An Bord Pleanála

Inspector's Report 308900-20

Development	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.
Location	Merrion Road / Rock Road, Bootertstown, Blackrock, Co. Dublin
Planning Authority	Dún Laoghaire-Rathdown County Council
Planning Authority Reg. Ref.	D19A/0908
Applicant(s)	Soundvale Limited
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party v. Decision
Appellant(s)	Soundvale Limited
Observer(s)	(1) An Taisce (2) Friends of Booterstown Coast

Date of Site Inspection	28th October 2022
Inspector	Louise Treacy

1.0 Site Location and Description

1.1. The subject site has a stated area of 0.76 ha and is located on the eastern / seaward side of Merrion Road / Rock Road (R118), Booterstown, Blackrock, Co. Dublin. The site is undeveloped and greenfield in nature and generally comprises open grassland with pockets of dense scrub, which is inaccessible in parts, particularly along the southern boundary. Japanese Knotweed is present on the site.

1.2. The site is bounded to the north by greenfield lands within the administrative area of Dublin City Council, to the south by the culverted Trimleston Stream and Booterstown Marsh and a public park beyond; and to the west by Merrion Road / Rock Road (R118). The Nutley Stream extends in an open channel along the eastern site boundary, with the DART / rail line and Booterstown Strand located further to the east. The site boundary adjoining the public road is characterised by intermittent mature trees set behind a low stone wall. A gas wayleave extends across the north-western corner of the site from the junction with Trimleston Avenue and continues in a northerly direction into the adjoining lands within Dublin City Council's administrative area.

1.3. 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 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.

1.4. A petrol service station (Applegreen) and a hotel development (Maldron) are located on the western side of Merrion Road opposite the subject site. Llandaff Terrace, a terrace of 2-storey dwellings is located further to the north-west, with Elm Park Business Campus located beyond. Booterstown Dart station is located approx. 530 m to the south-east of the subject site.

2.0 **Proposed Development**

2.1. The proposed development comprises the following:

- 1 no. vehicular access (exit point) from the site via Merrion Road/Rock Road (R118) linking to the existing traffic signalised junction at Trimleston Avenue/Merrion Road/Rock Road. This vehicular access (exit point) is proposed to serve a proposal for a new recreational and interpretive centre building on Dublin City Council lands to the north of the current site (this proposal is the subject of a separate and concurrent planning application to Dublin City Council and includes vehicular entry point).
- The proposal also provides for open landscaped space, which forms part of an overall biodiversity plan for this site and the adjoining development site to the north (a number of biodiversity proposals are the subject of a separate planning application lodged concurrently to Dublin City Council).
- Biodiversity proposals for this site provide for a range of measures including (1) a coastal meadow; (2) a coastal tree belt; (3) a new bird hide (c. 8.5 sq m) (overall height c. 3.25m); (4) a mown grass access path; (5) a coastal meadow flood plain; (6) small bee boxes, swift boxes and sand martin boxes; and (7) retention of existing scrub, natural grassland and wildflower areas.
- The associated site and infrastructural works proposed include provision of services and connections; all landscaping works and boundary treatments (including the provision of steel gates along the boundary frontage of the site at Merrion Road/Rock Road R118).

2.2. The development to which this appeal case relates forms part of a larger proposal, with the balance of the development located on the adjoining lands to the north / north-west within the administrative area of Dublin City Council. The development which is proposed on these lands includes a recreational and interpretive centre building over 5 floor levels, with an overall height of c. 18.5 m to parapet level and a gross floor area of 6,329 m^2, together with a range of biodiversity proposals.

2.3. The proposed building includes an interpretive centre (500 m^2) and associated external terrace; a crèche facility and associated outdoor play area / external terrace area; a member's area; a café / reception area; 6 no. health studios and 2 no.

external health studio terrace areas; a gym facility and external gym terrace area; a 20 m internal swimming pool, jacuzzi and hydro pool area and external pool terrace area; service / changing facilities; a spa facility and external spa area; a restaurant and external restaurant terrace area; service areas; recessed car parking area, circulation and ramp space; 68 no. car parking spaces; 92 no. bicycle parking spaces; and 3 no. motorcycle spaces.

2.4. The biodiversity proposals for the development which is proposed within the administrative area of Dublin City Council includes a portion of new coastal meadow, a coastal tree belt, coastal grass and shrub internal garden.

2.5. 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 located opposite Bellevue Avenue. Pedestrian access is also facilitated at 2 no. locations along the Merrion Road / Rock Road (R118) site boundary.

2.6. The associated site and infrastructural works include water services; foul and surface water drainage and connections; attenuation proposals; all landscaping works; boundary treatments (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.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Dún Laoghaire-Rathdown County Council issued Notification of the Decision to Refuse Permission for the proposed development on 16th November 2020 for 1 no. reason as follows:

"The applicant has failed to satisfactorily address the concerns of the Planning Authority (Biodiversity Officer) as set out in Item 3(e)(ii) of the Further Information request. The wintering bird surveys provided by the applicant are only based upon two months in the previous wintering bird season (i.e. 2018/2019). The use of a site may vary over the wintering season depending upon storms, bad weather, disturbance, foraging and energy needs of birds. Therefore, there is insufficient

scientific data provided in the NIS in relation to wintering bird use of the site including those designated features of the relevant Natura 2000 sites. In addition, the applicant's assumption that the application site is not favoured by any Special Conservation Interest (SCI) wintering birds has not been supported by any case studies or other best scientific data. Therefore, it has not been shown on the basis of clear, objective, scientific evidence, with a high degree of certainty, that there will be no impact on the conservation objectives of the site. In this regard, it has 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, and therefore to permit the development would be contrary to Section 4.1.1.2 Appropriate Assessment and Section 4.1.3.2 Policy LHB 20 Habitats Directive of the Dún Laoghaire-Rathdown County Development Plan 2016-2022. The proposed development would therefore be contrary to the proper planning and sustainable development of the area".

3.2. **Planning Authority Reports**

3.2.1. **Planning Reports (23rd January 2020 and 24th November 2020)**

3.2.2. Following an initial assessment of the planning application, Dún Laoghaire-Rathdown County Council's Planning Officer considered that the proposed development would deliver community gain through the provision of an array of biodiversity features which would enhance the site and form an attractive amenity space that could be used by the public. As such, the Planning Authority was satisfied that the principle of the development was acceptable and in accordance with the land use zoning of the site. It was also considered that the proposed development complied with SLO138 of the 2016 county development plan which restricted commercial or residential development on the site.

3.2.3. The Planning Officer recommended that **Further Information** be requested in relation to 4 no. items as summarised below:

3.2.4. **Item No. (1) (a)** The applicant shall demonstrate how public access of the open space can be achieved and sensitively managed. The applicant is requested to

provide a plan and elevation of the proposed vehicular entrance and steel gates including details/samples of the proposed materials and finishes.

3.2.5. **Item No. (1) (b)** Submit revised photomontages of view no. 3 (site entrance) and view no. 4 (omission of lighting column along Rock Road at central axis of Trimleston Avenue).

3.2.6. **Item No. (2)** The requested Further Information of the Drainage Planning Department (report dated 23rd December 2019 refers).

3.2.7. **Item No. (3)** The requested Further Information of the Biodiversity Officer (report dated 20th January 2020 refers).

3.2.8. **Item No. (4)** The requested Further Information of the Transportation Planning Division (report dated 16th January 2020 refers) and of the Public Lighting Department (verbal report received by the Planning Officer on 15th January 2020 refers).

3.2.9. The applicant submitted a **Response to the Request for Further Information** on 24th September 2020 which was deemed to contain significant additional information by the Planning Authority. The planning application was readvertised to the public.

3.2.10. The applicant's response can be summarised as follows:

3.2.11. **Item No. 1 (a):** The interpretive centre will be operated by an independent not-for-profit entity, as a social enterprise with an environmental mission and will be governed by an independent board of experts. Its ethos will focus on inclusiveness, promotion of a sustainable environment, health and education, which will be achieved through collaboration with academic institutions and others to deliver a world-class interpretive centre. There will be a transparent symbiotic relationship between the interpretive centre and the private recreational building.

3.2.12. A pathway to the coastal meadow will provide access to the Bird Hide. Additional desire lines or pathways (2-3) will be mown annually through the coastal meadow to bring visitors through the site and provide opportunities to visit alternative areas of the meadow. These may change from year to year to highlight different floral points of interest. The EIAR and NIS conclude that the management of visitors across the site, will not significantly impact adjacent ecological features.

3.2.13. An outdoor classroom and laboratory will be strategically placed in the Coastal Meadow so that it does not cause disruption to birds and wildlife. This facility will be used by schools, third level colleges, researchers and for public events.

3.2.14. The gates are intended to be open when the interpretive centre is in operation, thus providing an open character to the project, giving it a public sensibility. The gates are approx. 700-900 mm higher than the adjacent ground level and as such, will be used only as a deterrent as required to avoid people entering the meadow at night. Plans and elevations of the proposed vehicular entrance and steel gates have been provided.

3.2.15. **Item No. 1 (b):** Updated verified views (views 2, 3, 4, 5 and 6) have been prepared and an updated commentary provided in Chapter 12 of the EIAR. It is concluded that the changes to the views are very minor and difficult to discern. As such, the changes are not sufficient to require any change in the descriptions of the views as set out in the LVIA chapter of the EIAR, or any change to the assessment of likely visual effects from any of the 5 view locations.

