



## Development

The demolition and clearance of the existing industrial single storey warehouse and sheds (1,201sqm) and the development of a mixed-use marine commercial, leisure / community and residential based development.

The proposal is for the construction of:

1. A craft boat building workshop / craft boat storage facility (416 sqm).
2. A single storey building incorporating relocated marine leisure unit (10 sqm), relocated marine commercial unit (10 sqm) and community water sports changing facility (42 sqm).
3. A three-storey building incorporating a café (108 sqm), apartment entrance hall (44 sqm) and apartment car parking (2 spaces, 40 sqm) at ground floor level, a two-bed apartment (160 sqm) with associated balcony at

first floor level and a two bed apartment (160 sqm) with associated balconies at second floor level.

4. A single storey relocated seafood sales outlet (26 sqm).
5. 4 No. fisherman's huts, (total area 18 sqm).
6. A new public square fronting on to the harbour (20m wide x 9m deep).
7. 3 No. three storey detached houses (each 412 sqm) each with roof terraces, and off-street covered parking for 2 cars.
8. The existing south-western vehicular access from Bullock Harbour will be maintained and upgraded creating a two-way roadway and shared footpath affording access to the proposed dwellings to the rear of the development.
9. 5 No. visitor car parking spaces to the rear of the site.
10. The existing boundary wall will be maintained and repaired with natural coursed granite stone.
11. The development will also include piped infrastructure and ducting; changes in level; site landscaping and all associated site

development and excavation works  
above and below ground.

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|-------------------------------------|--|
| <b>Location</b>                     | Former Western Marine Building,<br>Bullock Harbour, Dalkey, Co. Dublin,<br>A96 X6W2. |
| <b>Planning Authority</b>           | Dún Laoghaire Rathdown County<br>Council   |
| <b>Planning Authority Reg. Ref.</b> | D17A/1135  |
| <b>Applicant(s)</b>                 | Bartra Property (Dublin) Ltd.  |
| <b>Type of Application</b>          | Permission   |
| <b>Planning Authority Decision</b>  | Refusal  |
| <b>Type of Appeal</b>               | First Party v. Decision  |
| <b>Appellant(s)</b>                 | Bartra Property (Dublin) Ltd.  |
| <b>Observer(s)</b>                  | 67 No. observations received (please<br>refer to the file)                           |
| <b>Date of Site Inspection</b>      | 26 <sup>th</sup> November, 2018  |
| <b>Inspector</b>                    | Robert Speer   |

## 1.0 Site Location and Description

- 1.1. The proposed development site is located at Bullock Harbour, Dalkey, Co. Dublin, approximately 2.0km southeast of Dún Laoghaire Harbour and 2.0km northwest of Dalkey Island, where it occupies a prominent position to the east of the harbour wall and berthing area. The immediate site surrounds are characterised by a variety of commercial, residential, leisure and infrastructural uses, including a number of water-related activities (e.g. boat hire / storage and fishermen's huts) whilst the wider harbour area is dominated by Bullock Castle and the Our Lady's Manor retirement / nursing home which each occupy prominent positions on the elevated lands that rise steeply on travelling southwards away from the quayside.
- 1.2. The site itself has a stated site area of 0.59 hectares, is irregularly shaped, and comprises two distinct elements. The more southerly and developable part of the site is presently occupied by a series of vacant structures / warehouses with an open yard area to the rear of same which previously accommodated the workshops and boat yard associated with the former 'Western Marine Ltd.' chandlery business. Notably, the quayside frontage of this section of the site is interrupted by the presence of a small single storey cottage known as 'Castleview' which is situated between the existing buildings and the vehicular access to the rear boat yard. The remainder of the wider site comprises a rocky outcrop along the coastline to the north of the developed area which serves as a public amenity accessible via a narrow passageway extending from the quayside along the northern outer wall of the existing complex of buildings.

## 2.0 Proposed Development

- 2.1. The proposed development consists of the demolition and clearance of the existing single storey industrial warehouse and sheds (floor area: 1,201m<sup>2</sup>) formerly occupied by the Western Marine Ltd. chandlery business and the construction of a three-storey, mixed-use commercial, leisure / community, and residential based development (floor area: 2,305m<sup>2</sup>) as set out in the public notices.
- 2.2. Water and sewerage services are available from the public mains.

*N.B.* The planning application was accompanied by an application for a Certificate of Exemption pursuant to the provisions of Section 97 of the Planning and Development Act, 2000, as amended, with regard to the proposed development.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

3.1.1. On 22<sup>nd</sup> February, 2018 the Planning Authority issued a notification of a decision to refuse permission for the proposed development for the following 3 No. reasons:

- In relation to the significant imbalance and predominance of residential use in the proposal and having regard to the low percentage of overall floor area being provided for the marine related uses together with the low developable site area being provided to support and service such uses, it is considered that insufficient provision has been made for waterfront, harbour and marine related uses. It is considered that the amount of site area reserved for residential use is excessive and seriously compromises the achievement of a quality mixed use and integrated development with adequate and appropriate provision for waterfront, marine and harbour related activities. It is therefore considered that the development as proposed would seriously compromise the harbour's ability to attract and maintain good marine related uses and harbour activities, would limit the scale and diversity of such uses which the harbour could support, and would be contrary to the 'W' zoning objective for this site which is 'to provide for waterfront development and harbour related uses'. The Planning Authority therefore considers that the development as proposed would be contrary to the zoning objective for this location of providing for waterfront development and marine related uses and would also be contrary to the requirements of Specific Local Objective 22 as set out in the 2016 – 2022 Dún Laoghaire-Rathdown County Development Plan. The proposed development would therefore be contrary to the proper planning and sustainable development of this area.
- It is considered that the lack of an integrated design approach and the almost exclusive use of the majority of the site area for residential use would

seriously erode and weaken the existing 'W' land use zoning objective for the site of providing for waterfront, marine and harbour related uses. This would undermine the existing land use zoning objective for this site and would seriously compromise the harbour's ability to attract and maintain good marine related uses. It would also limit the scale and diversity of uses which the harbour could support and would be contrary to the zoning objective for this site which is to provide for waterfront development and harbour related uses. The proposed development would therefore be contrary to the proper planning and sustainable development of this area.

- Given the prominent harbour and coastal location of the proposed development and taking into account the special character of the immediate harbour area, concerns exist that the proposed quayside elements are visually and physically segregated from the rear of the development site with no meaningful integration, visually or functionally. The proposed development fails therefore to respond appropriately to the unique site context, which requires a high quality, distinctive and integrated mixed use design approach, which considers the site holistically and responds appropriately to the special character of the area and seeks to strengthen and reinforce a positive sense of place at this location. The proposed development would therefore be seriously injurious to the special character and amenities of the harbour area and contrary to the requirements of Specific Local Objective 22 as set out in the 2016 – 2022 Dún Laoghaire-Rathdown County Development Plan. The proposed development would therefore be contrary to the proper planning and sustainable development of this area.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports:

Details the site context, planning history, and the applicable policy considerations, with particular reference to the land use zoning as 'W' with the stated objective 'To provide for waterfront development and harbour related uses' and Specific Local Objective No. 22: 'Bullock Harbour', before analysing the proposal as regards compliance with the site-specific and broader strategic requirements of the

Development Plan. It subsequently states that the proposal is significantly imbalanced and biased towards residential development in terms of both floorspace and site area given that the primary aim of the land use zoning is to provide for marine and harbour related uses. Further concerns are raised as regards the adequacy, design, accessibility, servicing, and parking requirements of the proposed marine-related uses and it is also considered that the proposal would seriously compromise the ability of Bullock Harbour to attract and maintain quality marine-related uses. In terms of urban design and visual amenity, whilst it is acknowledged that the design has merits, it is stated that the proposal fails to appropriately respond to the unique site context which requires a high quality, distinctive and integrated mixed-use design. The remainder of the report examines issues such as servicing and flood risk before ultimately recommending a refusal of permission.

### 3.2.2. Other Technical Reports:

*Drainage Planning, Municipal Services Department:* Provides a detailed analysis of the proposed development having regard to the Council's Coastal Defence Strategy Study, the Strategic Flood Risk Assessment appended to the County Development Plan, and the 'Planning System and Flood Risk Management, Guidelines for Planning Authorities', with particular reference to flood levels, the identification of flood zones, and the incorporation of climate change into the development design. It subsequently makes the following recommendations:

- The 2 No. apartment units should be refused permission on the basis that they will be located within Flood Zone 'A' (notwithstanding the proposal to locate the entrance to same at a higher level) and thus are contrary to either Sections 4.6 or 4.7 of the Strategic Flood Risk Assessment appended to the County Development Plan.
- On the basis that the applicant has not satisfied the Council that the proposed commercial units satisfy the requirements of Item Nos. 2(ii) & (iii) of the Justification Test as set out in the '*Planning System and Flood Risk Management, Guidelines for Planning Authorities*', it is recommended that further information be sought in respect of the flood defence / flood resilient measures to be incorporated into the development and how these will address

all of the sub-headings of Section 4 ('Designing for Residual Risk') of Appendix 'B' of the Guidelines.

The report notes that the finished floor levels of the proposed dwelling houses will be set above the extreme water levels plus climate change and freeboard with the result that they will be within Flood Zone 'C'. Although access to the proposed housing will be impeded during more extreme flood events, it is considered that this aspect of the proposal could be managed in a safe manner under the provisions of Sections 4.7 & 4.8 of Appendix 'B' of the Flood Risk Management Guidelines.

The remainder of the report concludes by recommending that further information should be sought in respect of surface water management in addition to the submission of a revised Wave Overtopping Assessment (to take account of the High End Future Scenario climate change extreme levels).

*Conservation Division:* States that Bullock Harbour is a place of cultural, social and historic interest and that although its wider setting has been compromised somewhat by the development of the Pilot View apartments and the nearby nursing home, any new development of the subject site would represent an opportunity to repair the damage by making a positive contribution to the area which respects the character of the harbour. It is further stated that the style and form of any redevelopment of the site should contribute to a sense of place reinforcing traditional harbour / quayside architecture with a mix of forms, heights, materials and uses.

The report subsequently details that whilst some aspects of the submitted proposal (such as the boat building workshop) are acceptable, there are other elements which due to their height, scale and massing are at variance with the objectives of the Development Plan, including Specific Local Objective No. 22 which states that any residential development at Bullock Harbour should *'form part of a mixed-use scheme which will include commercial marine-based activity and public water-based recreational uses and shall have regard to the special nature of the area in terms of the height, scale, architecture and density of built form'*.

It is further submitted that the proposed 3-storey houses are out of keeping with the scale and height of the existing streetscape along the quayside and thus will have a negative visual impact on the surrounding townscape, particularly on views of Bullock Harbour on the approach from Ulverton Road. It is also considered that the



identical design of each of the houses is unusual and that the overall site could be developed in a more organic manner with each house responding more sensitively to its context and orientation. With regard to the apartment block and boathouse, the overall form of same is considered to be acceptable, however, it is suggested that the 3-storey apartment building should be reduced in height to 2 / 2.5 storeys with an attic in order to avoid rising significantly above the rocky outcrop.

It is also suggested that any future proposal should seek to provide some form of public access through the site to the rocky foreshore and back to the quayside so that the current cul-de-sac arrangement for pedestrians can be avoided.

The report concludes by stating that the proposed design compromises the setting of the harbour, detracts from the character and visual amenity of the area, fails to respect or compliment the adjacent buildings or the significant harbour setting, and does not accord with the requirements of Specific Local Objective No. 22: '*Bullock Harbour*'. Accordingly, it is recommended that the proposal be refused permission

*Waste Section:* No objection, subject to conditions.

*Parks & Landscape Services:* States that the proposals are generally acceptable and represent a considerable improvement on the previous application refused under PA Ref. No. D16A/0906, although some aspects would require clarification and amendment by way of planning conditions.

*Biodiversity Officer:* Recommends that further information be sought in respect of a number of issues, including additional bird breeding and wintering surveys, an updated Construction and Environmental Management Plan to include site-specific details of those measures required to ensure no significant impacts on sensitive ecological receptors, an assessment of the improved access to the adjacent pNHA in relation to green infrastructure and how visitor pressure / human activities may impact on same (and / or protected species), and an updated Ecological Impact Assessment and screening exercise for the purposes of appropriate assessment to include the aforementioned items.

### 3.3. Prescribed Bodies

3.3.1. *Inland Fisheries Ireland:* States the following:

- Pollution of the adjacent coastal waters from poor on-site construction practices could have a significant negative impact on the fauna and flora in Bullock Harbour. High levels of suspended solids settling on the seashore and seabed can alter habitats resulting in the potential loss of feeding, nursery and spawning grounds for fish. All measures necessary should be taken to ensure the protection of local aquatic ecological integrity in the first place by complete impact avoidance and, as a secondary approach, through mitigation by reduction and remedy. Mitigation measures as outlined in the Ecological Impact Assessment should be implemented in full.
- The receiving foul and storm water infrastructure must have adequate capacity to accept the predicted volumes from the development with no negative repercussions for the quality of treatment, final effluent quality, or the quality of the receiving waters. In the event of a grant of permission, a condition should be included to require the owner to enter into an annual maintenance contract in respect of the efficient operation of the petrol / oil interceptor, grease, and silt traps.
- Any topsoil or demolition waste which is to be stored on site must have mitigation in place to prevent any deleterious matter from entering the harbour.
- Any dewatering from planned excavation works must be via settlement areas.
- The area proposed for demolition represents an important angling venue and a locally important commercial fishing centre. All measures should be undertaken to ensure and preserve access for anglers and commercial fishermen both during and after construction.
- All discharges must be in compliance with the European Communities (Surface Water) Regulations, 2009 and the European Communities (Groundwater) Regulations, 2010.

3.3.2. *Department of Culture, Heritage and the Gaeltacht*: States the following with regard to archaeological and nature conservation considerations:

*Archaeology:*

Having examined the archaeological assessment report submitted with the application, and in light of the results of the archaeological test excavations, it is recommended that the following condition be imposed in any decision to grant permission:

- The applicant is required to employ a qualified archaeologist to monitor all groundworks associated with the development.
- Should archaeological material be found during the course of monitoring, the archaeologist may have works on the site stopped pending a decision as to how best to deal with the archaeology. The developer shall be prepared to be advised by the Department of Culture, Heritage and the Gaeltacht with regard to any necessary mitigating action (e.g. preservation in situ, or excavation) and should facilitate the archaeologist in recording any material found.
- The Planning Authority and the Department of Culture, Heritage and the Gaeltacht shall be furnished with a report describing the results of the monitoring.

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:*

Whilst the Ecological Impact Assessment states that surveys of the existing buildings on site found no direct evidence of the presence of bats, it also acknowledges that several structural features have the potential for use as bat roosts and thus the buildings as a whole have a moderate suitability for roosting bats. In addition, bat detector surveys conducted on 9<sup>th</sup> August, 2016 & 7<sup>th</sup> September, 2017 recorded Common Pipistrelle and Leisler's Bats over Bullock Harbour (although no bats were identified emerging from the buildings on site). Furthermore, the Ecological Impact Assessment submitted in support of a previous application on site (PA Ref. No. D16A/0916) noted that there was anecdotal evidence of bats setting off burglar alarms in the Western Marine buildings with reports of same having been made to the NPWS. Amongst the conditions recommended in respect of PA Ref. No. D16A/0916 was that bat detector surveys of the Western Marine buildings should be carried out in May and June, 2017 (*N.B.* No such detector surveys were carried out).

In view of the foregoing, it is recommended that any grant of permission should include the following conditions:

- The demolition of any buildings on site should be supervised by a bat expert and if any evidence of the presence of bats is discovered, demolition of the building concerned should cease immediately and a licence to derogate from the Habitats Directive to interfere with or destroy a bat roost should be applied for from the NPWS.
- Dust and dawn bat detector surveys of the Western Marine buildings should be carried out as soon as is appropriate to identify summer bat roosts i.e. in May and June, 2018, and if a bat roost is identified, a licence to derogate from the Habitats Directive to interfere with or destroy the roost should be applied for from the NPWS.
- To mitigate any detrimental impacts on bats, any lighting installed on site should be in accordance with the recommendations included in the submitted Ecological Impact Statement.

3.3.3. *An Taisce*: Having regard to the planning history of the application site, with specific reference to PA Ref. No. D16A/0906, it is acknowledged that the quantum of marine-related uses would appear to have been increased and now equates to 522m<sup>2</sup> (excluding the café). However, it is considered that the scale of the 3 No. proposed dwelling houses to the rear of the site has the potential to detract from the character of Bullock Harbour and to impact on the residential amenities of 'Castleview'. It is further submitted that the Planning Authority's assessment should ensure that traffic congestion and safety are given adequate consideration.

3.3.4. *Irish Water*: No objection, subject to conditions.

#### 3.4. **Third Party Observations**

3.4.1. In excess of 250 No. submissions were received from interested parties in respect of the subject proposal, however, in the interests of conciseness, and in order to avoid unnecessary repetition, I would advise the Board that the principle grounds of objection / areas of concern raised therein can be derived from my summation of the contents of the various observations lodged with respect to this appeal as set out elsewhere in this report.

## 4.0 Planning History

### 4.1. On Site:

PA Ref. No. D16A/0906. Was refused on 3<sup>rd</sup> February, 2017 refusing Bartra Property Limited permission for the demolition and site clearance of the existing industrial single storey warehouses and sheds (1,210 sqm) and the development of a mixed-use marine commercial, leisure/community and residential based development. The proposal is for the construction of: 1. A new mixed use block of two and three stories high containing 7 number marine based units at ground floor level along the quayside and six residential units at ground floor to the rear and first and second floor overhead. Unit 1 - Relocated commercial and marine leisure based unit (26 sqm), Unit 2 - Harbour Café (69 sqm), Unit 3 - Marine/Harbour based retail unit (35 sqm), Unit 4 - Marine/Harbour based retail unit (30 sqm), Unit 5 - Community water sports facility (30 sqm), Unit 6 - Relocated clubhouse (12 sqm), Unit 7 - Relocated harbour activity (15 sqm); Six number residential units above, comprising 5nr three storey 154 sqm three bedroom harbour residences / 1nr two storey 89 sqm one bedroom harbour residence with associated balconies/roof terraces along the quayside and off street parking for 11 cars to the rear. 2. Construction of 3nr three storey detached five bedroomed dwellings (House 1 - 400 sqm / House 2 - 448 sqm / House 3 - 400 sqm) with roof terraces; each with off street parking for 2nr cars and 1nr visitor space set within private landscaped gardens and boat storage. 3. The existing south-western vehicular access and gates from Bullock Harbour will be maintained and upgraded, creating a two-way roadway and shared footpath affording access to the proposed dwellings from the rear of the development. The existing boundary wall will be maintained and repaired with natural coursed granite stone. The development will also include piped infrastructure and ducting; changes in level; provision for outdoor seating and tables along the site frontage; separate communal bin storage to serve the marine units and the residential units; cycle parking; site landscaping and all associated site development and excavation works above and below ground.

