

ARDS AND NORTH DOWN BOROUGH COUNCIL

11 January 2022

Dear Sir/Madam

You are hereby invited to attend a virtual meeting of the Planning Committee of the Ards and North Down Borough Council which will be held via Zoom on **Tuesday, 18 January 2022** commencing at **7.00pm**.

Yours faithfully

Stephen Reid
Chief Executive
Ards and North Down Borough Council

A G E N D A

1. Apologies
2. Declarations of Interest
3. Matters arising from minutes of Planning Committee Meeting of 02 November 2021 (Copy attached)
4. Planning Applications (Reports attached)

4.1	LA06/2020/1008/O	Erection of 9 Dwellings with access off Messines Road (Right turning lane provided) Lands immediately north of 10-18 Cambourne View and 17 Cambourne Park, Newtownards
4.2	LA06/2021/0744/F	Conversion and extension of existing single storey garage including increase in ridge height to create one and a half storey ancillary Granny Annex accommodation 5b Killinchy Road, Comber
4.3	LA06/2020/0253/F	Erection of 35 no. apartments with associated car-parking and landscaping Lands between 58 Kinnegar Drive and Pavillions Office Park, Kinnegar Drive, Holywood
4.4	LA06/2019/1195/F	Two single storey infill dwellings

		Lands adjacent to and South of 9 Killinakin Road, Killinchy
4.5	LA06/2019/1091/F	Creation of a designated area within the existing harbour estate to dismantle end of life fishing vessels (proposal includes a Section 76 legal agreement to discontinue use of original site previously approved under Ref LA06/2018/0893/F) Portavogie Harbour, Portavogie
4.6	LA06/2021/1185	Installation of sculpture to commemorate the centenary of the foundation of Northern Ireland 40M SW of 10 The Square, Comber
4.7	LA06/2021/1186	Installation of sculpture to commemorate the centenary of the foundation of Northern Ireland 23m east of 10 Union Street, Donaghadee (beside War Memorial)
4.8	LA06/2021/1187	Installation of sculpture to commemorate the centenary of the foundation of Northern Ireland 18m West of No. 2 Conway Square, Newtownards
4.9	LA06/2021/1188	Installation of sculpture to commemorate the centenary of the foundation of Northern Ireland Redburn Square, Holywood
4.10	LA06/2021/1189	Installation of sculpture to commemorate the centenary of the foundation of Northern Ireland 18m east of Bangor Town Hall, Bangor (grassed area in front of main front door)
4.11	LA06/2018/1169/F	Replacement dwelling (off site) to include the demolition of existing dwelling 85m West of 50 Kilcarn Road, Ballymacashen, Killinchy

5. Update on Planning Appeals (Report attached)

6. Review of decisions further to withdrawal of PAN (Report attached)

7. Judgment by Humphreys J regarding Battery Energy Storage Systems (Report attached)
8. Quarterly Performance Report – 2nd Quarter 2021/22 (Report attached)
9. Publication of the Northern Ireland Planning Monitoring Framework 2020/21 (Report attached)
10. Amendment to Protocol for the Operation of the Planning Committee (Report attached)
11. Council response to the Department for Infrastructure consultation on secondary legislation for the Reservoirs Act (Report attached)
12. Department for Infrastructure (DfI) (Planning) review of strategic planning policy on renewable and low carbon energy development (Report attached)

MEMBERSHIP OF PLANNING COMMITTEE (16 MEMBERS)

Alderman Gibson	Councillor Cooper
Alderman Keery	Councillor McAlpine
Alderman McDowell	Councillor McClean
Alderman McIlveen	Councillor McKee (Vice Chair)
Councillor Adair	Councillor McRandal
Councillor Brooks	Councillor P Smith
Councillor Cathcart (Chair)	Councillor Thompson
Councillor Kennedy	Councillor Walker

ARDS AND NORTH DOWN BOROUGH COUNCIL

A meeting of the Planning Committee was held virtually on Tuesday, 2 November 2021 at 7.00 pm via Zoom.

PRESENT:

In the Chair: Councillor Cathcart

Aldermen: Gibson Keery
McDowell McIlveen

Councillors: Adair McRandal
Brooks McKee
Cooper Smith, P
Kennedy Walker
McAlpine (7.02 pm)

Officers: Director of Regeneration, Development and Planning (S McCullough), Head of Planning (A McCullough), Senior Professional and Technical Officers (P Kerr and C Rodgers), Principal Professional and Technical Officers (G Kerr and L Maginn) and Democratic Services Officers (J Glasgow and M McElveen)

Also in Attendance: Mr David Donaldson (Agent)
Mr Stephen Dickson (Agent)
Damian Logue (Applicant)

WELCOME

The Chairman (Councillor Cathcart) welcomed everyone to the meeting.

1. APOLOGIES

Apologies for inability to attend were received Councillors Thompson and McClean.

NOTED.

2. DECLARATIONS OF INTEREST

The Chairman sought Declarations of Interest and none were notified.

NOTED.

3. MATTERS ARISING FROM MINUTES OF PLANNING COMMITTEE MEETING OF 5 OCTOBER 2021

PREVIOUSLY CIRCULATED:- Copy of the above.

Alderman McIlveen referred to Item 8 – Correspondence on Publication of Planning Advice note within the minutes. Subsequently the Advice note had been withdrawn and he noted that there was at least one planning application determined using that Advice Note. Alderman McIlveen asked if those decisions would be looked at again.

(Councillor McAlpine entered the meeting – 7.02 pm)

The Head of Planning responded advising that Planning Officers were currently reviewing those decisions that would have been issued during the timeframe from 2 August 2021 and the withdrawal. Legal advice was also being sought in that regard and the Head of Planning would report back to Members next month advising on the number of decisions affected and the outcome of those.

Alderman McIlveen asked if communication had taken place with the agents on those applications potentially affected. The Head of Planning advised that contact would only be made with agents/applicants upon receipt of legal advice. No concerns had been raised to date by agents in respect of the matter however she reassured the Member that contact would be made.

RESOLVED, on the proposal of Alderman McIlveen, seconded by Councillor McKee, that the minutes be noted.

4. PLANNING APPLICATIONS

4.1 LA06/2020/0981/F – 77 Tullynakill Road, Killinchy – Replacement dwelling with integral garage and the retention of the existing dwelling as an ancillary domestic use for storage etc

(Appendices I - II)

DEA: Comber

Committee Interest: Called in by Alderman McIlveen from delegated list w/c 20 September 2021

Proposal: Replacement Dwelling with integral garage and the demolition of the existing dwelling

Site Location: 77 Tullynakill Road, Killinchy

Recommendation: Refusal

PREVIOUSLY CIRCULATED:- Case Officer's Report and Addendum.

The Senior Professional and Technical Officer (P Kerr) outlined the detail of the application which was for full planning permission for a replacement dwelling with integral garage and demolition of the existing dwelling at 77 Tullynakill Road, Comber. This description had been updated to reflect a change from retention of the existing dwelling to demolition of existing dwelling. This change had been addressed by the recently circulated addendum and any further assessment and clarification required had been included in that.

The proposal involved the replacement dwelling being located off the existing site and within an adjacent field. All the relevant consultees were content with the proposal. There were 2 objections received both from the same address and the

planning issues raised related to the fact that the proposal was on a prominent site in the AONB and contrary to CTY1, CTY8, CTY13 and CTY14 of PPS21. The Planning Officer advised that earlier that day a third objection letter had been received from the same addressed raising the same issues as well as concerns regarding the damage that the demolition may cause to their own property.

With regard to the local development plan, the site was located outside the settlement limit and within an Area of Outstanding Natural Beauty (AONB) as designated in the Ards and Down Area Plan 2015.

Turning to regional policy considerations - The SPPS retained the policy provisions of PPS2, PPS3 and PPS21. The Planning Officer detailed that the provisions of PPS2 and PPS21 within the SPPS could not be met by the proposal. The proposal complied with PPS3 Access Movement and Parking. The proposal complied with NH2 and NH5 of PPS2 however did not comply with Policy NH6 of PPS2 which related to Areas of Outstanding Natural Beauty. It was considered that the prominent location of the proposed dwelling within the AONB coupled with the fact that it would create a build-up of suburban style development would have a detrimental impact on the AONB. The erection of a new dwelling outside the existing domestic curtilage of the dwelling to be replaced was likely to result in a visual impact on the AONB that was unsympathetic to the locality. The large domestic curtilage that was proposed was also out of character and unsympathetic to the AONB. Referring to the site plan, the Officer outlined that the proposed curtilage was more than 4 times bigger than the existing curtilage.

As the proposal was for a replacement dwelling in the countryside the main policy consideration to establish the principle of development is CTY1 and CTY3 of PPS21. For replacement dwellings in the countryside CTY1 directed us towards CTY3. Under CTY3 the dwelling to be replaced in this proposal exhibited the essential characteristics of a dwelling. Although the existing dwelling was suitable for replacement it was important to note that in all replacement cases the proposed dwelling should be sited within the existing established curtilage of the dwelling to be replaced unless the curtilage was so restricted that it could not reasonably accommodate a modest sized dwelling or it could be shown that an alternative position nearby would result in demonstrable landscape, heritage, access or amenity benefits.

The curtilage of the existing dwelling was not so restrictive that it could not reasonably accommodate a modest sized dwelling. The curtilage of the dwelling to be replaced was approximately 730sqm which could accommodate a modest size dwelling capable of meeting the applicants' needs of living space on one level, with an adequate amount of amenity space remaining. There was also scope for the existing curtilage to be enlarged.

With regard to an alternative position nearby resulting in demonstrable landscape, heritage, access or amenity benefits, the case officer dealt with the flooding and damp issues raised in support of the offsite replacement and it was noted that the site did not fall within the flood zones and that a new build dwelling built to modern day standards would alleviate any damp issues currently suffered in the existing dwelling. As the proposal would be sited on land sloping up to the south, any building

on the land would appear prominent when travelling south along the Tullynakill Road and although the site benefits from mature vegetation and backdrop, the unnecessary siting of a new dwelling at this location would have a negative impact on the character of the area. With regard to access benefits, a minor extension to the existing curtilage would also provide that and therefore it was considered that the off-site replacement offered no amenity or landscape benefits.

In the justification and amplification of CTY3 it stated that semi-detached dwellings would generally only be acceptable if replaced in situ with the proposed new dwelling remaining attached to the other elements of the existing development unless practical mitigating circumstances were to be considered which in this case there were none.

Under CTY3 it stated that the overall size of the new dwelling should allow it to integrate into the surrounding landscape and not have an impact greater than the existing building. The proposal would result very clearly in the visual impact of two separate dwellings whereas if the dwelling was built on the existing site the appearance in the landscape would remain as one built form albeit distinguishable as a pair of semis. When travelling south along the Tullynakill Road the proposed dwelling would have a visual impact significantly greater than the existing due to its location and elevated position.

The proposed design of the dwelling was of a high quality and would likely be acceptable if the principle of development and impact on AONB and rural character were not an issue, however for the reasons highlighted above it was not appropriate for this rural location.

Turning to CTY13 and CTY14 which covered integration and rural character; as discussed the principle of development cannot be established under CTY3 as a modest replacement dwelling could be reasonably accommodated on the existing site and the off-site location would result in a significantly greater impact than the existing building as well as impacting upon the AONB. Added to this the proposal would result in a prominent feature in the landscape and would result in a detrimental change to rural character with an unnecessarily large domestic curtilage and create a suburban style build up. The potential for enlarging the existing curtilage slightly was not explored. This would result in a more acceptable site for the proposed replacement and could accommodate the required same level living accommodation.

In summary, the Planning Officer stated that the proposal was not necessary in this rural location and no exceptions were met to justify the need for an off-site location. A modest dwelling capable of meeting the needs of the applicant could be accommodated on site without the need to further erode the countryside. Therefore, for all of the reasons above refusal was recommended.

The Chairman invited questions from Members.

Alderman McIlveen referred to the policy CTY3 for the replacement of semi-detached dwellings and noted that the preference that any replacement would remain attached. However, the policy also stated unless there were practical

mitigating circumstances to be considered. Alderman McIlveen asked if there were any such circumstances explored in the assessment of the application.

The Planning Officer advised that there was a statement submitted as part of the application detailing that the applicants required to live on one level and that there were some access issues coming in and out of the site. However, as detailed there could be a modest dwelling accommodated at the site and the relocation was not deemed necessary. If there was a slight enlargement of the existing curtilage the access issue could be overcome. It was the view from Planning Service that the request for an off-site replacement was not appropriate.

Alderman McIlveen detailed a number of matters that the Committee were being asked to look at;

1. Is it appropriate that the house does not remain attached?
2. If the house was not to remain attached, should it be accommodated outside of the curtilage?
3. If the size and scale of the house was inappropriate for the site?

Alderman McIlveen sought confirmation that those were the key matters for consideration.

The Planning Officer confirmed that the prominent location and the need for an off-site location were issues which were fully explored. The design would be a consideration if the principle of the development was accepted.

At this stage, Mr David Donaldson and Mr Dickson were brought into the meeting and the Chairman invited them to speak in favour of the application.

Mr Donaldson outlined that the application had been recommended for refusal because the new dwelling was not sited within the existing curtilage and for reasons of design and scale. The existing dwelling was low lying and sat right on the edge of Tullynakill Road and it had a significant backdrop of rising land. He outlined that the applicants were retired and Mr Hawthorne in particular was in poor health. The applicants required a new home for lifetime accommodation at single level and the proposed dwelling had been carefully designed to respect its setting and to avoid the need for significant retaining structures. Importantly, the application was not seeking to move the dwelling substantially, the new dwelling would be only 7m from the existing dwelling and would be contained within established boundaries.

Mr Donaldson stated that Policy CTY 3 indicated that replacement dwellings should *normally* be sited within the established curtilage. However, it did countenance two exceptions:

- i) where the curtilage is so restricted it could not '*reasonably*' accommodate a modest dwelling; or
- ii) where it can be shown that an alternative position would result in landscape, heritage, access or amenity benefits.

Exception 1: Existing Curtilage - The existing curtilage was plainly restricted in size. The width reduced as it went back from the road. This narrow width and awkward

shape significantly constrained the ability to locate a dwelling of modest size, with associated parking and amenity space. The existing curtilage was also low lying and surface water run-off from the higher land to the west was channelled through the curtilage and through the existing house. It had flooded on several occasions, with the consequence that insurance against flooding was not available to the occupants. The existing curtilage did not afford sufficient space for visitors or delivery vehicles to enter, park and leave the site in forward gear, nor could it provide sufficient amenity space.

Exception 2: What are the Benefits? - Landscape Benefits:

The proposed dwelling would be sited some 25 metres back from the public road. Furthermore, it would be screened and softened by the mature planting to the front and by the extensive backdrop of mature vegetation at higher level to the rear. It was an extremely well enclosed site. When travelling in both directions the house will be barely visible until the point of access, in distinct contrast to the existing house which occupied such a prominent roadside position.

The existing dwelling would be removed upon completion of the new development and the area would be suitably landscaped.

Mr Donaldson outlined that there were access benefits, at present the site access was quite narrow and constrained. Visitors and deliveries to the property parked on the roadside, where they could cause obstruction and impede safe flows of traffic. The new development would allow extended areas for parking and turning so that parking on the roadside would be eliminated. He also outlined the amenity benefits, there could be no doubt that setting the building further away from the road would make the site more pleasant for the occupants, in terms of useable amenity space, reduction in noise from the public road, enhanced privacy etc.

In terms of public amenity, the revised siting would also be beneficial, as it would allow the dwelling to be better integrated into the local landscape, with mature vegetation screening it from public views. It would better respect the AONB.

Mr Donaldson stated that the proposal did meet the exception tests under CTY3.

In relation to design, it was clear that the proposed dwelling was of simple rural form. It was essentially a rectangular structure, with a traditional pitched roof. The small area of under build to facilitate the garage would be well screened from public viewpoints and would ensure that the need for retaining structures was avoided, as advocated by the Rural Design Guide.

In conclusion, Mr Donaldson stated that the size of the site was similar to the nearby properties at No 71 and a lot smaller than No 81. Ultimately, this was a case whereby the Planning Committee must consider all of the material factors and determine whether harm would be caused to interests of public importance. The key factor as identified in other replacement cases in this and other Council areas, was rural appearance. Given the enclosed nature of this site, the modest scale of development proposed, and the increased set back from the public road, it was apparent that it complied with CTY3 and would give rise to no harm whatsoever.

The Chairman invited questions from Members.

Alderman McIlveen asked what evidence was submitted as to why the current house was not suitable. He made reference to the flooding and insurance issues and he asked if that information was submitted to Planning.

Mr Donaldson confirmed that the issues were set out to Planning Service as the application was being processed. He explained that the site was not affected by flooding from Strangford Lough however as the dwelling was at road level, there were gullies on the road which did not take all of the storm water and had caused flood water into the house. Due to the topography and the land being higher at the west of the site, storm water run-off occurred at periods of heavy rainfall and passed through the site causing the issues. Those were factors as to why the applicants did not feel it was feasible to situate the property on the existing site.

Alderman McIlveen asked if there was another design option or was the proposed the most practical solution. Mr Donaldson noted that the properties were referred to as semi-detached but were two dwellings built at different times, joined together with no shared party wall. If bound to retain the property in situ, the issue remained on the location which was relatively busy road with no front garden and the general quality of life would be improved if the property was allowed to be situated 7m away.

In response to a further question from Alderman McIlveen, Mr Donaldson advised that the applicants were currently living in the property however there were major issues in terms of the damp and its general condition.

Alderman Gibson sought clarity on the location of the gable site and asked the size of the new dwelling. Using the visuals, Mr Donaldson explained the application site and the landscaped area which already existed. The proposed dwelling would be a 3 bed house in region of 2000fsq with a garage underneath. Adding to that Mr Dickson referred to the visuals and advised that the applicant was keen to retain the shrubbery.

Referring to the proposed location, Councillor McRandal questioned why it had been decided to locate the property in a prominent location. Mr Donaldson explained that as build occurred in the field there was a need to be careful not to cut out an area with a need for large surrounding retaining structures. Through the design of the property, efforts had been made to work with the levels, it was only 3m above the floor level of the existing house and there was backdrop above the ridge height of the proposed dwelling. Mr Donaldson did not feel the proposed dwelling would be prominent, it had been carefully sited to ensure the proposed dwelling integrated into the surroundings and did not sit prominently.

Councillor P Smith referred to the presentation of the application by the Planning Officer and the words that were used to describe the proposal including unsympathetic, out of character, the size of the existing development, negative impact on the area and visual impact. He asked how Mr Donaldson would counter those arguments.

Mr Donaldson stated that Planning Service had been weighted to the idea that the property should be located in situ whereas their design approach was for the relocation. Planning Service's approach was that by moving the property away from the existing site that was increasing the prominence whereas it was recognised that the existing dwelling was in a prominent location by being on roadside. The existing location did not meet modern living standards. The proposal sought to set the property back from the roadside in a relatively small padlock field which had been extensively landscaped by the applicant and therefore in his view was a balanced judgement.

Councillor P Smith asked if there was any opportunity to keep the dwelling within the curtilage of the existing site. Mr Donaldson stated that was difficult to do, the existing site had a narrow frontage, restricted depth to achieve a dwelling with a reasonable quality of accommodation including access and turning space. The agent was working as close to the existing curtilage as possible.

Councillor Walker referred to the reason for the call-in which was the two exceptions of policy CTY3. He therefore asked within the policy it stated that the curtilage had to be so restricted that it could not accommodate a modest size dwelling. Having viewed the site on Google Maps, he felt it was fair to say that the site was not restricted. Mr Donaldson responded that the policy referred to when the site was so restricted that it could not reasonably accommodate a modest sized dwelling and it was matter of judgement. The current site was restricted with a narrow frontage and a restricted depth. A replacement dwelling could be situated on the existing site however the issues of amenity space, parking and standards of living would remain compromised.

Councillor Walker did not consider the site was restricted enough to prevent development of a modest sized building and therefore failed the policy on that basis. The second position in terms of policy was that 'an alternative position nearby would result in demonstrable landscape, heritage, access or amenity benefits'. Mr Donaldson stated that within the submission he had itemised the landscape benefits and the existing dwelling did have a prominent roadside siting. The current access was an issue as parking occurred on the road. In terms of the amenity benefits he felt there were public amenity benefits by moving the dwelling and amenity benefits for the applicants as they would not be sitting alongside a narrow busy road.

Councillor Walker referred to CTY13 and CTY14 and he expressed concerns in terms of prominence, that it would be a large building viewable from the south. He asked for an explanation as to why the proposed dwelling had to be so large and could not be situated on the existing curtilage. Mr Donaldson stated that it was matter of opinion on what constituted a large building and it was the view that the proposed dwelling was not particularly large for a rural setting. It was three bedroom house with good living areas and a basement garage. Mr Donaldson was of the view that the house was not prominent or large and as recognised by the Case Officer was of good design. The site had a high degree of natural enclosure without the need to include visibility splays. He felt that the proposal was in conformation of the CTY3, CTY13 and CTY14 policies. The real test for the Committee to consider was real harm being caused to the rural character by allowing the proposal.

The Chairman thanked Mr Donaldson and Mr Dickson for their time and they were returned to the public gallery.

The Chairman invited further questions for the Planning Officer.

Councillor Walker asked about the flooding issues recognising that was a serious issue. The Planning Officer responded advising that Planning Service had reviewed historical flood maps and there was no evidence of surface water flooding on the maps. From the evidence received and research undertaken there was nothing to demonstrate the flooding issue.

Alderman Keery questioned why officers were not taking account of the fact that an insurance company had refused the applicants insurance. The Planning Officer advised that evidence from an insurance company would need to be submitted to show that was the case and confirmed that such evidence had not been provided.

Alderman McIlveen was of the understanding that evidence had been submitted in respect of the flooding issue. He asked would it be normal practice to ask for evidence in respect of the flooding issue. The Planning Officer explained that the matter had been further explored which had been done through an extensive search of flood maps. Fluvial and surface water maps had been interrogated and there was no evidence to show that there was flooding at the site.

Taking into consideration scale, impact and the positioning Alderman McIlveen felt there were a number of issues that would benefit from a site visit.

Referring to the Protocol for the Operation of the Planning Committee, the Chairman asked Alderman McIlveen to outline in his judgement where the substantial benefit test applied, i.e.

- *The impact of the proposed development is difficult/impossible to visualise from the Officer's report, photographs, video, plans, drawings and any other supporting material;*
- *There was good reason why the comments of the applicant and objectors cannot be expressed adequately in writing;*
- *The proposal is particularly contentious;*
- *Non-visual considerations such as noise and smell are key issues on which the application will be determined.*

Alderman McIlveen confirmed he was requesting the deferral on the basis of '*The impact of the proposed development is difficult/impossible to visualise from the Officer's report, photographs, video, plans, drawings and any other supporting material.*' Alderman McIlveen stated that visual impact was a big issue and there was need to have better context from being on-site.

Proposed by Alderman McIlveen, seconded by Alderman Keery, that the application be deferred for a site meeting.

Alderman Gibson supported the proposal for a site meeting, stating that the Planning Committee did not undertake enough site visits.

Councillor Walker stated that he could not support the proposal. The visual impact was important; however, the application did not meet Policy CTY3 in the first instance as there was enough space to accommodate a modest size building within the existing curtilage, therefore there was no need to look at the impact of the off-site replacement.

Councillor P Smith concurred with Councillor Walker, stating that Members had been presented with the same amount of information for this application as they were for others.

On being put to the meeting with 5 voting FOR, 8 voting AGAINST, 1 ABSTAINING and 2 ABSENT, the recommendation was declared LOST. A recorded vote resulted as follows:

FOR (5) Aldermen Gibson Keery McIlveen	AGAINST (8) Alderman McDowell	ABSTAINING (1)	ABSENT (2)
Councillors Adair Kennedy	Councillors Brooks Cooper McAlpine McRandal McKee Smith, P Walker	Councillor Cathcart	Councillors McClellan Thompson

Proposed by Councillor Walker, seconded by Councillor P Smith, that the recommendation be adopted and that planning permission be refused.

Councillor Walker did not feel the application passed the CTY3 policy.

Alderman McIlveen stated that he could not support the proposal as he felt a site visit would allow for a properly informed decision.

On being put to the meeting with 7 voting FOR, 6 voting AGAINST, 1 ABSTAINING and 2 ABSENT, the recommendation was declared CARRIED. A recorded vote resulted as follows:

FOR (7) Aldermen McDowell	AGAINST (6) Alderman Gibson Keery McIlveen	ABSTAINING (1)	ABSENT (2)
Councillors Brooks	Councillors Adair	Councillor Cathcart	Councillors McClellan

McAlpine
McRandal
McKee
Smith, P
Walker

Cooper
Kennedy

Thompson

RESOLVED, on the proposal of Councillor Walker, seconded by Councillor P Smith, that the recommendation be adopted and that planning permission be refused.

- 4.2 LA06/2020/0579/F – Ardavon, 16 Glen Road, Cultra, Holywood – Demolition of existing derelict dwelling (with extant permission for conversion and extension to 4 No. apartments) and erection of new building containing 5 No. apartments with associated landscaping and ancillary storage building**
(Appendices III - IV)

DEA: Holywood & Clandeboye

Committee Interest: A Local development application attracting six or more separate individual objections which are contrary to the officer's recommendation

Proposal: Demolition of existing derelict dwelling (with extant permission for conversion and extension to 4 No. apartments) and erection of new building containing 5No. apartments with associated landscaping and ancillary storage building

Site Location: Ardavon, 16 Glen Road, Cultra, Holywood

Recommendation: Approval

PREVIOUSLY CIRCULATED:- Case Officer's Report, Addendum and correction report.

The Principal Professional and Technical Officer (G Kerr) outlined the detail of the application. She noted that the site had extant permission for conversion and extension to 4 No. apartments, so this application represented an increase of one apartment. The application was before Members as it had 9 objections from 6 separate addresses.

All material objections were addressed in the Case Officer Report and all consultees were content. Due to the proposed demolition of the building and existing vegetation and trees within and surrounding the site, an Ecological Appraisal and Impact Assessment was submitted. NIEA Natural Environment Division (NED) was consulted and commented that it '*has considered the impacts of the proposal on natural heritage interests and, on the basis of the information provided, has no concerns, subject to conditions.*'

Referring to the images, the Planning Officer detailed that the site was located on the western side of Glen Road and contained a large, detached period dwelling known as Ardavon (No. 16 Glen Road) which had been vacant for some time and was in a state of disrepair. The application site was approximately 50m from the road and views were limited due to the mature trees along Glen Road and within

the site. There were extensive grounds surrounding the proposed dwelling. Access was directly off Glen Road. The wider site was currently under construction for further residential units, as part of an overall redevelopment scheme. The site was well screened with the benefit of several trees within the site protected by a Tree Preservation Order. The established residential area along Glen Road was characterised by large, detached dwellings on generous plots that front onto the private road and were well screened by mature vegetation.

The Planning Officer referred to visuals of the site and general area to provide some context for members. The site was located within the settlement limit of Holywood as designated in both the North Down and Ards Area Plan 1984-1995 and Draft Belfast Metropolitan Area Plan 2015 (dBMAP). The site also lay within a proposed Area of Townscape Character (ATC) – Marino, Cultra and Craigavad. Consequently, the proposed ATC designation in draft BMAP was a material consideration relevant to this application. As the site lay within a development limit, there was a presumption in favour of development unless there was demonstrable harm caused.

The planning history was an important consideration for the site – there were two additional applications for discussion this evening for the wider site, one for 7no. units in a single building which had extant permission for 6no. units and another for a single gate lodge.

Regarding this application site - the site had extant conversion of the existing dwelling to 4no. apartments granted on 9 January 2019. The Planning Officer highlighted that the history was relevant as it demonstrated that the principle of development had been accepted on the site.

With regard to roads - access for the proposal was off the Glen Road. The Glen Road was not adopted by DfI Roads, but it accessed onto the A2 Bangor Road which was a Protected Route. DfI Roads had confirmed that the proposed development would not prejudice road safety or significantly inconvenience the flow of traffic. It did not conflict with Policy AMP 3 Access to Protected Routes as road safety would not be compromised.

With regard to the principle of demolition in an ATC it was considered that although the building currently made a material contribution to the appearance of the ATC, two separate structural survey reports had demonstrated that the building was in a bad state of repair and would be left to deteriorate further which would result in an adverse impact on the character and appearance of the ATC. It also had to be taken into consideration that the previous permission (LA06/2017/1461/F) which granted demolition of a significant portion of the building with only the front facade of the building remaining and both structural survey reports had indicated that refurbishment of the facade of the building would present challenges. On balance, it was considered that demolition was acceptable within the ATC and a well-designed replacement building could make a positive contribution to the character of the area. The overarching aim of the ATC policy was that there should be no harm to its character and appearance. It was considered that the proposal would maintain and enhance the character of the ATC. The replacement building would be of similar scale in height and would be replaced on a similar footprint as the original dwelling with a similar design.

The proposed density was acceptable due to the scale of the existing building and the overall appearance of a large grand house set within extensive mature grounds. This proposal would contain 5no. apartments in a new building but would provide the overall appearance of a large house within extensive mature grounds. The site was large and ensured that adequate amenity space was provided for the apartments. Each apartment would be provided with a covered terrace area (minimum approximately 19 sqm) as well as the landscaped gardens surrounding the building.

A detached building would be constructed on-site for bin storage and general storage for the apartments. A similar parking layout was approved under extant permission LA06/2017/1461/F. It was considered that as the proposal would provide at least 2no. spaces per apartment with a total of 13no. spaces being provided it complied with Policy AMP 7 Car Parking.

The protected trees had been integrated into the layout of the proposal and would be retained and protected by conditions on any planning approval. That would be supplemented by landscaping throughout the site to aid integration and soften the visual impact of hard surfaced parking areas.

To provide context, the Planning Officer displayed the original design of the proposal. Planning Officers had requested the design of the original proposed replacement building to be amended to be more in keeping with the architectural detailing of the original building and to give the appearance of a single detached dwelling, with a single and centrally located entrance door on the front elevation, rather than an apartment development. It was considered that the proposal now drew on the best local traditions of form, materials, and detailing. The new building would be finished in sand cement render with a natural slate roof which were sympathetic materials in keeping with the character of the area. The design of the new building would be in keeping with the architectural detailing of the original building and it had been designed to give the appearance of a large detached dwelling in keeping with the existing building on the site.

The proposal would have no unacceptable adverse impacts on existing or proposed properties in terms of overlooking, loss of light, overshadowing with separation distances ranging from 20m – 40m between the proposed building and the adjacent sites. Those separation distances combined with existing trees and planting within the site would ensure that there were no unacceptable adverse impacts on residential amenity.

In conclusion, the Planning Officer stated that the proposal had been considered having regard to all material considerations, representations, relevant planning policies, planning history and consultation responses. The principle of demolition had been fully considered in the context of two expert structural and civil engineering reports. The proposal would maintain the character of the ATC and would have no adverse impact on the residential amenity of existing or proposed neighbouring dwellings and the proposal would not prejudice road safety. Granting of planning permission was therefore recommended.

(Councillor P Smith withdrew from the meeting during the presentation of the item)

The Chairman invited questions from Members.

Councillor McRandal referred to the concerns expressed in relation to the potential for the increase in traffic, Glen Road was a narrow road and road safety concerns existed. Furthermore, there was no traffic lights at the junction with the A2.

(Councillor Cooper withdrew from the meeting – 8.17 pm)

Councillor McRandal referred to page 8 of the Case Officer's Report and Dfl's change in position and read out an extract *'Dfl Roads commented that 'there are a number of Planning applications accessed off this unadopted road which have been submitted individually and they singularly do not represent 5% intensification. If, however, they had been submitted as a single application then the 5% threshold may have been reached. Planning may wish to consider the cumulative effect of these individual applications with regard to the road and request that the road be adopted.'* As a result of this consultation response, a further consultation was issued to Dfl Roads to seek justification and at that stage Dfl Roads changed its position to detail that it was content with the proposal. Councillor McRandal asked the Planning Officer what led to the change in the position from Dfl Roads. In response the Planning Officer highlighted to Members that a late correction report had been circulated earlier that day regarding the relevant roads policy (PPS3). That report outlined that the road was within the settlement limit of Holywood within the extant development plan. Accordingly, each proposal should be considered against the following element of the Policy which stated that *'planning permission will only be granted for a development proposal involving direct access, or the intensification of the use of an existing access:*

- (a) where access cannot reasonably be taken from an adjacent minor road.*
- (b) In the case or proposals involving residential development, it is demonstrated to the Department's satisfaction that the nature and level of access onto the Protected Route would significantly assist in the creation of a quality environment without compromising standards of road safety or resulting in an unacceptable proliferation of access points.*

The Planning Officer had concluded that the proposed development would not prejudice road safety or significantly inconvenience the flow of traffic. It did not conflict with Policy AMP 3 Access to Protected Routes as the standards of road safety would not be compromised. Planning Officers were very mindful of the concerns raised in respect of roads and was the reasoning why Officers had repeatedly liaised with Dfl Roads seeking clarity. A study had also been carried out with regard to other developments along the Glen Road that had planning permission and yet to be constructed along with developments that already existed. That study showed that the calculation fell below the 5% intensification. The Planning Officer advised that legal advice had also been sought on the issue.

Adding to that, the Head of Planning advised that legal advice had been sought in respect of the 5% intensification issue. That issue sat within a guidance document rather than policy to be applied by Dfl Roads. The Head of Planning advised that in respect of the 5% intensification figure there was need to look at the wider context on what the policy sought to protect; safe flow of traffic and the access onto the protected route. The adoption of the road was up to the residents collectively and

was not something the Council had any responsibility for. To clarify, the Head of Planning stated that a number of objections related to the 5% being breached. Dfl was content with the baseline that existed plus the addition of those dwellings that had been approved, this proposal and the other proposals that were in the system for Glen Road. It was considered that there would be no impact in terms of road safety and safe flow of traffic, which is what the policy sought to protect.

The Chairman asked for clarity on Planning's role in terms of the unadopted road. The Head of Planning explained that Dfl Roads had stated that the Council may wish to consider adopting the Glen Road in the future to bring it up to a standard. The Council could not request for that to occur it would be up to the individual residents and she was unsure of the costs involved. Planning were solely looking at where the access of Glen Road met the A2, whether DFI Roads was content and to ensure that the junction could cope with additional traffic without prejudice to road safety.

The Chairman allowed for Mr David Donaldson and Mr Damien Logue to be admitted into the meeting and invited those representatives to speak in support of the application.

Mr Donaldson stated that Members had been provided with an exceptionally comprehensive report by the Planning Officers detailing how the proposed development complied with policy. Mr Donaldson stated that he did not wish to add anything to the Case Officer's Report, other than to say that the applicant was committed to ensuring that this proposal was delivered to the highest quality, so that it would be a real asset to the area. The proposed apartments would be set within a managed parkland, where the occupants would be able to enjoy the amenities of this part of the Borough. Mr Donaldson acknowledged that some concerns had been expressed over the increased traffic on Glen Road. However, he noted that two factors were important:

- i) the policy context has been very carefully considered by Planning Officers and by DFI Roads, and
- ii) this proposal seeks to develop 5 new apartments – 4 apartments have already been approved and could be built under LA06/2017/1461/F. So this proposal was only for one extra unit.

Mr Donaldson stated that the existing building was not listed and it was acknowledged that it was within a proposed Area of Townscape Character and the Project Team had gone to great lengths to ensure that the proposed building would, as the Officer's Report acknowledged, be in keeping with the character of the surrounding area. Mr Donaldson believed that it had been demonstrated that it would be a marked improvement upon the previous proposal which was to convert and extend the existing derelict building.

The Chairman invited questions from Members.

The Chairman noted that permission was in place already for the conversion of the property, granted in 2019. This application had been submitted in 2020 and he wondered why the change to demolition had occurred relatively quickly given planning had already been granted to convert. Mr Donaldson noted that while the

previous application had been granted in 2019 it had been submitted in 2017. The current developer purchased the site in 2016/17 and at the initial stage the plan was to convert the large house into apartments. With the passage of time and the increase in the information gained particularly in relation to the structural condition of the existing building and the work involved in retaining the frontage of the building there were found to be issues with that. It was found to be impractical to implement the previous approval and therefore this application was brought forward which was felt to be a better option for the site in terms of the character and appearance.

The Chairman asked why it was felt that the new building was better than the conversion. Mr Donaldson advised that the development would cause no harm to the proposed ATC. It was viewed that the proposal was a betterment and a lot of effort had been put in to ensure the new development had a historical and characterful appearance.

Councillor McRandal questioned why three separate planning applications had been submitted. Mr Donaldson explained that the site was purchased 4-5 years ago and the initial approach had changed. The proposals had come along incrementally and related to different parts of the site. As the concepts developed the applications came forward accordingly.

Mr Donaldson and Mr Logue were returned to the public gallery.

Proposed by Alderman McIlveen, seconded Councillor Adair, that the recommendation be adopted and that planning permission be granted.

Alderman McIlveen felt there was a lot of detail within the report, he noted there were concerns surrounding road safety and development in the area and he appreciated the work that been undertaken to explore the matter. The Committee needed to be mindful that the principle of development had been established.

On being put to the meeting with 8 voting FOR, 0 voting AGAINST, 4 ABSTAINING and 4 ABSENT, the recommendation was declared CARRIED. A recorded vote resulted as follows:

FOR (8)	AGAINST (0)	ABSTAINED (4)	ABSENT (4)
Aldermen		Alderman	
Gibson		McDowell	
Keery			
McIlveen			
Councillors		Councillors	Councillors
Adair		Cathcart	Cooper
Brooks		McKee	McClellan
Kennedy		McRandal	Smith, P
McAlpine			Thompson
Walker			

RESOLVED, on the proposal of Alderman McIlveen, seconded by Councillor Adair, that the recommendation be adopted and that planning permission be granted.

4.3 LA06/2020/0578/F – Land 20m west of Ardavon House, 16 Glen Road, Cultra, Hollywood – Development of a residential courtyard of 7 No. two storey dwellings with associated landscaping (increase from the 6 No. dwellings approved in this building under reference LA06/2020/0091/F)
(Appendices V - VI)

DEA: Hollywood & Clandeboye

Committee Interest: A Local development application attracting six or more separate individual objections which are contrary to the officer's recommendation

Proposal: Development of a residential courtyard of 7 No. two storey dwellings with associated landscaping (increase from the 6 No. dwellings approved in this building under reference LA06/2020/0091/F)

Site Location: Land 20m West of Ardavon House, 16 Glen Road, Cultra, Hollywood

Recommendation: Approval

PREVIOUSLY CIRCULATED:- Case Officer's Report and Addendum.

The Senior Planning and Technical Officer (C Rodgers) outlined the detail of the application which was for a residential courtyard of 7no. two-storey dwellings on Glen Road in Hollywood – an increase from an extant planning permission for 6no. dwellings on the site approved in July 2020.

The site was located 20 metres west of Ardavon House – the site of the application previously presented. The site formed part of the original curtilage of the dwelling.

The site was within the settlement of Hollywood and was within a proposed Area of Townscape Character and also a Local Landscape Policy Area, in draft BMAP.

The site was set back approximately 80m from the road and public views were restricted by mature trees and the existing dwelling. The site was bounded by, and had a number of trees within it, which were protected by a Tree Preservation Order. The proposed vehicular access was off Glen Road and reflected that previously approved. The existing access to Ardavon House would be for pedestrian and cycle use only.

The planning history of the site was a significant material consideration as the design, scale and layout of the proposed building closely replicated that of the extant planning permission for 6no. dwellings.

The proposal to subdivide the building to provide 7no. dwellings would slightly increase the density from that previously approved. However, it was considered that the impact on the character of the area and appearance of the proposed ATC would be the same. The proposed building would be sensitively sited to the rear of Ardavon House. The existing boundaries and trees would be retained where possible and that would ensure that the proposal would not harm the appearance of the proposed ATC.

The roads issues highlighted in the previous presentation were also relevant to this application. Glen Road was not adopted, but it accessed onto the A2 Bangor Road which was a protected route. *In accordance with Policy AMP 3 proposals involving intensification of the use of the existing Glen Road access onto the A2 Bangor Road*

will only be granted where the access cannot be taken from an adjacent minor road or in the case of residential development, it is demonstrated that the nature and level of access onto the Protected Route will significantly assist in the creation of a quality environment without compromising standards of roads safety or resulting in an unacceptable proliferation of access points.

Given the application sought to increase the number of dwellings by one, it did not represent intensification of use of the access onto the protected route taking into account the number of existing units and future committed development.

However, as indicated in the previous presentation, the Council requested DFI Roads to carefully consider the suitability of the Glen Road junction with the protected route, to accommodate the additional traffic generated. DFI Roads confirmed that, at the junction, there was no evidence of a collision history or record of delays or inconvenience caused to traffic within its vicinity. A Roads Officer visited the site to observe traffic movements and commented that while delays were experienced, they were not of a level that would raise concerns regarding road safety. The response from DFI Roads concluded that Glen Road had an acceptable junction with the A2 Bangor Road which was a Protected Main Traffic Route and that the proposed dwellings, in addition to those dwellings committed but not yet commenced, would not have any impact on the junction. DFI Roads provided no objection to the proposal. It was therefore considered that the proposal would not prejudice road safety or inconvenience the flow of traffic and does not conflict with the protected routes policy.

Private amenity space per dwelling satisfied Creating Places standards and additional communal open space was provided in the form of a landscaped courtyard to the front of the dwellings. Parking provision also met Creating Places standards. The separation distance between the proposal and the existing dwelling at Ardavon was the same as originally approved and was adequate to protect the residential amenity of both sites.

The Council's Tree Officer was consulted and provided no objection. This application proposed the same works to trees as that previously approved and planning conditions will ensure trees are adequately protected during construction.

Natural Environment Division provided no objection to the application and commented that the proposal was unlikely to significantly impact protected or priority species and habitats.

Six objections had been received and concerns related to traffic and roads safety, impact on trees, and impact on the character of the area. All issues raised had been carefully considered in the Case Officer Report.

As previously stated, the extant planning permission for six dwellings on this site was an important material consideration. No objection to the development had been received from any consultee. Having considered all material planning matters, the Planning Officer stated that the application was recommended for approval.

The Chairman thanked the Officer and sought questions from Members.

Councillor McRandal expressed interest in the nature and character of Glen Road which primarily comprised large detached houses. He asked the Officer how the courtyard of terraced type houses fitted into that locale albeit that the site had extant planning permission.

In response, the Senior Professional and Technical Officer explained that for this decision and the previous planning approval, it was ascertained that the site under discussion could be set apart from the established residential neighbourhood. It would present as a very largescale dwelling sitting 80m from the road, well screened by mature trees to limit public views. Therefore, in terms of the visual element, the impact would remain the same as the extant planning permission and cause no detriment to the overall character.

At this point, the Chairman asked that the speakers, Mr David Donaldson and Mr Damian Logue join the meeting.

Welcoming the Officer's in-depth report, Mr Donaldson clarified that the key consideration was that the courtyard was identical to the approval for six units and the only difference was that one of the larger units had been sub divided into two. In essence; it amounted to one extra unit above the extant planning permission.

The Chairman brought attention to the nature of the three separate applications pertaining to the one property as it appeared there was some suspicion that they were separating out the intensification of the site. He sought feedback from Mr Donaldson to allay those fears.

Mr Donaldson indicated that the three applications under discussion had been submitted at the same time whereas submission of the original applications had been staggered. He underlined that they represented the final position on the site and would undoubtedly precipitate the conclusion on what the applicant had hoped to achieve. He reiterated that the proposed courtyard for seven was precisely the same footprint for the six previously and the scale was not increasing. They believed it was now the optimum development to be attained on that plot.

As there were no further queries for Mr Donaldson, the Chairman requested Officers to return him and Mr Logue to the virtual public gallery.

Proposed by Alderman McIlveen, seconded by Alderman Keery that the recommendation be adopted.

Alderman McIlveen remarked both on the extant approval and the one additional unit. He referred to the dialogue that had taken place on the issues surrounding the possible impact on the draft ATC but as DfI Roads were satisfied and had raised no road safety concerns, he was happy to support the recommendation.

On being put to the meeting, with 9 voting FOR, 0 voting AGAINST, 3 ABSTAINING and 4 ABSENT, the recommendation was declared CARRIED. A recorded vote resulted as follows:

FOR (9)	AGAINST (0)	ABSTAINING (3)	ABSENT (4)
Aldermen		Councillor	Councillors
Gibson		Cathcart	Cooper
Keery		McKee	McClellan
McDowell		McRandal	Smith, P
McIlveen			Thompson
Councillors			
Adair			
Brooks			
Kennedy			
McAlpine			
Walker			

RESOLVED, on the proposal of Alderman McIlveen, seconded by Alderman Keery, that the recommendation be adopted, and that planning permission be refused.

- 4.4 **LA06/2020/0572/F – Lands approximately 30m NE of Ardavon House, 16 Glen Road, Cultra, Holywood – Gate lodge type dwelling & associated garage and landscaping – Lands approx 30m NE of Ardavon House, 16 Glen Road, Holywood**
(Appendices VII - VIII)

DEA: Holywood & Clandeboye

Committee Interest: A Local development application attracting six or more separate individual objections which are contrary to the officer's recommendation

Proposal: Gate lodge type dwelling and associated garage and landscaping

Site Location: Lands approximately 30m NE of Ardavon House, 16 Glen Road, Cultra, Holywood

Recommendation: Approval

PREVIOUSLY CIRCULATED:- Case Officer's Report and Addendum.

The Principal Professional and Technical Officer (G Kerr) outlined the detail of the application which was for a Gatelodge type dwelling and associated garage and landscaping. The application was before members as it had nine objections from six separate addresses. All material objections were addressed in the case officer report and all consultees were content.

As with the previous two proposals, an Ecological Appraisal and Impact Assessment was submitted with NIEA Natural Environment Division (NED) consulted and commented that they had no objections subject to conditions.

The site was located on the western side of Glen Road and within the grounds of Ardavon to the north-east of the existing dwelling and fronts onto Glen Road. There was an existing access onto Glen Road. There were mature trees and hedging along the road-side boundary and the existing access. The local plan considerations were the same as the previous two applications submitted. Whilst there was no planning history for the specific application site the principle of development was established on the wider site.

In respect of roads, the Planning Officer detailed that the consideration was the same as the previous two applications with the not resulting in intensification of use onto a Protected Route. It was considered that an additional dwelling would not prejudice road safety or significantly inconvenience the flow of traffic on to the private road and DfI Roads response to the proposal overall had offered no objections from a road safety perspective.

Adequate car parking would be provided as the site was of ample size to include more than two in-curtilage spaces and a detached double garage would also be provided. It was therefore considered that the proposal complied with Policy AMP 7 Car Parking.

She indicated that the proposal was for one dwelling within a large garden area within an established residential area. It was considered that the proposal was in keeping with the surrounding area as the proposed dwelling would front onto the road, the scale and design would respect the character of the area and views would be limited due to the mature trees along the road and within the site.

The protected trees had been integrated into the layout of the proposal and would be retained and protected by conditions on any planning approval. It was considered that the proposal would not have an adverse impact on the appearance of the proposed ATC as its scale and design were appropriate to the site context and character of the wider area and the site was well screened by existing vegetation. The proposed dwelling would respect the surrounding context and existing topography of the site. It was considered that the proposal now drew on the best local traditions of form, materials, and detailing. The new building will be finished in sand cement render with a natural slate roof which are sympathetic materials in keeping with the character of the area. Existing trees and planting within the site would also ensure that there were no unacceptable adverse impacts on residential amenity.

In conclusion, the Planning Officer detailed that the proposal has been considered having regard to all material considerations, representations, relevant planning policies, planning history and consultation responses. The proposal would maintain the character of the ATC and would have no adverse impact on the residential amenity of existing or proposed neighbouring dwellings and the proposal would not prejudice road safety. Therefore, grant of planning permission was recommended.

Thanking the Officer, the Chairman sought questions from Members.

Councillor McRandal made reference to page 7 of the Case Officer's report where it mentioned PPS2 – Natural Heritage and specifically quoted "NED recommends the use of low level lighting and that any lighting is avoided that would lead to illumination/light spill onto the boundary vegetation to protect bats. This has not been included as a condition to be added to any approval. NED would also recommend the implementation of the measures as noted within the Ecological Appraisal in relation to badgers but again this has not been included as a condition". With that information borne in mind, he questioned why those conditions had not been applied.

The Principal Professional and Technical Officer stated that with the agreement of the Head of Planning, the Committee could seek delegated powers to add the use of low level lighting as a condition, noting that it had been included in the two previous approvals. She verified that the measures relating to badgers could also be incorporated and that could be undertaken in advance of the Decision Notice being issued.

With no additional questions for the Officer, the Chairman asked that Mr Donaldson and Mr Logue be brought into the meeting.

Mr Donaldson believed the Officer had furnished the Committee with an exceptionally comprehensive report and he had nothing further to add. However, he mentioned that the gate lodge type dwelling was designed to represent an historical element to the overall concept that the applicant wished to achieve on the site. The three elements consisted of the main building, the subsidiary courtyard to the rear and the gate lodge to demarcate the main entrance. He welcomed the Officer's recommendation of approval.

With regard to the applicant, Councillor McRandal wondered about the imposition of those two conditions to be attached and if he would be affected by those.

Mr Donaldson gave an assurance that those would not cause an issue and indeed it was a point well made by the Member.

No other questions were forthcoming from Members, hence the Chairman asked that Mr Donaldson and Mr Logue be returned to the virtual public gallery.

Proposed by Councillor Adair, seconded by Alderman Keery that the recommendation be adopted.

UNANIMOUSLY RESOLVED, on the proposal of Councillor Adair, seconded by Alderman Keery, that the recommendation be adopted, and that planning permission be approved. In addition, delegated powers would be sought at next month's Council meeting to allow two conditions to be placed on the application.

RECESS

At this stage 9.02pm, the meeting took a 10 minute recess and recommenced at 9.12pm.

NOTED.

(Alderman Gibson and Councillor McKee left the meeting at this stage – 9.12pm)

5. UPDATE ON PLANNING APPEALS

(Appendix IX)

PREVIOUSLY CIRCULATED:- Report dated 18 October 2021 from the Director of Planning, Regeneration and Development attaching decision notice. The report detailed the following:

Decisions

1. The following appeal was deemed invalid on the 30 September

Appeal reference: 2020/A0026
Application Reference: LA06/2018/0673/O
Appeal by: Laburnumhill Properties Ltd
Subject of Appeal: Refusal of outline planning permission
Location: 70m south west of 1 Cardy Road East, Greyabbey

The Council refused the above application on 4 October 2020 for a number of reasons wherein it was considered that the proposal failed Policies CTY 2a, CTY 8, CTY 13 and CTY 14 of PPS 21 – Sustainable Development in the Countryside, and Policy NH 2 of PPS 2 – Natural Heritage.

The Commissioner was of the view that there was no valid appeal before the Commission as the requirements of Article 8 of The Planning (General Development Procedure) Order (Northern Ireland) 2015 had not been satisfied.

The Council advertised the proposal in line with the location as described on the submitted application form as '70m south west of no. 1 Cardy Road East....', and the decision issued referring to that address. However, that site address was incorrect as it referred to south west of no. 1 Cardy Road instead of south east of no. 1 Cardy Road. The incorrect address of the location was deemed to be seriously misleading and to have potentially deprived people who were interested in the proposal from making representations accordingly.

The Commissioner was of the opinion that the failure to publish a proper notice defeated the purpose of publication and rendered the Council's decision on the application invalid.

As such, the address had been corrected on the system and the requisite advertising and neighbour notification undertaken, and the decision would re-issue via the delegated list accordingly.

New Appeals Lodged

2. The following appeal was submitted on 27 September 2021.

Appeal reference: 2021/E0045
Application Reference: LA06/2017/0374/CA
Appeal by: Mr Glen Baxter
Subject of Appeal: Appeal against Enforcement Notice:

Location: 'Alleged unauthorised construction of earth bund adjacent to front boundary along Gransha Road'
431a Gransha Road, Bangor

Details of appeal decisions, new appeals and scheduled hearings could be viewed at www.pacni.gov.uk.

RECOMMENDED that Council notes this report.

The Head of Planning guided Members through the report drawing Members' attention to section 1 of the last paragraph. She advised that when officers had approached the agent to request the amended application form, they were informed that he and the applicant were compiling further information and plans for submitting. At that point Officers would advise neighbours why they were being notified again and it would be re-advertised.

RESOLVED, on the proposal of Councillor Adair, seconded by Alderman Keery, that the recommendation be adopted.

6. HED – ADVANCE NOTICE OF LISTING (Appendices XI – XII)

PREVIOUSLY CIRCULATED:- Report dated 25 October 2021 from the Director of Planning, Regeneration and Development detailing the following:

Background

1. The Council served a Building Preservation Notice (BPN) on 28 September 2021 on Orlock Coastal Battery, a building in the garden of 25 Coastguard Lane, Orlock, on the basis of an assessment carried out by the Department for Communities' Historic Environment Division.
2. On 1 April 2015 the discretionary power to serve a 'Building Preservation Notice' transferred from the former Department of the Environment to councils. Such a BPN was served where it appeared to a council that a building was of architectural or historic merit and was at risk of demolition or significant alteration.
3. A BPN was a form of temporary listing which provided statutory protection to an unlisted building, for a period of six months, as if it were listed, subject to meeting the following test:
 - It was of special architectural or historic interest; and it was in danger of demolition or of alteration in such a way as to affect its character as a building of such interest.

Consultation

4. The Council had received the attached documents setting out the Historic Environment Division's intention to list the Orlock Coastal Battery, near 25

Coastguard Lane, Orlock, and inviting the Council's views on the proposed listing, within six weeks of the date of the letter, being 03 December 2021.

5. The Planning Service's Local Development Plan team was reviewing the documentation in liaison with colleagues in Development Control and would respond accordingly.

RECOMMENDED that the Planning Committee notes the report and attachments, outlines its input into the response and that officers bring back a proposed response to Council for approval.

The Head of Planning spoke to the report and highlighted the salient points, emphasising that as part of the HED Advance Notice of Listing, the HED was concerned about what it considered to be a very rare World War 2 coastal battery. To provide background, she outlined that the occupants had submitted a planning application in October 2020 for the demolition of an existing guest accommodation building and construction of a new build. The proposed scheme involved demolition of a concrete gun house, which was part of the World War 2 coastal defence battery at Orlock Point. As a site on the Department's defence heritage record, it held a significant level of archaeological interest. HED had recently carried out an assessment in connection with the defence heritage survey and determined that it would potentially meet the criteria for scheduling. HED contended that the application was contrary to policy BH1 of PPS6: The Preservation of Archaeological Remains of Regional Interest and their setting. If permitted, HED considered it would adversely impact upon the gun house and had urged the applicant to submit a revised proposal to preserve and sympathetically incorporate the gun house.

The Head of Planning detailed that the planning application was subsequently withdrawn and in September 2021, Officers received a complaint relating to unauthorised excavation works at the base of the gun house. As a consequence of that, HED asked for a Building Preservation Notice to be served as it was concerned about its possible demolition as it did not have a listing. Apparently, the modern modifications did not detract from the listing criteria because it was so rare and only one of three in Northern Ireland that were largely intact. The consultation process would last six months and it was probable that it would meet the criteria for listing following that process.

Proposed by Councillor Adair, seconded by Alderman Keery that the recommendation be adopted.

As proposer, Councillor Adair articulated his support for the listing of this rare remaining piece of history and heritage; if permitted to be demolished it would be lost forever. He maintained that it was the Council's duty to protect and preserve this unique structure to tell the story of our Borough for future generations. He was also mindful that one of the biggest attractions for visitors to our Borough was our built heritage.

Alderman Keery fully endorsed the sentiments of his colleague and reiterated the importance of maintaining such structures as this for future generations.

Regarding the process for the listing of buildings, the Chairman queried the Council's role and asked if the Council had any rights if it happened to disagree about a potential listing or could it propose buildings to list.

The Head of Planning asserted that the Council could develop its own locally important buildings list whereby the buildings included may not meet the criteria for pure listing. Hence, we could certainly propose but only HED could confirm a listing. The powers to place Building Preservation Notices were passed to Council and in this instance, Officers were therefore expected to undertake the work of the HED without knowing the full background.

Listening to her explanation, the Chairman reiterated that the owner in this instance was powerless to make an argument and would just have to deal with the decision.

In a similar vein, Councillor Walker pondered that if the building were listed would the owners have to make it available for the public to view.

The Head of Planning reported that public access would not be necessary but rather it would remain part of our heritage. Undoubtedly, if it was granted listing in the future, it would become the responsibility of the person who had ownership and the onus would be on that owner to upkeep the building. She regretted that there was a lack of financial support from Central Government to encourage stewardship in those circumstances. The Heritage Lottery Fund was currently offering paltry amounts for roof repairs and local authorities had to continue to lobby Central Government in that regard.

It was the viewpoint of Councillor Walker that it was not an attractive building like Grey Fort and many other alternatives, so why would anyone wish to view the gun house. He concluded that it appeared to be an unfair situation.

RESOLVED, on the proposal of Councillor Adair, seconded by Alderman Keery, that the recommendation be adopted.

EXCLUSION OF PUBLIC/PRESS

AGREED, on the proposal of Councillor Adair, seconded by Alderman Keery, that the public/press be excluded during the discussion of the undernoted items of confidential business.

7. SUSTAINABILITY APPRAISAL OF LOCAL DEVELOPMENT PLAN

(Appendices XIII – XIV)

****IN CONFIDENCE****

NOT FOR PUBLICATION

SCHEDULE 6 – INFORMATION RELATING TO THE FINANCIAL OR BUSINESS AFFAIRS OF ANY PARTICULAR PERSON (INCLUDING THE COUNCIL HOLDING THAT INFORMATION)

8. QUARTERLY UPDATE ON ENFORCEMENT
(Appendices XV – XVI)

****IN CONFIDENCE****

NOT FOR PUBLICATION

SCHEDULE 6 – INFORMATION RELATING TO THE FINANCIAL OR BUSINESS AFFAIRS OF ANY PARTICULAR PERSON (INCLUDING THE COUNCIL HOLDING THAT INFORMATION)

RE-ADMITTANCE OF PUBLIC/PRESS

AGREED, on the proposal of Alderman McIlveen, seconded by Councillor Walker, that the public/press be re-admitted to the meeting.

TERMINATION OF MEETING

The meeting terminated at 9.38 pm.

ITEM 4.1

Ards and North Down Borough Council

Application Ref	LA06/2020/1008/O
Proposal	Erection of 9 Dwellings with access off Messines Road (Right turning lane provided)
Location	Lands immediately north of 10-18 Cambourne View and 17 Cambourne Park, Newtownards DEA: Newtownards
Committee Interest	Called in by Ald McIlveen from delegated list w/c 18 October 2021: <i>"The only ground for refusal of this application is that it is deemed contrary to policy AMP 3 of PPS3. I would ask that the Committee make a determination on whether this application meets any of the exceptions contained in that policy and that DfI Roads are asked to be present at the Committee meeting when this matter is being determined to inform the discussion."</i>
Validated	16/11/2020
Summary	<ul style="list-style-type: none">• Proposed access is directly onto Messines Road – A20 By -Pass• Messines Road is a Type 2 Protected Route - dual carriageways, ring roads, through passes and by passes• Protected Routes are designated to protect the free flow of traffic and the Planning Authority restricts number of accesses onto such routes accordingly• Statutory consultee DFI Roads recommend REFUSAL as, if permitted, it would result in the creation of an access onto the Messines Road prejudicing free flow of traffic and conditions of general safety• Proposal is not deemed to be an exception to the Policy or be of regional significance that would justify an approval of planning permission
Recommendation	Refusal
Attachment	Item 4.1a – Case Officer Report

Development Management Case Officer Report

Application Ref: LA06/2020/1008/O	DEA: Newtownards								
Proposal: Erection of 9 Dwellings with access off Messines Road (Right turning lane provided)									
Location: Lands immediately North of 10-18 Cambourne View and 17 Cambourne Park, Newtownards									
Applicant: Ashton Fraser Investments									
Date Valid: 16/11/2020	EIA Screening Required: No								
Date last Advertised: 05/08/2021									
Date last Neighbour Notified: 21/09/2021									
<p>Consultations</p> <p>Consultation was carried out with the following statutory and non-statutory consultees and a synopsis of responses is listed</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 40%;">Consultee</th> <th>Response</th> </tr> </thead> <tbody> <tr> <td>DFI Roads</td> <td>Recommends refusal</td> </tr> <tr> <td>NI Water</td> <td>No objection</td> </tr> <tr> <td>Environmental Health</td> <td>No objection subject to conditions</td> </tr> </tbody> </table>		Consultee	Response	DFI Roads	Recommends refusal	NI Water	No objection	Environmental Health	No objection subject to conditions
Consultee	Response								
DFI Roads	Recommends refusal								
NI Water	No objection								
Environmental Health	No objection subject to conditions								
Representations: Yes									
Letters of Support 0	Letters of Objection 2	Petitions 0							
<p>Summary of Main Issues:</p> <ul style="list-style-type: none"> • Principle of development • Visual Amenity • Residential Amenity • Sewerage arrangements • Road safety and parking • Biodiversity 									
Case Officer:	Caroline Herron								
Recommendation: Refuse Planning Permission									
Agreed by Authorised Officer									
Full details of this application, including the application forms, relevant drawings, consultation responses and any representations received are available to view at the Planning Portal www.planningni.gov.uk using Public Access									

1. Description of Site and Surrounding Area

The site is an area of grassland with large areas of gorse. The site is bound on 2 sides by roads and 1 side by residential development. The road to the north, on which the access to the site is proposed, is a Protected Route. There is a large office block serving Hughes Insurance north of the site. There is post and wire fencing and trees/scrub along the northern and eastern boundaries. The southern boundary is undefined as the red line does not exceed to the fence line at Cambourne.

The area contains a mix of residential and commercial uses.

2. Site Location Plan



3. Relevant Planning History

No relevant planning history.

4. Consideration and Assessment

Policy Framework

The relevant planning policy framework for this application is as follows:

- Ards and Down Area Plan 2015
- Strategic Planning Policy Statement for Northern Ireland

- Planning Policy Statement 2: Natural Heritage
- Planning Policy Statement 3: Access, Movement & Parking
- Planning Policy Statement 3: Clarification of Policy AMP 3: Access to Protected Routes
- Planning Policy Statement 7: Quality Residential Environments
- Addendum to Planning Policy Statement 7: Safeguarding the Character of Established Residential Areas
- Planning Policy Statement 8: Open Space, Sport and Recreation
- Planning Policy Statement 12: Housing in Settlements

Relevant supplementary planning guidance for this application is as follows:

- Creating Places
- DCAN 8 – Housing in Existing Urban Areas
- DCAN 15 – Vehicular Access Standards

Principle of Development

The site is within the settlement of Newtownards in the Ards and Down Area Plan 2015. There are no further designations on the land. This is an outline application proposing the erection of 9 dwellings and 0.35ha of public open space/parkland. Housing is considered to be in conformity with the plan provided it complies with the relevant regional planning policies.

The SPPS states that sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance.

The site currently comprises grassland with scrub throughout. The area was assessed to ascertain if it constitutes an area of open space as defined in Planning Policy Statement 8 (PPS 8). The portion of land under consideration is left-over land from the erection of the Hughes Insurance office block and the construction of the Ring Road. The land was not designed to function as an area of public open space and it does not make any significant contribution in terms of visual amenity. I am content that the land does not meet the definition of open space as set out in Annex A of PPS8.

The wider area is characterised by mixed use development. The area contains a wide range of house types including terrace, 1 ½ and 2 storey dwellings. The plots tend to have small open plan garden areas to the front and private garden areas to the rear. The finishes typical to the area are render and brick.



As this is an outline planning application, an illustrative layout was submitted indicating 4 pairs of semi-detached dwellings and 1 detached dwelling. The plots are shown with small garden areas to the front, private amenity to the rear and parking generally to the side. The dwellings would back onto the dwellings in Cambourne resulting in a back-to-back relationship.

The pattern of development for this layout would be considered to be in conformity with the area.

The density of the proposed development would equate to approximately 13 dwellings per hectare (dph) taking into account the proposed public open space/parkland area adjacent to Messines Road. The wider Established Residential Area (ERA) for the purposes of this assessment is considered to include residential development within Cambourne View, Cambourne Park and Stirling Avenue. The area is characterised by medium density of detached, semi-detached and terrace housing. The average density in the area is 26dph. It is therefore not considered that the density of the proposed development is out of character with the area or significantly higher than that found in the area.

The plot size of the application site is 0.08ha which is greater than the average plot size in the area which is 0.04ha. The development site should be capable of providing dwellings designed to a size not less than those set out in Annex A of the Addendum to PPS 7.

There is no significant change in ground levels between the application site and the existing adjacent housing so one and a half or two storey dwellings would be considered acceptable in this location.

Private Amenity and Open Space

Whilst the illustrative site plan shows some of the plots on the lower end of private amenity provision (minimum of 40-70sqm as recommended in the Creating Places document) I am content that there is ample room within the wider plot to ensure that sufficient private amenity space is provided in any final layout submitted at RM stage.

The provision of public open space is not required due to the number of dwellings, however public open space/parkland is proposed adjacent to Messines Road. The site is adjacent to a prominent junction, so the provision of landscaped open space would be welcomed as a buffer between the busy junction and the proposed housing.

Residential Amenity

Separation distance to the rear of neighbouring is in excess of 20m back to back. 10m rear gardens have not been provided however the plan is for illustrative purposes only and there is scope for the provision of additional amenity areas. Ample separation distance can be provided between opposing buildings is considered acceptable to warrant an adverse impact on residential amenity.

Road Safety and Parking



The proposed site will be accessed off Messines Road (A20) which is a Type 2 Protected Route. In Policy AMP 3: Access to Protected Routes in PPS 3 this road falls under - Protected Routes

Designed to an Appropriate Standard as Dual Carriageways, Ring Roads, Through-Passes and By-Passes – All locations

Planning permission will only be granted for a development proposal involving direct access or the intensification of the use of an existing access in exceptional circumstances or where the proposal is of regional significance.

It has not been demonstrated that the provision of housing with an access off this protected route would be deemed as an exceptional circumstances nor is it of regional significance.

DfI Roads was consulted and it recommended refusal - The proposal is contrary to Planning Policy Statement 3, Access, Movement and Parking, Policy AMP 3, in that it would, if permitted, result in the creation of a new vehicular access onto a Protected Route, thereby prejudicing the free flow of traffic and conditions of general safety.

I am content that adequate parking could be provided within the curtilage of the site for each dwelling and visitors.

Biodiversity

Policy NH1 relates to European and Ramsar sites. The potential impact of this proposal on Special Areas of Conservation, Special Protection Areas and Ramsar sites has been assessed in accordance with the requirements of Regulation 43 (1) of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended). The proposal would not be likely to have a significant effect on the features, conservation objectives or status of any of these sites.

Policy NH 2 of PPS 2 states that planning permission will only be granted for a development proposal that is not likely to harm a species protected by law. To this end, the NI Biodiversity Checklist has been used to identify whether the proposal is likely to adversely affect certain aspects of biodiversity including protected species. Richard Ayre of Ayre Environmental Consulting completed the Checklist and it has concluded that no further ecological survey work is required. If planning permission was to be granted, a native species hedgerow is recommended to the rear of the visibility splays.

Other Material Planning Considerations

There are no archaeological, built heritage or landscape features to protect or integrate into the overall design and layout of the development. Due to the proposal only being for 9 residential units there is no need for local neighbourhood facilities to be provided as an integral part of the development.

The proposal will not damage the quality of the local area. The layout has been designed to deter crime as the dwellings look onto a shared roadway.

5. Consideration of Representations

2 letters of objection have been received. The concerns relate to:

- Damage to housing in Cambourne due to vibrations of piling – the construction phase is temporary and will be subject to separate approval from the Council's Building Control Department. I do not consider this concern to be determining in the assessment of the proposal.
- Air and noise pollution – The Council's Environmental Health Department was consulted on the proposal and no objections have been raised. Any air and noise pollution caused during construction will be temporary.

- Loss of green space for wildlife – The NI Biodiversity checklist has been completed by a Qualified Ecologist and the site contains ranked grassland and scrub. There is a hedge along the northern boundary which needs to be removed and if the Council were minded to approve the application, then a new native-species hedgerow would be required to the rear of the visibility splays.
- Road safety: Messines Road is extremely busy and there will be an increased risk of accidents with people turning – As discussed in the body of the report, the application site is accessing onto a Protected Route which is not acceptable.
- Potential over-looking – I have considered the separation distances and as the ground levels remain consistent between the application site and the residential development at Cambourne, I have no concerns with regards to residential amenity.

6. Recommendation

Refuse Planning Permission

7. Reasons for Refusal

1. The proposal is contrary to Planning Policy Statement 3, Access, Movement and Parking, Policy AMP 3, in that it would, if permitted, result in the creation of a new vehicular access onto a Protected Route, thereby prejudicing the free flow of traffic and conditions of general safety.

2. Signatures

Case Officer Signature:

[Redacted Signature]

Date:

[Redacted Date]

ITEM 4.2

Ards and North Down Borough Council

Application Ref	LA06/2021/0744/F
Proposal	Conversion and extension of existing single storey garage including increase in ridge height to create one and a half storey ancillary Granny Annex accommodation.
Location	5b Killinchy Road, Comber DEA: Comber
Committee Interest	Called in by Ald McIlveen from delegated list w/c 15 November 2021: <i>"I would like to call in the above application. Given this is the conversion of a garage in close proximity to neighbouring dwellings and involves a raising of the height of this building to one and half storey, I would like the Committee to consider the impact of the proposal on privacy and amenity of neighbouring dwellings under the addendum to PPS7 Residential Extensions and Alterations"</i>
Validated	11/06/2021
Summary	<ul style="list-style-type: none">• Proposal located within Comber settlement development limit where there is a presumption in favour of development provided no demonstrable harm caused• Proposal located within a residential area known as 'The Grange' in Comber• 3 objections from 2 addresses• Objections fully considered in the case officer report• Proposal is conditioned to be ancillary to main dwelling house, have obscure glazing and cannot be separated, sold on or leased from the main dwelling
Recommendation	Approval
Attachment	Item 4.2a – Case Officer Report

Development Management Case Officer Report					
Application Ref: LA06/2021/0744/F		DEA: Comber			
Proposal: Conversion and extension of existing single storey garage including increase in ridge height to create one and a half storey ancillary Granny Annex accommodation.					
Location: 5b Killinchy Road, Comber, BT23 5LU.					
Applicant: Austin Thompson		Agent: Peter Best			
Date Valid: 11/06/2021		Env Statement Requested: No			
Date last Advertised: 28/10/2021					
Date last Neighbour Notified: 18/10/2021					
Consultations: No					
Representations: Yes					
Letters of Support	0	Letters of Objection	3 from 2 separate addresses	Petitions	0
<p>Summary of main issues considered the assessment of this application:</p> <ul style="list-style-type: none"> • Principle of development • Design and appearance of proposal • Impact of proposal on privacy or amenity of neighbouring dwellings • Impact of proposal on the character and appearance of the area • Impact on landscape features and environmental quality including biodiversity 					
Case Officer:	Emma Farnan				
Recommendation: Grant Planning Permission					
Agreed by Authorised Officer					
Full details of this application, including the application forms, relevant drawings, consultation responses and any representations received are available to view at the Planning Portal https://epicpublic.planningni.gov.uk/publicaccess/					

1. Description of Site and Surrounding Area

The application site is located at 5b Killinchy Road, Comber, and contains a two-storey dwelling and single-storey detached garage. The dwelling assumes an inverted L-shape footprint with a single storey sunroom to the rear and two bay windows on the ground floor of the front elevation. The dwelling is finished in smooth render painted cream, white window frames, black rainwater goods and black roof tiles. The external finished of the garage match the dwelling.

The garage is located to the rear of the dwelling in the eastern corner of the site. A tarmac driveway runs past the northern side of the dwelling to connect with the garage. A parking/turning area lies to the front of the dwelling along with a stoned amenity space. A lawn garden and enclosed patio area are located to the rear/southern side of the dwelling.

The eastern boundary contains the sites access and is defined by wooden fencing and double metal gates. The southern, eastern and northern boundaries are defined by 1.8m high closeboard fencing. The surrounding area is residential with the road known as 'The Grange' running parallel to the site's southern boundary (Figure 1). Surrounding dwellings are detached and one or two-storey in scale. Topography gentle inclines east to west.

2. Site Location Plan

Figure1: Site Location



Figure 2: Site Location Photograph (not showing neighbouring dwelling - 1A The Grange)



3. Relevant Planning History

There is no relevant planning history associated with the site.

4. Planning Policy Framework

The relevant planning policy framework for this application is as follows:

- Ards & Down Area Plan 2015
- Strategic Planning Policy Statement for Northern Ireland
- Planning Policy Statement 2 Natural Heritage
- Addendum to Planning Policy Statement 7 Residential Extensions and Alterations

5. Supplementary Planning Guidance

Relevant supplementary planning guidance for this application is as follows:

- Creating Places

6. Consultations

No consultations were required.

7. Consideration and Assessment

Compliance with the Local Development Plan

Until the Council adopts its new Local Development Plan, planning applications will continue to be assessed against the provisions of the Department of the Environment's development plans and Planning Policy Statements (PPSs) which contains the main operational planning policies for the consideration of development proposals.

Section 45 (1) of the Planning Act (Northern Ireland) 2011 requires regard to be had to the Development Plan, so far as material to the application and to any other material considerations. Section 6 (4) of the Planning Act 2011 states that determination under this Act must be made in accordance with the plan, unless material considerations dictate otherwise.

The Ards and Down Area Plan 2015 sets out the designations, policies, proposals and zonings specific to the Ards and Down area. The purpose of the Plan is to inform the general public, statutory authorities, developers and other interested bodies of the policy framework and land use proposals that will be used to guide development decisions over the Plan period.

The Ards and Down Area Plan 2015 designates the site as within Comber Settlement Limit. No environmental, architectural or archaeological designations relate to the site. The proposed development, which consists of a *'conversion and extension of existing single storey garage including increase in ridge height to create one and a half storey*

ancillary Granny Annex accommodation' would not adversely impact any designated areas within the plan and is therefore considered to be in general conformity with the plan subject to the relevant policy considerations below.

Strategic Planning Policy Statement for Northern Ireland (SPPS)

Under the SPPS, the guiding principle for planning authorities in determining planning applications is that sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance. Any conflict between the SPPS and any policy retained under the transitional arrangements must be resolved in favour of the provisions of the SPPS.

Within this context Planning Policy Statement 2 Natural Heritage and the Addendum to Planning Policy Statement 7 Residential Extensions and Alterations are retained and are of relevance to the assessment.

Planning Policy Statement 2 Natural Heritage

PPS 2 sets out the planning policies for the conservation, protection and enhancement of our natural heritage. In safeguarding Biodiversity and protected Habitats, the Council recognises its role in enhancing and conserving natural heritage and will ensure that appropriate weight is attached to designated sites of international, national and local importance; priority and protected species and to biodiversity and geological interests with the wider environment.

In relation to designated sites, Part 1 of NIEA's Biodiversity Checklist was employed as a guide to identify any potential adverse impacts on designated sites. No such scenario was identified. The potential impact of this proposal on Special Areas of Conservation, Special Protection Areas and Ramsar sites has therefore been assessed in accordance with the requirements of Regulation 43 (1) of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended).

In terms of protected and priority species, no scenario was identified that would reasonably require additional survey information. It is therefore considered that the proposal is low risk to species protected by national and international legislation.

Addendum to Planning Policy Statement 7 Residential Extensions and Alterations

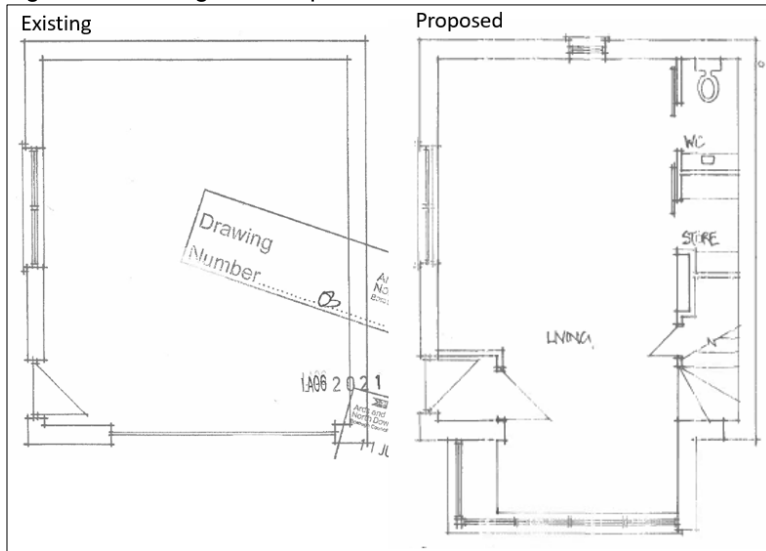
The proposal involves conversion and extension of the existing single storey garage (including increase in ridge height) to create one and a half storey ancillary Granny Annex accommodation.

Policy EXT1 of Addendum to PPS7 states that planning permission will be granted for a proposal to extend or alter a residential property where criteria a - d are met.

- a) the scale, massing, design and external materials of the proposal are sympathetic with the built form and appearance of the existing property and will not detract from the appearance and character of the surrounding area;**

In terms of massing, the proposal would see the existing garage converted into ancillary accommodation through the construction of a first floor and ground floor return. The proposed ground floor return would be sited on the eastern elevation which faces the application sites driveway, providing an additional 6.3sqm at ground floor level only (Figure 3). The building would largely remain rectangular in form. I am content that the massing is sympathetic and respectful of the existing building but also the existing dwelling which also assumes rectangular form.

Figure 3: Existing and Proposed Ground Floor Plan

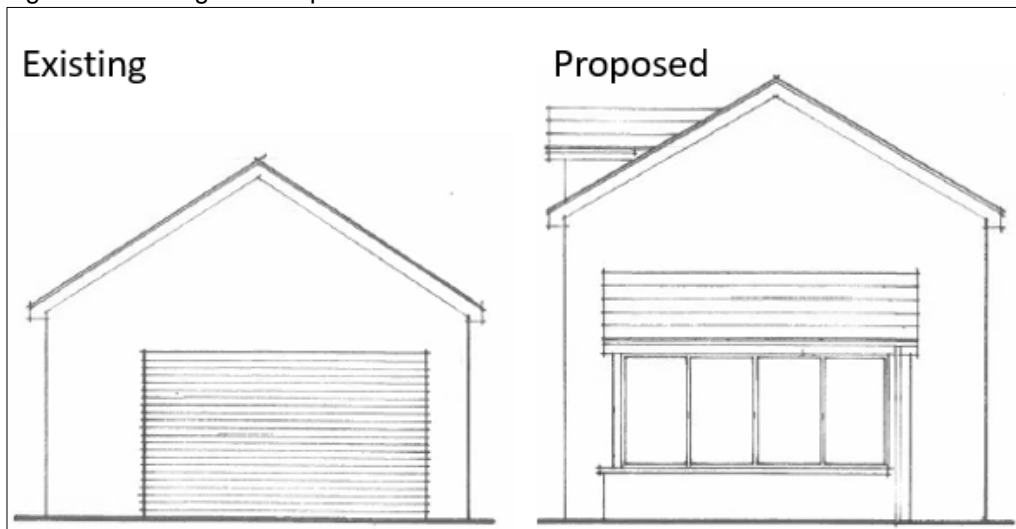


In terms of scale, the proposal would see the existing ridge height of 4.7m increased to 6.4m to allow for the development of a habitable first floor (Figure 4). The increased ridge height is considered an acceptable scale as it would see the ancillary building have a lower ridge height than the existing dwelling making it sympathetic in this regard. The width and length of the proposed ancillary building would largely remain the same as existing except for the proposed single storey return on the ground floor (Figure 5) which is considered subordinate in scale. The overall floorspace would increase from 37sqm to 80sqm which is considered a modest degree of accommodation space. It is not considered that the proposed scale would detract from the appearance and character of the surrounding area.

Figure 4: Existing and Proposed Southern (side) Elevation



Figure 5: Existing and Proposed East Elevation



With regard to the proposed design, the proposal building would employ a similar architectural style to match the existing dwelling including windows with a vertical emphasis, a dual pitched roof and matching external finishes. It is considered that once constructed the proposed ancillary accommodation would appear architecturally linked with the existing dwelling and therefore compatible with existing development on site. The sympathetic design would therefore allow the proposal to integrate with its wider environment which would maintain the appearance and character of the area.

On the whole I am of the view that the scale, massing, design and external materials proposed are sympathetic with the built form and appearance of the existing property and do not consider that the proposal would not detract from the appearance and character of the surrounding area.

b) the proposal does not unduly affect the privacy or amenity of neighbouring residents;

The proposal would be sited in the western corner of the site, adjacent to the common boundaries shared with 1A The Grange and 5 Killinchy Road.

No windows have been proposed on the northern elevation adjacent to No. 5 Killinchy Road so overlooking would not occur at this location.

Approximately 4m of separation space exists between the gable wall of the proposed ancillary accommodation and the nearest windows (serving a lounge) of No. 1A The Grange (Figure 6). Only a ground floor window (serving the proposed living room) has been proposed on the western gable elevation, no first-floor windows have been proposed on the gable elevation. The proposed ground floor window would sit 2.2m above ground level. A wooden fence approx. 1.8m high defines the common boundary but land at 1A The Grange sits on slightly elevated land. Views from the proposed ground floor window into No. 1A The Grange would be achievable and overlooking to an unacceptable degree would occur. A condition should be stipulated to obscure glaze the proposed ground floor gable window to protect the privacy of residents.

Figure 6: Space between application site and 1A The Grange



Two dormer windows have been proposed on the southern elevation (Figure 4) which would face into the application sites rear garden (Figure 7). Given the height of the proposed dormer windows, 3.5m above ground floor level, views into the front of the neighbouring dwelling at 1A The Garage would be achieved. While views would not directly overlook the neighbouring dwelling (1A The Grange), views could indirectly overlook a small patio area adjacent to the lounge of this neighbouring dwelling (Figure 8). Planning policy stipulates that overlooking of gardens may be unacceptable where it would result in intrusive, direct and uninterrupted views from a main room to the most private area of a garden, typically the first 3-4m closest to the residential property. As the proposed dormer windows will only have oblique views towards the front area of the neighbours plot and would serve two proposed bedrooms that would not be likely occupied during the day, I am of the opinion that an unacceptable degree of overlooking would not occur.

Figure 7: View of application garden and southern elevation of existing garage



Figure 8: Patio area of No 1A The Grange with applicant building adjacent



The remaining proposed windows do not pose overlooking concerns as they would be at ground floor level with sufficient boundaries treatments obscuring views into neighbouring dwellings.

