An Bord Pleanála

Inspector's Report PL16.CH3303 & JP0041

Development	Realignment of the N26 National Primary Route at Cloongullaun.
Location	Townlands of Pollsharvoge and Cloongullaun and in the DED of Cuildoo and Swineford, Co Mayo.
Planning Authority	Mayo County Council.
Applicant(s)	Mayo County Council.
Type of Application	Application for approval under the provisions of S.177AE of the Planning and Development Act, 2000 (as amended) and Application for confirmation of Compulsory Purchase Order under the provisions of S.76 of the Housing Act, 1966 (as amended).
Objectors to CPO	(i) Ann Taylor (ii) Bernadette Casey (iii) Alan McNulty (iv) Martin & Mary Gallagher (v) Michael Higgins (vi) Patricia Browne (vii) Therese Soden

Observer(s)/ Prescribed Bodies	(i) Depart of Arts Heritage, Regional, Rural and Gaeltacht Affairs (ii) Inland Fisheries Ireland (iii) Transport Infrastructure Ireland
Date of Site Inspection	25th January 2017
Inspector	Donal Donnelly

Contents

1 Introduction

1.1 Approval is sought from the Board by Mayo County Council for two applications relating to the proposed realignment of a section of the N26 National Primary Route at Cloongullaun to include a new bridge over the River Moy.

1.2 Firstly, an order has been made by Mayo County Council that, if confirmed by the Board, will authorise the local authority to acquire compulsorily lands for the proposed development and to extinguish public and private rights of way.

1.3 The second application made pursuant to Section 177AE of the Planning and Development Act, 2000 (as amended), seeks approval for the same road project for which a Natura Impact Statement has been submitted along with documentation in support of the application.

1.4 A total of seven objections to the CPO were lodged with the Board and observations on the Section 177AE application were received from the Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs; Inland Fisheries Ireland; and Transport Infrastructure Ireland.

1.5 An Oral Hearing was held on 8th March 2017 and attended by Mayo County Council, the National Parks and Wildlife Service, Inland Fisheries Ireland, Mr. Tom Corr (agent of Objectors to CPO) and Mr. Peter Sweetman.

2 Legislative Requirements

2.1 Under Section 177AE of the Planning and Development Act, 2000 (as amended), a local authority shall prepare a Natura Impact Statement where Appropriate Assessment is required in respect of development carried out by or on behalf of the local authority.

2.2 The local authority shall apply to the Board for approval, and the Board as the competent authority is required to carry out Appropriate Assessment and to determine whether or not the proposed development, alone or in combination, would adversely affect the integrity of a European site in light of the site's conservation objectives.

2.3 Before making its decision, the Board shall consider the Natura Impact Statement and any submissions or observations, or other further information furnished to the Board in relation to:

(i) the likely effects on the environment of the proposed development,

(ii) the likely consequences for proper planning and sustainable development in the area in which it is proposed to situate the said development of such development, and

(iii) the likely significant effects of the proposed development upon a European site,

2.4 The Board shall also consider the report and subsequent recommendation of the Inspector conducting an Oral Hearing in relation to the compulsory purchase of land, which relates wholly or partly to the proposed development.

2.5 Under Section 213(2)(a) of the Planning and Development Act, 2000 (as amended), a local authority may, for the purposes of performing any of its functions (whether conferred by or under this Act, or any other enactment passed before or after the passing of this Act), including giving effect to or facilitating the implementation of its development plan, acquire land, permanently or temporarily, by agreement or compulsorily.

2.6 Compulsory Purchase Orders are made pursuant to the powers conferred on the local authority by section 76 of the Housing Act, 1966, and the Third Schedule thereto, as extended by section 10 of the Local Government (No. 2) Act, 1960, (as substituted by section 86 of the Housing Act 1966), as amended by section 6 and the Second Schedule to the Roads Act, 1993, and as amended by the Planning and Development Act, 2000-2014. Orders are served on owners, lessees and occupiers in accordance with Article 4(b) of the Third Schedule to the Housing Act, 1966.

2.7 The Housing Act of 1966 provides if an objection has been made to a compulsory purchase order, the Board will facilitate the person making the objection to state their case at an Oral Hearing.

3 Site Location and Description

3.1 The N26 is a National Primary Route that continues for a distance of approximately 30km through north-eastern Co. Mayo connecting Swinford, Foxford and Ballina. The road commences at a T junction with the N5 to the south before passing through Swinford and continuing north-west in the direction of Foxford. The road then turns north at Foxford and continues onto to Ballina, terminating in the town at the junction with the N59. A 5km section of the N26 was upgraded to the south of Ballina, opening to traffic in 2004. Elsewhere, the road is narrow and horizontal alignments restrict forward visibility in places. Overtaking is restricted with solid white centre lines along much of the road and hardshoulders mostly absent on both sides. The average annual daily traffic on the N26 at a counter location between Foxford and Ballina was 7,596 in 2016 (4.6% HGV).

3.2 The proposed road realignment is located in an area defined in the Development Plan Landscape Appraisal as drumlins and inland lowlands. There are no scenic routes or protected views along this section of the N26. Surrounding land uses comprise of grasslands, private forestry and areas of bog.

3.3 The proposed realignment centres around the construction of a new bridge approximately 200m downstream from the existing bridge at Cloongallaun, which is currently one of two vehicular bridges over the River Moy on the N26, the other being at Foxford. The existing stone arched bridge is not a protected structure but is listed in the National Inventory of Architectural Heritage as a six-arched road bridge over river completed in 1826 and replaced following an explosion from 1919-23. There is also a disused handball alley located to the north of the bridge that is also listed on the NIAH.

3.4 The approaches to the existing bridge from both directions continue down-gradient and there are solid white centrelines and advanced warning perpendicular rumble strips. The road narrows at the bridge to a parapet to parapet width of 5.35m and there is an informal priority arrangement when a larger vehicle is crossing. The road makes a sharp bend to the left for west-bound motorists on the north-western side of the bridge. The existing approach to the bridge from the east to be realigned/ upgraded is approximately 580m in length and the longer existing approach from the west measures 1,250m. There are “series of dangerous corners ahead” road signs

and chevron sharp change in direction signage on the approaches to the bridge. The speed limit along the road is 100 kph.

3.5 There are essentially three sections where the proposed realignment will be off line. The first section from the west will be to the north of a small drumlin and through a small wooded area. A culvert is proposed to the east of this section and the road will re-join the existing road at a location between two existing dwellings. The second offline section is where the road will head over embankments to meet the new bridge. Existing levels fall quite steeply down the river bank at this location. The third off-line section will be on the eastern side of the bridge through riverside woodland and over embankments and farmland. This section then continues through an existing conifer plantation and to the location of the second culvert over the Swinford Road. The proposed realignment will re-join the existing road where a T junction is proposed within existing agricultural lands.

4 Proposed Development

4.1 The proposed development comprises the realignment of a 1.8km section of the N26 National Primary Route at Cloongullaun, Swinford, Co. Mayo to include the following:

Construction of a Type 2 single carriageway road (2 x 3.5m wide lanes, 2 x 0.5m wide hard strips and 2 x 2.5m wide verges);

- A new clear-span bridge crossing of the main channel of the River Moy downstream of the existing bridge (83.1m span between supports and 12.2m in width);
- Two culverts over tributaries of the River Moy (precast concrete box) requiring temporary diversions of rivers;
- Construction of at-grade junctions and local road realignments providing connectivity to the existing road network;
- Local road realignments;
- Construction of accommodation works/ farm accesses;
- Construction of a drainage system in accordance with sustainable drainage design principles and guidance;

- Diversion of existing services and utilities;
- Provision for treatment and recovery of unsuitable material; and
- Landscape planting, signage, lighting and other ancillary works.

4.2 From a west to east direction, the first 350m of the proposed road will be at grade and along the alignment of the existing road. For the next 400m, the road departs off-line to the south of the existing road and across the Pollsharvode River (Ch. 0+540). The road then returns on-line at the point of a proposed at-grade junction with a minor road to the south. A second at-grade junction is proposed with Killasser Road to the north (Ch. 0+950) before the road continues off-line in the direction of the proposed bridge over the River Moy.

4.3 At the eastern side of the river, the proposed road intersects Ballintemple Road where an at-grade T-junction is proposed, together with a pedestrian underpass. It is proposed to close the eastern end of this road and a cul de sac will remain. The road continues off-line across the Swinford River (Ch. 1+520) and then ties in with the existing N26 (Ch. 1+630). A new T junction is proposed at the truncated section of the existing N26.

4.4 A new section of cycleway will be constructed between the truncated sections of the existing road, which will be retained for pedestrian and cycle use. At the eastern and western ends of the proposed road, widened verges will accommodate future pedestrian/ cyclist facilities.

4.5 A number of direct accesses to houses and farmland will be provided and there will be combined accesses at locations where existing accesses are close together.

4.6 In terms of drainage, it is proposed to collect road run-off through lined filter drains, lined vegetated ditches and concrete surface water channels. Surface water will be carried to attenuation/ treatment ponds before discharging to receiving watercourses. There will be four outfalls with an attenuation and treatment pond located at each.

4.7 Accommodation works will be provided to allow the following:

- Re-instatement of access to properties/ holdings severed by the proposed development;
- Re-instatement of boundary walls and fencing;

- Re-instatement of domestic services/ utilities.

5 Planning History

5.1 The current proposal forms part of the planned N5/ N26/ N58 Castlebar East to Bohola and Swinford to Mount Falcon Road Project, which considers the upgrade of a triangle of roads to include the N5 from Turlough to Bohola and the N26/ N58. A Route Selection Report concluded that the N5 between Castlebar and Bohola and the N26/ N58 between Ballyvary and Ballina should be progressed as a Major Project by Transport Infrastructure Ireland. The section of project along the N26 between Foxford and Swinford should be improved along the line of the existing corridor as a series of minor works and safety programmes commencing with the realignment of the N26 at Cloongullaun Bridge. The scheme concept and feasibility studies are complete and preferred route corridors have been selected, and this will form the basis of detailed design to follow.

5.2 The cases below relate to previous proposals along the N26:

An Bord Pleanála Refs: 16.HA0003 and 16.KA0002

5.3 Mayo County Council sought approval under Section 51 of Roads Act, 1993 for the N26 Ballina to Bohola Stage 2 Road Scheme comprising 18.9km of standard single carriageway (0.8km) and Type 2 dual carriageway (18.1km) linking the existing N26 to the N5 at Bohola (approx.. 8.5km south-west of Swinford) and including a by-pass of Foxford.

5.4 The Board refused to approve the proposed road development in February 2010. It was not demonstrated to the Board that the scheme was justified and that a more environmentally and economically sustainable road upgrade scheme is not available. The Board also concluded that *"the road scheme as proposed would, therefore, constitute an unacceptable intrusion into the environment of the Moy River valley, and its designated habitats, and would be contrary to the proper planning and sustainable development of the area."* The CPO was therefore annulled.

An Bord Pleanála Ref: CH0509

5.5 The Board confirmed a CPO in 2002 for road construction and improvements at the N26 from Ballina to Carrowntreila (Stage 1). This road opened in December 2004.

An Bord Pleanála Ref: 16.PM0013

5.6 The Board received an application under Section 146B of the Planning and Development Act, 2000 (as amended) for alterations to the Oweninny windfarm development and associated works at Bellacorrick, Co. Mayo.

5.7 The proposal includes alteration to a small section of the N26 in the vicinity of Cloongullaun Bridge to facilitate the delivery of wind turbine components involving the excavation of c. 1,080 cu.m. of material along a 60m long section of roadside embankment and the installation of a gabion retaining structure. The works will involve existing road drainage and temporary drainage measures.

5.8 Excavated material will be stored in a designated area behind a residential property and will be reinstated once the turbine components have been delivered to the windfarm site.

5.9 At the time of writing, the Board has yet to reach a decision on this case.

6 Planning Policy Context

6.1 Regional Planning Guidelines for the West Region, 2010-2022

6.1.1 It is recognised in Section 5.1 of these Guidelines that good transport infrastructure is vital to promote economic and social well-being. It is a policy (IP2) to *"support the National Roads Authority investment to remedy deficiencies generally in the roads network minimising environmental impact."*

6.1.2 Section 1.5.3 contains a list of key future investment priorities required to support the sustainable development of the region. This includes the construction of the new N5 Bohola to Westport dual carriageway and improvement of the N5 Charlestown to the Roscommon /Longford borders inclusive of the Ballaghderreen bypass, as well as the construction of the R336 Galway to Ros a Mhil Road and the N26 Ballina to Bohola Road Phase II (previously refused by Board – Ref: 16.HA0003 and 16.KA0002).

6.1.3 It is also a stated objective of the Guidelines (IO6) *"to support the use of ecological assessment of strategic roads infrastructure projects including reservation of land and upgrading of routes to ensure route options have sufficient flexibility to avoid or*

mitigate significant environmental impacts. Mitigation measures for the protection of habitats or movement of species should be provided where feasible and appropriate."

6.2 Spatial Planning and National Roads: Guidelines for Planning Authorities, 2012

6.2.1 It is noted in these Guidelines that better national roads improve access to the regions, enhancing their attractiveness for inward investment and new employment opportunities. It is also considered important that the efficiency, capacity and safety of the national road network is maintained.

6.3 The National Cycle Policy Framework, 2009-2020

6.3.1 Policy 3.3 contained within this document seeks to examine the idea of using the hard shoulders and the contiguous space of roads with an arterial character as part of the National Cycle Network, and those hard shoulders will have the same maintenance and drainage standards applied to them as to the rest of the carriageway. Policy 3.4 relates to the upgrading of national roads where it is stated that any such proposal shall not impact negatively on the safety and perceived safety of the roads for cyclists.

6.4 Mayo County Development Plan, 2014-2020

6.4.1 It is an objective of the Council (RD-01) *"…to protect the capacity and safety of the National Road Network and Strategically Important Regional Road network (listed in Appendix 4) in the County and ensuring compliance with the Spatial Planning and National Roads Planning Guidelines (January 2013)."*

6.4.2 Building on the key infrastructure projects outlined in the Regional Planning Guidelines, the Infrastructure Strategy of the Development Plan identifies priority infrastructure requirements for the County over the plan period (Table 3). The N26 Ballina to Bohola is listed and it is an objective (I-01) *"…to provide, or facilitate the provision of, all infrastructure projects set out in Table 3, with priority given to infrastructure serving the Linked Hub and Key Towns or areas where significant environmental or safety issues are evident and require the particular infrastructure to solve the issues and where it can be demonstrated that the development will not*

have significant adverse effects on the environment, the integrity of the Natura 2000 network or visual amenity."

6.4.3 There are also objectives of the Council (RD-01) *"…to protect the capacity and safety of the National Road Network and Strategically Important Regional Road network (listed in Appendix 4) in the County and ensuring compliance with the Spatial Planning and National Roads Planning Guidelines (January 2013)"* and (RD-02) *"…to support improvements to the existing National Road and Regional Road network including road schemes and by-passes outlined in Table 3 where it can be demonstrated that the development will not have significant adverse effects on the environment, the integrity of the Natura 2000 network or visual amenity."*

6.4.4 With respect to pedestrian and cyclists, it is an objective of the Council (PC-01) *"…to encourage and facilitate the maintenance and further development of the public footpath network, public rights of way, walking and cycling routes and associated infrastructure, including the provision of bicycle racks in all towns and villages, in the County, including where possible the retrofitting of cycle and pedestrian routes into the existing urban road network, by carrying out works in accordance with the National Transport Authority's National Cycle Manual and to support the establishment of a network of interlinked cycle ways and walk ways in the County and the adjoining Counties, having regard to best practice standards and where it can be demonstrated that the development will not have significant adverse effects on the environment or the integrity of the Natura 2000 network."*

6.4.5 Chapter 4 of the Development Plan sets out the Council's Environment, Heritage and Amenity Strategy. With respect to water quality, it is a policy of the Council (WQ-01) *"…to implement the Western River Basin District Management Plan "Water Matters" 2009-2015 to ensure the protection, restoration and sustainable use of all waters in the County, including rivers, lakes, ground water, coastal and transitional waters, and to restrict development likely to lead to deterioration in water quality or quantity."*

6.4.6 The site is within Landscape Protection Policy Area 4 – Drumlins and Inland Lowland, where road projects are considered to have a low to medium potential to create adverse impacts on the existing landscape character.

6.4.7 It is an objective of the Council (NH-01) to protect, enhance, conserve and, where appropriate restore:

a) Candidate Special Areas of Conservation, Special Areas of Conservation, Special Protection Areas, Natural Heritage Areas and proposed National Heritage Areas, Statutory Nature Reserves, Ramsar Sites and Biogenetic Reserves, including those listed in the Environmental Report documenting the Strategic Environmental Assessment of this plan and any modifications or additional areas that may be so designated during the lifetime of the plan.

b) Natural habitats and plant and animal species identified under the Habitats Directive, Birds Directive, Wildlife Act and the Flora Protection Order, or any other relevant legislation that may be implemented during the lifetime of the plan.

c) Features of natural interest and amenity, which provide a unique habitat for wildlife including ecological networks (including ecological corridors and stepping stones), riparian zones, hedgerows, stonewalls and shelterbelts.

d) Bogs, fens and turloughs listed in the Environmental Report documenting the Strategic Environmental Assessment of this plan.

e) Features of geological interest as listed in the Audit of County Geological Sites (Mayo County Council).

f) The conservation value of disused railway lines, waterways, walkways *etc.* notwithstanding that some of these items (e.g. disused rail lines) may be developed at some future date as part of the County's infrastructure where it can be demonstrated that the development will not have significant adverse effects on the environment including the integrity of the Natura 2000 network.

g) Surface waters, aquatic and wetland habitats and freshwater and water dependent species through the implementation of all appropriate and relevant Directives and transposed legislation.

h) Trees or groups of trees protected under Tree Preservation Orders listed in the Environmental Report documenting the Strategic Environmental Assessment of this plan, as well as trees and woodlands of particular amenity and nature conservation value, or which make a valuable contribution to the character of the landscape, a settlement or its setting.

i) Sites of local conservation importance including those identified in the *Local Biodiversity Action Plan.*

6.4.8 It is an objective of the Council (NH-03) *"…to implement Article 6(3) and 6(4) of the EU Habitats Directive, by screening all plans and projects for appropriate assessment and to ensure those with potential to have significant effects on the integrity of Natura 2000 or European Sites (cSACs, SPAs), whether directly (in situ), indirectly (ex-situ) or in combination with other plans or projects, are subject to an appropriate assessment and the preparation of an NIR or NIS in order to inform decision making."*

7 Details of CPO

7.1 Mayo County Council is seeking to acquire compulsorily land for the purposes of road improvement and realignment of the N26 National Primary Route at Cloongullaun, between Swinford and Foxford, Co. Mayo to include extinguishment of public and private rights of way.

