



An  
Bord  
Pleanála

## Inspector's Report ABP-322031-25

### Development

Demolition of existing building and erection of a commercial building incorporating a shop, forecourt and all other associated site development works including a space for a memorial garden.

### Location

Creeshlough, Co. Donegal

### Planning Authority

Donegal County Council

### Planning Authority Reg. Ref.

2450106

### Applicant(s)

Vivo Shell Limited

### Type of Application

Permission

### Planning Authority Decision

Grant with Conditions

### Type of Appeal

Third Party x 2

### Appellant(s)

Hugh Harper & Others

Aine Flanagan & Others

### Observer(s)

Micheal O Kane

Ann Marie Boyle

**Date of Site Inspection**

14<sup>th</sup> May 2025

**Inspector**

Mary Crowley

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## **1.0 Introduction**

- 1.1. I have considered the plans and particulars submitted to Donegal County Council as part of the planning application process together with the written submissions received by An Bord Pleanála, all of which are available to view on the appeal file.
- 1.2. This is a very sensitive planning application. The tragic events of 7<sup>th</sup> October 2022, where ten people lost their lives on this site are referenced in many of the submissions on the appeal file. While I am cognisant of, and acknowledge, the harrowing experiences, personal grief and trauma of those who have made submissions it remains that this is a planning appeal. As such this assessment is restricted to the consideration of the scheme as it relates to the proper planning and sustainable development of the area i.e. planning matters only.
- 1.3. Non planning matters that relate to the personal experiences of those that have made submissions are not referenced in this report but are available to view on the appeal file.

## **2.0 Site Location and Description**

- 2.1. The appeal site is located on the western side of the N56 within the Town Settlement of Creeslough, in northwest Donegal, c.25km north of Letterkenny and c. 12km south of Dunfanaghy. The site is the location of an explosion in October 2022 and is currently surrounded by hoarding.
- 2.2. In planning terms, the site is described as a brownfield site i.e. previously developed land. The previous use being that of a filling station, shop, post office, and beauty salon with apartment development to the rear. It is noted that no residential units are proposed as part of the scheme now before the Board. Linear housing adjoins the site to the north and south with the Wild Atlantic Glamping site and Homeland Agricultural Co-Operative directly across the road.
- 2.3. I refer to the photos available to view throughout the file. Together with a set of photographs of the site and its environs taken during the course of my site inspection serve to describe the site and location in further detail.

### 3.0 Proposed Development

3.1. Permission was sought on 18<sup>th</sup> April 2024 for the following:

- demolition of existing building and
- erection of new building (812 sqm) which will incorporate a class 1 commercial building, shop, post office, off-licence, store, deli, toilets including accessible toilets, staff welfare facilities, forecourt, replacement of underground storage tanks and pumps, external canopy, associated signage and all other associated site development works including a space for a memorial garden

3.2. The application was accompanied by the following:

- Planning Statement
- Details / Brochure of the Composite Manhole Covers and Underground Containment Systems and
- Letter of consent from the landowners to make a planning application

3.3. **Further Information (FI) was submitted** on the 27<sup>th</sup> September 2024, 6<sup>th</sup> November 2024 and 10<sup>th</sup> December 2024. **Revised public notices** were submitted on the 15<sup>th</sup> January 2025 and 23<sup>rd</sup> January 2025.

3.4. The Further Information may be summarised as follows:

- 1) Revised site layout and internal floor plans of the building illustrating the relocation of the post office fronting onto the N56 with the store area being relocated to the northern boundary at the rear of the shop building. Further details in regard to the location of the loading bay were submitted illustrating the relocation of the loading bay to a location within the site area as opposed to along the N56, in close proximity to the shop store area, as required by the DCC Area Roads Engineer.
- 2) Revised site layout drawings illustrating proposed car parking (including 2 X disabled spaces) located within the forecourt area with the disabled spaces located adjacent to the proposed shop, the provision of a footpath along the roadside frontage of the site connecting to the existing footpaths to the north and south of the development site, the location of hard shoulders at roadside, proposed dropped kerbs, tactile paving and entry/exist signage as per DMURS and provision of the loading bay area located in close proximity to the shop store within the site layout as required by the Area Roads Engineer.

- 3) A Road Safety Audit (Stage 1 & 2) was submitted which audited the revised layout as required by Item no. 2 of the FI request and recommended that removable bollards located between the proposed vehicular access and egress locations to ensure easier access for fuel delivery vehicles. This audit made no further recommendations and was acceptable to the planning authority.
- 4) Solicitor's letter confirming that Vivo Shell Limited has sufficient entitlement to make the current application.

3.5. The FI was accompanied by the following:

- Road Safety Audit Stage 1 & 2
- Letter from Mortimore Shop Fitters
- Letter from Browne Solicitors re: legal interest and ownership
- Revised site layout
- Revised floor plan
- 3D render images that include changes.
- Copy of email from Donegal County Council (DCC) Area Engineer confirming that the new location of the proposed loading bay within the site is satisfactory from the road service point of view.

## 4.0 Planning Authority Decision

### 4.1. Decision

- 4.1.1. On the 19<sup>th</sup> February 2025 Donegal County Council issued notification of decision to grant permission subject to 10 no. conditions summarised as follows:

1)	<p>Compliance with lodged plans and details, particularly the following revised plans and details:</p> <ul style="list-style-type: none"> <li>▪ Revised floor plan and elevation titled 'General Arrangement' dated October, 2024* (Dwg no.3)</li> </ul> <p><b>(*NOTE to Board - Dwg no 3 was submitted on 27<sup>th</sup> September 2024)</b></p> <ul style="list-style-type: none"> <li>▪ Revised site layout plan received on the 10<sup>th</sup> December, 2024 (Dwg No. 02-A).</li> </ul>
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2)	Roadside building line setback located at the northeastern corner of the retail complex shall match the roadside setback as that of the post office and shop unit.
3)	<p>a) All recommendations in the Road Safety Audits (Stage 1 &amp; 2) received on 6<sup>th</sup> November, 2024 and 10<sup>th</sup> December, 2024 shall be implemented in full.</p> <p>b) All road markings as indicated on the revised site layout plan received on 10<sup>th</sup> December 2024 shall be agreed with the Area Roads Engineer with any amendments submitted for the written agreement.</p>
4)	Proposed alignment of the footpath along the roadside frontage of the site and how this connects/cojoins with the existing footpath infrastructure to the north and south of the development site shall be submitted for written agreement.
5)	Comprehensive boundary treatment plan to be agreed.
6)	Construction Management Plan to be submitted and agreed.
7)	Storm drainage design details to be agreed.
8)	All service cables shall be located underground, ducting to facilitate the provision of broadband infrastructure to be provided and 3 no. car parking spaces shall provide EV charging points.
9)	Waste Management Plan to be agreed.
10)	Water supply and foul effluent disposal shall be via. the respective existing public networks.

## 4.2. Planning Authority Reports

### 4.2.1. Planning Reports

- The **Case Planner** in their **first report** considered the principle of development, siting and design, access, public health and appropriate assessment and recommended that FI be requested requiring the relocation of the post office and store area, redesign of eastern elevation, revised site layout in accordance with



DMURS, Road Safety Audit and documentary evidence of legal title to make the planning application.

- Donegal County Council requested FI on 12<sup>th</sup> June 2024. On 11<sup>th</sup> October 2024 and again on 2<sup>nd</sup> December 2024 DCC sought outstanding FI items. A request for revised public notices issued on 3<sup>rd</sup> January 2025 and 16<sup>th</sup> January 2025.
- The **Case Planner** in their final report of 18<sup>th</sup> February 2025 and having considered the FI submitted recommended that permission be granted subject to 10 no conditions. The notification of decision issued by Donegal County Council reflects this recommendation.

#### 4.2.2. Other Technical Reports

- **Building Control** – No stated objection subject to conditions set out in the report.
- **DCC Road Design (x 4)** – The reports note that as the application was not issued to Road Design when the original application was received that it is difficult to request additional information at this stage. Reports request FI in relation to details of footpaths (cycleways if appropriate) in compliance with DMURS, drainage gullies should be altered to prevent water ponding behind raised table, Road Safety Audit to demonstrate that a fuel tanker has the necessary forecourt area to safely navigate within the proposed development, visibility splays, SuDs to be considered in the drainage design, loading bay to be relocated, the kerb along the frontage should be installed parallel to the existing road edge and the carriageway should be narrowed to 3.125-3.250M in accordance with DMURS, provision of appropriate facilities for vulnerable road users along the entire frontage of the proposed development, raised tables to be constructed as per TII Standard Construction Detail CC-SCD-05145, proposed bollards should be relocated to the front of the footpath along the entire frontage of the development to prevent illegal parking which will obstruct forward visibility at the proposed junctions and applicant should incorporate appropriate permeability link from west to east on the N56, a Road Safety Audit Stage 1 & Stage 2 to be carried out on the updated design and any items identified should be incorporated into the detailed design and a further Stage 3 Road Safety Audit.
- **DCC Area Engineer** – Requested FI in relation to a revised loading bay layout, HGV auto tract analysis of turning manoeuvres, footpath along frontage of the site

to be kerbed to road edge and appropriate bollards to be located on the carriageway side of the footpath to prevent parking.

#### 4.3. Prescribed Bodies

##### 4.3.1. Transport Infrastructure Ireland (x4)

- The application is at variance with official policy in relation to control of development on/affecting national roads, as outlined in the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities (2012), as the proposed development by itself, or by the precedent which a grant of permission for it would set, would adversely affect the operation and safety of the national road network.
- The RSA Stage 1 and 2 identified four road safety issues with the proposed development, and the design team has accepted the identified issues and proposed measures with alternative measure proposed for problem 3.4. A revised layout has been submitted, which doesn't appear to address the issues identified in RSA Stage 1 and 2 (Problems 3.5 and 3.6).
- 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.
- With reference to the further information submitted in connection with the above planning application TII advise that the Authority's position remains as set out in their letter of 20<sup>th</sup> November 2024

4.3.2. **HSE Environmental Health Service** - Given that the above proposal intends to connect to the existing public sewer, Irish Water/Donegal County Council Sanitary Services should be referred to for further comment.

4.3.3. **National Roads Office** – States the application is within Creeslough urban. Any application that directly impacts any element of the national road must demonstrate that any change proposed is compliant with applicable standards and the proposed change approved as set out by TII publications.