With regard to dominance, I am of the view that the proposed development would not adversely impinge on the immediate aspect or outlook from neighbouring dwellings to an unacceptable level. While No 1A The Grange lies in close proximity to the proposal building with windows on its gable elevation, two further double glazed sliding doors are located on its southern and northern elevations. These glazed, sliding doors provide views into the neighbours' front and rear amenity space which would mitigate against a sense of feeling 'hemmed-in' by the proposal. The remaining surrounding neighbouring dwellings are sited further away from the proposed ancillary accommodation and would not be affected by dominance.

With regard to loss of light/overshadowing, it is not considered that the proposal would lead to unacceptable loss of light. The nearest neighbouring dwelling, No. 1A The Grange, may receive less light with the development of the proposal however, two sets glazed double doors serve the same room and this provides an alternative and unaffected sources of light. The remaining neighbouring dwellings are located a sufficient distance away to prevent against loss of light.

- c) the proposal will not cause the unacceptable loss of, or damage to, trees or other landscape features which contribute significantly to local environmental quality;**

The proposal involves converting the existing garage with only a minor increase to the existing footprint which would see a small portion of the driveway lost to the development. The proposal will not cause the unacceptable loss of, or damage to, trees or other landscape features which contribute significantly to local environmental quality as no such features exist on site.

- d) sufficient space remains within the curtilage of the property for recreational and domestic purposes including the parking and manoeuvring of vehicles.**

Sufficient amenity space would be retained within the curtilage of the dwelling for recreational and domestic purposes (including the parking and manoeuvring of vehicles) in the form of a large garden and driveway.

Consideration of Ancillary Accommodation

Planning policy makes provision for ancillary accommodation to provide additional living space. Determining whether a separate building can be considered ancillary accommodation is a finely balanced decision based on site specific characteristics and material considerations. Ancillary accommodation must be subordinate to the main dwelling and its function supplementary to the use of the existing residence. Such ancillary accommodation is typically attached to the existing dwelling however, provision is also made for the conversion of an outbuilding providing the proposed development is of a modest scale.

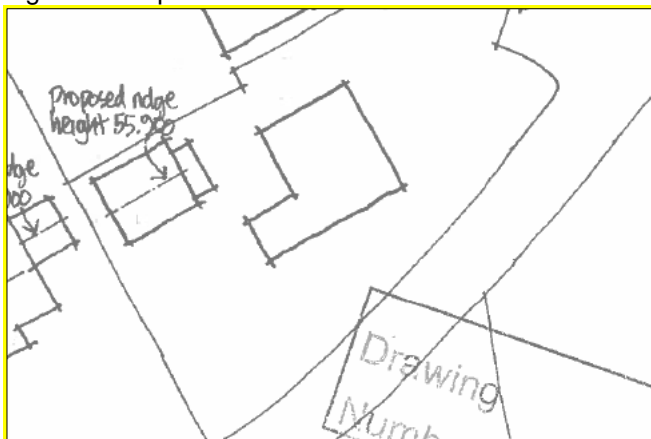
The current proposal presents similar characteristics to that of the building approved as ancillary accommodation in appeal decision 2015/E0053. In appeal decision 2015/E0053 the Planning Appeals Commission (PAC) gave weight to the following factors in determining whether the building in question could be considered ancillary accommodation:

- There was no physical boundary between it [the proposed ancillary building] and the main dwelling and as such, there is freedom of movement between both.
- The garden area was shared between the two buildings.
- The parking area was shared between the two buildings.

With these considerations in mind, the PAC determined '*there has been no sub-division of the planning unit to create an independent dwelling*' meaning that '*the structure functions as ancillary accommodation*'.

Whilst the proposal building would not be physically connected to the main dwelling, its siting to the rear of the dwelling with the proposed single storey return projecting towards the dwelling's rear sunroom, with little space between (Figure 5 & 7), makes it unlikely that this building could function as an independent dwelling. Similar to the ancillary building referenced in appeal decision 2015/E0053, there is no physical boundary between the application building and the dwelling, meaning there will be freedom of movement between both buildings.

Figure 7: Proposed Block Plan



Similar to the ancillary building referenced in appeal decision 2015/E0053, the garden and parking arrangement would be shared between the two application buildings. This supports the argument that there will not be a sub-division of the planning unit to create an independent dwelling.

As aforementioned, the proposed ancillary building is considered an acceptable scale, providing a modest level of floorspace (80sqm). The ground floor would see the provision of a living room, w/c and store and the first floor would provide two bedrooms and a shower room. A kitchen was initially proposed but removed from the proposal to demonstrate dependence on the host dwelling for use of the kitchen. It is considered that this dependency on the main dwelling for use of the kitchen assists with making the proposed accommodation ancillary in nature.

Appeal decision 2015/E0053 granted permission for ancillary accommodation which included three rooms on the bottom floor (kitchen, hallway and living room) and three rooms on the first floor (bathroom and two bedrooms). The current proposal would provide less accommodation (no kitchen) than the ancillary accommodation approved under appeal decision 2015/E0053. When this is considered alongside the fact that the proposed scale/massing and design have been found to be acceptable, I am content that the proposed level of accommodation meets the policy requirement.

Overall, I am content that the proposal represents ancillary accommodation in line with the policy interpretation. A condition specifying that the proposal will only be used for ancillary residential purposes, not as a separate unit of accommodation, should be stipulated.

8. Consideration of Representations

3 letters of representation were received from 2 separate addresses. The concerns raised are addressed below:

Proposal would cause overshadowing

The proposal has been assessed under the criteria specified in section b) of PPS 7 with it found that the proposal would not affect the level of light received by No. 1A to an unacceptable degree. This is as No. 1A The Grange benefits from two sets of glazed double doors located on its rear and front elevations which serve the same room. Light received by these front and rear double, glazed doors would not be affected by the proposal thus providing an unaffected secondary and third source of light to the room.

Approval of the proposal would create a precedent for others in the area would increase residential density

Approval of ancillary accommodation on one site does not set a precedent for approval of ancillary accommodation on another. Planning proposals are assessed in line with regional planning policy and material planning considerations including site specific characteristics. Importantly, the proposal is not for the development of a separate dwelling but rather, for ancillary accommodation. The proposal has been assessed under the ancillary development criteria specified in the Addendum to PPS 7 with consideration given to the Planning Appeals Commission's interpretation of the policy. I am satisfied that the proposal meets the ancillary policy criteria and have recommended a condition stipulating that the respective building shall not be used at

any time other than for purposes ancillary to the residential use of the dwelling known as 5b Killinchy Road.

9. Conclusion

The proposal is in accordance with the SPPS, Local Development Plan, relevant planning policies and other material considerations. In light of this, **APPROVAL** is recommended subject to conditions.

10. Recommendation

Grant Planning Permission

11. Conditions & Informatives

Conditions

1. The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.

Reason: As required by Section 61 of the Planning Act (Northern Ireland) 2011.

2. The ancillary building, illustrated on Drawing No. LA06/2021/0744/02 date stamped 11 June 2021, Drawing No. LA06/2021/0744/05A date stamped 11 August and Drawing No. LA06/2021/0744/06A, date stamped 18 October, hereby permitted shall not be used at any time other than for purposes ancillary to the residential use of the dwelling known as 5b Killinchy Road, Comber.

Reason: To prevent the creation of additional dwelling units.

3. The window on the southwest elevation serving the living room, shaded green on Drawing No. LA06/2021/0744/06A, bearing the date stamp 18 October 2021, shall be glazed with obscure glass prior to occupation of the development hereby approved and this obscure glazing shall be permanently retained thereafter.

Reason: In the interest of privacy.

4. The development hereby approved shall not be separated, sold off or leased from the property known as 5b Killinchy Road, Comber.

Reason: To ensure the building remains linked to the residential use of the main dwelling.

Informative

This Notice relates solely to a planning decision and does not purport to convey any other approval or consent which may be required under the Building Regulations or any other statutory purpose.

12. Signatures

Case Officer Signature:



Date:

Empty space for the date.

ITEM 4.3

Ards and North Down Borough Council

Application Ref	LA06/2020/0253/F
Proposal	Erection of 35 no. apartments with associated car-parking and landscaping
Location	Lands between 58 Kinnegar Drive and Pavillions Office Park, Kinnegar Drive, Holywood DEA: Holywood & Clandeboye
Committee Interest	A Local development application attracting six or more separate individual objections which are contrary to the officer's recommendation
Validated	24/04/2020
Summary	<ul style="list-style-type: none">• Proposal located within settlement limit of Holywood - presumption in favour of development unless demonstrable harm• Site has extant permission for 33no. units with associated car parking and landscaping (LA06/2015/0720/F) approved at Planning Committee meeting 05 December 2017 - Permission Granted 13.12.2017• Current proposal represents an increase of 2 units• Planning history is a material consideration - fall back to an extant approval exists• 34 objections from 23 addresses• All material objections fully considered in case officer report
Recommendation	Approval
Attachment	Item 4.3a – Case Officer Report

Development Management Case Officer Report					
Application Ref: LA06/2020/0253/F		DEA: Hollywood & Clandeboye			
Proposal: Erection of 35 no. apartments with associated car-parking and landscaping					
Location: Lands between 58 Kinnegar Drive and Pavillions Office Park Kinnegar Drive, Holywood					
Applicant: Beshouse Residential Properties Ltd		Agent: Footprint Architectural Design			
Date Valid: 24/04/2020		Env Statement Requested: No			
Date last Advertised: 13/05/2021					
Date last Neighbour Notified: 11/05/2021					
Consultations: Yes					
Representations: Yes					
Letters of Support	0	Letters of Objection	34 objections from 23 separate addresses	Petitions	0
<p>Summary of Main Issues:</p> <ul style="list-style-type: none"> • Compliance with local development plan • Impact on visual and residential amenity • Access and parking • Impact on flooding • Impact on biodiversity 					
Case Officer:	Gillian Corbett				
Recommendation: Grant Planning Permission					
Agreed by Authorised Officer					
Full details of this application, including the application forms, relevant drawings, consultation responses and any representations received are available to view at the Planning Portal https://epicpublic.planningni.gov.uk/publicaccess/					

1. Description of Site and Surrounding Area

The site is located at lands between 58 Kinnegar Drive and Pavillions Office Park, Kinnegar Drive, Holywood. The site is currently vacant and overgrown with vegetation. The site is relatively flat and is open onto Kinnegar Drive. The rear boundary of the site is defined by metal fencing with trees beyond. There is a group of trees at the north-east corner of the site adjacent to Pavillions Office Park.

No. 58 Kinnegar Drive, adjacent and south-west of the site, is one of a pair of semi-detached dwellings. These dwellings are two storey and finished with rough cast render with hipped tiled roofs. The boundary with the site is formed by timber fencing and hedging.

Pavillions Office Park is located adjacent to and north-east of the site. The office park consists of two storey blocks finished in red brick with hipped tiled roofs. Parking areas are dispersed throughout the office park. Metal fencing and trees form the boundary with the site.

Opposite the site, the dwellings between Nos. 49-39 Kinnegar Drive are terraced, two storey dwellings with painted render on ground floor, red brick to the first floor and tiled roofs. No. 37 Kinnegar Drive is a detached dwelling finished in painted render with a tiled roof. Nos. 35-25 Kinnegar Drive are terraced dwellings finished in rough cast render with tiled roofs. Nos. 35-27 are two storeys with No. 25 Kinnegar Drive dropping to single storey at the end of the terrace.

The site is within the settlement limits of Holywood as designated in the North Down and Ards Area Plan (NDAAP) 1984-1995 and draft Belfast Metropolitan Area Plan (BMAP) 2015. The site is also shown as whiteland within NDAAP and is zoned for housing within draft BMAP (zoning HD 03/02 – land adjacent to 58 Kinnegar Drive). The site is also located within an Area of Townscape (ATC) at Kinnegar within draft BMAP. The area is predominantly residential with a variety of dwellings and apartments ranging from single storey to three storeys in height and a range of designs and finishes.

2. Site Location Plan



3. Relevant Planning History

LA06/2015/0720/F – Lands between 58 Kinnegar Drive and Pavillions Office Park, Kinnegar Drive, Hollywood – 33no. units with associated car parking and landscaping – Permission Granted 13.12.2017

W/2007/0377/F - Lands between no.58 Kinnegar Drive and Pavillions Office Park, Kinnegar, Hollywood - Erection of residential development consisting of 53 units, with associated car parking and landscaping – Permission Granted 21.03.2008

W/1999/0478/F - Lands between No 58 Kinnegar Drive and Pavillions Office Park Kinnegar, Hollywood - Apartment development (four storey, 34 No units) with associated car parking, access and landscaping- Permission Granted 01.11.2000

The planning history of the site is a relevant material planning consideration as it demonstrates that apartment development has been considered as suitable for this site. The recent permission for 33 apartments on this site (LA06/2015/0720/F) is still extant.

4. Planning Policy Framework

The relevant planning policy framework for this application is as follows:

- North Down and Ards Area Plan 1984 - 1995
- Draft Belfast Metropolitan Area Plan 2015
- Strategic Planning Policy Statement for Northern Ireland
- Planning Policy Statement 2: Natural Heritage
- Planning Policy Statement 3: Access, Movement & Parking
- Addendum to Planning Policy Statement 6: Area of Townscape Character
- Planning Policy Statement 7: Quality Residential Environments
- Addendum to Planning Policy Statement 7: Safeguarding the Character of Established Residential Areas
- Planning Policy Statement 8: Open Space, Sport and Outdoor Recreation
- Planning Policy Statement 12: Housing in Settlements
- Planning Policy Statement 15: Revised Planning and Flood Risk

5. Supplementary Planning Guidance

Relevant supplementary planning guidance for this application is as follows:

Living Places

Creating Places

Parking Standards

DCAN 15 – Vehicular Access Standards

DCAN 8 – Housing in Existing Urban Areas

6. Consultations

Consultation was carried with the following statutory and non-statutory consultees and a synopsis of responses is listed

Consultee	Response
Environmental Health	No objections subject to conditions relating to contaminated land

Dfl Roads	No objections subject to conditions
NIEA Natural Environment Division	No objections subject to conditions to protect the biodiversity of the site
NIEA Marine and Fisheries Division	No objections as the site is not in close proximity to the marine environment
NIEA Water Management Unit	No objections provided NI Water is content
NIEA Regulation Unit	No objections subject to conditions relating to contaminated land
Dfl Rivers	No objections
NI Water	Content there is capacity at WWTW and foul sewer connection

7. Consideration and Assessment

Local Development Plan

Section 45 (1) of the Planning Act (Northern Ireland) 2011 requires regard to be had to the Development Plan, so far as material to the application and to any other material considerations. Section 6(4) states that where regard is to be had to the Development Plan, the determination must be made in accordance with the Plan unless material considerations indicate otherwise.

North Down and Ards Area Plan 1984-1995 & Draft Belfast Metropolitan Area Plan 2015

The adopted Belfast Metropolitan Area Plan 2015 (BMAP) has been quashed as a result of a judgment in the Court of Appeal delivered on 18th May 2017. As a consequence of this, the North Down and Ards Area Plan 1984-1995 (NDAAP) is now the statutory development plan for the area.

A further consequence of the judgment is that draft BMAP published in 2004, is a material consideration in the determination of this application. Pursuant to the Ministerial Statement of June 2012, which accompanied the release of the Planning Appeals Commission's Report on the BMAP Public Inquiry, a decision on a development proposal can be based on draft plan provisions that will not be changed as a result of the Commission's recommendations.

The application site is located within the settlement of Holywood as defined within the extant Area Plan (NDAAP) and draft BMAP. The site is also within Kinnegar Area of Townscape Character (ATC) and the site is zoned for housing in draft BMAP. As the site was a committed housing zoning, no Key Site Requirements were attached.

A number of Key Design Criteria were included for ATCs within draft BMAP, however the Planning Appeals Commission's report on the Public Local Inquiry considered objections to the ATC and the general policy for the control of development in ATCs. Within this report the Commission recommended that the policy be deleted, a detailed character analysis be undertaken, and a design guide produced for each individual ATC. As a result, no Key Design Criteria were included within the adopted BMAP.

The Commission also recommended no change to the plan with regards to ATC designation within this report. Therefore, it is likely, that if and when BMAP is lawfully adopted, a Kinnegar ATC designation will be included.

It would be incorrect to make any assumptions as to whether these recommendations will be reflected in any lawfully adopted BMAP or as to whether the text relating to the key features of the Kinnegar ATC will be repeated.

To date it is unclear how the area will be characterised in any lawfully adopted BMAP. However, the impact of the proposal on the proposed ATC remains a material consideration and can be objectively assessed.

Strategic Planning Policy Statement for NI (SPPS)

The SPPS sets out the guiding principle relating to the grant/refusal of development contained within paragraph 3.8. This states that sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance.

The SPPS retains the policy provisions of PPS 2, PPS 3, PPS 6, PPS 7, addendum to PPS 7, PPS 8, PPS 12 and PPS 15 until they are replaced by a Local Development Plan for Ards and North Down Borough.

The SPPS also refers to the continued materiality of the guidance document Creating Places.

Planning Policy Statement 2 - Natural Heritage

This policy sets out the policies for conservation, protection and enhancement of our natural heritage. Within this, natural heritage is defined as the diversity of our habitats, species, landscapes and earth science features.

Policy NH 1 relates to European and Ramsar Sites. The potential impact of this proposal on Special Areas of Conservation, Special Protection Areas and Ramsar sites has been assessed in accordance with the requirements of Regulation 43 (1) of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended). The proposal would not be likely to have a significant effect on the features, conservation objectives or status of any of these sites.

Policy NH 2 and NH5 relate to European protected species and priority species, habitats or features of natural importance. These policies state that planning permission will only be granted for a development proposal that is not likely to harm a European protected species or that is not likely to result in the unacceptable adverse impact on, or damage to known priority species or habitats.

As a result of the vegetation and overgrown nature on the site, a Biodiversity Checklist & Preliminary Ecological Assessment was submitted and NIEA Natural Environment Division (NED) consulted. It commented that 'NED has considered the impacts of the proposal on designated sites and other natural heritage interests and, on the basis of the information provided, has no concerns subject to conditions.'

NED also commented that it notes retention and details of the protection measures for two existing trees on the site and that bird and bat boxes will be installed on new trees and/or on the proposed buildings and that in combination with the planting

proposed, NED is content that this constitutes adequate mitigation for the habitat lost to facilitate the development.

NED also highlighted the intention to use cherry laurel within the landscaping and commented that natural heritage interests would be much better served by changing these to native species. As a result, the applicant provided details on why this species has been included within the landscaping and the Council notes that NED has not recommended that this is removed and states that 'on the basis of the information provided, has no concerns subject to conditions'.

It is therefore considered that the proposal will not harm protected or priority species, habitats or features of importance.

Contaminated Land

Historically a former gas works was located to the north of the site and the Belfast to Bangor Railway line is located along the eastern boundary of the site. It is also noted that there is a layer of made ground (1-2m thick) across the site with natural alluvium (sleech) below which could result in contamination of the site.

As a result, a Contamination Assessment and remediation strategy were submitted and the Council's Environmental Health Department and NIEA Regulation Unit Land and Groundwater Team were consulted.

The Council's Environmental Health Department commented that 'on the basis of the information submitted and, in the event, that planning permission is to be granted we would request that conditions are attached.' This will ensure the protection of human health.

Regulation Unit Land and Groundwater Team have no objections to the development provided conditions are placed on any Planning Decision Notice to ensure protection of environmental receptors and to ensure the site is suitable for use.

Planning Policy Statement 3 - Access, Movement and Parking

This policy sets out planning policies for vehicular and pedestrian access, transport assessment, the protection of transport routes and parking.

The proposal will create a new access onto Kinnegar Drive for vehicles to access the parking spaces behind the building. This access was approved under extant permission LA06/2015/0720/F.

A Transport Assessment Form was submitted which demonstrates that 'the development is considered to have a minimal transport impact relative to the existing traffic flows in the area. The threshold where a detailed Transport Assessment may be necessary is 100 residential units, or 100 trips in the peak hour. This application is well below these thresholds therefore no detailed Transport Assessment should be required.' The Transport Assessment sets out that 'the development will generate 9 trips in the AM peak and 10 in the PM peak.'

DfI Roads was consulted and offers no objections to the proposal. It also notes that the development will remain private and will not be adopted.

53 car parking spaces will be provided for 35 apartments. Parking standards sets out that 1.5 spaces are required per apartment which requires 52.5 spaces. It is therefore considered that suitable parking is provided. An area for bicycle parking is also provided.

It is therefore considered that the proposal complies with the principles of PPS 3 and will not prejudice road safety or significantly inconvenience the flow of traffic.

Addendum to Planning Policy Statement 6 – Areas of Townscape Character

The addendum to PPS 6 provides additional planning policies relating specifically to Areas of Townscape Character, for demolition of buildings, new development and the control of advertisements.

Policy ATC 2 of the addendum to PPS 6 relates to new development in an ATC and states that development proposals will only be permitted in an ATC where the development maintains or enhances its overall character and respects the built form of the area and trees, archaeological or other landscape features which contribute to the distinctive character of the area are protected and integrated into the design and layout of the development.

As discussed above, the site is within Kinnegar ATC as designated in draft BMAP. As the Planning Appeals Commission considered objections to this designation within its report on the BMAP public inquiry and recommended no change to the Kinnegar ATC designation, it is likely that if and when BMAP is lawfully adopted, this designation will be included, and therefore the Kinnegar ATC is a material consideration in the determination of this application.

It is considered that the proposed development will maintain and respect the overall character and appearance of the surrounding area. The buildings will be three storey and finished in different colours of clay facing brick with natural slate roofs or a similar roof system which will respect the character and appearance of the ATC as there are many examples of these finishes and differing heights and colours of buildings within the ATC. The buildings have been designed with the roof line of the apartment buildings broken up to reflect the Victorian terraces in the area which is a key feature of the ATC. There are examples of three storey buildings along Kinnegar Road and Kinnegar Avenue which are within the ATC.

It is also considered that the proposal will improve the appearance of the street scene by developing a vacant and overgrown site. Some trees within the site will also be retained to maintain the appearance of the area.

Planning Policy Statement 7 - Quality Residential Environments

This sets out planning policies for achieving quality in new residential development and advises on the treatment of this issue in development plans.

Policy QD1 seeks to achieve residential developments which promote quality and sustainability in their design and layout, and which respect the character, appearance and residential amenity of the local area. This policy sets out criteria that all proposals for residential development will be expected to conform to.

Policy QD1 also sets out that in Conservation Areas and Areas of Townscape Character housing proposals will be required to maintain or enhance their distinctive character and appearance. In primarily residential parts of these designated areas proposals involving intensification of site usage or site coverage will only be permitted in exceptional circumstances.

Paragraph 4.10 of the Justification and Amplification section of the policy states that 'in assessing housing proposals in Conservation Areas and Areas of Townscape Character, the protection of the existing character and distinctive qualities of the area will be paramount... proposals in the primarily residential parts of these designated areas which involve intensification of site usage or site coverage will not normally be acceptable... Proposals involving intensification in these areas will only be permitted in the following exceptional circumstances:

- (a) an extension in keeping with the scale and character of the dwelling and its surroundings; or
- (b) the sympathetic conversion of a large dwelling in appropriate locations to smaller units; or
- (c) the development of a significant gap site within an otherwise substantial and continuously built up frontage provided this would be of a density and character prevailing in the area.

It is acknowledged that the site will involve intensification in use as it is currently vacant, however this was considered under the previous approval for apartments on the site (LA06/2015/0720/F) as acceptable as the site clearly represents a significant gap within an otherwise substantial and continuously built up frontage. There has been no change in policy or the situation on the ground since the previous approval was granted and the site is still considered as a significant gap site within an otherwise substantial and continuously built up frontage. The frontage is formed by the existing dwellings at Nos. 58-68 Kinnegar Drive and the office buildings at Pavillions Office Park.

As discussed above the proposal will maintain the character and appearance of the surrounding ATC as the design and massing will respect the built form of the area.

The proposal is for 35 apartments within two building blocks. The blocks are three storeys except adjacent to the existing dwelling at Nos. 58 Kinnegar Drive where the height reduces to two storeys. As discussed previously there are examples of two and half and three storey buildings in the surrounding area.

The proposed buildings will front onto the public road with the parking located to the rear to screen it from public views and respect the existing street scene. The design and layout of the proposal gives the appearance of terraced dwellings which is characteristic of the area. The proposed buildings will also respect the existing building line along Kinnegar Drive and be built in line with the dwellings at Nos. 58-68 and Block 5 within Pavillions Office Park.

There is extant permission on the site for 33 apartments in two similar blocks (LA06/2015/0720/F). It has been shown on the plans how the design of this proposal will break up the massing of the apartment blocks and reduce the visual impact.



Front elevation of approved and extant permission on site LA06/2015/0720/F



Front elevation of Blocks A-D - Blue line shows outline of approved and extant permission on the site in comparison to proposed front elevation.



Comparison of Block E of proposal and extant permission for Block E - Blue line shows outline of extant permission on the site in comparison to proposed front elevation of Block E.

There are no features of archaeological heritage or built heritage to protect and/ or integrate into the overall design and layout of the development. Where possible existing trees will be retained within the site to aid integration and protect biodiversity.

Amenity space will be provided for the apartments in communal grassed areas at the rear of the building. These areas combined are greater than the 350 sq m of amenity space recommended for apartments in Creating Places (minimum standard of 10sqm per apartment unit)). Apartments on the second floor will also be provided with small balconies to provide additional amenity space. The site is also considered to be easily accessible to public open spaces and the coastal path is a short walk from the site.

Sufficient bin storage is provided at the rear of the site throughout the parking area. A bin store is provided at the front of the site adjacent to the road for collection day. This will be well screened by existing vegetation at the adjoining boundary with Pavillions Office Park.

New planting will be added along the front boundary, the side boundaries adjacent to No. 58 Kinnegar Drive and Pavillions Office Park and throughout the parking area to soften the visual impact of the development.

Due to the size of the development local neighbourhood facilities are not required to be provided by the developer as an integral part of the development. The site is within the settlement limit of Hollywood and within walking distance to many facilities.

The proposal supports walking and cycling, will meet the needs of people whose mobility is impaired and will provide adequate and convenient access to public transport. The site is connected by footpaths to Hollywood town centre and public transport links of buses and Hollywood train station. Cycle parking is provided within the site and there will be level access to the buildings to meet the needs of people whose mobility is impaired.

Adequate provision is made for parking. 53 spaces will be provided for 35 apartments which meets the Parking Standards set out for apartment developments.

The proposal will be finished in clay facing brick with natural slate roofs or a similar flat roof system. The buildings will be a maximum of three storeys with pitched roofs for the apartments and flat roofs on the sections connecting the apartments. The height and design will be similar in character to existing development within the Kinnegar area. The plans indicate that the proposal will use different colours of brick. The agent has submitted a design brief and photographs of existing buildings along the Esplanade in Hollywood to demonstrate where the design concept was derived from and demonstrate how the proposal will reflect the existing character of the area. Many of the buildings along the Esplanade are brightly coloured with variation in their sizes and heights.

The proposal will have no unacceptable adverse impacts on existing properties in terms of overlooking, loss of light, overshadowing, noise or other disturbance. The proposal will be built gable onto the existing adjacent office park. Block no. 5 is the closest office building to the proposed building. There will be 19.5m separation distance between the two buildings which is considered as sufficient to prevent any unacceptable adverse impacts on the existing or proposed properties and any windows on the gable elevation will be for bathrooms and obscure glazing.

The proposed development will front onto the public road. There is approximately 20m or greater separation distance between the proposed three-storey building and the existing dwellings facing the site at 29-49 Kinnegar Drive with the road in between to prevent any adverse impacts of overlooking or overshadowing on these properties. Some balconies are proposed on the second floor of the proposed development, however it is considered that as the properties facing the site are two storeys the proposed balconies will look towards the roofs and above of these properties and that combined with at least 20m separation distance will prevent any unacceptable adverse impacts from overlooking.

The 25-degree light test was carried out to ensure the proposal will have no unacceptable adverse impacts on the adjacent properties at 29-49 Kinnegar Drive from overshadowing/loss of light.

The proposed development will be built gable onto the existing dwelling at No. 58 Kinnegar Drive. The height of the building reduces to two-storey adjacent to the existing dwelling to tie in with the existing height and will be built in line with the rear

return of No. 58 to prevent any unacceptable adverse impacts on their residential amenity. It is considered that there will be no unacceptable adverse loss of light to the existing windows on the gable elevation of No. 58 and this proposal will improve the situation compared to the extant permission LA06/2015/0720/F as the massing of the proposed building has been reduced and there is a greater separation distance between the gables.

Any windows on the gable elevation will also be for bathrooms which will have obscure glazing. The proposed building will also respect the existing building line of No. 58 and a new strip of dense planting will be added along the adjoining boundary with the car park at the rear to prevent any unacceptable adverse impacts from the parking area on the residential amenity of No. 58.

A railway line runs along the rear of the site. New double-sided acoustic fencing will be added along the adjoining boundary with the railway line to protect the residential amenity of the proposed apartments.

The development is designed to deter crime and promote personal safety as the building will front the road, the parking area will be located to the rear and off street with apartments overlooking the car parking for surveillance and the boundaries will be enclosed by fencing and planting.

Addendum to Planning Policy Statement 7 - Safeguarding the Character of Established Residential Areas

The primary purpose of the addendum to PPS 7 is to reinforce existing planning policy on housing within urban areas by introducing additional provisions to protect areas of established residential character, environmental quality and local amenity.

Policy LC 1 is applicable. It states that 'in established residential areas planning permission will only be granted for the redevelopment of existing buildings, or the infilling of vacant sites (including extended garden areas) to accommodate new housing, where all the criteria set out in Policy QD 1 of PPS 7, and all the additional criteria set out in Policy LC1 are met.

The proposal will infill a vacant site. As mentioned above the proposal complies with Policy QD1 of PPS7. In relation to Policy LC 1 the proposed density was considered under previous approval LA06/2015/0720/F as acceptable for 33 apartments and this permission is still extant. There is also planning history on the site for 53 apartments under W/2007/0377/F. It is therefore considered that as the proposal will only increase the density of the site by two apartments that this will not have an adverse impact on the character of the area. The pattern of development was also considered in the previous approval as in keeping with the overall character and environmental quality of the area and the proposal is for a similar development.

The apartments within the proposal will be two bedroom and will be built to a size not less than those set out in Annex A.

Planning Policy Statement 8 – Open Space, Sport and Outdoor Recreation

This policy sets out planning policies for the protection of open space, the provision of new areas of open space in association with residential development and the use of

land for sport and outdoor recreation, and advises on the treatment of these issues in development plans.

Policy OS 2 relates to public open space in new residential development. Within this it states that for new residential developments of 25 or more units, or on sites of one hectare or more, proposals will only be permitted where public open space is provided as an integral part of the development.

An exception to this requirement is permitted in the case of apartment developments where a reasonable level of private communal open space is provided throughout the development. There will be over 350 sqm of maintained open space to the rear of the proposed buildings which is considered acceptable and this form of amenity space was previously considered acceptable under extant permission LA06/2015/0720/F.

The site is also easily accessible to the coastal path for outdoor amenity and recreation.

Planning Policy Statement 12 – Housing in Settlements

The proposal complies with relevant policy and guidance in PPS12. The proposal will not result in a significant increase of density on the site and it will not cause town cramming. The proposal has a good design and will respect the character of the surrounding area.

Planning Policy Statement 15 – Revised Planning and Flood Risk

This policy sets out the planning policies to minimise and manage flood risk to people, property and the environment.

Policy FLD1 relates to development in fluvial and coastal flood plains. The Flood Hazard Map (NI) indicates that the site lies within the 1 in 200-year coastal flood plain of Belfast Lough.

Under policy FLD 1 development will not be permitted within the 1 in 100-year fluvial flood plain or the 1 in 200-year coastal flood plain unless the applicant can demonstrate that the proposal constitutes an exception to the policy. The proposal is considered as an exception to the policy as the site is on previously developed land and there is extant permission on the site that was considered acceptable against Policy FLD 1.

A Flood Risk and Drainage Assessment were submitted in line with the policy and DfI Rivers was consulted. It commented that 'DfI Rivers, while not being responsible for the preparation of the Assessment accepts its logic and has no reason to disagree with its conclusions... Finished floor levels will be raised to 3.40mOD giving a 230mm freeboard above the 1 in 200 year coastal flood level of 3.17mOD.'

Policy FLD2 relates to the protection of flood defence and drainage infrastructure. DfI Rivers has commented that 'there are no watercourses which are designated under the terms of the Drainage (Northern Ireland) Order 1973 within this site. The site may be affected by undesignated watercourses of which we have no record, in the event of an undesignated watercourse being discovered, Policy FLD 2 will apply.'

Policy FLD3 relates to development and surface water. Dfl Rivers commented that it 'has reviewed the Drainage Assessment and while not being responsible for the preparation of the Drainage Assessment accepts its logic and has no reason to disagree with its conclusions.'

Policy FLD4 relates to the artificial modification of watercourses. This is not applicable as there are no designated watercourses within this site.

Policy FLD5 relates to development in Proximity to Reservoirs. Dfl River's reservoir inundation maps indicate that this site is in a potential area of inundation emanating from Church Road Upper. Dfl Rivers has commented that it 'is in possession of information confirming that Church Road Upper has 'Responsible Reservoir Manager Status'. Consequently, Dfl Rivers has no reason to object to the proposal from a reservoir flood risk perspective.'

Dfl River's reservoir inundation maps also indicate that this site is in a potential area of inundation emanating from Church Road Lower. Dfl Rivers has commented that 'it has not been demonstrated to Dfl Rivers that the condition, management and maintenance regime of Church Road Lower is appropriate to provide sufficient assurance regarding reservoir safety, as required under Policy FLD 5, so as to enable the development to proceed. However, in relation to this site, Dfl Rivers has carried out an assessment of flood risk to people (based on the Defra / Environment Agency's "Hazard to People Classification using Hazard Rating") for an uncontrolled release of water emanating from Church Road Lower and the overall hazard rating at this site is considered as low/moderate.

As the overall hazard rating is low/moderate it is considered by Dfl Rivers to be an acceptable combination of depth and velocity.

There is also extant permission on site for a similar development of 33 apartments and a history of planning approvals for residential development on this site and the site is zoned for housing within draft BMAP.

It is therefore considered that the proposal is acceptable from a flood risk perspective.

Creating Places

This document provides guidance to help achieve high quality and greater sustainability in the design of all new residential developments. The proposal complies with guidance in Creating Places as the design and layout are in keeping with the character of the area, sufficient private amenity space, car parking and bin storage will be provided and there is a sufficient separation distance between the proposal and existing properties.

Development Control Advice Note 8

This DCAN provides guidance to ensure that urban and environmental quality is maintained, amenity preserved, and privacy respected when new proposals are considered for housing development within existing urban areas. Proposals should seek to ensure that the form, density and character of any new development is in harmony with adjacent housing and does not detract from the environmental quality, residential amenity and established character of the surrounding area. As discussed above this would be the case for this proposal.

8. Consideration of Representations

34 objection letters have been received from 23 separate addresses. The main issues of concern are:

- Not enough parking in the area, commuters park on-street.

The proposed site will provide 53 parking spaces for 35 apartments which meets the current parking standards of 1.5 space per apartment. The Council cannot control commuters parking on street via this planning application.

- Poor quality roads in area, increased traffic will erode the roads further.

The quality of the roads in the area is a matter for DfI Roads to address and does not form part of this planning application. DfI Roads was consulted with this proposal and offers no objections from a road safety perspective.

- Increased traffic accessing onto A2, intensification onto a Protected Route, existing long wait times at traffic lights, only one access into Kinnegar area. Transport assessment should be carried out.

The proposal will access onto the public road at Kinnegar Drive and will not result in direct access onto a protected route therefore policy AMP 3 of PPS 3 - access onto a protected route is not applicable to this proposal.

As discussed previously in the report, a Transport Assessment Form was submitted which demonstrates that the development is considered to have a minimal transport impact relative to the existing traffic flows in the area and based on the number of peak trips generated by the development (9 trips in the AM peak and 10 in the PM peak) this application is well below the thresholds where a detailed Transport Assessment may be necessary (100 residential units, or 100 trips in the peak hour). DfI Roads was consulted with all the information submitted and offers no objections on the basis that it will not prejudice road safety or significantly inconvenience the flow of traffic and therefore complies with the policies within PPS 3. It should be noted that there is extant approval on site for a similar proposal, access and parking layout for 33 apartments (LA06/2015/0720/F).

- Drainage issues, no capacity at WWTW, extra demand on sewage system, flooding

In relation to flooding a Flood Risk and Drainage Assessments were submitted and DfI Rivers was consulted. It offers no objections therefore the proposal is considered acceptable from a flood risk perspective.

NI Water has commented that there is available capacity at the WWTW and a foul sewer connection has been agreed.

- Contaminated land

Contamination assessments were submitted and the Council's Environmental Health Department and the Land and Regulation unit within NIEA were consulted and both offer no objections.

- Impact on wildlife/ bats

A Biodiversity Checklist & Preliminary Ecological Assessment was submitted and NIEA Natural Environment Division (NED) consulted. It commented that 'NED has considered the impacts of the proposal on designated sites and other natural heritage interests and, on the basis of the information provided, has no concerns subject to conditions.'

Two existing trees will be retained on the site, bird and bat boxes will be installed on new trees and/or on the proposed buildings and new planting will be added throughout the site. This will ensure the proposal will not adversely harm the biodiversity of the site.

- Removal of trees and vegetation

Concern that removal of trees and vegetation has already been carried out. It should be noted that none of the trees are protected by a Tree Preservation Order and can be removed without permission and there is extant permission on the site under LA06/2015/0720/F which the applicant is permitted to commence.

- Height of the proposal out of character with the area, impact on light of adjacent properties.

There are examples of different heights within the surrounding Kinnegar Area. The extant permission on the site for 33 apartments (LA06/2015/0720/F) includes a three-storey building. The 25-degree light test was carried out which the proposal meets to ensure there are no unacceptable adverse impacts of overshadowing/loss of light. There is at least 20m separation distance between the proposal and existing dwellings on the opposite side of the road which will ensure there will be no unacceptable adverse impacts caused by loss of light. The proposed building breaks up the massing of the extant permission on the site which will allow more light through than the extant permission.

- Intensification on site, increase in density, apartments out of character with area.

It is acknowledged that the site will involve intensification in use as it is currently vacant, however this was considered under the previous approval for apartments on the site (LA06/2015/0720/F) as an exception to Policy QD1 and acceptable as the site clearly represents a significant gap within an otherwise substantial and continuously built up frontage. There has been no change in policy or the situation on the ground since the previous approval was granted and the site is still considered as a significant gap site within an otherwise substantial and continuously built up frontage. The frontage is formed by the existing dwellings at Nos. 58-68 Kinnegar Drive and the office buildings at Pavillions Office Park. The increase from 33 to 35 apartments is not considered as a significant increase in density to warrant the proposal as unacceptable against planning policy. It is also considered that apartments are

characteristic of the area and the area is predominantly residential. It should also be noted that the site is zoned for housing within draft BMAP and no Key Site Requirements to restrict the density on the site were included.

- Profit for developer without consideration of residents

The site is zoned for housing within draft BMAP and there is extant permission on the site for a similar apartment development. The profit of the developer is not a material planning consideration and the proposal has been assessed to ensure it complies with planning policy and will not have any unacceptable adverse impacts on the residential amenity or character of the area.

- Better use of land as housing with 2 parking spaces, green space, commuter parking.

The Council has to assess the planning application submitted. The site is zoned for housing within draft BMAP and there is extant permission on the site for a similar apartment development.

- Disruption during construction, unstable ground, assurances that properties in immediate area would not be adversely affected by building works.

Disruption during construction phase will be temporary and is not a reason to refuse planning permission. The responsibility lies with the developer to ensure the ground is stable for development and that no damage is caused to any surrounding properties. Consultation will be carried out with the Council's Building Control Department during the construction phase.

In relation to unstable ground NIEA has included a condition on any permission that no development or piling work should commence on this site until a piling risk assessment has been submitted in writing and agreed with the Council.

- Impact of Kinnegar army barracks closing and future planning issues.

This is not a material planning consideration as the Council cannot comment on what may or may not happen in the future. Each planning application is assessed on its own merits.

- Use of herbicides and planting should be native species.

Natural Environment Division was consulted with the landscaping plans and provided the comment that on the basis of the information provided, has no concerns subject to conditions.

- Set a precedent for other developments within the council area.

It is considered that this proposal will not set a precedent as each application is assessed on its own merits, this site is zoned for housing within draft BMAP and there is extant permission for a similar development on the site (LA06/2015/0720/F).

- No charging points for electric cars

There is no requirement in policy to provide charging points for electric cars.

- Devaluation of property.

This is not considered as a material planning consideration as it is controlled by many factors which are outside the remit of planning.

- Influx of short-term tenants and visitors causing security issues.

This is not considered as a material planning consideration as there is no evidence to demonstrate the type of tenants or that this will cause security issues.

9. Conclusion

The proposal has been assessed against relevant planning policies and all relevant material considerations, representations from members of the public and consultation replies have been considered. I am content that the proposal complies with planning policy and will respect the character and residential amenity of the area and will not prejudice road safety or significantly inconvenience the flow of traffic. It is therefore my professional planning judgement to recommend that planning permission is granted.

10. Recommendation

Grant Planning Permission

11. Conditions

1. The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.

Reason: As required by Section 61 of the Planning Act (Northern Ireland) 2011.

2. The vehicular access, including visibility splays and any forward sight distance, shall be provided in accordance with Drawing No 02B bearing the date stamp 1st March 2021 prior to the commencement of any other development hereby permitted.

Reason: To ensure there is a satisfactory means of access in the interests of road safety and the convenience of road users.

3. The area within the visibility splays and any forward sight line shall be cleared prior to the commencement of the construction of the development hereby approved to provide a level surface no higher than 250mm above the level of the adjoining carriageway.

Reason: To ensure there is a satisfactory means of access in the interests of road safety and the convenience of road users.

4. The access gradient(s) to the development hereby permitted shall not exceed 4% (1 in 25) over the first 10 m outside the road boundary. Where the vehicular access crosses footway, the access gradient shall be between 4% (1 in 25) maximum and 2.5% (1 in 40) minimum and shall be formed so that there is no abrupt change of slope along the footway.

Reason: To ensure there is a satisfactory means of access in the interests of road safety and the convenience of road users.

5. No apartment shall be occupied until provision has been made and permanently retained within the curtilage of the site for the parking of private cars at the rate of 1.5 spaces per apartment.

Reason: To ensure adequate parking in the interests of road safety and the convenience of road users.

6. Prior to the occupation of the proposed development, a Verification Report shall be submitted in writing and agreed with the Council. This report shall demonstrate that the remediation measures outlined in the Pentland Macdonald report - Contamination Assessment and Remediation Strategy, Site at Kinnegar Drive, Holywood, referenced PM19-1070 and dated November 2019 have been fully implemented.

The Verification Report shall demonstrate the successful completion of all remediation works, that the site is now fit for end-use (Residential with Plant Uptake) and the identified potential pollutant linkages are effectively broken. The Verification Report shall be in accordance with the current best practice and guidance and shall be subsequently implemented. In particular, this Verification Report shall demonstrate that:

A 1.0m thick physical barrier (capping layer) has been placed across all garden areas comprising:

- a 300mm thick capillary layer of granular material; overlain by 700mm of clean sub-soil and topsoil.

For all landscaped areas

- a 300mm thick capillary layer of granular material; overlain by 300mm of clean topsoil.

Gas protection measures to meet Characteristic Situation 2 as per C665 which shall include:

- Cast in-situ concrete floor slabs
- A proprietary gas and vapour resistant membrane (joints and service penetrations lapped and sealed with proven integrity to withstand the construction process)
- A passively ventilated under floor void.

All material brought on the site to raise the site levels and any excavated soil arising re-used on site, shall be accompanied by traceability documentation and shall be demonstrably proven to be suitable for the end use.

Reason: To protect public health and protection of environmental receptors to ensure the site is suitable for use.

7. If during the development works, new contamination and risks are encountered which have not previously been identified, works shall cease, and the Council shall be notified immediately. This new contamination shall be fully investigated in accordance with the Model Procedures for the Management of Land Contamination (CLR11). In the event of unacceptable risks being identified, a remediation strategy shall be agreed with the Council in writing and subsequently implemented to its satisfaction.

Reason: To protect public health and protection of environmental receptors to ensure the site is suitable for use.

8. No development or piling work shall commence on this site until a piling risk assessment has been submitted in writing and agreed with the Council and subsequently implemented to its satisfaction. Piling risk assessments shall be undertaken in accordance with the methodology contained within the Environment Agency document on "Piling and Penetrative Ground Improvement Methods on Land Affected by Contamination: Guidance on Pollution Prevention" available at <http://webarchive.nationalarchives.gov.uk/20140328084622/http://cdn.environment-agency.gov.uk/scho0202bisw-e-e.pdf>.

Reason: Protection of environmental receptors to ensure the site is suitable for use.

9. Prior to the commencement of development on site, a final drainage assessment containing a detailed drainage network design and compliant with Annex D of PPS 15 shall be submitted to the Council for agreement in writing and subsequently implemented to its satisfaction.

Reason: To safeguard against flood risk to the development and elsewhere.

10. All hard and soft landscape works shall be carried out in accordance with the approved plan Drawing No. 10A bearing the date stamp 27th November 2020, the Landscape Management Plan dated 25th November 2019 and the appropriate British Standard or other recognised Codes of Practice. The works shall be carried out during the first available planting season following occupation of the first apartment hereby approved and shall remain in perpetuity.

Reason: To ensure the provision, establishment and maintenance of a high standard of landscape.

11. The Landscape Management Plan dated 25th November 2019, including long-term management, management responsibilities and maintenance shall be carried out in perpetuity.

Reason: To ensure the provision, establishment and maintenance of a high standard of landscape.

12. The open space as indicated on Drawing No. 10A bearing the date stamp 27th November 2020 shall be laid out in accordance with the approved details prior to the occupation of any of the apartments hereby approved and shall not thereafter be used for any purpose other than as open space.

Reason: To ensure amenity space is available concurrently with the development of the site.

13. If within a period of 5 years from the date of the planting of any tree, shrub or hedge, that tree, shrub or hedge is removed, uprooted or destroyed or dies, or becomes, in the opinion of the Council, seriously damaged or defective, another tree, shrub or hedge of the same species and size as that originally planted shall be planted at the same place, unless the Council gives its written consent to any variation.

Reason: To ensure the provision, establishment and maintenance of a high standard of landscape.

14. The two existing trees as indicated on the approved plans, Drawing Nos. 10A bearing the date stamp 27th November 2020 and 02B bearing the date stamp 1st March 2021 shall be retained. No retained tree shall be cut down, uprooted or destroyed, or have its roots damaged within the crown spread nor shall arboricultural work or tree surgery take place or any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written consent of the Council. Any arboricultural work or tree surgery approved shall be carried out in accordance with the relevant British Standard 3998: 2010.

Reason: To ensure the continuity of amenity afforded by the existing trees and to minimise the impact of the proposal on the biodiversity of the site, including protected and priority species.

15. The erection of fencing for the protection of any retained tree, shall be undertaken in accordance with the approved plan Drawing No. 10A bearing the date stamp 27th November 2020 and in accordance with BS5837:2012 before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made or any other works carried out, or fires lit without the written consent of the Council.

Reason: To ensure the continuity of amenity afforded by existing trees and to minimise the impact of the proposal on the biodiversity of the site, including protected and priority species.

16. Seven bird boxes and four bat bricks or bat boxes shall be installed in the positions on site as shown on Drawing No. 10A bearing the date stamp 27th November 2020 and Drawing No. 02B bearing the date stamp 1st March 2021. These shall be installed during the first available planting season following occupation of the first apartment hereby approved and shall remain in perpetuity.

Reason: to minimise the impact of the proposal on the biodiversity of the site, including protected and priority species.

17. There shall be no external lighting on site until a Lighting Plan has been submitted to and approved in writing by the Council. The approved Plan shall be implemented in accordance with the approved details, unless otherwise agreed in writing by the Council. The Plan shall include the following:

- a) Specifications of lighting to be used across the site.
- b) All measures to mitigate for the impacts of artificial lighting on bats and other wildlife, including low lighting levels to be used across the site.
- c) A map showing predicted light spillage across the site (isolux drawing).
- d) Light spill falling on boundary vegetation and on the areas around the proposed bat bricks and/or bat boxes to be limited to no more than 1.0 lux.
- e) Bat foraging, commuting, and/or potential roosting habitat to be kept free from any artificial lighting.

Reason: To minimise the impact of the proposal on bats and other wildlife.

18. The windows on the side elevations of the approved buildings shaded green on Drawing Nos. 05C, 06C and 07C bearing the date stamp 20 October 2020 shall be glazed with obscure glass prior to the occupation of the apartments hereby approved and this obscure glazing shall be permanently retained thereafter.

Reason: In the interests of privacy and amenity.

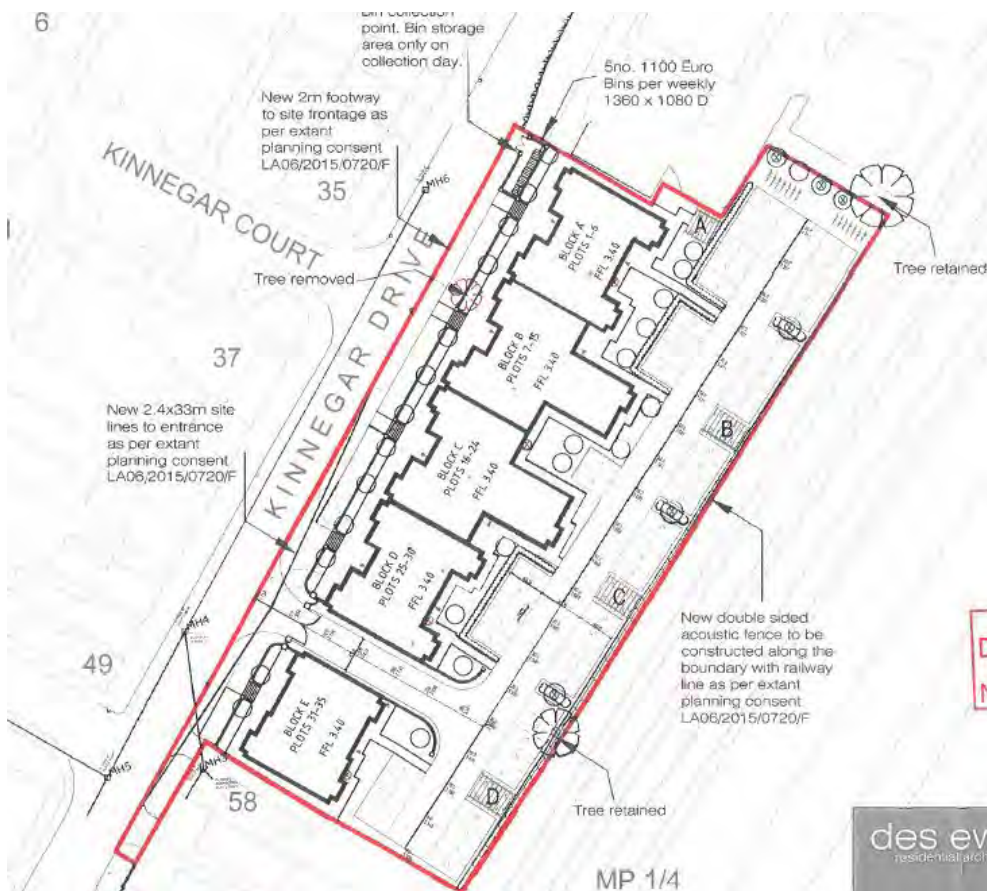
19. Prior to the occupation of the apartments hereby approved an acoustic fence shall be constructed along the boundary with the railway line, as shown on Drawing No. 02B bearing the date stamp 1st March 2021, and this acoustic fence shall be permanently retained thereafter.

Reason: In the interests of privacy and amenity.

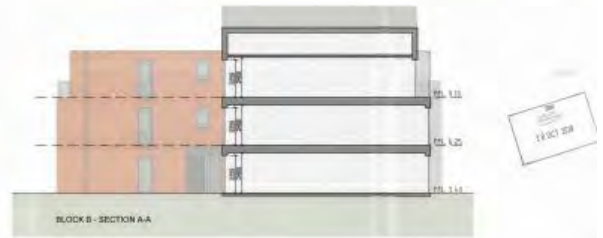
Aerial Image of Site



Site Layout



Front and side Elevations of Blocks A-D



Elevations of Block E (adjacent to No. 58 Kinnegar Drive)



Site Photographs

Site adjacent to No. 58 Kinnegar Drive



View of site looking north-east along Kinnegar Drive



View of Pavillions Office park looking north-east from within the site.



Street view looking south-west along Kinnegar Drive



ITEM 4.4

Ards and North Down Borough Council

Application Ref	LA06/2019/1195/F
Proposal	Two single storey infill dwellings
Location	Lands adjacent to and South of 9 Killinakin Road, Killinchy DEA: Comber
Committee Interest	A Local development application attracting six or more separate individual objections which are contrary to the officer's recommendation
Validated	13/12/2019
Summary	<ul style="list-style-type: none">• Site located in the Countryside within an Area of Outstanding Natural Beauty as designated in the Ards and Down Area Plan 2015• Policy CTY 8 of PPS 21 applicable - provision should be made for the development of a small gap site in an otherwise substantial and continuously built up frontage• Original proposal submitted for one dwelling – but found to not be in keeping with pattern of development therefore amended proposal submitted for two dwellings• Proposal has been comprehensively assessed against the policy and found compliant• 23 objections from 11 addresses• All objections fully considered in the case officer report• All consultees content
Recommendation	Approval
Attachment	Item 4.4a – Case Officer Report

**Development Management
Case Officer Report**

Reference:	LA06/2019/1195/F	DEA: Comber	
Proposal:	Two single storey infill dwellings.		
Location:	Lands adjacent to and South of 9 Killinakin Road, Killinchy.		
Applicant:	Rosina Herron.		
Date valid:	13/12/2019	EIA Screening Required:	No
Date last advertised:	10/12/2020	Date last neighbour notified:	03/12/2020
Letters of Support: 0	Letters of Objection: 23 from 11 addresses	Petitions: 0	
Consultations – synopsis of responses:			
NI Water	No objection.		
DFI Roads	No objection, subject to conditions.		
NIEA (supported by Council's Biodiversity Officer)	No objection.		
HED	No objection.		
Summary of main issues considered:			
<ul style="list-style-type: none"> • Compliance with the local development plan; • Planning history associated with the site; • Visual amenity and residential amenity; • Access, movement and parking; • Impact on biodiversity. 			
Recommendation: Grant Planning Permission			
Report Agreed by Authorised Officer			
Full details of this application, including the application forms, relevant drawings, consultation responses and any representations received are available to view at the Planning Portal https://epicpublic.planningni.gov.uk/publicaccess/			

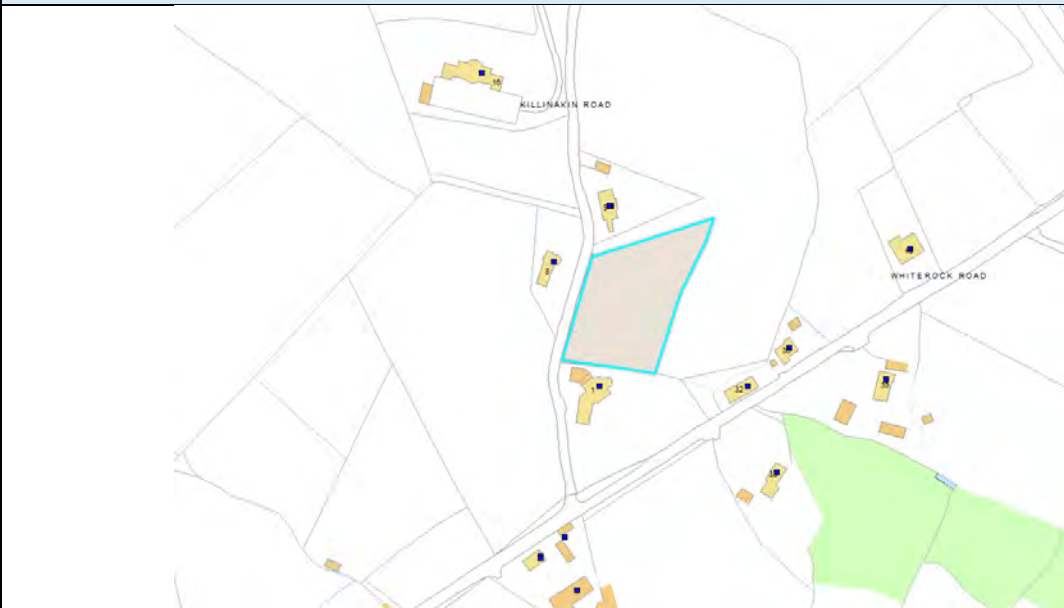
1. Site and Surrounding Area

The application site is located adjacent to and south of No. 9 Killinakin Road. The application site is on an elevated site on an uneven agricultural field, with the field sloping down relatively sharply from west to east, with the Killinakin Road at a higher level than the application site. The boundaries of the application site are defined by a series of native hedgerows. There are long distance views of the application site from the Whiterock Road.

The application site comprises of an agricultural field located in the space between the dwelling at No. 1 Killinakin Road, a single storey red brick dwelling located at the junction between the Killinakin Road and Whiterock Road, and the residential dwelling at No. 9 Killinakin Road; a two storey dwelling with detached garage.

The application site is located beyond any designated settlement stipulated in the Ards and Down Area Plan 2015, with the site located in an Area of Outstanding Natural Beauty and within close proximity of an archaeological site and monument, a private graveyard (DOW017:021).

2. Site Location Plan



3. Relevant Planning History

There is no planning history that is considered pertinent to the assessment of this application.

4. Planning Assessment

The relevant planning policy framework, including supplementary planning guidance where relevant, for this application is as follows:

- Ards and Down Area Plan 2015;
- Strategic Planning Policy Statement for Northern Ireland;
- Planning Policy Statement 2: Natural Heritage;
- Planning Policy Statement 3: Access, Movement and Parking;
- PPS 6: Planning, Archaeology and The Built Heritage;

- Planning Policy Statement 21: Sustainable Development in the Countryside.

Planning Guidance:

- Building on Tradition: A Sustainable Design Guide for the NI Countryside.

Principle of Development

ADAP currently acts as the LDP for this area. Ards and Down Area Plan 2015, the application site is located beyond the settlement limit of Killinchy. The application site is within a designated Area of Outstanding Natural Beauty and is within close proximity of an archaeological site and monument (DOW017:021), a private graveyard and the proposal is considered to be in general conformity with the plan, provided it complies with the relevant regional planning policies.

Strategic Planning Policy Statement for Northern Ireland (SPPS)

The SPPS sets out the guiding principle relating to the grant/refusal of development contained within paragraphs 3.8. The principle states that sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance.

With reference to applications pertaining to infill dwellings, the SPPS (p. 53) states that provision should be made for the development of a small gap site in an otherwise substantial and continuously built-up frontage. Planning permission will be refused for a building which creates or adds to a ribbon of development.

Existing policy provisions that have not been cancelled by the SPPS are to remain a material consideration. Within the context of this specific application PPS 21 remains the primary policy consideration in assessing development in the countryside.

Planning Policy Statement 2: Natural Heritage

PPS 2 sets out the policies for conservation, protection and enhancement of our natural heritage. Within this, natural heritage is defined as the diversity of our habitats, species, landscapes and earth science features. In taking decisions, the planning authority should ensure that appropriate weight is attached to designated sites of international, national and local importance; priority and protected species and to biodiversity and geological interests with the wider environment.

Policy NH 1 relates to European and Ramsar Sites and states that planning permission will only be granted for a development proposal that, either individually or in combination with existing and/or proposed plans or projects, is not likely to have a significant effect on European and Ramsar sites.

The potential impact of this proposal on Special Areas of Conservation, Special Protection Areas and Ramsar sites has been assessed in accordance with the requirements of Regulation 43 (1) of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended). The proposal would not be likely to have a significant effect on the features, conservation objectives or status of any of these sites.

Policy NH2 relates to protected species and Policy NH5 to habitats and species of natural heritage importance. Within these policies, planning permission will only be

granted where a development proposal is not likely to harm a protected species or have an adverse impact on priority species and habitats.

Upon review of the biodiversity checklist, it is considered that there will be no significant impact caused to protected species as a direct result of the proposed development. Whilst the proposal will result in removal of hedgerows, the application was reviewed by the Council's Biodiversity Officer who stated that she was content with the proposal. It is therefore reasoned that the proposal is not likely to harm a protected species or adversely impact on priority species or habitats and further investigation would not be required.

Policy NH 6 of PPS 2 states that planning permission for new development within an Area of Outstanding Natural Beauty will only be granted where it is of an appropriate design, size and scale for the locality and a number of criteria are complied with.

The initial proposal comprised of a single infill dwelling on the large application site between the residential properties of Nos. 1 and 9 Killinakin Road. The agent subsequently submitted an amended proposal seeking to attain permission for the erection of two infill dwellings on the application site and amended the design of the proposal.

The proposed dwellings are set down at a lower level to the Killinakin Road with the proposed dwellings of a limited scale; maximum 5m ridge height. Given the scale of the proposal and the land level it is set at, it is deemed that the proposal shall not become an incongruous feature within the wider area. The finished floor level and the limited scale of the proposal shall ensure that the views of Strangford Lough from the Killinakin Road are retained and whilst not a material planning consideration, the proposed development shall have no detrimental impact upon the views of the surrounding Area of Outstanding Beauty from neighbouring properties (Figure 9).

Furthermore, the amended design of the proposed dwellings are considered to be more sympathetic to the designated Area of Outstanding Natural Beauty than the initial proposal. The initial proposal had a large volume of glazing along the rear elevation, with long public views of this elevation on the elevated site as viewed from the Whiterock Road. The proposal shall be finished in rendered walls and timber cladding which are deemed to be in general compliance with Building on Tradition.

The proposed dwellings are considered to be sympathetic to the natural landform of the area, utilising the topography of the land to facilitate the integration of the two infill dwellings within the surrounding area and respect the privacy and amenity of neighbouring dwellings, with the dwellings deliberately designed to be low and modest in scale when viewed from the Killinakin Road as stated in the submitted Design and Access statement. The proposed dwellings have been designed to be low, single storey to ensure the views from existing neighbouring dwellings are not interrupted. To facilitate the excavation and the change of ground levels, there shall be the use of graded earth banks. This is considered acceptable with it noted that the use of more substantial retaining wall structures could have a detrimental impact on the visual amenity of the area, an Outstanding Area of Natural Beauty, particularly with long distance views from the Killinchy direction.

The boundary definition adjacent Killinakin Road is to be relocated to behind a boundary fence. The proposed fence is considered appropriate for defining the front boundary with the surrounding area characterised by detached boundaries with many of these having boundary definition of walls and fences. The remaining existing boundaries are to be retained and strengthened with native species and the new boundaries are to be defined in native species, with this considered to further facilitate integration of the proposed development into the designated Area of Outstanding Natural Beauty.

Consequently, it is deemed that approval for the current application would not have a detrimental impact upon the Area of Outstanding Natural Beauty with the application site a small gap site with the proposal respecting the existing development pattern along the road frontage in terms of size, scale, siting and plot size.

Planning Policy Statement 3: Access, Movement and Parking

As per the consultation response from DFI Roads, there are no objections to this proposal, subject to conditions.

PPS 6: Planning, Archaeology and The Built Heritage

The application site is within close proximity of an archaeological site and monument, a private graveyard (DOW017:021). HED (Historic Monuments) has assessed the application and on the basis of the information provided is content that the proposal is satisfactory to SPPS and PPS 6 archaeological policy requirements.

Planning Policy Statement 21: Sustainable Development in the Countryside

PPS 21 sets out planning policies for development in the countryside.

Policy CTY 1: Development in the Countryside

CTY 1 enables the development of a small gap site within an otherwise substantial and continuously built-up frontage in accordance with Policy CTY 8.

Policy CTY 8 – Ribbon Development

Planning permission will be refused for a building which creates or adds to a ribbon of development.

An exception will be permitted for the development of a small gap site sufficient only to accommodate up to a maximum of two houses within an otherwise substantial and continuously built-up frontage, provided these respect the existing development pattern along the frontage in terms of size, scale, siting and plot size and meets other planning and environmental requirements. For the purpose of this policy the definition of a substantial and built-up frontage includes a line of three or more buildings along a road frontage without accompanying development to the rear.

There are a number of residential properties within close proximity of the application site, with the surrounding area characterised by rural countryside with sporadic detached dwellings with a range of plot sizes within close proximity of the application site (Figures 13 – 18).

The site is considered a gap within a continuously built up frontage positioned within a row of 3 or more buildings on the eastern side of the Killinakin Road, which all have frontage to the road, comprising of the dwelling/aperture car port/garage to the south of the application site at of No. 1 Killinakin Road, with the site south of the dwelling and

garage at No. 9 Killinakin Road, on the eastern side of the Killinakin Road opposite to No. 8 Killinakin Road. As per Paragraph 6 of appeal decision 2020/A0042, *Section 250 of the Planning (Northern Ireland) Act 2011 (The Act), states that in the act, the word 'building' includes any structure or erection and any part of a building, as so defined. However, for the purposes of policy interpretation as opposed to 'in the act', the word should be given its natural, everyday meaning.* Consequently, the garage is deemed to constitute a building. Whilst it is acknowledged that it is associated with, and incidental to, the residential dwelling at No. 9 Killinakin Road it is deemed that due to the scale of the dwelling, the distance between the garage and the dwelling and its position forward of the building line, the dwelling and garage visibly read as two separate buildings when viewed from the Killinakin Road. On this basis it is acknowledged that there is an existing continuous and built-up frontage of a line of at least 3 buildings, as per the policy definition set out in CTY 8, on this stretch of Killinakin Road.

Policy CTY 8 however, states that permission will be granted for the development of a *small gap site sufficient only to accommodate up to a maximum of two houses* within an otherwise substantial and continuously built-up frontage. It adds that proposals must respect the existing development pattern along the frontage in terms of size, scale, siting and plot size.

As per Figure 11, the average plot size in the area is 2,722 square metres. Even though some acknowledged sites potentially increase the average plot size, it was acknowledged that the plot size of the original proposal of a single dwelling of 6,202 square metres would not be in keeping with the existing pattern of development within the wider area, with it considered that given the scale of the site and the spacing between the neighbouring properties that there would be the potential for further development within the area. This would be potentially detrimental to the rural character of the area.

The agent subsequently submitted amended forms and plans that sought to attain permission for the erection of two infill dwellings (Figure 5) on the same application site as the initial proposal. Each of the two proposed plots provides 3,101 square metres.

The dwelling at No. 9 has a road frontage of approx. 54m. The site at No. 1 Killinakin Road is visually read as having roadside frontage of approx. 46m, due to the strong boundary definition of a copse of trees that limit the extent of the domestic curtilage when viewed from both the Killinakin Road and the Whiterock Road.

The proposed application site has a road frontage of 76m; each site has a road frontage of approx. 38m along the Killinakin Road. This gap could accommodate 2 dwellings, with the gable walls orientated to the east/west, whilst respecting the existing development pattern along the frontage in terms of size, scale, siting and plot size and is comparable to the perceived roadside frontage of No. 1 Killinakin Road (Figure 5). Consequently, the amended proposal is determined to provide an exception to CTY 8 as the application site provides a small gap site sufficient only to accommodate up to a maximum of two houses within an otherwise substantial and continuously built-up frontage of a line of three or more buildings along a road frontage.

To ensure that the proposal integrates within the countryside and shall not have a detrimental impact upon the rural character of the site, the proposal shall be assessed against the policy provisions as stipulated within CTY 13 and CTY 14 of PPS 21.

Policy CTY 13: Integration of buildings in the Countryside

Policy CTY 3 states that planning permission will be granted for a building in the countryside where it can be visually integrated into the surrounding landscape and it is of an appropriate design; a new building will be unacceptable where:

(a) it is a prominent feature in the landscape;

The two proposed dwellings shall have a maximum ridge height of 5m. This shall inhibit the potential for the two infill dwellings to be prominent features within the landscape when viewed from the Killinakin Road.

The two proposed dwellings shall provide approx. 275m² of floor space, including the provision of four bedrooms, kitchen/living area, snug and integral garages. The proposed infill dwellings shall be finished in render and timber cladding which is considered to be appropriate for the rural location and in general compliance of Building on Tradition.

As discussed previously under PPS 2, Policy NH 6, the proposal is not considered to be a prominent feature within the landscape, a designated Area of Outstanding Natural Beauty. The two dwellings have been set down from the Killinakin Road, with the natural landform sloping down from west to east with the design of the proposal using the sloping landscape to facilitate integration into the surrounding area. Consequently, No. 8 Killinakin Road is at a higher level than the proposed dwellings, as is No. 9 Killinakin Road.

(b) the site lacks long established natural boundaries or is unable to provide a suitable degree of enclosure for the building to integrate into the landscape;

The application site has a suitable degree of enclosure for the proposed infill dwellings to integrate into the landscape, with the topography of the application site and the low finished floor level considered to facilitate the integration of the building within the wider landscape. Whilst there shall be new native species hedging to define the application site to accommodate the two dwellings, the boundaries between the application site and both No. 1 Killinakin Road and No. 9 Killinakin Road are to be retained and strengthened with native species and maintained. The boundary to the front of the application site, fronting onto the Killinakin Road shall have the existing hedging and trees that define the boundary set back behind a fence to ensure that the visibility splays are kept clear, with the remaining existing hedging to be strengthened with native species and maintained. The proposed boundary definition as per the proposed block plan shall be conditioned to ensure the proposed dwellings shall integrate into the wider landscape.

(c) it relies primarily on the use of new landscaping for integration;

The two proposed infill dwellings are considered acceptable. There shall be new hedging to define the application site into two areas to accommodate the two proposed dwellings. This is considered acceptable and shall facilitate the integration of the new boundary into the rural landscape, particularly given the long views of the application site from the Whiterock Road to the south of the application site. There shall also be new fencing along the front of the Killinakin Road with the existing trees and hedging relocated to the rear of the fence and strengthened with native hedging. This is to facilitate the implementation of visibility splays with the remaining boundaries providing sufficient enclosure to accommodate the proposed dwellings into the rural landscape and shall be appropriately conditioned.

(d) ancillary works do not integrate with their surroundings;

The proposal entails a shared entrance that splits to provide access to the proposed dwellings. The shared access is considered to inhibit the level of ancillary work required on site within the rural landscape, with the proposal also including the erection of an integral garage to each property which shall inhibit the number of buildings on each site. The application site shall utilise, maintain and strengthen the boundaries adjacent to the neighbouring dwellings of Nos. 1 and 9 Killinakin Road which shall facilitate integration into the area. The proposed boundary to the rear of the site shall be defined by native species hedging to facilitate integration and soften the visual impact. The existing hedges are to be retained, strengthened and maintained with new hedging along the eastern boundary to comprise of native species which shall help integrate the proposed dwellings within the wider area.

Given the appropriate scale and design of the proposed dwellings and the low finished floor level it is deemed that the proposed dwelling, garage and the ancillary works shall integrate into the surrounding area and the neighbouring properties which are in close proximity to the application site.

(e) the design of the building is inappropriate for the site and its locality;

As previously assessed, the design of the low scale of the proposed buildings are considered appropriate for the site and locality and in keeping with the dwellings within close proximity of the application site. The proposed finishes are considered to be in keeping with Building on Tradition, with the dwellings in close proximity to the application site including a mix of red brick, stone cladding and rough render buildings. It is acknowledged that the agent amended the plans from the initial proposal which included a significant volume of glazing on the rear elevation.

(f) it fails to blend with the landform, existing trees, buildings, slopes and other natural features which provide a backdrop;

The two proposed infill dwellings with integral garage and associated ancillary works are considered to blend with the landform, facilitated by the use of graded earth banks rather than more substantial retaining structures of more artificial appearance which would have a greater detrimental impact upon the natural landform, with the proposed boundary treatment considered to facilitate integration with the landform of the area.

The lower finished floor level of the proposed dwellings shall also ensure that the privacy and amenity of neighbouring dwellings is retained. Whilst not a material consideration, the proposed dwellings shall also retain the views that the neighbouring properties currently avail of. The proposal is considered acceptable.

(g) in the case of a proposed dwelling on a farm (see Policy CTY 10) it is not visually linked or sited to cluster with an established group of buildings on a farm.

N/A

Policy CTY 14: Rural Character

Planning permission will be granted for a building in the countryside where it does not cause a detrimental change to, or further erode the rural character of an area.

A new building will be unacceptable where:

(a) it is unduly prominent in the landscape;

As assessed under Part A of CTY 13 PPS 21 and Policy NH 6 PPS 2, the proposed dwellings are considered to be of an appropriate scale and design for the local context.

(b) it results in a suburban style build-up of development when viewed with existing and approved buildings;

As previously assessed under CTY 8, the proposed infill site and dwellings shall not result in a suburban style build-up of development when considered against the existing and approved buildings.

(c) it does not respect the traditional pattern of settlement exhibited in that area;

The proposed infill dwellings are considered to respect the traditional settlement pattern exhibited in the wider countryside landscape that the application site is located. The area has a number of detached single storey dwellings within close proximity of the application site, with no fixed building line and no predominant finishes established. The proposed dwellings are considered acceptable.

(d) it creates or adds to a ribbon of development (see Policy CTY 8);

The proposal is deemed to be in compliance with CTY 8, as previously addressed.

(e) the impact of ancillary works (with the exception of necessary visibility splays) would damage rural character.

As previously addressed, the proposed dwellings with integral garage and ancillary works are considered appropriate for the rural location in which the proposal is set as facilitated by the shared access to both dwellings and the erection of an integral garage, the use of graded earth banks, the retention, strengthening and maintenance of existing hedging and the supplementing of new native species boundary hedging.

Impact on neighbouring levels of amenity and privacy

The proposed dwellings are deemed to have no detrimental impact upon the levels of privacy or amenity of the existing neighbouring dwellings. There is approx. 16m spacing between the side elevation of No. 9 Killinakin Road and the proposed dwelling at Site A. Given the topography of the land, with the proposed dwelling at a lower land level than the existing neighbouring property, and the boundary vegetation it is deemed that the proposed dwelling at Site A shall have no detrimental impact upon the privacy or amenity of No. 9 Killinakin Road.

There is approx. 19m spacing between the side elevation of the existing dwelling at No. 1 Killinakin Road and the side elevation of the proposed dwelling at Site B. The boundary definition, the lower level that the neighbouring dwelling is set at and the orientation of the dwelling at No. 1 Killinakin Road shall inhibit the potential for the proposed dwelling to have a detrimental impact upon the levels of privacy and amenity.

The proposed dwellings are considered to have no detrimental impact upon levels of amenity and privacy to the existing dwelling on the opposite side of the Killinakin Road. There is in excess of 35m spacing between the existing dwelling at No. 8 Killinakin Road and the proposed dwellings. In addition to the significant level of spacing, the topography of the land and the sympathetic design of the proposed dwellings are holistically considered to inhibit the potential detrimental impact upon levels of privacy or amenity at the existing dwelling at No. 8 Killinakin Road.

The two proposed dwellings are deemed to have no detrimental impact upon their respective levels of privacy or amenity. There is approx. 15.5m between the dwelling at Site A and Site B, with new native species hedging to define the boundary between the two proposed dwellings. Furthermore, in addition to the level of spacing between the proposed dwellings, the proposed fenestration on each dwelling is considered to have been sympathetically designed to inhibit the potential to have a detrimental impact upon neighbouring levels of privacy. The proposed fenestration to the side elevation of the proposed dwelling at Site B, which looks in the general direction of Site A, is deemed to have been sympathetically designed to protect the levels of privacy at Site A. The large levels of fenestration shall look to the east of the site, towards Whiterock, with no neighbouring properties within close proximity of the application site.

The proposed dwellings and their respective integral garages are considered acceptable.

Policy CTY 16: Development relying on non-mains sewerage

As per the P1 form the proposal incorporates the use of a septic tank, with surface water being disposed of by soakaway. The proposal is therefore considered to comply with Policy CTY 16.

5. Representations

There was the submission of twenty-three (23) letters of representation from eleven (11) different addresses that stated their respective concerns:

- CTY 8 Ribbon development and the infilling of a visual break

As demonstrated within the assessment of CTY 8, the application site is considered to be a gap site able to accommodate two dwellings.

- Impact on character of the existing road, inadequate site lines

DFI Roads were consulted on the proposed access arrangements and stated no concerns, subject to the compliance of conditions. The impact of the proposed development is not deemed to be sufficiently detrimental so as to warrant a refusal with the surrounding area characterised by detached dwellings, with the proposal considered to be sympathetic to the surrounding landform.

- Proposed dwellings shall compromise view of the designated Area of Outstanding Natural Beauty for neighbours and walkers

These concerns were assessed under Policy NH 6 of PPS 2 with it deemed that the lower finished floor level and low 5m ridge height of the proposed dwellings shall retain views for walkers and road users and retain the character of the wider Area of Outstanding Natural Beauty with the finished floor levels and site levels provided.

- Inappropriate scale and design

The initial design was considered inappropriate, given the large dwelling with a significant volume of glazing on the rear elevation. Amended plans were submitted. Whilst there were letters of representation received after the amendments, only 1 letter discussed the visual appearance of the dwellings. The only concern stated was that whilst there are a few other buildings of modern design, it is his opinion that they do not really fit into the landscape. The proposed amended design of the two dwellings was

assessed in terms of its visual appearance and ability to integrate within the countryside and is deemed to be acceptable and broadly compliant with Building on Tradition.

- Drawings of insufficient quality to be seen online to provide context

Amended proposal provided cross sections and levels to attain an understanding of the proposal and how it would integrate within the local context with the drawings checked and confirmed as being of sufficient quality to be seen online to provide context.

- Concerns about the soakaways and the septic tank

Additional information was attained that stipulated further details in regard to the drainage arrangement with the soakaways etc clearly demarcated on the amended drawings and considered.

- Amended plans/proposal

The agent submitted amended plans that proposed two infill dwellings on the application site, whilst the initial application sought to attain permission for one infill dwelling. The neighbours were neighbour notified of the amendments and the proposal was advertised within local media.

- Planning Advice Note on countryside development

A letter of representation requested the application be reviewed in light of the planning advice note 'Implementation of Strategic Planning Policy on Development in the Countryside', issued on 2nd August 2021. The Department for Infrastructure withdrew the Planning Advice Note on the 15th October 2021.

6. Recommendation

Grant Planning Permission

7. Conditions

1. As required by Section 61 of the Planning Act (Northern Ireland) 2011, the development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.

Reason: Time Limit.

2. The vehicular access, including visibility splays and any forward sight distance, shall be provided in accordance within the Proposed Site Layout Plan, Drawing No. 05D bearing the stamp dated 11th November 2021 prior to the commencement of any other development hereby permitted.

Reason: To ensure there is a satisfactory means of access in the interests of road safety and the convenience of road users.

3. The area within the visibility splays and any forward sight line shall be cleared to provide a level surface no higher than 250mm above the level of the adjoining carriageway prior to the commencement of any other development and such splays shall be retained and kept clear thereafter.

Reason: To ensure there is a satisfactory means of access in the interests of road safety and the convenience of road users.

4. The access gradient to the dwellings hereby permitted shall not exceed 8% (1 in 12.5) over the first 5 m outside the road boundary. Where the vehicular access crosses footway, the access gradient shall be between 4% (1 in 25) maximum and 2.5% (1 in 40) minimum and shall be formed so that there is no abrupt change of slope along the footway.

Reason: To ensure there is a satisfactory means of access in the interests of road safety and the convenience of road users.

5. No construction to be made, trees planted or other obstruction made within
 - 3m (or 1.5 times the depth whichever is greater) of sewers, OR
 - 4m (or 1.5 times the depth whichever is greater) of watermains <350mm diameter or 8m of watermains of 350mm diameter or greater.

Reason: To prevent disturbance/ damage to existing sewers/watermains and in the interest of public safety.

6. All services within the development should be laid underground.

Reason: In the interests of visual amenity

7. Development shall not be occupied until the onsite works have been completed in accordance with the drainage details submitted to and approved in writing by the Ards and North Down Borough Council.

Reason: In the interest of public health.

8. The hard and soft landscape works shall be carried out in accordance with Drawing No. 05D bearing the date stamp 11th November 2021. All new planting shall be permanently retained, as indicated on the same stamped drawing and shall be undertaken during the first available planting season after the occupation of the dwellings hereby approved.

Reason: In the interest of visual amenity.

9. The existing natural screenings along the southern and northern boundaries of the site, as shown on Drawing No. 05D bearing the date stamp 11th November 2021, shall be permanently retained.

Reason: To ensure the development integrates into the countryside.

10. If within a period of five years from the date of the planting of any tree, shrub or hedge, that tree, shrub or hedge is removed, uprooted or destroyed or dies, or becomes, in the opinion of the Council, seriously damaged or defective, another tree, shrub or hedge of the same species and size as that originally planted shall be planted at the same place, unless the Council gives its written consent to any variation.

Reason: To ensure the provision, establishment and maintenance of a high standard of landscape.

Informative

This Notice relates solely to a planning decision and does not purport to convey any other approval or consent which may be required under the Building Regulations or any other statutory purpose. Developers are advised to check all other informatives, advice or guidance provided by consultees, where relevant, on the Portal.

