



An  
Bord  
Pleanála

## Inspector's Report 02.JP0049.

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<b>Development</b>	Amenity Development.
<b>Location</b>	Castlesaunderson, Co. Cavan.
<b>Planning Authority / Applicant</b>	Cavan County Council.
<b>Type of Application</b>	Application for approval under Section 177 AE of the Planning & Development Act 2000, as amended.
<b>Observers</b>	None.
<b>Prescribed Bodies</b>	<ol style="list-style-type: none"><li>1. Inland Fisheries Ireland.</li><li>2. Fermanagh &amp; Omagh District Council (including Department of Agriculture, Environment and Rural Affairs Northern Ireland and Department of Agriculture, Environment and Rural Affairs Northern Ireland).</li><li>3. Department of Culture, Heritage and the Gaeltacht.</li><li>4. Transport Infrastructure Ireland.</li></ol>
<b>Date of Site Inspection</b>	24 <sup>th</sup> April 2018.
<b>Inspector</b>	Karen Kenny.



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## 1.0 Introduction

- 1.1. This is an application to the Board for approval for an amenity development at Castlesaunderson Demesne, Belturbet, County Cavan.
- 1.2. The proposed development comprises the construction of amenity trails, a playground, a floating mooring, the redevelopment of an old boathouse to provide toilet and shower facilities, the installation of a wastewater holding tank and associated works.
- 1.3. The application is made pursuant to Section 177 AE (appropriate assessment of local authority development) of the Planning and Development Act, 2000, as amended.
- 1.4. Cavan County Council issued notice of the proposed development to prescribed bodies on 4<sup>th</sup> October 2017 and published notice in the Anglo Celt newspaper on 5<sup>th</sup> October 2017. The notices advised that a Natura Impact Statement has been prepared in respect of the proposed development and that submissions / observations could be made to An Bord Pleanála up to and including 4.30 p.m. on Wednesday 22<sup>nd</sup> November 2017. Submissions received by the Board are summarised in Section 6 below.
- 1.5. The application was received by the Board on 6<sup>th</sup> October 2017, and included the following:
  - Cover Letter.
  - Description of Proposed Development.
  - Natura Impact Statement.
  - Drawings.
  - Construction Methodology – Floating Mooring Installation.
  - Details of Waste Water Holding Tank.
  - Public Notice.
  - Copies of letters to prescribed bodies.
- 1.6. Additional Information was requested by the Board on 20<sup>th</sup> December 2017 in respect of a number of items. Further information was received on 31<sup>st</sup> May 2018. The further information included updated plans and drawings, an Ecological Impact

Assessment Report, an updated Natura Impact Statement and an Outline Construction Environmental Management Plan. The further information was deemed to be significant and was re-advertised.

## **2.0 Natural Heritage Designations**

- 2.1. The proposed development is located adjacent to and partially within the Lough Oughter and Associated Loughs SAC (Site Code IE000007) and approximately 9 kilometres to the north east of the Lough Oughter Complex SPA (Site Code IE004049) in the Republic of Ireland. The site is also adjacent to the Upper Lough Erne SAC (Site Code UK0016614) and Upper Lough Erne SPA (Site Code UK9020071) in Northern Ireland and approximately 9 kilometres south of the Slieve Beagh – Mullaghfad - Lisnaskea SPA (Site Code UK9020091) in Northern Ireland.

## **3.0 Legislative Requirements**

- 3.1. Section 177 AE (1) of the Act states that ‘where an Appropriate Assessment is required in respect of a development by a local authority that is within the local authority’s functional area, the local authority shall prepare or cause to be prepared a Natura Impact Statement’.
- 3.2. In accordance with subsection (3), where a Natura Impact Statement has been prepared, pursuant to subsection (1) the local authority shall apply to the Board for approval and the provisions of Part XAB shall apply to the carrying out of the Appropriate Assessment.
- 3.3. Section 177 AE (6) states that before making a decision in respect of the proposed development, the Board shall consider the NIS submitted by the local authority and any observations associated with it. The Board shall consider
- (i) The likely impacts on the environment of the proposed development.
  - (ii) The likely consequence for the proper planning and sustainable development of the area.
  - (iii) The likely significant effects of the proposed development on a European site.

Article 6 of the EU (Environmental Impact Assessment and Habitats) (2) Regulations 2011 exempts Part 8 requirements for local authority development where there is an appropriate assessment requirement.

## 4.0 Site Location and Description

4.1. The site, with a stated area of 30.4 hectares, is part of the Castlesaunderson Demesne in County Cavan. The site is situated in a rural area that is on the border between the Republic of Ireland and Northern Ireland. It is approximately 15 km north of Cavan Town, approximately 6.6 km north-east of Belturbet and approximately 5 km north of Cloverhill. The site is accessed from the N54 National Secondary Route and the local road network.

4.2. The site currently contains a ruinous castle structure with walled garden and outbuildings (RMP: CV011-00401, RMP: CV011-00402 and RPS: CV11002), the remains of a boat house and the former demesne church (RMP: CV011-006 and RPS: CV11002). Vegetation on site comprises dry meadows and grass verges, a broadleaved woodland along the north east margins of the site and a mixed conifer woodland along the south and west margins of the site. The site is open to the public and there are amenity trails and a car park around the castle. The site is bounded to the north east by the River Finn and Lough Sarah and to the south and west by a mixed conifer woodland. There is an International Scouting Centre in a clearing to the immediate north west of the site and a number of one off dwellings within the wider demesne landscape.

