



An
Bord
Pleanála

Inspector's Report ABP-310305-21

Development	Loughmacask Link Road Phase 1(a)
Location	From the R695 Kilkenny to Freshford Road to c. 50m W of the Dunningstown Road at Lousybush, Co. Kilkenny.
Planning Authority	Kilkenny County Council
Developer	Kilkenny County Council
Applicant	Enya Kennedy Christopher O'Keefe (Freshford Road Residents Association)
Type of Application	NIS Direction
Date of Site Inspection	26 th June 2021
Inspector	Karla Mc Bride

1.0 Introduction

The purpose of this report is to advise the Board on whether it should issue a direction to Kilkenny County Council that the proposed development of the Loughmacask Link Road Please 1 (a) from the R695 Kilkenny to Freshford Road to approximately 50m W of the Dunningstown Road at Lousybush, Co. Kilkenny should be subject to Appropriate Assessment (AA), which would require the preparation and submission of a Natura Impact Statement (NIS). The request for a direction has been made by Christopher O'Keefe under Article 250 (3) (b) of the Planning and Development Regulations 2001 (as amended).

2.0 Site Location and description

The linear site is located to the NW of Kilkenny City in Co. Kilkenny and the surrounding area is characterised by a mix of residential, commercial, warehousing and hospital uses. The proposed link road would occupy a part greenfield/part brownfield site. The W section would be located on amenity lands and the E section would overlay an existing road which was constructed under Phase 1 of a housing development which is in the charge of the local authority and serves the Talbots Court and Talbots Gate residential areas. The W section would form a junction with the existing Dunningstown Road and the E section would form a roundabout junction with the R695 Kilkenny to Freshford Road, to the immediate N of St. Luke's Hospital.

The River Nore flows c.300m to the E of the site and to the rear of the properties located along the R695 which include St. Luke's Hospital, warehousing and residential areas. The site and environs are not covered by any sensitive heritage designations although the River Nore and River Blackwater SAC, SPA and pNHA is located to the E of the site, and the proposed roundabout works along the Freshford road would be located within c.160m of the SAC site boundary. The W section of the route is located just outside the 700m consultation distance for the Grasslands Fertiliser (Seveso) Zone.

3.0 Proposed Part 8 Development

The proposed development would comprise the construction of Phase 1(a) of the Loughmacask Link Road from the Freshford Road at Talbotsinch (E) to the west side of the Dunningstown Road ay Lousybush (W) comprising:

- A 400m long carriageway:
 - A new 100m long section (W)
 - Widen & upgrade existing 300m long access road (E)
- A new roundabout with the Freshford Road (W).
- New footpaths & cycle tracks on both sides.
- Public lighting, new watermain & surface water drainage.
- Boundary treatment to rear of footpaths.
- Two signal controlled raised pedestrian crossings (Talbots Gate housing estate & Dunningstown Road).
- Two revised junctions to serve Talbots Gate & Talbots Court estates.
- Associated site works.

The local authority intends to progress the scheme under S.179 of the Planning and Development Act, 2000, as amended and under Part 8 of the Planning and Development Regulations, 2001.

The following documents were submitted:

- Cover Letter
- Phase 1(a) Part 8 Location Map
- Phase 1(a) Part 8 Plan Layout
- Habitats Directive Project Screening Assessment
- Screening for Environmental Impact Assessment

4.0 Legislative & Policy Context

Appropriate Assessment:

The Planning & Development Regulations, 2000 (as amended) states under Article 250(1), that where a local authority proposes to carry out a development it is required to carry out a screening of the proposed development to assess if the development individually or in combination with other plans or projects would be likely to have a significant effect on a European site. If on the basis of a screening under 250(1), it cannot be excluded, on the basis of objective information, that the proposed development, individually or in combination with other plans or projects, would have a significant effect on a European site, the local authority is required to determine that appropriate assessment of the proposed development is required and to prepare an NIS and submit the proposed development for approval to the Board under section 177AE of the Planning and Development Act, 2000, as amended.