7.2 The lands are described in the First Schedule of the Order as land other than land consisting of a house or houses unfit for human habitation and not capable for being rendered fit for human habitation at reasonable expense.

7.3 There are 75 separate plots of land listed in the First Schedule and a number of landowners or reputed land owners own more than one plot of land. As well as the owner or reputed owner of each plot of land, the First Schedule also lists the quantity, description and situation of each plot, any lessee or reputed lessee, and any occupier. It is estimated that the construction of the proposed scheme will affect 31 landowners.

7.4 The Second Schedule describes the public and private rights of way proposed to be extinguished. This includes two sections of the N26 and a section of the L-1312 public rights of way and a private right of way off the L-1312.

7.5 Other documentation forwarded to the Board by the Local Authority along with the signed and dated CPO with official seal and Schedules includes the Deposit Map illustrating all plots to land to be acquired; a sample form of notice served in connection with the CPO on the affected landowner/ lessee/ occupiers; registered

post list confirming serving of notice; newspaper and site notices; and copies of Manager's Orders, Reports and Memos.

7.6 Reports

7.6.1 A memo from Mayo County Council National Roads Design Office dated 3rd October 2016 sets out the project background; identification of need; national and regional policy; existing road conditions; safety; summary of route selection process; public information and consultation; project progress and description; and the recommendation of the National Roads Design Office regarding the purchase of land necessary for the proposed development.

7.6.2 The main points contained within this memo can be summarised as follows:

- Route selection report concludes that the N26 between Foxford and Swinford to be improved along the line of the existing corridor as a series of minor works and safety programmes commencing with the proposed development.
- Alignment and cross section of the existing N26 between Foxford and Swinford is in need of improvement to safely accommodate the current and future traffic requirements at the most deficient section at Cloongullaun Bridge and its approaches.
- Cloongullaun Bridge road narrows and restricts the flow of two-way traffic, especially the movement of large vehicles – bridge has parapet to parapet width of 5.35m.
- Along the extents of the proposed road development, the N26 has 10 horizontal curves, 9 of which are below the desirable minimum radius for a 100kph design speed.
- Vertical alignment along this section of road is also substandard and contains sag and crest curves, which are below the minimum for a design speed of 100kph.
- There are no facilities for non-motorised users along this section of the N26.
- This section of the N26 contains 5 no. local junctions, 15 no. field accesses and 9 no. house accesses.

- Under TII/ NRA Standard HD15, the road is considered under “Rural Single Carriageways” and the section of the road around Cloongullage Bridge has a ranking above the national average collision rate. Section of N26 west of the bridge has a rating twice above the national average which requires rectification as a priority.
- Of the three feasible route options between Cloongullaun and Callow, Crossing 3 was considered the most favourable corridor based on the ecological assessment and proximity to the existing road corridor.
- Stage 2 project appraisal was carried out under criteria of economy, safety, environment, accessibility and social inclusion and integration. Route Option P emerged as the preferred route – new bridge maximises safety; bridge can be developed to control and avoid impacts on SAC; upgrading of existing crossing would present greater risk of accidental impacts; and other routes had greater environmental impacts on archaeology, landscape/ visual and property.

7.6.3 A second memo dated 18th October 2016 outlines further detail relating to the benefits of the proposal under the headings of economy, safety, environment, accessibility & social inclusion and integration:

- Economic objectives are to improve the quality of the N26, thereby improving connectivity to Ballina, encouraging investment and employment; improving journey times and journey reliability; and providing a section of efficient transport infrastructure.
- In terms of safety, it is an objective to reduce the frequency and severity of collisions along the N26 at Cloongullaun Bridge and to provide facilities for pedestrians and cyclists.
- It is an objective to remove traffic from the settlement of Cloongullaun, in particular HGV’s, while respecting the constraints of the River Moy SAC.
- In terms of accessibility and social inclusion, the proposal will improve the quality of road to CLÁR and RAPID areas and to Ireland West Airport and for public transport.
- Proposal will support the objectives of the NSS and will integrate with recent government investments along the N5 corridor.

- Key operational outcomes are to improve the Level of Service and journey times and improve safety.
- The Benefit Cost Ratio for the project is 1.31.

7.6.4 A report of the Senior Planner appended to this memo refers to Policies PY-02, RD-01 and RD-02 and Objective I-01 of the Development Plan, together with Table 3 – Priority Infrastructure Projects for Co. Mayo 2014-2015.

7.6.5 It is stated that while the proposal is not specifically referred to in Table 3, it nonetheless is required (a) in the interests of traffic safety to eliminate an accident blackspot, and (b) as an improvement to the existing N26 serving the Linked Hub of Ballina and the Key Town of Swinford.

7.6.6 It is considered that the proposed realignment is compliant with the specific Infrastructure Policies I-01, RD-01 and RD-02 and is in conformity with the Development Plan and the proper planning and sustainable development of the area.

7.7 CPO Objections

7.7.1 A total of 7 no. objections to the CPO and Section 177AE documents were received by the Board on the 19th and 21st December 2016 from a consultant representing the following property owners:

- Ann Taylor (119a & 119b)
- Bernadette Casey (116a & 116b)
- Alan McNulty (122a to 122c)
- Martin & Mary Gallagher (124a to 124j)
- Michael Higgins (126a)
- Patricia Browne (132a to 132c)
- Therese Soden (125a & 125b)

7.7.2 The main points raised, which are repeated for all submissions, are summarised as follows:

- Acquisition of lands appear to be surplus for the construction of the new road;

- Inadequate drainage details have been provided along the proposed new roadway and there are concerns regarding adverse drainage problems to the retained lands during and after construction of the new road.
- Inadequate detailed information has been provided on mitigation measures to control noise pollution.
- There is lack of detail on access to the retained properties.
- Inadequate detail has been provided on the type of boundary to be provided along the new CPO line.
- There are concerns in relation to planning and environmental impacts.
- Information supplied by the acquiring authority is incomplete and may change – objectors reserve the right to include other grounds of objection and to elaborate on the above when such further information is made available, and to tender these at an Oral Hearing requested by the landowners.

8 Section 177AE Application Submitted

8.1 Mayo County Council has prepared a Natura Impact Statement and has applied to the Board for approval of the proposed development under Section 177AE(3) of the Planning and Development Act, 2000 (as amended)

8.2 The application includes design documentation, including a design report and design report drawings; the N5/N26/N58 Castlebar to Bohola & Swinford to Mount Falcon Route Studies (Volumes 1, 2A, 2B and 2C); Section 177AE Documents including a Section 177AE NIS Notice, a Screening Report for Appropriate Assessment, the Natural Impact Statement (NIS), a Section 177AE Planning Report, and the Section 177AE Planning Report Drawings.

8.3 Screening for Appropriate Assessment

8.3.1 The Appropriate Assessment Screening exercise provides information required to establish whether or not the proposed development is likely to have a significant impact on Natura 2000 sites in the context of their conservation objectives. The Screening for Appropriate Assessment included:

- Location of the project and distances from Qualifying Interests of Natura 2000 sites, including a map of the Project in relation to Natura 2000 boundaries;
- The size, scale and area of the Project in relation to Natura 2000 sites and projected level, class and frequency of activity;
- Details of construction works, including duration, materials and physical changes as detailed for the Project and any possible impacts that the proposed construction may have on the defining structure and function of the Natura 2000 sites.
- The potential impact of the proposed construction/operation on the defining structure and function of the Natura 2000.

8.3.2 It was determined that the River Moy SAC (002298) is the only European Site that occurs within the likely zone of impact of the proposed development, having regard to the physical distance from the project to the site, the sensitivities of the ecological receptors, and the potential for in combination effects.

8.3.3 The screening matrix for conservation objectives and detailed attributes and targets of the River Moy SAC sets out the potential likely significant effects of the project on the qualifying interests of the SAC. It has been determined that an Appropriate Assessment of the project is required as it cannot be excluded, on the basis of objective information, that the proposed development will not have a significant effect on the River Moy SAC.

8.4 Natura Impact Statement

8.4.1 The NIS provides a more detailed assessment of the potential impacts identified in the Screening for Appropriate Assessment and proposes appropriate mitigation measures to minimise/ eliminate these impacts. The NIS is set out as follows:

Section 1 includes the legislative context and assessment methodology;

Section 2 provides a description of the project

Sections 3 and 4 include the screening matrix and the conclusions of the Stage 1 screening exercise.

Section 5 sets out the types of impact arising from the project and these are assessed in light of the conservation objectives for the Qualifying Interests of the River Moy SAC. The following are the Qualifying Interests where significant short term and long term impacts were identified from the screening exercise:

- Predicted impacts on White-Clawed Crayfish
- Predicted impacts on Sea Lamprey and Brook/ River Lamprey
- Predicted impacts on Atlantic Salmon
- Predicted impacts on European Otter

(No potential likely significant effects were identified from the screening exercise on any other conservations objectives for the River Moy SAC.)

Section 6 considers the potential for cumulative impacts with water and wastewater service projects, national roads projects, energy infrastructure projects and other planning applications in the area.

Section 7 sets out mitigation for White Clawed Crayfish, Sea Lamprey and Brook/ River Lamprey, Atlantic Salmon, European Otter and for sedimentation/ erosion.

It is concluded in **Section 8** that "having had due regard to all current guidance on the assessment of plans and projects likely to have significant effects on Natura 2000 sites and having prepared the Screening for Appropriate Assessment report and the present Natura Impact Statement, it is considered that the proposed realignment of the N26 national primary road at Cloongullaun, either on its own or in combination with other plans and projects and given strict adherence to best practice guidelines and implementation of the mitigation measures proposed, would be unlikely to give rise to any direct or indirect significant effects on the River Moy SAC or any other Natura 2000 site for nature conservation."

8.5 Observations Received

8.5.1 The Development Applications Unit of the Department of Arts, Heritage, Regional, Rural & Gaeltacht Affairs submitted the following comments on 21st December 2016:

- Full extent of the area of overlap between the 'CPO line' and the SAC is not given in the application documentation.

- CPO line includes additional SAC areas where it is unclear if these will be avoided or impacted on a temporary or permanent basis by the overall development.
- Project footprint and construction areas are located in an area of high ecological and hydrological sensitivity, and on ground that slopes, steeply in places, towards the River Moy.
- Consideration should be given on whether there is sufficient information/ clarity on the final project design; the full extent of works/ lands required; details of mitigation measures and whether these can be delivered; any conflicts between mitigation measures; and details of the Construction Management Plan or Construction and Environmental Management Plan.
- Full details of ecological surveys carried out, their timing and areas surveyed, the methods used and the specific findings, are not presented in the NIS or ecology chapter of the Planning Report – scientific and site specific basis for further analysis and narrative in Sections 3-8 of the NIS is unclear.
- NIS lacks a description of the ecological characteristics of the receiving environment of the proposed scheme.
- There is no description or categorisation of the habitats in the receiving environment, including the SAC and surrounds.
- Other information supplementing the NIS does not enable the presence of Annex I (priority) habitat types, including woodlands, to be confirmed or refuted scientifically – habitat mapping difficult to interpret.
- Adopting a precautionary approach, alluvial woodland along the river should be treated as the qualifying interest Annex I priority habitat in the absence of scientific evidence and analysis to confirm the contrary.
- NIS appears to exclude the potential for any impacts on Annex I woodland habitat on the basis of habitat mapping published with the conservation objectives of the SAC – it is noted that mapping does not necessarily show entire extent of habitats and species.
- Screening does not identify any pathways for potential impacts on alluvial woodland habitat because it is deemed to be absent from the SAC in this area.

- NIS does not include any assessment of the likely significant effects on the alluvial woodland habitat in view of its conservation objectives.
- There will be permanent loss of possible alluvial woodland (reference to European Court of Justice Case C-258/11 – adverse effects on priority natural habitat and precautionary principle).
- Scientific basis for impact on five Annex II species which are qualifying interests for the site is not explained and there is no information to show available data on the species reviewed, or surveys of the species and their habitat carried out and local presence or absence of the species. This information is also necessary to show if species' derogation licences are required.
- Final conclusions on impact on the Annex II species should be reached with respect to residual effects, following the implementation of mitigation measures, and with respect to the implications for the conservation objectives and integrity of the SAC.
- Needs to be considered if the NIS complies with Section 177T of the Act – case law (e.g. C0258/11) has established that an appropriate assessment cannot have lacunae, and must be complete, precise and have definitive findings capable of removing all scientific doubt as to the effects of the project on the European site.

8.5.2 Inland Fisheries Ireland submitted the following comments on the application on 19th December 2016:

- River Moy system is considered Ireland's most productive salmon fishery, with important spawning and nursery habitat for salmon and trout at Cloongullane, which is also an important location for game angling.
- Proposed development lies within the Moy catchment and this catchment has been allocated "good ecological status" in the Western River Basin Management Plan and this status must be protected.
- Design of clear span bridge with provision of pedestrian/ anglers walkway is welcome.
- Design of culvert over the Swinford River must be changed from a box culvert to a bottomless culvert with foundations a minimum of 1m back from the top

of the bank – this will ensure that habitat is not altered and will negate the requirements for diversion.

- Culvert over the Swinford River may be longer than may be required and should be kept to a minimum length.
- IFI must be consulted on the design of all watercourse crossings – round or oval culverts should be limited to short runs and temporary crossings, and no sills or aprons should be installed during culvert construction. Method statements for all in-stream works must be provided to IFI a minimum of one month prior to work commencing.
- Culvert design should ensure that bed width and material of natural watercourse is replicated, there is a constant slope and the bottom (invert) should be at least 300mm below the grade line of the natural watercourse bed.
- All mitigation for sedimentation and erosion within the NIS must be adhered to and additional measures such as the provision of spill kits and drip trays will be required.
- Topsoil stripping must be kept to an absolute minimum and a vegetated buffer zone of 2m min. must be maintained along all watercourses, with double silt fences outside these buffer zones.
- Surface water outfalls from the site must be visually checked twice a day during construction. Maintenance schedule must be in place for silt and pollution control measures during construction.
- An Emergency Response Plan must be produced and the IFI included as a notifiable body in the case of pollution to a watercourse.
- In-stream works must be carried out between May and September, in the dry and during low flow conditions.

8.5.3 It is stated in an observation received from Transport Infrastructure Ireland that it has no specific comments to make in relation to the proposal.

8.6 Response to Observations and Objections

8.6.1 The consultants acting on behalf of Mayo County Council submitted the following responses on 10th February 2017 to observations and objections received from the Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs; Inland Fisheries Ireland; and landowners

Response to DAHRRGA

- Design as presented has been developed to sufficient detail to confirm the positions and dimensions of all principal elements of the proposed scheme – Council is confident that nothing that has been deferred to detailed design stage will result in any significant change to the environmental effects of the road project.
- While the area of scrub and wet grassland adjacent the proposed bridge may be required temporarily to locate a crane during construction, the area of woodland between on the north bank of the River Moy between existing and proposed bridges will remain undisturbed.
- There is nothing of an unusual nature required for the construction works and all mitigation measures are normal good practice measures. Contractor will be required to monitor water levels and forecast weather events upstream to ensure that potential contaminants are removed from the flood plain in advance of any flood event.
- No conflicts have been identified between different disciplines in terms of mitigation measures. Archaeological test trenching will only disturb those areas of the SAC containing no qualifying interests or ecological sensitivities. Mitigation measures to prevent contamination of the river during construction will equally apply to test trenching.
- Construction contract will require construction and environmental management plans to be developed within the defined scope prior to commencement on site and to review and update them as appropriate to any changes that may occur during construction. Environmental Manager will be nominated and employer will have full time presence on site.

- Three separate multidisciplinary walkover surveys were conducted to establish the baseline and identify important ecological features that may be affected.
- Surveys classified habitats according to "A Guide to Habitat in Ireland" (Fossitt, 2000) and mapped accordingly to the Heritage Council's "Best Practice Guidelines for Habitat Survey and Mapping" (Smith et al., 2001). No Annex I habitats were recorded within the works area.
- Detailed vegetation sample within the riparian woodland was undertaken at the location of the proposed south-eastern bridge abutment – no Annex I habitats were recorded within the study area; hence no Annex I habitats are shown on Drawing no. 04-000-HM-001. Condition assessment shows that the treeline and associated plot at the proposed south-eastern bridge abutment is not Annex I alluvial forests.
- Project ecologist is of the opinion that consideration should be given to the following rationale for precluding an assumption against Annex I criteria:
    - Treeline is not a "double line" and is broken and fragmented on both banks.
    - Emphasis on the term "former" alluvial woodland.
    - Treeline does not meet "Recommended Minimum Habitat Size Threshold" in the Heritage Council's "Best Practice Guidance for Habitat Survey and Mapping" and field evidence shows that the treeline is not of a sufficient area to be considered contiguous woodland habitat and therefore cannot be treated as qualifying interest Annex I priority habitat.
    - Heritage Council minimum dimension is 4m width for a treeline to be considered of sufficient size to be mapped as a habitat polygon – only one discreet clump on the southern bank is on 4m in width.
    - Heritage Council Guidance states *"as habitat area decreases, the number of species also decreases, resulting in fewer species or individuals able to characterise the habitat. As an extreme example, defining a 5x5m clump of trees as a woodland would be nonsense".*

- Potential impact on Annex I woodland habitat were excluded on the basis of detailed habitat surveys which proved a clear determination that no Annex I woodland habitats occur at the location of the proposed new bridge crossing.
- No pathway of risk to qualifying interest 91E0 Alluvial forest exists and significant effects on the qualifying interests have been screened out.
- There will be no permanent losses of areas of possible alluvial woodland arising from the development.
- Multidisciplinary surveys by ecologists were conducted to update data of baseline ecological conditions, and habitat suitability assessments for White Clawed Crayfish, Lamprey and Atlantic Salmon were undertaken in all watercourses within the CPO in January 2016.
- Field evidence of Otter was recorded and no potential Otter holts or couches were recorded within the CPO or within 150m derogation limit for this species.
- Based on the desk study and baseline ecological conditions on the Swinford River, and in accordance with the Precautionary Principle, White-clawed Crayfish and Lamprey are considered to be within the immediate proximity to proposed works.
- Conclusions of NIS clearly outline residual effects with, without and following implementation of proposed mitigation measures and residual effects, and these have been assessed as being insignificant in light of the site's Conservation Objectives.

<u>Response to Inland Fisheries Ireland</u>

- Council and project engineer and ecologist met with IFI and NPWS on 13th January 2016 and agreed that temporary diversions and installation of precast box culverts was an appropriate form of construction.
- Alternative studies have confirmed that a bottomless culvert could be accommodated within the proposed land-take at an extra cost of €250,000 (drawings appended).
- Box culvert sought to minimise the extent of wing walls to be constructed.