## 5.0 Proposed Development

5.1. The proposed development consists of the following:

- Construction of 1.7 km (approx.) of amenity trails extending from the Castle, through the broadleaved woodland along the River Finn and Lough Sarah, to the Demesne Church and looping back to the Castle. The proposed pathway is 2 metres wide with a depth of 300 mm.
- The development of a playground over an area of 360 square metres.

- The installation of a 42-metre-long floating mooring on the river, with concrete plinth, access gangway and land mooring. The mooring will be assembled off site and anchored by three locating piles that will be installed in the river and anchored to a depth of 2-3 metres below the river bed. A concrete landing platform is also proposed on the river bank.
- The redevelopment of an old boathouse to provide toilet and shower facilities. The foundations of the former boathouse will be excavated, and new concrete foundations installed. The new building, with a stated floor area of 65 square metres, will be of timber frame construction and have a cedar cladding finish. The building has an overall height of 5.8 metres.
- The installation of a 15,000-litre capacity wastewater holding tank adjacent to the redeveloped boathouse. The holding tank will be underground.
- The redevelopment of an existing access road to the boathouse to provide a 4m wide road with asphalt finish.

## 6.0 Written Submissions

### 6.1. Prescribed Bodies

6.1.1. In accordance with the provisions of Section 177 AE (4)(b), a number of prescribed bodies were notified of the proposal and copies of the application and NIS were circulated to same. The following bodies were notified:

- An Taisce
- Department of Culture, Heritage and the Gaeltacht (Development Applications Unit)
- Failte Ireland
- Inland Fisheries Ireland
- An Chomhairle Ealaion
- Transport Infrastructure Ireland
- Waterways Ireland
- The Heritage Council
- Fermanagh & Omagh District Council

6.1.2. Submission were received from Inland Fisheries Ireland, Fermanagh & Omagh District Council (inc. Department of Agriculture, Environment and Rural Affairs

Northern Ireland and Shared Environmental Services Northern Ireland), the Department of Culture, Heritage and the Gaeltacht (Development Applications Unit) and Transport Infrastructure Ireland. The issues raised can be summarised as follows:

#### **Inland Fisheries Ireland**

- Welcome development in principle.
- The River Finn is an important Salmonid Fishery. Recommend care and diligence in preventing discharges during the construction and operation phases.
- General requirements for works and activities in or close to water bodies are set out and there is a reference to guidelines to ensure that there is no entry or discharge of materials to the water.

#### **Fermanagh & Omagh District Council.**

- Support for the proposed development and positive contribution to tourism noted.
- Recommend that impact on natural heritage features in the Fermanagh and Omagh District Council area are taken into account.

#### **Department of Agriculture, Environment and Rural Affairs Northern Ireland.**

- Further information requested to enable a determination of potential impacts on designated sites. The details sought can be summarised as follows:
  - Outline Construction Environmental Management Plan to include all planned works.
  - Revised plans showing a 10 m (min) buffer between the effluent storage tank and the watercourse.
  - An Otter survey should be carried out in line with DAERA specifications.
- Recommend, in the event of a grant of permission, that measures are taken to minimise threats to breeding birds and to maintain availability of nest sites.



- Recommend that environmental permissions are obtained (to include agreement of a Construction Method Statements) from relevant authorities, prior to works commencing.
- Recommend that the sealed sewage tank should be watertight with no discharge to surrounding aquatic environment. Volume monitoring system could be considered.
- Advise that mitigation measures must be in place to protect water bodies at the location of the development and surrounding waterbodies from any discharge that may damage ecological status and to ensure that no Water Framework Directive objectives are compromised.
- Recommend measures to prevent pollution of surface or groundwater.

#### **Shared Environmental Services Northern Ireland.**

- Further information is required to assess potential impacts on European Sites.

#### **Department of Culture, Heritage and the Gaeltacht (Development Applications Unit).**

The submission highlights deficiencies in relation to the information submitted with the application and the assessment of impacts on European Sites. Concerns raised include the following:

- Deficiencies in the description of the baseline environment and the potential for impacts. There is no information of any ecological surveys undertaken, no Ecological Impact Assessment and no classification of habitat types within and adjacent to the site or identification of what, if any, habitats are to be lost.
- Deficiencies in the description of the development. The construction methodology is confined to the floating jetty only and is general in nature. Mitigation measures are of a general nature and are not site specific;
- There is no scientific rationale for the exclusion of the Lough Oughter SPA from the Appropriate Assessment process. There is a need for an assessment of ecological pathways, ecological receptors and an assessment of the potential impact on qualifying interests of all potentially affected European Sites.

- There is a need for an assessment of and reasoned conclusions in relation to impacts arising from the construction and operational phases. Concerns raised regarding assessment of impacts.
- Consideration of cumulative impacts fails to refer to the Ulster Canal Greenway Development Strategy.
- No reference to management of invasive alien species in the Construction Methodology provided.

### **Transport Infrastructure Ireland.**

No observation.

