



An
Bord
Pleanála

Inspector's Report ABP 319606-24

Development

Request to alter terms of approved
M28 Cork to Ringaskiddy Motorway
Scheme (HA0053)

Location

Townlands of Shanbally, Barnahely
and Lough Beg, Co. Cork

Applicant

Cork County Council

Type of Application

Request to amend the terms of an
approved development under Section
146B of the Planning and
Development Act, 2000, as amended.

Site Visit

4th June 2024

Inspector

Susan Clarke

1.0 Introduction

- 1.1.1. Cork County Council was granted approval in June 2018 under section 51 of the Roads Act 1993, as amended by section 9(1)(e) of the Roads Act 2007 for the provision of a motorway scheme between Cork and Ringaskiddy, referred to as the proposed M28 Road Scheme (file ref. 04.HA0053).
- 1.1.2. The Council is now submitting this request to the Board, pursuant to section 146B of the Planning and Development Act 2000 (as amended) for alterations to the terms of that permission.
- 1.1.3. The proposed works include a diversion of a double circuit 110kV overhead line for a distance of approx. 1.3km and works to the Barnahely ESB Substation in Shanbally so as to facilitate construction of the road development.

2.0 Legislative Provisions

Section 146B. — (1) Subject to subsections (2) to (8) and section 146C, the Board may, on the request of any person who is carrying out or intending to carry out a strategic infrastructure development, alter the terms of the development the subject of a planning permission, approval or other consent granted under this Act.

(2)(a) As soon as practicable after the making of such a request, the Board shall make a decision as to whether the making of the alteration to which the request relates would constitute the making of a material alteration of the terms of the development concerned.

(b) Before making a decision under this subsection, the Board may invite submissions in relation to the matter to be made to it by such person or class of person as the Board considers appropriate (which class may comprise the public if, in the particular case, the Board determines that it shall do so); the Board shall have regard to any submissions made to it on foot of that invitation.

(3)(a) If the Board decides that the making of the alteration would not constitute the making of a material alteration of the terms of the development concerned, it shall alter the planning permission, approval or other consent accordingly and notify the person who made the request under this section, and the planning authority or each planning authority for the area or areas concerned, of the alteration.

(b) If the Board decides that the making of the alteration would constitute the making of such a material alteration, it shall —

(i) by notice in writing served on the requester, require the requester to submit to the Board the information specified in Schedule 7A to the Planning and Development Regulations 2001 in respect of that alteration, or in respect of the alternative alteration being considered by it under subparagraph (ii)(II) , unless the requester has already provided such information, or an environmental impact assessment report on such alteration or alternative alteration, as the case may be, to the Board, and

(ii) following the receipt of such information or report, as the case may be, determine whether to —

(I) make the alteration,

(II) make an alteration of the terms of the development concerned, being an alteration that would be different from that to which the request relates (but which would not, in the opinion of the Board, represent, overall, a more significant change to the terms of the development than that which would be represented by the latter alteration), or

(III) refuse to make the alteration.

(3A) Where the requester is submitting to the Board the information referred to in subsection (3)(b)(i), that information shall be accompanied by any further relevant information on the characteristics of the alteration under consideration and its likely significant effects on the environment including, where relevant, information on how the available results of other relevant assessments of the effects on the environment carried out pursuant to European Union legislation other than the Environmental Impact Assessment Directive have been taken into account.

(3B) Where the requester is submitting to the Board the information referred to in subsection (3)(b)(i) , that information may be accompanied by a description of the features, if any, of the alteration under consideration and the measures, if any, envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment of the alteration.

(4) Before making a determination under subsection (3)(b)(iii), the Board shall determine whether the extent and character of —

(a) the alteration requested under subsection (1), and

(b) any alternative alteration it is considering under subsection (3)(b)(ii)(II)

are such that the alteration, were it to be made, would be likely to have significant effects on the environment (and, for this purpose, the Board shall have reached a final decision as to what is the extent and character of any alternative alteration the making of which it is so considering).

