

**An
Bord
Pleanála**

**Board Direction
BD-007923-21
ABP-306196-19**

The submissions on this file and the Inspector's report were considered at a Board meeting held on 09/04/2021.

The Board decided to grant permission, for the following reasons and considerations, and subject to the following conditions.

Reasons and Considerations

In coming to its decision, the Board had regard to the following:

- (a) The relevant provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU (EIA Directive) on the assessment of the effects of certain public and private projects on the environment, Directive 92/43/EEC (Habitats Directive) and Directive 79/409/EEC as amended by 2009/147/EC (Birds Directives) which set the requirements for Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union.
- (b) the national, regional and local strategic road policies and objectives, inclusive of those set out in the National Planning Framework, the Regional Spatial & Economic Strategy for the Southern Region, the Kerry County Development Plan 2015-2021 and the Cahersiveen, Waterville and Sneem Functional Local Area Plan, 2013-2019..
- (c) the nature, scale and design of the proposed works as set out in the application for approval and the pattern of development in the vicinity,
- (d) the documentation and submissions of the Local Authority, including the environmental impact assessment report and associated documentation

submitted with the application, and the range of mitigation and monitoring measures proposed,

- (e) likely effects and consequences for the environment and the proper planning and sustainable development of the area in which it is proposed to carry out the proposed development and the likely significant effects of the proposed development on European sites,
- (f) the submissions made in relation to the application, and
- (g) the report and recommendation of the Senior Planning Inspector.

Appropriate Assessment

Appropriate Assessment – Stage 1

The Board completed an Appropriate Assessment screening pursuant to the provisions of Section 177U of the Planning and Development Act 2000, as amended, in relation to the potential effects of the proposed development on designated European Sites, taking into account the nature, scale and location of the proposed development, the Screening Report for Appropriate Assessment in Appendix A of the Natura Impact Statement, the Inspector's report, and submissions on file. In completing the screening exercise, the Board adopted the report of the Inspector and it was concluded that the proposed road development may give rise to significant effects on the Kenmare River SAC (site code 002158), Drongawn Lough SAC (site code 02187), Blackwater River SAC (site code 002173), Old Domestic Building Askive Wood SAC (site code 002098), and Old Domestic Building Dromore Wood SAC (site code 00353).

Appropriate Assessment Stage 2

The Board considered the Natura Impact Statement and associated documentation submitted with the application for approval, the mitigation measures contained therein, the submissions on file, and the Inspector's assessment. The Board completed an appropriate assessment of the implications of the proposed road development for the affected European Sites, namely Kenmare River SAC (site code 002158), Drongawn Lough SAC (site code 02187), Blackwater River SAC (site

code 002173), Old Domestic Building Askive Wood SAC (site code 002098), Old Domestic Building Dromore Wood SAC (site code 00353) in view of the sites' conservation objectives. The Board considered that the information before it was adequate to allow the carrying out of an appropriate assessment.

In completing the appropriate assessment, the Board considered, in particular, the following:

- i. the likely direct and indirect impacts arising from the proposed road development both individually or in combination with other plans or projects,
- ii. the mitigation measures which are included as part of the current proposal, and
- iii. the conservation objectives for the European Sites.

In completing the appropriate assessment, the Board accepted and adopted the appropriate assessment carried out in the Inspector's report in respect of the potential effects of the proposed road development on the aforementioned European Sites, having regard to the sites' conservation objectives.

In overall conclusion, the Board was satisfied that the proposed road development, by itself or in combination with other plans or projects, would not adversely affect the integrity of the European Sites, in view of the sites' conservation objectives.

Environmental Impact Assessment:

The Board completed an environmental impact assessment of the proposed development, taking into account:

- (a) the nature, scale and extent of the proposed development;
- (b) the environmental impact assessment report and associated documentation submitted in support of the application;
- (c) the submissions from the applicant and prescribed bodies in the course of the application and application, and
- (d) the Inspector's report.

The Board considered that the environmental impact assessment report, supported by the documentation submitted by the applicant provided information which was

reasonable and sufficient to allow the Board to carry out an environmental impact assessment and to reach a reasoned conclusion on the significant effects of the proposed development on the environment taking into account current knowledge and methods of assessment and the results of the examination set out in the Inspector's Report.

The Board is satisfied that the Inspector's report sets out how these various environmental issues were addressed in the examination and recommendation and are incorporated into the Board's decision.

Reasoned Conclusion on the Significant Effects

The Board considered that the main significant direct and indirect effects of the proposed development on the environment are, and would be mitigated, as follows:

- **Population and Human Health**

- Adverse impacts from noise and dust may arise from construction activities. A suite of mitigation measures to manage noise during the construction phase are set out in sections 10.5.1, 11.6.1 and 11.6.2 and as summarised in sections 17.8 and 17.9 of the EIAR.
- In terms of the operational phase, the proposed development would have a positive impact in that the scheme is to be constructed with a low noise surface which will have a 1.5dB(A) reduction in road traffic noise at all locations from the current baseline situation.
- Positive effects in terms of the improved safety of the road and the consequent reduction in vehicular hazard.

- **Water**

- Potential adverse impacts arising from risk of pollution of ground and surface water during the construction and operational phases. The impacts would be mitigated by measures within a Construction Erosion and Sediment Control Plan and adherence to best practice construction measures and incorporation of appropriate drainage facilities as set out in sections 6.6.1.3 to 6.6.1.4 and commitments 1 to 15 in Section 17.4 of the EIAR. The proposed drainage arrangements

will provide for an improvement on the current regime which currently drains to the local receiving waters by runoff and groundwater flow.