3.2.16. **Item No. 2 (a):** A Land and Soils Report and Ground Investigation Report has been prepared in response to this item. Additional ground investigations were undertaken, including soakaways and groundwater monitoring. Results are provided for July 2020.

3.2.17. **Item No. 2 (b):** The proposed drainage system is considered the most sustainable approach, ensuring that only wastewater is discharged to the Irish Water foul sewer. Subject to agreement with the Planning Authority and Irish Water, the applicant is amenable to complying with a condition specifying the Planning Authority's requirements.

3.2.18. **Item No. 2 (c):** A Flood Risk Assessment response document has been prepared in relation to this item. Further hydraulic modelling of the site has been undertaken to determine flood levels and extents for the requested AEP events for both the existing and proposed development scenarios.

3.2.19. **Item No. 2 (d) and (e):** These items have been addressed in the Flood Risk Assessment response document and Chapter 8 of the updated EIAR.

3.2.20. **Item No. 3 (a)(i) and (ii):** An updated Invasive Species Management Plan (ISMP) has been prepared, which has been integrated into and appends the updated

Construction Management Plan. The feasibility of treatment options is addressed in Section 3, specific measures are identified in Section 4, while Section 5 sets out remediation measures.

3.2.21. **Item No. 3 (a)(iii):** Results of the ground investigation programme have been incorporated into and considered in the updated ISMP. The timing of the remediation and treatment works has been incorporated into the phasing programme and remediation will occur prior to construction.

3.2.22. **Item No. 3 (a)(iv):** Section 6 of the updated ISMP sets out ongoing monitoring and treatment of Japanese Knotweed on the site post construction and during the operation of the development.

3.2.23. **Item No. 3 (a)(v):** Section 5.3 of the updated ISMP addresses biosecurity measures, while Figure 10 sets out the site layout showing a schematic set up of the remediation works areas.

3.2.24. **Item No. 3 (a)(vi):** Section 6 of the updated ISMP notes that a monitoring programme will be agreed with the Planning Authority, with results reported on annually and reviewed and submitted to the Authority. Monitoring will be undertaken by a suitably qualified specialist, or suitably trained personnel.

3.2.25. **Item No. 3 (a)(vii):** The updated Construction and Demolition Waste Management (CDWMP) Plan has taken account of the updated ISMP.

3.2.26. **Item No. 3(b)(i):** A programme showing the stages at which biodiversity mitigation measures will be implemented is included in Section 3.16 of the Construction Management Plan (CMP).

3.2.27. **Item No. 3(b)(ii):** Site specific drawings for the location of site compounds, stockpiles, haul routes, hoarding, protective fencing, and the location of temporary SuDS measures have been provided in the CMP.

3.2.28. **Item No. 3(b)(iii):** Details regarding the treatment of Japanese Knotweed and biosecurity measures are provided in the CMP.

3.2.29. **Item No. 3(b)(iv):** The programme of works relating to the updated ISMP is provided in the CMP.

3.2.30. **Item No. 3(b)(v):** Outline details of the monitoring programme and reporting have been provided and can be developed further in consultation with the Planning Authority, prior to works commencing on site.

3.2.31. **Item No. 3 (c):** A Land & Soils RFI response report has been prepared in relation to this item. Ground investigations were undertaken during June and July 2020, the results of which are incorporated in Chapters 7 and 8 of the EIAR, the updated Chapter 6 of the EIAR, the updated AA Screening Report and the updated NIS.

3.2.32. **Item No. 3 (d):** The flood compensatory storage area has been relocated from the south-eastern portion of the site along the Nutley Stream to the north-east of the site along the Nutley Stream (DCC administrative area). This will concentrate activity and construction works away from sensitive ecological receptors and will allow the retention of a greater proportion of existing habitats within the southern portion of the overall site.

3.2.33. This area will be planted as a continuation of the proposed coastal wildflower meadow, which will be seeded with seed harvested from species-rich areas of the site to maintain local seed provenance and avoid importing non-native seed.

3.2.34. The relocated flood storage area will result in an increased area of 0.15 ha of scrub and grassland mosaic habitat which is an important breeding habitat for Stonechat and Reed Bunting within the site. The proposal will provide 0.48 ha of new coastal meadow and retain 0.59 ha of existing habitat.

3.2.35. **Item No. 3 (e)(i):** An updated NIS has been provided which incorporates all relevant updates produced in response to items 3(a) – (d).

3.2.36. **Item No. 3 (e)(ii):** Additional winter bird surveys were undertaken in February and March 2020 to further substantiate the findings of the surveys undertaken in winter 2019. These combined surveys demonstrate clear and comprehensive patterns of bird movement across the site and winter bird usage of the lands within the development site.

3.2.37. The southern half of the site offers extremely limited potential as a roosting/foraging site for wintering birds listed as SCIs for the nearby SPAs. Despite the foregoing, a precautionary approach was taken to the surveys, which were supplemented by the installation of a remote high-resolution camera to monitor that portion of the development site. The results of the camera surveys confirm the findings of the 2019

and 2020 surveys, that no SCI birds were recorded using any habitats within the proposed development site, including the southern portion.

3.2.38. The combination of survey methodologies, extent of background and published information on bird usage of the local area by wintering birds, and the sub-optimal habitats to support same, has provided sufficient scientific information to undertake a robust assessment in the EIAR and NIS.

3.2.39. **Item No. 3(e)(iii):** Mitigation measures are proposed in Section 5.4.4.3 of the updated NIS to minimise the potential for bird collision impacts with cranes during construction.

3.2.40. **Item No. 3(e)(iv):** It is envisaged that the Bird Hide will be run by a rota of volunteers as occurs at Turvey Hide at Rogerstown Estuary Nature Reserve. Further engagement will be sought with South Dublin Bird Watch Ireland branch.

3.2.41. **Item No. 3(e)(v):** The habitat management plan has been updated (Section 4.1) to address this item. Undesirable plant species will be removed via mechanical or manual means or by careful spot spraying.

3.2.42. **Item No. 3(e)(vi):** The operational lighting plan for internal and external light fixtures has been modelled. It is confirmed that 0-1 lux will be maintained in ecologically sensitive areas, along the Nutley Stream and in the coastal meadow.

3.2.43. **Item No. 3(e)(vii):** The Habitat Management Plan contains measures to minimise disturbance on fauna during cutting periods. Areas cut on a 2-3-year cycle will include marginal grassland areas adjacent to scrub habitat and marginal riparian habitat along the Nutley Stream. These areas will provide essential refuge during annual mowing of the meadow/grassland habitat. The uncut area of marginal grassland can be cut when the weather warms up in the spring to avoid disturbance and displacement of fauna during the winter months and to avoid cutting areas adjacent to annually mown meadow/grassland.

3.2.44. **Item No. 3 (f):** Chapter 6 of the EIAR (Biodiversity – Section 6.10 Mitigation Measures) has been updated to reflect the protection of Amber-listed Snipe at all phases of the proposed development. A programme for mitigation is also identified.

3.2.45. **Item No. 3 (g):** The updated Habitat Management Plan sets out long-term management of habitats within the proposed development site and the protection of

biodiversity and species which it will support. The NIS assessment of impacts on European sites fully assessed the proposed development in relation to the updated operations and public access arrangements of the site. Updates to the operation of the proposed development and managed access to the coastal meadow by the public and educational groups, has been fully considered in the EIAR. The site's green infrastructure and ecological connectivity to Booterstown Marsh has been strengthened by the relocation of the flood compensatory storage area.

3.2.46. **Item No. 4 (a):** A lux contour diagram and lighting report has been provided.

3.2.47. **Item No. 4 (b):** A Transportation Response Document has been provided in relation to this item. Drawings are provided which show provision for the East Coast Trail, the Bus Connects corridor and the proposed repositioning of the site security boundary by way of a native hedge and sliding steel, low gates. The East Coast Trail and pedestrian path are proposed to be situated between the existing and new tree belt to provide a safe experience for cyclists and pedestrians.

3.2.48. **Item No. 4 (c):** The traffic management plan to serve the proposed development has been modified to include the recommendations accepted in the feedback form submitted with the Stage 1 Safety Audit.

3.2.49. **Item No. 4 (d):** This matter is addressed in the Transportation Response Document prepared by Arup. An interim cycle facility is proposed and includes (i) a new south-bound, off-road cycle lane following the route of the cycle facility as proposed under the "With Bus Connects" scenario and (ii) a shared pedestrian / cycle zone facility located opposite Trimleston Avenue.

3.2.50. **Item No. 4 (e):** Revised drawings are provided showing provision for the East Coast Trail, the proposed repositioning of the security boundary to the site and updated roadside elevations.

3.2.51. **Item No. 4 (f):** Chapter 13 of the EIAR has been amended to fully address items 4(a) – (e).

3.2.52. Following an assessment of the applicant's Further Information submission, the Planning Officer concluded that the Planning Authority was generally satisfied that the principle of the development was acceptable. However, it was considered that the concerns of the Biodiversity Officer in relation to the wintering bird surveys had not been addressed, and as such, it had not been adequately demonstrated that the

proposed development would not have a negative impact on the biodiversity and conservation objectives of South Dublin Bay and River Tolka Estuary SPA and South Dublin Bay SAC. It was recommended that planning permission be refused for the proposed development on this basis.

3.2.53. **Other Technical Reports**

3.2.54. **Drainage Planning (23rd December 2019 and 21st October 2020)**

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

(1) A proposal demonstrating the proposed soak pit is suitable for its intended use, supported by additional site investigation results that establish standing groundwater levels, the suitability of the ground for infiltration and calculations showing the volume of surface water runoff that has to be catered for.