Section 146B(5) provides that if the Board determines that the making of either kind of alteration referred to in subsection (3)(b)(ii) —

(a) is not likely to have significant effects on the environment, it shall proceed to make a determination under subsection (3)(b)(ii), or

(b) is likely to have such effects, the provisions of section 146C shall apply.

Under section 146B(8) before the Board makes a determination under sections 146B(3)(b) or 146B(4), it is required to make, or require the requester to make, information relating to the request available for inspection to certain persons and/or the public. Submissions and observations are to be invited and the Board is required to have regard to any such submissions or observations received.

Section 146C relates to the preparation of environmental impact statement for purposes of section 146B and applies to a case where the determination of the Board under section 146B(4) is that the making of either kind of alteration referred to in section 146B(3)(b) is likely to have significant effects on the environment.

3.0 Planning History

3.1. ABP Ref: 04. HA0053

- 3.1.1. An Bord Pleanála, under Section 51 of the Roads Act 1993 (as amended), approved the M28 Cork to Ringaskiddy Motorway Scheme, a 12.5km project, commencing at the Bloomfield Interchange on the existing N28/N40 junction and terminating at the Port of Cork to the east of the village of Ringaskiddy:

- Approximately 11 kilometres of Standard Dual divided motorway, consisting of two lanes and a hard shoulder in each direction divided by a segregating barrier passing through the townlands of Douglas, Monfieldstown, Mounthovel, Maryborough, Moneygurney, Castletreasure, Ballinimlagh and Ballinrea in the District Electoral Division of Douglas; Shannonpatrick, Hilltown and Carrigaline Middle in the District Electoral Division of Carrigaline; Ballyhemiken and Raffeen in the District Electoral Division of Monkstown Rural; Shanbally, Barnahely and Ballintaggart in the District Electoral Division of Carrigaline in the County of Cork.
- Approximately 1.6 kilometres of Type 1 single carriageway (Protected Road) consisting of one lane and a hard shoulder in each direction passing through the townlands of Barnahely, Loughbeg and Ringaskiddy in the District Electoral Division of Carrigaline in the County of Cork.
- A proposed service area approximately 1.8 hectares in size located in the townlands of Loughbeg and Ringaskiddy in the District Electoral Division of Carrigaline in the County of Cork comprising:
 - One full grade separated junction at Carr's Hill;
 - Three partial grade-separated junctions at Bloomfield/Rochestown Road, Shannonpatrick and Shanbally, with associated roundabouts and slip roads;
 - Four on-line roundabouts at Barnahely, Loughbeg, Ringaskiddy and Port of Cork;
 - Six new road underbridges;
 - One underbridge widening;
 - One new underpass to facilitate pedestrian and cyclist movement along the Old Post Office Road;
 - Shared use pedestrian/cyclist underpass at Carr's Hill Interchange;
 - Removal of existing Maryborough Hill overbridge and construction of a new overbridge;
 - 16 new retaining wall structures;

- 15 culvert structures;
- Utility diversions including overhead and underground electricity lines, gas mains, watermains and communication cables;
- Access road and accommodation works;
- All associated ancillary and consequential works.

3.1.2. The application was accompanied by an EIS and AA. The approval is subject to six conditions. The Board permitted minor amendments to the Order (ABP PL 04.HA0053M) in 2023.

3.2. **ABP Ref: 04.MA0014**

3.2.1. A CPO was confirmed under Section 76 of the Housing Act, 1996, as amended, on the same date as the Approval in relation to the subject project.

4.0 **Proposed Alterations**

4.1.1. The proposed alterations relate to the necessary associated diversion and undergrounding of an existing double circuit 110kV overhead line and works to the Barnahely ESB substation in Shanbally to facilitate the construction of the motorway. I note from my site visit that enabling works have commencement with respect to the approved motorway scheme in the vicinity of the proposed alterations.

4.1.2. The extant Approval provides for the removal of four existing pylons and the addition of five pylons and associated works on the southern side of the proposed M28 mainline.