- It is considered that the amount of site area, which is reserved for residential use is excessive and together with the design and layout of the development and the inadequate provision for marine related uses, seriously compromises

the achievement of a quality mixed use and integrated development with adequate and appropriate provision for marine and harbour related activities. It is therefore considered that the development as proposed would seriously compromise the harbour's ability to attract and maintain good marine related uses and would limit the scale and diversity of such uses, which the harbour area could support. The Planning Authority therefore considers that the development as proposed would be contrary to the zoning objective for this location of providing for waterfront development and marine related uses and would also be contrary to the requirements of Specific Local Objective 22 as set out in the 2016 – 2022 Dún Laoghaire-Rathdown County Development Plan. The proposed development would therefore be contrary to the proper planning and sustainable development of this area.

- Having regard to the uniformity of the building design for the proposed quayside block, and the resulting visual scale of the building along its quayside elevation, it is considered that this prominent quayside element is lacking in the quality and distinctiveness of design required for this location and would result in an incongruous and abrupt visual form within the harbour area and would also be seriously injurious to the amenities of adjacent property within the harbour. The proposed development would therefore be seriously injurious to the amenities and visual character of this area and would be contrary to the requirements of Specific Local Objective 22 as set out in the 2016 – 2022 Dún Laoghaire-Rathdown County Development Plan. The proposed development would therefore be contrary to the proper planning and sustainable development of this area.
- It is considered that the design and layout as proposed significantly isolates the proposed development from the harbour and adjacent coastal area. In particular, the development fails to integrate appropriately with the harbour area and also fails to take advantage of opportunities to address the adjacent coastline through appropriate surveillance from within the subject site. The proposed development would therefore be contrary to Policy LHB9 of the 2016 – 2022 Dún Laoghaire-Rathdown County Development Plan and would be seriously injurious to harbour amenities and public amenities at this

location. The proposed development would therefore be contrary to the proper planning and sustainable development of this area.

PA Ref. No. D16A/0916. Was refused on 3<sup>rd</sup> February, 2017 refusing Bartra Property Limited permission for the demolition of the former warehouse buildings to facilitate future development, subject to planning. 1. The demolition and removal of the existing portal frame warehouse, rubble wall/brickwork workshop (excluding the boundary wall to the harbour-side) and 2-storey stone wall office (excluding the gable wall to the harbour-side) down to excavation level, to include the breaking up and removal of the concrete slab across the external area of the site. 2. The erection of temporary support works to adjoining walls.

- It is considered that the existing buildings have the potential to attract and support marine related uses. The demolition of these buildings in the absence of acceptable redevelopment proposals would significantly limit the potential of the harbour area to attract, support and maintain marine related uses and activities and would limit the scale and diversity of such uses, which the harbour area could support. The proposed development would therefore be contrary to the land use zoning objective for this site of providing for waterfront development and harbour related uses, as set out in the 2016-2022 Dún Laoghaire-Rathdown County Development Plan. The proposed development would therefore be contrary to the proper planning and sustainable development of this area.
- The buildings proposed for demolition are considered to enclose the harbour quay and inform the existing character and amenities of the immediate harbour area. The demolition of the buildings would significantly reduce the sense of enclosure, both visual and physical, along the quay and would have a seriously injurious impact on the visual amenities and character of this area. In the absence of acceptable redevelopment proposals for the site, it is considered that the demolition works as proposed would be seriously injurious to the existing character and visual amenities within the harbour area and would be contrary to the proper planning and sustainable development of this area.

## 5.0 Policy Context

### 5.1. National and Regional Policy:

- 5.1.1. The '*Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009*' note that, in general, increased densities should be encouraged on residentially zoned lands and that the provision of additional dwellings within inner suburban areas of towns or cities, proximate to existing or due to be improved public transport corridors, has the potential to revitalise areas by utilising the capacity of existing social and physical infrastructure. Such developments can be provided either by infill or by sub-division. In respect of infill residential development potential sites may range from small gap infill, unused or derelict land and backland areas, up to larger residual sites or sites assembled from a multiplicity of ownerships. In residential areas whose character is established by their density or architectural form, a balance has to be struck between the reasonable protection of the amenities and the privacy of adjoining dwellings, the protection of established character, and the need to provide residential infill.
- 5.1.2. The '*Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2018*' (which update the '*Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2015*') provide detailed guidance and policy requirements in respect of the design of new apartment developments. Where specific planning policy requirements are stated in the document, these are to take precedence over any conflicting policies and objectives of development plans, local area plans and strategic development zone planning schemes. Furthermore, these Guidelines apply to all housing developments that include apartments that may be made available for sale, whether for owner occupation or for individual lease. They also apply to housing developments that include apartments that are built specifically for rental purposes, whether as 'build to rent' or as 'shared accommodation'. Unless stated otherwise, they apply to both private and public schemes. These updated guidelines aim to uphold proper standards for apartment design to meet the accommodation needs of a variety of household types. They also seek to ensure that, through the application of a nationally consistent approach, new apartment developments will be affordable to construct and that supply will be forthcoming to meet the housing needs of citizens.



5.1.3. The *'Planning System and Flood Risk Management, Guidelines for Planning Authorities'* published by the Department of the Environment, Heritage and Local Government in November, 2009 introduce comprehensive mechanisms for the incorporation of flood risk identification, assessment and management into the planning process. The core objectives of the Guidelines are to:

- Avoid inappropriate development in areas at risk of flooding;
- Avoid new developments increasing flood risk elsewhere, including that which may arise from surface water run-off;
- Ensure effective management of residual risks for development permitted in floodplains;
- Avoid unnecessary restriction of national, regional or local economic and social growth;
- Improve the understanding of flood risk among relevant stakeholders; and
- Ensure that the requirements of the EU and national law in relation to the natural environment and nature conservation are complied with at all stages of flood risk management.

In achieving the aims and objectives of the Guidelines the key principles to be adopted should be to:

- Avoid the risk, where possible,
- Substitute less vulnerable uses, where avoidance is not possible, and
- Mitigate and manage the risk, where avoidance and substitution are not possible.

The Guidelines outline the need to identify flood zones and to categorise these according to their probability of flood events. Notably, these should be determined ignoring the presence of flood protection structures as such areas still carry a residual risk of flooding from overtopping or breach of defences and as there is no guarantee that the defences will be maintained in perpetuity.

A staged approach to Flood Risk Assessment is advocated with only such appraisal and / or assessment as is needed to be carried out for the purposes of decision-making at the regional, development and local area plan levels, and also at the site

specific level. Stage 1 entails the identification of flood risk by way of screening of the plan / project in order to determine whether there are any flooding or surface water management issues related to the area or the site that may warrant further investigation. This is followed by Stage 2 (Initial flood risk assessment) which seeks to confirm the sources of flooding that may affect a plan area or site, to appraise the adequacy of existing information and to scope the extent of the risk of flooding which may involve preparing indicative flood zone maps. Where hydraulic models exist, the potential impact of a development on flooding elsewhere and of the scope of possible mitigation measures can also be assessed. The third and final stage (Stage 3: Detailed flood risk assessment) aims to assess flood risk issues in sufficient detail and to provide a quantitative appraisal of potential flood risk to a proposed or existing development or land to be zoned, its potential impact on flood risk elsewhere and of the effectiveness of any proposed mitigation measures.

Chapter 3 of the Guidelines states that the key principles of a risk-based sequential approach to managing flood risk in the planning system are to:

- Avoid development in areas at risk of flooding;  
If this is not possible, consider substituting a land use that is less vulnerable to flooding.  
Only when both avoidance and substitution cannot take place should consideration be given to mitigation and management of risks.
- Inappropriate types of development that would create unacceptable risks from flooding should not be planned for or permitted.
- Exceptions to the restriction of development due to potential flood risks are provided for through the use of a Justification Test, where the planning need and the sustainable management of flood risk to an acceptable level must be demonstrated.

It is a key instrument of the Guidelines to undertake a sequential approach in order to guide development away from areas at risk from flooding such as through the use of flood zones and the vulnerability of different development types, however, it is recognised that several towns and cities whose continued growth and development is being encouraged (through the National Development Plan, Regional Planning

Guidelines etc.) in order to bring about compact and sustainable urban development and more balanced regional development, contain areas which may be at risk of flooding. Where a planning authority is considering the future development of areas at a high or moderate probability of flooding that would include types of development that are inappropriate in terms of their vulnerability, the 'Justification test' set out in Box 5.1 of the Guidelines should be employed.

The vulnerability of development to flooding depends on the nature of the development, its occupation and the construction methods used. The classification of different land uses and types of development as highly vulnerable, less vulnerable and water-compatible is influenced by various factors including the ability to manage the safety of people in flood events and the long-term implications for the recovery of the function and structure of buildings.

## 5.2. Development Plan

### 5.2.1. Dún Laoghaire Rathdown County Development Plan, 2016-2022:

#### Land Use Zoning:

The proposed development site (excluding the rocky outcrop along the shoreline beyond the confines of the existing building complex) is located in an area zoned as 'W' with the stated land use zoning objective 'To provide for waterfront development and harbour related uses'.

#### Other Relevant Sections / Policies:

*Chapter 2: Sustainable Communities Strategy:*

*Section 2.1: Residential Development:*

*Policy RES3: Residential Density:*

It is Council policy to promote higher residential densities provided that proposals ensure a balance between the reasonable protection of existing residential amenities and the established character of areas, with the need to provide for sustainable residential development. In promoting more compact, good quality, higher density forms of residential

development it is Council policy to have regard to the policies and objectives contained in the following Guidelines:

- ‘Sustainable Residential Development in Urban Areas’ (DoEHLG 2009).
- ‘Urban Design Manual - A Best Practice Guide’ (DoEHLG 2009).
- ‘Quality Housing for Sustainable Communities’ (DoEHLG 2007).
- ‘Irish Design Manual for Urban Roads and Streets’ (DTTaS and DoECLG, 2013).
- ‘National Climate Change Adaptation Framework Building Resilience to Climate Change’ (DoECLG, 2013).

*Policy RES4: Existing Housing Stock and Densification:*

It is Council policy to improve and conserve the housing stock of the County, to densify existing built-up areas, having due regard to the amenities of existing established residential communities and to retain and improve residential amenities in established residential communities.

*Policy RES7: Overall Housing Mix:*

It is Council policy to encourage the establishment of sustainable residential communities by ensuring that a wide variety of housing and apartment types, sizes and tenures is provided within the County in accordance with the provisions of the Interim Housing Strategy.

*Policy RES14: Planning for Communities:*

It is Council policy to plan for communities in accordance with the aims, objectives and principles of ‘Sustainable Residential Development in Urban Areas’ and the accompanying ‘Urban Design Manual – A Best Practice Guide’. In all new development growth areas, and in existing residential communities it is policy

to ensure that proper community and neighbourhood facilities are provided in conjunction with, and as an integral component of, major new residential developments and proposed renewal/redevelopment areas, in accordance with the concept of sustainable urban villages outlined under Policy RES15.

*Chapter 4: Green County Strategy:*

*Section 4.1: Landscape, Heritage and Biodiversity:*

*Section 4.1.2: Landscape:*

*Policy LHB9: Coastline Parks and Harbours:*

It is Council policy to continue to upgrade recreational and tourism-related amenities in the public parks and harbours along the coastline including improved accessibility by the general public.

*Policy LHB10: Beaches:*

It is Council policy to promote the use of certain beaches for amenity and recreational use.

*N.B.* The areas traditionally used for bathing in the county include Bullock Harbour.

*Policy LHB12: Coastal Area Feasibility Study:*

It is Council policy to undertake a comprehensive feasibility study on the recreational potential along the coastal area of the County which comprehensively addresses recreational impact - including visitor numbers, mapping and surveying of sensitive habitats and species and identification of significant threats on Natura 2000 sites - and which would allow an assessment of any future proposals, alone or in combination, to assess impact on the coastal and marine zone within and adjacent to the County boundary. The Council will explore the possibility of carrying out this study with adjoining and/or coastal Local Authorities and/or other agencies.

### Section 4.1.3: *Biodiversity:*

*Policy LHB19: Protection of Natural Heritage and the Environment:*

It is Council policy to protect and conserve the environment including, in particular, the natural heritage of the County and to conserve and manage Nationally and Internationally important and EU designated sites - such as Special Protection Areas, candidate Special Areas of Conservation, proposed Natural Heritage Areas and Ramsar sites - as well as non-designated areas of high nature conservation value which serve as 'Stepping Stones' for the purposes of Article 10 of the Habitats Directive.

*Policy LHB20: Habitats Directive:*

It is Council policy to ensure the protection of natural heritage and biodiversity, including European sites that form part of the Natura 2000 network, in accordance with relevant EU Environmental Directives and applicable National Legislation, Policies, Plans and Guidelines.

*Policy LHB22: Designated Sites:*

It is Council policy to protect and preserve areas designated as proposed Natural Heritage Areas, candidate Special Areas of Conservation, and Special Protection Areas. It is Council policy to promote the maintenance and as appropriate, delivery of 'favourable' conservation status of habitats and species within these areas.

### Section 4.2.2: *Open Space and Parks:*

*Policy OSR15: Sandycove Harbour and Bullock Harbour Masterplans:*

It is Council policy to formulate Masterplans for Bullock Harbour and Sandycove Harbour.

### *Chapter 5: Physical Infrastructure Strategy:*

#### *Section 5.2: Climate Change, Energy Efficiency and Flooding:*

Section 5.2.5: *Flood Risk:*

*Policy CC15: Flood Risk Management:*

It is Council policy to support, in cooperation with the OPW, the implementation of the EU Flood Risk Directive (2007/60/EC) on the assessment and management of flood risks, the Flood Risk Regulations (SI No. 122 of 2010) and the Department of the Environment, Heritage and Local Government and the Office of Public Works Guidelines on 'The Planning System and Flood Risk Management, (2009)' and relevant outputs of the Eastern District Catchment and Flood Risk Assessment and Management Study (ECFRAMS Study).

*Policy CC17: Coastal Defence:*

It is Council policy to implement and have regard to the recommendations of the Coastal Defence Strategy (2010) for the County where feasible. The Council will endeavour to obtain funding from the Office of Public works in order to undertake defence measures for specific areas as prioritised in the Strategy.

*Chapter 6: Built Heritage Strategy:*

*Section 6.1: Archaeological and Architectural Heritage:*

*Section 6.1.2: Archaeological Heritage:*

*Policy AH1: Protection of Archaeological Heritage:*

It is Council policy to protect archaeological sites, National Monuments (and their settings), which have been identified in the Record of Monuments and Places (RMP) and, where feasible, appropriate and applicable to promote access to and signposting of such sites and monuments.

*Chapter 8: Principles of Development:*

*Section 8.1: Urban Design:*

*Policy UD1: Urban Design Principles:*

It is Council policy to ensure that all development is of high quality design that assists in promoting a 'sense of place'. The Council will promote the guidance principles set out in the 'Urban Design Manual – A Best Practice Guide' (2009), and in the 'Design Manual for Urban Roads and Streets' (2013) and will seek to ensure that development proposals are cognisant of the need for proper consideration of context, connectivity, inclusivity, variety, efficiency, distinctiveness, layout, public realm, adaptability, privacy and amenity, parking, wayfinding and detailed design.

*Policy UD3: Public Realm Design:*

It is Council policy that all development proposals, whether in established areas or in new growth nodes, should contribute positively to an enhanced public realm and should demonstrate that the highest quality in public realm design is achieved.

*Section 8.1.2: Urban Design at the Local Level:*

*Section 8.2: Development Management:*

*Section 8.2.3: Residential Development:*

*Section 8.2.3.1: Quality Residential Design*

*Section 8.2.3.2: Quantitative Standards*

*Section 8.2.3.3: Apartment Development*

*N.B.* The 'Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2018' supersede several of the standards and specifications set out in Section 8.2.3.3 of the Development Plan as regards apartment development.

*Section 8.2.3.5: Residential Development – General Requirements*

*Section 8.2.7: Landscape, Heritage and Biodiversity:*

*Section 8.2.7.1: Biodiversity*



Section 8.2.7.4: *Development in the Coastal and 'Nearshore' area*

Section 8.2.9: *Environmental Management*

Section 8.2.10: *Climate Change Adaptation and Energy:*

Section 8.2.10.4: *Flood Risk Management*

Section 8.2.10.5: *Coastal Issues – Erosion / Flooding / Recreation*

Section 8.2.11: *Archaeological and Architectural Heritage*

*Chapter 9: Specific Local Objectives:*

*Specific Local Objective No. 22:*

- *Bullock Harbour:* That any residential development shall form part of a mixed-use scheme which will include commercial marine-based activity and public water-based recreational uses and shall have regard to the special nature of the area in terms of the height, scale, architecture and density of built form.

### **5.3. Natural Heritage Designations**

5.3.1. The following Natura 2000 sites are located in the general vicinity of the proposed development site:

- The Dalkey Islands Special Protection Area (Site Code: 004172), approximately 1.0km to the southeast of the site.
- The Rockabill to Dalkey Island Special Area of Conservation (Site Code: 003000), approximately 1.3km to the east of the site.
- The South Dublin Bay and River Tolka Estuary Special Protection Area (Site Code: 004024), approximately 2.6km to the northwest of the site.
- The South Dublin Bay Special Area of Conservation (Site Code: 000210), approximately 3.2km to the west-northwest of the site.
- The North Bull Island Special Protection Area (Site Code: 004006), approximately 7.2km northwest of the site.
- The North Dublin Bay Special Area of Conservation (Side Code: 000206), approximately 7.3km northwest of the site.