- Alternative bottomless culvert has been designed to a minimum length and it would be possible to reduce the length of a box culvert by 10m by providing more extensive wing walls.
- Council will continue to liaise with IFI regarding the culverting of all local land/ field drains at detailed design stage. Contractor will adhere to IFI's "Guidelines on Protection of Fisheries During Construction Works in and Adjacent to Waters" and a method statement for works on watercourses will be submitted to IFI.
- Both culverts have been designed to have a constant slope with the bottom at least 300mm below the grade line of the natural watercourse bed and with the existing bed width maintained along its length. There will be replacement of original substrate inside the culverts.
- Contract will include requirement for temporary facilities to trap any accidental spillage and Environmental Operating Plan will adhere to IFI Guidelines.
- Mitigation measures will be included within contract documents for the scheme and IFI's requirement to have spill kits, hydrocarbon absorbent materials and drip trays will be included.
- Erosion and sediment control plan includes measures to restrict topsoil stripping in the vicinity of watercourses. 2m exclusion zone with double silt fences will be maintained around watercourse diversions and along other sections of watercourse along the scheme.
- Should Board require a bottomless culvert along the Swinford River, 2m buffer will be reduced locally as specified by IFI.
- Only activities permitted within 4m buffer along River Moy will be the pruning of those trees directly below and within 1m of the edge of the bridge deck and the construction of the outfall channel from the attenuation pond.
- Contractor will appoint a responsible manager to ensure that mitigation measures are executed. Surface water outfalls will be checked twice a day.
- Commitment to prepare Emergency Response Plans is included and IFI will be notifiable body in the case of pollution to a watercourse.

- Instream works will be undertaken along the Swinford and Pollsharvoge Rivers between 1st May and 30th September.

Response to Landowners' Submissions

- Lands are required for road realignments including associated verges, earthworks, working space, maintenance access, attenuation ponds, bridge abutment, pedestrian walkway, pedestrian/ cycle paths, earthworks, drainage, visibility splays and for the safe access to adjoining lands.
- All new drainage will be detailed to ensure that there will be no increased risk of flooding and that the current drainage situation will not be affected.
- Agricultural holdings are not normally considered noise sensitive receptors and some landowners' dwellings are located a similar distance or further away to proposed road. Road will also have low noise surface.
- Proposed N26 will be 92m from the eastern façade of Therese Soden's house – noise mitigation measures as above.
- Existing access to Therese Soden's property will be set back from its existing position along Meelick Road and new access will be surfaced with asphalt concrete to match existing driveway. Existing cattle grid will be reinstated or compensation paid in lieu as part of the accommodation works agreement with this landowner. Boundary wall will also be constructed for this property.
- New accesses to retained lands will be constructed with a pavement width of 4m and will include grass verges of 1m minimum on both sides. Access will have double surface dressing.
- Access at Ch. 0+020 to properties along Meelick Road (Alan McNulty) will be gated separately and the junction will remain in public ownership.
- New field access into forested lands at Ch. 1+300 (Martin & Mary Gallagher) will be constructed to accommodate the movement of large trucks and vehicles.
- Junction between the proposed N26 and the property boundary gates (Michael Higgins) will remain in public ownership.

- Access into Patricia Browne's property and adjoining property to the east will be gated separately and the junction between the national road and the property boundary gates will remain in public ownership.
- Access to Ann Taylor's property will remain unaffected with existing N26 becoming a local road. Existing second access onto Killasser Road will be retained with minor regrading/ resurfacing works. Garden wall and grassed back around property will not be affected by the proposals.
- In general, permanent fencing will be timber post and rail fence with chainlink wire mesh. Along the national road, permanent fencing will be in accordance with TII standards and will maintain stock proofing requirements and enhanced road safety.
- Planning report and NIS identify and address the planning and environmental impacts associated with the proposed road project.

9 Oral Hearing

9.1 The parties to the Oral Hearing were Mayo County Council, represented by consulting engineers, project ecologist, senior planner and senior counsel; prescribed bodies, namely the Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs (NPWS) and Inland Fisheries Ireland; the agent for the objectors to the CPO; and Mr. Peter Sweetman. The Inspector was informed before commencement of the hearing that five of the seven objections to the CPO had been withdrawn, leaving only the objections by Ms. Patricia Browne and Ms. Ann Taylor remaining to the order.

9.2 The applicant, Mayo County Council, was asked firstly to state their case for the Section 177AE application. The prescribed bodies and objectors were then heard. All parties were given the opportunity to cross question one another and the Inspector ask questions of various parties.

9.3 The submission from Mayo County Council's consulting engineers included an outline of the background to the project; a demonstration of the need for the proposed development; a summary of the route selection process; a description of the proposed development; details relating to the construction phase; an outline of

effects on the environment; and errata, response to objections and conclusion. The Senior Planner's Brief of Evidence included an assessment of the requirement for EIA and AA; the need for the scheme; and compliance with policy. The first party's presentation concluded with the lead ecologist presenting his Natural Impact Statement and Ecology Brief of Evidence. Mayo County Council also introduced new evidence that was read into record from Mr. John Cross, an independent woodlands expert.

9.4 Within the submission from the Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs (DAHRRGA), the main concern was that the applicant has not demonstrated that permanent loss of small areas of the Annex I priority habitat and qualifying interests of the SAC, Alluvial forests will be avoided and that adverse effects on the Annex II species and qualifying interests of the SAC can be avoided or mitigated.

9.5 IFI maintains its position that a bottomless culvert should be installed over the Swinford River, as the area of river bed to be culverted is used for salmon spawning and may also be used by lamprey for spawning. However, a precast box culvert is considered acceptable for the Pollsharvogue River.

9.6 Mr. Peter Sweetman stated in his submission that the proposed development includes the removal of small amount of alluvial forest and reference is made to the Advocate General's opinion in Case C-258/11, which explains what a "small amount" is relevant to the Appropriate Assessment directive. It is therefore considered that it is absolutely impossible for the Board to grant the proposed development legally.

9.7 It was considered within the formal opinion of Mr. John Cross that the stand of trees on the south side of the river at the proposed crossing point does not meet the recommended minimum habitat size threshold to be defined as woodland and that while the vegetation has some similarities to alluvial woodland, it is neither sufficiently large nor well developed to be categorised as Residual Alluvial Woodland as described under the EU Habitats Directive.

9.8 The agent acting on behalf of an objector to the CPO put forward a counter-proposal for access to his client's field, which is located at the eastern end of the proposed road scheme on the northern side of the existing road. The objector prefers a single

access rather than a shared access to her field owing to concerns that parking could occur on the proposed access road.

9.9 A synopsis of the Oral Hearing, including issues discussed during cross questioning, is included in the Appendix of this report.

9.10 Further Information Request Following Oral Hearing

9.10.1 On 30th March 2017, the Board issued a request for further information to Mayo County Council on foot of the issues raised at the Oral Hearing and for the purposes of informing an Appropriate Assessment. This included the following:

- The Appropriate Assessment Screening determination and associated documentation relating to the ground investigation works on the southern bank of the river;
- Photographs and data from all surveys undertaken on site;
- Background data for the Field Assessment Sheets;
- Confirmation of all survey information provided to Mr. John Cross;
- A description and analysis of the wider local presence of Annex I priority habitat in the application lands and adjacent lands within and outside the SAC;
- Mapping including measurements of SAC, development footprint and construction footprint;
- Description and analysis or implications for habitat that will be impacted upon or contained within the specific areas described above;
- Identification of likely significant effects on each of the Annex II species that are a qualifying interest for the SAC, mitigation measures and residual effects;
- Outline of any specific mitigation measures intended to be addressed prior to construction within a Construction, Erosions and Sediment Control Plan and a Construction Management and Environmental Operating Plan.

9.10.2 Mayo County Council submitted a response to the further information request on 19th April 2017. The response includes the Appropriate Assessment Screening determination for the ground investigation works. It is noted that during these works artesian groundwater conditions were encountered within a borehole, and after

attempting to plug the borehole, it was not possible to prevent flow from running across the vegetated buffer towards the River Moy. A small settlement pond was created and flow was directed through a silt fence and straw bales to mitigate against siltation in the river.

9.10.3 Detailed ecological survey data presented in the further information response included *"preliminary assessments of ecological feasible alternatives"* prepared in March 2014; habitat surveys and woodland relevé assessments carried out in May 2015 for the ground investigation screening for appropriate assessment; desk study and multidisciplinary walkover survey conducted in January 2016 to update ecological baseline data; and further updating of multidisciplinary walkover survey by independent ecologists in April 2016 to include a full otter and badger survey and Bat Suitability Assessment. It should be noted that the relevé survey was undertaken in January 2016 and not April 2016.

9.10.4 The further information response outlines the information that was provided to Mr. John Cross for the purposes of this assessment of the riparian woodland, confirming that the 2014 and 2015 survey information was not made available. It was nonetheless concluded that *"the recommended minimum habitat size threshold (as described in the Heritage Council Best Practice Guidance for Habitat Survey and Mapping (Smith et al., 2011)) is not met and that the stand of trees along the river bank constitutes a treeline, rather than alluvial woodland."*

9.10.5 With respect to the applicant's response regarding the presence of Annex I priority habitat in the wider local area, reference is made to the Preliminary Assessment of Ecological Feasible Alternatives report of 2014 which concludes that *"none of the habitats present within the study area were positively identified as habitats listed on Annex I of the EU Habitats Directive."* Reference is also made to the conclusion of the assessment of habitat within the area of woodland along the conifer plantation to the south of the River Moy, which states that this area *"does not correspond to the Annex I Habitat 91E0 *Alluvial forests with Alnus glutinosa and Fraxinus excelsior as it fails on 50% of the assessment criteria including Positive and Negative indicator species. The size of the woodland plot is significantly lower than the minimum woodland survey area, of 0.98ha, as per Perrin (2008)."*

9.10.6 Mapping has now been provided which shows habitat that will be protected; habitat that will be lost under proposed earthworks; and habitat that will be lost during construction but replaced by new tree planting with native riparian species.

9.10.7 In terms of the likely effects on each of the Annex II Species within the SAC, reference is made to the screening matrix within the NIS which reviews the qualifying interest, the conservation objective of each qualifying interest and states whether a potentially likely significant effect exists in view of the conservation objectives. The mitigation for each qualifying interest is outlined, as well as any residual effects, and it is concluded that *"any residual effects remaining after implementation of mitigation measures proposed have been assessed as being insignificant in light of the site's Conservation Objectives."*

9.10.8 Mitigation measures proposed prior to commencement of development include implementation of an overall Construction Management Plan containing a Construction, Erosion and Sediment Control Plan and an Environmental Operating Plan. Prior to commencement of development, the contractor will be required to develop these plans with specific implementation details that demonstrate full compliance with prescribed mitigation measures to proposed construction programme and methods.

9.10.9 It was considered by the Board that the above submission by Mayo County Council contained significant additional data and the applicant was instructed to advertise that the further information is available for inspection and that submissions/ observations may be made to the Board.

9.11 Responses to Significant Further Information

Transport Infrastructure Ireland

9.11.1 TII had no specific comments to make in relation to the significant further information.

Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs

9.11.2 The following matters were raised by the DAHRRGA in a response dated 31st May 2017 to the significant further information:

- No additional scientific data, information or analysis are presented with the possible exception of mapping showing area measurements and implications for habitat;
- Extent of permanent development footprint within the SAC, including pedestrian/ angler walkway is unclear, as is the full extent of the temporary footprint, e.g. CPO line includes watercourse on northern bank.
- Timing of most recent project-specific ecological surveys in January 2016 is a significant constraint when undertaking habitat and botanical surveys – earlier surveys carried out in the absence of specific project details.
- Limited information about the habitats within the overall CPO line, and within the permanent and temporary footprints of the proposed development.
- Native wet woodland habitat occurs in narrow strips and wider areas along the banks of the River Moy – there may be correspondence with the Annex I priority habitat, Alluvial forests with *Alnus glutinosa and Fraxinus excelsior (alno-Padoin, Alnion incanae, Salicion albae)* [91E0^2], a qualifying interest of the SAC.
- Analysis used by the applicant to discount the presence of Annex I priority woodland was without reference to "Habitats Directive Article 17 reports for 2007 and 2013" and the "Interpretation Manual of European Union Habitats EUR 28 (2013)".
- Board's assessment should be carried out with respect to the conservation objectives of the European site and these are site specific in this case.
- There should be consideration of whether there are sufficient lands available for all development, works, access and storage noting the intention to avoid woodlands habitats within the SAC – should also include details of surface water management and risks of encountering further artesian groundwater flows. The likely effects of mitigation measures should also be addressed, e.g. archaeological testing or silt control measures.
- Details of proposed water quality monitoring are not presented and data on water quality are not presented to establish a baseline.
- Low water levels in the River Moy in 2017 have revealed large numbers of dead shells of Freshwater Pearl Mussel, an Annex II species but not a qualifying

interest of the SAC, at the proposed river crossing – survey of the crossing point and upstream and downstream is advised.

- Council's screening for appropriate assessment for ground investigation works reached its conclusions on the basis of an assessment of the likely effects of the works on the SAC, including ecological surveys.

9.11.3 The Board considered it appropriate to invite comment from the Local Authority in relation to the above submission from the DAHRRGA. In response, Mayo County Council's consultants submitted the following on 2nd August 2017:

- Section 2 of the further information response and associated Appendices B, C1, C2 and C3 include significant additional ecological survey data and scientific assessment of that data.
- Figure 1.0 in Appendix D makes clear the areas that will be disturbed and ultimately landscaped with incorporation of public footpath.
- Drainage channel and its relationship to the SAC is shown on drawing CE-04-NIS-001 – this is the only area of overlap between the CPO and the SAC not included in the Figure 1.0 and has an area of 0.05 ha.
- Prior knowledge of specific project details is not required in order to map or describe existing habitats – Results of woodland relevé survey of May 2015 remain valid.
- Level of assessment is appropriate in the context of the EIA Screening conclusion that a full EIS is not required.
- Comprehensive evidence has been provided that the wet woodland habitat does not correspond to the Annex I priority habitat type Alluvial Forests. Additional ecological survey data provide further scientific evidence in support of this conclusion.
- Article 17 Reports were referred to in the preparation of the AA Screening and NIS. Approach in Perrin et al was followed and O'Neill & Barron (2013) provides the most scientifically sound interpretation of Annex I Alluvial Forests in an Irish context.

- The site synopsis and conservation objectives are contained in Appendix D of the NIS.
- Sufficiency of lands included within the CPO for the construction phase is demonstrated by the construction planning described in chapter 4 of the Planning Report.
- Shallow foundations are proposed to avoid impacting on artesian groundwater flows which were encountered at 12m BGL.
- All mitigation measures listed in Chapter 12 that are specific to a particular location are clearly described such that their locations can be readily identified by reference to drawings contained in Volume 2.
- Water quality monitoring program downstream of proposed outfalls during the construction phase will be continued for 24 months post construction. Groundwater and water levels in the River Moy will also be monitored as part of the Construction Management Plan.
- Results of EPA Water Quality Monitoring and the Water Framework Directive assessment of the River Moy provide baseline water quality data.
- The river bed will not be disturbed and the abutments are set back a minimum of 10m from the river banks – watercourses suitable for freshwater pearl mussel only require detailed survey if the development has potential to significantly impact on the watercourse (Ecological Surveying Techniques for Protected Flora and Fauna during the Planning of National Road Schemes, 2008). Freshwater Pearl Mussel is not a qualifying interest for the River Moy SAC.
- Screening for ground investigation works concluded that the *"small scale land take within the SAC will be restricted to improved pasture, conifer plantation and non-Annex I wet woodland. There will be no direct or indirect impacts on Annex I habitat or Qualifying Interests of the River Moy SAC."*
- Screening for Appropriate Assessment for the full development used baseline ecological survey information from the ground investigations screening, further survey work undertaken subsequently, and feedback from consultations on site with the NPWS and IFI.

10 Compulsory Purchase Order Assessment

10.1 Community Need

10.1.1 I have inspected the N26 National Primary Route at Cloongullaun and the approaches to the existing bridge over the River Moy at this location. I have also conducted an Oral Hearing and examined all submissions and documentation on file and I would be satisfied that Mayo County Council has established a need for the proposed realignment of the N26 at this location.

10.1.2 It was highlighted within the Brief of Evidence presented at the Oral Hearing by the Council's Senior Planner that the spatial planning context for the proposed road scheme is rooted in the concept of balanced regional development and that the quality of road transport linkages is of crucial importance to trade, investment, tourism and quality of life. In this regard, it is considered that the proposed development will substantially improve links between Mayo and the rest of Ireland, the UK and Europe; facilitate existing and future economic activity; ensure speedy and efficient access to airports; and improve accessibility to/ from the north and north-west coast to support tourism and marine development.

10.1.3 There are two remaining objections to the CPO from adjoining landowners, Patricia Browne and Ann Taylor. There is no suggestion that the objectors are opposed to any community need that may arise from the proposed scheme. Grounds of objection are centred around particular aspects that affect the objectors themselves such as access, drainage, boundaries, noise and environmental/ planning.

10.1.4 On balance, however, I would be of the opinion that there is a wider gain to the community associated with the road realignment over the injury that would be experienced by the Objectors through loss of the land and other abovementioned impacts. The local community along the existing roadway will experience an improvement in conditions through removal of traffic, and the provision of cycleways and walkways. Sections 10.3 and 11.3 are also pertinent in this regard.

10.1.5 I would therefore conclude under this criterion that the need for the CPO is justified and that the community need for the scheme has been established.

10.2 The extent and suitability of lands sought for acquisition

10.2.1 The N5-N26-N58 Castlebar to Bohola and Swinford to Mount Falcon Route Studies prepared in September 2015 identify a preferred route corridor for sections of the N5, N58 and N26 National Roads including the section of the N26 from Mount Falcon to Swinford. It is recognised that the N26 will continue to function as the primary link between Ballina and the Midlands and Dublin Gateways via Foxford and Swinford and therefore further consideration should be given to improving the worst sections of this road under the Minor Works and Safety programmes.

10.2.2 Speed surveys conducted as part of the study identified a pressing need to consider relief of delays at Foxford, Swinford and Cloongullaun Bridge. The Road Safety Authority Personal Injury Accident (PIA) database was consulted to ascertain collisions along the N5, N58 and the N26. A high accident density was recorded between 2005 and 2012 at Cloongullaun Bridge and it is noted that the preponderance of single vehicle accidents is consistent with roads of a generally poor standard.

10.2.3 Having regard to the above, there is a need for the lands to facilitate the proposed development from a traffic safety perspective. The 1km approach to Cloongullaun Bridge from the west ranks twice above the national average collision rate[1] and the section at the bridge is ranked above average. Furthermore, the cross section and alignment of existing road are not of a standard required for the 100kph speed limit, with the average speed only being 61 kph. With traffic increasing to 4,660 AADT in 2035 from surveyed levels of between 3,300 and 3,800 AADT in 2013 and 2014, there would be a deterioration in the level of service and no improvement in facilities for pedestrians and cyclists.

