



By Registered Post

COMHAIRLE
CONTAE AN CHLÁIR

CLARE
COUNTY COUNCIL

Your Ref: ABP-312969-22

Our Ref: FB/CB

06th April 2022

An Bord Pleanála
64 Marlborough Street
Dublin 1
D01 V902

AN BORD PLEANÁLA	
LDG- _____	
ABP- _____	
07 APR 2022	
Fee: € _____	Type: _____
Time: _____	By: <u>REG. POST</u>

**Appeal Re: Application for Substitute Consent for infilling of land,
Tulla Road, Knockanoura, Ennis, Co. Clare**

A Chara,

I refer to your letter dated 10th March 2022, the Planning Authority responds as follows:-

With respect to the above appeal and in accordance with Section 177I(2) of the Planning and Development Act, 2000 - 2017, the Planning Authority wish to respond as follows:

177I. (2) The report referred to in subsection (1) shall include the following:

(a) information relating to development (including development other than the development which is the subject of the application for consent) carried out on the site where the development the subject of the application for consent is situated, and any application for permission made in relation to the site and the outcome of the application;

Below please find a synopsis of previous applications made on the subject site:

P19-409 Application by Valley Healthcare Fund for planning permission for a four-storey care health facility with photovoltaic arrays on the roof comprising a maximum gross floor area of 2623m²; (i) on site car and bicycle parking provision, (ii) associated building signage, (iii) landscaping and all ancillary signage; and (iv) all associated site development works. This was an invalid application.

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An Stiúirthóireacht Forbairt Gheilleagrach

Áras Contae an Chláir, Bóthar Nua, Inis, Co. an Chláir, V95 DXP2

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R20-25/ABP 307625-20

A declaration was sought from the Board as to whether the groundworks undertaken, including importation and deposition of fill material to create a hardstanding area and the raising of ground levels from 2013 onwards is or is not development and/or is or is not exempted development. The Board decided that the groundworks undertaken, including the importation and deposition of fill material to create a hardstanding area and the raising of ground levels from 2013 onwards at Knockanoura, Tulla Road, Ennis, County Clare are development and are not exempted development.

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(b) information relating to any warning letter, enforcement notice or proceedings relating to offences under this Act that relate to the applicant for substitute consent;

Below please find a synopsis of previous enforcement files on the subject site:

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(c) information regarding the relevant provisions of the development plan and any local area plan as they affect the area of the site and the type of development concerned;

Zoning

The site is zoned 'Commercial' in the Clare County Development Plan 2017 – 2023, as varied. The CDP states the following in relation to the 'Commercial' zoning:

The use of land zoned for 'commercial' purposes shall be taken to include the use of the lands for commercial and business uses including offices, service industry, warehousing and the facilitation of enterprise/retail park/office type uses as appropriate. Retailing is open for consideration on this zoning, provided that a sequential test is carried out and the lands are demonstrably the optimum location for the nature and quantum of retail development proposed

Part of the site, in addition to the existing adjoining commercial development, is designated in Volume 3 A of the Clare County Development Plan 2017-2023, as varied as Opportunity Site 18 Commercial Buildings, Tulla Road the objective for which is set out as follows:

OP18 Commercial Buildings, Tulla Road

This opportunity site is located on the Tulla Road (R352) in the Roslevan neighbourhood and is zoned for commercial use. There are a number of existing uses on the site including a petrol station and forecourt with ancillary shop and car wash, as well as a number of smaller retail/commercial units. The existing retail and commercial developments on the site have been developed in a piecemeal manner and as such, issues relating to traffic management and points of entry/exit to the site have not been developed in a co-ordinated manner. Future development proposals must be accompanied by a masterplan for the overall redevelopment of the site.

This site has the capacity to be redeveloped for high quality, mixed/commercial development of a limited scale, providing a landmark building on the site. As the site is partially located within an area identified as being at risk of flooding, the site is not considered appropriate for more vulnerable uses. A Traffic Management Plan will be required to accompany any future planning application and must address issues such as management of site access and egress for pedestrians, vehicles and cyclists. Adequate analysis for fuel delivery vehicles should be incorporated into the plan.