(2) An alternative proposal for the disposal of incidental runoff from the basement level car park such that the runoff shall be discharged to the foul system via a petrol / oil interceptor.

(3) The applicant is required to show existing and proposed flood levels and extents for the 1.0% AEP, 0.5% AEP and 0.1% AEP events.

(4) The applicant is requested to demonstrate that flood storage volumes are being maintained across a series of return period events.

(5) Chapter 8 of the EIAR shall be updated to reflect the agreed outcomes of item nos. 1 to 4 above.

3.2.56. Following the applicant's Further Information submission, it was recommended that **Clarification of Further Information** be requested as follows:

(1) The results of the Site Investigations to be presented in a single document and to provide conclusions that demonstrate the soakpit within the Planning Authority's administrative area is suitable for its intended purpose with regard to infiltration capacity and established groundwater levels.

(2) Submit information demonstrating that the proposed petrol / oil separator and up-flow sand filter have been adequately sized. A full retention separator will be required.

(3) Site Specific Flood Risk Assessment (SSFRA) – A1 drawings required, from which changes in extents and depths across the various events can readily be identified. A single drawing showing the current and proposed scenarios should be produced. The SSFRA should be updated to address the issues identified in Section 2.4 of the current SSFRA submission. Flood extents and depths maps should extend beyond the site boundaries for the existing and proposed scenarios.

(4) Table 7 of the SSFRA does not show the existing and proposed level of flood storage being provided across a range of flood events as requested.

3.2.57. **Waste Section / Environmental Enforcement (6th January 2020**): No objections / issues raised in relation to the EIAR, Outline Construction Management Plan and Construction and Demolition Waste Management Plan.

3.2.58. **Public Lighting (15th January 2020 and 9th November 2020):** Noted that there is no lighting design proposed for the new access road and that the existing light at the Rock Road site entrance is not mentioned in the documentation. This department cannot comment further on the application (report of 15th January 2020 refers).

3.2.59. No objections arose to the proposed development following the applicant's Further Information submission.

3.2.60. The Planning Officer's report notes that a verbal report was also received from the Public Lighting Department on 15th January 2020 which requested a lighting report and lux contour diagram, identifying lighting class and details, and a drawing showing the light levels out to a 1 lux contour.

3.2.61. **Transportation Planning (16th January 2020 and 9th November 2020):** Recommended that **Further Information** be requested in relation to:

(1) Fully detailed and dimensioned road layout drawings for the proposed 4-arm signalised junction at Trimleston Avenue, to include full details of the works proposed with and without the Bus Connects scheme. The inclusion of pedestrian crossings on each arm of the junction is recommended.

(2) Updated proposals taking recommendations as accepted by the Feedback Form submitted with the Stage 1 Road Safety Audit.

(3) Justification for the proposed development vehicular exit only width and the proposed egress gated opening width.

(4) The applicant is requested to consider and demonstrate how provision of improved cycle lane facilities can be delivered along the Merrion Road / Rock Road frontage in advance of implementation of the future Bus Connects scheme.

3.2.62. Following an assessment of the applicant's Further Information submission, it was recommended that: (1) a condition be attached in relation to the length of right-turning lanes and details of road markings to be subject to final approval with Dún Laoghaire-Rathdown County Council and Dublin City Council, particularly in the event of a "without Bus Connects" scheme scenario becoming operational; (2) a 2-way, off-road cycle route to be provided within the development, and (3) travel demand measures to be monitored and reviewed on an ongoing basis and the car park management plan to be subject to review and agreement when the development is operational.

3.2.63. **Biodiversity Officer (20th January 2020 and 9th November 2020):** Recommended that **Further Information** be requested in relation to:

(1) (a-g) The feasibility of treatment options for removal of invasive species, long term management of Japanese Knotweed, biosecurity measures, monitoring and reporting to the Planning Authority, including a Final ISMP.

(2) (a-e) An updated Construction Management Plan including stages of biodiversity mitigation measures, site specific details, all details regarding Japanese Knotweed treatment, details of monitoring programme and reporting.

(3) (a-g) A revised NIS including bird surveys during the wintering bird season, the addressing of assumptions regarding birds and collision risks, details of the operation of the bird hide, its management and access, the management of the meadow as a natural habitat, confirmation that the coastal meadow will remain unlit, consideration of mammals and birds in the coastal meadow.

(4) The relationship between surface and ground water and their interactions with ecology amongst other environmental factors has not been addressed in the EIAR or NIS.

(5) A revised Biodiversity chapter of the EIAR, including relevant updates from items 1 – 4 above, how bird species including Amber Listed Snipe will be addressed through all phases of the proposed works, an evaluation and assessment of the Nutley Stream.

(6) Long-term management of the meadow, protection of important species, potential links to green spaces and biodiversity areas and potential use of the site by visitors/the public or as a site under management either privately or by the local authorities in the future.

3.2.64. Following the applicant's Further Information submission, the Biodiversity Officer noted that wintering bird surveys covering the wintering bird season had not been provided and that the submitted information was based on 2 months. As such, it was considered that insufficient scientific data was provided in the NIS in relation to wintering bird use of the site, including those designated features of the relevant Natura 2000 sites.

3.2.65. **Parks and Landscape Services (22nd January 2020 and 10th November 2020):** The following commentary is provided in the report of 22nd January 2020:

(1) Public Accessibility: The applicant is requested to consider and demonstrate how managed public access of the coastal meadow can be achieved and sensitively managed.

(2) Landscape and Visual Impact: There are concerns regarding the building scale relative to the low-lying nature of the site. The applicant is requested to clarify / explain the proposed quantity of public lighting columns along Rock Road and to submit a revised photomontage (view 3) of the proposed entrance with no vehicles obstructing the view. A full external lighting strategy to be provided to ascertain the lighting impacts on the receiving environment.

(3) Soils, Geology & Hydrogeology: The applicant is requested to clarify the treatment being proposed to eradicate Japanese Knotweed. The applicant shall also confirm the growing medium proposed to mix with the 250 mm depth of crushed brick waste for the proposed new coastal meadow (i.e. imported soils). The applicant is requested to demonstrate how the proposed development will be impacted by tidal water infiltration and how development in the DCC boundary may impact on ground conditions within the DLRCC boundaries.

3.2.66. Following the applicant's Further Information submission, the following is noted:

(1) Public Accessibility: Recommendation that a detailed access management strategy be established and implemented, allowing full public access onto selected

areas of the site, to be negotiated and agreed with the Planning Authority prior to commencement of development.

(2) Landscape and Visual Impacts: No additional comments.

(3) Surface Water Storage – Treatment: Concerns of Drainage Department noted and their request for clarification relating to the soakpit and petrol / oil interceptor.

(4) Japanese Knotweed: Detailed set of drawings requested clarifying depths to which Japanese Knotweed will be buried. The applicant is requested to confirm the root-barrier cell installation method to be used, and provide specific, detailed and dimensioned plans and sections relating to same.

3.3. **Prescribed Bodies**

3.4. **An Taisce (6th January 2020 and 23rd October 2020):** An Taisce objects to the development on the basis that it is incompatible with the open / green space zoning objectives of the site and the wider environmental objectives of the Dublin City and Dún-Laoghaire-Rathdown County Development Plans.

3.5. An Taisce considers that the applicant's Significant Further Information submission fails to justify the scale of the development, the site-based need or suitability of the uses proposed and the amount of car parking. Notes that the interpretative centre accounts for 500 m^2 of 6,329 m^2 of the total proposed floorspace and that An Taisce already provides a bird observation hide for Booterstown Marsh in an agreement with Irish Rail. It is considered that the application does not adequately address the impact of the flood water storage and car park ramp on the riparian habitat of Nutley Stream and the impact of the proposed car park and surface water runoff in ground water and fluvial pollution. It is also considered that climate impact and flood risk are not properly considered and that the proposed development represents a collision risk to wintering birds.

3.6. **Department of Culture, Heritage and the Gaeltacht (15th January 2020 and 17th January 2020):** The Department agrees with the recommendations outlined in Section 16 of the EIAR regarding Archaeology, Architectural and Cultural Heritage.

3.7. It is also recommended that the applicant be requested to provide Further Information regarding revised landscape proposals not involving 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 and 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 and to avoid the encroachment of landscaping measures on the floodplain zone of the Nutley Stream, and therefore the extent of site regrading required.

3.8. **National Transport Authority (17th January 2020):** The NTA is satisfied that the proposed development would not preclude the delivery of the Blackrock to Merrion Core Bus Corridor included in the Bus Connects programme or the East Coast Trail.

3.9. **Transport Infrastructure Ireland (21st January 2020 and 12th October 2020):** No observations to make on the application.

3.10. **Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media (10th November 2020 and 18th March 2021):** This Department is satisfied with the applicant's response regarding concerns about: (1) potential impacts on the biodiversity of the site and adjacent South Dublin Bay SAC of utilising wildflower seeds of non-local origin in the proposed site landscaping, (2) the regrading of a section of the Nutley Stream in the south-east corner of the site.

3.11. Conditions are identified in the event planning permission is granted for the proposed development.

3.12. The submission of 18th March 2021 notes that other parties have expressed concerns that bird species of Special Conservation Interest for South Dublin Bay and River Tolka Estuary using the development site might be affected by the proposed development. The Department notes that the habitat present is unsuitable and as such, SCI do not occur on the development site. It is also considered that the bird hide will have no detrimental effect on the SAC or SPA, but notes that it may not be used to a great extent by bird watchers given that views of Booterstown Marsh are readily available from the Trimleston Stream culvert.