10.2.4 The objectors to the CPO consider that acquisition of lands appears to be surplus for the construction of the new road. The DAHRRGA states, however, that consideration should be given on whether there is sufficient information/ clarity on the final project design and the full extent of works/ lands required for the proposed development.

10.2.5 The proposal is for a Type 2 single carriageway comprising 2 x 3.5m lanes, 2 x 0.5m wide hard strips and 2 x 2.5m wide verges. Pedestrian and cyclist facilities will be

[1] HD15 Network Safety Ranking (renamed GE-STY-01022)

provided along the truncated sections of the N26 with a new cycleway to link these sections. The verges and tie-in points will also be widened to accommodate the potential for a future cycleway between Swinford and Foxford. Pedestrian facilities will also be provided under the eastern end of the River Moy Bridge.

10.2.6 The lands for the proposed development will include sufficient area for 4 no. at-grade junctions with local roads, as well as direct accesses to houses and farmland. Lands will also be required for drainage, including attenuation ponds located along the proposed road development before discharging to receiving water courses.

10.2.7 The applicant states that the sufficiency of lands included within the CPO for the construction phase is demonstrated within chapter 4 of the Planning Report (construction planning). Construction compounds for the two sections of road may include stores, offices, materials storage areas, materials processing areas, plant storage and parking. Upon completion of works, compound areas will be cleared and reinstated.

10.2.8 Overall, it is proposed that the total land-take for the proposed development will be 12.43 hectares, comprising of 7.56 hectares agricultural lands, 0.54 hectare forestry, 3.14 hectares public road, 0.53 hectares of houses to be acquired, 0.09 of garden and 0.57 of river. Three farms will experience some degree of severance and the properties to be acquired will be available for occupation upon completion of construction. Mitigation will be provided in the form of permanent stock proof fencing along the alignment and restoration of access, where affected. Compensation will also be paid subject to planning approval.

10.2.9 I would therefore agree that the land-take for the proposed CPO along the road corridor is necessary to ensure the delivery of the proposed realignment to appropriate standards.

10.3 Compatibility with Development Plan Provisions

10.3.1 The Core Strategy and Settlement Strategy of the Mayo County Development Plan, 2014-2020 recognise that "*the national road network plays a key strategic role in connecting the Linked Hub and Key Towns within the Region and to the Gateways (Sligo, Galway and Athlone) and Hub town (Tuam) destinations outside the County.*"

10.3.2 It is an objective of the Council *"to provide, or facilitate the provision of, all infrastructure projects set out in Table 3, with priority given to infrastructure serving the Linked-Hub and Key Towns or areas where significant environmental or safety issues are evident and require the particular infrastructure to solve the issues and where it can be demonstrated that the development will not have significant adverse effects on the environment, the integrity of the Natura 2000 network or visual amenity."*

10.3.3 The proposed scheme is not specifically referred to in Table 3 – Priority Infrastructure Projects for Co. Mayo 2014-2020. Reference is made to the N26 Ballina to Bohola scheme where the intention was to replace both the N26 and N58 between Foxford and the N5 with a single Type 2 dual carriageway. However, the Board decided to refuse permission for this scheme (HA0003/ KA0002) in February 2010 on the basis that a proposal of this scale was not justified. A strategic route assessment was then undertaken, which concluded that traffic demand between Castlebar and Ballina and between Ballina and Swinford is best served by the existing N5/ N58 and N26 corridors. The proposed development therefore forms part of the revised strategy for taking forward the original objectives of the N26 Ballina to Bohola Phase 2 Road Project following the Board's earlier refusal, and in effect supersedes the N26 priority infrastructure project.

10.3.4 The proposed scheme would also be consistent with Objective TM-03 of the Development Plan which seeks to *"…continue to provide where possible, or encourage the provision of, walkways and cycleways throughout the county where it can be demonstrated that the development will not have significant adverse effects on the environment, including the integrity of the Natura 2000 network or visual amenity, and to promote the County as a premier walking/cycling destination in the Country."*

10.3.5 Finally, the Council is seeking approval from the Board under the provisions of Section 177AE of the Planning and Development Act, 2000 (as amended) for a development for which a Natura Impact Statement has been submitted along with documentation in support of the application. This application shall therefore comply with Development Plan Objective NH-03 under which it is a requirement *"…to implement Article 6(3) and 6(4) of the EU Habitats Directive, by screening all plans and projects for appropriate assessment and to ensure those with potential to have*

significant effects on the integrity of Natura 2000 or European Sites (cSACs, SPAs), whether directly (in situ), indirectly (ex-situ) or in combination with other plans or projects, are subject to an appropriate assessment and the preparation of an NIR or NIS in order to inform decision making." In this regard, there are outstanding concerns raised within the Appropriate Assessment and with respect to the impact of the proposal on the Freshwater Pearl Mussel.

10.4 Consideration of alternatives to meet community need

10.4.1 The N5/ N26/ N58 Castlebar to Bohola and Swinford to Mount Falcon Route Studies were presented in a Route Corridor Selection Report and associated drawings in September 2015. Based on this report, it was recommended that the N5 Castlebar East to Bohola and N58/N26 Ballyvary to Mount Falcon (Option 6) is adopted as the Preferred Route Corridor for this route selection study and progressed as a NRA Major Roads Project.

10.4.2 Relatively low traffic volumes and consequently poor economic benefits do not justify the inclusion of the N26 between Foxford and Swinford as part of the Major Scheme, and therefore it was concluded that further consideration should be given to improving the worst sections of this element of the national road network under the Minor Works and Safety programmes. The proposed road development at Cloongullaun was commissioned following adoption of the Preferred Route Corridor in July 2015.

10.4.3 A route selection process, including habitat surveys for assessing suitable crossing points over the River Moy was carried out in 2013. Three potential crossing points were identified. Crossing point 3 was chosen on the basis of its closer proximity to the existing bridge and what was considered to be a slightly less ecological impact compared to the other crossing points further downstream.

10.4.4 Crossing point 3 was then considered along with two other options at this location that would have utilised the existing bridge via different approaches from the west via the Foxford Way. A project appraisal of these three routes was carried out using a Project Appraisal Matrix under the criteria of economy, safety, environment, accessibility and social inclusion and integration.

10.4.5 Route option 3 including the new crossing of the River Moy SAC downstream of the existing bridge emerged as the preferred route for the following reasons:

- Construction of a new bridge maximises safety, achieving full design standards, segregating local access and pedestrians from high-speed traffic, and avoiding a long road closure during upgrading of the existing bridge.
- The options were ranked equally in terms of environment; however, the design of the proposed new bridge can be developed to control and avoid impacts on the SAC.
- Upgrading of the existing crossing of the SAC would be more difficult to control, with greater risk of accidental impacts on the SAC during construction.
- Other route options had greater environmental impacts on archaeology, landscape and visual, and property when compared to Route option 3.

10.4.6 Having regard to the background of the scheme, including planning history and the emergence of preferred route corridors for national roads in the wider area, together with the assessment of options for crossing the River Moy at Cloongullaun, I am of the opinion that there has been due consideration of alternatives in this case.

10.5 Third Party Submissions

10.5.1 There are two remaining objections to the CPO from Ms. Patricia Browne and Ms. Ann Taylor. The quantity, description and situation of the land belonging to Ann Taylor comprises a 0.052 hectare part of the public road and a 0.1 hectare part of a garden at the corner of the existing N26 and the L-1329 to Killasser. There are three parcels of land belonging to Ms. Patricia Browne at the eastern end of the scheme described as part of the public road (0.061 hectare), agricultural land (0.075 hectare) and agricultural land (0.048 hectare).

10.5.2 Objections to the confirmation of the CPO and the Section 177AE application were made to the Board on behalf of the objectors in December 2016. The content of these objections was largely similar and relates to matters of surplus land acquisition, drainage, noise, access - general, boundary treatment, and environment and planning. The objectors also request the right to tender other grounds of

objection at the Oral Hearing. One third party objector to the CPO, Ms. Patricia Browne, was present at the Oral Hearing and evidence was submitted on her behalf.

10.5.3 Mayo County Council submitted individual responses to each of the CPO objections to the Board on 10th February 2017. In specific reference to Ann Taylor's objection, it is stated that the lands proposed to be acquired adjacent to this property are a road bed and an area of verge outside the walled garden that are required as working space for the construction of the scheme. Similarly, lands to be acquired adjacent to Patricia Browne's property are required to provide an appropriate roadside verge with associated earthworks, safe access to adjoining lands, working space and maintenance access.

10.5.4 In terms of drainage, reference is made to Section 3.9 of the Planning Report which states that *"new drainage will be detailed to ensure that there will be no increased risk of flooding and that the current drainage situation will not be affected."* The proposal will also be designed to ensure that existing ponding to the south of Ann Taylor's property is eliminated.

10.5.5 With respect to noise, it is stated that the N26 will be located further away from Ann Taylor's property and the agricultural plot belonging to Patricia Browne would not normally be considered a sensitive receptor. It is also proposed to include a low noise road surface.

10.5.6 The current access to Ann Taylor's property from the N26 will remain unaffected by the proposed road project and the second access to the local road will be retained with some minor regrading/ surfacing works. A new access to the north of the N26 will be constructed to Patricia Browne's property and the adjoining property to the east with separate gates.

10.5.7 The boundary to Ann Taylor's property will not be affected by the proposed development. Stock proof fencing will be maintained to Patricia Browne's property.

10.5.8 The objectors had general concerns regarding environmental and planning issues which are addressed in the planning report and NIS submitted with the planning application, and also within subsequent sections of this report.

10.5.9 Overall, I would be satisfied that the issues raised within written objections have been adequately responded to by the local authority. As noted in Section 10.2 above, the land take is necessary for the delivery of the proposed road scheme to

appropriate standards. The objectors' submissions on drainage, noise, boundary treatments and planning/ environmental are of a general nature and are addressed within submitted documentation or will form part of standard construction practice.

10.5.10 The outstanding issue for discussion at the Oral Hearing related to the form of access to Patricia Browne's property. A counter-proposal for access to his client's field to the north of the road was put forward by the agent at the hearing, whereby a single access rather than a shared access would be provided owing to concerns that parking could occur on the proposed access road.

10.5.11 Having regard to the traffic safety practice to collect farm accesses together as much as possible, and to the proposed length and design of the access which will facilitate a vehicle and trailer pulling up to the gate without blocking the other gate, I do not consider that the need for separate accesses to the objector's property and the adjoining property at this location can be sustained.

10.5.12 In general, I consider that the acquisition of the lands to facilitate the proposed realignment of the N26 at Cloongullaun would be in the public interest. The project is consistent with the relevant policies and objectives of previous and existing Local Area Plans and County Development Plans relating to the provision of improved transport infrastructure. However, the implications of the sproject, alone or in combination with other plans and projects, on the integrity of a European site in view of its Conservation Objectives must also be considered before any recommendation to approve the CPO.

11 Assessment of application for approval under Section 177AE

11.1 Under the provisions of Section 177AE(6) of the Planning and Development Act, 2000 (as amended), the Board is required to consider the following in respect of this type of application:

- The likely effects on the environment;
- The likely consequences for the proper planning and sustainable development of the area; and
- The likely impact on any European sites.

11.2 The Likely Effects on the Environment

EIA Screening Determination

11.2.1 Section 2.3.3 of the "Environmental Impact of National Road Schemes – Practical Guide" in relation to the Consideration of Environmentally Sensitive Sites states that if a proposed sub-threshold road scheme would be located on an environmentally sensitive site, the road authority shall decide whether it would or would not be likely to have significant environmental impacts. In this regard, it is stated that in cases *"where the road authority concludes that significant environmental impacts are likely, it informs An Bord Pleanála, and, where the Board concurs, it issues a direction to the road authority to prepare an EIS. It is important to note that where the road authority considers that significant environmental effects are not likely, there is no requirement to inform the Board. However, in such circumstances, the grounds for the road authority's conclusion should be recorded."*

11.2.2 In this case, Mayo County Council has decided that significant environmental impacts are not likely, notwithstanding the fact that Appropriate Assessment Screening concluded that an NIS was necessary. It was not therefore necessary to inform the Board and Mayo County Council's conclusion is recorded within the EIA screening determination of 26th May 2016.

11.2.3 In addition to the above, Section 177AE(15) states that *"where a proposed development to which this section applies is also required to be submitted to the Board under section 175 (Environmental impact assessment of certain development carried out by or on behalf of local authorities), it shall be sufficient for the applicant to make one application to the Board provided that the applicant complies with this section and section 175 and in such a case the Board shall issue one decision in relation to the application under this section and section 175."*

Ecology

11.2.4 The most significant potential impacts arise in relation to water quality and flora and fauna, and these are discussed in more detail within the Appropriate Assessment in Section 11.4.

11.2.5 No physical evidence of badgers or other evidence of breeding/ resting places for other terrestrial mammals (e.g. stoat, red squirrel, pine martin, etc.) were detected within multidisciplinary walkover surveys.

11.2.6 The Bat Suitability Assessment determined that an existing culvert under the L-1312, Meelick Road was considered as having medium potential to support a bat roost and a tree 100m outside the CPO was identified as having moderate/high bat roost suitability.

11.2.7 Within the submission of the DAHRRGA received by the Board on 31st May 2017, it is noted that large numbers of dead shells of Freshwater Pearl Mussel (Margaritifera margaritifera) were revealed at the location of the proposed river crossing during low water levels in May 2017. Freshwater Pearl Mussel is listed in Annex II and Annex V of the Habitats Directive but is not a qualifying interest of the River Moy SAC.

11.2.8 The freshwater pearl mussel is highly threatened and categorised as critically endangered in Ireland and across Europe, with 90% of the species having died out across Europe in the 20th century. According to "The Status of EU Protected Habitats and Species in Ireland, 2013" (NPWS), the species' current severe decline is because of sedimentation and enrichment of its habitat. Freshwater pearl mussel require very clean and well oxygenated rivers so that very tiny young can burrow into river gravels to prevent them from being washed out to sea. It is noted that sediment and nutrients that enter mussel rivers can come from a variety of sources, including development activities. Furthermore, it is highlighted that the species can suffer direct impacts from in-stream works such and channelisation and bridge construction.

11.2.9 The DAHRRGA consider that the proposed development has the potential to impact on freshwater pearl mussel or its habitat if present, and therefore a survey of the crossing point and upstream and downstream is advised. In response, the applicant refers to the National Roads Authority's guidance document "Ecological Surveying Techniques for Protected Flora and Fauna during the Planning of National Roads Scheme, 2008" which recommends that watercourses suitable for freshwater pearl mussel only require detailed survey for this species if the development has the potential to significantly impact on the watercourse. It is considered by the applicant

that there will be no significant impact on the River Moy as the river bed will not be disturbed and the abutments are set a minimum of 10m from the river banks.

11.2.10 Notwithstanding this, I would have significant concerns regarding the likely significant effects on this species, particularly from sedimentation, which is one of the main reasons for this species' current severe decline. It is unclear if any sediment entering the River Moy at the time of ground investigation works, when artesian conditions were encountered, is the reason for the freshwater pearl mussel mortality at this location. The applicant contends that no in stream works are proposed in the River Moy; however, significant construction works will take place in close proximity to the river that will involve stripping of vegetation, excavation works, operation of heavy machinery and the storage and use of concrete, chemicals and fuels.

11.2.11 Having regard to the above, I consider that the proposed development has the potential to have significant effects on freshwater pearl mussel when sufficient information is not available on the presence of this species at the location of the proposed river crossing, or indeed any of the tributaries. I would therefore be of the opinion that the Board cannot be satisfied, based on the information available, and in view of the conclusions of the DAHRRGA, that proposed development will not have significant adverse effects on a species listed in Annex II and Annex V of the Habitats Directive.

Hydrology and Hydrogeology

11.2.12 The three main watercourses along the proposed road realignment are the River Moy, the Pollsharvoge River and the Swinford River. The River Moy has been assigned "good status" under the EPA 'Q' rating system. Under the WFD assessment, the River Moy is classified as having: 'Good' macroinvertebrate status, 'High' general physico-chemical status and 'Good' overall ecological status. The overall status result for the River Moy is 'Good'.

11.2.13 In terms of flooding, a significant event occurred along this section of the River Moy in December 2015, with out of bank flooding for a distance of approximately 30m beyond the banks occurring downstream of Cloongullaun Bridge. All proposed crossing structures have been designed to accommodate 100 year rainfall event flow.

11.2.14 In terms of roadside drainage, it is noted that the existing runoff receives minimal treatment and the proposed attenuation ponds and treatment forebays have the potential to improve water quality.

11.2.15 It is proposed that the River Moy bridge abutments will be supported by shallow foundations to avoid artesian groundwater flows. The areas of cut associated with the proposed development will be limited to 2m bgl and therefore it is considered that there will be no impact on groundwater flow paths. A spring at Ch. +950 will be excavated, filled and channelled to the River Moy. Groundwater monitoring is proposed at one location as a precautionary measure.

11.2.16 The potential impacts of the proposed development on hydrology of the Pollsharvogue and Swinford Rivers is covered in more detail within the Appropriate Assessment section of the report.

Archaeology, Architecture and Cultural Heritage

11.2.17 In terms of direct impacts, the proposed development will result in the removal of a vernacular farm in ruin at Pollsharvogue. The applicant also confirms that there is potential for direct impacts on a former tail race along the Swinford River and this will require further investigation prior to construction.

11.2.18 Indirect impacts to features within 50m of the CPO line will occur at CH 46 (vernacular cottage); CH43 (school house); and CH42 (vernacular house).

11.2.19 The proposed development will positively impact in a number of features as a result of traffic diverting onto the new road. These include vernacular dwellings at CH40 and CH41, a roadside shrine at CH38, a bridge at CH39 and in particular Cloongullaun Bridge and the adjacent handball alley. Damage to the bridge as a result of collisions has occurred in the past and this has impacted on its structure and character.

11.2.20 Overall, it can be concluded that the proposed road development will have no significant impact on archaeological, architectural and cultural heritage features.

Landscape and Visual Impact

11.2.21 An assessment was carried out on the effects of the proposed development on landscape character and on public realm viewpoints. The qualitative landscape and visual effects were considered to be adverse at construction and in the short term,

but becoming neutral in the medium to long term. Impacts on residential properties as a result of loss of boundaries or nearby planting can be mitigated through reinstatement and/ or implementation of alternative proposals.

11.2.22 The bridge will be the most visible new feature of the proposed development. The bridge beams are relatively deep and visually prominent owing to the requirement to have a clear span construction to avoid in-stream works. It is considered that a curved parapet fascia will enhance the appearance of the bridge's elevations.

11.2.23 The offline sections of the proposed road on the north-western side of the River Moy will result in loss of existing vegetation, and much of the proposed route south-east of the river will not be visible from the existing N26. However, the wider landscape will be reinstated and repaired along the new alignment. The loss of existing landscape features will affect the residential amenity and views from seven dwellings at the approaches to the bridge. Many of the affected houses are along the existing N26 and will benefit from traffic removal.