The Fergus Minor River marks the western boundary of the site and, as such, there is an opportunity to provide pedestrian access from the Tulla Road to the River Fergus to accommodate access to possible future riverside walkways. All development proposals must be progressed in full compliance with the requirements of the Habitats Directive. Future development proposals must demonstrate, through a light spill modelling study, that there will be no negative impacts on the habitats of protected species.

A Flood Risk Assessment must also accompany any development proposals for the site, having regard to the location of the site on Flood Zones A and B. The Flood Risk Assessment must be prepared having regard to the Strategic Flood Risk Assessment in Volume 10(c) of this plan. Due to the proximity of the site to the Fergus Minor River, a Construction Method Statement will be required detailing how surface water run-off will be controlled during construction, especially in relation to the release of silt to the adjoining river, which is connected to the Lower River Shannon SAC.

Drainage plans must also be submitted in relation to surface water run-off during operation, ensuring that run-off is treated via appropriate SuDS (petrol interceptor, silt traps etc.) prior to discharge to any surface water features.

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The lands to the rear of the site are zoned as "Open Space" the objective for which is as follows:

Open Space

It is intended that lands zoned 'open space' will be retained as undeveloped open space, mainly for passive open space related activities. The open space/park areas could contain active play facilities such as children's play areas but these would only be a small component of the overall areas involved.

Flood Risk

The subject site is designated as a Flood Zoned B in Volume 2 of the Clare County Development Plan 2017-2023, as varied.

The Strategic Flood Risk Assessment is contained as Volume 10(d) of the Plan.

Objective 18.6 states that:

It is an objective of Clare County Council:

To ensure that proposals for development in areas where there is a risk of flooding, (based on the Flood Risk Maps contained in Volume 2 of the Clare County Development Plan 2017-2023, or any updated version), shall have regard to 'The Planning System and Flood Risk Management (and Technical Appendices) – Guidelines for Planning Authorities 2009' and any future OPW flood assessment information. Such proposals must also demonstrate that appropriate mitigation measures can be put in place.

Nature 2000 Site

An SAC site, SAC 002165 Lower River Shannon bounds the site immediately to the south west.

Objective 14.2 of the Clare County Development Plan 2011-2017 states the following:

It is an objective of the development plan:

a) To afford the highest level of protection to all designated European sites in accordance with the relevant Directives and legislation on such matters;

b) To require all planning applications for development that may have (or cannot rule out) likely significant effects on European sites in view of the site's Conservation Objectives, either in isolation or in combination with other plans or projects, to submit a Natura Impact Statement in accordance with the requirements of the EU Habitats Directive and the Planning and Development Act, 2000 (as amended);

c) To recognise and afford appropriate protection to any new or modified SPAs or SACs that are identified during the lifetime of this plan, having regard to the fact that proposals for development outside of a European site may also have an indirect effect.

(d) any information that the authority may have concerning –

- (i) current, anticipated or previous significant effects on the environment, or on a European site associated with the development or the site where the development took place F741 [or, where *section 177E(2A)(b)* applies, is proposed to take place] and, if relevant, the area surrounding or near the development or site, or

The remedial Natura Impact Statement (rNIS) as submitted to An Bord Pleanála is noted. Particularly the Planning Authority notes the conclusion as reached in the rNIS which states "*the development has not had an adverse impact on the relevant adjacent Natura 2000 sites*". The Planning Authority further notes the results from the Trial Hole Assessments which have indicated "*that there was little or no waste of an extraneous nature, no traces of putrescible or degradable waste deposited on the development site. Methane was not detected at any level at each trial hole. In addition, regarding groundwater analysis, a wide range of parameters covered by the groundwater regulations were found to be safely below the limit values imposed*".

