



An
Bord
Pleanála

Inspector's Report 312692-22

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| Development | Construction of a pedestrian walkway and a cycle lane along East Wall Road and Bond Road from the River Liffey to the Tolka Estuary with all associated site development works. |
| Location | East Wall Road & Bond Road, Dublin Port, Dublin 1 & 3. |
| Planning Authority | Dublin City Council |
| Planning Authority Reg. Ref. | 3220/21 |
| Applicant(s) | Dublin Port Company |
| Type of Application | Permission |
| Planning Authority Decision | Grant permission subject to conditions |
| Type of Appeal | Third Party vs. Grant |
| Appellant(s) | Futac Services Limited |
| Observer(s) | Transport Infrastructure Ireland |
| Date of Site Inspection | 10 th October 2022 |
| Inspector | Stephen Ward |

1.0 Site Location and Description

- 1.1. The subject site extends to a length of c. 1.4km from the River Liffey northwards to the River Tolka Estuary. It extends along the western margins of Dublin Port and the eastern margins of the Docklands and East Wall Road. It also crosses Promenade Road, and the northern end of the site covers Bond Road. East Wall Road is a heavily trafficked route of up to six vehicular lanes which links North Wall Quay with the Port Tunnel. It includes pedestrian facilities on both sides and sporadic cycle lanes of varying design and standard. There is a footpath on one side of Bond Road but there are no dedicated cycle facilities.
- 1.2. A high boundary wall running along the site separates East Wall Road from the western margin of the Dublin Port lands. The boundary wall is punctuated by several openings/junctions. The southern portion of the site includes the North Quay Wall extension, parking spaces, advertising structures, and various small-scale structures. The mid-southern section includes the Dublin Port Centre, Maritime Garden, Crane 292, parking areas, and a redbrick former substation building (protected structure) at the junction of East Wall Road and Alexandra Road.
- 1.3. Further north, the site stretches along the western margins of Terminal 4 and other port-related yards/storage areas. The northern extremity consists of Bond Road and adjoining verges and terminates near the Tolka Estuary shoreline.
- 1.4. The surrounding area to the east of the site is largely limited to port-related uses. To the west, the M50 Port Tunnel and an Irish Rail Freight Depot form a significant presence adjoining the mid-section of the site. However, further south there is a comprehensive mix of uses along the Docklands, while Eastpoint Business Park is further north along the estuary.

2.0 Proposed Development

- 2.1. The proposed development involves the construction of a new 1.4km pedestrian and cycle greenway with associated landscaping and public spaces along East Wall Road and Bond Road from the River Liffey to the Tolka Estuary. The aim of the proposal is to improve the public interface between Dublin Port and Dublin City and

to link the existing cycle facilities at North Wall Quay with the permitted Tolka Estuary Greenway and the wider pedestrian/cycle network. In accordance with the Dublin Port Masterplan, it is intended to link a series of existing, permitted, and planned historical and cultural spaces/attractions as part of a 'Distributed Museum'. The proposed development involves amendments to the development permitted under P.A. Reg. Ref. 3084/16.

2.2. The proposed development includes the following elements:

- Removal of part of existing Dublin Port western boundary wall / fence;
- Removal of the existing access to Terminal 3 on East Wall Road;
- Modifications to layout of Terminal 3 along eastern boundary including removal of private car parking spaces;
- Relocation of 3 no. existing double billboards;
- Relocation of existing flagpoles;
- Relocation of existing temporary office building of 15sq.m;
- Closure of left turn from Alexandra Road to East Wall Road southbound;
- Removal of 17 no. car parking spaces from the Dublin Port Centre car park;
- Realignment of Bond Road north of the Promenade Road junction;
- Construction of new boundary along sections of the Dublin Port western boundary comprising railings over plinth or wall to a height of c. 4m along East Wall Road and Bond Road or for a section along Bond Road a wall of c. 2.6m in height;
- Creation of a civic space adjacent to the River Liffey at North Wall Quay Extension,
- Provision of 25 no. bicycle parking spaces,
- Provision of a Dublin Port Irish language installation as part of the boundary treatment adjacent the Crane 292 enclosure.

- Provision of hard and soft landscaping including trees along the extent of the route, amenity, interpretation and wayfinding features including bins and seating;
- Provision of an indented bus stop on the east side of East Wall Road;
- Provision of pedestrian and cycle facilities to enable road crossing on the east side of East Wall Road to connect with permitted road crossings on East Wall Road by Dublin City Council;
- Provision of lighting and CCTV along the proposed pedestrian and cycle route; and
- Modifications to the existing maritime garden adjacent to Dublin Port Centre.

2.3. In addition to the replacement of permitted pedestrian and cycle facilities and associated works along East Wall Road and Bond Road as permitted under Reg. Ref. 3084/16, to include a bridge over Promenade Road with revised design and alignment, the following proposed amendments to the permission granted under Reg. Ref. 3084/16 will also comprise:

- Reduction in the width of the vehicular carriageway and omission of footpath on internal roadway in Terminal 3;
- Provision of a new vehicular access to Dublin Port Centre car park off the internal road network;
- Amendments to the junction between the Terminal 3/4 access road and Alexandra Road to include right-out only from the proposed access road onto Alexandra Road and changing the junction from signalised to priority controlled;
- Amendments to the permitted Alexandra Road / East Wall Road Junction to include the retention of the left slip lane from East Wall Road into Alexandra Road;
- Relocation of the emergency access gate at the junction of Tolka Quay Road and East Wall Road;

- Omission of the private secure access route for multi-modal berth between Tolka Quay Road and Alexandra Road; and
- Omission of a section of the internal road to the south of Dublin Port Centre car park.

2.4. The proposed development and proposed amendments include all associated ancillary works, including site clearance, demolitions, earthworks, pavement construction, drainage services, diversion and installation of utility services, installation of road markings and signs.

2.5. The application was accompanied by a Natura Impact Statement and a range of other supporting reports as follows:

- Planning Report
- Archaeological Impact Assessment
- Traffic and Transport Assessment
- Design Statement
- Tree/vegetation surveys and Landscape planting strategy
- Architectural Heritage Impact Assessment
- Engineering Report
- External Lighting and CCTV System Report
- Waste Management Plan
- Preliminary Ecological Appraisal Report
- Screening for Appropriate Assessment
- EIA Screening Report
- Summary of Mitigation Measures Report
- COMAH Land Use Planning Assessment.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. By order dated 14th January 2022, Dublin City Council (DCC) issued Notification of the Decision to Grant Planning Permission subject to 14 no. conditions. Notable aspects of the conditions are as follows:

Condition no. 4 requires confirmation that all corten steel removed from the site boundary shall be reused throughout the development.

Condition no. 5 outlines transportation details to be agreed, including junction details, phasing of the works, and associated traffic diversions.

Condition no. 6 outlines requirements that the historic quay and boundary walls shall be retained and repaired, and that new/relocated walls shall match the historic walls.

Condition no. 7 outlines archaeological survey and monitoring requirements.

3.2. Planning Authority Reports

3.2.1. Further Information

Following the initial consideration of the application, DCC issued a further information request. The issues raised can be summarised as follows:

- 1) Submit drainage information as follows:
 - a) Details of proposals to divert two public surface water sewers to include a revised Engineering Report expanding on the proposed diversion works; a full set of drawings for the proposed diversions; and an Outline Construction Management Plan.
 - b) Details of the SUDS Strategy to include extent and attenuation volumes of each sub-catchment; flow rates from each sub-catchment; and the quality of surface water discharge from contaminated ground.
 - c) Site Specific Flood Risk Assessment.
 - d) Clarification of areas to be taken in charge.

- 2) To address the following concerns of Irish Water (IW):
 - a) Engage with IW Diversions in respect of the infrastructure that might be affected.
 - b) Submit Confirmation of Feasibility (COF) following engagement.
- 3) To address the following conservation concerns:
 - a) Submit a list of all remaining heritage assets outlining proposals for retention, protection, and incorporation into the proposed development.
 - b) Proposals to retain more of the historic boundary walls along with more variety of boundary treatment and architectural devices.
 - c) Proposals to retain more of the original calp limestone at North Wall Square, along with justification for the removal and reuse of historic fabric.

3.2.2. Planning Reports

The assessment outlined in the Planning Reports can be cumulatively summarised as follows:

- The NIS concludes that mitigation measures will manage and reduce the risk of accidental pollution at construction stage, and that there will be no adverse impacts on the integrity of European Sites. This information has been reviewed and is accepted.
- The applicant's EIA Screening Report concludes that the proposal would not have significant impacts on the receiving environment. This conclusion is accepted.
- The majority of the site is within zone Z7, while parts of its are within Z9 and un-zoned land. It is appropriate to consider the proposed walkway/cycleway as 'open space' as per the definition in Appendix 21 of the Development Plan. This would be a permissible use in the Z7 and Z9 zones and is therefore permissible on the site in principle.
- Policy SC9 and section 16.21 of the Development Plan have regard to the Dublin Port Masterplan and DCC has had regard to the Masterplan in

previous applications. The Masterplan identifies an ongoing need for infrastructural upgrades.

- The proposal in itself, and when combined with other proposed/permitted developments in the area, has the potential to provide significant benefits for pedestrians, cyclists, and other non-motorised traffic.
- It would be in keeping with Development Plan policy to have regard to the Masterplan and to improve the interface/integration between the Port and city.
- A third-party submission from a leaseholder alleges that consent is required to make the application. This is a legal issue which is outside the remit of the application.
- The further information response includes additional drainage details which have been deemed acceptable by the DCC Drainage Division. It also includes correspondence from IW confirming that the proposed development can be facilitated.
- The further information response outlines a rationale for the alterations to the Port boundary treatment. This has been reviewed by the DCC Conservation Section which now recommends a grant of permission subject to conditions.
- Details submitted regarding existing and proposed trees are acceptable.
- All corten steel panels removed should be reused within the development.
- The proposal would complement recent and ongoing enhancements to landscaping, boundaries, and cultural heritage assets, and provides for an acceptable quality of landscaping and finishes.
- It is recommended to grant permission, and this forms the basis of the DCC decision.

3.2.3. Other Technical Reports

City Archaeologist: The original report highlights Policy CHC9 of the Development Plan and states that the application should comply with Condition no. 5 of the previous permission P.A. Reg. Ref. 3084/16. The final report notes the location of

the site in relation to The North Wall Quay RMP and agrees with the applicant's archaeological mitigation strategy. No objection subject to conditions requiring metric survey and monitoring.

Drainage Division: The original report requested further drainage information as outlined in point 2 of the DCC further information request. The subsequent report outlined no objections subject to conditions.

Transportation Planning Division: Welcomes improvements to the pedestrian and cycle network and has no objection subject to conditions, including agreement of the detailed design of the Alexandra Road/East Wall Road junction.

Conservation Officer: The original report raised issues regarding the protection of heritage assets/items, the need to protect historic boundary treatment, and recommended that the relocation of the cycleway out of the event space adjoining the protected structure (ESB substation). It recommended requesting further information on these matters. The subsequent report recommended that permission be granted subject to conditions.

3.3. **Prescribed Bodies**

Transport Infrastructure Ireland: No observations except that a section 49 Levy Scheme may apply for light rail.

Irish Water: The submission highlights the presence of IW assets and requests further information on sewer diversion proposals.

Irish Rail: The submission makes the following observations:

- The Railway Safety Act 2005 requires that there shall be no increased risk to the railway as a result of works.
- There is no objection in principle but there are some concerns, particularly where the cycleway crosses the rail tracks at Alexandra Road.
- Irish Rail operates freight trains into Dublin Port.
- The narrowed carriageway and junction alterations on Alexandra Road may force traffic to run on the railway, thereby causing possible conflict with trains and shunters. Concerns are also raised about right-turns from Alexandra

Road onto East Wall Road and traffic proceeding west from the new Dublin Port Office access.

- The altered kerb line does not leave adequate space to allow a train to pass a cyclist and it is not clear what is to occur with right turning vehicles coming off East Wall Road onto Alexandra Road.
- It is requested that the above points be included as a condition of any permission.

Health & Safety Authority: The submission does not advise against granting permission in the context of Major Accident Hazards.

National Transport Authority: Highlights the need to consider the function of East Wall Road, including bus routing and bus priority, both with and without the Southern Port Access Route (SPAR) in place; the requirement for a two-way cycle track on the western side of East Wall Road; and safeguarding of route options for the SPAR.

Department of Housing, Local Government, and Heritage: Notes the location of the site in relation to The North Wall Quay RMP and agrees with the applicant's archaeological mitigation strategy. No objection subject to conditions requiring metric survey and monitoring.

3.4. **Third Party Observations**

3.4.1 A submission from Ciaran Cuffe MEP outlines concerns about aspects of the proposal which can be summarised as follows:

- A wide high-speed sweeping turn at the North Wall Quay/East Wall Road junction is inappropriate. Cyclists may also be forced to pass through several sets of traffic signals to enter/exit the new cycle lane.
- The shared spaces may be problematic for people with disabilities.
- It is unclear if the existing cycle lane on East Wall Road will be retained; whether access is guaranteed to the proposed cycle lane; and what the orange and yellow designations refer to on drawings.

- The cycle bridge gradients are questionable. An at-grade track may be more appropriate.
- The cross-fall slope direction should be reconsidered.
- Clear access should be provided to the cycleway to/from Sherriff Street, Tolka Quay Road, Alexandra Road, and East Wall Road.
- The cycleway at Alexandra Road diverts from the desire line through a gated, unsupervised park.
- Possible negative impacts on the passage of trains travelling to/from the Port.
- It would seem reasonable that the refurbishment of the ESB substation (protected structure) be required as a condition of any permission.

3.4.2. A third-party submission was also made by BPS Planning Consultants on behalf of Futac Services Ltd, Tolka Quay Road, Dublin 1, i.e. the appellant in this case. The issues raised are covered in the ground of appeal in section 6 of this report.

4.0 Planning History

There is an extensive planning history relating to the adjoining Port lands and the wider surrounding area. Those of main relevance to the proposed development can be summarised as follows:

P.A. Reg. Ref. 4353/22: Current application for the continuance of use of a 100m long 6.5m wide single lane bridge with access ramps over the M50 and a storage area for imported cars and vans and all associated site development and service works as permitted under planning reg. ref. 2495/17 and reg. ref. 3788/11.