*N.B.* This list is not intended to be exhaustive as there are a number of other Natura 2000 sites in excess of the aforementioned distances yet within a 15km radius of the application site.

In addition to the foregoing, it should be noted that the proposed development site adjoins the Dalkey Coastal Zone and Killiney Hill proposed Natural Heritage Area (Site Code: 001206).

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- The proposed development site presently comprises a ‘brownfield’ site occupied by a series of dilapidated industrial structures and open yard areas which detract from the visual amenity of Bullock Harbour.
- The proposed development site is zoned as ‘W’ with the stated land use zoning objective ‘*To provide for waterfront development and harbour related uses*’ and in this regard it is submitted that the subject proposal provides for 5 No. uses which are ‘*permitted in principle*’ and 3 No. uses that are ‘*open for consideration*’ within this land use zoning.
- The proposed development includes several marine-related elements, however, the Planning Authority has focused on the alleged ‘*predominance of residential use in the proposal*’ and the ‘*low percentage of overall floor area*’ provided for the marine-related uses. The Development Plan does not require any particular quantum or percentage of the development to be marine-related nor does it specify any particular type of development. Instead, it seeks ‘*waterfront development and harbour related uses*’ and the proposed development includes precisely such uses which are focused on the waterfront. The area given over to these uses is substantial and it is considered that the proposed development accords with the applicable land use zoning objective.
- With regard to Specific Local Objective No. 22: ‘*Bullock Harbour*’, the proposed development complies with the requirements of same in that it provides for a mixed-use scheme which includes commercial marine-based

activity and public water-based uses (e.g. the rehousing of existing harbour-related uses, new changing facilities and toilets for harbour users, a boat building workshop, a café, and a new civic amenity space).

- Specific Local Objective No. 22 requires any redevelopment of the subject site to have regard to the special nature of the area in terms of the height, scale, architecture and density of built form. In this respect the design of the proposed buildings and the public square has been informed by the pattern of existing development along the eastern side of the harbour. The new development will introduce an architecturally coherent termination to the quayside streetscape, with a new public square framed by buildings of varying height and size, whilst the end of the quayside will be defined by a well-considered three-storey block overlooking the mouth of the harbour. To the rear, and partly concealed by the quayside buildings, the proposed 3 No. dwelling houses will provide a continuation and variation on the established pattern of development behind the quayside buildings at Bullock Harbour, including the Irish Water effluent pumping station.

The proposed development provides for a high quality architectural response to the harbour and its environs, having regard to the special nature of the area in terms of height, scale and built form. Notably, the Planning Authority had few criticisms of the design and scale of the proposal, although it was not satisfied with the proposed layout.

Accordingly, the proposal complies with the requirements of Specific Local Objective No. 22.

- The subject proposal provides for an integrated mixed-use development, although it does not correspond with the model sought by the Planning Authority.
- The design of the scheme is such that there is an immediately visible hierarchy of spatial organisation. Those areas designated for more public uses (e.g. the café) or for more intrusive activity (e.g. the-marine related uses), are grouped around the public square. The quieter residential uses are separated from the public areas either vertically (in reference to the apartment units) or horizontally (as in the case of the detached housing).

- The submitted design achieves a strongly defined public realm whereby the square will provide a nodal point for Bullock Harbour which it is presently lacking.
- From an urban design perspective, the proposed development constitutes a major enhancement of the visual environment of the harbour area.
- The rocky foreshore area (designated as a proposed Natural Heritage Area) will be transferred to public ownership at no cost to the Local Authority. This area will, therefore, be formally integrated into the public realm which amounts to a significant planning gain.
- The Planning Authority has asserted that the front of the site is '*visually and physically segregated from the rear of the development with no meaningful integration, visually or functionally*'.

During the course of pre-planning discussions, the Planning Authority indicated a preference for a less structured, more amorphous layout, including a public realm running through the site from the harbour front to the rear. It is considered that this desire informed the assessment of the proposal and that the term 'integrated' may have been employed with this in mind, although it should be noted that the expression 'integrated' does not appear in the wording of the relevant zoning objective or the Specific Local Objective.

- This dilapidated industrial site has never been a public amenity (and is something of a disamenity in visual terms).
- A logical structure has informed the submitted proposal which pays proper respect to both the established pattern of development and to good urban design practice.
- Good practice in designing mixed-use developments favours the attainment of a hierarchy of spaces progressing from the most public areas to the more private in a graduated format. For example, the '*Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009*' recommend that new developments, in respect of small towns and villages, should:

*'have a sense of identity and place appropriate to the character of the existing small town or village and a logical hierarchy of places within the scheme working from streets to semi-private and private areas'.*

The concept of a logical hierarchy of places from street (harbour front) to semi-private / private areas is an accepted design norm and has informed the proposed development. A less structured proposal, as inherent in the approach favoured by the Planning Authority, with an absence of definition of spaces etc. will give rise to problems, not least in terms of behaviour and security, and would also compromise the strong urban quality of the proposed public square which derives from its enclosure by the proposed quayside buildings.

- It is noteworthy that other larger developments around the harbour and its environs, such as the nursing home on the southern side of Bullock Harbour and the Pilot View apartment complex, make no provision for any public realm and prohibit the penetration of communal areas.
- Whilst areas such as Bullock Harbour were once the location of significant marine activity in the distant past, they are now largely used for limited leisure related purposes. Therefore, given that the potential for any viable marine related development at Bullock Harbour is constrained, the residential component of the subject proposal is required to subsidise the marine-related uses.

Regrettably, the Planning Authority does not accept the foregoing point and has sought further undefined marine-related uses and less residential development. It has again expressed a concern that the proposed development would adversely affect the ability to *'attract and maintain good marine related uses'* and would somehow *'limit the scale and diversity of uses'*. Similar conclusions were made by the Planning Authority in its assessment of PA Ref. No. D16A/0906.

Following the refusal of PA Ref. No. D16A/0906, the applicant commissioned independent economists KHSK to carry out an assessment of the potential for marine-related activity at Bullock Harbour which culminated in the report titled *'Assessment of the Potential for Commercial Marine-Based Activity at Bulloch*

*Harbour*' (KHSK, 2017). That report was informed by another study commissioned by the applicant, the '*Bulloch Harbour Observation Research Report*' (SPARK), which enumerated the number of persons visiting the harbour over a two-week period in March and June (*N.B.* Copies of both reports were submitted with the application).

The KHSK report states that there are no instances of the recent successful development of commercial activities, or the provision of built space for 'not-for-profit' community activities, in any of the small harbours around the Dublin area (with the possible exception of Balbriggan, although this is considered to be of little relevance to Bullock Harbour). Therefore, it was concluded that the provision of any such space at Bullock Harbour would require cross-subsidisation from associated development i.e. a residential component is necessary to underpin the cost of providing for non-viable commercial / community activities.

- The policy of the Planning Authority is unclear and it is questionable what is intended by the phrase '*commercial marine-related activity*' as employed in the Development Plan.
- The issue of economics cannot be divorced from land use planning which should be evidence-based. Whilst the Planning Authority has expressed a desire for a greater percentage of an alternative land use to be provided in the proposed development, there is no indication that any focused consideration was given to the KHSK analysis which has concluded that the approach of the Planning Authority to the consideration of an appropriate land-use mix on site is not well founded and lacks evidential underpinning.

It is clear that the potential of Bullock Harbour to attract and maintain commercially viable '*good marine related uses*' of any kind is extremely limited. In this regard it should be noted that the marine chandlery business that formerly occupied the site could not operate successfully and ultimately closed with severe financial losses.

- Bullock Harbour is not a '*working*' harbour and is essentially a place to moor some small boats with some minor marine leisure and commercial usage (please refer to the KHSK report). The potential of the harbour is constrained

by its small size, its lack of water flow at low tide, the disposition of rock outcrops near its entrance, and difficult currents on the approach. In addition, the harbour only has the most basic facilities, including a paucity of changing and sanitary facilities, whilst the Dublin Port Company recently removed the only crane. The prospect of any commercial marine-related activity of any consequence within Bullock Harbour is most unlikely in the absence of significant cross-subsidisation from residential development.

- The provision of non-viable commercial or other marine related accommodation on site (over and above that presently proposed) carries a high risk of resulting in empty, disused space (please refer to the KHSK report).
- It is considered that the subject proposal provides for an appropriate and reasonable mix of uses in terms of '*scale and diversity*' and it is unclear what other 'good marine related uses' could successfully operate from the site. The proposed development bears favourable comparison with the range of land uses around the much larger Dún Laoghaire Harbour and greatly exceeds the number of uses around the nearby smaller harbours of Coliemore and Sandycove.
- The current owners of the harbour (Dublin Port) have no development intentions whilst the Council has confined its own activity at this location to the normal provision of services and the upkeep of the public road.
- The design, scale, height and architectural composition of the proposed development would make a positive visual contribution to the area.
- There are few distant views into the site with those from the Forty Foot bathing area being the most significant. Nearer views are relatively restricted due to the prevailing topography. The critical views are included in the *Modelworks* montages and show that the development would sit comfortably in its setting.
- There are no protected structures or Recorded Monuments within the proposed development area.

- The Conservation Officer had no concerns in relation to the site of the proposed development and also acknowledged that the wider setting of the harbour had already been diminished by the nearby Pilot View apartment scheme and the Our Lady's Manor nursing home, although exception was taken to the height of the proposed dwelling houses and the three-storey block containing the apartments.

In response, it is submitted that the proposed development sits comfortably within its wider context and that the height of the houses is necessary in order to ensure that they enjoy a good quality of amenity and light. Furthermore, the proposed houses comprise a modest element in the context of the site location having regard to the scale and prominence of surrounding development.

- The proposed development will enhance and expand the public realm at Bullock Harbour with the new square providing a focal point where visitors will be able to avail of the new café. The square will be finished to a high standard whilst landscaping details can be agreed with the Planning Authority.
- Contrary to the concerns expressed by the Planning Authority, it is considered that the servicing arrangements proposed for the quayside units are satisfactory. With the exception of the boat workshop, the units in question are all relatively small with limited servicing requirements. Even the servicing needs of the workshop will be limited as the nature of the works is such that only occasional deliveries will arise. Moreover, the likelihood of a business with greater servicing requirements locating at Bullock Harbour is very low. Furthermore, it would not be desirable to require service vehicles to approach the quayside units through the residential component of the scheme in the interests of safety and amenity.
- Sufficient provision has been made for visitor car parking on site.
- The submitted Ecological Impact Assessment concluded that the subject proposal would not impact on the adjacent proposed Natural Heritage Area. In addition, a screening exercise for the purposes of appropriate assessment determined that a 'Stage 2' appropriate assessment was not required in this instance. These findings were accepted by the Planning Authority.



- In accordance with ‘*The Planning System and Flood Risk Management, Guidelines for Planning Authorities*’, the majority of the site is located within Flood Zone ‘C’ with only a smaller area within the north-western corner situated within Flood Zone ‘B’ (as determined by the 1:200 year tidal flood level).

Section 4.5 of the *Strategic Flood Risk Assessment* contained in Appendix 13 of the County Development Plan states the following:

*‘The most likely mitigation measure will involve setting finished floor levels to a height that is above the 1 in 100 year fluvial or 1 in 200 year tidal flood level, with an allowance for climate change and freeboard’.*

The OPW’s *Coastal Defence Strategy Study* has estimated the 1 in 200 year tidal level as 2.99mAOD. It is recommended that residential properties should have a finished floor level above the 1 in 200 tidal climate change level plus a suitable freeboard of 30mm (i.e. 3.79mAOD).

Due to the sensitivity of the site location and the adaptation measures for climate change limited to addressing floor level only, it is recommended that the Medium Range Future Scenario is replaced by the High End Future Scenario and an additional 0.5m is added to the flood levels. The proposed houses will have a finished floor level of 4.54mAOD and the two apartments will have a FFL of 6.56mAOD. These are above the high end extreme water level.

- The proposed apartment units do not include any habitable area at ground floor level and the entrance to these units will be located at 3.00mAOD. In accordance with Sections 4.3 & 4.5 of ‘*The Planning System and Flood Risk Management, Guidelines for Planning Authorities*’, which addresses proposed floor levels and flood resilient construction respectively, the lower non-habitable level of the (apartment) building will be constructed to be resilient to any water ingress.
- It is not feasible to raise the threshold entrance to the proposed apartments above the predicted 1 in 200 year tidal flood level, however, an alternative route via the eastern part of the site has been provided whereby the

occupants of the apartments can be assured of access without risk of flooding.

- Following the decision of the Planning Authority to refuse permission for the subject proposal, the flood risk assessment for the site has been revised by CS Consulting, with specialist input from JBA Consulting. Detailed site-specific survey information has been used to update the flood zones which are consistent with the Council's Flood Zone details.
- With regard to the assessment of a specific project, climate change is properly addressed in the vertical plane i.e. the adequacy of finished levels. In the subject case, finished floor levels in highly vulnerable areas (residential) are all significantly above any predicted flood level, including as affected by climate change. Safe access and egress, including for emergency vehicles, will also be provided.
- From a review of CS Consulting Drg. No. B056-SK007, it is apparent that the entirety of the application site is located within Flood Zone C (low risk), save for a very small area to the northwest which is within Flood Zone B (moderate risk between 1:200 and 1:1000). Only the entrances to the apartments and the seafood shop, as well as the access to the parking under the apartments, are within Flood Zone B. Whilst the café abuts Flood Zone B, it is accessed off the new public square and thus is not materially affected. Neither the café nor the seafood shop is of high vulnerability in terms of flood risk assessment.
- In accordance with the provisions of *'The Planning System and Flood Risk Management, Guidelines for Planning Authorities'*, an alternative access to the proposed apartments is available from the eastern part of the site to ensure full connectivity with Flood Zone C. The apartments themselves are separated vertically and thus are not liable to flooding.
- The finished floor levels of the proposed commercial units are generally above flood levels, however, by taking a precautionary approach to climate change, the buildings will be designed and constructed to be resilient in terms of finishes and services.
- Additional flood protection measures can be put in place where required, including removable flood barriers to serve the garage under the apartments

and the seafood outlet, as part of adaptation measures once climate change sea levels are experienced.

- The proposed development has been designed to withstand the overtopping conditions experienced at this coastal location whilst the on-site drainage system will also be improved.
- In response to the remarks by the Local Authority Engineer regarding resilience etc., the Board will be aware that the proposed development will be subject to the Building Regulations, including Part A (Structure) which effectively requires a building to be designed so that all combined actions liable to act on it are sustained i.e. a building in a maritime environment, such as Bullock Harbour, must be designed to meet the conditions arising at the site.
- Notwithstanding the site location within Flood Zone 'C', given its proximity to Flood Zones 'A' & 'B' and the requirements of the Strategic Flood Risk Assessment, having regard to the precautionary principle, a Justification Test has been carried out for the proposed development as follows:

- 1. Have the subject lands been zoned or otherwise designated for the particular use or form of development in an operative development plan, which has been adopted or varied taking account of these Guidelines?*

The subject lands have been zoned for the particular uses and form of development proposed. All the proposed uses are either permitted or open for consideration with the 'W' land use zoning.

- 2. Has the proposal been subject to an appropriate flood risk assessment that demonstrates:*

- i. The development proposed will not increase flood risk elsewhere and, if practicable, will reduce overall flood risk?*

The proposed development will not increase flood risk elsewhere and, due to improved design and maintenance, as well as acknowledgement of the need for action during extreme events, would tend to reduce overall flood risk.

- ii. *Does the development proposed include measures to minimise flood risk to people, property, the economy and the environment, as far as reasonably possible?*

The proposal incorporates various design elements to minimise the flood risk to people and property and, by extension, to the economy and environment. These include placing habitable areas above the predicted 1:200 year flood level (incorporating both extreme sea level rise and free board requirements). In the case of the commercial units, floor levels and finishes will be above flood levels and will accept a degree of inundation. The commercial units and residential accommodation will be constructed to flood resistant standards to minimise potential adverse impacts should flooding be experienced. The proposed development will also remedy the existing malfunctioning surface water drainage arrangements on site.

- iii. *Does the development proposed include measures to ensure that residual risks to the area and / or development can be managed to an acceptable level as regards the adequacy of existing flood protection measures or the design, implementation and funding of any future flood risk management measures and provisions for emergency services access?*

The development has been designed to ensure no habitable area is at a level that would be susceptible to flooding. The commercial units and the apartments will be constructed to flood resilient standards, including services systems, to minimise potential adverse impacts should flooding occur. Provision will be made for the fitting of flood barriers in certain locations near areas of higher flood risk. Access for emergency services will be assured. The proposed development will also provide for improved management of the quayside where people can be at risk.

- iv. *Does the development proposed address the above in a manner that is also compatible with the achievement of wider planning objectives in relation to development of good urban design and vibrant and active streetscapes?*

The proposed development will replace a group of dilapidated industrial buildings. The development has been designed to incorporate good qualities of urban design and to animate the streetscape along the harbour quayside whilst providing for appropriate measures to address flood risk.

- The proposed development is not likely to have significant impacts on the environment and an Environmental Impact Assessment is not required.

## 6.2. Planning Authority's Response

- The Board is referred to the contents of the Planner's Report on file.
- Having regard to the revised Site Specific Flood Risk Assessment provided with the grounds of appeal, and in light of new information pertaining to recent storm events and coastal flooding, the accompanying Drainage Planning Report recommends that permission be refused for the 2 No. apartment units on the basis that they are located within Flood Zone 'A' as defined by the Flood Zone Mapping contained in the Dún Laoghaire Rathdown County Development Plan, 2016-2022.
- A revised Wave Overtopping Assessment, calibrated to include information from recent storm events, has not been submitted. In the absence of such an assessment, the Drainage Planning Division of the Local Authority cannot now make a positive recommendation with regard to the 3 No. proposed dwelling houses. Where flood risk is being considered, a proposal to agree details post-planning is not satisfactory and should not be considered as a basis on which to grant permission.
- Whilst the applicable land use zoning objective indicates that residential development is open for consideration, the primary objective (i.e. 'permitted in principle') is the provision of waterfront development and marine-related uses.