6.1.3. The prescribed bodies were notified that significant further information was submitted to the Board and copies of the further information to include the Ecological Impact Assessment Report and the revised Natura Impact Statement were circulated.

6.1.4. Transport Infrastructure Ireland acknowledged receipt of the further information but had no observation to make in relation to same. The Board did not receive any other submissions from prescribed bodies during the consultation period.

### **6.2. Other Third-Party Submissions**

6.2.1. The Board has not received any third-party submissions in relation to the proposed amenity development.

## **7.0 Planning History**

**P.A. Ref. 05/65:** Permission granted for outdoor pursuit/camping centre for Scouting Ireland, to include a reception building with sports hall and sleeping accommodation, camp sites, marina, stores, covered sports area, security hut, car parking and sites for various outdoor activities including adventure play area and climbing wall. The application site encompassed the application site and surrounding lands.

## 8.0 Planning Policy Context

### 8.1. Cavan County Development Plan 2014-2020

8.1.1. The Cavan County Development Plan 2014-2020 is the relevant statutory Plan for the area. The following sections of the Development Plan are considered to be relevant.

- PIO65: Facilitate the development of walking and cycling related tourism in Cavan.
- Policies BHP2 and BHP3 relate to the sympathetic retention, reuse and rehabilitation of Protected Structures and their settings.
- Objective BHO4 is to promote cultural tourism in Cavan and to fully recognise the potential of the County's architectural heritage in this role.
- Section 7.5.2 "Archaeological Heritage" includes policies (BHP5 and BHP8) relating to the protection of archaeological monuments and sites and features of historical and archaeological interest and objectives in relation to the carrying out of archaeological investigations (BHO20-24).
- Chapter 8 "Natural Heritage & Environment" includes policies and objectives for the protection of natural heritage features including flora, fauna, habitats and landscapes.
  - Section 8.4 relates to Natura 2000 Sites and NHA's and includes a policy in relation to protecting the overall integrity of these sites (NHEP9) and an objective to protect and conserve the conservation value of SPAs, SACs and NHAs (NHEO5).
  - The Development Plan identifies five main Landscape Character Areas within County Cavan. Policy NHEP19 is to protect the landscape character, quality, and local distinctiveness of the County and to recognise the Landscape Categorisation of County Cavan. The site is within Area 2 "The Lakelands" which is deemed to be an area of "High Landscape Value or Special Landscape Interest". Objective NHEO26 is to maintain the scenic and recreation value of these areas by restricting all adverse uses and negative visual impacts.

- Castle Sanderson is identified as a County Heritage Site. Objective NHEO27 is to restrict incompatible development in order to protect the amenity, scientific and historical values of these areas.
- Objective NHEO33 is to maintain the amenity value of major lakes and their environs within a landscape, recreational and ecological context by restricting and regulating development that would prejudice use and enjoyment of the areas, give rise to adverse visual impacts or threaten habitats through disposal of effluents.
- Policy NHEP21 is to protect and enhance the natural heritage and landscape character of the Waterways and to maintain it free from inappropriate development and to provide for public access, where feasible, acknowledging the existence of contiguous Natura 2000 sites.
- NHEO39 is to protect the biodiversity of rivers, streams and other water courses of the Inland Waterways to maintain them in an open state and to discourage their culverting or realignment.
- Section 8.12 relates to “Water Resources and Quality” and includes an overarching policy (NHEP26) to protect the water resources of County Cavan and a policy (NHEP27) to protect the rivers, streams, lakes and all other watercourses in the County, in order to promote sustainable and suitable habitats for flora and fauna. Policy NHEP29 relates to achieving the objectives of the Water Framework Directive.
- Chapter 9 “Recreation and Tourism” includes policies and objectives in relation to the provision of walkways and amenities. RTO3 is to recognise the importance of walking and cycling routes and other countryside recreational opportunities, promote their development and ensure their protection, maintenance and where feasible improvement. RTO8 is to improve existing Local Authority recreational and amenity facilities and provide new facilities where considered necessary. Objective RTO13 is to promote and facilitate the redevelopment of the Ulster Canal and associated waterways.

## 9.0 Assessment

Under the provisions of Section 177AE (6) the Board is required to consider the following in respect of this type of application:

- (i) The likely effects on the environment,
- (ii) The likely consequences for the proper planning and sustainable development of the area, and
- (iii) The likely impact on any European sites.

I propose to assess the subject proposal under these three broad headings.

### 9.1. Likely Effects on the Environment

- 9.1.1. The most significant potential for impacts on the environment, arising in relation to water, flora and fauna are discussed in detail in the appropriate assessment below. In addition to these, I consider that environmental impacts may be considered under the following headings:

#### **Archaeology**

- 9.1.2. There are three features within the site that are listed on the Record of Monuments and Places. The site of the castle and its enclosure comprises RMP Ref. CV011-00401 (Castle Site) and RMP Ref. CV011-00402 (Bawn Site). The site of the church in the southern section of the site is listed as RMP Ref. CV011-006 (Church). There are also a number of other Recorded Monuments within the wider Castlesaunderson Demesne lands.
- 9.1.3. Potential impacts on archaeology, including sub-surface archaeology, have not been addressed in the submitted details, despite the presence of a number of recorded monuments within the site and in the wider area. The application was referred to the Development Applications unit of the Department of Culture, Heritage and the Gaeltacht, however, no response has been received in relation to archaeology.
- 9.1.4. Whilst no significant excavation is proposed, I am of the view that there is potential for the proposed works to impact on previously undiscovered sub-surface archaeology due to the proximity of the works to recorded monuments and in view of the number of archaeological features in this area.

