer to the decision of the Court of Appeal Judgement [2024] IECA 300 – which deems that the entire wind-farm development is unauthorised development. The Planning Authority’s decision outlines that the proposed works would be considered premature in light of legal proceedings. The Commission has engaged in pre-application consultation with the applicant pursuant to Section 177E (1A) of the Planning and Development Act 2000, as amended, (ABP Reference: 321426-24). I note that the grid connection along the

N15 forms part of the pre-application consultation boundary under ABP Ref: 321426-24.

- 8.2.4. The first party appeal outlines that regardless of the planning status of Meenbog Windfarm, the grid connection underground cabling which runs along this section of the N15 is fully installed and energised. The appeal refutes the assertion within the planning authority's decision that that the proposed development will facilitate Meenbog Windfarm grid connection.
- 8.2.5. The issue of association of the proposed works with Meenbog Windfarm was raised within Donegal County Council's request for further information (FI request). Under Item 2 of the FI request the applicant was requested to clarify if there was any connectivity between the proposed works and the Meenbog wind farm to the northeast. The applicant's response to Item 2 of DCC's request for further information outlines that there is no connectivity between the proposed development and the Meenbog wind farm site. The application documentation outlines that the application was submitted in response to a request from the Roads Section in Donegal County Council and states that the existing culverts are considered to be substandard with the replacements necessary to prevent potential failures, prevent flooding and ensure safeguarding of public safety. This is further addressed within the Preliminary Design Report submitted in conjunction with the applicant's response to Donegal County Council's request for further information.
- 8.2.6. Donegal County Council's response to the grounds of appeal outlines that the initial request came from the applicant to the Roads Section of DCC and was at that time clearly to facilitate a grid connection to Meenbog Windfarm. The background to the application is set out within the Roads Report dated 10/12/2024 as follows: "*The provision of the three culverts are works that are being undertaken by Mid Cork Electrical LTD as part of the grid connection works from the Meenbog wind farm to the sub-station at Clogher. These grid connection works did not form part of the planning permission associated with the Meenbog Windfarm but were sought by the applicant by way of a road opening licence application*".
- 8.2.7. The planner's report which informs the decision of DCC to refuse permission for the development outlines that given that the wind farm has gone through legal challenge and is currently halted pending resolution, the Planning Authority considers that all

works associated with the wind farm are premature and cannot be considered until the windfarm application has been fully resolved.

- 8.2.8. Having reviewed the application and appeal documentation and considered the planning history of the area and Court of Appeal Judgement [2024] IECA 300 relating to Meenbog windfarm I consider that the works proposed within the subject application are premature pending resolution of the status of Meenbog windfarm. The application seeks to replace existing culverts along the N15 with larger culverts. On the basis of the information on file, it is my view that such works are only being undertaken by the applicant on foot of works undertaken to provide a grid connection to Meenbog Windfarm as permitted under ABP Ref: 300460-17. I consider that the works are premature pending the resolution of the status of Meenbog Windfarm. I recommend that permission is refused for the development broadly in line with the Planning Authority's decision.

8.3. Landownership/Third Party Consent and Consultation (New Issue)

Landownership / Third Party Consent

- 8.3.1. The planner's report which informs the decision of DCC to refuse permission for the development raises the issue of third-party landownership. The report outlines that works are proposed outside of the public roadway and on third party lands and the applicant has failed to demonstrate sufficient interests in the lands outside the roadside boundary. It is stated that consent has not been submitted for any works outside the area of the public road and verge.
- 8.3.2. Item 3 of Donegal County Council's request for further information requested the applicant to provide "*Written consent to be provided from all third-party landowners for all works shown to occur outside the bounds of the national roadway*". The applicant's response to DCC's request for further information outlines that the culvert replacement works are to take place beneath the public roadway, which is in the charge of Donegal County Council. I note that the application is accompanied by a letter of consent from Donegal County Council. The FI response outlines that the works have come about following discussions between the applicant and the Council's Roads Section. It is stated that as the works will be carried out on behalf of Donegal County Council, their statutory powers under the Roads Act, 1993, Section 76 (a), allows the local authority to construct and maintain drains in, on, under,

through or to any land for the purpose of draining water from, or preventing water flowing onto, a public road. In this instance, the FI response outlines that third-party consent is not applicable.

8.3.3. The Planning Authority outlines that the proposed replacement culverts are not being undertaken on behalf of the Planning Authority but are proposed as part of works associated with a grid connection to Meenbog Wind Farm. The Planning Authority outlines that in the instance that such works were required that they would be undertaken by Transport Infrastructure Ireland.

8.3.4. Article 22 of the Planning and Development Regulations 2001 as amended sets out requirements for the content of planning applications generally. Article 22(2)(g) states that where the applicant for permission is not the legal owner of the land or structure concerned, the application shall be accompanied by the written consent of the owner to make the application. In the instance of the subject application, I note that the application is accompanied by a letter of consent from Donegal County Council. However, I note that as part of the request for further information the applicant was advised that works are proposed outside of the public roadway and the applicant was requested to submit written consent from all third-party landowners. The planner's report dated 10/12/2024 includes extracts from the Land Direct mapping and refers to lands within the application boundary which are within third party ownership.

8.3.5. I note that the PA's decision does not recommend a refusal of permission on the basis of third-party ownership. The planner's report which informs the notification of decision of DCC to refuse permission for the development refers to the provisions of Section 34(13) of the Planning and Development Act and Section 5.13 of the Development Management Guidelines. Section 34(13) of the Planning and Development Act provides that if the applicant lacks title or owner's consent to do works permitted by a planning permission, the permission does not give rise to an entitlement to carry out the development. Section 5.13 the Development Management Guidelines for Planning Authorities (June 2007) which outlines that:

"The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. In this regard, it should be noted that, as section 34(13) of the

Planning Act states, a person is not be entitled solely by reason of a permission to carry out any development. Where appropriate, an advisory note to this effect should be added at the end of the planning decision. Accordingly, where in making an application, a person asserts that he/she is the owner of the land or structure in question, and there is nothing to cast doubt on the bona fides of that assertion, the planning authority is not required to inquire further into the matter. If, however, the terms of the application itself, or a submission made by a third party, or information which may otherwise reach the authority, raise doubts as to the sufficiency of the legal interest, further information may have to be sought under Article 33 of the Regulations. Only where it is clear from the response that the applicant does not have sufficient legal interest should permission be refused on that basis. If notwithstanding the further information, some doubt still remains, the planning authority may decide to grant permission. However, such a grant of permission is subject to the provisions of section 34(13) of the Act, referred to above. In other words the developer must be certain under civil law that he/she has all rights in the land to execute the grant of permission”.

8.3.6. I have considered the proposal in light of the requirements of the provisions of Section 34(13) of the Planning and Development Act and the guidance set out within Section 5.13 of the Development Management Guidelines. On the basis of the application documentation and planning authority reports, I am not satisfied that the application has been made by a person who has - (a) sufficient legal estate or interest in the land the subject of the application to enable the person to continue the existing use of, or carry out the proposed works on the land, or (b) the approval of the person who has such sufficient legal estate or interest. I recommend that permission is refused for the development on this basis.

8.3.7. This is a new issue as it is not cited within Donegal County Council’s notification of decision to refuse permission for the development. The Commission may wish to seek the views of the parties. However, having regard to the other substantive reasons for refusal set out in Section 8.2 above and the reasons for refusal below, it may not be considered necessary to pursue the matter.

Consultation

- 8.3.8. I refer to the submission on file from Transport Infrastructure Ireland which outlines that no consultation has been undertaken with TII in respect of the works and any associated road closures. The applicant's FI response includes a Preliminary Design Report prepared by OCSC Consulting Engineers and prepared in accordance with TII's publication DN-STR-03001-Technical Acceptance of Road Structures on Motorways and Other National Roads and has had regard to TII's Design Manual for Roads and Bridges. I consider that this could be addressed via condition in the instance that the Commission is minded to grant permission for the development.
- 8.3.9. The proposed development relates to replacement of existing culverts under the N15. I note that such works should be subject to consent with the Office of Public Works under Section 50 of the Arterial Drainage Act, 1945. No evidence of consultation with the Office of Public Works (OPW) has been submitted as part of the application. Having regard to the other substantive reasons for refusal set out in Section 8.2 above and the reasons for refusal below, it may not be considered necessary to pursue the matter.

9.0 **AA Screening (New Issue)**

Appropriate Assessment Screening

- 9.1. I have completed a screening for Appropriate Assessment (Stage 1) and determined that the project may have likely significant effects on the following European sites: Lough Eske and Ardnamona Wood SAC [000163], Donegal Bay (Murvagh) SAC [000133] and Donegal Bay SPA [004151). An Appropriate Assessment (Stage 2) is required of the implications of the project on the same. I am satisfied that the possibility of likely significant effects by the project on other European sites could be excluded in view of the nature and scale of the project and those sites' conservation objectives.

Appropriate Assessment

- 9.2. I have considered the Natura Impact Statement submitted by the applicant and all other relevant documentation accompanying the application and completed an Appropriate Assessment (Stage 2) of the implications of the project on the Lough Eske and Ardnamona Wood SAC [000163], Donegal Bay (Murvagh) SAC [000133] and Donegal Bay SPA [004151) in view of the sites' conservation objectives. I

consider that there were information deficiencies within the submitted information to allow the carrying out of an Appropriate Assessment in respect of the Lough Eske and Ardnamona Wood SAC [000163].

