MWP

Derogation Licence Application under the European Communities (Birds and Natural Habitats) Regulations 2011 - 2021

Supporting Information

Issued to Department of Housing, Local Government and Heritage on behalf of Elecnor Servicios y Proyectos

March 2025

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1. Introduction

Malachy Walsh and Partners (MWP) Engineering and Environmental Consultants was commissioned by Elecnor (Elecnor Servicios y Proyectos), on behalf of Statkraft, to conduct ecological pre-construction surveys related to the permitted High Inertia Synchronous Compensator (HISC) compound (Planning Reg 21/549) as of 19 July 2021. As required by Condition 4 of the Grant, Section 3.4.1 of the Construction and Environmental Management Plan states that a pre-commencement ecological survey must be conducted.

The site is located in North Kerry in the townland of Kilpaddoge, Tarbert, Co Kerry, approximately 1.5km north-west of Tarbert and 6.7km north-east of Ballylongford. The site is on lands zoned for 'Industry' as per the Kerry County Development Plan 2015-2021 and is adjacent to the permitted Kilpaddoge Peaking Plant, which in turn is adjacent to the Eirgrid 110/220kV substation in the townland of Kilpaddoge Co. Kerry. The River Shannon is located within 100 metres of the site to the north at Glencloosagh Bay and Tarbert Power station is located c.1.2 km to the south east. Access to the site is available from an existing shared service road serving the existing substation and peaking plant which runs north from the L-1010 local road between Tarbert and Ballylongford villages.

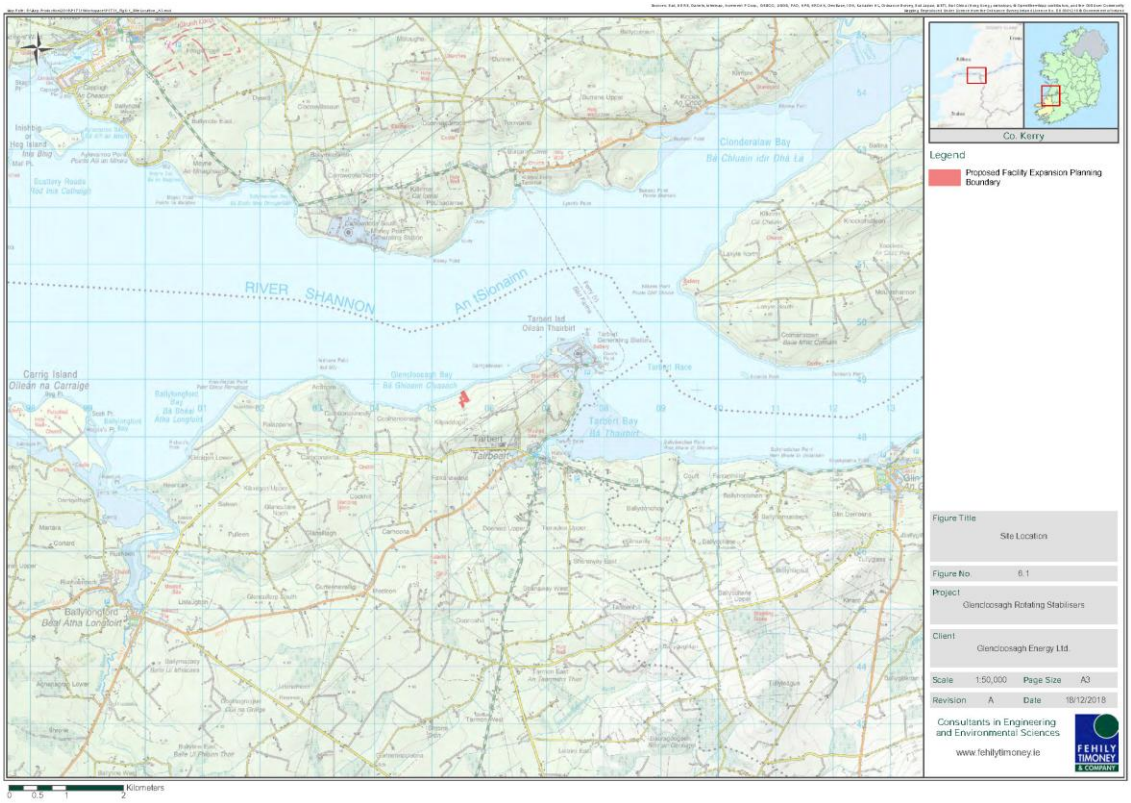


Figure 1-1 Location of the permitted site.

As part of the pre-commencement ecological survey required to comply with Condition 4 of the grant of planning, signs of otter activity were identified within the immediate vicinity of the subject site. On this basis, a targeted pre-construction survey for otter was conducted in the subject area.

Ecological surveys carried out by MWP in 2025 built upon previous baseline surveys carried out to inform the EIAR for the development.

This derogation licence application, where granted, is intended to facilitate construction activities scheduled for 2025. This report presents the findings of the ecological pre-construction surveys conducted by MWP ecologists and proposes mitigation, ensuring compliance with best practices, seasonal appropriateness, and adherence to relevant ecological guidelines.

2. Methodology

A pre-commencement ecological survey was undertaken on the 11th of February 2025. Searches were carried out for tracks, signs, dwellings, resting areas, feeding signs and droppings of target species. Survey efforts covered the footprint of the permitted site and extended outside the main study area where active evidence of mammals indicated the potential presence of dwellings. The survey extended out to 150 m upstream and downstream if active paths were deemed to lead to potentially significant dwellings.

A targeted pre- commencement otter (*Lutra lutra*) surveys were carried out on the 13th and 19th of February 2025 to capture further data on the presence of otter breeding/resting sites, and any other signs of otter, within or near the project boundary. The extent of the survey area was defined with regard to *Guidelines for the Treatment of Otters during the Construction of National Road Schemes* (NRA, 2006) and therefore included a minimum of 150 m upstream and downstream of the drainage ditch in the study area.

