

Planning Committee Report B/2014/0155/F	27th February 2019
PLANNING COMMITTEE	

Linkage to Council Strategy (2015-19)	
Strategic Theme	Protecting and Enhancing our Environment and Assets
Outcome	Pro-active decision making which protects the natural features, characteristics and integrity of the Borough
Lead Officer	Shane Mathers
Cost: (If applicable)	N/a

<u>App No:</u>	B/2014/0155/F	<u>Ward:</u>	Feeny
<u>App Type:</u>	Full Planning Permission		
<u>Address:</u>	Lands 90m SSE of 21 Derrychrier Road and 320m SSW of 756 Feeny Road, Dungiven.		
<u>Proposal:</u>	Develop a hydroelectric renewable energy system (20kw) inc' repair existing weir, addition of fish pass, retention of existing mill race, repair/improvement of intake chamber and construction of new turbine house.		
<u>Con Area:</u>	N/A	<u>Valid Date:</u>	9th July 2014
<u>Listed Building Grade:</u>	N/A	<u>Target Date:</u>	
Applicant:	Robert Henry, C/O Agent		
Agent:	Hydro NI, Unit 28 Omagh Enterprise Centre, Great Northern Road, Omagh, BT78 5LU.		
Objections:	13	Petitions of Objection:	0
Support:	0	Petitions of Support:	0

Drawings and additional information are available to view on the Planning Portal- www.planningni.gov.uk

1 RECOMMENDATION

- 1.1 That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in section 9 and the policies and guidance in sections 7 and 8 and resolves to **APPROVE** planning permission subject to the conditions set out in section 10.

2 SITE LOCATION & DESCRIPTION

- 2.1 The application site relates to a tributary that flows into the Owenbeg River, and straddles both sides of Derrycrier Road. The site has evidence of former historic use as a mill race, with the remains of the old mill house beside the site and within the applicant's control. There is a pipe system from the tributary to the Owenbeg River presently in place.
- 2.2 The site has limited visibility from Derrycrier Road, due to the topography and existing vegetation, and the chamber's distance from the road.

3.0 RELEVANT HISTORY

There is no relevant history associated with this application.

4.0 THE APPLICATION

- 4.1 The application is for the development of a hydroelectric, renewable energy scheme (20kW) including the repair of the existing weir, provision of a fish pass, retention of existing mill race, repair/improvement of intake chamber and construction of a new turbine house. The present state of the land is that of an existing weir, mill race, intake chamber and turbine house.
- 4.2 The primary objective of the proposal is to produce electricity for use in the applicant's farm house and yard, with any surplus exported to the grid to generate revenue. The existing system is somewhat antiquated, for example the generator is approximately 70 years old, and parts of it are broken beyond repair, and the

system is not connected to the grid, thereby unable to supply surplus energy to it or revenue for the applicant. The existing weir is partially failed, and has no fish pass. The existing sluice gate is controlled manually, which does not necessarily ensure residual flows are maintained in the river. The applicant has already secured an abstraction licence, the process of which required a number of features to be validated, including the volumes of water to be abstracted, the volumes which must be left in the river, a formal assessment of the weir designs by DCAL and Loughs Agency to confirm it was passable to migrating fish, and to ensure the residual flow is protected in the natural river channel at all times via a notch in the weir.

- 4.3 Owenbeg River is part of the River Roe and Tributaries designated Special Area of Conservation (SAC). Owenbeg River is known as a significant area for various fish species, including salmon, eels and lamprey. The proposal is aimed at improving the flow control and passage of fish.

Access to the sites will be via the existing accesses by the turbine house and intake chamber, and to the weir and sluice by another laneway by the bridge to the south, all of which is in the applicant's ownership.

- 4.4 The application is accompanied by a Project Statement, which details the available head, the available flow, generation potential, intake structure, leat/mill race, screening, pipeline/penstock, crossflow turbine, water return and screening. A Construction Method Statement has also been submitted outlining the project objectives, the nature of the proposed works, and risk assessments on the environment, and health and safety, and a methodology statement.

5.0 PUBLICITY & CONSULTATIONS

External:

- 5.1 **Neighbours:** 13 letters of representation have been received from 12 parties, including Roe Angling Limited and the Ulster Angling Federation objecting to the application for the following reasons:

- This river is a very important Salmon spawning area and the proposal would jeopardise the survival of the genetic strain of Atlantic Salmon that belong to this river. There are about 8 Salmon

spawning sites in the dewatered stretch of river. The rest is nursery for juvenile fish. There appears to be no means for eels to pass the weir. There is also Japanese Knotweed at the uppermost part of the site.

- The location of the smolt pass. Smolts should be deflected at the intake of the lade and not at the intake of the turbine. Queries the suggestion by NIEA that the hydro scheme at the Roe Valley Country Park is best practice as it does not allow smolts to enter the lade. Prefer two screens to be in place or a complete shut down during the smolt migration. Queries if there are any precautions for eel migration at this site. Queries the low flow rates in the dewatered stretch, the scheme would deprive water flow for up to 75 m downstream from the weir. The fish pass should be repositioned to the middle of the weir with a v notch to prohibit poaching. Significant public funds have been invested in the dewatered stretch to facilitate the Salmon spawning cycle.
- The Roe Angling Association and the Ulster Angling Federation has submitted a joint objection assessing the proposal under PPS 18, objectives and Policy RE1 and its justification. The submission also makes specific comments on the application, the approach to flow considerations, cumulative effects, risks in the dewatered stretch, DCAL Inland Fisheries Group Advice and attaches two documents relating to hydropower and the effect on fish populations and flows to protect salmonid rivers.

