



An
Bord
Pleanála

Board Order 09.JA0042

Planning and Development Acts, 2000 to 2017

Planning Authority: Kildare County Council

Application by Kildare County Council for approval under section 175 of the Planning and Development Act 2000, as amended, in accordance with plans and particulars, including an environmental impact assessment report lodged with An Bord Pleanála on the 15th day of September, 2017.

Proposed Development: Proposed River Morell Flood Management Scheme consisting of:

- The construction of approximately 7,423 metres of new embankments. These new embankments will consist of a clay core with surrounding fill materials covered in topsoil.
- Restoration works, as required, to approximately 1,842 metres of existing embankments.
- Approximately 474 metres of new concrete flood walls, ranging between one metre and two metres in height.
- Culvert alterations throughout the Morell Catchment including the upgrading of existing culverts, the opening of a blocked culvert and in-stream works for the installation of scour protection measures, as well as the complete restoration of a culvert as required.

- Stream realignment works are proposed in Tuckmilltown and Killeenmore. The realignment in Tuckmilltown will remove the sharp ox-bow bend. The realignment in Killeenmore allows a flood defence to be constructed between the stream and the railway embankment.
- All associated and ancillary development including temporary construction and excavation works, site compound and stockpiling areas.

All along the Morell north of Naas in townlands which include Ballyhays, Turnings, Killeenmore and Baronrath, Sherlockstown and Killeenmore, Kill East and Tuckmilltown, County Kildare.

Decision

Approve the above proposed development based on the reasons and considerations under and subject to the conditions set out below.

Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

Reasons and Considerations

Having regard to:

- a) European Union legislation including in particular:
 - the relevant provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU (EIA Directive),
 - EU Directive 2007/60/EC (Floods Directive),
 - EU Directive 2000/60/EC (Water Framework Directive), and
 - Directive 92/43/EEC (Habitats Directive) and Directive 79/409/EEC, as amended by 2009/147/EC (Birds Directives),
- b) National Legislation including in particular:
 - Section 175 of the Planning and Development Act 2000, as amended.
- c) National Policy including in particular:
 - Report of the Flood Policy Review Group (OPW 2004), and
 - the Planning System and Flood Risk Management – Guidelines for Local Authorities published (November 2009) jointly by the Office of Public Works and the the Department of the Environment, Heritage and Local Government.
- d) Regional Policy including in particular:
 - the Eastern Catchment Flood Risk Assessment and Management (CFRAM) study,
 - the Eastern River Basin District - River Basin Management Plan 2009 – 2015 and the Second Cycle River Basin Management Plans: 2015 – 2021, currently in draft format, and
 - the Regional Planning Guidelines for the Greater Dublin Area 2010-2022.
- e) Local Planning Policy including in particular:
 - the provisions of the Kildare County Development Plan 2017 – 2023.

f) The following matters:

- the nature and frequency of the recurring flooding within the Morell catchment and the potential impacts of climate change,
- the nature, scale and design of the proposed works and the pattern of development in the vicinity,
- 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,
- the submissions and observations made to An Bord Pleanála in connection with the application and the further submission received from the local authority,
- the likely 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, and
- the report and recommendation of the inspector.

Environmental Impact Assessment:

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

- a) the nature, scale, location and extent of the proposed development in an area prone to extensive recurring fluvial flooding which has resulted in significant damage to properties, businesses and agricultural landholdings,
- b) the environmental impact assessment report and associated documentation submitted in support of the application,
- c) the submissions from the local authority, the observers and the prescribed bodies in the course of the application, and
- d) the Inspector's report.

The Board considered that the environmental impact assessment report, supported by the documentation submitted by the local authority, provided information which is reasonable and sufficient to allow the Board 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. The Board is satisfied that the information contained in the EIAR complies with the provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU. 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:

- Noise and vibration impacts during construction which would be mitigated by noise and vibration mitigation measures, to be developed in the CEMP, and the use of plant with low inherent potential of noise and/or vibration and the limiting of construction hours and the option for monitoring at sensitive receptors if found necessary. Noise and vibration levels would be kept equal to or below those levels specified in Table 8.3 of the EIAR.
- Traffic impacts during construction would be mitigated by continued consultation with local businesses, landowners and residents, during the detailed design and construction phase, as well as the implementation of a Construction Traffic Management Plan (CTMP) and compliance with statutory obligations regarding temporary works. At a strategic level, the applicant would be required to consult with Transport Infrastructure Ireland (TII) with regard to their requirements and to ensure regard is had to any future planned road schemes in the area.
- Impacts on biodiversity, including aquatic and terrestrial ecology, are likely to arise during construction and would be mitigated against by minimising the removal of existing vegetation and reinstatement of vegetation, seeking the advice from a qualified ecologist and following best practice and procedures during the construction phase. Control of invasive alien species would also follow appropriate national guidance. In-stream works would be limited and would be such as to avoid works during restricted periods for relevant species

and would follow recognised Office of Public Works environmental management protocols and standard operating procedures for works near water. In addition, the works would include implementation of a programme of water quality monitoring.