Identified holts or resting places were subject to monitoring and mitigation measures in accordance with TII Guidelines for the Treatment of Otter Prior to the Construction of National Road Schemes (2006). Wildlife cameras were deployed at two locations in relation to otter (**Table 1**). Camera monitoring of the identified holt was undertaken under the appropriate licence from the National Parks and Wildlife Service (NPWS). Trail cameras were deployed under NPWS Licence No. 007/2025. An otter holt works exclusion zone was implemented on-site on the 25th of February 2025 (see Section 6 for more information).

Table 1. Trail cameras deployed during February 2025 as part of the initial pre-construction site survey.

Trail Camera No.	Location	Grid Reference (ITM)		Field Notes
		X	Y	
TC1	Northwest of the study site	505524	648767	Deployed on left bank of a drain facing potential otter holt on the right bank.
TC2	Northwest of the study site	505520	648767	Deployed above potential otter holt on the right bank of the drain to the west.

3. Survey limitations

The density of the hedgerow/scrub habitat in the western area of the construction area limited accessibility and restricted observation of the full extent of the drainage ditch encompassed within the site (Figure 5-1). Given the urgency of commencing hedgerow clearance before the bird nesting season (which begins on 1st March), clearance work was scheduled for the last week of February 2025. This timing ensures that full-scale construction activities can begin as planned in May or June 2025.

4. NPWS Consultation

An informal discussion was held with the local NPWS Ranger Mr Sean O' Brien on 24 February 2025.

5. Results

The subject site consists of areas of improved and semi-improved agricultural grassland, bordered by existing hedgerows and sections of built ground. It is situated adjacent to the shoreline of the Shannon Estuary. A drainage ditch in the western part of the construction area and flows northward and discharges into the Lower River Shannon Estuary to the north of the red line boundary (Figure 5-1).

Evidence of otters, in the form of spraints, was identified outside the red line boundary. Additionally, a dwelling within the red line boundary and construction area was considered a potential otter holt (Figure 5-1). Otter evidence was also recorded to the north of the site and along the shoreline (Figure 5-2). Survey results for otter are presented in Figure 5-2 and Plate 5-4 to Plate 5-5 below. No footage of otter was captured from Trail Cameras deployed for a 6-day period in February 2025.

The modified stream within the study area is presented in Plate 5-1 to Plate 5-2.

5.1 Otter Holt

A dwelling considered to comprise a potential otter holt was observed within the site to the west of the construction area at the northern end of the drainage ditch. The potential holt appeared abandoned at the time of the survey due to vegetative debris and overgrowth immediate to the dwelling entrance (Plate 5-3). No signs of activity were observed in the immediate area. The holt was identified within the site boundary and will likely be directly affected by works. Vegetation coverage at the hedgerows and stream banks varied between moderate and dense. Although vegetative cover provides protection for resting otter, it is possible that ongoing human, livestock and agricultural disturbances likely affect otter presence within the site boundary.

This holt is the subject of the current derogation license application.

5.2 Otter Spraint

Droppings characterised as otter spraint were identified outside the site boundary to the north at the mouth of the drainage ditch (**Plate 5-1**). Spraints comprised fish bones, fish scales and had a fishy odour (**Plate 5-4**). One spraint was recent (±24 hours) suggesting recent commuting or foraging otter in the area. Coastal otters require a freshwater source (e.g. stream, river) to remove salt deposits from their fur (Forestry Service, 2019).

5.3 Drainage ditch

A highly modified drainage ditch encompasses the red line boundary to the east. The drainage ditch flows north and discharges into the Lower Shannon Estuary (**Plate 5-1**). Two culverts exist at the site; one at the most south-easterly point of the red line boundary and the second further downstream ca. 96 m (**Plate 5-1**). The gradient of this stream reach was relatively flat upstream and downstream of the two culverts, with a moderate velocity in terms of flow (**Plate 5-2**). Water depth was relatively shallow for the most part, averaging depths of ca. 0.1 to 0.2 m. The stream to the east of the red line boundary comprised stone slabs in step formation creating a minor cascade. The high gradient produced a fast flow velocity (**Plate 5-2**) to this stream, also flowing south to north.

Given the characteristics of the stream, the gradient to the east and the presence of the culverts, it is considered fish passage is not likely to occur. The drainage ditch within the site comprises suboptimal foraging habitats for otters and has limited potential to support fish numbers feasible for hunting otters. The stream characteristics reduces prey availability of larger fish likely affecting the presence of otter foraging grounds. This drainage ditch was not considered optimal for breeding otters and their habitats.

