



An  
Bord  
Pleanála

## Inspector's Report 308845-20

---

<b>Development</b>	Recreational and interpretive centre building and a range of associated biodiversity proposals.
<b>Location</b>	Merrion Road / Rock Road, Booterstown, Blackrock, Co. Dublin
<b>Planning Authority</b>	Dublin City Council
<b>Planning Authority Reg. Ref.</b>	4514/19
<b>Applicant(s)</b>	Soundvale Limited
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party v. Decision
<b>Appellant(s)</b>	Soundvale Limited
<b>Observer(s)</b>	(1) Friends of Booterstown Coast (2) An Taisce
<b>Date of Site Inspection</b>	28th October 2022
<b>Inspector</b>	Louise Treacy

## 1.0 Site Location and Description

- 1.1. The subject site has a stated area of c 1.17 ha and is located on the eastern / seaward side of Merrion Road / Rock Road (R118), Booterstown, Blackrock, Co. Dublin. The site is greenfield in nature and generally comprises open grassland with pockets of dense scrub, which is inaccessible in parts, particularly along the northern boundary. Japanese Knotweed is present on the site.
- 1.2. The roadside (western) site boundary is defined by intermittent mature trees, set behind a low stone wall. Mature trees also extend along the northern site boundary. This existing planting largely screen public views into the site from the adjoining road network.
- 1.3. The site is bounded by greenfield lands immediately to the north and by a car park and an office building (Merrion House) further to the north. The site is bounded immediately to the south by greenfield lands within the administrative area of Dún Laoghaire-Rathdown County Council and by the culverted Trimleston Stream and Booterstown Marsh beyond. The Nutley Stream extends in an open channel along the eastern site boundary, with the DART railway line and Booterstown Strand located further to the east. A gas wayleave extends along the northern and western site boundaries.
- 1.4. The neighbouring development on the western side of Merrion Road / Rock Road at this location generally comprises a mix of residential and commercial developments, including 2-storey dwellings at Rock Road, Trimleston Avenue and Bellevue Avenue. A pedestrian crossing extends across Rock Road, just south of the junction with Trimleston Avenue and to the south-west of the subject site. A further pedestrian crossing extends across Merrion Road to the north-west of the site opposite Merrion House.
- 1.5. A petrol service station (Applegreen) and a hotel development (Maldron) are located on the western side of Merrion Road opposite the site. Llandaff Terrace, a terrace of 2-storey dwellings is located to the north-west, with Elm Park Business Campus located beyond. Booterstown Dart station is located approx. 600 m to the south-east of the subject site.

## 2.0 Proposed Development

2.1. The proposed development shall provide for a new recreational and interpretive centre building (total GFA c. 6,329 m<sup>2</sup>) and a range of associated biodiversity proposals. The overall proposal shall comprise the following development over 5 floor levels (overall building height c. 18.55m parapet):

- (1) Main external entrance area (c. 334 m<sup>2</sup>) at upper ground floor level.
- (2) An interpretive centre (c. 500 m<sup>2</sup> GFA) at upper ground floor and mezzanine floor levels and associated external terrace area at mezzanine floor level only (c. 165 m<sup>2</sup>).
- (3) A crèche facility (c. 278 m<sup>2</sup> GFA) and associated outdoor play area/external terrace area (c. 440 m<sup>2</sup>) at upper ground floor level.
- (4) A member's area at upper ground floor level (c. 190 m<sup>2</sup> GFA).
- (5) A café / reception area (c. 340 m<sup>2</sup> GFA) and associated shared WC facilities (c. 52 m<sup>2</sup> GFA) at upper ground floor level.
- (6) 6 no. health studios (c. 842 m<sup>2</sup> GFA) and 2 no. external health studio terrace areas (c. 75 m<sup>2</sup> and 40 m<sup>2</sup> respectively) at upper ground floor and mezzanine floor levels.
- (7) A gym facility (total GFA c. 630 m<sup>2</sup>) and an external gym terrace area (c. 135 m<sup>2</sup>) at 1<sup>st</sup> floor level.
- (8) A 20 m internal swimming pool, jacuzzi and hydro pool area (c. 575 m<sup>2</sup> GFA) and external pool terrace area (c. 230 m<sup>2</sup>) at 1<sup>st</sup> floor level.
- (9) Service / changing facilities (including circulation space) for the health studios, gym and pool area (c. 876 m<sup>2</sup> GFA) at upper ground floor, mezzanine floor and 1<sup>st</sup> floor levels.
- (10) A spa facility (c. 687 m<sup>2</sup> total GFA) comprising (a) a reception area, treatment rooms, sauna, salt room, steam room, relaxation rooms and circulation areas (c. 547 m<sup>2</sup> GFA); and (b) spa changing facility and WC (c. 140 m<sup>2</sup> GFA) at 2<sup>nd</sup> floor level. An external spa area (total c. 568 m<sup>2</sup>) comprising a relaxation terrace area (c 88 m<sup>2</sup>); a spa jacuzzi and external pool area (c. 100 m<sup>2</sup>); and pool run around area (c. 380 m<sup>2</sup>) is also proposed at 2<sup>nd</sup> floor level and within the main building envelope.

(11) A restaurant (c. 452 m<sup>2</sup> total GFA) comprising restaurant floor space (c. 344 m<sup>2</sup> GFA) and ancillary areas (c. 108 m<sup>2</sup> GFA) at 2<sup>nd</sup> floor level. An external restaurant terrace area (c. 300 m<sup>2</sup>) is also proposed at 2<sup>nd</sup> floor level.

(12) Service areas (c. 271 m<sup>2</sup> GFA) comprising (a) a bin store, acid store, alkaline store, delivery area and water storage and pump area (c 184 m<sup>2</sup> GFA); (b) ICT room (c. 6 m<sup>2</sup> GFA); (c) ESB sub-station and low-voltage switch rooms (c. 26 sq m GFA); and (d) water treatment plant (c. 55 m<sup>2</sup> GFA) at lower ground floor, upper ground floor and mezzanine floor levels.

(13) Recessed car parking area, circulation and ramp space (c. 1,910 m<sup>2</sup>) at lower ground floor level.

(14) Shared circulation space including fire-fighting cores (c. 636 m<sup>2</sup> GFA) at lower ground floor, upper ground floor, mezzanine floor, 1<sup>st</sup> floor and 2<sup>nd</sup> floor levels.

2.2. A total of c.4,197 m<sup>2</sup> external areas (external terraces / run around areas / car parking areas) are proposed. The proposal also provides for open landscaped space, which forms part of an overall biodiversity plan for this site and the adjoining Dún Laoghaire-Rathdown County Council lands to the south (a number of biodiversity proposals are the subject of a separate planning application lodged concurrently to Dún Laoghaire-Rathdown County Council). Biodiversity proposals for this site include (1) a portion of new coastal meadow; (2) a coastal tree belt; and (3) coastal grass and shrub internal garden.

2.3. An access ramp to the overall development is proposed at lower ground and upper ground floor levels. A second access ramp leading to a mown grass path is also proposed to facilitate a new bird hide on the adjoining site to the south (which is the subject of a concurrent planning application to Dún Laoghaire-Rathdown County Council). Vehicular access (entry point) to the overall development is proposed via Merrion Road/Rock Road (R118) in the form of a priority-controlled junction with an associated right turn lane opposite Bellevue Avenue. A separate vehicular access (exit point) to serve the development along Merrion Road/Rock Road (R118) is the subject of a separate planning application lodged concurrently to Dún Laoghaire-Rathdown County Council. A total of 68 no. car parking spaces, 92 no. bicycle spaces, and 3 no. motorcycle spaces are proposed. Pedestrian access is also facilitated at 2 locations from Merrion Road/Rock Road (R118). The associated site

and infrastructural works proposed include provision for water services, foul and surface water drainage and connections, attenuation proposals, all landscaping works, boundary treatment, including the provision of steel gates along the boundary frontage of the site at Merrion Road/Rock Road R118, internal roads and footpaths, and electrical services.

- 2.4. The proposed development forms part of a larger combined proposal which extends across the adjoining lands to the south within the administrative area of Dún Laoghaire-Rathdown County Council. The proposed development on this adjoining site is subject to a concurrent appeal case before the Board (see section 4.0 of this report for details) and comprises, inter alia, landscaping, biodiversity proposals, associated site and infrastructural works and a vehicular exit from the combined application sites onto Merrion Road / Rock Road (R118).

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

- 3.1.1. Dublin City Council issued Notification of the Decision to Refuse Permission for the proposed development on 10<sup>th</sup> November 2020 for 1 no. reason as follows:

“Having regard to the information submitted with both the application and subsequent additional information received, the Planning Authority cannot be satisfied that the proposed development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on Wetlands as a Qualifying Interest of the South Dublin Bay and River Tolka Estuary SPA (004024) and to Species of Conservation Interest for the South Dublin Bay and River Tolka Estuary SPA (004024). The proposed development would therefore be contrary to policy GI24 which seeks to conserve and manage all Natural Heritage Areas, Special Areas of Conservation and Special Protection Areas and Policy GI17 which seeks to ensure that any adverse environment effects are avoided, remedied or mitigated where sustainable coastal recreational amenities are proposed. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area”.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports (24<sup>th</sup> January 2020 and 10<sup>th</sup> November 2020)

3.2.2. Following an initial assessment of the planning application, Dublin City Council's Planning Officer considered that Further Information was required in relation to 9 no. items which can be summarised as follows:

3.2.3. **Item No. 1:** Details of the proposed operation of the interpretive centre, any agreements with educational institutions, admissions policy, hours of admission without the payment of fees and its long-term retention on site. Confirmation of the existence of the Advisory Group, its members and terms of reference are required.

3.2.4. **Item No. 2 (a):** An updated Ground Investigations report to include: (i) depth of made ground throughout the site, (ii) map location of trial pits, (iii) ground conditions in relation to proposed piling locations.

**(b)** A complete borehole survey to determine piling depth, a proposed pile design including proposed locations, method statement and mitigation strategy – revised AA screening and NIS to reflect the foregoing.

**(c)** Revised management plan for Invasive Alien Species (IAS) to include: (i) risk of spread of IAS to areas outside the site, in particular Irish Rail property, (ii) assessment of feasibility of proposed construction methods which may be affected by the ongoing presence of Japanese Knotweed, (iii) proposed methods and rationale.

**(d)** Provide an updated wintering bird survey with data on current season to determine trends, data for the Booterstown sub-sites and usage over the complete winter migratory season.

**(e)** Revised habitat maps in the EIAR and AA screening report and an assessment of their importance in terms of the city's biodiversity. The applicant is requested to prepare a breeding bird survey for the site with reference to the NPWS report and assess the importance of the existing habitats on the site for breeding birds. The importance of *Betula pubescens* should be assessed in the terms of the city's biodiversity.

**(f)** Demonstrate that any alterations of the design have been considered in the AA and provide a revised AA Screening Report to comply with the EU Habitats Directive.

- (g) Examine the interactions between any changes required under the Request for Further Information with regard to the EIAR findings.
- 3.2.5. **(3 – 8)** The requested Further Information of the Transportation Planning Division as per the report dated 20<sup>th</sup> January 2020.
- 3.2.6. **(9) (a), (b), (c)** The requested Further Information of the Engineering Department Drainage Division as per the report dated 9<sup>th</sup> January 2020.
- 3.2.7. **(9)(d)** Explore how the Integrated Constructed Wetland can be incorporated into the flood protection measures and the overall landscape design.
- 3.2.8. The applicant submitted a **Response to the Request for Further Information** on 16<sup>th</sup> September 2020. No significant changes were proposed to the development at this stage. The most notable change was the relocation of the compensatory flood storage area to the north-eastern part of the site (within the administrative area of Dublin City Council) adjacent to the Nutley Stream and the proposed building. The relocated flood storage area was proposed to enable the retention of riparian scrub and grassland habitat along the Nutley Stream on the south-eastern portion of the overall site (lands within the administrative area of Dún Laoghaire-Rathdown County Council).
- 3.2.9. Other changes to the scheme include, inter alia, inclusion of East Coast Trail bicycle lane and amendment to entrance and exit to allow for same, repositioned site security boundary, repositioned stone boundary wall to accommodate all traffic and transport amendments, repositioned trees in the tree belt and the entrance gates to allow for Bus Connects future proofing. The road junction at Trimleston Avenue will be altered to facilitate a pedestrian crossing on each arm of the junction. The road layout has been altered to show the “with Bus Connects” and the “without Bus Connects” scenario along with the East Coast Trail cycleway.
- 3.2.10. The application documents, including the EIAR and NIS, and the planning application drawings have been updated accordingly to reflect these changes.
- 3.2.11. The applicant’s response can be summarised as follows:
- 3.2.12. **Item No. 1:** The “Applicant’s Response Document” provides details on the “not for profit” operational structure of the interpretive centre, engagement with educational institutions and enthusiast groups and details on the proposed admissions policy.

The aim of the interpretive centre is to reach a wide range of educational and enthusiast groups in a safe and managed way. A “Long-Term Retention Statement” is also provided in compliance with the Dublin City Development Plan and the Planning Acts, which demonstrates that the applicant is committed long term to the subject site and the proposed development.

- 3.2.13. **Item No. 2 (a):** A Ground Investigation Report (dated July 2020) has been submitted based on site investigations undertaken from May to June 2020. The results and interpretation of the results of the ground investigations are incorporated into the revised EIAR (Chapter 6 – Biodiversity, Chapter 7 – Land & Soils, Chapter 8 – Hydrology) and the updated AA Screening Report and updated NIS.
- 3.2.14. **Item No. 2 (b):** The proposed pile design is contained within the updated Construction Management Plan. The pile design has been assessed in the updated EIAR – Chapter 6 Biodiversity, updated AA Screening Report and updated NIS when considering disturbance and displacement impacts on fauna that occur within the zone of influence of the proposed development. Piling will be restricted to April – July inclusive, outside of the most sensitive period for SCI birds, including pre-migrating terns and wintering birds.
- 3.2.15. **Item No. 2 (c):** An updated Invasive Species Management Plan has been prepared which sets out the historical context of Japanese Knotweed on the site, the feasibility of treatment options, details of specific measures and remediation measures. The risk of spread of Japanese Knotweed onto Irish Rail lands is not considered to be significant or of particular concern.
- 3.2.16. **Item No. 2 (d):** Additional winter bird surveys were completed in February and March 2020 which further substantiate the findings of the 2019 winter bird surveys. The combined surveys demonstrate clear and comprehensive patterns of bird movement across the site and winter bird usage of lands within the proposed development site.
- 3.2.17. Both survey years demonstrate the proposed development site is not used by Special Conservation Interest (SCI) species associated with nearby SPA’s although habitats within the site do accommodate numbers of wintering snipe. The restricted seasonal coverage of the winter bird surveys across 2019 and 2020 is not considered to be a limitation of the EIAR or NIS assessment as the proposed site is



sub-optimal habitat for the SCI species associated with the surrounding SPA sites. The site does not correspond with the intertidal or upper shoreline habitats used by SPI species for feeding and roosting in Booterstown Marsh and Dublin Bay.

- 3.2.18. Remote high-resolution cameras were installed on the southern portion of the site, which offers some extremely limited potential as a roosting / foraging site for wintering birds. The results of the camera surveys confirm that no SCI birds were recorded using any habitats within the proposed development site, including the southern portion.
- 3.2.19. **Item No. 2 (e):** The EIAR Biodiversity chapter has been updated to account for the City's Biodiversity Action Plan, with updates in the Habitat Management Plan, EIAR and NIS where relevant. The landscape design incorporates planting that is important to the city's biodiversity (e.g. Downey Birch) and has aimed to retain habitats, flora and fauna which are associated with the site and which have a limited range within the city and its green infrastructure. The southern portion of the site has largely been maintained without development infrastructure to maintain its importance in the city's green infrastructure network.
- 3.2.20. **Item No. 2 (f) and (g):** Changes to the proposed development have been accounted for in the updated EIAR Chapter 6 Biodiversity, the AA Screening Report, NIS and Habitat Management Plan.
- 3.2.21. **Item No. 3 (a):** The proposed 4-arm signalised junction at Trimleston Avenue has been amended to include a pedestrian crossing on each arm of the junction, which will improve pedestrian access from the western side of Merrion Road.
- 3.2.22. **Item No. 3 (b):** Autotrack drawings of emergency vehicle access in and around the proposed development have been provided. Waste vehicle access to the lay-by proposed to the front of the complex is also presented. Bus access to the development will be allowed and buses will also use this lay-by. Autotracking for buses will be the same as for waste vehicles.
- 3.2.23. **Item No. 3 (c) (i):** A Transportation Response document has been prepared by Arup which includes the sites used in TRICS to determine the trip rate for the proposed development, a copy of the traffic count data used in the submitted assessment and a copy of the LINSIG output files.

- 3.2.24. **Item No. 3 (c) (ii):** The distribution of trips was based on the recorded traffic counts and was generally weighted based on the two-way recorded traffic flows at 5 no. locations. The distribution pattern was then altered to reflect the presence of “pass-by” trips on Merrion Road, where patrons would call into the centre on their way to work in the morning peak period and on their way home from work in the evening peak period. The volume of traffic has not been reduced to reflect “pass-by” trips, which are already on the street network, and therefore the presented assessment is considered conservative in nature.
- 3.2.25. **Item No. 3 (c) (iii):** The LINSIG models were aligned to reflect existing operations along the Rock Road as best possible. It is acknowledged that in congested urban street networks, individual junctions are impacted by traffic congestion upstream within the overall street network. The Merrion Road / Rock Road radial route experiences delays and queuing during both the morning and evening peak hour periods, including at the junction of Merrion Road / Trimleston Avenue.
- 3.2.26. **Item No. 3 (c) (iv):** The correct mean max queue figure is 9 rather than 54, which was cited in error.
- 3.2.27. **Item No. 3 (c) (v):** Under the “with” and “without” development scenarios, queuing will remain an ongoing issue along Merrion Road / Rock Road, with queuing potentially impacting both the site entrance and Bellevue Avenue. Based on the current traffic management layout, and under both the “with” and “without” development scenarios, there is potential that traffic queuing at the existing Trimleston Avenue junction may impact the existing bus lane. Due to the scale of the proposed development, no material change is likely following the construction of the proposed development.
- 3.2.28. The delivery of the Bus Connects project will impact junction capacity in the area for general traffic and is likely to deliver queues blocking both the site entrance and Bellevue Avenue. This project will offer significant improvements to bus movements (and overall people movements) through this junction, resulting in a high-capacity transport network along this corridor.
- 3.2.29. **Item No. 3 (c) (vi):** The right-turn lane has been provided at the request of Dún Laoghaire-Rathdown County Council, is not required for junction capacity reasons,

and will ensure any waiting vehicles on Rock Road will not impact on traffic travelling towards the city.

