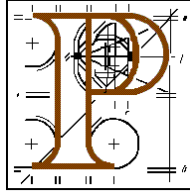


# An Bord Pleanála



## Inspector's Report

<b>Board Reference:</b>	17.EN3001.
<b>Nature of Application:</b>	Section 14B of National Monuments Act, 1930 [inserted by Section 5 of National Monuments (Amendment) Act 2004].
<b>Location of Development:</b>	On line of Approved Road M3 at Lismullin, County Meath.
<b>Road Authority:</b>	National Roads Authority.
<b>Previously Approved Development:</b>	M3 Clonee – North of Kells Motorway Scheme 2002 (17.MS2004 & 17.ER2014)
<b>Inspector:</b>	Eoghan Brangan.
<b>Site Inspection:</b>	27 July 2007

## **NOTIFICATION OF DIRECTIONS UNDER SECTION 14A(4)(d) OF THE NATIONAL MONUMENTS ACT, 1930**

On 6 July 2007 the National Roads Authority (NRA), informed the Board, under Section 14B(1) of the National Monuments Act 1930, that it had received Ministerial Directions in respect of the newly discovered national monument at Lismullin, Co. Meath, on the route of the approved M3 Clonee to North of Kells Motorway Scheme. The NRA enclosed a copy of the Directions and requested a formal response as required under Section 14B. Under this Section the Board is required, in the first place, to determine whether, as a consequence of the Directions, there is a material alteration to the approved road development.

The NRA states in its notification that it “is satisfied that no change is necessitated to the approved road development” arising from the Directions.

### **BACKGROUND TO CASE**

The current application arises under an amendment to the National Monuments Act, 1930, incorporated in the National Monuments (Amendment) Act, 2004. The case relates to a change or modification to a previously approved road development. The M3 Clonee to North of Kells Motorway Scheme 2002 was approved by the Board under Section 49 of the Roads Act 1993 on 22<sup>nd</sup> August 2003 (File Ref. 17.MS2004) and under Section 51 on 25<sup>th</sup> August, 2003 (File Ref. 17.ER.2014). Both approvals were subject to modifications.

In the course of archaeological investigations (in accordance with Ministerial Directions) in advance of the construction of the road, a previously unrecorded archaeological site was discovered at Lismullin (about 9 km south-east of Navan) directly on the route of the approved road. The monument is located in the valley between the hills of Tara and Skreen and in the vicinity of the ringfort of Rath Lugh. The monument, a ritual enclosure, has not been dealt with in the EIS for the scheme or by the Board in its decision to approve the road development. The monument consists of an outer enclosure some 80 metres in diameter with an entrance on the east from which two radial rows of stake holes lead to an inner enclosure which is 16 metres in diameter. The enclosure is defined by two rows of stake holes.

The view of the Minister, set out in the Introduction to the Directions, is that the enclosure at Lismullin is a National Monument.

## **MINISTERIAL DIRECTIONS TO THE NRA**

On 12<sup>th</sup> June, 2007, the Minister for the Environment, Heritage and Local Government issued Directions to the NRA. The Directions were issued pursuant to Subsection 14A(4)(d) of the National Monuments Act, 1930 and require “the road authority to fully excavate and record that part of the National Monument within the area of the CPO for the road. The archaeological excavations and recording are to be carried out in advance of any road construction works in the vicinity of the National Monument”. A topographical survey of the entire National Monument and some geophysical surveys are also required. As noted a copy of the six page Directions is attached to the notification from the NRA to the Board. The introduction to the Directions notes: “The Minister has taken into account that the monument has been degraded by ploughing in the past, that the surviving features are shallow, that the monument is in a fragile state and that there is a risk of degradation of the monument by natural elements.”

## **DESCRIPTION OF APPROVED ROAD AND NEW MONUMENT**

The sections below describe the location of the newly identified National Monument and the design of the approved road in the vicinity. Documents on file and referred to in the Description are included at Appendix A at the end of this Report.

The general location of the National Monument at Lismullin is indicated as “Lismullin 1” on the maps attached to the NRA notification to the Board. The National Monument is located on the line of the M3 about 300 metres south-east of the proposed Lismullin overbridge at approximate chainage 29,400 metres. The NRA notification also attached a “Location map of Lismullin 1” at a scale of approximately 1:9,000 and a “Detail of Enclosure” map at a scale of about 1:430.

I visited the site on 27 July 2007 accompanied by Ms Mary Deevy, Senior Archaeologist, NRA. At the time of my inspection, topsoil stripping was being carried out on the sections of the approved road (M3) in both directions from the

location of the new National Monument. (**Photos D, E and H** below.)