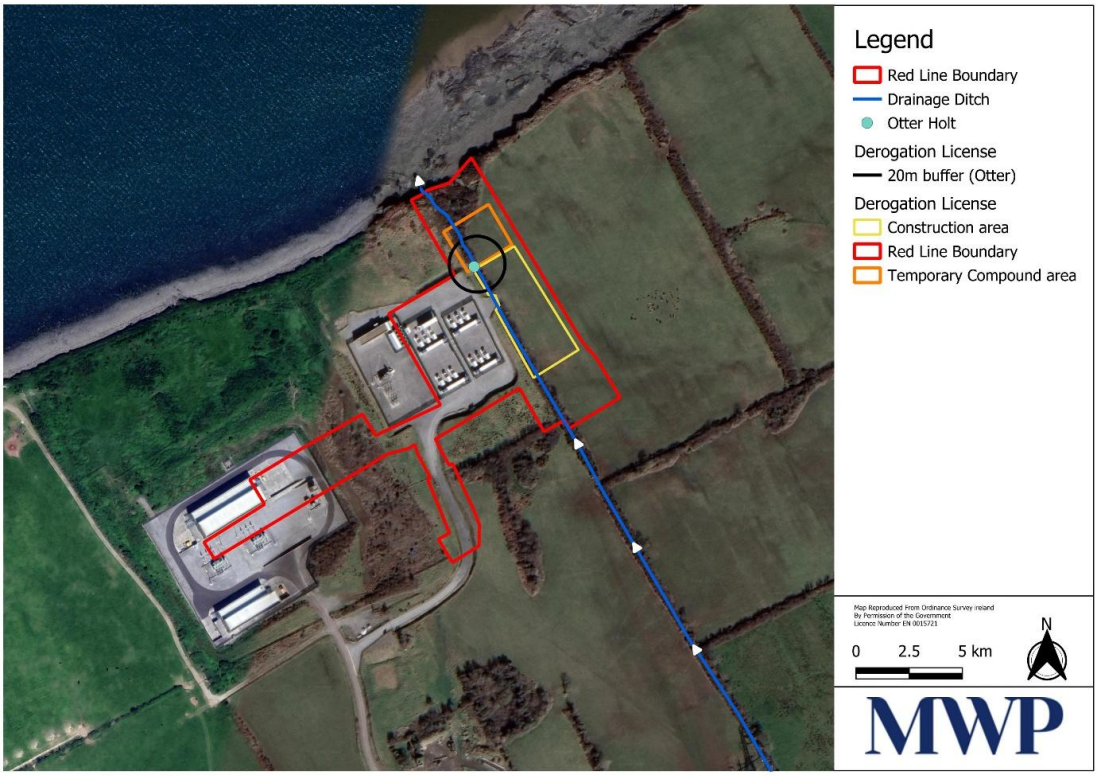
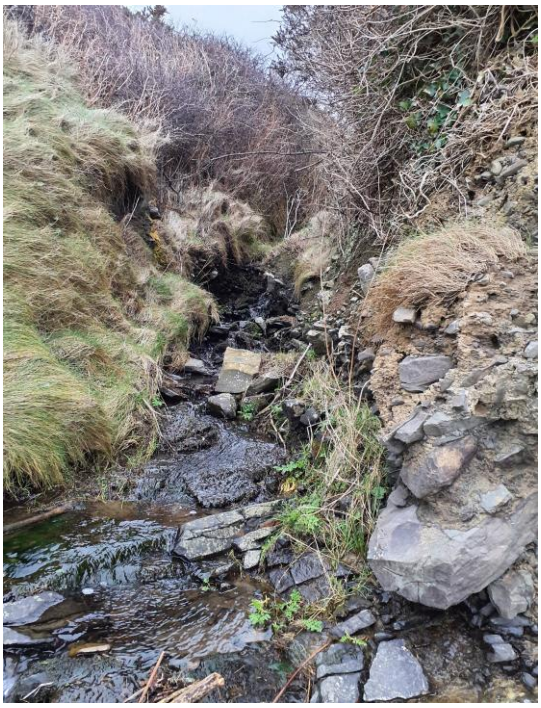


Figure 5-1 Site development plan



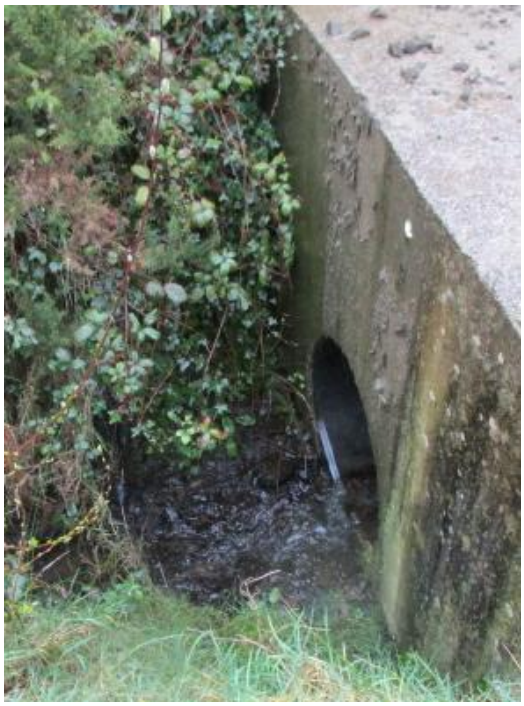
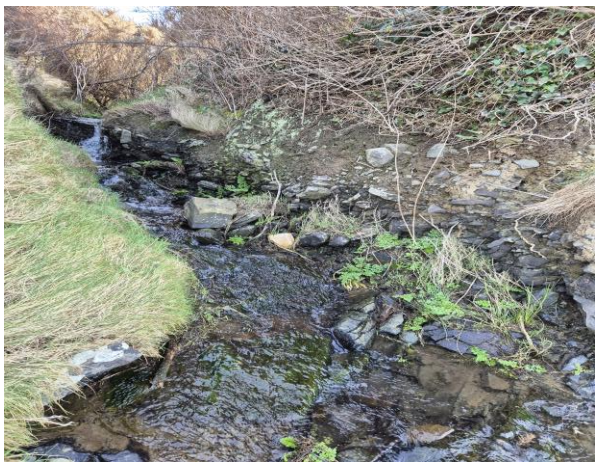


Plate 5-1. Highly modified and shallow stream to the east of the red line boundary



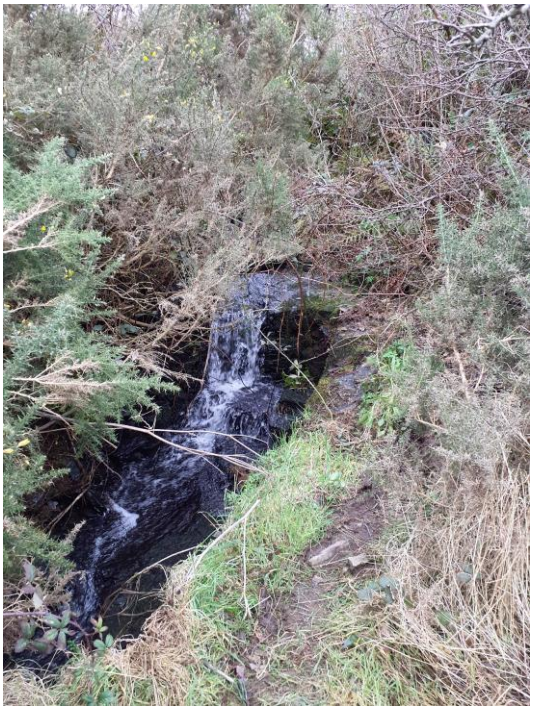


Plate 5-2. Highly modified and shallow stream to the east of the red line boundary