Figures



Figure 1: Site location

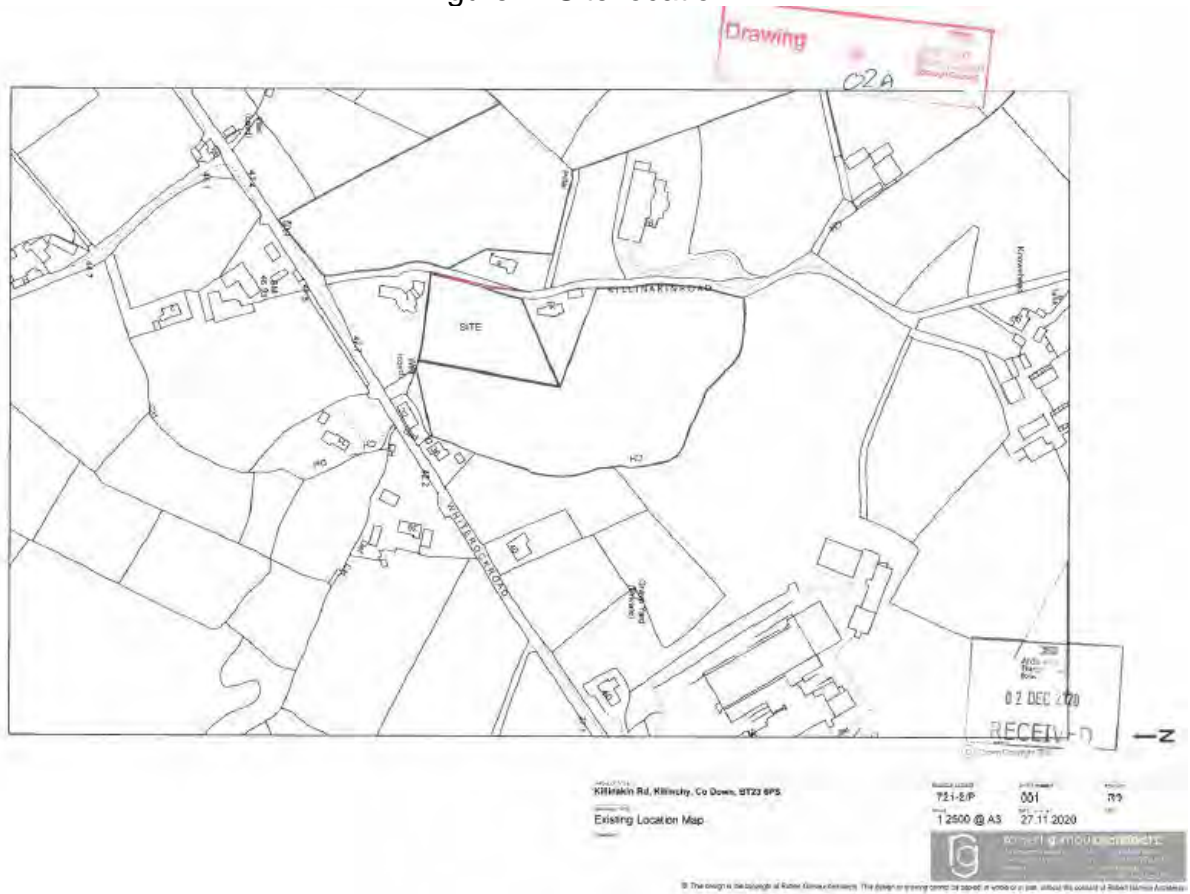


Figure 2: Drawing 02A – site location plan



Figure 3: Drawing 03A – existing site



Figure 4: Drawing 04A – proposed block plan



Figure 7: Drawing 07A – proposed elevations (front and rear)



Figure 8: Drawing 08A – proposed side elevations

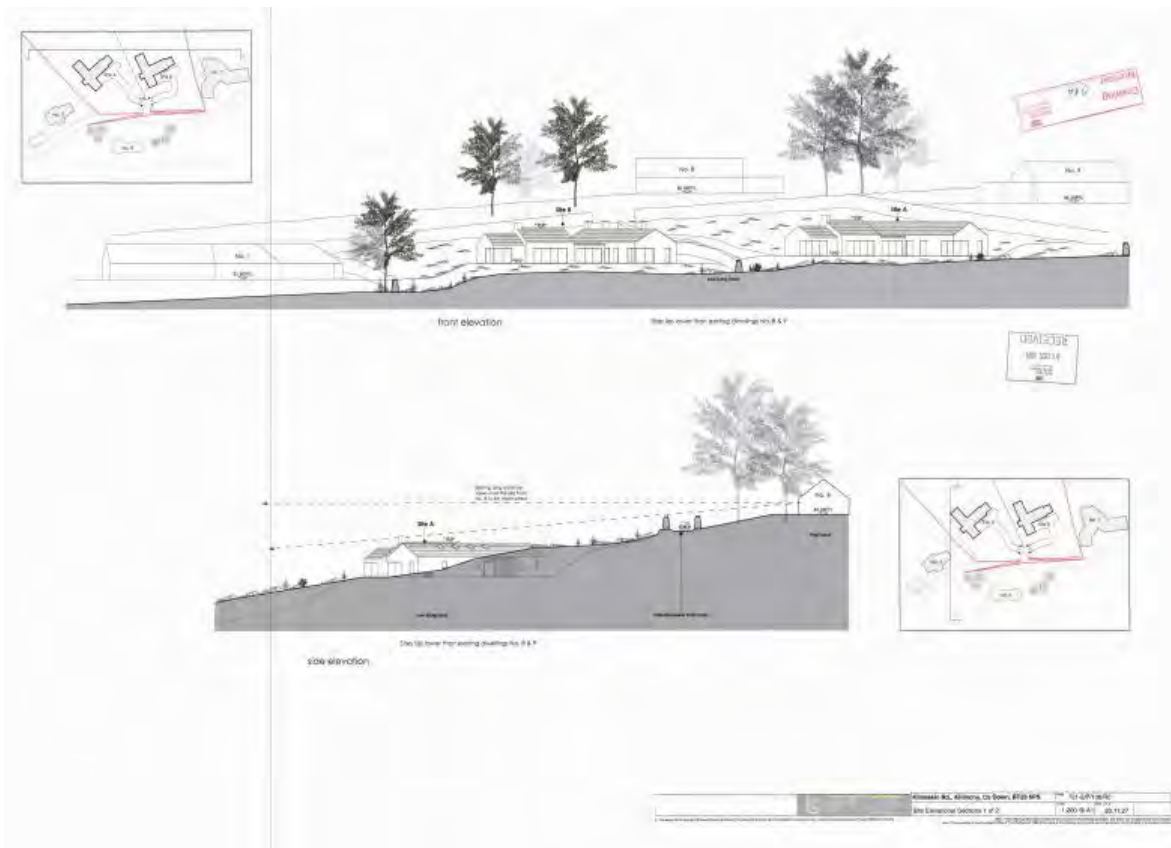


Figure 9: Drawing 09A – cross section

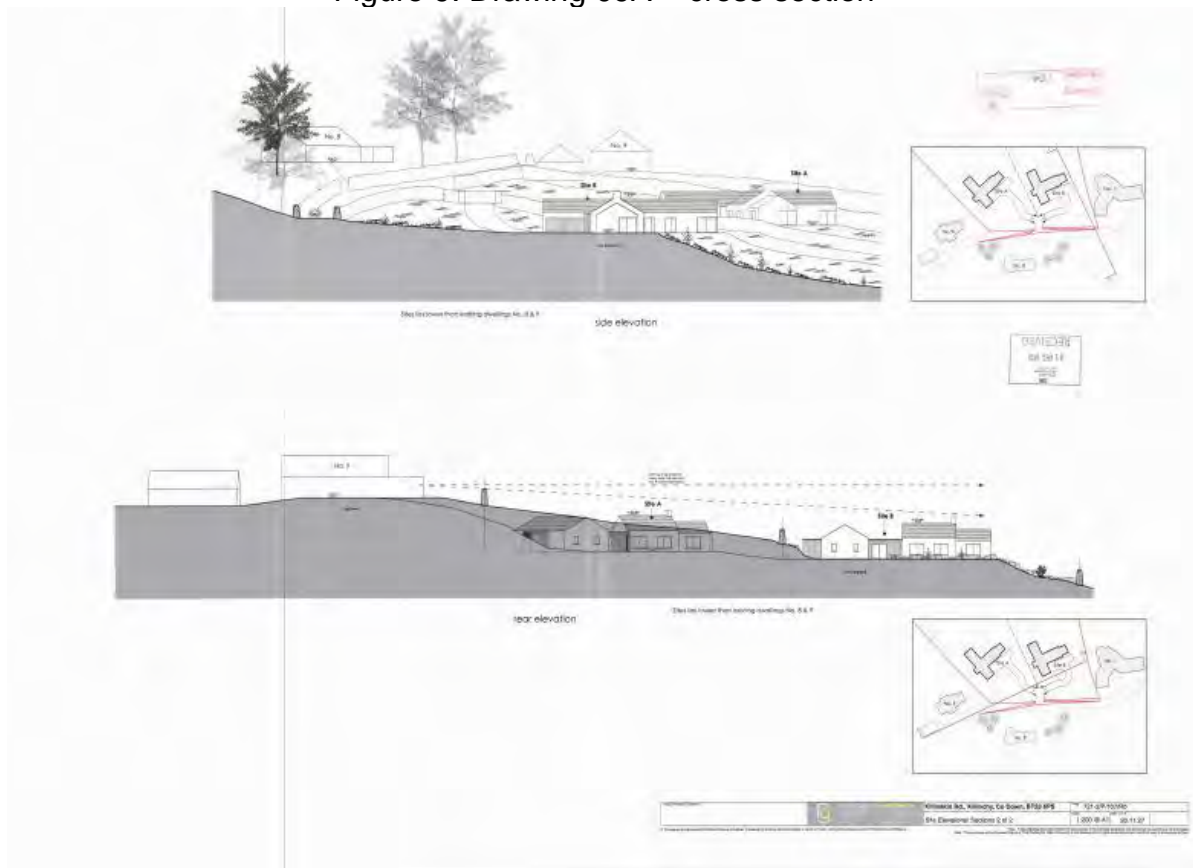


Figure 10: Drawing 10A – cross section

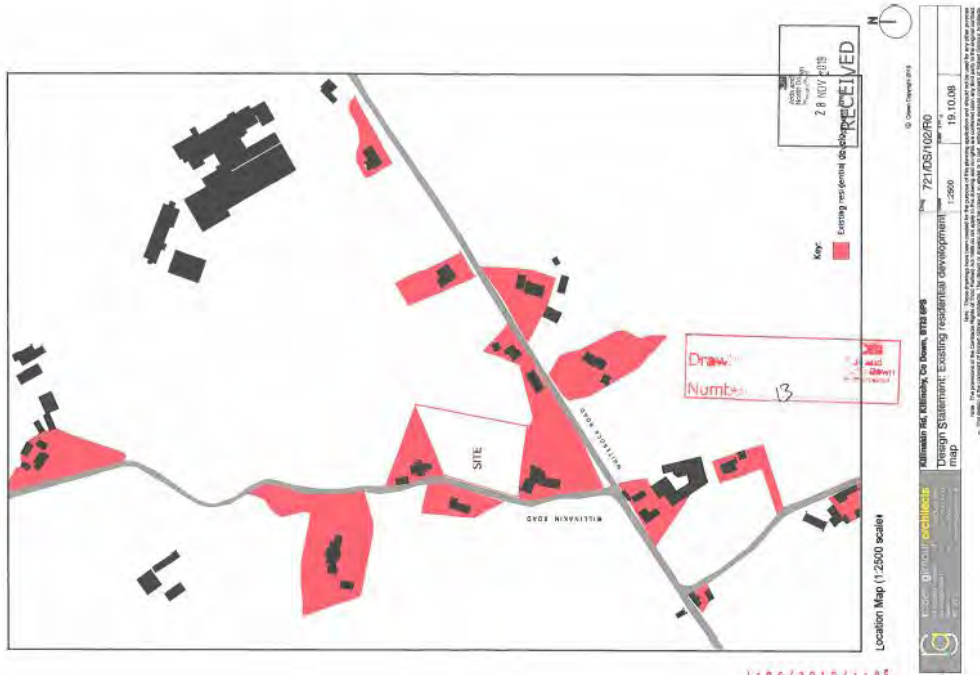


Figure 11: Drawing 13 – existing residential development

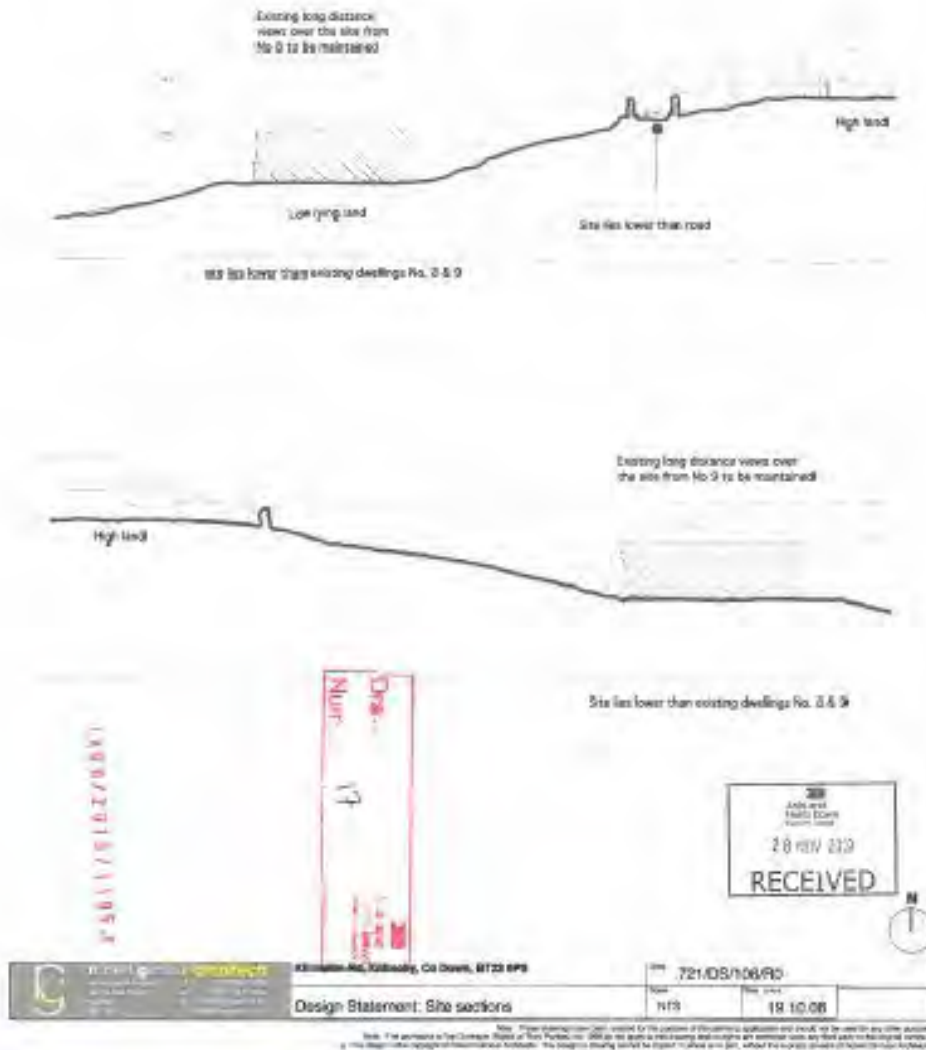


Figure 12: Drawing 17 – site section



Figure 13: No. 9 Killinakin Road

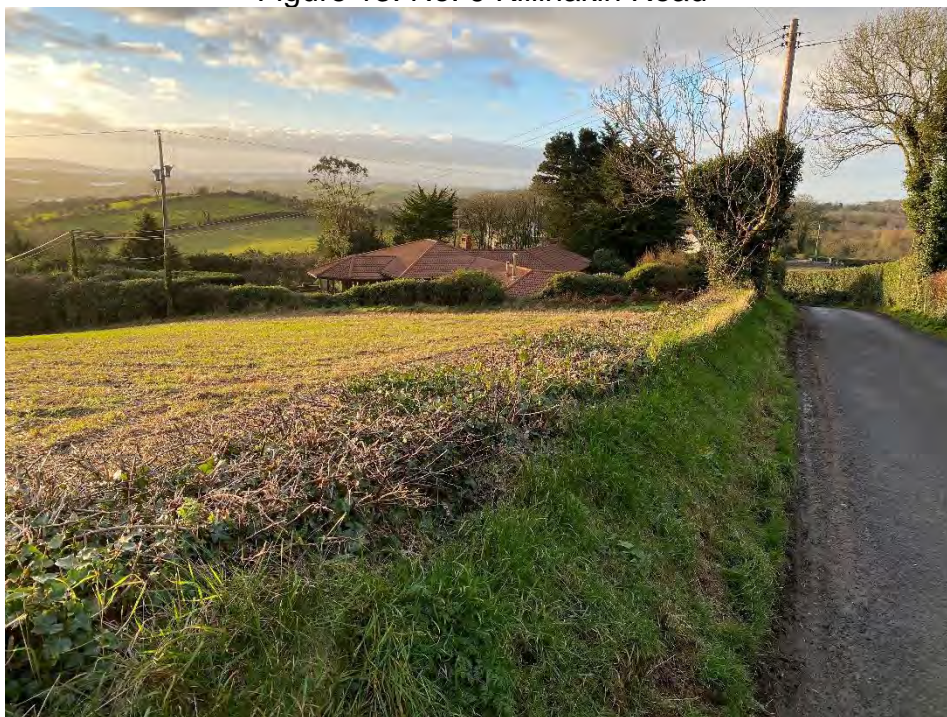


Figure 14: Application site on left, looking towards No. 1 Killinakin Road



Figure 15: No. 8 Killinakin Road, adjacent application site



Figure 16: Looking up Killinakin Road, No. 9 Killinakin Road ahead and application site on right



Figure 17: Looking onto site from general direction of No. 9 Killinakin Road



Figure 18: No. 1 Killinakin Road

Addendum to Development Management Case Officer Report

Planning Ref: LA06/2019/1195/F

Site: Lands adjacent to and South of 9 Killinakin Road, Killinchy, BT23 6PS.

The details of the application site have been remeasured. In the interest of transparency, the remeasurement confirmed that No. 1 Killinakin Road has a plot width of approx. 50m, excluding the copse of trees, with 46m stated in the Development Management Case Officer Report. No. 9 Killinakin Road has a plot width of approximately 60m, with 56m stated in the Development Management Case Officer Report.

The increase in plot widths of the two dwellings is considered marginal and bears no impact on the recommendation to approve the proposal as the primary policy consideration is whether the application site could accommodate two proposed dwellings on plots comparable in size to those in the surrounding area. There is a gap width of 92m between the two neighbouring properties of Nos. 1 and 9 Killinakin Road and it remains the case that the proposed dwellings and their respective plot widths is comparable to existing dwellings within the area.

ITEM 4.5

Ards and North Down Borough Council

Application Ref	LA06/2019/1091/F
Proposal	Creation of a designated area within the existing harbour estate to dismantle end of life fishing vessels (proposal includes a Section 76 legal agreement to discontinue use of original site previously approved under Ref LA06/2018/0893/F)
Location	Portavogie Harbour, Portavogie DEA: Ards Peninsula
Committee Interest	A planning (legal) agreement or modification to a legal agreement is required
Validated	07/11/2019
Summary	<ul style="list-style-type: none">• Proposal located within Portavogie working harbour• Proposal required for dismantling end of life fishing boats• Previous permission exists for another part of the harbour for same use - LA06/2018/0893/F -permission granted 27.02.2019.• As permission previously granted for same use within another area of the harbour a legal agreement required to discontinue use in that area in order to minimise possible cumulative noise and general disturbance• 4 objections from 2 addresses, 2 letters of support• Objections considered in the case officer report
Recommendation	Approval
Attachment	Item 4.5a – Case Officer Report

**Development Management
Case Officer Report**

Reference:	LA06/2019/1091/F	DEA: Ards Peninsula	
Proposal:	Creation of a designated area within the existing harbour estate to dismantle end of life fishing vessels (proposal includes a Section 76 legal agreement to discontinue use of original site previously approved under Ref LA06/2018/0893/F.)		
Location:	Portavogie Harbour, Portavogie		
Applicant:	NI Fishery Harbour Authority		
Date valid:	07/11/2019	EIA Screening Required:	Yes
Date last advertised:	04/11/2021	Date last neighbour notified:	18/11/2021
Letters of Support: 2	Letters of Objection: 4 from 2 separate addresses	Petitions: 0	
Consultations – synopsis of responses:			
Dfl Roads	No objection		
DAERA Natural Environment Division	No objection		
DAERA Marine and Fisheries Division	No objection		
DAERA Water Management Unit	No objection		
DAERA Waste Management	NIEA Waste Management has no further comment to make, however it is to be noted that this proposed activity will require an Authorisation from The Department in the form of a Waste Management Licence		
Shared Environmental Service	A condition for mitigation measures to be included on any permission granted		
Environmental Health Department	Conditions for mitigation measures are to be included on any permission granted		
Summary of main issues considered:			
<ul style="list-style-type: none"> • Principle of development • Potential impacts on the surrounding environment • Potential impacts to nearby residential properties regarding noise, odour, nuisance 			
Recommendation: Grant Planning Permission			
Report Agreed by Authorised Officer			

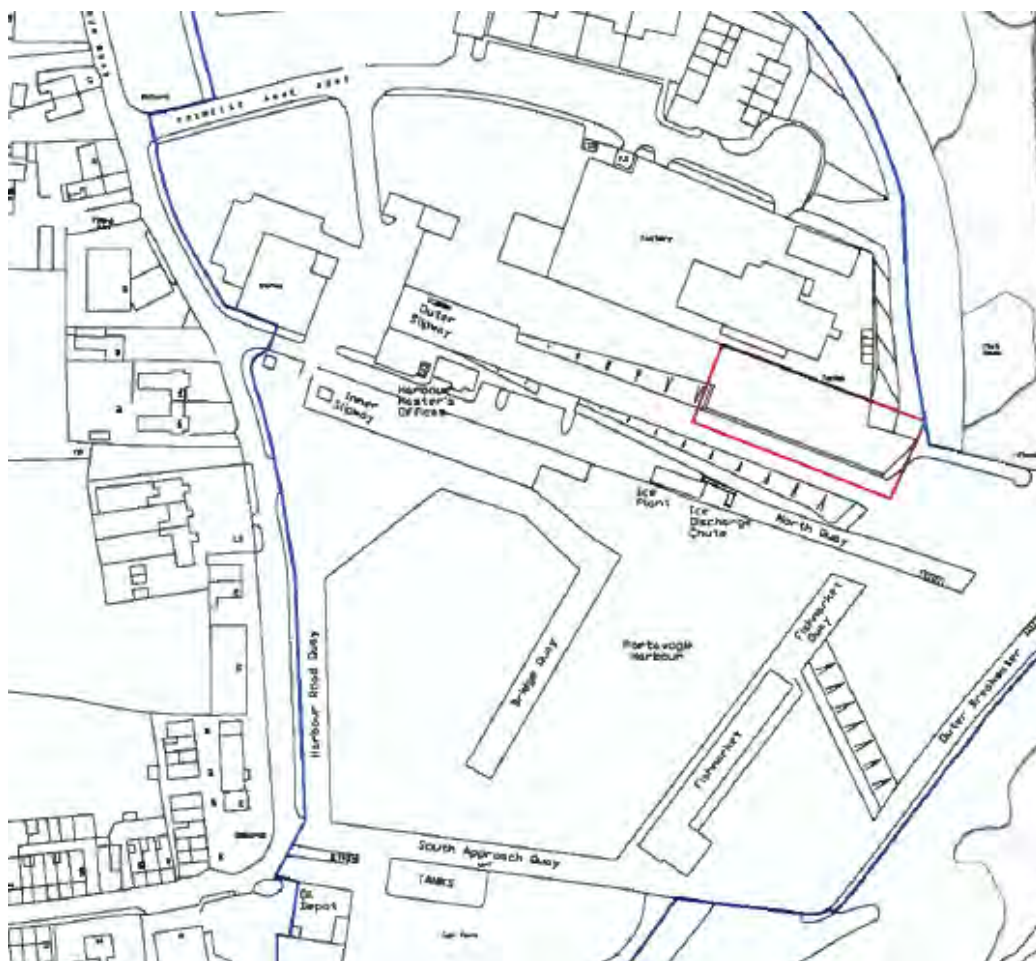
Full details of this application, including the application forms, relevant drawings, consultation responses and any representations received are available to view at the Planning Portal <https://epicpublic.planningni.gov.uk/publicaccess/>

1. Site and Surrounding Area

The site consists of an area within the existing commercial harbour estate in Portavogie. The area is located to the north of the Outer Slipway on the North Quay. It is a quayside used primarily for loading and unloading fishing gear to and from trawlers. Part of the quay is used for the storage of fishing nets.

The site lies within the settlement limit of Portavogie and is adjacent to designated sites Outer Ards ASSI, Outer Ards SPA and RAMSAR as designated in the Ards and Down Area Plan 2015.

2. Site Location Plan



3. Relevant Planning History

LA06/2018/0893/F – Portavogie Harbour

To create a designated area within the existing harbour estate for the dismantling of end of life fishing vessels

Full permission granted on 27.02.2019

4. Planning Assessment

The relevant planning policy framework, including supplementary planning guidance where relevant, for this application is as follows:

- Ards and Down Area Plan 2015 (ADAP)
- Strategic Planning Policy Statement for Northern Ireland
- Planning Policy Statement 2: Natural Heritage
- Planning Policy Statement 11: Planning and Waste Management

Principle of Development

Development Plan

ADAP currently acts as the LDP for this area. There are no material provisions in the Plan that are pertinent to the proposal and therefore the determination will be based on other material considerations. As far as the proposal relates to the ADAP, the site is located within the settlement limit for Portavogie within the existing fishing harbour. The plan contains no provisions specific to this proposal for a waste treatment facility for end-of-life fishing vessels. The proposed development is considered to be in general conformity with the Plan subject to the relevant policy considerations.

The Strategic Planning Policy Statement for Northern Ireland (SPPS)

The SPPS is material to all decisions on individual planning applications. Its guiding principle in determining planning applications is that sustainable development should be permitted having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance.

The SPPS came into effect in September 2015. A transitional period is in operation until a Plan Strategy for the whole of the Council area has been adopted. Existing policy provisions that have not been cancelled by the SPPS are to remain a material consideration. In respect of the proposal, no conflict arises between the SPPS, (in particular Paragraph 6.321) and the prevailing regional policy set out by PPS 11 Planning and Waste Management and PPS 2 Natural Heritage.

Paragraph 6.321 of the SPPS states 'When decision-taking important considerations will include: the types of waste to be deposited or treated and the proposed method of disposal; impacts on human health and the environment (including environmental pollution); roads/transport considerations (particularly where facilities depend on large transfer of materials, often generating a substantial volume of traffic); whether alternative transport modes, in particular, rail and water, have been considered; visual impacts on the landscape or townscape; impacts on nature conservation or archaeological / built heritage interests; impacts of the proposal on flooding at the site and whether it will cause or exacerbate flooding elsewhere; the permanent loss of the best and most versatile agricultural land; practical restoration and aftercare arrangements'. This is in line with the policy considerations set out in Policy WM 1 of PPS11 which is discussed later in this report.

Requirement for a Section 76 legal agreement to discontinue use of original site previously approved under Ref LA06/2018/0893/F

The applicant Northern Ireland Fishery Harbour Authority (NIFHA) gained approval for an area within which to dismantle end of life fishing vessels in a separate location within the harbour at Portavogie under approval LA06/2018/0893/F. NIFHA has now stated that the approved location is not fit for purpose in that it is not possible to lift the vessels up onto the quay as there is no slipway. It had been the intention to use a crane to winch / lift the vessel out of the water onto the quay but when the first vessel arrived it was too large to be lifted out of the water. This resulted in the vessel being tugged to the location proposed in this application (as per LA06/2019/1091/F) and pulled up onto the slipway, where it was dismantled. This was unauthorised activity at this location as it did not benefit from planning permission. Furthermore, given the location close to residential properties complaints were subsequently lodged to the Council with regard to the amount of noise and disturbance caused to adjacent residents. In order to ensure only one area is utilised for the proposed use, the Council requires drafting of a legal agreement to ensure that NIFHA does not continue to utilise the initially approved location for any dismantling. A legal agreement has been drafted and awaits the outcome of this current planning application. If approval of the current planning proposal is agreed by the Council, the legal agreement will be executed prior to the decision notice being issued.

Natural Heritage

Policy NH 2 of PPS 2 Natural Heritage states that planning permission will only be granted for a development proposal that is not likely to harm a species protected by law. Policy NH 5 of PPS 2 Natural Heritage seeks to protect European Protected Species and Priority Habitats. The potential impact of this proposal on Special Areas of Conservation, Special Protection Areas and Ramsar sites has been assessed in accordance with the requirements of Regulation 43 (1) of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended). The proposal would not be likely to have a significant effect on the features, conservation objectives or status of any of these sites and is in line with PPS 2.

NIEA has been consulted regarding the proposal. The comments are summarised below:

Coastal Development - Marine and Fisheries Division has considered the impacts of the proposal and on the basis of the information provided is content with the proposal subject to conditions.

Drainage and Water - Water Management Unit has considered the impacts of the proposal on the surface water environment and on the basis of the information provided is content with the proposal subject to conditions.

Land, Soil and Air - Regulation Unit has considered the proposal and advises that the applicant will be required to apply for a waste management licence to carry out this activity.

Natural Environment Division (NED) has considered the proposal and has not raised any objections.

Shared Environmental Service (SES) - Having considered the nature, scale, timing, duration and location of the project it is concluded that, provided the following mitigation is conditioned in any planning approval, the proposal will not have an adverse effect on site integrity of any European site. The following mitigation should be included through a condition as follows:

- No decommissioning shall be undertaken on the proposed site until such times as a Waste Management Licence is in place covering the breaking operations on each vessel.

Reason: To ensure that the Harbour Authority/Appointed Contractor will be implementing the appropriate environmental mitigation during decommissioning works.

Waste Management

The relevant planning policy is set out in PPS 11 Planning and Waste Management.

Policy WM1 of PPS11 sets out the criteria to assess the environmental impact of the proposed facility. Proposals for the development of a waste management facility will be subject to a thorough examination of environmental effects and will only be permitted where it can be demonstrated that all of the following criteria are met:

- the proposal will not cause demonstrable harm to human health or result in an unacceptable adverse impact on the environment;

As discussed previously in this report under the heading PP2 Natural Heritage, it is considered that the proposed works will not result in an unacceptable adverse impact on the environment. The Environmental Health Department of the Council was consulted in order to determine the public health impact of the proposal and has no objections subject to all the measures as specified in the Method Statement / Working Plan dated 5 August 2021 and supporting statement being complied with. Given the opinion of the Environmental Health Department, it is considered that the proposed works together with the mitigation measures will not cause any unacceptable impacts to human health and in particular, will not cause any unacceptable impacts regarding noise pollution to nearby residents.

- the proposal is designed to be compatible with the character of the surrounding area and adjacent land uses;

The proposal is compatible with the existing use of the commercial harbour estate. The Environmental Health Department does not object to the proposed works on the basis that the mitigation proposals are conditioned as part of any planning permission granted. It is satisfied that the proposed works will not have an adverse impact on any neighbouring residential properties. This is set out in more detail below:

The applicant's noise consultants have submitted adequate information and proposed numerous mitigation measures in order to demonstrate that the proposed works will not cause an unacceptable noise impact to neighbouring residential properties.

The noise assessments and the method statement/ working plan have included several mitigation measures which will be incorporated into the proposal and conditioned accordingly as part of any planning permission granted, and include the addition of an anchor point to facilitate the use of a hydraulic ram to slip the vessel from the water, the substitution of a digger and bucket with the use of hydraulic cutting shears to cut up the vessel and the use of on-site bespoke acoustic barriers.

The noise assessments submitted, assess the potential noise impact by comparing predicted noise levels for the activities during the dismantling operations against the existing background noise levels in accordance with British Standard BS4142:2014. A 6-day noise survey of existing levels was undertaken in September 2020. Following an assessment of the noise survey together with the proposed mitigation measures, and that ongoing noise monitoring will be undertaken during the dismantling of each vessel, to ensure that the levels remain below that level set, the Environmental Health Department has advised that it can no longer sustain an objection to the proposed works. The proposed mitigation measures must be conditioned as part of any planning permission granted. On this basis it is considered that the proposed works are compatible with the character of the surrounding area and adjacent land uses.

The Environmental Health comments are made on the understanding that the previous permitted dismantling operations approved under the original permission LA06/2018/0893/F will no longer take place. The Section 76 legal agreement to discontinue use of original site previously approved under Ref LA06/2018/0893/F will be executed prior to the issue of the decision notice.

- the visual impact of the waste management facility, including the final landform of landfilling or land raising operations, is acceptable in the landscape and the development will not have an unacceptable visual impact on any area designated for its landscape quality;

The proposal will have minimal visual impact as it will be part of the activities associated with a fishing harbour. As part of the mitigation measures, bespoke acoustic barriers will be erected in the agreed position as indicated on Drawing 02 date stamped 20 October 2021 between the noise source and the nearest residential properties at 65, 67a and 67b Harbour Road. The barriers will be 3m in height as this is the optimum height in order to reduce noise travel. They will be moveable and will be placed in position prior to any works taking place and then removed and returned to a storage area once the works have been completed. Given they will only be in place for the duration of the dismantling process and then returned to storage it is not considered that there will be any permanent adverse visual impacts caused.

- the access to the site and the nature and frequency of associated traffic movements will not prejudice the safety and convenience of road users or constitute a nuisance to neighbouring residents by virtue of noise, dirt and dust;

The access to the site is not proposed to be altered as a result of the proposed works. DfI Roads has been consulted regarding the additional traffic generated by the proposed works and no objections have been raised regarding the proposed works prejudicing the safety and convenience of road users or constituting a nuisance to neighbouring properties.

- the public road network can satisfactorily accommodate, or can be upgraded to accommodate, the traffic generated;

Access to the site is via the existing access. The proposal does not involve any changes to the access. DfI Roads has been consulted and it has not raised any concerns regarding road safety.

- adequate arrangements shall be provided within the site for the parking, servicing and circulation of vehicles;

An adequate area is available for parking, servicing and circulation of vehicles within the Harbour.

- wherever practicable the use of alternative transport modes, in particular, rail and water, has been considered;

This is not applicable.

- the development will not have an unacceptable adverse impact on nature conservation or archaeological/built heritage interests.

This has been discussed under the heading 'Natural Heritage'. It is considered that no unacceptable adverse impacts will be caused to nature conservation as a direct result of the proposed works. There are no archaeological or built heritage features in close proximity to the site.

- the types of waste to be deposited or treated and the proposed method of disposal or treatment will not pose a serious environmental risk to air, water or soil resources that cannot be prevented or appropriately controlled by mitigating measures;

No objections have been raised by Northern Ireland Environment Agency (NIEA) or the Environmental Health Department. The proposal will require a waste management licence from NIEA. As part of this process the site will be closely monitored to ensure adherence with procedure and policies to reduce environmental risks.

- the proposed site is not at risk from flooding and the proposal will not cause or exacerbate flooding elsewhere;

The proposal is for a change of use to a designated area for the dismantling of end-of-life fishing vessels. The proposal does not involve any buildings, permanent structures

and will only be used intermittently. On this basis it is not considered to be operational development per se and PPS15 is not applicable in the assessment of this proposal.

- the proposal avoids (as far as is practicable) the permanent loss of the best and most versatile agricultural land;

This is not applicable.

- In the case of landfilling the proposal includes suitable, detailed and practical restoration and aftercare proposals for the site.

This is not applicable.

In terms of Policy WM1 of PPS 11, the proposal meets all the relevant tests.

Policy WM2 of PPS 11 relates to Waste Collection and Treatment Facilities and states that proposals for the development of a waste collection or treatment facility will be permitted subject to a number of criteria.

Criterion (a) requires that there is a need for the facility as established through the Waste Management Strategy (WMS) and the relevant Waste Management Plan (WMP). The proposal to recover waste from end-of-life vessels is consistent with the objectives and principals of the WMS and will contribute in moving toward the targets. It is also consistent with the WMP (ARC 21 for the eastern region of NI) which confirms the need for suitable waste management facilities across the eastern region and confirms that end-of-life vehicles are a Priority Waste Stream. The proposal is consistent with criterion (a) of Policy WM2.

Criterion (b) of WM2 is no longer a material consideration following the publication of the WMS as stated in paragraph 6.323 (page 113) of the SPPS.

Criterion (c) requires that the proposed facility complies with one or more of the five locational criteria. The site meets the first test in that the site is located within an existing port area of a character appropriate to the development.

In terms of WM2 of PPS11, the proposal meets all the relevant tests.

5. Representations

4 letters of objection have been received from 2 separate addresses, 65 Harbour Road and 67b Harbour Road, Portavogie.

Those material planning matters raised in submitted representations are summarised below with consideration in italics:

- Increase in traffic including different types of machinery and vehicles and resulted in difficulty for nearby home-owners to access their property.

DfI Roads has been consulted and has not raised any concerns regarding the additional traffic generated from the proposed works and on this basis it is considered that the proposal is acceptable in terms of road safety and the convenience of road users.

- Excessive increase in noise. This is based on the previous occasion when a vessel was dismantled in this area. The Noise Impact Assessment 'predicts' the estimated noise levels.

The previous occasion when a vessel was dismantled in this area was unauthorised and without the benefit of planning permission and associated conditions and mitigation measures to reduce the noise pollution. The Environmental Health Department is satisfied that the proposed mitigation measures will prevent unacceptable noise disturbance to nearby residential properties.

- Debris from the dismantling operation blowing onto garden areas of neighbouring properties.

This disturbance occurred without the benefit of any of the proposed mitigation measures being put in place. The barriers will help to reduce debris from blowing beyond the site.

Other matters raised, such as a monument being located close to the site to remember the people who lost their lives at sea, is not a material planning matter that can be considered in respect of this proposal and did not require consultation with HED because it is not scheduled as an historic monument.

2 letters of support have been received from 2 separate addresses.

Those material planning matters raised in submitted representations are summarised below:

The Chief Executive of Northern Irish Fish Producer's Organisation:

The fishing Industry in NI has faced the challenge of how to dispose of fishing vessels that have reached the end of their life in a safe and environmentally responsible manner. The proposed facility for Portavogie Harbour is welcomed as it enables these challenges to be met and as such it has the full endorsement and support of the Northern Irish Fish Producers Organisation.

The Head of Assets and Property Services in Ards and North Down Borough Council:

There are currently no dismantling facilities in the area. The alternative is unfeasible as it means appointment of a tug to tow the vessel to Scotland at a significant cost. This gives rise to a risk of vessels being abandoned within our harbours, the owners are often untraceable leaving the harbour authority little option but to pay for the dismantling and disposal of the abandoned vessel. The proposal in Portavogie Harbour is supported on the basis that any environmental or nuisance concerns can be addressed by physical means or operational restrictions.

6. Recommendation

Grant Planning Permission

7. Conditions

1. The permission hereby granted shall be for a limited period of 5 years only and shall expire on ...December 2026. (date to be included when decision notice issues).

Reason: To enable the Council to consider the development in the light of circumstances then prevailing.

2. Dismantling operations shall not be undertaken, associated heavy goods vehicles shall not access the site and deliveries/ collections of skips or other materials shall not take place outside the following hours:

- Monday to Friday 08:00hrs - 18:00hrs
- No operations will be undertaken on Saturdays, Sundays, Bank or Public Holidays.

Reason: To safeguard the living conditions of residents in nearby properties.

3. All noise mitigation measures specified in Section 4.3 (Noise) of the Method Statement/ Working Plan received 5th August 2021 shall be adopted as specified, including in particular:

- The incorporation of an anchor point to facilitate the use of a hydraulic ram to slip the vessel from the water.
- The use of hydraulic cutting shears to cut up the vessel.

Reason: To safeguard the living conditions of residents in nearby properties.

4. No development activity shall commence on site until details of the bespoke moveable acoustic barriers as referred to in the Method Statement / Working Plan received 5th August 2021, have been submitted to and approved in writing by the Council. The approved barriers shall be positioned as indicated on Drawing 02 date stamped 20 October 2021 and will be in place on site prior to commencement of any works permitted in this application and during all dismantling works.

Reason: To safeguard the living conditions of residents in nearby properties.

5. The rating level of the noise emitting from the development shall not exceed 46.7dB LAr. All measurements and rating shall be made according to BS4142:2014.

Reason: To safeguard the living conditions of residents in nearby properties.

6. A noise monitoring terminal will be positioned within the site in the location as shown on Drawing 03 date stamped 20 October 2021 and will be in operation to record all noise levels during all dismantling works. This terminal shall be as specified in the Irwin Carr report dated 6th July 2021.

Reason: To safeguard the living conditions of residents in nearby properties.

7. All data obtained from each dismantling operation shall be downloaded and reviewed to ensure that the noise levels have not exceeded the rating level set. All data obtained, including any exceedances of the level set and the remedial action taken to reduce the level, shall be retained to be produced to Ards and North Down Borough Council on request.

Reason: To safeguard the living conditions of residents in nearby properties.

8. All construction activity shall be confined within site boundaries, and the boundary of the designated areas shall not be disturbed in any way without written consent from the Council.

Reason: To protect the integrity of Strangford Lough Part 2 & 3 ASSI, MCZ, SPA and SAC and Ramsar Site, Outer Ards SPA, ASSI and Ramsar Site, East Coast Marine pSPA, North Channel SCI, Murlough SAC and The Maidens SAC and to avoid damage by construction vehicles, deposited materials, contaminated run-off.

9. A detailed Construction Method Statement, for works in, near or liable to affect any waterway as defined by the Water (Northern Ireland) Order 1999, must be submitted to NIEA Water Management Unit, at least 8 weeks prior to the commencement of the works or phase of works.

Reason: To ensure effective avoidance and mitigation measures have been planned for the protection of the water environment.

10. The materials to be accepted shall be restricted to EWC 16-01-04 and shall apply to fishing vessels only.

Reason: In the interests of the amenity of the surrounding area.

11. No decommissioning shall be undertaken on the proposed site until such times as a Waste Management Licence is in place and this is confirmed with the Council in writing covering the breaking operations on each vessel.

Reason: To ensure that the Harbour Authority/Appointed Contractor will be implementing the appropriate environmental mitigation during decommissioning works

12. All equipment associated with the development hereby permitted shall be removed and the land restored to its former condition on or before (insert date 5 years from date of decision notice).

Reason: To protect the amenity of the area.

Informative

This Notice relates solely to a planning decision and does not purport to convey any other approval or consent which may be required under the Building Regulations or any other statutory purpose. Developers are advised to check all other informatives, advice or guidance provided by consultees, where relevant, on the Portal.

Aerial image



Aerial image showing the application site outlined in red

Site photographs



Photograph showing the slipway



Photogrpagh showing the slipway



Photograph showing nearby residential properties on Harbour Road

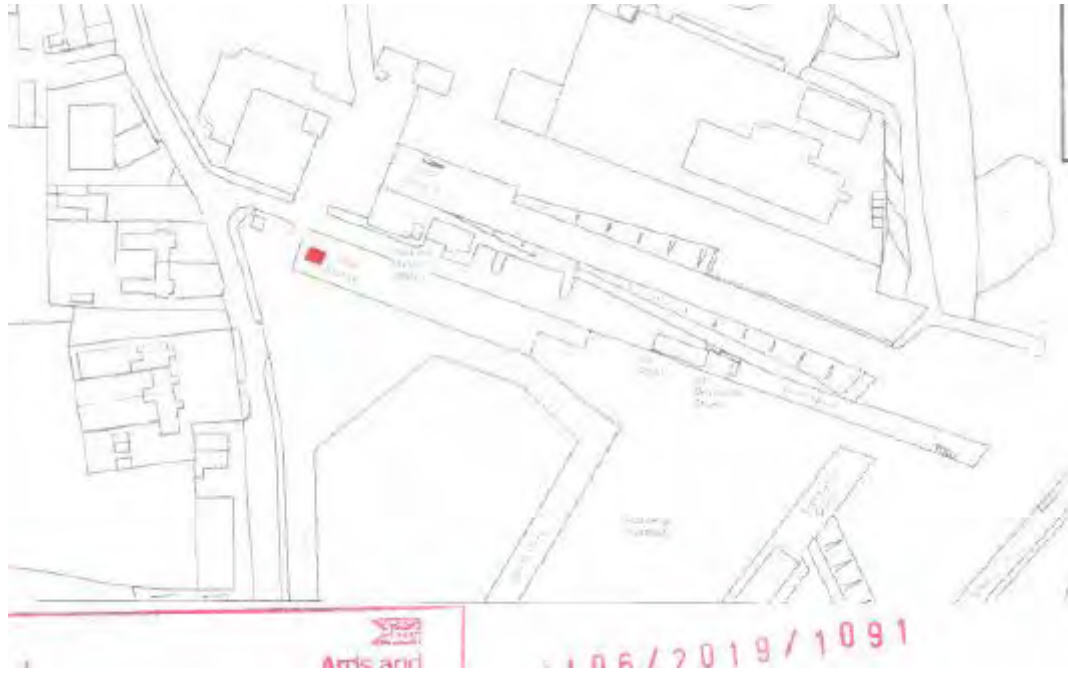
Application drawings



Drawing 02 showing the location of where the sound barriers will be positioned during dismantling works.



Drawing 03 showing the location of where the sound barriers will be stored when not in use



Drawing 04 showing the location of where the sound monitor terminal will be placed

ITEMS 4.6 - 4.10

Ards and North Down Borough Council

Application Refs	LA06/2021/1185/F LA06/2021/1186/F LA06/2021/1187/F LA06/2021/1188/F LA06/2021/1189/F
Proposal	Installation of sculptures in each of the Borough's five towns to commemorate the centenary of the foundation of Northern Ireland
Location	Comber, Donaghadee, Newtownards, Holywood, Bangor
Committee Interest	Applications made by the Council
Validated	14/10/21
Summary	<ul style="list-style-type: none">• The Council has submitted a series of sculptures commemorating the centenary of the foundation of Northern Ireland• The sculptures are 0.8m high, 0.7m wide and 0.5m long• The sculptures will respect amenity and will have no detrimental impact on the character and appearance of the areas in which they are located• No objections raised by relevant consultees
Recommendation	Approval
Attachment	Items 4.6a - 4.10a

**Development Management
Case Officer Report**

Reference:	LA06/2021/1185/F	DEA: Comber	
Proposal:	Installation of sculpture to commemorate the centenary of the foundation of Northern Ireland.		
Location:	40M SW of 10 The Square, Comber		
Applicant:	Ards & North Down Borough Council		
Date valid:	14.10.2021	EIA Screening Required:	No
Date last advertised:	28.10.2021	Date last neighbour notified:	18.10.2021
Letters of Support : 0	Letters of Objection: 0	Petitions: 0	
Consultations – synopsis of responses:			
Historic Environment Division		No objection, subject to condition.	
Summary of main issues considered:			
<ul style="list-style-type: none"> • Design of proposal; • Visual amenity; • Amenity; • Impact on Area of Archaeological Potential, listed building, proposed Area of Townscape Character and Comber town centre. 			
Recommendation: Grant Planning Permission			
Report Agreed by Authorised Officer			
Full details of this application, including the application forms, relevant drawings, consultation responses and any representations received are available to view at the Planning Portal https://epicpublic.planningni.gov.uk/publicaccess/			

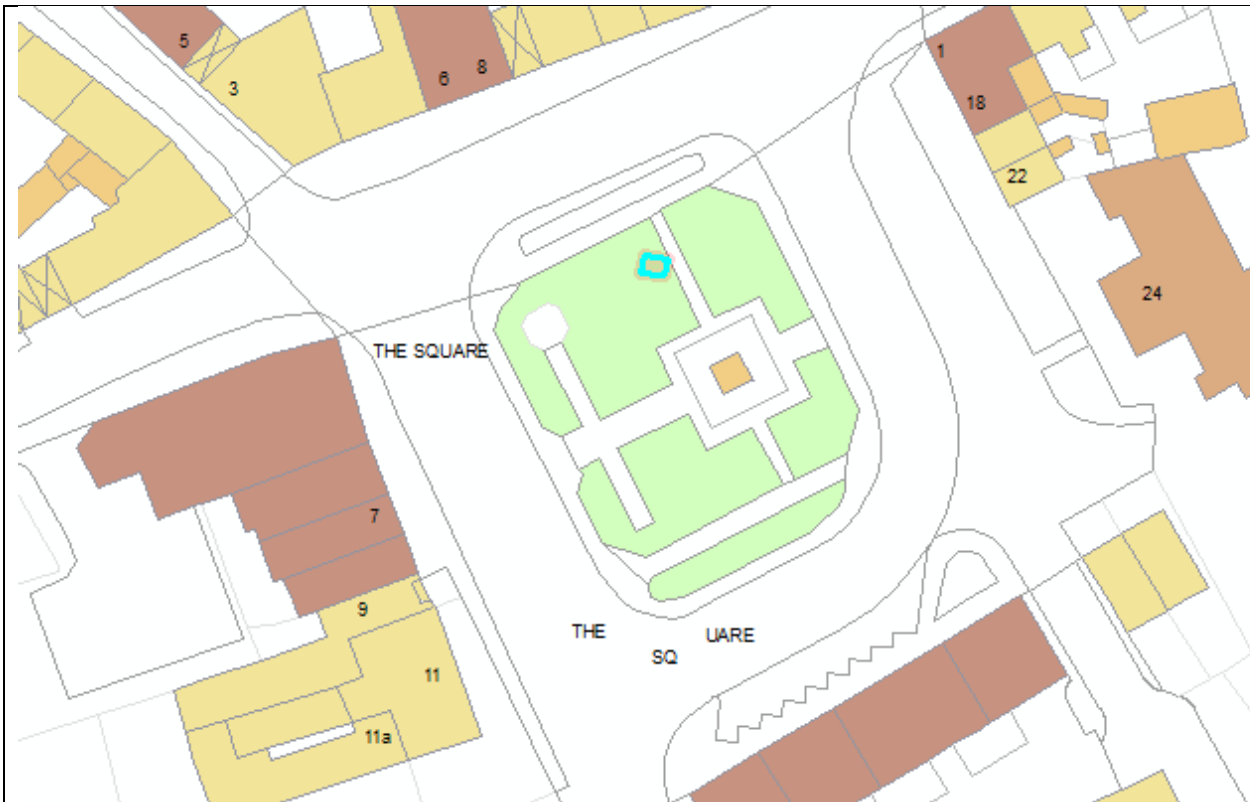
1. Site and Surrounding Area

The application site is located approx. 40M SW of No. 10 The Square, within the town centre and designated settlement limit of Comber. It is within an Area of Archaeological Potential and a proposed Area of Townscape Character.



The site is located within the main square in the town centre of Comber with it acknowledged that there are a number of commemorations, sculptures, public art installations and street furniture within close proximity of the application site.

2. Site Location Plan



3. Relevant Planning History

There is no planning history that is deemed pertinent to the assessment of this application.

4. Planning Assessment

The relevant planning policy framework, including supplementary planning guidance where relevant, for this application is as follows:

- Ards and Down Area Plan 2015 (ADAP);
- Strategic Planning Policy Statement for Northern Ireland;
- Planning Policy Statement 2: Natural Heritage;
- PPS 6: Planning, Archaeology and the Built Heritage;
- Addendum to PPS 6: Areas of Townscape Character.

Planning Guidance:

There is no relevant supplementary planning guidance.

Principle of Development Development Plan

ADAP currently acts as the Local Development Plan (LDP) for this area. There are no material provisions in the Plan that are pertinent to the proposal and therefore the determination will be based on other material considerations.

Strategic Planning Policy Statement for Northern Ireland

The SPSS sets out the guiding principle relating to the grant/refusal of development contained within paragraphs 3.8. The principle states that sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance.

The SPSS states that archaeological and built heritage are important sources of information about our past, and are often significant landmarks in the present townscape and countryside. It is acknowledged that the archaeological and built heritage constitutes an irreplaceable record which contributes to our understanding of both the present and the past, adds to the quality of our lives and promotes a sense of self.

The application site is located within an Area of Archaeological Potential, listed buildings (and their respective curtilage), an Area of Townscape Character within the designated town centre and settlement limit of Comber as per the Ards and Down Area Plan 2015.

Given the limited scale of the proposal, the proposed sculpture to commemorate the centenary of the foundation of Northern Ireland is deemed to have no detrimental impact upon the surrounding area, with it acknowledged that there are other commemorations and sculptures within close proximity of the proposal.

Any conflict between the SPSS and any policy retained under the transitional arrangements must be resolved in favour of the provisions of the SPSS.

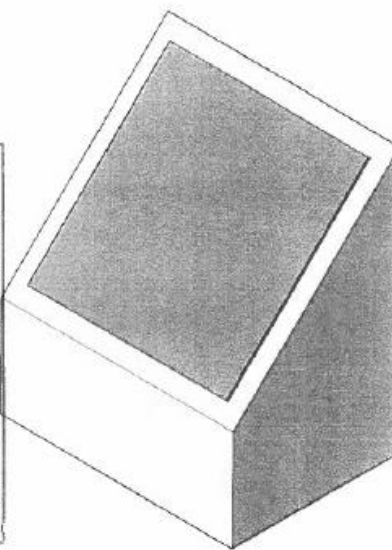
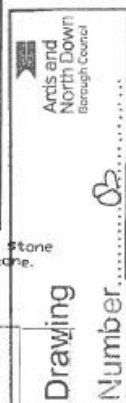
With regards to the SPSS I am satisfied that this proposal will not prejudice public safety and is respectful of the general characteristics of the area, nor will it detract from the quality and character of the locality.

Visual Impact

The proposal is for the new installation of a sculpture to commemorate the centenary of the foundation of Northern Ireland.



Above is an example of a NI100 Paving Stone that will be recessed into the sandstone.



Isometric View

Proposed Northern Ireland centenary commemorative stone

The proposed commemoration stone shall be 0.8m high, 0.7m wide and 0.5m long. The memorial stone will be constructed from sandstone buff coloured with a smooth finish, with the top of the stone recessed in order to accommodate the NI100 paving stone (approx. 0.6m and 0.6m). The proposal shall be located within the main square in the centre of Comber, with it acknowledged that there are a number of commemorations, public art installations and street furniture within the square. The proposed site is considered an appropriate location for the commemoration, with the proposal not deemed to prejudice pedestrian or vehicular movement and access.

The proposal is considered acceptable in that it shall have no detrimental impact upon the visual appearance of the surrounding area. Whilst it is acknowledged that art is subjective and part of its aim is to stimulate debate and provoke reaction, it is deemed that the design of the piece will contribute positively to the existing commemorations in the area with no detrimental impact upon neighbouring commercial and residential properties.

Addendum to PPS 6: Areas of Townscape Character

Policy ATC 2: New Development in an Area of Townscape Character

The proposal is deemed to have no detrimental impact upon the ATC. Due to the limited scale of the proposed commemorative stone the proposal is deemed to maintain and enhance the sense of 'place' within the main square. The proposal is in keeping with the street furniture, commemorations and sculptures that are located within the existing square

Impact on Amenity

The proposal is considered to be of a limited scale and degree so as to have no detrimental impact on the amenity of adjacent businesses or residential properties.

Given the location of the proposal and its limited design and scale, I am of the opinion that the proposal will have no detrimental impact on levels of amenity.

- **Natural Heritage**

Policy NH1 of PPS2 Natural Heritage relates to European and Ramsar sites and states that planning permission will only be granted for a development proposal that, either individually, or in combination with existing and/or proposed plans or projects, is not likely to have a significant effect on those sites.

The potential impact of this proposal on Special Areas of Conservation, Special Protection Areas and Ramsar sites has been assessed in accordance with the requirements of Regulation 43 (1) of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended). The proposal would not be likely to have a significant effect on the features, conservation objectives or status of any of these sites.

Policy NH 2 of PPS 2 states that planning permission will only be granted for a development proposal that is not likely to harm a species protected by law. To this end, the NI Biodiversity Checklist has been used to identify whether the proposal is likely to adversely affect certain aspects of biodiversity including protected species. In this instance, given the scale and nature of the proposal, it has indicated that there is not a

reasonable likelihood of there being protected species present and therefore further investigation is not considered necessary.

- **Archaeology and the Built Heritage**

With regard to PPS6 Planning Archaeology and the Built Heritage HED were consulted on this proposal because the application is in close proximity to The Gillespie Monument, The Square (HB24 15 011) and 6-8 The Square, Comber (HB24 15 005A).

Historic Environment Division (Historic Buildings) has considered the impacts of the proposal and on the basis of the information provided, advises that HED are content with the proposal, as presented, with a condition pertaining to the finishes and location being erected in accordance with the plans. These comments are made in relation to the requirements of the Strategic Planning Policy Statement for Northern Ireland (SPPS) paragraph 6.12 (setting) and of Planning Policy Statement 6: Planning, Archaeology and the Built Heritage (PPS6) Policy BH11 (Development affecting the Setting of a Listed Building).

The proposal is satisfactory to SPPS and PPS 6: Planning, Archaeology and the Built Heritage.

5. Representations

No letters of representation were received.

6. Recommendation

Grant Planning Permission

7. Conditions

1. The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.

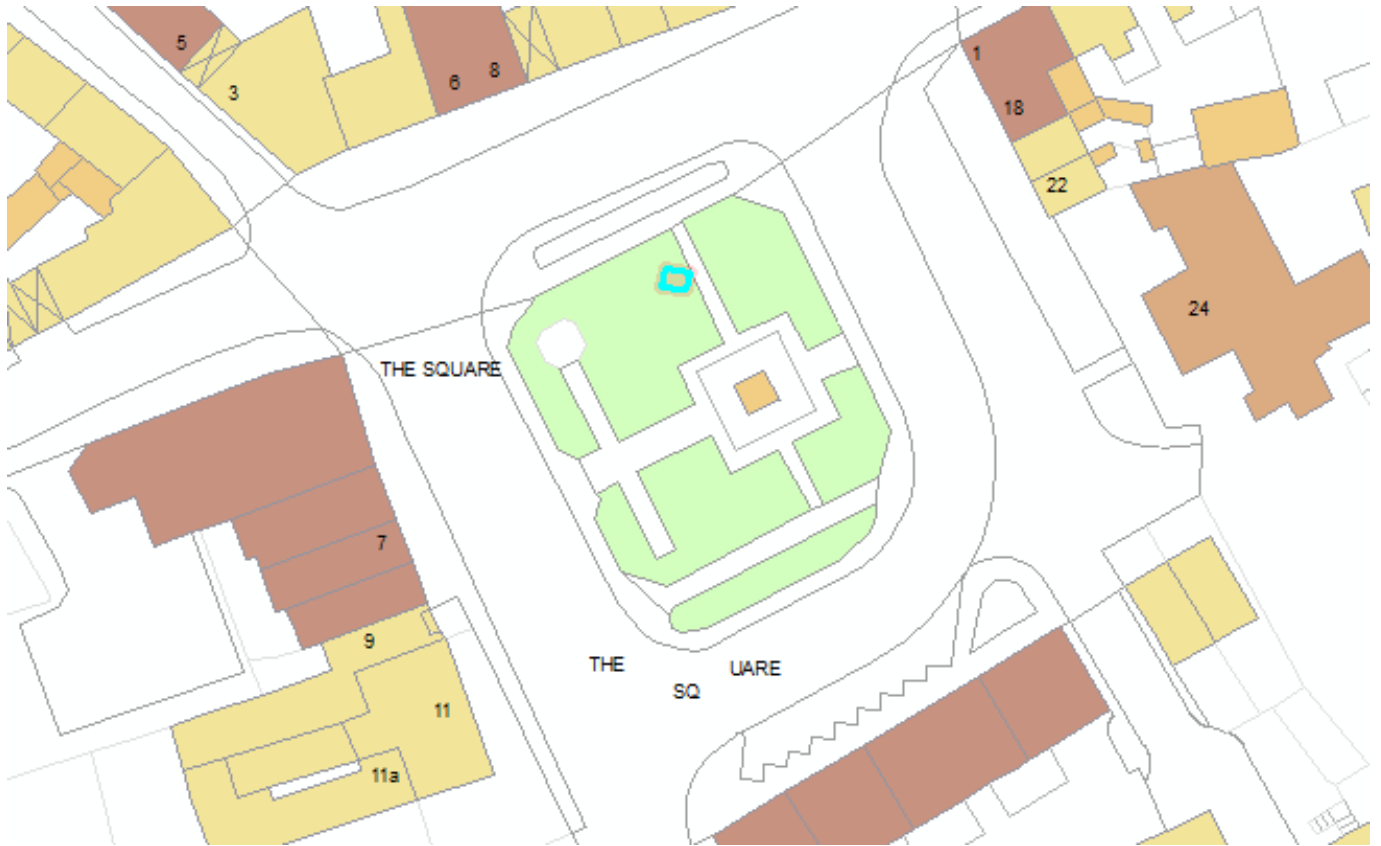
Reason: To comply with the requirements of Section 61 of the Planning Act (Northern Ireland) 2011.

2. The proposal including materials and finishes shall be as per planning Drawing Nos. 02 and 03 stamped received 04.10.2021.

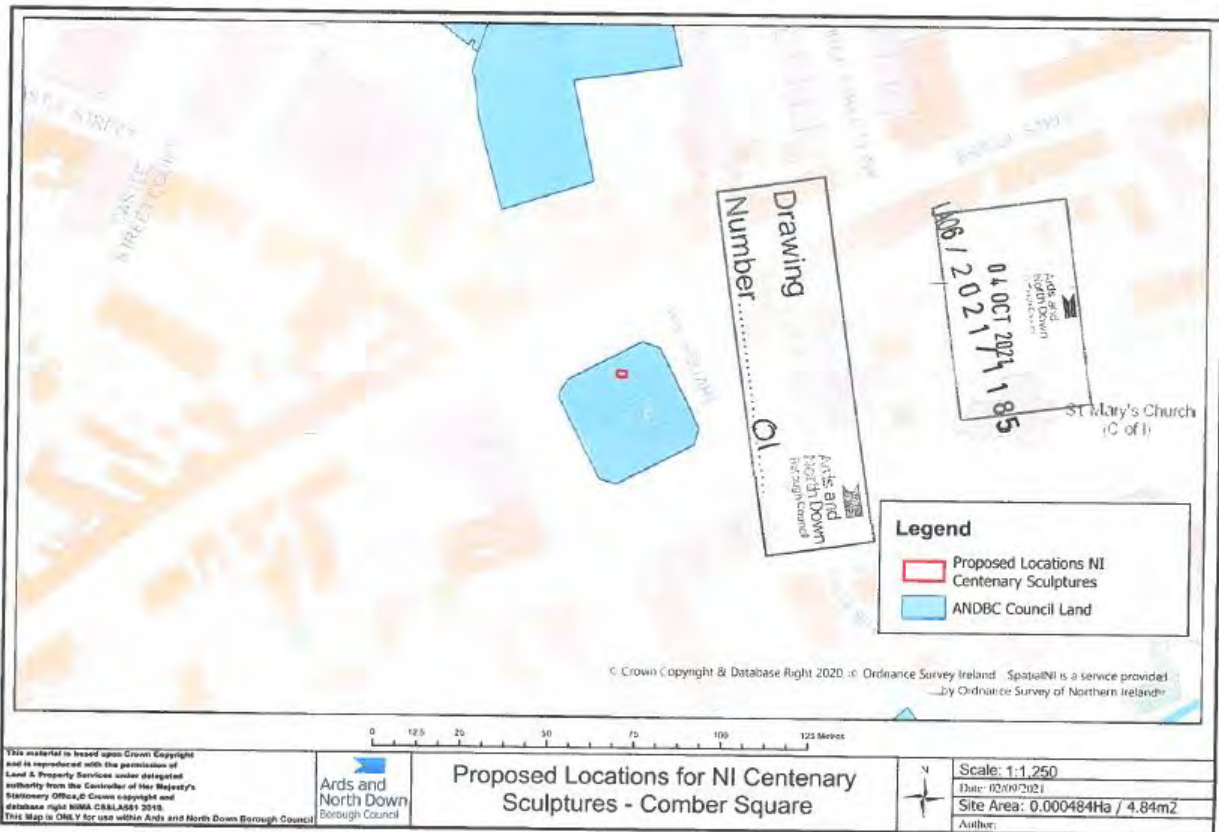
Reason: To ensure the detailed design respects the listed building in terms of scale, height, massing and alignment and to ensure the works proposed make use of traditional or sympathetic building materials and techniques which respect those found on the building and respects the character of the setting of the building.

Informative

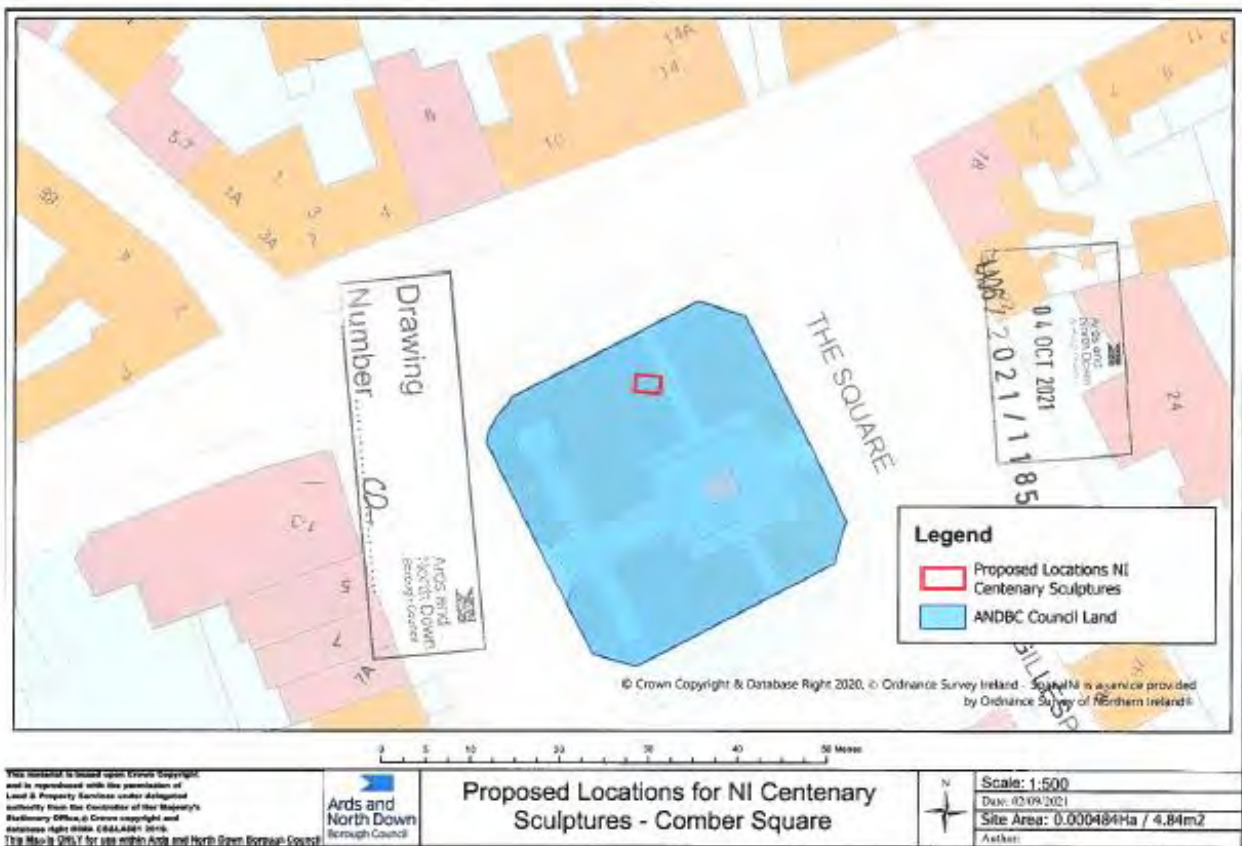
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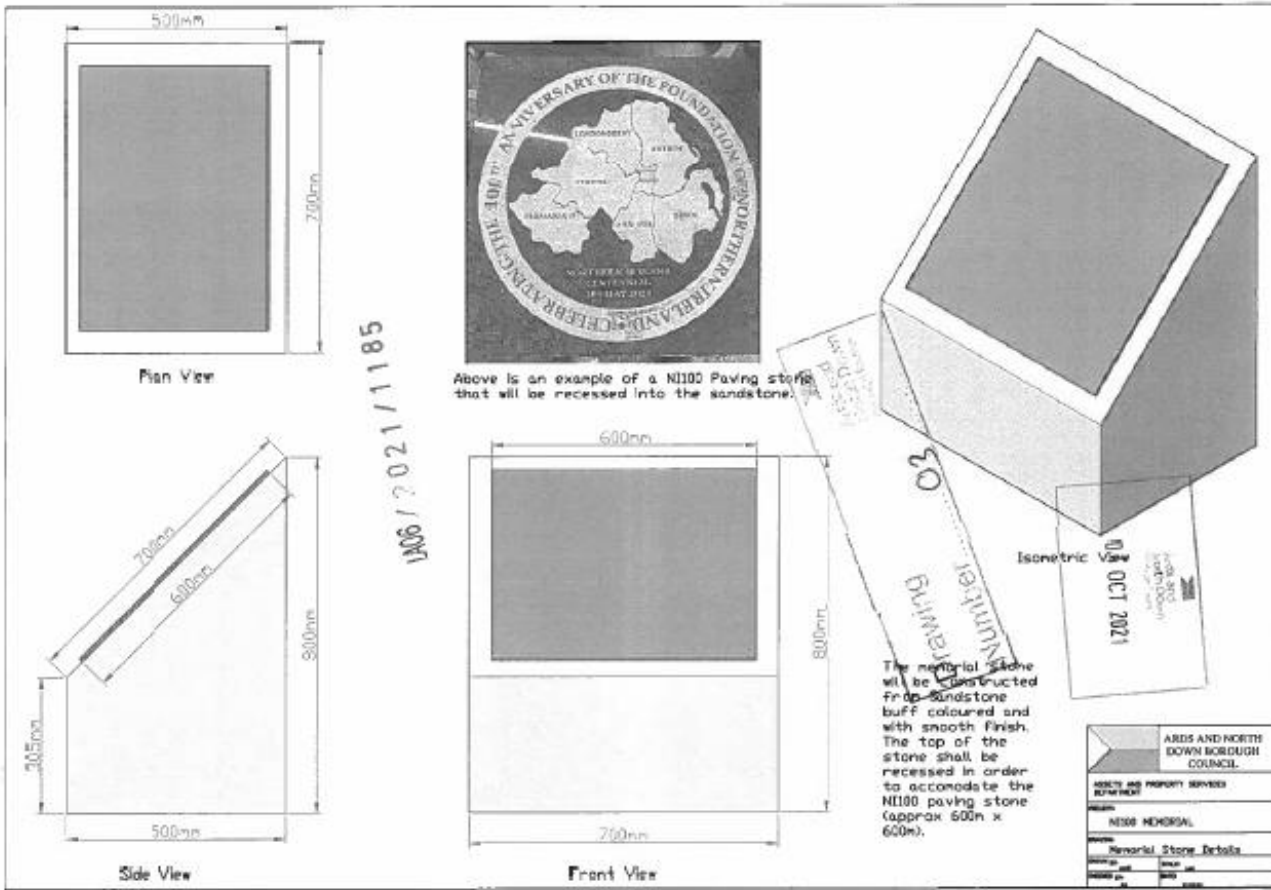
Site location



Drawing No. 01



Drawing No. 02



Drawing No. 03





**Development Management
Case Officer Report**

Reference:	LA06/2021/1186/F	DEA: Bangor East & Donaghadee	
Proposal:	Installation of sculpture to commemorate the centenary of the foundation of Northern Ireland.		
Location:	23m east of 10 Union Street, Donaghadee (beside War Memorial).		
Applicant:	Ards & North Down Borough Council		
Date valid:	14.10.2021	EIA Screening Required:	No
Date last advertised:	28.10.2021	Date last neighbour notified:	18.10.2021
Letters of Support : 0	Letters of Objection: 0	Petitions: 0	
Consultations – synopsis of responses:			
Historic Environment Division		No objection, subject to condition.	
Conservation Officer		No objection.	
Summary of main issues considered:			
<ul style="list-style-type: none"> • Design of proposal; • Visual amenity; • Amenity; • Impact on archaeological sites and monuments, Area of Archaeological Potential and Conservation Area. 			
Recommendation: Grant Planning Permission			
Report Agreed by Authorised Officer			
Full details of this application, including the application forms, relevant drawings, consultation responses and any representations received are available to view at the Planning Portal https://epicpublic.planningni.gov.uk/publicaccess/			

1. Site and Surrounding Area

The application site is located approx. 23m east of 10 Union Street, Donaghadee, beside the War Memorial. The application site is located at a lower level than the Shore Road, within close proximity of an existing stone commemoration.



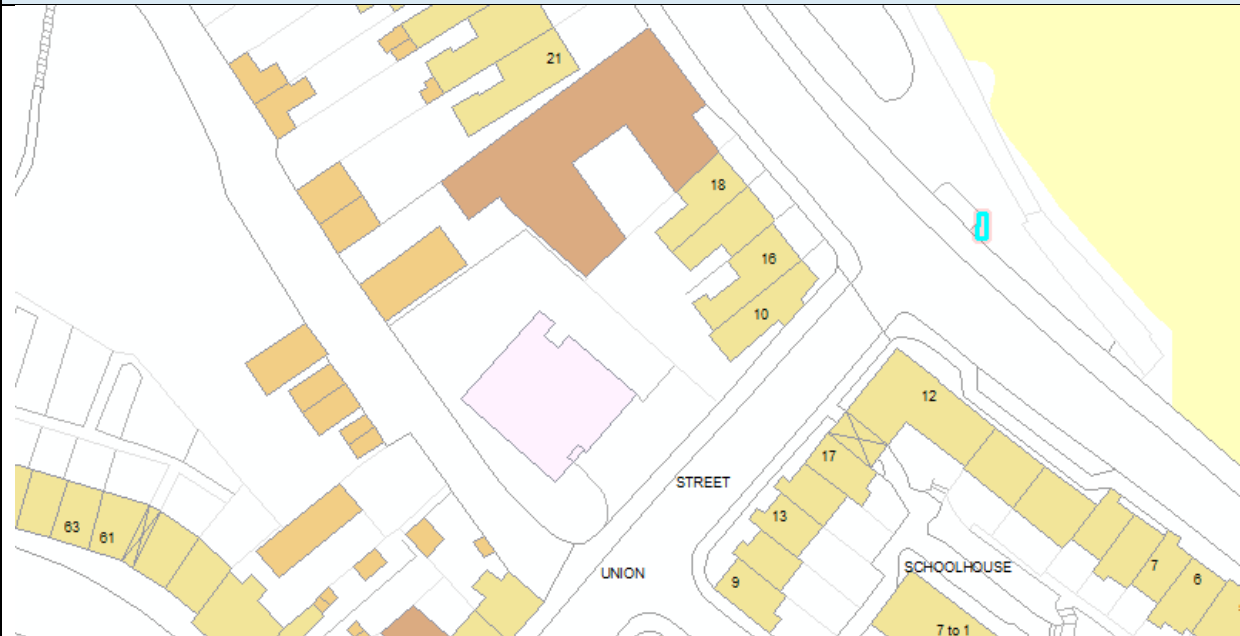
Viewed from the level of the road



Viewed from coastal side

The application is located within Donaghadee town centre, within the designated settlement limit of Donaghadee as per the Ards and Down Area Plan 2015. The application site is located within close proximity of archaeological sites and monuments modern church on site of medieval church, Donaghadee (DOW003:006), holy well (DOW003:004), historic settlement of Donaghadee (DOW003:011) and Donaghadee motte (DOW003:003) and is within an Area of Archaeological Potential. The application site is also within a Conservation Area.

2. Site Location Plan



3. Relevant Planning History

There is no planning history that is deemed pertinent to the assessment of this application.

4. Planning Assessment

The relevant planning policy framework, including supplementary planning guidance where relevant, for this application is as follows:

- Ards and Down Area Plan 2015 (ADAP);
- Strategic Planning Policy Statement for Northern Ireland;
- Planning Policy Statement 2: Natural Heritage;
- PPS 6: Planning, Archaeology and the Built Heritage.

Planning Guidance:

There is no relevant supplementary planning guidance.

Principle of Development Development Plan

ADAP currently acts as the LDP for this area. There are no material provisions in the Plan that are pertinent to the proposal and therefore the determination will be based on other material considerations.

Strategic Planning Policy Statement for Northern Ireland

The SPPS sets out the guiding principle relating to the grant/refusal of development contained within paragraphs 3.8. The principle states that sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance.

The SPPS states that archaeological and built heritage are important sources of information about our past, and are often significant landmarks in the present townscape and countryside. It is acknowledged that the archaeological and built heritage constitutes an irreplaceable record which contributes to our understanding of both the present and the past, adds to the quality of our lives and promotes a sense of self.

The application site is located within close proximity of archaeological sites and monuments modern church on site of medieval church, Donaghadee (DOW003:006), holy well (DOW003:004), historic settlement of Donaghadee (DOW003:011) and Donaghadee motte (DOW003:003) and is within an Area of Archaeological Potential.

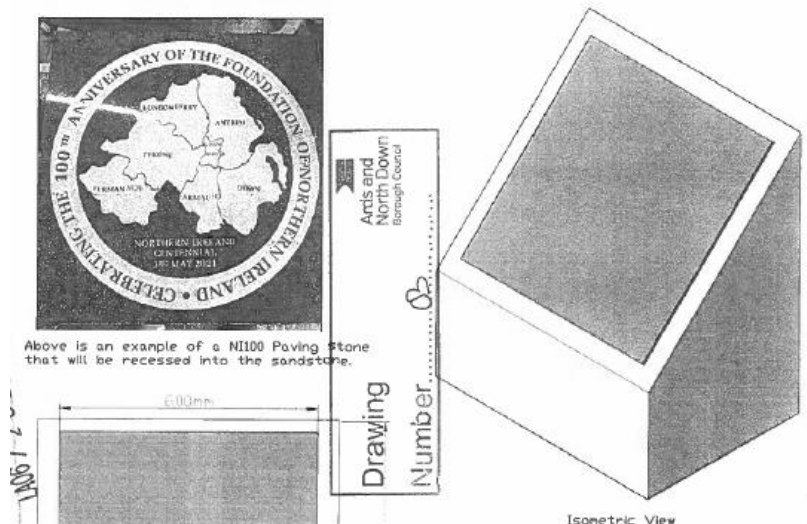
The application site is also located within a designated Conservation Area, with Para 6.18 of the SPPS states that the guiding principle pertaining to development within a Conservation Area is to afford special regard to the desirability of enhancing its character or appearance where an opportunity to do so exists, or to preserve its character or appearance where an opportunity to enhance does not arise. Given the limited scale of the proposal, the proposed sculpture to commemorate the centenary of the foundation of Northern Ireland is deemed to have no detrimental impact upon the Conservation Area.

Any conflict between the SPPS and any policy retained under the transitional arrangements must be resolved in favour of the provisions of the SPPS.

With regards to the SPPS I am satisfied that this proposal will not prejudice public safety and is respectful of the general characteristics of the area, nor will it detract from the quality and character of the locality.

Visual Impact

The proposal is for the new installation of a sculpture to commemorate the centenary of the foundation of Northern Ireland.



Proposed Northern Ireland centenary commemorative stone

The proposed commemoration stone shall be 0.8m high, 0.7m wide and 0.5m long. The memorial stone to mark the centenary of Northern Ireland will be constructed from sandstone buff coloured with a smooth finish, with the top of the stone recessed in order to accommodate the NI100 paving stone (approx. 0.6m and 0.6m). The proposal shall be located on the hard surfaced area of the public realm, to the rear of the existing war memorial at a lower level to the public Shore Street. Due to the different levels there shall be no public views of the proposal from the public Shore Road, with it noted that the proposal shall integrate with the War Memorial and existing commemorative markers in close proximity to the application site.

The proposal is considered acceptable in that it shall have no detrimental impact upon the visual appearance of the surrounding area. Whilst it is acknowledged that art is subjective and part of its aim is to stimulate debate and provoke reaction, it is deemed that the design of the piece will contribute positively to the existing commemorations in the area and contribute to the sense of 'place'.

Impact on Amenity

The proposed installation of a commemorative stone to mark the centenary of Northern Ireland is acknowledged as being sympathetic and complimentary to the existing commemorations at the war memorial. The proposal is considered to be of a limited scale and degree so as to have no detrimental impact on amenity, with the proposal set down below the level of the Shore Road set to the rear of the wall.

Given the location of the proposal and its limited design and scale, I am of the opinion that the proposal will have no detrimental impact on levels of amenity.

- **PPS 2: Natural Heritage**

Policy NH1 relates to European and Ramsar sites and states that planning permission will only be granted for a development proposal that, either individually, or in combination with existing and/or proposed plans or projects, is not likely to have a significant effect on those sites.

The potential impact of this proposal on Special Areas of Conservation, Special Protection Areas and Ramsar sites has been assessed in accordance with the

requirements of Regulation 43 (1) of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended). The proposal would not be likely to have a significant effect on the features, conservation objectives or status of any of these sites.

Policy NH 2 of PPS 2 states that planning permission will only be granted for a development proposal that is not likely to harm a species protected by law. To this end, the NI Biodiversity Checklist has been used to identify whether the proposal is likely to adversely affect certain aspects of biodiversity including protected species. In this instance, given the scale and nature of the proposal, it has indicated that there is not a reasonable likelihood of there being protected species present and therefore further investigation is not considered necessary.

- **PPS 6: Planning, Archaeology and the Built Heritage**

With regard to PPS6 Planning Archaeology and the Built Heritage HED were consulted on this proposal because the application is in close proximity to the modern church on site of medieval church, Donaghadee (DOW003:006), holy well (DOW003:004), historic settlement of Donaghadee (DOW003:011) and Donaghadee motte (DOW003:003) and is within an Area of Archaeological Potential.

HED (Historic Buildings) considers the height, scale, massing, alignment, materials and nature of the sculpture to be sympathetic to the character of Donaghadee, with the proposal sufficiently removed in situation and scale of development from the listed building as to have no impact and therefore consider it is content with the proposal if built according to the submitted planning documents. The proposal is considered acceptable.

Policy BH 12: New Development in a Conservation Area

As per the consultation response provided by the Council's Conservation Officer, dated 19th October 2021:

The proposed memorial stone is to be located on the hard surfaced area of the public realm, to the rear of the existing war memorial obelisk and also near to an existing commemorative stone which was put in place in 2016. It will not be visible from Shore Street due to its location behind the promenade wall, at a lower level than the public road. It will only be seen from Marine Gardens in the context of the existing pieces of public art, landscaping and street furniture. The stone is modest in scale and is composed of sandstone, which is a natural material and will tie in well with the existing stone cenotaph and perimeter wall. Historical plaques and memorials such as this are commonplace within historical town centres and add to the cultural understanding and heritage interest of these areas. The memorial will contribute positively to creating a sense of place and is similar in design to other sculptures that have been previously approved in the immediate vicinity.

In summary, this is a very minor development - modest in scale, simple in design, utilising traditional materials and adding to the historical fabric of Donaghadee. The proposal complies with policy BH12 of PPS6 and the SPPS insofar as it relates to conservation areas.

The proposal is deemed to be compliant with Policy BH 12: New Development in a Conservation Area with the proposal preserving the character and appearance of the area, with it noted that the limited scale of the proposal is considered acceptable.

The proposal is satisfactory to SPPS and PPS 6: Planning, Archaeology and the Built Heritage.

5. Representations

No letters of representation pertaining to the proposed development have been received.