On the copy photomap (Fig 2.3) and alignment (Fig 3.6) maps from volume 4B of the EIS I have indicated with a red star the approximate location of the National Monument and also, on Fig 3.6, the points from which photos C to H were taken during my site visit. (Photos A and B were taken from the hill of Skreen.)

Figure 3.6 shows the horizontal and vertical alignment of the approved road in the vicinity. The approved road would be in cut of approximately 3 metres over the section passing through the National Monument. At the location of the National Monument the overall width of the CPO area is about 100 metres allowing for a farm access road on the southern side. Figure 2.3 is based on aerial photography and shows the National Monument located in an area that was originally a ploughed field with woodland and pasture on either side along the route. The outline of the National Monument is sketched in roughly on Figure 1 which is an extract from MS\_ENG\_017.

**Photos A and B** illustrate the general location. **Photo A** is taken from the hill of Skreen looking directly towards Tara (west south-west) with the line of the M3 clearly visible where the topsoil has been stripped. The Lismullin National Monument is about 1.5 km north of this location. **Photo B** is taken from the same location looking north-east towards Lismullin. The location of the new National Monument is screened by woodland with the M3 running north-west away from the camera.

**Photo C** is taken from the vicinity of the proposed Lismullin overbridge looking east south-east along the line of the motorway and over the site of the National Monument. The M3 curves sharply to the right and photos D, E and H below were taken from the top of the gravel area beyond the grassed spoil heap at the right of the photo. (The Rath Luagh ringfort is in woodland just left of the gravel area.) **Photo D** is taken looking north-west over the National Monument and along the line of the M3. Topsoil stripping on the M3 in the direction of Navan can be seen in progress. **Photo E** is a closer view of the area near the boundary. **Photo F** is taken looking west over the National Monument (towards Navan) and **Photo G** looking east (towards

Dunshaughlin).

The outer 80-metre enclosure of the National Monument is visible under a blue protective material. The inner 16-metre enclosure is in the wetter area closer to the southern CPO area boundary with its near edge about 12 metres from the boundary. It would extend from the edge of the farm access road to the top of the embankment to the road. The outer enclosure would extend from the northern carriageway of the M3 to about 20 metres beyond the CPO area. As can be seen from the photos no significant archaeological excavations appeared to have been carried out on the new National Monument site up to the time of my visit on 27 July 2007 although I understand geophysical surveys had been carried out. News coverage indicates that actual excavations commenced on 7 August 2007. Work on the inner enclosure in particular depended on the area drying out more. I was given no indication that any measures other than those in the Directions were required.

## **ASSESSMENT**

### **FUNCTIONS OF THE BOARD UNDER SECTION 14B**

Section 14B of the Act (as amended) reads:

*(1) Where the Minister has issued directions to a road authority under Section 14A(4)(d) of this Act, the road authority shall inform An Bord Pleanála (in this section referred to as the “Board”) of those directions and of any change to the approved road development, which it is satisfied is necessitated by the Minister’s directions.*

*(2) As soon as practicable after the road authority has informed the Board of those directions the Board shall determine whether as a consequence of those directions there is a material alteration-*

*(a) to the approved road development, or*

*(b) any modification to which the approval under either or both sections 49 and 51 of the Roads Act 1993 is subject.*

*(3) Where the Board determines that as a consequence of the directions of the Minister –*

*(a) no material alteration arises to the approved road development, it shall so advise the road authority concerned,*

*(b) a material alteration arises to the approved road development concerned, it shall etc .....*

*and in exercising its functions under this sub-section the Board shall confine itself to considering the directions of the Minister and any proposed change to the approved road development.*

*Nothing in this section shall be construed so as to put in question any part of the scheme duly approved etc ..... and to which the directions of the Minister do not relate.*

In the present case, the NRA states that no change at all is required to the approved road but it would seem necessary for the Board to consider whether that statement is reasonable having regard to the design of the approved road at the particular location and to the requirements of the Minister's Directions. Having regard to the NRA's statement I propose to confine my report initially to the issue raised in sub-section (2) above.

The Board's approvals of 22<sup>nd</sup> and 25<sup>th</sup> August 2003 were subject to a number of modifications. Modifications set out in the Board's approval on 17.ER2014 do not affect the location of the Lismullin National Monument. Modifications set out in the Board's approval on MS2004 are described as "to take account of revised areas and updated information in relation to legal or reputed legal interests in lands affected by the scheme" and as such do not affect the location of the Lismullin National Monument.