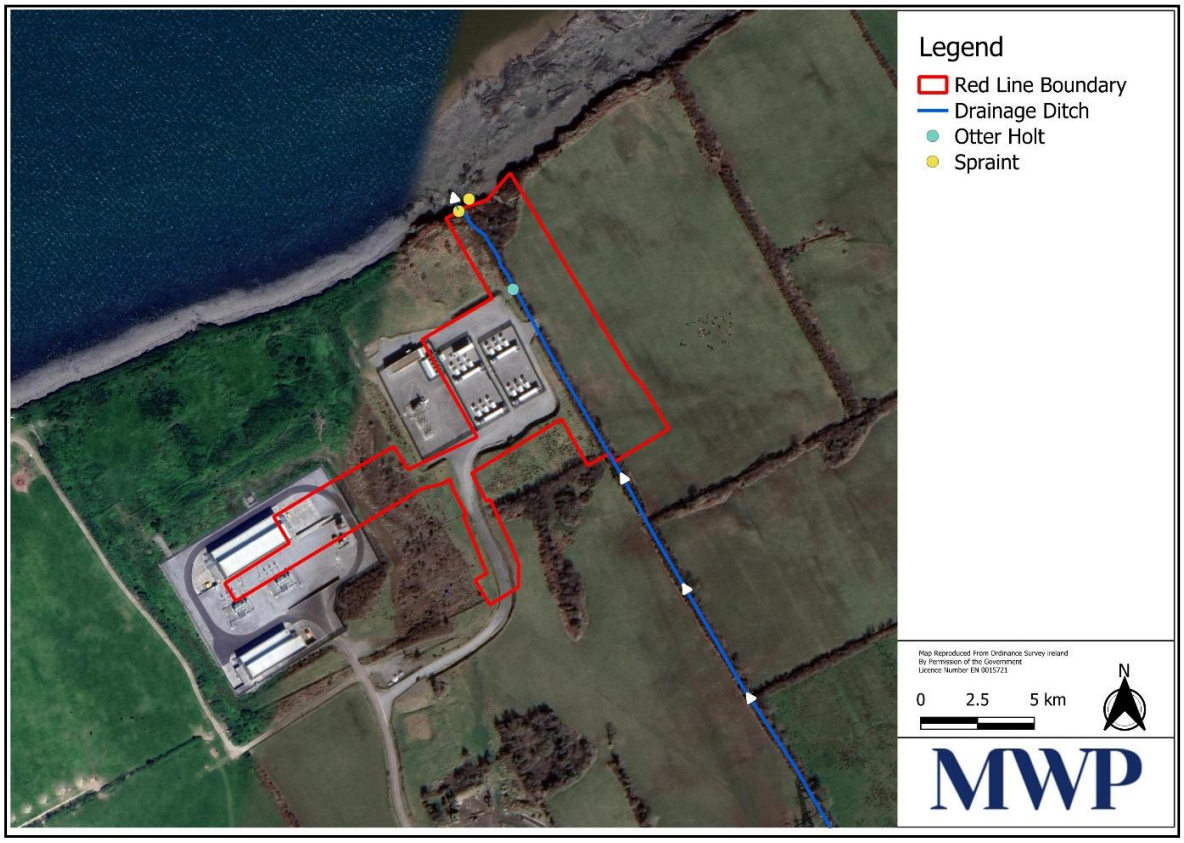


Figure 5-2 Pre-construction site walkover points of interest

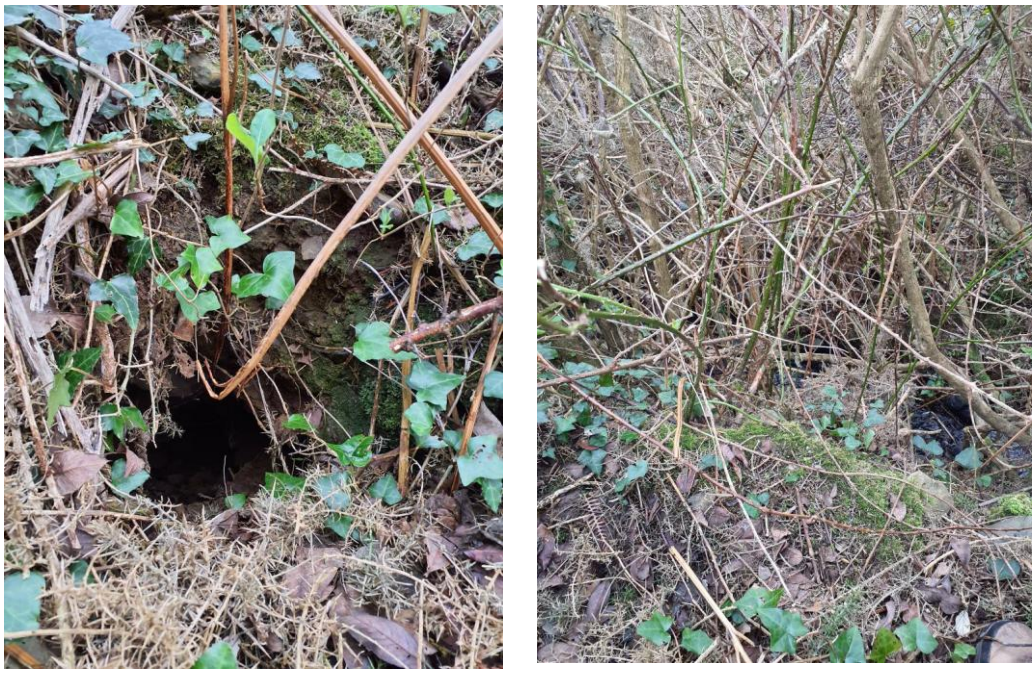


Plate 5-3. Potential holt (abandoned) (left). Habitat immediate at potential holt (right).