9.3. Following an Appropriate Assessment, it has been ascertained that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the following European Sites Nos 000133 Donegal Bay (Murvagh) SAC and 004151 Donegal Bay SPA subject to the implementation in full of appropriate mitigation measures.

9.4. This conclusion is based on a complete assessment of all aspects of the proposed project and there is no reasonable doubt as to the absence of adverse effects:

- The nature and scale of the development.
- The downstream distance to Donegal Bay (Murvagh) SAC [000133] and Donegal Bay SPA [004151], the urban nature of intervening habitats to these European Sites.
- A full and detailed assessment of all aspects of the proposed project including proposed mitigation measures in relation to the in relation to the Conservation Objectives Donegal Bay (Murvagh) SAC [000133] Donegal Bay SPA [004151].
- Detailed assessment of in-combination effects with other plans and projects including current proposals and future plans.
- No reasonable scientific doubt as to the absence of adverse effects on the integrity of the designates sites.

9.5. Following an Appropriate Assessment, it has not been ascertained beyond a reasonable doubt that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of European site No. 000163 Lough Eske and Ardnamona Wood SAC, in view of the site's Conservation Objectives. This conclusion is based on:

- The absence of sufficient detail on the impact of the proposed culvert works on the hydrology and channel flow of the Lowerymore River and habitat loss (blanket bog),

- the adequacy of the proposed mitigation measures and potential impact on Freshwater Pearl Mussel *Margaritifera margaritifera* which is a Qualifying Interest of the SAC.

In these circumstances, adverse effects on integrity of the European sites cannot be excluded.

- 9.6. This is a new issue as it did not form grounds of Donegal County Council's notification of decision to refuse permission for the development. The Commission may wish to seek the views of the parties. However, having regard to the other substantive reasons for refusal it may not be considered necessary to pursue the matter.

10.0 Water Framework Directive (New Issue)

- 10.1. An assessment of the proposed development has been undertaken in accordance with Article 4 of the EU Water Framework Directive (2000/60/EC), as transposed by the European Communities (Water Policy) Regulations 2003, as amended, and with regard to the Eastern/Southeastern River Basin Management Plan 2022–2027. I refer the Commission to Appendices 5 and 6 of this report in relation to Water Framework Directive Assessment.
- 10.2. The proposed development seeks permission for replacement culverts of tributaries which flow into the Lowerymore River along the N15. The works relate to existing tributaries which flow into the Lowerymore River. The Lowerymore_20 is designated as a High status water body under the Water Framework Directive.
- 10.3. Policy WW-P-2 of the County Donegal Development Plan 2024-2030 seeks to:

Ensure that new developments:

a. do not have an adverse impact on surface and ground water quality, drinking water supplies, Bathing Waters and aquatic ecology (including Water dependent qualifying interests within Natura 2000 sites); and

b. do not hinder the achievement of, and are not contrary to:

i. The objectives of the EU Water Framework Directive.

ii. EU Habitats and Bird Directives.

iii. The associated Programme of Measures in the River Basin Management Plan 2022-2027 including any associated Water Protection or Restoration Programmes. iv. Drinking Water Safety Plan.

v. The Guidelines on the Protection of Fisheries During Construction Works In and Adjacent To Waters (IFI, 2016).

- 10.4. On review of the application documentation, I am not satisfied that the necessary information has been provided, or an adequate assessment has been undertaken to determine as to whether the proposed development would not result in a risk of deterioration of surface water. I consider that there are information deficiencies within the application in relation to the potential impact of the revised culverts on channel flow and alteration to water quantity within the streams which flow directly into the Lowerymore River.
- 10.5. As such, I am not satisfied that the necessary information has been provided or an adequate assessment has been undertaken to determine as to whether the proposed development would not result in a risk of deterioration on the Lowerymore River, either on a temporary or permanent basis or otherwise jeopardise any waterbody in reaching its WFD objectives and consequently it cannot be excluded from further assessment based on the information provided. I recommend that permission is refused for the development on this basis.
- 10.6. This is a new issue as it did not form grounds of Donegal County Council's notification of decision to refuse permission for the development. The Commission may wish to seek the views of the parties. However, having regard to the other substantive reasons for refusal it may not be considered necessary to pursue the matter.

11.0 Recommendation

I recommend that permission be refused for the proposed development in accordance with the following reasons and considerations.

12.0 Reasons and Considerations

1. Having regard to the information set out within the application and appeal and within the planning authority submissions and having regard to the planning history of the site, it is considered that the proposed works are associated with the grid connection to Meenbog Windfarm as permitted under ABP Ref: 300460-17. The Commission notes the Court of Appeal Judgement [2024] IECA 300 which deemed Meenbog windfarm to be unauthorised development. The proposed works are considered premature pending resolution of the status of Meenbog windfarm. To permit the development would be premature and contrary to the proper and sustainable development of the area.
2. On the basis of the submissions made in connection with the planning application and appeal, the Commission is not satisfied that the application has been made by a person who has (a) sufficient legal estate or interest in the land the subject of the application to enable the person to continue the existing use of, or carry out the proposed works on the land, or (b) the approval of the person who has such sufficient legal estate or interest. The applicant has not demonstrated appropriate legal consent and the development is considered premature on this basis.
3. On the basis of the information provided with the application and appeal, having regard to the information set out within the submissions on file and in light of the Stage 2 Appropriate Assessment undertaken, the Commission cannot be satisfied that the development, individually, or in combination with other plans or projects, would not be likely to have a significant effect on the Lough Eske and Ardnamona Wood SAC [000163], in view of the site's conservation objectives, by reason of the absence of sufficient detail on the impact of the proposed culvert works on the hydrology and channel flow of the

Lowerymore River and habitat loss (blanket bog), the adequacy of the proposed mitigation measures and potential impact on Freshwater Pearl Mussel *Margaritifera margaritifera* which is a Qualifying Interest of the SAC. In such circumstances, the Commission is precluded from granting permission.

4. The proposed development relates to replacement culverts to existing streams which flow into the Lowerymore River. The Lowerymore_020 is designated as a High status water body under the Water Framework Directive. On the basis of the information set within the application and appeal, the Commission is not satisfied that sufficient information has been provided in relation to the detail of the proposed works and potential impact of the revised culverts on channel flow and alteration to water quantity within the streams which flow directly into the Lowerymore River. The Commission is not satisfied that the proposed development would not give rise to a risk of deterioration in the ecological and/or chemical status of the said water body, the proposed development would be therefore be contrary to the requirements of Article 4 of the EU Water Framework Directive (2000/60/EC), as transposed into Irish law by the European Communities (Water Policy) Regulations 2003 (S.I. No. 722 of 2003), as amended, and would be inconsistent with the objectives of the Water Action Plan 2024, Policy WW-P-2 of the County Donegal Development Plan 2024-2030 and 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 me, directly or indirectly, following my professional assessment and recommendation set out in my report in an improper or inappropriate way.”

Stephanie Farrington
Senior Planning Inspector

20th of May 2026

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	317718-25		
Proposed Development Summary	Construction of 3 no. culverts to replace existing culverts and all associated site works along N15.		
Development Address	Twanawully Mountains, Barnesmore Gap, Co. Donegal.		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? <small>(that is involving construction works, demolition, or interventions in the natural surroundings)</small>	Yes	√	
	No		
2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?			
Yes	√	Schedule 5, Part 2 Class 10. Infrastructure projects (f) (ii) Schedule 5, Part 2, Class 13	Proceed to Q3.
No			Tick if relevant. No further action required
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?			
Yes			EIA Mandatory EIAR required
No	√		Proceed to Q4
4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			
Yes	√	Class 10 (f) (ii) Canalisation and flood relief works, where the immediate contributing sub-catchment of the proposed works (i.e. the difference between the contributing catchments at the upper and lower extent of the works) would exceed 100 hectares or where more than 2 hectares of wetland would be affected or where the length of river channel on which works are proposed	Preliminary examination required (Form 2)

		<p>would be greater than 2 kilometres.</p> <p>The development includes 3 no. replacement culverts along the N15. The application boundary extends to c.1.2km along the N15. The overall extent of works are below the relevant threshold and confined to within the immediate area of each proposed replacement culvert.</p> <p>Class 13: 13. Changes, extensions, development and testing (a) Any change or extension of development already authorised, executed or in the process of being executed (not being a change or extension referred to in Part 1) which would:- (i) (ii) result in the development being of a class listed in Part 1 or paragraphs 1 to 12 of Part 2 of this Schedule, and result in an increase in size greater than – - - 25 per cent, or an amount equal to 50 per cent of the appropriate threshold, whichever is the greater.</p> <p>The proposed grid connection from Meenbog Windfarm to Clogher substation formed part of the Meenbog Windfarm development permitted under ABP Ref: 300460-17. An EIAR was submitted in conjunction with the application. The grid connection to Clogher was included within the EIAR Study Area.</p> <p>The overall extent of works and site area 0.32ha are well below the thresholds set out in Class 13. The windfarm site as permitted under ABP Ref: 300460-17 had a stated area of 990ha.</p>	
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5. Has Schedule 7A information been submitted?		
No	√	Screening determination remains as above (Q1 to Q4)
Yes		Screening Determination required