3.13. It is also noted that the mobilisation of sediments or contaminated material from the development site, or leakage of fuels or oils from machinery, could potentially threaten water quality and therefore the integrity of South Dublin Bay SAC and the South Dublin Bay and River Tolka Estuary SPA. It is considered probable that the mitigation measures set out in the NIS and CEMP to avoid such pollution, if

implemented in full, should prevent any detrimental effects on these Natura 2000 sites downstream.

3.14. The conclusion that bird collisions with the proposed building on the adjoining site are very unlikely to occur is accepted. It is recommended that an ultraviolet beam or paint should be used to mark out cranes operating on site to make them easier for birds to distinguish in poor light. It is recommended that this requirement be addressed by condition in the event planning permission is granted.

3.15. **Third Party Observations**

3.15.1. A total of 4 no. third-party observations were made on the application by: (1) John & Claire O'Reilly, 68 St. Helen's Road, Booterstown, Co. Dublin, (2) Catherine and James Burke, 70 St. Helen's Road, Booterstown, Co. Dublin, (3) Claire O'Reilly on behalf of St. Helen's Road Residents' Association, c/o 68 St. Helen's Road, Booterstown, Co. Dublin, and (4) M. R. O'Carroll and Rose Comiskey on behalf of Friends of Booterstown Coast, c/o 12 Eagle Hill, George's Avenue, Blackrock, Co. Dublin,

3.15.2. Representations were also made on the application by Cllr. Ossian Smyth and Cllr. Séafra Ó Faoláin.

3.15.3. The issues which are raised can be summarised as follows: (1) traffic congestion and collisions, (2) overspill parking, (3) excessive height, (4) impact on protected sea views, (5) impact on birds, (6) impact on underground streams, (7) no commercial demand for the proposed development, (8) conflict with Bus Connects route and S2S / East Coast Trail, (9) use of weedkillers should be prevented, (10) proposed use is incompatible with land use zoning, (11) material contravention of development plan, (12) site should form part of a strategically planned network of natural and semi-natural areas, (13) inaccuracies in the NIS, (14) impacts on ground and surface waters at Booterstown Marsh SPA and Williamstown Creek SPA, (15) impact on water quality of Nutley Stream, (16) negative impact on drainage networks, (17) flooding, (18) the site has a High Aquifer Vulnerability, (19) building glazing, lighting and landscaping plans will result in bird collisions, (20) bats not considered in NIS, (21) spread of invasive plant species, (22) inappropriate precedent, (23) reduced public access to green space.

3.15.4. A further 2 no. third-party observations were made on the applicant's Significant Further Information submission from: (1) St. Helen's Road Residents' Association c/o Claire O'Reilly, 68 St. Helen's Road, Booterstown, Co. Dublin, and (2) Friends of Booterstown Coast, c/o Mary O'Carroll, 12 Eagle Hill, Blackrock, Co. Dublin.

3.15.5. The new issues which are raised can be summarised as follows: (1) drainage arrangements of Nutley Stream incorrectly described, (2) the proposed development does not pass the justification test with respect to flooding, (3) inadequate bird surveys.

4.0 Planning History

Subject Site

4.1. **Planning Authority Reg. Ref. D21A/0905:** Planning permission granted on 26th May 2022 by Dún Laoghaire-Rathdown County Council for development comprising the construction of a pipeline insulation joint replacement.

4.2. This site is located at the south-western end of the current appeal site adjacent to the junction with Rock Road.

4.3. **Planning Authority Reg. Ref. D02A/1072; ABP Ref. 06D.203146**: Planning permission refused by the Board on 7th 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).

4.4. 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.

Adjoining Site to North

4.5. **Planning Authority Reg. Ref. 4514/19; ABP Ref. 308845-20**; Planning permission refused by Dublin City Council on 10th November 2020 for development on a site of c. 1.17 ha at Merrion Road/Rock Road, Booterstown, Blackrock, Co. Dublin

comprising, inter alia, a new recreational and interpretive centre building (c. 6,329 m^2) and a range of associated biodiversity proposals.

4.6. Planning permission was refused for 1 no. reason, which states that the Planning Authority was not 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 and to Species of Conservation Interest for the South Dublin Bay and River Tolka Estuary SPA.

4.7. This application site adjoins the current appeal site and is subject to a concurrent appeal before the Board.

4.8. **Planning Authority Reg. Ref. 3750/02; ABP Ref. PL29S.203391:** Planning permission refused by the Board on 7th November 2003 for 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.

5.0 Policy and Context

5.1. The development of the subject site was governed by the provisions of the Dún Laoghaire-Rathdown County Development Plan 2016-2022 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. **Dún Laoghaire-Rathdown County Development Plan 2022-2028**

5.3. **Land Use Zoning**

5.3.1. The site is subject to land use zoning “F” which has the objective “to preserve and provide for open space with ancillary active recreational amenities”.

5.3.2. “Open space” is permitted in principle under this zoning objective subject to the provision that not more than 40% of the land in terms of the built form and surface car parking combined shall be developed upon. Any built form to be developed shall be of a high standard of design including quality finishes and materials. The owner

shall enter into agreement with the Planning Authority pursuant to Section 47 of the Planning and Development Act 2000, as amended, or some alternative legally binding agreement restricting the further development of the remaining area (i.e. 60% of the site) which shall be set aside for publicly accessible passive open space or playing fields. Said space shall be provided and laid out in a manner designed to optimise public patronage of the residual open space and/or to protect existing sporting and recreational facilities which may be available for community use.

5.4. **Conservation**

5.4.1. The southern, western and north-western portions of the subject site are designated as a proposed Natural Heritage Area. This designation also applies to Booterstown Marsh to the south of the subject site.

5.5. **Specific Local Objectives**

5.5.1. The site is subject to specific local objectives (SLO) 4, 19 and 20 of the development plan as follows:

5.5.2. **SLO No. 4:** To implement the requirements of the Dublin Eastern Bypass Corridor Protection Study Booterstown to Sandyford, 2011 and any subsequent updates to same and to promote potential additional future temporary uses of the Dublin Eastern Bypass reservation corridor…pending a decision from Transport Infrastructure Ireland / Central Government in relation to the future status of the Bypass.

5.5.3. **SLO No. 19:** That no residential or commercial building development be permitted on this site, in recognition of its close proximity to Booterstown Marsh part of South Dublin Bay and River Tolka Estuary SPA and also a pNHA.

5.5.4. **SLO No. 20:** To recognise that infrastructure pertaining to the National Gas Grid runs through this site.

5.5.5. Land use zoning map no. 2 of the development plan also confirms that there is an objective to preserve north-easterly views across the subject site extending from the eastern side of Rock Road towards the coast.

5.6. **Open Space, Parks and Recreation**

5.6.1. **Policy Objective OSR2: Hierarchy of Parks and Public Open Space** - It is a Policy Objective to provide a hierarchy of attractive parks and public open spaces,

which vary in size and nature, are all inclusive, by being readily accessible and at a convenient distance from people's home and/ or places of work.

5.6.2. **Policy Objective OSR3**: **Future Improvements** - It is a Policy Objective to continue to improve, plant and develop more intensive recreational and leisure facilities within parks and public open spaces insofar, as resources will permit, while ensuring that the development of appropriate complementary facilities does not detract from the overall amenity of the spaces.

5.6.3. **Policy Objective OSR5**: **Public Health, Open Space and Healthy Placemaking** - It is a Policy Objective to support the objectives of public health policy including Healthy Ireland and the National Physical Activity Plan (NPAP) 2016, to increase physical activity levels across the whole population thus creating a society, which facilities people whether at home, at work or at play to lead a more active way of life (consistent with RPO 9.16).

5.6.4. **Policy Objective OSR9: Sports and Recreational Facilities** - It is a Policy Objective to promote the provision, and management of high-quality sporting, and recreational infrastructure throughout the County, in accordance with the National Sports Policy 2018-2027, and dlr Space to Play: a new approach to Sports Facilities Strategy', 2017-2022, to ensure that the particular needs of different groups are incorporated into the planning and design of new facilities.

5.7. **Green Infrastructure and Biodiversity**

5.7.1. **Policy Objective GIB6: Views and Prospects** - It is a Policy Objective to preserve, protect and encourage the enjoyment of views and prospects of special amenity value or special interests, and to prevent development, which would block or otherwise interfere with Views and/or Prospects.

5.7.2. **Policy Objective GIB18**: **Protection of Natural Environment and the Environment** - It is a Policy Objective to protect and conserve the environment including, in particular, the natural heritage of the County and to conserve and manage Nationally and Internationally important and EU designated sites - such as Special Protection Areas (SPAs), Special Areas of Conservations (SACs), proposed Natural Heritage Areas (pNHAs) and Ramsar sites (wetlands) - as well as non-designated areas of high nature conservation value known as locally important areas

which also serve as ‘Stepping Stones’ for the purposes of Article 10 of the Habitats Directive.

5.7.3. **Policy Objective GIB24**: **Rivers and Waterways** - It is a Policy Objective to maintain and protect the natural character and ecological value of the river and stream corridors in the County and where possible to enhance existing channels and to encourage diversity of habitat and nature-based solutions that incorporate biodiversity features. It is also policy (subject to the sensitivity of the riverside habitat), to provide public access to riparian corridors, to promote improved passive recreational activities.