Site Context

The proposed development site is located adjacent to the Lower River Shannon SAC (Site Code 002165) designated for a significant number of habitats and species listed on Annex I and II respectively of the E.U. Habitats Directive. The SAC is a large, multi-interest site that includes the channel of the River Fergus, which is adjacent to the subject site. Because of this direct linkage, a critical analysis is required to ensure that there are no associated adverse impacts on the important conservation interests of the Natura site.

European Sites

Given the location of the site, and the nature and scale of the proposed development, I consider the following designated sites as set out in Table 1 to be within the zone of influence of the subject site-

Table 1

Site Name & Code	Qualifying Interest / Special Conservation Interest	Distance
Lower River Shannon SAC 002165	1029 Freshwater Pearl Mussel Margaritifera 1095 Sea Lamprey Petromyzon marinus 1096 Brook Lamprey Lampetra planeri 1099 River Lamprey Lampetra fluviatilis 1106 Atlantic Salmon Salmo salar (only in fresh water) 1110 Sandbanks which are slightly covered by sea water all the time 1130 Estuaries 1140 Mudflats and sandflats not covered by seawater at low tide 1150 *Coastal lagoons	Adjacent

	<p>1160 Large shallow inlets and bays</p> <p>1170 Reefs</p> <p>1220 Perennial vegetation of stony banks</p> <p>1230 Vegetated sea cliffs of the Atlantic and Baltic coasts</p> <p>1310 Salicornia and other annuals colonizing mud and sand</p> <p>1330 Atlantic salt meadows (Glauco-Puccinellietalia maritimae)</p> <p>1349 Bottlenose Dolphin <i>Tursiops truncatus</i></p> <p>1355 Otter <i>Lutra</i></p> <p>1410 Mediterranean salt meadows (<i>Juncetalia maritimi</i>)</p> <p>3260 Water courses of plain to montane levels with the <i>Ranunculion fluitantis</i> and <i>Callitriche-Batrachion</i> vegetation</p> <p>6410 <i>Molinia</i> meadows on calcareous, peaty or clayey-silt-laden soils (<i>Molinion caeruleae</i>)</p> <p>91E0 *Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i>, <i>Alnion incanae</i>, <i>Salicion albae</i>)</p>	
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The Planning Authority would be satisfied that other European sites proximate to the site can be 'screened out' on the basis that significant impacts on such European sites could be ruled out, either as a result of the separation distance from the site, the extent of marine waters or given the absence of any direct hydrological or other pathway to the site.

Test of Likely Significant Effects

The project is not directly connected to or necessary to the management of any European site. The development was examined in relation to any possible interaction with European sites to assess whether it may give rise to significant effects on any European Site in view of the conservation objectives of those sites. Based on the source-pathway-receptor model and taking account of the characteristics of the proposed development in terms of its nature, location and the scale of works, the sites proximity to European sites and having regard to the NIS carried out for the County Development Plan and implications for this site, the following issues are considered for examination in terms of likely significant effects on European sites-

- Impact on water quality

The various Annex I habitats listed for this SAC can broadly be divided between those that occur in the estuarine zone and those in the freshwater areas of the site.

For the purpose of this assessment, the estuarine zone proper commences below Clarecastle Bridge, where the following Annex I habitats may be found:

- Estuaries
- Mudflats and sandflats not covered by seawater at low tide
- Lagoons
- Large shallow inlets and bays
- Salicornia and other annuals colonizing mud and sand
- Atlantic salt meadows
- Mediterranean salt meadows.

The Planning Authority would consider that there is no likelihood of any associated impact on these habitats, based on the separation distance and the scope of the works undertaken.

There is no example of the habitats 'Molinia meadows on calcareous, peaty or clayey-silt-laden soils' or 'Alluvial forests' in the area adjacent to the subject site.