Inspector: _____

Date: _____

Form 2 - EIA Preliminary Examination

Case Reference	
Proposed Development Summary	321718-25
Development Address	Twanawully Mountains, Barnesmore Gap, Co. Donegal.
This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.	
<p>Characteristics of proposed development</p> <p>(In particular, the size, design, cumulation with existing/ proposed development, nature of demolition works, use of natural resources, production of waste, pollution and nuisance, risk of accidents/disasters and to human health).</p>	<p>The proposal seeks permission for the construction of 3 no. culverts to replace existing culverts and all associated site works along N15. The site has a stated area of 0.32 ha.</p> <p>Existing development within the vicinity of the site is primarily rural in nature and defined by the N15 national route. Meenbog Wind Farm is located to the north east of the N15. The proposed replacement culverts would not be exceptional having regard to the existing site context.</p> <p>Any localised construction impacts associated with the development will be temporary. The proposed development would not give rise to waste, pollution or nuisances beyond what would normally be deemed acceptable. The application is accompanied by a CEMP. The development is not exceptional in the context of the existing environment.</p>
<p>Location of development</p> <p>(The environmental sensitivity of geographical areas likely to be affected by the development in particular existing and approved land use, abundance/capacity of natural resources, absorption capacity of natural environment e.g. wetland, coastal zones, nature reserves, European sites, densely populated areas, landscapes, sites of historic, cultural or archaeological significance).</p>	<p>The subject site comprises a stated area of 0.32ha, in the townland of Tawnawully along the N15. The site comprises 3 no. separate culvert replacements at locations on the N15. The sites are adjacent to and on the Lowerymore River within Barnesmore Gap.</p> <p>The Ecological Impact Assessment (EclA) submitted in conjunction with the application identifies that existing habitats on site. This outlines that the each of the three culverts upon which the proposed culvert works are to take place run beneath the N15 national road, acting to culvert water from several Eroding/upland rivers (FW1) and Drainage ditches (FW4) across the N15 and into the Lowerymore River, which is also classified as a Eroding/upland river (FW1). The N15 is classified as Buildings and artificial surfaces (BL3), with an approximately 4 metre strip of vegetation classified as Dry meadows and grassy verges (GS2) running along both sides of this road for the duration of its length in the area. Sections of these Dry meadows and grassy verges (GS2) along with the road itself (Buildings and artificial surfaces (BL3)) will be excavated to facilitate the installation of each of these culverts.</p>

	<p>The proposed works will primarily affect these habitats classified as Dry meadows and grassy verges (GS2) and Buildings and artificial surfaces (BL3) include Eroding/ upland River (FW1). The EclA outlines that Minimal areas of the Lowland blanket bog(PB3)/Wet heath (HH3) habitat mosaics on either side of the N15, or the Scrub (WS1) will be impacted upon as they are either largely outside of the site boundaries or will be subject to minimal excavation during the works.</p> <p>The proposal relates to culverts of the existing streams which flow into the Lowerymore River. The Lowerymore_20 is designated as High status within the Water Framework Directive. The underlying groundwater body is the Donegal South (IE_NW_G_047) which has a good status.</p> <p>The site is with a landscape of Especially High Scenic Amenity as per County Donegal Development Plan. The existing culverts run under the N15 and have limited visibility.</p> <p>The proposed development is not directly connected with or necessary to the management of a European site. Closest designated sites to the development include the Croaghonagh Bog SAC [000129] – 1.3km and the Lough Eske and Ardnamona Wood SAC [000163] – 2.5km.</p> <p>The site is located within a Poor Aquifer - Bedrock which is Generally Unproductive except for Local Zones. The National Groundwater Vulnerability Ireland groundwater vulnerability within the sites of the proposed culverts are regarded as ‘High’.</p> <p>No recorded archaeological or cultural heritage sites within or adjacent to the site.</p> <p>The site is located within a sparsely populated rural area. Some rural housing along local roads.</p>
<p>Types and characteristics of potential impacts</p> <p>(Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects and opportunities for mitigation).</p>	<p>Significant environmental effects not anticipated for the following:</p> <ul style="list-style-type: none"> • Potential for construction noise and dust. Mitigation measures in CEMP. Low impact, local, short term and not significant. • The proposed replacement culverts are within an application site boundary of 0.32ha. The

	<p>overall spatial extent of works are well below the relevant EIA threshold.</p> <ul style="list-style-type: none"> • Construction phase is detailed as 2 weeks. Construction timeframe is limited and activities will be in accordance with measures detailed within CEMP. Significant environmental effects not envisaged. • The development will result in loss of existing habitat as detailed within the EclA, including blanket bog. • Potential for hydrological and hydrogeological impacts. Likely to result in hydro morphological changes. Mitigation measures in CEMP and Natura Impact Statement (NIS) to control pollutants, including silt and sedimentation and drainage measures. Potential impacts not considered likely to be significant in EIA terms. Potential impacts are considered within the AA Screening and Water Framework Directive Screening. • Potential cumulative effects are not considered significant. • Transboundary effects are not considered significant due to nature and scale of proposal.
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Conclusion

Likelihood of Significant Effects	Conclusion in respect of EIA
<p>There is no real likelihood of significant effects on the environment.</p> <p style="text-align: center;">√</p>	<p>EIA is not required.</p> <p>The proposed development has been subject to preliminary examination for environmental impact assessment (refer to Form 1 and Form 2 in Appendices of this report). Having regard to the characteristics and location of the proposed development and the types and characteristics of potential impacts, it is considered that there is no real likelihood of significant effects on the environment. The proposed development, therefore, does not trigger a requirement for environmental impact assessment screening and an EIAR is not required.</p>
<p>There is significant and realistic doubt regarding the likelihood of significant effects on the environment.</p>	<p>Schedule 7A Information required to enable a Screening Determination to be carried out.</p>

There is a real likelihood of significant effects on the environment.	EIAR required.
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Inspector: _____ Date: _____

Appendix 3: Screening for Appropriate Assessment

Screening for Appropriate Assessment
Screening Determination
Step 1: Description of the Project
<p>The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U of the Planning and Development Act 2000 (as amended) are considered fully in this section.</p> <p>An AA Screening Report and Natura Impact Statement prepared by MKO was submitted in support of the application (dated April 2024). An updated Appropriate Assessment Screening Report and Natura Impact Statement was submitted in November 2024 in response to Donegal County Council's request for further information.</p> <p><u>Appeal Site</u></p> <p>The subject site comprises a stated area of 0.32ha, and is located in the townland of Tawnawully along the N15. The site comprises 3 no. separate culvert replacements at locations on the N15. The sites are adjacent to and on the Lowerymore River within Barnesmore Gap.</p> <p>Culvert C1 (ITM Co-ordinates: 602826, 885632 - Culvert C1 will culvert an unnamed stream, classified as an Eroding/ upland river (FW1), eastwards under the N15 and allow it to flow uninterrupted to its confluence with the Lowerymore River. This stream is ephemeral in nature, drying out periodically during the summer months. Therefore, this stream is not deemed to provide suitable habitat for fish. The habitat surrounding the upstream inlet of the culvert on the eastern and western side of the road was a combination of Dry meadows and grassy verges (GS2) and Wet heath (HH3)/Lowland blanket bog (PB3) habitat mosaic.</p> <p>Culvert C2 (ITM Co-ordinates: 603264, 886120) The stream flowing into Culvert C2 on the western side of the N15 is classified as Eroding/upland river (FW1) with a clearly defined course. This stream is ephemeral in nature, drying out periodically during the summer months. Therefore, this stream is not deemed to provide suitable habitat for fish.</p> <p>Culvert C3 (ITM Co-ordinates: 603628, 886566) On the western side of the N15, Culvert C3 is located within an area of Dry meadows and grassy verges (GS2) that bordered the road. On the opposite side of the channel leading into the culvert, the habitat transitioned to Wet heath (HH3)/Lowland blanket bog (PB3), with species including ling heather (<i>Calluna vulgaris</i>), purple moor-grass (<i>Molinia caerulea</i>), and soft rush (<i>Juncus effusus</i>) being common. A fence was set back slightly from the culvert, with purple moor-grass (<i>Molinia caerulea</i>) dominating the area behind this.</p> <p>On the eastern side of the N15, much of the area surrounding the downstream inlet of the culvert was classified as Dry meadows and grassy verges (GS2) which bordered the N15, however, there were areas directly adjacent to the culvert inlet which featured species including brambles (<i>Rubus fruticosus</i> agg.), bracken (<i>Pteridium aquilinum</i>), hard fern</p>

(*Blechnum spicant*), ling heather (*Calluna vulgaris*), and a number of juvenile willows (*Salix* spp.) which was classified as Scrub (WS1).

Proposed Development

The proposed development is described in Section 2 of this report. In brief, the development comprises the construction of 3 no. new culverts to replace existing culverts along the N15 National Primary Route which runs alongside the Lowerymore River.

Submissions and Observations

The Observations on file from Inland Fisheries Ireland (26/04/24 & 09/12/24) raise no objection to the development subject to conditions.

The Observation from the Department of Housing, Local Government and Housing (11/12/24) outlines that Neither the updated NIS, Ecological Impact Assessment (EclA) nor Construction Environmental Management Plan (CEMP) refer to the most recent guidance for the protection of Freshwater Pearl Mussel (*Margaritifera*) 2023ii. As the proposed works are within the Eske catchment, one of the top ten priority catchments for *Margaritifera* in Ireland, the works must ensure that this guidance is adhered to. In particular, the guidance must be included in the CEMP, with a one-page summary of the mitigation measures for protection of the river to be shown all contractors during induction. The works must be overseen by a qualified ecologist, experienced in Freshwater Pearl Mussel protection. Extract from Atkinson, S., Magee, M., Moorkens, E.A. & Heavey, M. (2023).