Local planning policy:

Kilkenny City Development Plan 2014 to 2020: The linear site would be located on lands mainly zoned for Amenity/Green Links/Biodiversity uses and the route as identified as being part of the Indicative Central Access Scheme for the City of Kilkenny. The W section of the site is located just outside the 700m consultation distance for the Grasslands Fertiliser (Seveso) Zone. The Lands to the N and S are zoned as Existing Residential uses.

5.0 Request for NIS Direction

5.1 Applicants request

Enya Kennedy, and Christopher O'Keefe (on behalf of Freshford Road Residents Association) requested the Board to issue an NIS Direction in respect of the proposed link road for the following reasons:

- The site is located c.300m from the River Barrow & River Nore SAC and c.200m from Lough Macask pNHA.
- KCC & the Dept of Education are seeking approval to begin construction of Phase 3 of the Central Access Scheme for the City of Kilkenny.
- The project has not been screened for Appropriate Assessment and request the Board to determine if AA is required as significant impact on the River Barrow & River Nore SAC may occur.
- Absence of Public Notices, inadequate details on planning file, no consultations with the public or Prescribed Bodies, no planning history details & no Ecological Impact Statement.
- AA screening from is an inappropriate method of scientific assessment and no AA Screening Report or NIS prepared.
- The project, which formed part of a larger development (Central Access Scheme), is premature pending progress on that part of the Kilkenny outer ring road between the Castlecomer & Freshford roads (incl. a new bridge over the River Nore) as per a previous Board decision under HA0/DHA0014 when the Project was originally identified as Phase 3.
- There has been no progress in the meantime, the outcome of the Issues Paper for the Pre-Draft Consultation “Loughmacask Masterplan, Kilkenny” nor the Masterplan have not been published, and the LAP is out of date.
- No construction phase, architectural, surface water drainage of flood risk assessment details provided.

5.2 Planning authority response

The planning authority’s response to the Board’s request for Part 8 information is summarised above in section 3.0 above. The planning authority did not respond to any of the concerns raised by Christopher O’Keefe on behalf of the Freshford Road Residents Association and it did not make a specific response to the applicant’s request for an NIS Direction.

5.3 Screening for Appropriate Assessment

The planning authority's Habitats Directive Project Screening Assessment described the proposed development and receiving environment. It identified the European sites that may be impacted by the proposed development (incl. River Nore, River Barrow & Lower River Suir) and their qualifying interest habitats and species. It identified and characterised the possible effects of the proposed development and associated works on the European sites and their qualifying interest habitats and species. It concluded that significant effects could be ruled out and that the preparation of an NIS was not required.

6.0 Planning History

Reg. Ref. 001966: planning permission granted in 2003 for Phase 1 of an overall housing development of 191 dwellings and community service buildings, new site entrance and associated site works. The Planner's report noted that the 2002 Development Plan contained a specific objective for a link road from the Freshford Road to the Waterbarrack through the site. The Roads Engineer also noted a preference for a new roundabout at Freshford Road and the concurrent construction of the link road to avoid future disruption to future residents.

HA0/DHA0014: The Board approved the construction of a bridge crossing over the River Nore and phases of the proposed Central Access Scheme in 2011, subject to several conditions including No. 2 which omitted Phases 2 and 3 in the interest of clarity and protection of the environment. The Board noted that it was not satisfied that the scheme as originally proposed including the construction at this time of Phases 2 and 3, would be in the interest of the longer-term proper planning of Kilkenny.... It considered that these Phases, as originally proposed (the link to the Western Environs & the Loughmacask Road) would be premature pending progress on that part of the Kilkenny outer ring road between the Castlecomer Road and the Freshford Road (incl. a new river crossing) which would alleviate traffic pressure on the city centre, especially from heavy goods vehicles.