#### 4.4. Third Party Observations

- 4.4.1. **Planning Application** - There are 30 no observations recorded on the planning application from Jamie Harper, Mary Doherty, Donna Harper, Anne Nicholls, Derek Martin, Ann Marie Boyle, Leah Clarke, Georgina Moore, Carmel Hodgriss, Caroline Peoples, Matt McGranaghan, Anthony Harper, Rosie Harkin, Liam Cannon, Charlie Flood, Aoife & John Boyle, Willie McCourt, Maggie O'Donnell, Margaret O'Donnell, Margo O'Donnell, John & Margaret McFarlane, Killian Flanagan, Kathryn Russell & Others, Hugh Harper, Charles O'Donnell, Aine Flanagan, Noreen Monaghan, Niamh McLoughlin, Donna McColgan and Siobhan Walsh.
- 4.4.2. The issues raised relate to the scale of the scheme, traffic impact, insensitive choice of materials, insensitive memorial design, visual impact, consideration of an alternative site, there should be no development on the site, there was no public consultation, anti-social behaviour, misleading communication from Donegal County Council, site should be handed over to the bereaved families, noise impact, location of underground petrol storage tanks, colocation of shop and memorial is an insensitive after thought, inappropriate design for a rural village, ongoing investigation should finish before site is developed, proximity to N56, memorial is meaningless, legal interest in the site, alternative sites should be considered, scheme not in keeping with the character of the area and boundary treatment to take account of light impact
- 4.4.3. **Further Information** - There are 17 no observations recorded on the planning file in response to the FI from Derek Martin, Donna Harper, Christine Evans, Mary Doherty, John & Margaret McFarlane, Caroline Peoples, Carmel Hodgriss, Paddy Gallagher, Nolene & Adrian McAuley, Phoenix Law on behalf of Aine Flanagan, Shauna Gallagher, Derek Martin, Caroline Lauder and Marie Louise MacLeod), Jamie Harper, Anthony Harper, Leah Clarke, Liam Cannon, Ann Marie Boyle, Charlie Flood and Hugh Harper.
- 4.4.4. The issues raised relate to traffic safety, insensitivity of the scheme to the bereaved, safety concerns, environmental impact, premature, Stardust was never rebuilt, technical concerns in relation to footpaths and residential amenity, there is a €13.5 million fund for Creeslough, collective owners are still in negotiation with the insurers so a decision to build by a single party is premature, management company was not consulted and site is too small to provide a safe environment.

## 5.0 Planning History

5.1. There is no evidence of any previous appeal on this site. The following planning history has been provided with the appeal file:

- **Reg Ref 96/612** - Planning permission granted for the erection of canopy and refurbishment of petrol filling station.
- **Reg Ref 00/2902** - Planning permission granted for demolition of existing garage building and construction of 16 number holiday apartments, petrol filling station and shop.
- **Reg Ref 03/2267** – Planning permission granted for an externally operated ATM.
- **Reg Ref 22/50288** - Planning permission granted to Vivo Shell for retention permission for (i) existing storage container (ii) amendments to shop floor layout (iii) change of use of two number apartments to commercial use and permission for (a) change of use of portion of existing shop to an off licence, (b) change of use of existing store to a post office, (c) construction of a storeroom and associated site works

## 6.0 Policy Context

### 6.1. Climate Action Plan 2024

6.2. The Climate Action Plan 2024 sets out the measures and actions that will support the delivery of Ireland's climate action ambition. Climate Action Plan 2024 sets out the roadmap to deliver on Ireland's climate ambition. It aligns with the legally binding economy-wide carbon budgets and sectoral ceilings that were agreed by Government in July 2022. Ireland is committed to achieving climate neutrality no later than 2050, with a 51% reduction in GHG emissions by 2030. These legally binding objectives are set out in the Climate Action and Low Carbon Development (Amendment) Act 2021.

6.3. **Climate Action Plan 2025** builds upon last year's Plan by refining and updating the measures and actions required to deliver the carbon budgets and sectoral emissions ceilings and it should be read in conjunction with Climate Action Plan 2024.

## 6.4. Development Plan

- 6.4.1. The operative plan for the area is the **County Donegal Development Plan 2024-2030**. Creeslough is defined as a Rural Settlement in the settlement Hierarchy of the County under the Core Strategy. Relevant policies are as follows:

**Objective S-O-5** - *To prioritise regeneration and renewal of the County's towns, villages and rural areas in order to support vibrant and strengthened communities and drivers of economic growth.*

**Policy CS-P-1** - *That within the boundaries of settlements identified Settlement Framework boundaries, applications for development will be assessed in the light of all relevant material planning considerations including any identified land use zonings, availability of infrastructure, relevant policies of the Development Plan/Local Area Plan as applicable, other regional and national guidance/policy and relevant environmental designations.*

**Policy ED-P-9** - *It is a policy of the Council that any proposal for economic development use, in addition to other policy provisions of this Plan, will be required to meet all the following criteria:*

- a) It is compatible with surrounding land uses existing or approved;*
- b) It would not be detrimental to the character of any area designated as being of Especially High Scenic Amenity (EHSA);*
- c) It does not harm the amenities of nearby residents;*
- d) There is existing or programmed capacity in the water infrastructure (supply and/or effluent disposal) or suitable developer-led improvements can be identified and delivered;*
- e) The existing road network can safely handle any extra vehicular traffic generated by the proposed development or suitable developer-led improvements are identified and delivered to overcome any road problems;*
- f) Adequate access arrangements, parking, manoeuvring and servicing areas are provided in line with the development and technical standards set out in this plan or as otherwise agreed in writing with the planning authority;*
- g) It does not create a noise nuisance;*

- h) It is capable of dealing satisfactorily with any emission(s);*
- i) It does not adversely affect important features of the built heritage or natural heritage including natura 2000 sites;*
- j) It is not located in an area at flood risk and/or will not cause or exacerbate flooding;*
- k) The site layout, building design, associated infrastructure and landscaping arrangements are of high quality and assist the promotion of sustainability and biodiversity;*
- l) Appropriate boundary treatment and means of enclosure are provided and any areas of outside storage proposed are adequately screened from public view;*
- m) In the case of proposals in the countryside, there are satisfactory measures to assist integration into the landscape;*
- n) It does not compromise water quality nor conflict with the programme of measures contained within the current north western river basin management plan.*

**Policy TV-P-6** - *That proposals for shopfronts shall, as appropriate:*

- a) Be of a high-quality design standard.*
- b) Respect the architectural characteristics of the subject building, in terms of scale, proportion, finishes, materials and relationship to upper levels.*
- c) Respect the existing streetscape and traditional shop fronts in the area in terms of scale, proportion, plot width, overall grain of development, arrangements of fenestration, facia treatment, colouring scheme, materials, and finishes.*
- d) Avoids the use of excessively scaled box facias, plastic canopies over shop fronts, external security shutters, brash colours, flashing or neon lighting.*
- e) Otherwise be in accordance with the policies contained within this Plan.*

6.4.2. **Chapter 16 – Technical Standards** sets out that the following will apply in respect of new **Petrol Filling Stations**:

- *Where appropriate a low wall, approximately 0.6m in height, shall be constructed along the road frontage in conjunction with appropriate measures to provide for the adequate enclosure and security of premises outside operating hours.*

- *A maximum of 2 road access points shall be provided for, which will be designed and constructed in accordance with TII Publications , as appropriate. The applicant shall submit a document demonstrating compliance with TII Publications as part of the planning application.*
- *No advertising or commercial signage shall obstruct visibility over the site access points or front boundary/wing walls.*

*A shop of up to 100 square metres net floor area may be allowed when associated with a petrol filling station. Where net retail space in excess of 100 square metres is sought the sequential approach to such development will apply.*

*In order to protect the carrying capacity of strategic routes, new petrol filling stations requiring direct access onto such routes, will not be considered outside the 60kph speed limit. This policy will apply to the strategic road network mapped in the Transportation Chapter.*

## **6.5. Natural Heritage Designations**

- 6.5.1. The appeal site is not located within any designated Natura 2000 sites. The Sheephaven SAC (Site code 001190) is c. 320 m to the east of the appeal site.

## **7.0 EIA Screening**

- 7.1. I note the concerns raised in the appeal submission that procedural violations arise as there has been a failure to conduct an EIA prior to the commencement of this project, a project that is described as having potentially harmful environmental effects (including climate change, disaster and accident risks). In the absence of an EIA, it is submitted that concerned citizens are denied the opportunity to participate fully in the decision-making process meaning that a fair balance has not been struck under Article 8 of the European Convention on Human Rights Act (ECHR).
- 7.2. 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.

- 7.3. Having regard to the EIA Screening Determination for this case, I am satisfied that no issues arise in relation to ECHR that would preclude the Board from determining this appeal.

## 8.0 The Appeal

### 8.1. Grounds of Appeal

- 8.1.1. There are 2 no appeals recorded on the appeal file from (1) Damien Tansey Solicitors on behalf of Hugh Harper & Others and (2) Phoenix Law Human rights Lawyers on behalf of Aine Flanagan & Others. The issues raised in each appeal may be summarised as follows:

#### 8.1.2. ***Damien Tansey Solicitors on behalf of Hugh Harper & Others***

- **Vivo / Shell Limited** – The applicants failed in their obligations to safely store, manage and use these hazardous materials and evidently, this had catastrophic consequences. The applicants cannot be granted permission to store, manage and use these volatile materials until a full investigation has been completed in respect of their failure to safely store, manage and use these volatile materials in their building prior to the explosion.
- **Ongoing Investigations** – The decision is untimely and premature. Investigations are still on going to determine the cause of the explosion. Material evidence on this site must be preserved and maintained until the various investigations have concluded. The bereaved family have also requested that the Government establish a Statutory Inquiry and until same has concluded, the site should not be tampered with in any way.
- **Inquests** – Inquests into the deaths of the 10 victims have not yet occurred. If permission is granted it will result in the destruction of crucial evidence and this would constitute an unacceptable obstruction of justice.
- **Mass Tragedy** – It is against public policy to rebuild a development where a mass tragedy has occurred. Noted the Stardust Nightclub and the Grenfell Tower were never rebuilt. The Creeslough explosion is akin to those tragedies. The proposed



memorial of ten steel rods is tactless and cannot be allowed. A suitable memorial should be erected at a suitable location on the site after detailed consultation and discussions with all the interested parties and most especially the bereaved.

- **Aesthetics and Incompatibility with the Community** – The construction of the proposed service station would negatively affect the character of the village of Creeslough which is primarily residential. The modern industrial style of the proposed new structure as well as large signage, bright lighting and bulky structure, contrasts sharply with the existing low rise, residential buildings that define the area. The proposed large impersonal building is akin to a service station adjacent to a motorway and is not a suitable structure for a remote rural village. The proposed service station will significantly disrupt the visual character and aesthetic harmony of Creeslough, and it is crucial that new developments are designed to complete the existing environment and maintain the character of the environment that is such an integral part of life in Creeslough.
- **Safety Concerns / Increased Traffic Pollution** – The addition of a petrol station in this location will inevitably lead to an increase in vehicular traffic including heavy fuel tankers and cars stopping for fuel. The resulting traffic congestion and idling vehicles will exacerbate air pollution in the area, significantly reducing air quality for residents, visitors and nearby businesses. Additionally, the road which will provide access to the proposed service station is narrow and the expected increase in traffic flow will likely cause significant congestion and dangerous driving conditions. Therefore, the increased traffic raises serious safety concerns. Moreover, pedestrians and cyclists in the area may also be at a greater risk due to increased vehicular activity, this is particularly concerning for local residents, children and nearby businesses whose will have to navigate through congested traffic, increasing the likelihood of road traffic accidents.
- **Oral Hearing** – An Oral Hearing (OH) was requested.
- **Conclusion** – Requested that appeal is upheld and permission refused.