Planning Authority Screening

Donegal County Council's initial Planner's Report dated 22/05/24 refers to the NIS submitted in conjunction with the application and recommends further elaboration of the proposed mitigation measures. The Planner's report dated 10/12/2024 outlines that the matters raised are addressed within the updated NIS submitted in conjunction with the FI response.

European Sites

The proposed development is not directly connected with or necessary to the management of a European site. 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.

The development site is not located in or immediately adjacent to a European Site. The nearest Natura 2000 sites to the application site as identified within Table 4.1 of the AASR and NIS include the following:

- Croaghonagh Bog SAC [000129] – 1.3km
- Lough Eske and Ardnamona Wood SAC [000163] – 2.5km
- River Finn SAC [002301] – 4.5km
- River Foyle and Tributaries SAC [UK0030320] – 5.1km
- Dunragh Loughs/Pettigo Plateau SAC [001125] -7.4km
- Meenaguse Scragh SAC [001880] – 11.1km
- Donegal Bay (Murvagh) SAC [000133] -12.3km
- Lough Nillan Bog (Carrickatlieve) SAC [000165] – 13.9km
- Durnesh Lough SAC [000138] – 20.1km

- Pettigo Plateau Nature Reserve SPA [004099] – 9.6km
- Lough Derg (Donegal) SPA [004057] -10.6km
- Donegal Bay SPA [004151] – 12.3km
- Lough Nillan Bog SPA [004110] – 13.8km
- Durnesh Lough SPA [000138] – 20.9km

In determining the zone of influence for the proposed development, I have had regard to the nature and scale of the project, the distance from the development site to European sites and any potential pathways that may exist from the development site to a European Site, application documentation and submissions, and my visit to the area.

Table 4.1 of the NIS provides a description of each site and any potential Source – Pathway – Receptor link. The NIS identifies that there are potential for likely significant effects arising from the project on the Lough Eske and Ardnamona Wood SAC [000163], Donegal Bay (Murvagh) SAC [000133] and Donegal Bay SPA [004151] via hydrological connections.

No hydrological or ecological pathways are identified for any other identified sites. These sites are therefore not considered further in this assessment.

I do not consider that any other European Sites other than Lough Eske and Ardnamona Wood SAC [000163], Donegal Bay (Murvagh) SAC [000133] and Donegal Bay SPA [004151] potentially fall within the zone of influence of the project, having regard to the nature and scale of the development, and the available information, the distance from the development site to European sites, the lack of an obvious pathway to European sites from the development site, local drainage patterns and catchments, and separation distances.

The applicant's NIS identifies the potential Source-Pathway-Receptor links to European sites from the application site, having regard to the direct hydrological pathway from the development site to the Lough Eske and Ardnamona Wood SAC [000163], Donegal Bay (Murvagh) SAC [000133] and Donegal Bay SPA [004151]. All other Natura 2000 sites within the area are discounted from further assessment. Given the separation distance from those sites and the lack of ecological or hydrological connection, I am satisfied with this conclusion.

Step 2: Potential Impact Mechanisms from the Project

The site is not within/or adjoining any Natura 2000 sites or necessary to the management of any such sites. No direct habitat loss and/or alteration is expected as a result of the proposed development.

Section 4.1 of the AA Screening Report outlines that there surface water connectivity via the site of the proposed works and the Lough Eske and Ardnamona Wood SAC [000163]. The development is also hydrologically connected to the Donegal Bay (Murvagh) SAC [000133] and Donegal Bay SPA [004151] via the Lowerymore River, Lough Eske and Eske River at a downstream distance of 15.5km. Therefore, taking a precautionary approach, a potential pathway for indirect impacts is identified in the form of deterioration of water quality through potential silt laden run off and other pollutants during the construction phase and operational phase to these Natura 2000 sites. A reduction in water quality locally has the potential to affect the aquatic habitats and natural conditions that are required to maintain or achieve the specific attributes and targets of the qualifying interests associated with the Lough Eske and Ardnamona Wood SAC [000163], Donegal Bay (Murvagh) SAC [000133] and Donegal Bay SPA [004151] and the conservation objectives that have been set for these QIs.

Following consideration of the pathways which could connect the site to European Sites in the wider surrounding area, the applicant's AA Screening report outlines that potential pathways relate to hydrological connection to the Lough Eske and Ardnamona Wood SAC [000163], Donegal Bay (Murvagh) SAC [000133] and Donegal Bay SPA [004151].

Step 3: European Sites at risk

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

Impact pathway/Zone of influence	European Site(s)	Qualifying interest features at risk
Hydrological connection.	Lough Eske and Ardnamona Wood SAC [000163]	1029 Freshwater Pearl Mussel <i>Margaritifera margaritifera</i> 1106 Salmon <i>Salmo salar</i> 3110 Oligotrophic waters containing very few minerals of sandy plains (<i>Littorelletalia uniflorae</i>) Petrifying springs with tufa formation (<i>Cratoneurion</i>) [7220] 6985 Killarney Fern <i>Vandenboschia speciosa</i> 91A0 Old sessile oak woods with <i>Ilex</i> and <i>Blechnum</i> in the British Isles
Hydrological Connection	Donegal Bay (Murvagh) SAC [000133]	1140 Mudflats and sandflats not covered by seawater at low tide 1365 Harbour Seal <i>Phoca vitulina</i> 2170 Dunes with <i>Salix repens</i> ssp. <i>argentea</i> (<i>Salicion arenariae</i>) 2130 *Fixed coastal dunes with herbaceous vegetation ('grey dunes') 2190 Humid dune slacks
Hydrological Connection	Donegal Bay SPA [004151]	A003 Great Northern Diver <i>Gavia immer</i> A046 Light-bellied Brent Goose <i>Branta bernicla hrota</i> A065 Common Scoter <i>Melanitta nigra</i> A144 Sanderling <i>Calidris alba</i> A999 Wetland and Waterbirds

Lough Eske and Ardnamona Wood SAC [000163]

Lough Eske is a large lowland oligotrophic lake. It lies approximately 5 km north east of Donegal town at the junction of Carboniferous rocks with more resistant Dalradian gneiss and granite. The site also includes the River Eske and short stretches of the

Lowerymore, Clogher and Drummenny Rivers, as well as a number of smaller tributaries.

Donegal Bay (Murvagh) SAC [000133]

This site occupies the inner part of Donegal Bay, immediately to the south-west of Donegal Town. It contains the estuary of the River Eske and a number of other significant rivers. The area is underlain by Carboniferous limestone and shale, although blown sand and other recent deposits obscure much of the solid geology.

Donegal Bay SPA [004151]

Donegal Bay SPA is a very large, marine-dominated, site. It extends from Doorin Point, to the west of Donegal Town, to Tullaghan Point in County Leitrim, a distance of approximately 15 km along its north-east/south-west axis. It varies in width from about 3 km to over 8 km. The site includes the estuary of the River Eske, which flows through Donegal Town, and the estuary of the River Erne, which flows through Ballyshannon. Much of the shoreline is rocky or stony, with well-developed littoral reefs in places. There are also extensive stretches of sandy beaches, especially from the Murvagh peninsula southwards to Rossnowlagh and at the outer part of the estuary of the River Erne. Shingle or cobble beaches are also represented. There are extensive areas of intertidal flats associated with the estuary of the River Eske, reflecting the very sheltered conditions in this part of the bay.

Step 4: Likely significant effects on the European site(s) 'alone'

Table 2: Could the project undermine the conservation objectives 'alone'

European Site and qualifying feature	Conservation objective (summary) ¹	Could the conservation objectives be undermined (Y/N)?		
		Surface Water & Groundwater pollution	Loss of Habitat	Air Emissions (dust) & Noise
Lough Eske and Ardnamona Wood SAC [000163]				
1029 Freshwater Pearl Mussel Margaritifera margaritifera	3 of the Qualifying Interests have as their Conservation Objectives to maintain their favourable conservation conditions 7220,91A0 and 6985. The Conservation Objective for 3110, 1029 and 1106 is to restore the favourable conservation condition.	Three small tributary streams of the Lowerymore River are within the works areas of the proposed 3 no. new culverts along the N15. Therefore, there is downstream surface water connectivity	No. There is no loss to habitat of the SAC, nor any habitat of the type for which the SAC is designated.	No. <u>Air emissions:</u> the site is sufficiently distant from the SAC to negate against dust impacts. <u>Noise:</u> the site is sufficiently
1106 Salmon Salmo salar				
Petrifying springs with tufa formation (Cratoneurion) [7220]				
3110 Oligotrophic				