NIEA Water Management Unit: no objection in principle providing all the relevant statutory permissions for this development and provided the designers/contractors consult with WMU Pollution Prevention Team in order to agree in water/near water works prior to the commencement of these works.

NIEA Development Management Team: The HRA determined that, provided all the mitigation measures detailed in the Construction Method Statement are adhered to, there would be no adverse impacts on the selection features of the River Roe and Tributaries SAC. A management plan is required for the Japanese Knotweed to ensure it does not spread off site as a result of this development.

Rivers Agency: As the agent has advised there will be no increase in flood risk elsewhere as a result of this proposal, no objection from the aspect of flood risk.

DAERA Inland Fisheries Group – (Previously DCAL): DAERA has responsibility for ensuring compliance or appropriate exemption of the scheme with the requirements of the Fisheries Act (NI) 1966 (as amended). Specifically, Section 54 relates to fish pass design, section 58 relates to the requirement for a weekend closure of abstraction operations, and section 59 relates to appropriate screening arrangements. DAERA IFG is satisfied that the screen spacings are compliant with the Act and is minded to exempt the applicant from the need to install a fine mesh screen on the intake during the months of March to May as required under section 59 (1)(a).

DAERA IFG is provisionally satisfied that the revised fish pass design will adequately facilitate upstream fish passage over the impoundment provided sufficient residual flow in the depleted channel is maintained. It is provisionally satisfied that the amended plans of the smolt bypass will effectively transfer downstream migrating smolts back to the river provided that adequately sized notches are located in the stone groynes and works extend to the point where the return channel discharges back to the river.

DAERA has highlighted that this is a replacement scheme that will comply with the Act or the applicant is putting in measures that DAERA is happy to exempt.

Loughs Agency: Loughs Agency is the statutory body charged with the conservation, protection and development of inland fisheries within the Foyle system. In their response they have raised concern with regards the design of the fish pass and screening arrangements.

However, as outlined above, the requirements of the Fisheries Act (NI) 1966 specifically in relation to appropriate fish pass design and screening arrangements is the responsibility of DAERA inland fisheries and is not within the remit of Loughs Agency.

Shared Environmental Service: This planning application was considered in light of the assessment requirements of Regulation 43 (1) of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended) by Shared Environmental Service on behalf of Causeway Coast and Glens Borough Council which is the competent authority responsible for authorising the project and any assessment of it required by the Regulations.

Having considered the nature, scale, timing, duration and location of the project it is concluded that, subject to condition in any planning approval, the proposal will not have an adverse effect on site integrity of any European site.

Transport NI: no objection subject to conditions.

Internal:

5.2 **Environmental Health:** no objection.

6.0 MATERIAL CONSIDERATIONS

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

6.2 The development plan is:

- Northern Area Plan 2016 (NAP)

6.3 The Regional Development Strategy (RDS) is a material consideration.

6.4 The Strategic Planning Policy Statement for Northern Ireland (SPPS) is a material consideration. As set out in the SPPS, until such times as a new local plan strategy is adopted, councils will apply specified retained operational policies.

6.5 Due weight should be given to the relevant policies in the development plan.

6.6 All material considerations and any policy conflicts are identified in the “Considerations and Assessment” section of the report.

7.0 RELEVANT POLICIES & GUIDANCE

Northern Area Plan 2016

Strategic Planning Policy Statement (SPPS)

Planning Policy Statement 2 - Planning and Nature Conservation

Planning Policy Statement 3 - Access, Movement and Parking.

Planning Policy Statement 15 - Planning and Flood Risk

Planning Policy Statement 18: Renewable Energy

8.0 CONSIDERATIONS & ASSESSMENT

- 8.1 The main considerations in the determination of this application relate to: the principle of development, the environmental impact on the Special Area of Conservation (SAC), its fish and the control of the spread of alien species and the consideration of representations.

Planning Policy

- 8.2 The principle of the type and scale of development proposed must be considered having regard to, the NAP 2016, The SPPS and the Planning Policy Statements specified above.

Northern Area Plan 2016

- 8.3 The site is located in the open countryside and does not fall within a specific designation as outlined in the NAP 2106.

SPPS

- 8.4 Paragraph 1.10 states that a transitional period will operate until such time as a Plan Strategy for the whole of the council area has been adopted. During the transitional period planning authorities will apply existing policy contained within the documents identified at paragraph 1.13, together with the SPPS. Any relevant supplementary and best practice guidance will also continue to apply. Paragraph 1.12 advises any conflict between the SPPS and any policy retained under the transitional arrangements must be resolved in the favour of the provisions of the SPPS. Where the SPPS is silent or less prescriptive on a particular planning policy matter than retained policies this should not be judged to lessen the weight to be afforded to the retained policy.
- 8.5 The SPPS promotes sustainable development throughout the planning system. The guiding principle for planning authorities, as stated in paragraph 3.8, 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.
- 8.6 Paragraph 6.224 of the SPPS states: Development that generates energy from renewable resources will be permitted where the

proposal and any associated buildings and infrastructure, will not result in an unacceptable adverse impact on the following planning considerations:

- public safety, human health, or residential amenity;
- visual amenity and landscape character;
- biodiversity, nature conservation or built heritage interests;
- local natural resources, such as air quality, water quality or quantity; and,
- public access to the countryside.