- Although the applicant has sought to draw comparisons between the subject site and other smaller harbours in the area, namely, Coliemore and Sandycove, which now only cater for limited leisure-related activities, neither of the aforementioned harbours are zoned as '*W: To provide for waterfront development and harbour related uses*'. This is a critical difference and hence the requirement for proposals at Bullock Harbour to provide for harbour related development and marine-related uses.
- With regard to the assertion that the potential for Bullock Harbour to attract and maintain economically viable marine-related uses of any kind is limited and the implication that the current zoning objective for the subject site is unrealistic, it is considered that the appropriate forum for advancing such views would be during the review of the Development Plan.
- There are serious concerns that the almost exclusive use of over two-thirds of the site area for residential purposes would seriously erode the applicable land use zoning objective, which aims to provide for waterfront development and marine / harbour related uses, and would also compromise the harbour's ability to attract and maintain good marine related uses.
- There are concerns in relation to the low percentage of floor area allocated to marine related use, the developable site area supporting such uses, and the accessibility, servicing and parking with respect to the marine related uses, which results from inadequate site area being available and the absence of an integrated design approach.
- Given the specifics of the site context, it is considered that the proposed quayside elements are visually and physically segregated from the rear of the site with no meaningful integration, visually or functionally. Therefore, the proposal fails to respond appropriately to the site context, including the special character of the area and the need to strengthen / reinforce a positive sense of place.
- With regard to the revised Site Specific Flood Risk Assessment provided with the grounds of appeal, whilst the applicant has stated that the High End Scenario has been applied to the wave overtopping calculations, the Local Authority Drainage Planning Dept. can only find reference to the Mid Range

Future Scenario (MRFS) in the JBA report submitted as part of the original application. Whilst it may be the case that the applicant has now updated the report to High End Future Scenario (HEFS), a revised report has not been submitted.

- The applicant has asserted that:

*‘ . . . it will be prudent to incorporate the levels witnessed during the recent Storm Emma event and these values will be included in the design. The modifications and upgrades to the drainage system will be agreed with the planning authority to ensure satisfactory compliance to requirements, guidelines and best practice’.*

The position of the Planning Authority is that all matters pertaining to flooding, including the demonstration of compliance with Box 5.1 of the *‘Planning System and Flood Risk Management Guidelines’*, must be addressed prior to any decision to grant or refuse permission. Proposals to agree details pertaining to flood risk ‘post-planning’ are not satisfactory and are not a basis on which to grant permission.

- The proposed apartment units are located within Flood Zone ‘A’ and, therefore, the mitigation provisions set out in Section 4.5 of Appendix 13: *‘Strategic Flood Risk Assessment’* of the County Development Plan (which relate to developments situated within Flood Zone ‘C’) are not applicable. Accordingly, the Board is referred to the initial recommendation of the Drainage Planning Dept. to refuse permission for that aspect of the proposed development.
- The applicant has stated that *‘it is not appropriate to include climate change levels in addition to basic flood levels provided, as climate change is a residual risk to be considered’* and proceeds to justify the siting of the first floor apartments on the basis that dual access is being provided whilst the entrance area to same is not habitable and thus is of low vulnerability.

It is the opinion of the Drainage Planning Dept. that rising sea levels attributable to climate change must be factored into the baseline determination of Coastal Flood Zone boundaries.

If the contention of the Drainage Planning Dept. is accepted then no residential development can be considered in Flood Zones 'A' & 'B' in accordance with Section 5.1 of Appendix 13: '*Strategic Flood Risk Assessment*' of the County Development Plan:

*'With the exception of zoned Major Town Centres, District Centres and Sandyford Business District, new development within Flood Zones A or B does not pass the Justification Test and will not be permitted. This applies to undeveloped areas which are zoned for development but are currently undeveloped and to areas of existing low intensity development. Whilst lands may have retained a zoning objective which would include development, applying the guidance in Section 4 means such development is restricted to Flood Zone C, with water compatible uses located within Zone A and B.'*

Locating highly vulnerable development (i.e. apartments) at first floor level does not remove it from within Flood Zone A and thus is contrary to Planning Authority policy on flooding.

- The applicant has asserted that the proposed development satisfies Part 1 of Box 5.1 (the 'Justification Test' for development management) of the '*Planning System and Flood Risk Management Guidelines*'.

Section 4.2 of Appendix 13 of the Development Plan states that '*It should be noted that this section of the SFRA begins from the point that all land zoned for development has passed the Justification Test for Development Plans, and therefore Part 1 of the Justification Test for Development Management*'.

It subsequently states that '*in addition to the general recommendations in the following sections, Section 5 should be reviewed for specific recommendations for the watercourses within Dún Laoghaire-Rathdown, including details of the application of the Justification Test*'.

At this point, the Board is referred to Section 5.1 (Undeveloped Land) of Appendix 13 of the Development Plan (as set out above).

On the basis that the residential component is located within Flood Zone 'A', it is submitted that the proposal does not pass Part 1 of Box 5.1 of the Development Management Plan Justification Test. All the criteria set out in



Box 5.1 have to be satisfied and, therefore, as Part 1 is not held to have been passed, no assessment was completed as regards the remaining sections.

(Notwithstanding the foregoing, it is the position of the Drainage Planning Dept. that all matters relating to flooding, with particular reference to demonstration of compliance with Box 5.1 of the '*Planning System and Flood Risk Management Guidelines*', must be addressed by an applicant prior to any decision being made on an application. The applicant has included many references to measures that will be implemented without submitting the details of same. In the absence of any such details on which a reasoned assessment could be made, and particularly where flood risk is being assessed, a proposal to agree details post-planning is not satisfactory and should not be considered as a basis on which to grant planning permission).

- In Section 'E' (Wave Overtopping) of the Municipal Services Planning Report dated 6<sup>th</sup> February, 2018, the contents of the JBA Consulting 'Wave Overtopping Assessment' were noted and two items of further information sought. Since then there have been two storms i.e. Storm Emma on 2<sup>nd</sup> March, 2018 and a lesser weather event on 18<sup>th</sup> March, 2018.

It is normal practice to collate and review new evidence of the impacts of storm events, including first-hand reports from Council staff as was the case for Storm Emma and the storm event of 18<sup>th</sup> March, 2018.

Appendix 'B' of this submission comprises the reports of Mr. Joe Craig (Senior Executive Engineer, Drainage Design, Municipal Services) on both of the aforementioned storm events as they related to the Bullock Harbour environs. Within these reports the inundation volume during Storm Emma for a 3-hour period was estimated as 2,803m<sup>3</sup> compared to 6.6m<sup>3</sup> as set out in the report of JBA Consulting. A further significant difference is that the JBA figure is based on a 0.5% AEP (1:200 year) event whereas the return period for Storm Emma has been estimated as a 1:80 year event. Even the lesser event of 18<sup>th</sup> March, 2018, with a return period of between 1:5 and 1:10 years, produced an estimated inundation volume of 1,500m<sup>3</sup>. While these figures are only an estimate, the differences are so significant as to seriously question the output of the JBA Consulting desktop study.

- Flood inundation volumes are not the only factor in assessing the impact of wave overtopping. The accompanying Photo Nos. 3 & 4 show the height of overtopping waves during both the aforementioned storm events. While it is not possible to quantify the force of these overtopping waves, a reasonable assumption can be made from the estimated inundation volumes and photos that the waves could be described as 'violent overtopping'. Table 3 of the 2016 EurOtop Manual advises that no access is to be permitted for persons during any such violent overtopping event.
- In the absence of a revised 'Wave Overtopping Assessment' calibrated to include information from recent storm events, the Drainage Planning Division cannot now make a positive recommendation with regard to the 3 No. proposed dwelling houses. Therefore, it is recommended that the 3 No. dwelling houses be refused permission.
- The Municipal Services Dept. of the Local Authority recommends the following:
  - The refusal of the 2 No. apartments over the commercial units on the basis that they are located in Flood Zone 'A' and thus do not accord with either Sections 4.6 or 4.7 of Appendix 13: 'Strategic Flood Risk Assessment' of the Development Plan.
  - With regard to the commercial units, the applicant should be required to submit proposals for the written agreement of the Planning Authority detailing the flood defence / flood resilient measures to be built into the proposed development. The applicant should also demonstrate how these measures will address all of the sub-headings set out in Section 4 (Designing for Residual Risk) of Appendix 'B' of the *'Planning System and Flood Risk Management Guidelines'*. In addition, the proposal should be amended to incorporate the changes in the surface water design layout required under Item D1.
  - It is reiterated that in the absence of a revised 'Wave Overtopping Assessment' calibrated to include information from recent storm events, permission should be refused for the proposed dwelling houses.

In the event of a grant of permission being considered, the following general surface water management conditions should be included:

1. Prior to the commencement of construction, the applicant shall submit details for the written consent of the Planning Authority demonstrating how the minimum outfall invert level of 3.0m can be achieved. In considering options the applicants should not confine themselves to a redesign of the current layout but should also consider the option of a direct discharge or discharges to the sea, above the foreshore line, within their property along the northern site boundary (The applicant proposes to discharge surface water runoff from the development to the sea via an existing sea outfall. The invert level of the final manhole is shown as 2.30m. For sustainable management of surface water outfalls, the IL of the outfall pipe should be set at a minimum to the 1.0% AEP flood levels. When considering the impact of climate change on the mean sea water level, the IL should be set to a minimum of 3.0m. From the information provided by the applicant it is not immediately apparent how these minimum IL requirements could be provided if it is proposed to reuse the existing sea outfall).
2. Prior to the commencement of construction, the applicant shall submit details for the written consent of the Planning Authority demonstrating that there will be sufficient storage within the proposed (redesigned) surface water drainage system to avoid surcharging contributing to flood risk.

*N.B. The Board is also referred to the accompanying appendices: (A) 'Drainage Planning Report dated 6<sup>th</sup> February, 2018' & (B) 'Comments on Flood Risk Assessment for Proposed Development Site at Bullock Harbour, Dalkey, Co. Dublin'.*

### **6.3. Observations**

- 6.3.1. A total of 67 No. observations have been received from interested parties in respect of the subject appeal and, therefore, in the interests of conciseness, and in order to avoid unnecessary repetition, I propose to summarise the key issues raised under the following headings:

### 6.3.2. Land Use Zoning:

- The current land use zoning as 'W' does not take into account the history of flooding and storm events at the site which renders it unsuitable / unsafe for residential development.

### 6.3.3. Compliance with the Development Plan:

- Inadequate provision has been made for the inclusion of marine and community uses on site.
- Inadequate consideration has been given to the wide range of groups that use the harbour (e.g. sea kayaking, sea scouts, diving clubs, fishing clubs, adventure activities, bird and marine watching etc.)
- Public amenities and facilities will be negatively impacted.
- The development will restrict the current and future use of the harbour and the surrounding area.
- The inclusion of high-end residential development is not compatible with the marine and leisure use of a working harbour or public access to the coastal rocks.
- The development is not consistent with the proposal to develop a masterplan for Bullock Harbour.
- The scale of the residential element does not accord with the land use zoning.
- The proposal fails to accord with Specific Local Objective 22: '*Bullock Harbour*' of the Development Plan.
- The proposed commercial units are of an inadequate size with the focus having instead been placed on the residential component.

### 6.3.4. Urban Design & Layout / Visual Amenity:

- The overall design and layout of the proposed development fails to comply with the requirements of Specific Local Objective No. 22: '*Bullock Harbour*'.
- The three-storey apartment building is of an excessive height, is too close to the quay front, and will detract from the streetscape.

- The bulk and height of the three-storey dwelling houses will dominate the skyline and obscure views of the rocky outcrop beyond same.
- The overall architectural style, scale, proportions, size and height etc. of the proposal is out of character with the surrounding pattern of development.
- The proposed development will be visually obtrusive and will have a detrimental visual impact on the harbour area.
- There are concerns that the proposed development will impinge / restrict public access to the adjacent rocks / beach area.
- Detrimental impact on the county's coastal heritage / seascape / protected views etc.
- The proposal will set an undesirable design precedent for future development in the area.
- Overdevelopment of the site.

6.3.5. Heritage Implications:

- Bullock Harbour is of considerable historical and cultural significance.
- The proposal is at odds with the maritime and monastic heritage of the harbour.
- The proposal is not in keeping with the designation of Dalkey as a 'Heritage Town'.
- Adverse impact on the existing harbour which is included in the Record of Monuments & Places and / or has been designated as a protected structure.

6.3.6. Flooding & Related Issues:

- The proposed development site (and surrounding lands, including the quayside) is subject to frequent flooding, particularly as a result of wave overtopping.
- Significant volumes of water and debris are projected onto the site and beyond as a result of wave overtopping during severe weather / storm events (giving rise to damage to property and safety concerns).

- The proposed development does not satisfy the 'Justification Test' as set out in the '*Planning System and Flood Risk Management, Guidelines for Planning Authorities*'.
- The proposed units will be unlikely to obtain flood insurance.
- Concerns as regards the structural stability of the harbour area given its vulnerability to high seas.
- The increased flood risk and associated challenges posed by climate change.
- The inadequacy of the flood risk assessment and the need to consider issues such as the displacement of flood waters.
- Deficiencies in the applicant's flood risk assessment and wave overtopping analysis.

6.3.7. Traffic Considerations:

- There is inadequate car parking in the area to accommodate the demands of the proposed development.
- Concerns as regards the potential for increased traffic congestion, particularly along the quayside road, and the risk to public safety.
- The inadequacy of the servicing and traffic turning arrangements.
- The proposed narrowing of the quayside will impinge on traffic turning movements etc.

6.3.8. Infrastructural / Servicing Issues:

- Concerns as regards the adequacy of the sewerage network to accommodate the additional loadings consequent on the proposed development and the associated risk of water pollution.
- The inadequacy of the existing drainage arrangements / culverting on site to drain the lands during flood events / storms / high tides etc.

6.3.9. Wildlife Considerations:

- The proposal will have a major impact on maritime wildlife in the area.
- Bullock Harbour is a proposed Natural Heritage Area.

- Concerns as regards possible water pollution during construction of the proposed development (e.g. fuel, oil spills etc.)
- The proposed development site is within the buffer zone for the Dublin Bay UNESCO Biosphere.

6.3.10. Harbour Usage and Commercial / Business Considerations:

- Contrary to the applicant's assertions, Bullock Harbour is a busy, working harbour, particularly during the fishing / tourist seasons etc.
- The residential component of the development would not be compatible with the existing harbour or the use of the rocky shoreline for recreational / leisure activities.
- The proposal could have an adverse impact on existing business interests operating from the harbour.
- The proposed development could undermine the functioning and development potential of the harbour.
- It is questionable whether the proposed café etc. would be commercially viable at this location.

6.3.11. Impact on Residential Amenity:

- Loss of privacy by reason of overlooking.
- Adverse impacts due to overshadowing.
- Increased noise and disturbance.
- The potential for damage to the foundations and structural integrity of neighbouring properties (i.e. 'Castlevue').
- The excessive scale and overbearing nature / appearance of the proposed development.
- The potential for waves / overtopping to damage the proposed dwelling houses / apartment units during storm events.
- Noise, dust and general disturbance etc. during construction works.
- The inadequacy of the public and private open space provision on site.

## 6.4. Further Responses

### 6.4.1. Response of the Applicant to the Circulation of the Planning Authority's Submission:

- The Planning Authority's submission reiterates several points previously raised in the report of the case planner which have already been addressed in the grounds of appeal.
- The proposed development accords with the applicable land use zoning objective whilst residential development is 'open for consideration' and is clearly envisaged in Specific Local Objective No. 22: '*Bullock Harbour*'.
- The grounds of appeal have not sought to change the land use zoning of the site. Instead, it has been demonstrated that the proposed development fully complies with the current zoning objective.
- The reference by the Planning Authority to the '*residential*' zoning of Sandycove and Coliemore Harbours fails to take cognisance of the point raised in the grounds of appeal that these legacy harbours have almost no viable commercial function and that this is unlikely to change. The issue of zoning is not of central relevance to this point.
- The site-specific flood risk assessment has confirmed the general accuracy of 'Flood Zone Map 4' of the Local Authority's Strategic Flood Risk Assessment in that most of the site is within Flood Zone 'C' with only its north-western fringe adjacent to the harbour quay located within Flood Zone 'B'.
- Neither the subject application nor PA Ref. No. D16A/0906 were refused permission for reasons pertaining to flood risk.
- In light of recent weather events, with particular reference to Storm Emma, the Planning Authority has adopted a more negative approach to the proposal in relation to flood risk and related matters. Its submission includes a new Drainage Planning Report and a report from the Council's Senior Executive Engineer in relation to the impact of Storm Emma. In response, the Board is requested to note the following:



- *Climate Change:*

The submitted documents address all relevant aspects in relation to flood risk, including a full analysis of the High-End Scenario in the revised JBA report.

Surface water will drain via the (properly reinstated) existing outfall into Bullock Harbour (Drg. No. B056-11 Rev. A: *Proposed Drainage Layout*). This will in part utilise a swale system. In the event of major storm surges with consequent wave overtopping, excess water will be permitted to drain along the surface into the harbour via the site entrance (as is broadly the case at present). In addition, a secondary overflow is proposed at the square to permit excess water to flow into the harbour.

- *Flood Zoning:*

The position of the Planning Authority as regards the determination of flood zones does not accord with '*The Planning System and Flood Risk Management Guidelines*'. Contrary to the Local Authority's Drainage Report that the site and two residential units are located in Flood Zone 'A', they are within Flood Zone 'C' (although adjacent to Flood Zone 'A') as defined by the Guidelines.

Flood zones should be based on the current understanding of flood risk, using readily available sources of information, as set out in the Guidelines. Where a flood zone has been published, such as in a Local Development Plan or through the OPW's CFRAM output, this would form the main source of information. Flood zones are the mechanism by which planning policy and the 'Justification Test' are triggered. In doing so, localised assessments are required which will improve the flood extent maps, an understanding of the risk, and the identification of the flood zone.