9.1.5. Given the confined footprint of new development and the limited extent of excavation proposed, I consider that archaeological supervision of all works would be sufficient to mitigate any potential impacts. I am, therefore, satisfied that issues raised in relation to archaeology can be addressed by way of condition. Should the Board be minded to approve the development I recommend that a condition is attached that requires all works to be monitored by a suitably qualified archaeologist and that provision is made for resolution of any archaeological features or deposits that may be identified during the works in consultation with the Department of Culture, Heritage and the Gaeltacht.

### **Visual Impact and Impact on Architectural Heritage**

- 9.1.6. The site forms part of a historic demesne. There are two structures within the site, both of which are listed on the Record of Protected Structures, namely Castlesaunderson, Country House (CV11002) and the Demesne Church (CV11002). The Castle structure is in a ruinous state, while the Church remains intact.
- 9.1.7. The proposed development comprises a walking trail, a small playground, floating jetty and a toilet / shower block within a historic river and lakeside setting. The site is enclosed by a mixed broadleaved woodland along the River Finn and Lough Sarah to the north east and a mixed conifer woodland to the south and west and as such, the development would not be visible within its wider landscape setting. The proposed structures are of a modest scale and the design and finishes are sympathetic to the “historic” and “natural” woodland setting. The removal of vegetation, excavation and regrading is also negligible. I am satisfied that the proposed developments would integrate to an acceptable degree within the historic context and that they will not detract from the character or amenities of the area.

### **Ecology**

- 9.1.8. The assessment of the impact of the proposed development on the conservation objectives of European Sites, pursuant to Article 6 of the Habitats Directive, is set out at Section 9.3 below. On the matter of the broader ecological considerations, I would note that the submitted Ecological Impact Assessment identifies potential for Badger, Frog and Otter species that are protected under Annex II of the EU Habitats Directive to exist within the site and that protected Bat species were encountered during survey. No bird species of high conservation value were noted within the

proposed development area. The Ecological Impact Assessment Report concludes that mitigation measures are recommended to minimise risk to ecological receptors and that once implemented, potential impacts are considered to be of low magnitude. I am satisfied that adequate information is provided in respect of the baseline ecological conditions and potential impacts and I am satisfied that, subject to the proposed mitigation measures, no significant impacts are likely to occur.

### **Other**

- 9.1.9. The impacts in respect of population and human health would be largely positive, in my view, arising from the expansion of the existing walking trails, the provision of toilet and showering facilities and the increased accessibility of the site by boat.
- 9.1.10. The site is accessed from the N54 and from the local road network and there is an existing car parking area adjacent to the Castle enclosure. No new vehicular access points or alterations to the access roadways are proposed, save for the provision of an access road to the toilet / shower block. Traffic impacts during the construction stage would arise from the movement of construction staff and deliveries into the site. During the operational stage the submitted details anticipated visitor numbers of between 35-40 persons per day. I am satisfied that the increase in traffic would be insignificant and that the proposed development is acceptable in this regard.

## **9.2. Likely Consequences for the Proper Planning and Sustainable Development of the Area**

- 9.2.1. The Cavan County Development Plan 2014-2020 is the relevant statutory plan for the area.
- 9.2.2. I consider that the proposed “amenity” development is acceptable in principle and that it accords with the Development Plan for the area. Castle Sanderson is identified as a County Heritage Site and I would note that objective NHEO27 of the Development Plan is “to restrict incompatible development in order to protect the amenity, scientific and historical values of these areas”. I am satisfied that the proposed amenity development responds positively to the amenity, scientific and historical values of the site and that it is in accordance with Objective NHE027.
- 9.2.3. The development responds to objectives in relation to the provision of enhanced tourist and recreational facilities. Policy PIO65 and Objective BH04 of the

Development Plan seek to “facilitate the development of walking and cycle related tourism” and “to promote cultural tourism ...”. The proposed development also responds to objectives in relation to the rehabilitation of Protected Structures and their curtilages, in particular Policy BHP2 “to encourage the sympathetic retention, reuse and rehabilitation of Protected Structures and their settings” and Policy BHP3 “to encourage the continued use of protected structures and their curtilage and to promote their sensitive adaption to accommodate modern requirements”.

- 9.2.4. In respect of archaeology, I am satisfied that the proposal does not conflict with objectives in this regard, provided that there is adequate monitoring of ground works by a qualified archaeologist and that provision is made for the resolution of any archaeological features or deposits that may be identified.
- 9.2.5. I am satisfied that the proposed development is generally in accordance with the policies and objectives of the Development Plan and that it will not give rise to significant adverse impacts on the amenities of the area. Accordingly, I consider that the development accords with the proper planning and sustainable development of the area.