8.7 Paragraph 6.225 continues...The wider environmental, economic and social benefits of all proposals for renewable energy projects are material considerations that will be given appropriate weight in determining whether planning permission should be granted.

8.8 Paragraph 6.224 of the SPPS does not conflict with the retained policy.

Principle of Development

8.9 In considering the principle of development the proposal has been assessed against the policy criteria outlined in the following Planning Policy Statements:

- Planning Policy Statement 2 - Planning and Nature Conservation
- Planning Policy Statement 3 - Access, Movement and Parking.
- Planning Policy Statement 18 - Renewable Energy
- Planning Policy Statement 15 - Planning and Flood Risk
- Planning Policy Statement 21 - Sustainable Development in the Countryside

PPS 2 - Planning and Nature Conservation

8.10 Policy NH1 of PPS2 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:

- a European Site (Special Protection Area, proposed Special Protection Area, Special Areas of Conservation, candidate Special Areas of Conservation and Sites of Community Importance).

8.11 This planning application was considered in light of the assessment requirements of Regulation 43 (1) of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended) by Shared Environmental Service on behalf of Causeway Coast and Glens Borough Council which is the competent authority responsible for authorising the project and any assessment of it required by the Regulations.

8.12 Having considered the nature, scale, timing, duration and location of the project it is concluded that, subject to condition in any planning approval, the proposal will not have an adverse effect on site integrity of any European site. The proposal therefore complies with NH1 of PPS2.

PPS 3 - Access, Movement and Parking

8.13 The proposal is largely served by the existing access laneway. A new turning head is to be provided for service vehicles close to the turbine house. DFI Roads Service have been consulted in relation to the access and are satisfied that the proposed works are in accordance with PPS 3 subject to condition.

PPS 21 - Sustainable Development in the Countryside

8.14 Policy CTY 1: Planning permission will be granted for non-residential development in the countryside in the following cases: - renewable energy projects in accordance with PPS 18.

PPS 18 – Renewable Energy

8.15 PPS 18 'Renewable Energy' sets out the Department's planning policy for development that generates energy from renewable resources and that requires the submission of a planning application.

8.16 In addition, the Best Practice Guidance to Planning Policy Statement 18 Renewable Energy is taken into account in assessing proposals for such schemes:

8.17 Section 5 deals with Small Hydro schemes and advised that there are a large number of locations where smaller, domestic scale schemes in the range 10kW to 50kW could be developed. The proposed turbine is 20kW and as such is of a domestic scale.

8.18 Section 5 lists the essential elements of a hydro scheme and the various issues to be considered including, Design Considerations,

Hydrological Considerations, Ecological Considerations, Fisheries interests and Noise.

8.19 Policy RE1 of PPS18 states: Development that generates energy from renewable resources will be permitted provided the proposal, and any associated buildings and infrastructure, will not result in an unacceptable adverse impact on:

- (a) Public safety, human health, or residential amenity – The Environmental Health Department have been consulted and have indicated no objection to the proposed scheme. The nature of the proposed development and the distance to neighbouring development would limit any potential impact on amenity.
- (b) Visual amenity and landscape character - The visual impact of the proposal will be limited given the low profile nature of the development. There will be a degree of localised impact at the intake, however public views of the site are limited.

The turbine house and intake chamber are set to either side of Derrychrier Road. The existing turbine house is partially visible from the roadside and the proposed replacement turbine house of similar proportions. Visual impact at the site will be most significant during and after the construction phase but this will soften over time as vegetation re-establishes around the infrastructure.

- (c) Biodiversity, nature conservation or built heritage interests - Shared Environmental Service, NIEA, DAERA – Inland Fisheries and Loughs Agency are the competent authorities in this regard. Having considered the application the consultees have no objection to the proposal subject to conditions. Environmental Impact is looked at in greater detail in section 8.24.
- (d) Local natural resources, such as air quality or water quality - DAREA Inland Fisheries response indicates that they are satisfied with the proposed development and NIEA – Water Management Unit have issued an abstraction license.
- (e) Public Access to the countryside - The proposal would not restrict access to the countryside.

Therefore the proposal complies with CTY1 of PPS21 and RE1 of PPS18.

PPS15 - Planning and Flood Risk

8.20 The Strategic Flood Map (NI) indicates that the site lies within the 1 in 100 year fluvial flood plain.

Policy FLD 1 of PPS15 states that development will not be permitted within the flood plain unless the proposal constitutes an exception to the policy.

8.21 The area is undefended and the Planning Authority would consider the proposal an exception under criterion (c) and (e) in that the proposal includes the replacement of the existing hydro scheme. It also constitutes an exception under criterion (e) as it is considered water compatible development, which for operational reasons has to be located within the flood plain.

8.22 Following initial concerns raised by Rivers Agency the Agent has provided a letter dated 16th March 2015 in lieu of a full flood risk assessment. Rivers Agency, having considered the additional information and are satisfied that there is no increase in flood risk elsewhere as a result of the proposed development and have no objection from the aspect of flood risk. The proposal is in accordance with policy FLD1 of PPS15.

8.23 When considered in the context of the policies outlined above the proposed development is in accordance with the defined criteria. The principle of development is therefore acceptable.