7.0 Screening for Appropriate Assessment

The proposed development would comprise a new c.400m long link road to the NW of Kilkenny City which would traverse an area of open space and overlay an existing road. It would include a new section of road (c.100m) and the upgrade of an existing road (c.300m), the construction of a new roundabout junction with the Freshford Road, and all ancillary works. The existing road is connected to the existing surface water drainage services along the Freshford Road which ultimately discharge to the River Nore to the E. The site is not located within any European sites however the European site boundaries of the River Nore and River Barrow SAC and River Nore SPA are located c.160m and c.280m to the E of the proposed road and roundabout.

Drainage arrangements:

Kilkenny County Council provided details of the existing and proposed surface water drainage arrangements. The existing road drainage is collected by gullies to a 300mm diameter pipe which drains to a surface water system along Freshford Road that ultimately discharges to the River Nore. The estimated increased surface area of road would be c.1000sq.m.. Future surface water will outfall to soakholes, the location and design of which would be determined at the detailed design stage of the project. The existing road drainage system would be diverted to the new soakaway system as part of the detailed design of the scheme, whilst the new roundabout would drain to the existing system. The Council states that the net discharge to the River Nore will be marginally reduced through the existing surface water drainage scheme as the new link road Phase 1(a) will drain to soakaways and not enter the surface water drainage system. No details have been provided for surface water management during the construction phase.

Desktop and field surveys:

Kilkenny County Council has not submitted the results of any desktop or field surveys in relation to the environmental or ecological assessments of the site (incl. habitats & species, water quality, flood risk or invasive species). The Council's Habitats Directive Screening Assessment identified several European sites in the potential impact zone (incl. River Nore, River Barrow & Lower River Suir), it listed their qualifying interest (QI) habitats and species, and their special conservation

interest (SCI) species. It carried out a preliminary examination of potential impacts on a variety of QI habitats (incl. freshwater, wetland & woodlands), QI species (incl. fisheries, aquatic invertebrates & otter), and SCI species (incl. Kingfisher). It carried out a slightly more detailed examination of the nature of possible impacts on selected habitats and species. The assessment considered a range of factors (incl. proximity of QIs & SCIs, water discharge & abstraction, and nature & proximity of the works). The assessment concluded that the works would not interfere any QI habitats or the characteristics of the River Nore (incl. riverbanks, water quality, water levels or the riverbed) and hence any QI species (incl. Otter, Atlantic salmon, River, Brook & Sea Lampreys, Twaité shad, Crayfish, and Freshwater & Nore pearl mussel). The assessment concluded that a Stage 2 NIS was not required.

Site characteristics:

The main habitats consist of overgrown grassland and hedgerow in the W section whilst the E section is defined by the existing road and grass verges. The River Barrow and River Nore SAC and River Nore SPA is located to the E of the site, and habitats along this section of the extensive SAC are riparian in nature and may comprise freshwater, woodland, and wetland habitats, and constituent species.

The NPWS Site Synopsis states that this SAC contains several Annex II animal species including Freshwater & Nore Pearl Mussel, White-clawed Crayfish, Salmon, Twaité Shad, three lamprey species (Sea, Brook & River Lamprey), the Whorl snail and Otter. It notes that this is the only site in the world for the hard water form of the Freshwater Pearl Mussel, one of only a handful of spawning grounds in the country for Twaité Shad, and the freshwater stretches of the River Nore main channel is a designated salmonid river. The site also supports many other important animal species including Daubenton's Bat, Badger, Irish Hare and Common Frog, and two other freshwater mussel species. The NPWS Conservation Objective Series (Maps 6 & 7) specifically note the presence of the QI habitat Alluvial forest and the QI species White-Clawed Crayfish c. 4km (straight line) downstream of works at confluence of the River Nore with the Brownstown River, to the SE of Kilkenny City. The site is of ornithological importance for a number of Annex I species including Kingfisher for

which the River Nore SPA is designated, and this site supports a nationally important population.