8.1.3. Damien Tansey Solicitors on behalf of Hugh Harper & Others (Appellant) submitted a further letter on 23<sup>rd</sup> March 2025 requesting that a decision is made in respect of the development only after an OH.

8.1.4. ***Phoenix Law Human rights Lawyers on behalf of Aine Flanagan & Others***

- **Background** – The application is premature as there are outstanding investigations pertaining to the site including a Garda Criminal Investigation and review by the HSA. Safety concerns remain with any future development at this location. It is submitted that a public inquiry is necessitated. Reference is made to a letter issued by Donegal County Council giving an undertaking that no redevelopment would occur until the investigations have concluded (copy provided).
- **Proposed Memorial** – The site should be a place of remembrance and reflection. No consultation took place with the families in relation to the memorial. Submitted that the design of the memorial is insensitive and its location in a small corner beside a bike rack is unacceptable. The scheme is inconsistent with other such locus of mass tragedy such as the Stardust and Grenfell sites that were not rebuilt. Submitted that the proposal is a flagrant departure from public policy which has long since held against the re-development of buildings and structures at the centre of mass tragedy.
- **European Convention on Human Rights (ECHR)** – Detailed legal submissions and concerns have been raised throughout this appeal that the legal obligations of both Donegal County Council and An Bord Pleanála, as organs of the State, are not confined to Planning Legislation. It is stated that under Section 3 of the European Convention on Human Rights Act 2003 (ECHR), any public body is prohibited from acting in a manner which is inconsistent with ECHR obligations imposed on the State. The Planning Authority breached Article 8 of the convention and this must be cured by the Board. An Bord Pleanála is an organ of the state and therefore Article 8 of the Convention applies. It is the appellants submission that the exercise of Article 8 family and private life rights may extend in certain situations after death and the right to grieve free from interference or impediment. In the context of an organ of the state considering a proposed redevelopment of the site of a disaster and mass loss of life, the Article 8 rights of the families of those victims are engaged. This procedural obligation requires that, in particular, the applicant be involved in that process and that the competent authorities perform a proportionality assessment of the competing interests at stake and give consideration to the relevant rights secured by Article 8 and that there must be procedures through which the views of the public can be taken onto account in the

decision-making process. The positive obligation in this particular case was not discharge by advertisement and the receipt of written representation by publication in the usual way. It requires much more, including full public hearings, the taking of evidence and submission and the right to cross examination. Due to the unavailability of such facilities before the Planning Authority, the hearing of this appeal must include these elements.

- **EIA** – The application and the decision of DCC breach the EIA Directive. In the absence of a screening assessment an EIA is required. Concern is raised in relation to significant adverse environmental effects associated with the scheme on human health, climate change, risks of major accidents and / or disasters and impact to cultural heritage (trauma) and that there may also be transboundary issues. The petrol station is the penultimate step in the fuel being inevitably burnt adding to carbon emissions and will thus have a significant impact on the climate over the lifespan of the petrol station, particularly when viewed within the context of Donegal's carbon emissions and its climate action plan which set out a roadmap to 2025 towards taking decisive action to halve emissions by 2030 and reach net zero no later than by the end of 2050 and statutory requirements under the climate Act 2015. Submitted that the development should be subject to EIA and that the Board should request same. Further stated that as a fundamental aspect of the privates lives of the appellants are engaged, and because there was no EIA carried out in the circumstances where the planning application had potentially harmful environmental impacts (including climate change, disaster and accident risks) there is an obligation on the relevant organ of the state (DCC and ABP) to assess whether the positive obligation to take steps to protect the Article 8 rights of the families arise. In the absence of an EIA, concerned citizens are denied the opportunity to participate fully in the decision-making process.
- **Major Accident & Hazardous Directive** – Additional procedures apply in this case as a grant of permission is likely to increase the risk of a major accident. The Planning Authority has failed to consult with relevant authorities under Section 34(8) of the Planning and Development Act as amended. Reference is made to the Commission for Regulation of Utilities, An Garda Siochana, Coroner for Donegal, HSA, Fire Authority, Department of Justice and Retail Licensing Authority in this regard.

- **Oral Hearing** – An OH was requested as the development raises issues of national interest and social importance to the state. Submitted that the positive obligation in this particular case was not discharged by advertisement and the receipt of written representation by publication in the usual way. It requires much more, including full public hearings, the taking of evidence and submission and the right to cross examination. Due to the unavailability of such facilities before the Planning Authority, the hearing of this appeal must include these elements.

## 8.2. Applicant Response

8.2.1. The first party response to the appeal has been prepared and submitted by Michael Friel Architects & Surveyors Ltd. and may be summarised as follows:

- Alternative sites were looked at within the Town boundary of Creeslough village, however, due to the topographical challenges which existed with many of the sites, they proved not to be viable options
- Consideration was given by the applicants to provide a commemorative piece of architecture at a central location within the site and was arrived at after much discussion. It was further considered to leave a space within the site to allow family members (if they wish) to develop an area to commemorate those who died. The area identified is a quiet space and allows people to visit without the public glare.
- The footprint of the proposed building has been in the main part kept off the footprint of the previous building and has been rotating by 90° and moving it towards the north of the site.
- The local Authority have shown how they considered all of the matters pertaining to the application in their Planner's report which gives a synopsis of the matters which were considered.
- It is fully accepted that there is an on-going investigation into the tragedy, however the applicants have been informed in writing by An Garda Síochána that the property has been returned to them as the on-site investigations have concluded. It is fair to conclude as per the letters which the owners have received that the on-site investigations have been concluded.
- The application as decided upon meets the local and national planning policies as the site previously had a shop, apartments & forecourt within it and the proposal

now is to re-erect an up to date, lower density development to meet the needs of the Creeslough Community into the future. The applicants have run a shop in Creeslough for in excess of 40 years and the location of this proposed development has had a shop located within it since the 1950's which is a consideration in regards to this application as it establishes the principle of a shop and fuel services at this location.

- The scale of the building is smaller than the previous three storey building. The proposed scheme has a smaller overall floor area, the ridge height of the building is much reduced as it has gone from a three storey building to a 1.5 storey building. The scheme will not disrupt the "visual character and aesthetic character of Creeslough" but rather compliment the residential amenities of the area through the provision of a new filling station, shop, post office and associated services.
- The site will be cleared and the existing tanks which are single skinned tanks will be removed from the site and replaced with new bunded tanks, this work is proposed to take place by Petroleum Installation Solutions (PIS) to ensure that the work complies with all relevant legislation and regulations and will include a vented system. It is proposed that all of the pipes used in the construction of the fuel system will be double skinned with fully sealed manhole covers and containment systems. The installation of all of these systems will be undertaken by PIS and shall be tested and certified prior to their first use, thereafter the system will be periodically tested by the installers so as to ensure that the system is working well.
- The application was made by the applicants in good faith seeking to re-erect a shop on a site which previously hosted the shop. This would be beneficial to the community whilst also allowing the people of the area to avail of services which are currently not available within the village such as permanent shop, fuel, a deli counter etc.
- The proposal to erect an Architectural installation in a prominent location within the site is a genuine effort to remember those who lost their lives so that their memory is incorporated into the proposed development.
- The assertion which have been made in regards to the need for an EIAR, have been dealt with by the Local Authority who carried out a screening report for an Appropriate Assessment (AA). This means that if it was deemed by the Planning

Authority not to meet the threshold which would require an AA to be carried out then it would therefore not require the more rigorous EIAR to be carried out either.

- The building type will assimilate well into the local environment.
- The investigations which have taken place on the site have been concluded by the various statutory bodies in as far as the applicants are aware and the site has been returned to the applicants who are the owners of the site.
- The principle of a shop at this location has been established through the granting of the original permission and therefore the Board Pleanála should accept that the Local Authorities decision was taken after much consideration and deliberation and in accordance with the Planning and Development Act 2000 (as amended) and the decision to grant should stand.

### **8.3. Planning Authority Response**

8.3.1. Donegal County Council in their response to the appeal set out the following as summarised:

- The commercial development is proposed to offer local services including a shop and post office to the community and visitors to the area adding to the economic vibrancy of the village.
- The proposed one-way system associated with traffic access/egress within the proposed development is a more managed way than the previous arrangement at this location which had an open unregulated frontage along the entire roadside of the site. The planning authority assessment of the RSA did not consider that the proposed vehicular entrance and egress points would lead to traffic conflict with existing entrances on the other side of the N56.
- In relation to Article 8 ECHR, it is submitted that the Planning & Development Act 2000 (as amended) requires that in making a decision on a planning application the planning authority is restricted to consider the proper planning and sustainable development of the area.
- The planning authority considered the proposed development for a replacement filling station on a site area of 2.47 hectares was below the threshold set out in Schedule 5, 10(b)(iv) that a Preliminary Screening for EIA was not required.

- Part 11 'Major Accidents Directive' of the Regulations does not apply in relation to the proposed development as the development does not fall within the scope of Section 34(8)(e) of the Act.
- In relation to the prematurity of the proposal given the ongoing criminal investigation, the planning authority had strict regard to the statutory requirements as defined in the PDA for making a decision on a planning application.

#### 8.4. **Observations**

8.4.1. There are two observations recorded on the appeal file from (1) Micheal O Kane & Associates and (2) Ferrys LLP Solicitors on behalf of Ann Marie Boyle. The issues raised in both may be summarised as follows:

##### 8.4.2. ***Micheal O Kane & Associates***

8.4.3. An Bord Pleanála is asked to agree that:

- Vital information regarding the Fuel Tanker "swept path" has not been provided
- Such information should have been available for the benefit of the Roads Dept., and the Planning Dept., of the Planning Authority (Donegal County. Council).
- The Planning Authority were not able to assess this information as satisfactory i.e. sustainable in accordance with proper planning controls (or alternately to perhaps assess it as unsatisfactory).
- Consequently, this vital information regarding the "swept path" of the Fuel Tanker is not available for review in the An Bord Pleanála appeal exercise for An Bord to determine satisfaction or not.

8.4.4. On the basis of these above grounds for concern and in the particular context of the background history of this site, the application should be refused permission.

8.4.5. Concerns are raised in relation to forecourt infrastructure as follows:

- 1) the need for separate Manhole chambers over separate compartments of u/g tanks (i.e. a double compartment tank requires 2 no. Manhole chambers etc.)
- 2) the need to determine the position of the various Fill Line connections to load the various fuel types into the various fuel type compartments of the Fuel Storage Tanks

- 3) the location of a Fuel Delivery Tanker Parking Stand, which may be determined by the position of the Fill Line connections. (Note - sometimes the best location of the Parking Stand may determine a position for the Fill Line connections),
- 4) the swept path of Fuel Delivery Tanker from when it drives into the Petrol Filling Station site, then to park on its Parking Stand, then to drive away to exit the site (Note - sometimes the swept path may determine the location of the Parking Stand, which then may determine the position of the Fill Line connections).