The flood risk assessment prepared by CS Consulting has reviewed the flood zone information using a detailed topographical survey and has determined that only a small area of the site adjacent to the quay is within Flood Zone 'B'.

The '*Planning System and Flood Risk Management Guidelines*' encourage climate change adaptability of the development and its treatment in the vertical and not by exclusion of development in the potential revised climate change extent. The climate change assessment is clear with the OPW

guidance providing fixed sea level rises for different scenarios. Applying these revised design sea levels would blight development in all the gateway cities across Ireland and is not a policy that is adopted in other Dublin council areas. Flood zones can only be determined on the basis of today's hindsight analysis of peak tide and sea levels.

The guidance provided in Appendix B of '*The Planning System and Flood Risk Management Guidelines*' as regards managing climate change and coastal risk, where development is justified, is to allocate an appropriate vulnerability within the development to suit the risks. It is entirely appropriate to plan vertically and to have higher vulnerability uses above commercial development. Indeed, this is the approach applied by Dublin City Council in its tidal risk areas.

It is submitted that the subject proposal is not within Flood Zone 'A' and that the locating of vulnerable development at first floor level is an appropriate arrangement for the site as supported by the Justification Test.

In summary, the Development Management Justification Test is passed as both current and future flood risks and the residual risks associated with wave overtopping have been assessed and can be managed effectively through design and an appropriate approach to management.

- *Predicted Tidal Levels:*

Climate change is not a factor in determining flood zones as per current advice. Furthermore, the '*Planning System and Flood Risk Management Guidelines*' make provision for the vertical separation of vulnerable elements from flood risk and this is a commonly used method of flood resilience employed in other areas such as the Dublin City Docklands.

- *Justification Test:*

The subject property is a zoned 'brownfield' site which has been designated for the uses proposed (please refer to the submitted Justification Test).

- *Wave Overtopping:*

JBA have completed a further analysis of the wave overtopping issues with revised calculations of the volume of water to be disposed of on site, including

for the High End Future Scenario. The maximum estimated volume of water does not differ greatly from that put forward by the Local Authority Senior Executive Engineer.

Residents will be advised in advance of any unusually severe weather conditions and adequate precautions will be put in place e.g. temporarily advising against entering rear garden areas and the shuttering of windows. On the landward side of the scheme conditions would be more benign given the shelter provided by the buildings.

Notably, the nearby apartment scheme overlooking Coliemore Harbour is also exposed to wave overtopping and was itself permitted by the Board. This is a sought-after residential location which does not enjoy any foreshore protection other than for a sea wall and has been in place for several years without difficulty.

- In response to the recommendations set out in the updated report of the Drainage Planning Division:
  - The proposed apartment units will be vertically separated from any flood risk whilst an alternative means of access will be available to avoid any area susceptible to flooding. Therefore, it is only reasonable to permit the proposed apartments.
  - The revised JBA report, together with the detailed drainage proposals, show that the detached dwelling houses may be granted permission.
  - Details of flood defence and resilience measures for the proposed commercial units can be agreed in advance of the commencement of development.

**6.4.2. Response of the Planning Authority to the Circulation of the Applicant's Submission:**

- In reference to Section 12 of the CS Consulting Site Specific Flood Risk Assessment (Rev. B July, 2018) it is accepted that the setting of the invert level to 3.0m would be impractical and hence the request for the applicant to explore alternatives. The current proposal does not design for the High End Future Scenario.

- With regard to Section 14 of the CS Consulting Site Specific Flood Risk Assessment, it is noted that Drg. No. B0056/011 would not appear to have been forwarded to the Drainage Planning Dept. for comment.
- Although it would appear to be the intention to allow stormwater to flow directly overland during extreme events, it is unclear if other 'lesser' events have been modelled. Neither does it appear that any analysis has been undertaken of the velocity and depths of overland flow.
- In relation to the JBA Wave Overtopping Report (Appendix 'H': CS Consulting Site Specific Flood Risk Assessment):
  - The updated (wave overtopping) volumes in this revised report generally correlate with the Council's previously submitted calculations i.e. JBA current 3-hour scenario volume 3,231m<sup>3</sup> v. Dún Laoghaire Rathdown County Council's estimate of 2,808m<sup>3</sup>. The report also acknowledges that overtopping volumes are '*significant in extreme events*' and proposes to manage all '*lower order*' events by an engineered overland flow route which will include a 'swale'.
  - The suggestion that the volumes of overland flow will be '*lower with the development*' and that the '*buildings will trap and reflect some of the overtopping*' is not supported by any evidence. Accordingly, the implication that 'reflected' waves which have overtopped the rock outcrop can be discounted from the remainder of the analysis is questionable.
  - The proposal to refurbish the existing culvert on site in order to provide an effective main outfall makes no allowance for the partial or full blockage of same which would be most prudent when attempting to locate houses in such an exposed location.
  - Figure No. 6 of the Site Specific Flood Risk Assessment refers to an '*assumed original culvert*', however, historic drainage mapping for the area would suggest that this '*culvert*' may actually be an old foul sewer which drains in the opposite direction to an outfall in the location identified as '*open section*'. Any proposal based on an '*assumed culvert*' would be highly imprudent.

- Although the applicant has indicated that overtopping will be managed *'through the emergency plan'*, no details of any such plan have been made available.
- Any development that relies on the need for an Emergency Response Plan is flawed and it is questionable whether any management company would be in a position to implement such a plan.
- It is noted that Section 5 of the report states that *'at the main overtopping point, at the rear of the houses along the site's northern boundary would be dangerous for people to access and would be closed off during or on prediction of such an event'*.
- The proposed 300mm diameter surface water pipe will only contain minimal volumes of seawater inundation and the reliance on an assumed culvert to even part accommodate the volumes predicted in the report is not a sound basis on which to proceed.
- Whilst Section 2.2.4 of the JBA Wave Overtopping Report estimates the 'Storm Emma' event as being between an 80 and 100-year return period (in line with the estimations of the Council), it does not comment on the return period for the storm event of 18<sup>th</sup> March, 2018 which is estimated by the Local Authority as being between a 5 and 10-year return period. Although Storm Emma was *'a significant but rare event'*, storms with a lesser return period in themselves produce large overtopping volumes (please refer to the table provided in the written submission). When considering the MRFS and HEFS, the site will be subject to significant overtopping reach volumes on a more regular basis for the 10% AEP events upwards thus exposing the proposed development to a high risk of repeated flooding. If the MRFS and HEFS are considered, overtopping reach volumes will be at or exceed the current 200-year return period in the 50-year return period while even the 10% AEP (current) flood volume of 930m<sup>3</sup> is not an insignificant volume.

It would be extremely imprudent to permit development in a location which has been demonstrably shown to be hazardous during 'lower order' events.

- In response to the submission prepared by Doyle Kent Planning Partnership Ltd.:

- It is accepted that much of Dublin city centre and its docklands are at risk of flooding, however, given the local, regional and national strategic importance of these areas, it is considered that their passing of the Development Plan Justification Test criteria cannot be questioned.
- For comparison purposes, the Board is referred to the Council's policy in respect of Major Town Centres, District Centres and Sandyford Business District as set out Section 5.1: Appendix 13 (Strategic Flood Risk Assessment) of the County Development Plan. Residential elements have previously been permitted above ground floor level in areas at risk of flooding (e.g. ABP Ref. Nos. ABP-300520-17 & ABP-301428-18).

If the contention of the Municipal Services Dept. is accepted, then no residential development can be considered in Flood Zones 'A' or 'B' in accordance with Section 5.1 (Undeveloped Land) or Appendix 13 of the Development Plan:

*'With the exception of zoned Major Town Centres, District Centres and Sandyford Business Park, new development within Flood Zones A or B does not pass the Justification Test and will not be permitted. This applies to undeveloped areas which are zoned for development but are currently undeveloped and to areas of existing low intensity development. Whilst lands may have retained a zoning objective which would include development, applying the guidance in Section 4 means such development is restricted to Flood Zone C, with water compatible uses located within Zone A and B'.*

Locating highly vulnerable development (apartments) at first floor level does not remove it from Flood Zone A and thus it would remain contrary to the Council's flood policy.

- It is not accepted that residential units located over ground floor commercial premises can be considered to comprise 'less vulnerable' 'mixed-use' development.
- All flooding-related matters, including compliance with the Justification Test set out in the '*Planning System and Flood Risk Management, Guidelines for Planning Authorities*', must be addressed in advance of any decision on a planning application.
- The Municipal Services Dept. of the Local Authority recommends the following:
  - The refusal of the 2 No. apartments over the commercial units on the basis that they are located in Flood Zone 'A' and thus do not accord with either Sections 4.6 or 4.7 of Appendix 13: '*Strategic Flood Risk Assessment*' of the Development Plan.
  - With regard to the commercial units, the applicant should be required to submit proposals for the written agreement of the Planning Authority, prior to the commencement of development, detailing the flood defence / flood resilient measures to be built into the proposed development. The applicant should also demonstrate how the measures proposed will address all of the sub-headings set out in Section 4 (Designing for Residual Risk) of Appendix 'B' of the '*Planning System and Flood Risk Management Guidelines*'. In addition, the proposal should be amended to incorporate the changes in the surface water design layout required under Item D1.
  - The 3 No. detached dwelling houses should be refused permission.
- The proposal does not include adequate measures to minimise the flood risk to people, property, the economy and the environment as far as reasonably possible nor does it ensure that the residual risks can be managed to an acceptable level as regards the adequacy of existing flood protection

measures or the design, implementation and funding of any future flood risk management measures. Therefore, it fails to comply with Sections 2(ii) and (ii) of Box 5.1 of the Justification Test for development management as set out in the '*Planning System and Flood Risk Management, Guidelines for Planning Authorities*'.

6.4.3. *Response of the Observers to the Circulation of the Applicant's Submission:*

A total of 37 No. additional observations were received in response to the circulation of the applicant's submission, a significant proportion of which reiterate several of the areas of concern / issues raised in previous submissions. Accordingly, in the interests of conciseness, I propose to summarise the pertinent additional points as follows:

*Land Use Zoning:*

- The provision that residential development at this location is '*open for consideration*' is wholly inappropriate in light of the risk to persons and property.

*Compliance with the Development Plan:*

- The scale and extent of the residential development proposed does not accord with the land use zoning.
- The proposed commercial units are of an inadequate size.
- The non-viability or otherwise of waterfront / harbour related uses should not be used to justify the extent of residential development proposed.

*Urban Design & Layout / Visual Amenity:*

- The design, scale, size and height etc. of the proposal is out of character with the surrounding pattern of development and will be visually intrusive.

*Heritage Implications:*

- Concerns in relation to the vulnerability of the nearby pre-Christian site.

*Flooding & Related Issues:*

- The serious flooding of the site is likely the reason why housing was never constructed on same.



- The underestimation of the flooding and overtopping inundation volumes undermines the integrity of the proposal.
- Deficiencies and a lack of transparency in the overtopping calculations.
- Inadequate consideration has been given to the safety implications arising from debris projected onto the site and beyond as a result of wave overtopping.
- Colliemore Harbour is not comparable to the application site in terms of wave overtopping etc. due to the differing sea conditions and breakwater characteristics, including the protection afforded by features such as Dalkey Island.
- The increased flood risk and associated challenges posed by climate change.
- Non-compliance with the '*Planning System and Flood Risk Management, Guidelines for Planning Authorities*'.
- The inadequacy and unworkability of the emergency measures proposed for residents / occupants of the development.

Infrastructural / Servicing Issues:

- The inadequacy of the drainage arrangements / culverting on site to drain the lands during flood events / storms / high tides etc.

Harbour Usage / Commercial / Business Considerations:

- Bullock Harbour is a busy working harbour and is not comparable to either Sandycove or Colliemore.

Other Issues:

- The applicant and its advisors have misrepresented and / or ignored critical details as regards the proposed development.

## 7.0 Assessment

- 7.1. From my reading of the file, inspection of the site and assessment of the relevant local, regional and national policies, I conclude that the key issues raised by the appeal are:

- The principle of the proposed development
- Impact on harbour usage and public amenities
- Overall design and layout / visual impact / urban design considerations
- Flooding / drainage considerations
- Impact on residential amenity
- Traffic implications
- Appropriate Assessment
- Environmental Impact Assessment (screening)
- Other issues

These are assessed as follows:

## 7.2. **The Principle of the Proposed Development:**

- 7.2.1. The proposed development site occupies a prominent position at the entrance to Bullock Harbour from Dublin Bay on lands which have been zoned as 'W' with the stated land use zoning objective '*To provide for waterfront development and harbour related uses*'. In this respect it is of also relevance to note that the subject site has been specifically identified for redevelopment by reference to Specific Local Objective No. 22: '*Bullock Harbour*' of the Development Plan which aims to ensure that '*any residential development shall form part of a mixed-use scheme which will include commercial marine-based activity and public water-based recreational uses and shall have regard to the special nature of the area in terms of the height, scale, architecture and density of built form*'. Moreover, the case can be put forward that the subject proposal involves the redevelopment of an under-utilised and dilapidated property which presently detracts from the special character of the harbour surrounds and thus would make a positive contribution to the wider area (*N.B.* The Board is advised that the application site comprises two distinct elements with the developable lands limited to the more southerly extent of the site area which are occupied by a series of vacant buildings / warehouses and an open yard area that previously accommodated the workshops and boatyard associated with the former 'Western Marine Ltd.' chandlery business. The remainder of the site comprises a rocky outcrop along the shoreline to the north of the existing building complex which

serves as a public amenity and it is proposed to transfer ownership of this area to the Local Authority).

7.2.2. Having regard to the foregoing, the subject proposal has sought to demolish the existing buildings on site and to redevelop this quayside location through the construction of a mixed-use development which will provide for a variety of commercial, retail, community, leisure, and residential uses. In this respect, it is my opinion that the proposed craft boat building workshop & storage facility, the relocated marine leisure & commercial units, the community water sports changing facility, the fisherman's huts, and the harbourside public square, all clearly accord with the intent of the land use zoning objective i.e. to provide for waterfront development and harbour related uses, and thus can be considered to be 'permitted in principle' by reference to Table 8.3.19 of the Development Plan. Indeed, the provision of water-based sports and maritime leisure activities along the coastline finds further support in Policy OSR12: '*Water-Based Sports*' of the Plan which recognises the important contribution to be made through the development of improved facilities for sailing and other water-based sports towards the revitalisation of areas such as Bullock Harbour. Furthermore, given the specifics of the site context and its historical usage, I am satisfied that the proposed new seafood sales outlet and café unit are permissible in this instance as they will function in an ancillary capacity and are compatible with the wider development proposal. However, it is clear from the decision of the Planning Authority and the multiple submissions received from third parties that considerable concerns arise as regards the residential component of the development.

7.2.3. Whilst residential development is '*open for consideration*' on lands zoned as '*W: To provide for waterfront development and harbour related uses*' in accordance with Table 8.3.19 of the Development Plan, it should be noted that any such use is only permissible in instances where the Planning Authority is satisfied that the development concerned is compatible with the overall policies and objectives of the relevant land use zoning and will not give rise to any undesirable effects or be otherwise inconsistent with the proper planning and sustainable development of the area. In the case of the subject site, some further clarity is provided by reference to Specific Local Objective No. 22: '*Bullock Harbour*' which states that '*any residential*

*development shall form part of a mixed-use scheme which will include commercial marine-based activity and public water-based recreational uses’.*

- 7.2.4. In its assessment of the subject proposal, the Planning Authority has determined that whilst some aspect of residential development is permissible on site pursuant to the land use zoning and the provisions of Specific Local Objective No. 22, there is a significant imbalance and bias within the submitted scheme towards the provision of housing both in terms of floorspace and site area given that the primary aim of the land use zoning is to provide for marine and harbour related uses. In support of the foregoing, it has asserted that 72.7% of the total floorspace is intended for residential purposes (primarily comprising the 3 No. detached dwelling houses to the rear of the scheme) whilst 71% of the developable site area, including the proposed access road and parking areas, will be used almost exclusively as part of the residential component. This aspect of the development has also garnered considerable criticism from third parties to the effect that the proposed waterfront / marine-related uses simply amount to ‘tokenism’ in an effort to secure residential development on site. The report of the case planner has further elaborated on the rationale to refuse permission by stating that the scheme makes inadequate provision for suitable servicing, accessibility, and parking arrangements to serve the marine and harbour related uses. It is also stated that the overall design and layout of the proposal, with particular reference to the severance of the proposed dwelling houses from the quayside element of the scheme, fails to achieve a sufficiently high quality and integrated form of mixed use development that includes adequate provision for waterfront, marine and harbour related activities. In addition, it has been asserted that the development as proposed would seriously compromise the harbour’s ability to attract and maintain quality marine-related uses and would undermine the scale and diversity of any such uses which the harbour could support.
- 7.2.5. In response to the foregoing, the applicant has sought to emphasise in the grounds of appeal that the subject proposal provides for an appropriate mix of uses, including several marine related elements, as well as a notable residential component, and that all aspects of the proposed development are permissible within the applicable land use zoning. Moreover, it has been submitted that the Development Plan does not require or specify any particular quantum or percentage of the development proposed on site to be allocated towards marine-related uses and is instead entirely

silent on such matters. In effect, the implication is that the Planning Authority has unfairly focused its assessment on an alleged '*predominance of residential use*' and the '*low percentage of overall floor area*' provided for marine-related uses when there is no express requirement or guidance contained in the Development Plan as regards the extent or allocation of any particular floorspace or land use on site. Accordingly, the case has been put forward that the proposal accords with both the land use zoning and the requirements of Specific Objective No. 22: '*Bullock Harbour*' (the design aspect of which will be assessed elsewhere in this report).

