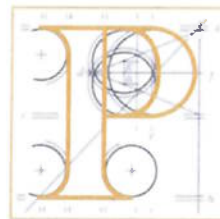


Our Case Number: ACP-324342-26

Your Reference: Darren Donaghey



An
Coimisiún
Pleanála

Augustus Cullen Law LLP
7 Wentworth Place
Wicklow
A67FX59

Date: 05 August 2026

Re: Proposed Burnfoot Flood Relief Scheme
in the townlands of Ballyederowen, Carnashannagh, Monreagh (aka Barr of Kilmacilvenny), and
Inch Level at Burnfoot, County Donegal

Dear Sir / Madam,

An Coimisiún Pleanála has received your recent submission in relation to the above-mentioned proposed development and will take it into consideration in its determination of the matter. Please note that the submission fee of €50 does not apply to owners/lessees/occupiers on whom notice has been served in relation to the compulsory purchase order associated with this application. As such, as your client is a landowner, a refund for the fee that you have paid will issue under sperate cover in due course.

Please note that the proposed development shall not be carried out unless the Commission has approved it or approved it with conditions.

If you have any queries in relation to the matter, please do not hesitate to contact the undersigned officer of the Commission at aps@pleanala.ie.

Please quote the above mentioned An Coimisiún Pleanála reference number in any correspondence or telephone contact with the Commission.

Yours faithfully,

pp 
Eimear Reilly
Executive Officer
Direct Line: 01-8737184

JA02

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Láithreán Gréasáin
Ríomhphost

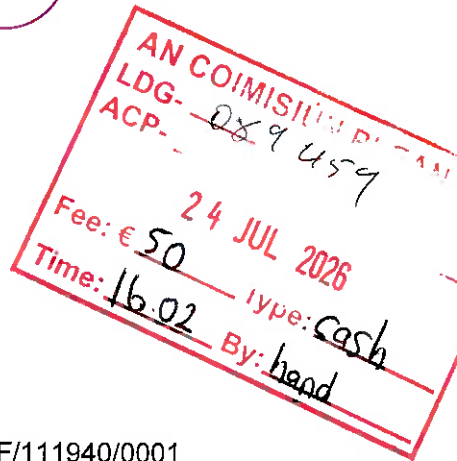
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Our Ref: AMF/AMF/111940/0001
Your Ref: TBA

24 July 2026

Our Client: Darren Donaghey
RE: Donegal County Council – Burnfoot Flood Relief Works

Dear Colleagues,

We are instructed by Mr. Darren Donaghey of 33 The Courtyard, Buncrana, Co. Donegal. This letter sets out Mr. Donaghey's objections to a proposed scheme, as detailed below. We enclose a fee of €50 in respect of same.

1. BACKGROUND

- 1.1. Our client is the owner and occupier of land in the village of Burnfoot, Co. Donegal (the "Lands"). The Lands are bordered by both the R238 Derry to Buncrana road on one side, and the Burnfoot river on another side.
- 1.2. The Lands include a dwelling house and a significant amount of development land. We are instructed that the said lands are zoned for residential purposes and have previously had planning permission for housing development. We are instructed that it is intended to develop the said lands for residential purposes.
- 1.3. Donegal County Council (the "Council") has recently given notice that it intends to apply to An Coimisiún Pleanála (the "Commission") under Section 175 of the Planning and Development Act 2000 and the Planning and Development Regulations 2001, to carry out various flood relief works in Burnfoot (the "Scheme"). Our client is one of the landowners who will be directly affected by the Scheme.
- 1.4. Based on documentation and information published by Donegal County Council, we understand that the Scheme will include, *inter alia*:
 - 1.4.1. construction of a flood embankment on the Lands, of unspecified dimensions;
 - 1.4.2. construction of a flood wall on lands adjacent to the Lands;

- 1.4.3. demolition of the main R238 bridge over the Burnfoot River. This road travels through Burnfoot and runs directly adjacent to the Lands;
 - 1.4.4. construction of a temporary bridge, which will occupy part of the Lands on a temporary basis, as well as temporary diversion of the R238 through the Lands;
 - 1.4.5. construction of a new permanent bridge over the Burnfoot River, which will be wider than the current bridge and occupy part of the Lands;
 - 1.4.6. temporary occupation of a large part of the Lands by the Council as an enabling / storage site for plant and materials associated with the Scheme; and
 - 1.4.7. permanent acquisition of part of the Lands for the purpose of the embankment described at 1.4.1, as well as a permanent right of access for the Council across the remaining Lands.
- 1.5. Our client has serious concerns in respect of both the Scheme and furthermore the way in which the Council has proposed to carry out the Scheme, and we set out his objections in this letter.