The site is connected to the River Nore via the existing surface water drainage arrangements under the Freshford Road which ultimately discharge to this river. EPA records indicate a recent decline in water quality in this watercourse. The ground water body is classified as a Regionally important gravel aquifer (Poor Aquifer - Generally Unproductive except for Local Zones). A section of the River Nore to the S of the site is prone to flooding however there are no records of flood events in the vicinity of the proposed development (there is a relatively steep change in levels between the Freshford Road and the River Nore).

Concerns raised:

Concerns have been raised that the proposed development has the potential to result in significant effects on European sites in the surrounding area. The proposed development is not necessary to the management of any European site. However, the existing road and proposed development has a direct aquatic connection to the River Barrow and River Nore SAC and River Nore SPA via the surface water drainage arrangements, and this triggers the requirement for Screening for AA.

Potential impacts:

The potential impacts that could arise during the construction and operational stages of the proposed development are:

- Release of sediment and pollutants and potential for discharge to surface water, particularly during heavy rainfall, during the construction and operational phases.
- Potential for spillages such as oils, fuels or other pollutants into groundwater during the construction and operational phases.
- Loss of habitat/resting places used by QI and SCI species.
- Noise and disturbance QI and SCI species.

The following European sites lie within a potential Zone of Influence:

European site (SAC/SPA)	Qualifying Interests/Special Conservation Interests	Distance to site boundary
River Nore & River Blackwater SAC (002162)	Estuaries, Mudflats & sandflats and Reefs Salicornia & other annuals (mud & sand) Atlantic & Mediterranean salt meadows Floating river vegetation (Ranunculion fluitantis & Callitriche-Batrachion) European dry heaths Hydrophilous tall herb fringe communities Petrifying springs with tufa formation Old sessile oak woods & Alluvial forests Desmoulin's Whorl Snail Freshwater & Nore Pearl Mussel White-clawed Crayfish Sea, Brook & River Lamprey Twaite Shad & Salmon Otter & Killarney Fern	c.160m E
River Nore SPA (004233)	Kingfisher	c.280m E

Potential Impacts on European Sites and test of Likely Significant Effects

River Barrow and River Nore SAC:

This site consists of the freshwater stretches of the Barrow and Nore River catchments as far upstream as the Slieve Bloom Mountains, and it also includes the tidal elements and estuary as far downstream as Creadun Head in Waterford. The boundary of this European site is located c.160m E of the site whilst the channel of the River Nore is located within c.280m. The site has been selected for a variety of coastal, riparian, woodland and freshwater habitats and species. The conservation objective is to maintain the favourable conservation condition of the habitats and species for which the SAC has been selected, subject to a list of targets and attributes (incl. area, population, distribution, water quality & habitat quality).

During the **construction phase**, works associated with the proposed development will take place entirely within the boundaries of the development site and there will be no **direct impacts** on QI habitats or species arising from the development.

However, the proposed development would be located a short distance uphill of the River Barrow and River Nore SAC, and no details in relation to the management of surface water runoff during the excavation and construction works have been provided, other than to ensure compliance with Best Construction Practices. This raises the potential for **indirect effects** on the SAC and its QI habitats and species arising from any deterioration in water quality as a result of the uncontrolled or unmitigated release of sediments and pollutants to the watercourse.

During the **operational stage** surface water runoff from the new and upgraded road will be discharged to soakaways along the route and surface water runoff from the proposed roundabout will discharge to the existing drainage system under the Freshford Road, and hence the River Nore. The Council states that there will be a marginal decrease in discharge volumes to the existing drainage system as the runoff from the existing road will be diverted to the soakaways. However, no details in relation to the location and design of the soakaways have been provided, or the ultimate destination of the runoff, which is likely to be the River Nore given the change in levels between the site and the river. This raises the potential for **indirect effects** on the SAC and its QI habitats and species arising from any deterioration in water quality as a result of the uncontrolled or unmitigated release of sediments and pollutants to the watercourse.