### 9.3. **Likely Significant Effects on a European Site**

#### **Introduction**

- 9.3.1. The EU Habitats Directive 92/43/EEC provides legal protection for habitats and species of European importance through the establishment of a network of designated conservation areas collectively referred to as Natura 2000 or ‘European’ sites. The network includes sites designated as Special Areas of Conservation (SAC) under the Habitats Directive and sites designated as Special Protection Areas (SPA) under the Birds Directive. Appropriate Assessment (AA) considers whether a plan or project individually, or in combination with other plans or projects would be likely to adversely affect the integrity of a European site in view of the site’s conservation objectives.
- 9.3.2. Following an initial screening of the proposed development the local authority determined that in the absence of mitigation or further details, the possibility of significant effects on the integrity of a European site(s) could not be excluded and that Stage 2 Appropriate Assessment would be required. In accordance with the



requirements of Section 177AE of the Planning and Development Act, a Natura Impact Statement was prepared, and an application submitted to An Bord Pleanála pursuant to Section 177AE of the Act.

### **Stage 1 – Appropriate Assessment Screening**

- 9.3.3. The application was accompanied by a Natural Impact Statement. Following an initial assessment, the Board, requested further information in relation to the effects of the proposed development on the environment. Cavan County Council submitted further information to the Board on 31<sup>st</sup> May 2018. The further information included an Ecological Impact Assessment Report, an Outline Construction Environmental Management plan and a revised Natura Impact Statement. I am satisfied that the information provided is sufficient to allow me to undertake an Appropriate Assessment of the proposed development.
- 9.3.4. In accordance with Departmental Guidance<sup>1</sup> the NIS (Section 3.2) identifies European Sites within a 15km radius of the site for the purpose of AA Screening. The NIS states that the projects zone of influence is considered to be within the local vicinity of the proposed works, with the possibility of further upstream and downstream effects associated with the River Finn. I consider this to be reasonable.
- 9.3.5. A description of the European Sites within the 15 km study area and an assessment of possible effects on the sites is set out in Table 9.1 below.

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<sup>1</sup> Appropriate Assessment of Plans and Projects In Ireland – Guidance for Planning Authorities (Section 3.2.3) – DEHG, 2009.

**Table 9.1**

<b>Site Name</b>	<b>Qualifying Interests / Conservation Objectives</b>	<b>Possibility of Significant Effects</b>
<p><b>Lough Oughter and Associated Loughs SAC</b></p> <p>Site Code IE000007</p> <p>Located adjacent to and partially within.</p>	<p><b>Qualifying Interests</b></p> <p>Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation,</p> <p>Bog woodland (priority feature),</p> <p>Lutra lutra (Otter).</p> <p><b>Conservation Objectives</b></p> <p>To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.</p>	<p>Works proposed within and adjacent to designated area of the SAC. Proposed jetty is within River Finn and its wetland habitat, designated as part of the SAC. Potential for direct / indirect impacts during construction / operation.</p>

<b>Site Name</b>	<b>Qualifying Interests / Conservation</b>	<b>Possibility of</b>
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Site Name	Qualifying Interests / Conservation Objectives	Possibility of Significant Effects
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	Objectives	Significant Effects
<p><b>Upper Lough Erne SAC</b> Site Code UK0016614 Located adjacent to and partially within.</p>	<p><b>Qualifying Interests</b></p> <p>Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation.</p> <p>Old sessile oak woods with Ilex and Blechnum in the British Isles.</p> <p>Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) (priority feature).</p> <p>Lutra lutra (Otter).</p> <p><b>Conservation Objectives</b></p> <p>To maintain (or restore where appropriate) the Natural eutrophic lakes with Magnopotamion or Hydrocharition-type vegetation.</p> <p>To maintain (or restore where appropriate) the Old sessile oak woods with Ilex and Blechnum in the British Isles.</p> <p>To maintain (or restore where appropriate) the Alluvial Forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae).</p> <p>To maintain (or restore where appropriate) Otter Lutra lutra.</p>	<p>SAC adjoins the Lough Oughter SAC. Works proposed adjacent to designated area. The proposed jetty is within River Finn and its wetland habitat, designated as part of an adjoining SAC. Potential for direct / indirect impacts during construction / operation.</p>

<p><b>Upper Lough Erne SPA</b></p> <p>Site Code UK9020071</p> <p>Located adjacent to and partially within.</p>	<p><b>Qualifying Interests:</b></p> <p>Whooper Swan (<i>Cygnus cygnus</i>) (Wintering Population),</p> <p>Habitat used by or partially usable by the feature species subject to natural processes.</p> <p><b>Conservation Objectives</b></p> <p>To maintain each feature in favorable condition.</p>	<p>Works proposed adjacent to designated area. The proposed jetty is within River Finn and its wetland habitat, designated as part of adjoining SAC. Potential for direct / indirect impacts during construction / operational.</p>
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<b>Site Name</b>	<b>Qualifying Interests / Conservation Objectives</b>	<b>Possibility of Significant Effects</b>
<p><b>Lough Oughter Complex SPA</b></p> <p>Site Code IE004049</p> <p>Located 9 kilometres to the south west.</p>	<p><b>Qualifying Interests:</b></p> <p>To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA namely:</p> <p>Great Crested Grebe (<i>Podiceps cristatus</i>),</p> <p>Whooper Swan (<i>Cygnus cygnus</i>),</p> <p>Wigeon (<i>Anas penelope</i>),</p> <p>Wetland and Waterbirds.</p> <p><b>Conservation Objectives</b></p> <p>To maintain or restore the favourable conservation condition of the wetland habitat at Lough Oughter Complex SPA as a resource for the regularly-occurring migratory waterbirds that utilise it.</p>	<p>No significant effects considered likely due to the distance and lack of pathways between the two sites.</p>