- 3.2.30. **Item No. 3 (c) (vii):** The right-turn lane does extend in front of Applegreen petrol station and Bellevue Avenue but access into both will still be permitted and is similar to many situations along major urban roadways.
- 3.2.31. **Item No. 3 (viii):** The revised Traffic Management Plan has been modified to include the recommendations accepted in the feedback form submitted with the Stage 1 Safety Audit.
- 3.2.32. **Item No. 3 (ix):** A phasing diagram of the proposed 4-arm signalised junction has been provided.
- 3.2.33. **Item No. 4:** Drawings are provided showing provision for the East Coast Trail and Bus Connects corridor. The drawings also show the proposed repositioning of the security boundary to the site by way of a native hedge and sliding steel, low gates.
- 3.2.34. **Item No. 5:** Provision has been made for the East Coast Trail.
- 3.2.35. **Item No. 6:** Consultation has been undertaken with Gas Networks Ireland and the site layout of the proposed development respects the wayleave as set by Gas Networks Ireland.
- 3.2.36. **Item No. 7:** A revised Outline Mobility Management Plan has been prepared.
- 3.2.37. **Item No. 8:** The busiest period within the facility will be mid-morning, with a second peak expected in the evening. A car park management plan is provided. A car park barrier is in place to ensure that no unauthorised parking is permitted on the internal road network. Coach arrivals will be permitted to use the service area to the front of the proposed development.
- 3.2.38. **Item No. 9 (a):** The proposed design requires no additional loading on the existing public surface water sewer running through the site and a minimum 3 m clearance will be provided between any on-site sewers and all structures.
- 3.2.39. **Item No. 9 (b):** Surface water layout drawings shall be provided for the agreement of the Drainage Division prior to the commencement of development.
- 3.2.40. **Item No. 9 (c):** The scheme shows a setback for cycleway and realigned bus lane as per the Further Information request. The scheme has the facility to accommodate a

Bus Connects scheme, which is not yet developed. The surface water drainage from the footpath, bus lane will be in accordance with Local Authority requirements and is expected to involve a connection into the public surface water sewerage system.

3.2.41. **Item No. 9 (d):** The surface water drainage system has remained as submitted and has been schemed to replicate, as far as possible, the existing wetland environment (considerable SuDS measures). The current scheme is considered the optimum arrangement given the site, environmental and usage considerations.

3.2.42. Following the applicant's Further Information submission, Dublin City Council's Planning Officer had no objection to the principle of the proposed development having regard to the site's Z9 zoning objective. However, the Planning Officer also noted the concerns which had been raised by the Parks and Landscape Officer. It was considered that the lack of detail on piling locations failed to allow the Authority to determine whether there will be impacts of noise and dust emissions on SCI birds of the adjoining Natura 2000 sites. Concerns were also raised in relation to: (1) piling in areas of contaminated soil may adversely affect groundwater and soils, (2) potential impacts due to hydrological links from the site to South Dublin Bay and River Tolka Estuary SPA, South Dublin Bay SAC, North Bull Island SPA and North Dublin Bay SAC, (3) the lack of data on wintering bird surveys, (4) new information in the RFI response on the level of contamination had not been referred to in the NIS with respect to measures to protect surface waters during construction.

3.2.43. Based on the foregoing, the Planning Authority was not satisfied that the proposed development would not adversely affect, directly or indirectly, the integrity of any European site, either alone or in combination with other plans or projects. It was also considered that the information contained in the EIAR does not fully comply with the provisions of Articles 3, 5 and Annex IV of EU Directive 2014/52/EU. As such, it was recommended that planning permission be refused for the proposed development.

3.2.44. **Other Technical Reports**

3.2.45. **Engineering Department Drainage Division (9<sup>th</sup> January 2020 and 2<sup>nd</sup> November 2020):** Recommended that **Further Information** be requested in relation to: (1) revised plans to ensure all issues related to surface water management are addressed, (2) the exact location of the existing public surface water sewer running through the site must be accurately determined and a minimum clear distance of 3 m

shall be maintained between sewers and all structures – the proposed surface water layout shall be submitted indicating proposed clearance / diversion, for written agreement at the commencement of the project, (3) surface water management details (drawings and report) shall be submitted showing how the set-back area for the future bus connection at Merrion Road will be drained within the site.

3.2.46. Following the applicant's Further Information submission, the Drainage Division had no objection to the proposed development subject to conditions.

3.2.47. **City Archaeologist (15<sup>th</sup> January 2020):** Appropriate planning conditions identified in the event planning permission is granted for the proposed development.

3.2.48. **Transportation Planning Division (20<sup>th</sup> January 2020 and 4<sup>th</sup> November 2020):** Recommended that **Further Information** be requested in relation to: (1) serious concerns regarding pedestrian movements generated to / from the proposed development, particularly the western side of Merrion Road, (2) auto-tracking of emergency and refuse vehicle access and bus access (if proposed), (3) queries regarding the submitted Traffic Impact Assessment, (4) the conflict between the site boundary and the Bus Connects corridor and East Coast Trail and the impact of the Gas Wayleave Zone, (5) a revised Outline Mobility Management Plan tailored for the proposed facility and its various uses, access arrangements and parking provision, (6) proposed car parking access and management arrangements.

3.2.49. Following the applicant's Further Information submission, the Transportation Planning Division had no objection to the proposed development subject to conditions.

3.2.50. **Parks and Landscape Services (21<sup>st</sup> January 2020 and 3<sup>rd</sup> November 2020):**

Recommended that **Further Information** be requested in relation to:

(1) Details of the proposed operation of the interpretive centre, any agreements with educational institutions, admissions policy, whether or not there will be hours of admission without fees payable and a statement regarding its long-term retention on the site.

(2) How the proposed development will ensure adequate provision for greenways, specifically for the Dublin Bay section of the East Coast Trail of the Dublin regional cycle network.

(3) An updated Ground Investigation Report to include depth of made ground throughout the site, map locations of trial pits and ground conditions in relation to proposed piling locations.

(4) The completion of a borehole survey to determine piling depth, a proposed pile design which includes proposed locations and method statement with detailed mitigation strategy of any impacts. The AA Screening report and NIS should be revised to reflect the proposed piling design and potential impacts during construction.

(5) A revised management plan for Invasive Alien Species, including (i) risk of spread to areas outside the site, in particular Irish Rail property, (ii) assessment of feasibility of proposed construction methods which may be affected by the ongoing presence of Japanese Knotweed, (iii) proposed methods and rationale; (6) an updated wintering bird survey which gives information on site usage in relation to data for the current season to determine trends, data for the Booterstown sub-sites and usage over the complete winter migratory season.

(6) Revised habitat maps in the EIAR (and AA screening report) and to assess their importance in terms of the city's biodiversity. The applicant is requested to prepare a breeding bird survey for the site with reference to the NPWS report and assess the importance of any existing habitats on site for breeding birds. The importance of *Betula pubescens* should be assessed in terms of the city's biodiversity.

(7) Revised AA Screening Report.

(8) Clarity required on the feasibility of the proposed Coastal Tree Belt which may be negated by any land take from planned transport projects.

3.2.51. Following the applicant's Further Information submission, Parks and Landscape Services considered that:

(1) Specific piling locations should have been identified to complete the AA with respect to noise and dust emission impacts on SCI birds of the Natura 2000 sites and to determine if piling is proposed in areas of contaminated soils and the effect on groundwater and soils.

(2) The NIS does not adequately describe how Natura 2000 sites (and the Nutley Stream) might be impacted by the mobilisation of contaminants in the made ground

during excavation and by accidental spills during construction and the proposed mitigation measures.

(3) Data on bird usage of the site has not been provided for a complete winter season.

(4) There is a discrepancy between the NIS and EIAR for the flight numbers for ducks and waders crossing the site.

(5) The Outline CEMP does not reference the presence of hazardous waste on site or the proposed treatment of contaminated land.

(6) The interactions of the findings of the EIAR of contaminated soil, soil (surface) water and groundwater have not been fully addressed with respect to potential impacts on the stream network, Booterstown Marsh and Natura 2000 sites of Dublin Bay.

3.2.52. It was recommended that **planning permission be refused** for the proposed development on the grounds that potential impacts to wetlands as a Qualifying Interest of the South Dublin Bay and River Tolka Estuary SPA (004024) and to Species of Conservation Interest for the South Dublin Bay and River Tolka Estuary Special Protection Area (Site Code 4024) cannot be assessed and, therefore, the precautionary principle applies.

3.2.53. **Waste Management Division (22<sup>nd</sup> January 2020)**: Planning condition identified in the event permission is granted for the proposed development.

### 3.3. Prescribed Bodies

3.3.1. **Irish Rail (17<sup>th</sup> December 2019)**: Planning conditions identified in relation to the safety and operation of the adjoining railway line in the event planning permission is granted for the proposed development.

3.3.2. **Irish Water**: None received.

3.3.3. **Dept. of Culture, Heritage and the Gaeltacht (21<sup>st</sup> January 2020)**: Recommended that **Further Information** be requested regarding revised landscaping proposals which do not involve the sowing of seeds of rare native species, or seeds of native species already growing on the site or in adjacent areas, including South Dublin Bay SAC or Booterstown Marsh. The proposals should seek to minimise the clearance of scrub from the site, particularly on the seaward side where various bird species nest,

including Reed Bunting and Stonechat. They should also seek to avoid as far as is feasible, the encroachment of landscaping measures on the floodplain zone of the Nutley Stream and therefore the extent of site re-grading which will be required.

- 3.3.4. **National Transport Authority (7<sup>th</sup> January 2020):** The Authority is satisfied that the applicant has accounted for Bus Connects and the East Coast Trail cycle track. Concerns are noted regarding the future boundary once Bus Connects is finalised. Notes that it is essential that the proposed development provides for the movement of the boundary (stone walls and steel gates) to a location behind the cycle track and footpath. It is considered unclear if the foregoing has been designed into the applicant's proposals.
- 3.3.5. **Transport Infrastructure Ireland (21<sup>st</sup> January 2020):** No observations to make on the application.
- 3.3.6. **An Taisce (6<sup>th</sup> January 2020):** Considers that the proposed large-scale, commercial development is inappropriate for the site, its open space zoning and its key function alongside Booterstown Marsh as part of Dublin's green and ecological networks. It is also considered that: (1) the height of the proposed development is excessive and out of character with the coastal area; (2) the proposed development would set an inappropriate precedent for similar developments in other green / open space areas of the city; (3) the proposed development does not take account of the East Coast Trail or Bus Connects Corridor (3) the development is at risk of flooding.

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

- 3.4.1. A total of 7 no. third party observations were made on the application by: (1) Seamus O'Boyle, 45 St. Helen's Road, Booterstown, Co. Dublin, (2) Friends of Booterstown Coast, c/o Mary O'Carroll and Rose Comiskey, 12 Eagle Hill, George's Avenue, Blackrock, Co. Dublin, (3) John & Claire O'Reilly, 68 St. Helen's Road, Booterstown, Co. Dublin, (4) St. Helen's Road Residents' Association, c/o Claire O'Reilly, 68 St. Helen's Road, Booterstown, Co. Dublin, (5) Catherine and James Burke, 70 Helens Road, Booterstown, Co. Dublin, (6) Srdjan Rosic and Mina Kocic, 215 Llandaff Terrace, Merrion Road, (7) Dublin Cycling Campaign, c/o Kevin Baker, DCC Tailors Hall, Back Lane, Dublin 8.
- 3.4.2. An observation was also made on the application by: (1) Cllr Ossian Smyth, Town Hall, Dún Laoghaire, Co. Dublin.



- 3.4.3. The issues which are raised can be summarised as follows: (1) impact on sea views, (2) excessive scale and height of development, (3) impact on birds – collision risks, light and disturbance impacts, loss of habitat, (4) development is incompatible with land use zoning, (5) material contravention of the development plan, (6) water quality of Nutley Stream, which drains into Booterstown Marsh, must be protected, (7) flood risk, (8) impact on local drainage infrastructure, (9) ground and surface water pollution impacts, (9) habitat loss and disturbance to bats, (10) spread of invasive plant species, (11) negative impacts on Natura 2000 sites, (12) increased traffic congestion, (13) overspill parking on local streets, (14) no need for additional gym facilities in this area, (15) negative impact on residential property values of Llandaff Terrace, (16) no commercial demand for the development, (17) ongoing construction impacts on local residents, (18) application does not provide for the East Coast Trail cycle route or the emerging route of Bus Connects Core Bus Corridor, (19) proposed road configuration (right-turning lanes) would risk side collisions with cyclists.

## 4.0 Planning History

### Subject Site

- 4.1. **Planning Authority Reg. Ref. 3750/02; ABP Ref. PL29S.203391:** Planning permission refused by the Board on 7<sup>th</sup> November 2003 for the development of 69 no. apartments in 5 no. blocks and 55 no. car parking spaces for 2 no. reasons including: (1) the proposed development would materially contravene the Z9 zoning of the site and (2) the development would be premature pending the determination of the route for the Eastern By-Pass.

### Adjoining Site to South

- 4.2. **Planning Authority Reg. Ref. D21A/0905:** Planning permission granted on 26<sup>th</sup> May 2022 for development comprising the construction of a pipeline insulation joint replacement. This site is located at the south-western end of the concurrent appeal site adjacent to the junction with Rock Road.
- 4.3. **Planning Authority Reg. Ref. D19A/0908; ABP Ref. 308900-20;** Planning permission refused by Dún Laoghaire-Rathdown County Council on 16<sup>th</sup> November 2020 for development generally comprising 1 no. vehicular access to Merrion Road/Rock Road to serve a new recreational and interpretive centre, open

landscaped space, biodiversity proposals, associated site and infrastructural works. This development forms part of an overall proposal with the development which is proposed under the current appeal case.

- 4.4. Planning permission was refused for 1 no. reason, relating to insufficient scientific data provided in the applicant's NIS in relation to wintering bird use of the site, including those designated features of the relevant Natura 2000 sites. As such, it was considered that it had not been adequately demonstrated to the satisfaction of the Planning Authority that the proposed works would not negatively impact on the biodiversity and conservation objectives of the Natura 2000 sites of the South Dublin Bay and River Tolka Estuary SPA and the South Dublin Bay SAC.
- 4.5. This application site adjoins the current appeal site to the south/south-east and is subject to a concurrent appeal before the Board.
- 4.6. **Planning Authority Reg. Ref. D02A/1072; ABP Ref. 06D.203146:** Planning permission refused by the Board on 7<sup>th</sup> November 2003 for development comprising a new vehicular access, the creation of a public park, 14 no. public car parking spaces (part of a larger development, concurrent application with Dublin City Council).
- 4.7. Planning permission was refused for 2 no. reasons including: (1) the proposed development would materially contravene the 'F' land use zoning objective of the site "to preserve and provide open space and recreational amenity", and (2) the development would be premature pending the determination of the route for the Eastern By-Pass.

## 5.0 Policy and Context

### 5.1. Dublin City Development Plan 2022-2028

- 5.1.1. The Dublin City Development Plan 2016-2022 was in force at the time this planning application was lodged. The 2022-2028 development plan has been adopted in the interim and is the relevant local planning policy document for the purposes of adjudicating this appeal case.

## 5.2. Land Use Zoning

- 5.2.1. The application site is subject to land use zoning “Z9 (Amenity / Open Space Lands / Green Network)” which has the objective “to preserve, provide and improve recreational amenity, open space and ecosystem services”.
- 5.2.2. Section 14.7.9 of the plan states that Z9 lands are multi-functional and central to health place making, providing for amenity open space together with a range of ecosystem services. They can be divided into three broad categories of green infrastructure, including public open space, private open space and sports facilities. Generally, the only new development allowed in these areas, other than the amenity / recreational uses, are those associated with the open space use. These uses will be considered on the basis that they would not be detrimental to the Z9 zoned lands.
- 5.2.3. In certain specific and exceptional circumstances, where it has been demonstrated to the satisfaction of the planning authority, some limited degree of residential or commercial development may be permitted on Z9 zoned land subject to compliance with the following criteria:
- Where it is demonstrated that such a development would be essential in order to ensure the long-term retention, enhancement and consolidation of a sporting facility on the site.
  - Any such residential / commercial must be subordinate in scale and demonstrate that the primary sporting land use on the site is not materially eroded, reduced or fragmented.
  - In all cases, the applicant shall submit a statement, as part of a legal agreement under the Planning Acts, demonstrating how the sports facility will be retained and enhanced on site.
  - In all cases, the applicant shall be the sports club owner or have a letter of consent from the owner.
- 5.2.4. The uses which are open for consideration on Z9 zoned land and which are relevant to this appeal case include “café/tearoom”, “car park for recreational purposes”, “childcare facility”, “community facility”, “cultural / recreational building and uses”, “restaurant” and “sports facility and recreational uses”.

### 5.3. **Green Infrastructure (GI)**

- 5.3.1. **Policy GI1 (Green Infrastructure Assets):** To identify and protect the integrity of the city's GI assets, as appropriate, and to enhance and expand the connectivity, multi-functionality, and accessibility of the city's green infrastructure network, while addressing gaps in the network.
- 5.3.2. **GI3 (Multi-functionality):** To ensure delivery of multifunctional green and civic spaces that meet community needs, support biodiversity, promote active and passive recreation, flood and surface water management and local habitat improvements. The multifunctionality of spaces will be balanced against the need to protect and enhance local habitat and the recreational and functional requirements of parks.

### 5.4. **Biodiversity**

- 5.4.1. **Policy GI9 (European Union Natura 2000 Sites):** To conserve, manage, protect and restore the favourable conservation condition of all qualifying interest/special conservation interests of all European sites designated, or proposed to be designated, under the EU Birds and Habitats Directives, as Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) (European / Natura 2000 sites).
- 5.4.2. **Policy GI16 (Habitat Creation and Development):** That new developments (as appropriate) will be required to support local biodiversity and incorporate biodiversity improvements through urban greening and the use of nature-based infrastructural solutions that are of particular relevance and benefit in an urban context. Opportunities should be taken as part of new development to provide a net gain in biodiversity and provide links to the wider Green Infrastructure network. All suitable new buildings will be required to incorporate swift nesting blocks into the building fabric.
- 5.4.3. **Policy GI18 (Minimise Impact – Light and Noise):** To minimise the environmental impact of external lighting and noise at sensitive locations to achieve a sustainable balance between the needs of an area, the safety of walking and cycling routes and the protection of sensitive species such as bats.

5.4.4. **Policy GI22 (Managed Access):** To provide managed access to landscape and amenity areas of Dublin city while ensuring their long-term protection and maintenance to limit degradation.

## 5.5. Rivers and Canals

5.5.1. **Policy GI30 (Maintain and Improve Connectivity of Freshwater and Estuarine Habitats/ EU Birds and Habitats Directives):** To conserve, maintain and restore freshwater and estuarine habitats which are of importance for species listed in the annexes of the EU Birds and Habitats Directives and to ensure connectivity of these in accordance with Article 10 of the EU Habitats Directive.