The habitat 'Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation' could be considered to be present downstream of the application site, located approx. 200-400 metres north of the Gaurus river confluence with the River Fergus. Species characteristic of this habitat type, including Callitriche spp., and Potamogeton spp., have been recorded in the study area during monitoring of the Doora landfill site (and downstream of the Ennis North wastewater treatment plant discharge). However, the Annex I habitat areas of submerged or floating-leaved vegetation specifically designated as SACs are dominated by Ranunculus species. The area of Annex I habitat noted upstream of the Fergus/Gaurus confluence has no Ranunculus recorded. This is considered to be probably due to the genus preferring shallower non tidal conditions. The presence of this Annex I habitat type could be anomalous, and directly related to the local enrichment of this stretch of water with the Ennis waste water discharge, as this form of vegetation can develop and/or increase due to artificial nutrient enrichment of rivers. In the context of the extent of the daily discharge from the Ennis wastewater treatment plant (considering both hydraulic loading and nutrients), the potential impact of the works undertaken at the site may be considered to be minimal.

The Planning Authority notes that European Commission Guidance states that *'The decision as to whether it (the European Site) is adversely affected should focus on and be limited to the sites conservation objectives'*. No significant impact on water quality in the River Fergus is noted in results of water quality monitoring of the River Fergus since the works were undertaken at the site. No likely impact on invertebrate biodiversity and community structure, and no significant impact on aquatic plant abundance or species composition in the Fergus River is likely to be associated with the works undertaken.

Freshwater elements of the SAC (and species for which the site is designated) which may be present in the potentially affected section of the River Fergus are: Sea Lamprey, River Lamprey, Brook Lamprey, Atlantic Salmon, Smelt (Red Data Book Species), Otter (Annex II species for which SAC Site is selected), Floating river vegetation (Annex I Habitat for which SAC Site is selected)

On the basis that there is no significant change in water quality in the River Fergus between 2019-2021 it is concluded that the works undertaken did not give rise to significant negative impact (either in isolation or cumulative) on Atlantic Salmon, Smelt, Otter or Floating River Vegetation.

- Impact on invertebrate biodiversity and community structure

The main qualifying interest of the Lower River Shannon likely to forage in this area is otter. Otter (as indicated above) is listed as a qualifying interest of the Lower River Shannon SAC, and is well distributed throughout much of the SAC site. The riparian area of the River Fergus (included in the Lower River Shannon SAC) adjacent to the site could provide foraging habitat for otter. However, the likelihood of otter frequenting the area is very low due to the well-established business activity in the vicinity of the site. The elevation difference between the site and the riparian area, together with the berm height, artificial yard surfaces, building lighting, and ongoing local traffic and railway line adjacent to the site are likely to be a discouragement for otter activity in the immediate area.

It is therefore considered that the potential for the development (as undertaken) to cause disturbance of the species, or its foraging habitat is negligible. However the Board are advised to note that the wet grassland (GS4) and scrub area (WS1) outside the site boundary may provide suitable foraging habitat for otter.

Potential Effects

In accordance with Regulation 42 (11) and 42 (12) of the Habitats Regulations the Planning Authority (An Board Pleanála) must determine whether or not a plan or project would adversely affect the qualifying interests of the European sites potentially linked to the works site, taking account of the reports prepared (and any other relevant information). Based on the submitted rNIS, and current review of site information, and the scope of existing development in the vicinity of the site (buildings, hard surfaces, lighting, traffic, regional road, footpaths) the conclusion that the works undertaken have not had a significant effect on qualifying interests of the SAC is reasonable.

- (ii) any remedial measures recommended or undertaken;

The Planning Authority is not aware of any remedial works having been undertaken. However the Planning Authority would concur with the rNIS regarding the implementation of future monitoring measures.

(e) the opinion, including reasons therefor, of the F742 [chief executive] as to –

- (i) whether or not substitute consent should be granted for the development, and

Having regard to the nature, scale and extent of the development which was carried out, and the remedial measures, and subject to compliance with the conditions set out below, the Planning Authority is satisfied that the subject development:

- has not and would not seriously injure the amenities of the area or of property in the vicinity, has not had and would not have an unacceptable impact on the ecology, landscape or visual amenities of the area,
- was and would be acceptable in terms of public health, traffic safety and convenience,
- was and would be in accordance with the Clare County Development Plan 2017-2023, as varied
- and was and would, therefore, be in accordance with the proper planning and sustainable development of the area

(ii) the conditions, if any, that should be attached to any grant of substitute consent.]