4.1.3. The proposed amendments include the following:

- Removal of six existing overhead pylons
- Installation of two new circuit line/cable interface masts in lieu of two existing overhead pylons
- Removal of 710m of existing overhead lines
- Installation of 1,210m of underground ducting within the CPO boundary
- Works to the ESB Barnahely substation including the installation of a new 110kV underground cable (90m) into bay H12, remove the overhead

conductors and end mast from bay H12, construct a new 110kV bay (H8) in the substation to accommodate the diversion of the existing Raffeen-Barnahely No. 2 110kV circuit, and a approx. 45 sq m extension to the control room to accommodate new circuit protection cabinets.

The proposed works are illustrated on the drawings BLB-S146-100 to BLB-S146-112 inclusive and PG567-D004-446-002-001.

- 4.1.4. With the exception of the works within the ESB Barnahely substation, all the proposed alignment alterations are wholly within the CPO lands. The application is accompanied by a letter of consent from ESB (14th March 2024).

5.0 Applicant's Case

- 5.1. The submission is accompanied by:

- Cover Letter (25th April 2024)
- Environmental Impact Assessment Screening Report (not dated)
- Report to Inform Screening for Appropriate Assessment (not dated)
- Correspondence from ESB to An Bord Pleanála outlining the rationale for the proposed amendment (14th March 2024)
- Letter of consent from ESB (14th March 2024)
- Plans and drawings of proposed alterations

- 5.2. The applicant states that the approved diversion route does not meet current ESB design requirements and the criteria for a double circuit 110kV line alteration of this type. Furthermore, the foundation details of the approved towers that would be required would have a significant impact on adjacent property and are not included in the CPO lands, due to the extent of the foundations to cater for the additional tower height requirements.

- 5.3. In addition, correspondence accompanying the application from ESB highlights that:

- The alterations will eliminate the outages that will be required on the overhead line (Barnahely-Reffeen No. 2) to facilitate the construction of the road and associated infrastructure.

- The alterations will remove significant and onerous constraints on the constructability of the approved road and associated infrastructure in proximity to the 110kV double circuit overhead line.
- Maintenance constraints and significant unworkable restrictions on the approved road, which would be imposed on the 110kV line, will be removed as a result of the alterations.

5.4. It is considered that the proposed alterations constitute a non-material amendment to the approved road development and, therefore, would qualify for determination under the provisions of section 146B(3)(a) of the Planning and Development Act, 2000 (as amended). The Applicant's EIA Screening addresses the assessment criteria set out in Schedule 7: (i) characteristics of the proposed development, (ii) location of proposed development, and (iii) characteristics of potential impacts. The conclusions and reasoning for each of the criteria are summarised below:

5.4.1. **Characteristics of the Proposed Development** – it is concluded that the nature and scale of the proposed alterations to the approved road development are not considered to have likely significant effects on the environment. The scale of the proposed works, when viewed individually and cumulatively, is small in the context of both the EIA threshold criteria and types of projects listed on the regulations which require EIA. The works will be undertaken according to construction methodologies designed to reduce/eliminate the potential for environmental impacts. Condition No. 1 of the extant Approval in relation to mitigation will apply in equal force and effect to the proposed alterations. Any waste arising on site will be re-used for the permitted project. Any noise and nuisance associated with the proposed works will be short-term and subject to appropriate best practice procedures.

5.4.2. **Location of Proposed Development** – it can be concluded that there will be no significant direct or indirect impacts by virtue of the location of the proposed alteration to the approved development on the receiving environment, over and above those considered and assess in the extant Approval. Condition No 1 of the extant Approval in relation to mitigation will apply with equal force and effect to the proposed alterations.

5.4.3. **Characteristics of Potential Impacts** – it is concluded that the characteristics of the proposed impacts arising from the proposed alterations to the permitted road

development are not significant. There are no long-term negative impacts which can be associated with the proposed alterations to the permitted road development. All works will be confined to the permitted M28 Cork to Ringaskiddy project area and will cover a length of 1.3km with the extent permitted road development. The potential for any direct or indirect impact on habitats and protected species is low and the likelihood of any significant effects occurring as a result of the alteration works can be excluded.