DCC requested further information on 24/8/22. The eastern extremity of the site overlaps with the current appeal site.

ABP Ref. 306648-20 (P.A. Reg. Ref. 4483/19): Permission granted (25/8/20) on site to the east of appeal site, Terminal 4 North lands bounded by Bond Road, Tolka Quay Road & Promenade Road (including the current appellant's site), for demolition of 10 buildings and removal of temporary structures, for use of the site as a multi-

functional storage yard and facilitate wider infrastructural upgrades to provide additional capacity within the Port.

The north-western corner of this site overlaps with the current appeal site.

Planning Authority Reg. Ref. 2681/20: Planning permission granted on 28th August 2020 for change of use, renovation and extension of the existing two storey protected structure (former substation) at Alexandra Road and East Wall Road to provide a new distributed museum, exhibition and multi-functional space to be operated by Dublin Port Company.

ABP Ref. PA29N.304888: 15-year permission granted (1/7/20) for development at Oil Berth 3 and Oil Berth 4, Eastern Oil Jetty and at Berths 50A, 50N, 50S, 51, 51A, 49, 52, 53 and associated terminal yards to provide for various elements including new Ro-Ro jetty and consolidation of passenger terminal buildings.

Planning Authority Reg. Ref. 4521/18: Planning permission granted on 10th May 2019 for a 150 m long, 13 m wide two-lane vehicular bridge with access ramps over Alexandra Road connecting the CDL yard and Terminal 4, associated lighting columns and all associated site development works.

Planning Authority Reg. Ref. 4507/18: Planning permission granted on 25th April 2019 for a temporary 5-year period for facilities to cater for cruise ship operations.

Part of this site bounds onto the eastern side of the appeal site.

Planning Authority Reg. Ref. 3649/17: Planning permission granted on 8th January 2018 for the removal of all internal structural and infrastructural elements, a change of use from existing ancillary staff car park to concrete paved multi-purpose yard designed to facilitate established core port activities, new surface treatment including underground drainage, attenuation, water services and electricity infrastructure, new lighting, security fencing and rolling access gate and all associated site works.

Part of this site bounds onto the eastern side of the appeal site.

Planning Authority Reg. Ref. 3620/16: Planning permission granted on 6th December 2016 for the demolition of 7 no. redundant buildings and removal of all structural and infrastructural elements to stores or disposal off site. Part of this site bounds onto the eastern side of the appeal site.

Planning Authority Reg. Ref. 2784/16: Planning permission granted on 19th October 2016 for development comprising erection of a detached metal clad warehouse structure with link building, all to the north of the existing warehouse/vehicle maintenance unit adjacent to East Wall Road on lands at P & O Terminal, East Wall Road.

Planning Authority Reg. Ref. 3084/16: Ten-year planning permission granted on 14th September 2016 for development comprising works to the Port's private internal road network, and includes works on public roads at East Wall Road, Bond Road and Alfie Byrne Road, and new pedestrian and cycle overbridge and underpass at Promenade Road.

Planning Authority Reg. Ref. 2567/16: Planning permission granted on 4th July 2016 for alterations to previously permitted developments (Reg. Refs. 2310/15 and 3021/15) comprising 4m high fencing in place of demolished walls and fencing fronting Alexandra Road, relocation and widening of gates fronting Alexandra Road, 2 no. project notice structures, 6 no. CCTV structures, and all associated site works.

A small section of the south-western corner of this site overlaps with the current appeal site.

Planning Authority Reg. Ref. 3452/15: Planning permission granted on 13th November 2015 for landscape and associated civil engineering works to the Port Centre Precinct to contribute to the public realm, to accommodate the relocation of the existing carpark from the Alexandra Road site boundary, and associated siteworks.

Planning Authority Reg. Ref. 3021/15: Planning permission granted on 21st September 2015 for the demolition of 2 no. warehouses (1,335 m²), the erection of 4m high boundary fencing fronting Tolka Quay Road and new fencing fixed to existing boundary wall fronting East Wall Road, the incorporation of the site into the adjacent site located to the east and south, the construction of new reinforced concrete surfacing and new replacement drainage and water system and associated ancillary works.

ABP Ref. No. 29N.PA0034: Permission granted on 8th July 2015 for redevelopment of Alexandra Basin and Berths 52 and 53, together with protection/dredging works to the Liffey Channel and with associated works in Dublin Port.

Planning Authority Reg. Ref. 2310/15: Planning permission granted on 8th July 2015 for new fencing fixed to existing boundary walls, new 4 m high fences in place of existing, new replacement gates, 16 no. 30 m high lighting masts and luminaries, the incorporation of 3 Branch Road South (private road) into the adjoining quayside goods handling area, new reinforced concrete surfacing and new replacement drainage and water supply system and associated ancillary works.

The western extremities of this site overlap with the appeal site.

Planning Authority Reg. Ref. 2753/14: Planning permission granted in September 2014 to erect 60m of replacement boundary wall to its property at East Wall Road and to demolish 40m of existing wall deemed to be structurally unstable and a portion of abutting wall.

Part 8 Point Junction Improvement Scheme: This approved scheme consists of upgrade to a three-arm signalised junction with left-turn slip lane from North Wall Quay to East Wall Road, toucan crossings and associated siteworks.

5.0 Policy and Context

5.1. National Policy & Guidance

- 5.1.1. The **National Sustainable Mobility Policy** (Department of Transport, 2022) sets out a strategic framework to 2030 for active travel (walking and cycling) and public transport journeys to help Ireland meet its climate obligations (51% reduction in carbon emissions). It is accompanied by an action plan to 2025 which contains actions to improve and expand sustainable mobility options across the country by providing safe, green, accessible and efficient alternatives to car journeys. In summary, the Policy and Action Plan include measures such as:

- Developing pedestrian enhancement plans and cycle network plans to guide investment in new active travel infrastructure and retrofitting of existing infrastructure.
- Expanding walking and cycling options across the country, including greenways.
- Rebalancing transport movement in metropolitan areas and other urban centres away from the private car and towards active travel and public transport.
- Support people focused mobility through a universal design approach.

5.1.2. The **National Cycle Manual** (National Transport Authority, 2011) outlines standards and guidance for the design of cycle infrastructure. It aims to improve the ‘cycling offer’ within urban areas to encourage more people to cycle. It embraces the ‘Principles of Sustainable Safety’ and offers guidance on proactively integrating cycle design in urban areas and transport networks.

5.2. **Dublin City Development Plan 2016-2022**

Zoning

5.2.1. The portions of the site which include the public road/footpath are not subject to any particular zoning objective. Otherwise, the majority of the site along the eastern side of East Wall Road and Bond Road is part of the wider land use zoning covering the Port lands i.e. ‘Z7 Employment (Heavy)’. The objective for the zone is ‘*To provide for the protection and creation of industrial uses, and facilitate opportunities for employment creation including Port Related Activities*’. A small portion at the northern extremity of the site along the Tolka estuary is zoned ‘Z9 Amenity/Open Space Lands/Green Network’, within which it is the objective ‘*To preserve, provide and improve recreational amenity and open space and green networks*’.

Dublin Port

5.2.2. Section 4.5.1.2 of the development plan recognises that the Port has a significant role to play in the future development and growth of the city and it is considered prudent to plan the structure of this part of the city, including the proposed public

transport network, to fully integrate with the developing new city structure and character, while having regard to the Dublin Port Company Masterplan 2012–2040. Relevant policies can be summarised as follows:

SC9: To support and recognise the important national and regional role of Dublin Port in the economic life of the city and region and to facilitate port activities and development, having regard to the Dublin Port Masterplan 2012-2040.

CEE23(iii): To recognise that Dublin Port is a key economic resource, including for cruise tourism, and to have regard to the policies and objectives of the Dublin Port Masterplan.

5.2.3. Section 16.21 of the Plan outlines that, in assessing proposals for the Dublin Port area, Dublin City Council will have regard to the following:

- Recognition of the important role of Dublin Port in the economic life of the city and the region and the consequent need in economic and employment terms to facilitate port development;
- The periphery of the port area facing residential areas shall be designed and landscaped to minimise the impact of its industrial character;
- The impact on nature conservation, recreation and amenity use, and other environmental considerations, including having regard to the designation of Dublin Bay as a UNESCO biosphere and other environmental designations such as Special Areas of Conservation (SAC) and Special Protection Area (SPA);
- The protection of the amenities of residential and commercial uses in adjoining areas;
- Design criteria including landscaping, finishes, signage and site layout;
- Facilitating plans to make Dublin a ‘home port’ for cruise tourism, with complementary cruise tourism facilities in the port and wider city/region.

Movement and Transport

5.2.4. Chapter 8 of the Plan outlines the transport strategy and strongly promotes sustainable/active modes of travel including cycling and walking. The Plan includes a

wide range of policies and objectives that support walking and cycling, which can be summarised as follows:

MT2: Promotes modal shift from car use to more sustainable forms of transport.

MT6(ii): Facilitates the needs of freight transport.

MT7: To improve the city's environment for walking and cycling through the implementation of improvements to thoroughfares and junctions and also through the development of new and safe routes, including the provision of foot and cycle bridges. Routes within the network will be planned in conjunction with green infrastructure objectives and on foot of (inter alia) the NTA's Cycle Network Plan for the Greater Dublin Area, and the National Cycle Manual, having regard to policy GI5 and objective GIO18.

MT11: Promotes improved permeability for both cyclists and pedestrians in existing urban areas.

MTO9: To develop, within the lifetime of this plan, the Strategic Cycle Network for Dublin city - connecting key city centre destinations to the wider city and the national cycle network, and to implement the NTA's Greater Dublin Area Cycle Network Plan to bring forward planning and design of the Santry River Greenway, incorporating strongly integrative social and community development initiatives.

MTO10: To improve existing cycleways and bicycle priority measures throughout the city, and to create guarded cycle lanes, where appropriate and feasible.

MT12: To improve the pedestrian environment and promote the development of a network of pedestrian routes which link residential areas with other destinations.

Green Infrastructure

- 5.2.5. Chapter 10 aims to achieve a green, connected city and more sustainable neighbourhoods in line with the Core Strategy. Figure 15 outlines City Centre Green Routes, including a proposed green route along East Wall Road. Relevant policies and objectives include the following:

G15: To promote permeability through our green infrastructure for pedestrians and cyclists.

G104: To improve pedestrian and cycle access routes to strategic level amenities while ensuring that ecosystem functions and existing amenity uses are not compromised and existing biodiversity and heritage is protected and enhanced.

G115: To protect, maintain, and enhance the natural and organic character of the watercourses in the city.

G1018: To protect and improve the natural character of watercourses, including the Dodder, and to promote access, walkways, cycleways and other compatible recreational uses along them, having regard to environmental sensitivities.

Heritage & Culture

5.2.6. Chapter 11 of the Plan deals with Built Heritage and Culture and section 11.1.4 outlines a strategic approach to protecting and enhancing built heritage based on the existing and ongoing review of Protected Structures, ACA's, Conservation Areas and Conservation Zoning Objective Areas.

5.2.7. The North Wall Quay to the west is a Protected Structure and is within a designated 'Conservation Area'. The former ESB substation within the site is a Protected Structure and the Port Centre building is listed in the NIAH. In addition, there are several structures in the surrounding area included on the Dublin City Industrial Heritage Record, including North Wall Quay, East Wall Quay, Harbour Master's Office, and Landing Stage. In summary, relevant policies include:

CHC1 Seek the preservation of the built heritage of the city.

CHC2 Ensure that the special interest of protected structures is protected.

CHC4 To protect the special interest and character of all Conservation Areas.

Control of Major Accidents Hazards Directive

5.2.8. Policy **SI28** is to have regard to the provisions of the Major Accidents Directive (2012/18/EU), relating to the control of major accident hazards involving dangerous substances and its objectives are to prevent major accidents and limit the consequences of such accidents. Dublin City Council will have regard to the provisions of the directive and recommendations of the HSA in the assessment of all planning applications located on or impacted by such sites.

5.2.9. The most proximate site in this case listed in the Development Plan is 'Topaz Energy Limited, Terminal 1, Alexandra Road, Dublin Port, Dublin 1'. This is a 'Lower Tier' site with a consultation distance of 400m from the perimeter.

5.3. **Dublin Port Masterplan 2040 (Reviewed 2018)**

5.3.1. The Dublin Port Masterplan is a non-statutory plan which presents a vision for future operations at the Port and critically examines how the existing land use at Dublin Port can be optimised for merchandise trade purposes. The Masterplan, which has been prepared following extensive engagement with stakeholders, also outlines how DPC will work to better integrate the Port with the City and people of Dublin.

5.3.2. Some of the Strategic Objectives of the Masterplan can be summarised as follows:

- Achieve closer integration with the City and people of Dublin through a commitment to respect soft values.
- Promote movement linkages in the form of pedestrian and cycle routes.
- Enhance the general aesthetics / visual impact of the Port around the interface with the City.
- Promote non-motorised sustainable transport modes, including cycling and walking.
- Maximise the use of rail transport for goods to and from the Port.
- Integrate new development with the built and natural landscapes.
- Promote sustainable design in the natural and built environment.
- Secure the preservation of all protected structures within the Port estate.
- Promote the principles of universal design to make environments inherently accessible for those with and without disabilities.
- Promote Dublin Port for recreation and amenity by highlighting walks and cycle routes.
- Develop landmark attractions such as a port heritage centre.

- Maximise public access to the waterfront and enhance the public realm by landscaping.

5.4. **Greater Dublin Area Cycle Network Plan 2013**

- 5.4.1. The National Transport Authority has prepared a Cycle Network Plan for the Greater Dublin Area, comprising the Urban Network, Inter-Urban Network, and Green Route Network. Part of the site includes a north-south secondary route along East Wall Road.

5.5. **North Lotts & Grand Canal Dock SDZ Planning Scheme 2014**

- 5.5.1. The SDZ bounds the appeal site along East Wall Road to the west. The vision is that it will become a world-class maritime quarter with a distinctive Dublin character. It will be a model of sustainable inner-city regeneration incorporating socially inclusive urban neighbourhoods, a diverse, green innovation-based economy contributing to the prosperity of the locality, the city and the country, all supported by exemplary social and physical infrastructure and a quality public realm integrated with the wider city.
- 5.5.2. One of the high-level themes of the scheme is extend connectivity within and around the SDZ by making a safe and efficient public realm which caters for walking, cycling, public transport and the car. Increased connectivity across and along the water bodies is also a component of this key theme.
- 5.5.3. The scheme includes a number of relevant objectives which can be summarised as follows:

CD14: Promote the development of street infrastructure, walking and cycling routes.