1. The development shall be retained in accordance with the plans and particulars, including the remedial Natural Impact Statement and other associated documentation, lodged with An Bord Pleanála on the 7th of March 2022, except as may otherwise be required in order to comply with the conditions set out below. Where any mitigation measures set out in the remedial Natural Impact Statement or any conditions of this Approval require points of detail to be agreed with the Planning Authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.

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 substitute consent hereby granted relates solely to the development which has already been carried out on site namely the infilling of the site.

Reason: In the interest of clarity, for the avoidance of doubt, and in the context of an application for substitute consent made further to an application for leave made pursuant to Section 177C(2)(b) and granted under Section 177D(1)(b) of the Planning and Development Act, 2000, as amended.

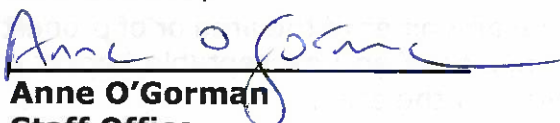
3. The applicant and any agent acting on its behalf shall comply with the mitigation measures and associated monitoring outlined in the plans and particulars submitted with the application, including the remedial Natural Impact Statement, shall be carried out in full except as may otherwise be required in order to comply with other conditions.

Reason: In the interest of clarity and the proper planning and sustainable development and to ensure the protection of a European site during construction

4. Within four months from the date of this consent, the applicant / any agent acting on its behalf shall submit details of a monitoring programme for noxious weeds and invasive species to control noxious weeds and invasive species that may be dormant or suppressed by recent weed control to the Planning Authority for agreement and approval. The monitoring programme shall include a comprehensive programme for the implementation of all monitoring commitments made in the application and supporting documentation, as well as an agreed timeframe for such monitoring.

Reason: In the interests of environmental protection and orderly development.

Mise le meas,



Anne O'Gorman
Staff Officer
Planning Department
Economic Development Directorate

Note: If you have any queries on the appeal, please contact the Planning Section, Clare County Council on telephone number (065) 6846456.

Derek Kelly

K. Kelly

From: Bord
Sent: Wednesday 6 April 2022 16:03
To: Appeals2
Subject: FW: ABP-312969-22 Substitute Consent for Infilling of Land at Tulla Road, Knockanoura, Ennis
Attachments: 3067_001.pdf

From: Maeve Seery <MSeery@clarecoco.ie>
Sent: Wednesday 6 April 2022 15:58
To: Bord <bord@pleanala.ie>
Subject: ABP-312969-22 Substitute Consent for Infilling of Land at Tulla Road, Knockanoura, Ennis

A chara,

Please see attached the Planning Authorities report on the above.

Mise le meas

Maeve Seery
Clerical Officer

Planning Department, Economic Development Directorate,
Clare County Council, Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2
T: 065 6846526 | E: mseery@clarecoco.ie | W: www.clarecoco.ie



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SÉANADH: Is eolas rúnda atá sa teachtaireacht seo agus d'fhéadfadh sé bheith faoi phribhléid dhlíthiúil. Is don seolaí amháin atá sí ceaptha. Is neamhúdaraíthe í an rochtain ar an teachtaireacht seo ag duine ar bith eile. Tá toirmeasc ar aon nochtadh, cóipeáil nó leithdháileadh den teachtaireacht, nó aon ghníomh nó neamhghníomh a ghlacann tusa agus tú ag brath uirthi, mura tusa an faighteoir a bhí ceaptha di. Téigh i dteagmháil leis an seoltóir láithreach má fuair tú an teachtaireacht seo trí earráid, le do thoil. Go raibh maith agat.