2. OBJECTIONS

- 2.1. Our client objects to the Scheme for the following reasons:

2.1.1. Failure to adequately consult

The Council has failed to carry out any and/or any appropriate public consultation in respect of the said scheme and particularly in that regard has not engaged properly and/or at all with affected land owners including our client.

We understand that the Scheme the subject of the application for approval was first proposed by Donegal County Council in or around 2019, in the aftermath of flooding that occurred in Co. Donegal in the winter of 2017. A public consultation meeting was held online in or around 2020 due to the COVID pandemic.

By holding the public consultation online, the Council has failed to consider the needs of residents without access or ability to access the internet; in particular, elderly people. There is also no evidence that the online consultation process made provision for those who may find online participation more difficult e.g. neurodivergence. This clearly led to extremely low engagement with the Scheme's consultation process, as evidenced by the low number of submissions the Council received in response.

The Court of Justice of the European Union (“CJEU”) has emphasised that public participation for the purposes of the EIA Directive must be effective, and this means that the public should be able to express views on the project concerned and its environmental impact.

Given the passage of time since the initial public consultation in respect of this matter, the low levels of participation by virtue of the Covid 19 emergency and the restrictions thereto, the lack of any meaningful and/or appropriate consultation with affected and impacted land owners including our client, it is respectfully submitted that the Council should hold a fresh consultation process, which is accessible to all and which complies with the mandatory obligations of the Environmental Impact Assessment Directive.

2.1.2. **Health and safety considerations**

The Council has proposed to utilise a large proportion of the Lands on a temporary basis, as a storage area for the works associated with the Scheme. This will result in a large volumes of material being brought onto the Lands, including clay, topsoil, concrete, as well as plant and heavy machinery.

In all the documentation and information submitted by the Council, there is no clear information provided in respect of what health and safety measures are proposed to be put in place to safeguard both our client and other members of the public. Furthermore, the use of heavy machinery on the Lands carries the risk of oil spills and environmental damage. The Council has not assessed this risk nor proposed any measures to guard against it.

If the Commission is minded to grant planning permission for the Scheme, we submit that in advance of such permission being granted, the Council should be required to submit a detailed plan for safeguarding the health and safety of both our client and other members of the public. Furthermore, compliance with such a plan should be a condition of any such planning permission.

2.1.3. **Lack of proper health assessment**

We refer to the Environmental Impact Assessment Report, dated May 2025, as published by the Council on the Scheme’s website (the “EIAR”).

Chapter 8 of the EIAR addresses risks to population health because of the Scheme. Despite references to various risks to the population of housing estates adjacent to the Lands, such as Líos na Greine and Grianán Park, there is absolutely no analysis of risks to anyone occupying the Lands as a result of the Scheme.

Furthermore, as detailed at paragraph 1.2 of this letter, a large proportion of the Lands are zoned for residential development. This is within the Council's knowledge as it has previously granted planning permission for such development and has conceded, in meetings with the client, that any future application would likely be looked upon favourably. Therefore, a proper assessment should have been carried out not just on any impact on any residents of our client's house because of the Scheme, but also on any future residents of the Lands following residential development.

2.1.4. Environmental concerns

Various chapters of the EIAR address the impact of the Scheme on the environment. This includes aquatic and terrestrial biodiversity, soil and geology, and water quality.

The Burnfoot River, which it is proposed will be the subject of the Scheme, is a tributary river flowing directly into Lough Swilly. The Commission will be aware that Lough Swilly is a protected site under European law and is also a Special Protection Area.

We submit that there has been a failure by the Council to properly assess the potential impact on the Lough Swilly Special Area of Conservation and the Lough Swilly Special Protection Area by the Scheme, contrary to the EIA Directive 2011/92/EU and the Habitats Directive 92/43/EEC. The Council should be required to conduct further analysis on the potential impact on Lough Swilly, with any planning permission being subject to a satisfactory outcome of such analysis.

2.1.5. Wildlife concerns

In the EIAR, there are references to various forms of wildlife within the Burnfoot River and underneath the main R238 bridge, such as trout and bats.

The Council has failed to address and/or adequately address the potential impact of the Scheme on these populations, nor has it set out any adequate measures to protect these populations, particularly considering that the said bridge is proposed for demolition.

It is respectfully submitted that the Council should be required to reassess the impact of the Scheme on wildlife and set out adequate measures to deal with this as its failure to do so is contrary to the Habitats Directive 92/43/EEC.

2.1.6. Potential interaction with other development

The Lands currently contain two utility service stations for the local area: an Uisce Éireann wastewater treatment plant and an ESB substation.

Our client is concerned that as part of the Scheme, additional works will be carried out, particularly in relation to sewage and the Uisce Éireann treatment plant. This is likely to significantly increase the injurious impact to the Lands in the event of foul odours etc.

We submit that the Council should be required to detail any additional works being carried out under the Scheme or at the same time as the Scheme, such as installation of additional pipework or other wastewater infrastructure. In the absence of same, planning permission should not be granted by the Commission.