CD15: Encourage interaction with the wider neighbourhood, including the design of public open space and the public realm.

MV1: Promotes modal shift from private car use towards more sustainable forms of transport.

MV4: Create and support a network of well-designed pedestrian/cyclist infrastructure, provide priority for pedestrians/cyclists along key desire lines, develop routes within the Docklands and link with surrounding networks.

5.6. Natural Heritage Designations

5.6.1. The northern extremity of the appeal site is just c. 5 metres from South Dublin Bay and River Tolka Estuary SPA (Site Code 004024). Otherwise, the site is distanced c. 8km from Howth Head SAC (Site Code 000202); 2.5 km from North Dublin Bay SAC (Site Code 000206); 1.6km from South Dublin Bay SAC (Site Code 000210); 8.4km from Rockabill to Dalkey Island SAC (Site Code 003000); 2.5km from North Bull Island SPA (Site Code 004006); and c. 11km from Howth Head Coast SPA (Site Code 004113).

5.7. EIA Screening

Mandatory thresholds

5.7.1. An Environmental Impact Assessment (EIA) Screening Report was submitted with the application. With regard to EIA thresholds, Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for a range of development classes. Those with any relevance to the proposed development are discussed in the following sections.

5.7.2. Class 10(a) relates to *'Industrial estate development projects, where the area would exceed 15 hectares.'* While the site is within the industrial port lands, I do not consider that the proposed development constitutes an 'industrial estate' project. Furthermore, the site area extends to 4.8192 hectares, which does not exceed the stated threshold of 15 hectares.

5.7.3. Class 10(b)(iv) relates to *'Urban development which would involve an area greater than 2 ha in the case of a business district, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere. (In this paragraph, "business district" means a district within a city or town in which the predominant land use is retail or commercial use).'* The Regulations does not define 'urban development', but I would feel that it generally relates to more substantial development rather than a walkway/cycleway of

this nature. In any case, the site is largely within the Z7 zone where it is the objective of the Development Plan to protect and create industrial uses. Accordingly, it is not a business district where the predominant use is retail or commercial, and it would not, therefore, exceed the applicable 10-hectare threshold for other built-up areas.

5.7.4. Class 10(dd) relates to *'All private roads which would exceed 2000 metres in length'*. The project in this case does not propose to create a private road, rather to alter the alignment and design of the existing road, much of which is within the public domain. In any case, the length of the route is 1.4km and does not exceed the 2km threshold.

5.7.5. Class 13(a) refers to the following:

Any change or extension of development already authorised, executed or in the process of being executed (not being a change or extension referred to in Part 1) which would:

- (i) result in the development being of a class listed in Part 1 or paragraphs 1 to 12 of part 2 of this Schedule, and*
- (ii) result in an increase in size greater than 25 per cent, or an amount equal to 50 per cent of the appropriate threshold, whichever is greater.*

5.7.6. The proposed development does not primarily consist of a change or extension of development already authorised, executed or in the process of being executed, but it does include consequential amendments to the development permitted under P.A. Reg. Ref. 3084/16. The amendments to Ref. 3084/16 involve the replacement of pedestrian and cycle facilities; revised bridge design over Promenade Road; a range of alterations to width/alignment, access arrangements, junction layouts; and omission of secure access route and section of internal road network.

5.7.7. The permission granted under P.A. Reg. Ref. 3084/16 comprised 4km of greenway and 1.5km of an internal road network. The appeal site overlaps part of that permitted site. However, the proposed amendments involve a revised design/layout only and do not propose to increase the size/length of the internal road network. Accordingly, I do not consider that the proposal would result in the development being of a class listed in Part 1 or paragraphs 1 to 12 of part 2 of Schedule 5 of the

Regulations, nor would it result in an increase in size greater than 25 per cent, or an amount equal to 50 per cent of the appropriate threshold.

- 5.7.8. Class 13 (c) relates to *'Any change or extension of development being of a class listed in Part 1 or paragraphs 1 to 12 of Part 2 of this Schedule, which would result in the demolition of structures, the demolition of which had not previously been authorised, and where such demolition would be likely to have significant effects on the environment, having regard to the criteria set out under Schedule 7'*. As previously outlined, the development is not of a class listed in Part 1 or paragraphs 1 to 12 of Part 2 of Schedule 5. Furthermore, the demolition works involved are relatively minor and would not be likely to have significant effects on the environment (See Appendix 1 for further details).
- 5.7.9. Class 14 relates to *'Works of demolition carried out in order to facilitate a project listed in Part 1 or Part 2 of this Schedule where such works would be likely to have significant effects on the environment, having regard to the criteria set out in Schedule 7'*. As previously outlined, the development is not of a class listed in Part 1 or Part 2 of Schedule 5. Furthermore, the demolition works involved are relatively minor and would not be likely to have significant effects on the environment (See Appendix 1 for further details).
- 5.7.10. Having regard to the foregoing, I conclude that the proposed development is not of a class included in Part 1 of Schedule 5, and would not exceed a quantity, area or other limit specified in Part 2 of Schedule 5 in respect of the relevant class of development. Accordingly, I do not consider that mandatory EIA is required.

Sub-Threshold Development

- 5.7.11. Class 15, Part 2, Schedule 5 of the Regulations provides that EIA will be required for *'Any project listed in this Part which does not exceed a quantity, area or other limit specified in this Part in respect of the relevant class of development but which would be likely to have significant effects on the environment, having regard to the criteria set out in Schedule 7'*.
- 5.7.12. The applicant's EIA Screening Report includes the information specified in Schedule 7A of the Regulations and, accordingly, the Board is required under Art. 109 (2B)(a)

of the Regulations to carry out an examination of, at the least, the nature, size or location of the development for the purposes of a screening determination

- 5.7.13. I am satisfied that the information provided by the applicant is in accordance with Schedule 7 and 7A of the Regulations. It also includes further relevant information on the characteristics of the proposed development and its likely significant effects on the environment, including, where relevant, information on how the available results of other relevant assessments of the effects on the environment carried out pursuant to European Union legislation other than the Environmental Impact Assessment Directive have been taken into account.

Submissions

- 5.7.14. None of the submissions received in connection with the application or appeal have raised the issue of EIA. I also note that the planning authority accepted the applicant's conclusions that the proposal would not have significant effects on the receiving environment and that an EIAR would not be required.

Assessment

- 5.7.15. As previously outlined, the area of the appeal site is 4.8192 hectares and is significantly below any of the relevant area thresholds for EIA. The site length of 1.4km is also significantly less than any relevant threshold, including that which applies to a private road. However, it again should be noted that the project does not involve the creation of a new private road, but rather mainly involves alterations to the existing road/footpath network in the public domain.
- 5.7.16. The area is already serviced and developed with large-scale industrial development to the east and large-scale commercial development to the west. There are also significant infrastructural developments in the surrounding area, including the Port Tunnel, the Port, and associated rail/road infrastructure. Therefore, the nature and scale of the proposed development is not exceptional in this context.
- 5.7.17. Apart from the proposed bridge, the proposed works generally comprise surface level works which would not result in significant physical changes to the locality. The nature of the proposed construction and operation stage is such that does not

involve the use of significant natural resources or substances, waste, or emissions that would be inconsistent with typical urban development.

- 5.7.18. It is acknowledged that there is a Seveso / COMAH site in the vicinity. Having regard to the nature and scale of the development, it is considered that there would be no unacceptable risk of major accidents that could affect human health or the environment.
- 5.7.19. Other existing and permitted developments in the vicinity have been considered and it is included that the project would not be part of wider large-scale change which could result in significant cumulative effects on the environment.
- 5.7.20. The site is not located within any sensitive locations as outlined in Article 109 (4)(a) of the Regulations. It is acknowledged that the site is in close proximity to the North Dublin Bay Proposed Natural Heritage Area and the South Dublin Bay and River Tolka Estuary SPA, as well as the existence of more distant Natura 2000 sites in the Dublin Bay area. However, the applicant has included a Natura Impact Statement and mitigation measures to ensure that there will be no adverse impacts on the integrity of any European Sites (see section 8.0 of this report for further details). A Preliminary Ecological Appraisal Report has also demonstrated that mitigation measures will prevent any significant effects on habitats or species.
- 5.7.21. It is acknowledged that North Wall Quay to the west is a Protected Structure, a recorded monument, and is within a designated 'Conservation Area', that the former ESB substation within the site is a Protected Structure and the Port Centre building is listed in the NIAH, and that there are several structures in the surrounding area included on the Dublin City Industrial Heritage Record. However, this is typical for the location of the site and suitable assessments have been included in the application, accompanied by design and mitigation measures to prevent significant environmental effects.
- 5.7.22. The site is surrounded by significant water courses/bodies, but it is not considered that there would be any significant hydrological effects in terms of water quality, volume, flood risk, or otherwise. The proposed development would not be likely to place significant pressure on infrastructural services such as water, wastewater, or

transportation. Nor would it result in any significant impacts or demands on social infrastructure in the area.

- 5.7.23. I have completed an EIA screening determination as set out in Appendix 1 of this report. I consider that the location of the proposed development and the environmental sensitivity of the geographical area would not justify a conclusion that it would be likely to have significant effects on the environment. The proposed development does not have the potential to have effects which would be rendered significant by its extent, magnitude, complexity, probability, duration, frequency, or reversibility. In these circumstances and having considered the criteria in Schedule 7 and 7A of the Regulations, I consider that it has been demonstrated that the proposed development would not be likely to have significant effects on the environment and that an environmental impact assessment is not required before a grant of permission is considered. This conclusion is consistent with the information provided in the applicant's EIA Screening Report.
- 5.7.24. A Screening Determination should be issued confirming that there is no requirement for an EIAR based on the considerations outlined in Appendix 1.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. An appeal has been lodged by BPS Planning & Development Consultants on behalf of Futac Services Ltd. It is stated that the appeal site comprises part of the appellant's shipping container business site. The business is operational daily, is wholly port-related, and has 45 years left on the lease of the site.
- 6.1.2. The appeal highlights several technical concerns with the application, which can be summarised as follows:
- The application excludes reference to the appellant's leasehold interest over part of the site.

- The application gives the incorrect impression that the appellant's site is a Dublin Port company storage yard and excludes references to the appellant's site and business.
- The Traffic and Transport Assessment (TTA) and application drawings do not provide information on alterations to the appellant's site entrance.

6.1.3. The appeal outlines the extent of proposed alterations to their site and contends that there will be significant land take (strip of 11-12m along western boundary), relocation and revisions to the western boundary treatment, alterations to site access arrangement, and associated siteworks, lighting etc.

6.1.4. The grounds of appeal can be summarised under the following headings:

Interest / Control of the site

- The applicant does not have sufficient interest to carry out the development works given the appellant's remaining 45-year lease.
- DCC should have clarified the matter through a further information request.
- The appellant has not provided a letter of consent for the works.
- The works could not be completed within the lifetime of the permission given the existence of a remaining 45-year lease. For the permission to be valid, an agreement must exist between the parties (*Frascati Estates v Walker* [1975] I.R. 177) and no such agreement exists in this case.
- The appellant has sufficient legal interest to propose their own development by virtue of their long-term lease. This is in line with previous Board decisions under Refs. 201945, 232065, and 238868.
- Planning permissions are indivisible (*Horne v Freeney* (1982/60MCA)) and the full development cannot be completed over the appellant's site.
- The application should be withdrawn and/or refused.
- The Port Masterplan recognises that DPC does not have full control over the use of all lands due to the existence of a range of franchise types, including long leases, and that it needs to regain control of some port lands. It is

submitted that this applies to the appellant's site and that the applicant is not in control of the site.

Other Permissions

- The growing lists of planning permissions not implemented by DPC requires explanation.
- The Board should request a timetable for the phased completion of these developments.
- There has been inadequate consultation with existing tenants.
- The appellant's site was not included in the TTA for P.A. Reg. Ref. 4521/18 and the current proposals to revise that permission would further impact on the site. The traffic impacts of both applications should be fully assessed in accordance with Development Plan requirements and statutory guidance. The impacts on access to the appellant's site would be unacceptable and could place the site within an island of associated development and/or cut off road access.

Land Take

- The appellant is sympathetic to the need for improved cycle/walking facilities, but it should not negatively impact on their existing business.
- The land-take area is currently used to store stacked shipping containers and the business requires all the space it has at present.

Existing business in the Port

- The proposed development is inconsistent with the existing operations of the Port.
- The TTA does not address potential impacts on the internal and external road networks, including the existing entrance to the appellant's site.
- The proposals impact on the existing business's interface with the port and the city.

Contrary to the Development Plan

- No part of the plan accepts that existing leaseholders and operational commercial uses can be removed by DPC's preference for public realm improvements.
- The Plan supports the appellant's existing port business use by reason of zoning objective Z7, Policy SC9, and Section 6.1.1.

Alternatives

- The nature of the appellant's business needs to be located within or beside the Port and no alternative location has been provided by DPC.
- The applicant has presented only one option for the delivery of the proposed cycle/walkway infrastructure. At least one alternative option should have been presented which avoided land-take from the appellant's site.

Objection to entrance revisions and western boundary treatment

- The application does not provide drawings and details of alterations to the appellant's entrance, which does not facilitate proper assessment.
- The relocated western boundary will unacceptably reduce the size of the appellant's site.
- The western boundary treatment is poorly designed and excessively tall, which appears more like a prison and is not justified on security grounds.
- An open style fence is not appropriate or safe for the operations carried on within the site including welding, spraying, steaming etc.

Additional details

The appeal submits that the following additional details would benefit the application:

- Clarification on the terms of the lease agreement and implications for the carrying out of the development.
- Clarification of other leases affected and proposals for their relocation.
- Options for agreed alternative design which does not require land-take from the appellant's site.

- Drawings and details of the proposed revisions to the appellant's entrance.
- Revised design of western boundary treatment.