6. Recommendation

Grant Planning Permission

7. Conditions

1. The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.

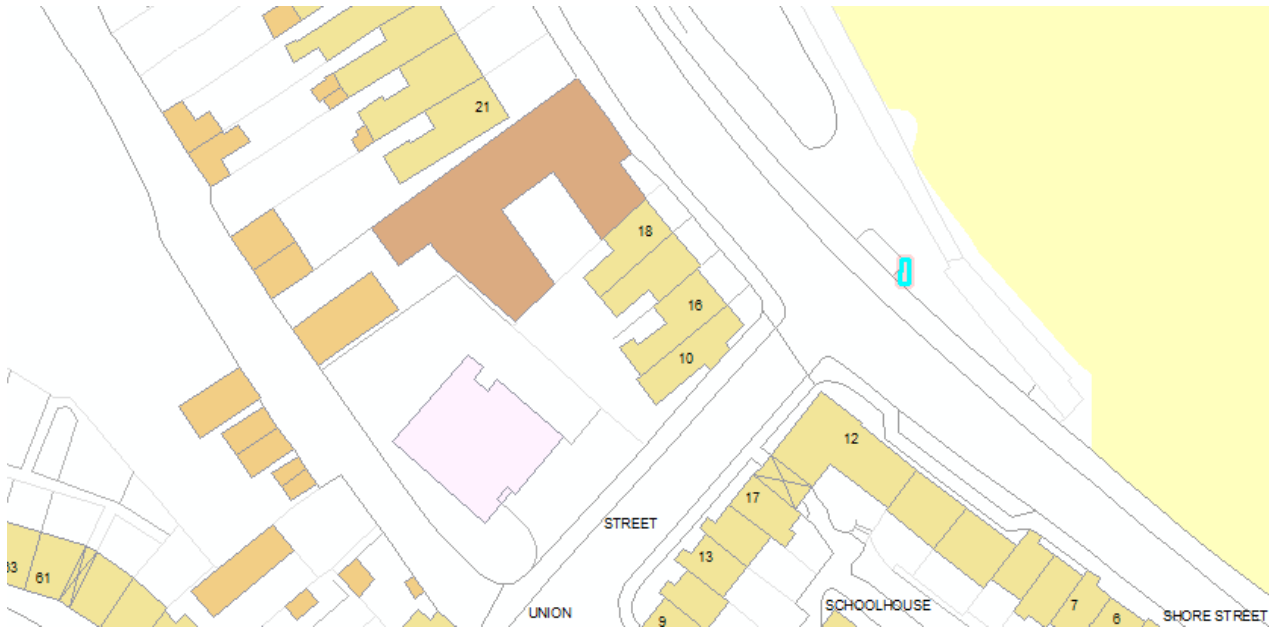
Reason: To comply with the requirements of Section 61 of the Planning Act (Northern Ireland) 2011.

2. The proposal including materials and finishes shall be as per planning Drawing Nos. 02 and 03 stamped received 04.10.2021.

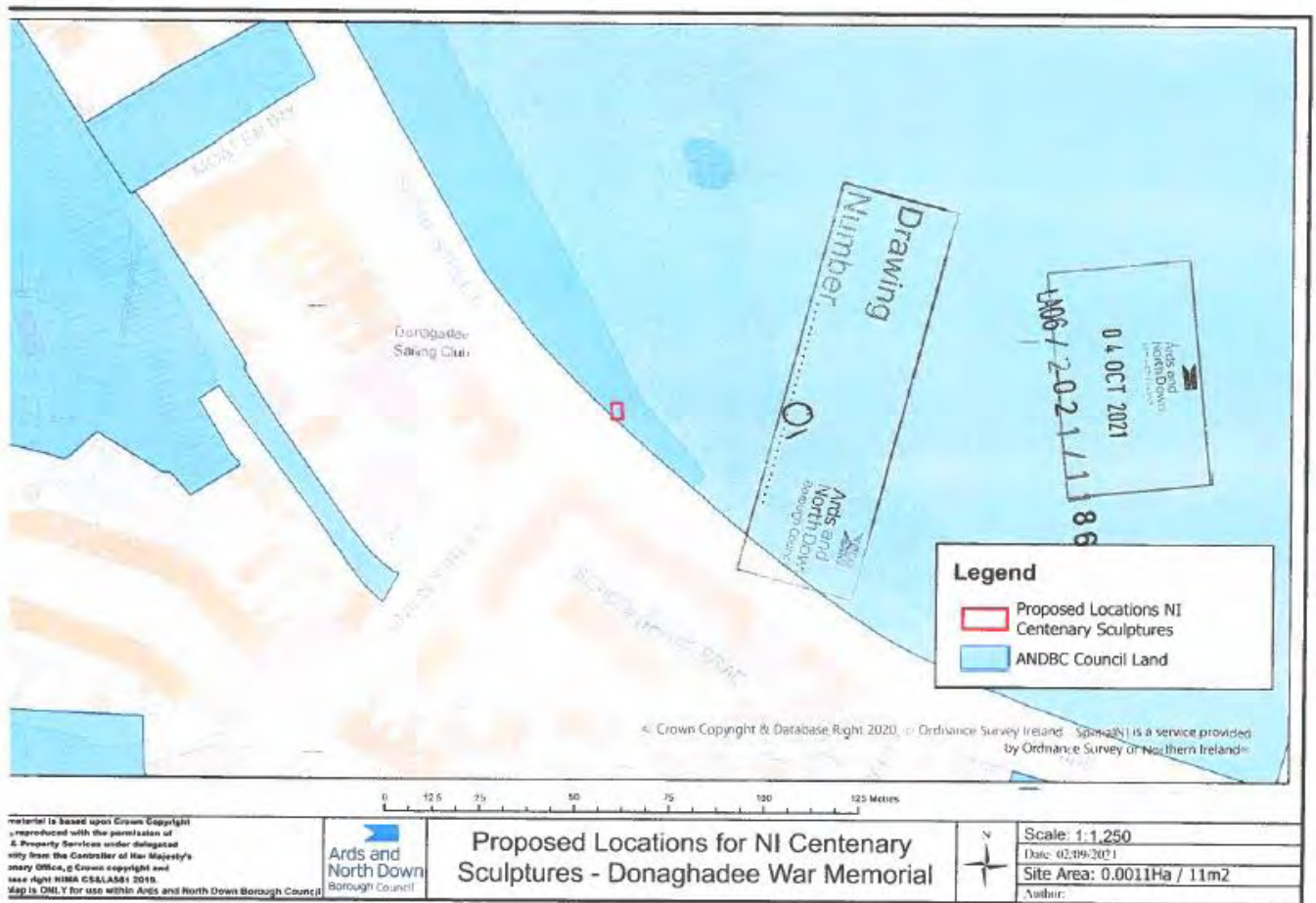
Reason: To ensure the detailed design respects the character of the area in terms of scale, height, massing and alignment and to ensure the works proposed make use of traditional or sympathetic building materials and techniques which respect those found on the building and respects the character of the setting of the building.

Informative

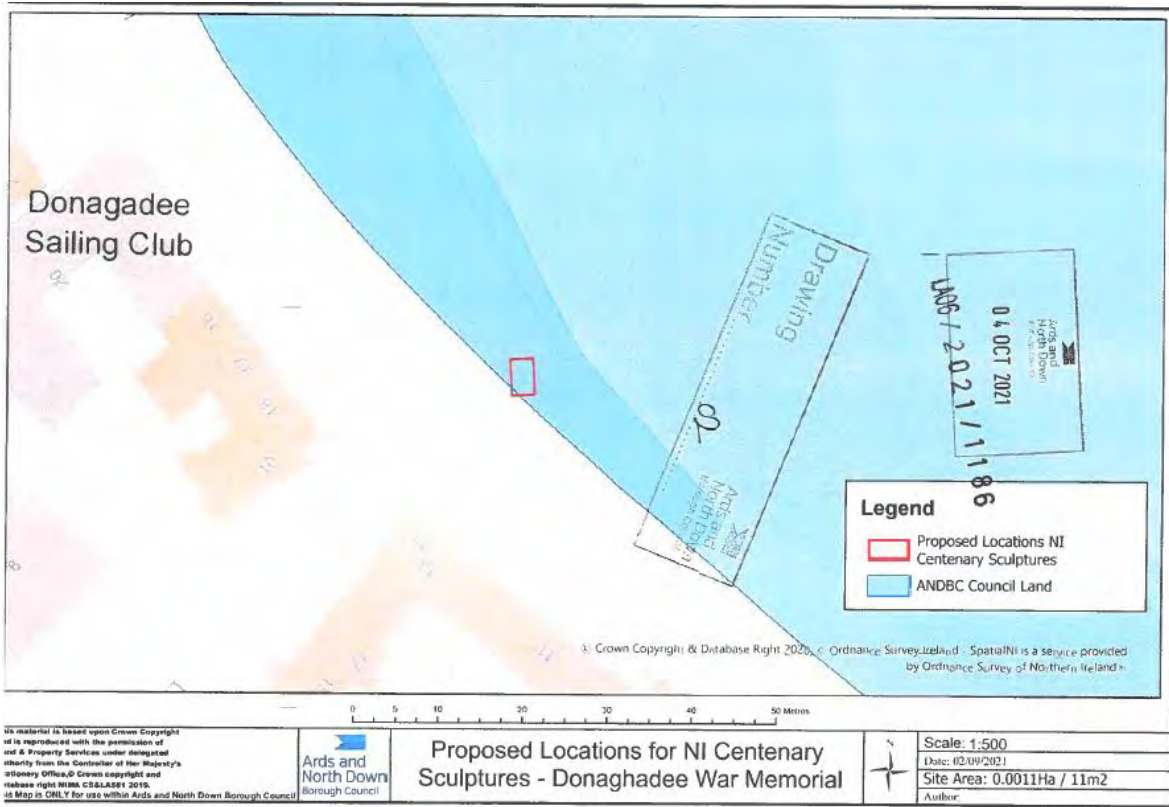
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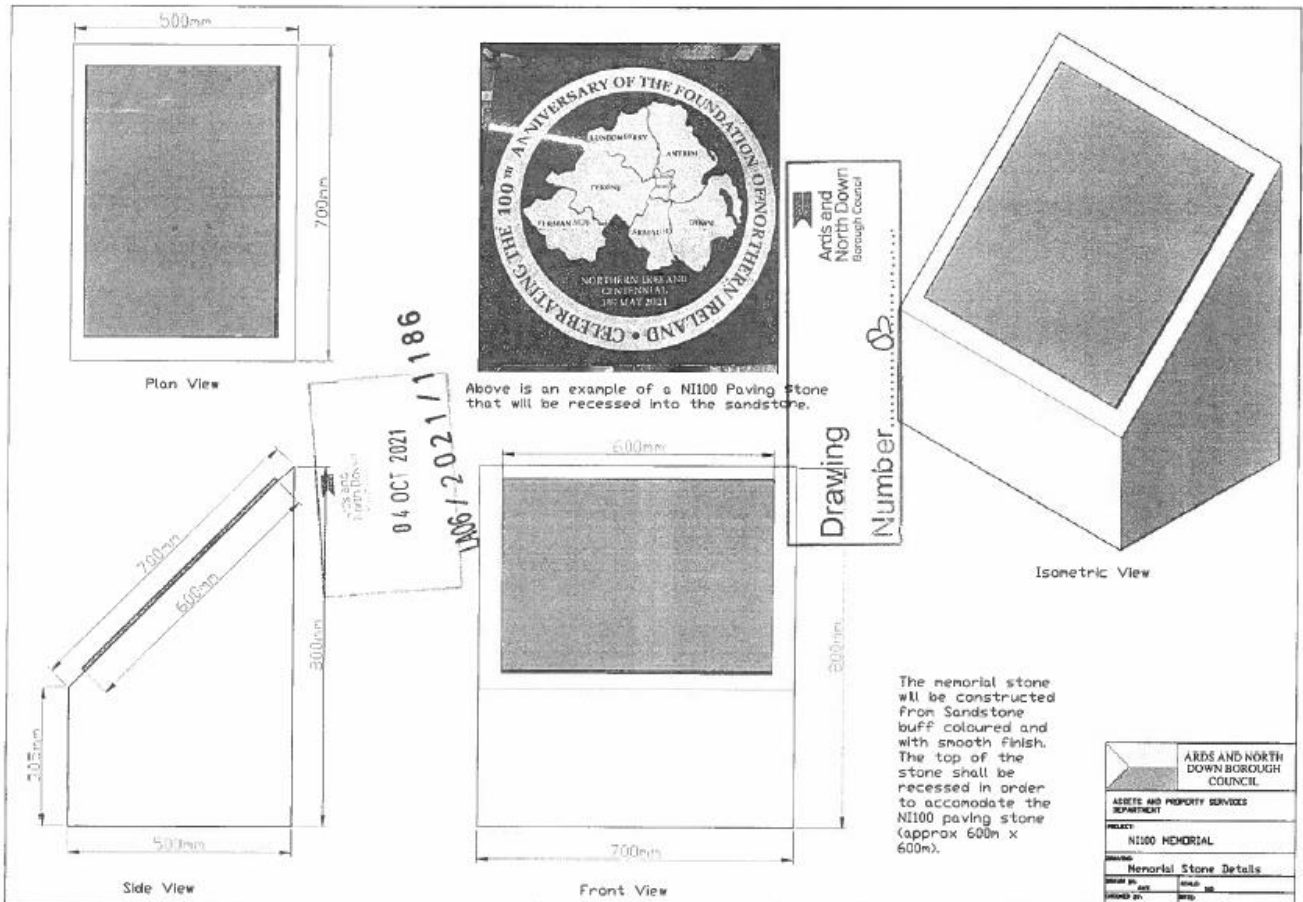
Site location



Drawing No. 01



Drawing No. 02



Drawing No. 03





**Development Management
Case Officer Report**

Reference:	LA06/2021/1187/F	DEA: Newtownards	
Proposal:	Installation of sculpture to commemorate the centenary of the foundation of Northern Ireland.		
Location:	18m West of No. 2 Conway Square, Newtownards.		
Applicant:	Ards & North Down Borough Council		
Date valid:	14.10.2021	EIA Screening Required:	No
Date last advertised:	28.10.2021	Date last neighbour notified:	18.10.2021
Letters of Support : 0		Letters of Objection: 0	
Petitions: 0			
Consultations – synopsis of responses:			
Historic Environment Division		No objection, subject to condition.	
Summary of main issues considered:			
<ul style="list-style-type: none"> • Design of proposal; • Visual amenity; • Amenity; • Impact on Area of Archaeological Potential, Newtownards Primary Retail Core and town centre. 			
Recommendation: Grant Planning Permission			
Report Agreed by Authorised Officer			
<p>Full details of this application, including the application forms, relevant drawings, consultation responses and any representations received are available to view at the Planning Portal https://epicpublic.planningni.gov.uk/publicaccess/</p>			

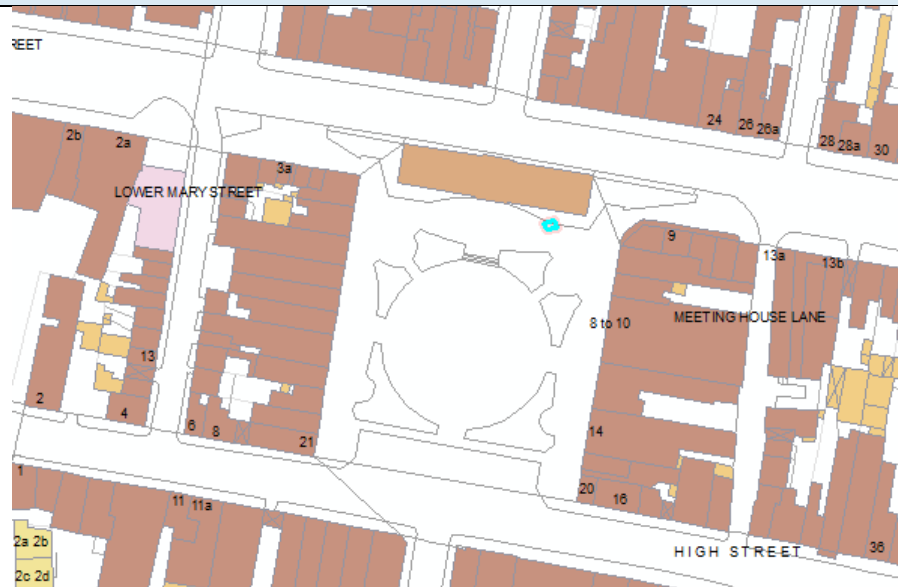
1. Site and Surrounding Area

The application site is located approx. 18m West of No. 2 Conway Square, Newtownards. The application is located within Ards town centre and Primary Retail Core, within the designated settlement limit of Ards as per the Ards and Down Area Plan 2015. The application site is also located within an Area of Archaeological Potential.



The application site is located adjacent to Ards Art Centre, looking onto Conway Square with a number of mixed-use commercial units surrounding the square. There are a number of elements of street furniture within close proximity of the application site.

2. Site Location Plan



3. Relevant Planning History

There is no planning history that is deemed pertinent to the assessment of this application.

4. Planning Assessment

The relevant planning policy framework, including supplementary planning guidance where relevant, for this application is as follows:

- Ards and Down Area Plan 2015 (ADAP);
- Strategic Planning Policy Statement for Northern Ireland;
- Planning Policy Statement 2: Natural Heritage;
- PPS 6: Planning, Archaeology and the Built Heritage.

Planning Guidance:

There is no relevant supplementary planning guidance.

Principle of Development Development Plan

ADAP currently acts as the LDP for this area. There are no material provisions in the Plan that are pertinent to the proposal and therefore the determination will be based on other material considerations.

Strategic Planning Policy Statement for Northern Ireland

The SPPS sets out the guiding principle relating to the grant/refusal of development contained within paragraphs 3.8. The principle states that sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance.

The SPPS states that archaeological and built heritage are important sources of information about our past, and are often significant landmarks in the present townscape and countryside. It is acknowledged that the archaeological and built heritage constitutes an irreplaceable record which contributes to our understanding of both the present and the past, adds to the quality of our lives and promotes a sense of self.

The application site is located within an Area of Archaeological Potential, Ards Primary Retail Core and town centre.

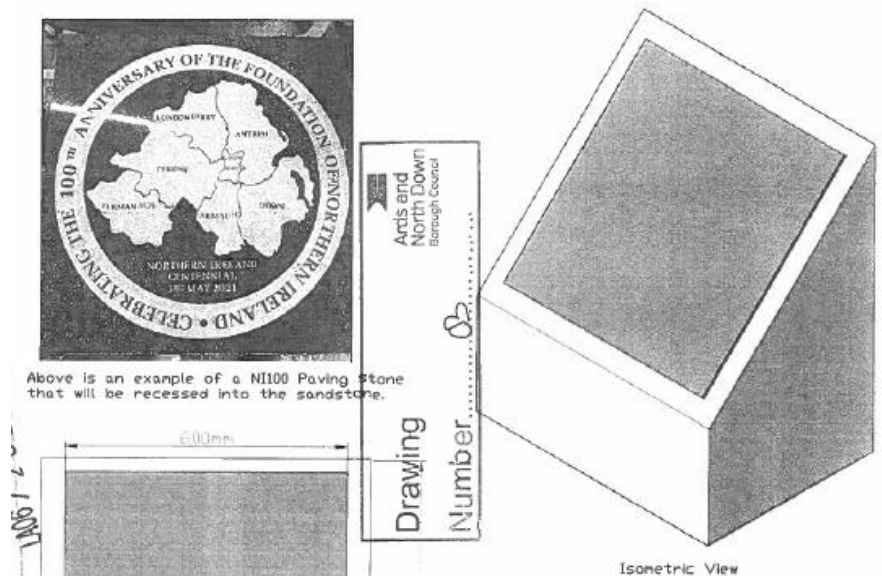
Given the limited scale of the proposal, the proposed sculpture to commemorate the centenary of the foundation of Northern Ireland is deemed to have no detrimental impact upon the surrounding area in terms of design and scale.

Any conflict between the SPPS and any policy retained under the transitional arrangements must be resolved in favour of the provisions of the SPPS.

With regards to the SPPS I am satisfied that this proposal will not prejudice public safety and is respectful of the general characteristics of the area, nor will it detract from the quality and character of the locality or have any impact on the town centre.

Visual Impact

The proposal is for the new installation of a sculpture to commemorate the centenary of the foundation of Northern Ireland.



Proposed Northern Ireland centenary commemorative stone

The proposed commemoration stone shall be 0.8m high, 0.7m wide and 0.5m long. The memorial stone will be constructed from sandstone buff coloured with a smooth finish, with the top of the stone recessed in order to accommodate the NI100 paving stone (approx. 0.6m and 0.6m). The proposal shall be located on the hard surfaced area of the public realm, to the rear of Ards Art Centre in Conway Square. The pedestrianised square area is considered an appropriate location for the commemoration, with it noted that there are statues and other elements of street furniture within close proximity of the proposed site.



The proposal is considered acceptable in that it shall have no detrimental impact upon the visual appearance of the surrounding area. Whilst it is acknowledged that art is subjective and part of its aim is to stimulate debate and provoke reaction, it is deemed that the design of the piece will contribute positively to the existing commemorations in the area in a manner that does not have a detrimental impact upon neighbouring businesses etc.

Impact on Amenity

The proposed installation of a commemorative stone to mark the centenary of Northern Ireland is acknowledged as being sympathetic and complimentary to the existing commemorations and street furniture that are located within close proximity of the application site. The proposal is considered to be of a limited scale and degree so as to have no detrimental impact on amenity, with the proposal located within a pedestrian square in the town centre of Ards.

Given the location of the proposal and its limited design and scale, I am of the opinion that the proposal will have no detrimental impact on levels of amenity.

- **PPS 2: Natural Heritage**

Policy NH1 relates to European and Ramsar sites and states that planning permission will only be granted for a development proposal that, either individually, or in combination with existing and/or proposed plans or projects, is not likely to have a significant effect on those sites.

The potential impact of this proposal on Special Areas of Conservation, Special Protection Areas and Ramsar sites has been assessed in accordance with the requirements of Regulation 43 (1) of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended). The proposal would not be likely to have a significant effect on the features, conservation objectives or status of any of these sites.

Policy NH 2 of PPS 2 states that planning permission will only be granted for a development proposal that is not likely to harm a species protected by law. To this end,

the NI Biodiversity Checklist has been used to identify whether the proposal is likely to adversely affect certain aspects of biodiversity including protected species. In this instance, given the scale and nature of the proposal, it has indicated that there is not a reasonable likelihood of there being protected species present and therefore further investigation is not considered necessary.

- **PPS 6: Planning, Archaeology and the Built Heritage**

HED were consulted on the application as the site is located within an Area of Archaeological Potential. As per the consultation response that HED provided on 5th November 2021, Historic Buildings considers the height, scale, massing, alignment, materials and nature of the sculpture to be sympathetic to the character of Conway Square and on the setting of the listed Town Hall. HED therefore consider it is content with the proposal if built according to the submitted planning documents.

The proposal is satisfactory to SPPS and PPS 6: Planning, Archaeology and the Built Heritage.

5. Representations

No letters of representation pertaining to the proposed development have been received.

6. Recommendation

Grant Planning Permission

7. Conditions

1. The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.

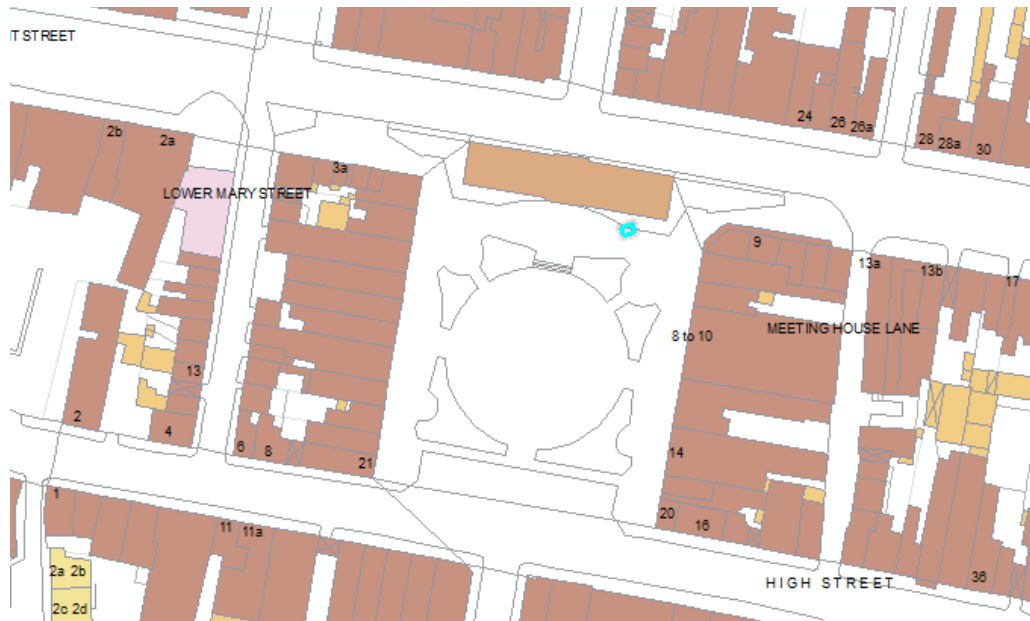
Reason: To comply with the requirements of Section 61 of the Planning Act (Northern Ireland) 2011.

2. The proposal including materials and finishes shall be as per planning Drawing Nos. 02 and 03 stamped received 04.10.2021.

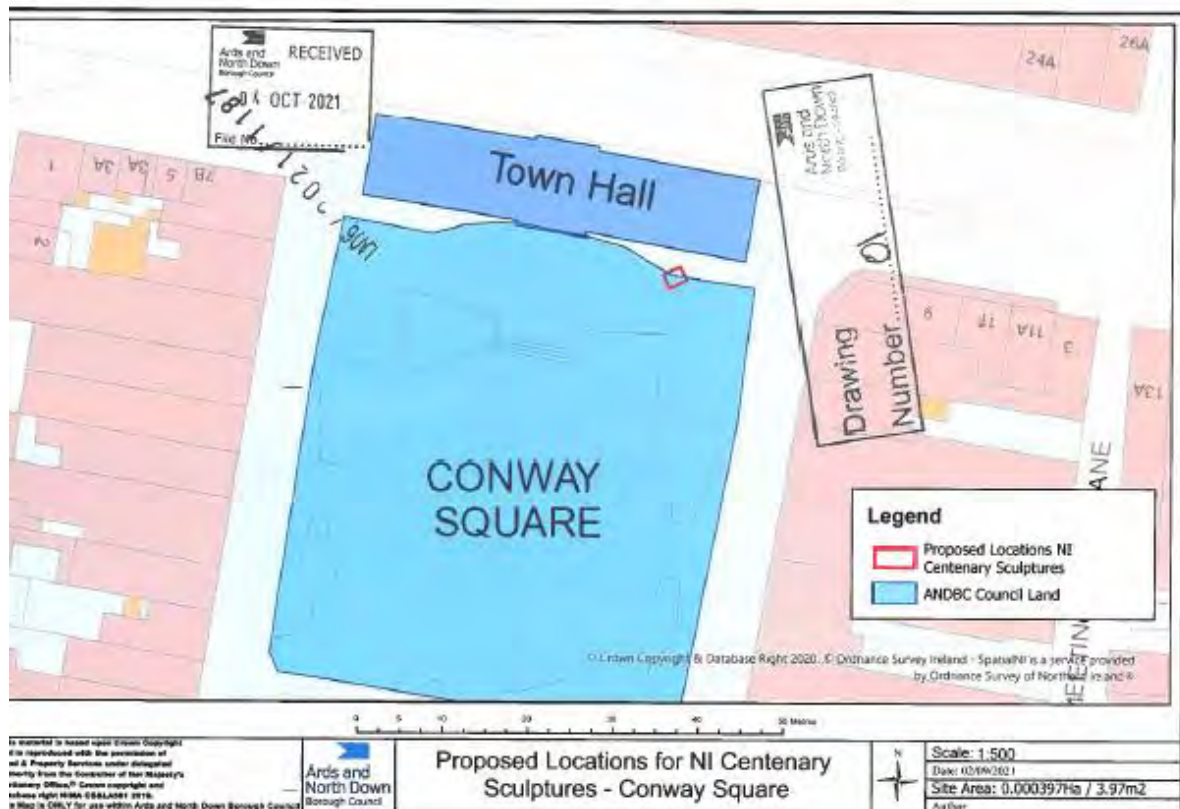
Reason: To ensure the detailed design respects the listed building in terms of scale, height, massing and alignment.

Informative

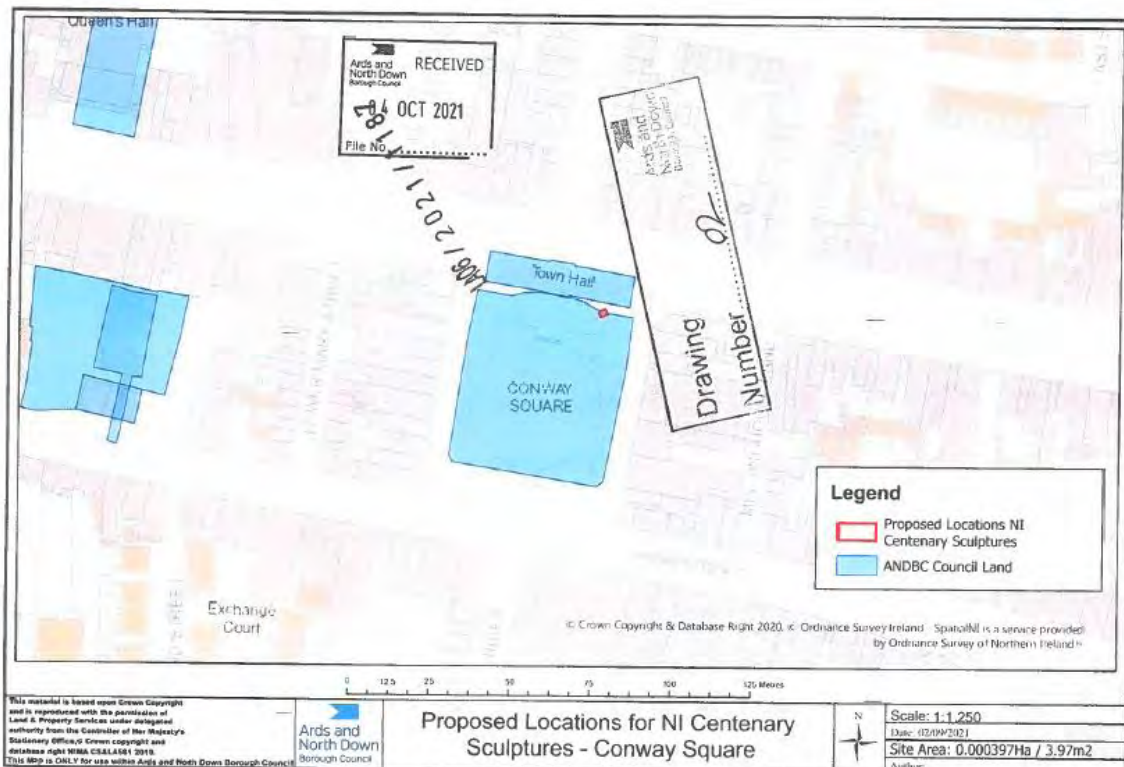
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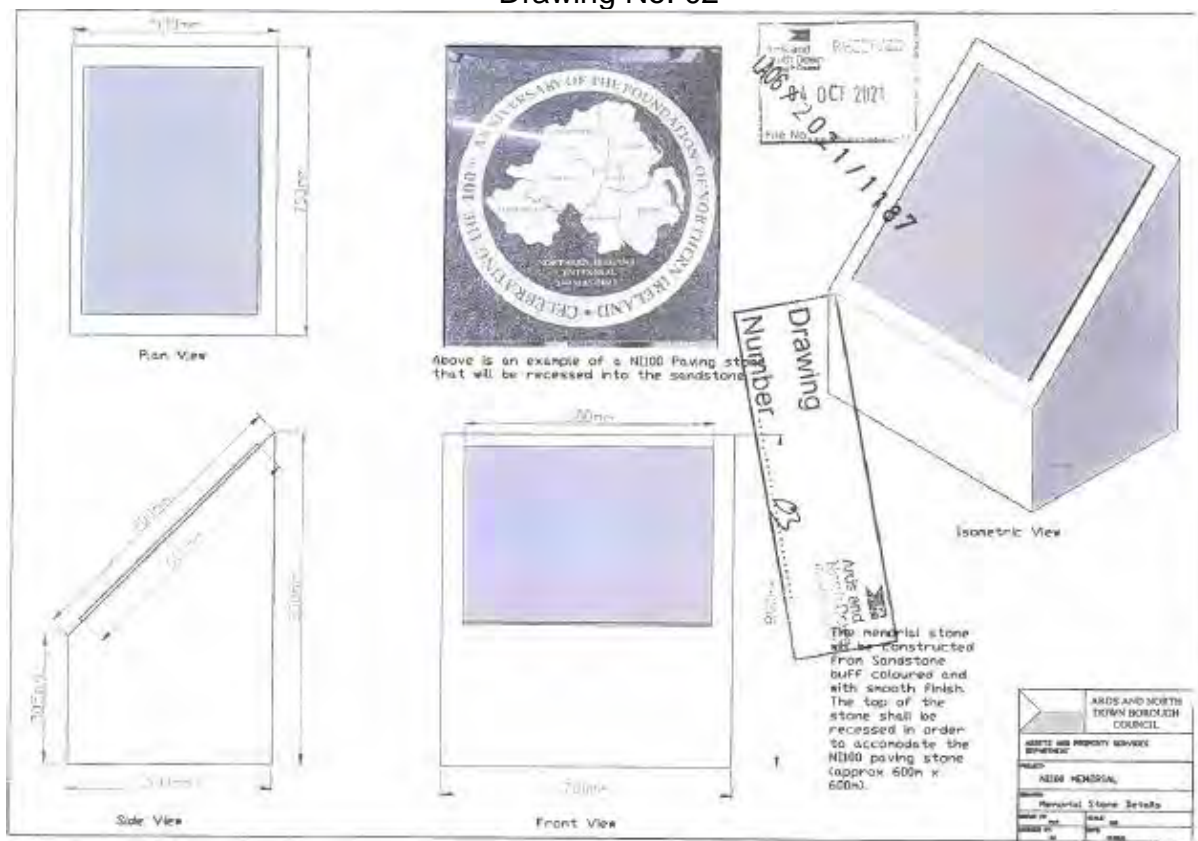
Site location



Drawing No. 01



Drawing No. 02



Drawing No. 03





**Development Management
Case Officer Report**

Reference:	LA06/2021/1188/F	DEA: Holywood & Clandeboye	
Proposal:	Installation of sculpture to commemorate the centenary of the foundation of Northern Ireland.		
Location:	Redburn Square, Holywood.		
Applicant:	Ards & North Down Borough Council		
Date valid:	14.10.2021	EIA Screening Required:	No
Date last advertised:	28.10.2021	Date last neighbour notified:	19.10.2021
Letters of Support : 0	Letters of Objection: 0	Petitions: 0	
Consultations – synopsis of responses:			
Historic Environment Division		No objection, subject to condition.	
Summary of main issues considered:			
<ul style="list-style-type: none"> • Design of proposal; • Visual amenity; • Amenity; • Impact on Area of Archaeological Potential, listed building, impact on proposed Area of Townscape Character and Holywood Town Centre. 			
Recommendation: Grant Planning Permission			
Report Agreed by Authorised Officer			
Full details of this application, including the application forms, relevant drawings, consultation responses and any representations received are available to view at the Planning Portal https://epicpublic.planningni.gov.uk/publicaccess/			

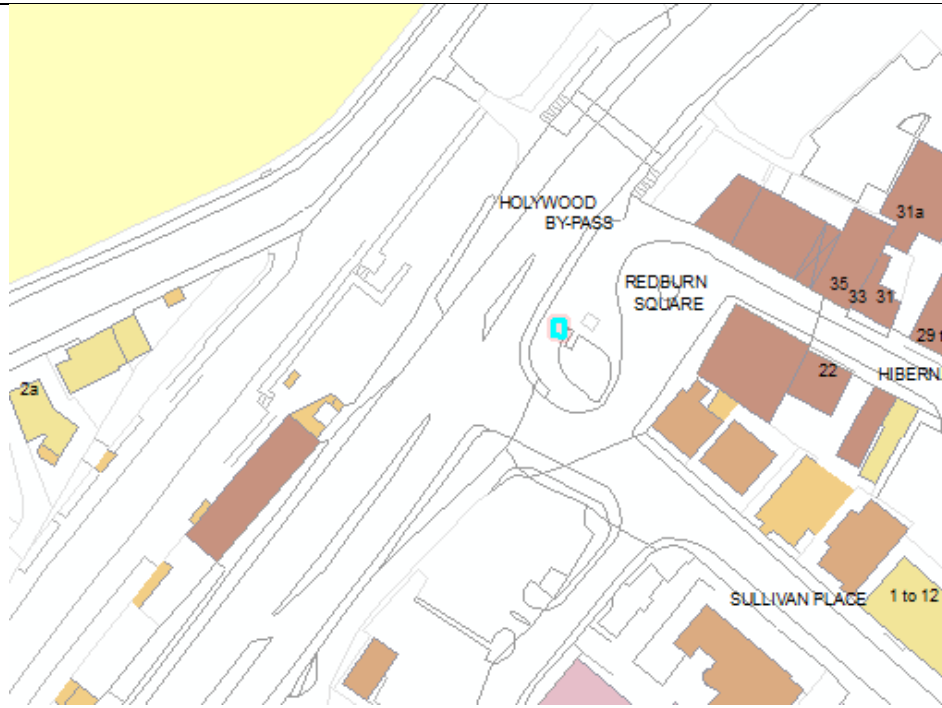
1. Site and Surrounding Area

The application site is located within Redburn Square, Hollywood. The application site is located within an Area of Archaeological Potential, proposed Area of Townscape Character within the town centre and settlement limit of Hollywood as per Draft BMAP 2015.



The application site is located in the hardstanding pedestrian Redburn Square, within close proximity of the listed Orange Hall and within close proximity to the Hollywood bypass and Hollywood train station.

2. Site Location Plan



3. Relevant Planning History

There is no planning history that is deemed pertinent to the assessment of this application.

4. Planning Assessment

The relevant planning policy framework, including supplementary planning guidance where relevant, for this application is as follows:

- North Down and Ards Area Plan 1984-1995 (NDAAP);
- Draft BMAP 2015;
- Strategic Planning Policy Statement for Northern Ireland;
- Planning Policy Statement 2: Natural Heritage;
- PPS 6: Planning, Archaeology and the Built Heritage;
- Addendum to PPS 6: Areas of Townscape Character.

Planning Guidance:

There is no relevant supplementary planning guidance.

Principle of Development Development Plan

NDAAP currently acts as the LDP for this area, despite its end date, with dBMAP remaining a material consideration where applicable. As there are no material

provisions in the extant Plan or dBMAP that are pertinent to the proposal, the determination will be based on other material considerations.

Strategic Planning Policy Statement for Northern Ireland

The SPPS sets out the guiding principle relating to the grant/refusal of development contained within paragraphs 3.8. The principle states that sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance.

The SPPS states that archaeological and built heritage are important sources of information about our past, and are often significant landmarks in the present townscape and countryside. It is acknowledged that the archaeological and built heritage constitutes an irreplaceable record which contributes to our understanding of both the present and the past, adds to the quality of our lives and promotes a sense of self.

The application site is located within an Area of Archaeological Potential, listed buildings (and their respective curtilage), a proposed Area of Townscape Character within the town centre and designated settlement limit of Holywood.

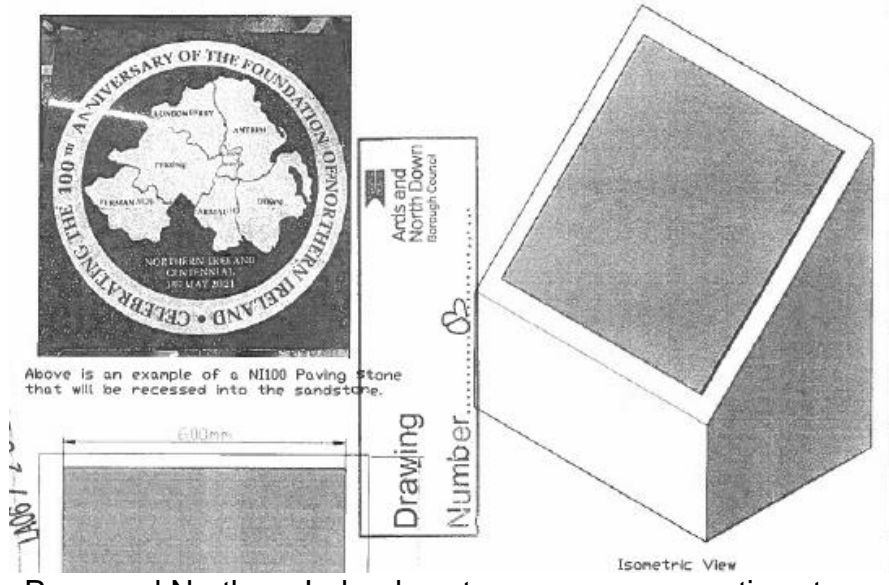
Given the limited scale of the proposal, the proposed sculpture to commemorate the centenary of the foundation of Northern Ireland is deemed to have no detrimental impact upon the surrounding area.

Any conflict between the SPPS and any policy retained under the transitional arrangements must be resolved in favour of the provisions of the SPPS.

With regards to the SPPS I am satisfied that this proposal will not prejudice public safety and is respectful of the general characteristics of the area, nor will it detract from the quality and character of the locality. Due to the limited scale and design of the proposed commemorative stone, which shall be located within close proximity of other commemorative pieces, the proposal is deemed to have no impact upon the town centre of Holywood.

Visual Impact

The proposal is for the new installation of a sculpture to commemorate the centenary of the foundation of Northern Ireland.



Proposed Northern Ireland centenary commemorative stone

The proposed commemoration stone shall be 0.8m high, 0.7m wide and 0.5m long. The memorial stone will be constructed from sandstone buff coloured with a smooth finish, with the top of the stone recessed in order to accommodate the NI100 paving stone (approx. 0.6m and 0.6m). The proposal shall be located within the existing Redburn Square, in the designated Holywood town centre. The proposed site is considered an appropriate location for the commemoration, with it noted that there are existing elements of commemoration in close proximity, with the proposal not deemed to prejudice pedestrian or vehicular movement and access.



The proposal is considered acceptable in that it shall have no detrimental impact upon the visual appearance of the surrounding area. Whilst it is acknowledged that art is subjective and part of its aim is to stimulate debate and provoke reaction, it is deemed that the design of the piece will contribute positively to the existing commemorations in the area with no detrimental impact.

Addendum to PPS 6: Areas of Townscape Character

Policy ATC 2: New Development in an Area of Townscape Character

The proposal is deemed to have no detrimental impact upon the proposed ATC. Due to the limited scale of the proposed commemorative stone the proposal is deemed to maintain and enhance the sense of 'place' within Redburn Square. The proposal is in keeping with the street furniture, commemorations and sculptures that are located within the existing square.

Impact on Amenity

The proposed installation of a commemorative stone to mark the centenary of Northern Ireland is acknowledged as being sympathetic and complimentary to the existing commemoration that are located within Redburn Square. The proposal is considered to be of a limited scale and degree so as to have no detrimental impact on amenity, with the proposal located in close proximity to an existing commemoration.

Given the location of the proposal and its limited design and scale, I am of the opinion that the proposal will have no detrimental impact on levels of amenity.

- **PPS 2: Natural Heritage**

Policy NH1 relates to European and Ramsar sites and states that planning permission will only be granted for a development proposal that, either individually, or in combination with existing and/or proposed plans or projects, is not likely to have a significant effect on those sites.

The potential impact of this proposal on Special Areas of Conservation, Special Protection Areas and Ramsar sites has been assessed in accordance with the requirements of Regulation 43 (1) of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended). The proposal would not be likely to have a significant effect on the features, conservation objectives or status of any of these sites.

Policy NH 2 of PPS 2 states that planning permission will only be granted for a development proposal that is not likely to harm a species protected by law. To this end, the NI Biodiversity Checklist has been used to identify whether the proposal is likely to adversely affect certain aspects of biodiversity including protected species. In this instance, given the scale and nature of the proposal, it has indicated that there is not a reasonable likelihood of there being protected species present and therefore further investigation is not considered necessary.

- **PPS 6: Planning, Archaeology and the Built Heritage**

Historic Environment Division (Historic Buildings) was consulted on the application as the site is located in close proximity to Holywood Orange Hall, Redburn Square, Sullivan Place (Grade B1).

Historic Environment Division (Historic Buildings) has considered the impacts of the proposal and on the basis of the information provided, advises that HED are content with the proposal, as presented, with a condition pertaining to the finishes and location being completed in accordance with the plans.

The proposal is satisfactory to SPPS and PPS 6: Planning, Archaeology and the Built Heritage.

5. Representations

No letters of representation pertaining to the proposed development have been received.

6. Recommendation

Grant Planning Permission

7. Conditions

1. The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.

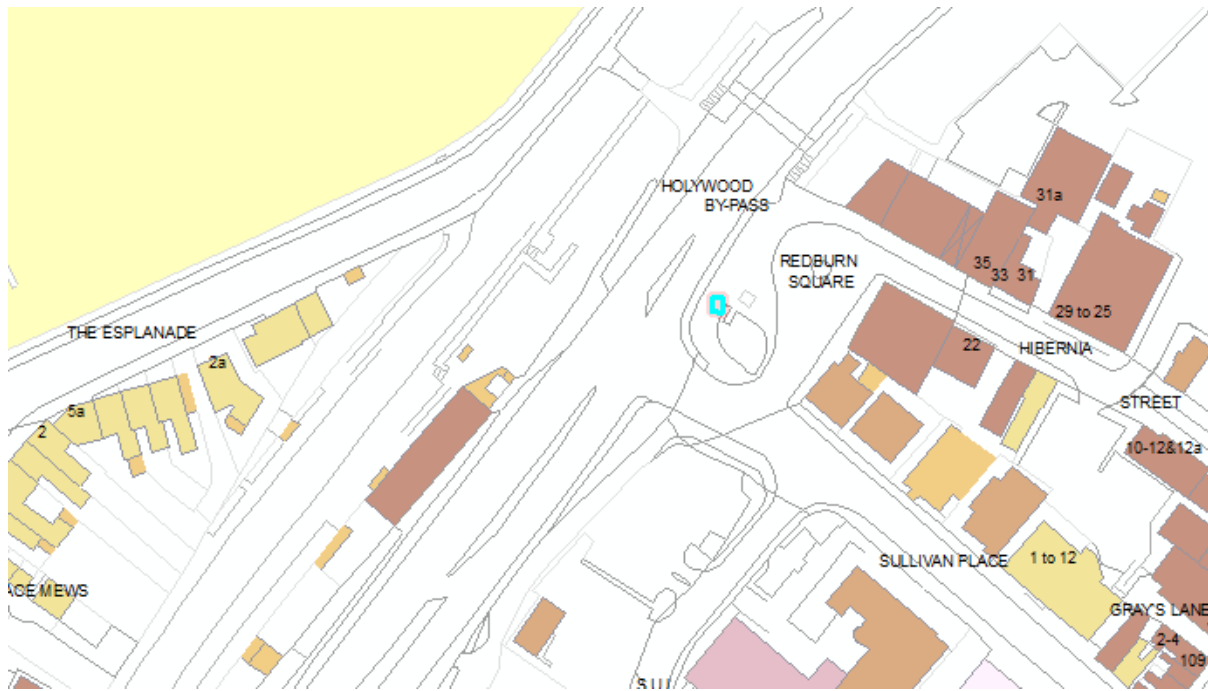
Reason: To comply with the requirements of Section 61 of the Planning Act (Northern Ireland) 2011.

2. The proposal including materials and finishes shall be as per planning Drawing Nos. 02 and 03 stamped received 04.10.2021.

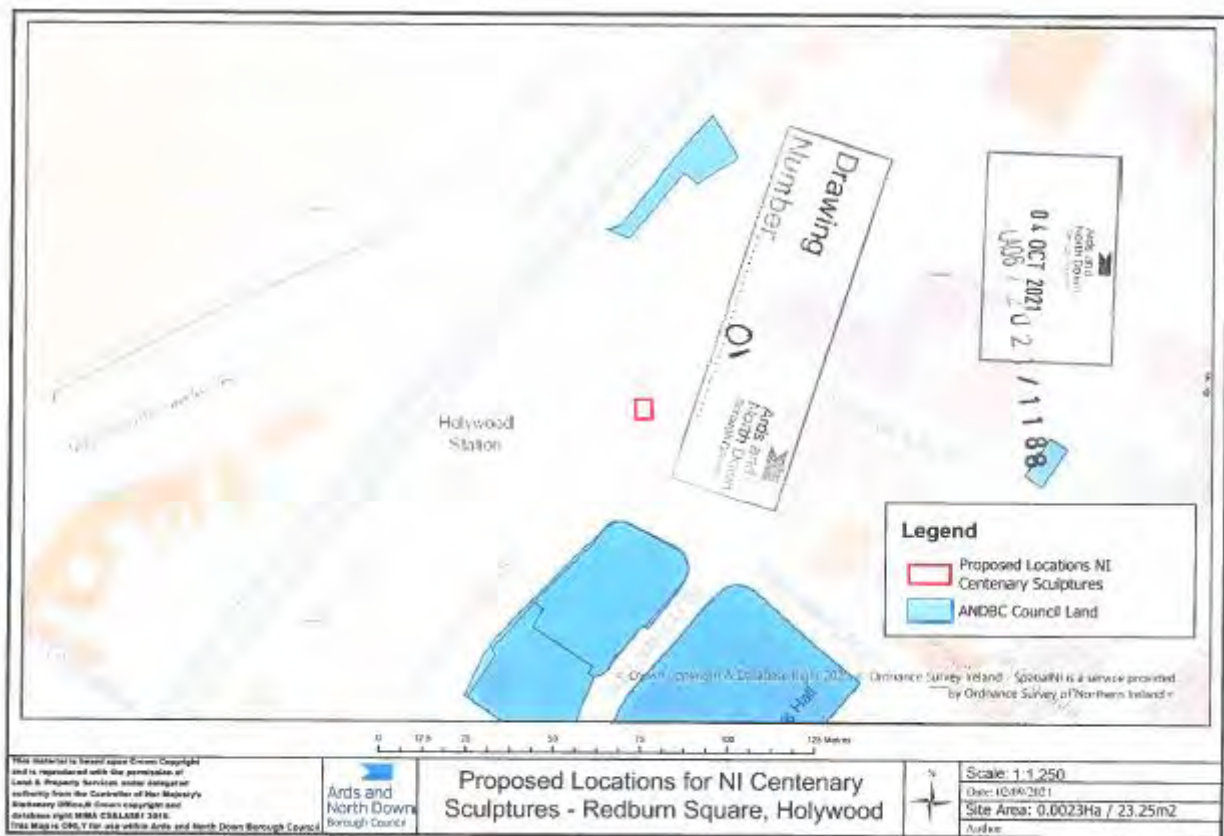
Reason: To ensure the detailed design respects the listed building in terms of scale, height, massing and alignment and to ensure the works proposed make use of traditional or sympathetic building materials and techniques which respect those found on the building and respects the character of the setting of the building.

Informative

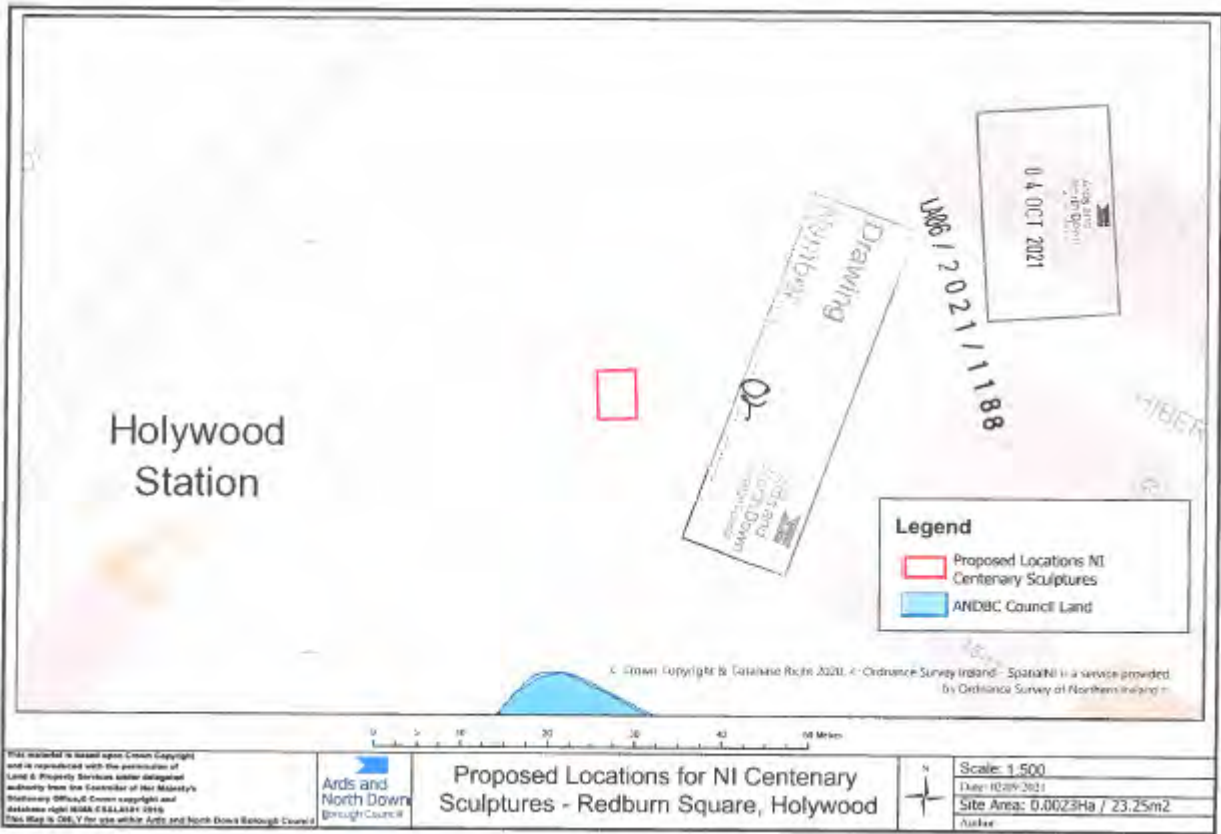
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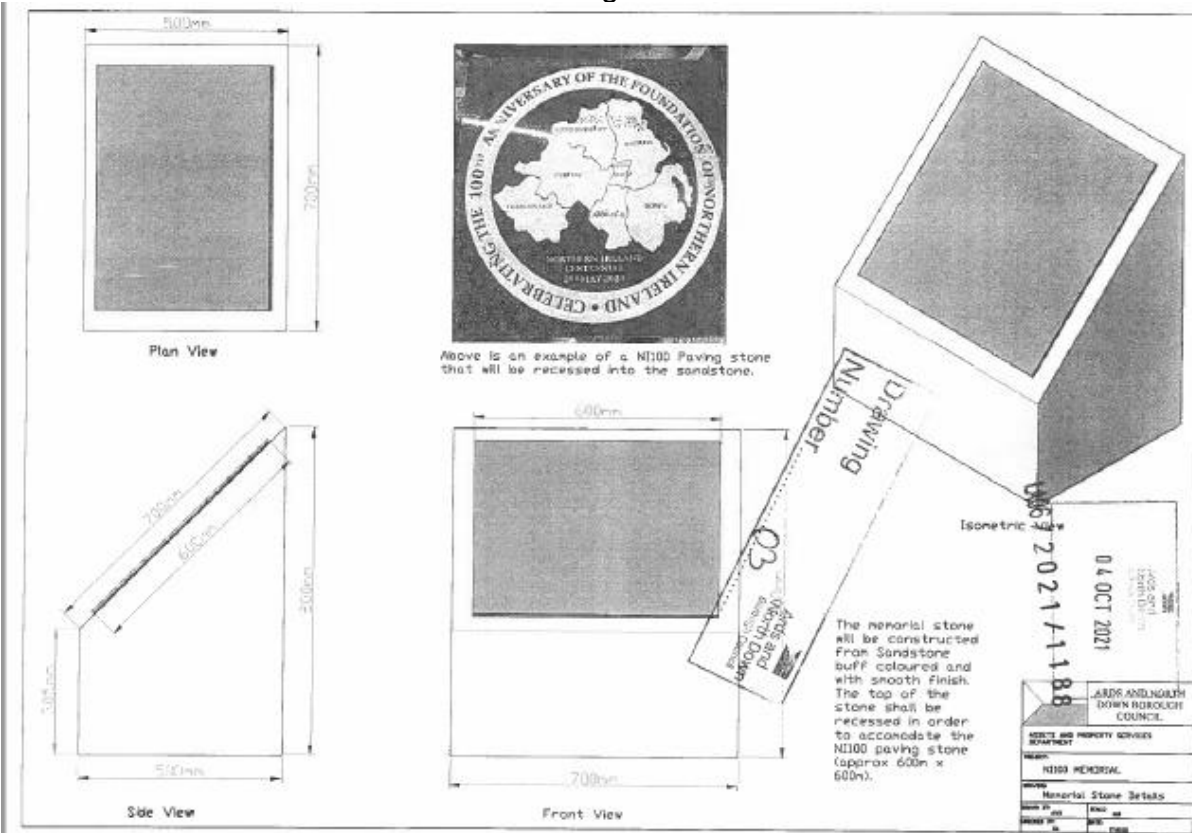
Site location



Drawing No. 01



Drawing No. 02



Drawing No. 03





**Development Management
Case Officer Report**

Reference:	LA06/2021/1189/F	DEA: Bangor Central	
Proposal:	Installation of sculpture to commemorate the centenary of the foundation of Northern Ireland.		
Location:	18m east of Bangor Town Hall, Bangor (grassed area in front of main front door).		
Applicant:	Ards & North Down Borough Council		
Date valid:	14.10.2021	EIA Screening Required:	No
Date last advertised:	28.10.2021	Date last neighbour notified:	18.10.2021
Letters of Support : 0		Letters of Objection: 0	
Petitions: 0			
Consultations – synopsis of responses:			
Historic Environment Division		No objection, subject to condition.	
Summary of main issues considered:			
<ul style="list-style-type: none"> • Design of proposal; • Visual amenity; • Amenity; • Impact on Area of Archaeological Potential, listed building, historic park, garden and demesne. 			
Recommendation: Grant Planning Permission			
Report Agreed by Authorised Officer			
Full details of this application, including the application forms, relevant drawings, consultation responses and any representations received are available to view at the Planning Portal https://epicpublic.planningni.gov.uk/publicaccess/			

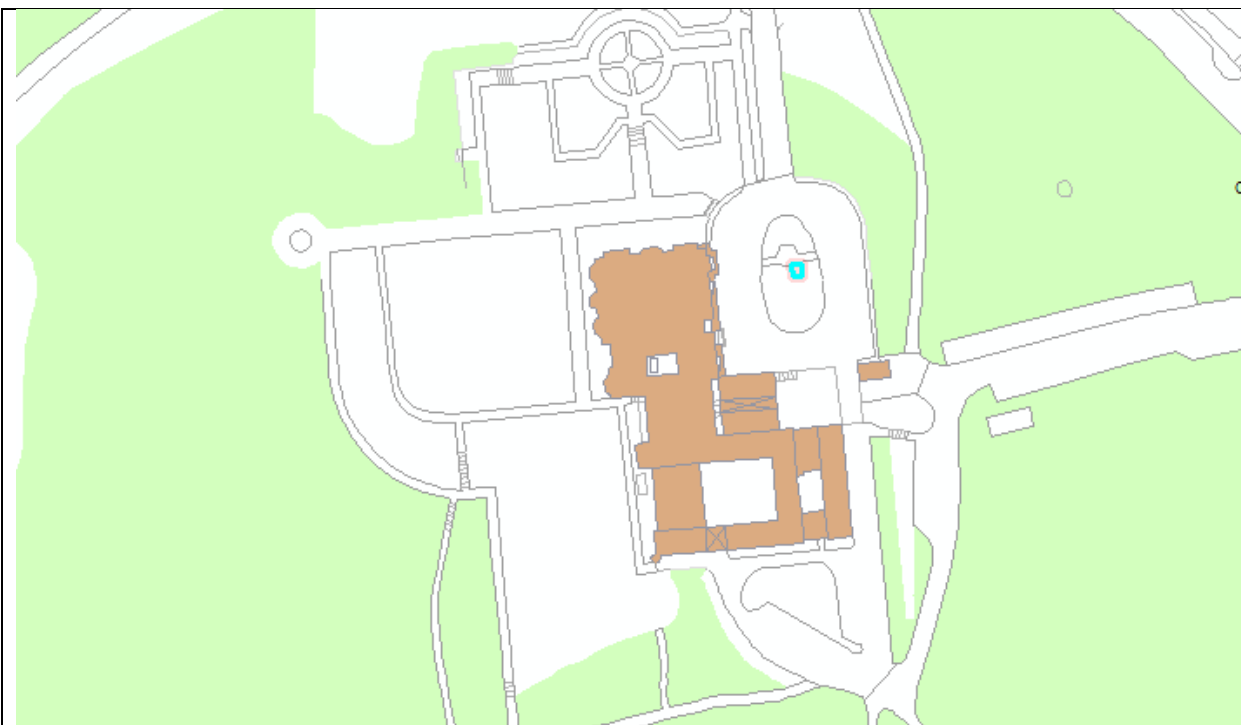
1. Site and Surrounding Area

The application site is located approx. 18m east of Bangor Town Hall. The application site is located within an Area of Archaeological Potential, a Local Landscape Policy Area, a historic park, garden and demesne and within close proximity of Grade A listed Bangor Town Hall (HB23 07 001 A) and Grade B+ listed local heritage and visitor's centre (HB23 07 001 B).



The application site is located adjacent to the front of Bangor Town Hall, a substantial 2 storey sandstone building with attic level and basement, occupying an elevated location overlooking Bangor Town Centre. The ornate architectural building includes detailing including quoins, clock tower with turret, balustrades and decorative stonework around doors and window openings. The proposal is located on an area of grass to the front of the castle within close proximity of the car parking available.

2. Site Location Plan



3. Relevant Planning History

There is no planning history that is deemed pertinent to the assessment of this application.

4. Planning Assessment

The relevant planning policy framework, including supplementary planning guidance where relevant, for this application is as follows:

- North Down and Ards Area Plan 1984-1995 (NDAAP);
- Draft BMAP 2015;
- Strategic Planning Policy Statement for Northern Ireland;
- Planning Policy Statement 2: Natural Heritage;
- PPS 6: Planning, Archaeology and the Built Heritage.

Planning Guidance:

There is no relevant supplementary planning guidance.

Principle of Development Development Plan

NDAAP currently acts as the LDP for this area, despite its end date, with dBMAP remaining a material consideration where applicable. As there are no material provisions in the extant Plan or dBMAP that are pertinent to the proposal, the determination will be based on other material considerations.

Strategic Planning Policy Statement for Northern Ireland

The SPPS sets out the guiding principle relating to the grant/refusal of development contained within paragraphs 3.8. The principle states that sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance.

The SPPS states that archaeological and built heritage are important sources of information about our past, and are often significant landmarks in the present townscape and countryside. It is acknowledged that the archaeological and built heritage constitutes an irreplaceable record which contributes to our understanding of both the present and the past, adds to the quality of our lives and promotes a sense of self.

The application site is located within an Area of Archaeological Potential, listed buildings (and their respective curtilage) Historic Park, Garden and Demesne and Local Landscape Policy Area.

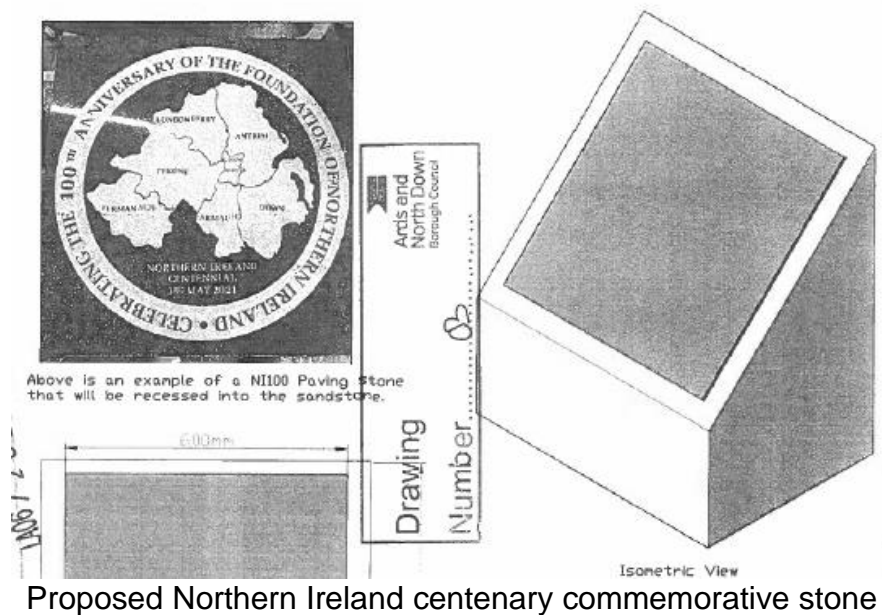
Given the limited scale of the proposal, the proposed sculpture to commemorate the centenary of the foundation of Northern Ireland is deemed to have no detrimental impact upon the surrounding area.

Any conflict between the SPPS and any policy retained under the transitional arrangements must be resolved in favour of the provisions of the SPPS.

With regards to the SPPS I am satisfied that this proposal will not prejudice public safety and is respectful of the general characteristics of the area, nor will it detract from the quality and character of the locality.

Visual Impact

The proposal is for the new installation of a sculpture to commemorate the centenary of the foundation of Northern Ireland.



The proposed commemoration stone shall be 0.8m high, 0.7m wide and 0.5m long. The memorial stone will be constructed from sandstone buff coloured with a smooth finish, with the top of the stone recessed in order to accommodate the NI100 paving stone (approx. 0.6m and 0.6m). The proposal shall be located on the area of grass to the front of Bangor Town Castle. The proposed site is considered an appropriate location for the commemoration, with it noted that there are existing elements of commemoration in close proximity, with the proposal not deemed to prejudice pedestrian or vehicular movement and access.



The proposal is considered acceptable in that it shall have no detrimental impact upon the visual appearance of the surrounding area. Whilst it is acknowledged that art is subjective and part of its aim is to stimulate debate and provoke reaction, it is deemed that the design of the piece will contribute positively to the existing commemorations in the area with no detrimental impact.

Impact on Amenity

The proposed installation of a commemorative stone to mark the centenary of Northern Ireland is acknowledged as being sympathetic and complimentary to the existing commemoration that is located to the front of Bangor Castle. The proposal is considered to be of a limited scale and degree so as to have no detrimental impact on amenity, with the proposal located on area of grass.

Given the location of the proposal and its limited design and scale, I am of the opinion that the proposal will have no detrimental impact on levels of amenity.

- **PPS 2: Natural Heritage**

Policy NH1 relates to European and Ramsar sites and states that planning permission will only be granted for a development proposal that, either individually, or in combination with existing and/or proposed plans or projects, is not likely to have a significant effect on those sites.

The potential impact of this proposal on Special Areas of Conservation, Special Protection Areas and Ramsar sites has been assessed in accordance with the requirements of Regulation 43 (1) of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended). The proposal would not be likely to

have a significant effect on the features, conservation objectives or status of any of these sites.

Policy NH 2 of PPS 2 states that planning permission will only be granted for a development proposal that is not likely to harm a species protected by law. To this end, the NI Biodiversity Checklist has been used to identify whether the proposal is likely to adversely affect certain aspects of biodiversity including protected species. In this instance, given the scale and nature of the proposal, it has indicated that there is not a reasonable likelihood of there being protected species present and therefore further investigation is not considered necessary.

- **PPS 6: Planning, Archaeology and the Built Heritage**

HED were consulted on the application as the application site is in close proximity to town Hall, Bangor Castle (Grade A HB23 07 001 A) and Local Heritage and Visitor's Centre, Bangor Castle (Grade B+ HB23 07 001 B).

Historic Environment Division (Historic Buildings) has considered the impacts of the proposal and on the basis of the information provided, advises that HED are content with the proposal, as presented, with a condition pertaining to the finishes and location of the proposal being developed in accordance with the proposed plans.

The proposal is satisfactory to SPPS and PPS 6: Planning, Archaeology and the Built Heritage.

5. Representations

No letters of representation pertaining to the proposed development have been received.

6. Recommendation

Grant Planning Permission

7. Conditions

1. The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.

Reason: To comply with the requirements of Section 61 of the Planning Act (Northern Ireland) 2011.

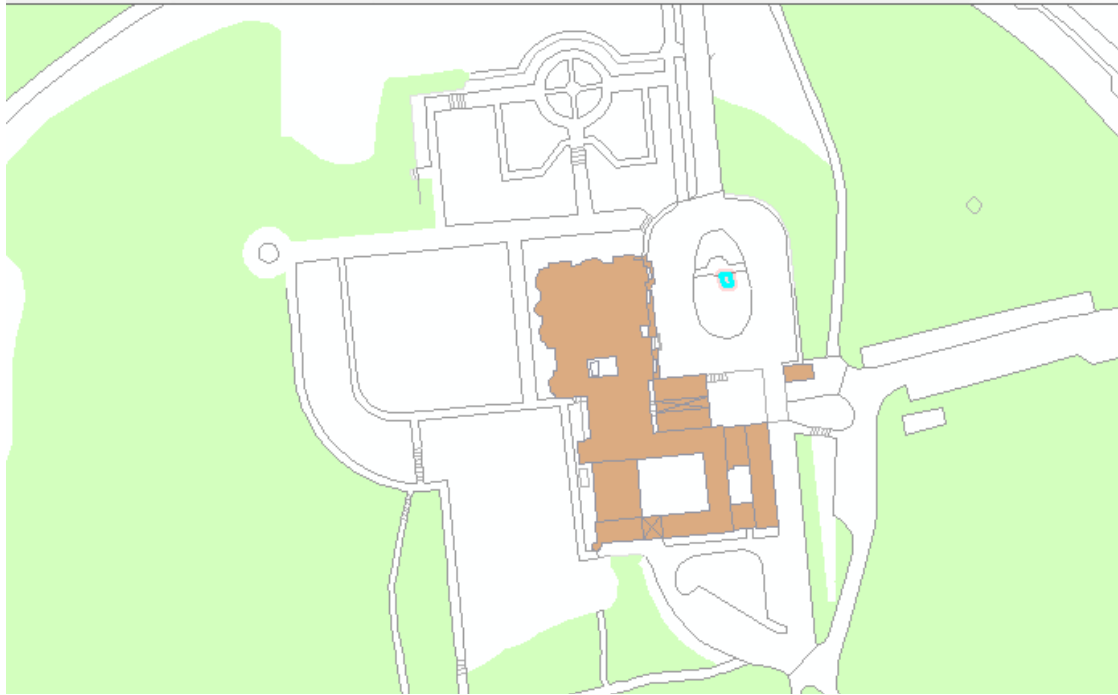
2. The proposal including materials and finishes shall be as per planning Drawing Nos. 02 and 03 stamped received 04.10.2021.

Reason: To ensure the detailed design respects the listed building in terms of scale, height, massing and alignment and to ensure the works proposed make use of traditional or sympathetic building materials and techniques which

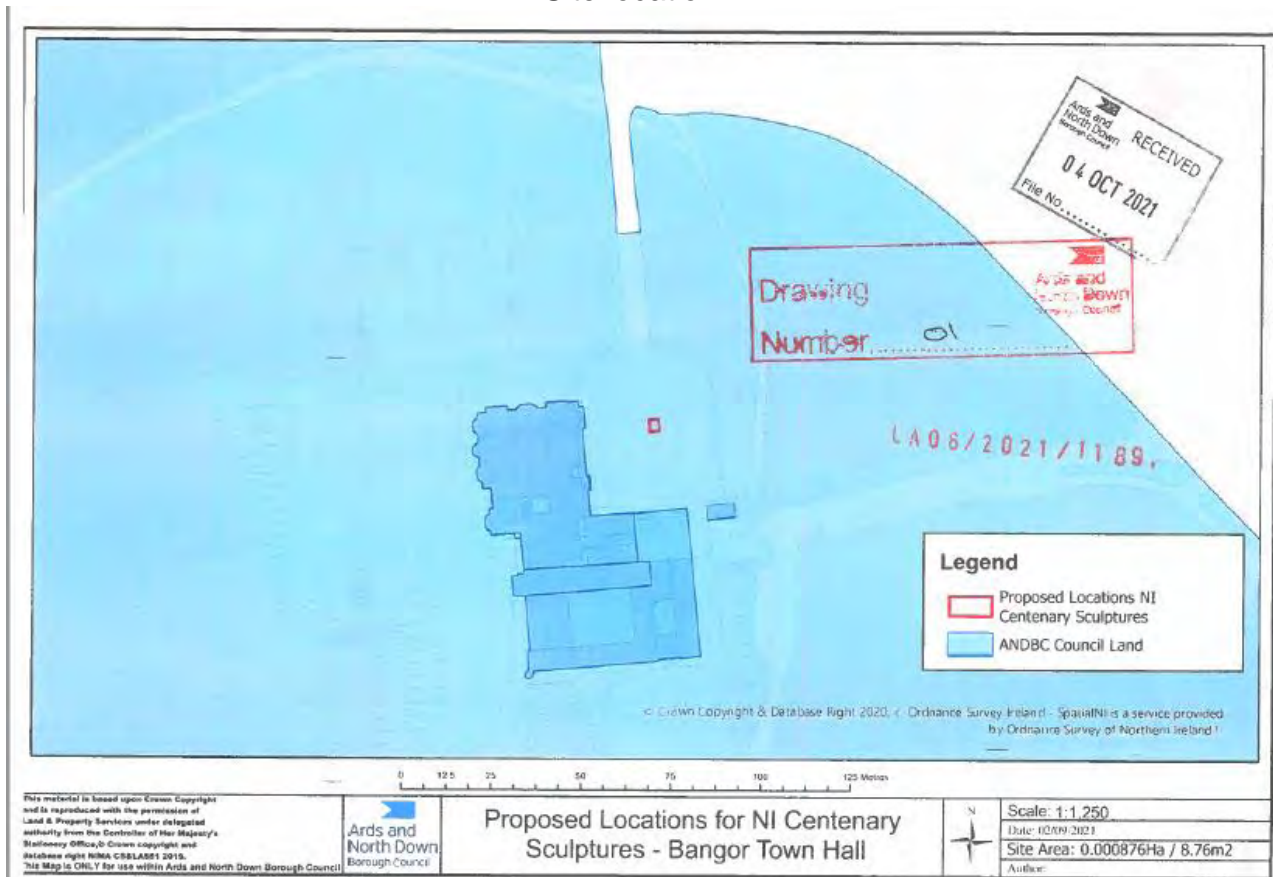
respect those found on the building and respects the character of the setting of the building.

Informative

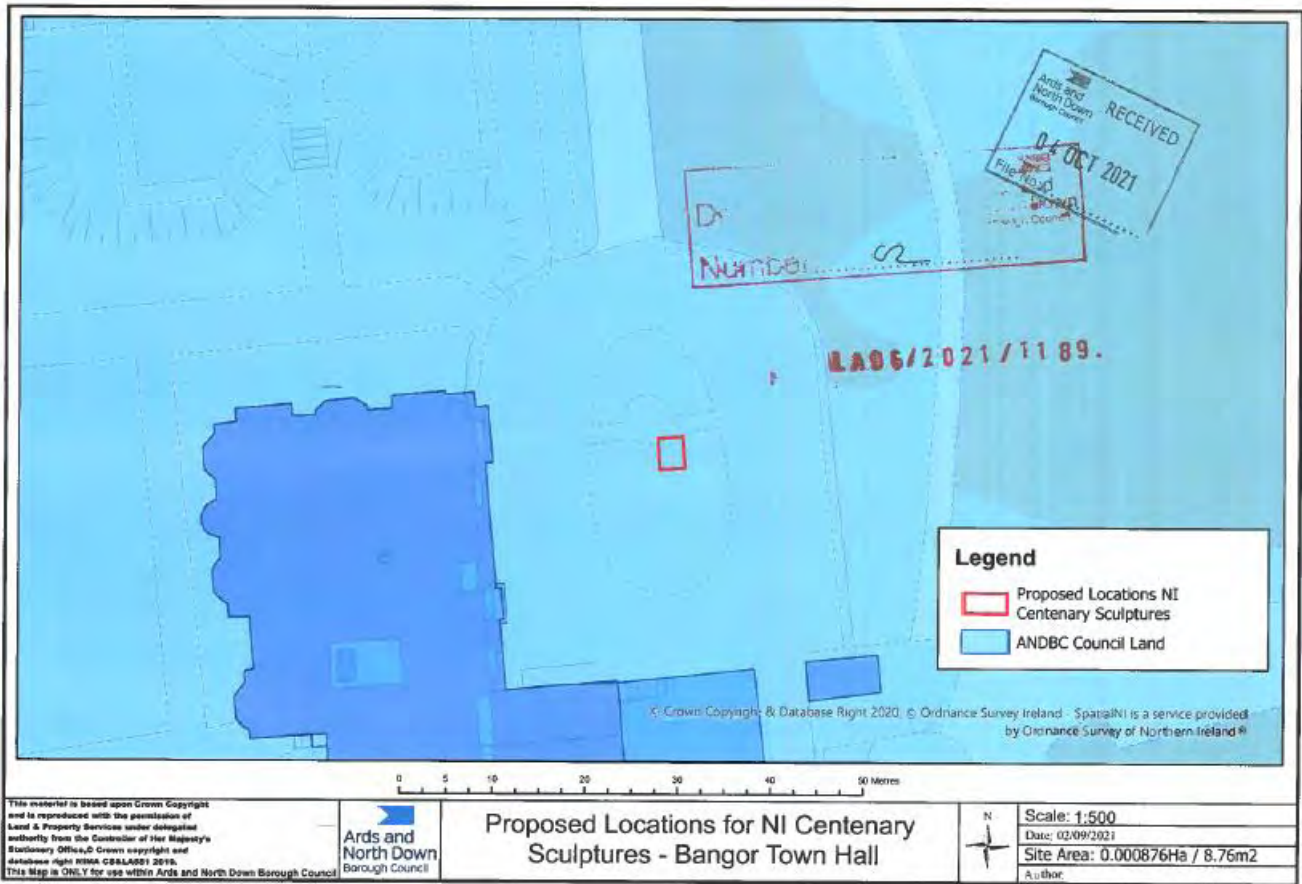
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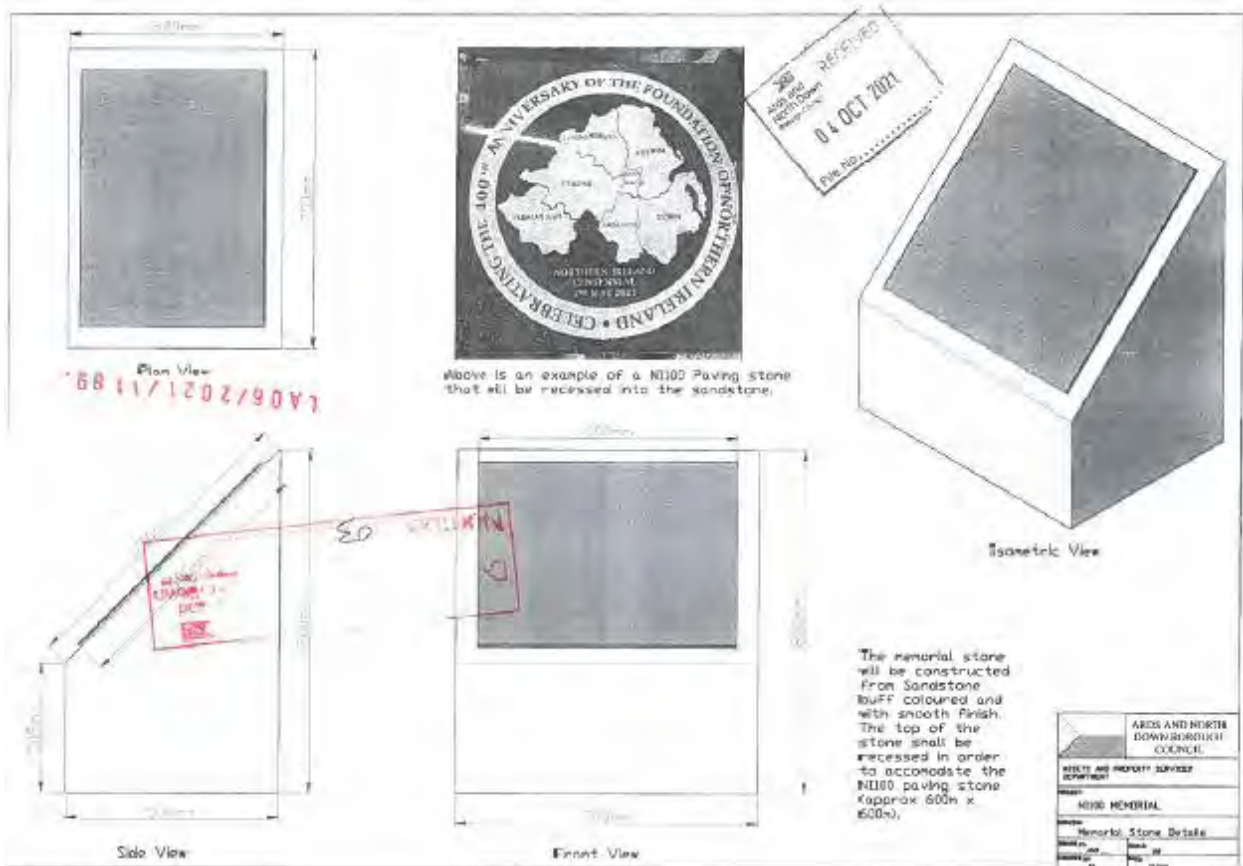
Site location



Drawing No. 01



Drawing No. 02



Drawing No. 03





ITEM 4.11

Ards and North Down Borough Council

Application Ref	LA06/2018/1169/F
Proposal	Replacement dwelling (off site) to include the demolition of existing dwelling
Location	85m West of 50 Kilcarn Road, Ballymacashen, Killinchy DEA: Comber
Committee Interest	Called in by Ald McIlveen from delegated list w/c 06 December 2021: <i>“This is an application for a replacement dwelling under PPS21. Policy CTY3 is applicable to such cases. As this application relates to a replacement dwelling that is outside the established curtilage, I would ask that the committee consider whether the application meets the criteria or the exceptions contained in that policy. If it meets the criteria under Policy CTY3 the application will not be contrary to Policy CTY1 or CTY8. Furthermore, that committee can make a determination as to whether the application is contrary to CTY 14 of PPS21.”</i>
Validated	29/10/2018
Summary	<ul style="list-style-type: none">• Proposal relates to the replacement of an existing dwelling• Proposal considered contrary to SPPS, PPS21- Policies CTY1, CTY3, CTY14, and PPS2 Policy NH2 and 5 due to insufficient information being received to determine if proposed development would not have an adverse impact on protected species or habitats• No justification for an off-site replacement• Proposed dwelling will a visually greater impact than the existing dwelling• The proposal would also create a ribbon of development
Recommendation	Refusal
Attachment	Item 4.11a – Case Officer Report

Development Management Case Officer Report					
Application Ref: LA06/2018/1169/F		DEA: Comber			
Proposal: Replacement dwelling (off-site) to include the demolition of the existing dwelling					
Location: 85m West of 50 Kilcarn Road, Ballmacashen, Killinchy					
Applicant: R Marshall			Agent: GT Design		
Date Valid: 29/10/2018			Env Statement Requested: No		
Date last Advertised: 28/10/2021					
Date last Neighbour Notified: 29/10/2019					
Consultations: Yes					
Representations: No					
Letters of Support	0	Letters of Objection	0	Petitions	0
Summary of Main Issues: <ul style="list-style-type: none"> Principle of Development in the countryside Whether the proposed dwelling would have a significantly greater impact than the dwelling to be replaced Its impact on visual amenity and rural character Impact on Biodiversity Access 					
Case Officer:					
Recommendation: Refuse Planning Permission					
Agreed by Authorised Officer					
Full details of this application, including the application forms, relevant drawings, consultation responses and any representations received are available to view at the Planning Portal www.planningni.gov.uk using Public Access					

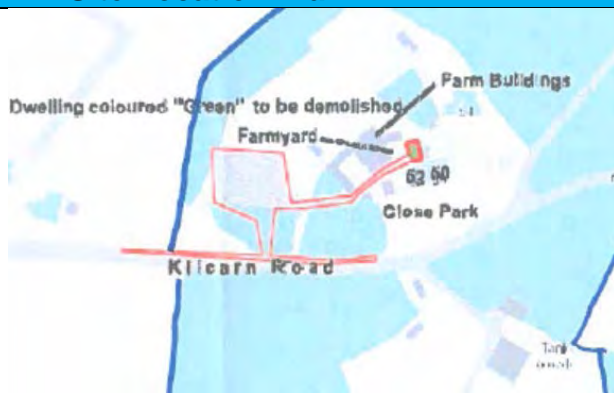
1. Description of Site and Surrounding Area

The site is located in the countryside outside of any designated settlement limit, on the Kilcarn Road, west of Balloo, and east of Saintfield. The building to be replaced is a single storey building (shown by red dot on ortho image below) with the proposed site for a replacement dwelling located in a large plot currently consisting of field accessed off the Kilcarn Road to the west of the original building.