Environmental Impact

8.24 In considering the environmental impact of the proposed development the Council carried out a determination under Category 3 (I) of Schedule 2 of the Planning (Environmental Impact Assessment) Regulations (NI) 2017. It was determined that the planning application did not require an Environmental Statement.

8.25 The application site forms part of the River Roe and Tributaries SAC/ASSI which are of international and national importance and are protected by Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended) and The Environment (Northern Ireland) Order 2002.

- 8.26 The application was considered in light of the assessment requirements of Regulation 43 (1) of the Habitat Regulations by Shared Environmental Service who concluded that, provided mitigation is conditioned in any planning approval, the proposal will not have an adverse effect on site integrity of any European site.
- 8.27 Shared Environmental Service have also requested by condition that a final Construction Environmental Management Plan be submitted and that it should include a Japanese Knotweed Management plan.
- 8.28 NIEA – Water Management Unit have no objection to the principle of the proposed development subject to condition. The Abstraction and Impoundment Licensing Team within WMU having considered the detailed design of the proposal and have granted the appropriate impoundment licence under The Water Abstraction and Impoundment (Licensing) Regulations (Northern Ireland) 2006.
- 8.29 The Abstraction licence was granted by NIEA on 26/9/2013 under licence number AIL/2009/0047. To ensure that unforeseen environmental impacts associated with the proposed development can be mitigated and are reversible, the licence is granted under condition. The conditions control the period of abstraction, the volume of abstraction and the residual flows. The license also allows for inspection of the facility at all times to ensure compliance with the relevant legislation. The operator must also provide a monitoring plan which provides annual returns to confirm compliance.
- 8.30 Natural Environment Division 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.
- 8.31 DAERA Inland Fisheries has responsibility for ensuring compliance or appropriate exemption of the scheme with the requirements of the Fisheries Act (NI) 1966. Specifically, section 54 relating to appropriate fish pass design and section 59 relating to appropriate screening arrangements. DAERA are satisfied with the proposed development and have given interim approval. Formal approval under Section 54 of the Act is withheld until fish passage arrangements can be fully assessed should the plant become operational.

8.32 Lough's Agency is the statutory body charged with the conservation, protection and development of inland fisheries in the Foyle system. Their initial consultation raised concerns with the smolt by-pass structure and its location relative to the mill race. The mill race was also a cause of concern as it was felt the channel offers increased exposure to predation. Loughs Agency stated their preference for a smolt screen at the intake to prevent smolts from entering the mill race.

8.33 The response then highlights the need for a separate consent for the removal of sand and gravel which must be acquired from Loughs Agency under the provision of the Foyle Fisheries Act (NI) 1952.

8.34 The open mill race is an existing feature and does not fall within the application red line. The application is for the redevelopment of the existing intake/weir and turbine house and as such the mill race is not under consideration and an objection on such grounds could not be sustained.

8.35 Loughs Agency stated that they would prefer a smolt screen to be provided, indicating that the proposal is non-compliant with the Fisheries Act (NI) 1966. However, DAERA Inland Fisheries Group in considering the amended plans advised that they were provisionally satisfied that the revised fish pass design will adequately facilitate upstream fish passage over the impoundment, provided sufficient residual flow in the depleted channel is maintained and that the smolt bypass will effectively transfer downstream migrating smolts back to the river, but that formal approval under section 54 and 59 of the Fisheries Act (NI) 1966 would be withheld until these can be fully assessed when operational.

8.36 Inland Fisheries are the authority responsible for ensuring compliance with the requirements of the Fisheries Act (NI) 1966. Specifically, section 54 relating to appropriate fish pass design and section 59 relating to appropriate screening arrangements. Loughs Agency therefore have no remit in relation to the screening and fish pass design and their objection on these grounds cannot be sustained.

8.37 With regards the provisions of the Foyle Fisheries Act (NI) 1952 Loughs Agency highlight the need for a separate consent for the

removal of sand and gravel. As the proposed amendments indicate areas where the river bed is to be lowered it would be reasonable to include a condition of planning permission that such consent be acquired prior to the commencement of construction.

8.38 Having consulted with the competent authorities in relation to potential environmental impacts it is concluded that the proposed development would not have a detrimental impact on features of acknowledged importance. Issues relating to the built and natural environment have been fully considered, a license for abstraction has been granted, mitigation and monitoring measures are also in place. The appropriate assessment has been undertaken with regards protected habitats and Inland fisheries are content to grant exemption under the appropriate sections of the Fisheries Act (NI) 1966.

Consideration of objections

8.39 Objectors have raised a number of concerns relating to the impact of the proposal. The Council has consulted DAERA IFG, the Loughs Agency, NIEA Natural Heritage and Water Management Unit and highlighted these concerns. The objections raise a number of issues outside the remit of this planning application, for example commentary on research on the cumulative impact of hydroelectric schemes, effects on fishing stocks and migration patterns, and the general approach applied to applications affecting fisheries. Objectors highlight the commendable work, often done voluntarily by local angling associations, to conserve and enhance fisheries and river environments.

8.40 DAERA has indicated that the objectors' suggestion that 'the existing weir will have only a trickle of water going over' is inaccurate and, when the amount is considered, this will be quite a lot of water and, notwithstanding this, a fish pass is being provided. DAERA has requested a Q80 higher residual flow which will provide more protection to the fish and maintain migration patterns. NIEA, as licencing authority, also have an interest in this aspect.