<b>Site Name</b>	<b>Qualifying Interests / Conservation Objectives</b>	<b>Possibility of Significant Effects</b>
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<p><b>Slieve Beagh – Mullaghfad - Lisnaskea SPA</b></p> <p>Site Code UK9020091</p> <p>Located c. 9 km to the north.</p>	<p><b>Qualifying Interests</b></p> <p>Hen Harrier (<i>Circus Cyaneus</i>) (Breeding Population),</p> <p>Habitat used by or potentially usable by notified species, within the SPA, subject to natural processes.</p> <p><b>Conservation Objectives</b></p> <p>To maintain each feature in favorable condition.</p>	<p>No significant effects considered likely due to the distance and lack of pathways between the two sites.</p>
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9.3.6. I conclude, on the basis of the assessment set out in Table 9.1, that the potential for likely significant effects on the Lough Oughter and Associated Loughs SAC, the Upper Lough Erne SAC and the Upper Lough Erne SPA cannot be screened out due to the possibility of impacts in the absence of mitigation, and that Stage 2 Appropriate Assessment is required in respect of these European Sites. I conclude that the potential for significant effects on the Lough Oughter Complex SPA and the Slieve Beagh-Mullaghfad-Lisnaskea SPA can be screened out, given the separation distance between the application site and the designated areas of these SPA's and the lack of direct ecological or hydrological connectivity.

**Stage 1 Screening Conclusion:**

9.3.7. It is reasonable to conclude on the basis of the information provided with the application, which I consider to be adequate in order to issue a screening determination, that with the exception of the Lough Oughter and Associated Loughs SAC, the Upper Lough Erne SAC and the Upper Lough Erne SPA, the proposed development individually or in combination with other plans and projects would not be likely to have a significant effect on the Lough Oughter Complex SPA (Site Code IE004049) and the Slieve Beagh-Mullaghfad-Lisnaskea SPA (UK9020091), or any other European Sites, in view of the site's Conservation Objectives, and that Stage 2 Appropriate Assessment is not therefore required in respect of these sites.

**Stage 2 Appropriate Assessment**

9.3.8. The Lough Oughter and Associated Loughs SAC, the Upper Lough Erne SAC and the Upper Lough Erne SPA are carried forward for Appropriate Assessment. The potential for impacts is assessed in light of the qualifying features (habitats and species) that are likely to be affected by the proposed development. The qualifying features and an assessment of potential impacts is outlined in Table 4-1 of the NIS and are summarised in Table 9.2 below.

**Table 9.2**

**Lough Oughter and Associated Loughs SAC**

<b>Qualifying Interest</b>	<b>Potential for Adverse Effect</b>
Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation [3150]	Yes - Habitat does not occur at the site. Using the precautionary approach due to lack of distribution data, it is assumed that potential exists for the habitat to occur downstream. Hydrological pathways exist with potential for indirect impacts to water quality during the construction and operation phases.
Bog woodland* [91D0]	No. Habitat type does not occur at the proposed development site. No pathways for impacts.
Lutra lutra (Otter) [1355]	Yes. Due to lack of distribution data it is assumed that the species is present throughout the catchment. Potential for adverse effects from pollutants entering surface water and disturbance from construction and operation phase.

**Upper Lough Erne SAC**

Qualifying Interest	Potential for Adverse Effect
Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation [3150]	Yes – Lake habitat does not occur at the site. However, due to lack of distribution data, potential exists for the habitat to occur downstream. Hydrological pathways exist with potential for indirect impacts to water quality during the construction and operation phases.
Old sessile oak woods with Ilex and Blechnum in the British Isles (91A0),	No - Habitat type does not occur at the proposed development site. No pathways for impacts.
Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) (91E0)* Priority feature.	No - Habitat type does not occur at the proposed development site. No pathways for impacts.
Lutra lutra (Otter) [1355]	Yes - Due to lack of distribution data it is assumed that the species is present throughout the catchment. Potential for adverse effects from pollutants entering surface water and disturbance from construction and operation phase.

## Upper Lough Erne SPA

Qualifying Interest	Potential for Adverse Effect
Whooper Swan (Cygnus cygnus) [A038] (Wintering Population)	Yes – Due to lack of distribution data, assumed that this species has potential to feed on the grassland along the norther banks of the River Finn. No suitable roosting habitat noted. Potential for disturbance to species exists during the operational phase.
Habitat used by or partially usable by the feature species subject to natural processes.	No – Development on southern bank of the River Finn, outside of the SPA. No suitable roosting or foraging habitat for Whooper Swan. Works to be undertaken during summer period. During the operational phases, hydrological pathways to downstream habitats may result in an increase in pollution via leaks and spills from boating activities during the operational phase. However, it is not considered that such occurrences would result in adverse impacts on the quality of the habitat used by Whopper Swans.