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To ensure that proposals for development in areas where there is a risk of flooding, (based on the Flood Risk Maps contained in Volume 2 of the Clare County Development Plan 2017-2023, or any updated version), shall have regard to 'The Planning System and Flood Risk Management (and Technical Appendices) - Guidelines for Planning Authorities 2009' and any future OPW flood assessment information. Such proposals must also demonstrate that appropriate mitigation measures can be put in place.

Nature 2000 Site

An SAC site, SAC 002165 Lower River Shannon bounds the site immediately to the south west.

Objective 14.2 of the Clare County Development Plan 2011-2017 states the following:

It is an objective of the development plan:

a) To afford the highest level of protection to all designated European sites in accordance with the relevant Directives and legislation on such matters;

b) To require all planning applications for development that may have (or cannot rule out) likely significant effects on European sites in view of the site's Conservation Objectives, either in isolation or in combination with other plans or projects, to submit a Natura Impact Statement in accordance with the requirements of the EU Habitats Directive and the Planning and Development Act, 2000 (as amended);

c) To recognise and afford appropriate protection to any new or modified SPAs or SACs that are identified during the lifetime of this plan, having regard to the fact that proposals for development outside of a European site may also have an indirect effect.

(d) any information that the authority may have concerning –

- (i) current, anticipated or previous significant effects on the environment, or on a European site associated with the development or the site where the development took place F741 [or, where section 177E(2A)(b) applies, is proposed to take place] and, if relevant, the area surrounding or near the development or site, or

The remedial Natura Impact Statement (rNIS) as submitted to An Bord Pleanála is noted. Particularly the Planning Authority notes the conclusion as reached in the rNIS which states *“the development has not had an adverse impact on the relevant adjacent Natura 2000 sites”*. The Planning Authority further notes the results from the Trial Hole Assessments which have indicated *“that there was little or no waste of an extraneous nature, no traces of putrescible or degradable waste deposited on the development site. Methane was not detected at any level at each trial hole. In addition, regarding groundwater analysis, a wide range of parameters covered by the groundwater regulations were found to be safely below the limit values imposed”*.

Site Context

The proposed development site is located adjacent to the Lower River Shannon SAC (Site Code 002165) designated for a significant number of habitats and species listed on Annex I and II respectively of the E.U. Habitats Directive. The SAC is a large, multi-interest site that includes the channel of the River Fergus, which is adjacent to the subject site. Because of this direct linkage, a critical analysis is required to ensure that there are no associated adverse impacts on the important conservation interests of the Natura site.

European Sites

Given the location of the site, and the nature and scale of the proposed development, I consider the following designated sites as set out in Table 1 to be within the zone of influence of the subject site-

Table 1

Site Name & Code	Qualifying Interest / Special Conservation Interest	Distance
Lower River Shannon SAC 002165	1029 Freshwater Pearl Mussel Margaritifera 1095 Sea Lamprey Petromyzon marinus 1096 Brook Lamprey Lampetra planeri 1099 River Lamprey Lampetra fluviatilis 1106 Atlantic Salmon Salmo salar (only in fresh water) 1110 Sandbanks which are slightly covered by sea water all the time 1130 Estuaries 1140 Mudflats and sandflats not covered by seawater at low tide 1150 *Coastal lagoons	Adjacent

	1160 Large shallow inlets and bays 1170 Reefs 1220 Perennial vegetation of stony banks 1230 Vegetated sea cliffs of the Atlantic and Baltic coasts 1310 Salicornia and other annuals colonizing mud and sand 1330 Atlantic salt meadows (Glaucopuccinellietalia maritimae) 1349 Bottlenose Dolphin Tursiops truncatus 1355 Otter Lutra 1410 Mediterranean salt meadows (Juncetalia maritimi) 3260 Water courses of plain to montane levels with the Ranunculion fluitantis and Callitricho-Batrachion vegetation 6410 Molinia meadows on calcareous, peaty or clayey-silt-laden soils (Molinion caeruleae) 91E0 *Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae)	
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The Planning Authority would be satisfied that other European sites proximate to the site can be 'screened out' on the basis that significant impacts on such European sites could be ruled out, either as a result of the separation distance from the site, the extent of marine waters or given the absence of any direct hydrological or other pathway to the site.