11.2.24 The proposal is for the realignment/ redevelopment of an existing feature in proximity to and along the existing route corridor. It is considered that the implementation of landscape mitigation measures and appropriate accommodation works for impacted properties will ensure that the proposal will have a neutral impact on landscape character and visual amenity.

Air, Noise & Vibration

11.2.25 Air quality at the site location is noted as being "good" based on EPA monitoring mapping. It is envisaged the new road will not have a significant impact on air quality having regard to predicted traffic flows. Some receptors will have a slight adverse impact and others, particularly the cluster around the existing bridge, will experience an improvement in air quality.

11.2.26 Mitigation measures will be put in place to minimise dust emissions during construction. This will include regular cleaning of site roads, speed restrictions, use of wheel wash, use of materials handling systems and dust minimisation procedures.

11.2.27 It is not considered that the proposed development will induce significant levels of new traffic. The realignment will result in five dwellings being located closer to the road, two of which are proposed to be acquired. Other properties will experience a

reduction in noise levels as a result of the realignment. The proposed road will have a low noise surface and this will offset any increase in noise levels.

11.2.28 There is potential for significant noise impacts during the construction phase. The contractor will be obliged to take specific noise abatement measures and maximum permissible noise levels at nearly dwellings at certain times of the day are set out. Normal working times will be 07:00 to 19:00 hours Monday to Saturday except where ecological restraints further restrict these hours.

11.2.29 Vibration impacts during operation can largely be avoided through good maintenance of the road surface. During the construction phase, vibration can be caused by demolition, excavation works, rock-breaking operations and lorry movements on uneven road surfaces. Allowable vibration levels during the construction phase from NRA Guidelines are set out and with adherence to these levels, the proposed development is not expected to give rise to vibration that is significantly intrusive or capable of giving rise to structural or cosmetic damage.

Agronomy & Property

11.2.30 Three farms along the alignment route will experience some degree of severance and there will be impacts on agricultural boundaries and entrances, service and drainage, farmyards and movement patterns. Permanent stockproof fencing will be provided along the alignment and affected drainage systems will be restored. The loss of farm buildings will be addressed by way of compensation.

11.2.31 Two residential properties will be acquired at Ch. 0+725 and Ch. 0+960 and these will be made available for re-occupation upon completion of works. There will be removal of trees and encroachment into gardens, as well as acquisition of road bed and hardstanding areas to the front of a number of properties. Impacts on residential properties will be addressed by restoring property boundaries and payment of compensation.

11.3 Likely Consequences for the Proper Planning and Sustainable Development of the Area

11.3.1 Section 10.3 of this report assesses the compatibility of the project with Development Plan provisions and the proper planning and sustainable development of the area.

11.3.2 It is considered in the Planning Brief of evidence presented at the Oral Hearing that the N26 is a vital element of the Core Strategy for Co. Mayo connecting the key town of Swinford and the town of Foxford, where development demand will be absorbed in relation to industry, public services, retail and tourism.

11.3.3 I would be in agreement that the proposal to support improvements to the existing national road network would be consistent with the proper planning and sustainable development of the area subject to an assessment of the effects on the environment and the integrity of the Natura 2000 network, as required under Development Plan objective RD-02.

11.4 Likely impact on any European Site (Appropriate Assessment)

11.4.1 The EU Habitats Directive (92/43/EEC) requires competent authorities to review planning applications and consents that have the potential to impact on European designated sites, i.e. Special Protection Areas (SPA's) and Special Areas of Conservation (SAC's). To assist this process, the applicant has prepared a Screening Report for Appropriate Assessment and a Natura Impact Statement (NIS).

Stage 1: Screening

11.4.2 The first stage of the Appropriate Assessment process is the screening exercise where it should be decided if the effects of a development on a European site are likely and whether or not the effects are significant in light of the Conservation Objectives for the site. The precautionary principle should apply if there are significant effects that cannot be excluded, or where the likelihood is uncertain.

11.4.3 The first step of this stage is to identify all European sites which could potentially be affected using the Source-Pathway-Receptor model. Having regard to the nature and scale of the proposed development and the implications and receiving environment, it is reasonable in this instance to evaluate sites within a15km radius for the purposes of identifying sites that could potentially be affected. There are three SACs within 15km of the subject site: Lough Hoe Bog SAC (site code: 000633) is located 8.2km north of the site and Lough Nabrickeagh Bog SAC (site code 000634) is 14.45km north-east of the site. The site is located partially within the River Moy SAC (site code: 002298). The Lough Conn and Lough Cullin Special

Protection Area is the only SPA within 15km of the site being a distance of 8.35km west of the subject site.

11.4.4 Having regard to the nature and scale of the proposed development, impact pathways would be restricted to hydrological pathways and mobile species pathways. The physical distance from the project site to Lough Hoe Bog SAC, Lough Nabrickeagh Bog SAC and Lough Conn and Lough Cullin SPA is such that any impact from the hazard source will be well diminished along the pathways in question by the time its reaches the receptor. It can therefore be reasonably concluded that the proposed development would not have a significant effect individually or in combination with other plans or projects on European sites in excess of 8km from the site having regard to the conservation objectives for these European Sites, the nature of proposed construction works, and the source-pathway-receptor risk assessment principle.

11.4.5 Using the source-pathway-receptor risk assessment principle, the European site that could potentially be affected by the proposed development is the River Moy SAC (site code: 002298). Potential pathways of risk exist between the proposed development and the White-Clawed crayfish, Sea and Brook Lamprey, Atlantic Salmon and Otter, as the proposal will involve the crossing of watercourses containing suitable habitat likely to support these species. The proposal will also result in the loss of small areas of riparian trees that could be classified as alluvial forest. These species and habitat are all receptors at risk, being qualifying interests or potential qualifying interests of the River Moy SAC, and for which it is a conservation objective to restore or to maintain the favourable conservation condition of these species/ habitat. As significant works are proposed within the SAC, hazard sources and receptors will be side-by-side and the consequences of such must be determined.

11.4.6 All qualifying interests within the River Moy SAC are reliant upon the aquatic environment. Therefore, the pathway between the receptor and the hazard source will be via surface water and possibly groundwater. There is potential for release of pollutants such as suspended solids and contaminating substances during construction works, as well as chemical substances associated with temporary sanitation during construction. The potential for water quality reduction is likely to

affect the conservation status of the qualifying interests for which the European Sites are designated.

11.4.7 Obstruction of culvert passages for aquatic fauna and change in water quality and velocity could occur from the installation of culverts. This would result in disturbance to substrate and river sediments and physical damage to habitat structure along riverbanks.

11.4.8 The construction of bridge abutments, involving excavation, erection of the support structures, laying of approach embankments and installation of pedestrian walkway could result in existing riparian woodland habitat being modified, fragmented, destroyed or isolated. The species reliant of this habitat would also be adversely affected by any loss, damage or deterioration of Annex I priority habitat quality

11.4.9 Finally, it can be determined that likely significant effects, either individually or in combination with other plans or projects, on the River Moy SAC cannot be reasonably ruled out in this case on the basis of objective scientific information. A Stage 2 Appropriate Assessment must be carried out to establish if the project will adversely affect the integrity of the European site, either individually or in combination with other plans and project, in view of the site's conservation objectives.

Stage 2: Appropriate Assessment

11.4.10 The purpose of the Stage 2 Appropriate Assessment is to establish if the project will adversely affect the integrity of the European site, either individually or in combination with other plans and project, in view of the site's conservation objectives. The Stage 2 Appropriate Assessment should consider mitigation measures where appropriate, both those proposed by the applicant and those that may be considered necessary to be required by the Board.

11.4.11 Firstly, the conservation objectives shall be identified for the European Site that could potentially be affected using the Source-Pathway-Receptor model. The conservation objective of the River Moy SAC (002298) is to maintain or restore the favourable conservation status of the following habitats and species of community interest:

- 1092 White-clawed Crayfish *Austropotamobius pallipes*

- 1095 Sea Lamprey *Petromyzon marinus*
- 1096 Brook Lamprey *Lampetra planeri*
- 1106 Salmon *Salmo salar*
- 1355 Otter *Lutra lutra*
- 7110 Active raised bogs*
- 7120 Degraded raised bogs still capable of natural regeneration
- 7150 Depressions on peat substrates of the Rhynchosporion
- 7230 Alkaline fens
- 91A0 Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles
- 91E0 Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (Alno-Padion, Alnion incanae, Salicion albae)*

11.4.12 The next step of a Stage 2: Appropriate Assessment is to identify the potential (a) likely and (b) significant effects (direct or indirect) of the project alone on the European site **solely** within the context of the site's conservation objectives in light of best scientific knowledge in the field.

Proposed development and works within SAC

11.4.13 The proposed development involves the construction of 1.8km of Type 2 single carriageway (2 x 3.5m lanes and 2 x 0.5m hard strips) that will include the construction of a single span bridge over the River Moy with reinforced concrete abutments set back from the river bank approximately 10m; the culverting of the Pollsharvogue and Swinford Rivers (tributaries of the River Moy); earthworks (cuttings and embankments); construction of road drainage including treatment ponds/ wetlands; and diversion of utility services. Shallow foundations supported on rock will be used rather than piled foundations.

11.4.14 At the location of the proposed bridge the construction sequence will include installation of sediment control measures (silt fences and straw bales, sediment lagoons, settlement trenches), excavation for all bridge supports; construction of reinforced concrete abutments and pier; construction of approach embankments; assembly of deck steelwork behind the east abutment; lifting of the deck steelwork into place with permanent participating formwork; construction of the concrete deck;

construction of the wingwalls; completion of waterproofing and the additional protective layer; and backfilling evenly on both sides.

11.4.15 Two culverts are proposed at tributaries to the River Moy at Pollsharvoge to the west and at the Swinford River to the eastern side of the proposed development. The proposed construction sequence for the development of these structures includes diversion or overpumping of watercourses; excavation to formation; laying of the sub-base; placement of precast units; laying of existing river bedding into the new culvert; and reflooding of the new channel. Further detail on development description is contained in Section 4 above.

11.4.16 From the outset it is important to note details of the area of the River Moy SAC that will be traversed by the proposed road. The CPO boundary overlaps the SAC at the location of the proposed bridge over an area of approximately 2.15 hectares. The realigned road will continue through the SAC for a distance of approximately 200m. Mayo County Council's further information response received by the Board on 19th April 2017 includes area measurements of habitat types where the SAC overlaps the CPO lands. A works exclusion zone either side of the bridge includes the channel itself and the river bank either side, extending on the north-western side as far as the existing Cloongullaun Bridge, and including all of the wooded area in that location. The habitat type on the northern bank is described as oak, Ash, Hazel woodland (WN2) and on the southern bank Wet Willow, Alder, Ash woodland (WN6) and Conifer plantation (WD4). The stated area of this zone is 1.05 hectares.

11.4.17 An area to the south of the exclusion zone on the southern bank over which the bridge will extend with pedestrian pathway underneath is described as comprising conifer plantation (WD4) grading into Wet Willow, Alder, Ash woodland (WN6). This area measures 0.15 hectare and the works area will be available to the contractor temporarily, to be landscaped on completion and to include the public footpath. To the south of this area enclosed by the proposed footpath and existing roadway is also an area of conifer plantation grading into Wet Willow, Alder, Ash woodland (0.17 hectare) that will be required for construction and future maintenance of earthworks.

11.4.18 Other SAC lands within the CPO line on the north-western side of the river include separate areas of grasslands (GS4) / Scrub (WS1) permanently required for construction and future maintenance of earthworks (0.32 hectare) and to be used as

a works area temporarily available to the contractor to be landscaped on completion (0.27 hectare). A 0.13-hectare area within the SAC to the north-east includes buildings and artificial surfaces (BL3) comprising a residential/ farm property to be retained and sold for future residential use.

11.4.19 The only other remaining area within the SAC/ CPO line is below the bridge deck and a part of a drainage channel on the northern bank that discharges directly into the River Moy. An attenuation pond located to the south of an upgraded "T" junction will discharge to this drainage channel, which will be cleared and regraded. The area of the drainage channel within the SAC measures approximately 500 sq.m.

Surveys

11.4.20 Ecological surveying of an area 1km downstream and 300m upstream of the existing bridge commenced in March 2014 as part of the preliminary assessment of alternative crossing points in terms of their ecological impact. This included a multi-disciplinary walkover survey to identify habitats and fauna present. Some of the low-lying woodland on the southern side of the river were identified as having the potential to be classified as Annex I Priority Habitat Alluvial Forest (91E0) and at the time it was recommended that further survey effort would be required to determine its exact status. The area was shown on mapping downstream a distance of approximately 250m from the proposed crossing. A small but similar habitat type (Wet Willow Alder Ash Woodland (WD2) was identified at the location of the proposed bridge on the southern side of the river.

11.4.21 The walkover survey conducted at this time also assessed the fauna of the area. A badger print was recorded on the northern side of the river and otter spraint and prints were discovered throughout the study area and in particular within the woodland downstream from the proposed crossing.

11.4.22 It was stated that the river could contain suitable spawning habitat for Salmon, Lamprey and White Clawed Crayfish. It was also noted that no Crayfish signs were observed in the Otter spraints recorded.

11.4.23 Detailed habitat surveys and woodland relevé assessments were carried out in May 2015 for ground investigation works at the proposed crossing. On the basis of the relevé surveys carried out within two 10x10m areas on the southern bank of the site,

the presence of Annex I habitat was discounted by the ecologists for the following reasons:

- The areas were not situated on alluvial soils;
- The areas included small patches (0.08 hectare and 0.13 hectare) within a larger conifer plantation. (below the minimum reference set out in the survey methodology in Perrin 2008);
- Relevé data failed according to Perrin for not supporting the necessary diversity of indicator species, the presence of non-native species and the lack of age, structure and diversity.
- Woodland did not exist prior to 2000 and conifers have been planted since. No mature, senescing or dead trees were present and all trees had a diameter of less than 40cm.
- Regeneration within the plot was primarily non-native sycamore;
- Areas were subject to drainage for both agricultural improvement of lands to the west and forestry plantation;
- Woodland areas do not provide connectivity with woodlands in the wider area – there are agricultural grasslands, residential properties and gardens in the surrounding area.

11.4.24 It should be noted at this point that the above ground investigation works were subject to Appropriate Assessment screening. Works involved site clearance, trial pits and silt trenches, rotary boreholes, cable percussion boreholes, ground probing and material testing. The overall conclusion of the screening exercise was that the ground investigation works, either individually or in combination with other plans or projects, would not be likely to have significant effects on the River Moy SAC.

11.4.25 Following on from the above, a desk study and multidisciplinary walkover survey was carried out in January 2016 by the project ecologists. This included a full otter survey of the River Moy and the Swinford and Pollsharvoge Rivers (tributaries), as well as habitat suitability assessments on the tributaries for White Clawed Crayfish, Lamprey and Atlantic Salmon. A woodland field assessment sheet was completed for the area of Wet Willow/ Alder/ Ash woodland located immediately north-west of the proposed southern bridge abutment to validate previous work.

11.4.26 The final multidisciplinary walkover survey was undertaken by independent ecological consultants in April 2016 to include a full otter and badger survey and Bat Suitability Assessment.

Identification of likely and significant effects (direct or indirect) on the SAC

11.4.27 This stage of the appropriate assessment seeks to identify the likely significant direct and indirect effects of the proposed development, individually, within the context of the sites conservation objectives in light of best scientific knowledge in the field on the River Moy SAC in view of the site's conservation objectives.

11.4.28 It is a conservation objective of the River Moy SAC to maintain the favourable conservation condition of **White-clawed Crayfish**. The potential likely significant effect on this species arises from the installation of culverts during construction works within the Swinford River which is directly connected to the River Moy and has been identified within surveys as containing suitable Crayfish habitat. Culvert installation also has the potential for a physical decline in habitat quality and heterogeneity for crayfish. Furthermore, there is also potential for likely significant effects from occurrences of crayfish plague given the popularity of the river amongst overseas anglers.

11.4.29 The applicant has submitted a Natura Impact Statement which sets out the types of impact arising from the project and the predicted impact on each of the Annex II species. The predicted impacts set out within the NIS for each species "screened in" can be summarised as follows:

11.4.30 Predicted impacts on White Clawed Crayfish:

- Vulnerable to damage/ loss of habitat and direct mortality during excavations in river channel;
- Operation of culvert will result in permanent loss of habitat along river margins and substrate (135.9 sq.m. in plan).
- Berried females and those carrying hatchlings are present from November to June and can be disturbed during works, reducing recruitment success;
- Long term habitat loss and barriers to movement can significantly restrict the distribution of crayfish;

- Significant effects from installation anticipated during both construction and operational phases from installation of proposed culvert on Swinford River.
- Creation and connection of diversion creates potential for habitat degradation downstream through smothering of substrate by sediment, accidental input of sediment/ construction materials into watercourse.

11.4.31 It is a conservation objective to restore the favourable conservation condition of the **Sea Lamprey** and **Brook Lamprey**. The applicant's Screening Report states that it is not possible to rule out significant effects on the population structure of these species owing to the lack of data concerning their use of the site. However, it is recognised that the installation of the culvert on the Swinford River will disturb potential spawning habitat for Brook/ River and Sea Lamprey and, therefore, it is not possible to rule out a decline in juvenile Lamprey density or the extent or distribution of spawning beds in the European site as a result of the proposed development.

11.4.32 Predicted impacts on Sea Lamprey and Brook/ River Lamprey set out in the NIS are summarised as follows:

- Proposed culvert on Swinford River could create additional barriers to migration, and damage/ disturbance to habitat and individuals through construction and operational phases;
- Riverine habitat suitable for spawning will be dried and excavated to facilitate laying of culvert sub-base and placement of precast concrete units – could lead to direct mortality, temporary loss of habitat and barrier to migration.
- Reflooding of channel may create potential for habitat degradation downstream through accidental sedimentation or input of construction material.

11.4.33 It is a conservation objective to restore the favourable conservation condition of **Atlantic Salmon** in the River Moy SAC. Two salmon redds were recorded during surveys at the location of the proposed culvert on the Swinford River. The proposed development will result in the decline in the number and distribution of spawning nests and therefore significant effects on Atlantic Salmon cannot be ruled out in view of the relevant conservation objectives. Inland Fisheries Ireland also had concerns regarding the box culvert design at the Swinford River and requested that a

bottomless design be included to ensure that habitat is not altered and to negate the requirement for a diversion.

11.4.34 The predicted impacts on Atlantic Salmon set out in the NIS are summarised as follows:

- Proposed culvert on Swinford River could result in impacts including barriers to migration and disturbance to early life stages during construction and operational stages.
- Riverine habitat will be dried and excavated to allow laying of culvert sub-base and placement of culvert - could lead to direct mortality, temporary loss of habitat and barrier to migration.
- Installation works create the potential for habitat degradation downstream of the construction site through accidental input of sediment/ construction materials to watercourse.
- Installation of culvert will result in permanent loss of two salmon redds.