6.0 Assessment

6.1. Consideration of Materiality

- 6.1.1. The first consideration in relation to this request to alter the terms of 04.HA0053 is to determine if the alteration would constitute the making of a material alteration of the terms of the M28 Road Scheme Cork to Ringaskiddy road development as approved.
- 6.1.2. As outlined above, the approved project includes for the diversion of electrical utilities. Specifically, at Shanbally, the scheme approves works to two overhead 110kV lines in the vicinity of the proposed Shanbally Interchange: the diversion of a single phase line (involving removal of two existing polesets and a tower and replacement with a new poleset and two new towers); and diversion of the double circuit line (Barnahely-Reffeen No. 2). As stated above, the latter diversion involves the removal of four towers and provision of six new towers on the southern side of the proposed M28 mainline (Dwg. No DG0210 in Volume 5 of the EIS is attached to this Report for ease of reference for the Board). It is this diversion that is the subject of the proposed alteration. In summary, it is now proposed to divert the overhead power line underground for approx. 1.3km requiring the removal of six pylons and a section of the overhead line, the installation of two new circuit line/cable interface masts, and works to the Barnahely substation. With the exception of the works to the Barnahely substation, all the works will occur within the CPO boundary, including approx. 200m of underground cabling in a public road (Shanbally Mews).
- 6.1.3. The applicant explains in the subject request that the approved diversion route does not meet current design requirements and the criteria for a double circuit 110kV line alteration of this type. It is stated that the foundations for the proposed towers would have a significant impact on the adjacent property and that they would not be included

within the CPO boundary (due to the extent of the foundations to cater for the additional tower height requirements.) The applicant further contends that the proposed amendments would remove significant and onerous constraints on the constructability of the proposed road and maintenance constraints due to the presence of the overhead 110kV lines. The applicant states that the alteration to the detail design facilitates the operation of the Approval and that no alterations are required to the Conditions of the extant Approval. It is further stated that the environmental commitments enshrined in the extant Approval apply with equal force and effect.

- 6.1.4. As outlined above, Section 146B(2)(a) states that *the Board shall make a decision as to whether the making of the alteration to which the request relates would constitute the making of a **material alteration of the terms of the development concerned***. (Bold: My emphasis.) Accordingly, my assessment is founded in the context of the approved 12.5km motorway project.
- 6.1.5. The proposed amendments are required to construct the approved motorway project. As such, in my view, they constitute enabling works and would not result in any material deviation or alteration to the design or operation of the approved motorway. As stated above, the approval facilitates the diversion of utilities including overhead and underground electricity lines. I reiterate that with the exception of the alteration works to the Barnahely substation, all the works will occur within the CPO boundary. Importantly, as highlighted by the applicant, the environment commitments, including the Conditions attached to the Order, would apply with equal force and effect. Having regard to the nature and extent of the underground diversion (1.3km), which will run parallel to the approved motorway (12.5km), on grounds that will be substantially altered (under and above ground level) during the construction phase of the approved road, I do not consider the diversion to be a material alteration of the terms of the development (i.e. the construction of a new motorway). As an aside note, I highlight that had these proposed works not been required in relation to a project which is the subject to EIA and AA, they may have been considered exempted development under Class 26 of the Planning and Development Regulations 2001 (as amended) (*The carrying out by any undertaker authorised to provide an electricity service of development consisting of the laying underground of mains, pipes, cables or other apparatus for the purposes of the undertaking*).

