

An
Bord
Pleanála

Board Direction
BD-011960-23
ABP-315838-23

The documentation on file and the Inspector's report were considered at a Board meeting held on 28/03/2023.

The Board recommends that the conditions as set out below be taken into account in any approval of the designated development by the Minister for the Environment, Climate and Communication.

Environmental Assessment

The Board carried out an environmental assessment of the designated development in accordance with section 5(2) of the Development (Emergency Electricity Generation) Act 2022.

The Board considered that the Environmental Report, supported by the documentation submitted by the applicant, was prepared by competent experts and describes the likely main effects of the designated development on the environment. The Board agreed with the examination set out in the Inspector's report of the information contained in the Environmental Report and associated documentation submitted by the applicant, and submissions made in the course of the application for approval.

In reaching a conclusion, the Board had regard to the following:

- a) European, national, regional and local planning, energy, climate and other policy of relevance, including in particular the following:

European Policy

- Directive 2014/52/EU amending Directive 2011/92/EU (EIA Directive);
- Directive 92/43/EEC (Habitats Directive, and Directive 79/409/EEC as amended by 2009/147/EC (Birds Directive);
- Directive 2000/60/EC (Water Framework Directive).

National Policy

- National Development Plan (2021-2030) (NDP);
- Development (Emergency Electricity Generation) Act 2022;
- Climate Action and Low Carbon Development Amendment Act 2021, amending the Climate Action and Low Carbon Development Act 2015;
- Climate Action Plan 2023;
- Policy Statement on Security of Electricity Supply (November 2021);
- National Energy Security Framework (April 2022);
- The Planning System and Flood Risk Management – Guidelines for Planning Authorities (2009).

Regional and Local Policy

- Regional Spatial and Economic Strategy for the Southern Region (2019-2031);
- Strategic Integrated Framework Plan for the Shannon Estuary (2013 – 2020);
- Kerry County Development Plan 2022-2028;
- Listowel Municipal District Local Area Plan 2019-2025.

- b) The brownfield nature of the site and planning history relating thereto.
- c) The nature and scale, and infrequent operation of the development limited to a maximum operation of 500 hours per year and the temporary period of operation limited to a maximum of 5 years, of the designated development.

- d) The documentation submitted by the applicant to the Minister in accordance with the provisions of article 3(4) of the Development (Emergency Electricity Generation) Regulations 2022.
- e) The range of mitigation measures set out in the Environmental Report and the Natura Impact Statement accompanying the application and recommended hereunder.
- f) The submissions received in relation to the application by all parties.
- g) The report of the planning Inspector, and
- h) The memorandum of the Ecologist appointed to assist the Board.

The Board has concluded that the main likely effects of the designated development on the environment are as follows:

- The designated development would give rise to a slight increase in airborne emissions with resulting air quality impacts during the operational phase. Modelling indicates that the impact on human and ecological receptors in the receiving environment would not be significant. Having regard to the scale and limited deployment of the plant and the modelling undertaken which demonstrates the designated development's ability to adhere to the air pollution limits set out in the Air Quality Standard Regulations (Statutory Instruments 180 of 2011), it is not considered that impacts in relation to any air borne emissions would be significant.
- Noise emissions during construction have the potential to give rise to adverse effects on adjoining sensitive residential and ecological receptors, in particular wintering birds. Having regard to the temporary duration of such activity and the identified mitigation measures, including in particular the proposed acoustic barriers around the site perimeter and the timing of certain activities, significant adverse effects are not considered likely. Such screening would also address potential visual disturbance effects on species of conservation interest in the adjacent habitats. Subject to the achievement of the specified operational noise levels, significant impacts on residential amenity or on ecological receptors are not considered likely.