The boundaries of the field for the replacement include a line of mature trees to the north, with a section of high mature trees to the south, with hedges and trees to the west forming a strong boundary. The boundary to the east of the proposed site is open to the adjacent farm yard.

The application site rises from the road toward the north and there is an existing farm gate to the south side. The surrounding area is rural and characterised by agricultural fields and dispersed rural dwellings/buildings.

2. Site Location Plan



3. Relevant Planning History

There is no pertinent history for the site or the adjoining area to the immediate east.

LA06/2017/0780/PAD

The above pre application discussion was facilitated in relation to discuss a proposal to '*Extend dwelling A to incorporate dwelling B, replace dwelling B; Replace dwelling C and convert dwelling C to garage for extended dwelling A. Convert barn D to habitable accommodation, convert barn E to habitable dwelling.*' This PAD included the building currently under consideration for replacement.

The applicant in relation to the above is the same applicant for this proposal, and was advised of the following:

- Any future application for multiple replacement dwellings should be supported by evidence to demonstrate that these dwellings are entirely independent;
- The developer should demonstrate why the proposed replacement dwellings cannot be located within the established curtilage of the existing building(s);
- Any future application must be accompanied by a statement setting out why the building is considered to be a locally important building as required by the SPPS;
- A Biodiversity Checklist and Bat Roost Potential Survey should accompany any proposal for demolition/conversion.

The above is relevant to the proposal which is for an off-site replacement dwelling.

4. Planning Policy Framework

The relevant planning policy framework for this application is as follows:

- Ards and Down Area Plan 2015
- Strategic Planning Policy Statement for Northern Ireland
- Planning Policy Statement 2: Natural Heritage
- Planning Policy Statement 3: Access, Movement and Parking
- Planning Policy Statement 21: Sustainable Development in the Countryside

5. Supplementary Planning Guidance

Building on Tradition

6. Consultations

Consultation was carried with the following statutory and non-statutory consultees and a synopsis of responses is listed:

Consultee	Response
NI Water	Refer to standing advice.
DFI Roads	No objection subject to conditions.
DAERA Water Management Unit (WMU)	Refer to standing advice.
DAERA Natural Environment Division (NED)	A Preliminary Ecological Appraisal (PEA) is required for an assessment of the potential

	impacts on protected/priority species and habitats. A bat emergence/ re-entry survey to DAERA specifications is also required.
NI Electricity	An 11kV overhead line traverses the site and will require to be altered if development permitted
Environmental Health	No objections

7. Consideration and Assessment

Proposal – the replacement (off site) of a dwelling attached to the rear of No. 52 Kilcarn Road – see map extract to right.



The Planning Act

Section 6(4) of the Planning Act 2011 states that determination under this Act must be made in accordance with the plan, unless material considerations dictate otherwise. Section 45 directs the Council in dealing with applications to have regard to the local development plan, so far as material to the application, and to any other material considerations.

Ards and Down Area Plan 2015

The site lies outwith any designated settlements limits within the countryside as defined in the Plan. No other designations affect the application site. There are no policies within the Plan that are relevant to the application site.

Strategic Planning Policy Statement for Northern Ireland

The guiding principle for planning authorities in determining planning applications is that sustainable development should be permitted, having regard to the development plan and all other material considerations unless the proposed development will cause demonstrable harm to interests of acknowledged importance.

The Strategic Planning Policy Statement for NI (SPPS) was published in September 2015. The transitional arrangements set out in Paragraph 1.10 indicate that until such times as a Plan Strategy for the whole of the council area has been adopted, planning authorities will apply existing policy within the Planning Policy Statements that have not been cancelled. The appeal site is in the open countryside, therefore Planning Policy Statement 21: Sustainable Development in the Countryside (PPS 21) is pertinent.

Paragraph 1.12 of the SPPS states that any conflict between the SPPS and any policy retained under the transitional arrangements must be resolved in favour of the provisions of the SPPS. The SPPS is more prescriptive than the retained policy in PPS

21 in relation to replacement dwellings and so it carries greater weight in the assessment of this proposal. Accordingly, the test as set out in Paragraph 6.73 is that any replacement dwelling must be located within the existing curtilage where practicable and must not have a visual impact significantly greater than the existing building (my emphasis). In these circumstances, greater weight must be attached to the tests set out in Paragraph 6.73 of the SPPS.

In addition to the above, Policy CTY3 states that planning permission will be granted for a replacement dwelling where the building to be replaced exhibits the essential characteristics of a dwelling and as a minimum, all external walls are substantially intact. Other criteria require that any alternative position outside the existing curtilage would result in demonstrable landscape, heritage, access or amenity benefits and that the overall size of the new dwelling should allow it to integrate into the surrounding landscape. This is assessed in detail below.

Planning Policy Statement 21: Sustainable Development in the Countryside

Policy CTY 1 of PPS 21 lists a range of types of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development. The circumstances wherein planning permission will be granted for an individual dwelling house are outlined. This includes a replacement dwelling in accordance with Policy CTY 3.

The first criterion requires that the proposed replacement dwelling should be sited within the established curtilage of the existing building, unless either

- a) the curtilage is so restricted that it could not reasonably accommodate a modest sized dwelling, or
- b) it can be shown that an alternative position nearby would result in demonstrable landscape, heritage, access or amenity benefits.

For the purpose of this policy, curtilage means the immediate, usually defined and enclosed area surrounding the existing dwelling house.

In this case the building is asserted to have previously been used as a dwelling. It is located within an area known locally as The Close. As can be seen in the photograph below the existing building is attached to the rear of that part of a semi-detached dwelling known as 52 Kilcarn Road. This stone-built building with slate roof has the appearance of a single storey dwelling with window openings and door to the front elevation, and chimney. Its walls and roof are intact and internal inspection has shown a general living area with fireplace and separate bathroom. As such I am content that the building to be replaced exhibits the essential characteristics of a dwelling and the external structural walls are substantially intact and as such meets the policy requirements in this regard.



In relation to the remainder of the policy, a replacement dwelling will only be permitted where all of the following criteria are met:

- the proposed replacement should be sited within the established curtilage of the existing building, unless either
 - a) the curtilage is so restricted that it could not reasonably accommodate a modest sized dwelling, or
 - b) it can be shown that an alternative position nearby would result in demonstrable landscape, heritage, access or amenity benefits.

As detailed above, the SPPS states that any replacement dwelling must be located within the existing curtilage where practicable and must not have a visual impact significantly greater than the existing building. There is no definitive curtilage to this building in its own right, as both it and the adjoining dwelling sit within a farmyard complex, and hardstanding/parking and road access as can be seen from the ortho below:



The red star denotes the building to be replaced, and the yellow star denotes the proposed location of the replacement dwelling.

Whilst it is considered that a modest two storey dwelling could be replaced in situ, joined to the existing dwelling, it is difficult to determine how adequate amenity area could be provided, unless space to the front of existing dwellings (Nos. 50 and 52) to the south is divided, but I consider this to be an unsatisfactory arrangement.

The existing building is a modest one storey cottage style building of just over 58m², whilst the proposed replacement will be located some 83m away from the original building, and is a substantially bigger two storey dwelling, consisting of 3.5 receptions, 4 beds, master with en-suite and attached garage, of approximately 373m² (ground plus first floor space). It is entirely obvious then that the new dwelling in its proposed location will have a significantly greater impact than the existing building, a one storey building which is entirely obscured from public viewpoints given its location tucked behind the existing dwelling at no. 52 Kilcarn Road and amid numerous other buildings in that complex.

It is proposed to locate the replacement dwelling within a field to the west of no.50 Kilcarn Road. There is an existing farm gate to the south. The agent has advised that as the building to be replaced opens directly onto a busy farmyard and a throughway for heavy plant and machinery, this creates a danger to any future inhabitants of the existing building. Whilst I consider that the building to be replaced could accommodate a modest sized dwelling, I have referred to the limited curtilage and lack of amenity space, however, I consider that there are more appropriate locations within the

ownership of the applicant that could more readily accommodate a more modest replacement dwelling without as great an impact visually as that proposed.

I do not consider that the size of this proposed replacement allows it to integrate into the surrounding landscape. Taking just the floorspace of the proposed ground floor the replacement dwelling is four times bigger than the floorspace of the existing building, and taking the total floorspace (ground and first) represents 6.4 times the original floorspace.

There are currently no views from the public road of the existing building as it is set back some 48m from the public road and screened entirely by surrounding farm buildings on site and the attached existing dwelling. The proposed off site location extends into and comprises part of a larger agricultural field to the west, with the position of the proposed dwelling located some 31m back from the public road. It is proposed at one and a half storey with a ridge height of c7.1m, with an attached single storey garage and sunroom. The main body of the building is approximately 12.6m in length with a total length over 22m including the garage and sunroom elements. The finished floor level proposed is +57.30 which is around 2.5m below the floor level of the existing building to be replaced, and slightly lower than the neighbouring properties at 50 and 52 Kilcarn Road. A new drive way is proposed off the Kilcarn Road to the immediately west of the existing access to the existing farmbuildings and also to the east of what appears on the map to be a disused access into the field.

- The design of the replacement dwelling should be of high quality appropriate to its rural setting and have regard to local distinctiveness.

The design of the dwelling to the front elevation is of a cottage style but with steeply pitched roof with sunroom with large expanse of glazing attached to one side, and an attached garage with grand double doors with arch detail above to the opposite side. The side elevation of the sunroom is of pitched glazed roof, expansive glazing, and a two storey return to the rear. Overall, the ratio of solid to void, with the exception of the sunroom element, is representative of rural dwellings, with proposed render finish to walls and blue/grey roofing slate. Overall ridge height is proposed at c7.1m. The site is not located within any particular designations relevant to design, and I consider the external materials to be acceptable in this rural location when considered alongside existing buildings in the immediate locale.

NI Water and Water Management Unit have been consulted and have no objection subject to conditions in relation to provision of the necessary services being provided without impact on the environment or character of the area.

Policy CTY 13 – Integration and Design of Buildings in the Countryside

Planning permission will be granted for a building in the countryside where it can be visually integrated into the surrounding landscape and it is of an appropriate design.

A new building will be unacceptable where:

- a) It is a prominent feature in the landscape; or**

- b) The site lacks long established natural boundaries or is unable to provide a suitable degree of enclosure; or
- c) It relies primarily on the use of new landscaping for integration; or
- d) Ancillary works do not integrate with their surroundings;
- e) The design of the building is inappropriate to the site and its locality; or
- f) It fails to blend with the landform, existing trees, buildings, slopes and other natural features which provide a backdrop.

The building to be replaced is currently obscured from public view from the Kilcarn Road by existing dwellings and outbuildings associated with the farm. The proposed replacement location will lead to the visual impact of a new dwelling being significantly greater, with removal of vegetation to provide for a new access and opening up of views of the site on approach from the east of the site. Some of the existing natural boundary will assist in some screening and whilst the site is higher than the adjacent public road, the existing natural boundaries are well established to enable integration. In this respect I do not consider that the dwelling will be overly prominent and new landscaping will not be relied upon for integration.

Ancillary works in the form of the new access will occur in opening up a stretch of the existing vegetation along the roadside, however the remaining vegetation should be able to integrate the remaining development. I have already considered that the design and materials used are appropriate in this location.

Policy CTY 14 – Rural Character

Planning permission will be granted for a building in the countryside where it does not cause a detrimental change to, or further erode the rural character of an area.

A new building will be unacceptable where:

- a) It is unduly prominent in the landscape; or
- b) It results in a suburban style build-up of development when viewed with existing and approved buildings; or
- c) It does not respect the traditional pattern of settlement exhibited in that area; or
- d) It creates or adds to a ribbon of development (see Policy CTY 8); or
- e) The impact of ancillary works (with the exception of necessary visibility splays) would damage rural character.

When viewed with existing buildings the proposal has the potential to result in a suburban style build-up of development, regardless of the ability for existing vegetation to assist in integration, given the proposed access and location closer to the public road than that it is replacing. It will have an adverse impact on an area which retains rural character consisting of dispersed traditional dwellings and farm buildings. Introduction of a new large building which will have a greater visual impact than that of the original building will contribute to erosion of the rural character in this location.

The proposed location of the dwelling does not reflect the traditional pattern of settlement exhibited in the immediate area of The Close. Existing buildings are set some distance back from the road in this immediate locality, and this proposal introduces a dwelling close to the road frontage which is out of keeping with the character of The Close. There are three dwellings further along the road to the east

which were approved as barn/outbuilding conversions, but do not read with the arrangement/type of development located at The Close. Existing development on the southern side of the road is not visible from the public road due to the natural screenings of the area.

The development has the potential to add to a ribbon of development when taken alongside the existing dwellings in The Close and their associated outbuildings, which is contrary to policy.

In relation to **Policy CTY 16 – Development relying on Non-Mains Sewerage** – the application form indicates that foul sewage will be disposed of by septic tank. No objections have been raised in this regard.

Planning Policy Statement 2 – Natural Heritage

Policy NH 2 – Species protected by law

Planning permission will only be granted for a development proposal that is not likely to harm a European or National Protected species.

The Pre Application Discussion highlighted the need for a completed biodiversity checklist and a bat roost potential survey to accompany any future application.

The agent has indicated that the existing building is to be demolished. Natural Environment Division (NED) returned a response stating it had noted from a desk top study of its GIS and aerial photography records that the application site has mature trees occurring within the site and other habitat in close proximity to the site with the potential to support a variety of species including but not limited to bats, badgers and wild birds which may be affected by the proposed development.

A bat report was provided, and re-consultation was carried out with NED who agreed that the building has low roost potential but stated that according to the BCT guidelines, despite the low potential, one emergence/re-entry survey is needed. NED also advised that a Preliminary Ecological Appraisal (PEA) is also required to assess the potential impacts for species and habitats.

Policy NH 5 – Habitats, Species or Features of Natural Heritage Importance

Planning permission will only be granted for a development proposal which is not likely to result in the unacceptable adverse impact on, or damage to known: priority habitats; or priority species, and in the absence of the information highlighted above, I am unable to determine if the proposal is likely to have such an impact.

Planning Policy Statement 3 – Access, Movement and Parking

The Kilcarn Road is not a protected route. DFI Roads have been consulted and have no objection subject to conditions.

Other Matters

NIE was consulted as an 11kV overhead line crosses the proposed site and will require alteration prior to any approved works commencing, and an informative was provided in this event.

8. Consideration of Representations

No representations were received.

9. Conclusion

Paragraph 6.73 of the SPPS states that any replacement dwelling must be located within the existing curtilage where practicable and must not have a visual impact significantly greater than the existing building. In this case the offsite replacement is being proposed in response to amenity issues relating to the current location of the building to be replaced within a farm yard, however, such an off site replacement of the size will have a visual impact significantly greater than the original building and is therefore contrary to policy. The extensive curtilage now proposed is not reflective of that associated with the original building and does not comply with Policy CTY 3. Despite being requested, insufficient information has been submitted to determine that the proposal will not have an adverse impact on any protected species or habitat.

10. Recommendation

Refuse Planning Permission

11. Reasons for Refusal

1. The proposal is contrary to the policy provisions of the Strategic Planning Policy Statement for Northern Ireland and Policy CTY 1 of Planning Policy Statement 21 – Sustainable Development in the Countryside, in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.
2. The proposal is contrary to the policy provisions of the Strategic Planning Policy Statement for Northern Ireland and Policy CTY3 of Planning Policy Statement 21 – Sustainable Development in the Countryside, in that the replacement dwelling will have a visual impact significantly greater than the existing building.
3. The proposal is contrary to Policy CTY 8 of Planning Policy Statement 21 – Sustainable Development in the Countryside in that the proposed replacement dwelling would add to a ribbon of development along Kilcarn Road.
4. The proposal is contrary to Policy CTY 14 of Planning Policy Statement 21 – Sustainable Development in the Countryside in that the proposed replacement

dwelling would further erode the character of the rural area by reason of resulting in a suburban style build up of development when viewed with existing buildings and would add to an existing ribbon of development.

5. The proposal is contrary to Planning Policy Statement 2 – Natural Heritage, Policies NH 2 and 5 as insufficient information has been submitted in order to determine that the proposed development would not have an adverse impact on protected species or habitats.

ITEM 5**Ards and North Down Borough Council**

Report Classification	Unclassified
Council/Committee	Planning
Date of Meeting	18 January 2022
Responsible Director	Director of Regeneration, Development and Planning
Responsible Head of Service	Head of Planning
Date of Report	21 December 2021
File Reference	160051
Legislation	The Planning Act (Northern Ireland) 2011
Section 75 Compliant	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Other <input type="checkbox"/> If other, please add comment below:
Subject	Update on Planning Appeals
Attachments	Item 5a - PAC decision 2020/A0076

Decisions

1. The following non determination appeal was allowed on 21 December 2021.

Appeal reference:	2020/A0076
Application Reference:	LA06/2020/0380/F
Appeal by:	Oasis Retail Services Ltd
Subject of Appeal:	Change of use from former bank (Class 2) to an amusement arcade and adult gaming centre and alterations to shop front
Location:	39 High Street, Newtownards

The Commissioner concluded that the proposed use was complementary to the retail uses within the Primary Retail Core, and that the appeal proposal was in accordance with policy. It was also considered that there would be little difference in the appearance of the appeal building whether used as a bank (former use) or as an amusement arcade and gaming centre. The proposed development would not have

a detrimental impact on visual amenity, and that the reuse of the appeal building, currently vacant and shuttered, would be positive. Decision is attached to this report.

New Appeals Lodged

2. The following appeals were submitted on the 26 October, 15, 16 and 29 November, respectively.

Appeal reference:	2021/A0133
Application Reference:	LA06/2020/1169/O
Appeal by:	Mr Wallace Magowan
Subject of Appeal:	Proposed site for dwelling on an active and established farm
Location:	Lands approx. 30m NE of no. 31 Gransha Road South, Bangor

Appeal reference:	2021/A0144
Application Reference:	LA06/2019/0609/O
Appeal by:	Mr Henry McDowell
Subject of Appeal:	Infill dwellings and garages
Location:	Land between 10 and 12 Ballycreely Road, Comber

Appeal reference:	2021/E0051
Application Reference:	LA06/2021/0150/LDP
Appeal by:	John Spratt
Subject of Appeal:	Commencement of development of X/2010/0034/F in accordance with approval
Location:	Adjacent and north of 27 Ballybeen Road, Comber

Appeal reference:	2021/A0155
Application Reference:	LA06/2019/1176/O
Appeal by:	Mr Ray Jackson
Subject of Appeal:	2no. dwellings and garages
Location:	Lands between No. 59 Thornyhill Road and 44 Ballymacashen Road, Killinchy

Details of appeal decisions, new appeals and scheduled hearings can be viewed at www.pacni.gov.uk.

RECOMMENDATION

It is recommended that Council notes this report.

Appeal Reference:	2020/A0076
Appeal by:	Oasis Retail Services Ltd
Appeal against:	The non-determination of an application for full planning permission
Proposed Development:	Change of use from former bank (Class 2) to an amusement arcade and adult gaming centre and alterations to shop front
Location:	39 High Street, Newtownards
Planning Authority:	Ards and North Down Borough Council
Application Reference:	LA06/2020/0380/F
Procedure:	Written representations and Commissioner's site visit on 22 September 2021
Decision by:	Commissioner McShane, dated 21 December 2021.

Decision

1. The appeal is allowed and full planning permission is granted, subject to the conditions set out below.

Reasons

2. The main issue in this appeal is:-
 - the impact of the proposed use on the vitality, viability and character of the Primary Retail Core (PRC);
3. Section 6 (4) of the Planning Act (NI) 2011 requires that the determination of proposals must be in accordance with the local development plan (LDP) unless material considerations indicate otherwise. The Ards and Down Area Plan 2015 (ADAP) operates as a LDP for the area. The appeal site is located in Newtownards town centre within the PRC as defined by Proposals NS 44 and NS 45 respectively.
4. Volume 1 of the ADAP states that the purpose in identifying a PRC within a Town Centre is to provide control over development inside that area, to ensure the continuance of a compact, lively and attractive shopping environment, offering both choice and convenience. This is repeated in Volume 2, which states that the main concentration of retail floor space in the Newtownards town centre should continue to be located within the PRC.
5. The ADAP points out that development proposals within Town Centres and PRCs will be assessed in the context of prevailing regional planning policy. Reference is made to Planning Policy Statement 5: Retailing and Town Centres, and other relevant policies contained in the relevant settlement sections.

6. Proposals NS 44 and NS 45 define the extent of the town centre and PRC; they do not contain policy. There are no operational plan policies pertinent to my assessment.
7. The Strategic Planning Policy Statement for NI 2015 (SPPS) cancelled PPS 5. The SPSS provides strategic subject planning policy for a wide range of planning matters, including town centres and retailing. General guidance and advice in Development Control Advice Note 1: Amusement Centres 1983 (DCAN 1) is also pertinent.
8. Paragraph 6.267 of the SPPS states that town centres are important hubs for a range of land uses and activities. It notes that they provide a wide variety of retailing and related facilities; including employment, leisure and cultural uses. Paragraph 6.269 states that it is important that planning supports the role of town centres and contributes to their success. Paragraph 6.270 states that the aim of the SPPS is to support and sustain vibrant town centres through the promotion of established town centres as the appropriate first choice location of retailing and other complementary functions consistent with the RDS.
9. The premise that underpins the regional strategic objectives for town centres and retailing, set out in Paragraph 6.271 of the SPPS, is the town centres first approach for the location of future retailing and other main town centre uses. Significantly, Footnote 58 of the SPPS confirms that town centre uses “includes cultural and community facilities, retail, leisure, entertainment and businesses”. An amusement arcade and gaming centre comprises a form of leisure and entertainment. Therefore, it constitutes a town centre use as envisioned by the SPPS. Accordingly, the objection that the use is not considered to be complementary to the retail uses within the PRC is not sustained.
10. Paragraph 6.279 of the SPPS states that all retailing and town centre proposals must ensure that there will be no unacceptable adverse impact on the vitality and viability of an existing centre. Para 6.281 requires planning applications for main town centre uses to be considered in an order of preference: PRC; town centres; edge of centre; and out of centre location. The appeal proposal, which is recognised as a town centre use by the SPPS, would be located within the defined PRC. In this respect, the appeal proposal is in accordance with policy and, as such, an assessment of need, as referred to in Paragraph 6.282 would be nugatory.
11. There is concern about the impact of the proposed development on the character of the area. Paragraph 6.269 of the SPPS notes that it is important that planning supports the roles of town centres and contributes to their success. Reference is made to seeking to encourage development at an appropriate scale to enhance the attractiveness of town centres, helping to reduce travel demand; although the term “appropriate scale” is not defined.
12. The SPPS recognises at Paragraphs 4.11 and 4.12 that there are a wide range of environment and amenity considerations, including noise, visual intrusion, general nuisance and waste management, which should be taken into account by planning authorities when managing development. Supporting good design and positive place making is one of the core planning principles of the SPPS (Paragraphs 4.23 - 4.36).

13. DCAN 1 provides advice on the planning criteria to be applied when an application for an amusement centre, which is a sui generis use, is being considered. Paragraph 3 of DCAN 1 indicates that one of the factors to be considered in relation to a planning application for an amusement centre are its effects on the amenity and character of its surroundings. Paragraph 4 points out that the effects on amenity and the character of the area will usually depend on the location of the proposal in relation to other development, its appearance, the kind of amusement to be provided, the noise likely to be produced and the hours of operation. Paragraph 5 states out that in area, where shopping is the predominant use, the likely effect of the development on the character of the shopping centre is relevant. It goes on to point out that an important consideration will be whether an amusement centre would break up an otherwise continuous shopping frontage.
14. The PRC of Newtownards includes Conway Square and High Street, the traditional focus for retailing in the Town Centre. The main shopping frontages which comprise the PRC are on either side of Regent Street, from Gibson's Lane to Castle Place and on either side of High Street from Conway Square to Castle Place.
15. The appeal building is located on the south side of High Street between Conway Square and Castle Place, it is not within a conservation area or other place of special architectural or historic interest. There is no indication that it is located near residential property or any schools, churches, hospitals or hotels, which DCAN 1 states are not normally acceptable locations for amusement centres. There is no other amusement arcade in the vicinity. The only reference to other leisure or entertainment uses within the PRC is to two public houses that are located on Frances Street.
16. The appeal building stands within a block that comprises approximately 20 units. Of these, 5 units are in non-retail use and 3 units are vacant. Significantly, the proposed development does not involve a change of use from Class A1 retail. Historically, the building has been used as a bank; Class 2. It has been vacant since the closure of the First Trust Bank in 2017. The proposed development would not break up an otherwise continuous shopping frontage, retail would remain the predominant use along the High Street frontage and the main concentration of retail floor space within Newtownards would continue to be located within the PRC as required by the ADAP.
17. The two storey, pitched slate roof appeal building is finished in cream coloured render. It has decorative eaves and timber framed windows. The tide mark of the "First Trust" and bank logo remain. The ATM and night safe have been removed; the gaps in the façade have been secured by metal sheeting. The appeal building comprises 269m² at ground floor level. It has a 15.7m frontage onto High Street, which includes a wrought iron gateway that provides access to the rear. The ground floor windows and entrance doors are covered by brown metal security shutters.
18. The proposed elevation drawings show that the upper level facade of the building would be redecorated, the wrought iron gate would remain in situ, the existing recessed entrance door would be replaced with one that is flush to the street and repositioned a short distance from its current location, the existing ATM façade

would be replaced with polished black granite, the existing glazed PPC windows and doors would be replaced with new PPC laminated safety glass display windows; the extent of ground floor glazing across the frontage would remain as it is currently; extending to approximately 8.5m.

19. Lighting and displays within the building would be subject to control under separate licensing and permitting arrangements. Photographs submitted of the building when it was still in use as a bank show that the former window display comprised a series of suspended posters that advertised banking products and services available. The Appellant indicates that the appeal development would have a similar form of signage behind the glazing. This is a matter that could be secured by the imposition of a condition.
20. Taking these factors into account, there would be little difference in the appearance of the appeal building whether used as a bank or as an amusement arcade and gaming centre. The proposed development would not have a detrimental impact on visual amenity. The reuse of the appeal building, currently vacant and shuttered, would be positive.
21. Paragraph 2.3 of the SPPS points out that the basic question to ask is not whether owners or occupiers of neighbouring properties would experience financial or other loss from a particular development, but whether the proposal would unacceptably affect amenities and the existing use of land and buildings that ought to be protected in the public interest.
22. There is no persuasive evidence to indicate that there is anything specific to the appeal proposal, which would result in a general nuisance or disturbance at this town centre location that would have an unacceptable detrimental impact upon amenity. The Environmental Health Office of the Council raises no objection to the proposed development. There is no indication that any complaints have been received by environmental health or the police about the Appellant's existing gaming businesses, 12 premises located throughout NI, in terms of noise, nuisance and general disturbance or litter generation. In any event, any potential issues around anti-social behaviour and public order are matters for the PSNI while responsible gaming is a matter for the owner/manager of the facility and any issues relating to noise and litter would be matters for Environmental Health. I have not been persuaded that the proposed development would discourage shoppers from visiting Newtownards town centre. The Third Party Objections are not determining in this appeal.
23. In the site specific and evidential context of this appeal, I have not been persuaded that the proposed amusement arcade and gaming centre would have an unacceptable impact on the vitality, viability and character of the PRC. The Council has failed to sustain its reason for refusal based upon the ADAP, the SPPS and DCAN 1. The concerns of Third Party Objectors have not been upheld. The proposed development complies with policy; therefore the issue of unacceptable precedent does not arise.
24. DCAN 1 points out that it is sometimes reasonable to give permission for an amusement centre, subject to conditions regulating the use of the premises. No such conditions were advanced. In the interest of visual amenity, the front windows of the premises are required to contain a display.

Conditions

- (1) The ground floor front windows of the premises shall contain a display at all times.
- (2) The development shall be begun before the expiration of five years from the date of this permission.

This decision approves the following drawings:

- LPA Drwg No.01: Site Location Plan (Scale 1:1250)
- LPA Drwg No.02: Proposed Ground Floor Plan (Scale 1:100)
- LPA Drwg No.03: Existing Ground Floor Plan (Scale 1:100)
- LPA Drwg No.04: Existing Shop Front Elevation (Scale 1:50)
- LPA Drwg No.05: Proposed Shop Front Elevation (Scale 1:50)

COMMISSIONER MCSHANE

List of Documents

Planning Authority:-	“LPA 1” Statement of Case (Ards and North Down Borough Council)
Appellant:-	“APP 1” Statement of Case and Appendices “APP 2” Rebuttal Statement and Appendices (MBA Planning)
Third Party:-	“TPO 1” Statement of Case “TPO2” Rebuttal Statement (Les Ross Planning)

ITEM 6**Ards and North Down Borough Council**

Report Classification	Unclassified
Council/Committee	Planning Committee
Date of Meeting	18 January 2022
Responsible Director	Director of Regeneration, Development and Planning
Responsible Head of Service	Head of Planning
Date of Report	12 November 2021
File Reference	160051
Legislation	The Planning Act (NI) 2011
Section 75 Compliant	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Other <input type="checkbox"/> If other, please add comment below:
Subject	Review of decisions further to withdrawal of PAN
Attachments	N/A

Members will recall that the Minister for Infrastructure published the Planning Advice Notice (PAN) relating to Sustainable Development in the Countryside on 2 August 2021. Further to receipt of various concerns regarding its content, the PAN was withdrawn on 15 October 2021.

A review of decisions issued during the period in which the PAN was presumptively valid and the weeks up to end of October 2021 took place. Within this timeframe, 25 decisions assessed under PPS 21: Sustainable Development in the Countryside were identified. None of the assessments of the proposed developments were reliant upon the clarification provided within the PAN and as such no further action is required to be taken by the Council.

RECOMMENDATION

It is recommended that Council notes the content of this report.

ITEM 7**Ards and North Down Borough Council**

Report Classification	Unclassified
Council/Committee	Planning Committee
Date of Meeting	18 January 2022
Responsible Director	Director of Regeneration, Development and Planning
Responsible Head of Service	Head of Planning
Date of Report	12 November 2021
File Reference	160051
Legislation	The Planning Act (NI) 2011; The Planning (Development Management) Regulations (NI) 2015
Section 75 Compliant	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Other <input type="checkbox"/> If other, please add comment below:
Subject	Judgment by Humphreys J regarding Battery Energy Storage Systems
Attachments	Draft Judgment re ABO Wind NI Limited and Energia Renewables Company 1 Limited's Application

Purpose of Report

It is considered prudent to bring the content of the attached judgment to Members' attention for information.

Background

On 16 December 2020 the Department for Infrastructure published its Chief Planner's Update 7 ('CPU 7') which, inter alia, provided advice and guidance in relation to Battery Energy Storage Systems ('BESS'). In CPU7, the Chief Planner advised Heads of Planning that such development fell within the meaning of 'electricity generating station'.

The advice provided was contrary to a previous decision issued by the Planning Appeals Commission for the development of a BESS facility at Kells in the Antrim

and Newtownabbey Borough council area, which was refused by that Council on the grounds of unacceptable detrimental impact on visual amenity and character of the area. Contrary to objectors' concerns that the Council had not appropriately categorised the development as 'major' and that it potentially could have been considered as Regionally Significant Development, the Commissioner determined, further to evidence provided, that the proposal was not an electricity generating facility but a facility for storing electricity that was previously generated from a primary energy source such as coal, oil, gas or wind, and as such was correctly classified as 'local' development.

Neither the objectors nor any other party sought to challenge the decision of the Commission.

The Chief Planner's Update

In CPU 7 in relation to BESS the Chief Planner advised that the Department had been reviewing these types of development and contrary to the appeal decision referred to above, he stated the following:

"I wish to formally confirm that, for the purposes of planning in Northern Ireland, the Department considers that electricity storage development falls within the meaning of an 'electricity generating station.'

Further he continued:

"I recognise that this is an unusual step and that the position involves a departure from the PAC decision which turned on the facts and evidential context of that particular case. However, the Department considers that there is a legitimate public interest in taking this approach and providing clarity for both councils and developers. I should highlight that this is not a legislative or policy change and is instead provided as clarification from the Department."

In practical terms, therefore, the Heads of Planning of the councils were being advised that applications involving 'electricity storage facilities', including BESS, should be considered as 'electricity generation' within the meaning of the 2011 Act and 2015 Regulations.

Implications

The Schedule to the Planning (Development Management) Regulations (Northern Ireland) 2015 sets out the classes of development belonging to the category of major development.

Class 2 relates to 'Energy Infrastructure' and in relation to 'Electricity generating stations' sets out the following threshold or Criteria:

1. The construction of an electricity station where its capacity is or exceeds 5 megawatts;
2. All onshore development associated with the construction of an offshore electricity generating station.

Class 9 within the Schedule relates to 'All other development' to cover 'Any development not falling wholly within any single class of development described in Parts 1 to 8 above' (emphasis added), and the relevant threshold or criteria is as follows:

- a) Development that comprises 5,000 square metres or more gross floor space;
or
- b) The area of the site is or exceeds 1 hectare.

which had implications for the categorisation of the proposal and assessment as to whether EIA was triggered.

The Challenge

ABO Wind NI Ltd and Energia Renewables Company 1 Ltd challenged the position adopted by the Chief Planner on the basis that this advice or 'clarification' was wrong in law, and on the basis that the PAC decision was a correct interpretation of the 2015 Regulations in respect of the category of development applied to such development proposals.

The Judgment

The Judge refers to 'Planning Appeal Principles' (2020) by William Orbinson QC in respect of the question of the precedent value of the decisions of the PAC. Mr Orbinson emphasises firstly that the PAC is a specialist independent statutory appellate body, entrusted with the task of hearing appeals from planning authorities. Then in the context of other case law examples, concludes that the decisions of the PAC "*must either be accepted or respected, or be challenged through the courts.*"

Humphreys J at paragraph [100] of the judgment sets out that whilst recognising that the respondent (the Department) was not bound by the PAC decision as a matter of strict precedent, he concurred with the view expressed by Mr Orbinson that such decisions must either be accepted and respected or challenged through the courts.

The application for judicial review succeeded on the issue of statutory interpretation, legality and Wednesbury rationality, in the Humphreys J considered that the Chief Planner did not analyse the statutory provisions in Northern Ireland with sufficient rigour and did not properly ask the question "*Does a BESS development fall wholly within class 2 of the Schedule to the 2015 Regulations?*" The Judge considered that had he asked the correct question, the answer, for the reasons provided within the judgment, must be 'no.'

Given that BESS are a form of storage not expressly mentioned in the Regulations, it must therefore be the case that it falls outwith Class 2 of energy infrastructure, and therefore into Class 9 of the Schedule and is subject to the thresholds contained therein.

The Judge at paragraph [101] was critical of the Department's publication of the Chief Planner's Update as "guidance" or "clarification", opining that it was a 'recipe

for administrative chaos' given that planning officers of local councils were then faced with a choice between following the PAC decision or the Chief Planner's guidance/clarification.

Review of existing permissions

On 10 August 2021, further to publication of the CPU regarding the classification of BESS development, DFI Planning requested detail of the Council's review of extant permissions, particularly with regard to environmental impact assessment. Ards and North Down Borough Council responded to advise it had reviewed the detail of one BESS development granted and was satisfied that it had applied the Development Management Regulations accordingly and had no intention of revoking on the basis of the CPU.

RECOMMENDATION

It is recommended that Council notes the content of this report, the attached judgment in respect of the precedent value of PAC decisions and the classification of Battery Energy Storage Systems.

Neutral Citation No: [2021] NIQB 96

Ref: HUM11648

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 21/10/2021

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

**QUEEN'S BENCH DIVISION
(JUDICIAL REVIEW)**

**IN THE MATTER OF AN APPLICATION BY ABO WIND NI LIMITED &
ENERGIA RENEWABLES COMPANY 1 LIMITED FOR JUDICIAL REVIEW
AND IN THE MATTER OF THE CHIEF PLANNER'S UPDATE 7**

**Stewart Beattie QC and Philip McEvoy (instructed by TLT NI LLP) for the Applicants
Paul McLaughlin QC and Michael Neeson (instructed by the Departmental Solicitor's
Office) for the Respondent**

HUMPHREYS J

Introduction

[1] The applicants for judicial review in these proceedings are two limited companies which operate in the renewable energy industry in Northern Ireland. The respondent is the Department for Infrastructure ('the Department').

[2] Periodically the Department publishes 'Chief Planner's Updates' which provide guidance, news and information to the Heads of Planning in each of the 11 councils in Northern Ireland.

[3] On 16 December 2020 the Department published Chief Planner's Update 7 ('CPU 7') which, *inter alia*, provided advice and guidance in relation to Battery Energy Storage Systems ('BESS').

[4] The applicants contend that the relevant part of CPU7 was wrong in law and is also vitiated on a variety of other grounds.

Background

[5] The evidence before the court revealed that the first applicant is a subsidiary of ABO Wind AG, a world wide developer in the renewables market. It has already invested significant sums in the Northern Irish market and proposes to bring forward projects with an estimated value of some £300m. The second applicant is part of the Energia group which currently provides around 20% of the renewable electricity in Ireland.

[6] BESS are a recent addition to the technology which is involved in renewable energy projects. By their very nature, wind and solar energy are produced intermittently and therefore facilities to store excess energy which is produced at time where supply outstrips demand represent a valuable addition to the infrastructure in this field.

[7] In the year to September 2020 some 47.7% of the total electricity consumption in Northern Ireland was generated from local renewable sources, ahead of the 40% target which had been set by the Strategic Energy Framework in 2010. The United Kingdom is now committed to 100% reduction in greenhouse gas emissions by 2050 and this move towards a net zero carbon emission economy also features as a key theme on an all Ireland basis.

[8] In simple terms, BESS work by absorbing electricity, converting it to chemical energy and storing it until such times as supply is required by the grid, at which time it is re-converted to electrical energy. Their use will play an important part in the progress towards meeting renewable energy targets and ensuring continuity of supply.

[9] In CPU7, the Chief Planner advised that such development fell within the meaning of 'electricity generating station' and it is this advice which gives rise to the core application for judicial review.

The Legislative Context

[10] The existing two tier system of planning control in this jurisdiction was introduced by the Planning Act (NI) 2011 ('the 2011 Act'). It obliges the Department to formulate and co-ordinate policy on a regional basis whilst councils create local development plans and determine local planning applications.

[11] Section 25 of the 2011 Act provides:

“(1) For the purposes of this Act, a development belongs to one of the following categories –

(a) the first, to be known as “major developments”; and

(b) *the second, to be known as “local developments.”*

(2) *The Department must by regulations describe classes of development and assign each class to one of the categories mentioned in paragraphs (a) and (b) of subsection (1).*

(3) *But the Department may, as respects a particular local development, direct that the development is to be dealt with as if (instead of being a local development) it were a major development.”*

[12] Section 26 requires an applicant for planning permission for a major development to consult with the Department who will determine if the proposed development is one of regional significance.

[13] Section 27 sets out the requirement for pre-application community consultation in the case of major developments. Section 50 requires either the council or the Department to decline a planning application when the requirements of section 27 have not been complied with.

[14] Section 29 permits the Department to ‘call-in’ planning applications:

“(1) The Department may give directions requiring applications for planning permission made to a council, or applications for the approval of a council of any matter required under a development order, to be referred to it instead of being dealt with by councils.

(2) *A direction under subsection (1) –*

(a) *may be given either to a particular council or to councils generally; and*

(b) *may relate either to a particular application or to applications of a class specified in the direction.”*

[15] Sections 68 and 72 give power to the councils and the Department respectively to modify or revoke any planning permission already granted. In the case of a council modification or revocation this must be confirmed by the Department under section 70. In either case a revocation or modification may be referred to the Planning Appeals Commission (‘PAC’).

[16] The obligation to make regulations under section 25(2) gave rise to the Planning (Development Management) Regulations (NI) 2015 (‘the 2015 Regulations’). Regulation 2 prescribes the classes of development belonging to the category of ‘major development’ as being those in Column 1 of the table in the

Schedule, where the threshold in Column 2 was met or exceeded. All other development is categorised as local development.

[17] There are nine classes of development belonging to the category of major development. The second of these is 'Energy Infrastructure' and the first sub-class is 'Electricity Generating Stations.' The major development threshold is met when the development consists of the "*construction of an electricity generating station where its capacity is or exceeds 5 megawatts.*" 'Storage' is the third sub-class of Energy Infrastructure and its thresholds are:

"1. Installations for the storage of petroleum, petrochemical, chemical products or natural gas where the storage capacity of the facility is expected to be 30,000 tonnes or more.

2. Installations for the underground geological storage of petroleum, natural gas, carbon dioxide or compressed air energy storage."

[18] The ninth class is 'All Other Development', being described as:

"Any other development not falling wholly within any single class of development described in Parts 1 to 8 above."

The threshold for class 9 is met where it is:

"(a) development that comprises 5,000 square metres or more gross floor space; or

(b) the area of the site is or exceeds 1 hectare."

[19] Any planning officer tasked with considering an application for permission must therefore apply the rules and thresholds in the Schedule to the 2015 Regulations in order to determine whether the development is major or local. If the development falls wholly within one of the classes 1 to 8, then the next question is whether the threshold is reached. If not, then the development is local. If the development does not fall within classes 1 to 8, then it is treated as 'all other development' and the threshold based on either the floor size or the area of the site is applied. If neither of these is met, the development is local.

[20] The scheme of the Schedule does not admit of any discretion on the part of the decision maker. A development is either major or local and must be classified according to the taxonomy in the Regulations. If, for instance, a development comprises both retail and housing elements, it could not be said to fall "*wholly within*" either class 6 (housing) or class 7 (retailing, community, recreation and culture). Accordingly, it must be treated as class 9 (all other development) and the relevant thresholds applied.

[21] All of this is subject to the important power vested in the Department by section 25(3) of the 2011 Act whereby it can direct that a particular local development be dealt with as if it were a major development.

The PAC Kells Decision

[22] In 2018, Kells BES Limited applied for planning permission for the development of a BESS facility at the Doagh Road, Kells, Co Antrim. The application was refused by Antrim & Newtownabbey Borough Council on the grounds of unacceptable detrimental impact on visual amenity and character of the area.

[23] This decision was appealed to the PAC and heard by an experienced Deputy Chief Commissioner, Trevor Rue. Kells Vocal, a local community group, appeared at the appeal hearing and adduced evidence.

[24] It was part of the case advanced by Kells Vocal that the development fell into Category 2 in the Schedule to the 2015 Regulations as it was an “electricity generating station.” Given that its capacity was approximately 50 MW, this ought to be treated as a major development. This would trigger pre-application consultation requirements and call upon the Department to determine if the application was of regional significance. The parties accepted that if Kells Vocal were correct on this issue, the planning application was procedurally flawed and there would be no valid appeal before the PAC.

[25] The PAC handed down its decision on 27 November 2019. Mr Rue rejected the argument from Kells Vocal and stated:

“The appellant’s grid expert explained at the hearing that electricity would enter the proposed facility direct from the adjacent Kells Substation, an important node into which electricity flows from many directions. It would be stored in chemical format in lithium-ion batteries and converted back to alternating current when required to meet demand. It follows that what is being proposed is not an electricity generating facility but a facility for storing electricity that was previously generated from a primary energy source such as coal, oil, gas or wind.”

[26] For this reason, the PAC held that the application was properly classified as local and therefore it had jurisdiction to hear and determine the appeal. Having considered the other issues raised by the parties, the PAC granted planning permission subject to conditions.

[27] Neither the council, Kells Vocal nor anyone else sought to challenge this decision by way of judicial review.

CPU7

[28] On 16 December 2020 the Chief Planner issued CPU7. Insofar as BESS are concerned, he put the matter in the following context:

“Following correspondence from several parties on this subject matter, the Department has been reviewing these types of developments and how they are processed in the planning system both here in Northern Ireland (NI) and across the other administrations. In particular, a query arose over whether such developments should be considered ‘electricity generating.’

You will be aware that the Planning Appeals Commission (PAC) recently granted planning permission for a BESS after concluding that it was not electricity generating and did not require EIA.”

[29] The document goes on to say that the government in England, Scotland and Wales has confirmed that electricity storage facilities are a form of generating station. He states:

“I wish to formally confirm that, for the purposes of planning in Northern Ireland, the Department considers that electricity storage development falls within the meaning of an ‘electricity generating station.’ This position is based on several factors including the operation of electricity storage systems; their classification in other jurisdictions; pre-existing Northern Ireland Legislation; and the legislative history of the Planning (Development Management) Regulations (NI) 2015 and consistency with the Electricity (NI) Order 1992.”

[30] CPU7 continues:

“I recognise that this is an unusual step and that the position involves a departure from the PAC decision which turned on the facts and evidential context of that particular case. However, the Department considers that there is a legitimate public interest in taking this approach and providing clarity for both councils and developers.

I should highlight that this is not a legislative or policy change and is instead provided as clarification from the Department.”

[31] In practical terms, therefore, the Heads of Planning of the councils were being told that applications involving ‘electricity storage facilities’, including BESS, should be considered as ‘electricity generation’ within the meaning of the 2011 Act and 2015 Regulations.

Statutory Construction

[32] The Chief Planner did not rehearse the provisions of section 25 of the 2011 Act or the 2015 Regulations but it is clear that he had those matters in mind when issuing CPU7. The intention of the advice was to inform the Heads of Planning, and therefore the councils, of the Department’s position that ‘electricity storage facilities’, such as BESS, should be treated as falling within sub-class 1 of class 2 of the Schedule to the 2015 Regulations and, provided the relevant threshold is met, be dealt with as major developments.

[33] The centrepiece of the applicants’ judicial review challenge is that this advice or ‘clarification’ is wrong in law. The corollary of that position is the PAC decision in Kells was a correct interpretation of the 2015 Regulations.

The Precedent Value of PAC Decisions

[34] In his ‘Planning Appeal Principles’ (2020), William Orbinson QC devotes a chapter to the question of the precedent value of the decisions of the PAC. He emphasises firstly that the PAC is a specialist independent statutory appellate body, entrusted with the task of hearing appeals from planning authorities.

[35] The planning system in England & Wales is quite different but a similar question arose in *R v Warwickshire County Planning Authority ex p. Powergen* [1998] JPL 131 as to the weight to be attached to the conclusions of an Inspector hearing an appeal in that system. Simon Brown LJ held that the authority was obliged, after the appeal was determined, to accept this decision and co-operate:

“The Inspector’s conclusion on the issue, because of its independence and because of the process by which it is arrived at, necessarily becomes the only tenable view on the issue ... and thus is determinative”

[36] In terms of precedent, George Bartlett QC, sitting as a deputy high court judge, said in *R v East Cambridgeshire District Council ex p. Rank* [2002] EWHC 2081 (Admin):

“In my judgment a previous appeal decision has a particular potential relevance to a determination by a local planning authority by reason of the fact that it is a decision of the Secretary of State or by an inspector with delegated powers. It is the decision of a superior authority, made in the reasoned

decision letter of an expert inspector (or in the reasoned decision letter of the Secretary of State on the basis of a reasoned report by an inspector), in the light of representations from the appellant on the one hand and the local planning authority on the other. The planning judgment that it contains has a potential relevance in itself that derives not simply from the desirability of consistency but from the status of the decision-maker, the expertise of the inspector and the process that has enabled the judgment to be formed.” [para 17]

[37] Mr Orbinson concludes that the decisions of the PAC “*must either be accepted or respected, or be challenged through the courts.*”

[38] In the instant case, no challenge was brought through the courts to the Kells decision of the PAC nor has any legislative amendment or new statement of policy been promulgated. The approach adopted by the respondent was, instead, to issue advice or clarification in the form of a CPU.

The Nature of BESS

[39] In their Order 53 statement, the applicants make the case that an “*‘electricity storage development’ cannot be said to generate energy; it merely stores energy.*” In common with the PAC and the Chief Planner, the applicants are guilty of using loose and potentially misleading language. BESS do not store electricity at all; they store energy.

[40] In understanding the functionality of BESS, I have derived considerable assistance from the report of Dr Robert E Brown, Chartered Electrical Engineer. He explains the following fundamentals of a BESS device:

- (i) It is capable of accumulating electrical charge when connected to a generation device;
- (ii) When connected, it will accumulate electrical charge to the point of saturation;
- (iii) It converts electrical energy to chemical energy and stores it;
- (iv) When required, it converts chemical energy back to electrical energy and discharges it.

[41] As such, a BESS device is illustrative of the first law of thermodynamics or the principle of conservation of energy. When the battery is in ‘discharge’ mode, it is producing or generating electricity.

[42] BESS facilities have been described as ‘quad-state’, i.e. they can adopt any one of four states, viz:

- (i) When connected to an electrical charge generation device, a BESS device will accumulate electrical charge, i.e. it is in a ‘charge’ state;
- (ii) A BESS will accumulate electrical charge to the point of saturation, i.e. the ‘saturation’ state;
- (iii) A BESS will discharge electrical charge when connected between two separate points of an electrical conductor. i.e. the ‘discharge’ state; and
- (iv) The BESS may fully discharge and then be in its ‘depletion’ state.

It is only when in the discharge state that the BESS acts as an electricity generation device.

The Respondent’s Approach

[43] Mr Kerr, the Chief Planner, has sworn two affidavits in which he explains how the issue of BESS came to his attention and the basis upon which he issued CPU7. He describes how there was *“uncertainty within the industry and Councils about the correct interpretation of the Regulations”* prior to the issue of his advice.

[44] In fact, the evidence reveals that there was no such uncertainty. All BESS applications prior to July 2020 had been treated as local development and no direction had been given by the Department pursuant to section 25(3) to have these treated as major development. In August 2019 the respondent had received an email communication from the Kells Vocal group, attaching their statement of case, and asserting that the BESS should be regarded as an electricity generating facility. The response was simply to the effect that the outcome of the appeal would be *“interesting”*.

[45] Having taken no steps at this time to consider the question, the issue came back to the Department’s attention not because of any uncertainty or risk but because of questions raised by MLA’s in the Northern Ireland Assembly which particularly focussed on the claimed disparity between the approach in this jurisdiction and that which prevailed in Great Britain. To address these questions, civil servants carried out research with other public bodies and with their counterparts elsewhere in the United Kingdom.

[46] Mr Kerr states that the Department *“ultimately disagreed with”* the PAC decision in Kells and found that it ran counter to the approach adopted in other jurisdictions. He formed the view that *“energy storage development which had a capacity for electricity generation from stored energy fell within the meaning of ‘electricity generating*

station.'" He advised the Heads of Planning of the local councils of this position at a meeting of the Strategic Planning Group which took place on 7 July 2020.

[47] Mr Kerr then briefed the Minister for Infrastructure at a meeting on 9 July 2020 and advised her of the view which he had formed. The Minister determined that it would be appropriate to await the formal response of the Department for the Economy ('DfE') and the Utility Regulator prior to issuing any formal advice.

[48] On 1 July 2020 Mr Kerr had asked a Mr Byrne of the DfE whether battery energy storage systems were considered as generating stations which require an 'Article 39 Consent' (a reference to the relevant article in the Electricity (NI) Order 1992) ("the 1992 Order"). In its response of 23 July the DfE stated:

"The Department takes the view that plant that can export electricity is producing electricity and in terms of the scope of Article 39 such a facility can be regarded as a 'generating station.'"

[49] Article 39 of the 1992 Order prohibits the construction, extension or operation of a generating station with a capacity of 10 MW or more without a consent from the DfE.

[50] A similar query was raised with the Utility Regulator on 9 July 2020 in relation to the requirement to hold a licence from the Regulator for the generation of electricity. In reply it said:

"The Utility Regulator has decided to issue electricity generating licences to battery storage applicants who meet the criteria outlined in the relevant legislation."

[51] The 'relevant legislation' is Article 10(1)(a) of the 1992 Order which provides:

"The Authority may grant a licence authorising any person ... to generate electricity for the purpose of giving a supply to any premises or enabling a supply to be so given."

[52] In his evidence, Mr Kerr has stated that he considered he was entitled to consult with these other bodies and take account of their approach when giving advice to councils and others relating to the 2015 Regulations.

[53] The Chief Planner prepared a submission for the Minister on 23 September 2020 which advised of the intention to issue a CPU to the Heads of Planning

[54] Mr Kerr determined that consultation with the renewable energy industry was not required on the basis that the proposed CPU was advice or guidance rather than any change in policy or amendment to existing legislation.

[55] However, the Chief Planner did receive correspondence in October and November 2020 from Energy Storage Ireland stating that there had been a change in approach by a number of councils in that BESS applications were being returned to developers on the basis statutory procedures had not been complied with. This was described by that entity as a “*significant change in policy at local council level and a departure from the position that had previously been adopted.*” The Kells PAC decision was referenced as was the most recent legislative change in England. Energy Storage Ireland stated that consultation was required before any formal change in existing policy. In his reply, Mr Kerr stated that guidance would be issued within days but this would represent clarity around interpretation rather than any change in policy, reflecting the conclusion that “*electricity storage was a form of electricity generation.*” Again, it must be recognised that this use of language was, at best, confusing.

[56] On 3 December 2020 a briefing paper went to the Minister seeking her agreement to the publication of CPU7. It noted that the Update “*may have an impact on existing BESS permissions.*” Legal advice had been sought and obtained by this stage from both the Departmental Solicitor’s Office and senior counsel. It records:

“Senior counsel has advised that he has considered the issue of statutory construction and concluded that BESS development does fall within the meaning of an ‘electricity generating station.’ He also advised that the recent decision of the PAC on the same issue is likely to be incorrect.”

[57] The advice from counsel was the matter could be addressed on an interim basis by issuing the guidance pending legislative change. This was not, however, accepted by Mr Kerr who expected that his advice would resolve the BESS issue across the planning system.

The Position in Other Jurisdictions

[58] In arriving at the conclusion which ultimately gave rise to CPU7, Mr Kerr had regard to a number of papers and documents emanating from other jurisdictions.

[59] Ofgem and the Department for Business, Energy and Industrial Strategy (BEIS) published a ‘call for evidence’ in November 2016 entitled ‘A Smart, Flexible Energy System’, seeking the views of energy industry players and consumers as to how the energy system could be made smarter and more flexible. This identified the absence of a definition of ‘storage’ in legislation and the consequent lack of clarity on the regulatory process. At this stage it said:

“For the time being BEIS, the Scottish Government and the Welsh Government agree that a storage facility is a form of electricity generating station.” [emphasis added]

[60] A further paper was published by BEIS and Ofgem in July 2017 following the receipt of responses to the call for evidence. It stated that, when Parliamentary time allowed, the Government intended to amend the Electricity Act 1989 to include a definition of storage as a distinct subset of the generation asset class.

[61] Following on from that paper, the Chief Planner in England, Mr Steve Quartermain, published a Planning Update newsletter setting out the findings and reaffirming the position that storage facilities were a “*form of generating station*” and that such facilities will constitute a Nationally Significant Infrastructure Project (NSIP) if the criteria in section 15 of the Planning Act 2008 apply.

[62] For reasons which are quite unclear, and despite the fact that these legislative amendments took effect in December 2020, just prior to the issue of CPU7, Mr Kerr does not depose to any account having been taking of subsequent events in Great Britain. It cannot be the case that he was unaware of these developments, given that they were expressly referenced by Mr Smith of Energy Storage Ireland in his letter of 20 November 2020.

[63] No reference is made at all to the consultation launched by BEIS in October 2019 in which the Government changed its position and proposed ‘carving out’ storage (save for pumped hydro) so it would no longer be considered as a form of generating station subject to the NSIP regime. This decision was based on the evidence received during the consultation process. Ultimately, this led to the Infrastructure Planning (Electricity Storage Facilities) Order 2020, made on 4 November 2020 and coming into force on 2 December 2020, which amended the Planning Act 2008. The relevant parts of this Act now read:

***“14 Nationally significant infrastructure projects:
general***

(1) In this Act “nationally significant infrastructure project” means a project which consists of any of the following –

(a) the construction or extension of a generating station...

15 Generating Stations

(3D) The construction or extension of a generating station is not within section 14(1)(a) to the extent that the generating station comprises or (when constructed or extended) is expected to comprise an exempt electricity storage facility

(6) In this section –

“electricity storage facility” means a facility which generates electricity from energy that –

- (a) was converted from electricity by that facility, and*
- (b) is stored within that facility for the purpose of its future reconversion into electricity;*

“exempt electricity storage facility” means an electricity storage facility which is not a pumped hydroelectric storage facility;

“pumped hydroelectric storage facility” means an electricity storage facility that stores the gravitational potential energy of water that has been pumped to a higher level so that its return to a lower level can be used to generate electricity.”

[64] There now exists a statutory definition of storage which reflects the conversion from electricity into energy which is stored for the purpose of future reconversion into electricity. Any such facility in England, which is not a pumped hydroelectric storage facility, is exempt from compliance with the NSIP requirements associated with generating stations.

[65] At the same time, the Electricity Storage Facilities (Exemption) (England and Wales) Order 2020 came into force which removed the requirement for the statutory consent to generate under section 36 of the Electricity Act 1989 (the equivalent of Article 39 of the 1992 Order). Article 3 of the 2020 Order provides:

“(1) This article applies in the case of generating stations otherwise than in Wales or in Welsh waters which –

- (a) comprise, or (when constructed or extended) are expected to comprise, in whole or in part, an exempt electricity storage facility; and*
- (b) exceed, or (when constructed or extended) are expected to exceed, the permitted capacity referred to in section 36(2)(a) and (b) of the 1989 Act or any capacity substituted for it which would otherwise apply.*

(2) Subject to paragraph (3), section 36(1) of the 1989 Act shall not apply to the generating station.”

[66] The legislative amendment also effects a clear policy objective which is to make the process of planning applications for BESS facilities more flexible and straightforward. This was explained in the response to the October 2018 consultation:

“This was on the basis that the planning impacts of the types of storage being deployed (predominantly batteries) are much lower than other forms of generation.”

[67] The contrast between the process adopted in England & Wales in relation to the proper planning treatment of the new technologies such as BESS and that in Northern Ireland could hardly be more stark. In England & Wales, consultation took place with all interested parties over a four year period through a range of consultation and response papers. Proposals were published and modified in light of the responses received and legislative amendments introduced to best reflect the planning needs and outcomes. In Northern Ireland, a senior civil servant published an ‘update.’ No consultation paper has issued, the views of the industry, of consumers and interest groups have not been sought. No legislative amendment has been proposed to accommodate important technology which may promote the attainment of renewable energy targets. Instead, this court is tasked, on an application for judicial review, to determine the proper treatment of such facilities within the existing Regulations.

[68] In 2007 the island of Ireland introduced the wholesale Single Electricity Market (SEM) which was replaced in 2018 by the Integrated Single Electricity Market (I-SEM). As such, the treatment of BESS in the other jurisdiction on the island is of significance. The principal primary legislation in Ireland is the Planning and Development Act 2000. By virtue of section 176 of that Act, the Minister has power to make regulations identifying types of development which may have significant effects on the environment.

[69] The relevant regulations made thereunder are the Planning and Development Regulations 2001. Schedule 5 to these Regulations prescribes various classes of development for the purpose of section 176. Class 3(a) of Part 2 of Schedule 5 refers to:

“Industrial installations for the production of electricity, steam and hot water not included in Part 1 of this Schedule with a heat output of 300 megawatts or more”.

[70] There is no reference anywhere in the Schedule to energy storage or batteries. In two decisions of An Bord Pleanála made in 2019 concerning BESS facilities in Ballyglasheen, Co Tipperary and Barrettspark, Co Galway, it was confirmed that the proposed development did not fall within Schedule 5. In the Ballyglasheen case, the Inspector Mr Stephen Kay found:

“Specifically, the nature of the project is such that it does not generate power and therefore does not come within the scope of any of the classes of development set out in the Fifth Schedule...the proposed development is not a ‘generating station’ and would not therefore lead to conveyance of electricity from a generating station to a substation or from one generating station to another”

[71] As a result, there was no requirement for Environmental Impact Assessment (EIA) screening. In the field of solar energy, the Irish High Court has confirmed that there is no EIA screening requirement since it is not expressly referenced in Schedule 5, and it does not produce heat and steam as well as electricity – see *Sweetman -v- An Bord Pleanála* [2020] IEHC 39 and *Kavanagh -v- An Bord Pleanála* [2020] IEHC 259. By analogy, it must be the case that BESS facilities would be similarly treated.

[72] It is evident that, despite the operation of the I-SEM, the Chief Planner chose not to familiarise himself with the treatment of BESS facilities in Ireland.

The Interpretation of the 2015 Regulations

[73] The starting point for any statutory interpretation exercise is the natural and ordinary meaning of words. A court should consider an enactment as a whole and per Bennion on Statutory Interpretation at 21.2:

“Given the presumption that the legislature does nothing in vain, the court must endeavour to give significance to every word of an enactment. It is presumed that if a word or phrase appears, it was put there for a purpose and must not be disregarded.”

[74] The applicants contend that the court must consider whether BESS development falls “wholly within” class 2 of the Schedule to the 2015 Regulations. If it does not, it is argued, it must fall into class 9.

[75] It is to be noted, however, that this is a somewhat different question to the one addressed in CPU7. It concludes that “*electricity storage development falls within the meaning of an ‘electricity generating station’*” without reciting the provisions of the 2015 Regulations. In particular, it does not concern itself with the question as to whether BESS facilities fall wholly within class 2.

[76] There is no doubt that a BESS facility can, and does, generate electricity. Electricity is produced by the reconversion process described by Dr Brown.

[77] The natural and ordinary meaning of the word “wholly” is entirely, fully or completely. Do BESS facilities therefore fall entirely or completely into class 2?

[78] Some assistance can be drawn from Regulations made in England & Wales under the Energy Act 2013. Regulation 2 of the Electricity Capacity Regulations 2014:

“‘storage facility’ means a facility which consists of –

- (a) *a means of converting imported electricity into a form of energy which can be stored, and of storing the energy which has been so converted; and*
- (b) *a generating unit which is wholly or mainly used to re-convert the stored energy into electrical energy."*

[79] This definition recognises that a storage facility carries out more than one task. It converts imported electricity into a form which can be stored; it stores the converted energy; and it re-converts the stored energy into electrical energy. In only one of these processes can it be said to be 'generating' electricity. Depending on demand, such a facility may not be called upon to generate electricity for some time. Applying the natural and ordinary meaning of all the words in the 2015 Regulations, a BESS facility does not fall wholly within any single class of development. It therefore falls within the "all other development" of class 9.

[80] Support for this conclusion can be derived from the sub-classes within class 2 of the Regulations. Sub-class 3 is headed 'Storage' and it includes "*installations for...compressed air energy storage.*" Compressed air energy storage works by converting electrical energy into high-pressure compressed air which can be released on demand to drive a turbine generator to produce electricity. It is another means of storing energy for reconversion into electrical energy when required. This type of system also generates electricity but the Regulations treat it as part of the sub-class 'Storage' rather than the sub-class 'Electricity generating stations.'

[81] Given that BESS are a form of storage not expressly mentioned in the Regulations, it must therefore be the case that it falls outwith the class 2 of energy infrastructure.

[82] The comparisons with the position in England & Wales are odious for the simple reason that the statutory language is entirely different. Section 14 of the 2008 Act uses the words "*consists of any of the following...*" which have a quite different connotation than "*wholly within.*" Indeed, the non-exclusive nature of the statutory language of the 2008 Act is emphasised by section 15(3C), as well as section 15(3D) set out above:

"To the extent that an exempt electricity storage facility forms part of a generating station..."

[83] A storage facility may co-exist with an electricity generating station as part of the same proposed development. Such a development would consist of the construction of an electricity generating station for the purposes of section 14 of the 2008 Act but would not fall "*wholly within*" class 2 to the Schedule of the 2015 Regulations.

[84] The legislative wording in the 1992 Order relating to the requisite licences and consents for the generation of electricity is also quite different. Any generation of electricity for the purpose of supply requires a licence under Article 10. Any construction of an electricity generating station requires statutory consent under Article 39. There is no limitation that the generation or the station be ‘wholly within’ a particular class.

[85] Much of the difficulty in this case has arisen because the Chief Planner did not analyse the statutory provisions in this jurisdiction with sufficient rigour and thereby asked the wrong question. The correct question to ask was:

“Does a BESS development fall wholly within class 2 of the Schedule to the 2015 Regulations?”

[86] Had he asked the correct question, the answer, for the reasons which I have given, must be ‘no.’ The consequence of that negative answer is that a BESS development falls into class 9 of the Schedule and is subject to the thresholds contained therein.

[87] As the applicants recognise, it remains open to the Department to give a direction under section 25(3) to have a given application treated as a major development.

[88] The application for judicial review therefore succeeds and my conclusion on the issue of statutory construction is sufficient to dispose of the matter. However, I did hear full argument on the other grounds and I propose to address these.

The *Wednesbury* Challenge

[89] The applicants contend that the decision is vitiated by the fact that the respondent failed to take into account, or give adequate weight to, material considerations including the Kells PAC decision. I have already set out the views of Mr Orbinson QC on this issue and it gives rise to important questions of constitutional principle as well as having practical effects.

[90] In *R (Bradley) -v- Secretary of State for Work and Pensions* [2008] EWCA Civ 36, the Court of Appeal in England & Wales considered whether the findings of the Parliamentary Commissioner for Administration (‘the Ombudsman’) were binding on the Secretary of State or whether it was open to him to reject the findings of maladministration.

[91] Sir John Chadwick referred to the decision in *Powergen* [supra] and *R -v- Secretary of State for the Home Department ex p. Danaei* [1997] EWCA Civ 2704 and set out the following principles:

- (i) *the decision maker whose decision is under challenge (in the former case, the local highway authority; in the latter, the Secretary of State) is entitled to exercise his own discretion as to whether he should regard himself as bound by a finding of fact made by an adjudicative tribunal (in the former case, the planning inspector; in the latter, the special adjudicator) in a related context;*
- (ii) *a decision to reject a finding of fact made by an adjudicative tribunal in a related context can be challenged on Wednesbury grounds;*
- (iii) *in particular, the challenge can be advanced on the basis that the decision to reject the finding of fact was irrational;*
- (iv) *in determining whether the decision to reject the finding of fact was irrational the court will have regard to the circumstances in which, and the statutory scheme within which, the finding of fact was made by the adjudicative tribunal;*
- (v) *in particular, the court will have regard to the nature of the fact found (e.g. that the immigrant was an adulterer), the basis on which the finding was made (e.g. on oral testimony tested by cross-examination, or purely on the documents), the form of the proceedings before the tribunal (e.g. adversarial and in public, or investigative with no opportunity for cross-examination), and the role of the tribunal within the statutory scheme. [para 70]*

[92] The question therefore is whether the decision maker acted rationally in deciding to depart from or reject the findings of fact. There must be a reason, over and above the preference for one's own opinion, to reject a finding which had been made after an investigation carried out under statutory powers (see para 91 of the judgment).

[93] The issue came before the Supreme Court in *R(Evans) -v- Attorney General* [2015] UKSC 21 in which a journalist sought to judicially review the issue of a certificate by the Attorney General under the Freedom of Information Act. Prior to this, the Upper Tribunal had ruled that the material in question should be disclosed. A majority held that the Attorney General was not entitled to issue the certificate, although there were some points of distinction in their analysis. Lord Neuberger said:

"In order to decide the extent to which a decision-maker is bound by a conclusion reached by an adjudicative tribunal in a related context, regard must be had to the circumstances in which, and the statutory scheme within which, (i) the adjudicative tribunal reached its conclusion, and (ii) the decision-maker is carrying out his function. In particular, the court will have regard to

the nature of the conclusion, the status of the tribunal and the decision-maker, the procedure by which the tribunal and decision-maker each reach their respective conclusions (e.g., at the extremes, (i) adversarial, in public, with oral argument and testimony and cross-examination, or (ii) investigatory, in private and purely on the documents, with no submissions), and the role of the tribunal and the decision-maker within the statutory scheme.” [para 66]

[94] In deciding that it was not permissible for the Attorney General to issue the certificate, Lord Neuberger was particularly influenced by the fact the decision of the Upper Tribunal could have been appealed; the Tribunal had a particular expertise; a full hearing with oral evidence and argument was conducted; the Tribunal delivered a reasoned decision; and the Attorney General had not received any fresh facts or evidence but simply disagreed with the outcome [para 69].

[95] From a constitutional perspective, Lord Neuberger identified two key tenets which were in play:

“First, subject to being overruled by a higher court or (given Parliamentary supremacy) a statute, it is a basic principle that a decision of a court is binding as between the parties, and cannot be ignored or set aside by anyone, including (indeed it may fairly be said, least of all) the executive. Secondly, it is also fundamental to the rule of law that decisions and actions of the executive are, subject to necessary well established exceptions (such as declarations of war), and jealously scrutinised statutory exceptions, reviewable by the court at the suit of an interested citizen.” [para 52]

[96] This case is an example of the second tenet. The question to be determined is whether it was open to the respondent to, in the language of CPU7, depart from the decision of the PAC in Kells.

[97] Lord Kerr and Lord Reed agreed with Lord Neuberger’s analysis. Lord Mance (with whom Lady Hale agreed) arrived at the same conclusion but found that departure from findings of fact or rulings on the law could occur but only where there was the “*clearest possible justification*” [para 130]. In the event he found that the Attorney General’s disagreement had not been justified on reasonable grounds.

[98] I note that very recently the Supreme Court has, in *R(Majera) v Secretary of State for the Home Department* [2021] UKSC 46 held that the obligation on the Executive to obey the decisions of courts, including the First-Tier Tribunal, extends to situations where the order appears to be irregular or invalid, unless and until it is varied or set aside.

[99] Applying the factors set out by Lord Neuberger to the situation in this case, the following conclusions can be drawn:

- (i) The statutory framework in Northern Ireland recognises the PAC as a specialist independent appellate body;
- (ii) Its decisions are amenable to judicial review by any party with the appropriate standing;
- (iii) It conducted a full and open hearing at which it heard evidence and submissions from all the relevant parties;
- (iv) It specifically addressed the question of whether a BESS facility fell within the definition of 'electricity generating station' and gave a reasoned judgment;
- (v) This matter was a question of law rather than fact or evaluative judgement;
- (vi) The respondent was aware of the issue prior to the Kells hearing but elected not to challenge the PAC decision in court after it was delivered;
- (vii) The Chief Planner consulted in private and took into account the views of some other agencies and in other jurisdictions;
- (viii) The Chief Planner formed his own view and decided to depart from the PAC because he had formed a different opinion.

[100] I have already found that the Chief Planner asked himself the wrong question. Even if he had asked the correct one, it was simply not open to him, as a matter of constitutional propriety and *Wednesbury* rationality, to depart from the PAC decision. I recognise that the respondent is not bound by the PAC decision as a matter of strict precedent but I concur with the view expressed by Mr Orbinson that such decisions must either be accepted and respected or challenged through the courts. I would add that it is always open to the respondent to seek to amend legislation through the Assembly or to introduce new planning policies. Both those routes would ensure an appropriate level of industry and community wide consultation which can only ensure better decision making.

[101] There is also a real practical issue which underscores this principle. Following the issue of CPU7 as "guidance" or "clarification", planning officers of local councils are faced with a choice between following the PAC decision or CPU7. This is a recipe for administrative chaos since some may choose the former and some the latter, thereby creating a wholly unsatisfactory system of planning applications for BESS facilities based on location. It is only by seeking a determination from the courts in relation to the issue that clarity can be achieved.

[102] This free standing ground of judicial review therefore succeeds.

The Lack of Consultation

[103] The respondent determined that there was no duty to consult prior to the publication of CPU7. It had, of course, set about a fact finding process to determine how the matter was addressed in other jurisdictions and by other agencies but, since it regarded the matter as one of clarification rather than policy or legislative amendment, no duty to consult was identified.

[104] In *R (Plantagenet Alliance) v Secretary of State* [2014] EWHC 1662 (Admin) Hallett LJ set out the following principles:

“(1) There is no general duty to consult at Common Law. The government of the country would grind to a halt if every decision-maker were required in every case to consult everyone who might be affected by his decision. (Harrow Community Support Limited v. The Secretary of State for Defence [2012] EWHC 1921 (Admin) at paragraph [29], per Haddon-Cave J).

(2) There are four main circumstances where a duty to consult may arise. First, where there is a statutory duty to consult. Second, where there has been a promise to consult. Third, where there has been an established practice of consultation. Fourth, where, in exceptional cases, a failure to consult would lead to conspicuous unfairness. Absent these factors, there will be no obligation on a public body to consult (R (Cheshire East Borough Council) v. Secretary of State for Environment, Food and Rural Affairs [2011] EWHC 1975 (Admin) at paragraphs [68-82], especially at [72]).

(3) The Common Law will be slow to require a public body to engage in consultation where there has been no assurance, either of consultation (procedural expectation), or as to the continuance of a policy to consult (substantive expectation) ((R Bhatt Murphy) v Independent Assessor [2008] EWCA Civ 755, at paragraphs [41] and [48], per Laws LJ).

(4) A duty to consult, i.e. in relation to measures which may adversely affect an identified interest group or sector of society, is not open-ended. The duty must have defined limits which hold good for all such measures (R (BAPIO Ltd) v Secretary of State for the Home Department [2007] EWCA Civ 1139 at paragraphs [43]-[44], per Sedley LJ).

(5) The Common Law will not require consultation as a condition of the exercise of a statutory function where a duty to consult would require a specificity which the courts cannot

furnish without assuming the role of a legislator (R (BAPIO Ltd) (supra) at paragraph [47], per Sedley LJ).

(6) *The courts should not add a burden of consultation which the democratically elected body decided not to impose (R(London Borough of Hillingdon) v. The Lord Chancellor [2008] EWHC 2683 (QB)).*

(7) *The Common Law will, however, supply the omissions of the legislature by importing Common Law principles of fairness, good faith and consultation where it is necessary to do, e.g. in sparse Victoria statutes (Board of Education v Rice [1911] AC 179, at page 182, per Lord Loreburn LC) (see further above).*

(8) *Where a public authority charged with a duty of making a decision promises to follow a certain procedure before reaching that decision, good administration requires that it should be bound by its undertaking as to procedure provided that this does not conflict with the authority's statutory duty (Attorney-General for Hong Kong v Ng Yuen Shiu [1983] AC 629, especially at page 638 G).*

(9) *The doctrine of legitimate expectation does not embrace expectations arising (merely) from the scale or context of particular decisions, since otherwise the duty of consultation would be entirely open-ended and no public authority could tell with any confidence in which circumstances a duty of consultation was to be cast upon them (In Re Westminster City Council [1986] AC 668, HL, at 692, per Lord Bridge).*

(10) *A legitimate expectation may be created by an express representation that there will be consultation (R (Nadarajah) v Secretary of State for the Home Department [2003] EWCA 1768 Civ), or a practice of the requisite clarity, unequivocalness and unconditionality (R (Davies) v HMRC [2011] 1 WLR 2625 at paragraphs [49] and [58], per Lord Wilson).*

(11) *Even where a requisite legitimate expectation is created, it must further be shown that there would be unfairness amounting to an abuse of power for the public authority not to be held to its promise (R(Coughlan) v. North and East Devon Health Authority [2001] 1 QB 213 at paragraph [89] per Lord Woolf MR).” [para 98]*

[105] There is no statutory duty to consult nor could the applicants demonstrate that a legitimate expectation of consultation had been created in the instant case.

Rather, they contended that such a duty arose because a failure to do so would, and has, led to conspicuous unfairness. In particular, it is claimed that the respondent ought to have taken steps to properly inform itself in relation to the financial consequences which may be attendant upon the decision to publish CPU7 and give directions to the councils.

[106] Mr Kerr's evidence is clear in that he was aware that the advice given to councils may create financial issues for those in the industry who wished to bring about BESS development, albeit he did not seek details of those consequences.

[107] The circumstances of this decision making process did not give rise to a legal duty to consult. I have already commented on the striking difference of approach between Northern Ireland and Great Britain on this issue. It may well be that consultation would have enabled greater understanding of the issues and therefore a better quality of decision making but that is not a matter for a judicial review court exercising its supervisory process. I have not identified, on the evidence, any unfairness, within the *Plantagenet* guidance, which would have given rise to a right to relief from this court. This ground of judicial review does not therefore succeed.

The Tameside Duty of Inquiry

[108] Hallett LJ in *Plantagenet* also addressed the related issue of the *Tameside* duty on public authorities to carry out sufficient inquiries:

"A public body has a duty to carry out a sufficient inquiry prior to making its decision. This is sometimes known as the 'Tameside' duty since the principle derives from Lord Diplock's speech in Secretary of State for Education and Science v Tameside MBC [1977] AC 1014, where he said (at page 1065B): "The question for the court is, did the Secretary of State ask himself the right question and take reasonable steps to acquaint himself with the relevant information to enable him to answer it correctly?"

The following principles can be gleaned from the authorities:

- (1) *The obligation upon the decision-maker is only to take such steps to inform himself as are reasonable.*
- (2) *Subject to a Wednesbury challenge, it is for the public body, and not the court to decide upon the manner and intensity of inquiry to be undertaken (R(Khatun) v Newham LBC [2005] QB 37 at paragraph [35], per Laws LJ).*
- (3) *The court should not intervene merely because it considers that further inquiries would have been sensible or desirable. It should intervene only if no reasonable authority*

could have been satisfied on the basis of the inquiries made that it possessed the information necessary for its decision (per Neill LJ in *R (Bayani) v. Kensington and Chelsea Royal LBC* (1990) 22 HLR 406).

(4) The court should establish what material was before the authority and should only strike down a decision by the authority not to make further inquiries if no reasonable council possessed of that material could suppose that the inquiries they had made were sufficient (per Schiemann J in *R (Costello) v Nottingham City Council* (1989) 21 HLR 301; cited with approval by Laws LJ in *R(Khatun) v Newham LBC* (supra) at paragraph [35]).

(5) The principle that the decision-maker must call his own attention to considerations relevant to his decision, a duty which in practice may require him to consult outside bodies with a particular knowledge or involvement in the case, does not spring from a duty of procedural fairness to the applicant, but from the Secretary of State's duty so to inform himself as to arrive at a rational conclusion (per Laws LJ in *R (London Borough of Southwark) v Secretary of State for Education* (supra) at page 323D).

(6) The wider the discretion conferred on the Secretary of State, the more important it must be that he has all relevant material to enable him properly to exercise it (*R (Venables) v Secretary of State for the Home Department* [1998] AC 407 at 466G).” [paras 99 & 100]

[109] It is evident therefore that a challenge to a public body’s decision on the manner and intensity of inquiry can only be made on *Wednesbury* grounds. Approached from the perspective of giving advice to councils on the proper treatment of a particular type of development, there is no basis to impugn the Chief Planner’s approach to this duty of inquiry. At the heart of the problem was not the fact that insufficient inquiries were made but that the Chief Planner asked himself the wrong question.

Error of Fact

[110] The applicants also seek to argue that the publication of CPU7 can be vitiated on the discrete ground that it was based on material errors of fact. It is said that the respondent took the matter forward on the basis that there was “*uncertainty within the BESS industry as to the correct interpretation of the 2015 Regulations*” when, in fact, no such uncertainty existed.

[111] The key to this ground of judicial review is materiality. If any alleged error of fact was not material, then the decision in question will not be vitiated. In this case, it mattered not whether there was uncertainty in the industry. All that actually mattered was the correct interpretation of the 2015 Regulations insofar as BESS developments were concerned. Again, therefore, this ground of judicial review fails.

Breach of A1P1 Rights

[112] The applicants sought, by a proposed amendment to the Order 53 statement, to assert that the impact of CPU7 was such that it interfered with their property rights, enjoyed by virtue of Article 1 of the First Protocol ('A1P1') to the ECHR, in a manner which was not in the general interest and was disproportionate.

[113] A1P1 provides:

"(1) Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

(2) The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

[114] In *R v Attorney General ex p. Countryside Alliance* [2007] UKHL 52, Lord Bingham observed:

"Strasbourg jurisprudence has drawn a distinction between goodwill which may be a possession for purposes of article 1 of the first protocol and future income, not yet earned and to which no enforceable claim exists, which may not."

[115] The desire of a developer to obtain planning permission is not a 'possession' within the meaning of A1P1. At best, it is a future hope of earning income which does not suffice as an enforceable right. The impact upon existing permissions of the publication of CPU7 was also raised but the evidence reveals that no effort has been made by any of the councils or the respondent to invoke their powers of revocation under the 2011 Act. Even if they did, such steps would trigger a right to compensation. Whether this would constitute proportionate interference with property rights is an entirely moot point.

[116] Accordingly, the claim pursuant to A1P1 is not arguable and I refuse leave to amend the Order 53 statement.