- 6.1.6. In my opinion, the removal of the six pylons and the addition of two new circuit line/cable interface masts would not have a material impact on the environment noting the presence of the overhead lines in the area. On the contrary, I concur with the applicant that the removal of the pylons would have a positive visual impact on the area. The two new circuit line/cable interface masts are proposed at locations in relatively close proximity to the existing pylons to be removed (Pylon No. 2 and 7). Whilst these masts are slightly bulkier than the pylons, I do not consider that there is a significant difference in scale between the structures that would have a material bearing on any nearby sensitive receptors. Similarly, in my view, the removal of a section of the overhead line would have a positive visual impact on the area as illustrated on the drawings enclosed with this request. In addition, noting the size and scale of the existing Barnahely substation, I do not consider that the proposed amendments would have any material impact on the substation or its impact on the surrounding environment.
- 6.1.7. In conclusion, in the context of the approved motorway development, which includes for utility diversions including overhead and underground electricity lines, I would concur with the applicant and consider that the proposed alterations are ancillary and consequential works. As discussed in further detail below, I do not consider that the proposed alterations give rise to any additional significant impacts over and above those contained in the EIS for the scheme, which were considered as part of the EIA of the scheme as approved.

6.2. Environmental Impact

- 6.2.1. The permitted road development was accompanied by an EIS and the Board carried out EIA on the said project. The works are to be carried out in accordance with the conditions attached to the approval as well as the environmental commitments associated with same. As outlined below, in my opinion, no new considerations arise in relation to the impact on the environment which were not considered in the assessment of impacts for the motorway development for which EIA (and AA) was conducted.

Population and Human Health

- 6.2.2. Having regard to the nature, scale and location of the proposed amendments in the context of the motorway project, in my opinion, no new considerations arise in terms of human beings. As outlined above, I consider that the proposed works will have a positive visual impact on the area with the removal of a section of the overhead lines and pylons. The applicant outlines in the EIA Screening Report that noise arising from the construction phase will be limited to plant operations and traffic movements to and from the proposed site, which are anticipated to be imperceptible/slight, temporary. As per Condition No. 1 of the Approval, the works will be restricted by various mitigation measures included in the EIS, including Section 14.6.1.1 which states inter alia: All Contractors will employ the Best Practicable Means to minimise noise emissions and will be obliged to comply with the general recommendations of BS 5228-1:2009+A1:2014 Code of practice for noise and vibration control on construction and open sites – Part 1: Noise. and BS 5228-2:2009+A1:2014 Code of practice for noise and vibration control on construction and open sites – Part 2: Vibration (together referred to as B.S. 5228). Similarly, mitigation measures and good working practices stipulated in the EIS would ensure that there would be no significant dust impacts. I submit that the proposed alterations will not alter the findings of the EIS and the EIA carried out by the Board.

Biodiversity

- 6.2.3. The proposed development is situated within the approved project area which predominantly comprises improved agricultural grassland, amenity grassland, a small disused quarry and building and artificial surfaces, which are considered to have negligible to low ecological value. The applicant highlights that there are no Annex I habitat, Annex II, Annex IV or Annex I bird species recorded at the proposed site and its environs during site surveys undertaken to inform the EIS for the permitted M28 project or pre-construction surveys undertaken within the proposed site between 2021 and 2024. The alterations will not result in any additional impact on flora, fauna and avifauna over that as originally assessed in the EIS. I note that the Report to Inform Screening for Appropriate Assessment which accompanied the request states that there are no invasive species present within the site area. As stated above, the underground ducting will run parallel to the motorway, in an area that will be subject to significant construction activity, including substantial ground works/excavations. I

submit that the proposed alterations will not alter the findings of the EIS and the EIA carried out by the Board.

Soils and Geology

- 6.2.4. The mitigation measures associated with the approved development to manage and control waste during construction will not be required to be changed or altered. The additional earthworks associated with the proposed underground ducting are minimal in the context of the quantities of excavation required for the approved motorway and will not alter the findings of the EIS and EIA carried out by the Board. I note from review of the Inspector's Report concerns were raised in relation to the construction of the motorway through former quarry lands. I do not consider that the proposed amendments raise any new considerations in this regard and submit that the findings of the EIS and the EIA carried out by the Board remain unchanged.