8.41 With regard to the objectors' concerns for the need for research into matters such as the levels of fish stocks in the depleted stretch of river, the effects of hydroelectric proposals on fish stocks, and the cumulative impact of proposals on fish, these are matters outside of this planning application, and would be undertaken by other bodies rather than the Council or the applicant.

- 8.42 Concern is raised that the design of the smolt bypass is extremely poor. The design allows for smolts to pass through the lade, there is no eel pass included and the screens should be closed during migration. DAERA have considered the design of the fish pass and screening and are satisfied that the design is sufficient to transfer downstream migrating salmonid smolts effectively back to the watercourse and is content to grant the appropriate exemption. For further consideration please see section 8.31.
- 8.43 It is also alleged that there is insufficient coordination to ensure the provisions of the Fisheries Act are fulfilled. DAERA, NIEA, SES and Loughs Agency have all been consulted on the planning application and each agency has the opportunity to peer review responses via the planning portal. DAERA are also a key consultee of NIEA Abstraction and Impoundment Licensing Team and advise on the provisions of the Act during the Abstraction Licensing process.
- 8.44 Concerns is also expressed that the appropriate assessment has not been completed in relation to Environmental Impact Assessment and Habitat Regulation Assessment and that the proposal would exacerbate the spread of invasive Japanese Knotweed. These issues are covered in sections 8.24 – 8.27 above.
- 8.45 The objectors have questioned the extent of the red line of the application, suggesting it is incorrect as it does not include the extent of river which will be severely dewatered by this proposal. The red line is correct, as dewatering does not fall under the definition of development contained in Part 3, Section 23 of the Planning Act.
- 8.46 Risks to fisheries interests in the dewatered stretch are also highlighted. The impact of degraded flows on migration patterns of sea trout and salmon does not fall within DAERAs' remit as the site falls within Loughs Agency jurisdiction. Loughs Agency were asked to consider the points raised in the objection. In their response no specific comment is made to support the assumptions outlined in the objection, referring only to their unchanged opinion outlined in their previous responses. As outlined in sections 8.32 – 8.37 these issues are either not within the remit of the Agency or can be dealt with by the use of planning conditions.

8.47 There is concern that the proposal would have a detrimental impact on angling in the area and that the fish pass would give rise to increased instances of poaching. In the first instance angling is not a material consideration of the planning process. DAERA have considered the details of the pass and are satisfied that it is acceptable. Poaching is not a consideration of the planning process and is an illegal activity prohibited under separate legislation. Policing of poaching is one of the responsibilities of Loughs Agency. They did not raise any specific objection on such grounds.

9.0 CONCLUSION

9.1 The application for a hydroelectric, renewable energy scheme includes the repair of the existing weir, provision of a fish pass, retention of existing mill race, repair/improvement of intake chamber and construction of a new turbine house. The upgrading of the existing facility will allow new measures to be put in place, for example the replacement of the manually operated sluice gate with an automated one to ensure the licenced residual flow is maintained in the river channel, and the establishment of a fish pass. The application has been assessed against relevant planning policy and with the input of the various expert statutory bodies. The objections have raised a number of issues and these have been assessed by consultees. The consultees have no grounds for objection to this proposal.

9.2 This proposal is considered acceptable in this location having regard to the Area Plan and other material considerations. The proposed development is in accordance with the policy criteria defined under PPS2 and would not cause demonstrable harm to features of acknowledged importance. The proposed development is in accordance with the Northern Area Plan 2016 and the relevant planning policy, guidance and other material considerations, including the SPPS.

9.3 The proposed development does not present demonstrable harm to the amenity of neighbouring residents and would not detract from the character and environmental quality of the surrounding area. Issues relating to the built and natural environment have been fully considered, appropriate assessment has been undertaken with regards protected habitats and drainage. Approval is recommended.

10.0 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 applicant must submit a final Construction Environmental Management Plan, including a finalised layout design, site drainage plan and landscaping management plan, to the competent authority for agreement prior to works commencing. This should reflect all the mitigation and avoidance measures to be employed as outlined in the Construction Environmental Management Plan (May, 2017) and all additional submitted information.
In addition the CEMP should include a Japanese Knotweed Management Plan and Decommissioning Plan. The measures within the approved CEMP and Abstraction Licence shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority and Department.
Reason: To ensure that the applicant/contractor undertaking the work is fully appraised of all the risks associated with the proposal and to provide effective mitigation ensuring there are no adverse impacts on the integrity of River Roe and Tributaries SAC.
3. All construction works should be carried out within daylight hours with no artificial lighting on site. Soil ramps must be constructed within areas of deep excavation to allow otters to escape. If there is evidence of otter activity on the site, all works must cease immediately and further advice must be sought from the Wildlife Team, Northern Ireland Environment Agency, Klondyke Building, Cromac Avenue, Gasworks Business Park, Belfast BT72JA. Tel. 028 905 69605.
Reason: To ensure there are no adverse impacts on the integrity of River Roe and Tributaries SAC.
4. Site drainage during construction and operational phases must be designed to the principles of Sustainable Drainage Systems (SuDS) in order to prevent the polluting effects of storm water on the River Roe and Tributaries SAC. Construction of SuDS should comply with the design and construction standards as set out in

The SuDS Manual - Construction Industry Research and Information Association (CIRIA) Report C753.

Reason: To prevent polluting discharges entering and impacting on the site integrity of the River Roe and Tributaries SAC.

5. Before work commences the applicant shall submit written confirmation (from the relevant energy regulator) to the competent authority demonstrating that connection to the grid has been secured.