#### **'MATERIAL ALTERATION' ISSUE**

The initial question to be determined by the Board in the current case is whether, as a consequence of the Directions, there is a material alteration to the development

previously approved. The legislation does not give any guidance as to what precisely the words ‘material alteration’ mean in the context of Section 14B. It is quite normal to identify archaeological remains during the course of projects and provision for dealing with them is normally built in to archaeological mitigation measures. The EIS for the proposed road notes, under “Mitigation Measures” in Section 13.6 of Volume 4B: *“It is likely that additional archaeological features will be uncovered during soil stripping and these too should be excavated prior to construction etc.”* The discovery of additional archaeological features is therefore something which was envisaged in the EIS and would not constitute a material alteration.

Section 14B applies only where the additional archaeological features discovered are considered to be a National Monument. It is clear from the wording of Section 14B that the discovery of a National Monument does not, of itself, constitute a “material alteration” in the context of the Section. While a particularly important National Monument or the particular circumstances of the approved road, even where the road authority is satisfied that no change to the proposed road is necessitated by the Minister’s Directions, might be considered a material alteration in a more general sense, it would not be *as a consequence of those directions* and hence not a material alteration for the purposes of Section 14B. I consider, therefore, that any material alteration must be one arising directly from the Directions.

The Directions place no restrictions on construction of the approved road subsequent to excavation of the National Monument and appear to assume such works proceeding. Under the heading “Protection of the National Monument” the NRA are required, in so far as is practicable, to provide the National Monuments Service with the names and addresses of the landowners of that part of the monument that lies outside the CPO for the road. I do not consider that any material change in the approved road arises directly from the Minister’s Directions.

The discovery of the enclosure means that there is an area occupied by a National Monument adjoining the CPO area which was not previously identified. While it is not known if it was intended to use any of this area for deposition of spoil or for placing of ancillary services, I would not consider any relocation of such facilities to constitute a material change in the approved road.

## **CONCLUSION ON ‘MATERIAL ALTERATION’ ISSUE**

Having regard

- to the Minister’s Directions to the National Roads Authority to, amongst other things, fully excavate and record that part of the National Monument within the area of the CPO for the road,
- to the design of the approved road and to the modifications subject to which the road was approved by the Board and
- to the National Roads Authority’s statement that no change is necessitated to the approved road development arising from the Ministerial Directions to complete the excavation of the affected part of the National Monument,

I do not consider that as a consequence of the Minister’s Directions there is a material alteration to the approved road development or any modification to which the approvals under Sections 49 and 51 of the Roads Act 1993 is subject.

## **OTHER ISSUES**

The proposed route of the M3 is highly controversial in the context of Tara. The Department of the Environment’s web site has considerable material on it defending the Minister’s Directions. This includes the advice of an expert committee appointed by the Minister to advise on the Lismullin site. The committee, which includes Conor Newman and the Director of the National Museum (both of whom are critical of the current proposed route), has advised that the remains at Lismullin are too fragile to remain in situ and must be recorded and removed.

The present case is under Section 14B and in the context that “*nothing in this section shall be construed so as to put in question any part of the scheme duly approved etc ..... and to which the directions of the Minister do not relate.*”

## **RECOMMENDATION**

I recommend that the Board determine that no material alteration arises to the approved road development as a consequence of the Minister's Directions and so advise the road authority concerned.

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Eoghan Brangan  
10 August, 2007

## **APPENDIX A**

### **DOCUMENTS ON FILE AND REFERRED TO IN DESCRIPTION OF APPROVED ROAD AND NEW NATIONAL MONUMENT**

Three maps attached to the NRA notification to the Board received 6 July 2007

- M3 Location Map
- Dunshaughlin – Navan
- Location Map of Lismullin 1
- Detail of Enclosure

Copy Extracts from the EIS for the M3 Clonee to North of Kells Scheme

Volume 4A: Extracts from Sections 13 and 15 dealing with Archaeology

Volume 4B: Photomap, Horizontal and Vertical Alignment, Cross Sections and Accommodation Works

Received from the National Roads Design Office on 26 July 2007

Volume 2 of the EIS for the M3 Clonee to North of Kells Scheme and maps.

Received from the National Roads Design Office on 2 August 2007

Drawings from the Motorway Order published in 2002 (MS 017 and MS 018), Engineering Drawings (MS\_ENG 017 and 018) covering the same area and extracts from the schedules to the motorway order.