11.4.35 It is a conservation objective to restore the favourable conservation condition of **European Otter** in the River Moy SAC. Suitable habitat for Otter occurs throughout the catchment and the evidence of presence was recorded within surveys at the proposed culvert on the Swinford River. Removal of vegetation and culverting and impacts on barriers to connectivity cannot be ruled out, notwithstanding the 10m buffers on the main crossing and proposed installation of otter ledges on culverts.

11.4.36 The predicted impacts on European Otter set out in the NIS are summarised as follows:

- Proposed culverts on Swinford and Pollsharvoge Rivers and pedestrian path under new bridge over River Moy, as well as traffic on the new alignment could have significant effects during construction and operational phases.
- Installation of culverts will result in temporary loss of both freshwater and terrestrial habitat at these locations and will constitute a temporary barrier to connectivity.

- There are predicted barriers to connectivity along the River Moy due to construction disturbance during daylight hours. There will also be noise and light disturbance from plant.
- There is potential for accidental otter fatalities across new road alignment.
- Pedestrian underpass has potential to cause significant long-term disturbance.

11.4.37 It is a conservation objective to restore the favourable conservation condition of **Alluvial Forests** with *Alnus glutinosa* and *Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae)* in the River Moy SAC. The Screening Report concluded that no element of the project is likely to result in significant change to any Annex I habitat, or cause a reduction in the area of any listed habitat within the River Moy SAC. On the basis of relevé surveys, the presence of Annex I habitat was discounted at the location of the proposed bridge on the southern river bank for the reasons outlined above in Section 11.4.24.

11.4.38 Notwithstanding this, the likelihood of significant effects exists if it cannot be determined beyond reasonable scientific doubt that Annex I priority habitat is present at this location, or that it will not be significantly affected by the proposed development. Furthermore, the Board is referred to conservation objectives for the site, which also seek to restore the favourable conservation status of habitats and species, which might be degraded at present but may regenerate in future.

11.4.39 Having regard to the precautionary principle, the predicted impacts on possible Alluvial Forests are as follows:

- Direct impact through habitat loss, damage or deterioration of habitat quality at the location of the proposed bridge over the River Moy on both river banks;
- Further fragmentation and isolation of treeline along the river bank connecting to other areas of potential Annex I priority habitat;
- Further degradation of species composition and ecological changes within the stand of trees on the southern river bank following site investigation works;
- Overshadowing arising from bridge limiting the potential for possible Annex I priority habitat to regenerate itself.
- Impacts on species reliant on riparian woodland.

11.4.40 The DAHRRGA notes that the riparian woodland supports characteristic tree and scrub species of alluvial woodland, Alder (*Alnus glutinosa), Ash (Fraxinus excelsior)* and Willow *(Salex cinerea, and other Salix spp.)*, as well as other characteristic species including Hawthorn *(Crataegus mongyna),* Meadowsweet *(Filipendula ulmaria),* Water Avens *(Geum rivale),* Yellow Irish *(Iris pseudacorus),* and Reed Canary Grass (Phalaris arundinacea).

11.4.41 The Interpretation Manual of European Union Habitats, 2013 provides descriptive sheets for Annex I priority habitat, which establish clear, operational scientific definitions of habitat type, using pragmatic descriptive elements (e.g. characteristic plants), and taking into consideration regional variation. Characteristic plants listed in the interpretation manual for alluvial forests include Alder (*Alnus glutinosa), Ash (Fraxinus excelsior),* Meadowsweet *(Filipendula ulmaria)* and Water Avens *(Geum rivale).* The DAHRRGA consider that there may be correspondence with Annex I priority habitat, Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae)* [91E0], as qualifying interest of the River Moy SAC.

11.4.42 The proposed development will result in the removal or pruning of alluvial woodland habitat at the location of the proposed bridge. It is not possible to rule out permanent loss of areas of Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae)* in the European site as a result of the proposed development. Under the precautionary principle, the likelihood of a significant effect exists if it cannot be determined beyond reasonable scientific doubt, and on the basis of objective information, that a likelihood does not exist.

11.4.43 It became evident during the course of the Oral Hearing that upwelling had been discovered on the southern river bank when site investigation works were taking place and there were problems trying to control **siltation**. Following a request for further information, the applicant confirmed that artesian groundwater conditions were encountered within a borehole, and after attempting to plug the borehole, it was not possible to prevent flow from running across the vegetated buffer towards the River Moy. A small settlement pond was created and flow was directed through a silt fence and straw bales to mitigate against siltation in the river. The DAHRRGA pointed out at the Oral Hearing that the proposal should include details of surface water management and the risk of encountering further artesian groundwater flows.

As a result of these ground investigation works, the applicant proposes that the bridge abutments are constructed on shallow foundations.

11.4.44 The predicted impacts from sedimentation in the River Moy are as follows:

- Habitat degradation downstream;
- Impacts on amount of light entering water;
- Impacts on the area of a river that is used for spawning;
- Reduction of light under bridge will reduce vegetation and possibly cause erosion and sedimentation.
- Acts as a vehicle for certain chemicals.

Cumulative impacts

11.4.45 The potential (a) likely and (b) significant effects (direct or indirect) of the project in combination with other plans or projects on the European site solely within the context of the site's conservation objectives in light of best scientific knowledge in the field must also be identified.

11.4.46 The Natura Impact Statement prepared by the applicant sets out a list of water and wastewater services projects, national roads projects, energy infrastructure projects and planning applications that may have a significant in-combination effect with the proposed development. It was concluded that the N5/ N26/ N58 Turlough to Bohola and Swinford to Mount Falcon Road Project is the only plan or project likely to have in-combination effects.

Mitigation

11.4.47 The NIS includes a series of mitigation measures for the significant impacts that were identified within the Appropriate Assessment Screening exercise. Mitigation measures are also included for sedimentation/ erosion. The following mitigation measures are recommended by the applicant having regard to the significant effects likely to arise both individually and in combination with other plans:

<u>Mitigation for White-Clawed Crayfish</u>

- As many individuals as practical should be displaced before culvert installation on the part of the Swinford River channel to be dewatered through drag and sweep netting for juveniles and manual searches for adults.

- Captured individuals will be release immediately upstream or downstream.
- Works will be commenced and concluded between 1st May and 30th September so as not to give rise to a long term effect on White-Clawed Crayfish;
- Best practice guidelines (IFI, 2016) will be followed and IFI will be closely consulted to mitigate against sedimentation;
- Permanent loss of benthic habitat will be mitigated by installing original substrate material inside the finished culvert.
- Installation of similar rock armouring to existing bank inside the culvert, which is of high suitability to Crayfish.

Mitigation for Sea Lamprey and Brook/ River Lamprey

- Restriction of works to period between 1st May to 30 September to limit the impact of short term habitat loss.
- IFI will carry out electrofishing prior to construction to move any individuals from the area to be dewatered.
- Additional barrier to migration/ connectivity resulting from culvert construction will not be in place during the migration period.
- Temporary diversion channel will nonetheless be designed and constructed in such a manner as to facilitate the passage of Lamprey species.
- Best practice guidelines (IFI, 2016) will be followed and IFI will be closely consulted to mitigate against sedimentation;
- No long-term effects on any of the Lamprey species are predicted.

Mitigation for Atlantic Salmon

- Restriction of works to the period from 1st May to 30th September which is less sensitive for migrating Salmon.
- Migration barrier from installation of culvert on Swinford River will only be in place outside of the main migration period. Nevertheless, the temporary diversion channel will be designed and constructed in such a manner as to facilitate the passage of salmon migrating outside of the main season.

- Prior to construction, IFI will carry out electrofishing to move any individuals from the area to be dewatered.
- Best practice guidelines (IFI, 2016) will be followed and IFI will be closely consulted to mitigate against sedimentation;
- It is proposed to cooperate with IFI in additional rehabilitation works on the Swinford River to ensure optimal passage of migrating adults and to replace the lost spawning habitat further upstream.

Mitigation for European Otter

- Pre-construction surveys will be carried out 10-12 months prior to commencement of works and again 2-3 weeks prior in order to identify any new otter holts – any destruction of holts will be carried out having regard to standard best practice guidelines (NRA, 2006) and under derogation licence.
- Noise and light will be mitigated by restricting works to normal working hours and ensuring there is no artificial lighting outside of those hours (otter are crepuscular species).
- 4m set back of construction activities from River Moy, in conjunction with the mitigation proposed to minimise disturbance to otter during hours of highest activity levels, will ensure continued connectivity for otter at this location.
- Pedestrian path under bridge will be designed to include loose surface material and appropriate controls will be in place at either end to prevent access by vehicles. Low intensity use of the path is expected.

Mitigation for Sedimentation/ Erosion

11.4.48 The Contractor will prepare and implement a Construction Erosion and Sediment Control Plan (CESCP) that will include the following:

- Limiting the works to a minimum area and timescale;
- Water quality monitoring downstream during construction and for 24 months after.
- Formulation of dust minimisation plan;

- Direction of site drainage through a settlement facility prior to discharge and provision of temporary facilities to trap any accidental spillage.
- Submission of method statements for works on watercourses to IFI;
- Promote awareness of good site management and the freshwater environment;
- Restriction of topsoil stripping near watercourses to dry weather conditions and location of stockpiles at least 100m from watercourses and covering of stockpiles within 200m of watercourse.
- Stripping of vegetation, covering of soil by Hessian or similar material and reseeding (with native grasses) immediately prior to the construction of road drainage outfalls;
- Pouring of concrete, sealing of joints, application of water-proofing paint or protective systems, curing agents etc. for outfalls to be completed in the dry;
- Storage of oils, fuel, chemicals, hydraulic fluids etc. to be located at least 30m from watercourses on an impervious base within a bund and appropriately secured; and,
- All machinery operating near watercourses to be steam-cleaned in advance of works and routinely checked to ensure no leakage of oils or lubricants and all fuelling of machinery to be undertaken a minimum of 30 m from watercourses.

11.4.49 In addition to the above, IFI made a submission to the Board on 19th December 2016 which included the following mitigation measures in addition to those proposed by the applicant:

- Design of culvert over the Swinford River must be changed from a box culvert to a bottomless culvert with foundations a minimum of 1m back from the top of the bank – this will ensure that habitat is not altered and will negate the requirements for diversion.
- Culvert over the Swinford River may be longer than may be required and should be kept to a minimum length.
- IFI must be consulted on the design of all watercourse crossings – round or oval culverts should be limited to short runs and temporary crossings and no sills or aprons should be installed during culvert construction.

- Method statements for all in-stream works must be provided to IFI a minimum of one month prior to work commencing.
- Culvert design should ensure that bed width and material of natural watercourse is replicated, there is a constant slope and the bottom (invert) should be at least 300mm below the grade line of the natural watercourse bed.
- All mitigation for sedimentation and erosion within the NIS must be adhered to and additional measures such as the provision of spill kits and drip trays will be required.
- Topsoil stripping must be kept to an absolute minimum and a vegetated buffer zone of 2m min. must be maintained along all watercourses, with double silt fences outside these buffer zones.
- Surface water outfalls from the site must be visually checked twice a day during construction. Maintenance schedule must be in place for silt and pollution control measures during construction.
- An Emergency Response Plan must be produced and the IFI included as a notifiable body in the case of pollution to a watercourse.
- In-stream works must be carried out between May and September, in the dry and during low flow conditions.

11.4.50 During the Oral Hearing, IFI maintained the request to install a bottomless culvert over the Swinford River, emphasising that the area of river bed to be culverted is used for salmon spawning and may also be used by lamprey for spawning. Furthermore, it is stated that the installation of existing river substrate into the culvert does not guarantee that salmon will use the altered site for spawning. Reduced survival at sea makes the protection of salmon habitat in the freshwater phases even more important. The Alternative 2: Bottomless Culvert as submitted by the applicant within the further information response is IFI's preferred option for the Swinford River, followed by Alternative 1: Minimum Length Box Culvert.

11.4.51 It was also submitted at the Oral Hearing that the site may be used for lamprey spawning from March to May and the larvae do not leave the spawning gravel for 3-5 weeks, which further reduces the season for in-stream works from July to September, weather dependent.

Mitigation for alluvial forest

11.4.52 As the Qualifying Interest Alluvial forest with *Alnus glutinosa* and *Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae)* was screened out by the applicant as not being of sufficient scale or species composition to be considered Annex I priority habitat, no higher level assessment took place and therefore no mitigation measures were proposed within the NIS.

11.4.53 Section 7.5.2 of the Planning Report accompanying the planning application sets out a number of enhancement proposals to compensate for the loss of vegetated cover to facilitate earthworks and road construction. It is stated that hedgerow and treelines to be lost during construction will largely be replaced as part of a landscaping plan to include species specific riparian planting along the River Moy and tributaries with *Alnus*, *Fraxinus* and *Salix* and a compatible seed mix to establish the herb layer, as well as planting of woodland and trees using native species where land is available within the CPO post construction.

11.4.54 No other mitigation measures specific to the predicted impact on riparian woodland are put forward by the applicant within the NIS.

Evaluation of potential effects taking account of mitigation

11.4.55 The potential effects of the proposed development on the conservation objectives of the site taking account of mitigation are evaluated with respect to effects on the Alluvial Forest qualifying interest, and in particular, the impact around the location of the proposed bridge, together within the effects arising from installation of the proposed boxed culvert on the Swinford River and the qualifying interests White-Clawed Crayfish, Sea and Brook/ River Lamprey, Atlantic Salmon and European Otter.

Annex II Species

11.4.56 There will be likely significant effects on Annex II species resulting from the installation of the box culvert on the Swinford River. This includes habitat loss, habitat degradation and barriers to connectivity for all five species during the construction phase, as well as habitat loss and disturbance during the operational phase of the development. A suite of mitigation measures are proposed in the NIS to eliminate or minimise significant effects. It is considered that any residual effects

remaining after the implementation of mitigation measures will be insignificant in light of the site's conservation objectives.

11.4.57 Notwithstanding the above, the proposed mitigation measures appear to be significant interventions that may give rise to unacceptable disturbance to Annex II species when alternative, less invasive mitigation may be possible. There are mitigation proposals to physically capture individual White Clawed Crayfish and release them upstream or downstream; however, no actual surveys were carried out to determine the quantity of the species at this location. The applicant's ecologist merely concluded that crayfish is highly likely to be present in the Swinford River.

11.4.58 The Swinford River is also considered to be highly suitable for spawning Lamprey and two Salmon redds were recorded at the location of the proposed culvert. It is proposed as mitigation to replace the original substrate material within the finished culvert. IFI confirmed at the Oral Hearing that even with proposed mitigation measures and the installation of existing river substrate into the culvert, there is no guarantee that salmon will use the altered site for spawning.

11.4.59 IFI requested that a bottomless culvert be installed within the Swinford River with foundations a minimum of 1m back from the top of the bank. This will ensure that habitat is not altered and will negate the requirement for a diversion. The applicant confirmed that such a design could be accommodated within the land-take at an increased cost of €250,000. The alternative culvert could also be designed to a minimum length required to achieve satisfactory sightlines from the adjacent junction. At the Oral Hearing, IFI indicated that their preference is Alternative 2: Bottomless Culvert followed by Alternative 1: Minimum Length Box Culvert as presented by the applicant within their response received by the Board on 10th February 2017.

11.4.60 Having regard to the above, it would appear that the likely significant effects on the qualifying interests of the River Moy SAC at the location of the proposed culvert over the Swinford River can be best mitigated by a change in design to bottomless culvert. However, any material changes to the design of the culvert would necessitate alternative mitigation measures during construction works, including strict adherence to best practice, and specific details relating to construction works on river banks, including measures to control erosion and sediment release.

11.4.61 Concern was raised at the Oral Hearing by observer, Mr. Peter Sweetman that the responsibility for control of sediment lies with the project contractor. The contractor will be required to prepare and implement a Construction Erosion and Sediment Control Plan.

11.4.62 Many of the measures suggested within the NIS for inclusion within this plan are general in nature and devoid of detail relating to the specific location of the mitigation measures proposed. It is stated in the NIS that implementation of this plan will mitigate against any residual adverse effects arising from the construction of the project on the integrity of the River Moy SAC. However, the DAHRRGA in its submission of 10th February 2017 does not appear satisfied that mitigation measures will be delivered in the locations necessary, sequenced as required, and will be effective at ameliorating the adverse effects, or risks of these at all stages of the project development, from set up to operation.

11.4.63 Following the Oral Hearing, the applicant was given the opportunity by way of further information to outline any specific mitigation measures intended to be addressed prior to commencement of development within a Construction, Erosion and Sediment Control Plan and a Construction Management and Environmental Operating Plan. It was considered by the DAHRRGA that the applicant's response did not contain any additional scientific data. The DAHRRGA also commented that full details of any project, including mitigation measures, should be available at application stage, and should be shown on maps and drawings, as appropriate. In addition, it was noted that a water quality monitoring programme is proposed as mitigation, when details of such a programme are not presented, and no baseline data has been established.

11.4.64 Overall, it can be concluded that information relating to measures for mitigating the impact of the proposed development on Annex II species are incomplete and without best scientific knowledge as to the effects on the conservation objectives and integrity of the European site. The best scientific information in the field should be regarded as information which is sufficient to dispel any reasonable scientific doubt about the adverse effects on the integrity of the European site, in light of the site's Conservation Objectives.

Annex I Priority Habitat

11.4.65 Annex I priority habitat are habitat types whose conservation requires the designation of an SAC and which are in danger of disappearing within EU territory.

11.4.66 Residual Alluvial Forests are an Annex I priority habitat, which according to the "Status of EU Protected Habitats and Species in Ireland" document (NPWS, 2013), comprise of "*riparian forests of ash (Fraxinus excelsior) and alder (Alnus glutinosa) occurring on heavy soils periodically inundated by the annual rise of river levels, but which otherwise are well drained and aerated during low water.*"

11.4.67 The overall status of this habitat is assessed as "Bad" due to historic losses, invasive species and the highly fragmented nature of this habitat. It is stated that there have been national efforts to remove non-native and invasive plant species and to reinstate correct hydrological regimes to generally improve the conservation status of alluvial woodlands.

11.4.68 The main area of contention with respect to the proposed development relates to the status of riparian woodland at the location of the proposed bridge over the River Moy. The construction of the bridge including abutments and approach embankments will necessitate the removal of part of a treeline along the northern bank, and a stand of trees situated on the southern bank of the river.

11.4.69 The project ecologists maintain that the treeline and clump of trees on the southern bank are not of a sufficient scale and do not comprise of a species composition that could be considered alluvial forests and a qualifying interest of the River Moy SAC. The DAHRRGA, meanwhile, is not convinced that the applicant has submitted sufficient scientific evidence to discount that the riparian woodland along the River Moy, and at the location of a tributary stream on the southern side is Annex I priority habitat.