2.1.7. Extent of Scheme

The Council has proposed an excessive acquisition and retention of the Lands as part of the Scheme. This impacts our client and the wider population of Burnfoot, for the following reasons:

- a) the construction of an embankment on the Lands rather than a wall, as is being constructed in adjacent property, results in a disproportionate and unjustifiable land take by the Council. This impacts our client's enjoyment of the Land and reduces his ability to develop the Land for residential purposes; and
- b) the Council has proposed the retention of a right of way along our client's Lands, to access the embankment on a permanent basis. This proposed right of way would run parallel to the main R238, but within the Lands. This deprives Burnfoot of additional roadside development, purely for the purpose of accessing an embankment;
- c) without prejudice to our client's objection to point a) above, if the embankment is constructed, then it would be capable of being maintained without heavy plant or machinery. The embankment could be maintained with smaller equipment, such as a regular lawnmower. Therefore, such a large right of way is disproportionate and unjustifiable. In such circumstances, we would propose that the existing access route to the Lands, which is used by Uisce Éireann to access the wastewater treatment plant, should be utilised instead. Alternatively, it could be accessed directly from the R238 via a smaller access point directly onto the embankment area.

We submit that the extent of the Scheme, as regards the Lands, is entirely disproportionate and unnecessary, and that permission should be refused by the Commission on that basis.

2.1.8. Duration of the works, noise, and general disruption

The Council has failed to adequately address the length of time that the Scheme will take to complete. Whilst there is an estimate of 78 weeks

set out in the planning documents and EIAR, this is not a concrete figure, nor is any indication provided as to the temporary take on the Lands.

Furthermore, the temporary acquisition of the Lands for the purposes of enabling works / storage site is clearly going to have a significant impact on our client's enjoyment of the Lands from a noise perspective. The Council has failed to adequately set out estimated noise levels because of works under the Scheme, nor has it given final details of working hours.

We submit that the Council should be required to conduct in-depth analysis on the noise levels expected as part of the works under the Scheme and the impact on our client and the Lands. Furthermore, adherence to reasonable decibel levels should be made a condition of any planning permission granted by the Commission for the Scheme, as should adherence to a strict timeframe for completion of the Scheme and specific working hours.

2.1.9. Ongoing impact on land

The Council proposes to permanently acquire part of the Lands to construct an embankment, as described above. This poses a risk to the remaining Lands, particularly from animals, which may move onto the embankment.

The Council has not set out any measures to prevent and/or address this obvious risk to the Lands.

We submit that detailed plans should be sought from the Council on this basis and that planning permission should be subject to adherence with such plans.

2.1.10. Hidden Pipes

As stated above, the Lands currently host a wastewater treatment plant for Uisce Éireann, which we understand serves the local housing estates including Lios na Greine. We are instructed that there are problems with this sewerage system.

Our client is concerned that as part of the Scheme, his Lands will be used to facilitate additional underground pipework, unbeknownst to him. This concern is exacerbated by the excessive permanent right of way being proposed, which aligns with the level of the wastewater treatment plant.

Our client has made numerous requests to the Council for information on this, none of which have been forthcoming.

We submit that the Council should be required to provide details of any and all works being proposed under the Scheme (or associated with the Scheme) prior to permission being granted.

2.1.11. Prematurity of application

The Council, in its current application, is seeking approval from the Commission of the Scheme. At the same time, and prior to any approval being granted by the Commission, it is requiring our client to make submissions to the Commission by 12 September 2026 in respect of the compulsory acquisition of the Lands. We submit that there is insufficient time being provided by the Council for the Commission to adequately review the Scheme before it is only a short time afterwards, also seeking a decision from the Commission to compulsorily acquire the Lands.

The Commission will be aware of the reasoning of Simons J in *Anne King v. An Bórd Pleanála* (22 January 2024), where the Court stated:

"the decision to confirm a compulsory purchase order can only be made in circumstances where the confirming authority is satisfied, having regard to environmental issues and the absence of suitable alternatives, that the use of the coercive power of compulsory acquisition is appropriate."

There is insufficient time for the Commission to consider the merits of the Scheme in this application, before our client is being asked to make submissions about the acquisition of the Land prior to any approval of the Scheme being granted.

- 2.2. For the reasons set out above, we submit that the Scheme has been inadequately assessed and therefore, that the application for planning permission is premature and should be refused by the Commission and/or subject to an oral hearing.

3. CONCLUSION

- 3.1. We trust that this letter sets out our client's preliminary objections in sufficient detail.
- 3.2. We look forward to hearing from the Commission regarding the outcome of the Council's application and/or an oral hearing.

Yours faithfully,

Andrew McFadden
AUGUSTUS CULLEN LAW LLP
andrew.mcfadden@acslsolicitors.ie

Encl,