8.4.6. Any disregard at the design stage for the basics of standard infrastructure at this proposed Petrol Filling Station site in Creeslough should be identified at the planning approval stage. If recognised faults are considered likely contributory factors to serious risks, the proposed development should be deemed unsustainable (and not left for post construction Risk Assessment). This position warrants the Refusal of Planning Permission for this proposed development.

**8.4.7. *Ferrys LLP Solicitors on behalf of Ann Marie Boyle***

- An Bord Pleanála is obliged to carry out its functions in compliance with the European Convention of Human Rights, with due regard to the Constitutional rights of parties to the appeal and to interpret the planning acts in accordance with the European Convention on Human Rights Act 2003.
- To allow the redevelopment of this site in the manner proposed is in breach of the observers' human rights, in particular their rights under Article 8 of the Convention - right to respect for private and family life - specifically, a right to grieve and the state is required to respect and vindicate same.
- If the Board was to find in favour of the applicant (Vivo Shell) and dismiss the appeal, the Board would be finding in favour of the rights of a corporate entity in respect of its freedom to make money over our client's right to grieve.
- A number of state bodies have yet to conclude investigations into the causes of the explosion. Therefore, should the Board refuse to grant the appeal requested that a stay is applied to the proposed development so that the said investigations can be brought to a conclusion.
- An appropriate memorial should be put in place, encompassing the entire site.



## 8.5. Further Responses

8.5.1. The two observations received from (1) Micheal O Kane & Associates and (2) Ferrys LLP Solicitors on behalf of Ann Marie Boyle were cross circulated to the Vivo Shell Limited (Applicant), Donegal County Council (Planning Authority), Damien Tansey Solicitors on behalf of Hugh Harper & Others (Appellant), Phoenix Law Human Rights Lawyers on behalf of Aine Flanagan & Others (Appellant), Ferrys LLP Solicitors on behalf of Ann Marie Boyle (Observer) and Michael O’Kane & Associates (Observer). The following responses, and additional comments, as summarised were received:

### 8.5.2. Donegal County Council (Planning Authority)

- **Michael O’Kane & Associates** - The Planning Authority considered that the relatively small number of refuelling deliveries on any particular month will be specifically managed by the filling station owners/management to co-ordinate times of fuel deliveries to less busier times of the day and to put a management plan in place for deliveries. In relation to the design of the underground tanks, the Planning Authority considers that these issues are dealt with specifically under other Codes rather than Planning such as Building Regulations.
- **Ferrys LLP Solicitors on behalf of Ann Marie Boyle** - Although the Planning Authority fully acknowledges the tragic events at the site, it does not agree with the grounds of the appeal in the submission and considers it imperative that the planning system finds an appropriate balance for all parties.

### 8.5.3. Damien Tansey Solicitors on behalf of Hugh Harper & Others (Appellant)

8.5.4. **Michael O’Kane & Associates** - Echo, agree and endorse the observation and submission in respect of the following:

- **Swept path of the fuel tanker** - The swept path of the fuel tanker has not been detailed in the application. Site closures will likely result in fuel tankers having to wait in the N56 resulting in increased traffic and road traffic accidents on the N56.
- **Location of the fuel delivery tanker stand** – The location of the fill manhole determines that the fuel tanker will have to take a travel path in an anticlockwise direction. This is against the proposed travel path (clockwise) of customer vehicles.

- **Inadequate proposed number of fuel storage tanks** – There are only two underground tank manholes concerns on the plans submitted. As the fuel station is supplying five separate fuels, there should be five separate underground tank hole covers to store these five fuels.
- **Inadequate underground fills termination pipework for connection to the underground fuel storage tanks** – There is one fill manhole, and this will have to accommodate five termination pipework connections for fill lines and one termination pipework connection for a vapour recovery line. There should be at least two fill manholes and one separate manhole for the vapour recovery line.

8.5.5. ***Ferrys LLP Solicitors on behalf of Ann Marie Boyle*** - Echo, agree and endorse the observation and submission in respect of the following:

- **Breach of Human Rights Law** – Not against development, progress or indeed the future but they are strongly opposed to the premature erasure of the past. If this appeal is dismissed and the planning application is granted, both Donegal County Council and An Bord Pleanála will be in breach of Section 3 of this Act.
- **Breach of Section 34(8) of the Planning & Development Act 2000 (increased risk of major accident)** – A fatal explosion occurred on this site under the control of the same company who has applied to rebuild the service station on the same plot of land. Therefore, this threshold is most definitely met and moreover, appropriate consultation did not occur.
- **Negative economic impact on Creeslough** – The development could potentially reduce the market value of the houses and buildings in the village of Creeslough and deter potential homebuyers, renters and tourists and could lead to a decline in the standard of living for its residents.
- **Lasting psychological & emotional harm** – Communities are built not only with bricks but with shared values. One of those values is remembrance.
- **Preservation of the site for ongoing investigations** – The site is still under investigation. Any development is not only premature but profoundly irresponsible until these investigations are concluded.
- **Conclusion** - In the event that permission is granted it is requested that a stay be granted until the State Bodies have concluded their investigation and until there

has been appropriate and exhaustive consultation with the families of those that lost their lives and the community at large regarding the appropriate memorial treatment to be included in the development.

#### 8.5.6. **Michael O’Kane & Associates (Observer)**

- ***Ferrys LLP Solicitors on behalf of Ann Marie Boyle*** - Planning permission should be refused and there should be no commercial development on this site. The site should be acquired by the Local Authority with the objective of installing a memorial garden.

8.5.7. The observations received from Micheal O Kane & Associates was also issued to **Transport Infrastructure Ireland**. The following response was received as summarised:

- Having regard to the site location within a reduced 50kph urban speed limit on the national road, TII has no other specific observations to make on the proposed development and appeal.

## 9.0 **Assessment**

9.1. This assessment is based on the plans and particulars submitted to DCC on 18<sup>th</sup> April 2024 as amended by further plans and particulars submitted to DCC by way of further information on the 27<sup>th</sup> September 2024, 6<sup>th</sup> November 2024 and 10<sup>th</sup> December 2024 and revised public notices submitted on the 15<sup>th</sup> January 2025 and 23<sup>rd</sup> January 2025.

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

- Principle
- Design & Visual Impact
- Traffic Impact
- Memorial
- European Convention on Human Rights Act (ECHR)

- EIA
- Waste Water Treatment (New Issue)
- Conditions
- Other Issues

### **9.3. Principle**

- 9.3.1. This is an application for the redevelopment of a brownfield site comprising demolition of the remaining buildings within the site being cleared and the erection of a commercial / retail / filling station development to include a shop, post office, off license, memorial in two distinct locations within the site, car parking and signage (as amended).
- 9.3.2. The site is located within the settlement framework boundary of Creeslough on the site of the former Vivo Shell filling station, commercial unit and apartment development which was damaged as a result of an explosion in October 2022. It is noted that the previous development was similar in terms of uses to that now proposed save for fact that there were residential apartments in the previous scheme and there are no residential apartments proposed in the current planning application before the Board.
- 9.3.3. This is a brownfield site within the village envelop of Creeslough and taken together with the former established use on this site, it is considered that the proposed scheme (as amended) is acceptable in principle subject to the acceptance or otherwise of site specifics / other policies within the development plan and government guidance.

### **9.4. Design & Visual Impact**

- 9.4.1. Concern is raised in the appeal that the proposed service station would negatively affect the character of the village of Creeslough which is primarily residential. It is submitted that the proposed large impersonal building is akin to a service station adjacent to a motorway and is not a suitable structure for a remote rural village. Concern is also raised that if the proposed service station was granted planning permission it would be a concerning precedent for future commercial developments in such areas which would further erode the residential character of the area.

- 9.4.2. The applicant in their response to the appeal submits that the barrel roofed building is similar in design to the barrel roofs of the glamping pods within the Wild Atlantic Camp (across the road) and that the building contains a streetscape which will incorporate local stone on the building façade and which will provide for a contemporary building which will have traditional elements contained on the roadside elevation. It is further stated that the scale (floor area and height) of the building is smaller than the previous three storey building and that this current proposal does not contain any residential element.
- 9.4.3. The proposed building is a portal frame with a barrel roof and will provide space for a shop, post office, storage associated with the shop, off-license, deli and toilets including accessible toilets. The building will have a maximum ridge of 7.84m and a gross floor area of 812 sq.m. The exterior will have a mix of finishes comprising of standing seam roof (RAL 7014), Kingspan type architectural wall panelling, locally sourced Muckish natural stone and anthracite grey aluminium windows and doors.
- 9.4.4. While the building is described as contemporary in its design I am concerned with its generic appearance and that perceived functionality has been the primary consideration in the design proposal. There is very little evidence that the scheme has had any meaningful regard to its context that being a rural village at a prominent location along the main route through Cresslough. Accordingly, I share the concerns raised by the appellants that the design and scale of the proposed service station is inconsistent with the surrounding buildings and the overall character of Cresslough. The scheme has a distinctly industrial appearance and its modern, cumbersome style as well as the large signage contrasts sharply with the distinct rural scale and nature of Cresslough.
- 9.4.5. As observed on day of site inspection, the northern / Dunfanaghy direction of the village is marked by St. Michael's Catholic Church, known locally as 'the Chapel' and designed by Derry architect Liam McCormick in 1971. This building is notable for its unique design, which mimics the shape of the nearby table mountain of Muckish and acts as a distinguished architectural anchor at the entrance / exit of the village. The appeal site, in my view, is suitably placed to mark the entrance / exit at the southern / Letterkenny direction of the village and that any application on this appeal site should be of the highest architectural merit while demonstrating a clear understanding of its context. The amendments to the roadside elevation, made in response to the request

for FI are noted but are considered insufficient to overcome the overall poor design of the scheme.

- 9.4.6. I would draw the Boards attention to Objective S-O-5 of the County Donegal Development Plan 2024-2030 that *seeks to prioritise regeneration and renewal of the County's towns, villages and rural areas in order to support vibrant and strengthened communities and drivers of economic growth*. As observed on day of site inspection, Cresslough is a strong, vibrant community that fosters and promotes local economic development such as the Wild Atlantic Glamping site directly across the road from the appeal site. Such economic drivers are to be encouraged and promoted. In the context of Objective S-O-5 I am concerned that to permit the proposed scheme (as amended) at this prominent location could have such a negative effect on the visual amenity and local character of Cresslough as to negatively impact on the wider, long-term regeneration and renewal of the village.
- 9.4.7. The benefits of well-designed buildings and spaces are more than site specific, and for villages such as Cresslough can be a driver for wider positive influence. The importance of an appropriate design response cannot be undervalued at this site. While the functionality of the building is important it should not be to the detriment of the visual character of Cresslough. A suitably designed scheme will balance functionality with design without compromising the visual aesthetic of Cresslough.
- 9.4.8. Refusal is recommended on the grounds that the overall architectural treatment, scale and design of the scheme (as amended), would be out of character with its surroundings, would seriously detract from the architectural character and setting of Cresslough and of the streetscape and approach to Cresslough from Letterkenny generally.