The proposed development is of a medium scale consisting of a new and upgraded road and new roundabout. According to the Council's submission there is adequate capacity in existing surface water management system to accommodate the proposal which would not constitute a significant change in the loading to the drainage system and its receiving waters. However, having regard to the proximity of the proposed development to the River Barrow and River Nore SAC, the absence of any site specific environmental or ecological survey data, the lack of detail in relation to the management of surface water runoff during the construction phase, and the lack of detail in relation to the location and design of the soakaways, I consider that it is reasonable to conclude that the proposed development could result in significant

effects on designated habitats and water dependent species for which River Barrow and River Nore SAC is selected.

River Nore SPA:

This European site corresponds to a large extent with River Barrow and River Nore SAC, and it has been selected for Kingfisher. The Conservation Objective seeks to maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA.

There will be no **direct effects** on the SPA or any species of conservation interest arising from the proposed development as the proposed works would take place entirely within the development site boundaries and outside the SPA site boundary. However, no site specific survey details have been provided in relation to the presence or absence of Kingfisher (nesting or foraging) along this stretch of the River Nore. This raises the potential for **indirect effects** on the SPA and its SCI species arising from any deterioration in water quality as a result of the uncontrolled or unmitigated release of sediments and pollutants to the watercourse which could have a resultant effect on prey species for Kingfisher, and from noise and disturbance during the construction phase.

In-combination effects:

The potential for in-combination effects with other plans and projects in the surrounding area has not been adequately considered in the planning authority's Habitats Directive Project Screening Assessment. The proposed development is described as comprising Phase 1(a) of the Loughmacask Link Road, however the submitted plans indicate another future section of the Link Road that would extend SW from Dunningstown Road at Lousybush to a roundabout junction and then SE to the CBS school site (Kilkenny CBS School Access Road). Furthermore, the current Kilkenny City Development Plan Zoning Map (as varied by Variation 6) describe the proposed Phase 1(a) of the Loughmacask Link Road as forming part of the extensive (partly approved) Central Access Scheme to the W of Kilkenny City.

Conclusion on AA Screening Report

Having regard to the foregoing, it is reasonable to conclude, on the basis of the information on the file and from other sources (incl. NPWS, GSi, OPW & EPA data), which I consider adequate in order to issue a screening determination, that the proposed development, either individually or in combination with other plans or projects would be likely to have a significant effect on River Barrow and River Nore SAC and the River Nore SPA, in view of the conservation objectives of these sites and that a Stage 2 Appropriate Assessment and the submission of a Natura Impact Statement for the proposed development is therefore, required.

10. Recommendation

Having regard to my assessment above, I consider that the proposed development of the Loughmacask Link Road and all associated site development works could have significant effects on the integrity of River Barrow and River Nore SAC and River Nore SPA, therefore, I recommend that the Board direct the local authority to prepare a Natura Impact Assessment report in respect of the development based on the reasons and considerations set out below.

Reasons and Considerations

Having regard to:

- (a) the nature and scale of the proposed development,
- (b) the proximity of the proposed development site to the River Barrow and River Nore SAC and the River Nore SPA,
- (c) the hydrological connection between the site and the European sites via the surface water drainage system,
- (d) the submission made by the local authority, including the Habitats Directive Project Screening Assessment,
- (e) the report and recommendation of the person appointed by the Board to make a report and recommendation on the matter,

It is considered reasonable to conclude that on the basis of the information available, which is considered adequate to issue a screening determination, that the proposed development, either individually and in-combination with other plans or projects, would be likely to have a significant effect on the River Barrow and River Nore SAC or River Nore SPA, in view of the conservation objectives of these sites and that a Stage 2 Appropriate Assessment and the submission of a Natura Impact Statement for the proposed development is, therefore, required.

Karla Mc Bride

Senior Planning Inspector

9th July 2021