Reason: To ensure the construction is required.

6. A designated buffer of at least 10 meters must be maintained between the location of refuelling, storage of oil/fuel, concrete mixing and washing areas, storage of machinery/material/spoil etc. and the Owenbeg River. Any washing water shall be collected and tankered off-site to a suitable water treatment facility. A silt fence should be erected around the entire perimeter between the construction works and watercourse. It should remain throughout construction works.

Reason: To ensure there are no adverse impacts on the integrity of River Roe and Tributaries SAC.

7. The barrier shall be de-watered prior to use of wet concrete onsite and all water contained thereafter shall be collected for treatment prior to disposal. At no point shall water be discharged from the site into the watercourse during construction. The sealed bags should be removed from the cofferdam structure in a gradual phased approach to minimize the risk of disturbance and to reduce the risk of sediment that has settled underneath the bags being exposed and entering the river flow.

Reason: To ensure there are no adverse impacts on the integrity of River Roe and Tributaries SAC.

8. All in-river works of the development must be carried out outside the Atlantic salmon spawning season (31 October to 31 March).

Reason: To ensure there are no adverse impacts on the integrity of River Roe and Tributaries SAC.

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.No hedgerow or scrub removal from March to August.

Reason: To avoid disturbance to breeding birds and their young.

11.Screening shall be erected around the site throughout the construction phase.

Reason: To avoid pollution (noise, visual, contamination) of adjacent designated sites.

12.All construction activity shall be confined within site boundaries and the boundary of the designated area shall not be disturbed in any way without written consent from the Department.

Reason: To protect the integrity of Lough Foyle SPA and Lough Foyle ASSI designated sites, and to avoid any encroachment therein.

13. Prior to the commencement of work the applicant shall submit to the planning authority, written confirmation that the appropriate consent has been granted by Loughs Agency in relation to the requirements of the Foyle Fisheries Act (NI) 1952.

Reason: To ensure compliance with the Foyle Fisheries Act (NI) 1952.

Informatives

1. The scheme must comply with all relevant aspects of the Foyle Fisheries Act (NI) 1952 (as amended). Details can be obtained from the Loughs Agency. The applicant should be aware that it is an offence under section 41 of the Foyle Fisheries Act (1952) to cause pollution which is detrimental to fisheries interests.

2. The applicant should be aware that Section 46(a) of the Foyle Fisheries Act 1952 states that it is an offence to *'wilfully obstruct the passage of the smolts or fry of salmon or trout'* and that Section 46(c) states that it is an offence to *'injure or disturb the spawn or fry of salmon or trout'*.

3. The applicant should be aware that it is an offence to remove or disturb any material, including sand or gravel from the bed of any freshwater river within the Foyle and Carlingford Areas without the consent of the Loughs Agency, contrary to Section 46 of the Foyle

Fisheries Act (NI) 1952, as amended by Article 18(3) of the Foyle and Carlingford Fisheries (NI) Order 2007.

4. It is an offence under Article 47 of the Fisheries Act (NI) 1966 to cause pollution which is subsequently shown to have a deleterious effect on fish stocks.
5. All works near watercourses to be carried out in line with guidance as described in the Pollution Prevention Guidelines 5 (Works In, Near or Liable to Affect Watercourses).
6. The scheme shall comply with all relevant aspects of the Fisheries Act (Northern Ireland) 1966 (as amended). DAERA Inland Fisheries have given interim approval with regard to the fish passage proposals for this project. DAERA Inland Fisheries will withhold the formal approval under Section 54 of the Act until fish passage arrangements can be fully assessed when the hydroelectric plant is operational.

7. The applicant is informed that it is an offence under Part II, Article 7 of 'The Water (Northern Ireland) Order (1999)' to knowingly or otherwise discharge or deposit any poisonous, noxious or polluting matter so that it enters a waterway or water contained in any underground strata. The penalty if found guilty of an offence under this Article is imprisonment for a term not exceeding 2 years or to a fine or to both.

The applicant should ensure that measures are in place to prevent pollution of surface or ground water as a result of the activities on site, both during construction and thereafter.

For further information relating to water issues please contact Northern Ireland Environment Agency – Water Management Unit (Telephone: 028 9262 3100).

8. The applicant's attention is drawn to The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended), under which it is an offence to:
 - a) Deliberately capture, injure or kill a wild animal of a European protected species, which includes the otter (*Lutra lutra*);
 - b) Deliberately disturb such an animal while it is occupying a structure or place which it uses for shelter or protection;
 - c) Deliberately disturb such an animal in such a way as to be likely to;