6.2. Applicant Response

6.2.1. A response was received from RPS Group Limited on behalf of the applicant. It contends that the appeal largely reiterates issues already dealt with by the planning authority, and by the Board under ABP Ref. 306648-20. The issues raised can be summarised under the following headings:

Ownership and control of the site

- The planning system is not designed as a mechanism for resolving such disputes and permission should only be refused on this basis where it is clear that that applicant does not have sufficient legal interest.
- The applicant is the undisputed owner of almost all of the site and has a letter of consent for DCC relating to remaining extent of public lands. The applicant is therefore entitled to make a planning application, regardless of there being a leasehold over a portion of the site.
- This position was accepted in the DCC Planner's report, which also referred to a similar situation in a Board case (P.A. Reg. Ref 4483/19, ABP Ref. 306648-20).
- While the extent of leased lands is immaterial to the substance of the appeal, it should be noted that the extent does not extend to the boundary wall along Bond Road. The leased lands are bound by a palisade fence c. 2.6m to 5.8m to the east of the boundary wall.
- As outlined in the decision of the Supreme Court in *Convery v. Dublin City Council*, it is clear from Section 34(13) of the Planning and Development Act 2000 (as amended) that a planning permission does not authorise a developer to commit an act that would otherwise be unlawful.

- As owner, the applicant was not required to engage with the appellant in the preparation of the application. However, it is submitted that they were consistently engaged with and informed of the applicant's plans.

Impact on Appellant

- It is the view of the applicant, as shared by DCC, that the proposed development is an important and significant part of the public realm and sustainable transport network in the area.
- Furthermore, the development of Terminal 4 as permitted under P.A. Reg. Ref 4483/19 (ABP Ref. 306648-20) means the redevelopment of the appellant's site is already permitted.
- Due to the inaccuracy regarding the western boundary as previously submitted, the lands required from the appellant's site are less than that suggested in the appeal. The lands are used for container storage only and the applicant has presented various operational solutions to the appellant.
- Permission for the gate access realignment has already been permitted (3084/16) and alternative solutions have been presented to the applicant. The alterations comprise the relocation of the access gate eastward and a condition of permission could involve agreement of details with DCC. Revised access arrangements can be agreed between the applicant and appellant, as has been achieved in the past.
- Alterations to the boundary treatment between Bond Road and Dublin Port lands, consisting of a 4m-high wall/fence, have already been permitted under P.A. Reg. Ref. 3084/16. The proposed design is an improvement on that already permitted and has been designed after careful consideration between the applicant's architects, Dublin Port security requirements, and DCC. It enhances integration between the Port and the city.
- The proposed design is the result of detailed work by the design team and involved multiple options being presented to the appellant. DCC has recognised that the proposed design is of very high quality.

Existing DPC Permissions

- DPC is currently increasing Port capacity and delivering significant public enhancements in accordance with Masterplan. Many of the permitted projects are large-scale and scheduling takes a number of years.
- It is wholly unclear how the scheduling and delivery of other projects can be relevant grounds for appeal in this case.
- Notwithstanding this, it is submitted that considerable development is taking place as outlined in the table below.

| Permission Reference (See section 4 of this report for details) | Status |
|--|--|
| P.A. Reg. Ref 2681/20 | Now being implemented |
| ABP Ref. PA29N.304888 | Detailed design and site investigation works ongoing. Construction works shall follow foreshore approval |
| P.A. Reg. Ref 3638/18 | Implemented |
| P.A. Reg. Ref 4521/18 | Implemented and bridge to be operational in April 2022 |
| P.A. Reg. Ref 3084/16 | Largely constructed. The outstanding elements are mainly subject to amendment in the current case |
| P.A. Reg. Ref 3452/15 | Implemented |
| ABP Ref. 29N.PA0034 | Being implemented on a phased basis with substantial works complete |

Consistency with Port activities

- The proposal achieves a number of strategic objectives of the Masterplan by improving the amenities of the area, accessibility, and integration with the city.

- The proposed development will combine with other projects to improve the interface with the city in accordance with Masterplan objectives, which are supported by Policy SC9 of the Development Plan.

Consistency with Development Plan

- The proposed development accords with the zoning objectives of the site and the surrounding environs.
- The Development Plan favours active transport modes and numerous policies support enhanced pedestrian and cycling facilities.
- In accordance with Section 16.21 of the Development Plan the proposal would significantly improve the interface with the city, would add to previously permitted public realm improvements, and would make a substantial contribution to the public realm.

Transport Statement

- No additional traffic will be generated, and the proposal will support a shift away from private motor vehicles.
- The TTA submitted with the application included the appellant's site and was carried out in accordance with the Development Plan and statutory guidance. It outlines that the proposal will not generate additional traffic and will result in a reduction of HGV traffic on East Wall Road through the closure of the Terminal 3 left-in/left-out junction and the diversion of traffic via the Terminal 4 Bridge, which provides a direct connection between the Port Tunnel and the Port's internal road network. The proposal will have a slight positive impact on traffic conditions.
- The appellant's reference to P.A. Reg. Ref. 4521/18 is puzzling as no amendments are proposed. The rationale for the bridge (now constructed) was to reduce traffic on public roads and the impacts were fully assessed at application stage.
- The proposal is in accordance with the Masterplan Strategic Transportation Study, which models the local network as generally functioning within capacity

at the end of the Masterplan at peak hours, with the additional Port growth and with the Southern Port Access Route (SPAR).

- The submissions from Transport Infrastructure Ireland and the National Transport Authority did not raise any concerns regarding the TTA.
- The DCC Traffic Department had no objections subject to conditions.

6.3. **Planning Authority Response**

6.3.1. None received.

6.4. **Observations**

Transport Infrastructure Ireland: An observation was received from Transport Infrastructure Ireland which highlights that careful consideration is required to safeguard the existing and future national road network, and access to the city and Dublin Port. The following should be considered:

- Construction Traffic Management Plan to be agreed with the planning authority and TII taking into account any impacts on Dublin Tunnel.
- With respect to the proposed bridge over Promenade Road, a risk assessment to be undertaken to ensure the safety of all bridge and road users, as well as ensuring free flow of traffic from Dublin Tunnel to the Port and city.

7.0 **Assessment**

7.1. **Introduction**

7.1.1. Having inspected the site and examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, and having regard to relevant local/national policies and guidance, I consider that the main issues for consideration in this case are as follows:

- The principle of the development
- Legal and practical implications for the appellant

- Visual amenity and built heritage
- Traffic and Transport
- Appropriate Assessment (See section 8 of this report).

7.2. The principle of the development

- 7.2.1. Much of the site is located within the Z7 zoning objective which aims to protect and create industrial uses and employment, including Port-related activities. The plan acknowledges that uses in this area can result in a standard of amenity that would not be acceptable in other areas. There is, therefore, an acknowledged challenge in integrating this area with the remainder of the city. I acknowledge that the Plan contains various other policies and objectives (including SC9) which support the development of the Port in accordance with the Masterplan, whilst also improving its interface and integration with the surrounding area.
- 7.2.2. The proposed development involves pedestrian and cycling improvements and associated landscaping etc. on the periphery of the Port area. In this regard, I note that section 16.21 of the Plan highlights that the periphery of the port area facing residential areas should be designed and landscaped to minimise the impact of its industrial character.
- 7.2.3. I consider that the proposed upgrades to the pedestrian and cycling infrastructure would, in principle, be consistent with local and national transportation policy aimed at encouraging more sustainable and active forms of transport. The proposed route, landscaping, open space, and alterations to boundary treatment, would also support the principle of improved integration with the surrounding area to the west of the site.
- 7.2.4. The proposed development is of a minor scale and ancillary nature relative to the overall Port operations. It involves alterations to access/circulation and associated open space and, as such, would be consistent with the overall zoning objective to protect and create industrial uses at this location. Furthermore, it would be consistent with objectives to promote sustainable transport and Port integration and would not conflict with any other port-related objectives contained within the Development Plan.

- 7.2.5. The remaining portions of the site are either unzoned (i.e. along roads/footpaths) or are zoned as Z9 with the objective to improve recreational amenity, open space, and green networks. I do not consider that the proposed development would conflict with any of these zoning provisions.
- 7.2.6. Having regard to the foregoing, I consider that the principle of the proposed development would be consistent with local and national transportation policy; the zoning objectives for the area; the policies and objectives which support the development of the Port; and the aim to integrate the Port as outlined in the Port Masterplan referred to in Policy SC9 of the Development Plan.

7.3. **Legal and practical implications for the appellant**

- 7.3.1. A significant portion of the appeal submission is concerned with the applicant's consent to make this planning application and to implement the development in the event planning permission is granted. The appellant purports to hold a 45-year lease over its business site and that the appeal site encroaches on this site along its northern and western margins. In response, the applicant contends that the extent of encroachment along the western boundary is overstated (i.e. it ranges from 2.6m to 5.8m, rather than the 11-12m stated in the appeal).
- 7.3.2. Under the Planning Regulations of 2001 as amended, a planning applicant who is not the legal owner of the land or structure in question must submit a letter of consent from the owner in order to make the planning application. However, in this case the applicant has outlined that it is the owner of the site (excluding the portion owned by DCC) and there is no evidence provided to the contrary. A letter of consent has been provided by DCC for the remaining public lands.
- 7.3.3. I acknowledge that a legal dispute has arisen in relation to the implications for the appellant as leaseholder. However, as outlined in Section 5.13 of the Development Management Guidelines for Planning Authorities (DoEHLG, 2007), the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land. These are ultimately matters for resolution in the Courts and the Board should note that, as per section 34(13) of the Planning Act 2000, a person is not entitled solely by reason of a permission to carry out any development.

- 7.3.4. The Guidelines do acknowledge that doubts raised as to the sufficiency of the legal interest may require a request for further information. It states that only where it is clear from the response that the applicant does not have sufficient legal interest should permission be refused. In this regard I consider that the applicant has already effectively responded to the appellant's concerns and confirmed that it is the owner of the site. I am satisfied that this establishes sufficient legal interest for the making of the application.
- 7.3.5. Apart from the making of the application, the appeal also contends that there is no prospect of executing any permission (if granted) due to the existence of the remaining 45-year lease. It is not an uncommon practice whereby a landowner may be granted permission while a long-term lease remains in place. Such situations may require renegotiation of legal terms for the implementation of the permission and this a matter for resolution between the relevant parties. The applicant has effectively acknowledged this situation, and, in the circumstances, I do not consider that it would be unreasonable for the Board to grant permission based on the provisions of section 34(13) of the Act.
- 7.3.6. In terms of the practical implications for the appellant's business, I would firstly point out that the redevelopment of the site has already been permitted under P.A. Reg. Ref. 4483/19 (ABP Ref. 306648-20). Notwithstanding this, I acknowledge that the primary and direct impact would be a reduction in the size of the site. While the extent of that reduction is subject to dispute based on the position of the western site boundary, I am again satisfied that any alterations to the terms of a surviving lease would be protected by the provisions of section 34(13) of the Act.
- 7.3.7. The appellant also raises concerns about the design of the proposed western site boundary. In this regard, I note that the height of the proposed boundary (c. 4 metres) is consistent with that already permitted at this location under P.A. Reg. Ref 3084/16. I acknowledge that it consists of a low wall and tall fencing, as opposed to the existing and permitted arrangements consisting mainly of block walls. However, I consider that this represents a softer and more permeable approach to the Port interface, which is consistent with Development Plan objectives for the Port and aims to improve the quality of the adjoining public realm. The site is mainly used for the

storage of containers, and I do not consider that a solid boundary is necessarily required to facilitate the operation of this business and any associated practices.

7.3.8. The proposed alterations to the appellant's site entrance have also previously been permitted under P.A. Reg. Ref. 3084/16. I note that the application does not provide details of same, except to state 'existing yard access to be altered'. However, given that this forms part of an existing permission rather than the proposed development, I am satisfied that the detail of the proposed works need not be reassessed as part of this development.

7.3.9. Having regard to the foregoing, I am satisfied that the applicant has demonstrated sufficient legal interest for the purposes of the planning application and appeal. And in relation to the execution of any permission, if granted, I am satisfied that the rights of the appellant will be appropriately protected under the provisions of section 34(13) of the Act of 2000. Accordingly, I do not consider that a request for further information or a refusal of permission would be warranted on this basis.

7.4. Visual amenity and built heritage

7.4.1. The nature and scale of the proposal is such that involves a substantial extent of surface level road/footpath and landscaping works which do not have a significant adverse visual impact. The main structural elements with visual impact are those relating to the existing/proposed boundary treatment, the proposed pedestrian/cycle bridge, and associated alterations to signage, lighting etc.

7.4.2. The design proposal seeks to transform East Wall Road from a road to an urban space boulevard marking the shoreline between the Port and the city. At the southern end of the scheme, North Wall Square is proposed as a key public space terminus/destination to accommodate a variety of uses. Heritage features will be retained at this location and a more visually open relationship with the Port will be created. I would accept that the space will contribute positively to character of the area and the quality of the public realm, while also achieving improved integration between the Port and the city.

7.4.3. From North Wall Square to Sheriff Street Junction, the proposal largely involves the removal and setback of the existing boundary wall to provide improved cycle/walking

surfaces and linear tree planting. The new boundary wall will consist of a low salvaged limestone wall and fence to allow views into the Port area. The historic quay wall and granite pavement stones will be exposed, and high-quality finishes, street furniture, and landscaping will visually enhance the character of this route.