## **9.5. Traffic Impact**

- 9.5.1. Concern is raised throughout the appeal file with regard to the increased traffic movements as a result of the proposal and associated safety concerns. These concerns were highlighted in the reports of DCC Road Design and informed the request for FI issued by DCC in relation to a revised site layout in accordance with DMURS and the submission of Road Safety Audit (RSA). TII made 4 no. separate submissions on the planning file highlighting concerns with the potential impact of the

scheme on the capacity, safety or operational efficiency of the National Road network in the vicinity of the site. TII requested the submission of a road safety audit, and in line with the comments of the DCC Road Design, that any recommendations be incorporated by amendment to the existing plans and application or as conditions on the permission, if granted. Again, these submissions informed the request for FI issued by DCC.

- 9.5.2. Access to the proposed development is from the N56. The previous premises had an open roadside frontage which was managed in an ad hoc manner. The current application proposes to implement a one-way system which will see vehicles entering on the southern or Letterkenny side of the site and existing on the northern or Dunfanaghy side of the site. The angular parking arrangement within the site as depicted on the site layout will assist in ensuring that the one-way system is implemented. The fuel pumps will be located in a central area and will allow for up to 4 vehicles to refuel at any one time. There will be no roadside parking. The speed limit at the location of this site is 50km/h and vision lines are of an adequate nature to ensure that safe stopping distances and appropriate vision lines are achievable without any obstruction. The relocation of the proposed loading bay to the west of the site and closer to the rear of the building has addressed concerns in relation to the creation of a traffic hazard associated with vehicular traffic leaving the forecourt area.
- 9.5.3. As pointed out by TII in their submission to the Board, the site access to the N56, national road, is within a reduced 50kph urban speed limit zone. I therefore agree with the Planning Authority that the proposed one-way system with separate access and egress from the proposed development will manage the flow of traffic in an acceptable way. An auto tracking analysis for a rigid delivery lorry was submitted in response to the further information. The RSA considered the operational condition of the road network and the circulation and proposed parking within the development site and concluded that there were no road safety issues. I am satisfied that the proposed development as amended will not give rise to any road safety issues.
- 9.5.4. In addition to the foregoing, detailed concern were raised in the observations to the appeal in relation to the location of the fuel delivery tanker stand (for Artic or Rigid units) and that the tanker travel-path will go against the proposed travel-path of customer vehicles, as proposed in the site layout plan i.e. going in a clockwise shape direction. It is stated that this will result in the site being closed down during the fuel

delivery events and adjacent car parking spaces may have to be kept clear. It is further submitted that if this is not managed it may result in fuel delivery tankers arriving at the site and waiting on the N56 causing traffic to have to make overtaking movements against oncoming traffic until a parked tanker can enter the site.

- 9.5.5. I agree with the Planning Authority that any risks associated with the emptying of the fuel interceptor tank can be managed onsite having regard to scheduling of time to carry out maintenance (to less busy times of the day / night) and through the use of the forecourt area between the removable bollards at roadside and the fuel pumping area. I am satisfied that this matter can be dealt with by way of a suitably worded condition.
- 9.5.6. The Donegal County Development Plan sets out the parking provision which is required at such a development in Table 16.8: Car Parking Standards. I note the Case Planners comments that the proposed nos. of parking spaces is an improvement to the previous filling station and shop. I am satisfied that the car parking proposed complies with the requirements of the plan.
- 9.5.7. Overall, I am satisfied that given the location of the appeal site and the layout of the proposed scheme together with infrastructure improvement proposals, that the vehicular movements generated by the scheme would not have a significant material impact on the current capacity of the road network in the vicinity of the site or conflict with traffic or pedestrian movements in the immediate area.

## **9.6. Memorial**

- 9.6.1. Significant concern is raised in both the appeals and throughout the multiple submissions and observations recorded on the appeal file that the proposed memorial comprising a green area and separate architectural installation is unsuitable in its location and design and that no consultation has taken place with interested parties and in particular the bereaved.
- 9.6.2. I note that the Planning Authority did not consider the proposed memorial in their assessment citing that they were precluded by Section 34 of the Planning and Development Act 2000 (as amended) from assessing the development proposal other than on the grounds of proper planning and sustainable development.



- 9.6.3. As set out in the public notices, the scheme includes “a space for a memorial garden”. The memorial element of the scheme is an integral part of the development for which permission is sought, and it cannot be set aside or separated out from the overall consideration and determination of development at this site.
- 9.6.4. I refer to the plans and particulars submitted and note that the memorial comprises two separate aspects as follows:
- **Green Area** – A small green area (45 sqm - 50 sqm) is to be left in the southwestern corner of the site, adjoining the proposed car parking spaces. It is submitted that this will allow for a respectful contemplative area to be reserved within the site. It is stated that no works other than the sowing of grass seed will be carried out as part of the development and if there is a plaque or monument to be erected it will be done so in consultation with the families of the deceased and the community.
  - **Architectural Installation** – The installation comprises 10 lit poles close to the entrance of the proposed shop fronting onto the N56 and that will be surrounded by a small wall which will act as a seating area. It is submitted that this *will represent the 10 persons who lost their lives at this location*.
- 9.6.5. The applicant states that “*much consideration and thought has gone into the application so as to be respectful towards all*”. While I note the applicant’s position in this regard, in terms of the revised layout and the inclusion of a memorial, I am concerned that the overall layout, scale and mix of uses proposed creates a relationship between competing uses that is incongruous and insensitive having regard to the recent history of the site.
- 9.6.6. The understanding of a site’s genius loci or unique sense of place is a corner stone of good planning and urban design. Such an understanding informs any physical intervention or design response and ensures that any built intervention is sensitively integrated into its surroundings while also respecting the unique character and history of place. In particular, the development of a memorial where the very objective of such is to serve as a suitable focus for the memory of something, such as a tragic event and loss of life as in this case, must be carefully and sensitively considered in terms of location, setting, scale, choice of materials, design and implementation. Often such considerations will necessitate consultation with the affected parties and the wider public.

- 9.6.7. The tragic events of October 2023 have changed the very fabric of Creeslough and in particular this site. These events have left a permanent scar on the collective memory of Creeslough and beyond and these cannot be set aside when considering the development of a memorial. Therefore, whether it is proposed to integrate the past into the redevelopment of the site, as in this appeal, or not, requires careful consideration and analysis. The resultant scheme should be respectful, accessible and readily discernible to all and should create a safe and contemplative space for those visiting for personal reasons. I am concerned that the scheme (as amended) before the Board has been unsuccessful in this regard. There is a clear conflict in the design and layout of the scheme whereby the architectural installation and the open space area appear to be incidental to the overall development. Having regard to the location of both memorials, whereby the open space is immediately adjacent to car parking and the architectural installation adjoins the vehicular exit, together with the significant pedestrian and traffic movement that will take place throughout the site when operational, serious concern is raised in relation to both the safety for those visiting the memorials and also the inappropriate siting of the memorial within the development (as amended) itself. Access for those visiting the memorial should be safe and unimpeded and I am concerned that this is not the case here.
- 9.6.8. In terms of the detailed design of the memorial it is taken that good design often doesn't require explanation, as its purpose and intent are clearly legible to all. However, in this case the evolution and design outcome together with the choice location within the scheme is, at best, disjointed and confusing. For a development use of this nature, it would not be unreasonable to expect a detailed architectural appraisal demonstrating the design evolution from inception to final design to be submitted with the scheme. This would have gone some way to assist in understanding the reasoning and nuances of the memorial proposed. In addition, and while not a requirement of the planning application process, the lack of public consultation given the particular circumstances in this case, is questionable. This application is silent in terms of both the design evolution and public consultation and this is unacceptable in planning terms.
- 9.6.9. This is a sensitive site that is marked by immense loss and emotional trauma. It holds a painful memory and failure to place adequate weight on this in terms of an appropriate design response to the memorial is concerning. While the competing uses

at the site are acceptable in principle, it cannot be to the detriment of a suitably designed and located memorial. I consider the memorial proposed to be incomprehensible and insensitive and I cannot support same. Refusal is recommended.

#### **9.7. European Convention on Human Rights Act (ECHR)**

9.7.1. I note the detailed legal submissions and concerns raised throughout the appeal that the legal obligations of both Donegal County Council and An Bord Pleanála, as organs of the State, are not confined to Planning Legislation. The appellant states that under Section 3 of the European Convention on Human Rights Act 2003 (ECHR), any public body is prohibited from acting in a manner which is inconsistent with ECHR obligations imposed on the State. The appellant further states that where an organ of the state is considering a proposed redevelopment on the site of a disaster and mass loss of life, such as in this case, the Article 8 rights of the families of those victims should be engaged. It is submitted that the positive obligation in this case was not discharged by advertisement and the receipt of written representation by publication in the usual way. It is stated that it requires much more, including full public hearings, the taking of evidence and submission and the right to cross examination. It is also submitted that if the appeal is dismissed and the planning application is granted, both Donegal County Council and An Bord Pleanála will be in breach of Section 3 of this Act.

9.7.2. Section 1 of the ECHR Act 2003 defines “*organ of the State*” as follows:

*“A Tribunal or any other body (other than the President or the Oireachtas or either House of the Oireachtas or a Committee of either such House or a joint Committee of both such Houses or a Court) which is established by law or through which any of the legislative, executive or Judicial powers of the State are exercised.”*

9.7.3. An Bord Pleanála, Irelands national independent planning body, is an organ of the State as it is constituted under the Planning and Development Act 2000 (as amended) and this is not disputed. The Convention rights that arise in this case, for example the right to grieve under Article 8 as referenced by the appellant, and Article 10, are already accommodated by the provisions of the Planning and Development Act 2000 (as amended), for example the right of public participation or the right to an

independent decision or the right to appeal the decision of the local authority. Likewise, the applicant also has Convention rights, and the appeal process governed by An Bord Pleanála, is the balance between them, where the planning views of all parties are considered and taken into account in the assessment of any proposed development.

- 9.7.4. Through the Planning and Development Act 2000 (as amended), An Bord Pleanála runs an accessible and impartial planning appeal system that has created a balance between the rights of all parties to the appeal by facilitating open and transparent public participation. Further, all proposed development schemes, including this development, are assessed against national statutory plans and guidance and the relevant local Development Plan all of which have been subject to the rigours of public consultation and scrutiny.
- 9.7.5. Notwithstanding the foregoing I also note the more specific concerns raised in the appeal in relation to public consultation, the right to an oral hearing and the requirement for an EIA and whether the positive obligation to take steps to protect the Article 8 rights of the families arise.
- 9.7.6. The documented frustrations in relation to the lack of steps taken to inform, engage with and consult the bereaved families and wider community to ascertain their views and inputs in respect of the proposed development and associated memorial are noted. While such engagement and consultation with the public is to be encouraged, particularly in relation to the development of this site, it is not a statutory or mandatory requirement of the planning application process.
- 9.7.7. The appellants request for an Oral Hearing as a procedural right to a fair hearing under ECHR is also noted. I am satisfied by reason of cross circulation of information that all parties to the appeal have been given sufficient and adequate opportunity to participate and make comment to the appeal. Further, the Board has determined, based on the information on the appeal file that there is adequate information available to determine the planning merits of this case without the need for an oral hearing. Memo dated 13<sup>th</sup> June 2025 refers.
- 9.7.8. EIA Screening is discussed in Section 7.0 of this report above and where it was concluded that no issues arise in relation to ECHR.