Water

- 6.2.5. As highlighted by the applicant, there are no watercourses or active drainage ditches within the proposed site and its immediate environs. As stated by the applicant, surface water management measures for both the construction and operational phases will be provided for in the Method Statement to be prepared by the contractor. The proposed alterations would not result in any increase in hard surface area and as such there will be no increase in stormwater run-off. Furthermore, the proposed amendments will not generate and wastewater/foul effluent. I accept the applicant's argument that the proposed alterations would not give rise to significant effects over that assessed in the EIS and the EIA undertaken by the Board

Air and Climate

- 6.2.6. As stated above, the dust suppression measures during the construction phase as detailed in the EIS which accompanied the original application will apply. No new considerations arise.

Material Assets

- 6.2.7. In my opinion, no new considerations arise in terms of material assets. The works outside the CPO boundary are within the Barnahely substation. As outlined above, ESB has highlighted the benefits of the proposed amendments in correspondence to the Board which accompanies this request. As highlighted by the applicant, concerns

in relation to the diversion of utilities during the assessment of the motorway project largely focused on interruptions to services during the construction of the motorway. As outlined by ESB, the proposed amendments will eliminate any outages that would be required on the overhead line to facilitate the construction of the motorway.

- 6.2.8. Having regard to the nature and scale of the proposed amendments in the context of construction traffic for motorway project, I submit that the proposed alterations will not alter the overall findings of the EIS. I highlight that approx. 200m of the underground cabling will occur within the public road (Shanbally Mews). The later will be on agricultural lands and a former quarry. The works will be completed over a short duration of time and as so any traffic impacts to the immediate area would be temporary in nature.

Cultural Heritage

- 6.2.9. The majority of the works are within the CPO boundary as assessed. The works outside the CPO boundary are within the Barnahely substation. As stated above, the underground ducting will run parallel to the motorway in an area which will experience significant ground disturbance. As per Condition No. 1 of the Approval, the works will be restricted by various mitigation measures included in the EIS, including those listed in Chapter 15 (Cultural Heritage), ensuring that there are no adverse impacts on nearby cultural heritage sites. I note from review of the Inspector's Report for HA0053 that concerns were raised in relation to impacts from the motorway project on a grotto located immediately to the south of the proposed Shanbally Interchange with its associated slip roads and access roads. The Inspector contended that the motorway project would have an indirect negative effect on the Grotto but mitigation measures in the form of hedging and tree planting which would create a visual screen between the structures that would reduce the impact. The underground ducting proposed as part of the amendment works would run in front (south) of the grotto. Whilst the works would have a negative impact during the construction phase, the impact would be temporary only. As the ducting is underground along the roadway, I do not consider that it would have any long-term impact on the feature. I highlight that this feature is not a Protected Structure. Overall, I submit that the proposed alterations will not alter the findings of the EIS.

Landscape

- 6.2.10. As stated above, I consider that the removal of a section of the overhead lines and a number of pylons will have a positive impact on the landscape and visual amenity of the area. The underground ducting will have no long-term impacts on the landscape. In terms of the works to the Barnahely substation, noting the scale and extent of the proposed amendments in the context of the existing substation, I consider that the proposal will have a neutral impact in landscaping terms. In summary, I consider that the proposed amendments will have no significant impact on the landscape.

Interaction of the Above and Cumulative Impacts

- 6.2.11. I submit that the interaction of impacts does not materially alter those identified in the EIS and assessed in the EIA.

Conclusion

- 6.2.12. I submit that the alterations sought would not give rise to significant environmental effects beyond those already considered in the original EIS and the Board's previously completed EIA. The amendments would not result in new or different planning issues to those that were addressed prior to the grant of approval for the permitted road. Any impact at construction stage, in terms of increased noise and dust would be marginal and temporary. The permitted development is subject to the preparation of a construction environmental management plan which includes matters such as hours of operation, details of construction traffic management, mitigations measures for dust, noise, site lighting and the monitoring of such levels. Thus the proposed alterations would be incorporated into the terms of the permitted development with appropriate mitigation measures required to be implemented. In summary, I am satisfied that the proposed alterations are of a minor nature in the context of the permitted road development and are not material.