- Peak construction traffic movements have the potential to impact on adjoining residential amenity during night-time hours. Having regard to the limited duration of such activity and subject to restrictions on the routing and volume of heavy goods vehicle movements during such periods, adverse impacts on residential amenity are not considered likely.
- Specific noise disturbance effects on Annex II species of the adjoining candidate Special Area of conservation, in particular, bottlenose dolphin is not considered likely to be significant having regard to the on-shore nature of the proposed works and subject to the identified mitigation measures, including in particular adherence to Guidance to Manage the Risk to Marine Mammals from Man-made Sound Sources in Irish Waters (DAHG 2014).
- The designated development would give rise to an increase in operational greenhouse gas emissions with resulting impacts on the achievement of European and National climate change and carbon emission reduction targets, however the impact on the environment would not be significant in the long-term having regard to the scale and the temporary and emergency nature of the facility, which would only operate intermittently, as and when needed, and for no more than 500 hours per year.
- The designated development could give rise to impacts on surface and groundwaters as a result of run-off of sediments, accidental spillages of chemicals, hydrocarbons or other contaminants entering waterbodies during construction and operational phases. These impacts would be adequately mitigated by the implementation of standard, best practice guidance and measures, including measures for the control of polluting materials and the management of surface waters and adherence to industrial emissions licence requirements. Subject to such measures, significant residual effects on the environment are not considered likely.
- The designated development comprises a highly vulnerable use and the subject lands are at risk of flooding. Having regard to the history of uses on these lands and subject to the provision of flood defences around the site, the development can be regarded as acceptable in principle. In this regard, conditions with regard to the level of flood protection to be achieved are considered to be appropriate.

In conclusion, having regard to the identified likely main effects, the Board is satisfied that the designated development would not have any unacceptable direct or indirect impacts on the environment, subject to implementation of the identified mitigation measures.

Having regard to the above conclusions, the Board recommends that the conditions as set out below be taken into account in any decision by the Minister for the Environment, Climate and Communication to approve of the designated development.

Appropriate Assessment: Stage 1:

The Board carried out an appropriate assessment of the designated development in accordance with section 6(1) of the Act.

Further to the Board's screening determination by order dated 24/02/2023, the Board identified the European Sites referred to below in respect of which there is a likelihood of significant effects.

The Board noted that the designated development is not directly connected with the or necessary for the management of any European Site.

The Board completed an Appropriate Assessment Screening exercise in relation to potential effects on designated European Sites, taking into account the Screening Report submitted with the application, the report and screening assessment completed by the Board's Inspector which concluded that the following sites are the European Sites in respect of which there is a likelihood of significant effects:

- Lower River Shannon Special Area of Conservation (Site Code: 002165)
- River Shannon and River Fergus Estuaries Special Protection Area (Site Code: 004077).
- Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area (Site Code: 004161),

- Moanveanlagh Bog Candidate Special Area of Conservation (Site Code: 002351).

The Board concluded that appropriate assessment was required in respect of these European Sites.

Appropriate Assessment: Stage 2:

The Board considered that the Natura Impact Statement and associated documentation submitted with the application, the mitigation measures contained therein, the submissions and observations on file, including that of the Development Applications Unit, and the report of the planning Inspector and the memorandum from the Ecologist, and carried out an appropriate assessment of the implications of the designated development on European Sites 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 and to allow it to reach complete, precise and definitive conclusions for appropriate assessment.

In completing the assessment, the Board considered in particular the likely direct and indirect impacts arising from the designated development both individually and in combination with other plans and projects, the mitigation measures which are included as part of the current proposal and additional mitigation measures recommended by the Inspector in view of the sites' conservation objectives. In completing the appropriate assessment, the Board accepted and adopted the appropriate assessment carried out by the Board's Inspector of the potential effects of the development on the aforementioned European Sites, having regard to the sites' conservation objectives. In overall conclusion, the Board was satisfied that the proposed development would not adversely affect the integrity of the European Sites, in view of their conservation objectives, namely;

- Lower River Shannon Special Area of Conservation (Site Code: 002165)
- River Shannon and River Fergus Estuaries Special Protection Area (Site Code: 004077).

- Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area (Site Code: 004161),
- Moanveanlagh Bog Candidate Special Area Conservation (Site Code: 002351).

There is no reasonable scientific doubt as to the absence of such effects.

The Board in accordance with section 6(2) of the Act also considered that the need for a derogation is not necessary in respect of the designated development.