9.7.9. To conclude, it is evident that national legislation, in this case the Planning and Development Act 2000 (as amended) is framed to be compatible with ECHR obligations and the Board itself provides the balance to assess competing rights through the appeal process which the appellants in this case and others have actively engaged in. Accordingly, I am satisfied that no issues arise in relation to ECHR that would preclude the Board from determining this appeal.

## **9.8. EIA**

9.8.1. Concerns are raised in the appeal that an EIA is required having regard to the potentially harmful environmental effects (including climate change, disaster and accident risks) associated with the development. This matter is addressed in Section 7.0 EIA Screening and Form 1 and 2 in Appendix 1 and 2 of this report.

9.8.2. The screening determination, that forms part of this report and assessment, concluded that there is no real likelihood of significant effects on the environment and therefore an EIA is not required.

## **9.9. Waste Water Treatment (New Issue)**

9.9.1. In terms of foul water management, it is proposed that the development will use the existing connection to the public mains which runs along the N56 at the front of the site, and which connects directly to the main Creeslough sewer. It is further proposed that storm / surface water will be directed to the main storm pipe along the N56.

9.9.2. While it is submitted that the existing Creeslough WWTP plant will have adequate capacity to deal with the sewerage generated on site this has not been confirmed in writing by Uisce Eireann. I note the comments of the Case Planner that the proposed development will have less demand on public infrastructural services than the previous development.

9.9.3. While the matter of capacity in the Creeslough WWTP to accommodate the scheme has not been raised in the appeal or by DCC or any other party to the appeal I am concerned that there may be inadequate capacity within the WWTP

9.9.4. I refer to the Uisce Eireann Annual Report 2023 ([D0534-01 2023 AER.pdf](#)) where it states that the Creeslough WWTP is non-compliant with the ELVs set in the Wastewater

Discharge Licence for the following: Ammonia-Total (as N) mg/l, ortho-Phosphate (as P) - unspecified mg/l. I also refer to the Uisce Éireann Donegal Settlements with Waste Water Discharge Authorisations - Wastewater Treatment Capacity Register ([Donegal | Wastewater Treatment Capacity Register | Uisce Éireann \(formerly Irish Water\)](#)). This register provides an indication of available wastewater treatment capacity based on loads received in 2023 and available treatment plant capacity in December 2024. It is stated that the WWTP at Cresslough has no spare capacity at present and that there are no projects planned or underway to increase capacity and/or improve treatment performance at this WWTP as of December 2024.

- 9.9.5. However, I note elsewhere on the Uisce Éireann website that working in partnership with Donegal County Council, they are investing €1.4 million to undertake essential upgrade works to wastewater treatment plants in 4 no towns and villages across Donegal ([Donegal Countywide Wastewater Treatment Plants Upgrades | Projects | Uisce Éireann \(formerly Irish Water\)](#) refers). These improvement works include upgrades to the inlet works, storm water management and sludge treatment and storage at the plants. As part of the project, upgrade works are proposed to be completed in in Cresslough. No further details or timescales for this works is readily available.
- 9.9.6. Regardless of the brownfield nature of the site and the similarity of the current scheme to the previous scheme and that in all likelihood the current scheme may have less demand on the WWTP, it remains that a Confirmation of Feasibility with Uisce Éireann is required to ensure a connection can be made and capacity is available for development. In the absence of written confirmation from Uisce Éireann and having regard to the foregoing documented deficiencies in the existing WWTP I cannot support the scheme as proposed. However, given the substantive issues raised in relation to visual impact and the proposed memorial and the fact that this matter could be easily resolved by way of confirmation from Uisce Éireann I do not consider that this matter necessitates a separate reason for refusal.
- 9.9.7. **NOTE** – The issue of capacity in the Cresslough WWTP is a new issue that has not been raised in the appeal nor is it raised elsewhere in the appeal file. This issue also has implications for AA which is discussed separately below. Please note that the foregoing information relating to the WWTP at Cresslough was sourced from the Uisce Éireann website. Should the Board be minded to grant permission it is recommended that the views and observations of Uisce Éireann be sought.

## 9.10. Conditions

9.11. I refer to Section 4.0 of this report above where a number of conditions of note, that reflect particular requirements of DCC and its internal departments are referenced and set out in the Case Planner's report. While some of the conditions as recommended are dealt with by way of standard Board conditions (compliance with plans and particulars submitted, Construction Management Plan, undergrounding of service cables, EV charging points, Waste Management Plan, site boundary treatment, water supply and effluent disposal), others of specific note are set out as follows:

## 9.12. Condition No 2 (Building Line)

2)	<p>a) The roadside building line setback of the proposed unit located at the northeastern corner of the retail complex shall match the same roadside setback as that of the post office and shop unit.</p> <p>b) Prior to commencement of development the applicant shall submit revised site layout and floor plans illustrating the requirement set out in 2(a) above for the written agreement of the planning authority.</p> <p>c) The development shall thereafter proceed in strict accordance with aforementioned written agreement.</p> <p><b>Reason:</b> To cater for orderly development.</p>
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9.13. It is not readily visible from the appeal file as to where this condition originates. However, in terms of design and the relationship of the proposed building with the public realm and footpath I consider this condition to be reasonable and necessary. It is recommended that should the Board be minded to grant permission that a similar condition is attached.

## 9.14. Condition No 3 (Road Markings)

3)	<p>a) All recommendations in the Road Safety Audits (Stage 1 &amp; 2) received on 6<sup>th</sup> November, 2024 and 10<sup>th</sup> December 2024 shall be implemented in full.</p> <p>b) Prior to the commencement of development all road markings as indicated on the revised site layout plan received on 10<sup>th</sup> December, 2024 shall be agreed with the Area Roads Engineer with any amendments being</p>
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	<p>submitted for the written agreement of the Planning Authority. Development shall thereafter proceed in strict accordance with aforementioned written agreement.</p> <p><b>Reason:</b> In the interests of traffic safety and to cater for orderly development.</p>
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9.15. It is not readily visible from the appeal file as to where this condition originates. However, in terms of traffic safety I consider this condition to be reasonable and necessary. It is recommended that should the Board be minded to grant permission that a similar condition is attached.

9.16. **Condition No 4 (Footpath)**

4)	<p>(a) Prior to commencement of development the applicant shall engage with the Area Roads engineer and agree design and details of the proposed alignment of the footpath along the roadside frontage of the site and how this connects/cojoins with the existing footpath infrastructure to the north and south of the development site. Detailed proposals shall include the provision of appropriate curved radii and dropped kerbs at existing entrances to the 2 no. adjacent dwellings to the north and south of the roadside boundary.</p> <p>(b) Following agreement with the Area Road engineer in accordance with 4(a) above, revised details and plans at a scale of not less than 1:500 and more detailed plans at the location of the neighbouring properties at a scale of not less than 1:100 shall be submitted for the written agreement of the planning authority.</p> <p>(c) The development shall thereafter proceed in strict accordance with aforementioned written agreement of the Planning Authority.</p> <p><b>Reason:</b> In the interests of traffic safety and to cater for orderly development.</p>
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9.17. I note from the submissions / observations on the planning file that concern was raised in relation to how the alignment of the footpath connects to the neighbouring properties either side of the site and that the public footpath at the front of the site and that a new curved/kerb radius with associated drop kerbs for pedestrians/wheelchairs/prams etc.



should be provided. I note from the Case Planner's final report that this matter was discussed with the Area Engineer, and it was recommended that this matter would be dealt with by condition. In this regard, I agree with the foregoing condition and consider that same is reasonable and necessary. It is recommended that should the Board be minded to grant permission that a similar condition is attached.

**9.18. Condition No 7 (Storm Drainage)**

1)	<p>Prior to commencement of development the applicant shall submit storm drainage design details including long sections of drainage proposals throughout the development and confirm the invert levels of any proposed connections to the existing drainage network in accordance with TII DN-DNG-03066 for the written agreement of the Planning Authority.</p> <p><b>Reason:</b> To cater for orderly development and prevention of flooding</p>
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9.19. I note from the final report of DCC Road Design that they sought the submission of storm drainage details, and this is reflected in the above condition. I agree with the foregoing condition and consider that same is reasonable and necessary. It is recommended that should the Board be minded to grant permission that a similar condition is attached.

9.20. **Development Contribution** - I refer to DCC Development Contribution Scheme. No Development Contribution condition was attached to the notification of decision grant permission issued by DCC. I note from the Case Planners report the Planning Authority had regard to the previous development permitted under Reg Ref 00/2902 and considered that as the proposed development has less demand on public infrastructural services than the previous no development contribution is to be levied on the development.

9.21. I refer to the DCC Development Contribution Scheme 2016 and Section 3.3 Exemptions and Reductions and Table 3: Schedule of Town/Village Centre Reductions/Exemptions therein. It is evident that there is a reduction in standard development charges for "demolition & rebuild on brownfield sites" over a threshold of 201 sqm. There is no obvious exemption for a development on a brownfield site where there is a lower demand on public infrastructural services. Accordingly, it is

recommended that should the Board be minded to grant permission that a Section 48 Development Contribution condition is attached.

## 9.22. Other Issues

- 9.22.1. **Legal Interest** – In terms of the legal interest, I am satisfied that the applicants have provided sufficient evidence of their legal interest to make an application. Any further legal dispute is considered a Civil matter and is outside the scope of the planning appeal.] In any case, this is a matter to be resolved between the parties, having regard to the provisions of s.34(13) of the 2000 Planning and Development Act.
- 9.22.2. **Extant Investigations** – Concern is raised that the site is still under investigation and that any development is not only premature but profoundly irresponsible until these investigations are concluded. While these investigations are separate from the planning process as set out under the Planning & Development Act 2000 (as amended), I consider that clarity with regard to any on site investigations is essential. I refer to the first party response to the appeal where it is stated that *the applicants have been informed in writing by An Garda Síochána that the property has been returned to them as the on-site investigations have concluded and that a structural report carried out by a registered Engineer was also received prior to the site being returned to the applicants.* A copy of any formal correspondence from An Garda Síochána confirming that all on site investigations have concluded would have been beneficial in allaying the concerns raised.
- 9.22.3. **Major Accident & Hazardous Directive** - Concern is raised that that additional procedures apply in this case as a grant of permission is likely to increase the risk of a major accident and that the Planning Authority has failed to consult with relevant authorities under Section 34(8) of the Planning and Development Act as amended. Reference is made to the Commission for Regulation of Utilities, An Garda Síochána, Coroner for Donegal, HSA, Fire Authority, Department of Justice and Retail Licensing Authority. In the normal course of events, and from a procedural perspective, a development of this nature would not give rise to a requirement for a Planning Authority to consult with a prescribed authority for the purpose of obtaining technical advice regarding risk of a major accident. Accordingly, I agree with the planning authority in this regard in that Part 11 'Major Accidents Directive' of the Regulations does not apply

in relation to the proposed development as the development does not fall within the scope of Section 34(8)(e) of the Act.