- (i) affect the local distribution or abundance of the species to which it belongs;
 - (ii) Impair its ability to survive, breed or reproduce, or rear or care for its young; or
 - (iii) Impair its ability to hibernate or migrate;
- d) Deliberately obstruct access to a breeding site or resting place of such an animal; or
- e) To damage or destroy a breeding site or resting place of such an animal.
9. If there is evidence of otter activity on the site, all works must cease immediately and further advice must be sought from the Wildlife Team, Northern Ireland Environment Agency, Klondyke Building, Cromac Avenue, Gasworks Business Park, Belfast BT72JA. Tel. 028 905 69605. There is no provision within the legislation to issue licences to kill otters for the purpose of development.
10. The following measures are taken to minimise threats to breeding birds and maintain the availability of nest sites:
- Removal of any hedgerow vegetation or trees for access purposes and removal or infilling of natural features such as earth banks and ditches should be avoided.
 - Any unavoidable hedgerow or tree removal should be carried out outside of the bird breeding season, which runs from 1st March to 31st August.
 - All works should remain within the access and construction footprint as shown on the original drawings.
- The applicant should refer and adhere to the precepts contained in DOE Standing Advice Note No. 4. Pollution Prevention Guidance, 5. Sustainable Drainage Systems (April 2015) (The applicant should note that since the publication of this standing advice the SuDS Manual has been updated and is now CIRIA C753 (2015) The SuDS Manual), 11. Discharges to the Water Environment and 18. Abstractions and Impoundments. Standing advice notes are available at:
- http://www.planningni.gov.uk/index/advice/northern_ireland_environment_agency_guidance/standing_advice.htm
12. The applicant's attention is drawn to the fact that the site adjoins the boundary of River Roe & Tributaries ASSI and SAC and precautions should be taken to ensure its integrity will not be damaged by construction vehicles, deposited materials,

contaminated run-off, or any other activity during the construction period or thereafter. Any works occurring within the designated site but outside the red line planning application boundary are subject to The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended) and Environment (Northern Ireland) Order 2002 (as amended) and require consent from the Northern Ireland Environment Agency, Conservation, Designations and Protection Unit, Klondyke Building, Gasworks Business Park, Belfast BT7 2JA.

14. The applicant's attention is drawn to Article 4 of the Wildlife (Northern Ireland) Order 1985 (as amended) under which it is an offence to intentionally or recklessly kill, injure or take any wild bird. It is also an offence to intentionally or recklessly: take, damage or destroy the nest of any wild bird while that nest is in use or being built; or take or destroy an egg of any wild bird. If any person intentionally or recklessly disturbs any wild bird while it is building a nest or is in, on or near a nest containing eggs or young; or disturbs dependent young of such a bird they shall be guilty of an offence.
Any person who knowingly causes or permits to be done an act which is made unlawful by any of these provisions shall also be guilty of an offence.
15. The applicant's attention is drawn to Article 15 of the Wildlife (Northern Ireland) Order 1985 (as amended) under which it is an offence for any person to plant or otherwise cause to grow in the wild any plant which is included in Part II of Schedule 9 of the Order, which includes (Japanese knotweed). This highly invasive plant species has been recorded on site and control measures must be taken to ensure that any works do not cause it to spread either on or off the site.
16. Any soil, containing (Japanese knotweed) plant or seed material, which is removed off site, is classified as controlled waste under the Controlled Waste Regulations (Northern Ireland) 2002. The Controlled Waste (Duty of Care) Regulations (Northern Ireland) 2002 places a duty of care on 'anyone who produces, imports, stores, transports, treats, recycles or disposes of waste to take the necessary steps to keep it safe and to prevent it from causing harm, especially to the environment or to human health'. In the case of (Japanese knotweed) it is the duty of the waste producer to inform the licensed waste carrier and licensed landfill site that the

controlled waste material contains (Japanese knotweed) as part of the waste transfer process.

Please see the following link for Best Practice Guidance:

<http://invasivespeciesireland.com/toolkit/best-practice-management/>

17. Under the terms of Schedule 6 of the Drainage (Northern Ireland) Order 1973 the applicant must submit to DfI Rivers, for its consent for any proposal to carry out works which might affect a watercourse such as culverting, bridging, diversion, building adjacent to or discharge of storm water etc. Failure to obtain such consent prior to carrying out such proposals is an offence under the aforementioned Order which may lead to prosecution or statutory action as provided for. An application form to undertake works to a watercourse can be obtained at the web address below.
<https://www.infrastructure-ni.gov.uk/publications/schedule-6-application-consent-undertake-works-watercourse>
18. Developers should acquaint themselves of their statutory obligations in respect of watercourses as prescribed in the Drainage (Northern Ireland) Order 1973, and consult the Rivers Agency of the Department of Agriculture accordingly on any related matters.
19. Any proposals in connection with the development, either temporary or permanent which involve interference with any watercourse at the site:- such as diversion, culverting, bridging; or placing any form of structure in any watercourse, require the written consent of the Rivers Agency. Failure to obtain such consent prior to carrying out such proposals is an offence under the Drainage Order which may lead to prosecution or statutory action as provided for.
20. Any proposals in connection with the development, either temporary or permanent which involve additional discharge of storm water to any watercourse require the written consent of the Rivers Agency. Failure to obtain such consent prior to permitting such discharge is an offence under the Drainage Order which may lead to prosecution or statutory action as provided for.
21. If during the course of developing the site, the developer uncovers a watercourse not previously evident, he should advise the local Rivers Agency office immediately in order that arrangements may

be made for investigation and direction in respect of any necessary measures required to deal with the watercourse.

