



Planning Ref: **P82024.07**

Your Ref: **Part 8 Proposed Grand Canal Greenway Phase 2 Additional Bridges**

Our Ref: **Part 8 P82024.07 Grand Canal Greenway Phase 2**

*(Please quote in all related correspondence)*

25 September 2024

A/Senior Executive Officer  
Strategic Projects and Public Realm Team  
Housing and Regeneration Department  
Level 3  
Kildare County Council  
Áras Chill Dara  
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Via Kildare County Council Consultation Portal

Re: Notification in accordance with Part 8, Article 81, of the Planning and Development Regulations, 2001 (as amended).

**Proposed Development: Part 8 application Planning Reference: P82024.07 for permission for Grand Canal Greenway Phase 2 Additional Bridges along the route of the Grand Canal Greenway Phase 2 at Downings South and Lowtown, County Kildare**

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I refer to correspondence on 14<sup>th</sup> August received in connection with the above.

Outlined below are heritage-related observations/recommendations co-ordinated by the Development Applications Unit under the stated headings.

### **Archaeology**

It is noted that the proposed development is large in scale. Given the scale, extent and location of the development it is possible that subsurface archaeological remains could be encountered during the construction phases that involve ground disturbance. It is the Department's recommendation that a suitably qualified archaeologist is employed to carry out an Archaeological Assessment of the proposed area and that this should be included in any granting of planning permission.



The Archaeological Impact Assessment should be compiled as follows;

1. The applicant is required to engage the services of a suitably qualified archaeologist to carry out an archaeological assessment of the development site. No sub-surface work should be undertaken in the absence of the archaeologist without his/her express consent.
2. The archaeologist should carry out any relevant documentary research and inspect the site. Test trenches may be excavated at locations chosen by the archaeologist (licensed under the National Monuments Acts 1930-1994), having consulted the site drawings.
3. Having completed the work, the archaeologist should submit a written report to the Department. Where archaeological material/features are shown to be present, preservation in situ, preservation by record (excavation) or monitoring may be required.

The Department will forward a recommendation based on the Archaeological Assessment to the Planning Authority.

Reason:

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

**Nature Conservation**

**Matters related to Appropriate Assessment (AA) Screening**

An Appropriate Assessment Screening Report (Rev 02), prepared for Fehily Timoney and Company by Ecology Research and Solutions Ltd. is provided with the Part 8 documents published online. The Department notes that this report only considers the Lowtown element of the project. No assessment appears to have been made of the Healy's Bridge (aka Bonynghe Bridge) element of the project. This is of concern as the Healy's Bridge element lies directly adjacent to the Ballynafagh Lake Special Area of Conservation (SAC) (Site Code: 001387). Section 3.3 of the AA Screening Report states erroneously that Ballynafagh Lake SAC is 970 m east of the proposed development site when it is, in fact, directly adjacent to the proposed development site. The first step in carrying out a screening exercise is to consider the nature and extent of the proposed development.<sup>1</sup> This has not been done in the present case and the Department therefore considers the AA Screening Report to be incomplete.

The Department notes that the Healy's Bridge element of the project coincides with the known distribution of Desmoulin's whorl snail (*Vertigo Moulinsiana*) (1km grid squares N8025 and N8125). A Conservation Objective for this species is that there is no decline in 1km squares occupied. The effects of the project on this Qualifying Interest species of Ballynafagh

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<sup>1</sup> OPR Practice Note ON01 Appropriate Assessment Screening for Development Management



Lake SAC have not been assessed in the AA Screening Report provided. The Part 8 Report prepared by Fehily Timoney states that a survey of the proposed development area was completed in July 2023. The report further states that due to the lack of suitable habitat within or adjacent to the proposed development the conclusion of the survey and report was that the proposed development will not have any negative impact on the *Vertigo Moulinsiana* species. As per EU guidance, appropriate assessment must examine the implications of the project in light of the best scientific knowledge. Therefore, the Department recommends that the Desmoulin's whorl snail survey and report should be considered as part of the AA screening determination.