5.7.4. **Policy Objective GIB28**: **Invasive Species** - It is a Policy Objective to prepare an ‘Invasive Alien Species Action Plan’ for the County which will include actions in relation to Invasive Alien Species (IAS) surveys, management and treatment and to also ensure that proposals for development do not lead to the spread or introduction of invasive species. If developments are proposed on sites where invasive species are or were previously present, the applicants will be required to submit a control and management program for the particular invasive species as part of the planning process and to comply with the provisions of the European Communities Birds and Habitats Regulations 2011 (S.I. 477/2011).

5.8. **Transport**

5.8.1. Land use zoning map no. 2 identifies Merrion Road / Roack Road adjacent to the subject site as a Core Bus Corridor. The proposed Sutton to Sandycove Walkway/Cycleway as a component part of the National East Coast Trail Cycle Route extends along the seaward side of the rail line which borders the north-eastern boundary of the appeal site. A strategic road reservation (route of proposed Eastern By-pass) extends across the south-eastern portion of the subject site (and into the adjoining lands to the south at Booterstown Marsh).

5.8.2. Section 12.4.16 of the development plan (Chapter 12: Development Management) states that planning applications in the vicinity of the Dublin Eastern Bypass shall comply with the requirements of the Dublin Eastern Bypass Corridor Protection Study Booterstown to Sandyford, 2011 and any subsequent updates. All such applications shall be accompanied by a report setting out how the requirements of the study are met.

5.9. **Flooding**

5.9.1. Flood Zone Map No. 2 of the development plan confirms that the subject site is located in Flood Zone A and is subject to wave overtopping. Guidance in relation to less vulnerable developments in Flood Zone A, including leisure uses as proposed, is set out in Section 5.2.3 of the Strategic Flood Risk Assessment (Appendix 15) of the development plan.

5.9.2. The design and assessment of less vulnerable development should begin with 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. There is greater scope for the developer of less vulnerable uses to accept flood risks while still building to a standard of protection which is high enough to manage risks for the development in question.

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 at 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. The subject site is adjoined by South Dublin Bay and River Tolka Estuary SPA (site code: 004024) to the south, which extends as far as the Trimleston Stream culvert. This SPA also extends to the east of the appeal site on the opposite side of the rail line. South Dublin Bay SAC (site code: 000210) is also located to the east of the site on the opposite side of the train line.

5.11.2. Booterstown Marsh pNHA overlaps the western and southern portions of the subject site.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. A first-party appeal against the Planning Authority's decision has been lodged by Brock McClure Planning & Development Consultants on behalf of the applicant. In addition to addressing the refusal reason, the submission also includes commentary in relation to public access, drainage, water, traffic and the removal of Japanese Knotweed from the site. It is submitted that the clarifications provided in the appeal do not warrant revisions to the EIAR and NIS as submitted to the Planning Authority at Further Information stage.

6.1.2. The appeal submission can be summarised as follows:

- The detailed record of survey activity across the site by various qualified persons since 2002 demonstrates a credible and robust record of bird usage on the lands.
- The peer review carried out by Dixon Bronson Environmental Consultants concludes that an examination of all available survey data supports the conclusion that the proposed development site is not of value to SCI birds. If additional winter surveys had been carried out, it would not have fundamentally changed the conclusions regarding the value of the site for birds, the appropriate mitigation measures to be implemented and the conclusions on predicted effects.

- The proposed development will remediate the site of contaminated soil within the development footprint. This has the potential to positively impact contaminate potentially leaching into Dublin Bay via groundwater and surface water.
- The project will deliver a world class recreational facility and interpretive centre in a coastal meadow and biodiversity rich setting, which complies with the site zoning and will be designed and operated to the highest standards.
- There are significant elements of planning gain associated with this proposal and the area would benefit greatly from this cultural and recreational amenity.
- The subject site has been explored for development for nearly 20 years. Bird data which has been gathered over that time from a variety of sources, has not identified the development site as a known site used by significant numbers of SCI birds. The site is also accessible to members of the public and dog walkers, which is likely to further discourage birds from using habitats within the proposed development site.
- The subject site is also elevated and exposed, with little shelter provided from low-lying scrub that dominates the site. As such, other sites, such as Booterstown Marsh, Blackrock College playing pitches and Sean Moore Park, record increased number of sheltering waders during adverse weather conditions.
- The additional 4 no. winter bird surveys undertaken in November and December 2020 do not satisfy the requirement of Dún Laoghaire-Rathdown County Council to undertake a full winter bird survey. However, these results further substantiate the assessment and conclusions made in Section 3.2.7.4 of the NIS.
- The overall treatment of Japanese Knotweed within the proposed development site is excavation and disposal off-site.
- To increase public accessibility to the site, desire lines and pathways will be mown annually through the meadow, which may differ from year to year based on floral points of interest. The development will also provide engagement with education groups and opportunities for outdoor learning.

- In the interests of protecting adjacent ecologically sensitive features from potential disturbance and displacement impacts during the operational phase, public accessibility to the site will be controlled and managed.
- The NIS has fully assessed the updates made to the management of the site as submitted in the Further Information Response and includes mitigation measures to protect SCI birds from disturbance during operation.
- The NIS concluded that the operation of the proposed development does not pose a risk of adversely affecting, directly or indirectly, the integrity of any Natura 2000 site.
- Providing resources for an interested public is a key part of the plan including, an interpretive centre, a public and accessible bird hide, possible introduction of Sand Martin, Swift and Bee boxes on the site, an outdoor classroom and a webcam, information and signage enabling education on-site and online.
- The applicant will accept a planning condition requiring detailed proposals relating to operational management and public access with the Planning Authority.
- The applicant's design team is satisfied that the combination of permeable paving and the soakaway represents the optimum approach for ease of access/exit and for sustainable pavement surface water disposal in a wetland environment.
- The basement drainage system will take run-off from the ramp and any incidental run-off from cars only. Flood storage capacity is provided externally to the building, which includes compensatory flood storage adjacent to the Nutley Stream.
- The detailed hydraulic modelling work undertaken as part of the FRA has clearly demonstrated that, with the proposed compensatory storage measures in place, flood risk to the lands adjacent to the site is not increased.
- The Planning Officer's report included suggested conditions with respect to traffic, should planning permission be granted for the proposed development. The applicant welcomes all suggested conditions.

6.1.3. The appeal submission is accompanied by a copy of the Planning Authority's Request for Further Information (Appendix A), a letter from Invasive Plant Solutions confirming the company's involvement in treating Japanese Knotweed on the appeal site (Appendix B), a letter from EirEco Environmental Consultants which provides commentary on the site's suitability to accommodate wintering birds (Appendix C), a letter from Peter Cuthbert BSc Agr (Hort) which contains commentary on site vegetation (Appendix D), a letter from Dixon Brosnan Environmental Consultants which contains commentary on the site suitability to accommodate wintering birds and the applicant's survey methodology for recording bird activity on the site (Appendix D).

6.1.4. The appeal submission also includes a response to the Planning Authority's refusal reason as prepared by Scott Cawley (Project Ecologists) and a memorandum prepared by Arup which addresses the Planning Authority's comments regarding flood risk and storage volumes on the site.

6.1.5. The content of these submissions has been reviewed and taken into consideration in the assessment of this appeal case.

6.2. Planning Authority Response

6.2.1. A response to the appeal was received from the Planning Authority on 16th April 2020. The Planning Authority has nothing further to add and refers the Board to their original determination on the planning application.

6.3. Observations

6.3.1. Two observations have been made on the application by: (1) An Taisce and (2) Friends of Booterstown Coast. No new issues have been raised.

6.4. Further Responses

6.4.1. A response to the observations was received from Brock McClure Planning & Development Consultants on behalf of the applicant on 30th April 2021.

6.4.2. The applicant's agent notes that the observer's submissions are identical to those lodged in respect of the concurrent appeal for the adjoining site within the administrative area of Dublin City Council (ABP Ref. 308845-20). Therefore, the

applicant's response comprises a copy of that made to the Board in relation to the aforementioned case as submitted on 30th March 2021.

6.4.3. A complete winter bird survey dataset is also enclosed by review for the Board. This presents data collected between November 2020 and March 2021 and a subset of this was presented in the previous response submitted to the Board on 30th March 2021. Table 1 of the response details the winter bird survey dates, times and weather conditions, while Appendix 1 comprises the full field survey recording forms completed between November 2020 and March 2021. An accompanying memo from Scott Cawley states that this dataset validates the assessment in the NIS that the site does not correspond with habitats used by SCI birds and that the proposed development site presents extremely limited potential to support significant numbers of wintering SCI birds associated with the surrounding Natura 2000 sites.

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

6.4.5. The applicant's response 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 Nutley Stream.
- The removal of habitat along 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 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 1st 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 the 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 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.

6.4.6. A response to An Taisce's observation was received from Friends of Booterstown Coast on 4th May 2021. No new issues are raised.

6.4.7. A response to the observation of Friends of Booterstown Coast was received from An Taisce on 4th May 2021. No new issues are raised.

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 north within the administrative area of Dublin City Council. The development of these adjoining lands is subject to a concurrent appeal case before the Board (ABP Ref. 308845-20). While 2 separate planning applications have been submitted for administrative reasons, the development proposed under both applications comprises a single scheme. As such, issues which are common to both applications are considered below and in my assessment of ABP Ref. 308845-20. In some instances, the observers have raised issues which relate to the concurrent appeal case only. These issues have been dealt with separately under that case as appropriate.