9.22.4. **Fuel Delivery Transfers** – I note the concerns raised in the observations to the appeal in relation to fuel deliveries, and also in relation to the design of the fuel storage tanks. Reference is made to the inadequate provision of manholes to be provided at ground level over the 5 no. access manhole chambers. The impact of this on the travel path for the fuel delivery tanker is discussed in Section 9.5 Traffic Impact of this report above. I agree with the comments of the Planning Authority that these matters are dealt with under other Codes rather than Planning such as Building Regulations and that the appropriate regulations are the Dangerous Substance (Flammable Liquids and Fuel Retail Stores) Regulations 2019. The Development Management Guidelines for Planning Authorities (2007) advice against conditions of permissions that are regulated under other Codes. The existence of a planning condition, or its omission, will not free a developer from his or her responsibilities under other codes (Section 7.8 of the Guidelines refers).

9.22.5. **Property Values** - I note the concerns raised in the submission in respect of the devaluation of neighbouring property. However, having regard to the assessment and conclusion set out above, I am satisfied that the proposed development would not seriously injure the amenities of the area to such an extent that would adversely affect the value of property in the vicinity.

## 10.0 AA Screening

10.1. No nature conservation concerns were raised in the planning appeals. An AA Screening exercise has been completed. See Appendix 3 of this report for further details.

10.2. On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not result in likely significant effects on the integrity of Sheephaven SAC (Site code 001190) in view of the site's Conservation Objectives and possibly other designated sites. This conclusion is based on

- the WWTP at Cresslough having no spare capacity at present and no projects planned or underway to increase capacity and/or improve treatment performance at this WWTP as of December 2024.
- the Cresslough WWTP being non-compliant with the ELVs set in the Wastewater Discharge License for the following: Ammonia-Total (as N) mg/l, ortho-Phosphate (as P) - unspecified mg/l and that
- the absence of details or timescales for essential upgrade works to the wastewater treatment plant at Cresslough by Uisce Eireann working in partnership with Donegal County Council,
- the absence of a report from Uisce Eireann

10.2.1. In light of the foregoing a potential weak indirect hydrological pathway between the site and Sheephaven SAC (Site code 001190) and perhaps other designated sites via the Cresslough WWTP and associated discharge.

10.2.2. While the potential for foul waters generated at the proposed development to reach this European site or other designated sites and cause likely significant effects, during the Operational Phase may be negligible, in the absence of AA Screening Assessment and an NIS, prepared by competent experts and providing the necessary detailed scientific information required the potential for significant effects significant effects cannot be excluded.

10.2.3. In such circumstances the Board is precluded from granting approval/permission under the provisions of Article 6(3) of the Habitats Directive (92/43/EEC).'

10.2.4. **NOTE:** This is a new issue. Having regard to the substantive issues raised in relation to visual impact and the proposed memorial I do not consider that this matter necessitates a separate reason for refusal in the circumstances.

## 11.0 Recommendation

11.1. Having considered the contents of the application the provision of the Development Plan, the grounds of appeal and the responses thereto, my site inspection and my assessment of the planning issues, I recommend that permission be **REFUSED** for the following reason and considerations and subject of the conditions outlined below.

## 12.0 Reasons and Considerations

- 1) Objective S-O-5 of the County Donegal Development Plan 2024-2030 that seeks *to prioritise regeneration and renewal of the County's towns, villages and rural areas in order to support vibrant and strengthened communities and drivers of economic growth*. Having regard to the existing character and the prevailing pattern of development in Cresslough, it is considered that the proposed development (as amended), by reason of its overall architectural treatment, scale and design, would be out of character with its surroundings, would seriously detract from the architectural character and setting of Cresslough and of the streetscape and approach to Cresslough from Letterkenny generally. To permit the proposed scheme (as amended) at this prominent location could have such a negative effect on the visual amenity and local character of Cresslough as to negatively impact on the wider, long-term regeneration and renewal of the village. The proposed development would, therefore, seriously injure the visual amenities of the area and would be contrary to Objective S-O-5 of the County Donegal Development Plan 2024-2030 and to the proper planning and sustainable development of the area.
  
- 2) Having regard to recent history of the site, it is considered that the proposed memorial consisting of an Architectural Installation at the vehicular exit to the site and a separate green area adjoining the car park servicing the development is inappropriately sited and would constitute an illegible and visually discordant feature within the overall scheme, that would be detrimental to the sensitive character of the site and wider settlement of Cresslough, which it is appropriate to acknowledge and preserve in the redevelopment of this site. The significant pedestrian and traffic movement that will take place throughout the site when operational, raises serious concern in relation to both the safety for those visiting the memorials and also the inappropriate siting of the memorial within the development (as amended) itself. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought

to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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**Mary Crowley**

**Senior Planning Inspector**

**16<sup>th</sup> June 2025**

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

<b>Case Reference</b>	<b>ABP-322031-25</b>
<b>Proposed Development Summary</b>	<b>Demolition of existing building and erection of a commercial building incorporating a shop, forecourt and all other associated site development works including a space for a memorial garden.</b>
<b>Development Address</b>	Creelough, Co. Donegal
	<b>In all cases check box /or leave blank</b>
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b>  (For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes,  - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	<input checked="" type="checkbox"/> Yes, it is a 'Project'. Proceed to Q2.  <input type="checkbox"/> No, No further action required.
<b>2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?</b>	
<input type="checkbox"/> Yes, it is a Class specified in Part 1.  <b>EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.</b>	
<input checked="" type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3	
<b>3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?</b>	
<input type="checkbox"/> No, the development is not of a Class Specified in Part 2,	

<p>Schedule 5 or a prescribed type of proposed road development under Article 8 of the Roads Regulations, 1994.</p> <p><b>No Screening required.</b></p>	
<p><input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold.</p> <p><b>EIA is Mandatory. No Screening Required</b></p>	<p><b>State the Class and state the relevant threshold</b></p>
<p><input checked="" type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold.</p> <p><b>Preliminary examination required. (Form 2)</b></p> <p><b>OR</b></p> <p><b>If Schedule 7A information submitted proceed to Q4. (Form 3 Required)</b></p>	<p>Class 10(b)(iv) 'urban development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere</p>

<p><b>4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?</b></p>	
<p>Yes <input type="checkbox"/></p>	
<p>No <input checked="" type="checkbox"/></p>	<p><b>Pre-screening determination conclusion remains as above (Q1 to Q3)</b></p>

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



## 14.0 Appendix 2 – Form 2 EIA Preliminary Examination

<b>Case Reference</b>	<b>ABP-322031-25</b>
<b>Proposed Development Summary</b>	<b>Demolition of existing building and erection of a commercial building incorporating a shop, forecourt and all other associated site development works including a space for a memorial garden.</b>
<b>Development Address</b>	<b>Creeslough, Co. Donegal</b>
<b>This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</b>	
<b>Characteristics of proposed development</b>  (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>The proposed development involves the demolition and removal of existing building (petrol station, retail and apartments) and the erection of new commercial / shop building (812 sqm), forecourt, replacement of underground storage tanks and pumps, external canopy, associated signage and all other associated site development works including a space for a memorial garden all on serviced lands within the settlement boundary of Cresslough.</p> <p>Demolition works will involve the removal of all structures, which will be taken to a licensed/permitted site to be disposed of.</p> <p>The nature and scale of the proposed development will have a visual impact at a local level and a refusal of same on these grounds is recommended in the foregoing assessment. However it is considered that the scheme would not give rise to significant visual environmental effects in terms of scale and design at a wider spatial level.</p> <p>Construction materials will be typical of an urban environment and any construction impacts would be local and temporary in nature and the implementation of a Construction Environmental Management Plan by way of a suitably worded condition will satisfactorily mitigate potential impacts.</p> <p>Operational waste will be managed via a Waste Management Plan. Foul water will discharge to the Cresslough WWTP. As documented in the assessment above it appears that this WWTP has</p>

	<p>no spare capacity and is non-compliant with the ELVs set out in the Wastewater Discharge Licence. Clarification from Uisce Eireann is necessitated in this regard. The proposed development will have less demand on public infrastructural services than the previous development and given the connection associated with the existing permitted use on site it is considered that no significant environmental effects would arise in this regard.</p> <p>The site is not at risk of flooding.</p> <p>There are no SEVESO/COMAH sites in the vicinity of this location.</p> <p>The development has a relatively modest footprint and does not require the use of substantial natural resources or give rise to significant risk of pollution or nuisance.</p> <p>The development, by virtue of its type and scale, does not pose a risk of major accident and/or disaster and therefore presents no risks to human health.</p> <p>It is acknowledged that fossil fuels are to be sold at the site. However given the scale and nature of the development whereby the proposal, which is essentially replacing the existing petrol filling station (i.e. like for like) would not of itself give rise to significant environmental effects.</p>
<p><b>Location of development</b></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>There are no known monuments or other archaeological features on the subject site.</p> <p>The development will implement measures to control surface water run-off. The site is not at risk of flooding.</p> <p>The site is served by a local urban road network. No significant contribution to traffic congestion is anticipated.</p> <p>The development is situated on serviced lands within the settlement envelop of Cresslough at a remove from sensitive natural habitats, designated sites and landscapes of significance identified in the County Donegal Development Plan 2024-2030</p>

<p><b>Types and characteristics of potential impacts</b></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>Having regard to the nature of the proposed development, its location relative to sensitive habitats/ features, likely limited magnitude and spatial extent of effects, and absence of in combination effects, there is no potential for significant effects on the environmental factors listed in section 171A of the Act.</p> <p>The proposed development is not of a type that would create a transboundary effects such as visual, noise and air quality, by reason of its location within the settlement boundary of Cresslough and in particular having regard to the substantial distance to the boundary with Northern Ireland (c35km).</p>
<p><b>Conclusion</b></p>	
<p><b>Likelihood of Significant Effects</b></p>	<p><b>Conclusion in respect of EIA</b></p>
<p><b>There is no real likelihood of significant effects on the environment.</b></p>	<p><b>EIA is not required.</b></p>

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

**DP/ADP:** \_\_\_\_\_ **Date:** \_\_\_\_\_

(only where Schedule 7A information or EIAR required)

## 15.0 Appendix 3 - AA Screening Determination

### Screening for Appropriate Assessment Screening Determination

#### 1. Description of the project

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

I refer to Section 2.0 and 3.0 of this report above where the site location and proposed development are described.