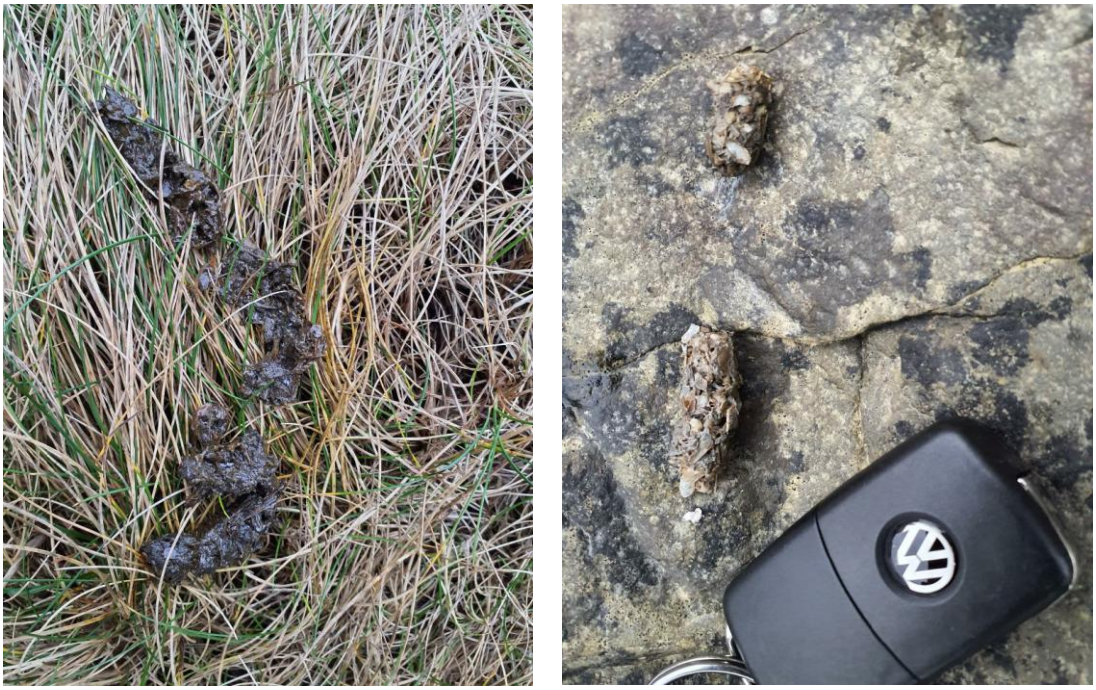


Plate 5-4. Fresh spraint (left) and dated spraint (right) comprising fish bones and scales adjacent to Shannon Estuary.

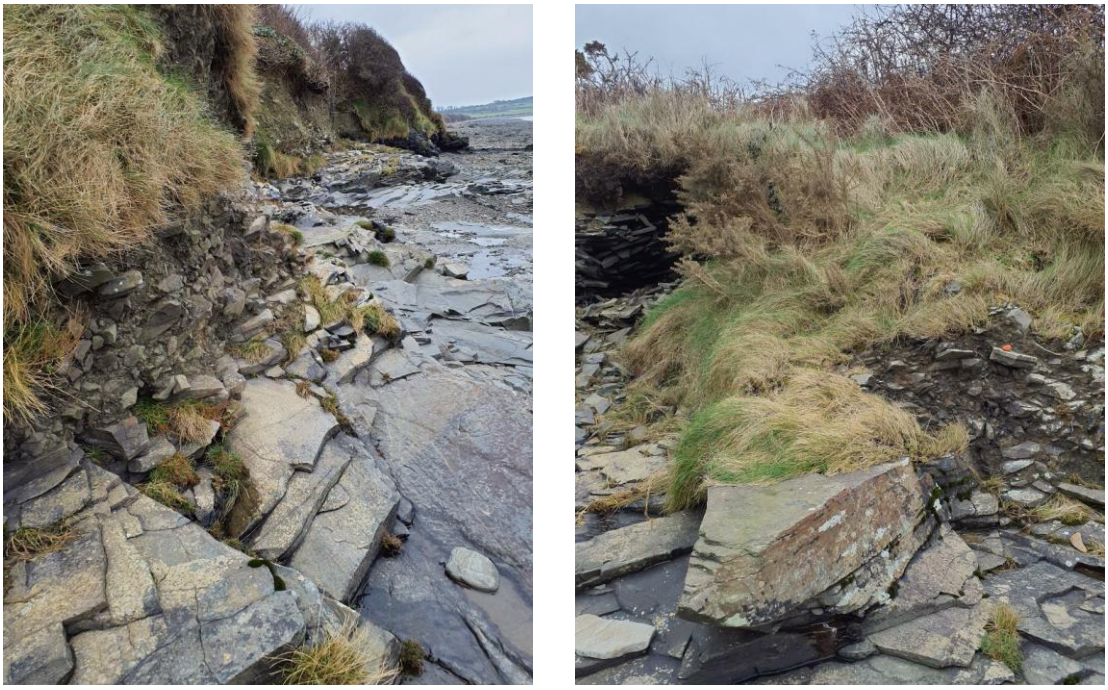


Plate 5-5. Coastline location of otter spraints.

6. Derogation License Application

Following consultation with the NPWS (Sean O'Brien, email dated 24 February 2025), it was confirmed that the removal of inactive or disused otter holts requires a derogation licence. The identified holt is situated within the hedgerow along the bank of a drainage ditch, where the High Inertia Synchronous Compensator (HISC) compound will be located. Consequently, the holt will need to be removed (see Figure 5-2 and Plate 5-3).

Additionally, the facility will be drained using new perimeter drainage channels surrounding the site footprint, which will discharge into the existing field drain. The current field drain will be slightly diverted along the eastern side of the redline boundary and redirected to its original course north of the proposal. The drainage ditch on the east of the red line boundary will be retained and diverted around the new infrastructure to maintain the existing site drainage functionality. The increased surface runoff from the newly created surfaced areas will be managed by the proposed drainage system, which includes a minimum 900 mm piping to provide adequate drainage capacity.