5.5.2. **Policy GI34 (New Development and Public Open Space along River Corridors):** To ensure that new development, in terms of siting and design, responds to the character, importance and setting of the city's rivers where the context allows, and to require public open space which is to be provided as part of new development, to supplement riparian buffer zones so as to support the attainment of 'good ecological status' or higher for water bodies, flood management, the conservation of biodiversity and ecosystem functions.

## 5.6. The Coast and Dublin Bay UNESCO Biosphere

5.6.1. **Policy GI36 (Recreational and Tourism Activities):** To develop sustainable estuarine and coastal recreational and tourism amenities which enhance appreciation of coastal natural assets in a manner that ensures that any adverse environmental effects are avoided, remediated or mitigated.

5.6.2. **Policy GI39 (Interpretation, Awareness and Public Engagement):** To raise awareness of the international importance for nature conservation of Dublin Bay by improving information and interpretation of its biodiversity for recreational users and visitors. To increase public engagement and actions to conserve nature in line with the objectives of the UNESCO Biosphere Reserve.

## 5.7. Sports, Recreation and Play

5.7.1. **Policy GI47 (Private Recreational Lands):** To support the development of private recreational lands for recreational purposes.

## 5.8. Flood Resilience and Water

- 5.8.1. **Policy CA28:** To encourage the use natural flood risk mitigation or nature-based solutions including integrated wetlands, green infrastructure, and Sustainable Drainage Systems (SuDS) as part of wider adaptation and mitigation responses to achieve flood resilience.

## 5.9. Strategic Flood Risk Assessment (SFRA)

- 5.9.1. The SFRA of the development plan includes flood risk maps which categorise areas which are subject to flood risk as “Flood Zone A”, “Flood Zone B” or “Defended Areas”. Defended areas are lands defended to the 1% AEP fluvial and / or the 0.5% AEP tidal flood events and therefore, should also be considered as Flood Zone A. Map H of the SFRA confirms that the site is designated as a “Defended Area” with respect to flood risk. Details regarding the location, condition and standard of protection offered by the various defences in the city is provided in Appendix A. The subject site is located within area A.5 (Sandymount) with all existing coastal defences, rock armour, sandbanks, embankments, promenades and sea walls noted to provide significant flood protection to roads, property and buildings behind them by keeping out the tide and breaking up waves which might otherwise over-top them. Between Booterstown Marsh and Merrion Gates, the existing sea wall and embankment is noted to protect the railway line.
- 5.9.2. Section 4.0 provides guidance on development management and flood risk, with less vulnerable development in Flood Zones A and B considered in Section 4.5.3. The design and assessment of less vulnerable development should be the 1% AEP fluvial or 0.5% AEP tidal events as standard, with climate change and a suitable freeboard included in the setting of finished floor levels. The presence or absence of flood defences informs the level of flood mitigation recommended for less vulnerable developments (which includes leisure uses etc) in areas at risk of flooding. There is greater scope for the developer of less vulnerable uses to accept flood risks and build to a lower standard of protection, which is still high enough to manage risks for the development in question. Any deviation from the design standard of 1% / 0.5% AEP plus climate change plus freeboard needs to be fully justified in the FRA.
- 5.9.3. In a defended site, the requirement to provide freeboard and climate change allowances on finished floor levels can be relaxed if the defences already include the

allowance. In a defended site, compensatory storage is not required as the floodplain was removed through the implementation of the flood defence scheme.

## 5.10. The Planning System and Flood Risk Management Guidelines for Planning Authorities (2009)

5.10.1. These Guidelines introduced mechanisms for the incorporation of flood risk identification, assessment and management into the planning process. The Guidelines identify 3 types of flood zones as a key tool in flood risk management in the planning process as follows:

- **Flood Zone A** – where the probability of flooding from rivers and the sea is highest (greater than 1% or 1 in 100 for river flooding or 0.5% or 1 in 200 for coastal flooding)
- **Flood Zone B** – where the probability of flooding from rivers and the sea is moderate (between 0.1% or 1 in 1000 and 1% or 1 in 100 for river flooding and between 0.1% or 1 in 1000 year and 0.5% or 1 in 200 for coastal flooding; and
- **Flood Zone C** – where the probability of flooding from rivers and the sea is low (less than 0.1% or 1 in 1000 for both river and coastal flooding). Flood Zone C covers all areas of the plan which are not in zones A or B.

5.10.2. The planning implications for development in Flood Zone A are described in Section 3.5 of the Guidelines. Most types of development would be considered inappropriate in this zone. Development in this zone should be avoided and / or only considered in exceptional circumstances or in the case of essential infrastructure that cannot be located elsewhere, and where the Justification Test has been applied. Only water-compatible development would be considered appropriate in this zone.

5.10.3. Table 3.1 of the Guidelines set out a classification of the vulnerability to flooding of different types of development. Leisure and commercial buildings, which are considered most relevant in this case, are categorised as “less vulnerable developments”. A proposal to undertake such developments within Flood Zone A must be subject to a Justification Test (plan making and development management). Box 5.1 of the Guidelines sets out the information which must be provided by an applicant with respect to the Justification Test for development plan and which includes, inter alia, that the subject lands must be zoned or otherwise designated for

the particular use or form of development, that the proposal has been subject to an appropriate flood risk assessment that demonstrates that the proposed development will not increase flood risk elsewhere, includes measures to minimise flood risk and to ensure that residual risks can be managed to an acceptable level, and is compatible with the achievement of wider planning objectives in relation to development of good urban design and vibrant and active streetscapes.

- 5.10.4. Compensatory flood storage is considered in the Technical Appendices of the Guidelines (Section 3.3.1). Direct or 'level-for-level' compensation works are identified as involving the re-grade of land to provide a direct replacement for lost flood storage volume. As a default, direct compensation works should be considered, and where a SFRA (or site-specific FRA) suggests that a relaxation is possible, compensation can be provided by indirect methods which rely on water entering a defined storage area and being released as a slower rate.
- 5.10.5. The compensatory volume must be at the same level (within reasonable working limits) as the lost storage. Level for level compensation should be a default position in fluvial flooding areas which will ensure incremental loss of floodplain is managed throughout the catchment. Where a SFRA has identified that the impact of development on downstream areas at flood risk is negligible for this and other development, then compensation requirements could be relaxed.

## **5.11. Natural Heritage Designations**

- 5.11.1. A small portion of Booterstown Marsh proposed Natural Heritage Area (pNHA) overlaps the extreme south-western corner of the subject site. South Dublin Bay and River Tolka Estuary SPA (site code: 004024) extends to the south, east and north-east of the subject site at separation distances of approx. 34 m, 36 m and 37 m respectively. South Dublin Bay SAC extends to the east of the subject site at a separation distance of approximately 36 m.



## 6.0 The Appeal

### 6.1. Grounds of Appeal

- 6.1.1. A first-party appeal against the Planning Authority's Notification of the Decision to Refuse Permission for the proposed development has been lodged on behalf of the applicant by Brock McClure Planning & Development Consultants. In addition to addressing the refusal reason, the submission also includes commentary in relation to drainage and traffic and transport issues, which are not directly related to the refusal reason.
- 6.1.2. The grounds of appeal can be summarised as follows:
- Based on the conditions recorded as part of the ground investigations, it is assumed the construction of the building foundations will involve the construction of 600 mm diameter rotary bored piles, end-bearing on rock to a depth of approx. 7m below ground level. The rotary bored solution is believed to be the likely worst possible case and piling is only proposed beneath the proposed building.
  - The actual number and location of the piles would be determined at detailed design phase, as is standard in projects of this size. Impacts arising would include the production of spoil and the generation of noise, vibration and dust. The worst-case piling method has been assessed.
  - In order to provide further comfort to the Board, a piled foundation solution has been prepared by ARUP.
  - The mobilisation of contaminants due to excavation and accidental spills on site is addressed in the EIAR. There will be an improvement in the condition of the site in the operational phase given the removal of made ground from across the site.
  - The NIS submitted to the Planning Authority at Further Information stage included a full assessment of construction activities, including piling, and in relation to hydrological or hydrogeological impacts.

- The exact piling locations do not change the NIS assessment, as piling is only proposed beneath the building and the worst-case scenario has assumed the closest possible proximity of piling to the nearest Natura 2000 site.
- The proposed rotary piling technique is used to limit noise levels and vibrations.
- The NIS fully addresses potential disturbance and displacement effects arising from noise impacts which could negatively affect SCI species using adjacent areas of Dublin Bay and Booterstown Marsh.
- The NIS assessment relied on information contained in Chapter 9 (Noise and Vibration) of the revised EIAR on existing ambient and background noise levels currently experienced at the proposed development site, predicted noise levels arising from construction and the operation of the proposed development and scientific literature which investigates the effect of piling noise on estuary birds.
- Mitigation measures to minimise noise impacts include the restricted timing of works which produce loud, irregular noises and are considered most startling (including piling) to only occur during April – July incl. which is outside the most sensitive period for SCI birds, including pre-migrating terns and wintering birds. As such, SCI birds will not be present during any proposed piling works.
- The absence of specific piling locations does not affect the robustness of the assessment of piling impacts on SCI birds as presented in the NIS.
- A rotary piling technique will not give rise to dust emissions over and above what has been considered in Chapter 10 of the EIAR.
- Dust impacts arising on Natura 2000 sites from construction works has been assessed as a worst-case scenario and has assumed piling works would occur at the closest proximity to the nearest Natura 2000 sites. The absence of specific piling locations does not affect the robustness of the assessment.
- A technical note in relation to contaminated soil impacts on QIs and SCI of Natura 2000 sites substantiates the assessment in the NIS that contaminated soil which exists in the site could present as a potential risk to Natura 2000

sites as contaminated surface water, contaminated groundwater or as particles in the air.

- A worst-case scenario has been considered in the EIAR that contaminated soils would be unearthed during the construction works and a full suite of mitigation measures to protect surface water quality and groundwater quality and to protect Natura 2000 sites from air quality impacts during construction are included in the NIS.
- The NIS has fully assessed the risk of contaminated soil potentially reaching Natura 2000 sites.
- The proposed development will remediate the site of contaminated soil that occurs within the footprint of the development, which has the potential to positively impact contaminate potentially leaching into Dublin Bay via ground and surface waters, and that is potentially contributing to nutrient enrichment of Dublin Bay.
- The NIS presents potential impacts of habitat degradation and / or species mortality on QI habitats and species, and SCI birds of Natura 2000 sites as a result of hydrological and hydrogeological impacts arising from potential contaminated surface water run-off, contaminated groundwater or an accidental pollution event during construction.
- The NIS fully assesses the impacts of dust on QI habitats and species, and SCI birds of Natura 2000 sites.
- Mitigation measures presented in the NIS fully address potential impacts of contaminated soils presenting as contaminated surface water run-off, contaminated ground water or as dust arising during construction.
- Potential impacts arising from contaminated soils on biodiversity at a local, county, national and international level are described in Chapter 6 of the EIAR.
- As part of the appeal response, a review of available records, observations, scientific data and ad hoc information gathered between 2004 and 2020 has been undertaken to supplement the NIS and substantiate the site suitability

conclusion for SCI birds. None of these sources have identified the proposed development site as a known site used by significant numbers of SCI birds.

- NPWS rangers are aware of the breeding bird species using scrub habitat within the proposed development site and did not raise any concern or note records that the site is used by SCI birds.
- The subject site is also accessible to members of the public and dog walkers, which is likely to further discourage birds from using habitats within the development site.
- The subject site is elevated and exposed, with little shelter from low growing scrub that dominates the site. As such, the site is not suitable to provide shelter to birds during adverse weather conditions and at high tide, with inland, sheltered sites being preferred.
- No SCI birds were recorded using the site during additional surveys undertaken in November and December 2020 which included a walk-over survey and flight activity surveys. These results further substantiate the assessment and conclusion of the NIS that the site does not correspond with habitats used by SCI birds and that it offers extremely limited potential to support significant numbers of wintering SCI birds associated with the surrounding Natura 2000 sites.
- Surface water management proposals could be agreed by condition in the event planning permission is granted for the proposed development.
- The provision of a pedestrian crossing on each arm of the signalised junction at Trimleston Avenue will improve pedestrian access from the western side of Merrion Road.
- The provision of a right turning lane on Merrion Road to access the site is considered acceptable due to the low volume of traffic which will be generated and the future delivery of Bus Connects along this road.
- The traffic management plan to serve the proposed development has been amended to include the modifications accepted in the feedback form submitted with the Stage 1 Road Safety Audit.

- The traffic management plan presented with the application took the East Coast Trail into account.

- 6.1.3. The appeal submission includes a copy of the Planning Authority's Request for Further Information (Appendix A), a letter from Invasive Plant Solutions which details activities in relation to Japanese Knotweed management on the site and informal observations of wintering birds (Appendix B), a letter from EirCo Environmental Consultants which considers the site suitability for wintering birds (Appendix C), a letter from Peter Cuthbert BSc Agr (Hort) regarding the site vegetation (Appendix D), a letter from Dixon Brosnan Environmental Consultants which provides commentary on the applicant's on-site bird surveys, the suitability of the site for SCI bird species and the risk of bird collision with the proposed building (Appendix E) and a letter from O'Callaghan Moran & Associates in relation to soil and groundwater contamination on the site (Appendix F).
- 6.1.4. The appeal submission also includes a separate ecological technical response to the Planning Authority's refusal reason as prepared by Scott Cawley (project ecologists) and a technical note prepared by ARUP which considers contamination within the soils, groundwater and surface water on the subject site.
- 6.1.5. The contents of these appendices and submissions have been reviewed and taken into consideration in the adjudication of this appeal case.

## **6.2. Planning Authority Response**

- 6.2.1. None received.

## **6.3. Observations**

- 6.3.1. Observations have been made on the application by: (1) Friends of Booterstown Coast, and (2) An Taisce. No new issues have been raised (refer to Section 3.4.3 of this report for a summary of third-party submissions).

## **6.4. Further Responses**

- 6.4.1. A first-party response to the observations of Friends of Booterstown Coast and An Taisce was lodged by Brock McClure Planning & Development Consultants on behalf of the applicant on 30<sup>th</sup> March 2021. The response includes a technical table

prepared by Arup which provides a summary response to the issues raised by the observers. Appendices 1 and 2 of the response comprise the results of winter bird surveys undertaken in January, February and March 2021.

6.4.2. The response addresses each observation separately and can be summarised as follows:

- The subject site does not overlap any SAC or SPA. There is a small area of overlap with Booterstown pNHA, which has been identified in the planning application material.
- No flood storage tank is proposed or shown on the planning drawings. The proposed building works are set back from the edge of the Nutley Stream.
- The removal of habitat along the Nutley Stream is restricted to a short stretch in the north-eastern part of the site, with all other remaining riparian vegetation being retained and protected.
- The applicant is not the landowner of the Nutley Stream.
- The EIAR and NIS consider the impact of dust emissions during construction works, groundwater interactions, including potential impacts on nearby receptors, and the dynamic between groundwater and surface water.
- The proposed basement is a sunken and naturally ventilated space, rather than being a full basement. It has been carefully designed to minimise impacts on the site.
- A detailed Flood Risk Assessment formed part of the planning application, with flood mitigation measures incorporated into the development design to mitigate flood risks.
- The NIS concludes that the mortality of SCI bird species arising from collisions with the proposed building is not a risk that has the potential to undermine the conservation objectives of the South Dublin Bay and River Tolka Estuary SPA.
- Since the lodgement of the 1<sup>st</sup> party appeal in December 2020, the ecological team has continued bird surveys of the site, with the results of surveys from January, February and March 2021 enclosed. This data further validates the

NIS assessment and conclusion that the site does not correspond with habitats used by SCI birds, and that the site presents extremely limited potential to support significant numbers of wintering SCI birds associated with the surrounding Natura 2000 sites.

- The observer has made unfounded assertions that the proposed development would cause serious traffic problems during the day. Both Dublin City Council and Dún Laoghaire-Rathdown County Council concluded that the principle of the proposed traffic proposals was acceptable, subject to conditions.
- The proposal fully accords with the site's zoning objective, as verified by the Planning Authority. The site is currently underutilised, is falling into disrepair and is not delivering on the intention of the zoning objective.
- The route of the Eastern Bypass has been removed from the 2016 Development Plan and further information in relation to this issue was not requested by either Planning Authority, TII or NTA.
- The current Greater Dublin Transport Strategy does not request that a bypass corridor be preserved in this area, while the corridor is removed in the issues paper for the Strategy for 2035 and beyond.
- The building has been designed to respond sensitively to the landscape, with the total outdoor space across both sites accounting for 1.74 ha (90%) of the total site area (1.93 ha).
- The proposed development complies with the Green Infrastructure policies of the DCC development plan.
- The proposal accords with Article 6 of the Habitats Directive and planning permission can be granted for the proposed development on this basis.

6.4.3. The response table prepared by Arup provides technical responses to the issues which have been raised by the observers. This table has been reviewed and considered in the adjudication of this appeal case.

6.4.4. Friends of Booterstown Coast lodged a further response on 29<sup>th</sup> March 2021 in support of the observation made by An Taisce. No new issues have been raised in this submission.

## 7.0 Assessment

- 7.1. The development which is the subject of this appeal case forms part of a larger proposal which extends across the adjoining lands to the south within the administrative area of Dún Laoghaire-Rathdown County Council. The development of these adjoining lands is subject to a concurrent appeal case before the Board (ABP Ref. 308900-20). While 2 separate planning applications have been submitted for administrative reasons, the development proposed under both applications comprises a single proposal, and as such, my assessment adjudicates the development on that basis as required.
- 7.2. The applicant submitted revised proposals to Dublin City Council and Dún Laoghaire Rathdown County Council in response to the Requests for Further Information issued by both Planning Authorities, including an updated EIAR and NIS. The amended development included the relocation of the compensatory flood storage area from the south-eastern portion of the site within Dún Laoghaire-Rathdown County Council's administrative area, to the north-eastern portion of the site, adjacent to the proposed building and the Nutley Stream (within Dublin City Council's administrative area). No other significant changes were proposed to the development at this stage. The development as amended at Further Information stage forms the basis of my assessment (including the revised EIAR and NIS).
- 7.3. The appellant has provided a detailed appeal submission, which has been considered in the assessment of this case. Having regard to the information presented in the appeal and the planning application, the issues identified by the observers to the appeal, and having undertaken an inspection of the site, I consider that the key planning issues in the assessment of this case can be addressed under the following general headings:
- Principle of the Development / Compatibility with Land Use Zoning
  - Scale / Height of the Proposed Development
  - Site Access / Traffic Impacts
  - Flooding
  - Invasive Alien Species



- Environmental Impact Assessment (EIA)
- Appropriate Assessment

7.4. Each of these issues is addressed in turn below.

#### 7.5. **Principle of the Development / Compatibility with Land Use Zoning**

- 7.5.1. Friends of Booterstown Coast submit that An Bord Pleanála refused planning permission (ABP Ref. PL29S.203391) for an apartment scheme on the site in 2002 on the basis that it would contravene the site’s open space and recreational amenity zoning. It is also noted that the Board’s second refusal reason stated that the development would be premature pending the determination of a route for the proposed Eastern Bypass motorway. Based on the foregoing, the observer considers that the current proposal is premature and constitutes a material contravention of the development plan with respect to the land use zoning of the site. It is also considered that the current proposal is commercial in nature and subsumes most of the open space, which conflicts with the stated objectives of the land use zoning. The observer considers that the site should form part of a strategically planned network of natural and semi-natural areas.
- 7.5.2. The observation from An Taisce notes that the proposed “spa” use is not “permissible” or “open for consideration” on the subject site. An Taisce also considers that the application has not demonstrated compatibility with the overall objectives of the land use zoning. It is submitted that the granting of permission for the proposed development would set a precedent for further privatisation and commercialisation of green space, reducing the public accessibility of these lands and their benefits to city residents.
- 7.5.3. While I acknowledge the previous refusal of planning permission for residential development on the subject site, I note that no residential development is proposed under the current application. A review of land use zoning map H of the 2022 – 2028 development plan confirms that a road reservation for the proposed Eastern Bypass Motorway route does not apply to the subject site. Having regard to the nature of the proposed development for which permission is now sought, and the status of the lands with respect to the Eastern Bypass, I consider that the previous refusal of permission which applies to the subject site is not an appropriate precedent for the purposes of adjudicating this appeal case.