9.3.9. I conclude, on the basis of the assessment set out in Table 9.2 that direct impacts on the qualifying interests of the European Sites are not likely. There is a possibility of for indirect impacts that may affect natural eutrophic lakes, otter and Whooper Swan.

9.3.10. Potential impacts detailed in the submitted NIS can be summarised as follows:

- During the construction phase there is potential for the release of suspended solids into surface water due to spills and leaks of hydrocarbons, introduction or spread of invasive species, temporary noise and disturbance impacts from machinery and staff at work and temporary displacement effects where otters are displaced from using the habitats within the proposed development area.
- During the operational phase there is potential for impacts on water quality due to increased boating activity and in the event of an accidental spill from



the proposed sewerage facility (eutrophication of the river) and for the displacement of fauna due to increased activity in the area.

- It is noted that the proposed works would not result in any direct loss or disturbance to Annex I habitats or Annex I or II species for which the SAC and SPA are designated.

### **Mitigation**

9.3.11. It is concluded that in the absence of mitigation measures there is potential for adverse effects on the qualifying interest habitats of the European Sites.

9.3.12. Mitigation measures have been outlined to address these impacts which include the preparation of an Outline Construction Management Plan (OCMP), to be implemented during the construction phase of development and the engagement of an Ecological Clerk of Works to oversee construction works. This plan covers all potentially polluting activities and includes mitigation measures for elements including instream works and works close to the River Finn, for the storage and handling of harmful materials, the management of invasive species, use of vehicles, excavation and the management of sediment and runoff. During the operation phase this plan covers all potentially polluting activities and includes mitigation measures in relation to the management of the wastewater holding tank, the collection of litter, the storage of cleaning products and chemicals within the site, surface water runoff and the use of boats in this area. The NIS concludes that, provided all mitigation measures detailed in Section 6 of the submitted NIS are fully implemented, no significant residual effects are likely to occur.

9.3.13. I consider that the proposed mitigation measures are clearly described, are reasonable, practical and enforceable. I am also satisfied that they fully address the potential impacts arising from the proposed development.

9.3.14. The NIS considers potential for in-combination effects associated with other developments. The most significant development considered is the Ulster Canal Restoration Project, which involves the reopening of a 13 km section of the Ulster Canal between Clones and Upper Lough Erne including a c. 4.5 km section of river channel in the Finn River to the north east of the Castlesaunderson Demesne. I would also note the Ulster Canal Greenway, a phased 190 km greenway that includes a section from Castlesaunderson to Clones. I consider that the potential

impacts to European sites as a result of these projects, is limited by the existing legal requirement for all plans and projects to undergo screening for AA, and if necessary AA and to adhere to best practice construction methodologies to avoid damage / removal of protected habitats and species and surface water run-off / contamination. I accept, therefore, that cumulative impacts are not likely to arise.

9.3.15. In conclusion, having examined the information before me, I am satisfied that the proposed mitigation measures to be put in place will ensure that the conservation objectives and the integrity of the Natura 2000 sites identified above, will not be adversely affected by the proposed development either alone or in combination with other potential impact sources.

### **Stage 2 Appropriate Assessment - Conclusion:**

9.3.16. I consider it 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 or projects would not adversely affect the integrity of the European Site No. IE000007 (Lough Oughter and Associated Loughs SAC), European Site No. UK0016614 (Upper Lough Erne SAC) and European Site No. (UK9020071), or any other European Sites, in view of the site's conservation objectives.

## **10.0 Other**

10.1.1. I would draw the Boards attention to the sites location on the border between the Republic of Ireland and Northern Ireland. Notification of the application and the further information was circulated to authorities in Northern Ireland. The responses received are detailed in Section 6.0 above. Having regard to the nature and extent of the proposed development, I am of the view that the proposed development is not likely to have significant effects on the environment of another Member State and that the formal procedures prescribed under Section 177 of the Planning and Development Act 2000 (as amended), in relation to the notification of another State, are not warranted in this instance. The Board may take a different view and consider initiating the procedures prescribed under Section 177.

## 11.0 Conclusion

11.1.1. Further to the above, I consider it reasonable to conclude on the basis of the information available, which I consider adequate to carry out a screening and appropriate assessment, that the proposed development, individually and in combination with other plans or projects would not adversely affect the integrity of European Site No. IE000007 (Lough Oughter and Associated Loughs SAC), European Site No. UK0016614 (Upper Lough Erne SAC) and European Site No. (UK9020071), or any other European Sites, in view of the site's conservation objectives. Further, I consider the proposal to be acceptable in respect of its likely effects on the environment and its likely consequences for the proper planning and sustainable development of the area.

## 12.0 Recommendation

Approve, subject to conditions, the proposed development based on the reasons and considerations set out below.