- Impact on cultural heritage would be mitigated by archaeological monitoring with provision made for the resolution of any archaeological features or deposits that may be identified.
- Landscape and visual impacts from the insertion of new flood walls and embankments into an agricultural setting. Implementation of the landscape management plan and ongoing landscape maintenance would greatly assist in assimilating the works into the landscape and reduce the impact at operational phase to 'minor to moderate'.
- Positive significant impacts would arise during the operation phase where significant areas of land and a wide range of land uses, including residential and agricultural uses, would benefit from reduced flood risk. It is acknowledged that some agricultural areas would be included in the post-scheme floodplain but, having regard to the overriding benefits which the scheme would bring to the properties which would be protected, such local impacts on agricultural lands would be acceptable.

The Board completed an environmental impact assessment in relation to the proposed development and concluded that, subject to the implementation of the mitigation measures proposed, as they pertain to the proposed development, as set out in Volume 2 Section 15.1 of the EIAR 'Summary of Impacts and Mitigation Measures', which provides a Summary of Impacts and Mitigation measures, including proposed monitoring, as appropriate, and, subject to compliance with the conditions set out herein, the effects on the environment of the proposed development, by itself and in combination with other development in the vicinity, would be acceptable. In doing so, the Board adopted the report and conclusions of the reporting inspector.

Appropriate Assessment:

The Board completed an appropriate assessment screening exercise in relation to the potential effects of the proposed development on designated European Sites. The Board noted that the proposed development is not directly connected with or necessary to the management of a European Site. The Board considered the nature, scale and location of the proposed development, the appropriate assessment screening report submitted with the planning application, the submissions on file and the report of the inspector. In completing the screening exercise, the Board adopted the report of the inspector and concluded that the proposed development, individually or in combination with other plans or projects, would not be likely to have a significant effect on European Sites, in view of the sites' conservation objectives, and a Stage 2 Appropriate Assessment (and submission of a Natura Impact Statement) is not, therefore, required.

Proper Planning and Sustainable Development:

It is considered that the proposed Morell River Flood Management Scheme (MRFMS) would accord with European, national, regional and local planning and related policy and objectives in relation to flood risk management and control without compromise to Directive 2000/60/EC (Water Framework Directive). The scheme would also ensure that time is available to react to any extreme flood events and to undertake any required emergency measures. It is acknowledged that some agricultural lands would be included in the post scheme floodplain, however, this is a planned measure for the retention of flood waters in the 1% AEP event to reduce the flood risk on properties in particular. The delivery of the scheme is considered to be in the interest of the common good and such planned local impacts are considered to be acceptable.

CONDITIONS

1. The proposed development shall be carried out and completed in accordance with the plans and particulars, including the environmental impact assessment report (EIAR), and other associated documentation, lodged with An Bord Pleanála on the 15th day of September 2017, except as may otherwise be required in order to comply with the conditions set out below. Where any mitigation measures set out in the environmental impact assessment report or any conditions of the approval require further details to be prepared by or on behalf of the local authority, these details shall be placed on the file and retained as part of the public record.

Reason: In the interest of clarity and the proper planning and sustainable development of the area and to ensure the protection of the environment.

2. The mitigation measures and associated monitoring outlined in the plans and particulars relating to the proposed development, including the environmental impact assessment report submitted with the application, as set out in Volume 2 Section 15.1 of the EIAR 'Summary of Impacts and Mitigation Measures', shall be carried out in full, except as may otherwise be required in order to comply with the following conditions. Prior to commencement of development, details of a time schedule for the implementation of the mitigation measures and associated monitoring shall be prepared by the local authority.

Reason: In the interest of clarity and the protection of the environment and in the interest of public health.

3. a) Prior to commencement of development, the local authority, or any agent acting on its behalf, shall prepare in consultation with the relevant statutory agencies, a Construction Environmental Management Plan (CEMP), including demonstration of proposals to adhere to best practice and protocols.