- 7.5.4. The site is subject to land use zoning “Z9” (Amenity / Open Space Lands / Green Network) which has the objective “to preserve, provide and improve recreational amenity, open space and ecosystem services”. Section 14.7.9 of the plan states that generally, the only new developments allowed on Z9 lands, other than amenity / recreational uses, are those associated with the open space use. These uses will be considered on the basis that they would not be detrimental to the Z9 zoned lands.
- 7.5.5. The uses which are open for consideration on Z9 zoned lands include “café/tearoom”, “car park for recreational purposes”, “childcare facility”, “community facility”, “cultural / recreational building and uses”, “restaurant” and “sports facility”. I note the following Land Use Definition of a “sports facility” as contained in Appendix 15 of the development plan:
- “A building, or part thereof, or land used for organised and competitive sporting activity and / or recreational use that aims to promote physical activity and well-being e.g. sports hall, gym, health studio, squash centre, tennis club, golf club, swimming pool, sports pitch, athletic track, skate park, racecourse and most indoor sports facilities not involving the use of firearms or motorised vehicles and including ancillary meeting or activity rooms and clubhouses”.
- 7.5.6. Having reviewed the nature and extent of the development as described in the statutory planning notices and the planning application documentation and drawings, I am satisfied that the uses for which permission has been sought can be considered on the subject site. For the avoidance of doubt, I consider that the proposed spa is “ancillary” to the primary amenity and recreational uses which are proposed in this instance, as provided for under the land use definition of a sports facility. I note that the Planning Authority did not raise any objections to the proposed uses based on the site’s Z9 zoning objective.
- 7.5.7. In my opinion, the site is significantly under-utilised having regard to its high-profile location and its accessibility by public transport. While public access is not directly facilitated into the site, informal access appears to be occurring, with walking tracks and evidence of littering noted during the inspection. A temporary shelter / dwelling has also been erected towards the northern end of the site in an area of dense scrub. The site generally has a dilapidated appearance and is significantly overgrown in parts. As such, the site currently makes little meaningful contribution to

the city's open space / green infrastructure network, nor has it done so over a significant period of time. I consider that the proposed development would bring the site into active use for amenity purposes, albeit on a largely indoor, private basis, and as such, would significantly improve the existing use value of the site. I also note that public access will be facilitated to the proposed bird hide and the interpretive centre. Thus, I am satisfied that the principle of the proposed development is acceptable in this instance and can be considered under the site's land use zoning objective.

- 7.5.8. Notwithstanding the information provided with the planning application in relation to this matter, in my opinion, it would be reasonable that the applicant / developer be required to agree final details in relation to the management and operation of the interpretive centre, including public access to same, and public access to the proposed bird hide with both Planning Authorities prior to the commencement of development. This matter can be addressed by planning condition should the Board decide to grant planning permission in this instance.

#### **7.6. Scale / Height of the Proposed Development**

- 7.6.1. An Taisce submits that the scale of the proposed development is excessive and inappropriate on Z9 land which has been zoned to protect its amenity as green space. It is also submitted that a 5-storey building height is excessive in a low-lying and scenic coastal area, with development in the immediate vicinity noted to be less than 3-storeys in height, apart from the Tara Towers Hotel. It is also submitted that the proposed development would obstruct views towards Dublin Bay.
- 7.6.2. In considering the foregoing, I note that the site is currently greenfield in nature. The existing treelines alongside the roadside (western) and northern boundaries, largely obscure public views into the site. While I acknowledge that the existing open nature of the site will be altered on foot of the proposed development, I consider that the site is currently significantly under-utilised and makes little positive contribution to the city's network of green spaces.
- 7.6.3. The proposed development has a circular building footprint and is generally centrally located within the site. When the proposed development and that which is proposed on the adjoining lands are considered as a whole, the building footprint will occupy less than half of the overall site area, while the open / undeveloped nature of the

lands in the administrative area of Dún Laoghaire-Rathdown County Council will largely be retained.

- 7.6.4. The scale of the development relative to the existing built context is illustrated on the Proposed Contiguous Elevations and Proposed Sections A-A and B-B (Drawing Nos. 04\_01\_03 Rev. P 01 and 03\_01\_01 Rev. P 01 respectively) which formed part of the applicant's Further Information response. In reviewing the foregoing, I consider that the scale and height of the proposed development would not be inappropriate at this location having regard to the height of the Maldon Hotel on the eastern side of Rock Road / Merrion Road (site of the former Tara Towers Hotel) and Elm Park Business Campus further to the north-east, both of which are recent developments that are noticeably taller than the current proposal. I also consider that the height of the proposed development would represent a modest increase in scale from the neighbouring office building to the north of the subject site at Merrion House (Sections 01-01 and 02-02 on the Proposed Contiguous Elevations Drawing refer). As such, I consider that the observer's assertions regarding the scale and height of the proposed development are unfounded having regard to the established pattern of development in the immediate vicinity of the application site.
- 7.6.5. Having regard to the site context and its open nature in views from the adjoining railway line and the coast, I consider that the materials and finishes of the proposed development should be agreed in writing with the Planning Authority prior to the commencement of development. This matter can be addressed by condition should the Board decide to grant planning permission in this instance.

## **7.7. Site Access / Traffic Impacts**

- 7.7.1. Friends of Booterstown Coast submit that the proposed vehicular entry and exit points would cause serious traffic problems during the day and that the proposed entry turning movement from south Merrion Road could result in queuing on the local road network. It is also submitted that the cycle path is unsatisfactorily located in a hazardous position behind the path and planting, with cyclists having to cross the vehicular entry and exit and the pedestrian entrance. I note that the observer has not submitted any technical information to support these assertions.
- 7.7.2. A separate vehicular entrance and exit is proposed to serve the development. The proposed vehicular entrance is located opposite the junction of Merrion Road and

Bellevue Avenue. A right-turning lane is proposed for northbound traffic entering the site from Merrion Road. The proposed vehicular exit is located opposite the existing 3-arm signalised junction of Merrion Road and Trimleston Avenue, which will become a 4-arm signalised junction on foot of the proposed development. Two separate pedestrian entrances into the site are also proposed, one at the northernmost end of the roadside boundary and the second located between the proposed vehicular entrance and exit.

- 7.7.3. Item nos. 3 – 8 of Dublin City Council’s Request for Further Information related to traffic and transportation issues as summarised in section 3.2.36 of this report. Responses to these items were prepared by Arup (response document dated 1<sup>st</sup> September 2020 refers). The response to Item no. 3 (c) (vi) states that the right turn lane (travelling northbound along Merrion Road) has been provided at the request of Dún Laoghaire-Rathdown County Council Transportation Department on foot of its objective to allow vehicles to store should the capacity of the car park be exceeded. It is further stated that the right turn lane is not required for junction capacity reasons and is to ensure that any waiting vehicles on the Rock Road would not impact on traffic travelling towards the city.
- 7.7.4. The applicant’s response to Item no. 3 (c) (vii) acknowledges that the right-turn lane will extend in front of the Applegreen petrol station and Bellevue Avenue (located on the western side of Merrion Road). It is submitted that access to both will be permitted, and that this arrangement reflects other examples along major urban roadways, including the current access into Applegreen, which crosses the right turn lane serving Trimleston Avenue and the access out of St. Helen’s Road (south of Trimleston Avenue) onto the Rock Road.
- 7.7.5. In reviewing the Transportation Planning Division’s report (dated 4<sup>th</sup> November 2020) on the applicant’s Further Information submission, I note that this Division had some remaining concerns in relation to the right-turning lane on Merrion Road to access the site and the resulting traffic impact on adjacent lanes and potentially the Trimleston Avenue junction. However, it was recognised that due to the limited car parking capacity proposed, the overall trip generation on foot of the proposed development would have a limited impact on junction capacity. The requirement to accommodate changes to the public road network on foot of the Bus Connects project and the East Coast Trail was also noted. Thus, having regard to the current

traffic arrangements on Merrion Road, the traffic impact assessment and noting the proposed separate, controlled egress at Trimleston Avenue, on balance, this Division considered the right-turn lane to be acceptable subject to a condition that details in relation to same be agreed in writing with the Planning Authority prior to the commencement of development.

7.7.6. In responding to Item nos. 4 and 5 of the Request for Further Information, the applicant submitted drawings demonstrating how the proposed development takes account of the proposed Bus Connects scheme and the East Coast Trail. Drawing No. 01\_01\_02 Rev. P01 (Proposed Site Layout Plan –Roof Plan & East Coast Trail DCC) illustrates a proposed 2-way cycle track extending between the roadside stone boundary wall and the steel gates which are proposed further back within the site, and which segregates the proposed cycle tracks and the internal access road. While I acknowledge that the proposed cycle tracks cross 1 no. pedestrian entrance and the vehicular entrance and exit into the site, in my opinion, this arrangement would not be unusual in an urban context. I further note that the Transportation Planning Division of Dublin City Council has recommended that agreement should be reached on the final alignment, design and materials of the cycle tracks and public footpath and the location of the stone boundary wall. In my opinion, this requirement is reasonable and can be addressed by condition should the Board decide to grant planning permission for the proposed development.

7.7.7. For the avoidance of doubt, I consider that final details of the roadside boundary should also be agreed with the Planning Authority prior to the commencement of development to ensure futureproofing for the planned Bus Connects corridor along the R118. This matter can also be addressed by planning condition.

## 7.8. **Flooding**

7.8.1. Friends of Booterstown Coast submit that the basement car park could be subject to flooding and that mitigation measures to address this issue could pass the flooding problem elsewhere. It is also submitted that the building of a flood wall on the north boundary does not address the primary problem that this is a high-risk flood area and a highly vulnerable site. It is also submitted that the basement level does not comply with the climate action plans of either Planning Authority, which seek to reduce the vulnerability of development to sea level rise. It is considered that the

proposed development does not pass the Justification Test with respect to new development on “Flood Zone A lands” and that adequate consideration has not been given to increasing sea levels, storm surges and increased rainfall events.

- 7.8.2. The application site is a defended site with respect to flood risk as designated under the SFRA of the development plan. The concurrent application site within the administrative area of Dún Laoghaire-Rathdown County Council is located within Flood Zone A and is subject to overtopping. The planning application documentation included a Stage 3 Flood Risk Assessment (FRA). The report has assessed and confirmed that the proposed development passes both the Development Plan Justification Test and Development Management Justification Test as required under The Planning System and Flood Risk Management Guidelines for Planning Authorities (2009). Appendix B of the SFRA of the development plan confirms that this area (Sandymount) passes the justification test for development plans.
- 7.8.3. The report notes that the site is at risk of tidal and pluvial flooding. The risk of groundwater flooding to the site was identified as low under normal conditions. The risk to the site from wave overtopping was considered low. The risk of fluvial flooding from Elm Park Stream (275 m) to the north was considered very low and from and Trimleston Stream to the south of the site was considered low. The site was identified as being at risk of flooding from the Nutley Stream.
- 7.8.4. A detailed hydraulic model of the Nutley Stream was developed and used to estimate design flood levels across the site. To minimise the flood risk to the development, it was proposed to set the finished floor level of the development at 4.8 m OD (c. 0.71 m above the recommended minimum site flood defence level and including a freeboard of 500 mm and a 0.55 m climate change allowance). A flood embankment was proposed around the perimeter of the proposed car park to prevent the ingress of flood water. The crest of the embankment was proposed to be set at 3.3 m OD, which is 300 mm above the design 200-year tidal water level. The risk of pluvial flooding was considered remote given that the ground level of the building will be elevated above the external ground level. The risk of pluvial flooding to the car park is to be minimised by the construction of the flood embankment and by ensuring external ground levels to the car park slope away from the structure.

- 7.8.5. The original FRA noted that the proposed development would involve the loss of an earthen mound which forms part of the site landscaping and the construction of the earthen embankment around the car park, with the total volume of displaced water estimated as 350 m<sup>3</sup>. An area of compensatory storage was proposed, which involved regrading an area of 1,800 m<sup>2</sup> to a depth of 200 mm adjacent to the Nutley Stream (located across both Planning Authority administrative areas), providing c. 360 m<sup>3</sup> of compensatory storage.
- 7.8.6. Following their assessment of the submitted documentation, Dún Laoghaire-Rathdown County Council requested Further Information in relation to the concurrent application on the adjoining lands to the south (Planning Authority Reg. Ref. D19A/0908; ABP Ref. 308900-20). This request included, inter alia, proposals to minimise the clearance of scrub and the avoidance, as far as possible, of the encroachment of landscaping measures on the floodplain zone of the Nutley Stream and the extent of site regrading required.
- 7.8.7. The applicant submitted an updated FRA to reflect the changes which were proposed to the development in response to the Further Information request, including the relocation of the proposed compensatory flood storage area along the riverbank adjacent to the proposed building. The proposed relocated flood storage area is within the administrative area of Dublin City Council. On foot of these changes, the finished floor level of the building will remain at 4.8 m OD and the crest of the flood embankment around the perimeter of the proposed car park will remain at 3.3 m OD. The proposed development will also involve landscaping, including an earthen mound external to the building, and regrading of the river channel and floodplain immediately adjacent to the building over a length of c. 50 m to provide compensatory flood storage.
- 7.8.8. The fluvial flood risk to the site has been assessed for the proposed development and compared with the existing scenario without the development in place. The hydraulic model results show that for a Q100 95% CI scenario with the development in place, flood risk upstream and downstream of the site will be reduced. As such, the development will not increase flood risk off-site. Flood levels are increased throughout the development site but the change in water levels is noted to be minimal, with an increase of 2 mm observed over most of the site and a maximum increase of 3 mm occurring just before the Trimleston Stream culvert.



- 7.8.9. The displaced flood storage volume is c. 865 m<sup>3</sup>, with the proposed compensatory flood storage area accounting for c. 480 m<sup>3</sup>. The applicant notes that a relaxation of compensation requirements can be considered under Technical Appendix B, Section 3.3.1 of the Flood Risk Management Guidelines where a SFRA demonstrates that the impact of the development on downstream areas at flood risk is negligible for this and other potential development.
- 7.8.10. Having regard to the information which has been presented with the planning application and the appeal in relation to flood risk, I am satisfied that no undue flood risk would arise on foot of the proposed development, either within the application site, where flood levels have been demonstrated to generally decrease, or on the adjoining lands. While I acknowledge that a marginal increase in the 1% AEP flood extent occurs on the southern portion of the combined application sites with the development in place, I note that no buildings are proposed at this location and that a maximum water level increase of 3 mm has been identified. On balance, I do not consider the extent of this increase to be significant. I also note that the proposed development comprises “less vulnerable development” in the context of flood risk and that the Engineering Department Drainage Division of Dublin City Council had no objection to the proposed development following the applicant’s Further Information response subject to conditions.
- 7.8.11. I further note that this Division recommended a planning condition be attached requiring the updating of the Stage 3 Flood Risk Assessment to incorporate the information contained in the applicant’s “Flood Risk Assessment – Response to RFI report” (DCC Drainage report of 2<sup>nd</sup> November 2020 refers). In my opinion, the applicant’s response document already updates the FRA as originally submitted, and as such, this requirement is not necessary. I further note that, in the event planning permission is granted for the proposed development, it must be implemented in accordance with all plans and particulars which form part of the application, as provided for under condition no. 1. As such, I am satisfied that the issue of flood risk has been satisfactorily addressed by the applicant.

## 7.9. Invasive Alien Species

- 7.9.1. Friends of Booterstown Coast note the presence of Japanese Knotweed on the site and submit that this invasive species could travel via the Nutley Stream or be mechanically spread to Booterstown Marsh. Item No. 2 (c) of the Planning Authority's Request for Further Information required the applicant to submit a revised management plan for Invasive Alien Species. Dún Laoghaire-Rathdown County Council also requested Further Information in relation to the treatment of Japanese Knotweed as per Item No. 3 (a) of Planning Authority Reg. Ref. D19A/0908; ABP Ref. 308900-20.
- 7.9.2. A revised Invasive Species Management Plan was submitted to Dublin City Council to address the requested information (Appendix A of revised Outline Construction Management Plan refers). Japanese Knotweed was first identified on the site in 2013 and a Management Plan for its treatment was prepared in 2015. A control programme has been implemented on the site since that time. The submitted plan notes that there has been active engagement with Irish Rail in relation to the treatment of this species on Irish Rail lands since 2015. Apart from a pre-existing stand located behind the Merrion House office building, the applicant submits that no issues have been identified that would create concern regarding the spreading of this species onto Irish Rail lands.
- 7.9.3. A range of treatment options have been considered and discounted. The excavation and disposal off-site of infested material is the chosen method of remediation, excluding the Japanese Knotweed located along the southern boundary of the combined application sites, which will be retained to minimise impacts on adjacent ecologically sensitive features. Herbicide treatment of the isolated stands in this location is proposed. In areas where it may not be possible to excavate soil to a depth of 5 m, horizontal and vertical root barrier membranes will be installed to ensure there is no re-introduction of this plant species. Results of a monthly monitoring programme during the construction stage will be submitted to the Local Authority and a post-construction management programme is proposed for a period of at least 5 years following the completion of the development. It is the applicant's intention to carry out the ground remediation works in advance of the main development construction. In my opinion, these matters can reasonably be addressed by planning condition.

- 7.9.4. The plan states that site inspections undertaken between 2015 and 2020 indicate that Japanese Knotweed on the site is now under very good control and in most instances is close to eradication. There was no evidence of its further emergence over the 2020 growing period.
- 7.9.5. In my opinion, the submitted information demonstrates that the applicant has undertaken a proactive approach to the treatment of Japanese Knotweed on the site since 2015 and has engaged with adjoining landowners in relation to this issue, including Irish Rail. I note that the Parks and Landscape Services Department raised no objections in relation to the revised Invasive Species Management Plan (report dated 3<sup>rd</sup> November 2020 refers). In my opinion, the information contained in the revised management plan is acceptable and I consider that the concerns raised by the observer have already been satisfactorily addressed by the applicant.