The appeal site comprises a brownfield site in the village of Creeslough in north Donegal. The previous use on the site was that of a filling station, shop, post office, and beauty salon with apartment development to the rear.

The development (as amended) comprises the demolition and removal of existing building and the erection of new commercial building (812 sqm) which will incorporate a petrol / filling station forecourt, shop, post office, off-licence, store, deli, toilets including accessible toilets, staff welfare facilities, replacement of underground storage tanks and pumps, external canopy, associated signage and all other associated site development works including on site car parking and a space for a memorial garden.

The tanks on site will be removed from the site and replaced with bunded tanks and will include a vented system. The forecourt above the tanks will be finished in such a manner that any liquid which will fall on the forecourt area such as storm water or fuel spillages will be collected in an aco-channel which will surround the fill area and then travel through a hydrocarbon interceptor prior to discharge. This will ensure

that the storm / surface water which leaves the site and is received in the roadside drainage system will be clean and will not compromise the receiving waters. Petroleum Installation Services have supplied details in regard to the type of system which will be fitted on the site, which will include double skinned pipes, fully sealed manhole covers and containment systems which will be fully up to date and ensure that the most up to date system is fitted, tested and operated on the forecourt.

**Surface / Storm Water** – It is proposed that the development will use the existing public sewer / drain. Storm / surface water will be directed to pass through a Hydrocarbon interceptor which will be located on the site and then into the main storm pipe along the N56.

**Foul Water Management** – It is proposed that the development will use the existing connection to the public mains which runs along the N56 at the front of the site and which connects directly to the main Creeslough sewer. Submitted that as there are no apartments proposed in this development the effluent generated on site will be less than the previous loading.

**Water Supply** – It is proposed that the development will use the existing connection to public mains water services.

**Flood Risk** – None identified. The site is not at risk of flooding and there is no increased risk to any nearby properties or developable land.

**Baseline Ecology** – The site is predominantly composed of collapsed buildings and artificial surfaces. This habitat has low / no ecological value.

The planning application was referred to the following prescribed bodies:

- Transport Infrastructure Ireland
- Heritage Council
- Irish Water
- Department of Housing and Local Government and Heritage

The submissions received from Transport Infrastructure Ireland raised no issues in relation to ecology or biodiversity. No response from the other bodies is recorded on the appeal file.

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

The potential for significant effects that may arise from the Proposed Development was considered through the use of key indicators:

- Habitat loss or alteration.
- Habitat/species fragmentation.
- Disturbance and/or displacement of species.
- Changes in population density.
- Changes in water quality and resource.

The site is not within or adjoining any Natura 2000 sites and I do not consider that there is potential for any direct impacts such as habitat loss, direct emissions, or species mortality/disturbance.

However, there is potential for significant effects from the proposed development at the construction and operational stage in respect of the following:

### ***Construction Phase***

- Uncontrolled releases of silt, sediments and/or other pollutants into the air due to earthworks.
- Surface water run-off containing silt, sediments and/or other pollutants into nearby waterbodies.
- Waste generation comprising soils, construction and demolition wastes.
- Increased noise, dust and/or vibrations as a result of construction activity.
- Increased dust and air emissions from construction traffic.
- Increased lighting in the vicinity as a result of construction activity.

**Operational Phase**

- Surface water drainage from the site of the proposed development.
- Foul water from the proposed development leading to increased loading on the wastewater treatment plant
- Increased lighting in the vicinity emitted from the proposed development; and
- Increased human presence in the vicinity as a result of the proposed development

Having regard to the nature of the site and its distance and lack of connectivity with Natura 2000 sites, I do not consider that there would be any other potential impact mechanisms.

**3. European Sites at risk**

In assessing the zone of influence of this project upon Natura 2000 sites the following factors must be considered:

- Potential impacts arising from the project
- The location and nature of Natura 2000 sites
- Pathways between the development and the Natura 2000 network

It has already been stated that the site is not located within or directly adjacent to any Natura 2000 site. For projects of this nature an initial 15km radius is normally examined. There are a number of Natura 2000 sites within this radius as follows:

- 1) Sheephaven SAC (Site code 001190) (c0.32km)
- 2) Muckish Mountain SAC (Site code 001179) (c2.34km)
- 3) Cloughernagore Bog & Glenveagh National Park SAC (Site code 002047) (c2.1km)
- 4) Sessiagh Lough SAC (Site code 00185) (c5.5km)
- 5) Horn Head and Rinclevan SAC (Site code 000147) (c6.4km)
- 6) Tranarossan and Melmore Lough SAC (000194) (c8.5km)
- 7) Mulroy Bay SAC (Site code 002159) (c9.1km)

- 8) Leannan River SAC (Site code 002176) (c9.9km)
- 9) Lough Nagreany Dunes SAC (000164) (c12.6km)
- 10) Derryveagh and Glendownan Mountains SPA (Site code 004039) (3.8km)
- 11) Horn Head to Fanad SPA (Site Code 004194) (c5.6km)
- 12) Falcarragh to Meenlaragh SPA (Site code 004149) (c11.8km)
- 13) Lough Fern SPA (Site code 004060) (c13.2km)
- 14) Ballyness Bay SAC (Site code 001090) (c11.1km)
- 15) Mulroy Bay SAC (Site code 002159) (c9.1km)

In relation to the foregoing European Sites, with the exception of Sheephaven SAC (Site code 001190) the following can be concluded:

- Hydrologically these sites are not linked to the proposed development and will not be affected by emissions or drainage effects from the construction or operation of the proposed development.
- The intervening distances between the site and the identified SACs are sufficient to exclude the possibility of significant effects on the SACs arising from: emissions of noise, dust, pollutants and/or vibrations emitted from the site during the Construction Phase; increased traffic volumes during the Construction and Operational Phase and associated emissions; potential increased lighting emitted from the site during Construction and Operational Phase; and increased human presence at the site during Construction and Operational Phase.
- The intervening distance between the site and the SPA is sufficient to exclude the possibility of significant effects on the SPA arising from: emissions of noise, dust, pollutants and/or vibrations emitted from the site during the Construction Phase; increased traffic volumes during the Construction and Operational Phase and associated emissions; potential increased lighting emitted from the site during Construction and Operational Phase; and increased human presence at the site during Construction and Operational Phase. The site does not provide significant ex-situ habitat for QI/SCI species within the site of the proposed development.



No complete impact source-pathway-receptor chain has been identified. Therefore, significant effects on the European Sites identified above resulting from the proposed development can be excluded and they are therefore 'screened out' with the exception of Sheephaven SAC (Site code 001190).

#### 4. Likely significant effects on the European site(s) 'alone'

In relation to Sheephaven SAC (Site code 001190) the source – pathway – receptor may be summarised as follows:

- Weak hydrological pathway via contaminated surface water discharge during the construction and operational phase and an indirect hydrological connection via treated foul water discharge from the Creeslough WWTP during the Operational Phase.

The Conservation Objectives and QIs for Sheephaven SAC (Site code 001190) together with the Source-Pathway-Receptor Assessment and Potential for Significant Effects is as follows:

European Site (code) / Distance from proposed development (km)	Qualifying interests (Link to conservation objectives NPWS)	Source-Pathway-Receptor Assessment	Potential for Significant Effects
Sheephaven SAC (Site code 001190) (c0.32km)	<a href="#">Sheephaven SAC   National Parks &amp; Wildlife Service</a>	<p>The SAC is beyond any zone of sensitivity for noise or dust-related effects on habitats within the SAC and there is no potential for such effects as a result of the proposed development during either construction or operation.</p> <p>There are no open watercourses within, or in proximity to, the proposed development site. There is no potential for any surface waters during construction to directly enter any waterbody, and therefore the SAC.</p> <p>During operation both surface and foul water will connect to the existing public networks which connects directly to the main</p>	There is a potential pathway for effects and therefore potential for effects on the SAC as a result of the proposed development.

		Creeslough WWTP. There may be a weak indirect hydrological pathway between the site and European sites in Sheephaven Bay or elsewhere via this sewerage network, which may eventually discharge to Sheephaven Bay or elsewhere.	
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In relation to the foregoing European Site, the following can be concluded:

- There is no hydrological connectivity between the proposed development and any European site. There are no open watercourses within, or in proximity to, the proposed development site. There is no potential for any surface waters during construction to directly enter any waterbody, and therefore any European site.
- At the operational stage the proposed development will be served by what is described as an “existing connection” to the public sewer / surface water network which runs along the N56 at the front of the site. However, it appears that there is no capacity in the existing WWTP and that it is also non-compliant with the ELVs set in the Wastewater Discharge License. I refer to the Uisce Eireann website where the following is stated:
  - the WWTP at Cresslough has no spare capacity at present and there are no projects planned or underway to increase capacity and/or improve treatment performance at this WWTP as of December 2024.
  - the Creeslough WWTP is non-compliant with the ELVs set in the Wastewater Discharge License for the following: Ammonia-Total (as N) mg/l, ortho-Phosphate (as P) - unspecified mg/l and that
  - Uisce Eireann working in partnership with Donegal County Council, are investing €1.4 million to undertake essential upgrade works to wastewater treatment plants in 4 no towns and villages across Donegal including Cresslough. No further details or timescales for this works is readily available

In light of the foregoing there may be a weak indirect hydrological pathway between the site and Sheephaven SAC (Site code 001190) and perhaps other designated sites via this sewerage discharge network, which may eventually be discharged to Sheephaven Bay. However no information has been made available with the appeal file in relation to the discharge point of the existing WWTP and therefore it cannot be concluded that the foul waters generated by the proposed development will not reach this European site or others sites. It is also noted that there is no written confirmation by Irish Water that a wastewater connection is feasible without an infrastructure upgrade.

While the increase of the PE load at the WWTP facility as a result of the proposed development, may be considered to be an insignificant increase in terms of the overall scale of the facility taken together with the previous existing connection at the site, it remains that there are documented limitations in the existing capacity at the WWTP.

While the potential for foul waters generated at the proposed development to reach this European site or other designated sites and cause likely significant effects, during the Operational Phase may be negligible, in the absence of a Screening Assessment and an NIS, prepared by competent experts and providing the necessary detailed scientific information required the potential for significant effects significant effects cannot be excluded.

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

Having regard to the foregoing, I consider that the potential for in-combination effects is limited to the cumulative impact of Surface / Storm Water Drainage and WWTP capacity associated with other developments in the area.

A pathway connecting the project site to surrounding Natura 2000 sites has been identified above in relation to the Cresslough WWTP and therefore the potential to

combine with other projects in the surrounding area to result in cumulative significant effects to the local environment or Natura 2000 sites occurring in the wider surrounding area cannot be excluded in the absence of an NIS.

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

On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not result in adverse effects on the integrity of Sheephaven SAC (Site code 001190) in view of the site's Conservation Objectives.

In such circumstances the Board is precluded from granting approval/permission under the provisions of Article 6(3) of the Habitats Directive (92/43/EEC).'