<p>waters containing very few minerals of sandy plains (Littorelletalia uniflorae)</p> <p>6985 Killarney Fern Vandenboschia speciosa</p> <p>91A0 Old sessile oak woods with Ilex and Blechnum in the British Isles</p>		<p>between the sites in which the proposed works will occur and the Lough Eske and Ardnamona Woods SAC via the Lowerymore River. The SAC and site lie within the same ground waterbody Donegal South (IE_NW_G_047). In the absence of mitigation, the water discharge with potential silt laden run off and other pollutants during the construction phase have the potential to impact on the surface waters and underlying aquifer which, in turn, could impact on surface water receptors within the SAC.</p>		<p>distant from the SAC to negate against noise impacts.</p>
<p>Donegal Bay (Murvagh) SAC [000133]</p>				
<p>1140 Mudflats and sandflats not covered by seawater at low tide</p> <p>1365 Harbour Seal Phoca vitulina</p> <p>Dunes with Salix repens ssp. argentea (Salicion arenariae) [2170]</p>	<p>Two of the Qualifying Interests have as their Conservation Objectives to maintain their favourable conservation conditions 1140,1365.</p> <p>The Conservation Objectives for 2130, 2170, and 2190 is to restore the favourable conservation condition.</p>	<p>Yes. There is a hydrological link between the SAC and project site via the Lowerymore River, Lough Eske and Eske River at a downstream distance of 15.5km). In the absence of mitigation, the water discharge</p>	<p>No. There is no loss to habitat of the SAC, nor any habitat of the type for which the SAC is designated.</p>	<p>No.</p> <p><u>Air (dust) emissions:</u> the site is sufficiently distant from the SAC to negate against dust impacts.</p> <p><u>Noise:</u> There are no receptors</p>

<p>(added 7th of April 2026)</p> <p>2130 *Fixed coastal dunes with herbaceous vegetation ('grey dunes')</p> <p>2190 Humid dune slacks</p>		<p>with potential silt laden run off and other pollutants during the construction phase and operational phase have the potential to impact on the surface waters which, in turn, could impact on surface water receptors within the SAC.</p>		<p>for noise within the SAC.</p>
<p>Donegal Bay SPA [004151]</p>				
<p>Great Northern Diver (<i>Gavia immer</i>) [A003]</p> <p>Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046]</p> <p>Common Scoter (<i>Melanitta nigra</i>) [A065]</p> <p>Sanderling (<i>Calidris alba</i>) [A144]</p> <p>Wetland and Waterbirds [A999]</p>	<p>All of the Special Conservation Interests (SCI's) have as their Conservation Objectives to maintain their favourable conservation conditions A003,A046, A065, A144, A 999.</p>	<p>Yes. There is a hydrological link between the SAC and project site via the Lowerymore River, Lough Eske and Eske River at a downstream distance of 15.5km. Therefore, taking a precautionary approach, in the absence of mitigation, the water discharge with potential silt laden run off and other pollutants during the construction phase and operational phase have the potential to impact on the surface waters receptors within the SPA.</p>	<p>No. There is no loss to habitat of the SAC, nor any habitat of the type for which may be part of and/or support SCIs for which the SPA is designated.</p>	<p>No.</p> <p><u>Air (dust) emissions:</u> the site is sufficiently distant from the SAC to negate against dust impacts.</p> <p><u>Noise:</u> The site is sufficiently distant from the SPA to negate against noise impacts on SCI's of the SPA.</p>

AA Screening Report Conclusion

Section 4.2 sets out the applicant's Appropriate Assessment Screening Conclusion as follows:

"It cannot be excluded beyond reasonable scientific doubt, in view of best scientific knowledge, on the basis of objective information and in light of the conservation objectives of the relevant European sites, that the Proposed Development, individually or in combination with other plans and projects, would be likely to have a significant effect on the following European designated sites: Lough Eske and Ardnamona Wood SAC [000163] Donegal Bay (Murvagh) SAC [000133] Donegal Bay SPA [004151] As a result, an Appropriate Assessment is required and a Natura Impact Statement shall be prepared in respect of the Proposed Development".

Overall Conclusion- Screening Determination

The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having regard to the proximity of the subject site to European sites and the nature of the development and its potential effects, it is concluded that the project individually (or in combination with other plans or projects) could have a significant effect on European Site Nos. 000163, 000133 and 004151, in view of the site's Conservation Objectives, and Appropriate Assessment is therefore required.

An appropriate assessment is required on the basis of the possible effects of the project 'alone. Further assessment in-combination with other plans and projects is not required at screening stage.

Appendix 4: Stage 2 – Appropriate Assessment

12.2. Stage 2 – The Natura Impact Assessment

An AA Screening Report and Natura Impact Statement prepared by MKO was submitted in support of the application (dated April 2024). An updated Appropriate Assessment Screening Report and Natura Impact Statement was submitted in November 2024 in response to Donegal County Council's request for further information. For the purposes of clarity, I refer to the updated NIS submitted in response to DCC's request for further information within this assessment.

I am satisfied that it was prepared in line with current best practice guidance and provides an assessment of the potential impacts to the designated sites and an evaluation of the mitigation measures proposed.

Having reviewed the documents, submissions and consultations I am not satisfied that the information allows for a complete assessment of any adverse effects of the development, on the conservation objectives of the designated sites alone, or in combination with other plans and projects. I consider that there are information deficiencies within the application documentation and submitted NIS as detailed further in this assessment.

12.3. Appropriate Assessment of implications of the proposed development

The following is an assessment of the implications of the project on the qualifying interest features of the European sites using the best scientific knowledge in the field as outlined in the NIS. All aspects of the project which could result in significant effects are assessed and mitigation measures designed to avoid or reduce any adverse effects are considered and assessed.

12.4. European Sites

A description of the sites and their Conservation and Qualifying Interests (QI's) / Special Conservation Interests (SCI's), including any relevant attributes and targets for these sites, are set out in the Section 5.1 and Tables 5.1, 5.7 and 5.11 of the NIS.

Section 5.1 of the NIS identifies the individual qualifying features within each of the sites with potential to be affected.

Table A2. 1: AA Summary Table for Lough Eske and Ardnamona Bog SAC [000163]	
Conservation Interest - To maintain or restore the favourable conservation status of habitats and species of community (M/R)	
Pathway and Distance: The proposed culverts are situated along three tributaries to the Lowerymore River (EPA Code: 37L01) and flows into the Lough Eske and Ardnamona Wood SAC. c.2.5km.	
<i>Qualifying Interests/Species of Conservation Interest</i>	Oligotrophic waters containing very few minerals of sandy plains (Littorelletalia uniflorae) 3110
<i>Conservation Objective</i>	To restore the favourable conservation condition of Oligotrophic waters containing very few minerals of sandy plains (Littorelletalia uniflorae) in Lough Eske and Ardnamona Wood SAC.
<i>Potential Adverse Effects</i>	Yes. The Lake Habitat is identified in Map 2 of the Conservation Objective document. There is no potential for a direct effect on this habitat as it is not present within the site boundaries. As the sites of the proposed works are located upstream of the European Site and there is a direct surface water connection a potential pathway for indirect effects on this QI habitat was identified in the form of deterioration of water quality through potential silt laden run-off and other pollutants during the construction phase.
<i>Mitigation Measures</i>	Construction Phase Mitigation Measures are set out in Section 6.2.2 to negate against water quality impacts.
<i>Qualifying Interests/Species of Conservation Interest</i>	7220 Petrifying springs with tufa formation (Cratoneurion)
<i>Conservation Objective</i>	To maintain the favourable conservation condition of Petrifying springs with tufa formation (Cratoneurion)* in Lough Eske and Ardnamona Wood SAC.
<i>Potential Adverse Effects</i>	Yes. The habitat Petrifying springs with tufa formation (Cratoneurion)* has not been surveyed in detail in Lough Eske and Ardnamona Wood

	<p>SAC and thus the exact total area of the qualifying priority habitat in the SAC is currently unknown. Map 3 of the Conservation Objectives report on the site illustrates the spatial distribution of this habitat based on NPWS internal files and the Conservation Objectives Document outlines that further areas of this habitat may be present within the SAC.</p> <p>The NIS outlines that there is no potential for a direct effect on this habitat as it is not present within the site boundaries. However, a potential pathway for indirect effects on this habitat was identified in the form of deterioration of water quality through potential silt laden run-off and other pollutants during the construction phase.</p>
<i>Mitigation Measures</i>	Construction Phase Mitigation Measures are set out in Section 6.2.2 to negate against water quality impacts.
<i>Qualifying Interests/Species of Conservation Interest</i>	91A0 Old sessile oak woods with Ilex and Blechnum in the British Isles
<i>Conservation Objective</i>	To maintain the favourable conservation condition of Old sessile oak woods with Ilex and Blechnum in the British Isles in Lough Eske and Ardnamona Wood SAC,
<i>Potential Adverse Effects</i>	No. No potential pathway for direct or indirect effects on this QI habitat was identified. Due to the terrestrial nature of this QI, and the intervening distance between the Proposed Development site and Lough Eske and Ardnamona Woods SAC, no complete source pathway-receptor chain for any effect has been identified.
<i>Mitigation Measures</i>	None Required.
<i>Qualifying Interests/Species of Conservation Interest</i>	1029 Freshwater Pearl Mussel Margaritifera margaritifera
<i>Conservation Objective</i>	To restore the favourable conservation condition of Freshwater Pearl Mussel (Margaritifera margaritifera) in Lough Eske and Ardnamona Wood SAC