Test of Likely Significant Effects

The project is not directly connected to or necessary to the management of any European site. The development was examined in relation to any possible interaction with European sites to assess whether it may give rise to significant effects on any European Site in view of the conservation objectives of those sites. Based on the source-pathway-receptor model and taking account of the characteristics of the proposed development in terms of its nature, location and the scale of works, the sites proximity to European sites and having regard to the NIS carried out for the County Development Plan and implications for this site, the following issues are considered for examination in terms of likely significant effects on European sites-

- **Impact on water quality**

The various Annex I habitats listed for this SAC can broadly be divided between those that occur in the estuarine zone and those in the freshwater areas of the site.

For the purpose of this assessment, the estuarine zone proper commences below Clarecastle Bridge, where the following Annex I habitats may be found:

- Estuaries
- Mudflats and sandflats not covered by seawater at low tide
- Lagoons
- Large shallow inlets and bays
- Salicornia and other annuals colonizing mud and sand
- Atlantic salt meadows
- Mediterranean salt meadows.

The Planning Authority would consider that there is no likelihood of any associated impact on these habitats, based on the separation distance and the scope of the works undertaken.

There is no example of the habitats 'Molinia meadows on calcareous, peaty or clayey-silt-laden soils' or 'Alluvial forests' in the area adjacent to the subject site.

The habitat 'Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation' could be considered to be present downstream of the application site, located approx. 200-400 metres north of the Gaurus river confluence with the River Fergus. Species characteristic of this habitat type, including Callitriche spp., and Potamogeton spp., have been recorded in the study area during monitoring of the Doora landfill site (and downstream of the Ennis North wastewater treatment plant discharge). However, the Annex I habitat areas of submerged or floating-leaved vegetation specifically designated as SACs are dominated by Ranunculus species. The area of Annex I habitat noted upstream of the Fergus/Gaurus confluence has no Ranunculus recorded. This is considered to be probably due to the genus preferring shallower non tidal conditions. The presence of this Annex I habitat type could be anomalous, and directly related to the local enrichment of this stretch of water with the Ennis waste water discharge, as this form of vegetation can develop and/or increase due to artificial nutrient enrichment of rivers. In the context of the extent of the daily discharge from the Ennis wastewater treatment plant (considering both hydraulic loading and nutrients), the potential impact of the works undertaken at the site may be considered to be minimal.

The Planning Authority notes that European Commission Guidance states that *'The decision as to whether it (the European Site) is adversely affected should focus on and be limited to the sites conservation objectives'*. No significant impact on water quality in the River Fergus is noted in results of water quality monitoring of the River Fergus since the works were undertaken at the site. No likely impact on invertebrate biodiversity and community structure, and no significant impact on aquatic plant abundance or species composition in the Fergus River is likely to be associated with the works undertaken.

Freshwater elements of the SAC (and species for which the site is designated) which may be present in the potentially affected section of the River Fergus are: Sea Lamprey, River Lamprey, Brook Lamprey, Atlantic Salmon, Smelt (Red Data Book Species), Otter (Annex II species for which SAC Site is selected), Floating river vegetation (Annex I Habitat for which SAC Site is selected)

On the basis that there is no significant change in water quality in the River Fergus between 2019-2021 it is concluded that the works undertaken did not give rise to significant negative impact (either in isolation or cumulative) on Atlantic Salmon, Smelt, Otter or Floating River Vegetation.

- Impact on invertebrate biodiversity and community structure

The main qualifying interest of the Lower River Shannon likely to forage in this area is otter. Otter (as indicated above) is listed as a qualifying interest of the Lower River Shannon SAC, and is well distributed throughout much of the SAC site. The riparian area of the River Fergus (included in the Lower River Shannon SAC) adjacent to the site could provide foraging habitat for otter. However, the likelihood of otter frequenting the area is very low due to the well-established business activity in the vicinity of the site. The elevation difference between the site and the riparian area, together with the berm height, artificial yard surfaces, building lighting, and ongoing local traffic and railway line adjacent to the site are likely to be a discouragement for otter activity in the immediate area.