Recommended Conditions

1. The designated development shall be carried out and completed in accordance with the plans and particulars, including the mitigation measures specified in the Environmental Report, Framework Construction Environmental Management Plan and the Natura Impact Statement lodged with the application to the Minister for the Environment, Climate and Communication on the 17th day of February 2023, except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity and environmental protection

2. The construction of the development shall be managed in accordance with a finalised Construction Environmental Management Plan, which shall be prepared and made available for inspection. This plan shall provide details of intended construction practice for the development, including, inter alia:
 - (a) Location of the site and materials compounds including areas identified for the storage of construction refuse;
 - (b) Location of areas for construction site offices and staff facilities;
 - (c) Final alignment of acoustic barriers and site security fencing and hoarding;
 - (d) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;

- (e) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels. This should include additional mitigation measures in respect of noise identified in section 1.5 of Appendix E of the Natura Impact Statement.
- (f) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;
- (g) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;
- (h) A site-specific water management plan, to include detailed drawings of adequate scale, for each development phase of the project identifying measures to ensure that surface water run-off is attenuated and controlled such that no silt or other pollutants enter estuarine waters, local surface waters or drains.

A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be retained for inspection.

Reason: In the interest of amenities, public health and safety.

3. During the operational phase of the development, the noise level arising from the development, shall not exceed:-
 - (a) An Leq,1h value of 55 dB(A) during the period 0800 to 2200 hours from Monday to Saturday inclusive at any point along the boundary of the site.
 - (b) An Leq,15 min value of 45 dB(A) at any other time at the nearest dwelling at any other time.

The noise at such time shall not contain a tonal component. All sound measurement shall be carried out in accordance with ISO Recommendation 1996:2007: Acoustics - Description and Measurement of Environmental Noise.

Reason: To protect the residential amenities of property and avoid adverse effects on species of conservation interest in the vicinity of the site.

4. (a) All discharges through the stormwater drainage outfall shall pass through a silt trap and Class 1 Hydrocarbon Interceptor. Any bunded areas within the site will have valve-controlled discharge points as part of their connection to the outfall drainage network. Drainage runoff from these areas will be tested for contamination prior to release to the outfall drainage network.

(b) All material storage and containment at the Designated Development site, to include all tanks (including drums and containers), bunds and pipelines which store or transmit potentially polluting substances, and transformers shall be designed and installed in accordance with the Environmental Protection Agency *IPC Guidance Note - Storage and Transfer of Materials for Scheduled Activities* (EPA 2013), as amended. Each fuel oil storage tank shall be provided with a leak detection system.

Reason: In the interests of environmental protection.

5. The development shall provide firewater retention which shall be designed and sized in accordance with the provisions of the Environmental Protection Agency *Guidance on Retention Requirements for Firewater Run-off* (EPA 2019). In the event of a fire or a spillage to storm water, the system shall provide for the automatic diversion of storm water for collection.

Reason: In the interests of environmental protection.

6. During the site clearance, preparation and construction phase of the development, dust levels shall not exceed 350 milligrams per square metre (TA LUFT Air Quality Standard) per day averaged over 30 days, when measured at the site boundary.

Reason: In the interest of public health and residential amenity.

7. A finalised Construction Traffic Management Plan shall be agreed in writing with the planning authority which shall provide for the following:
- (a) Details of the timing and routing of construction traffic to and from the construction site, including abnormal loads, and associated directional signage.
 - (b) Consultation with all relevant parties involved in the management of the local and national road network traversed by the haul route to ascertain any operational requirements.
 - (c) Surveys of structures on the public road network to be used as haul routes, to confirm their capacity to accommodate any abnormal weight loads.
 - (d) Any damage to the local and national road network arising from the transportation of components units and/or materials to the site, identified in post-construction phase surveys, shall be rectified in accordance with the requirements of the planning authority, at the developer's expense.

Reason: In the interest of road safety, orderly development and the proper planning and sustainable development of the area.

8. The movement of construction heavy goods vehicles to / from the N67 during the night-time period shall be restricted to 2 number movements per hour and shall be restricted to the use of the eastern entrance to the development site, in accordance with section 4.3.5.2 of the Environmental Report.

Reason: In order to protect adjoining residential amenities.