6.3. Boundary Considerations

- 6.3.1. As outlined on Dwg. No. BLB-S146-100 which accompanies this request, all the proposed alterations are within the CPO with the exception of the works within the Barnahely substation.
- 6.3.2. I would refer the Board to other cases which came before it where the changes to developments were made outside of the red line.

ABP-04PM0010 - Proposed alteration to the redevelopment of the Port of Cork Ringaskiddy.

The Inspector's Report referenced the location of development outside of the red line boundary and considered that this, amongst other effects of the proposed alterations, constituted a material alteration within the meaning of section 146B(2)(a). The Board invited submissions and observations on the proposed alterations and requested an environmental impact assessment from the applicant. Subsequently, the Board decided to alter the subject development having concluded that there would be no significant environmental impacts or significant effects on European sites.

ABP-06D.PM0015 - Proposed alterations to the National Rehabilitation Hospital in Dun Laoghaire-Rathdown

- 6.3.3. The works involved a slight adjustment to the red line boundary. The Board found that the site boundary revision with associated minor increase in landscape buffer zone, would not result in a material alteration to the terms of the development.

ABP 313323-22 – Proposed alterations to a substation and compound, Dunboyne. Co. Meath.

- 6.3.4. The alterations involved the relocation of the access track, part of which was outside the red line boundary. The Inspector recommended that subject to the applicant being requested to make a submission revising the said red line boundary by way of section 146 (2)(b) of the Act the proposed alterations were not material. The request was not made. The Board in its decision considered the proposal alteration not to be material.

Alterations Subject of this Request

- 6.3.5. Notwithstanding my conclusions that the proposed physical alterations comprise modest changes to the permitted development and do not, of themselves, result in a material alteration to the terms of the approved development, I am concerned that the specified works outside of the red line/CPO boundary has the potential to comprise a material alteration on legal or procedural grounds.
- 6.3.6. Whilst Barnahely substation is not within the control of the applicant, ESB has issued a letter of consent (14th March 2024) in relation to the making of the request on its lands. In addition, in further correspondence to the Board that forms part of the request, ESB outlines the rationale and benefits for the proposed alterations. However,

the correspondence does not make specific reference to amendments to the red line/CPO boundary. Accordingly, before making a determination in respect of materiality, the Board may wish to invite a submission from ESB in relation to revising the red line/CPO boundary to include the works to Barnahely substation. This information could be sought under section 146B(2)(b) of the Act which reads 'Before making a decision under this subsection, the Board may invite submissions in relation to the matter to be made to it by such person or class of person as the Board considers appropriate (which class may comprise the public if, in the particular case, the Board determines that it shall do so); the Board shall have regard to any submissions made to it on foot of that invitation'.

- 6.3.7. Having regard to (i) my conclusion in respect of the physical alterations proposed, (ii) there is only a small area of additional land affected by the works, (iii) and ESB's endorsement of the proposed works, I am satisfied that an alteration to the red line/CPO boundary to include the Barnahely substation would not comprise a material alteration to the permitted development. Nonetheless, as stated above, section 146B(2)(b) of the Act does make provision for the Board to request submissions from ESB (or any person or class of person) prior to determining the case, should it consider such consultation necessary.

6.4. Public Consultation

- 6.4.1. I have considered the provisions of section 146B(2)(b) which provides for, at the Board's discretion, the inviting of submissions from persons, including the public. Having considered the nature, scale and extent of the alteration, the information on file, the nature, scale and extent of the development approved under 04.HA0053 and the information on the said original file including the submissions from the public, I am of the opinion that inviting submissions from the public in this instance is not necessary and is not required for the purposes of the Board determining the matter.

6.5. Appropriate Assessment

- 6.5.1. Under ABP 04.HA00053 the Board completed an appropriate assessment screening exercise in relation to Natura 2000 sites within the zone of influence of the motorway project. The Board then undertook an appropriate assessment in relation to the effects

of the development proposed on two sites that were not screened out namely: Great Island Channel SAC (site code 001058) and Cork Harbour SPA (site code 004030).