- 7.2.6. In further support of the proposal, the applicant has sought to highlight that whilst Bullock Harbour was once the location of significant marine-related activity, it is now largely used for leisure purposes with limited potential for any viable marine-related development. It is further noted that permission was refused for an earlier development proposal on site under PA Ref. No. D16A/0906 on the basis of concerns that the proposed development would adversely affect the ability of the existing harbour to '*attract and maintain good marine related uses*' and would somehow '*limit the scale and diversity of uses*' and, therefore, the applicant commissioned an independent economic analysis of the potential for marine-based activity at Bullock Harbour as part of the subject proposal (please refer to the report entitled '*Assessment of the Potential for Commercial Marine-Based Activity at Bulloch Harbour*', August, 2017, KHSK Economic Consultants). This assessment was further informed by the '*Bulloch Harbour Observation Research Report*' (SPARK) which enumerated the numbers of persons visiting the harbour over two weeks in March and June. Cumulatively, these reports considered the financial viability of new or expanded marine-related and other commercial activities at Bullock Harbour and noted that there were no recent instances of the successful development of commercial activities, or the provision of built space for not-for-profit community activities, in any of the small harbours within the Dublin area (with the possible exception of Balbriggan Harbour) and thus the provision of such space would require cross-subsidisation from associated development i.e. the residential component of the subject proposal is necessary to underpin the cost of providing for non-viable commercial and / or community activities. Therefore, whilst the Planning Authority has sought an increased percentage / proportion of alternative land uses in the proposed development, the applicant is of the view that such an approach is not

well founded and lacks evidential underpinning, and that the provision of any additional commercial or other marine-related uses over and above that presently proposed would carry a high risk of failure thereby resulting in empty disused space.

7.2.7. Having reviewed the available information, in my opinion, there are two key issues which require consideration as regards the overall principle of the proposed development. Firstly, with regard to the intent of the land use zoning objective and the inclusion of residential development within the subject proposal, in my opinion, it is clear from Table 8.3.19 of the Development Plan that housing development is 'open for consideration' on lands zoned as '*W: To provide for waterfront development and harbour related uses*' and that further weight is lent to same by Specific Local Objective No. 22: '*Bullock Harbour*' which expressly references the inclusion of residential development in any redevelopment of the subject site. However, whilst I would accept that some aspect of residential development is permissible on site, I would suggest that this must be taken in context by reference to the overriding purpose of the land use zoning objective i.e. to provide for waterfront development and harbour related uses. The lands in question are not expressly zoned for 'residential' purposes and the implication of the categorisation of any such development as 'open for consideration' is that any such use is only permissible in instances where the Planning Authority is satisfied that the development concerned is compatible with the overall policies and objectives of the relevant land use zoning. In this regard, I would revert to the principle stated objective of the land use zoning (to provide for waterfront development and harbour related uses) and the requirement of Specific Local Objective No. 22 that '*any residential development*' should form part of a mixed-use scheme to include commercial marine-based activity and public water-based recreational uses. Although not entirely clear from the wording of the Development Plan, the development objectives for the subject lands could be interpreted as implying that any residential development on site should only form a subsidiary aspect of a wider mixed-use scheme. In effect, the inclusion of housing in any development proposal for the application site is subject to the caveat that the principle objective is to secure the provision of suitable waterfront development and harbour related uses.

7.2.8. Therefore, on balance, although I am amenable to the inclusion of a residential component in any redevelopment of the subject site, the fundamental purpose of the

land use zoning objective must take precedence to the effect that any housing proposal should be limited in its extent so as not to undermine the key development objectives for the site. Accordingly, given that the majority of the floorspace of the subject proposal and the wider extent of the developable area will be devoted to residential development, I would concur with the assessment of the Planning Authority that difficulties arise in reconciling the submitted scheme with the policy objectives for the site. In my opinion, the intent of the Development Plan for this site is to provide for a mixed-use scheme incorporating a variety of commercial marine-based activities and public water-based recreational uses with an ancillary / subsidiary residential element and, therefore, I am in agreement with the Planning Authority that, in light of the significant imbalance and predominance of residential use, insufficient provision has been made for waterfront, harbour and marine related uses.

- 7.2.9. The second consideration pertaining to the extent of residential development proposed on site relates to the wider viability of marine-related uses and the need to subsidise same through the inclusion of a residential component. Whilst I would acknowledge the contents and conclusions of the KHSK & SPARK reports provided with the application (although I would caution against placing an overt reliance on same given the limitations of the survey methodologies employed) and the assertion that an evidential analysis of Bullock Harbour serves to support the contention that the scale of marine-related activities sought by the Planning Authority would not be economically viable, and although difficulties arise in reconciling same with certain key policy objectives of the Development Plan, including the applicable land use zoning and Specific Local Objective No. 22, I am inclined to suggest that the appropriate forum for the resolution of such matters would be during the course of a review of the Development Plan which could perhaps revisit the site objectives or ensure greater clarity as regards the intention of same and the circumstances under which certain uses may be permissible. In this regard it is of relevance to note that Policy LHB12: '*Coastal Area Feasibility Study*' of the Development Plan aims to undertake a comprehensive feasibility study on the recreational potential of the coastal area of the County whilst Policy OSR15: '*Sandycove Harbour and Bullock Harbour*' refers to the formulation of a masterplan for Bullock Harbour. Therefore, given that the aforementioned studies would likely inform the future development

potential of Bullock Harbour, in the absence of same I would be reluctant to place undue weighting on the confined analysis undertaken by the applicant.

7.3. **Impact on Harbour Usage and Public Amenities:**

- 7.3.1. Concerns have been raised as regards the potential impact of the proposed development on the continued use / operation of the existing harbour by interested parties (including local business interests, community / recreational / leisure groups, and private individuals) as well as the implications for its future development. In this regard, particular reference has been made to the possible undermining of existing quayside activities (including the necessary servicing arrangements), the viability of the proposed café and leisure / marine-related uses, and the compatibility of the residential component of the proposed scheme with the wider operation of the harbour. It has also been suggested that the proposed development may interfere with the use of the adjacent rocky outcrop as an amenity area by the general public.
- 7.3.2. With regard to the existing harbour activities, it was clear during the course of my site inspection that the area along the quayside both to the front of the application site and on the approach to same is presently used for the storage of a number of boats (possibly associated with local hire operations) and somewhat informal / haphazard car parking with the result that there is limited free space available for the safe manoeuvring of cars and larger vehicles. In this respect I would accept that it is possible that the need to maintain clear access to the proposed development for vehicular traffic, including private cars, delivery vehicles and emergency services, may necessitate some changes to existing harbourside practices, however, I would suggest that this should be balanced against the likely demands previously arising from the former chandlery business etc. which operated on site. Furthermore, although it has been suggested that the proposal will result in the narrowing of the quayside area, it would appear from the submitted site layout plans that the proposed development will be undertaken entirely within the confines of the application site and thus will not encroach into the public road. In addition, the inclusion of a 'public square' to the front of the proposed craft boat building / storage facility would serve to open up the quayside to a greater extent and could perhaps be used to accommodate out-of-hours / off-peak deliveries etc. associated with the café and seafood sales units thereby providing for improved circulation along the quayside service road.



- 7.3.3. In my opinion, the quayside element of the proposed development, including the café, seafood sales unit, community water sports changing area, craft boat building / storage facility, and the replacement marine leisure & commercial units, are all compatible with this waterfront / harbourside location and could potentially serve to increase the attractiveness of Bullock Harbour to further investment. Whilst this may necessitate some changes to existing practices along the quayside, I do not accept that the introduction of such uses would give rise to such a level of disturbance as to undermine the wider functioning of the harbour. Similarly, I am unconvinced that the redevelopment of the subject site in the manner proposed would, in itself, serve to detract from the overall development potential or usage of the wider harbour area. The proposed development involves the replacement of a series of dilapidated and vacant structures (which could be considered as having previously accommodated more 'traditional' marine / harbour-related uses, e.g. a chandlery business) with a mixed-use scheme that will provide for a variety of commercial, leisure and residential uses. In this regard I would suggest that the proposal will contribute to a more active waterfront / quayside space that may in turn serve to rejuvenate the wider Bullock Harbour area in a manner which is perhaps consistent with the gradual decline in traditional historical / 'heavy' marine-related uses and an increased focus on more leisure / tourism-orientated enterprises.
- 7.3.4. With respect to the suggestion that the residential element of the proposed development would not be compatible with the marine and leisure use of the harbour or with public access to the adjacent rocky outcrop, given the prevalence of housing both along the quayside and in the immediate site surrounds, I am unconvinced of the merits of such an argument. Indeed, the inclusion of residential accommodation in the redevelopment of waterfront / harbourside locations is commonplace nationwide.
- 7.3.5. In response to concerns that the proposed development may interfere with the use of the rocky outcrop to the north of the site as a publicly accessible amenity, I would advise the Board that this part of the site is to be excluded from the development proposal and that the quayside access to same will be maintained. Moreover, the applicant has offered to transfer ownership of the area in question to the Local Authority thereby ensuring its continued accessibility by the general public.

7.3.6. Therefore, in view of the foregoing, whilst the proposed development may necessitate certain changes to the management / usage of the quayside, in my opinion, the wider benefits accruing from the redevelopment of this brownfield site through the introduction of more active uses along the waterfront must be acknowledged. Moreover, I am satisfied that the overall scheme will be compatible with existing and potential future harbour operations.

7.4. **Overall Design and Layout / Visual Impact / Urban Design Considerations:**

7.4.1. In terms of design and layout the proposed development effectively comprises two distinct elements as follows:

- The mixed-use, partial three-storey, quayside construction; and
- The 3 No. three-storey detached dwelling houses located to the rear of the site.

7.4.2. Having regard to the site context, with particular reference to its prominent quayside location at the seaward entrance to Bullock Harbour, and the surrounding pattern of development in the immediate locality, in my opinion, the overall design, scale, height and composition of the quayside element of the proposed development represents an appropriate addition to the area which suitably balances the need to provide a focal point at this location whilst taking due cognisance of the considerable variance in building type and architectural styling within the harbour area. The new construction represents a considerable improvement over the existing dilapidated buildings on site which detract from the amenity of the area and will make a positive contribution to this waterfront / harbourside location, the wider setting of which has already been seriously compromised by inappropriately designed development such as the nearby nursing home.

7.4.3. With respect to the proposal to develop a series of 3 No. detached dwelling houses to the rear of the site, I am inclined to concur with the assessment by the Planning Authority that this aspect of the development gives rise to particular concern as regards adherence to the applicable land use zoning objective (i.e. To provide for waterfront development and harbour related uses) and Specific Local Objective No. 22: 'Bullock Harbour' which aims to ensure that *'any residential development shall form part of a mixed-use scheme which will include commercial marine-based activity and public water-based recreational uses and shall have regard to the*

*special nature of the area in terms of the height, scale, architecture and density of built form*. In my opinion, the proposed housing has effectively been conceived in isolation from the remainder of the scheme and fails to provide for any meaningful integration in terms of a visual, physical or functional relationship with the quayside construction. Furthermore, I would suggest that the overall scale and height of the proposed housing is excessive and responds poorly to the site context in that it will dominate views from the opposing side of the harbour (notwithstanding the screening provided by the new quayside structure). Accordingly, I am not satisfied that the proposed housing complies with the specific policy objectives applicable to this unique harbourside site.

*N.B.* By way of further comment, and in response to concerns raised by third party observations, it is my opinion that adequate private and semi-private / communal open space has been provided to serve the proposed housing. Furthermore, having reviewed the available information, it is my opinion that the design of the proposed apartment units accords with the minimum requirements of the *'Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2018'* and provides for a satisfactory level of residential amenity for the future occupants of same.

#### **7.5. Flooding / Drainage Considerations:**

- 7.5.1. From a review of the available information, and particularly in light of recent storm events, including Storm Emma (March, 2018), it is apparent that consideration needs to be given to the potential flooding implications of the proposed development given its exposed coastal location along the quayside at Bullock Harbour. In this respect I would advise the Board at the outset that whilst the National Flood Hazard Mapping available from the Office of Public Works does not record any flood events in the immediate surrounds of the subject site, it should be acknowledged that this mapping is not definitive and serves only as a useful tool in highlighting the potential for flood events in a particular area. Similarly, although the most up-to-date flood mapping prepared by the Office of Public Works as part of its CFRAM programme, which has recently been made available on [www.floodinfo.ie](http://www.floodinfo.ie) and serves to inform the development of Flood Risk Management Plans for specific areas, does not record any incidences of flooding on site or in the immediate vicinity of same, it must also be accepted that this mapping has limitations in terms of identifying flood risk in

any given area. However, Flood Zone Map No. 4 of the Strategic Flood Risk Assessment contained in Appendix 13 of the Dún Laoghaire Rathdown County Development Plan does indicate that the harbour wall and parts of the quayside are subject to coastal flooding and that the north-western extent of the site area would appear to be within the identified extent of Flood Zones 'A' and 'B'.

(*N.B.* The Strategic Flood Risk Assessment appended to the County Development Plan has been informed (in part) by the Draft Preliminary Flood Risk Assessment prepared by the Office of Public Works and published in 2011 (as part of the CFRAM programme). In this regard I would draw the Board's attention to the contents of Circular PL2/2014 issued by the Department of the Environment, Community and Local Government on 13<sup>th</sup> August, 2014 which states that the Draft Indicative Preliminary Flood Risk Assessment Maps were prepared for the purpose of an initial assessment, at a national level, of areas of potentially significant flood risk and that *'the maps provide only an indication of areas that may be prone to flooding. They are not necessarily locally accurate and should not be used as the sole basis for defining Flood Zones, or for making decisions on planning applications'*. This Circular further recommends that for the purposes of decision-making in respect of planning applications, a Stage II Flood Risk Assessment as set out in *'The Planning System and Flood Risk Management, Guidelines for Planning Authorities, 2009'* should be undertaken where there are proposals for development in areas that may be prone to flooding).

- 7.5.2. Notably, further support for the contents of the Strategic Flood Risk Assessment can be found by reference to the strategic current and future scenarios (up to 2100) coastal flood hazard maps contained in the Irish Coastal Protection Strategy Study which was completed in 2013. The relevant mapping detailing the extent of tidal flooding along this section of coastline confirms that parts of Bullock Harbour, including the quayside and areas of the application site, are or will be subject to flood events in the current, mid-range future, and high-range future scenarios.
- 7.5.3. Therefore, whilst there are some conflicting accounts within the aforementioned flood mapping as regards the extent or prevalence of flood events either on site or in its immediate surrounds, in my opinion, given the site context, with particular reference to its coastal location and proximity to the harbour area, and the evidence of localised flooding and wave overtopping as set out in the submissions received from

multiple third parties, there is an identifiable risk of flooding at the subject site and, therefore, the proposed development necessitates site-specific flood risk assessment pursuant to the provisions of Section 5.2.5: 'Flood Risk' of the Development Plan and the requirements of the '*Planning System and Flood Risk Management, Guidelines for Planning Authorities, 2009*'.

- 7.5.4. The initial planning application was accompanied by a 'Site Specific Flood Risk Assessment (December, 2017)' prepared by CS Consulting which sought to assess the risk to the proposed development from all potential sources of flooding and the necessity for the implementation of suitable mitigation measures where appropriate. However, the contents of that report have since been superseded by an updated Flood Risk Assessment ('*Site Specific Flood Risk Assessment, Rev. B – July 2018*') received by the Board on 9<sup>th</sup> July, 2018 which was submitted by the applicant following the circulation of the Planning Authority's response to the grounds of appeal and, therefore, in the interests of conciseness, I propose to focus my analysis on the contents of that assessment (*N.B.* This later flood risk assessment also supersedes that provided with the grounds of appeal).
- 7.5.5. The updated Flood Risk Assessment (FRA) notes that the OPW's historical database does not record any previous instances of flooding on site and proceeds to refer to the Strategic Flood Risk Assessment appended to the County Development Plan which details that the majority of the application site is located within Flood Zone 'C' (i.e. where the probability of flooding is less than the current 0.1% (1 in 1,000 chance in any given year) AEP flood extent) before subsequently acknowledging that the north-westernmost corner of the site is within Flood Zone 'B' (i.e. between 0.1% or 1 in 1,000 and 0.5% or 1 in 200 for coastal flooding). Given the difficulty in ascertaining the precise location of the differing flood zones due to the scale of the mapping provided with the Council's Strategic Flood Risk Assessment, the applicant has also generated a detailed flood zone map for the application site based on topographical survey work and published predicted flood levels in Appendix 'F' of the site-specific FRA.
- 7.5.6. At this point, it should be noted that the Strategic Flood Risk Assessment is derived from the historical data which was available at the time of its preparation and thus an element of caution should be exercised in its use as regards the identification of flood risk i.e. the input data for the Strategic Flood Risk Assessment was developed

at a point in time and there may have been changes within the catchment since that mean a future study or more localised assessment of risk may result in changes in either flood extent or depth. In this regard, I would emphasise to the Board that the extent of flooding and the identification of flood zones in the SFRA (and other information sources such as the National Flood Hazard Mapping and the Irish Coastal Protection Strategy Study) will not have taken account of any flooding attributable to more recent storm events, for example, Storm Emma. Accordingly, there are limitations in the available flood zone mapping.

- 7.5.7. Having established that the application site is primarily located within Flood Zone 'C' as defined by the '*Planning System and Flood Risk Management, Guidelines for Planning Authorities*', I would refer the Board to Table 3.1 of the Guidelines which sets out the classification of various land uses / development types which are either highly vulnerable, less vulnerable, or water-compatible. Within Flood Zone 'C' all forms of development, including highly vulnerable development, would be deemed to be '*appropriate*' as per the criteria set out in Box 5.1 of the Guidelines and thus does not have to demonstrate compliance with the 'Justification Test'. Therefore, those elements of the proposed development which are situated within Flood Zone 'C' (i.e. the proposed dwelling houses and the majority of the new quayside construction) would normally be permissible in accordance with the Guidelines. With regard to the north-western extent of the proposed development, which includes for a café, seafood sales unit, car parking, and the main entrance to the overhead apartment units, it has been suggested that these uses amount to '*less vulnerable development*' and thus are also '*appropriate*' within Flood Zone 'B' as per Table 3.2 of the Guidelines (thereby negating any requirement to comply with the Justification Test).

(*N.B.* In response to concerns as regards the siting of the upper floor apartment units within Flood Zone 'B', the applicant has sought to emphasise that the units themselves will be above the predicted flood levels and that provision has been made for the inclusion of an alternative access route whereby residents of the apartments can egress the units to the east without encountering potential flood waters along the quayside / harbour. Moreover, it has been asserted that as the main entrance lobby to the apartment units does not comprise 'habitable' space, it amounts to less vulnerable development).