## **7.10. Environmental Impact Assessment**

### **7.11. Introduction**

- 7.11.1. This section of the report comprises an environmental impact assessment of the proposed development. A number of matters to be considered have already been addressed in the Planning Assessment above. As such, this section of this report should be read in conjunction with the relevant sections of this assessment.
- 7.11.2. Both the 2014 amended EIA Directive (Directive 2014/52/EU) and the European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018 are applicable.
- 7.11.3. In considering the classes of development in Schedule 5, Part 2 of the Planning and Development Regulations, 2001 (as amended) for which an EIAR is required, the overall site area at c. 1.17 ha is below the 10-ha threshold for urban development in other parts of a built-up area (outside of a business district) as set out in Class 10 (b) (iv). As per the EIA screening report, the applicant considered that the preparation of an EIAR was warranted having regard to the sensitivities of the site given its proximity to Booterstown Marsh, South Dublin Bay & Tolka Estuary SPA and South Dublin Bay SAC. The applicant also notes that Dublin City Council considered that the preparation of an EIAR was required.

7.11.4. An EIAR was submitted with the application and was amended in response to the Request for Further Information.

- Content and Structure of EIAR

7.11.5. The EIAR as amended consists of 2 volumes, grouped as follows:

Volume 1: Non-technical Summary

Volume 2: Main Report (2 no. reports)

7.11.6. In accordance with Article 5 and Annex IV of the EU Directive, the EIAR provides a description of the project comprising information on the site, design, size and other relevant features. It identifies, describes and assesses in an appropriate manner, the direct and indirect significant effects of the project on the following environmental factors: (a) population and human health, (b) biodiversity with particular attention to species and habitats protected under the Habitats Directive and Birds Directive, (c) land, soil, water, air and climate, (d) material assets, cultural heritage and the landscape, and (e) the interaction of the factors referenced in points (a) to (e). It provides an adequate description of forecasting methods and evidence used to identify and assess the significant effects on the environment. It also provides a description of measures envisaged to avoid, prevent, or reduce and, if possible, offset likely significant adverse effects. The mitigation measures are presented in each chapter and are summarised in Chapter 18 of the EIAR. Where proposed, monitoring arrangements are also outlined. No difficulties were encountered in compiling the required information.

7.11.7. I am satisfied that the information provided is reasonable and sufficient to allow the Board to reach a reasoned conclusion on the significant effects of the project on the environment, taking into account current knowledge and methods of assessment. I am also satisfied that the information contained in the EIA complies with the provisions of Articles 3, 5 and Annex (IV) of EU Directive 2014/52/EU amending Directive 2011/92/EU and Article 94 of the Planning and Development Regulations, 2001 (as amended).

7.11.8. I am satisfied that the EIAR has been prepared by competent experts to ensure its completeness and quality. I note the qualifications and expertise of the persons involved in the preparation of the EIAR are set out in Chapter 19. I am satisfied that

the information provided in the EIAR is sufficiently up to date and is adequate for the purposes of the environmental impact assessment to be undertaken.

## **7.12. Consultations**

7.12.1. Details of the consultations undertaken by the applicant as part of the preparation of the EIAR are set out in Chapter 4 and elsewhere in the planning application documentation. Submissions received during the planning authority's assessment of the application, including submissions from prescribed bodies, are summarised in sections 3.3 and 3.4 above, with the third-party observations received by the Board identified in section 6.3 above. I consider that the requirements in terms of consultation have been adequately met by the applicant.

## **7.13. Vulnerability to Risk of Major Accidents and / or Disaster**

7.13.1. The requirements of Article 3(2) of the Directive include the expected effect deriving from the vulnerability of the project to risks of major accidents and / or disaster. The EIAR addresses this issue in Chapters 1, 5 and 11 and in the Stage 3 Flood Risk Assessment.

7.13.2. The closest Industrial Emissions Directive licensed facility to the site is Syntheses Limited which is approximately 850 m to the south-west on Woodbine Road in Blackrock. There are extensive mechanisms in place to mitigate and avoid any major accident or incident at licensed facilities in accordance with the conditions of the license and given the distance to the subject site, the proposed development is not vulnerable.

7.13.3. The proposed development has been designed in accordance with relevant standards and design codes and will be constructed in line with international best practices and best practice construction measures. Extensive regulatory and environmental protection controls will be in place during construction and the design will result in a safe, secure environment that is not vulnerable, nor will it create, the potential for major accidents and / or disasters. The potential for vulnerability to climactic events has been considered in Chapter 11 of the EIAR, while the potential for flooding is considered as part of the Stage 3 Flood Risk Assessment.

7.13.4. It is concluded that there is limited vulnerability to and / or potential for major accidents and disasters with the development and that it is unlikely to result in any significant environmental effects. Given the nature of the operations, the proposed

development will be relatively insensitive, and no likely significant effects are envisaged. I am satisfied that this issue has been satisfactorily addressed in the EIAR.

#### **7.14. Alternatives**

- 7.14.1. Article 5 (1)(d) of the 2014 EIA Directive requires, inter alia, a description of reasonable alternatives studied by the developer and an indication of the main reasons for the chosen option, taking into account the effect of the proposed development on the environment.
- 7.14.2. The consideration of alternatives is addressed in Chapter 4 of the EIAR. The subject site was identified as the preferred site to accommodate a biodiversity and recreational proposal and has a suitable land use zoning to accommodate the proposed development. No other alternative sites to accommodate the proposal are identified in the EIAR.
- 7.14.3. The design of the proposed development has evolved in response to input from the EIAR team, Dublin City Council, Dún Laoghaire-Rathdown County Council and relevant stakeholders, with 4 no. options identified. Under option no. 1 (“Matt Landscape”) the project covered the entire site, was low-lying in nature, and appeared as an “untouched” landscape in distant views of the site. This project was considered damaging in terms of biodiversity and landscape impacts, would require extensive groundworks and make flood mitigation difficult.
- 7.14.4. Option no. 2 (“Fan & Plinth”) allowed for a plinth above floor level, with set-backs for gas wayleaves and future proofing for possible Bus Connects layouts and a reduction in the built portion of the ground floor. This option accounted for more ground floor area than was desired and it was considered that any subsequent proposal should not propose any accommodation on the Dún Laoghaire-Rathdown County Council portion of the overall site. The lack of a central courtyard required that any outdoor space could not be projected from the Marsh and Bay. There was also a risk of light spill and acoustic issues to the Marsh from proposed terraces facing south towards the road.
- 7.14.5. Option no. 3 (“Concentric Circles”) incorporated a central courtyard to provide a buffer zone to the Marsh and Bay, a landscaped garden to the south-eastern portion of the site, semi-recessed car parking to allow for natural ventilation and visual

concealment from the site, flood alleviation parameters, Bus Connects future proofing and gas wayleave identification. All the building footprint was proposed on lands located in Dublin City Council's administrative area and this scheme was subject to preplanning consultation with the Planning Authority. It was subsequently determined that the building footprint could be reduced, and the car parking could be further concealed. Landscape architects were appointed to the project and a series of surveys of flora and fauna habitats were maintained to inform the design process.

- 7.14.6. Option no. 4 (Planning Application Scheme) was subject to pre-planning consultations with both Planning Authorities and with a variety of stakeholders. Option no. 4 (a) (Planning Application RFI scheme) represents the scheme as amended in response to the Request for Further Information issued by both Dublin City Council and Dún Laoghaire-Rathdown County Council.
- 7.14.7. A "Do-Nothing" scenario was also considered, which would involve the site remaining in its current position. It was considered that the biodiversity and ecology potential of the site would be lost under this scenario, and it is highlighted that the site is one of the last remaining opportunities along Dublin Bay to deliver a public realm proposal of national significance.
- 7.14.8. Having regard to the Guidelines for Carrying out Environmental Impact Assessment (2018) which state that the type of alternatives will depend on the nature of the proposed project and the characteristics of the receiving environment, I consider that the requirements of the Directive in terms of consideration of reasonable alternatives have been discharged.

## **7.15. Population and Human Health**

- 7.15.1. Population and human health are considered in Chapter 5 of the EIAR. The likely effects of the proposed development on human beings and health are addressed under several headings of the environmental impact assessment, and as such, should be considered as a whole.

### **Receiving Environment**

- 7.15.2. The site is located in an area which is characterised as a well-planned and settled, mature residential area. It is located between 2 no. electoral divisions, Pembroke East D to the north-west and Blackrock-Boooterstown to the south-east. The total population of Pembroke East D in 2016 was 5,263 persons (increase of 12.5%) and

of Blackrock-Boosterstown was 3,436 persons (increase of 3.2%). These electoral divisions have a wide range of healthcare, childcare and educational facilities. The area also includes community facilities such as parks, playgrounds and libraries.

7.15.3. In a “Do-Nothing” scenario, it is likely that the subject site would remain vacant, be significantly underutilised and would likely go into further decline.

### **Potential Impacts**

7.15.4. There is potential for noise exposure of construction workers during the construction phase. There will be some impact on nearby noise sensitive properties due to construction noise emissions from site activity and traffic. The noise emissions during the operational phase of the proposed development will be either imperceptible or designed to comply with relevant noise limit values.

7.15.5. Incorrect management of waste during the construction and operational phases of the proposed development could result in a nuisance to the public and attract vermin.

### **Mitigation Measures**

7.15.6. A Construction Management Plan (CMP) has been prepared and will provide a mechanism for implementing the various mitigation measures described in Chapter 18 of the EIAR. All personnel will be required to understand and implement the requirements of the CMP and to comply with all legal requirements and best practice guidance for construction sites.

7.15.7. The proposed development has been designed to avoid negative impacts on population and human health through the inclusion of a childcare facility, landscaping to mitigate against issues arising from microclimate conditions, the inclusion of a comprehensive foul and surface water management system, energy efficiency measures and high-quality finishes and materials.

### **Residual Impacts**

7.15.8. It is anticipated that the proposed development will realise significant positive overall economic and social benefits for the local community and the wider Booterstown area. Adherence to the identified mitigation measures will ensure that there will be no negative residual impacts or effects on population or human health from the construction and operation of the proposed development.



## **Population and Human Health - Conclusion**

7.15.9. I have considered the submissions on file and this chapter of the EIAR. I am satisfied that potential effects on population and human health would be avoided, managed and mitigated by the measures which form part of the proposed development, the proposed mitigation measures and through suitable conditions. I am therefore satisfied that the proposed development would not have any unacceptable direct, indirect or cumulative effects on population and human health.

### **7.16. Biodiversity**

7.16.1. The impact of the proposed development on Biodiversity is considered in Chapter 6 of the EIAR.

### **Receiving Environment**

7.16.2. The subject site is disused and primarily consists of made ground and is dominated by scrub vegetation. The Nutley Stream forms the eastern boundary of the site and the culverted Trimleston Stream forms the southern site boundary, separating it from Booterstown Marsh beyond. Both these streams discharge to Dublin Bay. The boundary of South Dublin Bay SAC is located c. 35 m to the east of the site, while the boundary of South Dublin Bay and River Tolka Estuary SPA is located immediately to the south. The application site also overlaps the boundary of Booterstown Marsh pNHA. The area of overlap does not contain any wetland or saltmarsh habitat for which this site is designated.

7.16.3. Japanese Knotweed was recorded on the site during habitat surveys. A treatment programme for this invasive species has been in operation since 2015. Mammal paths recorded on site during the site survey are likely attributable to Red Fox. No signs of Badger were recorded on the site and Otter was not recorded within the site or near the Nutley Stream. Pygmy Shrew, Hedgehog, Brown Rat, Rabbit and House Mouse may occur within the site. The value of the site for mammals, other than Bat and Otter, is of low ecological value.

7.16.4. No trees containing potential roost features for bats were identified within the site. Foraging / commuting bat activity was recorded along the periphery treeline which forms the southern site boundary and to a lesser extent along the Nutley Stream to the east of the site. Suitable wetland breeding/hibernation habitats for amphibians were identified adjacent to the Nutley Stream and riparian vegetated banks located

within the site. There is also suitable habitat for Common Lizard. Flowering plants were abundant within the site and the area is considered to provide a valuable resource for invertebrates and pollinators.

- 7.16.5. Four amber-listed bird species are considered to breed within the site including Robin, Linnet, House Sparrow and Stonechat.
- 7.16.6. Wintering bird surveys undertaken on the site in 2019 and 2020 recorded Snipe, Teal, Mallard, Little Egret, Moorhen and Kingfisher. Surveys at Booterstown Marsh recorded 17 wintering bird species, while 19 were recorded at Sandymount Sandspit. Of the bird species recorded, 14 are species of Special Conservation Interests (SCI) of nearby SPAs. Both survey years demonstrated that the proposed development site is not used by SCI species.
- 7.16.7. A total of 18 wintering bird species were recorded flying over the proposed development site during 2020 flight activity surveys, including Gulls, Light-bellied Brent Geese, Waders and Ducks, Cormorant, Grey Heron and Little Egret.
- 7.16.8. In a “Do-Nothing” Scenario, the site would continue to exist as a brownfield site and provide suitable habitat for breeding birds, pollinators, foraging bats and numbers of roosting wintering birds.

### **Potential Impacts**

- 7.16.9. Likely significant effects have been considered for Key Ecological Receptors. Potential impacts which may arise to 8 no. European sites in Dublin Bay and the Irish Sea include hydrological impacts resulting in habitat degradation or species mortality, air quality impacts, potential for escape / spread of non-native invasive plant materials resulting in habitat degradation, disturbance and displacement impacts, and bird collision risk impacts. In the absence of mitigation, there is also potential for the proposed development to impact on habitats and species associated with Booterstown Marsh pNHA and Dublin Bay pNHAs.
- 7.16.10. The proposed development will result in the loss of a portion of the following habitats – treelines, dry calcareous and neutral grassland, dry meadows and grassy verges and scrub mosaic and depositing/lowland rivers – Nutley Stream. The removal of 8 no. small trees is not considered to affect the overall integrity of treelines within the site as a resource for breeding birds and foraging bats, and therefore, any impact will be negligible. There will be a small loss of dry calcareous

and neutral grassland which is not considered to result in a significant impact on the overall botanical value of the site. This loss is considered to result in a significant impact at the local geographical scale arising from potential impacts in its support of pollinators, breeding birds and foraging bats. A total of 94% of the dry meadows and grassy verges and scrub mosaic occurring within the site will be lost on foot of the proposed development. This loss will result in a significant impact at the local geographical scale arising from potential impacts in its support of pollinators, breeding birds and foraging bats.

7.16.11. The proposed development will not directly impact any instream habitat associated with the Nutley Stream. A stretch of riparian habitat will be lost along the stream to accommodate the relocated flood compensatory storage area. Indirect impacts on water quality in the stream may occur during construction resulting from accidental pollution or sediment run-off. In the absence of mitigation, these impacts are expected to result in a significant impact at a local geographical scale. The spread of Japanese Knotweed to un-infested areas of the site or to adjacent areas, could result in a significant impact at a local to an international geographic scale. Habitat degradation arising from dust impacts during construction has the potential to result in a significant impact at a local geographical scale.

7.16.12. The removal of c. 0.99 ha of dry meadows and grassy verges and scrub mosaic has the potential to significantly impact foraging bats at a local geographical scale. In the absence of mitigation, temporary lighting during the construction stage may result in a temporary significant impact on bats at a local geographical scale. An accidental pollution event of a significant magnitude during construction has the potential to affect water quality in the Nutley Stream and the local common frog and/or the smooth newt it supports. In the absence of mitigation, the proposed development has the potential to result in a likely significant effect at the local geographic scale. In the absence of mitigation, the loss of grassland habitat, open areas of bare ground and recolonising bare ground, will result in a significant impact on common lizard at a local geographical scale.

7.16.13. In the absence of mitigation, there is the potential for direct impacts on nesting birds and/or mortality of birds arising from the clearance of site vegetation. Birds currently using the site may also be temporarily disturbed and displaced on foot of increased noise and human activity during construction. In the absence of mitigation,

this may potentially reduce the breeding success of the local bird population, although this impact is considered to be short-term and temporary.

- 7.16.14. Construction activities have the potential to result in visual and auditory disturbance impacts on wintering birds occurring in adjacent areas of Dublin Bay. Contaminated surface water run-off could also potentially cause adverse impacts on wintering and / or staging birds as a result of direct contact or indirectly through degradation of roosting and feeding habitats. There is the potential for the proposed development and cranes used during construction to present a collision risk to winter bird species which may fly over the site to reach inland sites. It is considered that the cranes will not pose a collision risk to winter species that would have any long-term effect on population numbers.
- 7.16.15. Wintering Snipe were regularly recorded within the proposed development site and would be displaced during construction works. Given the few numbers of brownfield sites along Dublin Bay that are available to wintering snipe, disturbance and displacement during the construction phase is likely to result in a significant impact at a county scale. As a worst-case scenario and in the absence of mitigation, pre-migrating Terns at Sandymount Sandspit would be affected by construction phase impacts, which would potentially have medium to long-term negative impacts on terns during migration and their subsequent survival and reproductive success. This potential significant impact would be at an international scale.
- 7.16.16. During the operational phase, the proposed landscape planting and areas of habitat retention will result in a long-term increase of local (higher) valued habitats within the site, which is a significant positive impact at the local geographical scale. It is also expected that there will be a long-term increase of pollinator-friendly habitats available to the local population within the site, which is a significant positive impact at a local geographical scale.
- 7.16.17. In the absence of mitigation, there could be a low level of mortality attributable to bird collision with glazing on the lower levels of the proposed building. This impact is unlikely to cause any significant impact at the local scale. Operational lighting has the potential to reach Sandymount Sandspit and Booterstown Marsh and habitats within the site which are used by wintering bird species, giving rise to disturbance impacts. In the absence of mitigation, the operational phase impacts of the

development on wintering birds could result in a significant impact at a local to international geographical scale.

### **Mitigation Measures**

7.16.18. The updated CMP incorporates relevant biodiversity mitigation measures and an updated Invasive Species Management Plan. The mitigation measures which are proposed during the construction stage can be summarised as follows:

- Appointment of suitably qualified Ecological Clerk of Works.
- Adherence to best practice construction guidelines.
- Storage of sand / gravel / soil away from watercourses or hydrological pathways to Dublin Bay.
- Collection of surface water in silt / gravel traps prior to discharge to surface water drainage network, with weekly visual checks.
- All chemicals / fuels to be stored in bunded containers with sufficient storage capacity.
- Refuelling in bunded enclosures.
- Spill kits on site, spill response procedures and reporting of spill incidents.
- Oil interceptors installed on surface water drainage network.
- No foul sewer discharge to surface water drainage network.
- Temporary SuDS measures implemented during all phases of construction works, including on-site treatment of surface and groundwater run-off.
- Spraying of exposed earthworks and haul roads during dry weather.
- Wheel washes, controlled vehicle speeds and sweeping of hard surfaces.
- Sensitive receptors - rock breaking plant located as far away as possible, hoarding and covering of stockpiles.
- Measures to control and eradicate Japanese Knotweed set out in updated Invasive Species Management Plan.
- Demarcation of all retained habitats to protect from accidental damage.