- 7.4.4. In the section around the Port Centre, a new Irish language installation creates a wide opening allowing the route to enter the Port Maritime Garden (during business hours). The historic boundary wall at this location largely remains in situ, as does the historic substation building at the south side of the junction with Alexandra Road. I consider that the proposed boundary alterations will provide an improved external interface with the city, while also significantly improving the integration of the Port with the city through the incorporation of the attractive Maritime Gardens as part of the route.
- 7.4.5. On the northern side of Alexandra Road, the applicant's response to the DCC further information request includes a proposal to reconstruct the existing limestone boundary wall. In this significantly setback area, improved cycle/walking surfaces will be provided along with significant linear tree planting which will visually enhance the character of this area.
- 7.4.6. Further north, the proposed pedestrian/cyclist bridge over Promenade Road would form a significant visual presence. It has been designed to address the interface between the Port and the city. Promenade Road is one of the Port's primary access roads and the proposed bridge offers the amenity value of the linear cycle/pedestrian route, safe passage across the junction, and a visual experience with views over the surrounding area. I acknowledge that the bridge is a substantial structure, but I consider its scale and design to be appropriate in this context containing other significant infrastructural projects and industrial character/heritage. I would accept that it adds visual interest to the route and will form a distinctive and attractive infrastructural element at this interface.
- 7.4.7. At the extreme northern end of the site, the widened and landscaped route continues along Bond Road to terminate with an open public space along the southern shoreline of the Tolka Estuary. This connects with the Tolka Estuary Greenway where there are attractive views across the estuary. The combined routes enhance

and expand on the other existing and planned cycle projects and the proposed project will make a significant contribution to the amenity and character of the area by providing an attractive north-south link between the River Liffey and Tolka Estuary.

- 7.4.8. As previously outlined, the applicant's response to the DCC further information request amended the proposal to address DCC concerns about protecting remaining heritage assets, retaining historic boundary walls, incorporating more variety of boundary treatment, retention of the original calp limestone at North Wall Square, and justification for the removal and reuse of historic fabric.
- 7.4.9. The response acknowledges the various features which form part of the heritage of Dublin Port, albeit in a somewhat fragmented condition. It is proposed that historic paving, train tracks, quay/berth coping stones, and metal gate posts/columns will all be retained at their present location and integrated into the scheme. The original crossberth quay wall will be revealed as a significant heritage feature in the public realm.
- 7.4.10. The objectives of the scheme (i.e. creation of the pedestrian/cycle route and improved integration between the Port and the city) necessitate the removal of most of the existing boundary wall. The existing boundary along the Port Centre will be retained and other substantial sections of the historic calp limestone wall will also be taken down and reinstated along the new boundary as part of the scheme, with an expected 70% reuse of existing material. This includes the reinstatement of the existing wall section extending northwards from the proposed North Wall Square over a length of c. 32 metres. It is noted that the removal of sections of the boundary wall has already been permitted under P.A. Reg. Ref 2753/14 and the Part 8 Joint Junction Improvement Scheme.
- 7.4.11. Otherwise, a new boundary will be formed consisting of a low stone plinth wall (reused calp limestone) with a solid coping and metal railing incorporating bespoke lighting and entrance gates/portals along its length. The railing provides a softer interface between the port and the city, with improved transparency and permeability. The pedestrian bridge also provides a new elevation to the Port edge, with a rebuilt solid stone wall boundary along the full length of Bond Road.

- 7.4.12. Having regard to the objectives of the project, I acknowledge that the increased width of road/public realm requires substantial setback of the existing boundary, and that the defensive nature of the existing solid boundary wall requires an improved interface between the Port and the city. I consider that the proposed design achieves a satisfactory response to these objectives whilst also ensuring the protection of heritage features, maintenance of security requirements, and provision of a suitable variety of boundary treatments.
- 7.4.13. Expanding on built heritage impacts, I acknowledge that the North Wall Quay to the west of the site is a Protected Structure and is within a designated 'Conservation Area'. The former ESB substation within the site is a Protected Structure and the Port Centre building is listed in the NIAH. In addition, there are several structures in the surrounding area included on the Dublin City Industrial Heritage Record, including North Wall Quay, East Wall Quay, Harbour Master's Office, and Landing Stage.
- 7.4.14. The application is accompanied by an Architectural Heritage Impact Statement prepared by Shaffrey Architects. The Design Proposal report submitted as further information also contains additional assessment of the heritage impacts associated with the revised proposals.
- 7.4.15. The 'Conservation Design and Development Strategy' aims to engage positively with the heritage of significance using a five-pronged approach which can be summarised as follows:
- Retain & Integrate - structures and elements such as historic coping stones and other granite paving relating to Crossberth quay; metal gate posts and lamps at North Wall Quay entrance; historic train/crane tracks; and the historic walling along the Port Centre.
 - Dismantle & Reuse - elements such as the boundary wall or sections of metal tracks, posts, or coping stones.
 - Respond & Inform - design of new elements is informed by historic features, including the design of lighting, guard-railing, and paving.

- Explore & Present – The Archaeological Impact Assessment report outlines evidence of the surviving 18th century sea wall below ground level, as well as the potential for other features of historic interest. Subject to further investigation, opportunities for localised presentation of the sea wall may become feasible.
- Quality in Execution – The quality of detailed design and execution of new works shall respect the quality of surviving historic fabric. The project aims to contribute to the Port's Distributed Museum Initiative and to ensure that all elements deliver an overall visual coherence with optimum performance in use and durability.

7.4.16. The applicant's further information response expands and improves on these strategic approaches through an increased emphasis on the retention / reuse of historic fabric. There is also a greater quality of design and materiality in individual elements such as boundary treatment, lamp posts, and railings etc.

7.4.17. The proposed works do not have a direct physical impact on the Protected Structures (North Wall Quay and Substation), but I acknowledge that works would take place within the curtilage of these structures. However, I consider that the proposed works would significantly improve the character and amenity of the area, thereby having a positive impact on the setting of the Protected Structures and the wider Conservation Area along North Wall Quay.

7.4.18. I consider that the alignment of the route within the curtilage of the substation building would facilitate a greater understanding and appreciation of its heritage value. And while one 3rd party submission has suggested that the refurbishment of the substation building should be required as a condition of any permission, I am satisfied that the refurbishment project has only been approved relatively recently (August 2020) under a separate permission. The refurbishment works are not included as part of the current application, although my site inspection noted that refurbishment/investigative works are ongoing at the site, and I am satisfied that the applicant is committed to this project as an important part of the Distributed Museum. Accordingly, I do not consider it reasonable or warranted to require its completion as part of this current project.

- 7.4.19. The project also involves limited works to the setting of the NIAH Port Centre building. Again, I consider that the works would improve the setting of this important 20th Century building and the improved access to the centre would facilitate increased awareness and appreciation of its architectural heritage and value.
- 7.4.20. I am satisfied that the proposal appropriately protects the other heritage elements of the area, including sites on the Industrial Heritage Record. Furthermore, the proposal appropriately provides for further archaeological investigation and potential exposure of the historic sea wall and other historic elements. This has the potential to significantly contribute to the overall heritage value of the Port area by adding a compelling set-piece to the emerging Distributed Museum. The Board may be aware (as was widely publicised) that recent archaeological investigations (in October 2022) associated with the Substation permission have uncovered the sea wall and it is planned to expose and incorporate this important feature as part of that project.
- 7.4.21. In conclusion, I acknowledge that the fundamental objectives of the project necessitate significant alterations to the existing boundary/interface between the Port and the city. These objectives are appropriate in the interests of the proper planning and sustainable development of the area insofar as they would facilitate sustainable transport and an enhanced visual appearance at this interface. I am satisfied that the design approach would result in an attractive linear route between public open spaces which would cumulatively result in a significant enhancement of the visual amenity of the area. Furthermore, the proposal has been designed to appropriately respect features of archaeological/built heritage and would not seriously detract from the character or setting of Protected Structures, Conservation Areas, or any other features of built heritage value. Accordingly, I have no objections in this regard.

7.5. Traffic and Transport

- 7.5.1. Along with the creation of the proposed pedestrian/cycle route, the main traffic/transport elements included in the proposed development can be summarised as follows:

- Removal of the existing Terminal 3 left-in / left-out access on East Wall Road to facilitate the Part 8 Point Junction Improvement scheme. This removal will

also be facilitated by the Terminal 4 bridge crossing over Alexandra Road to provide a new internal route to Promenade Road.

- Relocation of the Port Centre access from Alexandra Road to the proposed Terminal 3 service road.
- Alterations to the previously permitted link road between Alexandra Road to East Wall Road. This road will provide service access to Terminal 3 and the Port Centre only, and the connection to East Wall Road/Sheriff Street will no longer be provided. The junction of the service access with Alexandra Road will be made a priority junction, with the northbound section restricted to right-out movements only to direct traffic to Promenade Road via the internal network. At the Alexandra Road / East Wall Road there will be additional footpath buildouts and increased space for pedestrian/cyclist crossings. The left-turn from Alexandra Road to East Wall Road southbound will be closed, although a connection will be maintained for emergency purposes. The existing traffic signal/signage arrangements will require minor alterations and the current railway traffic management measures will be maintained.
- Alterations to the previously permitted internal road network (Planning Authority Reg. Ref. 3084/16) to include: reduction in the width of the vehicular carriageway and omission of footpath on internal roadway for Terminal 3/4; retention of the left slip lane from East Wall Road into Alexandra Road; relocation of the emergency access gate at the junction of Tolka Quay Road and East Wall Road; omission of the private secure access route for multi-modal berth between Tolka Quay Road and Alexandra Road; omission of a section of the internal road to the south of Dublin Port Centre car park; and improvements to the bridge and ramp arrangements over Promenade Road.

7.5.2. The applicant's Traffic and Transport Assessment (TTA) report outlines that traffic surveys were carried out in May 2018. At the Point Roundabout, the surveys recorded a total throughput of nearly 2,400 vehicles (AM peak) and 2,200 in the PM peak. At the 'Terminal 3 / East Wall Road left-in/left-out junction', 67 2-way movements into and out of T3 were recorded in the AM peak, with 69 recorded in the PM peak. A total of 1,135 such movements were recorded daily. At the Alexandra

Road / East Wall Road junction, surveys recorded a total of almost 3,000 vehicles in the AM peak and 1,800 in the PM peak. The TTA applies traffic growth factors for the opening year (2023) and design year (2038) based on NRA/TII guidelines and the breakdown of light/heavy surveyed (i.e. 72% and 28% respectively).

7.5.3. The applicant's 'traffic impact analysis' focuses on the Alexandra Road / East Wall Road junction, which I consider to be reasonable and adequate given that it is the junction subject to significant impacts. A LinSing analysis is included which compares the 2018 traffic conditions with the 'opening year (2023)' and 'design year (2038)' scenarios, both with and without development. In summary, it is noted that:

- The existing junction has a maximum degree of saturation (DoS) up to 73%, which would increase (without development) to a DoS of 87% in 2038.
- Following completion of the development, there would be a slight improvement in the operation of the junction with the maximum DoS decreasing by 3% to 84%.

7.5.4. I am satisfied that this demonstrates that the proposed changes to the junction would have no significant adverse impact on the capacity of the junction and that the closure of the 'Terminal 3 / East Wall Road left-in/left-out junction' diverts some traffic away from the junction to Promenade Road. The scheme would provide significant improvements to pedestrian/cycle infrastructure, which would promote active, sustainable travel modes in the area. It would not generate additional traffic but would redistribute traffic via the Terminal 4 bridge to the Port Tunnel, thereby reducing the extent of heavy vehicle traffic along East Wall Road.

7.5.5. I note that the appellant contends that the TTA should have included a cumulative assessment of the revisions to permission P.A. Reg. Ref. 4521/18 for the vehicular bridge with access ramps over Alexandra Road. However, the current application does not involve revisions to P.A. Reg. Ref. 4521/18, and it should be noted that this permission has now been implemented. I am therefore satisfied that a cumulative assessment is not required, and I consider that the submitted TTA adequately acknowledges the redirection of traffic flow via the bridge. I consider that this appropriately redirects traffic away from East Wall Road and would not result in any significant adverse traffic impacts.

- 7.5.6. Regarding construction stage traffic, I accept that a significant portion of the works can be carried out off-line. There will be requirements for some minor temporary diversions and phasing of works to maintain road access. A Traffic Management Plan will be developed by the contractor, and I am satisfied that this will satisfactorily address any construction traffic impacts.
- 7.5.7. The Irish Rail submission highlights some concerns about the need to protect rail infrastructure and freight movements at the East Wall Road / Alexandra Road junction. It requests that the detail of these impacts would be clarified through a condition of any permission. I acknowledge the importance of facilitating freight transport in accordance with Policy MT6(ii) of the Development Plan. Therefore, consistent with the Irish Rail submission and condition no. 5(a) of the DCC decision, I consider that the detailed design requirements of the junction should be agreed by condition, including specific demonstration of the facilitation of rail/freight movements. A condition should also address potential impacts on the Port Tunnel as outlined in the TII observation.
- 7.5.8. The Ciarán Cuffe MEP submission to the planning authority raises concerns including a wide high-speed sweeping turn at the Point Junction, the extent of traffic signals, and implications for the existing cycle lane on East Wall Road. However, it should be noted that the road layout, traffic signals, and crossings along East Wall Road and the Point Junction have already been permitted as part of the DCC Part 8 Point Junction scheme. These elements are not part of the proposed development, and therefore I do not propose to raise any objection in this regard. Otherwise, I am satisfied that the bridge gradient does not exceed a 1 in 20 slope as recommended in the TII Design Criteria for Footbridges (2004), and that the scheme as a whole is designed in accordance with the National Cycle Manual (NTA 2011) and appropriate universal accessibility standards.
- 7.5.9. In terms of traffic safety, I am satisfied that the proposed development will deliver a safe pedestrian/cycle connection with maximum segregation from vehicular traffic, including the bridge over Promenade Road. An enhanced signalised crossing of Alexandra Road will also be provided, which is the only location where crossing of a regular trafficked road will occur along the entire 1.4km route.

7.5.10. In conclusion, I consider that the proposed development would have a positive impact on active, sustainable transport patterns, and would not result in any unacceptable impacts on the capacity or safety of the existing and planned transport network in the surrounding area.

7.6. **Other Issues**

Drainage & Flooding

- 7.6.1. In response to the DCC further information request, the applicant has provided revised drawings and reports outlining the public sewer diversion works and information on constructability, route selection and proving, site investigations, impact on the hydraulic performance of the sewer network, and proposed piling and construction management. It outlines that the surface water drainage details will be in accordance with the Greater Dublin Regional Code of Practice for Drainage works and that detailed design will be agreed with DCC prior to commencement of development. A letter from Irish Water is included which states that the diversions can be facilitated subject to agreement of detailed design.
- 7.6.2. The response also outlines the 8 no. sub-catchments of the SuDS strategy, including the area and volume of each catchment. The flow rates for each surface water pipe connection are also provided and it is clarified that the SuDS components will be lined to prevent surface water infiltration to subsoil where contaminated ground is known.
- 7.6.3. The updated Engineering Report included in the further information response also includes a Site-Specific Flood Risk Assessment. It confirms that it accounts for climate change scenarios and concludes that standard drainage measures will sufficiently manage the risk of pluvial flooding without the need for a detailed flood risk assessment.
- 7.6.4. The DCC Drainage Division subsequently confirmed that there was no objection to the proposals subject to conditions. I am satisfied that the application has included an adequate assessment of drainage and flood-risk impacts and that any outstanding detailed design matters can be satisfactorily resolved in agreement with DCC by condition of any permission.