### REASONS AND CONSIDERATIONS

Having regard to

- (a) the EU Habitats Directive (92/43/EEC),
- (b) the European Communities (Birds and Natural Habitats) Regulations 2011,
- (c) the EU Water Framework Directive 2000 (2000/60/EEC),
- (d) the document entitled "Appropriate Assessment of Plans and Projects in Ireland: Guidance for Planning Authorities issued by the Department of the Environment, Heritage and Local Government (amended 2010)
- (e) the Cavan County Development Plan 2014-2020,

- (f) the submissions and observations received in relation to the likely effects on the environment,
- (g) the report and recommendation of the reporting inspector,
- (h) the likely consequences for the environment and the proper planning and sustainable development of the area in which it is proposed to carry out the proposed development and the likely significant effects of the proposed development on a European site,

12.1.1. The Board completed an Appropriate Assessment Screening exercise in relation to the potential effects of the proposed development on designated European sites. The Board noted that the proposed development is not directly connected with or necessary to the management of a European Site. The Board considered the nature, scale and location of the proposed development, the Natura Impact Statements submitted with the application, the submissions on file and the report of the Inspector. In completing the screening exercise, the Board adopted the report of the Inspector and concluded that with the exception of the Lough Oughter and Associated Loughs SAC (Site Code IE000007), Upper Lough Erne SAC (Site Code UK0016614) and Upper Lough Erne SPA (Site Code UK9020071) the proposed development, individually or in combination with other plans and projects would not be likely to have a significant effect on the Lough Oughter Complex SPA (Site Code IE004049) and the Slieve Beagh-Mullaghfad-Lisnaskea SPA (UK9020091), or any other European Sites, in view of the site's Conservation Objectives, and that Stage 2 Appropriate Assessment is not therefore required in respect of these sites.

12.1.2. The Board completed an Appropriate Assessment exercise in relation to the potential effects of the proposed development on the affected Natura 2000 site, namely the Lough Oughter and Associated Loughs SAC (Site Code IE000007), Upper Lough Erne SAC (UK0016614) and the Upper Lough Erne SPA (UK9020071) and in doing so took into account the nature, scale and location of the proposed development, the Natura Impact Statements submitted with the application, the submissions on file and the report of the Inspector's assessment. In completing the Appropriate

Assessment, the Board adopted the report of the Inspector and concluded that the proposed development would not be likely to have a significant effect individually or in combination with other plans and projects on the environment, on the amenities of the area or on the European sites referred to. The Board concluded that the proposed scheme would not have an adverse effect on the integrity of the European sites, having regard to the Conservation Objectives for the sites.

The Board considered, given the established presence of 'amenity' uses at this location and having regard to the nature, scale and extent of the proposed development and the location of the subject site that, subject to compliance with conditions set out below, the proposed development would not adversely affect the environment and would not seriously injure the amenities of the area or property in the vicinity. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

## **CONDITIONS**

1. The proposed development shall be carried out and completed in accordance with the plans and particulars, including the Ecological Impact Assessment (May 2018) and Natural Impact Statement (May 2018) and other associated documentation, lodged with An Bord Pleanála on the 6<sup>th</sup> October 2017 and 31<sup>st</sup> May 2018, except as may otherwise be required in order to comply with the conditions set out below. Where any mitigation measures set out in the Ecological Impact Assessment and Natural Impact Statement or any conditions of this Approval require further details to be prepared by or on behalf of the Local Authority, these details shall be placed on the file and retained as part of the public record.

**Reason:** In the interest of clarity and the proper planning and sustainable development of the area and to ensure the protection of the environment.

2. The mitigation measures and associated monitoring outlined in the plans and

particulars submitted with the application, including the Ecological Impact Assessment (May 2018) and Natural Impact Statement (May 2018), shall be carried out in full except as may otherwise be required in order to comply with other conditions.

Prior to commencement of the development, details of a time schedule for implementation of the mitigation measures and associated monitoring shall be prepared by Cavan County Council.

**Reason:** In the interest of clarity and protection of the environment and in the interest of public health.

3. Prior to the commencement of development, Cavan County Council or any agent acting on its behalf shall prepare in consultation with the relevant statutory agencies, a Construction Environmental Management Plan (CEMP), that adheres to best practice environmental management. The CEMP shall include specific proposals for monitoring of the effectiveness of the environmental management measures outlined in the CEMP.

**Reason:** In the interest of protecting the environment, protection of European sites and in the interest of public health.

4. Prior to commencement of the development, details of measures to protect fisheries and the water quality of the river systems shall be outlined and placed on file.

Full regard shall be had to the IFI's published updated guidelines for construction works near waterways (Guidelines on Protection of Fisheries during Construction Works in and Adjacent to Waters, 2016). A programme of water quality monitoring shall be prepared in consultation with the Contractor, the Local Authority and relevant statutory agencies and the programme shall be implemented thereafter.

**Reason:** In the interest of protection of receiving water quality, fisheries and aquatic habitats.

5. A suitably qualified ecologist shall be appointed by Cavan County Council to oversee the site set-up and construction of the proposed development in accordance with the mitigation measures set out in the Natura Impact Statement. Upon completion of the construction stage, an audit report of the site works shall be prepared by the appointed ecologist and submitted to the local authority to be maintained on record.

**Reason:** To ensure the protection of the designated sites during construction.

6. During construction stage, all topsoil stripping associated with the proposed scheme shall be subject to full time archaeological monitoring by a suitably qualified archaeologist under licence from the Department of Culture, Heritage and the Gaeltacht. Provision shall be made available for the resolution of any archaeological features or deposits that may be identified.

**Reason:** In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

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Karen Kenny  
Senior Planning Inspector

22<sup>nd</sup> October 2018