11.4.70 The applicant relies on ecological relevé surveys and multidisciplinary walkover surveys of the area to form the opinion that the woodland along the River Moy is not Annex I priority habitat. The Lead Ecologist confirmed at the Oral Hearing that under the screening of pathways of risk and on the basis of the relevé data, the woodland along the river was screened out and no higher level of assessment was carried out. The NIS does not therefore make an assessment of alluvial forest. It was also confirmed that the survey methodology set out in Perrin et al, 2008 and O'Neill and

Barron, 2003 were used and that the Interpretation Manual of European Union Habitats is incorporated strongly into these documents.

11.4.71 Characteristic plants listed in the EU interpretation manual for alluvial forests include Alder (*Alnus glutinosa), Ash (Fraxinus excelsior),* Meadowsweet *(Filipendula ulmaria)* and Water Avens *(Geum rivale).* The DAHRRGA notes that the riparian woodland supports characteristic tree and scrub species of alluvial woodland, Alder (*Alnus glutinosa), Ash (Fraxinus excelsior)* and Willow *(Salex cinerea, and other Salix spp.)*, as well as other characteristic species including Hawthorn *(Crataegus mongyna),* Meadowsweet *(Filipendula ulmaria),* Water Avens *(Geum rivale),* Yellow Iris *(Iris pseudacorus)* and Reed Canary Grass (Phalaris arundinacea). It would appear, therefore, that the riparian woodland at the location of the proposed crossing displays at least some of the characteristics of Residual Alluvial Woodland and this is also acknowledged in the formal opinion by Dr. John Cross submitted at the Oral Hearing.

11.4.72 The formal opinion submitted at the Oral Hearing on the woodland affected by the proposed realignment within the River Moy SAC was informed by the 20m x 20m survey plot (relevé) from January 2016. It is concluded that the stands of trees alongside the river on both the southern and northern sides at the proposed crossing do not meet the recommended minimum habitat size threshold to be defined as woodland, and while the vegetation on the south side has some similarities to alluvial woodland, it is neither sufficiently large nor sufficiently well developed to be categorised as Residual Alluvial Woodland, as described under the EU Habitats Directive. It is accepted that the timing of the survey may be partly attributable to the species poor field layer recorded on site, and it was also noted that there is a dominance of ivy and bramble at this relevé location.

11.4.73 The DAHRRGA emphasised the point at the Oral Hearing that relevé data from January 2016 is not going to give a very accurate picture, certainly of ground flora, in the survey area and it was noted that photographs of wooded area have not been provided during growth seasons to inform the formal opinion, despite a number of surveys having been carried out during these periods. It is also highlighted that no formal opinion is given on all woodland within the CPO lands, including the wet alluvial woodland along the stream between the two sections of conifers.

11.4.74 At the Oral Hearing, the Inspector asked the DAHRRGA when the site was designated as an SAC and could it in any way have become degraded in terms of species composition since its designation. The NPWS confirmed that the site was advertised in December 2002 and there may have been ecological changes in the area caused by the site investigation works. There are also indications locally that there has been some loss and fragmentation of woodland.

11.4.75 A track has been cleared through the riparian woodland (rather than the adjoining conifer plantation) for ground investigation works. Photographs taken prior to this clearance would appear to indicate the presence of plants and trees characteristic of alluvial woodland. Clearly, the project will result in further permanent loss of small areas of the woodland containing characteristics of Annex I priority habitat and qualifying interests of the SAC.

11.4.76 There is also the potential that the proposed bridge will impact on the potential of the riparian woodland to rejuvenate or improve as Annex I (priority) habitat. The removal of woodland to facilitate ground investigation works has led to a deterioration of the structure and function of the habitat; however, there is potential for this area to rehabilitate and the removal of none native and invasive plant species from the area could further improve the conservation status of the woodland. The overall aim of the Habitats Directive is to restore as well as maintain the conservation status of habitats and species of community interest.

11.4.77 Whilst it is recognised that the riparian woodland area that would be most affected by the project is small and fragmented, the DAHRRGA state that it is common in Ireland for the remains of former alluvial woodland to be restricted to a line of trees along river banks. I would also refer to European Court of Justice Case C-258/11 which concluded that *"the plan or project* (Galway Bypass) *will lead to the irreparable loss of the whole or part of a priority natural habitat type whose conservation was the objective that justified the designation of the site… the view should be taken that such a plan or project will adversely affect the integrity of the site."* This case therefore determines that the loss of even a very small part of an Annex I priority habitat is regarded as adversely affecting the integrity of European site. Furthermore, Case C-258/11 found that a project would adversely affect the integrity of a European site if it is liable to prevent the lasting preservation of the constitutive characteristics of the site that are connected to the presence of a priority natural

habitat whose conservation was the objective justifying the designation of the site as an SAC.[2]

11.4.78 In conclusion, the woodland habitat at the location of the proposed bridge appears to displays characteristics of Annex I priority habitat and it is apparent that the habitat has suffered from degradation and fragmentation. The small scale of the woodland area affected is not reason for it to be discounted as Annex I priority habitat and any further degradation of this habitat as a result of the proposed development is liable to further limit the potential for maintenance or restoration of the habitat to favourable conservation status.

11.4.79 On the basis of the information provided with the application and appeal, including the Natura Impact Statement, and in light of the assessment carried out above, I am not satisfied that the proposed development individually, or in combination with other plans or projects would not adversely affect the integrity of European site No. 002298, in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting approval/permission.

Appropriate Assessment Conclusions

11.4.80 Having regard to the nature of the proposed works within the River Moy SAC, I consider that it is reasonable to conclude on the basis of the information on the file, which I consider adequate in order to carry out a Stage 2 Appropriate Assessment, that the proposed development, individually or in combination with other plans and projects would adversely affect the integrity of the European site no. 002298 in view of the site's Conservation Objectives.

12 Recommendation

12.1 I recommend that the application under Section 177AE for the realignment and upgrade of the N26 National Primary Route at Cloongullaun is refused (Schedule 1), and consequently that the CPO is annulled (Schedule 2).

[2] It should be noted that this case related to the loss of limestone paving, which is a non-renewable resource.

Schedule 1

13 Reasons and Considerations

1. The Board agreed with the screening assessment and conclusion carried out by the Inspector that the River Moy SAC (Site Code 002298) is the European site for which there is a likelihood of significant effects.

The Board considered the Natura Impact Statement and all other relevant submissions and carried out an appropriate assessment of the implications of the proposal for the River Moy SAC (Site Code 002298) in view of the Site's Conservation Objectives.

In completing the assessment, the Board considered, in particular, the:

i. Likely direct and indirect impacts arising from the proposal both individually or in combination with other plans or projects, specifically upon the River Moy SAC,

ii. Mitigation measures which are included as part of the current proposal,

iii. The Conservation Objective for this European Site,

iv. Views of the Department Arts, Heritage, Regional, Rural and Gaeltacht Affairs.

v. Views of Inland Fisheries Ireland

In completing the AA, the Board accepted and adopted the Appropriate Assessment carried out in the Inspector's report in respect of the potential effects of the proposal on the aforementioned European Site, having regard to the site's Conservation Objectives. The Board is not satisfied that:

i. the proposed N26 road realignment, including construction of a clear span bridge over the River Moy, would not result in the continued significant loss of potential Residual Alluvial Forestry habitat, which is an Annex I priority habitat under the European Union Habitats Directive of 1992; and

ii. the proposed culvert at the River Swinford, notwithstanding the proposed mitigation measures, would not give rise to potential increased disturbance to wildlife and aquatic species, including White-Clawed Crayfish, Sea

Lamprey and Brook/ River Lamprey Atlantic Salmon and European Otter, which are protected species included on Annex II of the European Union Habitats Directive, from construction and operational activity associated with the proposed development in what was formerly a relatively undisturbed area.

Furthermore, and notwithstanding (i) and (ii) above, the Board is not satisfied, on the basis of the submissions made in connection with the Section 177AE application, that adequate information has been provided to satisfactorily demonstrate that no adverse effects will occur on the integrity of the European Site from the proposed development on hydrological and riparian conditions within the Annexed habitat and the resulting implications for wildlife and flora.

It is therefore considered that the Board is unable to ascertain that the proposed development will not adversely affect the integrity of a European Site no. 002298 alone or in combination with other projects having regard to the conservation objectives of the site. It is considered that the proposed development would, as such, be contrary to the proper planning and sustainable development of the area.

In overall conclusion, the Board is not satisfied that the proposed development would not adversely affect the integrity of the European Site in view of the site's Conservation Objective.

2. Having regard to evidence of a large number of dead shells of Freshwater Pearl Mussel (Margaritifera margaritifera) within the River Moy at the location of the proposed bridge, and to the absence of any detailed survey to determine the presence in the vicinity of this species or species appropriate mitigation measures, the Board is not satisfied, notwithstanding the fact that Freshwater Pearl Mussel is not a qualifying interest of the River Moy SAC, that the proposed development will not adversely impact on this Annex II and Annex V species and its habitat if found to be present. This species is highly threatened and categorised as critically endangered in Ireland and across Europe, and is particularly vulnerable to sedimentation, which can occur during construction activities. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

Schedule 2

14 Reasons and Considerations

Having regard to:

i. The provisions of the Regional Planning Guidelines for the West Region, 2010-2022; the Spatial Planning and National Roads: Guidelines for Planning Authorities, 2012; The National Cycle Policy Framework, 2009-2020 and the Mayo County Development Plan (2014-2020),

ii. Safety considerations as outlined by the Local Authority in documentation and at the oral hearing,

It is considered that the need for an improvement to the N26 at Cloongullaun is established but having regard to:

i. The location of the project site within the River Moy SAC and the Appropriate Assessment carried out by An Bord Pleanála,

ii. Evidence of the presence of freshwater pearl mussel at the location of the proposed river

It is considered that the Local Authority has not demonstrated that the road scheme is suitable to meet the stated need. It is therefore considered that the acquisition by the Local Authority of the lands which are the subject of the Compulsory Purchase Order is not justified and that the compulsory purchase order shall be annulled.

Donal Donnelly

Planning Inspector

27th October 2017

15 Appendix – Oral Hearing Synopsis

15.1 Presentation of Evidence from First Party

15.1.1 The Oral Hearing commenced with an engineering brief of evidence and presentation from Mr. Jim Thorpe of Roughan & O'Donovan, the consultants acting on behalf of Mayo County Council. This was followed by a Brief of Evidence by Mr. Iain Douglas, Senior Planner of Mayo County Council. The Project Ecologist, Mr. Ryan Wilson-Parr, then presented his Brief of Evidence on the Natural Impact Assessment and Ecology to conclude the first party's evidence.

15.2 Engineering Brief of Evidence.

15.3 This Brief of Evidence included an outline of the background to the project; a demonstration of the need for the proposed development; a summary of the route selection process; a description of the proposed development; details relating to the construction phase; an outline of effects on the environment; and errata, response to objections and conclusion. The main points of the Evidence can be summarised as follows:

<u>Background</u>

- Following Board's decision to refuse permission for a Type 2 Dual Carriageway between Mount Falcon and Bohola (HA0003/KA0002), the then ongoing work on the N5 between Westport and Bohola was curtailed at Turlough to reconsider the most appropriate route for the N5 between Turlough and Bohola, (Board curtailed the Westport to Turlough Scheme HA0042/KA0028 for the same reason).
- Strategic Route Assessment was undertaken in 2010 and subsequent studies concluded that rather than combining the N26 and N58, an upgrading of the N5 and N58 and localised online improvement measures along the N26 between Foxford and Swinford would be proposed.
- Further development of the recommendations of the N5/ N26/ N58 Route Studies is currently on hold with the one exception being the need to address the particular deficiencies of the N26 at Cloongullaun.

Need

- NSS identifies the important role of Ballina within national structures for which critical factors will include improvements in regional accessibility.
- The National Development Plan sought to tackle structural infrastructure deficits that continue to impact on competitiveness.
- This type of development is supported in the "Strategic Investment Framework for Land Transport"; "Building on Recovery 2016-2021; The Road Safety Authority Road Safety Strategy, 2013-2020; the Regional Planning Guidelines for the Western Region 2010-2022; Mayo County Development Plan 2014-2020; and "Smarter Travel".
- National, regional and county policy all point to the need to improve the accessibility of the Ballina Hub to the Midlands, Dublin Gateways and Knock Airport.
- There is a concentration of road traffic collisions on the N26 at Foxford and Cloongullaun.
- HD15 Network Safety Ranking (renamed GE-STY-01022) divides national road network into 1km sections and ranks them – 1km section on the approach to the bridge from the west is ranked twice above the national average collision rate and the section at the bridge is ranked above average. Sections ranked twice above average are considered priority for further consideration of improvement measures.
- Cross section or alignment of existing road are not of a standard required for the 100kph speed limit – 50kph speed limit is appropriate along much of the road and there is a 90-degree bend at the west end of the bridge. Average speed is only 61kph along this section of road and the target minimum is 80kph.
- Traffic surveys in 2013 and 2014 indicated that volumes vary between 3,300 and 3,800 AADT – under do nothing scenario, traffic would increase to 4,660 by 2035 and there would be increased congestion and delays, deterioration in Level of Service and no facilities for pedestrians and cyclists.
- Do minimum approach was considered inappropriate as it is not possible to provide necessary forward visibility to traffic lights; an unacceptably long

pedestrian phase would be required; traffic control cannot be extended along the "twice above national average" segment; and traffic controls would introduce further delay.

Route Selection

- Ecologists identified 3 potential crossing points over the River Moy at Cloongullaun Bridge – proposed crossing was identified as having the least impact on ecology and also facilitates the shortest length of off-line alignment.
- Two alternatives were considered at this location utilising the existing crossing point – widening of bridge and realignment of approach roads would have facilitated high-speed through traffic but would have significantly reduced safety for pedestrians, cyclists and local traffic and required more direct accesses onto the national road. Bridge widening would also have presented greater risks to water quality within the SAC.

Description of Proposed Development

- Predicted traffic volume of 4,660 AADT in 2035 suggests that it would be imprudent to limit the N26 to a Type 3 carriageway with AADT of 5,000 – Type 2 carriageway is therefore proposed to provide a good measure of future proofing and to maximise economic and accessibility benefits.
- As alignment departs the N26 heading east, it is carried on an embankment of maximum 5m in height, directly impacting on the ruins of some vernacular farm buildings at Ch 0+490.
- It is accepted that Properties P0110 and P0118 will be included in the CPO and the houses will be retained for future residential use following completion of construction.
- Embankment of 6.2m in height will be required at the bridge abutment on the western side.
- A steep area between the N26 and River Moy is being acquired as it is not possible to provide safe access for agricultural vehicles. Area of scrub adjacent to the proposed approach embankment will be planted with woodland following construction. Area of woodland closer to existing bridge will be excluded from works.

- Bridge abutments will be set back 10m from the top of the river bank as indicated by OSi mapping – this line itself is 1 or 2m back from the top of the bank as identified in a recent topography survey. 4m exclusion zone will be maintained either side of the river and this meets the recommended width to maintain river bank connectivity for otters.
- There will be a maximum fill of 6m on eastern side of river and a public path will be provided underneath the river bridge. Road will be on an embankment of 4.5m in height crossing the Swinford River, which will be carried through a box culvert. Instream diversion works are scheduled between 1st May and 30th September.
- Two field accesses on the northern side of the N26 at Ch 1+770 are to be combined into a single access.
- Disused sections of the N26 will be retained for local access and will be suitable for use by pedestrians and cyclists. A segregated shared pedestrian cycle track will connect disused sections of N26 and a 5m widened verge will be provided on the northern side of the road to the east and west.

Construction Phase

- Phase 1 will establish construction compounds, temporarily divert tributaries and install pollution control measures in River Moy; construct two culverts and bridge abutments; and divert tributaries through new culverts.
- Phase 2 will include bulk earthworks, availing of new accesses created by culverts.
- Phase 3 will include assembly of bridge beams behind one or other abutment then lifted into place.
- Phase 4 and 5 will see completion of earthworks and bridge deck followed by road construction.

Effects on the Environment

- No significant effects found on existing hydrological regime, with enhanced water quality protection; no impact on hydrogeology; no direct impact on archaeological, architectural or cultural heritage protected sites, with a mix of positive and negative indirect effects on the setting of built heritage; short term

landscape and visual amenity impacts; and no significant air quality or odour concerns.

- Control measures will limit noise and vibration impacts during construction and it is proposed to use a low noise surface.

Errata, Response to Objections and Conclusion

- Minimum distance between watercourses and the storage of oils, fuel, chemicals hydraulic fluids, etc. has been made consistent at 30m.
- Seasonal constraint on in-stream works has been made consistent with that included on the construction sequence drawing and NIS.
- Final paragraph of Section 7.3.3 of Planning Report has been amended to clarify "no habitats corresponding to any protected habitats listed on Annex 1 of the Habitats Directive were recorded within land available to the Contractor for the purposes of construction of the proposed road development".
- NIS amended to confirm that there are no potential pathways of risk due to the absence of alluvial forest within the CPO and the absence of change in flood levels.
- Road development is necessary to address deficient alignment and poor safety record; is consistent with overarching planning policy and findings of route studies; and is the most appropriate solution in terms of the five appraisal criteria of economy, safety, environment and social inclusion and integration.

15.4 Planning Brief of Evidence

15.4.1 This Brief of Evidence includes an assessment of the requirement for EIA and AA; the need for the scheme and compliance with policy. The main points can be summarised as follows:

- Proposed road does not exceed any of the thresholds for a mandatory EIA under Section 50 of the Roads Act, 1993 (as amended) and Article 8 of the Roads Regulations 1994 – it does not involve the provision of a 4-lane road of any length nor does it involve the provision of a bridge or tunnel greater that 100m in length.

- Proposed road scheme was assessed against the criteria in Schedule 7 of the Planning and Development Regulations, 2001 (as amended) and it was concluded that it is not likely to have significant effects on the environment.
- Spatial planning context for the proposed road scheme is rooted in the concept of balanced regional development as set out in the NSS and translated down to regional and county level.
- Quality of road transport linkages is of crucial importance to trade, investment, tourism and quality of life.
- Proposed development will substantially improve links between Mayo and the rest of Ireland, the UK and Europe; facilitate existing and future economic activity; ensure speedy and efficient access to airports; and improved accessibility to/ from the north and north-west coast to support tourism and marine development.
- N26 is identified in the NSS as part of a number of strategic radial corridors to be developed to improve the accessibility of the Castlebar-Ballina linked hub.
- RPGs Strategic Goals SG1 and SG2 are a formal recognition that good transport infrastructure is vital to peripheral areas for the promotion of economic and social well-being.
- The N26 Ballina to Bohola Phase 2 Road Project is included under Objective IO5 (projects required to promote a balanced regional development) in the RPGs – proposed realignment forms part of the revised strategy for taking forward the original objectives of the N26 Ballina to Bohola Phase 2 Road Project following the Board's earlier refusal.
- The need to upgrade the national road network has been recognised in Transport 21 and the proposal meets the principal objectives of the NDP Roads Sub-Programme.
- Focus of the Development Plan Core Strategy is the continued fabrication of growth of the Linked Hub and Westport and this is directly underpinned by a number of support strategies including the Infrastructure Strategy – proposed realignment is directly related to the objectives of the Core Strategy and Settlement Strategy.