Control of Major Accident Hazards (COMAH)

- 7.6.5. The application includes a COMAH Land Use Planning Assessment prepared by Byrne Ó Cléirigh Engineers Consultants. It outlines details of 10 no. COMAH establishments within the Port area, the nearest being the Circle K Terminal 1 yard located c. 400 metres east of the application site. It also accounts for the planning history of current and prospective (permitted) COMAH establishments.
- 7.6.6. The assessment's criterion on which the level of individual risk is assessed is based on the HSA's guidance and use of a three-zone (contoured) traffic light system. Societal risk is assessed using a societal risk index (SRI) to examine the overall risk to which the population may be exposed. It also considers the sensitivity level of the development and the types of scenarios to be considered in accordance with HSA guidance.
- 7.6.7. In terms of 'individual risk' the applicant's assessment calculates that the project lies outside the risk contours associated with COMAH establishments, which satisfies the HSA's criteria. From a societal risk perspective, the SRI is calculated at approximately 317, which is significantly less than both the value for which the UK HSE would normally 'not advise against' a development (i.e. 2,500) and the value that the HSA uses to assess a 'broadly acceptable risk' (i.e. 4,000).
- 7.6.8. In accordance with the provisions of Article 137(1) of the Planning and Development Regulations 2001 (as amended), I note that DCC referred the application to the HSA, which has confirmed that it does not advise against the granting of permission in the context of major accidents and hazards.
- 7.6.9. Having regard to the foregoing, I am satisfied that the application has included a comprehensive assessment of the risks associated with the development in accordance with COMAH requirements. I do not consider that there are any unacceptable individual or societal risks associated with the project and I have no objections in this regard.

8.0 **Appropriate Assessment**

8.1. **Introduction**

The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U and section 177V of the Planning and Development Act 2000 (as amended) are considered fully in this section. The areas addressed in this section are as follows:

- Compliance with Article 6(3) of the EU Habitats Directive
- Screening the need for appropriate assessment (AA)
- The Natura Impact Statement (NIS)
- Appropriate Assessment of implications of the proposed development on the integrity of relevant European sites.

8.2. **Compliance with Article 6(3) of the EU Habitats Directive**

The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal will not adversely affect the integrity of the European site before consent can be given. The proposed development is not directly connected to or necessary to the management of any European site and therefore is subject to the provisions of Article 6(3).

8.3. **Screening the need for Appropriate Assessment**

Background

8.3.1. The application includes a 'Screening for Appropriate Assessment & Natura Impact Statement' prepared by RPS Group. Section 4 of the document deals with

'Screening for Appropriate Assessment'. It has been prepared in line with current

best practice guidance and identifies European Sites with potential pathways to the proposed development in order to establish the zone of influence of the proposal.

- 8.3.2. The Screening exercise concludes that Stage 2 Appropriate Assessment is required to be undertaken to prevent the risk of accidental pollution, diminution of water quality in the marine environment, and potential deterioration of wetland habitats.
- 8.3.3. Having reviewed the documents and submissions on file, I am satisfied that the information allows for a complete examination and identification of all the aspects of the project that could have an effect, alone, or in combination with other plans and projects on European sites.

Screening for AA – Test of likely significant effects

- 8.3.4. The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site in view of the conservation objectives of those sites.
- 8.3.5. A detailed description of the development is outlined in section 2 of this report. In summary, the proposed development involves the construction of a new 1.4km pedestrian and cycle greenway with associated landscaping and public spaces along East Wall Road and Bond Road from the River Liffey to the Tolka Estuary. The application extends to c. 4.8 hectares and habitats on the site consist of Amenity Grassland, Buildings and Artificial Surfaces, Scrub, Ornamental Scrub, and Scattered Trees. It is bounded to the east and west by urban development. To the north of the site is the Tolka Estuary and to the south is the River Liffey.
- 8.3.6. Taking account of the characteristics of the proposed development in terms of its location and the scale of works, the main issues considered for examination in terms of implications for likely significant effects on European sites are habitat loss/fragmentation; water quality and habitat deterioration; noise and disturbance; operational effects; and in-combination effects.

Submissions and observations

8.3.7. No submissions or observations were received in relation to impacts on Natura 2000 sites or the question of Appropriate Assessment.

European Sites

8.3.8. The subject site is not located within any European Sites, although it is in close proximity to the South Dublin Bay and River Tolka Estuary SPA (site code: 004024) at a distance of c. 5 metres to the north. There is also several European Sites in the wider Dublin Bay area. A summary of European Sites within the potential zone of influence and the identification of potential effects and is presented in the table below. I have added links to conservation objectives for each site, which I have taken into consideration in this Appropriate Assessment section.

| European Site (Site Code) | Qualifying Interests (QIs) *Denotes a priority habitat | Distance | Potential connections (source, pathway, receptor) and effects |
|---|--|-------------|---|
| South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024) | Light-bellied Goose <i>Branta (bernicla hrota)</i> [A046] Oystercatcher (<i>Haematopus ostralegus</i>) [A130] Ringed Plover (<i>Charadrius hiaticula</i>) [A137] Grey Plover (<i>Pluvialis squatarola</i>) [A141] Knot (<i>Calidris canutus</i>) [A143] Sanderling (<i>Calidris alba</i>) [A144] Dunlin (<i>Calidris alpina alpina</i>) [A149] Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157] Redshank (<i>Tringa tetanus</i>) [A162] Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179] Roseate Tern (<i>Sterna dougallii</i>) [A192] Common Tern (<i>Sterna hirundo</i>) [A193] Arctic Tern (<i>Sterna paradisaea</i>) [A194] Wetlands [A999] | c. 5 metres | Habitat Loss. Potential water quality and habitat deterioration due to hydrological connection. Noise and Disturbance due to proximity. Operational effects due to emissions / disturbance. In-combination effects. |

| European Site (Site Code) | Qualifying Interests (QIs) *Denotes a priority habitat | Distance | Potential connections (source, pathway, receptor) and effects |
|--|--|----------|---|
| | <u>Conservation objectives:</u> https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004024.pdf | | |
| North Bull Island SPA (Site Code: 004006) | Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046] Shelduck (<i>Tadorna tadorna</i>) [A048] Teal (<i>Anas crecca</i>) [A052] Pintail (<i>Anas acuta</i>) [A054] Shoveler (<i>Anas clypeata</i>) [A056] Oystercatcher (<i>Haematopus ostralegus</i>) [A130] Golden Plover (<i>Pluvialis apricaria</i>) [A140] Grey Plover (<i>Pluvialis squatarola</i>) [A141] Knot (<i>Calidris canutus</i>) [A143] Sanderling (<i>Calidris alba</i>) [A144] Dunlin (<i>Calidris alpina</i>) [A149] Black-tailed Godwit (<i>Limosa limosa</i>) [A156] Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157] Curlew (<i>Numenius arquata</i>) [A160] Redshank (<i>Tringa totanus</i>) [A162] Turnstone (<i>Arenaria interpres</i>) [A169] Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179] Wetland and Waterbirds [A999] <u>Conservation Objectives:</u> https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004006.pdf | 2.5km | Habitat Loss. Potential water quality and habitat deterioration due to hydrological connection. Noise and Disturbance due to proximity. Operational effects due to emissions / disturbance. In-combination effects. |
| South Dublin Bay SAC (site) | Mudflats and sandflats not covered by seawater at low tide [1140] Annual vegetation of drift lines [1210] Salicornia and other annuals colonising mud and sand [1310] | 1.6km | Habitat Loss. Potential water quality and habitat deterioration due to hydrological connection. |

| European Site (Site Code) | Qualifying Interests (QIs) *Denotes a priority habitat | Distance | Potential connections (source, pathway, receptor) and effects |
|--|---|----------|---|
| code: 000210) | Embryonic shifting dunes [2110] <u>Conservation Objectives:</u> https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000210.pdf | | Noise and Disturbance due to proximity. Operational effects due to emissions / disturbance. In-combination effects. |
| North Dublin Bay SAC (Site Code: 000206) | Mudflats and sandflats not covered by seawater at low tide [1140] Annual vegetation of drift lines [1210] Salicornia and other annuals colonising mud and sand [1310] Atlantic salt meadows (<i>Glauco-Puccinellietalia maritima</i>) [1330] Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410] Embryonic shifting dunes [2110] Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes) [2120] Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130] Humid dune slacks [2190] <i>Petalophyllum ralfsii</i> (Petalwort) [1395] <u>Conservation Objectives:</u> https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000206.pdf | 2.5km | Habitat Loss. Potential water quality and habitat deterioration due to hydrological connection. Noise and Disturbance due to proximity. Operational effects due to emissions / disturbance. In-combination effects. |
| Howth Head SAC (Site Code: 000202) | Vegetated sea cliffs of the Atlantic and Baltic coasts [1230] European dry heaths [4030] <u>Conservation Objectives:</u> https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000202.pdf | 8km | Habitat Loss. Potential water quality and habitat deterioration due to hydrological connection. Noise and Disturbance due to proximity. Operational effects. In-combination effects. |

| European Site (Site Code) | Qualifying Interests (QIs) *Denotes a priority habitat | Distance | Potential connections (source, pathway, receptor) and effects |
|---|---|----------|---|
| Rockabill to Dalkey Island SAC (Site Code: 003000) | Reefs [1170] Phocoena phocoena (Harbour Porpoise) [1351] <u>Conservation Objectives:</u> https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO003000.pdf | 8.4km | Habitat Loss. Potential water quality and habitat deterioration due to hydrological connection. Noise and Disturbance due to proximity. Operational effects due to emissions / disturbance. In-combination effects. |
| Howth Head Coast SPA (Site Code: 004113) | Kittiwake (Rissa tridactyla) [A188] <u>Conservation Objectives:</u> https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004113.pdf | 11km | Habitat Loss. Potential water quality and habitat deterioration due to hydrological connection. Noise and Disturbance due to proximity. Operational effects due to emissions / disturbance. In-combination effects. |

Identification of likely effects

- 8.3.9. Although it is in close proximity to the South Dublin Bay and River Tolka Estuary SPA, the site is not within any of the European Sites. Accordingly, I am satisfied that there is no potential for significant effects on any of the European Sites by reason of habitat loss.
- 8.3.10. Surface water from the proposed development will flow into the Port Centre network and flow onwards to the existing drainage network. It will be attenuated before passing through existing interceptors and discharging to the Lower Liffey, thereby creating a hydrological pathway to European Sites in Dublin Bay. At construction

phase, there is the possibility of sediments/contaminants escaping and travelling via the surface water drainage network.

- 8.3.11. Any elevated concentration of suspended sediment or polluting substance would be diluted by existing flows and the drainage network. However, the point of discharge to the Tolka Estuary is within the SPA and, therefore, there is potential for significant localised deterioration of water quality and habitats within the South Dublin Bay and River Tolka Estuary SPA and any European Site further afield. Therefore, in the absence of mitigation measures, the potential for significant effects cannot be excluded.
- 8.3.12. Regarding underwater noise disturbance, no works are proposed below the mean high-water mark. Therefore, I am satisfied that there is no potential for underwater noise effects on sensitive QIs including the Harbour Porpoise in Rockabill to Dalkey Island SAC and the more proximate seal haul out site at Bull Island.
- 8.3.13. In relation to noise impacts on non-breeding waterbirds, the site is separated from the South Dublin Bay and River Tolka Estuary SPA by rock armour and is c. 1.5km from the nearest Tern colony. The proposed structures and works are consistent with the scale of existing development, and I am satisfied that any noise or other disturbances impacts will be masked by the existing levels of noise, lighting, and visual activity in the Port. Having regard to this context and the distance and separation of the proposed development from the SPA, I am satisfied that likely significant noise, lighting and disturbance effects can therefore be excluded. The nearest other SPA (North Bull Island) is at a significantly greater distance of c. 2.5km and potential significant effects can be similarly excluded.
- 8.3.14. Regarding breeding waterbirds, the terns that breed in the Port area are habituated to a noisy industrial environment and monitoring of breeding success has shown no significant effects on this activity. Given the significant distance of nesting sites (at least 1.4km) and marine foraging habits further afield, I am satisfied that there is no potential for likely significant effects on the South Dublin Bay and River Tolka Estuary SPA as a result of noise or disturbance. Howth Head Coast SPA is at a

significantly greater distance of c. 11km and potential significant effects can be similarly excluded.

- 8.3.15. At operational stage, there will be no significant change in the intensity of use. Surface water will drain in a consistent manner to existing arrangements and there will be no new or additional emissions to the marine environment. There will be no increase in traffic volumes and no additional stimuli of disturbance towards the breeding and non-breeding waterbirds of the Tolka Estuary. I am satisfied that the operational stage does not present a new or increased risk of maintaining the conservation objectives of any of the European Sites identified.
- 8.3.16. Regarding potential in-combination effects, the application and the applicant's AA Screening exercise identifies a wide range of other projects in the surrounding area. It is noted that the majority of these projects have already been 'screened out' for potential significant effects on European Sites and, therefore, there is no potential for in-combination effects with the proposed development.
- 8.3.17. The applicant's report identifies those projects which have the potential for significant effects and have been subject to Appropriate Assessment i.e. Dublin Port Masterplan 2040-Reviewed 2018, ABR Project, MP2 Project, Berth 49 Ramp, and DPC Post 2019/2021 Maintenance Dredging Campaign. The applicant outlines that these projects have incorporated mitigation measures to ensure that adverse impacts on the integrity of European Sites will not occur. The applicant's AA Screening identifies a pathway of potential effects in-combination with all the above-mentioned projects (excluding Berth 49 Ramp) relating to accidental pollution but concludes that pollution prevention measures will form part of these projects and the current project.
- 8.3.18. Although the Dublin Port Internal Road Network (P.A. Reg. Ref. 3084/16) was not deemed to include potential significant effects on European Sites, it is considered by the applicant on the basis that it includes an adjoining greenway which could result in disturbance at operational stage. However, given that the current proposal does not have identified potential for operational stage disturbance, I am satisfied that there is no possibility of significant in-combination disturbance effects.