A mitigation-by-design approach has been integrated into the HISC plan. According to the National Roads Authority (NRA) guidelines, no wheeled or tracked vehicles should operate within 20 m of an active, non-breeding otter holt, and light activities such as hand digging or scrub clearance should not occur within 15 m unless licensed. Although the holt is currently inactive, a precautionary 20 m ecological exclusion zone was implemented at the site on the 25th of February prior to any site works, including vegetation clearance, commencing (Plate 6-1, Plate 6-3 and Plate 6-3). This exclusion zone will be maintained until such time as a derogation licence is obtained. All mitigation measures follow the guideline as per NRA (2006)

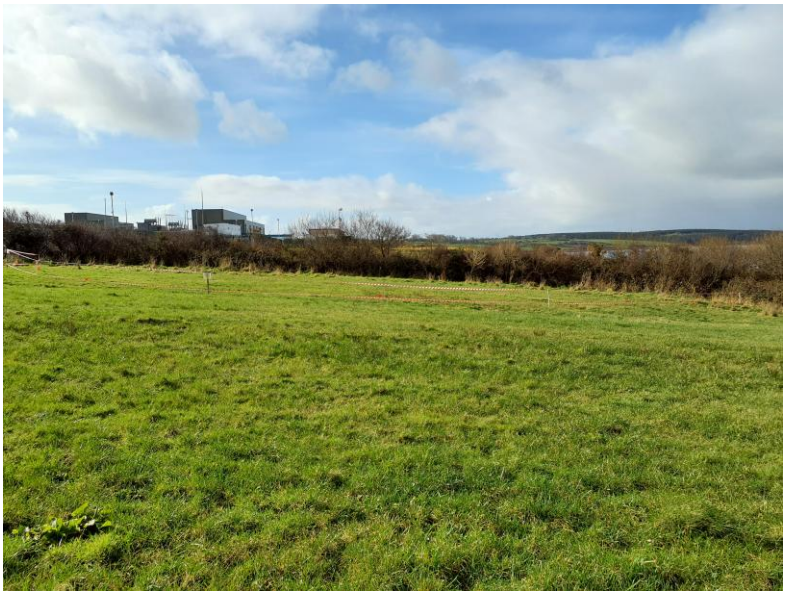
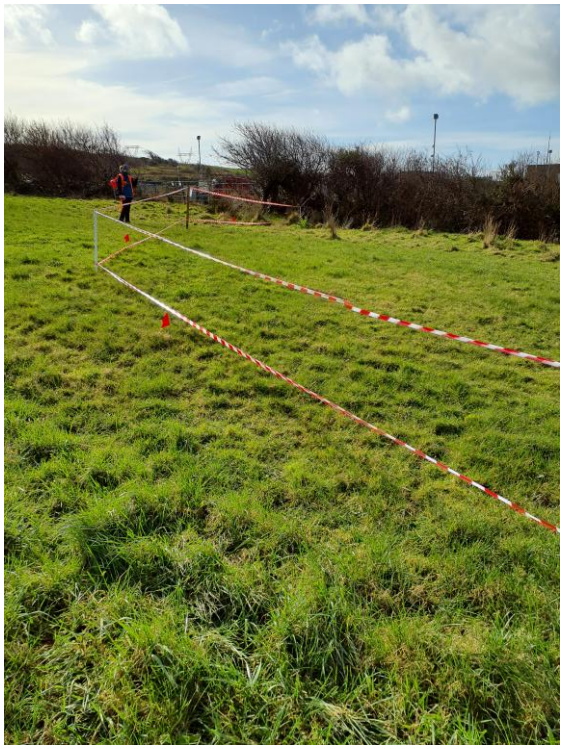


Plate 6-1 Evidence of the 20m exclusion zone.



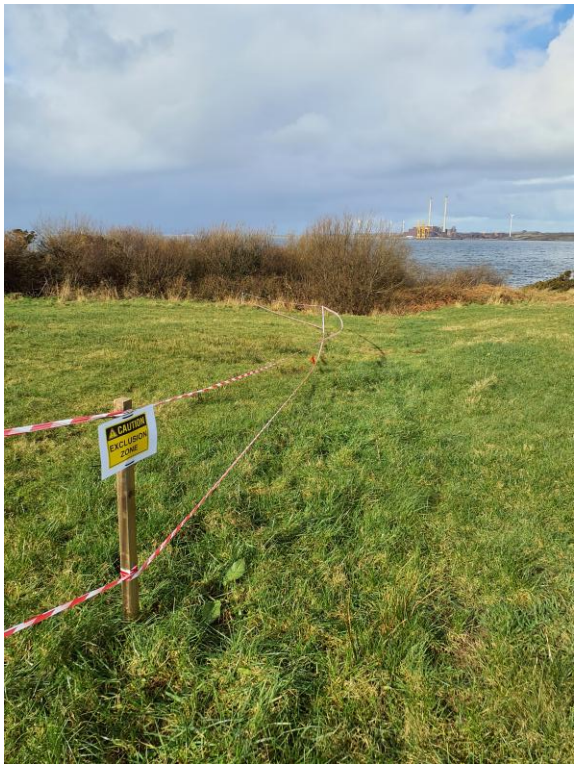
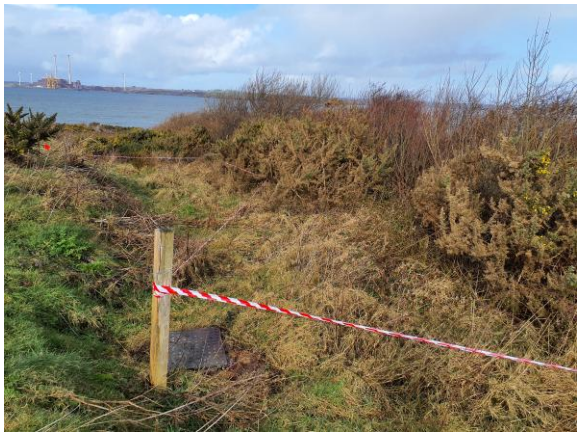


Plate 6-2 Evidence of the 20m exclusion zone on the east of the hedgerow within the construction area.