9. Construction and demolition waste shall be managed in accordance with a Construction Waste and Demolition Management Plan, which shall be prepared in accordance with the "Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects", published by the Department of the Environment, Heritage and Local Government (2006).

Reason: In the interest of sustainable waste management.

of the Guidance shall be subject to agreement with the Regulatory Authority.

- (c) Underwater noise monitoring shall be undertaken before, during, and after, any piling activity within 20 metres of the Shannon Estuary and the results of such monitoring shall be included as part of reporting requirements to the Regulatory Authority under the Guidance (2014).

Reason: In the interest of wildlife protection.

- 15. (a) All mitigation measures in relation to archaeology and cultural heritage as set out in Chapter 4.10 of the Environmental Report shall be implemented in full, except as may otherwise be required in order to comply with the conditions of this Order.
- (b) The Construction Environmental Management Plan (CEMP) shall include the location of any and all archaeological or cultural heritage constraints relevant to the proposed development as set out in Chapter 4.10 of the Environmental Report. The CEMP shall clearly describe all identified likely archaeological impacts, both direct and indirect, and all mitigation measures to be employed to protect the archaeological or cultural heritage environment during all phases of site preparation and construction activity.
- (c) The planning authority and the Department of the Environment, Climate and Communication shall be furnished with a final archaeological report describing the results of all archaeological monitoring and/or any archaeological investigative work/excavation required, following the completion of all archaeological work on site and any necessary post-excavation specialist analysis. All resulting and associated archaeological costs shall be borne by the developer.

10. (a) Lighting during construction and operational phases of the development shall be designed in accordance with Guidance Note 01/21 *The Reduction of Obtrusive Light at Night* (Institute of Lighting Professionals (2021)).
- (b) LED lighting used on the site should have CCT values at or below 3000K, where possible.

Reason: In the interest of wildlife protection.

11. The proposed flood defence wall shall be provided to a level to protect the site from coastal flooding in the 1-in-1000 event (0.1% AEP) in accordance with the levels identified in the National Coastal Flood Extents 2021 - Mid-Range Future Scenario.

Reason: In the interest of public health and safety and to obviate the risk of ecological impacts from inundation of the site.

12. The acoustic barrier fence, as indicated in Figure 12 of the Natura Impact Statement, shall be extended along the north-eastern shore of Tarbert Island as far as the CW Pumphouse / WTP Building (Disused).

Reason: In the interest of wildlife protection.

13. During the construction phase, the developer shall adhere to the measures set out in "Guidelines for the Treatment of Otters Prior to the Construction of National Road Schemes", published by the National Roads Authority in 2008.

Reason: In the interest of wildlife protection.

14. (a) Impact piling activity on the site shall be undertaken in accordance with the provisions of the '*Guidance to Manage the Risk to Marine Mammals from Man-made Sound Sources in Irish Waters*' (Department of Arts, Heritage and the Gaeltacht 2014).

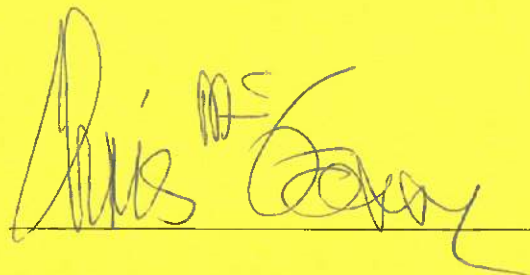
(b) The radial distance of the Monitored Zone for the purpose of section 4.3.3

Reason: To ensure the continued preservation either in situ or by record of places, caves, sites, features or other objects of archaeological interest.

Section 6(2) - Strict Protection of Certain Animal and Plant Species under the Habitats Directive

Having regard to the available information, including the results of surveys undertaken in respect of the designated development and the results of surveys previously undertaken in the area, the Board concluded that there is no basis to consider that a requirement for a derogation for the purposes of Article 16 arises. Accordingly, no recommendation as to the granting of such a derogation under article 6(2) of the regulations of 2022 is made.

Board Member

A handwritten signature in black ink, appearing to read 'Chris McGarry', written over a horizontal line.

Date: 28/03/2023

Chris McGarry