8.3.19. In conclusion on the foregoing, I consider that the construction stage of the project has the potential for sediments/contaminants escaping and travelling via the surface water drainage network to discharge to the Tolka Estuary within the SPA. Therefore, there is potential for significant localised deterioration of water quality and habitats within the South Dublin Bay and River Tolka Estuary SPA and the identified European Sites further afield. In the absence of mitigation measures, the potential for significant effects cannot be excluded.

Mitigation Measures

8.3.20. In this screening exercise, I have not relied upon any measures designed or intended to avoid or reduce any harmful effects of the project on European Sites.

AA Screening Conclusion

8.3.21. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually, or in combination with other plans or projects, could have a significant effect on European Sites in view of the Conservation Objectives of those sites and Appropriate Assessment is therefore required for the following sites:

- South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024)
- North Bull Island SPA (site code: 004006)
- South Dublin Bay SAC (site code: 000210)
- North Dublin Bay SAC (site code: 000206)
- Howth Head SAC (site code: 000202)
- Rockabill to Dalkey Island SAC (site code: 003000)
- Howth Head Coast SPA (site code: 004113).

8.4. The Natura Impact Statement

8.4.1. The planning application includes a NIS which examines the potential water quality and habitat deterioration effects of the proposed development on the conservation objectives of the South Dublin Bay and River Tolka Estuary SPA and the other six

relevant European Sites identified further afield. As part of the combined AA Screening / NIS document, it includes a description of the proposed development; an outline of the conservation objectives for the European Sites and how they would be affected by the proposed development; and proposes mitigation measures to prevent adverse effects on the integrity of any European Sites.

8.4.2. The applicant's NIS was prepared in line with current best practice and includes an assessment of the direct and indirect effects on habitats and species, as well as an assessment of the cumulative impact of other plans and projects. It concludes that the implementation of mitigation measures will prevent adverse effects on the integrity of any European Sites and that no scientific doubt remains as to the absence of such effects.

8.4.3. Having reviewed the documents and submissions included in the appeal file, I am satisfied that the information allows for a complete assessment of any adverse effects of the development alone, or in combination with other plans and projects, on the conservation objectives of the relevant European Sites.

8.5. Appropriate Assessment of implications of the proposed development on the integrity of European Sites

8.5.1. I am satisfied that the potential for significant effects on the seven identified European Sites is limited to the risk of accidental pollution during the construction phase, diminution of water quality in the marine environment, and potential deterioration of wetland habitats.

8.5.2. The nearest European Site is the South Dublin Bay and River Tolka Estuary SPA. This site's conservation objective for wetland habitat states that in order to maintain favourable condition the permanent area occupied by the wetland habitat should be stable and not significantly less than the area of 3,094ha, other than that occurring from natural patterns of variation. The wetland habitat contains subtidal, intertidal, and supratidal habitats which naturally vary, and many waterbirds will use more than one habitat type for different reasons throughout the tidal cycle.

8.5.3. In terms of the quality of the wetland habitat, it is noted that the trend and distribution objective for SCI species covers the need to maintain, or improve where appropriate,

the different properties of the wetland habitats contained within the SPA. I would accept that such properties would include water quality.

- 8.5.4. Given the potential for the construction stage to result in suspended sediments and/or pollutants entering the SPA and potentially decreasing the range, timing, or intensity of use of the SPA by SCI species as a result of habitat deterioration due to reduced water quality, there is a risk that the conservation targets for overwintering SCIs in the South Dublin Bay and River Tolka Estuary SPA could be undermined. Due to further hydrological connection, the same risk applies to the other six identified European Sites in the wider Dublin Bay area.
- 8.5.5. The applicant's NIS accepts that mitigation in the form of pollution prevention measures is required to prevent adverse effects on any European Sites. The NIS outlines mitigations measures which can be summarised as follows:
- Best practice pollution prevention measures including adherence to national and international guidelines to prevent potential impacts to water quality.
 - Precautionary measures to minimise the risk of suspended sediment and sedimentation impacting on water quality within the receiving environment.
 - Precautionary measures to minimise the risk of concrete and cement pollution impacting on water quality within the receiving environment.
 - Precautionary measures to minimise the risk of general construction works (e.g. leaks/spillage of fuel, oils, other chemicals and waste water) impacting on water quality within the receiving environment.
- 8.5.6. In my opinion, the mitigation measures which have been proposed in this instance are acceptable and will ensure that the proposed development would not adversely affect the integrity of any European Sites in view of the sites' Conservation Objectives.

Cumulative / In-combination effects

- 8.5.7. I have previously outlined the nature and extent of other relevant plans and projects in the area. Given the nature, scale, and mitigation measures already incorporated into these plans and projects, no developments were identified in the surrounding area that could lead to potential cumulative or in-combination effects with the proposed development.

8.6. Appropriate Assessment Conclusion

- 8.6.1. The proposed development has been assessed in light of the requirements of Sections 177U and 177V of the Planning and Development Act 2000 (as amended). Having carried out screening for Appropriate Assessment of the project, it was concluded that it may have a significant effect on South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024), North Bull Island SPA (Site Code: 004006), South Dublin Bay SAC (site code: 000210), North Dublin Bay SAC (site code: 000206), Howth Head SAC (site code: 000202), Rockabill to Dalkey Island SAC (site code: 003000), and Howth Head Coast SPA (site code: 004113).
- 8.6.2. Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying interests/special conservation interests of those sites in light of their conservation objectives. I am satisfied that an examination of the potential impacts has been analysed and evaluated using best scientific knowledge. Where potential significant effects on Natura 2000 sites have been identified, key design features and mitigation measures have been prescribed to remove risks to the integrity of the European sites. I am satisfied based on the information available, which I consider to be adequate in order to carry out a Stage 2 Appropriate Assessment, that if the key design features and mitigation measures are undertaken, maintained and monitored as detailed in the NIS, adverse effects on the integrity of Natura 2000 sites will be avoided.
- 8.6.3. Therefore, following an Appropriate Assessment, it has been ascertained 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 (Site Code: 004024), North Bull Island SPA (Site Code: 004006), South Dublin Bay SAC (site code: 000210), North Dublin Bay SAC (site code: 000206), Howth Head SAC (site code: 000202), Rockabill to Dalkey Island SAC (site code: 003000), and Howth Head Coast SPA (site code: 004113), or any other European site, in view of the sites' Conservation Objectives. This conclusion is based on a complete assessment of all aspects of the proposed project and there is no reasonable doubt as to the absence of adverse effects.

9.0 Recommendation

Having regard to the foregoing and the following reasons and considerations, I recommend that planning permission should be granted subject to conditions as outlined below.

10.0 Reasons and Considerations

Having regard to the provisions of the Dublin City Council Development Plan 2016-2022 and the nature, scale, and design of the proposed development, it is considered that the proposed development would be consistent with the zoning objectives for the area, would facilitate the ongoing development and integration of the Port with the city in accordance with the objectives of the Development Plan, would be consistent with transportation policy aimed at encouraging more sustainable and active forms of transport as outlined in the Development Plan and the National Sustainable Mobility Policy published by the Department of Transport in 2022, and would be acceptable in terms of traffic safety and convenience. The proposed development would enhance the visual amenity and character of this interface between the Port and the city, would appropriately protect the archaeological and built heritage value of the area, and would be acceptable in terms of drainage, flood risk, and the control of major accidents and hazards. Subject to the following conditions, the proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Environmental Impact Assessment Screening

An environmental impact assessment screening of the proposed development has been carried out and it is considered that the Environment Impact Assessment Screening Report and other documents submitted by the applicant identifies and describes adequately the direct, indirect, secondary, and cumulative effects of the proposed development on the environment.

Having regard to:

- the nature and scale of the proposed development, which is below the thresholds in respect of any relevant classes in Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended,
- the location of the site on lands zoned as 'Z7' and 'Z9' in the Dublin City Development Plan 2016-2022, the objectives for which would accommodate improvements to access/circulation, open space, and green networks, and which was subject to a strategic environmental assessment in accordance with the SEA Directive (2001/42/EEC),
- The developed nature of the site and its location within the existing built-up urban area, which is served by public infrastructure, and the existing pattern of development in the vicinity,
- The guidance set out in the "Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development", issued by the Department of the Environment, Heritage and Local Government (2003),
- the location of the development outside of any sensitive location specified in article 109(4)(a) of the Planning and Development Regulations 2001 (as amended),
- The criteria set out in Schedule 7 and 7A of the Planning and Development Regulations 2001 (as amended),
- the available results, where relevant, of preliminary verifications or assessments of the effects on the environment carried out pursuant to European Union legislation other than the Environmental Impact Assessment Directive, and
- the features and measures proposed by the applicant envisaged to avoid or prevent what might otherwise be significant effects on the environment, including measures identified in the Natura Impact Statement, Waste Management Plan, Engineering Report (including Site Specific Flood Risk Assessment), Archaeological Impact Assessment, Preliminary Ecological

Appraisal Report, Architectural Heritage Impact Assessment, and as consolidated in the Summary of Mitigation Measures Report,

It is considered that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment and that the preparation of an environmental impact assessment report would not, therefore, be required in this case.

Appropriate Assessment

An Appropriate Assessment Screening exercise has been carried out and concluded that there is potential for significant effects on the following European Sites:

- South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024)
- North Bull Island SPA (site code: 004006)
- South Dublin Bay SAC (site code: 000210)
- North Dublin Bay SAC (site code: 000206)
- Howth Head SAC (site code: 000202)
- Rockabill to Dalkey Island SAC (site code: 003000)
- Howth Head Coast SPA (site code: 004113).

The applicant's Natura Impact Statement and all other relevant submissions have been considered and an Appropriate Assessment has been carried out of the implications of the proposed development for European Sites in view of the Conservation Objectives for the relevant sites.

It is considered that the information on file is sufficient to undertake a complete assessment of all aspects of the proposed development in relation to the Conservation Objectives of the European Sites using the best available scientific knowledge in the field. In completing the assessment, the following was considered:

- Site-specific Conservation Objectives for these European Sites,
- Current conservation status, threats and pressures of the qualifying interest features, likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects,
- Any submissions from observers, prescribed bodies and the reports of the Planning Authority, and
- Mitigation measures which are included as part of the current proposal.

It is considered that the main likely impacts arising from the proposed development on the European Sites would arise from the risk of accidental pollution during the construction phase, diminution of water quality in the marine environment, and potential deterioration of wetland habitats. Having regard to these potential impacts and the mitigation measures as set out in the Natura Impact Statement, it is considered that the proposed development, subject to the identified mitigation measures, would not adversely affect any of the habitats or species within the relevant European sites. The proposed development would not adversely affect the integrity of the European sites in view of the conservation objectives for the sites and there is no reasonable scientific doubt as to the absence of such effects.

11.0 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 to the planning authority on the 11th day of November, 2021, 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. The developer shall ensure that all mitigation measures set out in the Natura Impact Statement submitted with the application, shall be implemented in full.

Reason: To protect the integrity of designated European Sites in accordance with the requirements of the EU Habitats Directive.

3. 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 and to ensure a proper standard of development.

4. Prior to commencement of development, the developer shall enter into an agreement with Irish Water regarding the diversions of any sewers or watermains.

Reason: In the interest of public health.

5. The following transportation requirements shall be complied with:

- a) Prior to commencement of development, full details of all works to the public road and the public realm, including any necessary signalling changes at the East Wall Road/Alexandra Road junction, the East Wall Road/Bond Road junction, the emergency access onto Alexandra Road, and at North Wall Quay/East Wall Road junction, shall be submitted to and agreed in writing with the Planning Authority.
- b) Phasing arrangements for the opening of the pedestrian walkway and cycle lanes to the public, having regard to the associated traffic diversions on the internal road network, shall be submitted to and agreed in writing with the Planning Authority prior to their operation.

- c) Prior to commencement of development, and on appointment of a contractor, a Construction Traffic Management Plan shall be submitted to and agreed in writing with the planning authority. The Plan shall include proposals to demonstrate, in consultation with Transport Infrastructure Ireland, that there will be no adverse impacts on the Dublin Tunnel and associated traffic during the course of construction works.
- d) Prior to commencement of development, a risk assessment shall be submitted to and agreed in writing with the planning authority regarding the proposed bridge over Promenade Road. The assessment shall include proposals, in consultation with Transport Infrastructure Ireland, to ensure the safety of road and bridge users, as well as the free flow of traffic from the Dublin Tunnel.
- e) Prior to commencement of development, the developer shall submit to and agree in writing with the planning authority proposals to ensure, in consultation with Irish Rail, that the rail infrastructure and associated freight movements along East Wall Road and Alexandra Road will be protected during the construction and operational stages of the development.

Reason: In the interest of traffic safety and convenience.

- 6. a) A conservation expert shall be employed to manage, monitor and implement the works on the site and to ensure adequate protection of the retained and historic fabric during the works. In this regard, all permitted works shall be designed to cause minimum interference to the retained features and/or fabric.
- b) All repair works to historic fabric shall be carried out in accordance with best conservation practice as detailed in the application and the Architectural

Heritage Protection Guidelines for Planning Authorities issued by the Department of Environment, Heritage and Local Government in 2004. The repair works shall retain the maximum amount of surviving historic fabric in situ and shall be designed to cause minimum interference. Items that have to be removed for repair shall be recorded prior to removal, catalogued and numbered to allow for authentic re-instatement.

c) All existing original features shall be protected during the course of construction works.

Reason: To ensure that the integrity of the retained structures is maintained and that the structures are protected from unnecessary damage or loss of fabric.

7. 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.

8. Details, including samples of the materials, colours and textures of all the external finishes to the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

9. 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 subject to the prior written agreement of the planning authority.

Reason: In the interest of clarity and protecting the amenities of surrounding properties.

10. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of public safety and residential amenity.

11. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

Reason: In the interest of sustainable waste management.