7.5.8. On balance, I would generally concur with the foregoing conclusions, although I would advise the Board that the westernmost extent of the service road extending from the quayside that provides access to the rear of the site (including the proposed detached housing and the alternative escape route from the apartment units) will be within the predicted 1 in 200 year tidal flood level when account is taken of the High End Future Scenario rise in sea level of 1.0m attributable to climate change (i.e. 3.99mAOD).

7.5.9. Notwithstanding that almost all of the site is located within Flood Zone 'C' and that the uses proposed within Flood Zone 'B' can be considered to comprise 'less vulnerable development', given the proximity of the site to Flood Zones 'A' & 'B', and having regard to the precautionary principle, the applicant has nevertheless subjected the proposed development to the Justification Test as set out in Box 5.1 of the Guidelines as follows:

1) *The subject lands have been zoned or otherwise designated for the particular use or form of development in an operative development plan, which has been adopted or varied taking account of the Guidelines:*

The proposed development site is zoned as 'W: To provide for waterfront development and harbour related uses' in the Development Plan and all of the proposed uses are either 'permitted in principle' or 'open for consideration'.

2) *The proposal has been subject to an appropriate flood risk assessment that demonstrates:*

i) *The development proposed will not increase flood risk elsewhere and, if practicable, will reduce overall flood risk:*

The proposal will not increase flood risk elsewhere and, due to improved design and maintenance, as well as the acknowledgment of the need for action during extreme events, will tend to reduce overall flood risk.

ii) *The development proposal includes measures to minimise flood risk to people, property, the economy and the environment as far as reasonably possible:*

The proposed development incorporates various design elements to minimise the flood risk to people and property and, by extension, to the economy and environment. These include placing habitable areas above the predicted 1:200 year flood level (incorporating both extreme sea level rise and freeboard requirements). In the case of the commercial units, floor levels and finishes will be above flood levels and will accept a degree of inundation. The commercial units and residential accommodation will be constructed to flood resistant standards in order to minimise potential adverse impacts should flooding be experienced. The proposals will also remedy the existing surface water drainage arrangements on site.

- iii) *The development proposed includes measures to ensure that residual risks to the area and / or development can be managed to an acceptable level as regards the adequacy of existing flood protection measures or the design, implementation and funding of any future flood risk management measures and provisions for emergency services access:*

The development has been designed to ensure no habitable area is at a level that would be susceptible to flooding. The commercial units and apartments will be constructed to flood resistant standards, including service systems, to minimise potential adverse impacts should flooding be experienced. Provision will be made for fitting flood barriers in certain locations near areas of higher flood risk. Access for emergency services will be assured.

Currently, there is little active management of the quayside, but the proposed development will provide additional surveillance of this area where people can be at risk.

- iv) *The development proposed addresses the above in a manner that is also compatible with the achievement of wider planning objectives in relation to development of good urban design and vibrant and active streetscapes.*



The proposed development will replace a group of dilapidated industrial buildings. It incorporates good urban design qualities and will serve to animate the streetscape / quayside whilst providing for appropriate measures to address flood risk.

- 7.5.10. In assessing the foregoing, at the outset I would concur with the applicant that the proposed development broadly complies with the wider land use zoning and development objectives applicable to the site and thus satisfies this initial criterion of the Justification Test.
- 7.5.11. With regard to the potential for the proposal to increase flood risk elsewhere (or to reduce overall flood risk), I am satisfied that the redevelopment of this brownfield site in the manner proposed will not give rise to any significant displacement of tidal flood waters nor will it unduly impact on the existing flood regime given the capacity of Dublin Bay to mitigate any such effects.
- 7.5.12. In terms of minimising the risk to people and property etc., I would accept that all of the proposed habitable accommodation will be sited above the High-Range Future Scenario 0.5% AEP flood event water level and that the development will be constructed to flood resilient standards. In this respect it is of relevance to note that the design of the proposed development has taken cognisance of the predicted impacts of climate change and that whilst Section 4.9: '*Incorporating Climate Change into Development Design*' of the Strategic FRA states that the Medium Range Future Scenario (i.e. an increase of 0.5m in sea level) is an appropriate consideration in the design of most development (including residential), the site-specific FRA has adopted a more precautionary approach by reviewing the finished floor levels of the scheme against the High End Future Scenario (i.e. a future sea level rise of 1.0m). Section 9.2 of the FRA has calculated the 1:200-year tidal flood level in the context of the High-End Future Scenario as 3.99mAOD. Accordingly, when account is taken of the necessity to provide for 300mm of freeboard, it has been determined that the finished floor level of the residential component of the proposed development should be set at a minimum of 4.29mAOD. From a review of the submitted drawings, it is apparent that whilst the ground floor level of the less vulnerable quayside uses will be allowed to flood in such circumstances (noting the proposed flood resilient construction of same), the finished floor levels of the proposed housing will be set at 4.65mAOD with the result that the freeboard to the 1-in-200 year flood event,

including for climate change of 1.0m, will be 0.66m (*N.B.* This floor level will also satisfy the 1-in-1000 year event (plus climate change of 1.0m) with 0.48m of freeboard). However, I would reiterate my earlier comments that the service roadway accessing the rear of the site will be partially flooded in such circumstances thereby impeding access / egress for occupants of the proposed housing (and also for the proposed apartment units as the alternative eastern access route from same will necessitate traversing the service road in order to exit onto the quayside). Notably, the Local Authority has suggested that access via the service roadway during more extreme flood events could be managed in a safe manner by way of suitable emergency response planning as per Sections 4.7 & 4.8 of Appendix B of the *'Planning System and Flood Risk Management, Guidelines for Planning Authorities'* whilst the applicant has indicated that advance flood warning measures / plans will be put in place with respect to the proposed development. In reference to the proposed flood-proofing measures, I note that the proposed buildings are to be designed and constructed to flood-resilient standards in terms of finishes and services with the ground floor units designed to accommodate some degree of flood inundation whilst additional flood protection measures can be put in place where required, including removable flood barriers to serve the garage under the apartments and the seafood outlet, as part of adaptation measures once climate change sea levels are experienced. Further details of these measures are set out in Section 17 of the site-specific flood risk assessment e.g. the western elevation facing the harbour will be designed to resist hydrostatic water pressures, the substrate will be concrete to avoid dampness issues, walls and floors will be finished in ceramic tiling or painted to allow for quick drying and cleaning, non-return valves will be placed on drainage lines, and all electrical sockets will be located 500mm above floor level. In my opinion, the final specifications of any such flood-resilient / resistant measures can be sought by way of condition in the event of a grant of permission.

- 7.5.13. With regard to managing residual flood risks, the applicant has reiterated that no habitable accommodation will be located at a level that would be susceptible to flooding and that the commercial units and apartments will be constructed to flood resistant standards, including service systems, to minimise potential adverse impacts should flooding be experienced with provision included for fitting flood barriers in certain locations near areas of higher flood risk.

- 7.5.14. In respect of the final criterion of the Justification Test that the proposed development should also be compatible with the achievement of wider planning objectives in relation to the development of good urban design and vibrant and active streetscapes, in my opinion, the appropriate redevelopment of this under-utilised and dilapidated property will make a positive contribution to the harbour area whilst the subject proposal is generally compatible with the broader objectives of the Development Plan.
- 7.5.15. Having considered the foregoing, and following a review of the available information, it is my opinion, on balance, that the submitted proposal satisfies the requirements of the Justification Test as set out in the *'Planning System and Flood Risk Management, Guidelines for Planning Authorities'*.
- 7.5.16. However, I would suggest that the foregoing conclusions primarily derive from the identification of flood zones attributable to instances of tidal flooding and that further consideration is required of the implications of 'pluvial'-type / overland flooding caused by wave-overtopping into the site.
- 7.5.17. The Flood Zones identified in both the Strategic FRA and the applicant's site-specific flood risk assessment do not take account of pluvial flooding or overland flow arising from wave-overtopping and thus an assessment of the risk arising from such sources must be made (*N.B.* Although Section 3.3.2: *'Tidal Flooding'* of the SFRA states that wave overtopping was previously investigated as part of the Dart Drainage Impact study and that the extents of the overtopping outline were very similar to the Flood Zones, these investigations were limited to the length of coast between Merrion Gate and Monkstown and thus do not relate to the section of coastline at the subject site. Moreover, it is clear from the available information that overtopping at the subject site does not correspond with the extent of Flood Zones A or B).
- 7.5.18. The issue of wave-overtopping is considered in Section 14.0 of the applicant's updated site-specific flood risk assessment with reference to an analysis contained in the *'Wave Overtopping Report'* prepared by JBA Consulting and included as Appendix 'H'. In summary, it states that modelling undertaken in accordance with the methodology set out in the *'EurOtop Wave Overtopping of Sea Defence and Related Structures: Assessment Manual, 2016'* has calculated that a flow rate of 899 l/s would be need to conveyed through the site during extreme wave overtopping

arising during a 3-hour duration, 1-in-200 year storm event increased by 1m to the predicted High End Future Scenario (it has been clarified that the capacity of the existing outfall and culvert on site has been excluded from these calculations and thus the aforementioned volume of water would need to be managed above ground, although Section 4.1: '*Drainage Design*' of the JBA report subsequently suggests that there will actually be a lower volume of water within the development for a number of reasons e.g. the improvement of the existing culvert system on site and the reflection / deflection of some overtopping by the new construction / buildings). In order to drain this volume of water from the site it is proposed to construct an open channel to the rear of the 3 No. dwelling houses into which wave overtopping flows will be directed. This will extend around the perimeter of the site towards the main entrance. During non-extreme events the culvert from this open channel will discharge into the proposed stormwater drainage system and onwards into the harbour via an existing outfall, however, during extreme events, the culvert will be allowed to overflow with the stormwater flowing directly overland into the sea (please refer to Drg. No. B056-011 Rev. A: '*Proposed Drainage Layout*' received by the Board on 9<sup>th</sup> July, 2018).

7.5.19. At this point I would refer the Board to the clear evidence of significant wave overtopping and the subsequent overland flow of a considerable volume of stormwater from the site into the harbour during recent storm events (e.g. Storm Emma, March, 2018) as detailed in multiple third party submissions on file. In this respect it is of relevance to note that the Local Authority has estimated Storm Emma to have been a 1-in-80 year event whilst the applicant has similarly concluded that it would equate to between a 1-in-80 and a 1-in-100 year event.

7.5.20. Having reviewed the available information, whilst I note the contents of the applicant's wave overtopping analysis and the various mitigation measures proposed, given the complexity of the physical processes leading to wave overtopping (e.g. the state of the sea, the geometry of the beach / coast, and the dominant wind / wave direction) there are inherent limitations in the accuracy of any prediction modelling, as has been acknowledged by the report's author (and the updated '*EurOtop Manual on wave overtopping of sea defences and related structures*', 2<sup>nd</sup> Ed., 2018). Accordingly, I would suggest that caution should be exercised in the consideration of the submitted analysis.

7.5.21. In any event, given the site context and the evidence of significant overtopping in recent years during storms of less than a 1-in-100 year return period, in my opinion, the pertinent issue for consideration in this instance is the risk posed by wave overtopping to the safety of persons and property within the site, particularly as the proposed development involves the introduction of more vulnerable land uses to the site with the more exposed elements including residential accommodation. In this regard I would suggest that consideration must be given not only to the direct physical risk to safety posed by overtopping waters and overland flow (noting that the inundation of the site by flood waters will impact on emergency access / egress), but also to the fact that strong winds and significant overtopping may conceal debris (rocks, shingle, wooden pieces, bottles, plastics, etc.) whilst salt spray can lead to the deterioration of building fabric.

7.5.22. The *'EurOtop Manual on wave overtopping of sea defences and related structures'* considers the potential hazard to people and property posed by wave overtopping and states that whilst the main response to these hazards has most commonly been the construction of new defences, or the extension or improvement of existing defences, responses should now always consider three options, in increasing order of intervention:

- Move human activities away from the area subject to overtopping and/or flooding hazard, thus modifying the land use category and/or habitat status;
- Accept hazard at a given probability (acceptable risk) by providing for temporary use and/or short-term evacuation with reliable forecast, warning and evacuation systems, and/or use of temporary / demountable defence systems;
- Increase defence standard to reduce risk to acceptable levels probably by enhancing the defence and / or reducing loadings

7.5.23. This risk-based sequential approach broadly mirrors that set out in the *'Planning System and Flood Risk Management, Guidelines for Planning Authorities'* which aims to minimise the risk to persons and property by avoiding inappropriate development in areas at risk of flooding with the substitution of less vulnerable uses where avoidance is not possible followed by suitable mitigation and management where avoidance and substitution are not possible.

7.5.24. Accordingly, having considered the available information, including the significant overtopping and exceedance overland flows recorded on site during recent 'lower order' storm events, and noting the concerns expressed by the Drainage Division of the Local Authority that the site will likely be subject to significant overtopping reach volumes on a more regular basis when account is taken of the Mid-Range and High End Future Scenarios thereby exposing the site to a greater risk of repeated flooding, I would have serious reservations as regards the suitability of the application site for residential development notwithstanding the land use zoning and Specific Local Objective No. 22: '*Bullock Harbour*'. In my opinion, given the site location in an area which is prone to (tidal and overland) flooding and wave overtopping, the policies and objectives of the County Development Plan, and the provisions of the '*Planning System and Flood Risk Management, Guidelines for Planning Authorities*', it is appropriate to apply the precautionary principle in this instance and to adhere to the risk-based sequential approach to flood risk whereby 'highly vulnerable' (residential) development should be avoided in areas at risk of flooding. In this respect, I would also highlight the risk to public safety and property (i.e. the future occupants of the proposed housing and the physical construction works, including the notable extent of glazing at first and second floor levels to the rear of the detached dwelling houses) given the exposure to significant wave overtopping events (and the debris carried by same) and the overt reliance on emergency planning as a mitigation measure against the impact of same.

7.5.25. Therefore, having regard to the coastal location of the site in an area which is prone to flooding, notwithstanding that the wider site itself is not subject to tidal flooding, the recorded instances of significant wave overtopping on site during lower order storm events, the policies and objectives of the County Development Plan, and the provisions of the '*Planning System and Flood Risk Management, Guidelines for Planning Authorities*' & the '*EurOtop Manual on wave overtopping of sea defences and related structures*', I am inclined to apply the precautionary principle in this instance in that I am not satisfied that it has been adequately demonstrated that the subject site is suited to highly vulnerable residential development or that the proposal would result in a satisfactory residential environment for future residents due to the close proximity of roads and lands which flood and the associated risk to public safety.

7.6. **Impact on Residential Amenity:**

- 7.6.1. Having reviewed the available information, including the shadow impact analysis set out in the '*Daylighting & Sunlight Report*' provided with the application, and in light of the site context, including its location within a built-up urban area, in my opinion, the overall scale, design, positioning and orientation of the proposed development, with particular reference to the separation of same from adjacent dwelling houses, will not give rise to any significant detrimental impact on the residential amenity of neighbouring property by reason of overlooking, overshadowing, loss of daylight / sunlight, or overbearing appearance.
- 7.6.2. With regard to concerns that the proposed construction works could undermine the structural integrity / stability of neighbouring property (i.e. 'Castlevue'), it is my opinion that any damage to, or interference with, adjacent property attributable to the proposed development would be a civil matter for resolution between the parties concerned and in this respect I would refer the Board to Section 34(13) of the Planning and Development Act, 2000, as amended, which states that '*A person shall not be entitled solely by reason of a permission under this section to carry out any development*' and, therefore, any grant of permission for the subject proposal would not in itself confer any right over private property. It is not the function of the Board to adjudicate on property disputes etc. or to act as an arbitrator in the assessment of damages and thus I do not propose to comment further on this matter.
- 7.6.3. With regard to the potential impact of the construction of the proposed development on the residential amenities of surrounding property, whilst I would acknowledge that the proposed development site is located in a primarily residential area and that any construction traffic routed through same could give rise to the disturbance / inconvenience of local residents, given the limited scale of the development proposed, and as any constructional impacts arising will be of an interim nature, I am inclined to conclude that such matters can be satisfactorily mitigated by way of condition.

7.7. **Traffic Implications:**

- 7.7.1. Due to its harbourside location, the proposed development site can only be accessed via the adjacent quayside roadway and in this respect it is notable that the subject proposal intends to utilise the existing entrance arrangement situated within

the south-western corner of the site to access the 3 No. dwelling houses proposed to the rear of the property in addition to the replacement fishermen's huts. The remainder of the scheme, including a garage area accommodating 2 No. parking spaces for the overhead apartment units, will be reliant on servicing directly from the quayside.

7.8. Concerns have been raised as regards the adequacy of the proposed parking and servicing arrangements and the potential for increased traffic congestion given the nature of the uses proposed and the proposal to narrow a section of the quayside. Further reference is made to the need to ensure continued access to the harbourside for existing and future users and the risk to public safety given the proximity of the harbour itself.

7.8.1. With regard to the foregoing, at the outset I would refer the Board to the Traffic Generation Report submitted with the initial application which includes an analysis of the likely trip generation consequent on the proposed development. This report has utilised the TRICS database to determine the peak-hour vehicle trip generated rates arising from the residential and 'marine-based' commercial / leisure components of the development and has concluded that the volumes of traffic involved are minimal whilst the small-scale commercial / leisure units will have a negligible impact on the operational performance of the existing road network. Having reviewed these details, whilst I would broadly accept the report's findings, I would suggest that the trip generation figures produced are likely to have underestimated the traffic impact of the proposal. In this respect I note, for example, that it has been calculated that the 5 No. dwelling units proposed on site will only result in 2 No. vehicular departure trips during the AM peak hour whilst the trip generation rate for the 'marine-based' element of the scheme has not expressly considered the individual uses proposed (i.e. a café, a retail (seafood sales) unit, the community-use facilities (noting that such facilities may be used by larger groupings such as sailing / diving clubs etc.) or the boat building / storage facility). However, I am cognisant of the availability of public transport links, including bus and train services, in the wider area, such as Dalkey station approximately 1km south of the site, whilst consideration should also be given to the traffic demands associated with the historical use of the site which previously accommodated the workshops and boat yard of the former 'Western Marine Ltd.' chandlery business. Therefore, on balance, whilst I would acknowledge



the concerns of local residents, having regard to the limited scale of the development proposed, the likely traffic volumes and speeds along this section of roadway, and the historical use of the site, it is my opinion that the surrounding road network has sufficient capacity to accommodate the additional traffic volumes consequent on the proposed development and that this aspect of the proposal does not pose a risk to traffic / public safety.