<i>Potential Adverse Effects</i>	<p>Yes. The NIS outlines that as the works will occur within a Freshwater Pearl Mussel catchment, there is potential for direct effects on Freshwater Pearl Mussel associated with this SAC due to the proposed works. A potential pathway for indirect effects is also identified in the form of deterioration of water quality through potential silt laden run-off and other pollutants during the construction. A Freshwater Pearl Mussel Survey was submitted in conjunction with the application. The survey was undertaken in an area ranging 150m downstream of each culvert and concludes that no live or dead mussels were found in this area.</p> <p>The NIS outlines that there is no potential for the proposed works to result in direct effects on mussels as a result of pollution of the river or any other proximity related effect. The NIS outlines that there is potential for the development to result in direct effects on freshwater pearl mussel where they existing within the Lough Eske and Ardnamona Woods SAC.</p>
<i>Mitigation Measures</i>	Construction Phase Mitigation Measures are set out in Section 6.2.2 to negate against water quality impacts.
<i>Qualifying Interests/Species of Conservation Interest</i>	1106 Salmon <i>Salmo salar</i>
<i>Conservation Objective</i>	To restore the favourable conservation condition of Atlantic Salmon (<i>Salmo salar</i>) in Lough Eske and Ardnamona Wood SAC,
<i>Potential Adverse Effects</i>	Yes. The NIS outlines that there is no potential for a direct effect on Salmon associated with this SAC as there is no significant potential habitat for this QI species within the site boundaries. An Indirect effect on Salmon was identified in the form of deterioration of water quality through potential silt laden run-off and other pollutants during the construction phase.
<i>Mitigation Measures</i>	Construction Phase Mitigation Measures are set out in Section 6.2.2 to negate against water quality impacts.
<i>Qualifying Interests/Species of Conservation Interest</i>	6985 Killarney Fern <i>Vandenboschia speciosa</i>
<i>Conservation Objective</i>	To maintain the favourable conservation condition of Killarney Fern (<i>Vandenboschia speciosa</i>) in Lough Eske and Ardnamona Wood SAC

<i>Potential Adverse Effects</i>	No. No potential pathway for direct or indirect effects identified.
<i>Mitigation Measures</i>	None required.
<i>Overall Conclusion – Integrity Test</i>	<p>I refer to the submission on file from the Department of Housing, Local Government and Housing (11/12/24) outlines that neither the updated NIS, Ecological Impact Assessment (EclA) nor Construction Environmental Management Plan (CEMP) refer to the most recent guidance for the protection of Freshwater Pearl Mussel (Margaritifera) 2023ii.</p> <p>Based on the information provided, I consider that there are information deficiencies within the application and submitted NIS in relation to the potential impacts on Freshwater Pearl Mussel Margaritifera margaritifera in terms of impacts associated with channel flow and habitat removal upstream of the SAC. I am not satisfied that adverse effects can be excluded for this SAC site or that no effects of any significance would occur.</p>

Table A2.2: AA Summary Table for Donegal Bay (Murvagh) SAC [000133]

Conservation Interest - To maintain or restore the favourable conservation status of habitats and species of community interest. Distance: 12.3km / 15.5km downstream	
<i>Qualifying Interests/Species of Conservation Interest</i>	1140 Mudflats and sandflats not covered by seawater at low tide
<i>Conservation Objective</i>	To maintain the favourable conservation condition of Mudflats and sandflats not covered by seawater at low tide in Donegal Bay (Murvagh) SAC,
<i>Potential Adverse Effects</i>	Yes. No direct impacts are envisaged given that the proposed culverts are located outside of the SAC boundary. Potential pathway for indirect effects on this QI habitat was identified in the form of deterioration of water quality through potential silt laden run-off and other pollutants during the construction phase.

<i>Mitigation Measures</i>	Construction Phase Mitigation Measures are set out in Section 6.2.2 to negate against water quality impacts.
<i>Qualifying Interests/Species of Conservation Interest</i>	2130 Fixed coastal dunes with herbaceous vegetation (grey dunes)
<i>Conservation Objective</i>	To restore the favourable conservation condition of Fixed coastal dunes with herbaceous vegetation (grey dunes) in Donegal Bay (Murvagh) SAC,
<i>Potential Adverse Effects</i>	No. No potential pathway for direct or indirect effects on this QI species is identified within the NIS. The NIS refers to the terrestrial nature of this QI and the intervening distance between the proposed development and the QI.
<i>Mitigation Measures</i>	None required.
<i>Qualifying Interests/Species of Conservation Interest</i>	2170 Dunes with Salix repens ssp. argentea (Salicion arenariae)
<i>Conservation Objective</i>	To restore the Favourable conservation condition of Dunes with Salix repens ssp. argentea (Salicion arenariae) in Donegal Bay (Murvagh) SAC.
<i>Potential Adverse Effects</i>	This QI was designated in April 2026 and is therefore not assessed within the NIS. Having regard to the terrestrial nature of the QI and intervening distance between the QI and proposed development, there is no potential pathway for direct or indirect effects on this QI species.
<i>Mitigation Measures</i>	None required.
<i>Qualifying Interests/Species of Conservation Interest</i>	2190 Humid dune slacks

<i>Conservation Objective</i>	To restore the favourable conservation condition of Humid dune slacks in Donegal Bay (Murvagh) SAC
<i>Potential Adverse Effects</i>	No. No potential pathway for direct or indirect effects on this QI species is identified within the NIS. The NIS refers to the terrestrial nature of this QI and the intervening distance between the proposed development and the QI.
<i>Mitigation Measures</i>	None required.
<i>Qualifying Interests/Species of Conservation Interest</i>	1365 Harbour Seal <i>Phoca vitulina</i>
<i>Conservation Objective</i>	To maintain the favourable conservation condition of Harbour Seal in Donegal Bay (Murvagh) SAC
<i>Potential Adverse Effects</i>	Yes. The proposed culverts are located outside of the SAC boundary and no direct impacts are envisaged. The NIS identifies potential indirect associated with deterioration of water quality through potential silt laden run-off and other pollutants during the construction phase.
<i>Mitigation Measures</i>	Construction Phase Mitigation Measures are set out in Section 6.2.2 to negate against water quality impacts.
<i>Overall Conclusion – Integrity Test</i>	Based on the information provided, I am satisfied that adverse effects can be excluded for this SAC site and that no effects of any significance would occur to SCI species utilising habitats within the development site. No uncertainty remains. Significant disturbance has been excluded. Adverse effects from contamination can be effectively prevented by mitigation measures. The proposed development would not delay or prevent the attainment of the Conservation objectives of any of this SAC.

Table A2.3: AA Summary Table for Donegal Bay SPA [004151]

<p>Conservation Interest - To maintain or restore the favourable conservation status of habitats and species of community interest.</p> <p>Distance: 12.3km / 15.5km downstream</p>	
<p><i>Qualifying Interests/Species of Conservation Interest</i></p>	<p>A003 Great Northern Diver Gavia immer</p>
<p><i>Conservation Objective</i></p>	<p>To maintain the favourable conservation condition of Great Northern Diver in Donegal Bay SPA.</p>
<p><i>Potential Adverse Effects</i></p>	<p>Yes. The proposed culverts are located completely outside of the SPA boundary, therefore, there is no potential for direct effect. The NIS outlines that as Great Northern Divers are exclusively found along coastal bays and inlets, there is no significant suitable habitat for this SCI species within the footprint of the proposed works. Given the lack of significant suitable habitat within the site, the significant intervening distance between the proposed culverts and the coast, and the small scale and nature of the works, there is no potential for direct or indirect effects resulting from disturbance/displacement or habitat loss on the SCIs of this SPA. The NIS identified potential indirect impacts associated with deterioration in water quality in the absence of mitigation measures.</p>
<p><i>Mitigation Measures</i></p>	<p>Construction Phase Mitigation Measures are set out in Section 6.2.2 to negate against water quality impacts.</p>
<p><i>Qualifying Interests/Species of Conservation Interest</i></p>	<p>A046 Light-bellied Brent Goose Branta bernicla hrota</p>
<p><i>Conservation Objective</i></p>	<p>To maintain the favourable conservation condition of Light-bellied Brent Goose in Donegal Bay SPA,</p>
<p><i>Potential Adverse Effects</i></p>	<p>Yes.</p> <p>The culverts are located outside of the SPA boundary and there is no potential for direct effects. As Light-bellied Brent Geese are typically found</p>

	<p>on coastal estuaries and grassland, there is no significant suitable habitat for this SCI species within the footprint of the proposed works.</p> <p>Additionally, as the sites of the proposed culverts are located a minimum of 12.3km from the SPA, they are outside the maximum foraging range of this SCI species (8.2km). Given the lack of significant suitable habitat within the site, the significant intervening distance between the proposed culverts and the SPA, and the small scale and nature of the works, there is no potential for direct or indirect effects resulting from disturbance/displacement or habitat loss on the SCIs of this SPA.</p> <p>In the absence of mitigation deterioration in water quality may result in significant indirect effects on this SPA's SCI species.</p>
<i>Mitigation Measures</i>	Construction Phase Mitigation Measures are set out in Section 6.2.2 to negate against water quality impacts.
<i>Qualifying Interests/Species of Conservation Interest</i>	A065 Common Scoter <i>Melanitta nigra</i>
<i>Conservation Objective</i>	To maintain the favourable conservation condition of Common Scoter in Donegal Bay SPA
<i>Potential Adverse Effects</i>	<p>Yes.</p> <p>The culverts are located outside of the SPA boundary and there is no potential for direct effects. As Common Scoters are found almost exclusively in marine habitats during the winter, and only small breeding populations are present on large lakes in the summer, there is no significant suitable habitat for this SCI species within the footprint of the proposed works. Given the lack of significant suitable habitat within the site, the significant intervening distance between the proposed culverts and the SPA, and the small scale and nature of the works, there is no potential for direct or indirect effects resulting from disturbance/displacement or habitat loss on the SCIs of this SPA.</p> <p>In the absence of mitigation deterioration in water quality may result in significant indirect effects on this SPA's SCI species.</p>