The AA Screening Report states that there are no pathways for sources identified to Ballynafagh Lake SAC. The AA Screening Report does not consider the possible pathway for invasive species to spread to Ballynafagh Lake SAC, which lies directly adjacent to the development site, via soil movement, earthworks, vegetation removal, machinery etc. This includes spread of invasive species possibly present at the proposed development site or in its vicinity (Japanese knotweed can spread from tiny pieces of root material in soil several metres from the plant location) and importation via contaminated material or machinery. It is noted that no information is provided within the AA Screening Report on the presence of invasive species within the proposed development's zone of influence. A Conservation Objective target for the Qualifying Interest habitat Alkaline Fen is that invasive species cover less than 1% of the area of the SAC. The Department recommends that the impacts of the spread of invasive species must be considered in the AA Screening Report. This is in accordance with Kildare County Development Plan Policy BI O6:

*Apply the precautionary principle in relation to proposed developments in environmentally sensitive areas to ensure that all potential adverse impacts on a designated NHA or Natura 2000 Site arising from any proposed development or land use activity are avoided, remedied, or mitigated.*

### **Cumulative impacts**

The Department notes that Phase 2 of the Greenway from Sallins to Clonkeen on the Offaly border has received Part 8 consent (Ref Planning No. P82018.012) and is currently at the detailed design stage. Given the potential pathway for invasive species to enter Ballynafagh Lake SAC as described above, the Department advises that the cumulative impact of the current proposed development and phase 2 of the Greenway must be assessed.

### **Matters related to Ecological Impact Assessment (EclA)**

The EIA Screening Report, prepared by Fehily Timoney (page 11) states that an ecological survey has been completed and due to the scale of the project the habitat loss is not considered to have a significant effect. No evidence has been provided to support this conclusion. The Ecological Survey has not been provided with the Part 8 documents. In the absence of evidence that Ecological Impact Assessment has been carried out and suitable mitigation/compensation measures put in place, the Department is concerned that the



proposed development may lead to biodiversity loss and has the following recommendations to make:

The Department notes that the proposed project lies within the Grand Canal proposed Natural Heritage Area (pNHA) (Site Code 002104) and will lead to habitat loss within this site. Kildare County Development Plan Policy BI O12 requires the preparation of an Ecological Impact Assessment (EclA) by a suitably qualified professional for proposals for development within or adjacent to a proposed Natural Heritage Area (pNHA), to ensure the development is designed and sited to minimise its impact on the biodiversity, ecological, geological and landscape value of the site, particularly plant and animal species listed under the Wildlife Acts. Such assessments shall be carried out in line with the CIEEM (2018) Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater, Coastal and Marine. The Department advises that evidence must be provided that Policy BI O12 has been complied with and that an EclA has been prepared. This should be submitted prior to any decision being made on this proposed development.

The EclA should include a habitat survey and loss of habitat should be quantified. This should include the development of an amenity area (as noted on the drawings the area adjacent to the northern bank will be landscaped for further use as a trial head or recreational area), loss of semi-natural habitat between Lowtown and Robertstown on the canal bank, and loss through piping of a currently open watercourse. Particular attention should be paid to any examples of habitats listed under Annex I of the Habitats Directive and potential habitat of Annex II species such as Marsh Fritillary and Desmoulin's Whorl snail. Kildare County Council must ensure that the CIEEM Advice Note on the Lifespan of Ecological Reports & Surveys is complied with.<sup>2</sup> Surveys/Reports older than 18 months need to be reviewed by a professional Ecologist who must undertake a site visit.

#### **Annex IV Species**

A number of species are included in a system of "strict protection" pursuant to the requirements of Articles 12, 13 and 16 of the Habitats Directive (92/43/EEC) and are listed in Annex IV of the Directive. Any EclA must consider impacts to the Annex IV species, bat species and European otter, which are likely found within the development's zone of influence. The following publications provide information on the legal obligation of Kildare County Council when carrying out development which may affect Annex IV animal species.