7.2. Changes were proposed to the development by way of the applicant's response to the Planning Authority's Request for Further Information. Permission was originally sought for the development as described in Section 2.0 of this report. The changes which were proposed to the development at Further Information stage include:

- The relocation of the compensatory flood storage area from the south-eastern portion of the site adjacent to the Nutley Stream onto the adjoining site within the administrative area of Dublin City Council. The storage area is proposed along the Nutley Stream on the north-eastern portion of that site, adjacent to the proposed building. Riparian scrub and grassland habitat along the Nutley Stream in the southern / south-eastern portion of the current appeal site will be retained.

- A pedestrian crossing associated with the vehicular access and egress at Merrion Road.
- Connection to the East Coast Trail bicycle lanes and future proofing for Bus Connects.

7.3. The amended development was readvertised to the public, and as such, forms the basis of my assessment (including the revised EIAR and NIS).

7.4. Having regard to the information presented in the appeal and the planning application, including the third-party observations, and having undertaken an inspection of the site, I consider that the key planning issues in this case can be addressed under the following general headings:

- Principle of the Development / Compatibility with Land Use Zoning
- Site Access / Traffic Impacts
- Flooding
- Surface Water Drainage
- Invasive Species
- Environmental Impact Assessment (EIA)
- Appropriate Assessment (AA)

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

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

7.6.1. The subject site is significantly under-utilised given its greenfield nature, its high-profile location and its accessibility by public transport. While public access is not 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 was noted to have been erected on the adjoining site to the north within the administrative area of Dublin City Council. Overall, the site generally has a dilapidated appearance and is significantly overgrown in parts.

7.6.2. The site is subject to land use zoning “F” which has the objective “to preserve and provide for open space with ancillary active recreational amenities”. Open space development is permitted in principle under this zoning objective, subject to the

provision that not more than 40% of the land in terms of built form and surface car parking combined, shall be developed upon.

7.6.3. While the 2016 development plan was in force at the time this planning application was lodged, I note that the policy context pertaining to the site under the 2022-2028 development plan remains largely unchanged. I also note that Dún Laoghaire-Rathdown County Council's Planning Officer considered that the proposed development would provide an opportunity to deliver community gain through the provision of an array of biodiversity features which would enhance the site and form an attractive amenity space for use by the public.

7.6.4. In my opinion, the proposed development would result in a low-level of intervention on the subject site, with no buildings proposed at this location. Having regard to the foregoing, I do not consider that a Section 47 agreement regulating the use of the land as provided for under the development plan is required should the Board grant panning permission for the proposed development. A small section of hard standing for the proposed vehicular access extends through the westernmost portion of the site adjacent to Merrion Road, with an entrance gate proposed at the site boundary. The Site Plan drawings which accompany the applicant's Further Information Response and Drawing No. 02_02_01 (Proposed Bird Hide & Coastal Meadow – Lower Ground Floor Plan) confirm that the majority of the existing habitats on the site will be retained.

7.6.5. A new timber bird hide is proposed towards the south-eastern corner of the site. The hide will be accessed from the main building by a mown grass accessible path and a timber path closer to the structure itself. Sand Martin boxes are proposed in the south-eastern corner of the site adjacent to the Nutley Stream, while bee boxes are proposed on the north-western portion of the site. A coastal meadow planting mix is proposed where the existing habitats will not be retained (see Landscape Planting Plan which accompanies the RFI Response – Drawing No. LL603-150-0081).

7.6.6. An Taisce submits that the granting of planning permission in this instance would set an undesirable precedent for the approval of similar developments on other green / open spaces in the city, which would erode Dublin's green infrastructure network. I do not agree with this assertion, and I note that each application must be adjudicated on its merits. I also consider that the site does not currently make any meaningful or

high-quality contribution to the city's green network having regard to its overgrown nature, including the presence of Japanese Knotweed. While I acknowledge that the overall development is commercial in nature, I am satisfied that it would comply with the site's land use zoning objective, would not conflict with specific local objective nos. 4, 19 and 20 of the 2022-2028 development plan, and would be acceptable in principle subject to an assessment of the other key issues arising in this case.

7.6.7. Having regard to the site's land use zoning objective, I consider it reasonable that the applicant be required to agree details of how public access will be facilitated, including access to and management of the bird hide. I note that the Parks Department of the Planning Authority had requested that these details be agreed prior to the commencement of development. In my opinion, these matters can be addressed by planning 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 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 northern-most end of the roadside boundary and the second located between the proposed vehicular entrance and exit (both on the adjoining site within the administrative area of Dublin City Council). A 2-way cycle track is also proposed within the site. The proposed development has been set back sufficiently to allow for the future delivery

of the Bus Connects project along the Merrion Road / Rock Road (R118) boundary of the site.

7.7.3. Item no. 4 of Dún Laoghaire-Rathdown County Council's Request for Further Information related to traffic and transportation issues including, inter alia, lighting, detailed drawings of the proposed 4-arm signalised junction at Trimleston Avenue and works proposed with and without the Bus Connects scheme. The inclusion of pedestrian crossings on each arm of the signalised junction was also recommended. The applicant was also requested to take account of the recommendations of the Stage 1 Road Safety Audit, to provide justification for the width of the vehicular exit and egress and to consider how improved cycle lane facilities could be provided along the Merrion Road / Rock Road frontage in advance of the implementation of the Bus Connects scheme.

7.7.4. Responses to these items were prepared by ARUP (response document dated 24th September 2020 refers). In summary, the 4-arm signalised junction at Trimleston Avenue was amended to include the provision of pedestrian crossings on each arm. The traffic management plan to serve the proposed development has been modified to include the recommendations accepted in the feedback submitted with the Stage 1 Road Safety Audit, with the following changes: (1) the length of the right-turn lane on Rock Road serving Trimleston Avenue has been increased from 2 to 3 vehicles under the "Without Bus Connects" scenario, (2) the ghost island hatching serving the right-turn lanes on Rock Road have been modified to improve visibility for turning vehicles, (3) the exit from the proposed development will be signalised to ensure safe egress, and (4) the eastern approach along Rock Road has been auto-tracked and the horizontal radii increased slightly to ensure public transport vehicles can stay within the existing lane alignment. The width of the vehicular entrance and exit will ensure safe passage for waste trucks entering and exiting the site. An interim south-bound off-road cycle lane is also proposed under the "With Bus Connects scenario", with a shared pedestrian/cycle zone facility proposed opposite Trimleston Avenue.

7.7.5. Following an assessment of the applicant's response, the Transportation Planning Department had no objections to the proposed development subject to conditions including that: (1) details regarding the length of right-turning lanes and details of road markings be subject to final agreement with both Planning Authorities prior to the construction of the proposed development, particularly in the event of the

"Without Bus Connects" scenario becoming operational, (2) a 2-way, off-road cycleway be provided within the development from its first occupation unless otherwise agreed, (3) travel demand management measures be monitored and reviewed on an ongoing basis and that the car park management be subject to review and agreement with both Planning Authorities when the development is operational.

7.7.6. Having regard to all of the foregoing, I consider that no significant traffic impacts would arise on foot of the proposed development as asserted by the observer. The final vehicular access arrangements on the public road, taking account of the "with and without Bus Connects scenarios", and the layout of the proposed off-road cycle track, can reasonably be agreed with the Planning Authority prior to the commencement of development. This matter can be addressed by planning condition should the Board decide to grant planning permission for the proposed development.

7.8. **Flooding**

7.8.1. Further Information Item Nos. 2 (c) and (d) of the Planning Authority's Further Information Request related to flood risk and required the applicant to: (1) show existing and proposed flood levels and extents for the 1.0% AEP, 0.5% AEP and 0.1% AEP events and (2) provide a level for level compensation analysis (tabular format) using a series of flows between the 0.5% and 50% AEP events, for existing and proposed conditions to demonstrate that flood storage volumes are being maintained across a series of return period events.

7.8.2. The subject site is located within Flood Zone A and is subject to wave overtopping. The proposed development impinges on the existing floodplain of the Nutley Stream, and as such, compensatory storage is required to minimise this impact in accordance with the requirements of the Planning System and Flood Risk Management Guidelines for Planning Authorities (2009). As per the applicant's Further Information Response, this compensatory storage is proposed along the riverbank of the Nutley Stream adjacent to the proposed building, on lands within the administrative area of Dublin City Council.

7.8.3. The applicant's revised FRA notes that 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.

7.8.4. Fluvial flood extent mapping has been derived from the hydraulic model for the requested flood events. Figures 12 and 13 of the FRA show the existing site context with current fluvial flood events and the proposed scenario respectively. The site lies within the fluvial floodplain for the Q100, Q200 and Q1000 flood events in the existing scenario, with the flood events being reduced for all return periods in the proposed scenario. The Q100 fluvial flood extent is also reduced for the climate change scenario with the proposed development in place (Figure 15 of FRA refers).

7.8.5. Table 2.7 of the FRA sets out a level for level storage volume analysis (flood storage volume removed v's flood storage volume added). The displaced flood storage volume is c. 865 m^3, with the proposed compensatory flood storage area providing a storage volume of c. 480 m^3. 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. It is submitted that the results of the hydraulic model indicate that the subject site and adjacent lands will not be adversely impacted by the proposed development as water levels upstream and downstream are reduced, while minor increases (max. 3 mm) occur across the site.