<i>Mitigation Measures</i>	Construction Phase Mitigation Measures are set out in Section 6.2.2 to negate against water quality impacts.
<i>Qualifying Interests/Species of Conservation Interest</i>	A144 Sanderling <i>Calidris alba</i>
<i>Conservation Objective</i>	To maintain the favourable conservation condition of Sanderling in Donegal Bay SPA
<i>Potential Adverse Effects</i>	<p>Yes. The culverts are located outside of the SPA boundary and there is no potential for direct effects. As Sanderlings are mostly found along sandy coastlines, there is no significant suitable habitat for this SCI species within the footprint of the proposed works. Given the lack of significant suitable habitat within the site, the significant intervening distance between the proposed culverts and the coast, and the small scale and nature of the works, there is no potential for direct or indirect effects resulting from disturbance/displacement or habitat loss on the SCI's of this SPA.</p> <p>In the absence of mitigation deterioration in water quality may result in significant indirect effects on this SPA's SCI species.</p>
<i>Mitigation Measures</i>	Construction Phase Mitigation Measures are set out in Section 6.2.2 to negate against water quality impacts.
<i>Qualifying Interests/Species of Conservation Interest</i>	A999 Wetlands
<i>Conservation Objective</i>	To maintain the favourable conservation condition of the wetland habitat in Donegal Bay SPA as a resource for the regularly-occurring migratory waterbirds that utilise it.
<i>Potential Adverse Effects</i>	<p>Yes. There is no potential for a direct effect on the supporting wetland habitats of this SPA as the sites of the proposed culverts are located entirely outside the SPA boundary.</p> <p>The proposed culvert locations are situated along three tributaries to the Lowerymore River (EPA Code: 37L01) which flows into the Lough Eske</p>

	and Ardnamona Wood SAC. This is in turn connected to the Donegal Bay SPA via the Eske River (EPA Code: 37E05). As the sites of the proposed works are located upstream of the European Site and there is a direct surface water connection a potential pathway for indirect effects was identified in the form of deterioration of water quality through potential silt laden run-off and other pollutants during the construction phase.
<i>Mitigation Measures</i>	Construction Phase Mitigation Measures are set out in Section 6.2.2 to negate against water quality impacts.
<i>Overall Conclusion – Integrity Test</i>	<p>Based on the information provided, I am satisfied that adverse effects can be excluded for this SPA site and that no effects of any significance would occur to SCI species utilising habitats within the development site. No uncertainty remains.</p> <p>Significant disturbance has been excluded.</p> <p>Adverse effects from contamination can be effectively prevented by mitigation measures.</p> <p>The proposed development would not delay or prevent the attainment of the Conservation objectives of any of this SPA.</p>

12.5. Mitigation

Section 6.2 of the NIS addresses the Potential for indirect Effects on European Sites.

Construction Phase Mitigation:

Construction Phase mitigation is set out within Section 6.2.2 of the NIS and includes the following:

- The streams which run through the existing culverts are ephemeral in nature, drying out periodically during the summer months. Therefore, the works will be carried out in line with the following guidelines:
- Culverts will be constructed when streams are 100% dry.
- Culverts will be constructed offline and in isolation from the existing streams and culverts.
- The existing channels will be protected during construction operations with appropriate barriers including silt fences to ensure that, even if there is water

in the streams, there is no potential for pollution to enter them. Locations of silt fencing are illustrated in Figures 6.1, 6.2 and 6.3.

- The upstream and downstream connections of the culverts to the existing streams will be undertaken when the streams have NO flow in them to avoid the need for instream works and the potential for pollution to occur.
- The connections with the existing streams will be designed to avoid the potential for mobilisation of silt or other pollutants when the connection is made.
- The NIS sets out measures which will be implemented in the event of water being present within the channels during the proposed works to prevent the release of silt laden runoff into the downstream watercourse.
- Standard best practice and bespoke environmental control measures are detailed within the NIS including the following:
 - Pollution Control Measures: Placement of silt fencing along each side of N15, Diesel and petrol pumps will be operated within bunded units.
Earthworks will not be carried out during period of heavy rainfall
- Temporary Compounds and Welfare Stations - All waste generated at the proposed temporary compound and welfare facilities will be taken offsite and disposed of at a licensed waste disposal facility. Following the completion of works the temporary compound and welfare facilities, and all associated mitigation measures will be removed from site.
- Cement Based Products: only dry-mix concrete will be used. There will be no batching of wet mix concrete on site. No washing out of any plant used in concrete transport or concreting operations will be allowed on-site.
- Refuelling, Fuel and Hazardous Materials Storage: No refuelling will be carried out at the works area. Plant and equipment will be refuelled off site at refuelling station. Spill kits will be made available. Waste oils and hydraulic fluids will be collected in leak-proof containers and removed from the site for disposal or re-cycling.
- Spill Control Measures and Dust Suppression Measures.

- **Water Quality Monitoring:** The surface water quality monitoring programme combines the use of laboratory analysis and visual inspection to develop a comprehensive schedule of monitoring of the watercourse that exist adjacent to the locations of the proposed works. Monitoring will include pre-construction monitoring, visual inspections, in situ monitoring and reporting. Post Construction monitoring will continue for 3 months after construction is complete.

12.6. In Combination Effects

Potential for Cumulative Impacts is addressed within Section 8 of the NIS and considers potential provisions of the plans and permissions within the area as detailed within Appendix 1. The NIS outlines that the Proposed Development will not result in any residual adverse effects on any of the European Sites, their integrity or their conservation objectives when considered on its own. There is therefore no potential for the Proposed Development to contribute to any cumulative adverse effects on any European Site when considered in-combination with other plans and projects.

12.7. Integrity Test

I have relied on the following guidance: - Appropriate Assessment of Plans and Projects in Ireland: Guidance for Planning Authorities, DoEHLG (2009); Assessment of plans and projects significantly affecting Natura 2000 sites. Methodological guidance on the provisions of Article 6(3) and 6(4) of the Habitats Directive 92/43/EC, EC (2002); Managing Natura 2000 sites, The provisions of Article 6 of the Habitats Directive 92/43/EEC, EC (2018).

I am satisfied that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the European sites Nos. 000133 and 004151, in view of the site's Conservation Objectives. This conclusion is based on a complete assessment of all aspects of the proposed project and there is no reasonable doubt as to the absence of adverse effects:

- The nature and scale of the development;

- The downstream distance to Donegal Bay (Murvagh) SAC [000133] and Donegal Bay SPA [004151], the urban nature of intervening habitats to these European Sites;
- A full and detailed assessment of all aspects of the proposed project including proposed mitigation measures in relation to the in relation to the Conservation Objectives Donegal Bay (Murvagh) SAC [000133] and the Donegal Bay SPA [004151].
- Detailed assessment of in-combination effects with other plans and projects including current proposals and future plans.
- No reasonable scientific doubt as to the absence of adverse effects on the integrity of the designates sites.

However, on the basis of the information provided with the application and appeal, having regard to the information set out within the submissions on file and in light of the Stage 2 Appropriate Assessment undertaken, I am not satisfied that the development, individually, or in combination with other plans or projects, would not be likely to have a significant effect on the Lough Eske and Ardnamona Wood SAC [000163], in view of the site's conservation objectives.

I refer to the Observation on file from the Department of Housing, Local Government and Housing (11/12/24) which raises concern in relation to the content and scope of the NIS. The observation outlines that Neither the updated NIS, Ecological Impact Assessment (EclA) nor Construction Environmental Management Plan (CEMP) refer to the most recent guidance for the protection of Freshwater Pearl Mussel (*Margaritifera*) 2023ii. Freshwater Pearl Mussel (*Margaritifera*) is a Conservation Objective of the Lough Eske and Ardnamona Wood SAC.

The submission outlines that as the proposed works are within the Eske catchment, one of the top ten priority catchments for *Margaritifera* in Ireland, the works must ensure that this guidance is adhered to. In particular, the guidance must be included in the CEMP, with a one-page summary of the mitigation measures for protection of the river to be shown all contractors during induction. The works must be overseen by a qualified ecologist, experienced in Freshwater Pearl Mussel protection. Extract from Atkinson, S., Magee, M., Moorkens, E.A. & Heavey, M. (2023).

I have reviewed the guidance for the protection of Freshwater Pearl Mussel (*Margaritifera*) 2023ii as referred to within the Departments submission and taken into consideration the concerns raised within the submission in relation to potential impacts of action outside of the immediate habitat of the mussel including physical river works outside the mussel habitat, changes in river flow, addition of chemicals and nutrients and inputs of sediment.

The focus on the NIS is on water quality impacts on the SAC and the mitigation measures are primarily related water quality. On an overall basis I do not consider that the NIS is sufficiently robust in terms of the assessment of the potential changes in channel flow or habitat loss as a result of the development. I note the reference within the submission on file from the Department of Housing, Local Government and Housing (11/12/24) which outlines that all works should be overseen by a qualified ecologist and this is not included within the mitigation measures set out within the NIS.

The appeal site is located within the Freshwater Pearl Mussel Catchment as identified within Map 5 of the SAC Conservation Objectives Document. Site Specific Pressure and Threats identified for SAC as set out within Table 5.2 of the NIS. Potential threats include: Natural System Modifications – human induced changes in hydraulic conditions. The development as proposed seeks replacement culverts and channel realignment of existing tributaries which flow in the Lowerymore River. Table 5.3 of the NIS details Targets and Attributes for Freshwater Pearl Mussel (*Margaritifera*). The identified attributes include : Hydrological regime: flow variability and the target seeks to restore appropriate hydrological regime. I do not consider that the NIS sufficiently details the potential indirect impacts of the development on alteration to the channel flow regime upstream of the SAC.