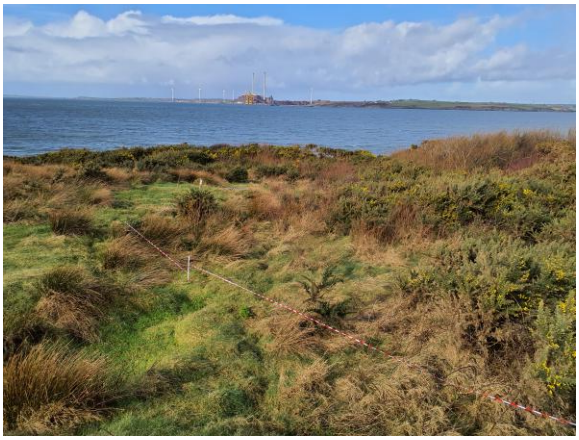


Plate 6-3 Evidence of the 20m exclusion zone on the west of the hedgerow within the redline boundary.

To mitigate potential impacts on nesting birds, all hedge cutting and clearing in areas outside of the implemented 20 m ecological exclusion zone was undertaken in February (25th and 26th). It will therefore be required that permission be given by NPWS to remove the vegetation within the 20 m ecological exclusion zone after receiving the derogation licence and after the holt has been closed, where the licence is granted. As this area of remaining vegetation is proposed to be cleared during the bird nesting season, this will be done only after a bird nesting survey by a suitably qualified ecologist has been completed. Full construction activities,

including the use of heavy machinery, are scheduled to commence in May, making the removal of the holt necessary. Therefore, a derogation licence is required to facilitate these works.

To safeguard water quality, a comprehensive water monitoring programme will be established for the project's duration. Stilling ponds will be installed progressively as construction advances, featuring diffuse outflow details to mitigate any increase in runoff. Erosion control and retention facilities, including stilling ponds, will undergo regular maintenance during the construction phase. The three-stage treatment train system (swale – stilling pond – diffuse outflow) will manage discharges from hard surface areas, effectively treating runoff and minimizing downstream flooding risks.

Upon obtaining the derogation licence, mammal-proof fencing will be installed following the TII Guidelines for the Treatment of Otters Prior to the Construction of National Road Schemes (2006), Forestry and Otter Guidelines (2009) and Standard Construction Details (TII SCD 300 Series, 2017). This fencing will extend around the HISC to prevent otter access to the construction site.

Where feasible, natural vegetation cover will be reinstated, or alternative landscaping measures will be adopted to preserve the drainage ditch's role.

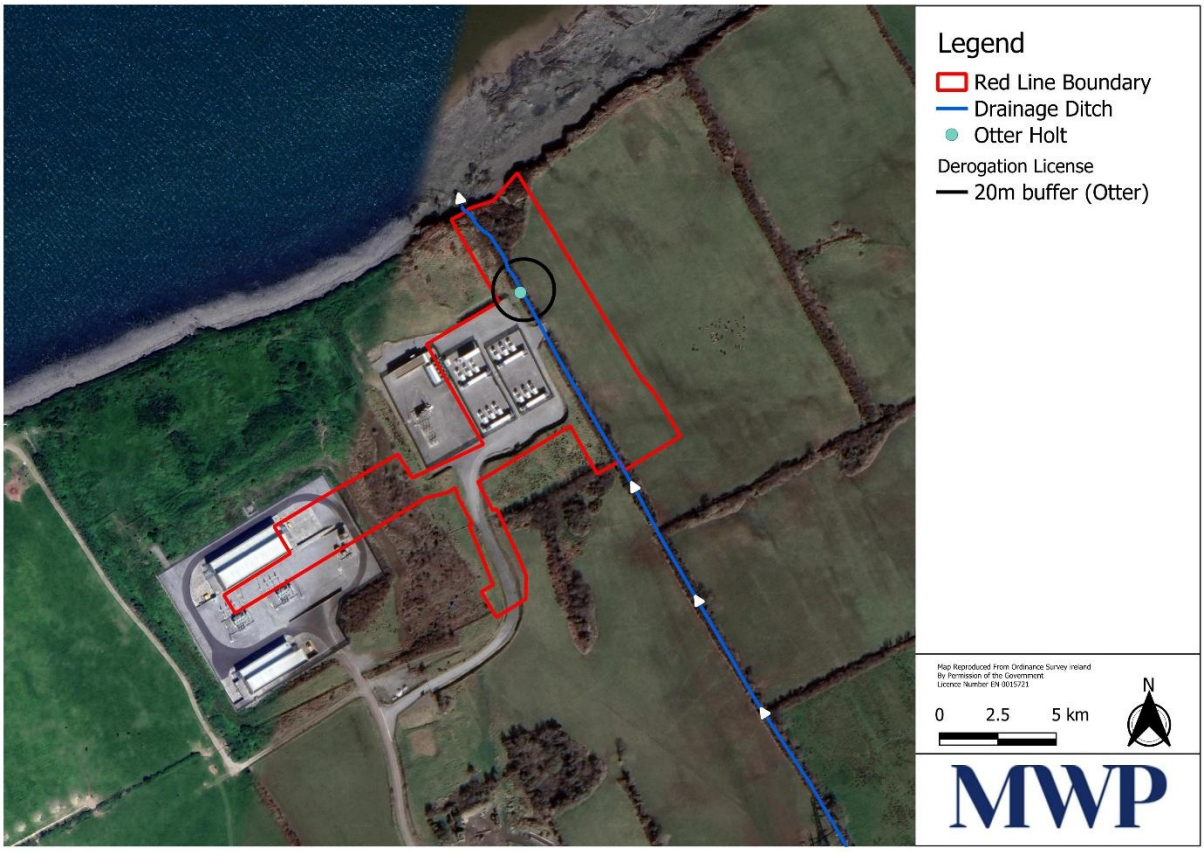


Figure 6-1. Recommended best practice 20 m ecological exclusion zone on inactive otter holt (implemented on the 25th and 26th of February and currently still in-situ on-site).