- Strict Protection of Animal Species – Guidance for Public Authorities on the application of Articles 12 and 16 of the EU Habitats Directive to development/works undertaken by or on behalf of a Public Authority (2021)<sup>3</sup>

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<sup>2</sup> <https://cieem.net/wp-content/uploads/2019/04/Advice-Note.pdf>

<sup>3</sup> Mullen, E., Marnell, F. & Nelson, B. (2021) <https://www.npws.ie/sites/default/files/files/article-12-guidance-final.pdf> (National Parks and Wildlife Service)



- Commission notice Guidance document on the strict protection of animal species of Community interest under the Habitats Directive<sup>4</sup>

### **Bat Species**

Scrub and tree removal and habitat modification works required at existing Lowtown Bridge may negatively affect bat roosting and foraging habitat. The Department is concerned that there is no bat survey or report included with the Part 8 documents and recommends that a bat survey and report are produced.

Any roosts identified are protected under the provisions of Regulation 51 of the European Communities (Birds and Natural Habitats) Regulations 2011-2021. Damage to such roosts can only occur if a derogation licence under Regulation 54 is obtained. It is important to be aware of European and Irish jurisprudence where this has implications for interpretation and application of certain aspects of the directives and of national legislation, and where this updates aspects of associated guidance or circulars. In particular, the judgement of the European Court of Justice Hellfire Massey Judgement should be consulted.<sup>5</sup>

Applications for derogation licences can be made in writing, including survey results and proposed mitigation measures, to the Wildlife Licensing Unit, National Parks and Wildlife Service of this Department.

### **European Otter**

Otters, along with their breeding and resting places, are protected under the provisions of the Wildlife Acts 1976 to 2023. Otters have additional protection because of their inclusion in Annex II and Annex IV of the Habitats Directive 92/43/EEC, which is transposed into Irish law by the European Union (Birds and Natural Habitats) Regulations 2011 to 2021 (S.I. No. 477 of 2011). Studies of the Royal Canal have found that otter sign distribution and the location of otter marking correlates strongly with less disturbed areas of habitat and lower levels of human-related disturbance.<sup>6</sup> This includes areas of semi-natural fringe habitat that are poorly accessible to people and often on banks opposite the towpaths such as in the area between Robertstown and Lowtown. The Department is concerned that this project will have negative effects on otter distribution and otter habitat. The Department recommends the carrying out of an otter survey and report by otter specialists in winter of 2024-2025. This period is considered optimal for surveys given a greater propensity for otter marking (pre-breeding) and a higher likelihood of sign detection due to decreased vegetation cover. Collection of otter spraint for DNA analysis to allow the estimation of the otter population along the Grand Canal adjacent to the proposed development should be considered

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<sup>4</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=PI\\_COM%3AC%282021%297301](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=PI_COM%3AC%282021%297301)

<sup>5</sup> ECLI:EU:C:2023:545

<sup>6</sup> Royal Canal (1<sup>st</sup> to 16<sup>th</sup> Lock) Otter Survey 2023 prepared by Triturus Environmental Ltd. for Roughan & O'Donovan Consulting Engineers, January 2024



Any holts/couches identified, are protected under the provisions of Regulation 51 of the European Communities (Birds and Natural Habitats) Regulations 2011-2021. Damage to such sites can only occur if a derogation licence under Regulation 54 of the European Communities (Birds and Natural Habitats) Regulations 2011-2021 is obtained. It is important to be aware of European and Irish jurisprudence where this has implications for interpretation and application of certain aspects of the directives and of national legislation, and where this updates aspects of associated guidance or circulars. In particular, the judgement of the European Court of Justice Hellfire Massey Judgement should be consulted.

### **Summary**

In summary, the Department considers that in the absence of Appropriate Assessment Screening of the entire development, the absence of scientific evidence and the failure to assess the impact of invasive species spread as well as cumulative impacts with other projects, this project is likely to have significant effects on Ballynafagh Lake SAC. Furthermore, in the absence of Ecological Impact Assessment, as required by Kildare County Development Plan 2023-2029 in this case, being provided with the Part 8 application, negative impacts for wider biodiversity due to this project cannot be ruled out.

You are requested to send any further communications to this Department's Development Applications Unit (DAU) at [manager.dau@npws.gov.ie](mailto:manager.dau@npws.gov.ie), where used, or to the following address:

The Manager  
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Y35 AP90

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A handwritten signature in blue ink, which appears to read 'Sinéad O'Brien'.

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Sinéad O' Brien  
Development Applications Unit  
Administration