7.8.6. The Drainage Department of Dún Laoghaire-Rathdown County Council recommended that Clarification of Further Information be requested in relation to the applicant's Site-Specific Strategic Flood Risk Assessment including, inter alia:

(1) A1 drawings to provide sufficient clarity, and from which the changes in extents and depths across the various flood events can be readily identified. The SSFRA should then be updated to satisfactorily address the issue acknowledged by the applicant in Section 2.4 of the current SSFRA submission (compensatory storage).

The flood extents and depths maps should also extend beyond the site boundaries for both the existing and proposed scenarios, extending to cover the locations of all the node points referenced in the SSFRA.

(2) Table 7 of the SSFRA does not show the existing and proposed level of flood storage being provided across a range of flood events as requested.

7.8.7. The applicant's appeal submission includes a memorandum prepared by Arup which seeks to address the clarification items requested by the Drainage Department. A set of flood maps are included for the node points referenced in the SSFRA. The conclusions which are drawn from the flood maps are as follows:

- The existing and proposed flood extents downstream of the site in Booterstown Marsh are effectively identical and there is no increase in flood risk in this area with the development in place.
- Within the site boundary, the 1% AEP fluvial flood extent is reduced in the vicinity of the proposed development with the development in place. Downstream of the development within the site, there is a very marginal increase in the 1% AEP flood extent (max. water level 3 mm) with the development in place.
- There is no significant increase in the maximum Q100 water level upstream of the site. With the development in place, there is a marginal reduction in the maximum 1% AEP flood level upstream of the site.

7.8.8. Figure 2 of the memorandum provides further clarification in relation to the compensatory flood storage volumes, which are presented for different level bands and for a range of return period events. The applicant's agent reiterates the relaxation in compensatory storage provisions under Section 3.3.1 of Technical Appendix B of the Flood Risk Management Guidelines and the hydraulic modelling work which has been undertaken which demonstrates that with the compensatory storage measures in place, the flood risk to adjacent lands is not increased.

7.8.9. Having regard to the information which has been presented with the planning application and the appeal, 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 site 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 increase to be significant. I also note that the proposed development comprises “less vulnerable development” in the context of flood risk. As such, I am satisfied that the issue of flood risk has been satisfactorily addressed by the applicant.

7.9. **Surface Water Drainage**

7.9.1. Item Nos. 2 (a) and (b) of the Planning Authority’s Further Information Request required the applicant to submit additional details regarding the proposed surface water drainage arrangements. Item No. 2 (a) required the submission of a proposal demonstrating that the proposed soak-pit is suitable for its intended purposes, supported by additional site investigation results that establish standing groundwater levels, the suitability of the ground for infiltration and calculations showing the volume of surface water runoff to be catered for.

7.9.2. In response to this item, additional ground investigations were undertaken, including soakaways and groundwater monitoring, with the results provided for July 2020. The 4 no. soakaway pits which were carried out as part of the 2020 ground investigations were provided to assist in the soak pit design. Four of the boreholes were completed as groundwater monitoring wells and dataloggers were placed in these to monitor fluctuations in the groundwater levels beneath the site. Details of the findings of these loggers and the ground water levels across the site are presented in Chapter 7 of the EIAR.

7.9.3. It was also submitted that the soakaway within the Planning Authority’s administrative area is part of a drainage system for the eastern portion of the entrance roadway, which will be of permeable design to allow for storage and infiltration to ground. The soakaway is provided at the low point as an overflow for the permeable paving events exceeding the standard design capacity. Infiltration rates have been established following the ground investigation. The soakaway at this location will be 2.1 m diameter with 1 m of voided stone and will cater for events up to 10-year storm events. A secondary high-level overflow will be provided from this soakaway to the series of soakaways within the site.

7.9.4. Following the applicant's Further Information submission, the Drainage Planning Department recommended that Clarification of Further Information be requested in relation to the presentation of the site investigation results in a single document and the provision of conclusions that demonstrate that the soak pit in the Planning Authority's administrative area is suitable for its intended purpose regarding infiltration capacity and established groundwater levels.

7.9.5. The applicant's agent has sought to clarify this matter in Section 6.4 of the appeal submission. While it is stated that the SI is summarised in an attached memo "Ground Conditions at SA03", with a drawing showing the soak pit in relation to the SI strata, I note that these items do not appear to have been appended to the appeal submission.

7.9.6. The soakaway is located adjacent to the lowest point of the entrance roadway. Road gullies are included at this low point which discharge to the soakaway, a minimum of 5 m from the pavement. There is 400 m^2 of permeable paving in the catchment area for the gullies / soakaway. The proprietary permeable paving design allows for infiltration and storage during average winter rainfall and up to the once-in-one-year storm events. During occurrences of rainfall events, where the capacity of the permeable paving to absorb rainfall through the surfacing may be exceeded, the design considerations wanted to ensure there was sufficient capacity to efficiently drain away water standing on the surface through the provision of gullies at the low point. The applicant emphasises that occurrences of high rainfall of this nature are relatively rare. The applicant is satisfied that the combination of permeable paving and the soakaway presents the optimum approach for ease of access / exit and for sustainable pavement surface water disposal in a wetland environment.

7.9.7. Item No. 2 (b) of the Planning Authority's Further Information Request also required the applicant to submit an alternative proposal for the disposal of incidental run-off from the basement level car park, such that the runoff shall be discharged to the foul system via a petrol / oil interceptor.

7.9.8. A response to this item was prepared by Arup Consulting Engineers which stated that a multi-stage treatment train is proposed, including a Class 1 petrol / oil separator and a proprietary up-flow sand filter to ensure that only clean water is discharged via a pump station and rising main to the adjacent shallow infiltration

trenching at ground level, which will offer further filtering. It was noted that the open-sided nature of the basement car park may lead to significant levels of rainwater being pumped to the Irish Water foul sewerage network during an extreme rainfall event. The applicant submitted that the proposed system is a sustainable approach, ensuring that only wastewater is discharged to the foul sewerage system.

7.9.9. Having considered this information, the Drainage Planning Department recommended that Clarification of Further Information was required to demonstrate that the proposed petrol / oil interceptor and up-flow sand filter have been adequately sized. It was also considered that the applicant's statement regarding "significant levels of rainwater being pumped to the Irish Water foul sewerage network" required additional assessment.

7.9.10. The applicant's agent has sought to address this matter in the appeal submission. It is submitted that the proposed full retention petrol interceptor, which will take incidental run-off from the basement car park, will accommodate a flow of up to 6 l/s. A proprietary unit will be provided, with the proprietary up-flow water treatment filter noted to take a flow of up to 7.8 l/s. These will be confirmed during the design stage. Discharge of incidental runoff from the basement area can be directed to the Irish Water foul sewer if required, subject to agreement with the Planning Authority and Irish Water. It is confirmed that the basement system will take run-off from the ramp and any incidental run-off from cars only, with flood storage capacity provided externally to the building under the FRA proposals, including compensatory storage adjacent to the Nutley Stream.

7.9.11. Having considered the information provided with the applicant's Further Information response and the appeal submission, I consider these technical details, including the "Ground Conditions at SA03" memo and the drawing showing the soak pit in relation to the SI strata as referenced in the appeal, could reasonably be provided to, and agreed in writing with, the Planning Authority prior to the commencement of development. In my opinion, this matter can be addressed by way of planning condition.

7.10. **Invasive Species**

7.10.1. Friends of Booterstown Coast note the presence of Japanese Knotweed (JKW) on the site and submit that this invasive species could travel via the Nutley Stream or be mechanically spread to Booterstown Marsh. I note that Dún Laoghaire-Rathdown County Council requested Further Information in relation to the treatment of JKW (Item No. 3 (a) refers), including, inter alia, the feasibility of the exact treatment option, details of the implementation of the chosen option, along with timing and phasing relative to the construction phase of the development. The integration of these details into the Construction Management Plan was also requested.

7.10.2. A revised Invasive Species Management Plan (ISMP) was submitted to the Planning Authority in response to the requested information (also included as Appendix A of the revised Outline Construction Management Plan). JKW was first identified on the site in 2013. A Management Plan for its treatment was prepared in 2015 and a control programme has been implemented on the site since then. The submitted plan notes that there has been active engagement with Irish Rail in relation to the treatment of JKW on adjoining Irish Rail lands since 2015.

7.10.3. A range of treatment options have been considered and discounted, with the excavation and disposal off-site of infested material being the chosen method of remediation, excluding the JKW along the southern site boundary, 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 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.

7.10.4. The plan states that site inspections undertaken between 2015 and 2020 indicate that JKW on the site is now under very good control and in most instances is close to eradication. There was no evidence of further emergence of viable JKW over the 2020 growing period.

7.10.5. I note that the Parks and Landscape Services Department requested a detailed set of drawings clarifying the depths to which JKW will be buried on site (Further Information report dated 10th November 2020 refers). This department also noted that the applicant's Further Information response illustrates two types of root-barrier cell installations (partially or fully buried cells), with the applicant requested to confirm the method they intend on using and specific, detailed and dimensioned plans and sections relating to same. The Biodiversity Officer had no further comments in relation to the treatment of JKW (report of 9th November 2020 refers).

7.10.6. The applicant's agent has sought to clarify this matter in section 6.2 of the appeal submission, which states that the Planning Authority has misinterpreted the ISMP, as no cell containment system will be used to treat JKW on site. It is reconfirmed that the overall treatment proposed is excavation and disposal off-site. Where this is not possible, other treatment options will be employed as summarised in section 7.10.3 of this report.