Stephen Ward
Senior Planning Inspector

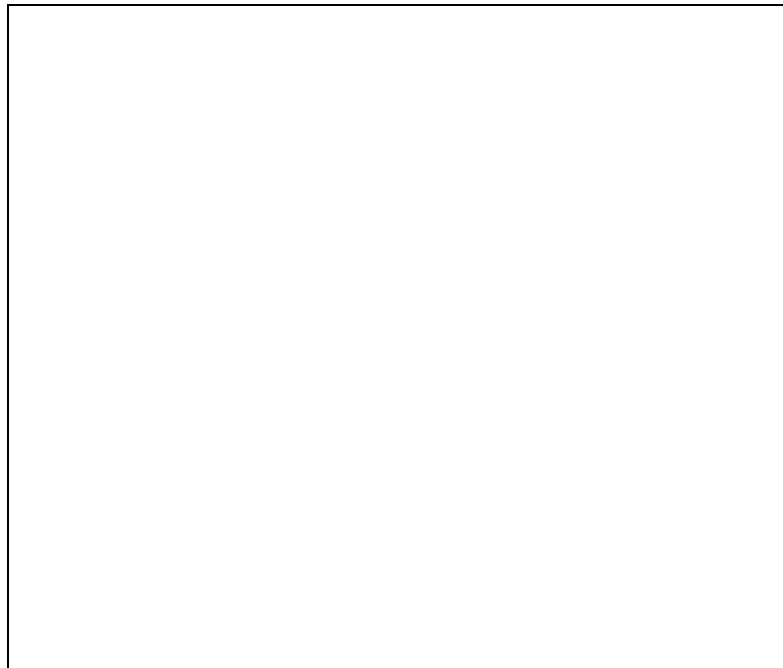
25th October 2022

Appendix 1:

Environmental Impact Assessment Screening Determination

A. CASE DETAILS

| | | |
|--|-----------------------|--|
| An Bord Pleanála Case Reference | | ABP-312692-22 |
| Development Summary | | Construction of a pedestrian walkway and a cycle lane along East Wall Road and Bond Road from the River Liffey to the Tolka Estuary with all associated site development works. |
| | Yes / No / N/A | |
| 1. Has an AA screening report or NIS been submitted? | Yes | An AA Screening Report and Natura Impact Statement was submitted with the application. |
| 2. Is an IED/ IPC or Waste Licence (or review of licence) required from the EPA? If YES has the EPA commented on the need for an EIAR? | No | N/A |
| 3. Have any other relevant assessments of the effects on the environment which have a significant bearing on the project been carried out pursuant to other relevant Directives – for example SEA | Yes | <p>SEA undertaken in respect of the Dublin City Development Plan 2016-2022 and the results of the Strategic Environmental Assessment of the plan.</p> <p>SEA undertaken in respect of the Dublin Port Masterplan (Reviewed 2018) and the results of the Strategic Environmental Assessment of the plan.</p> <p>SEA undertaken in respect of the North Lotts and Grand Canal SDZ Scheme and the results of the Strategic Environmental Assessment of the scheme.</p> <p>SEA undertaken in respect of the Greater Dublin Area Cycle Network Plan 2013 and the results of the Strategic Environmental Assessment of the scheme.</p> |



A Waste Management Plan which had regard to the EU Directives 2018/851, 75/442/EEC, 2018/850, 2012/19, and 2004/35/CE.

An Appropriate Assessment Screening Report, Natura Impact Statement, and a Preliminary Ecological Appraisal which had regard to the Habitats Directive (92/43/EEC) and the Birds Directive (2009/147/EC).

A Site-Specific Flood Risk Assessment (FRA) which had regard to 'The Planning System and Flood Risk Management Guidelines for Planning Authorities' and the OPW Eastern CFRAM study prepared under the EU Floods Directive.

A COMAH Land Use Planning Assessment which had regard to the Major Accidents Directive (2012/18/EU).

| | | | |
|---|-------------------|---|-----------|
| <p>1.2 Will construction, operation, decommissioning or demolition works cause physical changes to the locality (topography, land use, waterbodies)?</p> | <p>Yes</p> | <p>The proposed development is located within the urban area. The majority of the works are at surface level and will not significantly impact on the locality.</p> | <p>No</p> |
| <p>1.3 Will construction or operation of the project use natural resources such as land, soil, water, materials/minerals or energy, especially resources which are non-renewable or in short supply?</p> | <p>Yes</p> | <p>Construction materials will be typical of such urban development. The project will not result in any significant loss of natural resources.</p> | <p>No</p> |
| <p>1.4 Will the project involve the use, storage, transport, handling or production of substance which would be harmful to human health or the environment?</p> | <p>Yes</p> | <p>The construction stage may involve the use of harmful substances and will produce some waste/debris which will be managed in accordance with the Waste Management Plan. The operational stage would only potentially produce litter, and this would be managed through bin provisions.</p> | <p>No</p> |

| | | | |
|--|------------|---|-----------|
| <p>1.5 Will the project produce solid waste, release pollutants or any hazardous / toxic / noxious substances?</p> | <p>Yes</p> | <p>Construction activities will require the use of potentially harmful materials, such as fuels and other such substances and give rise to waste for disposal. Such use will be typical of construction sites. Noise and dust emissions during construction are likely. Such construction impacts would be local and temporary in nature and implementation of the proposed construction mitigation measures will satisfactorily address potential impacts.</p> <p>Operational waste will be managed via a Waste Management Plan and significant operational impacts are not anticipated.</p> | <p>No</p> |
| <p>1.6 Will the project lead to risks of contamination of land or water from releases of pollutants onto the ground or into surface waters, groundwater, coastal waters or the sea?</p> | <p>Yes</p> | <p>The construction emissions have the potential to release pollutants, but the construction mitigation measures will satisfactorily address any concerns. The operational development will connect to mains services and surface water drainage proposal would not adversely alter the existing drainage system.</p> | <p>No</p> |

| | | | |
|--|-------------------|--|------------------|
| <p>1.7 Will the project cause noise and vibration or release of light, heat, energy or electromagnetic radiation?</p> | <p>Yes</p> | <p>Potential for construction activity to give rise to noise and vibration emissions. Such emissions will be localised, short term in nature and their impacts will be suitably addressed by the construction mitigation measures.</p> | <p>No</p> |
| <p>1.8 Will there be any risks to human health, for example due to water contamination or air pollution?</p> | <p>Yes</p> | <p>Construction activity has the potential to impact on water and air quality via the emission of dust, substances etc. Such emissions will be localised, short term in nature and their impacts will be suitably addressed by the construction mitigation measures.</p> | <p>No</p> |

| | | | |
|--|-------------------|--|-----------|
| <p>1.9 Will there be any risk of major accidents that could affect human health or the environment?</p> | <p>Yes</p> | <p>No significant risk having regard to the nature and scale of development. Any risk arising from construction will be localised and temporary in nature. A COMAH risk assessment has been included as part of the application and satisfactorily demonstrates that the project does not present unacceptable risk to individuals or society.</p> | <p>No</p> |
| <p>1.10 Will the project affect the social environment (population, employment)</p> | <p>Yes</p> | <p>The proposal is likely to result in positive effects on the population through improved accessibility, connectivity and improvement to the public realm.</p> | <p>No</p> |
| <p>1.11 Is the project part of a wider large scale change that could result in cumulative effects on the environment?</p> | <p>Yes</p> | <p>The project is part of several related projects in the Port area which aim to improve accessibility, connectivity, and integration between the Port and the city. However, the projects are relatively small in scale and are not exceptionally complex or sensitive. Accordingly, it is not considered to give rise to significant cumulative effects.</p> | <p>No</p> |

| 2. Location of proposed development | | | |
|--|-------------------|---|------------------|
| <p>2.1 Is the proposed development located on, in, adjoining or have the potential to impact on any of the following:</p> <ol style="list-style-type: none"> 1. European site (SAC/ SPA/ pSAC/ pSPA) 2. NHA/ pNHA 3. Designated Nature Reserve 4. Designated refuge for flora or fauna 5. Place, site or feature of ecological interest, the preservation/conservation/ protection of which is an objective of a development plan/ LAP/ draft plan or variation of a plan | <p>Yes</p> | <p>The site adjoins the North Dublin Bay Proposed Natural Heritage Area and the South Dublin Bay and River Tolka Estuary SPA. There are also other designated natural heritage sites and Natura 2000 sites in the wider Dublin Bay area.</p> <p>The application includes a Preliminary Ecological Appraisal Report and a Natura Impact Statement, and I am satisfied that the proposed mitigation measures will prevent adverse effects on Natura 2000 sites and any other designated natural heritage sites.</p> | <p>No</p> |
| <p>2.2 Could any protected, important or sensitive species of flora or fauna which use areas on or around the site, for example: for breeding, nesting, foraging, resting, over-wintering, or migration, be affected by the project?</p> | <p>Yes</p> | <p>The Preliminary Ecological Appraisal Report and Natura Impact Statement have identified the potential for impacts on relevant habitats and species. The proposed mitigation measures will prevent the potential for significant environmental effects in this regard.</p> | <p>No</p> |

| | | | |
|--|-------------------|--|-----------|
| <p>2.3 Are there any other features of landscape, historic, archaeological, or cultural importance that could be affected?</p> | <p>Yes</p> | <p>The North Wall Quay to the west is a Protected Structure, recorded monument, and is within a designated 'Conservation Area'. The former ESB substation within the site is a Protected Structure and the Port Centre building is listed in the NIAH. There are several structures in the surrounding area included on the Dublin City Industrial Heritage Record. However, this is typical for the location of the site and suitable assessments have been included in the application, accompanied by design and mitigation measures to prevent significant environmental effects on historic, archaeological, and cultural heritage.</p> | <p>No</p> |
| <p>2.4 Are there any areas on/around the location which contain important, high quality or scarce resources which could be affected by the project, for example: forestry, agriculture, water/coastal, fisheries, minerals?</p> | <p>Yes</p> | <p>The site is surrounded by significant water courses/bodies, but it is not considered that there would be any significant hydrological effects in terms of water quality, volume, flood risk, or otherwise.</p> | <p>No</p> |
| <p>2.5 Are there any water resources including surface waters, for example: rivers, lakes/ponds, coastal or groundwaters which could be affected by the project, particularly in terms of their volume and flood risk?</p> | <p>Yes</p> | <p>The site is surrounded by significant water courses/bodies, but it is not considered that there would be any significant hydrological effects in terms of water quality, volume, flood risk, or otherwise.</p> | <p>No</p> |
| <p>2.6 Is the location susceptible to subsidence, landslides or erosion?</p> | <p>Yes</p> | <p>The site adjoins the River Liffey and Tolka Estuary but no significant risks are identified in this regard.</p> | <p>No</p> |

| | | | |
|---|-------------------|---|-----------|
| <p>2.7 Are there any key transport routes (eg National Primary Roads) on or around the location which are susceptible to congestion or which cause environmental problems, which could be affected by the project?</p> | <p>Yes</p> | <p>The site is close to a range of important transport infrastructure including the Port Tunnel (M50) and the surrounding road network, the Port, and surrounding rail infrastructure. The proposal involves increased emphasis on sustainable transport modes. A Traffic and Transport Assessment has been completed and a Traffic Management Plan will be implemented. The impacts on transport routes are expected to be negligible.</p> | <p>No</p> |
| <p>2.8 Are there existing sensitive land uses or community facilities (such as hospitals, schools etc) which could be affected by the project?</p> | <p>No</p> | <p>This is primarily a commercial and industrial area. The development would not be likely to generate additional impacts or demands on educational or health facilities in the area.</p> | <p>No</p> |

| <p>3. Any other factors that should be considered which could lead to environmental impacts</p> | | | |
|--|-------------------|--|-----------|
| <p>3.1 Cumulative Effects: Could this project together with existing and/or approved development result in cumulative effects during the construction/ operation phase?</p> | <p>Yes</p> | <p>There is a wide range of other permitted projects in the surrounding area. The construction stage of the proposed development has potential to have cumulative impacts relating to noise, disturbance, emissions, traffic, none of which are likely to be significant. There will also be positive cumulative effects with other planned public realm and transport improvements.</p> | <p>No</p> |

| | | | |
|---|-----------|--|----|
| 3.2 Transboundary Effects: Is the project likely to lead to transboundary effects? | No | No trans boundary considerations arise | No |
| 3.3 Are there any other relevant considerations? | No | No | No |

C. CONCLUSION

| | | | |
|--|------------|-------------------|-------------------|
| No real likelihood of significant effects on the environment. | Yes | EIAR Not Required | EIAR Not Required |
| Real likelihood of significant effects on the environment. | No | | |

D. MAIN REASONS AND CONSIDERATIONS

Having regard to: -

- the nature and scale of the proposed development, which is below the thresholds in respect of any relevant classes in Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended,
- the location of the site on lands zoned as 'Z7' and 'Z9' in the Dublin City Development Plan 2016-2022, the objectives for which would accommodate improvements to access/circulation, open space, and green networks. The development plan was subject to a strategic environmental assessment in accordance with the SEA Directive (2001/42/EEC).
- The developed nature of the site and its location within the existing built-up urban area, which is served by public infrastructure, and the existing pattern of development in the vicinity.
- The guidance set out in the "Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development", issued by the Department of the Environment, Heritage and Local Government (2003),
- the location of the development outside of any sensitive location specified in article 109(4)(a) of the Planning and Development Regulations 2001 (as amended),
- The criteria set out in Schedule 7 and 7A of the Planning and Development Regulations 2001 (as amended),
- the available results, where relevant, of preliminary verifications or assessments of the effects on the environment carried out pursuant to European Union legislation other than the Environmental Impact Assessment Directive, and
- The features and measures proposed by the applicant envisaged to avoid or prevent what might otherwise be significant effects on the environment, including measures identified in the Natura Impact Statement, Waste Management Plan, Engineering Report (including Site Specific Flood Risk Assessment), Archaeological Impact Assessment, Preliminary Ecological

Appraisal Report, Architectural Heritage Impact Assessment, and as consolidated in the
Summary of Mitigation Measures Report,

It is considered that the proposed development would not be likely to have significant effects on the environment and that the preparation and submission of an environmental impact assessment report would not therefore be required.

Inspector: _____

Stephen Ward

Date: 25th October 2022

ADP: _____

Tom Rabbette

Date: 25th October 2022