- 7.8.2. With respect to car parking, in accordance with Table 8.2.3: '*Residential Land Use - Car Parking Standards*' of the Development Plan, car parking for the residential component of the development should be provided at the following rates (depending on design and location):
- Residential Dwelling: 2 spaces per 3-bed unit+
  - Apartments: 1.5 spaces per 2-bed unit

*N.B.* The car parking standards set out for residential land uses in Table 8.2.3 are generally to be regarded as 'standard' parking provision and include for both residents and visitors parking (although there should be a clear distinction between the two types of parking).

- 7.8.3. Therefore, on the basis that the proposed development includes for 2 No. two-bed apartments and 3 No. four-bed detached houses, it would typically generate a demand for 9 No. parking spaces, although consideration could be given to a reduced parking requirement depending on a number of factors such as the proximity of the proposed development to public transport.

- 7.8.4. The proposed development includes for a total of 13 No. car parking spaces with 11 No. spaces (including 5 No. visitor spaces) located to the rear of the site (accessed via the existing site entrance arrangement) to serve the 3 No. detached dwelling houses with a further 2 No. spaces to be provided within an enclosed garage area accessed directly from the quayside for the apartment units. Accordingly, it is clear that sufficient car parking will be provided within the confines of the site to accommodate the demands of the residential component of the wider development. However, it is relevant to note that the Traffic Generation Report submitted with the application expressly states that the parking area to the rear of the site will be for the exclusive use of residents and will not be available for users of the retail / commercial / community aspects of the scheme. This is to be ensured by way of a

secured mechanical entrance gate and the implementation of a parking control regime by the appointed management company and thus it is unclear how access to the proposed fishermen's huts alongside the service road will be accommodated.

- 7.8.5. By way of further comment, I would have some reservations as regards the garage parking proposed for the apartment units given the limited space available for the manoeuvring of vehicles to and from same, the possible presence of obstructions along the quayside associated with activities further along the harbourside, and the proximity of the harbour edge. Accordingly, I would suggest that it would be preferable to omit these parking spaces and to utilise the space vacated by same in order to provide for a more active use / street frontage, particularly as the surplus parking to the rear of the site would be accessible to the apartments via the alternative eastern access arrangement.
- 7.8.6. With regard to the absence of car parking for the (non-residential) marine-related elements of the scheme (including the proposed café, seafood sales unit and community changing facilities), the applicant has asserted that the proposed marine leisure / commercial uses involve the relocation of existing activities and thus will not generate any vehicular trips in excess of those existing whilst the proposed cafe is expected to cater for local residents and persons already visiting other elements of the development i.e. it does not represent a generator of vehicular trips. In effect, the rationale for the non-provision of parking for the marine leisure and commercial units is that it is reflective of the current situation on site (i.e. the former chandlery business etc.), although reference has also been made to the availability of on-street car parking in the area such as along Harbour Road.
- 7.8.7. Whilst I am not entirely convinced by the argument put forth by the applicant that the inclusion of uses such as a café and new community changing facilities etc. will not give rise to any increase in parking demand over and above that associated with the historical use of the site, it is perhaps preferable in the interests of public safety to discourage unnecessary traffic movements along the quayside through the omission of dedicated parking given the limited manoeuvring space available and the proximity of the harbour edge. Accordingly, I am amenable in principle to relying on patrons of the proposed marine / commercial uses availing of the existing on-street parking in the surrounding area (e.g. along Harbour Road) as a continuation of current practices.

- 7.8.8. In terms of the wider servicing requirements of the proposed development, particular concerns have been raised as regards the proposal to narrow the space presently available along the quayside, notwithstanding the provision of a new open 'public square'. In this respect I would draw the Board's attention to the irregular building line of the existing construction and the fact that parts of the frontage of the application site can presently be used for informal parking purposes despite these areas being in private ownership and not forming part of the public road. Whilst I would acknowledge that the proposed development will result in the loss of those open areas along the site frontage which are likely used as an informal 'extension' of the public roadway thereby accommodating the parking / manoeuvring of vehicles along the quayside, I would reiterate that this space is private property and thus any use of same as part of existing harbourside activities by third parties is at the discretion of the property owner. Moreover, it is clear that the public square to be developed along the quayside is intended to be used for the movement of boats etc. to / from the craft boat building / storage building and thus could also provide for the servicing of the proposed café and retail unit. Although it would probably be necessary to install demountable bollards along the edge of the square with the public road in order to preserve it free from unauthorised parking, a suitable management scheme could provide for the servicing of the smaller commercial units (e.g. deliveries / collections) by way of this space (*N.B.* It is intended that the new public square be 'taken in charge' by the Local Authority).
- 7.8.9. In addition to the foregoing, I would refer the Board to the swept-path analysis provided with the application (Drg. No. B056-019) which confirms that adequate manoeuvring space will be available to permit a refuse truck to turn at the main site entrance whilst a fire tender will also be able to access the housing proposed to the rear of the site.
- 7.8.10. Therefore, having considered the nature and scale of the development proposed, the historical use of this brownfield site, the site location at the end of the quay beyond nearby housing, and the inclusion of a public square along the quayside, I am satisfied that the proposed development is capable of being adequately serviced from the quayside without giving rise to unacceptable traffic congestion or unduly impacting on existing harbourside activities.

7.9. **Appropriate Assessment:**

- 7.9.1. From a review of the available mapping, including the data maps from the website of the National Parks and Wildlife Service, it is apparent that whilst the proposed development site is not located within any Natura 2000 designation, there are a number of Natura 2000 sites within the wider area with the most proximate of same including the Dalkey Islands Special Protection Area (Site Code: 004172) approximately 1.0km to the southeast of the site, and the Rockabill to Dalkey Island Special Area of Conservation (Site Code: 003000) approximately 1.3km to the east of the site. In this respect it is of relevance to note that it is the policy of the Planning Authority, as set out in Chapter 4: '*Green County Strategy*' of the Dún Laoghaire Rathdown County Development Plan, 2016-2022, to ensure the protection of natural heritage and biodiversity, including European sites that form part of the Natura 2000 network, in accordance with relevant EU Environmental Directives and applicable National Legislation, Policies, Plans and Guidelines.
- 7.9.2. In effect, it is apparent from the foregoing provisions that any development likely to have a serious adverse effect on a Natura 2000 site will not normally be permitted and that any development proposal in the vicinity of, or affecting in any way, the designated site should be accompanied by such sufficient information as to show how the proposal will impact on the designated site. Therefore, a proposed development may only be authorised after it has been established that the development will not have a negative impact on the fauna, flora or habitat being protected through an Appropriate Assessment pursuant to Article 6 of the Habitats Directive. Accordingly, it is necessary to screen the subject proposal for the purposes of 'appropriate assessment'.
- 7.9.3. In screening the subject proposal for the purposes of appropriate assessment, I would refer the Board at the outset to the screening exercise undertaken by the applicant as set out in the document entitled '*Provision of Information Regarding Appropriate Assessment Screening*' which has accompanied the application. This has identified the following 17 No. European Sites within a 15km radius of the proposed works pursuant to the advice contained in the '*Appropriate Assessment of Plans and Projects in Ireland, Guidance for Planning Authorities*' as published by the Department of Environment, Heritage and Local Government:

- The Rockabill to Dalkey Island Special Area of Conservation (Site Code: 003000)
- The South Dublin Bay Special Area of Conservation (Site Code: 000210)
- The North Dublin Bay Special Area of Conservation (Side Code: 000206)
- The Ballyman Glen Special Area of Conservation (Site Code: 000713)
- The Bray Head Special Area of Conservation (Site Code: 000714)
- The Knocksink Wood Special Area of Conservation (Site Code: 000725)
- The Howth Head Special Area of Conservation (Site Code: 000202)
- The Wicklow Mountains Special Area of Conservation (Site Code: 002122)
- The Baldoyle Bay Special Area of Conservation (Site Code: 000199)
- The Ireland's Eye Special Area of Conservation (Site Code: 002193)
- The Dalkey Islands Special Protection Area (Site Code: 004172)
- The South Dublin Bay and River Tolka Estuary Special Protection Area (Site Code: 004024)
- The Wicklow Mountains Special Protection Area (Site Code: 004040)
- The North Bull Island Special Protection Area (Site Code: 004006)
- The Howth Head Special Protection Area (Site Code: 004113)
- The Baldoyle Bay Special Protection Area (Site Code: 004016)
- The Ireland's Eye Special Protection Area (Site Code: 004117)

7.9.4. In addition to the foregoing, using the precautionary principle, I would advise the Board that I have given consideration to Natura 2000 sites located outside of the defined 15km radius, however, as no potential pathways for any significant impacts can be established, it can be concluded that there is no potential for any impacts on those Natura 2000 sites located outside the 15km radius.

- 7.9.5. In terms of assessing the potential direct, indirect or secondary impacts of the proposed development on the conservation objectives of the aforementioned Natura 2000 sites, it should be noted that due to the location of the proposed works outside of any Natura 2000 designation, and the separation distances involved, it is clear that the subject proposal will not directly impact on the integrity of any European Site (such as by way of habitat loss or reduction). However, having reviewed the available information, in light of the nature and scale of the proposed development, and the specifics of the site location relative to certain Natura 2000 sites, in my opinion, by employing the source / pathway / receptor model of risk assessment, it can be determined that particular consideration needs to be given to the likelihood of the proposed development to have a significant effect on the conservation objectives of several of the aforementioned sites, including the Rockabill to Dalkey Island Special Area of Conservation, the South Dublin Bay Special Area of Conservation, the Dalkey Islands Special Protection Area, and the South Dublin Bay and River Tolka Estuary Special Protection Area (by reference to their qualifying interests), due to a deterioration in water quality attributable to the proposed works given the hydrological connectivity between the application site and those European sites. In this regard I would advise the Board that the existing and proposed surface water drainage networks on site drain directly to Bullock Harbour and Dublin Bay whilst the discharge of treated effluent from the foul drainage network is also a potential pathway for pollutants between the application site and Dublin Bay.
- 7.9.6. At this point I would refer the Board to Tables 1 & 2 of the applicant's screening exercise which considers the pressures on water quality within European sites in proximity of the application site.
- 7.9.7. With regard to the discharge of surface water runoff from the site directly into Bullock Harbour during the demolition, construction and operational phases of the proposed development, I would concur with the findings of the screening assessment that the dilution factor and assimilative capacity of Dublin Bay, particularly when taken in combination with the separation distance and the substantial marine open water buffer between the discharge point and surrounding Natura 2000 sites, will ensure that the proposed development is unlikely to give rise to any significant adverse impact on water quality or the qualifying interests of distant Natura 2000 sites.

7.9.8. Foul water from the proposed development will be directed to the public mains sewer for treatment at the Ringsend Wastewater Treatment Plant prior to discharge to Dublin Bay and in this respect I note the applicant's reference to the potential for any discharge from existing or proposed projects to act cumulatively to reduce water quality in Dublin Bay thereby potentially affecting European sites given that the treatment plant has historically operated at or above capacity and was found to be in non-compliance with several of the parameters of its EPA discharge licence in 2013. In this regard it has been submitted that no significant effects from foul water discharge to the mains system consequent on the proposed development are predicted to occur due to the following:

- There was no proven link between WWTP discharges and nutrient enrichment of sediments in Dublin Bay based on analyses of dissolved and particulate nitrogen signatures;
- Enriched water entering Dublin Bay has been shown to rapidly mix and become diluted such that the plume is often indistinguishable from the rest of the bay water;
- Marine modelling for the WWTP indicates that discharged effluent is rapidly mixed and dispersed to low levels via tidal mixing within a short distance of the outfall; and
- The commitment of Irish Water to the implementation of upgrading works at the plant.

*N.B.* The Board granted approval on 16<sup>th</sup> November 2012 under ABP Ref. No. 29N.YA0010 for the Ringsend Wastewater Treatment Works Extension Project which would expand wastewater treatment plant to its ultimate capacity of 2.4 million PE within the confines of its site and achieve the required discharge standards. A further approval was issued on 24<sup>th</sup> April, 2019 under ABP Ref. No. ABP-301798-18 for revisions and alterations to the existing and permitted development at the Ringsend Wastewater Treatment Plant and for a new Regional Biosolids Storage Facility, being two components of an integrated wastewater treatment facility.

7.9.9. At this point It is of further relevance to note that the Ringsend WWTP has an existing discharge authorisation licence in accordance with the requirements of the Waste Water Discharge (Authorisation) Regulations, 2007, as amended.

7.9.10. Having considered the available information, it is my opinion, given the nature, design and scale of the proposed development, the site location outside of any Natura 2000 designation, the limited ecological value of the lands in question, the separation distances involved between the site and nearby designations, and the availability of public services, that the proposal is unlikely to have any significant effect in terms of the disturbance, displacement or loss of habitats or species on the ecology of the aforementioned Natura 2000 sites (*N.B.* Whilst the Planning Authority has raised concerns that construction works on site could potentially disturb protected bird species en route to Natura 2000 sites which may utilise the adjacent rocky outcrop for feeding / landing opportunities, given the wider site context, with particular reference to its location in a built-up urban area, the historical use of the application site, and the recreational use of the outcrop in question, I am not satisfied as regards the likelihood of any such impact). Therefore, I am inclined to conclude that the proposed development would not be likely to significantly affect the integrity of the foregoing Natura 2000 sites and would not undermine or conflict with the Conservation Objectives applicable to same.

7.9.11. Accordingly, it is reasonable to conclude on the basis of the information available, which I consider adequate in order to issue a screening determination, that the proposed development, individually and in combination with other plans or projects, would not be likely to have a significant effect on any European site, in particular, those sites set out in Section 7.9.3 above, in view of the relevant conservation objectives and that a Stage 2 appropriate assessment (and the submission of a NIS) is not therefore required.

7.10. **Environmental Impact Assessment (Screening):**

7.10.1. Having regard to the nature and scale of the development proposed, the location of the developable lands outside of any protected site and the nature of the receiving environment, the limited ecological value of the lands in question, the availability of public services, the separation from the nearest sensitive location (i.e. the Dalkey Coastal Zone and Killiney Hill Proposed Natural Heritage Area (Site Code: 001206) to the north, and the proposal to adhere to common construction management practices, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment



can, therefore, be excluded at preliminary examination and a screening determination is not required.

7.11. **Other Issues:**

7.11.1. **Archaeological and Architectural Heritage:**

From a review of the available information, including the 'Archaeological Assessment Report' submitted with the application, it can be confirmed that although there are a number of recorded monuments within the wider site surrounds, including RMP Nos. DU023-020004: 'Quay': Bullock Harbour & DU023-020001: 'Martello Tower', there are no such features within the confines of the development lands. Furthermore, archaeological test trenching undertaken on site under licence did not record any items of archaeological significance. Accordingly, I am amenable to the inclusion of a condition in any grant of permission requiring all groundworks associated with the development to be monitored by a qualified archaeologist as per the recommendation of the Department of Culture, Heritage and the Gaeltacht.

In terms of built heritage, whilst the surrounds of Bullock Harbour and its quayside are of wider architectural and historical interest, the proposed development site is not a protected structure nor is it included in the National Inventory of Architectural Heritage. Moreover, the structures proposed for demolition are somewhat dilapidated and of little architectural merit.

7.11.2. **Wildlife Considerations:**

Concerns have been raised as regards the potential impact of the proposed construction and demolition works on the adjacent Dalkey Coastal Zone and Killiney Hill / Rocheshill Proposed Natural Heritage Area (Site Code: 001206), with particular reference to maritime wildlife, however, having regard to the limited ecological value of the application site, the nature and scale of the works proposed, and the implementation of best practice construction management measures, I am satisfied that the proposal is unlikely to have any significant impact on the aforementioned pNHA.

In reference to the possible presence of bats on site, I would suggest the imposition of a suitable condition in line with that recommended by the Department of Culture, Heritage and the Gaeltacht.

## 8.0 Recommendation

- 8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be upheld in this instance and that permission be refused for the proposed development for the reasons and considerations set out below:

## 9.0 Reasons and Considerations

1. Having regard to the predominance of residential use within the proposed development and the low proportion of the total floor area intended for waterfront and harbour related uses, including commercial marine-based activity and public water-based recreational uses, together with the limited developable site area being provided to support and service such uses, it is considered that insufficient provision has been made for waterfront, harbour and marine related uses and that the proposed development would materially contravene the land use zoning objective for the site as set out in the Dún Laoghaire-Rathdown County Development Plan, 2016-2022 which seeks 'To provide for waterfront development and harbour related uses', and would further undermine the achievement of Specific Local Objective No. 22: 'Bullock Harbour' which aims to provide for an appropriate mixed-use redevelopment of the lands in question to include for commercial marine-based activity and public water-based recreational uses. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
2. Having regard to the location of the proposed development in an area which has been identified as potentially liable to flood events and significant wave overtopping, and to the provisions of the 'Planning System and Flood Risk Management, Guidelines for Planning Authorities' issued by the Department of the Environment, Heritage and Local Government in November 2009, the Board is not satisfied, on the basis of submissions made in connection with the planning application and the appeal, that the subject site is an appropriate location for the scale and type of development proposed or that the proposed development would not result in serious injury to the amenities of persons and

property as a result of this. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

3. Given the prominent quayside and coastal location of the proposed development and taking into account the special character of the immediate harbour area, it is considered that the proposed development does not provide for a suitably integrated, high quality, mixed-use design which considers the site holistically and responds appropriately to the unique character of Bullock Harbour. The proposed development would therefore be seriously injurious to the special character and amenities of the harbour area and would be contrary to the requirements of Specific Local Objective 22 as set out in the Dún Laoghaire-Rathdown County Development Plan, 2016-2022. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

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Robert Speer  
Planning Inspector

29<sup>th</sup> May, 2019