A derogation license is requested for the proposed works, with the following details:

- Applicant: Francisco García Cintas, Aviador Zorita, 32, 5º, 11, Madrid, 28020;

- Supervised by: Hazel Dalton, Salona Reddy, Orla van der Noll (Ecologists with MWP), Reen Point, Blennerville, Co. Kerry;
- Species: European Otter (*Lutra lutra*);
- Activity: HISC compound;
- Timeline: 01/05/2025 to 01/04/2027.

6.1 Derogation License Checklist

Explanation as to why the derogation sought is the only available option for works and no suitable alternative exists as per Regulation 54 of the European Communities (Birds and Natural Habitats) Regulations.

The derogation licence is required because the holt is situated within the construction footprint of the permitted development, leaving no feasible alternative for proceeding with the works other than its removal.

The permitted development, a High Inertia Synchronous Condenser (HISC) housing structure, is essential for protecting infrastructure from coastal elements. No suitable alternative locations exist that would allow construction to proceed without impacting the holt.

Evidence that actions permitted by a derogation will not be detrimental to the maintenance of the populations of the species to which the Habitats Directive relates at a favourable conservation status in their natural range as is required under Section 54(2) of the European Communities (Birds and Natural Habitats) Regulations.

The holt was classified as abandoned and inactive following a period of monitoring is located within sub-optimal habitat (adjacent to artificial drainage channel in improved agricultural land). During the construction period, various sediment mitigation measures will be implemented to protect the water quality of the drainage ditch and any potential otters utilizing the water downstream. Prior to obtaining the derogation license, a 20 m ecological exclusion zone was implemented around the inactive holt on a precautionary basis.

Additionally, no nighttime works are proposed for the construction of the HISC compound. Site lighting will consist of standard, single downlights positioned around the main plant building, which will be activated only by vehicles or personnel entering the site. The lighting units will be hooded to minimize light pollution and spillage, reducing potential impacts on local wildlife.

These measures are designed to ensure that the permitted actions will not be detrimental to the maintenance of otter populations, thereby supporting the species' favourable conservation status within their natural range in compliance with Section 54(2) of the European Communities (Birds and Natural Habitats) Regulations.

Details of any mitigation measures planned for the species affected by the derogation at the location, along with evidence that such mitigation has been successful elsewhere.

To address the potential impact of construction works on otters, a series of mitigation measures have been implemented, as outlined below, with evidence of successful application in similar situations:

1. Mitigation-by-Design Approach: In the HISC compound, a 20-meter ecological exclusion zone has been established around the inactive otter holt until the derogation licence is obtained.
2. Pre-Construction Otter Surveys: As per the NRA (2006), otter surveys should be conducted prior to any construction to monitor changes in otter activity, holt locations, or other relevant factors since the original EIS surveys. This includes monitoring the holt for at least five days to confirm whether it is

active or inactive. If the holt remains undisturbed for five days, it may be removed using a mechanical digger, under the supervision of a licensed NPWS derogation holder.

3. Holt Destruction Process: If destruction of an otter holt is necessary, it must be ensured that no otters are inside. Appropriate equipment should be available to handle any otters found or injured. The destruction process involves using a digger, starting 15 meters from the entrance to check for otter activity. Once confirmed empty, the holt can be safely destroyed and the area back-filled. This process should be completed within one working day. A report detailing the procedures must be submitted to NPWS to meet derogation conditions, and construction can begin only after the holt has been evacuated and destroyed in accordance with the derogation.
4. Active Holts and Breeding Season: If an otter holt is found to be active, it should not be disturbed or excluded during the breeding season. If breeding is suspected, construction works must be paused until the otters have naturally vacated the holt. The holt should be monitored to confirm the presence of a female with cubs. The breeding season can last up to 21 weeks, with a 9-week gestation period followed by 7 weeks of cubs remaining in the holt. Cubs are weaned at 3 to 4 months of age. Once the female and cubs have left, the holt should be monitored and then permanently excluded, if necessary, under supervision and with a valid NPWS derogation.

Construction Activities Near Active Holts:

- Breeding Holts: No works should take place within 150 meters of holts with breeding females or cubs, unless NPWS consultation allows works closer with appropriate mitigation measures (e.g., screening or restricted working hours).
- Non-Breeding Active Holts: No wheeled or tracked vehicles should be used within 20 meters of non-breeding active holts. Light activities (e.g., hand digging or scrub clearance) should not occur within 15 meters, except under licence.
- Fencing and Exclusion Zones: Temporary fencing should be used to create an exclusion zone around otter holts before invasive work begins. The fencing should comply with Clause 303 of the NRA's Specification for Roadworks. Site staff should be notified of the exclusion zone's purpose, and proper signage should be in place on each fence.
- Awareness and Training: All contractors and site operators must be fully aware of the procedures related to affected holts.
- Construction Near Non-Destructive Holts: If construction works are near holts that do not require destruction, works may proceed once all recommended mitigation measures for otters are implemented.

These mitigation measures aim to minimize the impact of construction on otters and ensure compliance with NPWS derogation requirements.

To protect nesting birds, vegetation clearance will occur in February, with any necessary removals within the exclusion zone requiring NPWS approval following an ecological survey. Water quality will be safeguarded through a monitoring programme, erosion control measures, and a three-stage treatment train system to manage runoff. These mitigation strategies align with Transport Infrastructure Ireland (TII) and NPWS best practices, with evidence of successful implementation in previous infrastructure projects.

As much information as possible to allow a decision to be made on this application.

A full outline of information is provided above.

7. References

Forest Service. (2009). *Forestry and Otter Guidelines*. Department of Agriculture, Fisheries and Food.

NRA (2006) *Guidelines for the Treatment of Otters prior to the Construction of National Road Schemes*. National Roads Authority, St Martin's House, Waterloo Road, Dublin 4.

TII (2017), *Standard Construction Details – Series 300*. Transport Infrastructure Ireland, Dublin, Ireland.