7.10.7. The applicant's clarification on this matter supports my interpretation of the revised ISMP. In my opinion, the information which has been provided in relation to the treatment of JKW is clear and unambiguous. I also consider that the submitted information demonstrates that the applicant has undertaken a proactive approach to the treatment of JKW on the site since 2015 and has engaged with adjoining landowners in relation to this issue. The applicant has indicated their intention to carry out the ground remediation works in advance of the main development construction and to submit the results of monitoring programmes during and post construction to the Planning Authority. These matters can be addressed by planning condition in my opinion.

7.11. **Environmental Impact Assessment**

7.12. **Introduction**

7.12.1. 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.

7.12.2. Both the 2014 amended EIA Directive (Directive 2014/52/EU) and the European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018 are applicable.

7.12.3. 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. 0.76 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.

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

- Content and Structure of EIAR

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

Volume 1: Non-technical Summary

Volume 2: Main Report (2 no. reports)

7.12.6. 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.

7.12.7. 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).

7.12.8. 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.

7.13. **Consultations**

7.13.1. 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 3.15 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.

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

7.14.1. 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.

7.14.2. 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.

7.14.3. 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.

7.14.4. 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.

7.15. **Alternatives**

7.15.1. 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.

7.15.2. 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.

7.15.3. 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.

7.15.4. 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.

7.15.5. 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.

7.15.6. 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.

7.15.7. 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.

7.15.8. 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.

7.16. **Population and Human Health**

7.16.1. 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

7.16.2. 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-Booterstown to the south-east. The total population of Pembroke East D in 2016 was 5,263 persons (increase of 12.5%) and of Blackrock-Booterstown 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.

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

Potential Impacts

7.16.4. 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.

7.16.5. 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

7.16.6. 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.

7.16.7. 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

7.16.8. 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

7.16.9. 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.

7.17. **Biodiversity**

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

Receiving Environment

7.17.2. 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.

7.17.3. 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.

7.17.4. 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.

7.17.5. Four amber-listed bird species are considered to breed within the site including Robin, Linnet, House Sparrow and Stonechat.

7.17.6. 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.

7.17.7. 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.

7.17.8. 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

7.17.9. 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.

7.17.10. 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.

7.17.11. 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.

7.17.12. 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.

7.17.13. 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.

7.17.14. 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.

7.17.15. 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.

7.17.16. 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.

7.17.17. 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

7.17.18. 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

7.17.19. 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

7.17.20. 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.

7.18. **Land and Soils**

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

Receiving Environment

7.18.2. 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.

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

Potential Impacts

7.18.4. 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

7.18.5. 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

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

Land and Soils - Conclusion

7.18.7. 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.

7.19. **Water**

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

Receiving Environment

7.19.2. 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.

7.19.3. 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.

7.19.4. 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.

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

Potential Impacts

7.19.6. 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.

7.19.7. 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

7.19.8. 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

7.19.9. 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.

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

Water – Conclusion

7.19.11. 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.

7.20. **Noise and Vibration**

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

Receiving Environment

7.20.2. 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.

Survey Location	Ambient Noise Levels (LA_{eq})	Max. Noise Levels (LA_{max})	Background Noise Levels (LA_{90})
A	53 - 57	61 - 78	49 - 50
B	62 - 66	77 - 93	52 - 53
C	53	68 - 72	46

7.20.3. 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.

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

Potential Impacts

7.20.5. 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.

7.20.6. 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

7.20.7. 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

7.20.8. 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

7.20.9. 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.

7.21. **Air Quality and Climate**

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

Receiving Environment

7.21.2. 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_2, PM_{10}, $PM_{2.5}$, Benzene and CO are identified, all of which are below/significantly below the relevant limit values.

7.21.3. 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_{10} 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.

7.21.4. 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

7.21.5. 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

7.21.6. 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_2, PM_{10}, $PM_{2.5}$, 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

7.21.7. 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

7.21.8. No significant residual impacts are identified.

Air Quality and Climate – Conclusion

7.21.9. I have considered the submissions on file and this chapter of the EIAR. I am satisfied that potential effects to 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.

7.22. **Wind and Microclimate**

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

Receiving Environment

7.22.2. 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.

7.22.3. 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

7.22.4. 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.

7.22.5. 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

7.22.6. 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 clam 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

7.22.7. No residual impacts are identified.

Wind and Microclimate – Conclusion

7.22.8. 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.

7.23. **Landscape and Visual Effects**

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

Receiving Environment

7.23.2. 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

7.23.3. 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.

7.23.4. 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.

7.23.5. 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

7.23.6. 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

7.23.7. No residual impacts are identified.

Landscape and Visual Effects – Conclusion

7.23.8. 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.

7.24. **Traffic and Transport**

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

Receiving Environment

7.24.2. 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.

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

Potential Impacts

7.24.4. The total construction traffic volumes per hour are not significant in terms of the overall existing traffic flows.

7.24.5. 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

7.24.6. The mitigation measures which are proposed with respect to traffic and transport include:

- Preparation of a CMP and Construction Traffic Management Plan (CTMP). The CMTP will clearly identify the routes to be used for different types of traffic as appropriate.
- Appointment of Traffic Management Coordinator with responsibility for traffic management coordination 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

7.24.7. No residual impacts are identified.

Traffic and Transport - Conclusion

7.24.8. 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.

7.25. **Utilities**

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

Receiving Environment

7.25.2. 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.

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

Potential Impacts

7.25.4. 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.

7.25.5. 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

7.25.6. 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

7.25.7. No residual impacts are identified.

Utilities – Conclusion

7.25.8. 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.

7.26. **Waste Management**

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

Receiving Environment

7.26.2. 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.

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

Potential Impacts

7.26.4. 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.

7.26.5. 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

7.26.6. 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

7.26.7. 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.

7.26.8. No significant residual impacts are identified.

Waste Management – Conclusion

7.26.9. 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.

7.27. **Archaeological, Architectural and Cultural Heritage**

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

Receiving Environment

7.27.2. 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.

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

Potential Impacts

7.27.4. 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

7.27.5. 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.

7.27.6. 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

7.27.7. No residual impacts are identified.

Archaeological, Architectural and Cultural Heritage - Conclusion

7.27.8. 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.

7.28. **Interactions of the Above and Cumulative Impacts**

7.28.1. 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. In my assessment of each environmental topic, I have the 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.

7.28.2. 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.

7.29. **Reasoned Conclusion on the Significant Effects**

7.29.1. 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:

7.29.2. **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.

7.29.3. 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.

7.29.4. 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.

7.29.5. 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.

7.29.6. **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.

7.29.7. 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.

7.29.8. **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.

7.29.9. 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.

7.29.10. I am satisfied therefore, that the proposed development would not have any unacceptable direct or indirect effects on the environment.

7.30. **Appropriate Assessment**

7.30.1. 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.

7.30.2. 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

7.30.3. 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

7.30.4. 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)

7.30.5. 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.

7.30.6. 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.

7.30.7. 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)

7.30.8. 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

7.30.9. 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.

7.30.10. 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 Dún Laoghaire-Rathdown County 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 biodiversity proposals and the proposed public access arrangements into the site,

(f) the Environmental Impact Assessment Report submitted,

(g) the Natura Impact Statement submitted,

(h) the appeal and observations made in connection with the planning application and appeal, and

(i) 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 and 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.	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 24th 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. **Reason:** In the interest of clarity.
2.	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. **Reason:** In the interest of clarity and protection of the environment during the construction and operational phases of the proposed development.
3.	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

	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. **Reason:** 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.
4.	(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 24th day of September 2020, in consultation with Dublin City 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. (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 Dublin City Council, prior to the commencement of development. **Reason:** 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.
5.	Proposals for a development name and associated signage shall be submitted to, and agreed in writing with, the planning authority, in consultation with Dublin City Council, prior to the commencement of development. **Reason:** In the interest of urban legibility.
6.	(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. (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. (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. (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. (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. (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. **Reason:** In the interest of traffic safety.

7.	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: (a) Location of the site and materials compound(s) including area(s) identified for the storage of construction refuse; (b) Location of areas for construction site offices and staff facilities; (c) Details of site security fencing and hoardings; (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; (e) Measures to obviate queuing of construction traffic on the adjoining road network; (f) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network; (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; (h) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels; (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; (j) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil; (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. 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. **Reason:** In the interest of amenities, public health and safety.

8.	The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall - (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, (b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and (c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove. In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination. **Reason:** In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.
9.	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. **Reason**: To protect wild birds whose flight paths cross the route of the proposed development.
10.	(a) Ground remediation works regarding the treatment of Japanese Knotweed on the site shall be commenced and completed in advance of the main development construction works. (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. (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.

	Reason: To ensure appropriate treatment and to prevent the spread of an invasive alien species.
11.	Drainage arrangements including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services. **Reason:** In the interest of public health.
12.	The developer shall enter into water and/or wastewater connection agreement(s) with Irish Water, prior to commencement of development. **Reason:** In the interest of public health.
13.	The following requirements of Irish Rail shall be complied with: (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. (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. (c) Boundary treatments should be designed to withstand noise and vibrations emanating from railway operations and maintenance. **Reason:** In the interests of safety in the operation of the railway line.
14.	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. **Reason:** In order to safeguard the residential amenities of property in the vicinity.

Louise Treacy
Senior Planning Inspector

2nd February 2023

Appendix 1: Appropriate Assessment