It is therefore considered that the potential for the development (as undertaken) to cause disturbance of the species, or its foraging habitat is negligible. However the Board are advised to note that the wet grassland (GS4) and scrub area (WS1) outside the site boundary may provide suitable foraging habitat for otter.

Potential Effects

In accordance with Regulation 42 (11) and 42 (12) of the Habitats Regulations the Planning Authority (An Board Pleanála) must determine whether or not a plan or project would adversely affect the qualifying interests of the European sites potentially linked to the works site, taking account of the reports prepared (and any other relevant information). Based on the submitted rNIS, and current review of site information, and the scope of existing development in the vicinity of the site (buildings, hard surfaces, lighting, traffic, regional road, footpaths) the conclusion that the works undertaken have not had a significant effect on qualifying interests of the SAC is reasonable.

- (ii) any remedial measures recommended or undertaken;

The Planning Authority is not aware of any remedial works having been undertaken. However the Planning Authority would concur with the rNIS regarding the implementation of future monitoring measures.

(e) the opinion, including reasons therefor, of the F742 [chief executive] as to –

- (i) whether or not substitute consent should be granted for the development, and

Having regard to the nature, scale and extent of the development which was carried out, and the remedial measures, and subject to compliance with the conditions set out below, the Planning Authority is satisfied that the subject development:

- has not and would not seriously injure the amenities of the area or of property in the vicinity, has not had and would not have an unacceptable impact on the ecology, landscape or visual amenities of the area,
- was and would be acceptable in terms of public health, traffic safety and convenience,
- was and would be in accordance with the Clare County Development Plan 2017-2023, as varied
- and was and would, therefore, be in accordance with the proper planning and sustainable development of the area

(ii) the conditions, if any, that should be attached to any grant of substitute consent.]

1. The development shall be retained in accordance with the plans and particulars, including the remedial Natural Impact Statement and other associated documentation, lodged with An Bord Pleanála on the 7th of March 2022, except as may otherwise be required in order to comply with the conditions set out below. Where any mitigation measures set out in the remedial Natural Impact Statement or any conditions of this Approval require points of detail to be agreed with the Planning Authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.

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 substitute consent hereby granted relates solely to the development which has already been carried out on site namely the infilling of the site.

Reason: In the interest of clarity, for the avoidance of doubt, and in the context of an application for substitute consent made further to an application for leave made pursuant to Section 177C(2)(b) and granted under Section 177D(1)(b) of the Planning and Development Act, 2000, as amended.

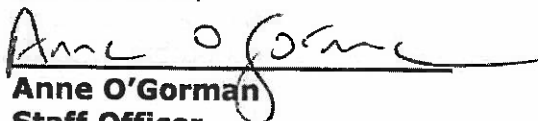
3. The applicant and any agent acting on its behalf shall comply with the mitigation measures and associated monitoring outlined in the plans and particulars submitted with the application, including the remedial Natural Impact Statement, shall be carried out in full except as may otherwise be required in order to comply with other conditions.

Reason: In the interest of clarity and the proper planning and sustainable development and to ensure the protection of a European site during construction

4. Within four months from the date of this consent, the applicant / any agent acting on its behalf shall submit details of a monitoring programme for noxious weeds and invasive species to control noxious weeds and invasive species that may be dormant or suppressed by recent weed control to the Planning Authority for agreement and approval. The monitoring programme shall include a comprehensive programme for the implementation of all monitoring commitments made in the application and supporting documentation, as well as an agreed timeframe for such monitoring.

Reason: In the interests of environmental protection and orderly development.

Mise le meas,



Anne O'Gorman
Staff Officer

Planning Department
Economic Development Directorate

Note: If you have any queries on the appeal, please contact the Planning Section, Clare County Council on telephone number (065) 6846456.