Improper Motive & Bad Faith

[117] Following service of the first affidavit from Mr Kerr, the applicants sought leave to amend to the Order 53 statement to plead an express case of improper motive or bad faith. I declined to grant leave at the interlocutory stage but adjourned the question to the full hearing for further consideration.

[118] The editors of De Smith's Judicial Review (8th edition, 2018) state as follows:

"Fundamental to the legitimacy of public decision-making is the principle that official decisions should not be infected with improper motives such as fraud or dishonesty, malice or personal self-interest ... A power is exercised fraudulently if its repository intends for an improper purpose, for example dishonestly, to achieve an object other than that which he claims to be seeking ... A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. Bad faith is a serious allegation which attracts a heavy burden of proof." [paras 5-095 to 5-097]

[119] It is not clear to me that the issue of malice was pursued by the applicants. It would seem that the allegations in respect of which leave was being sought were limited to issues of dishonesty.

[120] The applicants' claims resolve to four issues:

- (i) The alleged inconsistency with the evidence of Mr Kerr whereby he states the respondent disagreed with the Kells PAC decision and the content of CPU7 itself which states that this decision turned on on its particular facts and evidential context. There is an apparent inconsistency here but one must read CPU7 as a whole and it does make it clear that councils are being asked to depart from the Kells decision. There is no basis whatsoever to impute any dishonesty on the part of the author.
- (ii) The reference to 'uncertainty' which was said to be present both in the industry and in councils. The applicants' case is that simply did not exist before the intervention of the Chief Planner. This may be correct in a local sense but it is evident that there were different views on the issue of 'generation' which had been raised by elected representatives. Again, a court could not infer any dishonesty from these remarks.
- (iii) The financial consequences which were referenced by Mr Kerr but were not the subject of any inquiry on his part. Mr Kerr clearly knew

there would be consequences and advised the Minister of such. The fact that he did not have the full picture of the financial implications from developers does not mean that he was acting dishonestly.

- (iv) The allegation that the respondent was motivated to issue CPU7 to provoke a judicial review challenge. In fact, what Mr Kerr said in evidence was that such a challenge might be preferable to the judicial review of an extant application with all the consequences which could flow from that. There is nothing approaching dishonesty which arises from this.

[121] Whether taken individually or together, the applicants did not begin to meet the heavy burden of proof which rests on a litigant seeking to make a bad faith case. The points made were unarguable and leave to apply for judicial review on the ground and to amend the Order 53 statement is refused.

The Application to Cross Examine

[122] The applicants also applied, pursuant to Order 53 rule 8 to compel Mr Kerr to attend court for the purposes of cross-examination. In the language of *Re McCann's Application* [unreported, 13.5.92, Carswell J], there was nothing in this case which warranted any further examination or rendered cross-examination of the deponent necessary.

[123] As has been set out, this was a case fundamentally about statutory interpretation and legal principle, not about procedural fairness or the motivation of decision makers.

Conclusions and Relief

[124] I therefore find as follows for the reasons set out:

- (i) The application for judicial review succeeds on the issue of statutory interpretation, legality and *Wednesbury* rationality;
- (ii) The claims arising from procedural unfairness and error of fact are dismissed.
- (iii) Leave is refused in relation to the A1P1 and bad faith claims.

[125] I note the applicants seek relief in the form of an order of certiorari of CPU7. In light of the specific findings in this judgment, I have determined that declaratory relief is both more appropriate and effective in this case and I would invite Counsel to agree a suitable form of declaration.

[126] I will also hear the parties on the question of costs.

ITEM 8**Ards and North Down Borough Council**

Report Classification	Unclassified
Council/Committee	Planning Committee
Date of Meeting	18 January 2022
Responsible Director	Director of Regeneration, Development and Planning
Responsible Head of Service	Head of Planning
Date of Report	15 November 2021
File Reference	160051/160127
Legislation	Local Government Act (NI) 2014
Section 75 Compliant	Yes
Subject	Quarterly Performance Report – 2 nd Quarter 2021/22
Attachments	N/A

Context

Members will be aware that Council is required, under the Local Government Act 2014, to have in place arrangements to secure continuous improvement in the exercise of its functions. To fulfil this requirement, Council approved the Performance Management Policy and Handbook in October 2015. The Performance Management Handbook outlines the approach to Performance Planning and Management process as:

- Community Plan – published every 10-15 years
- Corporate Plan – published every 4 years (Corporate Plan Towards 2024 in operation)
- Performance Improvement Plan (PIP) – published annually (for publication 30 September 2021)
- Service Plan – developed annually (approved April/May 2021)

The Council's Service Plans outline how each respective Service will contribute to the achievement of the Corporate objectives including, but not limited to, any relevant actions identified in the PIP.

Reporting approach

The Service Plans will be reported to relevant Committees on a quarterly basis as undernoted:

Reference	Period	Reporting Month
Quarter 1 (Q1)	April – June	September
Q2	July – September	December
Q3	October – December	March
Q4	January - March	June

The report for Quarter 2 of 2021-22 is attached.

Key points to note:











- During this quarter the Council determined one major application as follows: LA06/2019/0603/F - Proposed residential development of 108 no. dwellings At Lands south of 37-77 Court Street, Newtownards, situated within Bawn Wall and bounded by canal with vehicular access from Castlebawn roundabout. The application was subject to an extensive round of consultations given its location both within the historic setting of the Bawn Wall and directly adjacent to a watercourse. The applicant was required to be in possession of Scheduled Monument consent due to the historic fabric of the site prior to any approval of planning being granted. As the site is also within a reservoir inundation area amended plans were required which included a reconfiguration of the site layout in order to comply with the requirements set out in FLD5 of PPS 15 (Revised). Several rounds of consultation were also required with DFI Roads in order for the street layout to be of a standard where it could be adopted.
- In respect of local applications, a total of 240 decisions were issued, in addition to other work not reported upon, including pre-application discussion, review of Proposal of Application Notices, applications for Non Material Changes, and applications for Certificates of Lawfulness
- Of 40 householder decisions issued within Quarter 2 – whilst only 26 were issued within the internal target of 8 weeks, 39 issued within the 15 week target for locals.
- Planning enforcement concluded some 80 cases, whilst another 103 new cases were opened.
- There were no appeal decisions received during this quarter against refusal of planning permission.

RECOMMENDATION

It is recommended that the report is noted.

Unclassified

Last Update Q2 2021/22

Performance Data Traffic Light Icon	PI Short Name	Performance Data Current Value	Performance Data Current Target
	Undertake health and condition surveys of all existing historical Tree Preservation Order (TPO) sites	50%	50%
	Number of weeks to process local applications from date valid to decision or withdrawal	20.2	15
	Number of weeks to process major applications from date valid to decision or withdrawal	110.8	30
	% of householder applications processed to recommendation with 8 weeks	65%	75%
	Appeals against refusal of planning permission dismissed by PAC	N/A	60%
	% spend against budget	85.14%	100%
	% progress of all enforcement cases to target conclusion within 39 weeks of receipt of complaint (i.e. case closure, date on which Enforcement Notice or Breach of Condition Notice issued, summons to court (date solicitor instructed)	76.8%	70%
	Continue to work alongside Department for Infrastructure to identify improvements to the planning system through review of the implementation of the Planning Act, and contribution of consultees to the planning system (meetings/workshops)	3	3
	% staff attendance	95.17%	95%
	% staff reporting regular/monthly receipt of team briefings	100%	100%

ITEM 9**Ards and North Down Borough Council**

Report Classification	Unclassified
Council/Committee	Planning Committee
Date of Meeting	18 January 2022
Responsible Director	Director of Regeneration, Development and Planning
Responsible Head of Service	Head of Planning
Date of Report	21 December 2021
File Reference	160051/RDP27
Legislation	
Section 75 Compliant	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Other <input type="checkbox"/> If other, please add comment below:
Subject	Publication of the Northern Ireland Planning Monitoring Framework 2020-2021
Attachments	

The DfI Northern Ireland Planning Monitoring Framework 2020/21 was released on 2 December 2021 and can be accessed at the link below:

<http://www.infrastructure-ni.gov.uk/publications/northern-ireland-planning-monitoring-framework-202021>

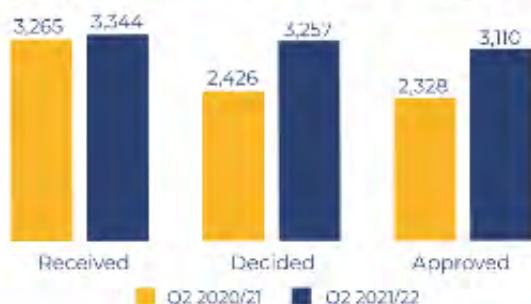
The statistical release of data tables includes details of performance across the three statutory targets namely, major development applications, local development applications and enforcement cases. This takes place alongside a suite of additional indicators that are intended to provide a more comprehensive assessment of planning activity. The release provides a summary of the indicators for Northern Ireland, as well as relevant indicator data for each local planning authority. Comparable data from 2018/19 and 2019/20 are also included where available.

The Department has published the infographic as shown overleaf, which can be viewed here [Northern Ireland Planning Statistics Quarter 2 2021-22 Infographic \(infrastructure-ni.gov.uk\)](http://www.infrastructure-ni.gov.uk)

Planning activity and processing performance during 2020/21 and the first six months of 2021/22 were impacted by the restrictions put in place due to the coronavirus pandemic. This should be borne in mind when interpreting these figures or making comparisons with other periods.

Overall planning applications

Applications received, decided & approved



Comparing Q2 2021/22 with Q2 2020/21:

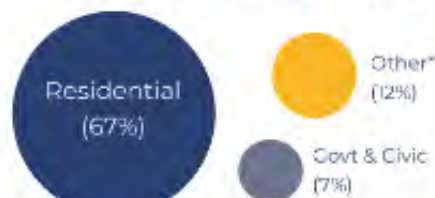


Applications received Q2 2021/22

A total of **3,344** planning applications were received during Q2 2021/22:



3 largest development types



*Other includes work to facilitate disabled persons, signs/advertisements & listed buildings

Planning statutory targets April - September 2020 and 2021

Average processing times (weeks) - major



Councils within major target



Average processing times (weeks) - local



Councils within local target



% of enforcement cases concluded within 39 weeks



Councils within enforcement target



For further information please contact ASRB@nirs.gov.uk or view report at: www.infrastructure.ni.gov.uk/en/infrastructure-planning-activity-statistics

Planning Monitoring Framework Indicators

The list of indicators under the new framework includes the three existing statutory indicators and an existing departmental indicator, in addition to five other indicators. These are detailed as follows:

Indicator 1	Average processing time taken to determine major applications
Indicator 1.1	Average time taken to determine major applications (excluding withdrawn applications)
Indicator 2	Average time taken to determine local applications
Indicator 2.1	Average time taken to determine local applications (excluding withdrawn applications)
Indicator 3	Proportion of enforcement cases progressed to the target conclusion within 39 weeks
Indicator 4	Percentage of applications determined under delegated powers
Indicator 5	Number of applications decided by Planning Committee and percentage of Committee decisions made against officer recommendation
Indicator 6	Percentage of appeals against refusals of planning permission that are dismissed
Indicator 7	Number of claims for costs received by Planning Appeals Commission (PAC) and number of claims awarded
Indicator 8	Percentage of regionally significant planning applications processed to a Ministerial recommendation within 30 weeks
Indicator 9	Number of applications notified to the Department and the number of these processed within the period of 28 days

Associated Commentary

It is advised against using the data as a 'league table' as there is a wide range of inconsistencies across Councils in respect of each Council's individual procedures and processes. These include the number and type of planning applications received; the servicing by statutory consultees in different divisional offices; resourcing within individual Councils and within central government departments; and 'Schemes of Delegation'.

RECOMMENDATION

It is recommended that Council notes this report and the Planning Monitoring Framework at the link provided.

ITEM 10**Ards and North Down Borough Council**

Report Classification	Unclassified
Council/Committee	Planning Committee
Date of Meeting	18 January 2022
Responsible Director	Director of Regeneration, Development and Planning
Responsible Head of Service	Head of Planning
Date of Report	21 December 2021
File Reference	160051
Legislation	
Section 75 Compliant	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Other <input type="checkbox"/> If other, please add comment below:
Subject	Amendment to Protocol for Operation of the Planning Committee
Attachments	Item 10a - Revised Protocol

- Members will be aware that the current Protocol for the Operation of the Planning Committee sets out practical handling arrangements for the operation of that committee. It is read in conjunction with the Council's agreed Standing Orders and the Code of Conduct for Councillors. The Protocol was last amended in November 2020.
- The Council at its meeting of 24 November 2021 noted a recent legal judgment with its associated implications for Planning Committees both in respect of the related Standing Orders and Protocol for the Operation of the Planning Committee.
- It was agreed by Council that the relevant provisions of the Protocol would be amended whereby it referenced prohibiting Members from taking part in decision-making insofar as they relate to non-attendance.
- The Protocol has subsequently been amended accordingly as detailed below.

5. Paragraph 14 has been removed which read:
'If the Planning Committee becomes inquorate due to Members' disqualification due to absence through all of the discussions of the application, the application will be considered afresh.'

6. Paragraph 51 has been removed which read:
Members must be present for the entire item, including the officer's introduction and update; otherwise they cannot take part in the debate or vote on that item. This also applies to those applications deferred from a previous meeting, i.e. if a Member was absent from the previous meeting at which an application was debated, but no decision reached and subsequently deferred, that Member cannot take part in the debate or vote on that application at the next meeting.

7. Paragraph 59 has been amended as follows:
~~*'Where a deferral relating to a "minded to" motion is made, only those Members who considered the planning application at the previous committee meeting(s) can vote to determine the planning application. No additional speaking rights will be afforded to any person unless at the Chairperson's discretion he/she authorises same. Such speaking rights will be a maximum of 3 minutes.'*~~

8. Paragraph 78 has been removed which read as follows:
'Only those Members who attend the site visit(s) will be eligible to take part in the discussion and vote on the planning application, as it is considered that the site visit is an extension of the determination of an application.'

9. The Protocol for the Operation of Virtual Planning Committee during COVID has also been amended accordingly.

RECOMMENDATION

It is recommended that Council notes this report and the revised Protocol for the Operation of the Planning Committee.

Protocol for the Operation of the Planning Committee

December 2021



**Ards and
North Down**
Borough Council

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PURPOSE OF THE PROTOCOL

1. The purpose of this protocol is to outline practical handling arrangements for the operation of Ards and North Down Borough Council's Planning Committee.
2. The protocol should be read in conjunction with the Council's agreed Standing Orders and the Code of Conduct for Councillors. It is not intended to replace either document. It should also be read alongside the Protocol for the Operation of Virtual Planning Committee, when such meetings are held virtually, such as during a national pandemic.

REMIT OF THE PLANNING COMMITTEE

Development Management

3. The main role of the Planning Committee is to consider planning applications made to the Council as the local planning authority and decide whether or not they should be approved. To this end, the Planning Committee of Ards and North Down Borough Council has full delegated authority, meaning that the decisions of the Committee, in respect of planning applications, will not go to the full Council for ratification.

Development Plan

4. Ards and North Down Borough Council is required by Section 8 of the Planning Act (NI) 2011 to prepare a plan for its district. This plan forms the basis for public and private investment decisions, providing a degree of certainty as to how land will be developed. In law, planning applications must be determined in accordance with the development plan unless other material considerations indicate otherwise. This means that where land is zoned for a particular use, the Planning Committee should ensure it is reserved for that use: for example, an application for housing in an area zoned for housing should be approved unless the design and layout fails in terms of the environmental, open space and access standards, or its design and layout has a detrimental impact on the character of the area or neighbouring amenity.

5. The Planning Committee's role in relation to the Local Development Plan is to contribute to the development of and approve the Local Development Plan before it is passed by resolution of the Council. The Planning Committee should also ensure that the Local Development Plan is monitored annually, particularly in terms of the availability of housing and economic development land, and that it is reviewed every five years, giving consideration to whether there is a need to change the Plan Strategy, or the zonings, designations and policies as contained in the Local Policies Plan.

Development Plan Transition Arrangements

6. Until such time as Ards and North Down Borough Council has adopted its Plan Strategy the local development plans for the Council area will be taken to be the extant Departmental development plans, namely, the North Down and Ards Area Plan 1984-1995 and the Ards and Down Area Plan 2015, with the draft Belfast Metropolitan Area Plan 2015 being a material consideration.
7. When the Council's Plan Strategy is formally adopted, the Local Development Plan will be the Council's adopted Plan Strategy and the extant Departmental development plans, namely the North Down and Ards Area Plan 1984-1995 and the Ards and Down Area Plan 2015, read together, with the draft Belfast Metropolitan Area Plan 2015 being a material consideration. If there is a conflict between the Council's Plan Strategy and the extant Departmental development plan(s) the conflict shall be settled in favour of the Council's adopted Plan Strategy.
8. When the Council has adopted its Local Policies Plan, the Local Development Plan will be the Council's adopted Plan Strategy and Local Policies Plan as defined in Section 6 of the 2011 Act.

Enforcement

9. The enforcement of planning controls is delegated to appointed officers with the Planning Committee receiving regular reports on the progress of enforcement activities.

SIZE OF THE PLANNING COMMITTEE

10. Ards and North Down Borough Council Planning Committee comprises of 16 Members with no substitutions being permitted.
11. The quorum for the Planning Committee will be six (6) Members present and eligible to vote. Where there are less than six Members present eligible to debate an application and vote, the Committee shall be inquorate and the planning application cannot be determined. The application should therefore be withdrawn from the agenda and returned to the next Planning Committee meeting.
12. Where the Planning Committee becomes inquorate, not due to Committee Members being absent but due to Committee Members declaring an interest, the planning application concerned should be deferred to the next Planning Committee meeting to allow each Member to seek advice as to whether their interest of concern is in fact an interest which would prevent them considering and voting upon the planning application. In the event that a Member or Members, on receipt of advice, are comfortable that there is in fact no interest to prevent them considering and voting upon the application, the reasoning for such a position should be so recorded in the minutes of the next Planning Committee meeting.
13. In the event of Planning Committee still being inquorate, due to Members declaring an interest, the Council is deemed to not be able to determine the application, which is then referred to the Department.
14. The Head of Planning will normally attend all Planning Committee meetings in addition to planning officers presenting application reports and recommendations.

FREQUENCY OF MEETINGS

15. In accordance with the Council's Standing Orders, Committees will be held on a monthly basis. The Planning Committee of Ards and North Down Borough Council will meet on the first Tuesday in every month at 7pm in the Council Chamber at 2 Church Street, Newtownards. In exceptional circumstances the Committee shall from time to time fix

its own day and hour of meeting and notify the Council. Committee meeting dates and times will be published monthly on the Council's website in advance of each meeting.

SCHEME OF DELEGATION

16. Section 31 of the Planning Act (NI) 2011 requires the Council to produce a Scheme of Delegation for operation in its area. A Scheme of Delegation is where decision-making for local applications is delegated to an appointed officer rather than the Planning Committee, thereby enabling speedier decisions and improved efficiency.
17. The Council's Scheme of Delegation relates only to those applications that fall within the definition of Regulation 2 of the Planning (Development Management) Regulations (NI) 2015. Certain statutory restrictions that apply to the Council's scheme prevent particular types of application from being delegated to officers, thereby requiring them to be determined by the Planning Committee. The Scheme of Delegation agreed by Ards and North Down Borough Council reflects these restrictions and can be viewed on the Council's website.

ENFORCEMENT

18. In accordance with the Planning Committee's Scheme of Delegation, the enforcement of planning controls is delegated to appointed officers. The Planning Committee will be informed of progress on cases and can request a report from officers to the Committee on any enforcement matter.
19. The Head of Planning will prepare a quarterly report on enforcement including the progress of formal enforcement cases which will be circulated to Planning Committee Members, detailing the number of live cases, details of notices issued, prosecutions and any other information deemed relevant.
20. An Enforcement Strategy detailing how enforcement action will be dealt with has been agreed by the Planning Committee and can be viewed on the Council's website.

REFERRAL OF DELEGATED APPLICATIONS TO THE PLANNING COMMITTEE

21. A weekly list of validated applications will be prepared and circulated to all 40 elected Members and will be published on the Council website.
22. Elected Members of the Council can request that a delegated application be referred ('called-in') to the Planning Committee.
23. In such cases, Members must notify the Head of Planning of requests in writing or by email stating clearly the reason(s) for such requests. Valid planning reasons must be provided for all applications 'called-in'. Requests must be made within 25 working days of the application being made valid; however, Members should be aware that applications can be determined after the expiration of 14 days from the date the application is first advertised, neighbour notified or first published on the Council's website, whichever date is the later or latest.
24. In addition, where applications have been delegated to officers, Planning Committee Members will be notified by email, usually on a Monday (or next appropriate day taking account of public/bank holidays) of a list of delegated decisions made, but not yet issued, which will detail the reference number, proposal, location, decision, number of objections, and a hyperlink to connect to the relevant part of the Planning Portal to enable Planning Committee Members to view more details about the application. If considered appropriate, Planning Committee Members can then request that applications are 'called-in'. Such requests must be received via the planning@ardsandnorthdown.gov.uk email inbox (marked as 'Call-In' in the subject line) by the specified time 48 hours later. It should be noted that applications for householder development which have not attracted objections and which are recommended for approval will not be included in the weekly delegated list, but the decisions issued immediately.
25. In either of the above circumstances an authorised senior officer will then liaise with the Chairperson or Vice Chairperson (as appropriate) to determine whether the reasons which have been set out constitute valid planning reasons so as to merit referral to the Planning Committee. The requesting Member will be advised if the request has been

successful or alternatively, if the reasons do not constitute valid planning reasons and the request rejected.

26. The agenda for the next appropriate meeting will be amended as soon as possible to reflect those applications that have been 'called-in' from the delegated list.
27. The Head of Planning may also consider it prudent to refer a delegated application to the Planning Committee for determination.
28. Members of the public, MLAs or MPs **cannot** directly request that an application be referred to the Planning Committee.
29. The number and nature of delegated applications referred to the Planning Committee will be reviewed on a regular basis.

PUBLICATION OF SCHEDULE OF APPLICATIONS TO BE DETERMINED BY PLANNING COMMITTEE

30. The schedule of those applications to be determined at the Planning Committee meeting will be published on the Council's planning website pages ten working days before that Planning Committee meeting.

SUBMISSION OF INFORMATION

31. In the interests of efficient and timely decision-making on those applications being presented to the Planning Committee with a recommendation, it is imperative that **all relevant and appropriate information** as required has been received by planning officers, whether in support of or in opposition to proposals. To this effect **no additional information** will be accepted by the Council after 5pm on the Tuesday *prior* to the Planning Committee meeting scheduled to hear that application (one full week prior).
32. In addition, **no documentation** should be circulated at the meeting at any time to Members by speakers.

FORMAT OF PLANNING COMMITTEE MEETINGS

33. Ards and North Down Borough Council will operate its Planning Committee in line with its approved Standing Orders.

Standard Items

34. The agenda will allow for the inclusion of the following items:

- Notice of Meeting
- Apologies
- Declarations of Interests
- Matters arising from the minutes of the previous meeting
- Schedule of Planning Applications
- Development Plan Issues
- Enforcement Matters
- Budgetary Matters
- Performance Management Matters

Committee Papers

35. All Planning Committee Members will be sent an agenda one week in advance of the committee meeting. The following papers (where appropriate) will also be provided:

- Minutes of the previous meeting;
- Details of Development Plan issues;
- Details of relevant Enforcement matters;
- Details of proposed pre-determination hearings;
- Details of non-delegated applications (including those brought back following deferral) for consideration by the Planning Committee;
- Details of applications of regional significance with an impact upon the Council area in response of which the Council is a statutory consultee or where it may wish to make representations;

- Performance Management Reports.

36. When considered appropriate two sets of the detailed drawings will be made available in the Members' Room in both Church Street, Newtownards and in The Castle, Bangor, for inspection from the Thursday before and each day up to and including the day of the scheduled Planning Committee meeting.

37. The Chairperson and Vice Chairperson of the Planning Committee along with the Head of Planning (or authorised senior officer) will hold a briefing session with planning officers on each application to be considered in advance of the Planning Committee meeting.

38. Where necessary, planning officers will prepare an addendum before 10.30am on the day of the Planning Committee meeting to report any updates since the agenda was issued.

39. Planning Committee meetings will be open to the public.

Declarations of Interests

40. At the beginning of **every** meeting, Members will be asked to declare an interest in any item on the agenda and must leave the Council Chamber (including the Public Gallery) for that item. Once the item has been determined (or deferred), Members will be invited to return.

PUBLIC SPEAKING

Procedures for Public Speaking

41. The following procedures will apply to Ards and North Down Borough Council Planning Committee meetings:

- Requests to speak should be received by the Planning Department (in writing or by email) at least 5 working days prior to the scheduled Planning Committee meeting.

Late requests will not be accommodated. The request must set out the material planning issues that the speaker wishes to raise.

- Requests to speak can only be submitted once the Schedule of applications to be heard has been published. The Planning Department will not accept requests made via representations (either in letters of support or objections) submitted in relation to any planning application.
- Written requests should be addressed to Ards and North Down Borough Council Planning Department and highlighted “Request to Speak”; Email requests should be sent to planning@ardsandnorthdown.gov.uk and specify “Request to Speak” in the subject line.
- When a speaking request has been accepted, registered speakers must submit a copy of their speaking note to the Planning Department by 10.30am on the Friday prior to the scheduled meeting. Failure to provide by the specified time will result in cancellation of the speaking rights.
- Members, whether or not on the Planning Committee, may speak in opposition or support of a proposal – in the case of a Member of the Planning Committee, that Member must declare an interest and be excluded from any discussion and decision on the application;
- There is **only one 5-minute slot** for those speaking in opposition to an application, and **only one 5-minute slot** for those speaking in support of an application. Where there is more than one request to speak, the 5 minutes will be shared or one person can be appointed to speak;
- Members of the public (including agents/representatives) may wish to appoint an elected Member, or an MLA/MP to speak on their behalf or alongside them – regardless, the 5-minute limit will still apply.
- Members of the public seeking to speak will be expected to have organised themselves in advance of the Planning Committee meeting and informed the

Planning Department of details of those individuals intending to share the time or of an appointed speaker (and have submitted a copy of the speaking note by the time prescribed);

- The Planning Committee can seek clarification from those who have spoken but must not enter into a debate on any issue raised;
- No documentation should be circulated at the meeting to any Members by speakers;
- Audio/visual presentations will not be permitted;
- The exhibition of models and displays will not be permitted;
- Applications where there will be speakers from the public will be taken first, where possible;
- Planning officers can address any issues raised.

42. Where an application has been debated by Planning Committee but no decision made and it is then deferred for any reason, when it is returned to a subsequent Planning Committee meeting there shall be a further exercise of speaking rights, **only to those who registered in the first instance**, of 3 minutes only, (and providing a copy of speaking notes was submitted within the specified time frame) limited by the Chair to particular issues. A copy of the speaking notes must also be provided to the Planning Department by 10.30am on the Friday prior to the Planning Committee meeting where the application is being heard again. Failure to provide by the specified time will result in cancellation of speaking rights.

AUDIO RECORDING OF COMMITTEE MEETINGS

43. From April 2019 audio recordings of each meeting will be made by the Council, with the exception of items discussed 'In Committee'. These recordings will be posted on the Council's webpages after the minutes of the meeting have been ratified at full Council. Interested parties should listen to both the recording of the Planning Committee meeting

and that of full Council, as items heard at Committee which relate to matters for which Planning Committee does not have delegated powers are subject to ratification by full Council. All comments made by speakers appearing before the Committee, whether elected representatives, planning agents or members of the public will be included within the recording.

RUNNING ORDER

44. Details of the running order for discussion of planning applications is included as Appendix 1 to this Protocol.

COMMITTEE DECISIONS

45. The main role of the Planning Committee is to consider applications made to the Council as the local planning authority and determine whether planning permission should be approved or refused.

46. A Planning Officer will prepare a Case Officer report containing a professional planning recommendation which will be circulated in advance. Members will be expected to appraise themselves of any relevant drawings/plans and other relevant information available to them on the Planning Portal. The application will be presented with a recommendation on whether the application should be approved, approved with conditions or refused. Plans and photographs may be shown as appropriate.

47. After the Planning Officer presents the report, Members will have an opportunity to ask questions of the Planning Officer relating to the proposed development, those speaking for or against the proposal, and debate the case.

Committee Decision Making Options

48. The Planning Committee will discuss applications presented to it during the Planning Committee meeting before taking a vote on one of the following options:

- Approve the application with conditions as recommended;

- Approve the application with amended conditions;
- Refuse the application for the reasons recommended;
- Refuse the application with additional or different reasons recommended;
- 'Minded to' approve or refuse the application in contrast to the officer recommendation;
- Defer the application to allow additional information/clarification to be provided or a site visit to be arranged.

49. Any appropriate conditions/reasons for refusal must be proposed and seconded before being voted on by Members.

50. The Committee Chairperson has a casting vote.

51. A recorded vote will be taken where a motion is not unanimous whereby the names of Members voting for and against the proposal will be recorded manually and entered into the minutes.

52. Planning Committee Members can add, amend or remove conditions to an approval, (or add, amend or remove reasons for refusal) but they cannot amend the application itself (for example, by allowing a one-bedroom flat if the application is for a two-bedroom flat). Members will therefore seek guidance from the relevant planning officer as to the appropriateness of the proposal to add, amend, or remove a condition or reason for refusal. Any additional conditions should be proposed and seconded before being voted on by Members. Members should be aware that conditions can be tested at appeal and based on planning case law there are a number of requirements that they should therefore meet, namely that they should be necessary, relevant to planning and the development under consideration, enforceable, precise and reasonable in all other respects. An applicant also has a right of appeal to the Planning Appeals Commission in respect of all reasons for refusal.

Decisions Contrary to Officer Recommendation

53. The Planning Committee has to reach its own decision. Planning Officers offer advice and make a recommendation. Planning Officers' views, opinions and recommendations may, on occasion, be at odds with the views, opinions or decisions of the Planning Committee or its Members. There should always be scope for Members to express a different view from Planning Officers in appropriate circumstances.
54. The Planning Committee can accept, reject or place a different interpretation on, or give different weight to, the various arguments and material planning considerations.
55. Planning Committee decisions contrary to Planning Officer recommendation may be subject to appeal or to legal challenge. Members should therefore ensure that the planning reasons for the decision are set out and based on proper planning reasons prior to any resolution being made and voted upon thereafter. The Planning Officer should always be given the opportunity to explain the implications of the Planning Committee's decision.
56. If the Committee votes to overturn the recommendation of the Planning Officer by way of a "minded to approve or refuse the planning application" motion, the Member proposing the motion to overturn the recommendation must outline the reasoning and material planning considerations relied upon for reaching such a decision. Such reasoning should explain, as and when appropriate, why it is proposed to depart from the development plan, the departure from policy or policy interpretation relied upon and/or what material planning considerations are being attributed determining weight. The receipt of the reasoning and material planning considerations from the Member proposing the motion will ensure that the Committee is fully aware of the reasoning and material planning considerations upon which such a motion is based and allow the Planning Department to prepare a note of the reasoning, accompanied by either draft reasons for refusal or draft reasons for approval with draft conditions. This report will be presented at the next Planning Committee meeting to allow the Committee to consider its content. As a consequence of the tabling of the "minded to" motion, the planning application will be deferred to the next Planning Committee meeting to permit the Planning Department to prepare this report. As part of the deferral of the application

the Committee, Chair of the Committee, or Head of Planning, may seek legal advice on the robustness of the reasons for refusal or the reasoning and conditions of approval. Any such advice will be provided to the Committee in advance of the resumption of the consideration of the planning application to allow them to consider same.

57. No additional speaking rights will be afforded to any person unless at the Chairperson's discretion he/she authorises same. Such speaking rights will be a maximum of 3 minutes.
58. In the event that a Member tables a motion contrary to the recommendation of the Planning Department seeking to approve or refuse the planning application (other than a "minded to" motion) the Member proposing the motion to overturn the recommendation must set out the reasoning and material planning considerations relied upon for reaching such a decision prior to tabling the motion and the Committee voting on same. Such reasoning should explain, as and when appropriate, why it is proposed to depart from the development plan and/or the departure from policy or policy interpretation relied upon and/or what material planning considerations are to be attributed determining weight.
59. Decisions contrary to a Planning Officer's recommendation, and full details of the Members' reasoning for attaching differing weight to material considerations or departing from planning policy or the development plan, must be formally recorded in the Planning Committee minutes, ratified at the next Planning Committee meeting and a copy placed on the planning application file / electronic record.
60. The Planning Committee and Members tabling motions to overturn recommendations of the Planning Department should be mindful of the ability to seek costs on appeal to the Planning Appeals Commission or potential costs liability that may arise through any legal challenge brought against such a contrary decision.

Appeal Contrary to Officer Recommendation

61. In the event of an appeal against a refusal of planning permission contrary to a Planning Officer's recommendation, planning consultants or different planning officers than those

who made the original recommendation may be appointed to represent the Council at appeal.

Decisions Contrary to Local Development Plans

62. Planning decisions should be taken in accordance with the Local Development Plan (in so far as it is relevant to the application) unless material considerations indicate otherwise.
63. Should a Planning Committee Member propose, second or support a decision contrary to the local development plan, they will need to clearly identify and understand the planning reasons for doing so, and clearly demonstrate how these reasons justify overruling the local development plan.
64. The reasons for any decisions which are made contrary to the development plan must be formally recorded in the minutes and a copy placed on the planning application file / electronic record.
65. All decisions, whether taken by the Council's appointed Planning Officer, or by the Planning Committee, are decisions made by Ards and North Down Borough Council and may be subject to challenge either by judicial review or appeal.

LEGAL ADVISER

66. Ards and North Down Borough Council will have access to legal advice to support the planning function. Members may require the Legal Adviser to provide legal advice on an issue which arises during the course of a meeting of the Planning Committee. The Director of Regeneration, Development and Planning, and the Head of Planning, shall each also have the ability to exercise discretion regarding the requirement for attendance of the Legal Adviser at Planning Committee. In such circumstances, the Committee shall meet 'in Committee' with only Members of the Planning Committee, presiding officials and the legal adviser(s) remaining in the room. For the avoidance of doubt, all councillors who are not Members of the Planning Committee and Members of the said Committee who have chosen to speak as a supporter or objector to an

application, will be required to withdraw from the room while the legal advice is provided on the matter arising.

DEFERRALS

67. The Planning Committee can decide to defer consideration of an application to the next Planning Committee meeting to:

- allow additional information/clarification to be provided (including provision of legal advice);
- allow a site visit to be arranged; or
- enable consideration of a 'minded to approve or refuse the planning application' reasoning.

Such a decision should be proposed, seconded and subject to a majority vote.

68. Members of the Planning Committee should be aware that deferrals will inevitably have an adverse effect on processing times and will prolong future meetings, and therefore should be used as an exception. Members should therefore restrict themselves, where possible, to one deferral only per application. In addition, there should be clear reasons why a deferral is necessary.

69. Members should not seek to defer an application in order to seek to re-design or negotiate amendments to an application. The Committee must determine the proposal as presented before it.

Minutes of Planning Committee Meetings

70. Written minutes will be recorded at all Planning Committee meetings which will be published on the Council's website. All minutes taken at Planning Committee meetings, although not verbatim, must reflect the discussions and decisions taken during the meetings as these could be used as evidence should any complaints be made about how decisions were taken, or a decision appealed to the Planning Appeals Commission.

SITE VISITS

71. Planning Committee site visits can be useful to identify very important features of a proposal that may be impossible to convey in a written report or by photographs, video, plans and drawings. Site visits can cause delay and should only be used where the expected benefit is substantial.
72. Planning Committee visits will normally be arranged by the Head of Planning, in consultation with the Chairperson, where in their judgement the substantial benefit test applies, i.e.
- The impact of the proposed development is difficult/impossible to visualise from the officer's report, photographs, video, plans, drawings and any other supporting material;
 - There is good reason why the comments of the applicant and objectors cannot be expressed adequately in writing;
 - The proposal is particularly contentious;
 - Non-visual considerations such as noise and smell are key issues on which the application will be determined.
73. If Planning Committee Members defer consideration of an application for a site visit this should only follow a formal proposal, the substantial benefit test and the vote being taken. The reason for deferral for a Planning Committee site visit shall be minuted.
74. The purpose of the Planning Committee site visit is a fact-finding exercise and therefore public rights of attendance/speaking do not apply. The purpose is not to make a decision on the application.
75. Where a site visit is agreed, the planning case officer will contact the applicant/agent to arrange access to the site. Invitations will then be sent to Members of the Planning Committee.
76. At the site visit the merits of application should not be discussed. The purpose of any

discussion is to direct Planning Committee Members to the matters they have come to view or experience. Neither the applicant/agent, objectors, supporters, the Council nor any other Member of the public, will be permitted to address Planning Committee Members, either individually or as a group. It is a function of the Chairperson of the Planning Committee, but also of any officer present and the Planning Committee Members themselves, to make this clear at the visit or beforehand if a member of the public enquires.

77. Members of the Planning Committee should not carry out their own unaccompanied site visits as there may be issues relating to permission for access to land, they will not have the information provided by the Planning Officer, and, in some circumstances (e.g. where an elected Member is seen with applicant or objector) it might lead to allegations of bias.

78. Site visits must not be requested in any of the following cases:

- To consider boundary or neighbour disputes;
- To consider objections raised on competition grounds;
- To consider objections raised on the grounds of loss of property values;
- To consider any other issues which are not material planning considerations;
- Where Members of the Planning Committee have already visited a site within the last year, except in exceptional circumstances; or
- To consider representations from friends, neighbours or relatives.

Site Visit Procedure

79. The Chairperson/Vice Chairperson of the Planning Committee will oversee the conduct of site visits. They will start promptly at the time notified to Members and planning officers. At the request of the Planning Committee Chairperson/Vice Chairperson, the planning officer may be invited to describe the proposal to Members. Whilst Planning Committee Members will be expected to be familiar with the planning officer's report, plans/drawings may be used where necessary.

80. The planning officer may indicate matters of fact in relation to the proposal and surrounding land which Members can take account of. Through the Planning

Committee Chairperson/Vice Chairperson, Members may ask the planning officer for factual clarification on any planning matter relating to the proposal or surrounding land, such as distances to adjoining properties or the location of proposed car parking.

81. At no time during the site visit should Members debate the merits of the planning application. To do so outwith the Planning Committee meeting might imply that Members had made their mind up.
82. In order to assist Members to retain their objectivity, they should keep together in one group with the Chairperson/Vice Chairperson and the planning officer and should avoid breaking away into smaller groups. Once a site visit is concluded, Members should leave the site promptly.

Record Keeping

83. The planning officer will keep a record of Members' attendance at the site visit and will pass this information to Democratic Services for minute purposes. The planning officer will also prepare a written report on the site visit. This report will be presented at the next meeting of the Planning Committee scheduled to discuss the particular application.

PRE-DETERMINATION HEARINGS

84. In order to enhance scrutiny of applications for major development which may raise issues with particular sensitivity for a local area, Regulation 7 of the Planning (Development Management) Regulations (NI) 2015 sets out a **mandatory** requirement for pre-determination hearings for those major developments which have been subject to notification (i.e. referred to the Department for call-in consideration, but that have been returned to a Council for determination). In such cases Ards and North Down Borough Council's Planning Committee will hold a hearing prior to the application being determined.
85. In addition, the Planning Committee may also hold pre-determination hearings, at its discretion, when considered necessary, to take on board local community views, as well as those in support of the development. The intention is to give applicants and those who have submitted relevant representations the opportunity to be heard by the

Planning Committee before it takes a decision. This will make the application process for major development more inclusive and transparent.

86. Any hearing should take place after the expiry of the period for making representations on the application but before the Planning Committee decides the application. It will be for the Planning Committee to decide whether it wishes to have a hearing on the same day as the related planning application is determined by the Planning Committee or to hold a separate hearing on a different day. The scale and complexity of the planning issues will have to be considered. In holding a hearing, the Planning Committee procedures can be the same as for the normal Planning Committee meetings. The Planning Officer will produce a report detailing the processing of the application to date and the planning issues to be considered. If the Planning Committee decides to hold the hearing on the same day as it wishes to determine the application the report to elected Members should also contain a recommendation.
87. Whilst the Planning Committee will endeavour to hold its pre-determination hearings outwith the Planning Committee meeting at which the application will be considered, it is recognised that this may not always be possible.

TRAINING

88. It is recommended that participating Planning Committee Members continue to attend relevant training on planning matters as required and/or provided in association with the Head of Planning.

NETWORK

89. It is anticipated that a network of Planning Committee Chairpersons will be established and that Members should meet regularly to discuss items of common interest. Ards and North Down Borough Council will contribute to this network once established.

REVIEW OF DECISIONS

90. On an annual basis Members of the Planning Committee should inspect a sample of

implemented planning decisions in order to assess the quality of decision-making. This should include a sample of decisions delegated to officers to give assurance that the scheme of delegation is operating effectively and in line with the Council's views. Procedures will be prepared to assist with this review.

REVIEW OF PROTOCOL

91. This protocol will be monitored and procedures reviewed as necessary to ensure that they remain current and relevant to the operational needs of the Ards and North Down Borough Council Planning Committee.

APPENDIX 1: RUNNING ORDER FOR PLANNING APPLICATIONS

1. Presentation of Application		
a.	Oral update if required to report any updates since agenda was issued	Planning Officer
b.	<p>Presentation of application Officers' reports will have been available on the NI Planning Portal and have been circulated to Planning Committee Members in advance.</p> <p>The officer will detail the following:</p> <ul style="list-style-type: none"> • Application Number • District Electoral Area • Committee Interest (why before Planning Committee) • Proposal • Site/Location • Any other facts considered necessary for the information of the Planning Committee <p>The officer will provide clarification on any issue raised by Planning Committee Members.</p>	Planning Officer
2. Speaking Arrangements		
a.	<p>Person(s) speaking in opposition of the application (including elected members/MPs/MLAs) ('Against')</p> <p>5-minute allocation</p>	Chairperson
b.	<p>Person(s) speaking in support of the application (including elected members/MPs/MLAs) ('For')</p> <p>5-minute allocation</p>	Chairperson
<p>The same procedure will be used for each speaker:</p> <ul style="list-style-type: none"> • Welcome by the Chairperson, including reminder to keep to planning issues and stating time limit. • Clarification questions from Planning Committee Members through the Chairperson – these should be points of fact, policy or other technical aspects and only refer to issues raised by the speakers • Speaker asked to return to Public Gallery • Clarification on any points from Planning Officer 		

3. Debate		
a.	Indication of Members who wish to speak An initial indication to ensure all Planning Committee Members are able to speak or ask for additional information/clarification. Does not preclude another Member speaking later during the debate.	Chairperson
b.	Debate (Planning Committee Members, through Chairperson, support from officers) Member debate on the planning issues for the application. To be framed by (but not restricted to) the issues identified in the officer report and the resulting recommendation. Clarification available from officers.	Chairperson/ Planning Committee Members /Officers
c.	Invite proposing and seconding of the recommendation/alternative recommendation (if applicable based on debate) If the debate appears to be contrary to the officer recommendations (i.e. decision to overturn or revision to conditions etc.) then the Chairperson should invite a proposal for alternative recommendation or deferral. If the debate appears to support a vote in line with officer recommendation, no action is required.	Chairperson
4. Vote		
a.	Checking that Planning Committee is ready to vote The Chair will ascertain if the Planning Committee as a whole whether it feels it is now ready to vote on the application, leaving a pause for any Member to either request that the debate should continue or to seek clarification on a matter of fact, policy or other technical aspect.	Chairperson
b.	Summing up Short conclusion, returning to the main issues raised by the officer report, the way in which Members have explored these and other issues. Clear reminder of the motion and the implication of a vote in either direction.	Chairperson/Officers
c.	Vote Clear show of hands raised above the head and held in place until the Director/Democratic Services acknowledges the count. Voting first in favour of the motion, then against, then for abstentions. Anyone not voting is subsequently deemed to have abstained.	Director/Democratic Services
d.	Recording of Decision Director/Democratic Services to announce the number of votes in each direction. Individual Member voting to be recorded where not unanimous. Chair to clearly announce the decision and to be included in the minutes.	Director/Democratic Services/Chairperson

ITEM 11**Ards and North Down Borough Council**

Report Classification	Unclassified
Council/Committee	Planning Committee
Date of Meeting	18 January 2022
Responsible Director	Director of Regeneration, Development and Planning
Responsible Head of Service	Head of Planning
Date of Report	10 January 2022
File Reference	
Legislation	The Reservoirs Act (Northern Ireland) 2015
Section 75 Compliant	Yes <input type="checkbox"/> No <input type="checkbox"/> Other <input checked="" type="checkbox"/> If other, please add comment below: Response to Departmental Consultation
Subject	DFI Consultation on secondary legislation to further commence and implement the requirements of the Reservoirs Act (NI) 2015
Attachments	11.1 - Consultation Document 11.2 - Table of Content of Reservoirs Act 11.3 - Proposed Council Consultation Response

Members will be aware of the Consultation issued by DFI as referenced at Item 8.2 of the Council meeting of 22 December 2021 and that delegated authority was issued to Planning Committee to issue a response.

Background

The Reservoirs Act (Northern Ireland) 2015 ('the Act') came into operation in July 2015 and was purported to introduce a 'proportionate regulatory and management framework for reservoir safety in Northern Ireland'. The Act can be accessed here <https://www.legislation.gov.uk/nia/2015/8/contents>.

At that time only limited elements of the Act were commenced which included: the definition of a controlled reservoir, who is the reservoir manager, and powers of entry for the Department.

Statutory responsibility for the Reservoirs Act only transferred to the Department for Infrastructure in June 2021, some almost six years later. It is only now that the Department states it is in a position to consider further commencement of the other elements of the Act and subordinate legislation in the form of Regulations and Orders to provide clarification or the details to effectively implement the Act and enable reservoir managers to comply with the Act.

Planning Policy in relation to reservoirs

Regardless of the lack of subordinate legislation at the time to support the operation of the Reservoirs Act, the then Department of the Environment published a revised Planning Policy Statement 15: Planning and Flood Risk in September 2015 which introduced Policy FLD 5: 'Development in proximity to reservoirs'. The Strategic Planning Policy Statement for NI, published in September 2015, also contains regional policy in this regard.

The Strategic Planning Policy Statement for Northern Ireland (SPPS), paragraphs 6.119 to 6.122, together with the provisions of Policy FLD5 of revised PPS 15 provides that new development will only be permitted within the potential flood inundation area of a controlled reservoir if the applicant can demonstrate that the condition, management and maintenance regime of the reservoir is appropriate to provide sufficient assurance regarding reservoir safety and the developer provides a flood risk assessment (FRA) which includes, amongst other considerations, an assessment of the downstream flood risk, including flood water depth, velocity and flow path issues.

Cognisant of the absence of subordinate legislation and issues facing planning authorities, DFI Rivers issued a Technical Guidance Note in June 2020 setting out the general approach DFI Rivers would follow when providing advice to planning authorities on all relevant applications for development within the flood inundation area of a controlled reservoir. This guidance highlights a risk still remains of inappropriate new development in the potential inundation areas of controlled reservoirs, but provides practical details associated with the implementation of the policy in the short term before the longer term solutions (i.e. the introduction of further legislation) can come into effect.

Members will be aware of the impact that the current planning policy has in relation to specific planning applications, particularly that of Queen's Parade private investor redevelopment scheme in the context of the lack of sufficient assurance regarding reservoir safety of Clondeboy Lake, and in this context the proposed response highlights the lack of an agreed industry methodology for assessing 'Probability' of an uncontrolled release of water from a reservoir, and the impact that the lack of appropriate legislation to date has had on building investment confidence in Northern Ireland as a whole.

The Consultation

The consultation (as outlined in 11.1) invites responses in relation to those sections of the Act that the Department proposes to commence, and the Regulations and Orders that it proposes to make at this time.

A table is attached for Members' information detailing the totality of the sections of the Reservoirs Act and identifying those sections currently in operation, those proposed to come into operation and those not yet consulted upon (11.2).

A draft response is attached (11.3) for discussion and agreement by Members.

Members should also note that the Heads of Planning Group is seeking an extension from DFI's Water and Drainage Policy Division in order to formulate a collective professional officer response as it is clear not all councils were aware of the consultation, as DFI Planning did not highlight to councils in the context of prevailing planning policy which is reliant upon this Act. In this response it is pertinent to highlight that this is not a consultation in relation to current planning policy and as such the Council is unable to amend such regional policy.

RECOMMENDATION

That the Council notes the content of this report and approves the proposed response to the Department's consultation on the Reservoirs Act.



Department for

Infrastructure

An Roinn

Bonneagair

www.infrastructure-ni.gov.uk

RESERVOIRS ACT (Northern Ireland) 2015

Consultation on proposals to commence sections of the Reservoirs Act (Northern Ireland) 2015, and introduce the secondary legislation required to implement the fundamental elements of the reservoir safety policy in Northern Ireland and the criteria which will be used to give controlled reservoirs a reservoir designation.



FOREWORD

The Reservoirs Act (Northern Ireland) 2015 introduces a proportionate regulatory and management framework for reservoir safety that will help protect citizens from flooding as a result of reservoir failure. As responsibility for reservoir safety functions has recently transferred to my Department, I am now in a position to consult on plans to commence implementation of the Reservoirs Act.

This consultation document provides details on the planned further commencement of the Reservoirs Act and sets out proposals to be included in secondary legislation for:

- How the volume of water held above the natural level of the surrounding land is to be calculated;
- How reservoir managers will register a controlled reservoir with the Department;
- Information held on the publically available controlled reservoirs register;
- Frequency of visits to a controlled reservoir by a supervising engineer;
- Recording of water levels and record keeping by a reservoir manager;
- Display of emergency information at a controlled reservoir;
- Dispute Referral process;
- Stop Notices;
- Establishing of Panels of Reservoir Engineers and the sections of the Act under which members may be commissioned;
- Provision to enable the Department to pay reservoir safety grants to reservoir managers; and
- Form and content of notices, form of written statements, reports and certificates under the Act.

Although not required to be included in secondary legislation, the consultation also covers the criteria that the Department will apply when giving a designation to a controlled reservoir. The designation of a reservoir will determine the management and maintenance regime required for the controlled reservoir.

All of the above are fundamental components of the reservoir safety policy and will start to embed the operation of a management regime which is based on industry best practice for the safety of reservoirs. The implementation of the Reservoirs Act will mean that those reservoirs within the scope of the Act, are subject to a regulated system of scrutiny and control, which in turn will provide assurance in terms of the protection of people, property, the environment and economic activity.

This consultation is targeted at those on whom the legislation will impact and those with an interest in the management and maintenance of reservoirs to ensure reservoir safety. You will wish to note that I am planning to introduce regulations that would allow for consideration of an appropriate and affordable grant scheme to assist with the cost of reservoir safety works.

It is important that you have an opportunity to consider the proposals and express your views and I would therefore encourage you to respond to the consultation.

NICHOLA MALLON MLA
Minister for Infrastructure

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Executive Summary

This targeted consultation provides details on the commencement of a number of sections of the Reservoirs Act (Northern Ireland) 2015 (the Act) and invites comments on proposals for secondary legislation to implement the fundamental elements of a management and maintenance regime for reservoir safety provided for by the Act. These elements include registration, designation, supervision by a supervising engineer, inspection by an inspection engineer and a requirement to undertake measures in the interest of safety.

This consultation also includes the proposed criteria that the Department will apply when giving a designation to a controlled reservoir. Although the Department is not required to include the designation criteria in legislation, your views on the proposals are extremely important as the reservoir designation will determine the level of regulation and management required at a controlled reservoir.

Regulatory Purpose

The Act provides for a regulatory and management regime for controlled reservoirs in order to protect people, the environment, cultural heritage and economic activity from the risk of flooding due to an uncontrolled release of water. The Act requires the managers of all controlled reservoirs to register their reservoir(s) with the Department and for the Department to give each controlled reservoir a reservoir designation. The reservoir designation, which is based on the consequential impact of an uncontrolled release of water in the inundation area of the reservoir, will determine the level of regulation and management required. Controlled reservoirs will be given a designation of either High Consequence, or Medium Consequence, or Low Consequence.

The Act provides for proportionate regulation according to the consequence of reservoir failure with high consequence reservoirs requiring a higher degree of regulation and management than those reservoirs designated as medium or low consequence. When the Act is fully implemented it will provide greater safety for people, property, economic activity, infrastructure, the environment, and cultural heritage from the risk of flooding from reservoirs.

It should be noted that in order for the legislation to be effective, it will require the introduction of secondary legislation in conjunction with the commencement orders.

Consultation aims

The consultation aims to give those who are involved with, or have an interest in, reservoirs an opportunity to provide comments in relation to the

Department's proposals in relation to the Reservoirs Act (NI) 2015. In particular, the consultation is interested in obtaining the views of reservoir managers on the sections of the Act which the Department proposes to commence, the draft Regulations and Orders and the designation criteria for controlled reservoirs.

The sections which the Department proposes to commence are listed at Annex A and B.

The Regulations and Order that the Department proposes to make are provided at Annexes C, D, and E.

The draft designation criteria is detailed at pages 26 - 31.

Your views will help ensure that the draft Regulations and Orders are appropriate and will introduce the fundamental elements of the reservoir safety policy. Information on how to respond to the consultation is available on Page 7. A list of the consultation questions are provided at Annex G

The closing date for responses is 23 January 2022. All responses received by this date will be considered by the Department.

1. Consultation Arrangements

Timetable

- 1.1 This consultation document will be available for response, and comment for a period of 8 weeks from 29 November 2021 to 23 January 2022. The document can be viewed on the Department's website: <https://www.infrastructure-ni.gov.uk/publications/reservoir-safety-legislation-commence-and-implement-reservoirs-actni-2015>
- 1.2 Following the consideration of consultation responses and development of a consultation report, it is envisaged that the legislation will be progressed through the Assembly process.

How to respond

- 1.3 We would welcome your views on the commencement of the Act, the draft Regulations and Orders and the proposed draft designation criteria for controlled reservoirs. Please provide comments in writing by completing and returning the Response Form (see consultation website page) which contains the questions at Annex G to this document before the closing date of 5.00pm on 23 January 2022.

- 1.4 Responses should be sent to e-mail:
FloodingandDrainagePolicy@infrastructure-ni.gov.uk. or

Reservoirs Team
Department for Infrastructure
Water and Drainage Policy Division
Room 15 Benson House
Benson Street
Lisburn
BT28 2BG

We will acknowledge receipt of your submission.

Alternative formats

- 1.5 If you require the document in hard copy or a format such as Braille, auto tape or large print please contact us at the e-mail or address provided or telephone 028 92626662.

Freedom of Information Act 2000 - Confidentiality of Consultations

- 1.6 Please note that all responses will be treated as public and may be published on the Department's website. If you do not want your response to be used in this way or if you would prefer for it to be used anonymously, please indicate this when responding.
- 1.7 Following consideration of all responses, a report may be published on the Department's website. Information you provide in your response, including personal information, could be published or disclosed under Freedom of Information Act 2000 or Environmental Information Regulations 2004.

2. Background

- 2.1 The Reservoirs Bill for Northern Ireland received Royal Assent on 24 July 2015 and is known as the Reservoir Act (Northern Ireland) 2015. The Department for Infrastructure (the Department) received statutory responsibility for the Reservoirs Act on 2 June 2021, following a Transfer of Functions Order being made by The Executive Office. The Department is now in a position to consider further commencement and the secondary legislation required to implement the reservoir safety regime envisaged in legislation.
- 2.2 This Act introduces a proportionate regulatory and management framework for reservoir safety in Northern Ireland. It aims to manage the flood risk from an uncontrolled release of water due to reservoir failure from reservoirs capable of holding 10,000 cubic metres of water above the natural level of any part of the surrounding land. These reservoirs are known as “controlled reservoirs”.
- 2.3 The reservoir safety framework is based on industry best practice. It requires reservoir managers to register their reservoir with the Department and for the Department to give each controlled reservoir a designation of High, or Medium, or Low consequence. The reservoir designation will determine the level of regulation and management required for the reservoir. The key elements of the management and maintenance regime include registration, designation, supervision of a reservoir, inspections of reservoirs and a requirement to undertake measures in the interest of safety.
- 2.4 Integral to the management framework is the supervision and inspection of reservoirs by specialist civil engineers known as reservoir panel engineers. The Department will establish panels of engineers and appoint engineers to the panels who are suitably qualified and experienced. Reservoir managers will commission engineers from the panels to supervise, inspect, construct or alter a controlled reservoir, or undertake other duties as required by the Act.
- 2.5 The Act and Explanatory Notes are available on the website at <http://www.legislation.gov.uk/nia/2015?title=Reservoirs%20Act>.

PART 1 - COMMENCEMENT

3. Commencement of the Reservoirs Act (NI) 2015

- 3.1 Some provisions of the Act came into operation on the day following Royal Assent i.e. 25 July 2015. These provisions are sections 1, 2, 5, 6, 42, 93 to 97, 126 to 128, 130, 132 and Schedule 2. These provisions include; the definition of a controlled reservoir, who is the reservoir manager, and powers of entry for the Department.
- 3.2 The remaining sections of the Act will come into operation on such day or days as the Department, by order, appoints. This consultation concerns those sections of the Act that the Department proposes to commence and the Regulations and Orders that it proposes to make, at this time. The sections which the Department proposes to commence are listed in the Schedules to the draft Commencement Orders at Annexes A and B.
- 3.3 Two commencement Orders are being consulted on (Annex A and B). This is due to the requirement within the Act that some sections can only be commenced when a draft Order has been laid before, and approved by a resolution of the Assembly (Annex B refers) i.e. draft affirmative Assembly procedure.
- 3.4 It should be noted that both commencement orders must be made at the same time to ensure that the reservoir safety policy is commenced and implemented and operates effectively.

PART 2 - REGULATIONS AND ORDER

4. Regulations and Order

- 4.1 While the Act provides the policy framework for the reservoir safety management and maintenance regime, the Department is required to make secondary legislation which will provide clarification or the details to effectively implement the Act and enable reservoir managers to comply with the Act.
- 4.2 The Department is proposing to introduce those regulations or orders which are essential to commence implementation of the Act and which will bring Northern Ireland into line with a similar reservoir safety regime operating in the rest of the UK. These are:-
- Calculation of the volume of a reservoir;
 - Information to be held on a controlled reservoirs register;
 - Information to be provided by a reservoir manager to register a reservoir;
 - Frequency of Visits by supervising engineers;
 - Recording of water levels and record keeping by a reservoir manager;
 - Display of emergency response information;
 - Dispute Referral process;
 - Stop Notices;
 - Establishment of Panels of Reservoir Engineers and the sections of the Act under which members of Panels may be commissioned;
 - Provision to enable the Department to pay reservoir safety grants to reservoir managers; and
 - Form and content of notices, the form of written statements, reports and certificates under the Act.
- 4.3 The Department proposes to make two Regulations and one Order and these are detailed in draft at Annexes C, D and E. Two Regulations are required due to requirements within the Act that some are made by negative resolution procedure in the Assembly (Annex C refers) and others can only be made when the draft regulations are laid before, and approved by a resolution of the Assembly (Annex D refers).

- 4.4 It should be noted that both Regulations must be made to ensure the effective implementation of the reservoir safety policy and to support the commencement orders.
- 4.5 Each of the provisions included in the regulations are discussed in more detail below.

5. Calculation of the volume of water held above the natural level of the surrounding land

- 5.1 Section 4(2) of the Act provides the Department with the power, by regulation to make provision as to:
- a) how the volume of water capable of being held above the natural level of any part of the surrounding land is to be calculated; and
 - b) the meaning of “natural level” and “surrounding land”.
- 5.2 The Department has set out in the draft Regulations at Annex C the way the volume of water held in a reservoir above the natural level of the surrounding land will be calculated. It is proposed that the regulations will be as consistent as possible with the specifications for calculating the capacity of reservoirs in England, Scotland and Wales and therefore is based on the following general principles which may apply for all types of reservoirs:-
- The capacity is the estimated volume of water that would escape from a reservoir in the event of reservoir failure. This may be less than the total volume of water in the reservoir as any water held at or below the natural level of any part of the surrounding land will not escape.
 - The volume of water capable of being held above the natural level of any part of the surrounding land will be determined with reference to the bed of the reservoir, the top water level and the toe of the reservoir.
 - Silt or other material on the bed of a reservoir above the natural level of the surrounding land is included in the calculation of volume as silt or other material could be capable of flowing if a reservoir was to fail.

- In the case of a reservoir with a gated spillway it will be assumed that the gates are closed and, therefore, the top of the gate is the top water level.

5.3 The Department has also defined in the draft Regulations the meaning of “natural level” as the level of the natural land remaining after the construction or any alteration of a reservoir and “surrounding land” as being the land adjacent to a reservoir.

6. Information to be held on the controlled reservoirs register

6.1 Section 9 of the Act requires the Department to establish and maintain a register of controlled reservoirs. The Department has set out in the draft regulations at Annex C the information that it is proposed will be held on the controlled reservoirs register.

6.2 As required by the Act, the Department will make the register available for public inspection.

6.3 Registration of a controlled reservoir in the controlled reservoirs register is the first stage of the management and maintenance regime under the Act.

7. Information to be provided by a reservoir manager to register a controlled reservoir with the Department

7.1 Section 10 of the Act provides that a reservoir manager of a controlled reservoir must register the reservoir with the Department. The Department has specified the information that a reservoir manager must provide to the Department to register a reservoir in Schedule 1 to the draft Regulations at Annex C.

7.2 The information to be provided is necessary to enable the Department to communicate with reservoir managers at all times

e.g. in emergency situations. This includes the location of the reservoir and reservoir manager(s) name and contact details including mobile telephone numbers and the details of the part of the reservoir for which a manager has responsibility. This is particularly important where there are multiple reservoir managers for a reservoir and each reservoir manager must register that part of the reservoir for which they have responsibility.

- 7.3 Where a reservoir manager has nominated another reservoir manager to act on their behalf, as permitted by section 7 of the Act, the nominee reservoir manager must register the reservoir on behalf of the nominating manager, if responsibility for doing so is specified in the nomination. The name of the nominated reservoir manager must be provided to the Department as part of the registration process.
- 7.4 Sections 11 to 13 of the Act provides the timeframes for the registration of controlled reservoirs. Generally this will be 6 months from the date of commencement of Section 10 of the Act. The Act provides provision for the Department, where it considers it appropriate to do so, to extend the time period for a reservoir manager to provide it with information, and for different time periods to be specified for receipt of different information.

8. Frequency of visits to a controlled reservoir by a supervising engineer

- 8.1 Section 25 of the Act provides that a controlled reservoir designated as high consequence or medium consequence must be under the supervision of a supervising engineer at all times i.e. on an ongoing basis. A reservoir manager must commission a supervising engineer from the appropriate panel of engineers within 6 months of the reservoir designation taking effect. Section 26 of the Act provides the duties of a supervising engineer.
- 8.2 Section 27 makes provision for the Department to make regulations by draft affirmative procedure for:-
- a) there to be a standard frequency of visits that must be made by a supervising engineer to a high or medium consequence reservoir; and

b) the standard frequency to be different should the Department consider that the reservoir is of an acceptable standard as regards how it is being maintained.

8.3 The proposed standard frequency of visits and the different frequency of visits as well as the documents that will be considered by the Department in its decision as to a reservoir being of an acceptable standard as regards how it is being maintained, and the appeal process, is set out in the draft regulations at Annex D.

8.4 Notwithstanding the requirements contained in the regulations, section 35(4)(i) makes provision for an inspecting engineer to require a supervising engineer to visit a reservoir more frequently than is required by the regulations.

9. Recording of water levels and record keeping by a reservoir manager

9.1 Section 37 of the Act sets out the matters that reservoir managers of reservoirs designated as high or medium consequence have to keep a record of (known as “the recorded matters”) and it allows the Department, by regulations, to set out other matters that should be recorded. The regulations may also provide the information and form of the record to be maintained in respect of the recorded matters.

9.2 Schedule 2 to the draft regulations at Annex C sets out the other matters that must be recorded under section 37 and Schedule 3 to the regulations provide for the information to be included in relation to the recorded matters and the form of the record to be maintained.

9.3 Specifying the form of record keeping has a number of purposes:-

- It brings together key information about the operation of the reservoir that could be valuable in the event of any problem.
- It acts as a diary of the life of the reservoir, for example recording of maintenance, works, problems and steps to resolve those problems.
- Allows engineers commissioned in respect of the reservoir and the Department to identify and use the required data more easily.

- 9.4 The matters to be recorded and the information and form of record is similar to records maintained under reservoir safety legislation in the rest of the UK.

10 Display of emergency response information at a reservoir

- 10.1 Section 59(1) of the Act requires that reservoir managers of controlled reservoirs must ensure that emergency response information is displayed at or near the reservoir.
- 10.2 Section 59(2) provides that emergency response information is such information about the reservoir and the reservoir manager that is specified in regulations made by the Department. The information to be displayed is specified in the draft regulations at Annex C.
- 10.3 Section 59(4) enables the Department to give directions by notice to reservoir managers of controlled reservoirs as to the manner and location of the information to be displayed.

11. Dispute Referral process

- 11.1 The dispute referral process provides a form of arbitration between reservoir managers and construction or inspecting engineers. The Act provides that reservoir managers may challenge-
- a direction and/or recommendation given by an inspecting engineer in an inspection report; or
 - a direction given by a construction engineer in a safety report or certain matters contained in a preliminary certificate or a final certificate
- by referring it to a referee in accordance with regulations made by the Department under section 66. Any direction, recommendation or matter which is the subject of the dispute referral process,

will be suspended until the dispute process is determined by the referee or is withdrawn by the reservoir manager.

- 11.2 A referee is a reservoir engineer who is a member of an appropriate panel of engineers established by the Department, commissioned either by:
- agreement between the reservoir manager and the relevant engineer; or
 - where no agreement is reached, by the Institution of Civil Engineers (ICE).
- 11.3 The proposals are set out in draft Regulations at Annex C.
- 11.4 A referee has the power to modify any direction, recommendation or matter that is subject to a challenge and any inspection report, safety report, preliminary certificate or final certificate that are modified has effect in its modified form. A referee is required to give the reservoir manager and the relevant engineer a referral certificate containing his decision along with any modified report or certificate.
- 11.5 The dispute referral process being proposed is similar to the process in operation in the rest of the UK.

12. Stop Notices

- 12.1 Section 77 gives the Department powers to make regulations to permit the serving of a stop notice on a reservoir manager. A stop notice is defined as a notice prohibiting the carrying on of an activity, or permitting the carrying on of an activity by another until such steps as specified in the notice have been taken. The Act indicates the circumstances in which a stop notice may be issued and lists the conditions the Department must meet before exercising its power under the regulations. The Act also provides that regulations may:
- specify the content of a stop notice;
 - provide for the issue of completion certificates;
 - make provision for compensation to be paid to a reservoir

manager for loss suffered as a result of the serving of a stop notice;

- provide for right of appeal; and
- provide for offence and penalties as well as a defence to a charge of an offence.

12.2 In summary the draft regulations at Annex D provide that:-

- A stop notice must include information as to the grounds for giving the notice, rights of appeal and the consequence of non-compliance.
- Where after giving a stop notice to a reservoir manager, the Department is satisfied that the reservoir manager has taken all the steps specified in the notice, the Department must issue the reservoir manager with a completion certificate.
- A stop notice ceases to have effect on the giving of a completion certificate.
- The reservoir manager to whom the stop notice is given may at any time apply for a completion certificate.
- The Department must make a decision whether to give a completion certificate within 14 days of any application.
- A reservoir manager on whom a stop notice is given may appeal to the Water Appeals Commission against the notice or against the decision not to give a completion certificate.
- The Department (in certain circumstances) must consider a claim for compensation by a reservoir manager for loss suffered as a result of the serving of a stop notice.
- The Department will consider the claim for compensation and decide on the appropriate amount of compensation payable.
- The time periods for appeals to the WAC and powers securing that the Commission may confirm, quash or vary the Department's decisions as well as making it an offence not to comply with a stop notice and provides for a defence to a charge in proceedings for an offence.
- The Department has a power to recover costs reasonably incurred in relation to the serving of a notice.

13 Establishment of panels of reservoir engineers and the sections of the Act under which members of Panels may be commissioned

- 13.1 Reservoir engineers will play an important role in the supervision, inspection and construction of controlled reservoirs under the Act. Section 102 enables the Department to establish one or more panels of reservoir engineers and to appoint suitable engineers to be members of such panels. The Department must by order specify the sections within the Act and the types of reservoir in relation to which members of such panels may be commissioned by reservoir managers to undertake various roles.
- 13.2 It is proposed that the Department will establish 4 panels of reservoir engineers. These are the:
- All reservoir panel
 - Service reservoirs panel
 - Non-impounding reservoirs panel
 - Supervising panel.
- 13.3 The difference between the panels is based on the function. The first three are “inspecting panels”, where members are qualified to design, supervise the construction of, and inspect the different kinds of reservoirs i.e. members of the all reservoir panel may undertake functions on all types of reservoirs, while members of service panel and non-impounding panel can only carry out functions in relation to service reservoirs and non-impounding reservoirs respectively. These engineers can also act as supervising engineers for any reservoir. Supervising engineers are qualified to supervise all reservoirs under the Act and advise the reservoir managers on the safety of a reservoir between inspections.
- 13.4 The draft Order at Annex E provides the sections of the Act under which members of each panel may be commissioned and is summarised below:-
- All Reservoirs Panel - members of this panel are qualified to design and supervise the construction and alteration of, to inspect and

report upon, to act as supervising engineers, to act as referees and for the purposes of emergency powers for all the reservoirs to which the Act applies.

Service Reservoirs Panel - members of this panel are qualified to design and supervise the construction of, to inspect and report on, and to act for the purposes of emergency powers for service reservoirs and to act as supervising engineer for all reservoirs to which the Act applies. A service reservoir is a non-impounding reservoir which is constructed of brickwork, masonry, concrete or reinforced concrete.

Non-impounding Reservoir Panel - members of this panel are qualified to design and supervise the construction and alteration of, inspect and report upon, to act for the purposes of emergency powers for non-impounding reservoirs and to act as supervising engineers for all reservoirs to which the Act applies. Non-impounding reservoirs do not obstruct or impede the flow of a watercourse, they are filled by pumping or manmade leats etc from an adjacent watercourse.

Supervising Engineers Panel - members of this panel are qualified to supervise all reservoirs to which the Act applies.

- 13.5 These panels of engineers are the same as the panels of reservoir engineers established under the Reservoirs Act 1975, which applies to England and Wales, and the panels of reservoir engineers established under the Reservoirs (Scotland) Act 2011. They recognise the experience and qualifications that an engineer requires to undertake specific roles under the Act. An engineer may specialise in one or more roles therefore an engineer may be appointed to one or more panels, with the exception of the All Reservoirs Panel as they will be qualified to fulfil the roles or functions of an inspecting, supervising and construction engineer for all categories of controlled reservoirs.
- 13.6 Section 103 enables transitional arrangements for the first appointment of engineers to the Northern Ireland panels, utilising appointments made under the Reservoirs Act 1975 to the Defra panels.
- 13.7 For future appointments, the Institution of Civil Engineers (ICE) will recommend to the Department those engineers that it considers suitable for appoint to the appropriate Northern Ireland panels as it does with appointments to the panels in England, Wales and Scotland.

14. Provision to enable the Department to pay reservoir safety grants to reservoir managers

- 14.1 Section 114 of the Act provides the Department with the power by regulations to provide for payment of grants to reservoir managers of controlled reservoirs for the purposes of enabling or assisting the managers to comply with their obligations arising by virtue of the Reservoirs Act.
- 14.2 The draft regulations at Annex D provide for a grant scheme to be developed and be subject to such terms and conditions as the Department may determine (including conditions as to repayment in the event of contravention of the other terms or conditions on which the grant is made).
- 14.3 Options are currently being developed to inform consideration of an appropriate and affordable grant scheme to assist with the cost of reservoir safety works.

15. Form and content of notices, the form of written statements, reports and certificates under the Act

- 15.1 Under the Reservoirs Act there are a number of requirements for reservoir managers to provide notices to the Department and for panel engineers to issue reports, certificates and written statements to reservoir managers. Section 118 of the Act enables the Department to make further provision in regulations about the form and content of any notice and the form of any report, written statement, or certificate under the Act.
- 15.2 Schedules 5 to 12 to the draft regulations at Annex C provide the form and content of notices to be provided by reservoir managers and schedules 13 to 28 provide the form of any written statement,

reports or certificates to be provided by supervising engineers, inspecting or construction engineers.

- 15.3 The reason for providing the form and content of notices, forms etc. is that it will ensure reservoir managers and engineers provide consistent and easy to understand records. These forms are similar to the forms required under reservoir safety legislation in the rest of the UK.

PART 3 - DESIGNATION

16. Designation Criteria

- 16.1 Section 17 of the Act requires the Department to give a controlled reservoir a reservoir designation as soon as reasonably practicable after registering the reservoir in the controlled reservoirs register. The reservoir designation will determine the management and maintenance regime that will apply to a controlled reservoir as provided by the relevant sections of the Act.
- 16.2 The Department will give each controlled reservoir one of the following designations:-
- High consequence reservoir
 - Medium consequence reservoir
 - Low consequence reservoir
- 16.3 When giving a reservoir designation the Department must take account of the matters provided for by Section 22(1) of the Act, in so far as it is reasonably practicable to do so. These matters are :-
- The potential **adverse consequence** of an uncontrolled release of water from the controlled reservoir, and
 - The **probability** of such a release.
- 16.4 **Adverse Consequences** - Section 22(2) of the Act provides that the potential adverse consequences of an uncontrolled release of water include the potential damage to any of the following:
- Human life or human health;
 - The environment;
 - Economic activity; and
 - Cultural heritage.
- 16.5 The potential adverse consequences to the matters listed above will be scored against set criteria for each designation category as detailed in the summary table below. The highest designation scored against each of the criteria for any of the above will be the designation that the reservoir is given.

- 16.6 **Probability** - There is presently no agreed industry methodology for assessing the probability of an uncontrolled release of water from a reservoir. Therefore, until such time an industry methodology is agreed, the Department will give a reservoir designation based on the potential adverse consequences of an uncontrolled release of water from the controlled reservoir.

Reservoir Designation Maps

- 16.7 To assist in the reservoir designation process the Department has produced two sets of maps for each controlled reservoir. One map shows the flood extent of the reservoir inundation and the other map which will be used for designation purposes will show depths and velocities within the inundation area. The flood extent maps will be publically available at <https://dfi-ni.maps.arcgis.com/home/index.html> however the maps showing depths and velocity will not be available to the public as this information is considered official sensitive.
- 16.8 The maps, developed using computer models, will assume total reservoir failure and show the extent of the potential flooding and detail the depth and velocity of the flood water in the inundation area. The methodology used to produce the inundation maps takes account of the materials used to construct the reservoir and the type of reservoir i.e. whether it is an impounding, non-impounding or service reservoir.
- 16.9 The maps when overlaid with relevant datasets will also detail any of the receptors listed and the designation Panel will consider the impacts on these receptors against the designation criteria. The criteria is detailed in the summary table below.
- 16.10 In addition, as appropriate, engineering and professional judgement/ advice as well as local knowledge may be taken into account when determining the reservoir designation.
- 16.11 The Department will give a controlled reservoir a reservoir designation by notice served on the reservoir manager. The Act provides a reservoir manager with the right for a review of the designation (section 20) and following a review a right of appeal to the Water Appeals Commission (section 21 refers). The Act also requires the Department to re-assess the reservoir designation when it considers it appropriate and in any event at least every 10 years (section 18 refers).

Designation Criteria - Summary Table

Consequence Designation of Controlled Reservoirs			
	High	Medium	Low
Human Life and Health	Risk to life or health for one or more persons within the reservoir inundation area determined by one or more property/properties within the area(s) and represented as danger to all (red), danger to most (orange) or danger to some (yellow) on the Flood Hazard to People mapping.	Not applicable - no requirement for a medium designation in relation to human life and health.	No risk to life or health identified within the reservoir flood inundation area represented as very low hazard (green) on the Flood Hazard to People inundation mapping.
Environment	Not applicable - no requirement of a high consequence designation in relation to the environment.	The inundation from a reservoir is likely to cause loss or a severe impact on one or more SAC, SPA, ASSI or Ramsar features i.e. assessed as having moderate or high vulnerability assessed as a function of 'Susceptibility' x 'Resilience'.	The inundation from a reservoir is likely to cause a significant impact on one or more SAC, SPA, ASSI or Ramsar features i.e. assessed as having very low or low vulnerability assessed as a function of 'Susceptibility' x 'Resilience'

Consequence Designation of Controlled Reservoirs			
	High	Medium	Low
Economic Activity - Commercial/ Business	<p>There is one or more commercial property(ies) or business(es) in the reservoir inundation area and</p> <p>the velocity of water is equal or greater than 2m/s and the depth and velocity combined is equal to or greater than 3m²/s in the inundation area ($V \geq 2\text{m/s}$ and $DV \geq 3\text{m}^2/\text{s}$) represented as red or orange coloured banding on the Binnie and Partners reservoir inundation mapping</p>	<p>Not applicable - no requirement for a medium designation in relation to economic activity Commercial / Business</p>	<p>There is one or more commercial property(ies) or business(es) in the reservoir inundation area and the velocity of water is less than 2m/s or depth and velocity combined is less than 3m²/s in the inundation area ($V < 2\text{m/s}$ or $DV < 3\text{m}^2/\text{s}$) represented as green coloured banding on the Binnie and Partners reservoir inundation mapping.</p>
Economic Activity - transport	<p>There are any of the following in the inundation area:-</p> <ul style="list-style-type: none"> Motorway A class road Airport Railway 	<p>There are B Class and C Class roads in the reservoir inundation area.</p>	<p>There are unclassified roads in the reservoir inundation area.</p>

Consequence Designation of Controlled Reservoirs			
	High	Medium	Low
Economic Activity - Agriculture land	Not applicable - no requirement for a High designation	There is agricultural land classified as Grade 1 or Grade 2 within the inundation area and the velocity of water is equal or greater than 2m/s and the depth and velocity combined is equal to or greater than 3m ² /s in the inundation area ($V \geq 2\text{m/s}$ and $DV \geq 3\text{m}^2/\text{s}$) represented as red or orange coloured banding on the Binnie and Partners reservoir inundation mapping	There is agricultural land classified as Grade 3, Grade 3a, Grade 3b, Grade 4 or Grade 5 within the inundation area or there is agricultural land classified as Grade 1 or Grade 2 in the inundation area and the velocity is less than 2m/s or depth and velocity combined is less than 3m ² /s ($V < 2\text{m/s}$ or $DV < 3\text{m}^2/\text{s}$) represented as green coloured banding on the Binnie and Partners reservoir inundation mapping.

Consequence Designation of Controlled Reservoirs			
	High	Medium	Low
Cultural Heritage	<p>The velocity of water is greater than 2m/s and depth and velocity combined is greater than 7m²/s in the inundation area (V>2m/s and DV>7m²/s represented as red on the inundation map) and</p> <p>there is one or more of the following in the inundation area:- a world heritage site, a listed building, a historic monument in state care, a scheduled historic monument.</p>	<p>The velocity of water is less than 2m/s and depth and velocity combined is greater than 3m²/s but less than 7m²/s in the inundation area (V<2m/s and 3m²/s<DV<7m²/s) represented as orange on the inundation map) and</p> <p>there is one or more of the following in the inundation area:- a world heritage site, a listed building, a historic monument in state care, a scheduled historic monument.</p>	<p>The velocity of water is less than 2m/s or depth and velocity combined is less than 3m²/s in the inundation area (V<2m/s or DV<3m²/s) represented as green on the inundation map</p> <p>and</p> <p>there is one or more of the following in the inundation area:- a world heritage site, a listed building, a historic monument in state care, a scheduled historic monument.</p>

ANNEXES

ANNEX A

DRAFT STATUTORY RULES OF NORTHERN IRELAND

2019 No. 000

FLOOD RISK MANAGEMENT

**The Reservoirs (2015 Act) (Commencement No. 1)
Order (Northern Ireland) 20****

Made - - - -

The Department for Infrastructure ^(a) makes the following Order in exercise of the powers conferred by section 130(2) of the Reservoirs Act (Northern Ireland) 2015^(b) and now vested in it.

Citation and interpretation

1.—(1) This Order may be cited as The Reservoirs (2015 Act) (Commencement No. 1) Order (Northern Ireland) 20**.

(2) In this Order “the Act” means the Reservoirs Act (Northern Ireland) 2015.

Appointed Day

2. The day appointed for the coming into operation of the provisions of the Act specified in the Schedule is <Date> <Month> 20**.

Sealed with the Official Seal of the Department for Infrastructure on



Address
Date

To insert name
A senior officer of the
Department for Infrastructure

^(a) S.R. 2021 No.114 (see article 4).

^(b) 2015 c.8 (N.I.).