22. Where a Designated watercourse flows through or adjacent to a development site, it is considered essential that a working strip of minimum width 5m is left along the bank in order to facilitate future maintenance of the watercourse by the Rivers Agency. Actual requirement should be determined in consultation with the Agency.
23. Consideration must be given at preliminary planning and design stages to ensure that impact on the receiving water environment during construction phase are minimised. The perceived risks identified and associated mitigation measures should be addressed.
24. Given the nature of the project and the proximity of the proposed works in, near to and liable to impact the waterway, the WMU - Pollution Prevention team will require the designer/ contractors to consult with them from early planning/ design stages. This will serve to:
 - Ensure perceived threats to the waterway during the construction and operational phase have been identified
 - Ensure potential pollution pathways have been identified
 - Ensure appropriate mitigation have been identified and utilized
 - Ensure management and maintenance of mitigation measures
 - Ensure that efforts are made and measures are in place to reduce the number of water pollution incidents and minimize the effects of human activities on the environment during both the construction and operational phase.
25. Consideration should be made of current best practice which is highlighted in relevant Pollution Prevention Guidelines (PPGs) as noted below. Such considerations will include:
 - Maintenance of vegetative buffer zones alongside any waterway of a min of 10m) including any un-named tributaries running through the site during land stripping.
 - Creation of hard tracks to prevent plant machinery from unnecessarily de-vegetating the site.
 - Regular inspections of machinery working near any waterway should be made to prevent pollution by fuel/oil.

- No machinery should enter any waterway at any time. This may affect decisions relating to the project. Any work in a waterway should be conducted 'in the dry' behind coffer dams using over pumping etc.
- Any runoff contaminated by cement should be directed via an impermeable pathway to purpose built impermeable containment to be taken away by a licensed waste carrier.
- Management of stockpiles in accordance to best practice
- Minimisation of exposed earth, over land flow and control of surface water discharges from the site. This must be managed in a manner to prevent entry of suspended solids and contaminants to the waterway. Cut off channels along with check dams can also serve to minimise the amount of surface runoff from the site and assist in the settlement of suspended solids.

26. Water containing suspended solids must be fully treated prior to it entering any waterway. This may require surface water flow to be channelled towards settlement systems.

- Silt settlement ponds should be constructed in a manner that adheres to industry best practice with respect to length: width ratios and depth. The use of metal skips mentioned in the Construction Method Statement is unlikely to be industry best practice.
- A washed stone dam in the middle of each pond helps settlement.
- There must be a management/ maintenance programme for such settlement systems in place to ensure effective functioning.

Water Management Unit would recommend that **all the relevant Pollution Prevention Guidelines (PPGs) are adhered to** in order to minimise the impact of the project on the environment including:

- PPG 01 – General guide to the prevention of pollution
- PPG 02 – Above ground oil storage tanks
- PPG 05 – Works and maintenance in or near water
- PPG 06 – Working at construction and demolition sites
- PPG 13 – Vehicle washing and cleaning
- PPG 21 – Pollution incident response planning
- PPG 22 – Incident Response dealing with spills

- PPG 26 – Safe Storage-drums and intermediate bulk containers

All the current PPGs can be obtained from the following link:
<http://search.netregs.org.uk/search?w=pollution%20prevention%20guidelines>

27. Precautions shall be taken to prevent the deposit of mud and other debris on the adjacent road by vehicles travelling to and from the construction site. Mud, refuse, etc. deposited on the road as a result of the development, must be removed immediately by the operator/contractor.
28. Notwithstanding the terms and conditions of the approval set out above, you are required under Articles 71-83 inclusive of the Roads (NI) Order 1993 to be in possession of the Department for Regional Development's consent before any work is commenced which involves making or altering any opening to any boundary adjacent to the public road, verge, or footway or any part of said road, verge, or footway bounding the site. The consent is available on personal application to the TransportNI Section Engineer whose address is County Hall, Castlerock Road, Coleraine, BT51 3HS. A monetary deposit will be required to cover works on the public road.
29. All construction plant and materials shall be stored within the curtilage of the site.
30. It is the responsibility of the Developer to ensure that water does not flow from the site onto the public road (including verge or footway) and that existing road side drainage is preserved and does not allow water from the road to enter the site.
31. Notwithstanding the terms and conditions of the approval set out above, you are required under the Street Works (Northern Ireland) Order 1995 to be in possession of a Street Works Licence before any work is commenced which involves making any opening or placing of any apparatus in a street. The Street Works Licence is available on personal application to the Department for Regional Development TransportNI Section Engineer whose address is County Hall, Castlerock Road, Coleraine, BT51 3HS. A monetary deposit will be required to cover works on the public road.

32. Consent to discharge under the terms of the Water (Northern Ireland) Order 1999 may be required for the discharge of site drainage during the construction phase of the proposed development. Water Management Unit would encourage the use of SuDS (Sustainable Drainage System) techniques during the construction phase, as set out in the Pollution Prevention Guidelines (PPG's) and Construction Industry Research and Information Association (CIRIA) guidance, to deal with this drainage (please see SuDS standards detailed above).
33. An application form for consent to discharge under the Water (NI) Order 1999 (as amended) can be obtained by contacting NIEA WMU at the above address, or by visiting our web site at:- http://www.ni-environment.gov.uk/water/home/regulation_of_discharges_industrial/industrial_and_private_sewage_2.htm
34. The applicant should note that the Department will withhold granting of exemption to section 59 of the Fisheries Act (NI) 1966 (as amended) 1966 in relation to location of fish protection screen until fully satisfied that smolt bypass arrangements operate as proposed.
35. This determination relates to planning control only and does not cover any consent or approval which may be necessary to authorise the development under other prevailing legislation as may be administered by the Council or other statutory authority.
36. This permission does not alter or extinguish or otherwise affect any existing or valid right of way crossing, impinging or otherwise pertaining to these lands.
37. This permission does not confer title. It is the responsibility of the developer to ensure that he controls all the lands necessary to carry out the proposed development.