- Lough Fadda is a source of water supply for 5 no. properties to the south. Construction works will disrupt this supply. An alternative supply will be required during the duration of construction works at the lough. Monitoring during and post construction will be undertaken to ensure adequate supply and quality.

- **Biodiversity**

- Construction activity has the potential to impact negatively on lesser horseshoe bat roosts. The removal of hedgerow/treelines, scrub and woodlands and use of lighting could result in disturbance/displacement. Mitigation measures are set out in sections 9.7.1.9 and commitment No.9 of section 17.7 of the EIAR
- The proposal will result in loss of habitat supporting Kerry slug. It will be necessary to remove Kerry Slug from impacted habitats. Individual slugs and features which may contain Kerry Slug within the footprint of the works will be translocated to adjacent lands which are known to contain existing populations of the species. Mitigation measures are set out in Section 9.7.1.6 and commitment no. 6 of Section 17.7 of the EIAR.
- Freshwater Pearl Mussel in Tahilla River has the potential to be impacted negatively by water quality changes. Mitigation measures are detailed in sections 8.5.2.1 to 8.5.2.5 and commitments 1 to 20 of section 17.6 of the EIAR.
- The proposal could facilitate the indirect spread of invasive species. An Invasive Alien Species Management Plan is to be prepared.
- Permanent loss of a small portion of Lough Fadda which will be infilled to accommodate the proposed road development. This loss cannot be mitigated.

- **Material Assets**

- The proposed development would give rise to significant impacts on Material Assets and Land arising from the compulsory acquisition of land to allow for the development. The TII/NRA's Code of Practice Guide to Process and Code of Practice for National Road Project Planning and Acquisition of Property for National Roads will be adhered to and the mitigation measures with regard to timing of works, consultation with property owners, restoration of access, boundary treatment, drainage and services will be carried out.
- **Landscape**
 - Visual Impacts will arise from the Proposed Road Development. Landscape mitigation proposals shall take account of the approaches and principles set out in A Guide to Landscape Treatments for National Road Schemes in Ireland with planting and landscaping to be carried out in accordance with the mitigation measures set out in sections 13.6.1. and 13.6.2 and detailed in Table 17.11.

It is considered that, subject to the implementation of the mitigation measures referred to above and as detailed throughout the chapters of the EIAR including Chapter 17 Summary of Mitigation Measures, the effects on the environment of the proposed development in the vicinity, would be acceptable in respect of the delivery of the physical infrastructure and any associated direct impacts.

Overall, the Board was satisfied that the proposed development would not have any unacceptable effects on the environment.

Proper Planning and Sustainable Development

The Board noted that the section of the N70 under consideration is substandard in engineering terms and that the upgrading of the road to a Type 3 Single Carriageway Road standard would improve alignment, sight distances and access arrangements and provide a segregated cycle/pedestrian facility. The Board was satisfied that the proposed road development would not have significant adverse effects on this sensitive tourism route which forms part of the Ring of Kerry and Wild Atlantic Away and would be acceptable in terms of traffic safety and convenience. The proposed

development would therefore be in accordance with the proper planning and sustainable development of the area.

In deciding not to accept the Inspector's recommendation to refuse permission, the Board noted the Inspector's concerns regarding the absence of an overall strategy for improvements on the N70 including proposals for a more comprehensive segregated pedestrian/cycle path/s but was satisfied that the upgrade of this short section of the road would deliver benefits to all road users including cyclists and pedestrians in terms of safety and convenience. The Board also noted the Inspector's concerns in relation to pedestrian/cyclist safety arising from potential conflicting movements where the short section of segregated path begins and ends but was satisfied that the scheme would deliver overall benefits arising from the provision of the improved stretch of segregated path and that potential issues could be addressed through appropriate road safety measures.

The Board did not consider that the approval of the scheme would represent a haphazard approach or a catalyst for the justification and advancement of future upgrade and improvements on the N70. The Board considered that the policy context, project need and project objectives for the proposed road development were satisfactorily addressed in Chapter 2 of the EIAR and that the scheme was carefully designed to achieve the necessary upgrade of this section of the N70, whilst minimising the potential for impacts on this tourism route within a sensitive landscape and environment. Furthermore, any potential future upgrade or road improvement schemes on the N70 or elsewhere, would be required to be assessed on both their individual merits and their overall potential for cumulative impacts in accordance with proper planning and sustainable development.

The Board agreed with the Inspector that the proposed road scheme would not result in any unacceptable impacts on the environment and would not adversely affect the integrity of European Sites, in view of the sites' conservation objectives.

Conditions


1. The proposed road development shall be carried out and completed in accordance with the plans and particulars, including the Environmental Impact Assessment Report and Natura impact statement, lodged with the application to An Bord Pleanála.

Reason: In the interest of clarity.

2. The proposals, mitigation measures and commitments set out in the Environmental Impact Assessment Report and the Natura impact statement shall be implemented in full as part of the proposed road development.

Reason: In the interest of clarity, to mitigate the environmental effects of the proposed road development and to protect the amenities of the area and of property in the vicinity

Board Member



Maria FitzGerald

Date: 16/04/2021