SCHEDULE 1

Provisions of the Act coming into operation in accordance with Article 2

<i>Provisions of the Act</i>	<i>Subject matter</i>
Section 3	Matters to be taken into account under section 2(3)
Section 4	Controlled reservoirs: further provision
Section 7	Multiple reservoir managers: supplementary
Section 8	Duty of multiple reservoir managers to co-operate
Section 9	Controlled reservoirs register
Section 10	Reservoir managers' duty to register with the Department
Section 11	Structures or areas which are controlled reservoirs on the relevant date
Section 12	Structures or areas which become controlled reservoirs after the relevant date
Section 13	Structures or areas which are the subject of regulations under section 2(3)
Section 15	Registration: supplementary
Section 16	Offences: registration
Section 17	Giving a reservoir designation
Section 18	Periodic re-assessment of reservoir designation
Section 19	Date on which reservoir designation given under Section 17 or given as different designation under Section 18 takes effect
Section 20	Review by Department of its decision under Section 17 or Section 18
Section 21	Appeal against Department's decision in a review under Section 20
Section 22	Matters to be taken into account under sections 17(3), 18(2), 20(3)(b)(ii) and 21(5)(a)
Section 23	Matters to be taken into account under sections 17(3), 18(2), 20(3)(b)(ii) and 21(5)(a): further provision.
Section 24	High-consequence reservoirs, medium-consequence reservoirs and low-consequence reservoirs: further provision
Section 25(3)	Definition of supervising engineer
Section 26(10) for the purposes of sections 26 and 35	Duties etc. in relation to supervision
Section 30(1)	Inspection timings
Section 30(5) in so far as it defines an "inspecting engineer" as an engineer duly commissioned under section 34 to inspect a high-consequence or medium-consequence reservoir when required by section 30, 31 or 32	Definition of an inspecting engineer

Section 31(1) and (6)	Inspection timings: - reservoir subject to a pre-commencement inspection report and meaning of relevant date
Section 32	Inspection timings: other qualifications
Section 33	Pre-commencement inspection report
Section 34(1)(a), (2), (4) and (5)	Commissioning of an inspecting engineer to undertake inspection
Section 35(1), (4)(a), (b), (e), (f), (g) and (h), (5)(a), (6)(a) and (c) and (7)	Duties etc. in relation to inspection
Section 38(1)(e), except in relation to the requirements of section 34(1)(b)	Offences in relation to requirements of 34(1)(a) commission of inspection engineer and associated penalties as they relate to offences commenced
Section 38(2)(c)	Offence: notice of commission of inspecting engineer
Section 38(3) in relation to an offence under section 38(1)(e) that is attributable to a failure to comply with the requirements of section 30, 31, 32 or 34(1)(a)	Penalties in relation to offences
Section 38(3) in relation to an offence under section 38(2)(c)	Penalty in relation to offence
Section 41	Application of Part 3 etc.
Section 43	Notice to Department and commissioning of construction engineer
Section 44	Supervision of relevant works and reservoir safety by construction engineer
Section 45	Safety report
Section 46	Safety report: compliance
Section 47	Preliminary certificate
Section 48	Construction certificate
Section 49	Final certificate
Section 50	Preliminary and final certificate: compliance
Section 51	Termination of supervision by construction engineer
Section 52	Offences: construction or alteration
Section 53	Offences: failure to comply with safety direction in safety report, preliminary certificate or final certificate
Section 54	Defences: offences under 53(1)
Section 55	Controlled reservoirs subject to relevant works on the commencement date
Section 58	Maintenance of records
Section 59(2) and (3)	Display of emergency response information

Section 60(1)(c), and section 60(3) so far as it relates to failure to comply with requirements of section 58	Offences under Part 4
Section 61	Referral to referee: directions in safety report or inspection report
Section 62	Referral to referee: requirements in preliminary certificate or final certificate
Section 63	Commissioning of referee
Section 64	Powers of referee: referral under section 61(2)
Section 65	Powers of referee: referral under section 62(1)
Section 66	Procedure etc.
Section 67(1)(b) and (c), (2) and (3)	Enforcement notice: commissioning an inspecting or construction engineer
Section 68 in so far as it concerns the commissioning of an inspecting or construction engineer	Offence: failure to comply with a notice under section 67(2)
Section 69 in so far as it concerns the commissioning of an inspecting or construction engineer	Commissioning of engineer by Department
Section 70(b) and(c)	Commissioning by the Department: engineers' reports, certificates, recommendations etc.
Section 74 in relation to an offence under section 53(1)(a)	Offence: failure to comply with direction in safety report further remedies
Section 75	Emergency powers
Section 76 as regards costs in relation to the commissioning of an inspecting or construction engineer under section 69 or costs under section 75	Recovery of costs
Section 77	Stop notices
Section 78	Stop notices: content and procedure
Section 79	Stop notices: compensation
Section 80	Stop notices: enforcement
Section 90(1)(a)	Consultation: section 77(2)(stop notices)
Section 90(2) in relation to the consultation required by section 77(2)	Persons to be consulted
Section 91 in relation to regulations under section 77(1)	Recovery by the Department of certain costs in relation to regulations under section 77(1)

Section 98, except so far as it defines a “relevant engineer” as a supervising engineer (including a nominated representative of a supervising engineer under section 26(7) who is acting as such in the event of the supervising engineer being unavailable)	Affording of reasonable facilities to engineers
Section 99	Power of the Department to require information and assistance from reservoir managers
Section 100, in relation to failure to comply with the requirements of section 98 as respects a relevant engineer who is not a supervising engineer (including a nominated representative of a supervising engineer under section 26(7) (a) who is acting as such in the event of the supervising engineer being unavailable), and in relation to failure to comply with the requirements of section 99	Offences: section 98 and 99
Section 101	Power to require information and assistance from others
Section 102	Panels of reservoir engineers
Section 103	Appointment of members to panels: further provision
Section 104	Removal of panel members
Section 105	Dissolution or alteration of panels etc.
Section 106	Review of decision not to appoint, or to remove civil engineers from panels etc.
Section 107	Consultation with Institution of Civil Engineers
Section 108	Reimbursement of costs incurred by Institution of Civil Engineers

Section 109(1) and (3) to (5), except so far as relating to: an appeal by virtue of regulations under 27(1); an appeal under section 76 as regards costs in relation to the commissioning of a supervising engineer under section 69; an appeal under section 76 as regards costs under section 71 or 73; or an appeal by virtue of regulations under section 81(1), 83(1) or 86(1)	Power of Water Appeals Commission to award costs in appeals
Section 109(2)(a) and (e)	Power of Water Appeals Commission to award costs in appeal under section 21 and by virtue of regulations under section 77(1)
Section 109(2)(d) except so far as relating to: an appeal under section 76 as regards costs in relation to the commissioning of a supervising engineer under section 69; or an appeal under section 76 as regards costs under section 71 or 73.	Power of Water Appeals Commission to award costs in appeals
Section 110 except so far as relating to: an appeal by virtue of regulations under 27(1); an appeal under section 76 as regards costs in relation to the commissioning of a supervising engineer under section 69; an appeal under section 76 as regards costs under section 71 or 73; or an appeal by virtue of regulations under section 81(1), 83(1) or 86(1)	Orders as to costs in relation to an appeal
Section 111 except so far as relating to: an appeal by virtue of regulations under 27(1); an appeal under section 76 as regards costs in relation to the commissioning of a supervising engineer under section 69; an appeal under section 76 as regards costs under section 71 or 73; or an appeal by virtue of regulations under section 81(1), 83(1) or 86(1)	Fees in relation to appeals
Section 112	Time limit for certain summary offences under the Act
Section 113	National security: further provision
Section 115	Assessment of engineers' reports etc.

Section 116	Publication of information as regards ranges of costs of engineers' services
Section 117	Notice to the Department of revocation of commissioning, or resignation, of engineer
Section 118	Form and content of notices, reports, certificates etc.
Section 119	Electronic serving or giving of notices or other documents
Section 120	Change to the Institution of Civil Engineers
Section 121	Civil liability
Section 122	Application to the Crown
Section 123	Enforcement in relation to the Crown
Section 124	Service or giving of notices or other documents: the Crown
Section 125	Offences by bodies corporate and partnerships
Section 129	Minor and consequential amendments and repeals
Schedule 1	Pre-commencement inspection reports: review of decision under section 33(2)
Schedule 3	Minor and consequential amendments
Schedule 4	Repeals

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the coming into operation of the provisions of the Reservoirs Act (Northern Ireland) 2015 listed in the Schedule to the Order.

ANNEX B

Draft Order laid before the Assembly under Section 130(3) of the Reservoirs Act (Northern Ireland) 2015, for approval

DRAFT STATUTORY RULES OF NORTHERN IRELAND

20 No.****

FLOOD RISK MANAGEMENT

The Reservoirs (2015 Act) (Commencement No. 2) Order
(Northern Ireland) 20**

Made - - - - - ***
Laid before the Assembly in draft ***
Coming into operation ***

The Department for Infrastructure^(a), in exercise of the powers conferred by section 130(2) of the Reservoirs Act (Northern Ireland) 2015^(b) and now vested in it, makes the following Order.

Citation and interpretation

- 1. — (1) This Order may be cited as the Reservoirs (2015 Act) (Commencement No. 2) Order (Northern Ireland) 20**.
- (2) In this Order “the Act” means the Reservoirs Act (Northern Ireland) 2015.

Appointed Day

2. The day appointed for the coming into operation of the provisions of the Act listed in the Schedule is <Date> <Month> 20**.

Sealed with the Official Seal of the Department for Infrastructure on ***



Address
Date

Name to be inserted
A senior officer of the Department for Infrastructure

^(a) S.R. 2021 No. 114 (see article 4).
^(b) 2015 c.8 (N.I.)

SCHEDULE

Provisions of Act coming into operation in accordance with Article 2

<i>Provisions of the Act</i>	<i>Subject matter</i>
Section 25(1), (2), (4) and (5)	Supervision requirement and commissioning of supervising engineer etc.
Section 26 (1) to (9)	Duties etc. in relation to supervision
Section 26(10), for the purposes of sections 27 to 31 and 37	References to supervising engineer
Section 27	Regulations as to visits by supervising engineer
Section 28	Visual inspection directed under section 26(4) (a): further provision
Section 29	Nominated representative under section 26(7) (a): further provision
Section 30(2) to (4)	Inspection timing: general requirements
Section 30(5), in so far as it defines an “inspecting engineer” as an engineer duly commissioned under section 34 to supervise the taking of a measure referred to in section 34(1)(b)	Definition of an inspecting engineer
Section 31(2) to (5)	Inspection timing: reservoir subject to pre-commencement inspection report
Section 34(1)(b) and (3)	Requirement to commission inspecting engineer to supervise the taking of any measure as mentioned in section 35(4)(e) or taking of a pre-commencement safety recommendation, and the definition of a pre-commencement safety recommendation
Section 35(2), (3) (4)(c), (d) and (i), (5)(b) and (6) (b)	Duties etc. in relation to inspection – specifying duty of a reservoir manager, definition of a pre-commencement inspection report certificate, measures to be specified in an inspection report and need to copy to a supervising engineer
Section 36	Inspection reports: compliance
Section 37	Recording of water levels etc. and record keeping
Section 38(1)(a), (b), (c), (d), and (f)	Offences in relation to sections 25(2), 28(1), 28(2)(a), 28(2)(c), and 37 regarding supervision, inspection and record keeping
Section 38(1)(e) in relation to the requirements of section 34(1)(b)	Offence: securing the supervision by inspecting engineer
Section 38(2)(a), (b), (d) and (e)	Offences in relation to sections 25(4), 26(8)(a) or (b), 35(2) and 36(2)(b) regarding notice to the Department of commissioning of supervising engineer and giving copies of reports etc. to supervising or inspection engineer, and notice to the Department of commissioning of any other qualified engineer

Section 38(3) in relation to an offence under section 38(1) (a), (b), (c), (d) or (f) or (2)(a), (b), (d) or (e)	Penalties in relation to offences
Section 38(3) in relation to an offence under section 38(1)(e) that is attributable to a failure to comply with the requirements of section 34(1)(b)	Penalty in relation to offence
Section 39	Offence in connection with inspection: failure to secure compliance with safety direction or recommendation
Section 40	Defences: offence under section 39(1)
Section 67(1)(a)	Enforcement notice – commissioning of a supervising engineer per section 25(2)
Section 68 in so far as it concerns the commissioning of a supervising engineer	Offence: failure to comply with a notice under section 67(2)
Section 69 in so far as it concerns the commissioning of a supervising engineer	Commissioning of engineer by Department
Section 70(a)	Commissioning by the Department: engineers’ reports, certificates, recommendations etc.
Section 71	Enforcement notice: safety measures
Section 72	Offence: failure to comply with notice under section 71(2)
Section 73	Department’s power to arrange taking of safety measures
Section 74 in relation to an offence under 39(1)	Offence: failure to comply with direction in inspection report or pre-commencement safety recommendation: further remedies
Section 76 as regards costs in relation to the commissioning of a supervising engineer under section 69 and costs under section 71 or 73	Recovery of costs
Section 92	Publication of enforcement action
Section 98, so far as it defines a “relevant engineer” as a supervising engineer (including a nominated representative of a supervising engineer under section 26(7)(a) who is acting as such in the event of the supervising engineer being unavailable)	Affording reasonable facilities to engineers
Section 100, in relation to failure to comply with the requirements of section 98 as respects a relevant engineer who is a supervising engineer (including a nominated representative of a supervising engineer under section 26(7)(a) who is acting as such in the event of the supervising engineer being unavailable)	Offences: section 98
Section 109(1) and (3) to (5), so far as relating to: an appeal by virtue of regulations under section 27(1); an appeal under section 76 as regards costs in relation to the commissioning of a supervising engineer under section 69; or an appeal under section 76 as regards costs under section 71 or 73	Power of the Water Appeals Commission to award costs in relation to an appeal

Section 109(2)(b)	Award of costs in relation to an appeal by virtue of regulations under section 27
Section 109(2)(d) so far as relating to: an appeal under section 76 as regards costs in relation to the commissioning of a supervising engineer under section 69; or an appeal under section 76 as regards costs under section 71 or 73	Award of costs in relation to an appeal under section 76
Section 110 so far as relating to: an appeal by virtue of regulations under section 27(1); an appeal under section 76 as regards costs in relation to the commissioning of a supervising engineer under section 69; or an appeal under section 76 as regards costs under section 71 or 73	Orders as to costs in relation to an appeal
Section 111 so far as relating to: an appeal by virtue of regulations under section 27(1); an appeal under section 76 as regards costs in relation to the commissioning of a supervising engineer under section 69; or an appeal under section 76 as regards costs under section 71 or 73	Fees in relations to appeals
Section 114	Grants

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the coming into operation of the provisions of the Reservoirs Act (Northern Ireland) 2015 listed in the Schedule to the Order.

ANNEX C

DRAFT STATUTORY RULES OF NORTHERN IRELAND

20 No.**

FLOOD RISK MANAGEMENT

The Reservoirs (Northern Ireland) Regulations 20**

<i>Made</i>	- - - - -	20**
<i>Laid</i>		20**
<i>Coming into operation</i>	-	20**

The Department for Infrastructure makes the following Regulations in exercise of the powers conferred by sections 4(2), 9(2), 10(2), 37(1)(e), 37(2), 58(3), 59(2), 66(1), 188 and 127(4) of the Reservoirs Act (Northern Ireland) 2015^(a).

In accordance with section 4(3) of that Act, the Department has consulted the Institution of Civil Engineers and other organisations as it considers appropriate in relation to the calculation of volume.

PART 1

Introduction

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Reservoirs (Northern Ireland) Regulations 20** and shall come into operation on <Date> 20**.
(2) In these Regulations—

- “the Act” means the Reservoirs Act (Northern Ireland) 2015^(b);
- “the Department” means the Department for Infrastructure;
- “final certificate” means a certificate prepared by a construction engineer in accordance with section 49 of the Act;
- “inspection report” means a report prepared by an inspecting engineer in accordance with section 35 of the Act;
- “preliminary certificate” means a certificate prepared by a construction engineer in accordance with section 47 of the Act;
- “relevant engineer” has the same meaning as section 63(4) of the Act;
- “safety report” means a report prepared by a construction engineer in accordance with section 45 of the Act;

^(a) 2015 c. 8 (N.I.)
^(b) 2015 c. 8 (N.I.)

PART 2

Capacity, Registration and Record Keeping

Calculation of volume

2.—(1) For the purposes of sections 1, 2, 41, 45 and 49 of the Act the volume of water capable of being held above the natural level of any part of the surrounding land is to be calculated by measuring the volume of water (in cubic metres) which is capable of being held—

- (a) above the bed of the reservoir; and
- (b) between the toe of the reservoir and its top water level.

(2) Water not capable of flowing out of the reservoir over natural land in the event of an uncontrolled release of water from the reservoir shall not be included in the calculation.

(3) In paragraph (1)—

“bed” in relation to a reservoir includes any silt or other material that is incapable of flowing out of the reservoir over natural land in the event of an uncontrolled release of water;

“natural level” is the level of the natural land remaining after the construction or any alteration of a reservoir;

“surrounding land” is the land adjacent to a reservoir;

“toe” in relation to a reservoir means the point on the downstream side of a dam, reservoir wall, or embankment where the base of the dam, reservoir wall or embankment, as the case may be, meets the lowest natural level of any part of the surrounding land including the lowest bed level of any watercourse;

“top water level” means—

- (a) in the case of a reservoir with a fixed overflow sill, the lowest crest level of that sill;
- (b) in the case of a reservoir the overflow from which is controlled wholly or partly by movable gates, siphons or otherwise, the maximum level to which water may be held exclusive of any provision for flood storage; or
- (c) in the case of a reservoir designed for the purpose of holding back floodwater, the maximum level to which floodwater may be held during any flood event exclusive of any provision for overflow

Controlled reservoirs register

3. The Department will establish and maintain a controlled reservoirs register which must contain the information in relation to each controlled reservoir as specified below—

- (a) name and location of the reservoir;
- (b) designation of the reservoir; and
- (c) a copy of the reservoir inundation outline map.

Information to be provided by a reservoir manager to register a controlled reservoir

4.— (1) The reservoir manager of a controlled reservoir must, under section 10(1) of the Act, register the reservoir with the Department in accordance with sections 11 to 13 of the Act by providing the Department, in writing, with the information specified in Schedule 1.

(2) For the purposes of maintaining the controlled reservoirs register, the Department may request further information or documents in relation to a reservoir from a reservoir manager and the reservoir manager must provide such information to the Department within 28 days of any such request.

Recording of water levels etc. and record keeping

5. — (1) The record of matters (“the recorded matters”) to be maintained by a reservoir manager under section 37(1) of the Act must, in addition to the matters required by subsection (1)(a) to (d) of that section, include the other matters specified in Schedule 2.

(2) The information to be included in relation to the recorded matters and the record to be maintained under section 37(1) must be in the form as specified in Schedule 3.

Record of repairs

6. The information about repairs to low consequence reservoirs to be contained in a record of relevant documents pursuant to section 58(3) (maintenance of records) of the Act must be in the form set out in Schedule 4.

PART 3

Emergency Response and Dispute Referral

Display of emergency response information

7. The reservoir manager of a controlled reservoir must ensure that the following information is displayed at or near the controlled reservoir at all times—

- (a) reservoir name;
- (b) name and address of reservoir manager;
- (c) registration number;
- (d) contact number for the reservoir manager;
- (e) contact telephone number for the Department in the event of an emergency at a high consequence or medium consequence reservoir.

Time within which a referee may be commissioned by agreement

8. The time within which a referee (“the referee”) may be commissioned under section 63(1)(a) (commissioning of referee) of the Act by agreement between the reservoir manager and the relevant engineer, is a period of 60 days beginning with, as the case may be—

- (a) the day on which the inspection report or the safety report, which contains the direction or recommendation which is to be referred to the referee by the reservoir manager under section 61(2) of the Act, was given to the reservoir manager; or
- (b) the day on which the preliminary certificate or the final certificate, which contains the matters which are to be referred to the referee by the reservoir manager under section 62(1) of the Act, was given to the reservoir manager.

Time within which a request to the Institution of Civil Engineers to commission a referee may be made

9. The time within which a request to the Institution of Civil Engineers for the commissioning of a referee (“the referee”) under section 63(1)(b) of the Act may be made, is a period of 70 days beginning with, as the case may be—

- (a) the day on which inspection report or safety report, which contains the direction or recommendation which is to be referred to the referee by the reservoir manager under section 61(2) of the Act, was given to the reservoir manager; or
- (b) the day on which the preliminary certificate or the final certificate, which contains the matters which are to be referred to the referee by the reservoir manager under section 62(1) of the Act, was given to the reservoir manager.

Procedure and manner of the request

10. —(1) Any request to the Institution of Civil Engineers for the commissioning of a referee (“the referee”) under section 63(1)(b) of the Act must be made in writing.

(2) Where the subject of the referral to be made to the referee is a direction or recommendation contained in a safety report or an inspection report, the request must be accompanied by—

- (a) the safety report or the inspection report containing the direction or recommendation;
- (b) a statement specifying the terms of the direction or recommendation in the safety report or, as the

case may be, the inspection report for which the commission is requested;

- (c) where the report containing the direction is a safety report, any safety measure certificate given in relation to the report; and
- (d) where the report containing the direction is an inspection report, any interim inspection compliance certificate given in relation to the report.

(3) Where the subject of the referral to be made to the referee is a matter contained in a preliminary certificate or final certificate, the request must be accompanied by—

- (a) the preliminary certificate or the final certificate which contains the matter; and
- (b) a statement specifying the matter in the preliminary certificate or, as the case may be, the final certificate for which the commission is requested.

Procedure in the referral before the referee

11. —(1) A referee commissioned under section 63(1) must, within a period of 28 days beginning with the day on which the referee is commissioned, invite the reservoir manager in question to give to the referee a statement in writing of the grounds of challenge under, as the case may be—

- (a) section 61(2) (referral to referee: directions or recommendation in a safety report or inspection report) of the Act; or
- (b) section 62(1) (referral to referee: matters in preliminary certificate or final certificate) of the Act.

(2) Where a reservoir manager is invited to give a statement under paragraph (1), the reservoir manager must give the statement in writing to the referee within a period of 28 days beginning with the day on which the reservoir manager is invited to do so.

(3) Where a referee is given a statement in accordance with paragraph (2), the referee must give a copy of the statement to the relevant engineer and invite the engineer to give to the referee observations in writing in relation to the statement within a period of 28 days beginning with the day on which the engineer was given the copy of the statement.

(4) Where the referee is given observations in accordance with paragraph (3), the referee—

- (a) must give a copy of the observations to the reservoir manager and invite the manager to give to the referee comments in writing in relation to the observations within a period of 21 days beginning with the day on which the manager was given the copy of the observations; and
- (b) may arrange to meet the reservoir manager and the relevant engineer, or their representatives, to hear any observations that either party may wish to make orally.

(5) The referee may carry out an investigation and this may include an inspection of the reservoir in question (with or without the reservoir manager and the relevant engineer, or their representatives) before making a decision under, as the case may be—

- (a) section 64 (powers of referee: referral under section 61(2)) of the Act; or
- (b) section 65 (powers of referee: referral under section 62(1)) of the Act.

Cost of investigation and proceedings (including the remuneration of the referee)

12. The cost of any investigation and proceedings (including the remuneration of the referee) arising in consequence of a referral under section 61(2) or section 62(1) of the Act are expenses for the purposes of section 66(2) of the Act (expenses of the investigation and proceedings to be paid by the reservoir manager who makes the referral).

PART 4

Form and Content of Notices, Reports, Certificates etc.

Notices by reservoir managers

13. A notice required to be given by a reservoir manager under the Act must be in the form and include the content as specified below—

- (a) Schedule 5: notice under section 7(5) (nomination of reservoir manager);
- (b) Schedule 6: notice under section 15(1) (ceasing to be a reservoir manager);
- (c) Schedule 7: notice under section 15(2) (becoming a reservoir manager);
- (d) Schedule 8: notice under section 25(4) (commissioning of supervising engineer);
- (e) Schedule 9: notice under section 34(2) (commissioning of inspecting engineer);
- (f) Schedule 10: notice under section 43(1) (proposed relevant works);
- (g) Schedule 11: notice under section 43(2) (commissioning of construction engineer);
- (h) Schedule 12: notice under section 117(1) (revocation of commission of a reservoir engineer).

Notices by supervising engineers

14. — (1) A notice required to be given by a supervising engineer under section 26(2)(a) the Act must be in the form and include the content as set out in Schedule 13;

(2) A notice required to be given by a supervising engineer under section 26(2)(g) or (h) must be in the form and include the content as set out in Schedule 14.

Statement by supervising engineer

15. An annual statement given by a supervising engineer under section 26(5) of the Act must be in the form set out in Schedule 15.

Reports by inspecting or construction engineer

16. An inspection report given by an inspecting engineer under section 35 of the Act must be in the form set out in Schedule 16.

17. A safety report given by a construction engineer under section 44 of the Act must be in the form as set out in Schedule 17.

Certificates by inspecting engineer

18. A certificate given by an inspecting engineer under the Act must be in the form as specified below—

- (a) Schedule 18: certificate under section 36(3) (interim inspection compliance certificate);
- (b) Schedule 19: certificate under section 36(5) (inspection compliance certificate).

Certificates by construction engineer

19. A certificate given by a construction engineer under the Act must be in the form as specified below—

- (a) Schedule 20: certificate under section 46 (safety measure certificate);
- (b) Schedule 21: certificate under section 47 (preliminary certificate);
- (c) Schedule 22: certificate under section 48 (construction certificate);
- (d) Schedule 23: certificate under section 49(1) (final certificate for purposes of construction or alteration of a controlled reservoir);
- (e) Schedule 24: certificate under section 49(3) (final certificate for the purposes of discontinuance of a controlled reservoir);
- (f) Schedule 25: certificate under section 49(5) (final certificate for the purposes of abandonment of a controlled reservoir).

Certificates by a referee

20. A certificate given by a referee under the Act must be in the form as specified below—

- (a) Schedule 26: referral certificate under section 64 (referral under section 61(2));
- (b) Schedule 27: referral certificate under section 65 (referral under section 62(1)).

Notice of resignation of engineer

21. A notice regarding the resignation of a reservoir engineer commissioned in relation to a reservoir pursuant to section 117(2) of the Act must be in the form set out in Schedule 28.

Sealed with the Official Seal of the Department for Infrastructure on 20**

(L.S.)

A senior officer of the Department for Infrastructure

SCHEDULE 1

Regulation 4(1)

INFORMATION TO BE PROVIDED BY A RESERVOIR MANAGER TO REGISTER A CONTROLLED RESERVOIR

Reservoir details

Name and location of the controlled reservoir

Reservoir type (i.e. impounding, non-impounding, service)

Public Access – Yes /No

Reservoir manager details (if more than one reservoir manager the details for each manager must be provided).

Name of reservoir manager

Contact name and contact details (if organisation/company)

Part of reservoir with management responsibility

Grid reference of part of reservoir with management responsibility

Postal address of reservoir manager

E-mail address of reservoir manager

Landline telephone number of reservoir manager

Mobile telephone number of reservoir manager

Name of nominated reservoir manager (if applicable)

SCHEDULE 2

Regulation 5(1)

OTHER MATTERS OF WHICH A RECORD MUST BE MAINTAINED UNDER SECTION 37(1) OF THE ACT

- (a) The name of any reservoirs engineer commissioned by the reservoir manager.
- (b) A description of the access to the reservoir.
- (c) The certified level up to which the reservoir may store water, its surface water area, capacity and fetch.
- (d) The structural character of the dam(s), reservoir wall(s) or embankment(s), their date (or approx. date) of completion (if known), height, level of the top of the dam(s), reservoir wall(s) or embankment(s) and of the wave wall above ordnance datum.
- (e) Details of draw off works, bottom outlets, or any other means of lowering the water level, together with their maximum rates of discharge.
- (f) The physical characteristics of direct and indirect catchment areas of the reservoir and method of filling from indirect catchment areas.
- (g) The standard average annual rainfall on direct and indirect catchment areas of the reservoir.
- (h) The type, location and level of spillway works and the safety provisions made in connection with their operation.
- (i) Details of relevant work notified to the Department under section 43 of the Act (proposed works to construct or alter a controlled reservoir).
- (j) The measures taken in the interests of safety or which might affect safety.
- (k) Details of directions by a supervising engineer.
- (l) Any unusual events which could affect the safety of the reservoir.
- (m) The commission of any referee under section 61 of the Act.
- (n) A drawing register detailing all drawings of the reservoir (where available) and its component parts.
- (o) All instrumentation at the reservoir.
- (p) The extent of opening of valves, gates and penstocks, and related information.

SCHEDULE 3

Regulation 5(2)

INFORMATION AND FORM OF RECORD TO BE MAINTAINED UNDER SECTION 37(1) OF THE RESERVOIRS ACT (NORTHERN IRELAND) 2015

RECORD OF MATTERS IN RESPECT OF A CONTROLLED RESERVOIR UNDER SECTION 37(1) OF THE RESERVOIRS ACT (NORTHERN IRELAND) 2015 (“the Act”)

If any of the information is not relevant in relation to the reservoir, “Not Relevant” should be inserted beside the relevant section.

Any information to be provided may be supplemented with relevant drawings

Name and location of reservoir	
Name and address of reservoir manager(s)	

Details of directions under section 37(3) of the Act

Details of any directions by the supervising engineer, inspecting engineer or construction engineer under section 37(3) of the Act as to the manner in which the information is to be recorded and the intervals at which the record is to be updated.

Date	Details of Direction	Name of engineer

WATER LEVELS AND DEPTH OF WATER

A record of water levels and depth of water including the flow of water over the waste weir or overflow should be maintained by recording appropriate entries in the form below

Date	Water level in the reservoir measured relative to the top water level (in metres) (record positive if above top water level and negative if below top water level)	Name of person responsible for entry
Date	Depth of water flowing over waste weir or overflow (in metres)	Name of person responsible for entry

Method of recording water levels		

Datum to which levels are referred e.g. ordnance datum or the level of the overflow sill:

LEAKAGES, SETTLEMENTS OF WALLS OR OTHER WORKS AND REPAIRS

A record of leakages, settlements of walls or other works, and repairs should be maintained by recording entries in the form below

Position and extent of any leakage from the reservoir or settlement of walls or other works, giving date of discovery	Description of action taken consequent on discovery of leakage or settlement (including details of any notifications to the supervising engineer)	Name of person responsible for entry	Date action taken

Details of repairs undertaken on reservoir	Name of person who carried out the works	Date repairs carried out

RESERVOIR ENGINEERS COMMISSIONED BY THE RESERVOIR MANAGER

Supervising engineer

Name:		
Address:		
E-mail address:		
Telephone number (within normal working hours)		
Telephone number (outside normal working hours)		
Period of commission	Date period began	
	Date period ends (or ended)	

Inspecting engineer

Name:		
Address:		
E-mail address:		
Reason for commission (to inspect the reservoir or to supervise the taking of a safety measure or a pre-commencement safety recommendation)		
Period of commission	Date period began	
	Date period ends (or ended)	

Construction engineer

Name:		
Address:		
E-mail address:		
Contact telephone number:		
Reason for commission (tick as appropriate)	Construction of a controlled reservoir (other than restoration to use)	
	Restoration to use of a controlled reservoir	
	Abandonment of a controlled reservoir	
	Discontinuance of a controlled reservoir	
	Other alteration of a controlled reservoir	
Period of commission	Date commenced	
	Date ends (or ended)	

RESERVOIR ACCESS

Description of access giving any restrictions on load, width or height of vehicles using access and details of the construction of the access route:

CERTIFIED LEVEL UP TO WHICH THE RESERVOIR MAY STORE WATER, ITS SURFACE WATER AREA, CAPACITY AND FETCH

Level up to which water may be stored exclusive of flood storage:

Capacity (in m ³)	At the top water level:	
	Between lowest natural level of any part of the surrounding land and the top water level:	
	Between the lowest natural level of any part of the surrounding land and level, as last specified in a certificate given under the Act, exclusive of any provision for flood storage:	

Surface water area (in m ² or km ²)	At the top water level:	
	At level up to which water may be stored, exclusive of flood storage, as it was last specified in a certificate given under the Act:	

Fetch (in metres):	
Fetch direction:	

STRUCTURAL CHARACTER OF DAM, RESERVOIR WALL OR EMBANKMENT

Type (tick as appropriate)	Date of construction
Earth: (specify sealing membrane or core)	
Rockfill: (specify sealing membrane or core)	
Gravity:	
Buttress:	
Other (specify as appropriate)	

DETAILS OF DRAW-OFF WORKS, BOTTOM OUTLETS, ETC

	Details	Maximum rate of discharge (in m ³ /s)
Draw-off works		
Bottom outlets		
Any other means of lowering the level of the water		

PHYSICAL CHARACTERISTICS OF DIRECT AND INDIRECT CATCHMENT AREAS, ETC

Direct catchment area (m ² or km ²):	
Indirect catchment area (m ² or km ²):	

Method of bringing water into the reservoir from the indirect catchment area, with details of any control (including location) or pumps provided and the maximum inflow capacity:

Physical characteristics of direct and indirect catchment areas which affect the rate of storage of water:

STANDARD AVERAGE ANNUAL RAINFALL ON DIRECT AND INDIRECT CATCHMENT AREAS

Details of standard average annual rainfall on the direct and indirect catchment areas of the reservoir according to the meteorological office records:

SPILLWAY WORKS: TYPE, LOCATION AND LEVEL AND THE SAFETY PROVISIONS MADE IN CONNECTION WITH THEIR OPERATION

Type and location (if independent of main dam structure):

	Crest level	Length	Other particulars
Fixed crest weirs			
Syphons (state if air regulated saddle siphons)			
Other gates or valves			
Movable crest gate			
Tunnels or other features affecting discharge capacity			
Emergency spillway			

Movable gates or valves		
Methods of operation (tick as appropriate)	Manual	
	Automatic	
	Float control	
Sequence of operation:		
Source of power:		
Standby arrangement:		

RELEVANT WORK NOTIFIED TO THE DEPARTMENT UNDER SECTION 43 OF THE ACT

Category of relevant work notified to the Department (tick as appropriate)	Construction of a reservoir (other than restoration to use)	
	Restoration to use of a reservoir	
	Abandonment of a reservoir	
	Discontinuance of a reservoir	
	Other alteration of a reservoir	
Details of work:		
Date of notice to the Department:		

MEASURES TAKEN IN THE INTERESTS OF SAFETY OR WHICH MIGHT AFFECT SAFETY

Details of measures directed in a safety report	Dates(s) when measure taken

Details of measures (not for the maintenance) specified in an inspection report which the reservoir manager is directed (under section 35(4)(e)) to ensure are taken under supervision, and the period of time specified within which the measure is to be taken.	Date(s) when measure taken

Details of measures (for the maintenance of the reservoir) specified in an inspection report which the reservoir manager is directed (under section 35(4)(f)) to ensure are monitored by the supervising engineer.	Date(s) when measure taken

Details of any recommendation (relating to the maintenance of the reservoir) which are included pursuant to section 35(4)(b)	Date(s) when recommendation taken

DIRECTIONS BY A SUPERVISING ENGINEER

Details of any direction given under section 26(4) of the Act by the supervising engineer and date of visual inspection completed and observations made			
Date	Details of direction	Date of visual inspection	Observations made

UNUSUAL EVENTS WHICH COULD AFFECT THE SAFETY OF THE RESERVOIR

A record of unusual events, such as seismic activity, that have a bearing on the safety of the reservoir should be maintained by recording entries in the form below

Details of any unusual events which have occurred at or near the reservoir	Date(s) of occurrence of any such events

COMMISSION OF REFEREES UNDER THE ACT

Name of Referee	Date of commission

DRAWING REGISTER

A register of drawings of the reservoir (where available) and its component parts should be maintained by recording appropriate entries in the form below.

Drawing number	Drawing title	Revision number	Approval date

INSTRUMENTATION AT THE RESERVOIR

A record of the type, location, age and condition of instruments installed at the reservoir should be maintained by recording appropriate entries in the form below.

The location of instruments with their reference numbers should be shown on the relevant drawings of the reservoir.

Site reference number instrument	Type and serial number of instrument and key details	Location at the reservoir	Date of installation	Conditions and assessment date

EXTENT OF OPENING OF VALVES, GATES AND PENSTOCKS

A record of the extent that valves, gates and penstocks are open should be maintained by recording appropriate entries in the form below.

Date	Type and location of equipment (gate, valve and penstock)	Extent of opening	Name, signature and position of engineer or person responsible for the entry
Method of recording extent of opening for each type of equipment:			

Procedures used for opening each type of equipment and for reading the extent of opening:

SCHEDULE 4

Regulation 6

INFORMATION ABOUT REPAIRS TO LOW CONSEQUENCE RESERVOIRS TO BE INCLUDED IN RECORD OF RELEVANT DOCUMENTS UNDER SECTION 58(3) OF THE RESERVOIRS ACT (NORTHERN IRELAND) 2015

INFORMATION ABOUT REPAIRS TO LOW CONSEQUENCE RESERVOIRS TO BE INCLUDED IN RECORD OF RELEVANT DOCUMENTS UNDER SECTION 58(3) OF THE RESERVOIRS ACT (NORTHERN IRELAND) 2015		
Reservoir registration number (as specified in the controlled reservoir register)		
Name and location of reservoir (including grid references, if possible)		
Name and address of reservoir manager(s)		
Details of repairs to reservoir	Name of person, position, and signature of person or engineer who carried out the works or repair	Date repairs carried out

SCHEDULE 5

Regulation 13(a)

FORM AND CONTENT OF NOTICE UNDER SECTION 7(5) OF THE RESERVOIRS ACT (NORTHERN IRELAND) 2015 – NOMINATION OF RESERVOIR MANAGER

NOTICE OF NOMINATION OF RESERVOIR MANAGER UNDER SECTION 7(5) OF THE RESERVOIRS ACT (NORTHERN IRELAND) 2015	
Name of reservoir.	
Name and address (including postcode) and telephone number of the nominating manager.	
Name and address (including postcode) and telephone number of the nominee.	
Date on which nomination takes effect.	
The requirements which the nominee will fulfil and the rights to be exercised under the Reservoirs Act (NI) 2015 are as follows:-	
Signature of nominating manager.	
Date	
I hereby accept all of the responsibilities specified in this nomination.	
Signature of nominee.	
Date	

This notice must, not later than 28 days after the date the notice is signed by the nominee, be given by the nominating reservoir manager to the Department and all other managers of the reservoir and any supervising engineer, inspecting engineer, other qualified engineer, or construction engineer, commissioned in relation to the reservoir.

SCHEDULE 6

Regulation 13(b)

FORM AND CONTENT OF NOTICE UNDER 15(1) OF THE RESERVOIRS ACT
(NORTHERN IRELAND) 2015 – CEASING TO BE A RESERVOIR MANAGER

NOTICE OF CEASING TO BE A RESERVOIR MANAGER UNDER SECTION 15(1) OF THE RESERVOIRS ACT (NORTHERN IRELAND) 2015	
Name of reservoir.	
Name and address (including postcode) of the person ceasing to be the reservoir manager.	
Date when cessation of being the reservoir manager takes effect.	
Name and address (including postcode) of the person who has (or will) become the reservoir manager.	
Signature of the person ceasing to be the reservoir manager	
Date	

SCHEDULE 7

Regulation 13(c)

FORM AND CONTENT OF NOTICE UNDER 15(2) OF THE RESERVOIRS ACT (NORTHERN IRELAND) 2015– BECOMING A RESERVOIR MANAGER

NOTICE OF BECOMING A RESERVOIR MANAGER UNDER SECTION 15(2) OF THE RESERVOIRS ACT (NORTHERN IRELAND) 2015	
Name of reservoir.	
Name and address (including postcode) and telephone number of the person who has (or will) become the reservoir manager.	
Date when becoming the reservoir manager takes effect.	
Name and address (including postcode) of the person ceasing to be the reservoir manager.	
Signature of person who has (or will) become the reservoir manager.	
Date	

SCHEDULE 8

Regulation 13(d)

**FORM AND CONTENT OF NOTICE OF COMMISSION OF SUPERVISING
ENGINEER UNDER SECTION 25(4) OF THE RESERVOIRS ACT
(NORTHERN IRELAND) 2015**

NOTICE OF COMMISSION OF SUPERVISING ENGINEER UNDER SECTION 25(4) OF THE RESERVOIRS ACT (NORTHERN IRELAND) 2015	
Name of reservoir.	
Name and address (including postcode) of the reservoir manager.	
Name of the supervising engineer/Business address (including postcode)/E-mail address/ Telephone number(s)	
Date of commission.	
Signature of reservoir manager	
Date	

SCHEDULE 9

Regulation 13(e)

FORM AND CONTENT OF NOTICE OF COMMISSION OF INSPECTING ENGINEER UNDER SECTION 34(2) OF THE RESERVOIRS ACT (NORTHERN IRELAND) 2015

NOTICE OF COMMISSION OF INSPECTING ENGINEER UNDER SECTION 34(2) OF THE RESERVOIRS ACT (NORTHERN IRELAND) 2015	
Name of reservoir.	
Name and address (including postcode) of reservoir manager.	
Name/Business Address (including postcode)/ E-mail address/Telephone number(s) of the inspecting engineer commissioned.	
Date of commission.	
Engineer commissioned to *inspect reservoir/*supervise measures in the interest of safety (*delete as appropriate)	
Signature of reservoir manager	
Date	

SCHEDULE 10

Regulation 13(f)

FORM AND CONTENT OF NOTICE OF PROPOSED RELEVANT WORKS AS
REQUIRED BY SECTION 43(1) OF THE RESERVOIRS ACT
(NORTHERN IRELAND) 2015.

NOTICE OF PROPOSED RELEVANT WORKS UNDER SECTION 43(1) OF THE RESERVOIRS ACT (NORTHERN IRELAND) 2015	
* Location of the proposed works to construct a controlled reservoir.	
*Name of the controlled reservoir which is to be altered.	
Type of works to be undertaken at a controlled reservoir:	<p>* Construction (including restoration to use)</p> <p>*Alteration (not amounting to discontinuation or abandonment)</p> <p>*Abandonment (structure is to be made incapable of filling with water above the natural level of any part of the surrounding land)</p> <p>*Discontinuance (structure is to be made incapable of holding 10,000 cubic metres of water above the natural level of any part of the surrounding land)</p>
Date when the proposed works will commence.	
Date (or approximate date) when the proposed work will be completed.	
Signature of reservoir manager	
Date	

***Delete as appropriate**

SCHEDULE 11

Regulation 13(g)

FORM AND CONTENT OF NOTICE OF COMMISSION OF CONSTRUCTION
ENGINEER UNDER SECTION 43(2) OF THE RESERVOIRS ACT
(NORTHERN IRELAND) 2015

NOTICE OF COMMISSION OF CONSTRUCTION ENGINEER UNDER SECTION 43(2) OF THE RESERVOIRS ACT (NORTHERN IRELAND) 2015	
Name of reservoir.	
Name/Business Address (including postcode)/ E-mail address/Telephone number(s) of the construction engineer commissioned.	
Date of commission.	
Construction engineer commissioned to supervise the *construction/*alteration/*abandonment/*discontinuance of a controlled reservoir. *Delete as appropriate	
Signature of reservoir manager	
Date	

SCHEDULE 12

Regulation 13(h)

FORM AND CONTENT OF REVOCATION OF A COMMISSION OF A RESERVOIR
ENGINEER UNDER SECTION 117(1) OF THE RESERVOIRS ACT
(NORTHERN IRELAND) 2015

NOTICE UNDER SECTION 117(1) OF THE ACT AS REGARDS REVOCATION OF A RESERVOIR ENGINEER	
Name and Location of Reservoir	
Reservoir Manager Name	
Name of reservoir engineer whose commission has been revoked	
Role in which Engineer commissioned i.e. Inspecting Engineer, Supervising Engineer, Construction Engineer	
Date revocation took/takes effect	
Signature of Reservoir Manager	
Date	

SCHEDULE 13

Regulation 14(1)

**FORM AND CONTENT OF NOTICE GIVEN BY A SUPERVISING ENGINEER
UNDER SECTION 26(2)(a) OF THE RESERVOIRS ACT
(NORTHERN IRELAND) 2015**

NOTICE GIVEN BY A SUPERVISING ENGINEER UNDER SECTION 26(2)(a) OF THE RESERVOIRS ACT (NORTHERN IRELAND) 2015	
Name of reservoir.	
Name of reservoir manager.	
The matters that might affect the safety of the reservoir are as follows:	(insert matters)
Signature of supervising engineer	
Date	

SCHEDULE 14

Regulation 14(2)

FORM AND CONTENT OF NOTICE GIVEN BY A SUPERVISING ENGINEER
UNDER SECTION 26(2)(g) or 26(2)(h) OF THE RESERVOIRS ACT
(NORTHERN IRELAND) 2015

NOTICE GIVEN BY A SUPERVISING ENGINEER UNDER SECTION 26(2)(g) or 26(2)(h) OF THE RESERVOIRS ACT (NORTHERN IRELAND) 2015	
Name of reservoir.	
Name of the reservoir manager.	
Which section(s) failed to comply with:- i.e. (g) (i), (ii), (iii) or (h)	Details of failure to comply
(insert section)	(insert details)
Signature of supervising engineer	
Date	

SCHEDULE 15

Regulation 15

FORM OF ANNUAL STATEMENT BY SUPERVISING ENGINEER UNDER SECTION 26(5) OF THE RESERVOIRS ACT (NORTHERN IRELAND) 2015

ANNUAL STATEMENT BY SUPERVISING ENGINEER UNDER SECTION 26(5) OF THE RESERVOIRS ACT (NORTHERN IRELAND) 2015	
Reservoir name.	
<p>I [insert name of engineer] being a member of [insert name of panel to which engineer is appointed], commissioned to supervise the above named controlled reservoir, state in relation to the reservoir that during the period beginning with [insert period start date] and ending with [insert period end date]-</p> <p>(1) In relation to the matters referred to in section 26(2) (a) to (h) and (j) and (k) of the Reservoirs Act (NI) 2015:-</p>	
Matters	Date and reason for any notice issued/Is the reservoir manager's compliance satisfactory/unsatisfactory/General Observations/or N/A
(a) I gave notice to the reservoir manager of anything that may affect the safety of the reservoir.	
(b) I monitored the reservoir manager's compliance with directions or recommendations in the latest inspection report as to measures to be taken in the interests of safety for its maintenance.	
(c) I monitored or watched any matter specified to be monitored or watched in the latest inspection report (see 'note' below).	
(d) I monitored any matter specified to be monitored in a safety report.	
(e) I monitored the reservoir manager's compliance with any preliminary or final certificate.	
(f) I monitored any matter in the final certificate until the next inspection of the reservoir.	
<p>(g) I gave notice to the reservoir manager and Department of any failure to comply with:</p> <ul style="list-style-type: none"> • any directions in the latest inspection report as to measures in the interests for safety which are measures for the maintenance of the reservoir; and/or • a safety report; and/or • a preliminary certificate. 	
(h) I gave notice to the reservoir manager and the Department of any failure to comply with a final certificate.	

<p>(i) I monitored the reservoir manager's compliance with the requirement of section 37 – recording of water levels etc. and record keeping.</p>	
<p>(j) I undertook site visits to the reservoir on (enter dates).</p>	
<p>2. The reservoir manager [insert name of reservoir manager] took the following measures in the interests of reservoir safety or otherwise to maintain the reservoir:- [insert measures or 'None' if applicable]</p>	
<p>3. I gave the reservoir manager a written recommendation in accordance with section 26(3) to have the reservoir inspected and specified that the inspection should take place by [insert date or N/A if not applicable]. This was copied to the Department on [enter date].</p>	
<p>4. I gave the reservoir manager a written direction in accordance with section 26(4)(a) to carry out a visual inspection of the reservoir for the purpose of identifying anything which may affect the safety of the reservoir on [insert date of direction or N/A if not applicable]. This was copied to the Department on [enter date].</p>	
<p>5. A written record of the visual inspection is maintained *Yes/No. [*delete as appropriate or N/A if not applicable].</p>	
<p>6. Notice of anything identified that may affect the safety of the reservoir was provided to me on *[enter date]. *N/A if not applicable [*delete as appropriate]</p>	
<p>Signature</p>	
<p>Date</p>	

Note: The 'latest inspection report' includes a pre-commencement inspection report under section 33 of the Act.

SCHEDULE 16

Regulation 16

FORM OF INSPECTION REPORT BY AN INSPECTING ENGINEER UNDER
SECTION 35 OF THE RESERVOIRS ACT (NORTHERN IRELAND) 2015

INSPECTION REPORT BY AN INSPECTING ENGINEER UNDER SECTION 35 OF THE RESERVOIRS ACT (NORTHERN IRELAND) 2015	
Name of the reservoir.	
Name of the reservoir manager.	
Name of the inspecting engineer.	
Date(s) of the inspection.	
Inspection report details	
<p>1. I consider that the following measures should be taken in the interests of the safety of the reservoir including measure(s) for the maintenance of the reservoir. I direct the reservoir manager to ensure that the measures are taken in accordance with 5 and 6 below as appropriate: (Insert 'None' if appropriate)</p> <p>2. I consider:</p> <p>(a) That the following matter(s) are relevant to the maintenance of the reservoir: (Insert 'None' if there are no such matters)</p> <p>(b) I make the following recommendation as regards the matter(s) relevant to the maintenance of the reservoir: (Insert 'None' if there are no recommendation as regards the matter).</p> <p>3. The following measure(s) in the interests of the safety of the reservoir were also specified in the previous inspection report: (Insert 'None' if appropriate).</p> <p>4. The following measure(s) in the interests of the safety of the reservoir, which were specified in the previous inspection report, have not been taken and I consider it/they should no longer be taken because of the reason(s) specified below in relation to each measure: (Insert 'None' if appropriate).</p> <p>5. I direct that the reservoir manger takes the following safety measure(s) under the supervision of an inspecting engineer and within the period of time stated: (Insert 'None' if appropriate).</p> <p>6. I direct the reservoir manager to ensure that the following safety measure(s) in relation to maintenance is/are monitored by a supervising engineer: (Insert 'None' if appropriate).</p> <p>7. I recommend that the following matter(s) should be monitored by a supervising engineer until the next inspection of the reservoir: (Insert 'None' if appropriate).</p> <p>8. I recommend the next inspection of the reservoir should take place not later than (*Insert date).</p> <p>9. I consider that the supervising engineer should visit the reservoir more frequently than is required of the supervising engineer by virtue of regulations made under section 27(1) of the Reservoirs Act (NI) 2015: Insert at what intervals, when, or in what circumstances, any additional visit(s) should take place. (Insert 'N/A' if more frequent visits are not required).</p>	
Signature	
Date	

*It should be noted that controlled reservoirs that are given a Medium Consequence designation are not subject to the 10 year inspection cycle. Rather, reservoirs given a Medium Consequence designation are required to be inspected within one year of the initial designation being given and thereafter as recommended by the supervising engineer or at any time recommended by an inspecting engineer in an inspection report.

SCHEDULE 17

Regulation 17

FORM OF SAFETY REPORT BY CONSTRUCTION ENGINEER UNDER SECTION 44
OF THE RESERVOIRS ACT (NORTHERN IRELAND) 2015

SAFETY REPORT BY CONSTRUCTION ENGINEER UNDER SECTION 44 OF THE RESERVOIRS ACT (NORTHERN IRELAND) 2015	
Name of reservoir.	
Name of reservoir manager.	
Name of construction engineer.	
Date(s) of safety inspection.	
I consider that the following measures are necessary in the interests of the safety of the controlled reservoir (see note below):	
I direct the reservoir manager to ensure that the measures specified in this report are taken under my supervision and within the period of time that I have specified.	
I consider that the following matters should be monitored by the supervising engineer until I issue a final certificate in respect of the relevant works: (delete if there are no such matters)	
Signature	
Date	

Note

Where the safety report relates to a controlled reservoir which is being:

1. Constructed, restored to use, or is subject to alteration for the purpose of increasing or decreasing capacity (but not abandonment or discontinuance), the measures must include in particular any measures the construction engineer considers should be taken before the reservoir may safely be used for the collection and storage of water;

2. Discontinued, the measures must include in particular any measures the construction engineer considers are necessary to secure that the resulting structure:

- (a) is incapable of holding 10,000 cubic metres of water above the natural level of the surrounding land; and
- (b) may safely be used for the collection and storage of water above the natural level of any part of the surrounding land.

3. Abandoned, the measures must include in particular any measures the construction engineer considers are necessary to secure that the reservoir is incapable of filling with water above the natural level of any part of the surrounding land.

SCHEDULE 18

Regulation 18(a)

FORM OF INTERIM INSPECTION COMPLIANCE CERTIFICATE UNDER SECTION 36(3) OF THE RESERVOIRS ACT (NORTHERN IRELAND) 2015

FORM OF INTERIM INSPECTION COMPLIANCE CERTIFICATE UNDER SECTION 36(3) OF THE RESERVOIRS ACT (NORTHERN IRELAND) 2015	
Name of reservoir.	
Name of reservoir manager.	
<p>I [insert name of engineer] being a member of [insert name of panel to which engineer is appointed], commissioned by the *reservoir manager/Department [*delete as appropriate] as the engineer to supervise the taking of measures specified in an inspection report dated [insert date of inspection report] in relation to the above named controlled reservoir:</p> <p>I am satisfied that the following measure(s) directed in the inspection report has/have been taken:</p> <p>[Insert measure(s) directed in the report which has or have been taken and the date on which it was/they were taken.</p> <p>I am satisfied that the following measure(s) directed in the inspection report have yet to be taken:</p> <p>[insert measure(s) directed in the report which has or have yet to be taken].</p>	
Signature	
Date	

SCHEDULE 19

Regulation 18(b)

FORM OF INSPECTION COMPLIANCE CERTIFICATE UNDER SECTION 36(5) OF
THE RESERVOIRS ACT (NORTHERN IRELAND) 2015

FORM OF INSPECTION COMPLIANCE CERTIFICATE UNDER SECTION 36(5) OF THE RESERVOIRS ACT (NORTHERN IRELAND) 2015	
Name of reservoir.	
Name of reservoir manager.	
<p>I [insert name of engineer] being a member of the [insert name of panel to which engineer is appointed], commissioned by the *reservoir manager/Department [delete as appropriate] as the engineer to supervise the taking of measures specified in an inspection report dated [insert date of inspection report] in relation to the above named controlled reservoir, am satisfied that all the measure(s) directed in the inspection report has/have been taken.</p> <p>The measure(s) were completed on (insert date of completion).</p>	
Signature	
Date	

SCHEDULE 20

Regulation 19(a)

FORM OF SAFETY MEASURE CERTIFICATE UNDER SECTION 46 OF THE
RESERVOIRS ACT (NORTHERN IRELAND) 2015

FORM OF SAFETY MEASURE CERTIFICATE UNDER SECTION 46 OF THE RESERVOIRS ACT (NORTHERN IRELAND) 2015	
Name of the reservoir.	
Name of the reservoir manager.	
<p>I [insert name of engineer] being a member of the [insert name of panel to which engineer is appointed], commissioned as the construction engineer to supervise the taking of measures specified in a safety report dated [insert date of safety report] in relation to the above named controlled reservoir, am satisfied that the following measure(s) directed in the safety report has/have been taken:</p> <p>[Insert measure(s) directed in the report which has or have been taken].</p> <p>The measure(s) was/were completed on (insert date(s) of completion).</p> <p>The following measure(s) directed in the safety report have yet to be taken:</p> <p>[insert measure(s) directed in the report which has or have yet to be taken or None if no further measures to be taken]</p> <p>I consider that the following measure(s) specified in the safety report need no longer be taken: [insert measure(s) that no longer need to be taken or N/A if not applicable].</p>	
Signature	
Date	

SCHEDULE 21

Regulation 19(b)

FORM OF PRELIMINARY CERTIFICATE UNDER SECTION 47 OF THE
RESERVOIRS ACT (NORTHERN IRELAND) 2015

PRELIMINARY CERTIFICATE BY CONSTRUCTION ENGINEER UNDER SECTION 47 OF THE RESERVOIRS ACT (NORTHERN IRELAND) 2015	
Name of reservoir.	
Name of reservoir manager.	
<p>I [insert name of engineer] being a member of [insert name of panel to which engineer is appointed], commissioned to supervise the relevant works for the purpose of the</p> <p>[construction (including restoration to use)]</p> <p>[alteration (not amounting to the discontinuance or the abandonment)]</p> <p>[abandonment]</p> <p>[discontinuance] (delete as appropriate) of the above named controlled reservoir</p> <p>am satisfied that the</p> <p>[reservoir may be safely filled (wholly or partially) with water].</p> <p>or</p> <p>[level of water in the reservoir should be reduced]. (delete as appropriate)</p> <p>The level of water held in the reservoir must not exceed [insert the level (above ordnance datum) that the water in the reservoir must not exceed] (the “specified level”).</p> <p>I require you as the reservoir manager to ensure that the level of water in the reservoir does not exceed the specified level.</p> <p>[The following requirements are imposed as to the manner in which the level of water in the reservoir may be increased or decreased;</p> <p>[insert requirements that the engineer considers appropriate as to the manner in which the level of water in the reservoir may be increased or decreased].] (delete if no requirements imposed)</p> <p>This certificate:</p> <p>(a) Replaces any previous preliminary certificate applicable to the reservoir in respect of these relevant works; and</p> <p>(b) Ceases to have effect on the issue of the final certificate applicable to the reservoir in respect of these works.</p>	
Signature	
Date	

SCHEDULE 22

Regulation 19(c)

FORM OF CONSTRUCTION CERTIFICATE UNDER SECTION 48 OF THE
RESERVOIRS ACT (NORTHERN IRELAND) 2015

CONSTRUCTION CERTIFICATE BY CONSTRUCTION ENGINEER UNDER SECTION 48 OF THE RESERVOIRS ACT (NORTHERN IRELAND) 2015	
Name of reservoir.	
Name of the reservoir manager.	
<p>I [insert name of engineer] being a member of [insert name of panel to which engineer is appointed], commissioned to supervise relevant works for the purpose of the</p> <p>[construction (including restoration to use)]</p> <p>[alteration (not amounting to the discontinuance or the abandonment)]</p> <p>[abandonment]</p> <p>[Discontinuance] (delete as appropriate)</p> <p>of the above named controlled reservoir [for which a preliminary certificate was given on [insert date of certificate] (delete if no preliminary certificate given), being satisfied that the relevant works have been completed to a satisfactory standard, certify that the relevant works have been executed satisfactorily in accordance with the detailed drawings and descriptions included in the annex to this certificate. (see note below).</p>	
Signature	
Draft	

Note

In accordance with section 48(3)(a) of the Reservoirs Act (Northern Ireland) 2015, the annex must contain detailed drawings and descriptions giving full information about the relevant works, including the dimensions, water levels and details of the geological strata or deposits encountered in bore holes, trial holes or excavations made in connection with the works.

SCHEDULE 23

Regulation 19(d)

FORM OF FINAL CERTIFICATE UNDER 49(1) OF THE RESERVOIRS ACT
(NORTHERN IRELAND) 2015 FOR THE PURPOSES OF CONSTRUCTION OR
ALTERATION OF A CONTROLLED RESERVOIR

FINAL CERTIFICATE BY CONSTRUCTION ENGINEER UNDER SECTION 49(1) OF THE RESERVOIRS ACT (NORTHERN IRELAND) 2015	
Name of reservoir.	
Name of the reservoir manager.	
<p>I [insert name of engineer] being a member of [insert name of panel to which engineer is appointed], commissioned to supervise relevant works for the purpose of the</p> <p>[construction (including restoration to use)]</p> <p>[alteration (not amounting to the discontinuance or the abandonment)] (delete as appropriate)</p> <p>of the above named controlled reservoir [for which a preliminary certificate was given on [insert date of certificate]] (delete if no preliminary certificate given),</p> <p>consider that the reservoir is sound and satisfactory and may safely be used for the collection and storage of water.</p> <p>[I recommend that an early inspection of this reservoir should take place before [insert date by which the inspection should take place].](delete if an early inspection is not appropriate) (see note below)</p> <p>[I consider that the following matters should be monitored, until the first or next inspection of this reservoir under section 32 of the Reservoirs Act (Northern Ireland) 2015 is undertaken, by the supervising engineer commissioned in relation to the reservoir under section 25 of that Act:- [insert matters which the construction engineer considers should be monitored].] (delete if no matters are considered appropriate).</p> <p>The level of water held in the reservoir must not exceed [insert the level (above ordnance datum) that the water in the reservoir must not exceed] (the “specified level”). The reservoir manager must ensure that the level of water in the reservoir does not exceed the specified level.</p> <p>[The following requirements are imposed as to the manner in which the level of the water in the reservoir may be increased or decreased:</p> <p>[insert requirements that the construction engineer considers appropriate as to the manner in which the level of water in the reservoir may be increased or decreased].] (delete if no such requirements)</p>	
Signature	
Date	

NOTE

In accordance with section 32 the reservoir manager must secure that a high or medium consequence reservoir which has been subject to relevant works is inspected before the end of the period of 2 years beginning with the date of the final certificate for the relevant works.

SCHEDULE 24

Regulation 19(e)

FORM OF FINAL CERTIFICATE UNDER SECTION 49(3) OF THE RESERVOIRS
ACT (NORTHERN IRELAND) 2015 FOR THE PURPOSES OF DISCONTINUANCE
OF A CONTROLLED RESERVOIR

FINAL CERTIFICATE BY CONSTRUCTION ENGINEER UNDER SECTION 49(3) OF THE RESERVOIRS ACT (NORTHERN IRELAND) 2015	
Name of the reservoir.	
Name of the reservoir manager.	
<p>I [insert name of engineer] being a member of [insert name of panel to which engineer is appointed], commissioned to supervise relevant works for the purpose of the discontinuance of the above named controlled reservoir, am satisfied:</p> <ul style="list-style-type: none"> (i) that the discontinuance has been safely completed; (ii) that the resulting structure or area is incapable of holding 10,000 cubic metres of water above the natural level of any part of the surrounding land; and (iii) that the resulting structure or area is sound and satisfactory and may safely be used for the collection and storage of water. <p>The level of water held in the reservoir must not exceed [insert the level (above ordnance datum) that the water in the reservoir must not exceed] (the “specified level”). The reservoir manager must ensure that the level of water in the reservoir does not exceed the specified level.</p> <p>[The following requirements are imposed as to the manner in which the level of the water in the reservoir may be increased or decreased: [insert requirements that the engineer considers appropriate as to the manner in which the level of the water in the reservoir may be increased or decreased].] (delete if there are no such requirements).</p>	
Signature	
Date	

SCHEDULE 25

Regulation 19(f)

FORM OF FINAL CERTIFICATE UNDER SECTION 49(5) OF THE RESERVOIRS
ACT (NORTHERN IRELAND) 2015 FOR THE PURPOSES OF ABANDONMENT OF
A CONTROLLED RESERVOIR

FINAL CERTIFICATE BY CONSTRUCTION ENGINEER UNDER SECTION 49(5) OF THE RESERVOIRS ACT (NORTHERN IRELAND) 2015	
Name of reservoir.	
Name of the reservoir manager.	
<p>I [insert name of engineer] being a member of [insert name of panel to which engineer is appointed], commissioned to supervise relevant works for the purpose of the abandonment of the above named controlled reservoir am satisfied that the:</p> <p>(i) abandonment has been safely completed; and</p> <p>(ii) the resulting structure or area is incapable of filling with water above the natural level of any part of the surrounding land.</p>	
Signature	
Date	

SCHEDULE 26

Regulation 20(a)

FORM OF REFERRAL CERTIFICATE UNDER SECTION 64 OF THE RESERVOIRS ACT (NORTHERN IRELAND) 2015

REFERRAL CERTIFICATE BY REFEREE UNDER SECTION 64 OF THE RESERVOIRS ACT (NORTHERN IRELAND) 2015	
Name of the reservoir.	
Name of the reservoir manager.	
<p>I (insert name of referee) being a member of (insert name of the panel of engineers) having been commissioned by [insert name of reservoir manager or Institution of Civil Engineers] (delete as appropriate) to investigate the referred matters (below) regarding a [direction] [recommendation] (delete as appropriate) contained in a [safety report] [inspection report] (delete as appropriate) dated (insert date of report) given by (insert name of engineer who signed the report):</p> <p>As the referee on these matters I have decided [not] to modify the report. (delete as appropriate)</p> <p>[Accordingly, I revise [the report dated (insert date of report)] [and] [the certificate dated (insert date of certificate) which was given with reference to the report,] in the following manner:-] (delete as appropriate if referee decides not to modify the report or insert modifications as appropriate if referee decides to modify the report)] (delete if not applicable)</p> <p>[A copy of the modified [report] [certificate] (delete as appropriate) is attached.](delete if not applicable)</p>	
Signature	
Date	

SCHEDULE 27

Regulation 20(b)

FORM OF REFERRAL CERTIFICATE UNDER SECTION 65 OF THE RESERVOIRS
ACT (NORTHERN IRELAND) 2015

REFERRAL CERTIFICATE BY REFEREE UNDER SECTION 65 OF THE RESERVOIRS ACT (NORTHERN IRELAND) 2015	
Name of the reservoir.	
Name of the reservoir manager.	
<p>I (insert name of referee) being a member of (insert name of panel of engineers) having been commissioned by [insert name of reservoir manager] [Institute of Civil Engineers] (delete as appropriate) to investigate the referred matters (below) regarding a matter contained in the [preliminary certificate] [final certificate] (delete as appropriate) dated (insert date of certificate) given by (insert name of engineer who signed the certificate).</p> <p>As the referee on these matters I have decided [not] to modify the certificate. (delete as appropriate)</p> <p>[Accordingly, I revise the certificate dated (insert date of certificate) in the following manner:- (delete if referee decides not to modify the certificate or insert modifications as appropriate if referee decides to modify the certificate)](delete if not applicable)</p> <p>[A copy of the modified certificate is attached.](delete if not applicable)</p>	
Signature	
Date	

SCHEDULE 28

Regulation 21

NOTICE REGARDING THE RESIGNATION OF A RESERVOIR ENGINEER
COMMISSIONED IN RELATION TO A RESERVOIR UNDER SECTION 117(2) OF
THE RESERVOIRS ACT (NORTHERN IRELAND) 2015

NOTICE UNDER SECTION 117(2) OF THE ACT AS REGARDS RESIGNATION OF A RESERVOIR ENGINEER	
Name and Location of Reservoir	
Reservoir Manager Name	
Name of Reservoir Engineer resigning	
Role in which Engineer commissioned i.e Inspecting Engineer, Supervising Engineer, Construction Engineer	
Date resignation took/takes effect	
Signature of Reservoir Engineer	
Date	

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Reservoirs Act (Northern Ireland) 2015 makes provision for regulations to be made to provide information and procedures to facilitate reservoir managers of controlled reservoirs to implement the requirements of various sections of the Act. These Regulations make provision for:

- (a) How the volume of water capable of being held in a controlled reservoir above the natural level of the surrounding land is to be calculated and provides the definition of various parts of a reservoir (regulation 2);
- (b) The information to be held on the controlled reservoirs register (regulation 3);
- (c) The information that a reservoir manager must provide to the Department to register a controlled reservoir (regulation 4 and Schedule 1);
- (d) The matters to be recorded and the information and form of record that must be maintained in respect of “the recorded matters”.(regulation 5 and 6 and Schedules 2, 3 and 4)
- (e) The emergency response information that must be displayed at a controlled reservoir (regulation 7);
- (f) The detail in relation to the dispute referral process, including the time within which a reservoir manager may commission a referee or request the Institution of Civil Engineers to commission a referee, the procedure and manner of the request, the procedure to be followed by the referee in any investigation and the expenses to be paid by the reservoir manager who made the referral to a referee (regulation 8 to 12);

- (g) The form and content of notices to be given by reservoir managers and the form of notices, statement, reports and certificates to be given by reservoir engineers engaged in work in connection with a controlled reservoir (regulation 13 to 21 and Schedules 5 to 28).

These Regulations do not introduce any new policy and as no significant impact on business, charities or voluntary bodies in addition to the assessment prepared for the introduction of the reservoir safety policy provided for by the Act is foreseen, no regulatory impact assessment has been prepared for these

Regulations.

ANNEX D

Draft Regulations laid before the Assembly under 27(1), 77(1) and 114 of the Reservoirs Act (Northern Ireland) 2015, and subject to affirmative resolution of the Assembly

STATUTORY RULES OF NORTHERN IRELAND

20 No.****

FLOOD RISK MANAGEMENT

The Reservoirs (Visits by Supervising Engineers, Stop Notices and Grants) Regulations (Northern Ireland) 20**

Made - - - - -
Coming into operation -

The Department for Infrastructure makes the following Regulations in exercise of the powers conferred by sections 27(1), 77(1), 114 and 127(4) of the Reservoirs Act (Northern Ireland) 2015(a).

The Department has consulted, as required by Section 77(2) and in accordance with Section 90 of the Act, in relation to the serving of a Stop Notice.

Citation, commencement and interpretation

1. — (1) These Regulations may be cited as the Reservoirs (Visits by Supervising Engineers, Stop Notices and Grants) Regulations (Northern Ireland) 20** and shall come into operation on?????.

(2) In these Regulations—

- (a) “annual written statement” is a statement prepared by a supervising engineer under section 26(5); and
- (b) a reference to a section is a reference to a section of the Reservoirs Act (Northern Ireland) 2015^(a).

Visits by a supervising engineer

2. — (1) Subject to paragraph (3) a supervising engineer must visit a high-consequence or medium-consequence reservoir in accordance with the standard frequency of visits as specified in paragraph (2).

(2) The standard frequency of visits which will apply to a high or medium consequence controlled reservoir is:—

- (a) High Consequence: a supervising engineer must visit the reservoir at least once in every 12 month period;
- (b) Medium Consequence: a supervising engineer must visit the reservoir at least once in every 36 month period.

^(a) 2015 c.8 (N.I.)

(3) If the Department considers that a high-consequence or medium-consequence reservoir is of an acceptable standard as regards how it is being maintained a supervising engineer must visit the reservoir in accordance with the different standard frequency of visits as specified in paragraph (4).

(4) The different standard frequency of visits by a supervising engineer that will apply to a high-consequence or medium-consequence controlled reservoir is:—

- (a) High Consequence: a supervising engineer must visit the reservoir at least once in every 24 month period;
- (b) Medium Consequence: a supervising engineer must visit the reservoir at least once in every 60 month period.

(5) The Department will notify a reservoir manager of the standard frequency of visits or the different standard frequency of visits which applies to their controlled reservoir and accordingly the visits that must be made to it by the supervising engineer.

(6) Nothing in this regulation shall affect the power of an inspecting engineer under section 35(4)(i) to require a supervising engineer to visit a reservoir more frequently and to specify in the inspection report what intervals, when, and in what circumstances, any additional visit should take place.

Acceptable standard as regards how a controlled reservoir is being maintained

3. — (1) The Department will decide whether a controlled reservoir is of an acceptable standard as regards how it is being maintained, and therefore for a reservoir to be of a different standard frequency of visits, taking account of, as appropriate, the following in relation to a reservoir—

- (a) a pre-commencement inspection report which does not contain any measures that should be taken in the interests of safety; or
- (b) a pre-commencement inspection report certificate(s) which specifies that each or all of the measures that should be taken in the interests of safety contained in a pre-commencement inspection report have been taken; or
- (c) an inspection report which does not contain any directions for measures in the interests of safety or does not include any matters that the inspecting engineer recommends should be monitored by a supervising engineer until the next inspection of the reservoir; or
- (d) an inspection compliance certificate which specifies that all of the measures directed in an inspection report, or the pre-commencement inspection report, have been taken; and
- (e) an annual written statement which:—
 - (i) does not contain anything that the supervising engineer considers might affect the safety of the reservoir;
 - (ii) specifies that anything that the supervising engineer considers might affect the safety of the reservoir, previously notified to the reservoir manager under section 26(2)(a), has been resolved;
 - (iii) specifies that the reservoir manager has complied with any direction in the latest inspection report as regards any measure that should be taken in the interests of safety which is a measure for its maintenance;
 - (iv) specifies that the reservoir manager has complied with any recommendation in a pre-commencement inspection report as to a measure that should be taken for its maintenance;
 - (v) specifies that the supervising engineer has monitored any matters that the inspecting engineer recommends should be monitored in the latest inspection report;

- (vi) specifies any notice given to the reservoir manager as to failure to comply with—
 - (aa) any direction or recommendation in the latest inspection report as to measures in the interests of safety as regards the maintenance of a reservoir;
 - (bb) a safety report;
 - (cc) a preliminary or final certificate;
- (vii) specifies that the reservoir manager has complied with a recommendation as to the next inspection of a reservoir;
- (viii) specifies that the reservoir manager has complied with a direction to undertake a visual inspection.

(2) The Department must review the standard frequency of visits by a supervising engineer to a controlled reservoir every time that it receives one of the documents mentioned in paragraph (1) in relation to a reservoir and decide whether or not it considers that the reservoir is of an acceptable standard as to how it is being maintained.

- (3) The Department must notify a reservoir manager within 14 days of making its decision, as to—
- (a) whether or not it considers that the reservoir is of an acceptable standard as regards how it is being maintained and accordingly the standard frequency of visits that must be made to it by a supervising engineer;
 - (b) the reasons why it is considered, or is not considered, to be of an acceptable standard as to how it is maintained; and
 - (c) that the reservoir manager has a right of appeal against the decision of the Department.

Right of appeal against the decision of the Department

4.—(1) A reservoir manager may appeal to the Water Appeals Commission against the decision of the Department. Any appeal must be made in writing within 14 days from the date of the notice which contains the decision.

(2) The decision in respect of which an appeal is made continues to have effect pending a decision by the Water Appeals Commission.

(3) The Water Appeals Commission has the power to confirm or quash the decision of the Department and it must notify the reservoir manager and the Department of its determination.

(4) Where the Water Appeals Commission determines to quash the decision of the Department the Department must issue a notice, within 14 days from the date on which it receives the determination of Water Appeals Commission, to the reservoir manager specifying the frequency of visits that is to be made by a supervising engineer to the reservoir.

Stop Notices

5.— (1) The Department may, by notice (a stop notice) served on a reservoir manager, prohibit a reservoir manager of a controlled reservoir from doing any of the following until the manager has taken the steps specified in the notice—

- (a) carrying on an activity specified in the notice, or
- (b) permitting the carrying on by another of an activity so specified.

(2) A stop notice may only be served in relation to a case where either—

- (a) a reservoir manager is carrying on the activity, or the activity is being carried on by another with the permission of the manager, and the Department reasonably considers that the activity as so carried on either—
 - (i) presents a risk to the safety of the reservoir that may result in an uncontrolled release of water from it, or
 - (ii) involves or is likely to involve the commission of an offence under the Act as specified under paragraph (4), or
- (b) The Department considers that a reservoir manager is likely to carry on, or permit the carrying on of, the activity and that the activity as likely to be carried on either—
 - (i) will present a risk to the safety of the reservoir that may result in an uncontrolled release of water from it, or
 - (ii) will involve, or is likely to involve, the commission of an offence under the Act as specified under paragraph (4).

(3) Where the Department proposes to exercise its power to serve a stop notice in a case mentioned in paragraph (2)(a)(i) or (2)(b)(i) (risk to the safety of the reservoir)—

- (a) the Department must, before it exercises its power—
 - (i) at its own expense commission an engineer who is a member of a panel of reservoir engineers established under section 102 who may (by virtue of an Order under that section) be commissioned in respect of section 77 in relation to the reservoir; and
 - (ii) take into account any recommendation made by the engineer about the steps to be taken by the reservoir manager to remove or reduce the risk to the safety of the reservoir;
- (b) the steps specified in any such stop notice must be steps which will remove or reduce the risk to the safety of the reservoir referred to in paragraphs (2)(a)(i) or (2)(b)(i).

(4) The Department may only issue a stop notice to a reservoir manager in the case of paragraphs (2)(a)(ii) or (2)(b)(ii) where it reasonably considers that the activity as carried on, or as likely to be carried on, involves, will involve or is likely to involve the commission of an offence under one or more of the following provisions—

- (a) section 38(1)(e) in relation to 34(1)(b) (failure to commission an inspecting engineer to supervise any measure in the interests of safety);
- (b) section 52(1) (failure to commission a construction engineer to supervise works to construct or alter a controlled reservoir);
- (c) section 52(2)(a) (failure to give notice to the Department of proposed works to construct or alter a controlled reservoir);
- (d) section 53(1)(a) (failure to take safety measures as directed in a safety report issued by a construction engineer); and
- (e) section 53(1)(b) (failure to undertake any requirements in the manner specified in a preliminary or final certificate issued by a construction engineer).

Information to be included in a stop notice

6. A stop notice must include information as to—

- (a) the grounds for serving the stop notice,
- (b) the steps to be taken by the reservoir manager and the timeframe within which such steps are to be taken,
- (c) the consequences for non-compliance with the stop notice, and
- (d) the details for an appeal to the Water Appeals Commission.

Appeal as to the serving of a stop notice

7. — (1) A reservoir manager on whom a stop notice has been served may appeal to the Water Appeals Commission against the decision of the Department to issue it.

(2) The appeal must be made in writing within 14 days beginning with the day on which the Department served the stop notice on the reservoir manager.

(3) The appeal may be made on any of the following grounds—

- (a) the decision was based on an error of fact,
- (b) the decision was wrong in law,
- (c) the decision was unreasonable,
- (d) any step specified in the notice is unreasonable.

(4) The Water Appeals Commission may confirm, quash or vary the decision and it must notify the reservoir manager and the Department of its determination.

(5) Where the Water Appeals Commission determines to quash or vary the decision, the Department must withdraw the stop notice or, as the case may be, amend the stop notice, within 14 days of the date on which it receives the determination of the Water Appeals Commission.

(6) A stop notice continues to have effect pending the determination of an appeal by the Water Appeals Commission.

Completion Certificate

8.— (1) Where, after serving a stop notice, the Department is satisfied that a reservoir manager has taken all the steps specified in the stop notice, the Department must give the reservoir manager a certificate to that effect (a completion certificate).

(2) A stop notice ceases to have effect when the Department gives the reservoir manager a completion certificate.

(3) A reservoir manager on whom a stop notice is served may at any time apply for a completion certificate.

(4) The Department must make a decision as to whether, or not, to give a completion certificate within 14 days from the date an application for a completion certificate is made by a reservoir manager.

(5) Where the Department decides to give a completion certificate, it must give the completion certificate to the reservoir manager within 14 days of making its decision.

(6) Where the Department decides not to give a completion certificate it must, within 14 days of making its decision, give the reservoir manager notice in writing of that decision and advise the reservoir manager of the right of appeal to the Water Appeals Commission against the decision.

(7) The appeal may be made on any of the following grounds—

- (a) based on an error of fact,
- (b) wrong in law,
- (c) unreasonable.

(8) An appeal to the Water Appeals Commission against the decision of the Department must be made in writing within 14 days from the date of the notice which contains the decision.

(9) The Water Appeals Commission may confirm or quash the decision of the Department not to give a completion certificate and it must notify the reservoir manager and the Department of its determination.

(10) Where the Water Appeals Commission determines that the decision should be quashed, the Department must give a completion certificate within 14 days from the receipt of the Water Appeals Commission determination.

Claim for Compensation

9. — (1) A reservoir manager may make a claim for compensation from the Department for loss suffered as a result of a stop notice being served in the circumstances where the loss was attributed to—

- (a) a stop notice the issue of which is quashed on appeal by the Water Appeals Commission under regulation 7;
- (b) any step in the notice which is varied on appeal by the Water Appeals Commission under regulation 7.

(2) The claim for compensation must—

- (a) be made in writing to the Department;
- (b) detail the loss suffered as a result of the serving of the stop notice and contain supporting evidence of such loss;
- (c) specify the amount of compensation claimed in respect of the loss;
- (d) be made within 60 days from the date of the determination of the Water Appeals Commission to quash the issue of the stop notice or vary the stop notice.

(3) Where a reservoir manager makes a claim for compensation, the Department must, within a period of 28 days beginning with the day that the claim is received, make a decision—

- (a) as to whether or not to pay compensation; and
- (b) if the decision is to award compensation, the amount of the compensation.

(4) The Department must, within 14 days of making a decision under paragraph (3), give the reservoir manager notice in writing of its decision. Where the decision is not to award compensation, or as the case may be, to award an amount of compensation which is less than the amount claimed, it must specify the reasons for that decision in the notice and that the reservoir manager has a right of appeal to the Water Appeals Commission against the decision.

(5) A reservoir manager may appeal, within 14 days beginning with the date of the notice, to the Water Appeals Commission against the decision of the Department—

- (a) not to award compensation; or
- (b) as to the amount of compensation payable.

(6) The Water Appeals Commission has the power to confirm, quash or vary the decision of the Department and it must notify the reservoir manager and the Department of its determination.

Payment of compensation

10. — (1) Where the Department decides to award the amount of compensation claimed it must make the payment to the reservoir manager—

- (a) within a period of 14 days from the date of making its decision where the Department is in possession of the required information to process the payment; or
- (b) within a period of 14 days from the date of receiving the required information to process the payment from the reservoir manager.

(2) Where the Department has decided to award compensation less than the amount claimed and no appeal has been made by the reservoir manager under regulation 9(3), or any such appeal has been withdrawn, it must make the payment to the reservoir manager—

- (a) within a period of 14 days of the expiry date for a reservoir manager to make an appeal to the Water Appeals Commission, or as the case may be, within a period of 14 days from the receipt of confirmation that the appeal has been withdrawn where the Department is in possession of the required information to process payment to the reservoir manager; or
- (b) within a period of 14 days from the date of receiving the required information to process the payment from the reservoir manager.

(3) Where a reservoir manager appeals against the decision of the Department not to award compensation or the amount of compensation payable, the Department must make any such payment in accordance with the determination of the Water Appeals Commission—

- (a) within a period of 14 days of the receipt of the determination of the Water Appeals Commission where the Department is in possession of the required information to process the payment; or
- (b) within a period of 14 days from the date of receiving the required information to process the payment from the reservoir manager.

Offences and Penalties

11. Where a reservoir manager on whom a stop notice is served fails to comply with it, the reservoir manager commits an offence and is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding £20,000, or to both,
- (b) on conviction on indictment—
 - (i) for a first such offence, to imprisonment for a term not exceeding 12 months, or to a fine, or to both,
 - (ii) for any subsequent such offence, to imprisonment for a term not exceeding 2 years, or to a fine, or to both.

Defence

12. It is a defence to a charge in proceedings for an offence under regulation 11 for the reservoir manager to show both—

- (a) that the failure to comply with the stop notice was as a result of either an accident which could not reasonably have been foreseen or natural cause or force majeure which was exceptional and could not reasonably have been foreseen; and

- (b) that the reservoir manager—
 - (i) took all practicable steps to prevent an uncontrolled release of water from the reservoir,
 - (ii) took all practicable steps as soon as was reasonably practicable to rectify the failure,
 - (iii) provided particulars of the failure to the Department as soon as practicable after the failure arose.

Recovery of costs by the Department

13. — (1) The Department may, by notice served, require a reservoir manager on whom a stop notice is served to pay the amount of any costs reasonably incurred by the Department in relation to (and up to the time of) the service of the stop notice.

(2) The costs to be recovered may include—

- (a) investigation costs;
- (b) administration costs;
- (c) costs of obtaining expert advice, including legal advice.

(3) A notice served on a reservoir manager to recover costs must include—

- (a) a breakdown of the costs;
- (b) the total amount to be paid;
- (c) how payment is to be made;
- (d) the period within which the payment is to be made;
- (e) the right of appeal and the timeframe within which an appeal may be made.

(4) A reservoir manager on whom a notice is served may appeal to the Water Appeals Commission against the following—

- (a) the decision of the Department to impose the requirement to pay costs,
- (b) the decision of the Department as to the amount of the costs.

(5) An appeal to the Water Appeals Commission must be made in writing and within 14 days from the date of the notice specifying the costs to be recovered.

(6) The Water Appeals Commission may confirm, quash or vary the decision of the Department and it must notify the reservoir manager and the Department of its determination.

(7) Where a reservoir manager makes an appeal under paragraph (4) to the Water Appeals Commission, the notice specifying the costs is suspended until the Water Appeals Commission makes its determination or the reservoir manager withdraws the appeal.

Payment of costs

14. — (1) Subject to paragraph (2) and (3), a reservoir manager on whom a notice is served must pay the costs specified in the notice within 30 days from the date of the notice.

(2) Where a reservoir manager makes an appeal under regulation 13(4) and the Water Appeals Commission confirms or varies the decision, the reservoir manager must pay the amount specified in the

notice, or as the case may be, the amount determined by the Water Appeals Commission, within 30 days from the date of the receipt of the determination of the appeal.

(3) Where a reservoir manager withdraws an appeal, the amount specified in the notice must be paid within 30 days from the date of the confirmation that the appeal has been withdrawn.