- Planting of species-rich calcareous grassland mix in the southern section of the site and inclusion of Downy Birch in the proposed tree planting mix.
- Implementation of detailed, updated Habitat Management Plan.
- Removal of trees and hedgerows to be undertaken outside of the bird nesting season. Where this restriction cannot be observed, a breeding bird survey of the affected habitat will be undertaken.
- Construction lighting directed away from sensitive receptors.
- UV light beam or paint used on crane arm to make it detectable for SCI birds flying at dusk or night.
- Use of SuDS maximised to minimise impact on the surface water system.
- Ground floor level windows of the proposed building will include visual markers or decals to make the glazing more detectable for passerines.
- Design of the operational lighting will maintain a dark corridor along Nutley Stream, in the coastal wildflower meadow and closest to Booterstown Marsh.

### **Residual Impacts**

7.16.19. Subject to the implementation of the identified mitigation measures, no residual impacts are predicted in relation to designated sites, habitats, foraging/commuting bats, invertebrates including pollinators and pre-migrating terns. Residual impacts on breeding and wintering birds include temporary displacement from the subject site during the construction phase and vegetation clearance. However, no long-term significant impacts are predicted on breeding and wintering birds at any geographical scale.

### **Biodiversity - Conclusion**

7.16.20. I have considered the submissions on file and this chapter of the EIAR. I am satisfied that potential effects on biodiversity would be avoided, managed and mitigated by the measures which form part of the proposed development, the proposed mitigation measures and through suitable conditions. I am therefore satisfied that the proposed development would not have any unacceptable direct, indirect or cumulative effects on biodiversity.

## 7.17. Land and Soils

7.17.1. Land and soils are considered in Chapter 7 of the EIAR.

### Receiving Environment

7.17.2. The site-specific ground investigations identified ground conditions beneath the site as made ground which extends to a maximum thickness of 3.2 m. Estuarine and beach deposits, relict topsoil and glacial till underlie the made ground. Some contaminated soil samples were identified on the site, with the degree of contamination being minor on a local scale. The site is underlain by Lucan formation limestone and by a locally important aquifer that is moderately productive only in local zones. Groundwater vulnerability within the site is described as high. The subsoil of the site has low permeability with a maximum recharge of 200 mm/yr.

7.17.3. In a “Do-Nothing” Scenario, there will be no major changes to the baseline conditions of the site.

### Potential Impacts

7.17.4. The excavation of overburden and topsoil from the site may have a slight/moderate impact on the local environment. The removal of Japanese Knotweed contaminated material will have a minor beneficial impact on the site. There is the potential for contamination of groundwater during the construction phase. No effects on soils, geology or hydrogeology are envisaged during the operational phase of the proposed development.

### Mitigation Measures

7.17.5. The mitigation measures which are proposed in relation to land and soils include:

- Precautionary measures to contain any areas within the site at risk of contaminated run-off.
- Monitoring of earthworks, which will not be undertaken in extreme weather events, with excavation of Japanese Knotweed material carried out in dry weather conditions. All excavated material to be stored on geotextile membranes.
- Waste produced but not subsequently used on site will be transported to a licensed waste disposal facility.

- The CEMP will outline good construction management practices to minimise the risk of pollution of existing water bodies and water courses due to the transport and storage of excavated materials.

### **Residual Impacts**

7.17.6. Subject to the implementation of the identified mitigation measures, no residual impacts are predicted in relation to land and soils.

### **Land and Soils - Conclusion**

7.17.7. I have considered the submissions on file and this chapter of the EIAR. I am satisfied that potential effects on land and soils would be avoided, managed and mitigated by the measures which form part of the proposed development, the proposed mitigation measures and through suitable conditions. I am therefore satisfied that the proposed development would not have any unacceptable direct, indirect or cumulative effects on land and soils.

### **7.18. Water**

7.18.1. The impact of the proposed development on the water environment of the site is considered in Chapter 8 of the EIAR.

### **Receiving Environment**

7.18.2. The subject site is located in the Eastern River Basin District Area. The Elm Park Stream is located approx. 275 m north of the site boundary and flows in an east-west direction into Dublin Bay. The Trimleston Stream runs parallel to the southern site boundary. The Nutley Stream runs parallel to the eastern site boundary from north to south. The Irish Sea is located to the north-east of the subject site.

7.18.3. Surface water currently discharges to ground within the site. There is an existing 300 mm vitrified clay gravity combined sewer, a 9-inch cast iron watermain and 24-inch cast iron trunk watermain on Merrion Road / Rock Road outside the site. Groundwater levels within the site range from approx. 0.75m OD to 1.65 m OD.

7.18.4. The subject site lies within the 1 in 200-year tidal floodplain, is at risk of tidal flooding and lies within Flood Zone A. There is potential for pluvial flooding in the study area. Existing ground levels on the site are above mean high-water spring tide levels and therefore it is assumed that the risk of groundwater flooding is low. Fluvial risk to the



site from Elm Park Stream and Trimleston Stream is considered low. The results of hydraulic modelling indicate that the site is at risk of flooding from the Nutley Stream.

7.18.5. A “Do-Nothing” scenario would result in a neutral effect with regard to water.

### **Potential Impacts**

7.18.6. Potential impacts to water on foot of the proposed development include pollution from runoff and erosion from site earthworks and stockpiles, fuels and lubricants, washing of construction vehicles and equipment and accidental spillages of fuel / oil leaks. The construction activities have the potential to temporarily alter the hydrological regime in the study area, which is a significant, short-term negative effect.

7.18.7. Surface water has the potential to flood excavations, the car parking and lower ground floor areas during construction. The proposed development also has the potential to increase flood risk off-site during construction.

### **Mitigation Measures**

7.18.8. The mitigation measures which are proposed with respect to water include:

- The preparation and agreement of a Construction Management Plan (CMP) with the Planning Authority, which will be further developed by the contractor as a Construction Environmental Management Plan (CEMP) and maintained for the duration of the construction programme.
- Earthwork operations will promote safe run-off and prevent ponding and flooding.
- Control of run-off to minimise water effects in outfall areas.
- All concrete mixing and batching activities located away from watercourses and drains.
- All hazardous materials stored within secondary containment to retain at least 110% of the storage contents and use of temporary bunds for oil/diesel storage tanks.
- Use of SuDS features to improve water quality and reduce quantity of surface water discharging into the receiving system.
- Provision of compensatory flood storage on the northern part of the site along the riverbank of the Nutley Stream.

- Flood Risk – floor level set to 4.8 m OD, which is significantly elevated above the site flood defence level; construction of minor embankment around car park perimeter; ground levels external to car park fall away from the undefended section; appropriately designed drainage system.

### **Residual Impacts**

7.18.9. With the implementation of the identified mitigation measures, there will be no significant residual effect on the hydrology of the site, water quality or the drainage characteristics of the site during construction. No residual effects are expected in relation to water supply or wastewater arising from the construction phase of the proposed development. There will be no significant residual effect on flood risk on foot of the proposed development, as a series of engineering measures will be incorporated into the development that will appropriately mitigate flood risk at the site.

7.18.10. The proposed development is predicted to have an overall neutral impact within the study area in relation to wastewater and water supply.

### **Water – Conclusion**

7.18.11. I have considered the submissions on file and this chapter of the EIAR. I am satisfied that potential effects on water would be avoided, managed and mitigated by the measures which form part of the proposed development, the proposed mitigation measures and through suitable conditions. I am therefore satisfied that the proposed development would not have any unacceptable direct, indirect or cumulative effects on water.

### **7.19. Noise and Vibration**

7.19.1. The noise and vibration impacts of the proposed development are considered in Chapter 9 of the EIAR.

### **Receiving Environment**

7.19.2. An environmental noise survey was undertaken at 3 no. locations on the subject site as illustrated in Figure 9.1 (Site Context and Measurement Positions). Survey point A was located at the southern end of the site adjacent to Booterstown Marsh, survey point B was located at the south-western site boundary adjacent to the public road, while survey point C was located adjacent to the south-eastern site boundary

proximate to the rail line. The results of the survey are summarised in the table below.

<b>Survey Location</b>	<b>Ambient Noise Levels (LA<sub>eq</sub>)</b>	<b>Max. Noise Levels (LA<sub>max</sub>)</b>	<b>Background Noise Levels (LA<sub>90</sub>)</b>
<b>A</b>	53 - 57	61 - 78	49 - 50
<b>B</b>	62 - 66	77 - 93	52 - 53
<b>C</b>	53	68 - 72	46

7.19.3. The nearest noise sensitive locations to the proposed development include the houses at Landaff Terrace to the north-west (NSL1), the Tara Towers Hotel to the west (NSL2) and houses at Merrion Road / Trimleston Avenue junction to the south-west (NSL3). Ecological impacts on Booterstown Nature Reserve during the construction phase are considered in Chapter 6: Biodiversity.

7.19.4. In a “Do-Nothing” scenario, the noise environment within the site and at nearest noise sensitive locations will remain largely unchanged.

### **Potential Impacts**

7.19.5. Potential noise impacts may arise from construction plant and construction traffic on foot of the proposed development. Vibration at sensitive locations is typically limited to excavation works and lorry movements on uneven road surfaces. Based on predicted daytime noise levels during the construction phase, and allowing for the attenuation of sound over distance, the levels at the nearest noise sensitive properties is below the relevant construction noise criteria. Thus, in the absence of noise mitigation, a negative, moderate and short-term impact is likely at the identified noise sensitive locations.

7.19.6. The predicted change in noise level associated with additional traffic on foot of the proposed development ranges from no change to a negligible change, with the impact being neutral, imperceptible and long-term. Noise impacts may arise on foot of the operation of mechanical plant during night-time periods. There is also potential for exposure to noise for construction workers during the construction phase of the proposed development.

## **Mitigation Measures**

7.19.7. The following mitigation measures are identified with the respect to noise and vibration:

- Adherence to best practice noise and vibration guidance and control methods including, selection of quiet plant, noise control at source, screening, liaison with public, limited working hours and where required, monitoring.

## **Residual Impacts**

7.19.8. Subject to mitigation, noise and vibration impacts during the construction phase will be negative, moderate and short-term on the surrounding environment. During the operational phase, traffic noise arising on foot of the proposed development will have a neutral, imperceptible and long-term impact to nearby residential locations. The residual impacts from mechanical services plant will also be neutral, imperceptible and long-term.

## **Noise and Vibration - Conclusion**

7.19.9. I have considered the submissions on file and this chapter of the EIAR. I am satisfied that potential effects of noise and vibration would be avoided, managed and mitigated by the measures which form part of the proposed development, the proposed mitigation measures and through suitable conditions. I am therefore satisfied that the proposed development would not have any unacceptable direct, indirect or cumulative effects by reason of noise and vibration.

## **7.20. Air Quality and Climate**

7.20.1. The impact of the proposed development on Air Quality and Climate is considered in Chapter 10 of the EIAR.

### **Receiving Environment**

7.20.2. The baseline air quality of the subject site has been identified using the most recently available annual report from the EPA – “Air Quality in Ireland 2017 – Indicators of Air Quality” (2018). Current background concentrations for the key pollutants including NO<sub>2</sub>, PM<sub>10</sub>, PM<sub>2.5</sub>, Benzene and CO are identified, all of which are below/significantly below the relevant limit values.

7.20.3. The sensitivity of the receiving environment to dust impacts is identified as medium for 11 no. high-sensitivity (residential) receptors located within 50 m of the proposed construction works. The sensitivity of these receptors with respect to PM<sub>10</sub> concentration (human health) is low. Booterstown Marsh pNHA, South Dublin Bay & River Tolka Estuary SPA and South Dublin Bay pNHA and SAC have a high sensitivity to ecological impacts from the proposed construction works.

7.20.4. Under a “Do-Nothing” scenario, no construction works will take place and impacts of fugitive dust and particulate matter emissions and emissions from equipment and machinery will not occur. The ambient air quality at the site will remain as per the baseline and will change in accordance with trends in the wider area.

**Potential Impacts**

7.20.5. The risk of dust emission impacts on foot of earthworks, construction activities and track-out activities are summarised in the table below.

Potential Impact	Dust Emission Magnitude			
	Demolition	Earthworks	Construction	Track-out
Dust Soiling	N/A	Medium risk	Medium risk	Medium risk
Human Health	N/A	Low risk	Low risk	Low risk
Ecological	N/A	High risk	Medium risk	Medium risk

7.20.6. There is also the potential for greenhouse gas emissions to atmosphere during the operational phase of the development, but the impact to climate is considered imperceptible and short-term. There is also potential for traffic-related emissions to the atmosphere during the operational phase. The impact of the proposed development in terms of NO<sub>2</sub>, PM<sub>10</sub>, PM<sub>2.5</sub>, CO and benzene is long-term, localised, negative and imperceptible. The likely overall magnitude of changes on climate in the operational stage is imperceptible and long-term. The impact of the construction of the proposed development is likely to be negative, short-term and imperceptible with respect to human health.

## **Mitigation Measures**

7.20.7. The mitigation measures which are proposed with respect to Air Quality and Climate include the formulation of a dust-minimisation plan for the construction phase of the project (plan outlined in Appendix 10.2). Impacts to air quality and climate are predicted to be imperceptible for the operational phase of the proposed development, and as such, no mitigation is required.

## **Residual Impacts**

7.20.8. No significant residual impacts are identified.

## **Air Quality and Climate – Conclusion**

7.20.9. I have considered the submissions on file and this chapter of the EIAR. I am satisfied that potential effects on air quality and climate would be avoided, managed and mitigated by the measures which form part of the proposed development, the proposed mitigation measures and through suitable conditions. I am therefore satisfied that the proposed development would not have any unacceptable direct, indirect or cumulative effects on air quality or climate.

## **7.21. Wind and Microclimate**

7.21.1. The impact of the proposed development with respect to wind and microclimate is considered in Chapter 11 of the EIAR.

## **Receiving Environment**

7.21.2. The local wind climate has been determined using historical meteorological data recorded at Dublin Airport and compared with the results of on-site measurements using a B-fluid weather station. The wind predominantly blows from the west and southwest directions, with a secondary wind from the southeast. Maximum daily winds are commonly found between 6 – 15 m/s, with the strongest winds arising from the west and southwest.

7.21.3. The proposed development introduces no critical or negative wind or microclimate conditions onto existing pedestrian paths, buildings or the environment. As such, the “do-nothing” impact of the proposed development is imperceptible.

## **Potential Impacts**

7.21.4. As the construction of the proposed development progresses, the wind conditions of the site will gradually adjust to those of the completed development. During this phase, the predicted impacts are classified as negligible.

7.21.5. Computational Fluid Dynamics (CFD) modelling indicates that funnelling effects are experienced in the under-passage to the central courtyard. At certain wind directions, certain balconies on the middle and top floors may be exposed to the wind and higher velocities may be experienced.

## **Mitigation Measures**

7.21.6. The proposed mitigation measures include:

- Landscaping with tree planting to reduce incoming velocities and wind impacts on buildings, public spaces and pedestrian paths.
- The use of horizontal canopies to improve pedestrian level wind conditions in the under-passage to the central courtyard.
- A colonnade on the windward face of the building to provide pedestrians with a calm area for walking.
- Implementation of planters around the balustrade, pergola and trellis structures around sitting areas to balconies. Multi-stem planting will help to reduce velocities and have a decorative function.

## **Residual Impacts**

7.21.7. No residual impacts are identified.

## **Wind and Microclimate – Conclusion**

7.21.8. I have considered the submissions on file and this chapter of the EIAR. I am satisfied that potential wind and microclimate effects would be avoided, managed and mitigated by the measures which form part of the proposed development, the proposed mitigation measures and through suitable conditions. I am therefore satisfied that the proposed development would not have any unacceptable direct, indirect or cumulative effects with respect to wind and microclimate.

## **7.22. Landscape and Visual Effects**

7.22.1. The landscape and visual effects of the proposed development are considered in Chapter 12 of the EIAR.

### **Receiving Environment**

7.22.2. The receiving environment of the site is as described in Section 2.0 of this report. In a “Do Nothing” scenario, the existing visual environment will remain unchanged.

### **Potential Impacts**

7.22.3. The proposed construction works will result in the usual visual effects from a substantial construction project. These will be moderate in extent in a worst-case scenario. The character of the visual effects during the construction phase are likely to be wholly negative at first, becoming neutral to positive as the new structure becomes apparent.

7.22.4. During the operational phase of the proposed development, the effects on landscape character and social and cultural amenity, will be moderate, positive and long-term. The proposed building is likely to be perceived as a landmark due to its unique character and architectural expression.

7.22.5. Photomontages of the proposed development from 11 no. viewpoint locations have been prepared and have been used to assess the extent of its likely effect on the surrounding visual environment. The likely visual effect of the proposed development ranges from “none” to “imperceptible” to “slight” to “moderate”.

### **Mitigation Measures**

7.22.6. The mitigation measures which are proposed with respect to landscape and visual effects include:

- Establishment of an integrated relationship between the development, surrounding buildings and the landscape by incorporating aspects of current and emerging trends in built form, scale, texture, colour and materials.
- Rationalisation of all service elements and other potential visual clutter.
- Use of appropriate materials.
- The inclusion of communal / public uses within the development.



- The protection of existing habitat and informed introduction of new habitat.
- Providing education and awareness of the adjacent UNESCO Dublin Bay Biosphere.

### **Residual Impacts**

7.22.7. No residual impacts are identified.

### **Landscape and Visual Effects – Conclusion**

7.22.8. I have considered the submissions on file and this chapter of the EIAR. I am satisfied that potential landscape and visual effects would be avoided, managed and mitigated by the measures which form part of the proposed development, the proposed mitigation measures and through suitable conditions. I am therefore satisfied that the proposed development would not have any unacceptable direct, indirect or cumulative landscape and visual effects.

### **7.23. Traffic and Transport**

7.23.1. The traffic and transport impacts of the proposed development are considered in Chapter 13 of the EIAR.

#### **Receiving Environment**

7.23.2. The proposed development is located adjacent to the Merrion Road / Rock Road. Pedestrian footpaths are provided along Merrion Road to the north of the site and along Rock Road to the south, providing good accessibility for pedestrians. A pedestrian crossing is in place adjacent to the site at the junction with Trimleston Avenue. The site is located within the 20-minute walking catchment of Sydney Parade Dart station. Cycle facilities are in place along Merrion Road and Rock Road. The Merrion Road / Rock Road is a good quality transport corridor, with bus lanes along most of its length. The south bound bus stop no. 425 and northbound stop no. 475 are located directly adjacent to the site and serve numerous Dublin Bus routes. The site is bounded by the DART line to the east, with Booterstown station located approx. 500 m to the southwest of the site.