- b) The CEMP shall include a site-specific landscape management plan, and a plan for the control of invasive alien plant species, including Japanese Knotweed (*Fallopia japonica*).
- c) At all times during construction, emphasis shall be placed on minimising the removal of existing vegetation.
- d) Noise survey and monitoring locations shall be identified during the detailed design, in consultation with residents/owners, as part of the CEMP in advance of the construction works.
- e) Pre-condition surveys shall be carried out at residential properties in close proximity to the construction works and haul routes.
- f) The CEMP shall also include specific proposals as to how the measures outlined in the CEMP will be measured and monitored for effectiveness.

Reason: In the interest of protecting the environment, the landscape, the European Sites and sensitive receptors, and in the interest of public health.

4. Prior to commencement of development, details of measures to protect fisheries and water quality of the river systems shall be outlined and placed on file. In-channel works shall adhere to timing restrictions set out in Table 11.22 of the EIAR (in-stream works restriction periods for aquatic protected species of the Morell Catchment). Full regard shall be had to Inland Fisheries Ireland's published updated guidelines for construction works near waterways (Guidelines on Protection of Fisheries during Construction Works in and Adjacent to Waters, 2016). A programme of water quality monitoring shall be prepared in consultation with the contractor, the local authority and relevant statutory agencies and the programme shall be implemented thereafter.

Reason: In the interest of the protection of receiving water quality, fisheries and aquatic habitats.

5. Prior to commencement of development, the local authority shall consult with Transport Infrastructure Ireland with regard to proposals for future national road schemes in the area, including the N7 Newlands Cross to Naas (Upgrade TEN-T and M7 Naas to Newbridge Bypass Upgrade). The scheme proposals shall

have regard to the requirements/approval of Transport Infrastructure Ireland with respect to the design and construction methods in accordance with the TII publication DN-STR-03001.

Reason: To protect the national road network.

6. Prior to commencement of development, a construction transport management plan (CTMP) shall be prepared which shall include details of road signage, warning the public of the entrance to work sites and of proposals for traffic management and specific proposals for consultation with affected residents, businesses and local persons engaged in agricultural, equine or related activity.

Reason: To ensure appropriate engagement with the public and the appropriate management of traffic.

7. A suitably qualified ecologist shall be appointed by the local authority to oversee the site set-up and construction of the proposed development and the ecologist shall be present on site during construction works. Removal of vegetation shall not occur during the breeding bird season (1st March to 31st August). If this seasonal restriction cannot be accommodated, a suitably qualified ecologist with experience in nest-finding will be required to check all vegetation for nests (under licence from the National Parks and Wildlife Service to permit potential disturbance to nesting birds) prior to removal/trimming. Upon completion of the construction stage, an ecological report of the site works shall be prepared by the appointed ecologist and submitted to the local authority.

Reason: In the interest of nature conservation and the protection of terrestrial and aquatic ecology including breeding birds.

8. The local authority shall facilitate the preservation, recording, protection or removal of archaeological materials or features that may exist within the site. In this regard, the local authority shall carry out the following in consultation with the Department of Culture, Heritage and the Gaeltacht and in advance of the detailed design stage:

- a) Engage the services of a suitably qualified archaeologist to carry out an underwater archaeological assessment of the proposed programme of works and shall inform on the archaeological potential of the rivers within the catchment area. This shall be undertaken to the specifications advised and be licenced by the Department of Culture, Heritage and the Gaeltacht and a written report shall be prepared and submitted to the local authority and the Department of Culture, Heritage and the Gaeltacht.
- b) The assessment shall be comprised of a desktop study looking specifically on sources relevant to the rivers and to include the recommended wade survey of areas less than 0.75 metres in depth and a dive survey of all other deeper areas if there is a potential that they will be impacted. Areas where dredging of watercourses is to be undertaken shall be identified and all areas of proposed topsoil and subsoil stripping, to be the subject of archaeological monitoring, shall also be outlined.
- c) The assessment shall include all bridge sites (which could be the sites of earlier fording points) and all plant and machinery access points if they might be using watercourses.
- d) The assessment shall include a finds retrieval strategy for spoil, particularly any spoil related to the watercourse and any removal of older embankments which might include material dredged from the river. A strategy for the archaeological assessment of these to determine the artefact bearing potential shall also be included.

During the construction stage, all topsoil stripping associated with the proposed scheme shall be subject to full time archaeological monitoring by a suitably qualified archaeologist under licence from the Department of Culture, Heritage and the Gaeltacht. Provision shall be made available for the resolution of any archaeological features or deposits that may be identified. In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

**Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.**

Dated this day of 2018