- 6.5.2. The Board concluded that the proposed development, by itself, or in combination with other plans or projects, would not be likely to adversely affect the integrity of the European Sites in view of the sites' conservation objectives.
- 6.5.3. The proposed alterations are located within the red line and CPO boundary of the approved development save for works to Barnahely substation (directly abutting the CPO boundary). As outlined above, I do not consider that the proposed alterations are material nor do they raise any new environmental considerations. Any potential pathways for impacts of the permitted motorway project have already been assessed under an Appropriate Assessment of that application and the proposed amendments do not give rise to any new or different issues or impact pathways that would now need to be assessed. The works will be carried out in the context of the environmental commitments for the permitted road development and will not require any additional measures over and above those already in place.
- 6.5.4. Having considered the Board's determination on appropriate assessment on ABP HA0053, section 21 of the Inspector's Report on the said file, the nature, scale and extent of the proposed alterations relative to the development subject of and approved under ABP HA0053, and the information on file which I consider adequate to carry out appropriate assessment screening, I consider it reasonable to conclude that the alterations proposed, individually or in combination with other plans or projects, would not be likely to have a significant effect on the European sites in view of the sites' conservation objectives.

7.0 Recommendation

I recommend that the Board decides that the making of the alterations subject of this request do not constitute the making of a material alteration of the terms of the development as approved under 04.HA0053.

Draft Order for the Board's consideration provided below.

REQUEST received by An Bord Pleanála on the 25th day of April 2024 from Cork County Council under section 146B of the Planning and development Act, 2000, as

amended, to alter the terms of the permission for the M28 Road Scheme Cork to Ringaskiddy project subject of an approval under An Bord Pleanála reference number 04.HA0053.

WHEREAS the Board made a decision to grant approval subject to conditions for the above mentioned development by order dates the 29th day of June 2018.

AND WHEREAS the Board has received a request to alter the terms of the development, the subject of the approval,

AND WHEREAS the proposed alterations in respect of the utility diversion is described as follows:

- Removal of six existing overhead pylons,
- Installation of two new circuit line/cable interface masts in place of two existing overhead pylons,
- Removal of 710m of existing overhead lines,
- Installation of 1,210m of underground ducting within the CPO boundary, and
- Installation of 90m of underground ducting within the ESB Barnahely substation.

AND WHEREAS the Board decided, in accordance with section 146B(2)(b) of the Planning and Development Act 2000, as amended, not to invite submissions or observation from the public in relation to whether the proposed alteration would constitute the making of the material alteration to the terms of the development concerned,

AND WHEREAS the Board decided, in accordance with section 146B(2)(a) of the Planning and Development Act 2000, as amended, that the proposed alteration would not result in a material alteration to the terms of the development, subject of the permission,

AND WHEREAS having considered all of the documents on file and the Inspector's report, the Board considered that the making of the proposed alteration would not be likely to have significant effects on the environment or on any European Site,

NOW THEREFORE in accordance with section 146B(3) of the Planning and Development Act, 2000, as amended, the Board hereby alters the above mentioned

decision so that the permitted development shall be altered in accordance with the plans and particulars received by An Bord Pleanála on the 25th day of April, 2024 for the reasons and considerations set out below.

REASONS AND CONSIDERATIONS

Having regard to:

- (i) the nature and scale of the development approved under An Bord Pleanála reference number 04.HA0053 for the M28 Cork to Ringaskiddy Motorway Scheme
- (ii) the examination of the environmental impact, including in relation to Natura 2000 sites, carried out in the course of that application,
- (iii) the nature and location of the alterations now proposed,
- (iv) the nature and limited scale of the alterations when proposed in relation to the overall scale of the road development
- (v) the absence of any significant new or additional environmental concerns (including in relation to Natura 2000 sites) arising as a result of the proposed alterations, and
- (vi) the report of the Board's inspector, which is adopted,

it is considered that the proposed alterations would not be material. In accordance with section 146B(3)(a) of the Planning & Development Act, the Board hereby makes the said alterations.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Susan Clarke

Senior Planning Inspector

6th June 2024