7.23.3. Under a “Do Nothing” scenario, traffic conditions on Merrion Road will remain congested during peak hour periods.

## **Potential Impacts**

- 7.23.4. The total construction traffic volumes per hour are not significant in terms of the overall existing traffic flows.
- 7.23.5. The proposed development will result in only slight increases in traffic on the local road network during the operational phase (assumed operational year 2021). The percentage increase in traffic at junctions across the local road network in 2021 are minor (less than 5%). Junction assessments undertaken on the R118 Merrion Road / R118 Rock Road / Trimleston Avenue / Site Exit and the R118 Merrion Road / Bellevue Avenue / Site Entrance indicate that the proposed development will have minimal or no impacts on the operation of these junctions in the opening year (2021) and 15 years after the opening of the development (2036).

## **Mitigation Measures**

- 7.23.6. The mitigation measures which are proposed with respect to traffic and transport include:
- Preparation of a CMP and Construction Traffic Management Plan (CTMP). The CTMP will clearly identify the routes to be used for different types of traffic as appropriate.
  - Appointment of Traffic Management Coordinator for the project duration.
  - Site induction for workers, emergency procedures and a system of clear signage to direct users.
  - The preparation of a Mobility Management Plan (MMP) to address the mobility needs of staff, members and visitors.

## **Residual Impacts**

- 7.23.7. No residual impacts are identified.

## **Traffic and Transport - Conclusion**

- 7.23.8. I have considered the submissions on file and this chapter of the EIAR. I am satisfied that potential traffic and transport effects would be avoided, managed and mitigated by the measures which form part of the proposed development, the proposed mitigation measures and through suitable conditions. I am therefore satisfied that the

proposed development would not have any unacceptable direct, indirect or cumulative traffic and transport effects.

#### **7.24. Utilities**

7.24.1. The impact of the proposed development on utilities is addressed in Chapter 14 of the EIAR.

#### **Receiving Environment**

7.24.2. There are no existing electrical or water connections entering the site. There are no existing drainage connections to the public sewer on the site. There are no existing commercial / domestic gas connections entering or serving the site. There is a 400 mm diameter 40-bar gas trunk main that crosses Dublin Bay before it enters the north-eastern corner of the site. It then runs parallel to the northern site boundary, before turning in a south-east direction to run just inside the boundary with Merrion / Rock Road. An existing wayleave arrangement is in place for this trunk main. There are no existing telecommunication connections entering the site.

7.24.3. The “Do Nothing” scenario is considered to have a neutral effect with regard to utilities.

#### **Potential Impacts**

7.24.4. There is the potential for slight, negative, short-term impacts to arise during the construction phase on foot of power demands, water supply, new drainage infrastructure and telecommunications equipment for the proposed signalised crossing installations.

7.24.5. During the operational phase, the power, water, drainage and gas requirements arising on foot of the proposed development are expected to be minor.

#### **Mitigation Measures**

7.24.6. The following mitigation measures are proposed with respect to utilities:

- All works in the vicinity of utilities apparatus will be carried out in ongoing consultation with the relevant provider / Local Authority.
- Where new services are required, connection permits will be sought in advance and all implementation requirements will be adhered to.

## **Residual Impacts**

7.24.7. No residual impacts are identified.

## **Utilities – Conclusion**

7.24.8. I have considered the submissions on file and this chapter of the EIAR. I am satisfied that potential effects on utilities would be avoided, managed and mitigated by the measures which form part of the proposed development, the proposed mitigation measures and through suitable conditions. I am therefore satisfied that the proposed development would not have any unacceptable direct, indirect or cumulative effects on utilities.

## **7.25. Waste Management**

7.25.1. The impact of the development with respect to waste management is considered in Chapter 15 of the EIAR.

## **Receiving Environment**

7.25.2. The receiving environment is largely defined by Dublin City Council as the Local Authority responsible for setting and administering waste management in the area. This is governed by the requirements of the Eastern-Midlands Region (EMR) Waste Management Plan 2015-2021, which sets out targets for waste management in the region.

7.25.3. In a “Do Nothing” scenario, there will be a neutral effect on the environment with respect to waste management.

## **Potential Impacts**

7.25.4. The potential impacts associated with waste management include:

- Inappropriate management and storage of waste during the construction and operational phases could result in negative environmental impacts or pollution – litter, presence of vermin.
- Correct classification and segregation of excavated material from the site will be required to ensure that potentially contaminated materials are identified and handled so they do not impact negatively on workers and water and soil environments, on and off-site.

- The use of non-permitted waste contractors or unauthorised facilities could give rise to the inappropriate management of waste during the operational phase, resulting in negative environmental impacts or pollution.

7.25.5. The potential effect of construction waste generated from the proposed development is considered to be short-term, not significant and neutral. The potential impact of operational waste generation from the proposed development is considered to be long-term, not significant and negative.

### **Mitigation Measures**

7.25.6. The following mitigation measures are proposed with respect to waste management:

- Preparation of project-specific Construction & Demolition Waste Management Plan (provided in appendix 15.1) which will be refined in consultation with the Local Authority.
- Correct classification and segregation of excavated materials from the site to ensure potentially contaminated materials are identified and handled correctly.
- Building materials chosen to design out waste.
- On-site segregation of waste, stored in suitable skips/receptacles in designated areas.
- All waste to be reused, recycled or recovered where possible.
- Appointment of waste manager and appropriate training of staff.
- All waste transported by suitable permitted contractors to suitably registered, permitted or licenced facilities.
- All waste leaving the site properly recorded and copies of relevant documentation maintained.
- Implementation of Operational Waste Management Plan (provided in appendix 15.2) to ensure a high level of recycling, reuse and recovery.
- On-site segregation of all waste during the operational phase, with all waste appropriately stored, collected and transported.

## **Residual Impacts**

7.25.7. The predicted effect on the environment with respect to waste during the construction phase will be short-term, imperceptible and neutral. The predicted effect on the environment with respect to waste during the operational phase will be long-term, imperceptible and neutral.

7.25.8. No significant residual impacts are identified.

## **Waste Management – Conclusion**

7.25.9. I have considered the submissions on file and this chapter of the EIAR. I am satisfied that potential effects with respect to waste management would be avoided, managed and mitigated by the measures which form part of the proposed development, the proposed mitigation measures and through suitable conditions. I am therefore satisfied that the proposed development would not have any unacceptable direct, indirect or cumulative waste management effects.

## **7.26. Archaeological, Architectural and Cultural Heritage**

7.26.1. The impact of the proposed development on Archaeological, Architectural and Cultural Heritage is addressed in Chapter 16 of the EIAR.

## **Receiving Environment**

7.26.2. The subject site comprises foreshore partially reclaimed after the construction of the railway in 1834 and does not contain any previously recorded archaeological monuments. Those closest to the site are located 100 m to the west at the Chapel of Merrion (DU023-053001) and its associated graveyard to the south (DU023-053002). Neither of these monuments will be directly impacted by the proposed development.

7.26.3. In a “Do-Nothing” scenario, there will be no negative impact on the archaeological resource that may potentially exist on the site.

## **Potential Impacts**

7.26.4. The proposed development could potentially impact negatively on any subsurface archaeological remains that survive on the site. There is some limited potential for the survival of multi-period archaeological evidence for intertidal activity submerged in the underlying silts.

## **Mitigation Measures**

- 7.26.5. Established mitigatory measures involve the excavation under archaeological licence of a series of test trenches across the site. Should archaeological deposits be encountered, a report in relation to same will be submitted to the statutory authorities for further consideration. With agreement of the statutory authorities, the area can be opened up and the material excavated by hand and thus preserved by record.
- 7.26.6. Should no archaeological material be recorded during test trenching, a monitoring brief will be undertaken over the course of the development to establish whether archaeological deposits exist on the site. Where found to be present, development work will cease, and deposits will be excavated by hand with the agreement of statutory authorities.

## **Residual Impacts**

- 7.26.7. No residual impacts are identified.

## **Archaeological, Architectural and Cultural Heritage - Conclusion**

- 7.26.8. I have considered the submissions on file and this chapter of the EIAR. I am satisfied that potential effects on archaeological, architectural and cultural heritage would be avoided, managed and mitigated by the measures which form part of the proposed development, the proposed mitigation measures and through suitable conditions. I am therefore satisfied that the proposed development would not have any unacceptable direct, indirect or cumulative effects on archaeological, architectural and cultural heritage.

## **7.27. Interactions of the Above and Cumulative Impacts**

- 7.27.1. I have considered the interrelationships between factors and whether these may, as a whole, affect the environment even though the effects may be acceptable when considered on an individual basis. The details of all interrelationships are set out in Chapter 17 of the EIAR. In my assessment of each environmental topic, I have considered the likelihood of significant effects arising as a consequence of interrelationship between factors. Most interactions are considered under individual topic headings. I am satisfied that effects as a result of interactions can be avoided, managed and/or mitigated by the measures which form part of the proposed development, mitigation measures, and suitable conditions. There is, therefore,

nothing to prevent approval for the development on the grounds of significant effects as a result of interactions between the environmental factors.

7.27.2. Cumulative impacts were assessed in each chapter of the EIAR. Consideration was given to both the construction and operational phases of the proposed development. I am satisfied that the cumulative assessment is robust and fully assesses the impacts of the current proposal in the context of other permitted and proposed developments and projects, as appropriate.

## 7.28. Reasoned Conclusion on the Significant Effects

7.28.1. Having regard to the examination of the environmental information contained above, and in particular, the EIAR and supplementary information provided by the developer, the reports of the Planning Authority, prescribed bodies and observers in the course of the application and appeal, it is considered that the main significant direct and indirect effects of the proposed development on the environment are, and will be mitigated as follows:

7.28.2. **Biodiversity:** Potential biodiversity impacts which may arise to 8 no. European sites in Dublin Bay and the Irish Sea include hydrological impacts, air quality impacts, potential for escape / spread of non-native invasive plant materials, disturbance and displacement impacts, and bird collision risk impacts. In the absence of mitigation, there is also potential for the proposed development to impact on habitats and species associated with Booterstown Marsh pNHA and Dublin Bay pNHAs. There is also potential for direct impacts on nesting birds and / or mortality of birds arising from the clearance of site vegetation.

7.28.3. The building is located in the north-western section of the combined application sites, at the greatest distance from sensitive ecological receptors. A landscaping plan has been designed to retain as much of the existing habitats as possible.

7.28.4. During the operational phase, the proposed landscape planting and area of habitat retention will result in a long-term increase of local (higher) value habitats within the site, which is a significant positive impact at the local geographical scale. It is also expected that there will be a long-term increase of pollinator-friendly habitats available to the local population within the site, which is a significant positive impact at a local geographical scale.



- 7.28.5. Extensive mitigation measures have been identified to mitigate potential impacts on biodiversity including, inter alia, adherence to a Construction Management Plan and the implementation of an Invasive Species Management Plan. No likely significant residual effects on biodiversity are predicted.
- 7.28.6. **Water:** Potential impacts to water on foot of the proposed development including pollution from runoff and erosion from site earthworks and stockpiles, fuels and lubricants, washing of construction vehicles and equipment and accidental spillages of fuel / oil leaks. Construction activities have the potential to temporarily alter the hydrological regime in the study area. Surface water has the potential to flood excavations, the car parking and lower ground floor areas during construction. The proposed development also has the potential to increase flood risk off the site during construction.
- 7.28.7. A flood compensatory storage area is proposed adjacent to the building and the Nutley Stream to ensure no flood risk arises on or off-site. The proposed drainage design will replicate the natural drainage characteristics of the site and surface water run-off will not increase compared to the existing scenario. The operational phase of the development is predicted to have an overall neutral, long-term impact on the hydrology within the study area. A CEMP will be prepared and submitted to the Planning Authority for approval prior to the commencement of construction. Earthwork operations shall be carried out such that surfaces shall be designed with adequate falls, profiling and drainage to promote safe run-off and prevent ponding and flooding. Good site housekeeping will be enforced to mitigate the risk of spillages. Visual monitoring will be undertaken as part of regular site audits during construction to ensure the existing drainage regime of the site is not impacted by the proposed development. No mitigation or monitoring measures are proposed during the operational phase of the development. With the implementation of the identified mitigation measures, there will be no significant residual effect on hydrology, drainage characteristics, water quality or flood risk during either the construction or operation of the proposed development.
- 7.28.8. **Landscape:** The proposed development will permanently alter the landscape character of the site. The visual effects of the proposed development during the construction phase are likely to be negative at first, becoming neutral to positive as the new structure becomes apparent.

- 7.28.9. During the operational phase, the effects on landscape character and social and cultural amenity, will be moderate, positive and long-term. The proposed building is likely to be perceived as a landmark due to its unique character and architectural expression. Proposed mitigation measures include the incorporation of current and emerging trends in built form, scale, texture and colour and the use of appropriate materials; rationalisation of all service elements and other potential visual clutter; the protection of existing habitat and introduction of new habitat; the inclusion of communal / public uses within the building; and providing education and awareness of the adjacent UNESCO Dublin Bay Biosphere.
- 7.28.10. I am satisfied therefore, that the proposed development would not have any unacceptable direct or indirect effects on the environment.

### **7.29. Appropriate Assessment**

- 7.29.1. A detailed examination and analysis of the information provided as part of the applicant's planning appeal in relation to the proposed development for the purpose of Appropriate Assessment (AA) under the provisions of Article 6(3) of the Habitats Directive and the Planning and Development Act 2000 (as amended) is set out in Appendix 1 to this report. It provides a recommendation on the AA based on the scientific information provided in the Natura Impact Statement (NIS) and other supplemental documents provided and has taken account of the reasons for refusal of both Dún Laoghaire-Rathdown County Council and Dublin City Council which relate to nature conservation issues, and third-party submissions and observations on the appeal.
- 7.29.2. The subject site is located adjacent to the South Dublin Bay SAC (site code: 000210), separated by the railway line, and also South Dublin Bay and River Tolka Estuary SPA (site code: 004024) which includes the adjacent Booterstown Marsh. There is overlap between the proposed development site (Dún Laoghaire-Rathdown portion) and the Booterstown Marsh pNHA designation of c. 0.34ha. The Nutley Stream flows along the eastern site boundary, parallel to the railway line and into Booterstown Marsh, with an outfall into Dublin Bay further south of Booterstown Dart station (Williamstown Creek).

### **Legislative context and assessment**

7.29.3. I am satisfied that the first party planning appeal relating to the proposed development has been considered in light of the relevant requirements of part XAB of the Planning and Development 2000 (as amended). I consider that the Board can be confident that the information and assessment before them is complete, precise and definitive for the purpose of Appropriate Assessment. I fully adopt the assessments undertaken by the Inspectorate Ecologist Dr Maeve Flynn and her recommended determinations for Stage 1 Screening and Stage 2 Appropriate Assessment (Appendix 1 refers). I consider that both screening and Appropriate Assessment have been carried out using the best available scientific information including the following:

- Natura Impact Statement (including screening report)
- Other relevant information such as that contained in the environmental report construction and management plan
- Information submitted as part of the first party appeal - Planning Report by Brock McClure Planning & Development Consultants (including additional winter bird survey results from November and December 2020)
- Supporting submissions from other ecologists and independent peer review of bird surveys by Dixon Brosnan
- Full consideration of third-party submissions
- First Party response to third-party submissions (March 2021)
- Complete winter bird survey data set and copies of flight activity maps collected between November 2020 and March 2021
- Conservation objectives and conservation supporting documents for SAC and SPA sites in Dublin Bay

### **Adequacy of Information**

7.29.4. An overview of the NIS additional bird survey data submitted is provided in Sections 5.3 and 5.4 of the Appropriate Assessment report provided in Appendix 1. In light of the reasons for refusal relating to uncertainty of the importance of the proposed development site to SCI bird species, additional bird surveys were undertaken to cover the recommend winter survey period. The results of this additional survey work confirmed that the proposed development site is not an area favoured or used by SCI bird species. Based on the information submitted by the first party, and the

technical review of the Inspectorate Ecologist, I am satisfied that adequate survey data has been collected and analysis carried out to address the concerns of the Planning Authorities and that all potential impact mechanisms have been considered and assessed.

### **Appropriate Assessment Screening Determination (Stage 1)**

- 7.29.5. Having regard to the Inspectorate Ecologists report, information presented in the AA Screening Report, NIS, submissions, the nature, size and location of the proposed development and its likely direct, indirect and cumulative effects, the source pathway receptor principle and sensitivities of the ecological receptors, I consider that there is potential for significant effects on South Dublin Bay and River Tolka Estuary SPA (site code: 004024) and South Dublin Bay SAC (site code: 000210). The qualifying interests and conservation objectives for these sites are provided in Appendix 1 of this report.
- 7.29.6. These European sites are immediately adjacent and ecologically connected to the site and any potential impacts would exert the greatest effect on Booterstown Marsh via the connection of Nutley Stream and proximity. Impacts generated at the development site could affect SCI bird species from SPA sites in wider Dublin Bay due to the known interactions and movements between these SPA sites therefore, North Bull Island SPA (site code: 004006), Baldoyle Bay SPA (site code: 004016), Malahide Estuary SPA (site code: 004025) and Dalkey Islands SPA (site code: 004172) are brought forward for inclusion in the AA. The qualifying interests and conservation objectives for these sites are also provided in Appendix 1.
- 7.29.7. I consider that that North Dublin Bay SAC (site code: 000206) and Rockabill to Dalkey Island SAC (site code: 003000) can be removed from consideration as part of the AA and screened out of the AA process. There is a very low probability or possibility of impacts of such magnitude (alone or in combination) that could result in significant effects on North Dublin Bay SAC or Rockabill to Dalkey Island SAC in view of the conservation objectives of those sites and the likelihood of impact mechanisms reaching other SAC sites in wider Dublin Bay would be remote, given the tidal movements and dilution effects of the Bay and the fact that any accidental pollution event to surface water would be intercepted at Booterstown Marsh and further south at Williamstown Creek before discharge into South Dublin Bay SAC.

## **Appropriate Assessment (Stage 2)**

7.29.8. In the absence of mitigation or further detailed analysis, the potential for significant effects could not be excluded for:

- South Dublin Bay and River Tolka Estuary SPA and South Dublin Bay SAC.
- North Bull Island SPA, Baldoyle Bay SPA, Malahide Estuary SPA and Dalkey Islands SPA

7.29.9. Consequently, an Appropriate Assessment is required of the implications of the project on the qualifying features of those sites in light of their conservation objectives. Potential adverse effects identified include:

- Degradation of habitat quality and food resources for SCI bird species for the SPA sites due to construction related emissions.
- Disturbance of SCI birds roosting or feeding in Booterstown Marsh, Dublin Bay and Sandymount Sandspit.
- Low risk of collision of SCI bird species with cranes during construction.
- Degradation of water quality from accidental construction related emissions could affect habitat quality and vegetative communities of South Dublin Bay SAC.