Another key attribute of the species relates to fringing habitat: area and condition. This Conservation Objectives document for the Lough Eske and Ardnamona Wood SAC outlines that semi-natural and natural riparian habitats, including those along lake fringes, even where they do not form part of a natural floodplain, are an integral part of the structure and functioning of river systems. Open wetlands, e.g. wet heath and blanket bog, are particularly critical to the hydrological regime of mussel rivers. Fringing habitats aid in the settlement of fine suspended material, protect banks from

erosion, contribute to nutrient cycling, and to the aquatic food web (e.g. allochthonous matter from poor fens/flushes), and provide habitat (refuge and resources) for life-stages of fish, birds and aquatic invertebrates. Section 6.5.1 of the 2023 Freshwater Pearl Mussel Guidance document outlines that impact to flow regime can be a result of the removal of natural ecosystems and outlines that Changes that include removal of natural ecosystems such as blanket bog or wetlands as part of plans or projects are unacceptable. The Ecological Impact Assessment (EclA) submitted in support of the application outlines that areas of Lowland blanket bog (PB3) will potentially be subject to clearance to facilitate the installation of the culverts. Table 6.2 of the EclA outlines that the Proposed Development will likely result in the clearance of 175m² of the wet heath/lowland blanket bog habitat mosaic to facilitate the installation of the upgraded culverts.

On the basis of the information provided with the application and appeal, having regard to the information set out within the submissions on file and in light of the Stage 2 Appropriate Assessment undertaken, I am not satisfied that the development, individually, or in combination with other plans or projects, would not be likely to have a significant effect on the Lough Eske and Ardnamona Wood SAC [000163], in view of the site's conservation objectives, by reason of the absence of sufficient detail on the impact of the proposed culvert works on the hydrology and channel flow, water quantity and habitat loss (blanket bog), the adequacy of the mitigation measures and potential impact on Freshwater Pearl Mussel *Margaritifera margaritifera* which is a Qualifying Interest of the SAC. I consider that permission should be refused for the development on this basis.

12.8. Appropriate Assessment Conclusion

The proposed development has been considered in light of the assessment requirements of Section 177 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 Lough Eske and Ardnamona Wood SAC [000163] Donegal Bay (Murvagh) SAC [000133] Donegal Bay SPA [004151]. 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 would not adversely affect the integrity of the European sites Nos. 000133 and 004151, in view of the site's Conservation Objectives.

This conclusion is based on a complete assessment of all aspects of the proposed project and there is no reasonable doubt as to the absence of adverse effects:

- The nature and scale of the development;
- The downstream distance to Donegal Bay (Murvagh) SAC [000133] and Donegal Bay SPA [004151], the urban nature of intervening habitats to these European Sites;
- A full and detailed assessment of all aspects of the proposed project including proposed mitigation measures in relation to the in relation to the Conservation Objectives Donegal Bay (Murvagh) SAC [000133] and the Donegal Bay SPA [004151].
- Detailed assessment of in-combination effects with other plans and projects including current proposals and future plans.
- No reasonable scientific doubt as to the absence of adverse effects on the integrity of the designates sites.

Following an Appropriate Assessment, it has not been ascertained beyond a reasonable doubt that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of European site No. 000163 Lough Eske and Ardnamona Wood SAC, in view of the site's Conservation Objectives. This conclusion is based on:

- The absence of sufficient detail on the impact of the proposed culvert works on the hydrology and channel flow of the Lowerymore River and habitat loss (blanket bog), the adequacy of the proposed mitigation measures and potential impact on Freshwater Pearl Mussel *Margaritifera margaritifera* which is a Qualifying Interest of the SAC.

In these circumstances, adverse effects on integrity of the European sites cannot be excluded.

APPENDIX 5: WFD IMPACT ASSESSMENT STAGE 1: SCREENING

Step 1: Nature of the Project, the Site and Locality

An Coimisiún Pleanála ref. no.	321718-25	Townland, address	Tawnawully Mountain, Donegal Town, Co. Donegal
Description of project		Construction of 3 no. culverts to replace existing culverts and all associated site works along N15 at Tawnawully Mountains, Barnesmore Gap, Co. Donegal.	
Brief site description, relevant to WFD Screening,		<p>The proposed works involve the construction of 3 no. new culverts to replace existing culverts along the N15 National Primary Route which runs alongside the Lowerymore River. The proposed culverts are located upstream of Lough Eske and Ardnamona Wood Special Area of Conservation (SAC). The three culverts to be replaced house three tributaries of the Lowerymore River (European Code IE_NW_37L010300). The Lowerymore River flows southwest into Lough Eske (ESKE_010, EPA Code IE_NW_37E050200), which is situated approx. 7.8km downstream of the closest culvert location.</p> <p>The sites of the proposed culverts are located in the Lowerymore_020 WFD River Sub Basin, Eske_SC_010 WFD Sub Catchment, WFD Catchment 37, and Hydrometric Area 37 (Donegal Bay North). The underlying ground waterbody is the 'Donegal South' groundwater body (IE_NW_G_047).</p>	
Proposed surface water details		Works proposed within tributaries of River Lowerymore.	

Proposed water supply source & available capacity	Not applicable.
Proposed wastewater treatment system & available capacity, other issues	Not applicable.
Others?	Not applicable

Step 2: Identification of relevant water bodies and Step 3: S-P-R connection

Identified water body	Distance to (m)	Water body name(s) (code)	WFD Status	Risk of not achieving WFD Objective e.g.at risk, review, not at risk	Identified pressures on that water body	Pathway linkage to water feature (e.g. surface run-off, drainage, groundwater)
River Waterbody	Within	Lowerymore_020	High Status	Not at risk	None	Yes culvert works within tributaries of the River.
Groundwater Body	Underlying Site	Donegal South (IE_NW_G_047).	Good	Not at Risk	No pressures	Infiltration and seepage.

Step 4: Detailed description of any component of the development or activity that may cause a risk of not achieving the WFD Objectives having regard to the S-P-R linkage.							
CONSTRUCTION PHASE							
No.	Component	Water body receptor (EPA Code)	Pathway (existing and new)	Potential for impact/ what is the possible impact	Screening Stage Mitigation Measure*	Residual Risk (yes/no) Detail	Determination** to proceed to Stage 2. Is there a risk to the water environment? (if 'screened' in or 'uncertain' proceed to Stage 2.
1.	Surface	Lowerymore_020	Drainage and uncontrolled run off during works	Siltation in the watercourse. Hydrocarbon Spillages Hydromorphological alteration — disruption to flow, water quantum.	Standard Construction Measures / Conditions, pollution controls, fuel storage etc. Not addressed within the application	No Yes. Insufficient information has been provided in relation to the detail of the proposed	Screened in

						works and potential impact of the revised culverts on channel flow, and alteration to water quantity within the streams which flow directly into the Lowerymore River	
2.	Ground	Donegal South (IE_NW_G_047).	Drainage	Hydrocarbon Spillages	Standard Construction Measures / Conditions, pollution controls, fuel storage etc.	No	Screened out
OPERATIONAL PHASE							
1.	Surface	Lowerymore_020	Drainage and uncontrolled run off during works	Siltation in the watercourse. Hydrocarbon Spillages Hydromorphological alteration — disruption to flow,	Standard Construction Measures / Conditions, pollution controls, fuel storage etc. Not addressed within application.	No. Yes. Insufficient information has been provided in relation to the detail of the proposed works and potential impact of the revised culverts on channel flow,	Screened in

						and alteration to water quantity within the streams which flow directly into the Lowerymore River.	
2.	Ground	Donegal South (IE_NW_G_047).	Drainage	Hydrocarbon Spillages. Reduction in groundwater quantity and impact on the yield.	Standard Construction Measures / Conditions, pollution controls, fuel storage etc.	No	Screened out
DECOMMISSIONING							
Not applicable – proposed permanent works.							

Appendix 6: STAGE 2: ASSESSMENT

Details of Mitigation Required to Comply with WFD Objectives

Surface Water

Development/Activity	<u>Objective 1:Surface Water</u> Prevent deterioration of the status of all bodies of surface water	<u>Objective 2:Surface Water</u> Protect, enhance and restore all bodies of surface water with aim of achieving good status	<u>Objective 3:Surface Water</u> Protect and enhance all artificial and heavily modified bodies of water with aim of achieving good ecological potential and good surface water chemical status	<u>Objective 4: Surface Water</u> Progressively reduce pollution from priority substances and cease or phase out emission, discharges and losses of priority substances	Does this component comply with WFD Objectives 1, 2, 3 & 4? (if answer is no, a development cannot proceed without a derogation under art. 4.7)
	Describe mitigation required to meet objective 1:	Describe mitigation required to meet objective 2:	Describe mitigation required to meet objective 3:	Describe mitigation required to meet objective 4:	
Proposed Culverts – Construction and Operation Phases	Site specific mitigation methods described in the CEMP and NIS to negate against water quality impacts. Insufficient information within the application in relation to impact of the development on channel	Site specific mitigation methods described in the CEMP and NIS to negate against water quality impacts. Insufficient information within the application in relation to impact of the development on channel	n/a	n/a	No. In the absence of information on potential changes to channel flow, it cannot be confirmed that Objectives 1 & 2 of Article 4 can be met for this component.

	flow and water quantity within the River Lowerymore. Further details required.	flow, and water quantity within the River Lowerymore. Further details required.			
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