- A number of other policies and objectives of the Development Plan are relevant to the proposed development: Policies PY02, I01 (General), LS03 (Land Use Integration & Sustainable Transport), RD01, RD02, RD04 (Roads), TM03 (Economic Development Strategy), PY03 (Environment, Heritage and Amenities Strategy), LP01-LP03 (Landscape Protection), NH01 and NH03 (Natural Heritage), AoH-01 (Archaeological Heritage)
- The Key Town of Swinford and Foxford are identified in the Settlement Strategy as having the function of absorbing development demand in relation to industry, public services, retail and tourism in the wider Mayo context.
- Progress in achieving balanced regional development has been limited due to a number of factors including the significant national downturn since 2007.
- Proposed development would not seriously injure the visual amenities or landscape character of the area, would not seriously injure the amenities of property in the vicinity, would be acceptable in terms of traffic safety and convenience, would not be prejudicial to public health and would not, therefore, be contrary to the proper planning and sustainable development of the area.

15.5 Natural Impact Statement and Ecology Brief of Evidence

15.5.1 The Council's evidence was concluded by Mr. Ryan Wilson-Parr, Lead Ecologist with Roughan & O'Donovan. The main points raised in this submission are summarised as follows:

- A detailed habitat survey was undertaken to inform the proposed development by McCarthy Keville and O'Sullivan Ltd. and a detailed woodland relevé assessment at the specific location of the proposed bridge was conducted in May 2015. The Lead Ecologist conducted multi-disciplinary ecological walkover surveys in January 2016 and an updated multi-disciplinary ecological walkover survey was undertaken by Woodrow Sustainable Solutions in April 2016.
- Assessment methodology involved a desk review, consultations with relevant statutory authorities and a review of previous assessments – Surveys were undertaken following Ecological Surveying Techniques for Protected Flora and Fauna during the Planning of National Road Schemes (2008) and Guidelines for

Assessment of Ecological Impacts of National Road Schemes (2009). Habitats were categorised in accordance with the Fossitt system and mapped in adherence to Heritage Council Best Practice Guidance for Habitat Survey and Mapping (2011).

- Area of oak-hazel-ash woodland (WN2) on the north bank of the river beside the existing bridge will not be impacted and will be contained within a fenced exclusion zone.
- A fragmented treeline (WL2) occurs along both banks at the proposed crossing and works area for bridge abutments will be set back 4m from the bank - there will be no removal of the treeline and selective pruning of individual trees below and within 1m of the bridge deck will occur. No Annex I habitat occurs within land available to the contractor for the purposes of construction of the proposed road.
- An exemption is granted for the clearance of vegetation under Section 40 of the Wildlife Acts – if vegetation is required during the restricted period, site inspection by Ecologist will be carried out.
- Proposed bridge abutments will be set back 10m from the river bank ensuring that connectivity for otter will be maintained. Mammal ledges will be provided within the culverts and mammal resistant fencing will be used along roadway.
- Suitable habitat for white clawed crayfish occurs throughout the Swinford River and they are highly likely to be present. Salmon redds were also recorded at the site of the proposed culvert and the Swinford River is highly suitable for spawning Lamprey.
- Kingfisher are likely to hold territory within the catchment; however, no suitable nesting habitat were identified and no nests occur within the immediate vicinity of the proposed road development.
- Species specific riparian planting will be provided along the River Moy and tributaries and new native trees will be planted in land available within the CPO post construction. A herb layer will be established and bat boxes will be installed at suitable locations.

15.5.2 Screening for AA identified likely significant effects on the River Moy SAC and its tributaries through potential short-term and long-term habitat loss, barriers to connectivity and temporary disturbance.

15.5.3 NIS proposes the following mitigation measures to eliminate these impacts and their effects:

- Scheduling of works to avoid periods of high sensitivity for fisheries;
- Temporary replacement of habitat during construction, e.g. diversion channel;
- Strict adherence to IFI best practise guidelines;
- Implementation of Construction Erosion and Sediment Control Plan;
- Replacement of original substrate inside culverts; and
- Restriction of construction activities and lighting to minimise disturbance.

15.5.4 Any residual effects will be insignificant in light of the site's conservation objectives.

15.5.5 There is no potential for impacts arising in combination with any other plans or projects.

15.5.6 It is concluded that in view of best scientific knowledge, on the basis of objective information, and provided effective mitigation is in place, the proposal either individually or in combination with other plans and projects, will not have an adverse effect on the integrity of River Moy SAC or any other European site.

15.6 Submissions from Prescribed Bodies and Third Parties

15.6.1 The Hearing reconvened with submissions from the National Parks and Wildlife Service, Inland Fisheries Ireland and the agent, Mr. Tom Corr, acting on behalf of the objectors to the scheme, (five of the original seven objectors withdrew their objections). It was also agreed before the Hearing reconvened that a submission would be heard from Mr. Peter Sweetman.

15.7 Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs

15.7.1 Reference is made within this submission to the "Response to Submissions/ Observations" report prepared on behalf of the applicant. The Board is asked to

note that no new scientific data, information or analysis are presented to address the gaps in the NIS.

15.7.2 It is the Department's view that there are significant gaps in the scientific examination of evidence and data necessary to identify and classify the implications of the proposed development, alone and in combination with other plans and projects, for the conservation objectives and integrity of the River Moy SAC. In particular, it has not been demonstrated that permanent loss of small areas of the Annex I priority habitat and qualifying interests of the SAC, Alluvial forests will be avoided and that adverse effects on the Annex II species and qualifying interests of the SAC can be avoided or mitigated.

15.7.3 It is reiterated that an Appropriate Assessment cannot have lacunae, and must contain complete, precise and definitive findings and conclusions capable of removing all scientific doubt as to the effects of the project on a European site (Case C-258/11 of the European Court of Justice). It is advised that these standards, best scientific knowledge, and the precautionary principle, should underpin the Board's final assessment with regard to the conservation objectives and integrity of the European site.

15.8 Inland Fisheries Ireland

15.8.1 IFI have the following response to Mayo County Council's response to its submission dated 16th December 2017:

- IFI maintain the request to install a bottomless culvert over the Swinford River – area of river bed to be culverted is used for salmon spawning and may also be used by lamprey for spawning.
- Even with proposed mitigation measures and the installation of existing river substrate into the culvert, there is no guarantee that salmon will use the altered site for spawning.
- Salmon spawning habitat has increasing value in this catchment in light of a reduction in the exploitable salmon surplus, which dropped from 19,012 salmon in 2016 to 14,925 for 2017 (28,000 in 2012).

- Reduced survival at sea make the protection of salmon habitat in the freshwater phases even more important.
- Site may also be used for lamprey spawning from March to May and the larvae do not leave the spawning gravel for 3-5 weeks, further reducing the season for in-stream works from July to September, weather dependent.
- A precast box culvert is considered acceptable for the Pollsharvogue River but a clear span bottomless culvert is preferred for the Swinford River.
- Alternative 2: Bottomless Culvert is preferred followed by Alternative 1: Minimum Length Box Culvert.

15.9 Mr. Tom Corr acting on behalf of Ms. Patricia Browne

15.9.1 The agent put forward a counter-proposal for access to his client's field which is located at the eastern end of the proposed road scheme on the northern side of the existing road.

15.9.2 The Council's proposal is for a combined access to the client's field and an adjoining field to the east. This proposal includes an access roadway approximately 30m in length that splays towards its northern end to provide two separate accesses to each field. The counter-proposal would see the length of road shortened to approximately 15m with the gates brought closer to the main road and no splaying of the access road. There would be separate gates to the left and right into each field. The client states that they do not want to share the access road.

15.9.3 In response, Mr. Jim Thorpe on behalf of the Council outlines that it is normal TII practice to collect farm accesses together as much as possible and that the 30m length is provided so that a vehicle and trailer (15m) can pull up to the gate without blocking access to the other gate.

15.9.4 The landowner's agent questions why a single access is safer than two adjoining accesses and the Mr. Thorpe highlights that sight distances of 215m at a distance of 3m back from the road edge are required for this type of road and therefore any gates closer to one another than this distance would not provide a safe means of egress onto the national road.

15.9.5 The landowner's position remains the same that she should prefer a separate access to her field. It is highlighted that there would be very low volumes of traffic using this access and there is concern that unauthorised parking could occur on the proposed access road.

15.10 Mr. Peter Sweetman

15.10.1 The Observer disagrees that the proposed development is not likely to have a significant effect on the environment when you consider Sweetman v. An Bord Pleanala, Case C-258/11. It is submitted that where a development is having such an effect on a SAC that it is 100% illegal, it cannot be claimed that the development will not have an effect on the environment.

15.10.2 It is stated that the development includes the removal of small amount of alluvial forest and reference is made to the Advocate General's opinion in Case C-258/11, which explains what a "small amount" is relevant to the EIA directive. It is therefore considered that it is absolutely impossible for the Board to grant the proposed development legally.

15.11 Formal Opinion of John Cross, Independent Expert

15.11.1 This opinion was submitted at the hearing and read into record by Mr. Jim Thorpe. Mr. Cross was asked to provide an opinion on the nature of the woodlands to be impacted by the proposed bridge and specifically whether the woodlands are indeed a woodland or a treeline, and whether they represent Residual Alluvial Forest as described in Annex I of the EU Habitats Directive. Mr. Cross was not present at the hearing and he did not undertake a field survey.

15.11.2 The conclusions of this opinion can be summarised as follows:

- SAC has not been surveyed in detail to obtain a clear picture of the distribution and extent of Alluvial Forest.
- On the south side of the river, the field layer of the semi-natural woodland is poor in species, although this may be partly attributed to the time of the year when the survey was undertaken – it contains some species characteristic of wet soils but

the species complement suggests a relatively poor development example of wet willow-alder-ash woodland (WN6).

- These is a dominance of ivy and bramble and the absence of constant/ positive indicator species of alluvial woodland.
- Land appears to rise quite steeply from the river, suggesting only the lower part could be subjected to flooding – this area is separated from the higher part of the woodland by a grassy track.
- The recommended minimum habitat size threshold (Heritage Council) is not met and the stand of trees along the river bank constitutes a treeline, rather than alluvial woodland.
- There is only a treeline on the north side of the river.

15.11.3 It is therefore concluded that the stand of trees does not meet the recommended minimum habitat size threshold to be defined as woodland and that while the vegetation on the south side has some similarities to alluvial woodland, it is neither sufficiently large nor well developed to be categorised as Residual Alluvial Woodland as described under the EU Habitats Directive.

15.12 Cross Questioning

15.12.1 The Ecologist confirmed that no further fisheries survey work carried out since preparation of NIS.

15.12.2 The NPWS were asked to outline what additional scientific evidence could be provided to demonstrate that the riparian woodland is not Annex I priority habitat. In response, the NPWS ask where in the NIS is the woodland described in terms of its vegetation and where is the relevant relevé data, evidence and analysis that is referred to? The Lead Ecologist confirmed that under the screening of pathways of risk and on the basis of the relevé data, the woodland was screened out and no higher level of assessment was carried out. The NIS does not therefore make an assessment of alluvial forest. The results table the applicant's response to submissions and observations is referred to by the Lead Ecologist and it is noted that background data to this assessment can be made available.

15.12.3 Mr. Sweetman then asked what criteria were used for screening for Appropriate Assessment and it was confirmed that botanical surveys were carried out and validated by the Lead Ecologist. Reference is made by Mr Sweetman to the legal opinion set out in Kelly v An Bord Pleanala where a development cannot be screened out where it is capable of having an effect on an Annex I priority habitat. It is also noted that the Formal Opinion was carried out by someone who did not carry out a field survey.

15.12.4 Mr. Sweetman also asked if any European guidance was used to determine if the woodland is alluvial forest and the Lead Ecologist confirmed that Perrin et al, 2008 and O'Neill and Barron, 2003 were used and that the EU interpretation manual is incorporated strongly into these documents. Mr. Sweetman remains of the opinion that the woodland is at least the remains of alluvial forest where the objective should be to improve and regenerate this habitat by fencing it off.

15.12.5 The Inspector asks when the site was designated and could it in any way have become degraded in terms of species composition since its designation. The NPWS confirmed that the site was advertised in December 2002 and there may have been ecological changes in the area caused by the site investigation works. There are also indications locally that there has been some loss and fragmentation of woodland. Dr. Fossitt from the NPWS confirmed that she had visited the site to familiarise herself with the area.

15.12.6 Mayo Council Council's representatives confirm that the treeline will be within a 4m buffer and selected pruning of trees will be carried out within 1m of the bridge abutment. There are no trees under the line of the bridge on the southside. Aerial photography (Bing) was shown by the applicant and Mr. Sweetman considered from this imagery that the area to the south of the river is woodland.

15.12.7 The NPWS state in response to the Formal Opinion prepared by John Cross, Independent Expert that this assessment appears to relate to one small part of the CPO lands and there is no opinion for the remainder of the woodland on the southern side of the river bank or the treeline on the opposite side. It is considered that Mr. Cross has not given an opinion of the wider local presence of Annex I Priority Habitat within the CPO lands or adjacent areas and that impacts have not been assessed because it has been excluded.

15.12.8 There is no indication that the woodland assessment contained within the 2015 Screening Report was provided to Mr. Cross. In addition, habitat mapping from the 2015 Screening Report is not presented to the Board and the relevé data from May 2015 is not available to the Board to described and scientifically exclude Annex I Priority Habitat. Thus, data aren't there to describe fully the habitat present.

15.12.9 Relevé data from January 2016 is not going to give a very accurate picture, certainly of ground flora, in this particular area and photographs of the wooded area have not been provided during growth seasons despite a number of surveys having been carried out during these periods. It is also submitted that there is wet alluvial woodland along the stream between the two sections of conifers and this area does not seem to be represented and is clearly of an alluvial nature.

15.12.10 Another point raised by the NPWS is the clear track through the woodland on the southern bank of the river which, it is claimed, was cleared for site investigations. The Screening for Appropriate Assessment for these works indicated a clearing for access through the conifers at this location and it is also submitted that upwelling was discovered in this area that there were problems trying to control silt when the site investigation works were taking place. It is stated that it would have been useful to have photographs of this area prior to site investigation works being carried out. It is also presumed that the Council can provide the Board with the determination it made with respect to the requirement for appropriate assessment for the ground investigation works.

15.12.11 It was confirmed by the Council that it made a determination on Annex I priority habitat within the Appropriate Assessment for ground investigation works; however, the NPWS stated that the relevé data from May 2015 are not presented in the current application.

15.12.12 In response, the Council's Senior Counsel highlights that the complaints from the NPWS should have been communicated to the Council before this point. It is considered that the ecologist has provided the evidence that there is no Annex I Habitat at this location of the proposed bridge. The only evidence from NPWS is a statement that it has not been adequately demonstrated that this is not Annex I priority habitat but the NPWS itself has not presented evidence and have not stated

that this is Annex I priority habitat. It is submitted that the Council has given the evidence and Board should make a decision based on the evidence.

15.12.13 The NPWS consider that Page 5 of the Council's Response to Submissions/ Observations is not relevé data as it should present actual species recorded and their abundance. This is considered to be a summary of some information. In addition, it is stated that the actual description in NIS and Planning Report does not describe the habitat within the footprint of development to any degree and it is not a scientifically based description of the habitat. In addition, it is noted that Dr. Cross did not give an opinion on all woodland within the CPO lands. In response, the Council state that Mr. Cross was asked to look at the NPWS submission and explicitly talks about north and south side of the river and not one specific area.

15.12.14 The Inspector asked about the potential for siltation and reference is made to the relevant section of the NIS. Mr. Sweetman enquired as to how the river banks can be secured from erosion and the Council responds that the bridge abutments will be set back 12m from the river bank. Mr. Sweetman states that the reduction of light will reduce vegetation and possibly cause erosion as grass is a binder of the bank and does not grow well in the shade. Mr Sweetman also asks about the issue of flooding and in response, Mr Thorpe points out that the river is in a clearly defined channel and generally stays within the banks. Reference is made to the flooding event of last winter that would have extended to the bridge abutments as being very exceptional.

15.12.15 Mr. Sweetman highlighted that the precautionary principle applies and that there must be reasonable scientific certainty. The developer has failed to do that and has failed to show mitigation measures that are proven to work. The fact that the contractor is to decide appropriate mitigation is concerning and proves that permission cannot be granted for the proposed development. A framework for mitigation is not acceptable under the Habitats Directive; it has to be said for certain that mitigation will work.

15.12.16 Mr. Thorpe states that a CMEOP will be prepared prior to commencement of works and the day to day operation of the site will require detailed assessment and monitoring with amendment and adjustment as works proceed. The NIS has defined

what mitigation measures must achieve and the general nature of mitigation measures have been outlined.

15.12.17 Mr. Sweetman is concerned that the contractor is required to submit the CMEOP to Mayo County Council for approval rather that to the NPWS or the Board. It is considered that only variables, such as undertaking works in certain weather conditions, should be agreed during the construction stage.

15.12.18 The NPWS enquired as to what area in terms of hectares is of the following:

- SAC within the CPO lands;
- Permanent footprint of development within SAC;
- Footprint of construction area that will be impacted upon on a lasting basis.

15.12.19 It is also asked what habitats are impacted upon or contained within these specific areas. The Council responded that no calculation for these has been derived and the NPWS highlighted that without very strict mitigation measures there is potential for all land to be used.

15.12.20 The NPWS concluded that the original NIS does not contain sufficient information and the response to the NPWS does not provide additional scientific, data and analysis. It is a matter for the Board to carry out Appropriate Assessment to the standards required.

15.12.21 After resumption of the hearing, the applicant confirmed that Table 3 - Priority Infrastructure Projects for Co. Mayo, in the County Development Plan refers to the N26 Ballina to Bohola project. Following rejection by the Board, route studies were carried out and the current proposal is part of revised proposals that in effect supersede the N26 project outlined in Table 3. Reference is also made to Development Plan Policy RD04 which states that “it is an objective of the Council to provide a safe road system throughout the County through Road Safety Schemes and to encourage the promotion of road safety in the County.”

15.12.22 It is stated that the proposed scheme takes priority because Council have resources to complete it.

15.12.23 The Council’s Senior Counsel stated in the concluding statement that there has been nothing from anyone objecting to proposed development in terms of need.

15.12.24 With respect to environmental issues sufficient evidence has been submitted that there will be no significant effect on Annex I priority habitat and no evidence to the contrary has been heard, particularly from NPWS who have had two staff members visit the site. The Board should therefore arrive at conclusion that it is not Annex I priority habitat at the location of the proposed bridge.