7.29.10. Following Appropriate Assessment informed by the Natura Impact Statement, additional information submitted as part of the First Party appeal, consideration of the Planning Authority's refusal reason, submissions and observations, and including the full application of mitigation measures, it is considered that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of South Dublin Bay and River Tolka Estuary SPA and South Dublin Bay SAC in view of the conservation objectives of those sites. Adverse effects can also be excluded for more remote SPA sites that share SCI species including, North Bull Island SPA, Baldoyle Bay SPA, Malahide Estuary SPA and Dalkey Islands SPA in view of the conservation objectives of those sites. This conclusion is based on best scientific knowledge and a complete assessment of all aspects of the proposed development including consideration of the following:

- Detailed assessment of all aspects of the proposed development that could result in significant effects or adverse effects on European Sites within a zone of influence of the development site.
- Consideration of the conservation objectives and conservation status of qualifying interest species and habitats.
- A full assessment of risks to special conservation interest bird species and qualifying interest habitats and species.
- Complete and precise survey data and analysis of wintering birds in particular
- The proposed development site has been scientifically verified as not being of significance to or an area favoured by SCI bird species at any stage of the wintering or summer seasons.
- Application of mitigation measures designed to avoid adverse effects on site integrity and likely effectiveness of same.
- The proposed development would not undermine the favourable conservation condition of any qualifying interest feature or delay the attainment of favourable conservation condition for any species or habitat qualifying interest for these European sites.

## 8.0 Recommendation

8.1. I recommend that planning permission be granted for the proposed development.

## 9.0 Reasons and Considerations

9.1. The Board had regard to:

- (a) the Dublin City Development Plan 2022-2028,
- (b) the Planning System and Flood Risk Management Guidelines for Planning Authorities (2009),
- (c) the existing condition and underutilised nature of the subject site,
- (d) the character and pattern of the existing developments in the vicinity of the subject site,

- (e) the layout, height and scale of the proposed development,
- (f) the biodiversity proposals and the proposed public access arrangements into the site,
- (g) the Environmental Impact Assessment Report submitted,
- (h) the Natura Impact Statement submitted,
- (i) the appeal and observations made in connection with the planning application and appeal, and
- (j) the report of the Inspector

### **Appropriate Assessment: Stage 1**

The Board considered the Natura Impact Statement and all the other relevant submissions and carried out both an appropriate assessment screening exercise and an appropriate assessment in relation to the potential effects of the proposed development on designated European sites. The Board agreed with and adopted the screening assessment carried out and the conclusions reached in the Inspector's report that South Dublin Bay and River Tolka Estuary SPA (site code: 004024), South Dublin Bay SAC (site code: 000210), North Bull Island SPA (site code: 004006), Baldoyle Bay SPA (site code: 004016), Malahide Estuary SPA (site code: 004025) and Dalkey Islands SPA (site code: 004172) are the only European sites in respect of which the proposed development has the potential to have a significant effect.

### **Appropriate Assessment: Stage 2**

The Board considered the Natura Impact Statement and associated documentation submitted with the application and appeal, the mitigation measures contained therein, the submissions and observations on file, and the Inspector's assessment. The Board completed an appropriate assessment of the implications of the proposed development for the aforementioned European sites in view of the sites' Conservation Objectives. The Board considered that the information before it was adequate to allow the carrying out of an Appropriate Assessment. In completing the Appropriate Assessment, the Board considered, in particular, the following:

- the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects,

- the mitigation measures which are included as part of the current proposal, and
- the Conservation Objectives for the European sites.

In completing the Appropriate Assessment, the Board accepted and adopted the Appropriate Assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the aforementioned European sites, having regard to the sites' Conservation Objectives.

In overall conclusion, the Board was satisfied that the proposed development, by itself or in combination with other plans or projects, would not affect the integrity of the European Sites, in view of the sites' Conservation Objectives.

### **Environmental Impact Assessment**

The Board completed an environmental impact assessment of the proposed development, taking into account:

- (a) the nature, scale and extent of the proposed development,
- (b) the environmental impact assessment report and associated documentation submitted in support of the planning application,
- (c) the submissions from the planning authority, prescribed bodies, the appellant and the observers in the course of the application, and
- (d) the Inspector's report.

The Board considered that the Environmental Impact Assessment Report, supported by the documents submitted by the applicant, adequately considers alternatives to the proposed development and identifies and describes adequately the direct, indirect, secondary and cumulative effects of the proposed development on the environment.

The Board agreed with the examination, set out in the Inspector's report, of the information contained in the Environmental Impact Assessment Report, and associated documentation submitted by the applicant and submissions made in the course of the application.



The Board considered, and agreed with the Inspector's reasoned conclusions, that the main significant direct and indirect effects of the proposed development on the environment are:

**Biodiversity:** Potential biodiversity impacts which may arise to European sites in Dublin Bay and the Irish Sea include hydrological impacts, air quality impacts, potential for escape / spread of non-native invasive plant materials, disturbance and displacement impacts, and bird collision risk impacts. There is also potential for the proposed development to impact on habitats and species associated with Booterstown Marsh pNHA and Dublin Bay pNHAs and for direct impacts on nesting birds and / or mortality of birds arising from the clearance of site vegetation.

The building is located at the greatest distance from sensitive ecological receptors. The landscaping plan will retain as much existing habitats as possible. During the operational phase, the proposed landscape planting and area of habitat retention will result in a long-term increase of local, higher-value habitats within the site. It is also expected that there will be a long-term increase of pollinator-friendly habitats available to the local population within the site. Extensive mitigation measures have been identified to mitigate potential impacts on biodiversity including adherence to a Construction Management Plan and the implementation of an Invasive Species Management Plan.

**Water:** Potential impacts to water include pollution from runoff and erosion from site earthworks and stockpiles, fuels and lubricants, washing of construction vehicles and equipment and accidental spillages of fuel / oil leaks. Construction activities have the potential to temporarily alter the hydrological regime in the study area. Surface water has the potential to flood excavations, the car parking and lower ground floor areas during construction. The proposed development also has the potential to increase flood risk off the site during construction.

A flood compensatory storage area is proposed to ensure no flood risk arises on or off-site. The proposed drainage design will replicate the natural drainage characteristics of the site and surface water run-off will not increase compared to the existing scenario. The operational phase of the development is predicted to have an overall neutral, long-term impact on the hydrology within the study area. Earthwork operations shall be carried out such that surfaces shall be designed with adequate

falls, profiling and drainage to promote safe run-off and prevent ponding and flooding. Good site housekeeping will be enforced to mitigate the risk of spillages. Visual monitoring will be undertaken as part of regular site audits during construction to ensure the existing drainage regime of the site is not impacted by the proposed development.

**Landscape:** The proposed development will permanently alter the landscape character of the site. The visual effects of the proposed development during the construction phase are likely to be negative at first, becoming neutral to positive as the new structure becomes apparent.

During the operational phase, the effects on landscape character and social and cultural amenity, will be moderate, positive and long-term. The proposed building is likely to be perceived as a landmark due to its unique character and architectural expression. Proposed mitigation measures include the incorporation of current and emerging trends in built form, scale, texture and colour and the use of appropriate materials; rationalisation of all service elements and other potential visual clutter; the protection of existing habitat and introduction of new habitat; the inclusion of communal / public uses within the building; and providing education and awareness of the adjacent UNESCO Dublin Bay Biosphere.

The Board completed an Environmental Impact Assessment in relation to the proposed development and concluded that, subject to the implementation of the mitigation measures set out in the Environmental Impact Assessment Report, and subject to compliance with the conditions set out below, the effects on the environment of the proposed development, by itself and in combination with other development in the vicinity, would be acceptable. In doing so, the Board adopted the report and conclusions of the Inspector. The Board is satisfied that this reasoned conclusion is up to date at the time of taking this decision.

**Proper Planning and Sustainable Development:**

It is considered that, subject to compliance with the conditions set out below, the proposed development would improve the existing use value of the site for recreation and amenity purposes, would be in accordance with the land use zoning of the site, would make a positive contribution to the character of the area, would facilitate public access onto the site, and would not seriously injure the residential or visual

amenities of the area or of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 16<sup>th</sup> day of September 2020, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>All mitigation and monitoring commitments identified in the updated Environmental Impact Assessment Report dated September 2020 (and summarised in Chapter 18) and the mitigation measures identified in the updated Natura Impact Statement dated September 2020 shall be implemented in full as part of the proposed development, except as may otherwise be required in order to comply with the following conditions.</p> <p><b>Reason:</b> In the interest of clarity and protection of the environment during the construction and operational phases of the proposed development.</p>
3.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable</p>

	<p>indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p><b>Reason:</b> It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>
4.	<p>(a) A detailed public access management strategy, allowing full public access to the proposed interpretive centre and bird hide as detailed in the “Applicant Response Document” dated September 2020 and submitted to the Planning Authority on 16<sup>th</sup> day of September 2020, shall be agreed in writing with the Planning Authority, in consultation with Dún Laoghaire-Rathdown County Council, prior to the commencement of development and shall be permanently maintained thereafter. The opening hours of these facilities shall also be agreed in writing with the Planning Authority prior to the commencement of development.</p> <p>(b) Details of the operation and management of the bird hide, shall be submitted to, and agreed in writing with, the Planning Authority, in consultation with Dún Laoghaire-Rathdown County Council, prior to the commencement of development.</p> <p><b>Reason:</b> To facilitate public access to the site in accordance with the land use zoning objective and the proper planning and sustainable development of the area.</p>
5.	<p>Proposals for a development name and associated signage shall be submitted to, and agreed in writing with, the planning authority, in consultation with Dún Laoghaire-Rathdown County Council, prior to the commencement of development.</p> <p><b>Reason:</b> In the interest of urban legibility.</p>

6.	<p>Details (including samples) of the materials, colours and textures of all the external finishes to the proposed development shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of development.</p> <p><b>Reason:</b> In the interest of visual amenity.</p>
7.	<p>No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.</p> <p><b>Reason:</b> To protect the visual amenity of the area.</p>
8.	<p>(a) Prior to the commencement of development, the applicant shall agree in writing with the Planning Authority, a revised and final alignment and location of the stone boundary wall along Merrion Road and the cycle path and pedestrian path to ensure that the final design takes account of changes to the carriageway and meets the requirements of the Bus Connects Core Bus Corridor and the East Coast Trail proposals. Detailed design and materials, which shall be to a taken-in-charge standard, shall be agreed.</p> <p>(b) The implementation of a two-way cycle track and revised public footpath prior to the Bus Connects Core Bus Corridor by the applicant / developer shall be subject to agreement with the Planning Authority prior to the commencement of development. An independent road safety audit shall be carried out for the final design. All works and materials shall be to taken-in-charge standard and costs at the applicant's expense.</p> <p>(c) In order to facilitate the proposed signalised pedestrian / toucan crossing across Merrion Road, the applicant shall contact the Planning Authority regarding works required to facilitate the new pedestrian crossing and any works required to the existing signalised junction. All works shall be agreed with the Planning Authority prior to the commencement of development.</p>

	<p>(d) Final details of the right turning lane serving the proposed development and required road markings on the Merrion Road / Rock Road (R118) shall be submitted to, and agreed in writing with, the Planning Authority prior to the commencement of development.</p> <p>(e) Details of the materials proposed in public areas or areas to be taken-in-charge shall comply with the requirements of the Planning Authority for such works.</p> <p>(f) A drawing detailing all areas to be taken in charge shall be submitted for the written agreement of the Planning Authority prior to the commencement of development.</p> <p>(g) All car parking spaces shall be futureproofed for electrical charging facilities and a minimum of 2 no. EV charging spaces shall be provided prior to occupation. 5 no. car parking spaces shall be allocated to staff. 3 no. car parking spaces shall be allocated to drop-off only. Car parking spaces shall be permanently allocated to the proposed use and shall not be sold, rented or otherwise sub-let or leased to other parties.</p> <p>(h) Cycle parking shall be secure, conveniently located, sheltered and well-lit. Shower and changing facilities shall also be provided as part of the development. Key / fob access shall be required to bicycle compounds. Cycle parking design shall allow both wheel and frame to be locked.</p> <p><b>Reason:</b> In the interest of pedestrian and traffic safety.</p>
9.	<p>(a) A Mobility Management Strategy shall be submitted to the Planning Authority for written agreement prior to the occupation of the proposed development. The strategy shall address the mobility requirements of the end user(s) and shall promote the use of public transport, cycling and walking. A mobility manager shall be appointed to oversee and co-ordinate the implementation of the strategy.</p> <p>(b) The Mobility Management Strategy shall incorporate a Car Parking Management Strategy for the overall development which shall address the management and assignment of car spaces. This shall include a strategy</p>

	<p>for the enforcing of no parking outside designated car parking spaces or along the internal access roads.</p> <p><b>Reason:</b> In the interest of sustainable transportation and safety.</p>
10.	<p>The construction of the development shall be managed in accordance with a Construction Environmental Management Plan (CEMP), which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including:</p> <ul style="list-style-type: none"> <li>(a) Location of the site and materials compound(s) including area(s) identified for the storage of construction refuse;</li> <li>(b) Location of areas for construction site offices and staff facilities;</li> <li>(c) Details of site security fencing and hoardings;</li> <li>(d) Details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site;</li> <li>(e) Measures to obviate queuing of construction traffic on the adjoining road network;</li> <li>(f) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;</li> <li>(g) Alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works;</li> <li>(h) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;</li> <li>(i) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;</li> <li>(j) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;</li> <li>(k) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.</li> </ul>

	<p>A record of daily checks that the works are being undertaken in accordance with the Construction Environmental Management Plan shall be kept for inspection by the Planning Authority.</p> <p><b>Reason:</b> In the interest of amenities, public health and safety.</p>
11.	<p>A plan containing details for the management of waste within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.</p> <p><b>Reason:</b> To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.</p>
12.	<p>Details of ultraviolet bird warning markers to be used on cranes or any other elevated construction equipment, shall be submitted to, and agreed in writing with, the planning authority, prior to the commencement of development.</p> <p><b>Reason:</b> To protect wild birds whose flight paths cross the route of the proposed development.</p>
13.	<p>(a) No construction or site preparation work may be carried out on the site until all archaeological requirements of the Planning Authority are complied with.</p> <p>(b) The project shall have an archaeological assessment (and impact assessment) of the proposed development, including all temporary and enabling works, geotechnical investigations, e.g. boreholes, engineering test pits etc, carried out for this site as soon as possible and before any site clearance / construction work commences. The assessment shall be prepared by a suitably qualified archaeologist and shall address the following issues:</p> <p>(i) The archaeological and historical background of the site, to include industrial heritage.</p>



<p>(ii) A paper record (written, drawn and photographic, as appropriate) of any historic buildings and boundary treatments, etc.</p> <p>(iii) The nature, extent and location of archaeological material on site by way of archaeological testing.</p> <p>(iv) The impact of the proposed development on such archaeological material.</p> <p>(c) The archaeologist shall forward their Method Statement to the Planning Authority prior to the commencement of development.</p> <p>(d) Where archaeological material is shown to the present, a detailed Impact Statement shall be prepared by the archaeologist which shall include specific information on the location, form, size and level (correct to Ordnance Datum) of all foundation structures, ground beams, floor slabs, trenches for services, drains, etc. The assessment shall be prepared on the basis of a comprehensive desktop study and, where appropriate / feasible, trial trenches excavated on the site by the archaeologist and / or remote sensing. The trial trenches shall be excavated to the top of the archaeologist deposits only. The report containing the assessment shall include adequate ground plan and cross-sectional drawings of the site, and of the proposed development, with the location and levels (corrected to Ordnance Datum) of all trial trenches and / or bore holes clearly indicated. A comprehensive mitigation strategy shall be prepared by the consultant archaeologist and included in the archaeological assessment report.</p> <p>(e) No subsurface work shall be undertaken in the absence of the archaeologist without his / her express consent. The archaeologist retained by the project to carry out the assessment shall consult with the Planning Authority in advance regarding the procedure to be adopted in the assessment.</p> <p>(f) Two copies of a written report and digital report (on compact disc) containing the results of the archaeological assessment shall be forwarded on completion to the Planning Authority. The Planning Authority, in consultation with the City Archaeologist and the National Monuments</p>
---

	<p>Service, Department of Arts, Heritage and the Gaeltacht, shall determine the further archaeological resolution of the site.</p> <p>(g) The developer shall comply in full with any further archaeological requirement, including archaeological monitoring, and if necessary, archaeological excavation and / or the preservation in situ of archaeological remains, which may negate the facilitation of all, or part of any basement.</p> <p>(h) The developer shall make provision for archaeological excavation in the project budget and timetable.</p> <p>(i) Before any site works commence the developer shall agree the foundation layout with the Planning Authority.</p> <p>(j) Following submission of the final report to the Planning Authority, where archaeological material is shown to be present, the archaeological paper archive shall be compiled in accordance with the procedures detailed in the Dublin City Archaeological Archive Guidelines (Dublin City Council, 2008) and lodged with the Dublin City Library and Archive, 138-144 Pearse Street, Dublin 2.</p> <p><b>Reason:</b> In the interest of preserving by record archaeological material likely to be damaged or destroyed in the course of development.</p>
14.	<p>(a) Ground remediation works for the treatment of Japanese Knotweed on the site shall be commenced and completed in advance of the main development construction works.</p> <p>(b) The results of a monthly monitoring programme in relation to Japanese Knotweed shall be submitted to the Planning Authority during the construction stage of the project.</p> <p>(c) A post-construction management programme in relation to Japanese Knotweed shall be undertaken for a period of at least 5 years following the completion of the proposed development.</p> <p><b>Reason:</b> To ensure appropriate treatment and to prevent the spread of an invasive alien species.</p>

15.	<p>Drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the Planning Authority for such works and services.</p> <p><b>Reason:</b> In the interest of public health.</p>
16.	<p>The developer shall enter into water and / or wastewater connection agreement(s) with Irish Water, prior to commencement of development.</p> <p><b>Reason:</b> In the interest of public health.</p>
17.	<p>The following requirements of Irish Rail shall be complied with:</p> <p>(a) Should the development require the use of a crane that could swing over the railway property, the developer must enter into an agreement with Iarnród Éireann / C.I.E regarding this issue.</p> <p>(b) No additional liquid, either surface water or effluent, shall be discharged to the Nutley Stream which may undermine the integrity of the railway embankment.</p> <p>(c) Boundary treatments should be designed to withstand noise and vibrations emanating from railway operations and maintenance.</p> <p><b>Reason:</b> In the interests of safety in the operation of the railway line.</p>
18.	<p>Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p><b>Reason:</b> In order to safeguard the residential amenities of property in the vicinity.</p>

---

Louise Treacy

Senior Planning Inspector

2<sup>nd</sup> February 2023



## **Appendix 1: Appropriate Assessment**