Grants

15. — (1) The Department may pay such grants as it considers appropriate to reservoir managers of controlled reservoirs to enable or assist the managers to comply with their obligations under the Act .

(2) The payment of any such grant to reservoir managers of controlled reservoirs shall be subject to such terms and conditions as the Department determines and may include conditions for the repayment of such grant in the event of contravention of the other terms or conditions on which the grant is made.

Sealed with the Official Seal of the Department for Infrastructure on ??????????

(L.S.)

An Other

A senior officer of the Department for Infrastructure

EXPLANATORY NOTE

(This note is not part of the Order)

The Reservoirs Act (Northern Ireland) 2015 makes provision for regulations to be made regarding the frequency of visits by a supervising engineer to a high or medium consequence reservoir and to provide the power for the Department to serve stop notices, in certain circumstances, on reservoir managers of controlled reservoirs. It also makes provision for the Department by regulation to introduce a grant, subject to terms and conditions, to enable or assist reservoir managers of controlled reservoirs to comply with their obligations under the Act.

The Regulations in relation to the frequency of visits by supervising engineers make provision for:

- (a) a standard frequency of visits by a supervising engineer that will apply to a high or medium consequence controlled reservoir (regulation 2(2));
- (b) for a different standard frequency of visits to be applicable if the Department decides that the reservoir is of an acceptable standard as regards how it is being maintained (regulation 2(4));
- (c) the documents that will be considered and what needs to be specified or contained in the documents for the Department to decide that the reservoir is of an acceptable standard as regards how it is being maintained (regulation 3);
- (d) a right of appeal for the reservoir manager to the Water Appeals Commission against the Department's decision and the procedures for the appeal (regulation 4).

In relation to Stop Notices, the Regulations provide for

- (a) the Department to serve a stop notice on a reservoir manager prohibiting a reservoir manager from carrying on of an activity or permitting the carrying on by another of an activity specified in the notice until the reservoir manager has taken the steps specified in the notice (regulation 5(1));
- (b) a stop notice to be served in the circumstances where the Department reasonably considers that an activity as being carried on by the reservoir manager or by another, or an activity is likely to be carried on by the reservoir manager or by another and that the activity is or is likely to present a risk to the safety of the reservoir or involves, will involve or is likely to involve the commission of certain specified offences under sections 38(1)(e), 52(1), 52(2)(a) and 53(1) of the Act (regulation 5(2)&(4));
- (c) Information to be included in a stop notice (regulation 6), the issue of completion certificates (regulation 8), for a reservoir manager to make a claim for compensation in specified circumstances (regulation 9), for the Department to pay compensation to a reservoir manager (regulation 10) and for the Department to recover costs reasonably incurred from a reservoir manager in relation to the service of a stop notice (regulation 13);
- (d) a right of appeal by a reservoir manager to the Water Appeals Commission against the Department's decisions to serve a stop notice (regulation 7), not to issue a completion certificate (regulation 8(7)), not to pay compensation or not to pay the amount of compensation claimed (regulation 9(5)), and the Department's decision to impose the requirement to pay costs and the amount of such costs (regulation 13(4));
- (e) offences and penalties where a reservoir manager fails to comply with a stop notice and a defence to a charge in proceedings for an offence (regulations 11 & 12).

As regards the introduction of grants the Regulations provide for the Department to pay grants to reservoir managers to enable or assist them to comply with their obligations of the Act. Any such grant will be subject to such terms and conditions as the Department may determine (regulation 15).

These Regulations do not introduce any new policy therefore no business and regulatory impact assessment has been prepared for these Regulations as no significant impact on business, charities or voluntary bodies is foreseen in addition to the assessment prepared for the introduction of the reservoir safety policy provided for by the Reservoirs Act (Northern Ireland) 2015.

ANNEX E

DRAFT STATUTORY RULES OF NORTHERN IRELAND

20 No.000**

FLOOD RISK MANAGEMENT

The Reservoirs (Commissioning of Panel Engineers) Order (Northern Ireland) 20**

Made - - - - *Date 20***
Coming into operation - *Date 20***

The Department for Infrastructure, makes the following Order in exercise of the powers conferred by section 102(1)(c) of the Reservoirs Act (Northern Ireland) 2015^(a).

In accordance with section 107(c) of that Act, the Department has consulted the President of the Institution of Civil Engineers (or a committee of that Institution appointed for the purpose of the consultation).

Citation, commencement and interpretation

1. — (1) This Order may be cited as the Reservoirs (Commissioning of Panel Engineers) Order (Northern Ireland) 20** and comes into operation on Date 20**.

(2) In this order—

“impounding reservoir” means a controlled reservoir which is formed by impounding a watercourse in a natural valley by means of a dam;

“non-impounding reservoir” means a controlled reservoir which is not designed to obstruct or impede the flow of a watercourse;

“section” refers to a section of the Reservoirs Act Northern Ireland 2015;

“service reservoir” means a non-impounding reservoir which is constructed of brickwork, masonry, concrete or re-enforced concrete.

(3) References to a named panel are references to the panel of that name established under section 102(1)(a).

a. 2015 c.8 (NI)

All reservoirs (Northern Ireland) Panel

2. A member of the All Reservoirs (Northern Ireland) Panel may undertake roles and responsibilities on all types of reservoirs (impounding, non-impounding and services reservoirs) and may be commissioned under—

- (a) section 20(3);
- (b) section 25;
- (c) section 29;
- (d) section 33(2);
- (e) section 34;
- (f) section 36(2);
- (g) section 43;
- (h) section 56;
- (i) section 57;
- (j) section 63;
- (k) section 69;
- (l) section 71;
- (m) section 73;
- (n) section 75;
- (o) section 77; or
- (p) Schedule 1

Non-impounding Reservoirs (Northern Ireland) Panel

3. A member of the Non-impounding Reservoirs (Northern Ireland) Panel may be commissioned under—

- (a) section 20(3) for the purposes only of making recommendation regarding a review of risk designation in respect of a non-impounding reservoir;
- (b) section 25;
- (c) section 29;
- (d) section 33(2) for the purposes only of consultation regarding a pre-commencement report in respect of a non-impounding reservoir;
- (e) section 34 for the purposes only of an inspecting engineer in respect of a non-impounding reservoir;
- (f) section 36(2) for the purposes only of compliance with inspection report in respect of a non-impounding reservoir;
- (g) section 43 for the purposes only of a construction engineer in respect of a non-impounding reservoir;

- (h) section 56 for the purposes only of determining if an incident has occurred in respect of a non-impounding reservoir;
- (i) section 57 for the purposes only of approving flood plans in respect of a non-impounding reservoir;
- (j) section 63 for the purposes only of refereeing referrals under dispute referral in respect of a non-impounding reservoir;
- (k) section 69 for the purposes only of the Department commissioning an engineer for a non-impounding reservoir;
- (l) section 71 for the purposes only of an enforcement notice regarding safety measures in respect of a non-impounding reservoir;
- (m) section 73 for the purposes only of the Department arranging the taking of safety measures in respect of a non-impounding reservoir;
- (n) section 75 for the purposes only of emergency powers in respect of a non-impounding reservoir;
- (o) section 77 for the purposes only of stop notices in respect of a non-impounding reservoir; or
- (p) Schedule 1 for the purposes only of a review of a decision regarding a pre-commencement report in respect of a non-impounding reservoir.

Service Reservoirs (Northern Ireland) Panel

- 4.** A member of the Service Reservoirs (Northern Ireland) Panel may be commissioned under—
- (a) section 20(3) for the purposes only of making recommendation regarding a review of risk designation in respect of a service reservoir;
 - (b) section 25;
 - (c) section 29;
 - (d) section 33(2) for the purposes only of consultation regarding a pre-commencement report in respect of a service reservoir;
 - (e) section 34 for the purposes only of an inspecting engineer in respect of a service reservoir;
 - (f) section 36(2) for the purposes only of compliance with inspection report in respect of a service reservoir;
 - (g) section 43 for the purposes only of a construction engineer in respect of a service reservoir;
 - (h) section 56 for the purposes only of determining if an incident has occurred in respect of a service reservoir;
 - (i) section 57 for the purposes only of approving flood plans in respect of a service reservoir;
 - (j) section 63 for the purposes only of refereeing referrals under dispute referral in respect of a service reservoir;
 - (k) section 69 for the purposes only of the Department commissioning an engineer for a service reservoir;
 - (l) section 71 for the purposes only of an enforcement notice regarding safety measures in respect of a service reservoir;

- (m) section 73 for the purposes only of the Department arranging the taking of safety measures in respect of a service reservoir;
- (n) section 75 for the purposes only of emergency powers in respect of a service reservoir;
- (o) section 77 for the purposes only of stop notices in respect of a service reservoir; or
- (p) Schedule 1 for the purposes only of a review of a decision regarding a pre-commencement report in respect of a service reservoir.

Supervising Engineers (Northern Ireland) Panel

5. A member of the Supervising Engineers (Northern Ireland) Panel may be commissioned under sections 25 or 29 for all types of reservoirs.

Sealed with the Official Seal of the Department for Infrastructure on ***

A senior officer of the Department for Infrastructure

Date



EXPLANATORY NOTE

(This note is not part of the Order)

This Order specifies the sections of the Reservoirs Act (Northern Ireland) 2015 under which a member of a panel established under section 102(1)(a) of that Act may be commissioned to undertake a particular purpose as required by the Act.

The panels referred to in the Order were established under section 102(1) by the Department.

This Order does not introduce any new policy therefore no business and regulatory impact assessment has been prepared for this Order as no significant impact upon business, charities or voluntary organisations is foreseen in addition to the assessment prepared for the introduction of the reservoir safety policy provided for by the Reservoirs Act (Northern Ireland) 2015.

ANNEX F

List of consultees - Targeted consultation

Reservoir Managers / owners of reservoirs in Northern Ireland

Institution of Civil Engineers

British Dam Society

Engineers Ireland

Office of Public Works (ROI)

District /Borough Councils

Ulster Farmers Union

Ulster Angling Federation

CIWEM

NIAPA

Ulster Coarse Fishing Federation

UK Government Departments with responsibility for reservoirs - Defra, Welsh Government, Scottish Government

UK Reservoir Safety Regulators - SEPA, EA, NRW

ANNEX G

List of Consultation Questions

PART 1 - Commencement

- Q1 Do you agree that the sections of the Act that the Department proposes to commence, include the key elements of the reservoir safety regime envisaged by the Act?

PART 2 - Regulations

- Q2 Do you agree with the level of information that it is proposed is held on the controlled reservoirs register?
- Q3 Do you agree with the level of information that it is proposed should be provided by reservoir managers at registration?
- Q4 Do you agree with the standard frequency of visits proposed for a high or medium consequence reservoir?
- Q5 Do you agree that the proposed level of emergency response information displayed at or near a reservoir is sufficient?
- Q6 Do you agree with the proposed approach to stop notices set out in the draft Regulations at Annex D?
- Q7 Do you agree that consideration is given to an appropriate and affordable grant scheme to assist with the cost of reservoir safety works?

PART 3 - Designation Criteria

- Q8 Do you agree with the proposed criteria which will be used to give a reservoir a high, medium or low consequence designation?



Department for

Infrastructure

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The Reservoirs Act (Northern Ireland) 2015 – Contents

KEY

	Those provisions of the Reservoirs Act already in operation
	Those provisions of the Reservoirs Act proposed to come into operation
	Those provisions of the Reservoirs Act not yet in operation/proposed by this consultation

Section	Subject
CONTROLLED RESERVOIRS, REGISTRATION AND RESERVOIR DESIGNATION	
Controlled reservoirs	
1	Controlled reservoirs
Structure or area which is to be treated as a controlled reservoir	
2	Structure or area which is to be treated as a controlled reservoir
3	Matters to be taken into account under section 2(3)
4	Controlled reservoirs: further provision
5	Controlled reservoirs: supplementary
Reservoir Managers	
6	Reservoir managers
7	Multiple reservoir managers: supplementary
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Item 11.2

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DfI Reservoir Act Consultation – ANDBC Response

PART 1 – Commencement

Q1 Do you agree that the sections of the Act that the Department proposes to commence, include the key elements of the reservoir safety regime envisaged by the Act?

Council Response: Ards and North Down Borough Council welcomes the consultation on the secondary legislation to further commence and implement the requirements of the Reservoirs Act (Northern Ireland) 2015, however it expresses disappointment that it has taken nearly five and a half years to get to this point, despite the relevant government departments having expressed serious concern in respect of damage to human life/health, the environment, economic activity and cultural heritage.

PART 2 – Regulations

Q2 Do you agree with the level of information that it is proposed is held on the controlled reservoirs register?

Council Response: Yes

Q3 Do you agree with the level of information that it is proposed should be provided by reservoir managers at registration?

Council Response: Yes

Q4 Do you agree with the standard frequency of visits proposed for a high or medium consequence reservoir?

Council Response: Yes

Q5 Do you agree that the proposed level of emergency response information displayed at or near a reservoir is sufficient?

Council Response: Yes

Q6 Do you agree with the proposed approach to stop notices set out in the draft Regulations at Annex D?

Council Response: Yes, however, the Council does not agree with the proposed Regulation 13: *Recovery of Costs by the Department*. It queries why as part of its oversight regime in relation to the Act, the Department would be able to recover such costs including: investigation costs, administration costs, and costs of obtaining expert advice, including legal advice. The Planning Service of this Council which administers the planning functions of the Council, conferred upon it by the transfer of planning powers on 01 April 2015 and legislated for under the Planning Act

(Northern Ireland) 2011, has no right to claim compensation associated with service of any enforcement notices or stop notices, regardless of the resource expended in this regard, and as such the Council would query the inclusion of such a provision in the Regulations.

Q7 Do you agree that consideration is given to an appropriate and affordable grant scheme to assist with the cost of reservoir safety works?

Council Response: Yes. The Council considers this to be the critical factor in respect of ensuring compliance with the Act, however, such grants should ensure as far as practicable that they cover ALL critical works to bring high and medium consequence reservoirs up to the appropriate standard so as to enable economic development to proceed within inundation zones.

Regulation 15 refers to the Department paying grants to reservoir managers of controlled reservoirs 'as it considers appropriate' – the Council considers more detail is required in relation to what 'is appropriate' and certainly would wish such funding to be made available at the earliest possible opportunity to enable managers to carry out the requisite works to bring reservoirs to safe standards, otherwise the act of serving Stop Notices and proceeding with summons and summary convictions will further prevent such works from being carried out.

The Council would urge that Regulations be put in place as soon as practicable to address this critical section of the Act.

PART 3 – Designation Criteria

Q8 Do you agree with the proposed criteria which will be used to give a reservoir a high, medium or low consequence designation?

Council Response: Whilst the Council agrees generally with the proposed criteria, it is extremely concerned that there is not yet an agreed industry methodology for assessing 'Probability' of an uncontrolled release of water from a reservoir. It considers that such a standard should be researched and identified immediately, given that it is now more than five years since the Act was introduced, as it is this criterion that is pivotal to ensuring that economic development is not stymied by being located within the potential inundation zones. The issue to date seems to have arisen from the fact that there is no idea of probability and therefore Planning policy is based solely on 'Adverse Consequences', which is having a detrimental impact on proposals within the major category of development within the inundation zones.

In respect of the criteria proposed as set out on pages 28-31 of the consultation document, 'Economic Activity – Commercial/Business' under 'High Consequence', inter alia, refers to there being 'one or more commercial property(ies) or business(es) in the reservoir inundation zone. The Council would query how this information is calculated particularly in urban areas where landuse is subject to frequent change and the category of commercial/business had wide ranging staffing/customer parameters.

Under Cultural Heritage, again in relation to 'High Consequence' the impact described is in relation to world heritage sites, listed buildings, historic monuments in state care or scheduled monuments. The Council queries if it would not also be appropriate to include designated Conservation Areas and Areas of Townscape/Village Character, each of which is designated under Planning legislation in respect of the architectural or historic interest in each which have a particular character considered worthy of conservation.

Further Council Comment: The Council is disappointed that section 92 of the Act in relation to publication of enforcement action is not also being considered for consultation at this time.

It would also query why the legislation in Northern Ireland in respect of controlled reservoirs refers to 10,000m³ compared to 25,000m³ in England and the rationale for electing this smaller volume.

ITEM 12**Ards and North Down Borough Council**

Report Classification	Unclassified
Council/Committee	Planning Committee
Date of Meeting	18 January 2022
Responsible Director	Director of Regeneration, Development and Planning
Responsible Head of Service	Head of Planning
Date of Report	04 January 2022
File Reference	
Legislation	
Section 75 Compliant	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Other <input type="checkbox"/> If other, please add comment below:
Subject	Department for Infrastructure (Dfi) (Planning) review of strategic planning policy on renewable and low carbon energy development.
Attachments	Item 12a: DFI Planning Issues Paper - Renewable Energy and Low Carbon Development Item 12b: Issues Paper Response form

1.0 Background

- 1.1 The Department for Infrastructure (Dfi) has commenced a new review of strategic planning policy on renewable and low carbon energy.
- 1.2 DFI has published an issues paper, (Item 12a) 'Review of Strategic Planning Policy on Renewable & Low Carbon Energy'. There is an 8-week consultation period, which commenced on 15 December and closes on 11 February 2022.

2.0 Detail

- 2.1 The aim stated by DFI of the review is to ensure that strategic planning policy on renewable and low carbon energy development remains fit for purpose and to inform decision-making in relation to development proposals for this subject area. DFI state that it is also intended to 'inform the local development plan (LDP) process and enable plan-makers to bring forward appropriate local policies, all within the wider contemporary context for energy and the climate emergency'.
- 2.2 The Issues Paper sets out the background to this Review, including the wider policy context of Climate Change, National / regional targets for Renewable Energy production and a new Energy Strategy for NI. Specific planning matters to be considered for the review include:
- Energy targets & strategic planning policy;
 - Locational considerations;
 - Siting new wind farms in perpetuity;
 - Wind turbines & amenity considerations;
 - Decommissioning and site restoration for new development;
 - Solar farms and agricultural land;
 - Co-locating renewable, low carbon and supporting infrastructure;
 - Re-powering existing wind farms; and,
 - Emerging technologies & other issues.

Next steps

- 2.3 Responses to the Issues Paper are requested by e-mail to DFI by 5.00pm, Friday 11 February 2022. It is suggested to use the response form (at Item 12b) but other responses are welcome. DFI shall consider the information gathered as a result of the Issues Paper in helping to inform the way forward for this policy area. Any recommendations emerging from this review which involve policy changes will require an amendment to the Strategic Planning Policy Statement which will be taken forward in accordance with established policy making best practice. (This will include public consultation on any draft policy proposals). It is understood that DFI intend to issue a draft revised policy document in 2022.
- 2.4 Planning officers from the LDP team shall prepare a response which shall also include liaison with Development Management and the Council's Sustainability Officer, which will be brought to January's Council for approval.

RECOMMENDATION

It is recommended that Council notes the publication of the issues paper document and outlines any areas for inclusion in the response, with a further report to be brought to January's Council with a recommended response.



Department for

Infrastructure

An Roinn

Bonneagair

www.infrastructure-ni.gov.uk

Issues Paper

Review of Strategic Planning Policy on Renewable & Low Carbon Energy

Issued: 15 December 2021

Respond by: 11 February 2022

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Introduction

Following Minister Mallon's announcement on 21 April 2021, the Department for Infrastructure (DfI) has commenced a review of strategic planning policy on renewable and low carbon energy which may result in an amendment to the Strategic Planning Policy Statement (SPPS). The aim of this review is to ensure that strategic planning policy on renewable & low carbon energy development remains fit for purpose and up-to-date to inform decision-making in relation to development proposals for this subject area. It is also intended to inform the local development plan (LDP) process and enable plan-makers to bring forward appropriate local policies, all within the wider contemporary context for energy and the climate emergency.

The responses to this Issues Paper will help inform the way forward for this policy area. This paper is a targeted engagement exercise with key stakeholders and it is the Department's intention to issue a draft revised policy document for full public consultation in 2022.

How to Respond

You are invited to submit your views in response to this Issues Paper by **5:00pm, Friday 11 February 2022**. Comments after this deadline will not be accepted.

Please respond using the Response Form attached to this document.

Responses should be emailed to the Department at the following address:

SPPSTeam@infrastructure-ni.gov.uk

Alternatively, where it is not possible to respond electronically, responses may be posted to the following address:

SPPS Team

Department for Infrastructure

Room 1.01, First Floor

Clarence Court, 10-18 Adelaide Street

Belfast BT2 8GB

Freedom of Information Act 2000 - Confidentiality of Responses

The Department may publish a summary of responses following the closing date for receipt of comments. Your response, and all other responses to this publication, may be disclosed on request and/or made available on the Dfl website (redacted). The Department can only refuse to disclose information in exceptional circumstances. Before you submit your response, please read the paragraphs below on the confidentiality of responses as this will give you guidance on the legal position about any information given by you in response to this publication.

The Freedom of Information Act 2000 and Environmental Information Regulations 2004 give the public a right of access to any information held by a public authority, namely, the Department in this case. This right of access to information includes information provided in response to a consultation. The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this publication, including information about your identity, should be made public or treated as confidential. The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that:

- The Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Department's functions and it would not otherwise be provided.
- The Department should not agree to hold information received from third parties 'in confidence' which is not confidential in nature.
- Acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

The information you provide in your response to this issues paper, excluding personal information, may be published or disclosed in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004 (EIR). Any personal information you provide will be handled in accordance with the UK-GDPR and will not be published.

If you want the non-personal information that you provide to be treated as confidential, please tell us why, but be aware that, under the FOIA or EIR, we cannot guarantee confidentiality.

For information regarding your personal data, please refer to the DfI Privacy Notice at www.infrastructure-ni.gov.uk/dfi-privacy.

For further details on confidentiality, the FOIA and the EIR please refer to www.ico.org.uk.

BACKGROUND

1. This Issues Paper builds on earlier preparatory work including a [‘Call for Evidence’](#) and [‘Emerging Issues Paper’](#) as well as independent research for this policy area. The consultant’s report will be published with a public consultation draft revised policy document in due course.

Planning Policy Context

2. The Strategic Planning Policy Statement (SPPS) for Northern Ireland (NI) was published in September 2015, following Executive Committee agreement. The SPPS consolidates some twenty separate policy publications into one document, and sets out strategic subject planning policy for a wide range of planning matters, including renewable energy. It is an important planning policy framework for the reformed two tier planning system. The provisions of the SPPS apply to the whole of Northern Ireland¹. They must be taken into account in the preparation of local development plans (LDPs) and are material to all decisions on individual planning applications and appeals by planning authorities.
3. The current policy approach in the SPPS in relation to renewable energy is “*to facilitate the siting of renewable energy generating facilities in appropriate locations within the built and natural environment in order to achieve Northern Ireland’s renewable energy targets and to realise the benefits of renewable energy without compromising other environmental assets of acknowledged importance.*” (Paragraph 6.218).

Wider Policy Context

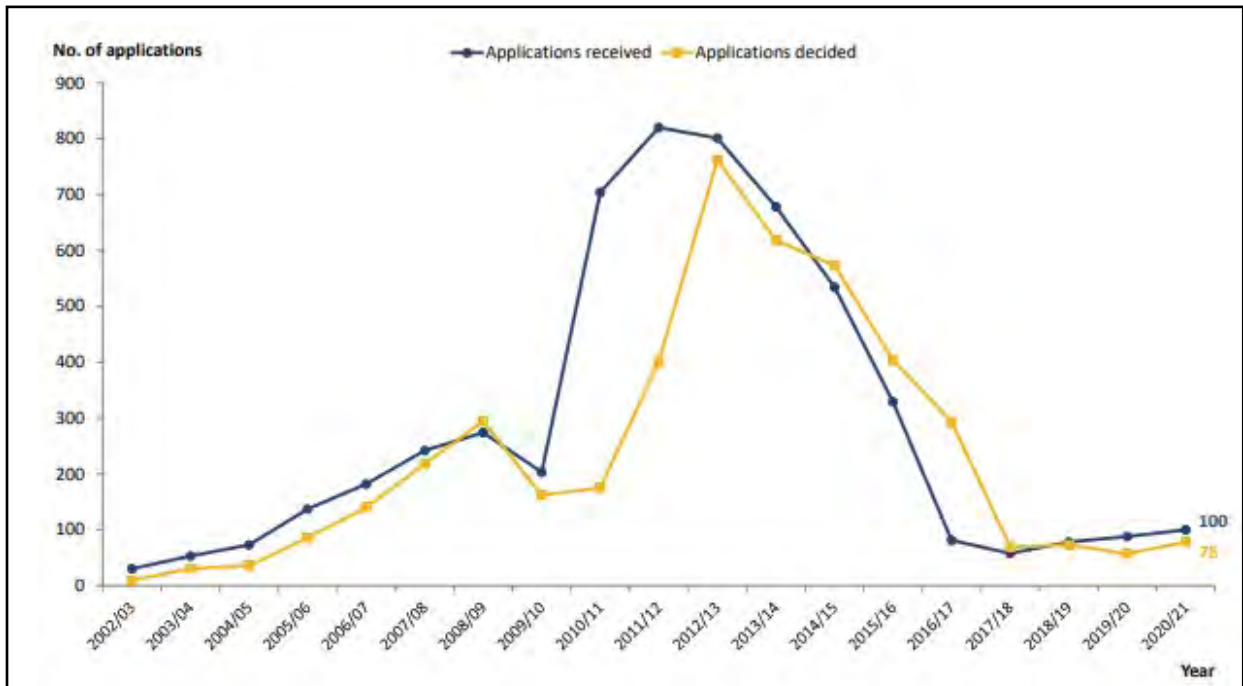
4. The SPPS sets out a wide range of objectives which act to ensure that renewable energy development makes an increased contribution to the overall energy mix in accordance with the Department for Economy’s (DfE) strategic aim for a more

¹ The policy provisions of Planning Policy Statement 18 (PPS 18) ‘Renewable Energy,’ published August 2009, are retained under the transitional arrangements of the SPPS until such times as a Plan Strategy for the whole of the council area has been adopted.

secure and sustainable energy system (as contained within the Strategic Energy Framework 2010 (SEF) for Northern Ireland). The SEF, established a target that NI would achieve 40% of its electricity consumption from renewable sources by 2020. This target has been met with the latest results showing that for the 12 month period April 2020 to March 2021, 46.4% of total electricity consumption in Northern Ireland was generated from renewable sources located in NI. The current planning policy approach to this category of development has played an important role in helping to facilitate the achievement of these objectives.

5. The SEF policy was supported by subsidy. The Northern Ireland Renewables Obligation (NIRO) played a pivotal role in achieving the expansion of renewable energy development and progressing towards achieving established renewable energy targets. The NIRO closed to new large scale onshore wind on 31 March 2016, to new small scale onshore wind on 30 June 2016 and to all other technologies on 31 March 2017, with exceptions to those projects that met the criteria for grace periods.
6. Prior to the closure of the NIRO, it had been the case that renewable energy developments which met the criteria had been issued with Renewables Obligation Certificates (ROCs) based on the technology they were using and the amount of energy they produced. Essentially the closure of NIRO has resulted in the reduction of the number of planning applications for renewable energy development as indicated in Figure 1.

Figure 1 - Renewable Energy applications, annually, 2002/03 – 2020/21



Source: Northern Ireland Statistics and Research Agency - Northern Ireland Planning Statistics April 2020 – March 2021

Emerging Energy Strategy

7. DfE is leading in the process of developing the Executive's new Energy Strategy. A policy options consultation issued on 31 March 2021 for 13 weeks, closing on 2 July of this year². The new Energy Strategy aims to decarbonise the NI energy sector by 2050 and it will consider the existing energy mix, how it will be reshaped, as well as considering energy demand reduction. The policy options proposed that a new renewable electricity target of 70% by 2030 should be set. DfE intend to publish the new Energy Strategy later this year. DfI representatives have engaged and will continue to engage positively with DfE on areas of mutual interest, including the synergies between a new Energy Strategy, strategic planning policy and the planning system generally.

² [Consultation on policy options for the new Energy Strategy for Northern Ireland | Department for the Economy \(economy-ni.gov.uk\)](https://www.economy-ni.gov.uk/consultation-on-policy-options-for-the-new-energy-strategy-for-northern-ireland)

Climate Emergency

8. Minister Mallon MLA is committed to ensuring that her department, and the wider planning system, does everything possible to help address the climate emergency, protect our environment and enable a green recovery from the Covid pandemic. Regional guidance in the Regional Development Strategy 2035 (RDS) and regional planning policy contained in the SPPS, already emphasises how planning authorities should mitigate and adapt to climate change.
9. In recognition of the ongoing climate emergency, Clare Bailey MLA introduced the [Climate Change \(No. 1\) Bill](#) (i.e. the Private Member's Bill) to the NI Assembly on 22 March 2021 and which progressed to second stage on 10 May 2021. The Bill aims to enable the mitigation of the impact of climate change in Northern Ireland; establish a legally binding net-zero carbon target for Northern Ireland; provide for the establishment and powers of the Northern Ireland Climate Commissioner and Northern Ireland Climate Office; guarantee existing environmental and climate protections; and for connected purposes. The Bill will also legislate for a requirement to prepare future action plans and targets for achieving carbon emission reductions.
10. In addition, Edwin Poots MLA, Minister for Agriculture, Environment and Rural Affairs (DAERA), introduced the [Climate Change \(No. 2\) Bill](#) (i.e. the DAERA Bill) to the NI Assembly on 5 July 2021 and has since progressed to second stage on 27 September 2021. The Bill aims to set targets for the years 2050, 2040 and 2030 for the reduction of greenhouse gas emissions; to provide for a system of carbon budgeting; to provide for reporting and statements against those targets and budgets; to confer power to impose climate change reporting duties on public bodies; to provide for reports and advice from the Committee on Climate Change; and for connected purposes.
11. Furthermore, DAERA is currently leading on the Executive's overarching multi-decade Green Growth Strategy and Delivery Framework for Northern Ireland, which is aiming to transform our society towards net zero by 2050, protect and enhance our environment and sustainably grow our economy through improved

efficiency which will in turn help more business become more profitable. Consultation on the draft Green Growth Strategy for Northern Ireland launched on 21 October 2021 and the consultation closes on 21 December 2021. DAERA is also currently bringing forward Northern Ireland's first Environment Strategy, and new strategies on Peatland and Biodiversity.

12. It is also important to note that the Intergovernmental Panel on Climate Change (IPCC) published their [Sixth Assessment Report](#) on the physical science basis of climate change. The report provides an understanding of the current state of the climate, including how it is changing and the role of human influence, the state of knowledge about possible climate futures, climate information relevant to regions and sectors, and limiting human-induced climate change.

Scope of the Review

13. This review will consider strategic planning policy matters with regards to current and likely future renewable & low carbon energy development and associated infrastructure. It will take account of the Department's previous call for evidence on planning policy for renewable energy, the independent consultants' report that the Department commissioned, as well as wider research and responses to this issues paper. In addition, the review will have regard to wider policy developments referred to above, such as the emerging Energy Strategy.

14. Specific planning matters to be considered for the review include:

- Energy targets & strategic planning policy;
- Locational considerations;
- Siting new wind farms in perpetuity;
- Wind turbines & amenity considerations;
- Decommissioning and site restoration for new development;
- Solar farms and agricultural land;
- Co-locating renewable, low carbon and supporting infrastructure;
- Re-powering existing wind farms; and,
- Emerging technologies & other issues.

15. The review will not consider energy from waste (i.e. incineration, gasification and pyrolysis). Overall policy responsibility for waste rests with DAERA and extant strategic planning policy for waste is provided for separately in the SPPS's subject policy titled 'Waste Management'. Should DAERA bring forward changes to its overall Waste Management Strategy, DfI will consider the relevant implications for the planning system at the appropriate time, including any implications for extant strategic planning policy. DAERA is also responsible for marine planning and marine licencing. As such, any consideration of the extant marine planning policy regarding off-shore renewable energy development is outside the scope of the review. It is, however, worth noting that onshore development, associated with offshore development, will fall to be considered by the terrestrial planning system.
16. Whilst this review is likely to result in amendments to the SPPS, changes to extant planning legislation (including permitted development rights) or regional planning guidance³ on renewable and low carbon energy are outside the scope of this exercise. It is also important to note that this review of strategic planning policy will not interfere with the environmental legislative requirements that already exist and with which renewable and low carbon energy developments must comply.

Key Issues

17. Under the two-tier planning system local government has the primary responsibility for local plan-making and for determining the vast majority of planning applications. The Department for Infrastructure is responsible, inter alia, for formulating strategic planning policy and the determination of regionally significant developments. Strategic planning policy contained in the SPPS therefore provides a framework and direction for councils in plan-making (LDPs provide detailed local operational planning policies) and for all planning authorities in decision-taking. Whilst the Department welcomes comments on any aspect of strategic planning policy on

³ Guidance contained in Best Practice Guidance to PPS 18 - Renewable Energy will continue to have effect (where relevant) unless and until such guidance is updated, revised or replaced by new Departmental guidance on this planning issue.

renewable & low carbon energy, it is particularly keen to hear views on the following key issues:

Key Issue: Energy targets & strategic planning policy

Context: The current policy approach has played an important role in helping to facilitate the achievement of the renewable deployment to date (i.e. 40% of electricity generated from renewable sources by 2020). DfE's Energy Strategy consultation has proposed that a new renewable electricity target of 70% by 2030 should be set. This is within the wider context of consideration of net zero by 2050 and that all electricity in the UK should come from clean sources by 2035. In the context of the climate emergency there is support for increasing renewable and low carbon development to decarbonise our electricity supply. However, it is also recognised that this has to be balanced against any potential unacceptable adverse impacts on the local environment and communities.

Question 1: How should future strategic planning policy continue to help NI achieve any new targets for increasing energy from renewable and low carbon sources arising from the emerging Energy Strategy and in doing so assist in addressing the climate emergency?

Key Issue: Locational considerations

Context: Strategic planning policy currently provides for a cautious approach in designated landscapes that are of significant value. There have been calls to provide more clarity on where is, and where is not, acceptable for the provision of new and additional development to give certainty to communities, developers, investors and infrastructure providers.

Question 2: What are your thoughts on introducing new provisions within strategic planning policy to provide for a more strategic spatial approach for the siting of wind and solar farm (or others types of

renewables) development through identifying suitable and/or unsuitable areas in principle?

Key Issue: Siting new wind farms in perpetuity

Context: In relation to wind farms, the operating period of a wind farm is generally a matter for the developer, subject to relevant planning controls. Consideration could be given to supporting development on sites/areas in perpetuity. Such an approach has the potential to make the best use of land and wind resource, existing infrastructure, including grid connections. (See also 'Re-powering of existing Wind Farms' below, Question 8).

Question 3: What are your thoughts on introducing new provisions within strategic planning policy to require new wind farms to be capable of being sited in perpetuity?

Key Issue: Wind turbines & amenity considerations

Context: Strategic planning policy currently provides that any development should not result in an unacceptable adverse impact on residential amenity. Issues that have been a focus of concern regarding the current policy approach include noise, shadow flicker and separation distance of wind turbines. Noise is currently assessed in line with ETSU-R-97 'The Assessment and Rating of Noise from Wind Farms'. BEIS is responsible for the good practice guide to ETSU-R-97 and it is also used in England, Scotland and Wales.

Question 4a: How best should strategic planning policy provide for the consideration of such matters when plan-making and decision-taking?

Question 4b: Do you consider strategic planning policy should require a mandatory separation distance for wind energy. If so, what distance and why?

Key Issue: Decommissioning and site restoration for new development

Context: In relation to developments such as wind farms and solar farms strategic planning policy currently requires applicants to provide details on future decommissioning, including proposals for site restoration e.g. timescales, financial bonds etc. In such cases planning conditions, or a legal agreement where appropriate, should be used. The review will consider the appropriateness of this approach for future wind turbine and solar farm development.

Question 5. What are your thoughts on the best approach to decommissioning and restoration of future wind turbine and solar farm development?

Key Issue: Solar farms and agricultural land

Context: There have been concerns that agricultural land has been lost to solar farms, whilst more sustainable alternative sites may exist, such as previously developed lands.

Question 6: Do you consider strategic planning policy should prioritise non-agricultural land for renewable energy development, such as solar energy. If so, how and why?

Key Issue: Co-locating renewable, low carbon and supporting infrastructure

Context: There are considered to be a range of potential economic and environmental benefits associated with co-locating renewable, low carbon energy and storage infrastructure together, where appropriate. Such an approach may help exploit the advantages of grouping development in order to maximise energy generation and capture whilst making best use of land and infrastructure. For example, co-locating different technologies such as solar and/or wind farms with battery energy storage systems/facilities.

Question 7: Should strategic planning policy provide for the appropriate co-location of renewable, low carbon energy and supporting infrastructure? If so, how best might this be achieved and why?

Key Issue: Re-powering existing wind farms

Context: There are potential benefits with supporting the repowering of existing wind farm sites which are already in suitable locations. Whilst planning applications would still be required to consider the details of any proposed future new development, the established use of an area of land could be considered in principle to be acceptable for that particular use indefinitely, i.e. in perpetuity.

Question 8: Should strategic planning policy provide for and/or encourage the re-powering of wind turbines as they come to the end of their consented lifespan and require/allow that all new wind farms should be sited in perpetuity?

Key Issue: Emerging technologies & other issues

Context: A challenge for strategic planning policy is to ensure that the planning system can appropriately provide for consideration of the relevant planning matters associated with all renewable and low carbon energy development and supporting infrastructure, including emerging technologies, such as battery energy storage systems, hydrogen energy, geothermal energy/power development etc.

Question 9a: What do you consider to be the emerging technologies and how best should strategic planning policy provide for their consideration by relevant planning authorities when plan-making and decision-taking?

Question 9b: How best should strategic planning policy provide for the consideration of battery energy storage systems by relevant planning authorities when plan-making and decision-taking?

Question 9c: What do you consider to be any other issues relevant to renewable and low carbon energy development and how best should strategic planning policy provide for their consideration by relevant planning authorities when plan-making and decision-taking?

Please complete your responses on the form provided and supply information or evidence to support your responses.

Next steps

13. Responses to this Issues Paper should be made on the appropriate form to the Department by **5.00pm, Friday 11 February 2022.**
14. The information gathered as a result of this Issues Paper will be considered by the Department and will help inform the way forward for this policy area.
15. Any recommendations emerging from this review which involve policy changes will require an amendment to the SPPS which will be taken forward in accordance with established policy making best practice. This will include public consultation on any draft policy proposals. It is the Department's intention to issue a draft revised policy document in 2022.

REVIEW OF STRATEGIC PLANNING POLICY ON RENEWABLE & LOW CARBON ENERGY

ISSUES PAPER RESPONSE FORM

YOUR DETAILS

Title:	
First Name:	
Surname:	
Date:	
Postal Address:	
Postcode:	
Organisation:	
Email:	

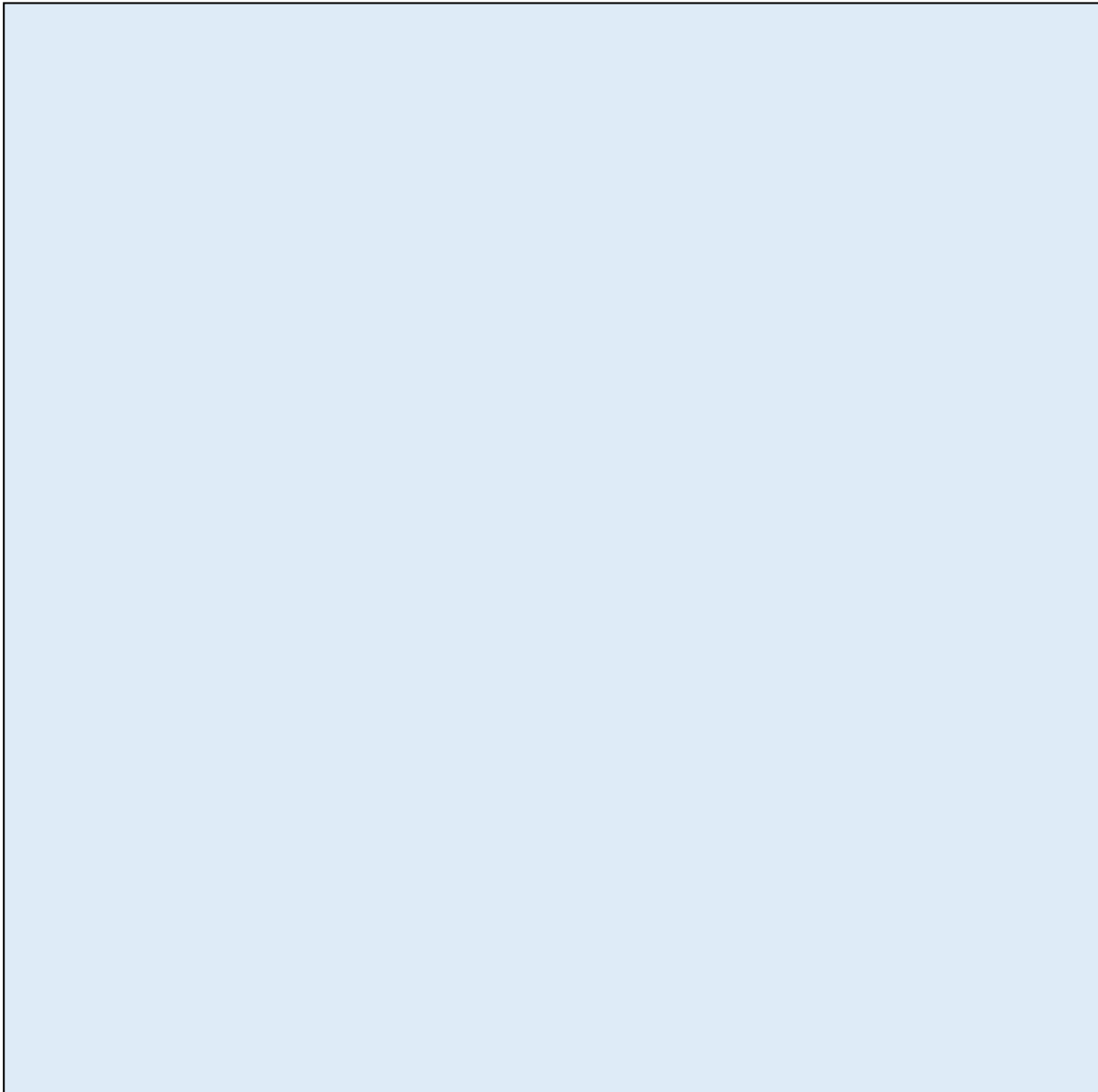
YOUR COMMENTS

Please provide us with your comments below. Please be as concise as possible and where appropriate provide evidence to support your responses.

KEY ISSUE: ENERGY TARGETS & STRATEGIC PLANNING POLICY

Q.1. How should future strategic planning policy continue to help NI achieve any new targets for increasing energy from renewable and low carbon sources arising from the emerging Energy Strategy and in doing so assist in addressing the climate emergency?

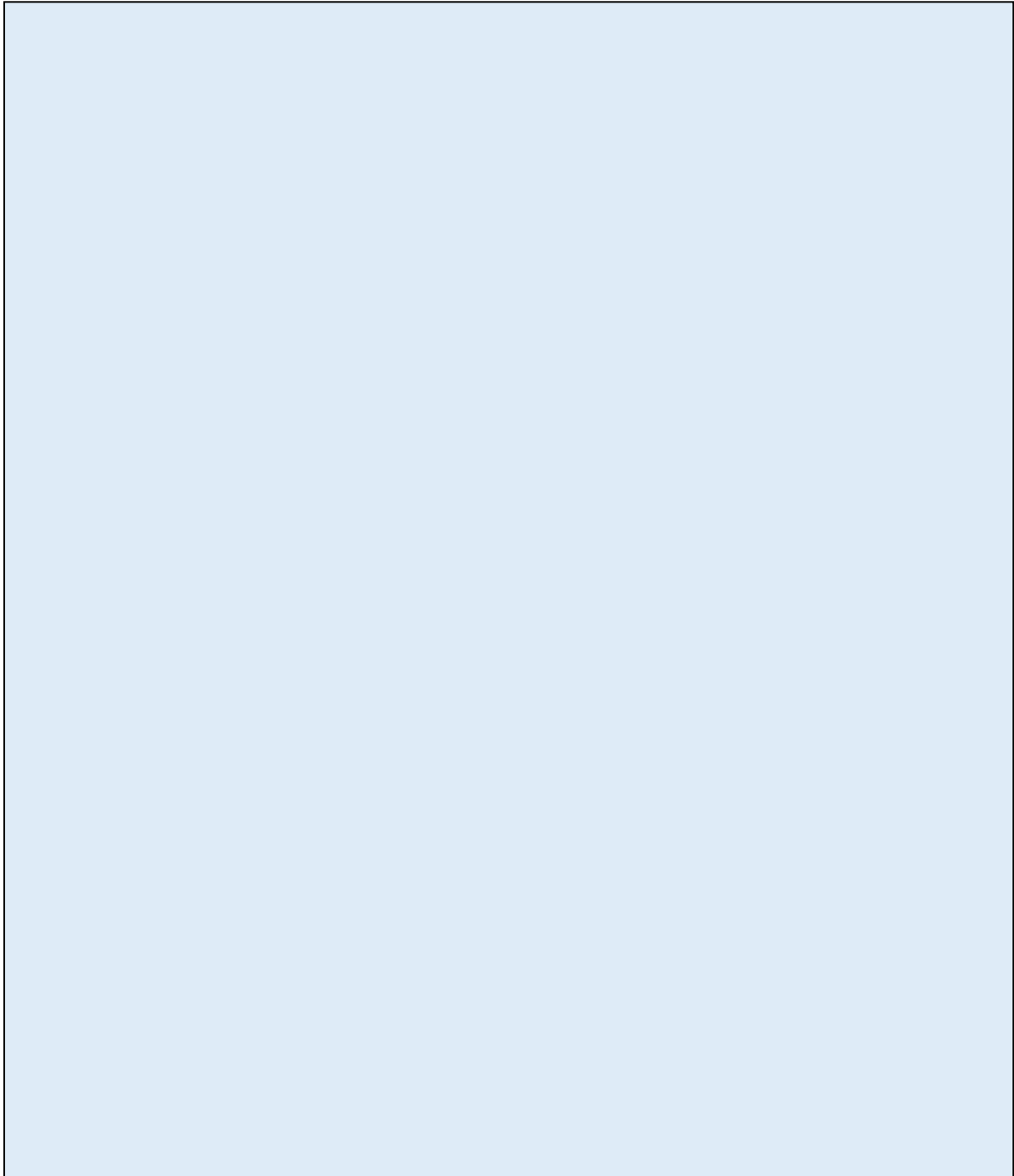
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KEY ISSUE: LOCATIONAL CONSIDERATIONS

Q.2. What are your thoughts on introducing new provisions within strategic planning policy to provide for a more strategic spatial approach for the siting of wind and solar farm (or others types of renewables) development through identifying suitable and/or unsuitable areas in principle?

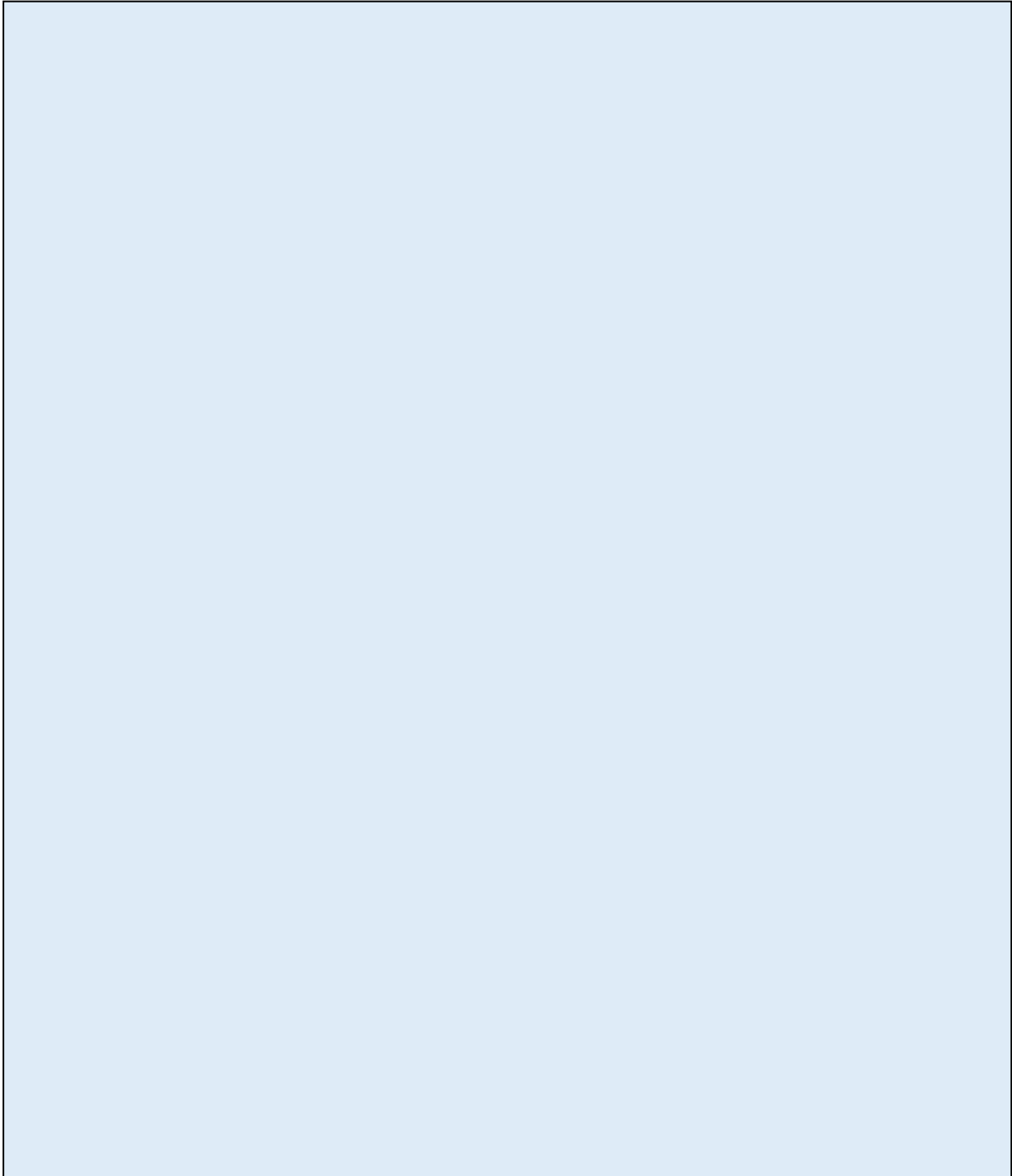
Comments:

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KEY ISSUE: SITING NEW WIND FARMS IN PERPETUITY

Q.3. What are your thoughts on introducing new provisions within strategic planning policy to require new wind farms to be capable of being sited in perpetuity?

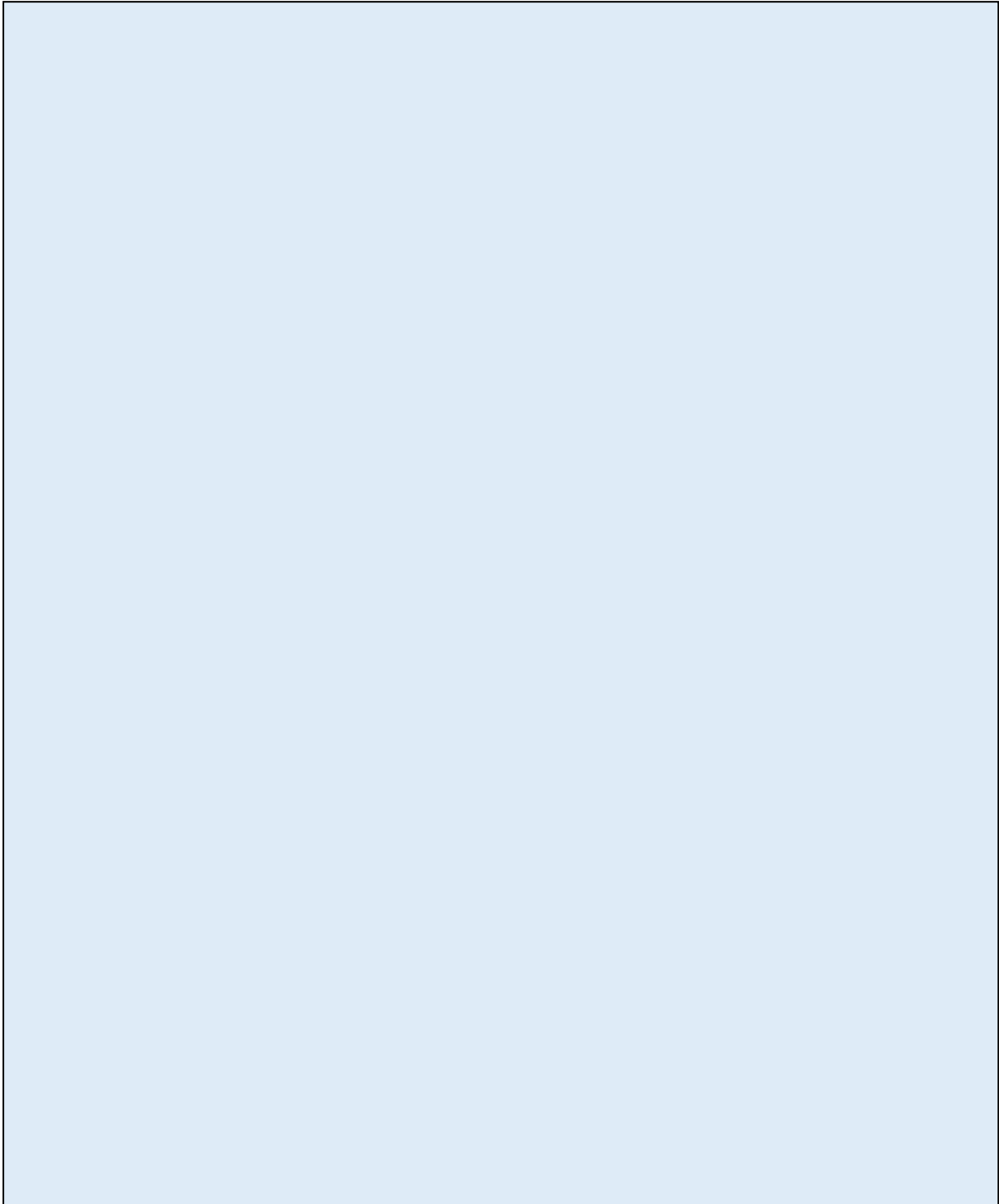
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KEY ISSUE: WIND TURBINES & AMENITY CONSIDERATIONS

Q.4a. How best should strategic planning policy provide for the consideration of such matters when plan-making and decision-taking?

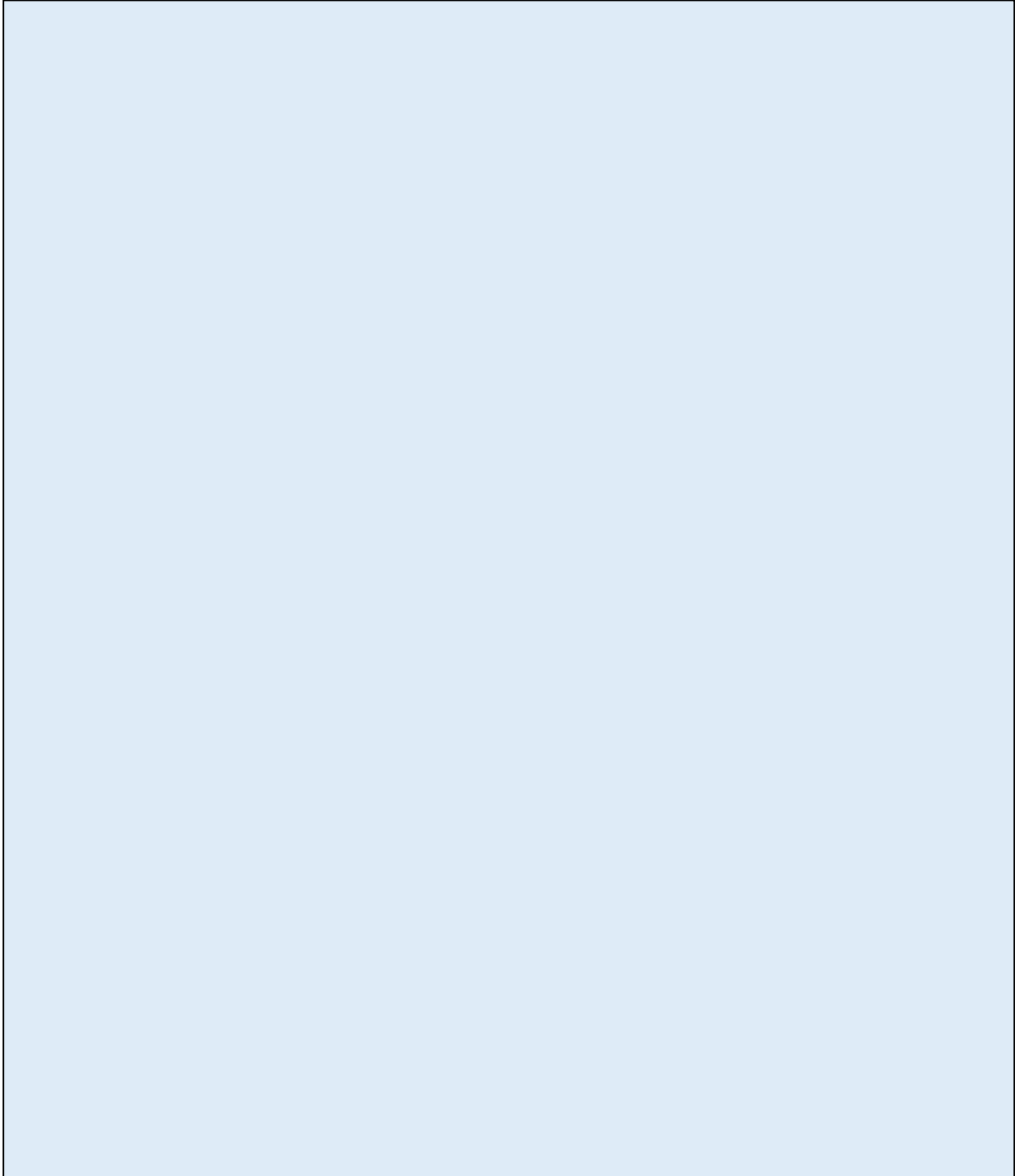
Comments:

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KEY ISSUE: WIND TURBINES & AMENITY CONSIDERATIONS

Q.4b. Do you consider strategic planning policy should require a mandatory separation distance for wind energy. If so, what distance and why?

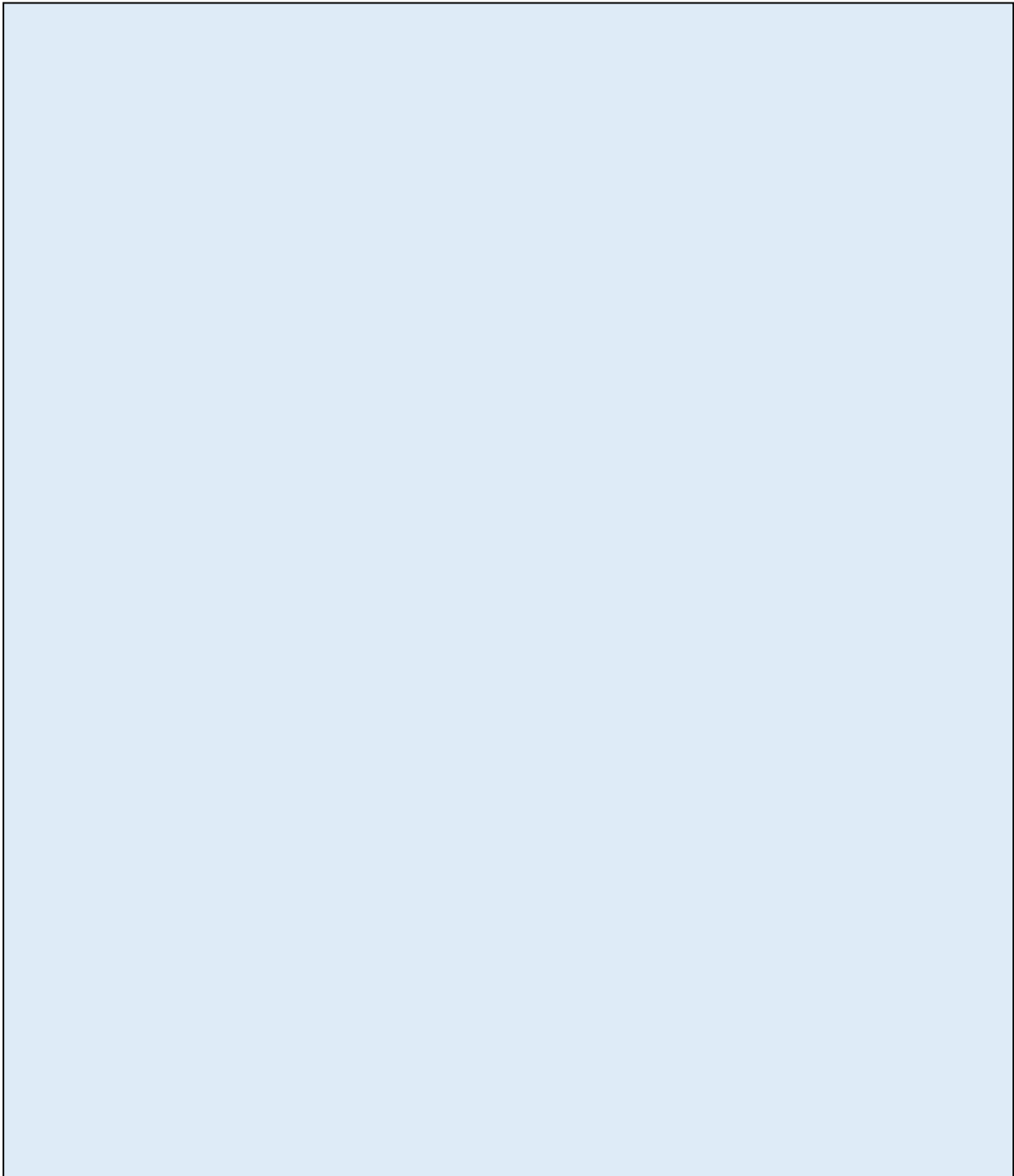
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KEY ISSUE: DECOMMISSIONING AND SITE RESTORATION FOR NEW DEVELOPMENT

Q.5. What are your thoughts on the best approach to decommissioning and restoration of future wind turbine and solar farm development?

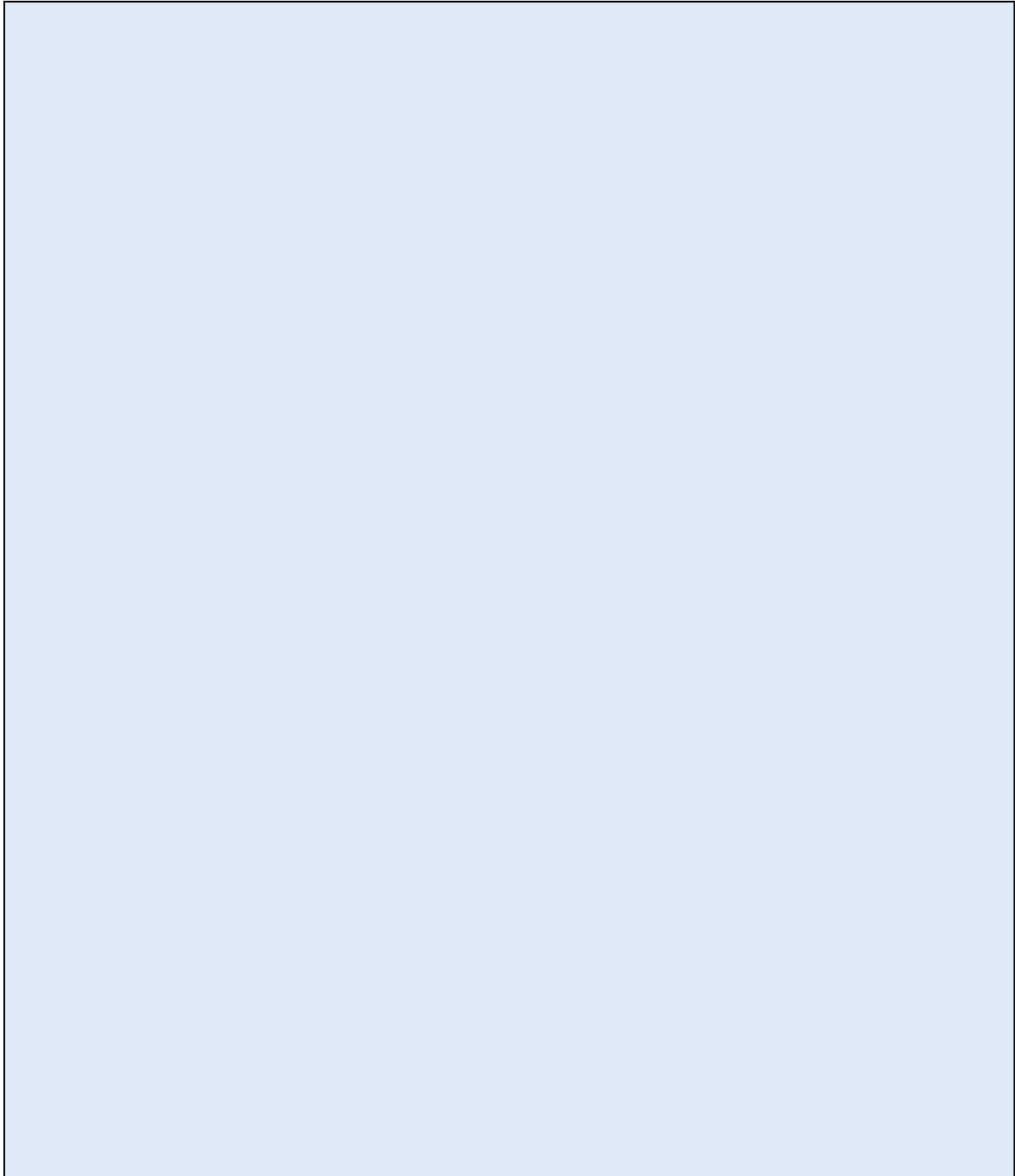
Comments:



KEY ISSUE: SOLAR FARMS AND AGRICULTURAL LAND

Q.6. Do you consider strategic planning policy should prioritise non-agricultural land for renewable energy development, such as solar energy. If so, how and why?

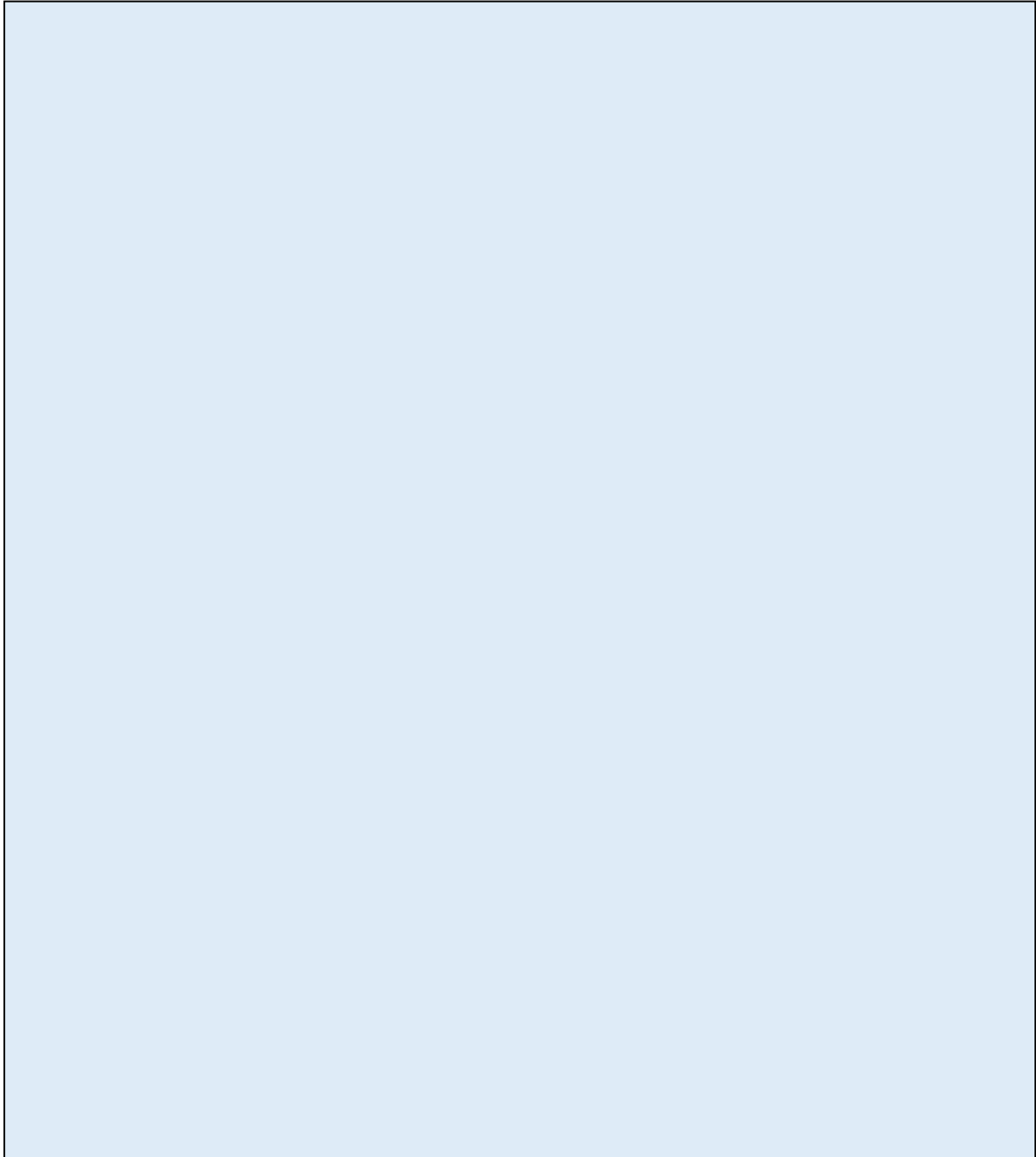
Comments:



KEY ISSUE: CO-LOCATING RENEWABLE, LOW CARBON AND SUPPORTING INFRASTRUCTURE

Q.7. Should strategic planning policy provide for the appropriate co-location of renewable, low carbon energy and supporting infrastructure? If so, how best might this be achieved and why?

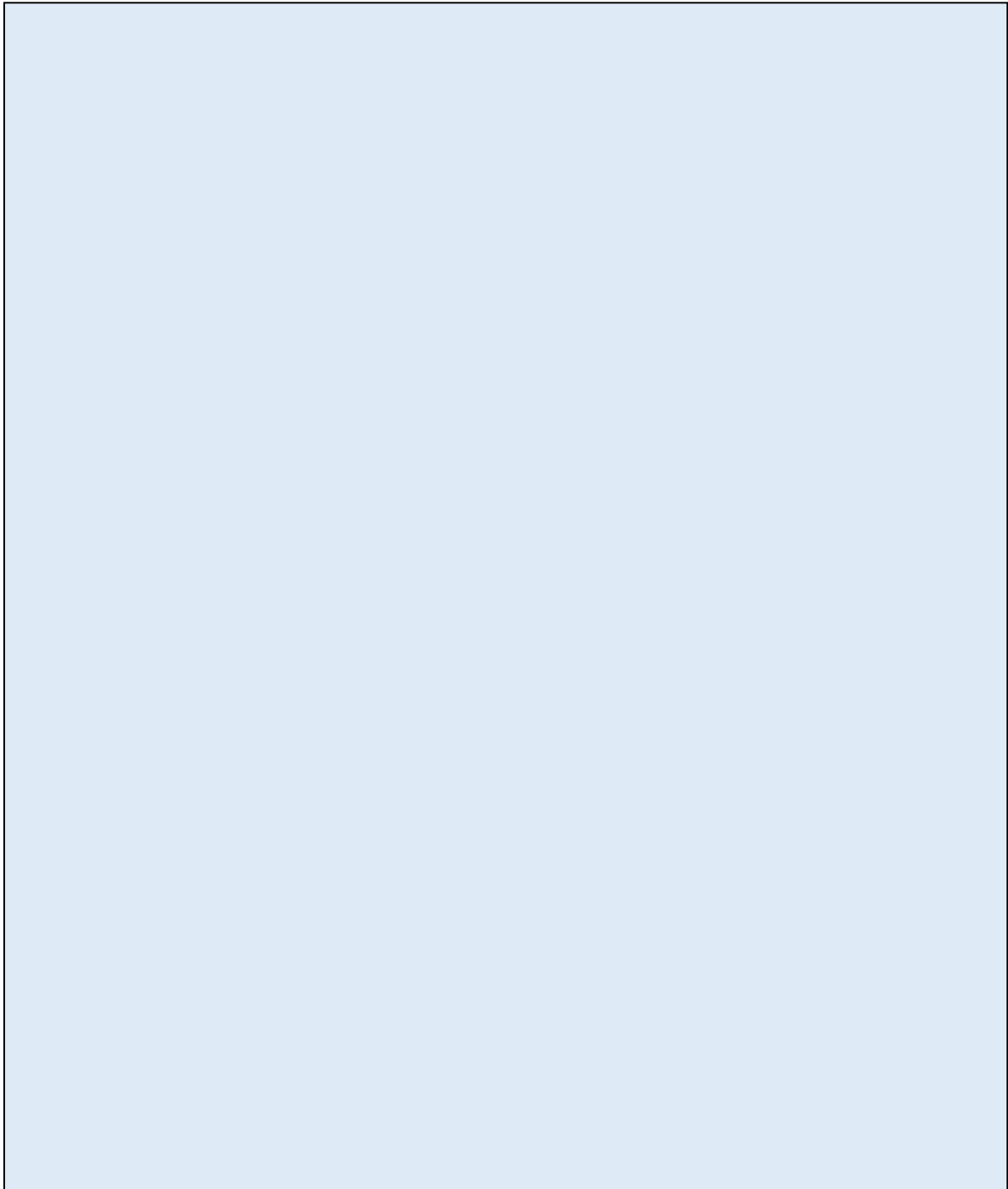
Comments:



KEY ISSUE: RE-POWERING EXISTING WIND FARMS

Q.8. Should strategic planning policy provide for and/or encourage the re-powering of wind turbines as they come to the end of their consented lifespan and require/allow that all new wind farms should be sited in perpetuity?

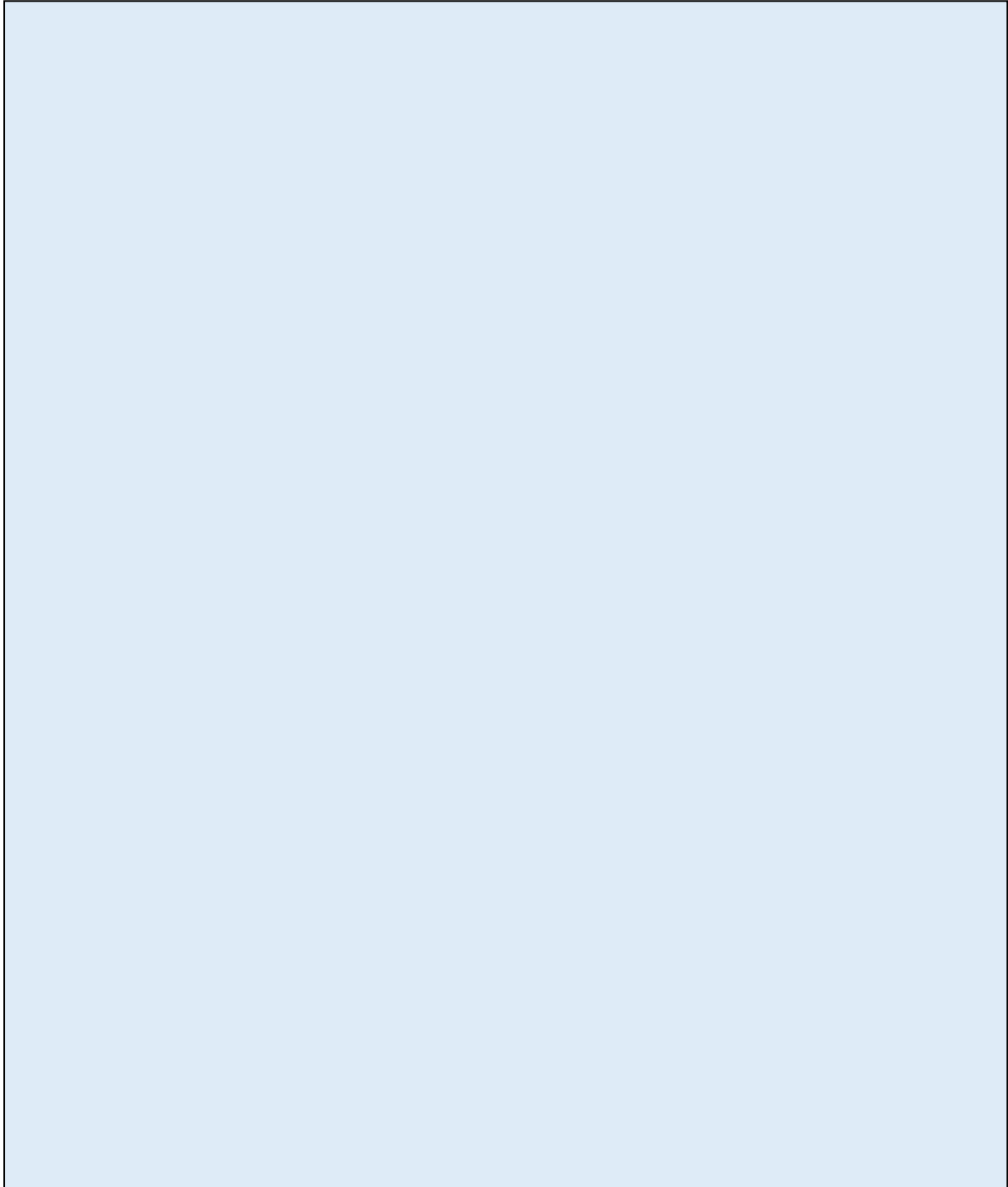
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KEY ISSUE: EMERGING TECHNOLOGIES AND OTHERS

Q.9a. What do you consider to be the emerging technologies and how best should strategic planning policy provide for their consideration by relevant planning authorities when plan-making and decision-taking?

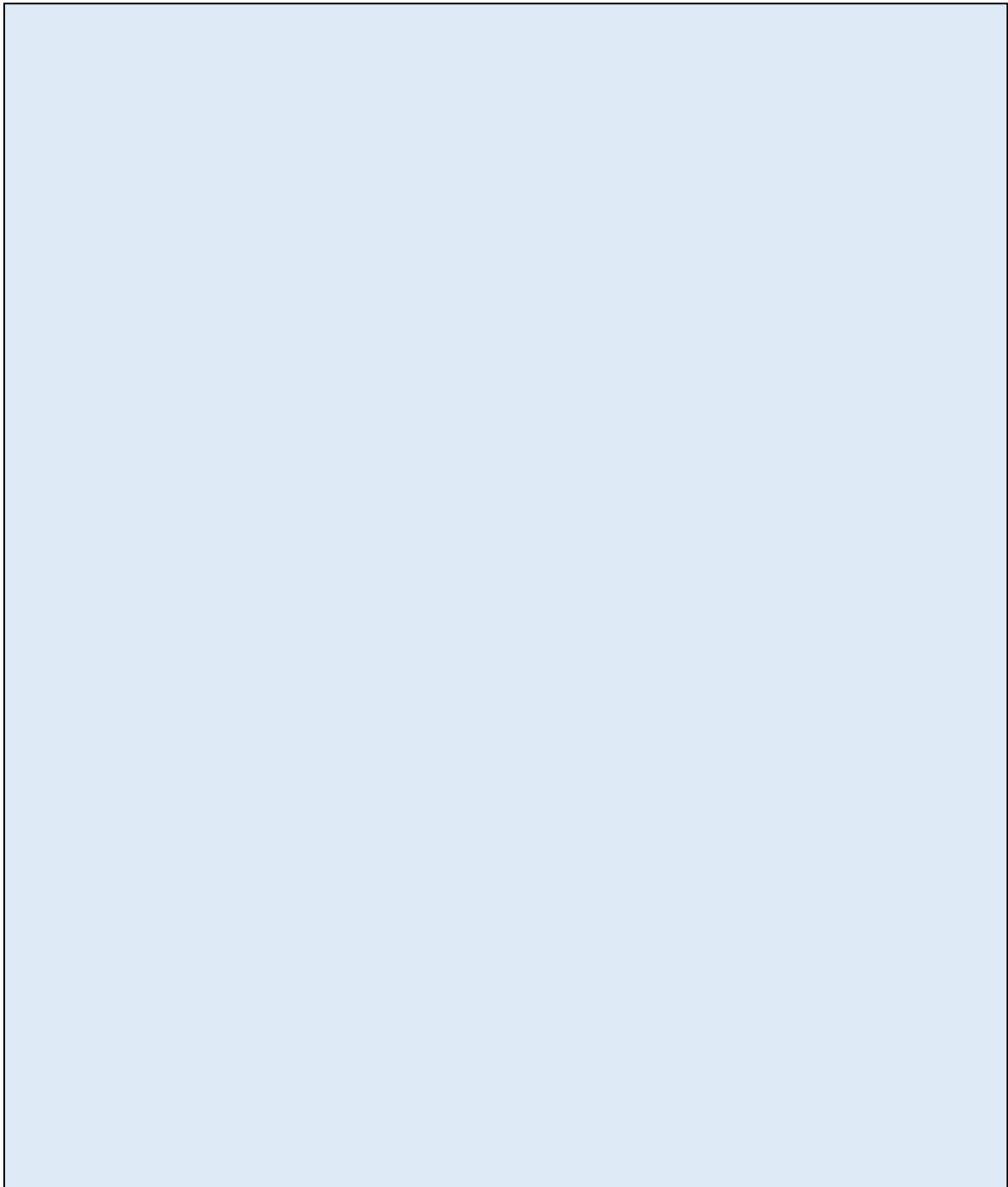
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KEY ISSUE: EMERGING TECHNOLOGIES AND OTHERS

Q.9b. How best should strategic planning policy provide for the consideration of battery energy storage systems by relevant planning authorities when plan-making and decision-taking?

Comments:

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KEY ISSUE: EMERGING TECHNOLOGIES AND OTHERS

Q.9c. What do you consider to be any other issues relevant to renewable and low carbon energy development and how best should strategic planning policy provide for their consideration by relevant planning authorities when plan-making and decision-taking?

Comments:

