



An
Bord
Pleanála

Inspector's Report

ABP-313146-22

Development

Development consisting of the demolition and clearance of the existing industrial single storey warehouses and sheds and the development of a mixed-use marine commercial, leisure/community and residential based development, and all associated site works.

Location

Former Western Marine Building,
Bullock Harbour, Dalkey, Co. Dublin
A96 X6W2

Planning Authority

Dun Laoghaire Rathdown County
Council

Planning Authority Reg. Ref.

D22A/0006

Applicant(s)

Bartra Property (Dublin) Ltd

Type of Application

Permission.

Planning Authority Decision

Refuse

Type of Appeal

First & Third Party

Appellant(s)	1. Bulloch Harbour Preservation Association CLG 2. Bartra Property (Dublin) Limited
Observer(s)	49 Observations submitted see Appendix 1 for list of names.
Date of Site Inspection	19.03.2023
Inspector	Fiona Fair

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1.0 Site Location and Description

- 1.1. Bullock Harbour is located less than a kilometre from Sandycove Village, within 1.2km of Dalkey Village and within 1.5km of Glasthule village. It is within the low-lying coastal strip, which runs southwards from the city boundary to Killiney, which is predominantly residential in character.
- 1.2. The harbour is overlooked by Bullock Castle, built on the western side of the harbour on elevated ground. The harbour was considerably developed by the Ballast Office of Dublin City in the nineteenth century, from where granite stone was shipped across the bay to be used in building Dublin Port. The principal significance of the harbour in modern times is as a visual and recreational amenity, giving access to the sea and mooring for small boats, with a minor element of commercial fishing and pleasure sailing.
- 1.3. The site subject of this application is located on the eastern side of the harbour. The overall site includes an area of rock outcrop and occasional grass to the north and east, between the area proposed for development and the shoreline. This area of rock outcrop, which is a proposed Natural Heritage Area, is in the applicant's ownership and is used by the public as an amenity. Although within the red line of the planning application, it does not form include any of the proposed development.
- 1.4. The full extent of the site at Bullock Harbour includes the former workshop building and boat yard, which are enclosed by high stone walls, and also the rocky coastal strip directly to the north and east. The overall lands in the applicant's ownership measure 0.59 Ha, including the pNHA rocky area (not forming part of the development proper) and the developable area subject of the planning application measures 0.28 Ha.
- 1.5. The site encompasses a narrow strip of land to the west of the boundary wall fronting the quayside, on which a lean-to building and two containers are currently located. These structures accommodate marine related users, namely a lean to shed with boat hire and occasional sale of bait, crab lobster and fish, and two containers one occupied by Dublin Port and the other occupied by DCSAC Angling Club.
- 1.6. Between the former Western Marine workshop building and the vehicular access to the boat yard, there is a single storey dwelling 'Castlevue'.

- 1.7. The municipal sewage pumping station is located immediately to the south of the former boatyard. South of the laneway entrance to the pumping station, there is a row of seven two storey dwellings fronting the quayside, Beyond these dwellings, considerably further to the south-east, Pilot View apartments are located at a higher level overlooking Bullock Harbour. Other land uses in the environs of Bullock Harbour are predominantly residential in nature.

2.0 Proposed Development

- 2.1. The development will consist of:

- The demolition and clearance of the existing industrial single storey warehouses and sheds (1,210 sqm) and the development of a mixed-use marine commercial, leisure/community and residential based development.

The proposal includes the construction of:

- A craft boat building workshop / craft boat storage facility, total area 397 sqm, including first floor area of 94 sqm.
- A single storey building incorporating relocated marine leisure unit (10 sqm), bin store (9 sqm), relocated marine commercial unit (10 sqm) and community water sports changing facility (60 sqm).
- A three storey building incorporating a cafe (108sqm) at ground floor and one number (411sqm) four bedroom apartment on two levels, at first and second floor, with associated roof terrace at first floor level and two balconies at second floor level, including ground floor entrance and off-street parking (40sqm) for 2 cars.
- A single storey re-located seafood sales outlet (30sqm) with ancillary bin storage.
- Four number fisherman's huts, (total area 19 sqm).
- A new public square fronting on to the harbour (20.85m wide x 9.00m deep =187.65sqm).
- Three number three storey detached houses (each 412sqm) each with roof terraces and off street covered parking for two cars, with provision for five number visitor car parking spaces.

- Eight public bicycle parking spaces and four bicycle spaces to serve apartment.
- Reinstatement and enhancement of existing surface water drainage system in response to best available climate change and wave data, including
 - (i) Recommissioning/reinstatement of existing surface water sump with sluice gate in the eastern part of the land holding;
 - (ii) Construction of a new 300mm storm sewer to run from existing sump across the development area of the site to connect to the existing 300mm outfall culvert discharging under the Bullock Harbour quay road;
 - (iii) Construction of an additional overflow culvert to run inside the existing development area boundary wall for 46.3m along the eastern and northern edges of the development area;
 - (iv) Provision to redirect extreme storm event overflows into a new culvert under the proposed boat storage facility prior to discharge onto quay side (which overflows currently discharge onto the quayside immediately adjacent existing residential property).
- Stabilisation of the existing development area boundary wall and repair with natural coursed granite stone.
- A new support wall in concrete will be erected inside section (34.8 m long) of the existing development area boundary wall at rear and north side of site.
- The existing south-western vehicular access from Bullock Harbour will be maintained and upgraded, creating a two-way roadway and shared footpath affording access to the proposed dwellings to the rear of the development,
- The development will also include piped infrastructure and ducting; changes in level; site landscaping and all associated site development and excavation works above and below ground.
- A Natura impact statement will be submitted to the planning authority with the application.

2.2. The following documents support this application:

- Planning Report prepared by Doyle Kent Planning Partnership Ltd.

- Urban Design Alternatives by Doyle Kent Planning Partnership Ltd.
- Design Statement by de Blacam and Meagher Architects
- Landscape Design Statement by James Kelly B.Sc (Land Arch) Landscape Architect
- AA Screening Report by Scott Cawley Ltd.
- Ecological Impact Assessment by Scott Cawley Ltd (with Bat Survey Report by Eire Ecology)
- Sustainability/Energy Report by J. V. Tierney & Co.
- Bullock Harbour Daylighting and Sunlight Report by J.V. Tierney & Co.
- Traffic and Transport Assessment Report by CS Consulting Group
- Construction Management Plan by CS Consulting Group
- Waste Management Statement for Demolition and Construction by CS Consulting Group
- Engineering Services Report by CS Consulting Group
- Site Specific Flood Risk Assessment by CS Consulting
- Hydrology Report by J BA Consulting
- Construction Environmental Management Plan by JBA Consulting
- EIA Screening Report by JBA Consulting
- Article 103 Report by JBA Consulting
- Operational Waste Management Plan by AWN Consulting
- Archaeological Assessment Report by Dr. Ellen O'Carroll
- Outline Conservation Report and Development Strategy by Howley Hayes Cooney Architects
- Assessment of the Potential for Commercial Marine-Based Activity at Bulloch Harbour by KHSK Economic

3.0 Planning Authority Decision

3.1. Decision

3.2. The planning authority decided to refuse permission for four reasons:

1. The proposed development is located in an area which has been identified as potentially liable to flood events and significant wave overtopping. Having regard to the provisions of Appendix 13 (Strategic Flood Risk Assessment) of the 2016 - 2022 Dun Laoghaire -Rathdown County Development Plan and the 'Planning System and Flood Risk Management, Guidelines for Planning Authorities' issued by the Department of the Environment, Heritage and Local Government in November 2009, the proposed development has not included adequate measures to minimise flood risk, and has not included adequate measures to ensure that residual risks to the area and/or development can be managed to an acceptable level as regards the adequacy of existing flood protection measures and provisions for emergency services access, and thus fails Sections 2(ii) and (iii) of Box 5.1 of the Justification Test for development management of The Planning System and Flood Risk Management Guidelines, 2009. Furthermore, the proposal to provide new residential development within Flood Zone A in particular, namely the proposed apartment over commercial units, would not be in accordance with the requirements of Section 4. 7 and 5.1 of Appendix 13 (Strategic Flood Risk Assessment) of the Dun Laoghaire Rathdown County Development Plan 2016-2022. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. In relation to the significant imbalance and predominance of residential use in the proposal and having regard to the low percentage of overall floor area being provided for the marine related uses together with the low developable site area being provided to support and service such uses, it is considered that insufficient provision has been made for waterfront, harbour and marine related uses. It is considered that the amount of site area reserved for residential use is excessive and seriously compromises the achievement of a quality mixed use and integrated development with adequate and appropriate provision for waterfront, marine and harbour related activities. It is therefore considered that the development as

proposed would seriously compromise the harbour's ability to attract and maintain good marine related uses and harbour activities, would limit the scale and diversity of such uses, which the harbour could support and would be contrary to the 'W' zoning objective for this site which is 'to provide for waterfront development and harbour related uses'. The Planning Authority therefore considers that the development as proposed would be contrary to the zoning objective for this location of providing for waterfront development and marine related uses and would also be contrary to the requirements of Specific Local Objective 22 as set out in the 2016 - 2022 Dun Laoghaire -Rathdown County Development Plan. The proposed development would therefore be contrary to the proper planning and sustainable development of this area.

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

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

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

3.3. Planning Authority Reports

3.3.1. Planning Reports

- It is considered by the Planning Authority that the proposals are out of keeping with the existing harbour thus would have a negative impact on the streetscape, historical features and setting of the harbour and visual amenities of the surrounding area.
- In terms of residential density, the development would equate to a density of 14 units/ha. While a density of this order may be considered for this location, the residential component is considered excessive in terms of scale, with over 72% of the proposed floor area proposed for residential use and 73.4% of the total site area generally being reserved for the residential component.
- Serious concern with respect to flooding, highlight recommendations made by Drainage Planning.
- The proposed development has not included adequate measures to minimise flood risk, and has not included adequate measures to ensure that residual risks to the area and/or development can be managed to an acceptable level as regards the adequacy of existing flood protection measures and provisions for emergency services access.
- Thus, the Planning Authority is not satisfied that the proposed development would be in accordance with the provisions of Appendix 13 (Strategic Flood Risk Assessment) of the 2016 - 2022 Dun Laoghaire -Rathdown County Development Plan and the 'Planning System and Flood Risk Management, Guidelines for Planning Authorities' issued by the Department of the Environment, Heritage and Local Government in November 2009. Accordingly, having regard to the foregoing, a refusal of permission is recommended.
- The breakdown of floor areas and uses proposed is not deemed acceptable in the context of the zoning objective and polices for the subject site. Having

regard to the low percentage of overall floor area being provided for the marine related uses (28% inclusive of cafe), the low developable site area being provided to support such uses - 29.6% (inclusive of cafe and public space) it is considered that insufficient provision has been made for harbour and marine related activities.

- The proposal fails to respond appropriately to the unique site context.
- Concerns regarding the scale, height and massing of the proposed development
- Whilst the Planning Authority consider that there are certain elements of the subject development, which have merit, the fundamental issues though regarding the absence of an integrated design approach, the excessive standalone residential element and the inadequate provision for harbour and marine related uses, have not been addressed. The Planning Authority considers that the subject site has the potential to support a high quality integrated mixed use development at this location, which would both support harbour and marine related uses while also safeguarding and enhancing the amenities of the area.

3.3.2. Other Technical Reports

Biodiversity Officer Report Dated 23/02/2022: Recommends requesting Further Information. Report as per the following.

1. It is noted that Applicants consultants Scott Cawley in both section 3.5 of NIS and section 4.3 of EclA, have omitted the initial email consultation in 2021 with DLR's Biodiversity Officer. DLR's Biodiversity Officer requested at that time that the Applicant submit a formal S. 247 pre-planning request, given the time lapse of 4 years since the previous preplanning meeting, and likely changes since then. Given that the Applicant did not submit such a meeting request, there was a missed opportunity for the Applicant to obtain feedback and biodiversity information from DLR's Biodiversity Officer.

Therefore, the following is requested:

2. In light of the flooding and overtopping of this part of the coastline, noted in the PA documents and also the impacts of climate change in the future, it is unclear how the proposed site will be protected or adapted in the face of these impacts. The evacuation of residents and businesses is one proposed option, however even if this was accepted as an option by the Planning Authority, it is probable that other protection measures may be required in the longterm. This is relevant to biodiversity in terms of how any future proposed protection measures, such as hard structures, if required may impact on the adjacent coastal habitats and associated species. It is requested therefore that the Applicant clearly demonstrates how this is addressed in the EclA, NIS and the other assessments.

3. Habitat Surveys Limitations

It is noted in Section 3.6 of NIS and 4.4.1 of EclA that habitat and flora surveys were completed outside the appropriate season and this is viewed by DLR as a limitation, especially in relation to those habitats within the zone of influence of the proposed development that are important habitats including:

- Intertidal Reefs which occur directly adjacent to the proposed site and their associated flora.
- Rocky habitats in the terrestrial area directly adjacent to the proposed site and potential flora associated with this habitat including rare or protected plants. Some rare plants have been recorded on DLR's coastal habitats including on rocky areas. Vegetation is noted to comprise Sea Cliff habitat type in this area Section 6.2.1 of the EclA and is given County level importance.
- Upper Saltmarsh (noted in the Section 5.2 NIS and 6.2.1 EclA)
- It is also noted in the NIS and EclA that saltmarsh and patchy grass etc occurs on the rocky outcrops within the site.
- Invasive alien species (IAS) and the potential for these to occur on site confirmation regarding IAS is requested and any requirement for an IAS Management Plan and/or Biosecurity measures.
- There are contradictory statements in the EclA and NIS stating that the site is devoid of vegetation and then also stating that 'sparse vegetation and debris' will be cleared from the site. Clarification is requested as to whether or not vegetation

occurs on the site and within the redline boundary including survey, evaluation and assessment of this vegetation including flora species and habitats.

4. Clarification is requested in terms of the area south of the boundary wall which is indicated to occur within the redline boundary - it is unclear as to how this area will be impacted by the proposed development directly or indirectly and there are no details provided of how it will be managed in the future.

5. Impacts of increased activities

There appears to be no assessment of the potential increased activities associated with the proposed development on the surrounding area and harbour, in particular in relation to the human disturbance caused by visual, movement and noise associated with any recreational or leisure activities such as marine or increased use of the rocky shoreline etc. Therefore, an assessment of any activities during operation is requested where relevant and any assessment will be supported by scientific data.

6. Marine Mammals

Harbour porpoise are known to occur around the harbours of DLR and it is reasonable to assume the occasional usage by seal species and harbour porpoise of these areas. Therefore, it is requested that the NIS and EclA take this into account. This also relates to Item 5 also.

7. Otter

Otter, an EU Annexed species occurs within 25m of the proposed site development and within the site redline boundary, this is indicated by spraint evidence and a holt which occur in close proximity to the proposed site, all otter data is available to the Applicants consultants in the DLR County Otter Surveys completed by Triturus in 2019 and 2020. It is requested that otter is assessed by a suitably qualified otter specialist and a clear demonstration of how this species will be protected is provided. Any data not held by the consultant can be obtained from DLR's Biodiversity Officer.

8. Breeding Birds

There is no reference to breeding Black Guillemots, known to use harbour walls and other features for nesting. NPWS have carried out surveys for this species and it is requested that information is sought from NPWS and consultation in relation to the surveys completed. The outcome of which will determine if any further breeding bird surveys are necessary.

9. Habitat degradation as a result of hydrological impacts

The JBA Hydrology report supporting the NIS and the EclA does not address the potential impacts on habitats and species in close proximity to the proposed development (during construction and operation) and only describes the downstream effects on European site areas. It is requested that the following is taken into account in terms of water quality in terms of assessment and mitigation regarding water quality in the NIS, EclA and any supporting reports:

a) Mobile species of the designated European sites such as marine mammals and also birds (as shown in the bird maps in Figure 3 of the NIS). This would also include tern species feeding in the marine waters. There is a potential risk of local impacts on water quality in terms of concrete pouring, runoff of sediments, oil or other lubricants that may impact negatively on these mobile species that are designated features of European sites outside these European sites,

b) Habitats and species of Dalkey Coastal Zone and Killiney Hill pNHA including those areas next to the south boundary wall that receive tidal inundation, intertidal reefs that occur adjacent to the site and also other marine species such as marine fish etc and those species that forage the rocky outcrops and intertidal area including Annex II species Otter and other species such as badger.

c) A detailed examination of the feasibility of attenuating water on site during construction is requested. Given the location and proximity to marine sensitive waters and the size of the site, details of; the size attenuation tanks, how much space they require, where they would be located, what pumping rates would be required during heavy rains/storms and how would this be monitored to ensure no overpumping and pollution of the receiving waters, how they would be managed during an overtopping event and so on. If it cannot be demonstrated that attenuation

is a feasible option on site, then an alternative and proven method for dealing with runoff/water prior to discharge is required.

d) The risk of wave overtopping during storm events is recognised in the CEMP however, it is not clearly detailed how this will be addressed. Therefore, greater detailed guidance on site layout for a contractor is required, for example - location of; storage areas, compound, services such as lavatories, allocation of the concrete trucks area and also the expectations in terms of exactly what infrastructure may require removal prior to a storm. Also, consideration of what materials should not be stored on site i.e. those of greatest risk to the environment that it may be possible to obtain as and when required. Overall, it is not considered that the potential impacts on the adjacent water, European sites, pNHAs, habitats and species is addressed realistically in the measures outlined in the CEMP. It is requested that more robust measures with proven outcomes based on other case studies and best practice for, similar coastal construction operations and sites, are provided.

e) A storm event has the possibility of creating a pollution event and possibly an environment emergency event. It is requested that such a scenario is addressed fully. For example, pollutants such as oils or lubricants can severely impact on the habitats and species of the adjacent European sites and pNHA if they spill out or contaminate marine waters or if oil covers birds, similarly concrete or concrete wash out etc. contain chemicals and are at a pH that can also have severe impacts for example on marine aquatic invertebrates, birds and habitats along with any other pollutants that enter the marine environment and marine ecosystems.

10. Disturbance and Displacement

a) Otter

It is requested that the assessment on otter is revised to take into account the DLR County Otter Surveys completed by Triturus in 2019 and 2020 and which identified important otter habitats in the area of Bulloch Harbour and beyond including an otter halt with ca 300m. Otter are afforded strict protection under EU and Irish law.

Also, the assessments do not consider the potential increase in human activity In the area and the potential impacts on otter, it is requested in light of the use of the area by otter and the proximity of the otter halt that the assessment of otter is revised. It is likely that otter use this area as a result of low human disturbance relative to the highly disturbed environment of the surrounding areas and as reported In the Triturus report 2020.

b) Noise Impacts

It is requested that screening of the proposed site using noise reduction screens are used in addition to the noise mitigation outlined in the CEMP.

c) Visual Impacts

It is requested that the assessments consider visual and movement disturbance impacts in terms of the construction phase. This is possible to address through the noise reduction screening.

d) Lighting Impacts

Although lighting mitigation is described in the EclA for bats and states that it is considered In the lighting design, it is requested that the lighting plan for 1. construction and 2. operation are provided along with details of the specific mitigation measures incorporated for all species, to demonstrate how species are protected including bats, otter, and if any roosting birds, that may occur within the zone of influence.

e) Potential impacts on Lambay Island SAC (Section 7.3)

An error is noted in Section 7.3.4 which details the disturbance of harbour porpoise which should read grey seals and harbour seals.

11. Habitat Enhancement for Biodiversity

a) Given the proximity of the proposed site to sensitive coastal habitats and in order to avoid the possible spread of species to adjacent coastal areas via marine water, wind and animals, it is requested that the Landscape Plan is examined with input

from the ecologist/botanist, in terms of the species chosen including those chosen for pollinators and grasses to ensure they are appropriate to the location and will not colonise the pNHA and downstream coastal habitats and/or European sites. It is also noted that DLR do not encourage the use seed mixes for pollinators and request the examination of the reuse of soils on site along with a management programme to develop a local habitat where feasible. This will be done in consultation with DLR's Biodiversity Officer.

12. Rocky coastline and associated habitats within the redline boundary:

Given the sensitivities of the coastal habitats along this coastline and within the Dalkey Coastal Zone and Killiney Hill pNHA, a Biodiversity Management Plan for the rocky coastline and associated habitats is requested and this will include for the longterm management and monitoring of this area for biodiversity. This will be completed in consultation with NPWS and DLR's Biodiversity Officer.

13. Landscape Plan

There appears to be some omissions and inconsistencies In the Landscape Plan DWG A-PA-108 in relation to the proposed planting. It is requested that the details are completed following on from item 11 above to Include the ecologists input into all the Landscape documents.

14. CEMP

Given the proximity of sensitive marine habitats, pNHA and the potential presence of mobile designated features of European sites, more details of the mitigation measures of the CEMP are required will give clear guidance to an appointed contractor. An updated CEMP that will include any updates related to the NIS and EclA as part of the FI and will also include the following:

a) Site specific details of water quality mitigation including design details and specification of SUDS measures during construction and other features to address potential polluting substances such as concrete, oils etc. Details of how wet concrete pouring will be managed is also requested and a method statement provided.

- b) Site specific details of dust management.
- c) Site specific details of noise mitigation including design and specification of noise reducing screening of the proposed site (also to provide screening of the site to address visual disturbance to marine fauna) and details of other noise mitigation measures.
- d) Site specific details of construction lighting to address potential impacts on nocturnal species including EU Annex II species.
- e) Site construction layout drawing indicating proposed site compound, bunded storage areas, SUDS construction measures and water drainage etc.
- f) Refuelling will take place off site where feasible
- g) As noted in Item 9 above, a detailed examination of the feasibility of attenuating water on site is requested. Given the location and proximity to marine sensitive waters and the size of the site, it is unclear what size attenuation tanks would be required, what space would they require, where would they be located, what pumping rates would be feasible during heavy rains/storms and how would this be monitored to ensure no overpumping and pollution of the receiving waters. If it cannot be demonstrated that attenuation is a feasible option on site, then an alternative and proven method for dealing with runoff/water prior to discharge is required.
- h) As noted in Item 9 above, the risk of wave overtopping during storm events is recognised in the CEMP however, It is not clearly detailed how this will be addressed and greater detailed guidance on site layout for a contractor is required, for example - location of; storage areas, compound, services such as lavatories, allocation of the concrete trucks area and also the expectations in terms of exactly what infrastructure may require removal prior to a storm. Also, consideration of what materials should not be stored on site i.e. those of greatest risk to the environment that it may be possible to obtain as and when required. Overall, it is not considered that the potential impacts on the adjacent water, habitats and species is addressed realistically in the measures outlined in the CEMP. It is requested that a more robust

measures with proven outcomes based on other case studies for coastal construction operations and sites are provided.

i) As noted in Item 9 above, a storm event and overtopping has the possibility of creating a pollution event and possibly an environment emergency event. It is requested that such a scenario is addressed fully in the assessments. For example, pollutants such as oils or lubricants can severely impact on the habitats and species of the adjacent European sites and pNHA if they spill out or contaminate marine waters or if oil covers birds, similarly concrete or concrete wash out etc. contain chemicals and are at a pH that can also have severe impacts for example on marine aquatic invertebrates, birds and habitats along with any other pollutants that enter the marine environment and marine ecosystems.

j) The primary responsibilities of the EcOW shall be to:

- Act as the contact for the Planning Authority and agree the frequency and number of site inspections and monitoring programme for the implementation of the Biodiversity related mitigation of the updated NIS, Ecological Impact Assessment and CEMP;
- Act as the primary on-site ecological contact for the Project Manager and Site Manager (SM) regarding implementation of the Biodiversity related mitigation of the updated NIS, Ecological Impact Assessment and CEMP;
- Ensure compliance with all Biodiversity related mitigation of the updated NIS, Ecological Impact Assessment and CEMP;
- Request relevant records and documentation from the SM where necessary;
- Attend routine meetings with the SM;
- Keep detailed records of any ecological incidents and the remedies required and implemented. Report these to the Project Manager and Planning Authority;
- The EcOW shall produce the staged monitoring reports in agreement with the Planning Authority on the implementation of Biodiversity related mitigation of the updated NIS, Ecological Impact Assessment and CEMP; The EcOW shall submit these directly to the Planning Authority and to the Project Manager.

- The EcOW shall also act as overall technical advisor to the Project Manager and SM regarding the implementation of all Biodiversity related mitigation of the updated NIS, Ecological Impact Assessment and CEMP.
- Note: No modifications to the updated NIS, Ecological Impact Assessment and CEMP Plan can be made post planning permission that will alter the outcomes of the ecological assessments in terms of significance of impacts. Therefore, no modifications can be made without prior agreement with the Planning Authority and no modifications will be proposed that will negatively impact biodiversity.

15. It is also requested that the Applicant clearly demonstrates how item 14. a) to i) inclusive are addressed in the EclA, NIS and the other assessments.

Conservation Officer & Senior Architect Report Dated 17/02/2022:

Recommends Further Information. Report summarised as per the following.

Whilst acknowledging that the wider setting of the Harbour has been somewhat compromised by the development of Pilot View apartments and the nearby Nursing Home. Any new development on this site presents an opportunity to repair the damage by seeking to make a positive contribution to the area which respects the character of the harbour. The style and form of any redevelopment of this site should contribute to a sense of place reinforcing traditional harbour/quayside architecture with a mix of forms, heights, materials and uses.

While some elements are acceptable; there are other elements which due to the height, scale and massing are at variance to the stated objectives of the County Development Plan at set out above. The form and design of the Boat Building Workshop is considered acceptable and accords with the guidance for re-development of the site as set out in SLO 22. While the form of the adjacent gable-fronted apartment building is acceptable, however, the height should be reduced to read as 2-2.5 storey to avoid significantly rising above the rocky backdrop.

The three-storey houses to the west of the site are out-of-keeping with the scale and height of the existing streetscape along the quayside and will have a negative visual Impact on the surrounding townscape and in particular on the view of Bulloch

Harbour as approached coming down the hill from Ulverton Road and on views from Harbour Road. This is illustrated in the Design Statement, Proposed View A to E, by De Blacam and Meagher. It is suggested that the height of the proposed three-storey houses should be reduced by the equivalent of one-storey.

Any future proposal should also seek to provide some form of public access through the site to the rocky foreshore and back to the quayside via the small fisherman's huts so that the current cul de sac arrangement for pedestrians can be avoided.

Drainage Planning Report Report, dated 2/03/2022:

Split recommendation - Refusal & Further Information.

The report compiled by Drainage Planning is summarised below. In addition, Appendix A is appended to the Drainage Report, and is available to view on file. Appendix A is Technical Comment on the Site-Specific Flood Risk Assessment.

Flood Risk Assessment

The proposed development has a frontage onto Bulloch Harbour and so will have to be assessed in the context of Flood Risk, in particular the risks of Coastal Flooding and rise in sea levels due to Climate Change. Rising sea levels due to climate change will permanently raise the mean sea level, therefore, Municipal Services considers it prudent to adopt the precautionary approach to climate change as recommended in the 'Planning System and Flood Risk Management guidelines' and that the extents of Flood Zones in coastal areas should be redefined to the High-End Future Scenario (HEFS) as advised in the 'Planning System and Flood Risk Management guidelines'.

Section 3.2 of Appendix 13 of the County Development Plan 2016-2022 discusses identification of flood risk:

"...it should be borne in mind that the input data was developed at a point in time and there may be changes within the catchment that mean a future study, or more localised assessment of risk may result in a change in either flood extent or depth... which could show a greater or less level of risk than is included in the Flood Zone

maps... This is to be expected and it will require discussion between the developer and the Dun Laoghaire Rathdown Planning and Engineering teams to ensure the assessment is appropriate and relevant to the site in question."

In accordance with the above excerpt, any SSFRA or Flood Risk Modelling should include all the latest flood data available. As such, there are two sources of flood data which are of relevance to this site that are publicly available but have not been included in the applicant's SSFRA, which are the latest National Coastal Flood Hazard mapping released by the OPW in the second half of 2021 and the Wave Overtopping extents from a Coastline Screening study undertaken for DLRCC in 2021. This information was available prior to the finalisation of the SSFRA prepared by CS Consulting and Bulloch Harbour Flood Risk Modelling prepared by JBA.

The SSFRA also focuses mainly on extreme, less frequent events and does not analyse the impact of more frequent events which also have significant safety implications for the users and residents of any development at Bulloch Harbour.

Background

The following sections of Appendix 13 (Strategic Flood Risk Assessment) County Development Plan 2016 -2022 are of particular relevance to the assessment of the SSFRA.

Section 2.3 Definition of Flood Zones

In the 'Planning System and Flood Risk Management', Flood Zones are used to indicate the likelihood of a flood occurring. These Zones indicate a high, moderate or low risk of flooding from fluvial or tidal sources and are defined below in Table 2-2.

It is important to note that the definition of the Flood Zones is based on an undefended scenario and does not take into account the presence of flood protection structures such as flood walls or embankments. This is to allow for the fact that there is a residual risk of flooding behind the defences due to overtopping or breach and that there may be no guarantee that the defences will be maintained in perpetuity,

It is also important to note that the Flood Zones indicate flooding from fluvial and tidal sources and do not take other sources, such as groundwater or pluvial, into account, so an assessment of risk arising from such sources should also be made.

Section 3.3.7 Climate Change

Climate change should be considered when assessing flood risk and in particular residual flood risk. Areas of residual risk are highly sensitive to climate change impacts as an increase in flood levels will increase the likelihood of defence failure.

The 'Planning System and Flood Risk Management' recommends that a precautionary approach to climate change is adopted due to the level of uncertainty involved in the potential effects. Specific advice on the expected impacts of climate change and the allowances to be provided for future flood risk management in Ireland is given in the OPW draft guidance 1. Two climate change scenarios are considered. These are the Mid Range Future Scenario (MRFS) and the High-End Future Scenario (HEFS). The MRFS is intended to represent a "likely" future scenario based on the wide range of future predictions available. The HEFS represents a more "extreme" future scenario at the upper boundaries of future projections. Based on these two scenarios the OPW recommended allowances for climate change are given in Table 3-2. These climate change allowances are particularly important at the development management stage of planning and will ensure that proposed development is designed and constructed to take into account current Government advice. Guidance on when the MRFS or HEFS should be used is provided in Section 4.9. It is acknowledged that climate change research is advancing rapidly, and the allowances provided in the OPW guidance may be an underestimate of future impacts. At this, the development planning stage, a detailed knowledge of the impact of climate change on flood levels is not required to inform the strategic allocation of land. Instead, and in the absence of detailed projections of climate change impacts, fluvial flood extents can be assessed by using the Flood Zone B outline as a surrogate for 'Flood Zone A with allowance for the possible impacts of climate change', as suggested in the 'Planning System and Flood Risk Management'. For tidal flood risk, an increase of 0.5m or 1m should be assessed using UDAR or other available ground level data.

4.9 Incorporating Climate Change into Development Design

“As detailed throughout this SFRA, consideration and incorporation of the potential impacts of climate change into development layout and design is essential. For most development, including residential, nursing homes, shops and offices, the medium-range future scenario (20% increase in flows and / or 0.5m increase in sea level) is an appropriate consideration. In the case of coastal locations, and as climate projections are further developed, it may be prudent to demonstrate adaptability to even higher sea levels”.

5.3.8 Coastal flooding

“Climate change projected to result in sea levels to increase, with latest OPW recommendations indicating rises of between 0.5 and 1m should be planned for. Development opportunities along the seafront are limited, but any flood risk assessment for infill or small new development should take into account the potential impact of climate change on sea levels. Depending on the nature and design life of the development, this may include additional allowances in finished floor levels, emergency planning and business continuity and recovery.”

4.6 Applications for Minor Developments in Areas at Risk of Flooding

"In an extension to Section 5.28 of the Planning Guidelines on Flood Risk Management, two classes of 'Minor developments' have been defined through this SFRA. These are:

Class 1 - Works directly associated with existing developments, such as extensions, renovations and rebuilding within the footprint of the existing development, and changes of use.

Class 2 - Works in relation to infill development, which may include development of previously unused (greenfield) land, or building within the curtilage of an existing development, but outside the footprint of the building.

In the case of class 1, the 'Sequential Approach' and 'Justification Test' will not apply as they relate to existing buildings. However, an assessment of the risks of flooding

should accompany such applications to demonstrate that they would not have adverse impacts or impede access to a watercourse, floodplain or flood protection and management facilities. Where possible, the design of built elements in these applications should demonstrate principles of flood resilient design (See Section 4 - Designing for Residual Flood Risk of the Technical Appendices to the DoECLG Flooding Guidelines). Emergency access must be considered as in many cases flood resilience will not be easily achieved in the existing built environment.

For Class 2 development, construction of new buildings on what would otherwise be greenfield, or undeveloped land, has generally been found to generate an unjustifiable level of risk, either through introducing additional people into the floodplain, blocking surface water and overland flow paths or requiring works which are likely to have a negative impact on flood risk elsewhere. For this reason, new, standalone development is not permitted within Flood Zone A or B for highly vulnerable uses or in Flood Zone A for less vulnerable uses."

4.7 Applications for Larger Development in Areas at Risk of Flooding

4.7.1 Highly vulnerable development in Flood Zone A or B

Development which is highly vulnerable to flooding, as defined in The Planning System and Flood Risk Management, includes (but is not limited to) dwelling houses, hospitals, emergency services and caravan parks.

4.7.2 New development

It is not appropriate for new, highly vulnerable development to be located on greenfield land in Flood Zones A or B, particularly outside the core of a settlement and where there are no flood defences. Such proposals do not pass the Justification Test. Instead, a less vulnerable use should be considered.

5.1 Undeveloped land

With the exception of zoned Major Town Centres, District Centres and Sandyford Business District, new development within Flood Zones A or B does not pass the Justification Test and will not be permitted. This applies to undeveloped areas which

are zoned for development but are currently undeveloped and to areas of existing low intensity development. Whilst lands may have retained a zoning objective which would include development, applying the guidance in Section 4 means such development is restricted to Flood Zone C, with water compatible uses located within Zone A and B.

Recommendations

A. One residential unit over commercial unit - RECOMMENDATION OF REFUSAL

The OPW released National Coastal Flood Hazard Mapping, and associated report, in late 2021 which provides extents and depths of coastal flooding for the Present Day, Mid Range Future Scenario (MRFS) and the High-End Future Scenario (HEFS). It should be noted that the applicant has not included any drawings which overlay the flood extents and depths for the 0.5% AEP and 0.01% AEP events for current, MRFS or HEFS, for existing and proposed development scenario. Without this it is difficult to confirm exactly what areas of the proposal are in Flood Zones A, B or C. However, the HEFS extents for Bulloch harbour appear to extend significantly into the west portion of the proposed site. Using these extents to redefine Flood Zone A and B as per the previous, it would appear that this encapsulates the access road, the entire footprint of the building to the west of the site and would have possible implications for House 1.

It is the opinion of Municipal Services that following the rationale detailed above, the one residential unit over commercial units is located in Flood Zone A, including the access point at ground level, and therefore in accordance with any of Sections 4.6, 4.7 or 5.1 of Appendix 13 (Strategic Flood Risk Assessment) County Development Plan 2016 -2022 this element of the proposal should be refused.

B. Commercial Units - FURTHER INFORMATION REQUIRED

The proposed craft boat workshop/storage, marine leisure/commercial units, watersports changing facilities and fisherman's huts would be linked to Water-based recreation and tourism and thus be categorised as Water compatible development

and therefore appropriate development in accordance with the Planning System and Flood Risk Management guidelines.

Under the 'Planning System and Flood Risk Management guidelines', commercial units fall under the category of Less Vulnerable Development. Less vulnerable development, such as the cafe and seafood sales outlet, is considered appropriate for Flood Zone B but is required to satisfy the requirements of Box 5. 1 (Justification Test for development management) of the Planning System and Flood Risk Management guidelines.

It is the opinion of Municipal Services that the applicant has not satisfied the requirements of parts 2(ii) and 2 (iii) of the Justification Test in so far as insufficient detail has been provided for the commercial elements of the development. The applicant will need to address not only extreme events but will also have to deal with fluctuating water levels and future mean sea water level rise from the impact of climate change that would require, for all intents and purposes, the commercial units to have permanent defences in place for events for the 5.0% AEP event if not the 2% AEP event.

Further information is required as follows:

1. The applicant is requested to overlay the flood extents and depths for the 0.5% AEP and 0.1%AEP events for present day MRFS and HEFS scenarios, for existing and proposed development. This should confirm whether the commercial elements are in Flood Zone A or B.
2. The applicant is requested to submit detailed proposals of the flood defence/ flood resilient measures that will be built-in to the proposed development, specifically those for the commercial elements. Such measures should be incorporated into the architectural plans and layouts and be clearly identified as thus. The applicant shall also demonstrate how the measures being proposed have addressed all the subheadings of Section 4 (Designing for Residual Risk) of Appendix B of Planning System and Flood Risk Management guidelines.

3. The applicant is requested to demonstrate that safe access/egress for users and emergency services can be maintained during the 0.5% and 0.1% AEP events.

C. Three Houses - RECOMMENDATION OF REFUSAL

The flood (wave overtopping) volumes in the updated Wave Overtopping Assessment would appear to be in accordance with what would be expected. However, no risk assessment on depth or velocity has been included in the CS Consulting Site Specific Flood Risk Assessment.

CS Consulting has set out the proposed Emergency Response Plan in Section 19.0 Adaption & Emergency Planning Procedures of the SSFRA. There are a number of significant issues with these proposals. Any development that relies at the outset on the need for an Emergency Response Plan is flawed. The notion that a Management Company would be willing to and could be relied upon to fully understand and implement such a plan would have to be questioned. The requirement for residents to either be trapped in or to have to leave their homes during storms, which will only become more frequent and severe over time, are unacceptable mitigation measures. This is further compounded by the requirement for this evacuation to have to be facilitated by emergency services, and as such this Emergency Response Plan is an unacceptable mitigation measure for a development to propose. Section 19 also assumes that the local authority will provide a degree of protection for critical infrastructure, such as the Irish Water Regional Foul Water Pumping Station, in future which would also protect this site, again placing future flood response and resilience as the responsibility of third parties.

It is the opinion of Drainage Planning that the development proposal has not included adequate measures to minimise flood risk to people, property, the economy and the environment as far as reasonably possible and has not included adequate measures to ensure that residual risks to the area and/or development can be managed to an acceptable level as regards the adequacy of existing flood protection measures or the design, implementation and funding of any future flood risk management measures and provisions for emergency services access and thus fails Sections 2(ii) and (iii) of Box 5.1 of the Justification Test for development

management (The Planning System and Flood Risk Management Guidelines). Therefore, this element of the proposal should be refused.

Surface Water Drainage - General - FURTHER INFORMATION REQUIRED

1. The applicant is requested to demonstrate by the submission of calculations that there will be sufficient storage within the proposed surface water drainage system that avoids surcharging of the surface water drainage system to the extent that the surcharging would create a flood risk.
2. The applicant is requested to demonstrate how the inlets and outlets of the culvert and proposed stormwater sewer will be kept clear of blockages.
3. The applicant is requested to assess the Impact of MRFS and HEFS on the surface water drainage proposals.
4. The applicant has not incorporated sufficient SuDS measures in their proposal to demonstrate accordance with Section 5.1.1.8 Policy EIS: Sustainable Drainage Systems and Section 8.2.4.9 of the County Development Plan 2016-2022. The applicant is requested to resubmit their design incorporating SuDS measures appropriate to the development, such as rainwater harvesting, green roofs, permeable paving, tree pits, raingarden planters, etc.
5. The applicant is requested to show the options being proposed for interception and treatment with contributing areas on a drawing together with an accompanying text and tabular submission showing the calculations, to demonstrate that the entire site is in compliance with GDSDS requirements. The applicant should note that over provision in one location does not compensate for under provision elsewhere'.

Heritage Officer - No report received.

Housing Department – report dated 31/01/2022:

It is noted that the applicant has applied for and been granted an exemption, reference no. V/099/21 from Part V of the Planning and Development Act 2000, as amended'.

Parks Department - No report received.

Public Lighting – report dated 24/01/2022, Recommends requesting Further Information.

Following information is required:

1. Lighting design report with details of the lighting equipment to be used
1. Lux contour drawing to the 1 lux line (with no masking)
2. The existing lighting on Bullock Harbour is of a P4 lighting class and this needs to be matched in this development'

Waste Management/ Environmental Enforcement – report dated 17/02/2022:

Report states that this Section is 'generally unhappy with the submitted documents..' and consider a number of matters to be addressed by way of condition.

The following reports have been prepared as part of this planning submission;

- EIAR Screening Report
- Preliminary Construction Environmental Management Plan (CEMP)
- Technical Report
- Operational Waste Management Plan
- Sustainability/Energy Statement
- Construction Management Plan
- Waste Management Statement

Environmental Management notes the location of the proposed works adjoining residential Areas and the existing Sewage Pumping Station.

The submitted documents are noted to be outline in nature and lacking relevant detail. In particular the submitted Waste Management Statement is not consistent with the Construction and Demolition Resource Waste Management Plan (RWMP) as set out in the Best Practice Guidelines for the Preparation of Resource and Waste Management Plans for C&D Projects (EPA 2021). The absence of any noise planning in relation to either the construction phase or the operational phase of the proposed works is also noted as is the lack of detail in relation to operational waste management facilities.

Environmental Enforcement is generally unhappy with the submitted documents and consider that the following are be required to provide for the design and management of the proposed works

1. Environmental Monitoring

Prior to the commencement of the proposed site works noise, vibration and dust monitoring stations to be installed and maintained to provide continuous monitoring to measure and record the impact of site activities on local receptors. Noise monitoring to demonstrate compliance with the recommendations contained in BS 5228 shall be installed, monitored and reported on at weekly intervals by a suitable qualified specialist company for the duration of the contract. All monitoring data to be compiled into a weekly technical monitoring report which shall identify remedial measures where levels exceed relevant limit values.

2. Construction Waste

Records shall be maintained and made available for inspection on site demonstrating tracking of all waste generated to final destination.

A Construction and Demolition Resource Waste Management Plan (RWMP) as set out in the Best Practice Guidelines for the Preparation of Resource and Waste Management Plans for C&D Projects (EPA 2021) shall be developed, Implemented and updated throughout the project, identifying type of materials/proportion of re-use/recycled materials and future maintenance to support the implementation of Government and EU circular economy policy.

3. Liaison with Public

A Public Liaison Plan shall be developed and implemented for the duration of the works, covering the following;

- Appointment of a Liaison Officer as a single point of contact to engage with the local community and respond to concerns
- Keeping local residents informed of progress and timing of particular construction activities that may impact on them
- Provision of a notice at the site entrance identifying the proposed means for making a complaint
- Maintenance of a complaints log recording all complaints received and follow up actions

4. Operational Waste Management

Submission of a detailed Operational Waste Management Plan demonstrating measures to allow segregation and management of all operational waste arising within the curtilage of the development in accordance with relevant waste legislation including by-laws.

5. Noise Management

A Noise Management Plan shall be developed and implemented demonstrating selection of construction methodology and implementation of mitigation measures to minimise nuisance affecting adjoining properties, both during the construction and operational stages of the proposed development.

6. Pest Control

An appropriate rodent/pest control plan shall be developed and implemented for the duration of the works on site'.

Transportation Planning - Report Dated 23/02/2022:

Recommends requesting Further Information. Report summarised as per the following.

Transportation Planning requests Further Information for the proposal and revised drawings and details shall be submitted, as appropriate, for the following items:

1. The Applicant is requested to undertake a detailed Quality Audit (which shall include a Road Safety Audit, Access Audit and a Walking Audit) to demonstrate that appropriate consideration has been given to all relevant aspects of the proposed residential and non residential development in accordance with the Design Manual for Urban Roads & Streets (DMURS). The Independent Audit Team shall be approved by the Planning Authority (Transportation Planning Section) and all measures recommended by the Auditor shall be undertaken unless the Planning Authority approves any departure in writing. A feedback report should also be submitted providing a response to each of the items. The following specific list of items should be addressed as part of the audit:

- Requirement for edge protection to pier to overrun of vehicles/NMUs into harbour.
- Potential conflict between vehicles entering/egressing the proposed development and the location of fisherman's huts.
- Any potential conflicts arising from the proposed location of the boat building workshop to the rear of the public space/cafe seating area.
- Any potential conflicts arising from the intensification of use of the general harbour area as a result of the proposed development.

2. The Applicant shall submit a detailed breakdown and revised drawings showing an appropriate amount of car parking spaces for the residential and non-residential units within the curtilage of the proposed overall development in accordance with Table 8.2.3 and 8.2.4 of the current County Development Plan (2016 - 2022), so as to avoid an overspill of car parking on Bullock Harbour and in the nearby residential areas. The excess residential parking shall be omitted or re-allocated.

3. The Applicant shall submit revised drawings and details which demonstrate the proposed provision of cycle parking for the proposed development (including houses) in accordance with DLRCC's 'Standards for Cycle Parking and associated Cycling Facilities for New Developments.'

4. The Applicant shall submit existing and proposed road layout drawings which demonstrate all existing road markings and traffic calming/control measures along the pier and clearly demonstrates proposed road markings and signage leading to and within the vicinity of the proposed development.
5. The Applicant shall submit revised drawings which demonstrate which of the proposed car parking spaces will be equipped with electric vehicle charging points. The submitted drawings shall also show that the proposed car parking spaces, for the proposed overall development, are constructed so as to be capable of accommodating future electric charging points for electrically operated vehicles without the need for future excavation/intrusive works.
6. The Applicant shall submit detailed drawings and details showing the loading/unloading arrangements for the proposed non-residential units.
7. The Applicant shall show on a detailed plan layout drawing the turning arrangements and vehicle manoeuvres required for emergency/tender vehicles, service vehicles, refuse collection etc. on the public road at the end of Bullock Harbour. The Applicant shall show the above on a detailed layout drawing by using a Computer Aided Design (CAD) software such as Autoturn or similar computerised design software'.

Environmental Health Officer – report dated 08/02/2022:

Recommends requesting Further Information

1. A baseline noise survey should be performed by a qualified technician before a decision is made. The site neighbours residential properties and surrounds a particular property on 3 sides.

The impacts of the demolition and construction phases on the receiving environment should be predicted and mitigation measures proposed, especially for any proposed rock braking activities. This report should include a baseline environmental noise survey and predictive modelling on the noise impacts of the operational phase.

2. It shall be included in the CEMP that all activities including deliveries which are required outside of the stated working hours will require prior approval from DLRCC planning department.

Normal working hours for the site shall be from:

08:00 a.m. to 18:00 p.m. Monday to Friday, 08:00 a.m. to 14:00 p.m. Saturday

No activities shall take place on Sundays or Bank Holidays'.

3.4. **Prescribed Bodies**

Dept. of Agriculture, Food & Marine – report dated 14/02/2022:

No objection. Report as per the following. 'MED Foreshore Comments

Sea Fishing

Sea fishing does occur in proximity to this area; however any impact on sea-fishing is not a matter for this office.

Fishery Harbours

The nearest Fishery Harbour Centre is Howth F.H.C. Due to the distance separating Howth FHC and the Proposed Works Areas as indicated on the drawings and information in the planning application, the proposal as presented is unlikely to have any impact on this or any other FHC.

Aquaculture

There are no local licensed aquaculture sites close by that might be impacted upon by this application.

Comments

MED has no objections to the application as presented. As with all work in the vicinity of the water best practice must be followed during the to ensure that the

execution of the works and operations of the buildings thereof do not create unnecessary or unmitigated negative impacts on water quality, safety or access

Cumulative Impact

Commentary on the cumulative impact of these types of development in conjunction with this application, on a Natura 2000 site, is not a matter for this office'.

Dept. of Housing, Local Government and Heritage Submission 1 –

Archaeology, report dated 09/02/2022:

No objection subject to compliance with conditions. Report as per the following.

The application for permission for development was accompanied by an Archaeological Assessment with Testing Report by Dr Ellen O'Carroll (dated December 2021). Archaeological mitigation of archaeological monitoring was recommended (section 1.5). Having reviewed all of the development application's documentation and mapping the National Monument Service of the Department of Housing, Local Government and Heritage agrees with this mitigation and now recommends archaeological monitoring.

Archaeological monitoring should be undertaken as follows:

1. The applicant is required to engage the services of a suitably qualified archaeologist to carry out archaeological monitoring under licence at the development site. No sub surface work should be undertaken in the absence of the archaeologist without his/her express consent.
2. Should significant archaeological features be found, any works which would affect them shall cease pending agreement with the National Monument Service of the Department of Housing, Local Government and Heritage as to how they are to be dealt with. Where archaeological material/features are shown to be present, preservation in situ, preservation by record (excavation), or further monitoring may be required.

3. Having completed the work, the archaeologist should submit a written report to the Planning Authority and to the Department of Housing, Local Government, and Heritage.

Reason: To ensure the continued preservation (either in situ or by record) of places, caves, sites, features or other objects of archaeological interest.'

Submission 2 - Architecture Dated 14/2/2022: Recommends requesting Further Information. Report as per the following.

The harbour is a recorded monument (and is noted in the Record of Protected Structures appendix of the Development Plan) and has been subject to recent conservation works.

The application is accompanied by a built heritage assessment report and appraisal of the development strategy, which describes the historical context and cultural significance of the historic harbour area. It discusses the characteristics that define the area and the elements that detract from it, such as the Pilot View apartments to the south and the Our Lady's Manor site to the west. The report notes the strength of the local distinctiveness and relationship between natural and manmade elements, given that the harbour was constructed from the granite quarried on site.

The Department is supportive of the adaptation and reuse of redundant structures as an approach to sustainable regeneration. In this instance the proposed demolition of a substantial warehouse and ancillary structures is recommended by the applicant on the basis that the industrial site detracts from the amenity of the historic context of the harbour and the adjoining protected structures/single private houses situated to front the west quay. The Department consider that the protected structures are the reference for the proposed development in terms of height, scale and overall arrangement to the quay and should also address the special maritime and natural topography of the rocky outcrop to the eastern side of the site. The development should be designed to address the historical context of the quay and harbour in a way that is both contemporary and sensitive to its setting and that the role of the new development should be to enhance and support the harbour and recommends the

avoidance of the negative impact of higher density development as per modern nearby developments.

Within the overall re-development a more modest scale of insertion has been indicated in the context of the surviving villas, the series of gable ends fronting the quay are generously set back and the structural form reflects the traditional linear rhythm of the historic terrace. The major development set to the interior of the site is partially mitigated by the existing structures and outcrop feature. However, this image indicates that the grouping of the three flat roofed villas would exceed the height of the outcrop to the east, which is one of the defining characteristics of the harbour as a shelter from the open sea. The architectural heritage assessment provided is supportive of the modern architectural style on the basis that it has historical precedent in close-by Sandycove. This precedent is acknowledged, however, the structure referred to is a standalone architectural element that is enjoyed in the round, from the sea and within the cultural landscape of Sandycove. In this instance three No. substantial contemporary houses appear tightly planned around a crowded shared space which don't adequately merge with the coastal topography. The reduction by 1 No. residence to the rear of the multiple gabled structure would allow for the design of a more natural and secreted development and an enhanced buffer between the services areas of the cafe and the private residences.

This Department consider that sufficient views have not been provided to show the impact of the three detached houses from the sea and their direct impact on the setting of the villas and character of the harbour area. The subject site is within a location that is valued and understood still as a working harbour, and therefore views from sea as well as land should be taken, to clearly show all usual viewpoints towards the harbour seen by boat users.

Built Heritage Recommendations:

The Department is concerned that the proposal as currently designed may not have sufficient regard to the special nature of the area in terms of its overall historical character and maritime heritage. The height, scale and the arrangement of the

proposed structures require greater consideration to avoid adversely affecting the architectural character of this unique harbour setting.

Therefore, the Department recommends that Further Information is requested to illustrate the proposed impact on the historic setting of Bullock Harbour as follows:

An appraisal of the visual impact of the development on the character of the harbour and its historic structures and features, specifically referencing Development plan objectives and policies, with recommendations as to how best to mitigate the identified impacts of the proposed design as raised above i.e. the omission of 1 No. house to the rear of gable fronted cafe/terrace, redesign of the twin-gable structure to reduce its impact. Clarification of overall finishes and public realm treatment including re-making of boundaries.

A selection of photographic images to describe the revised proposal from a wider range of views, including from the sea and publicly accessible areas of the outcrop; specifically, the revised proposal should be seen in juxtaposition with the nineteenth century villas and their amenity.

Dept. of the Environment, Climate and Communications, report dated 7/2/2022:

Geological Survey Ireland has no specific comment or observation to make on this matter at this time.

Inland Fisheries Ireland, report dated 24/1/2022:

- Pollution of the adjacent coastal waters from poor on-site construction practices could have a significantly negative impact on the fauna and flora of waters in Bullock Harbour. High levels of suspended solids settling on the sea shore and seabed can alter habitats resulting in potential loss of feeding, nursery and spawning grounds for fish. All measures necessary should be taken to ensure protection of local aquatic ecological integrity, in the first place by complete impact avoidance and as a secondary approach through mitigation by reduction and remedy.
- It is essential that the receiving foul and storm water infrastructure has adequate capacity to accept predicted volumes from this development with no negative

repercussions for quality of treatment, final effluent quality and the quality of receiving waters. It is noted that Ringsend WWTP is currently working at or beyond its design capacity and won't be fully upgraded until 2023. Also, in November 2020, a High Court judge ruled planning permission must be quashed for a proposed €500 million wastewater treatment plant at Clonsaugh, intended by Irish Water to supplement the Ringsend waste water treatment plant.

- Any top soil or demolition material which is to be stored on site must have mitigations in place to prevent any deleterious material entering the harbour.
- Any dewatering from planned excavation works anywhere on site must be via settlement areas.
- The mitigation measures outlined in chapter 7.5 and 8.4 of EIAR screening report should be made a condition of planning.
- All discharges must be in compliance with the European Communities (Surface Water) Regulations 2009 and the European Communities (Groundwater) Regulations 2010'.

Irish Water, report dated 24/02/2022:

Irish Water records indicate the presence of water/waste infrastructure which may be impacted by the proposed development. In order to assess the feasibility of a connection to public water/waste water infrastructure further information is requested as follows;

The applicant is required to engage with Irish Water through the submission of a Pre Connection Enquiry (PCE) in order to determine the feasibility of connection to the public water/waste water infrastructure. The Confirmation of Feasibility (COF) must be submitted to the planning department as the response to this further information request. Pre-connection enquiries can be made at [https://www.water.ie/connections/get connected/](https://www.water.ie/connections/get%20connected/). Pending the outcome of any feasibility assessment, proposals by the applicant to build over or divert existing water or wastewater services shall be agreed Irish Water prior to works commencing'.

3.5. Third Party Observations

144 third party submissions were received, the main issues raised are comparable to those raised in the appeals and observations received by the Board which are summarised in section 7 below.

4.0 Planning History

Reg. Ref. D17A/1135 Permission was sought at the Former Western Marine Building, Bullock Harbour, Dalkey, Co. Dublin, A96 X6W2 for the demolition and clearance of the existing industrial single storey warehouse and sheds (1210 sqm) and the development of a mixed-use marine commercial, leisure/community and residential based development. The proposal is for the construction of:

- 1) A craft boat building workshop / craft boat storage facility (416 sqm),
- 2) A single storey building incorporating relocated marine leisure unit (10 sqm), relocated marine commercial unit (10 sqm) and community water sports changing facility (42 sqm),
- 3) A three storey building incorporating a cafe (108 sqm), apartment entrance hall (44 sqm) and apartment car parking (2 spaces, 40 sqm) at ground floor level, a two bed apartment (160 sqm) with associated balcony at first floor level and a two bed apartment (160 sqm) with associated balconies at second floor level.
- 4) A single storey re-located seafood sales outlet (26 sqm).
- 5) 4 no. fisherman's huts, (total area 18 sqm).
- 6) A new public square fronting on to the harbour (20m wide x 9m deep).
- 7) 3 no. three storey detached houses (each 412 sqm) each with roof terraces, and off street covered parking for 2 cars.
- 8) The existing south-western vehicular access from Bullock Harbour will be maintained and upgraded creating a two-way roadway and shared footpath affording access to the proposed dwellings to the rear of the development.

9) 5 no. visitor car parking spaces to the rear of the site.

10) The existing boundary wall will be maintained and repaired with natural coursed granite stone.

11) The development will also include piped infrastructure and ducting; changes in level; site landscaping and all associated site development and excavation works above and below ground.

The Planning Authority made a decision to refuse permission on 22/2/18 for the following reasons:

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

2. It is considered that the lack of an integrated design approach and the almost exclusive use of the majority of the site area for residential use would seriously erode

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

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

NOTE: The applicant is advised that the Council's Drainage Planning report in respect of this application highlights significant coastal flooding issues at this location. The report recommends a refusal of permission for the two apartments proposed within the quayside block and recommends seeking further information with respect to flood defence measures for the other elements of the development.

This decision was then appealed to An Bord Pleanála (ABP) by the Applicant; **ABP-301237-18** refers. The Board granted permission subject to 10 conditions on 28/6/19.

The Board's decision was subject of a Judicial Review. **The decision to grant planning permission was quashed by Order of the High Court, on the 1/9/20.** The case was remitted by that Court back to An Bord Pleanala for a new decision; New reference number ABP-308243-20

No decision was made by ABP. The Applicant withdrew the application on the 31/12/2021.

- 4.1. An application was made for a mixed use scheme on the site in 2016, **under Reg. Ref. D16A/0906**, and was refused permission by the planning authority in February 2017. The decision of the planning authority was not appealed. The development proposed per Reg. Ref. D16A/0906 included a two and three storeys high block along the quayside, with seven marine based units at ground floor level, including a cafe, and six residential units overhead and to rear. Behind the front block, three houses were proposed, each three storeys high, with roof terraces.
- 4.2. Three reasons were given for the decision by the planning authority to refuse permission:
 1. It is considered that the amount of site area, which is reserved for residential use is excessive and together with the design and layout of the development and the inadequate provision for marine related uses, seriously compromises the achievement of a quality mixed use and integrated development with adequate and appropriate provision for marine and harbour related activities. It is therefore considered that the development as proposed would seriously compromise the harbour's ability to attract and maintain good marine related uses and would limit the scale and diversity of such uses, which the harbour area could support. The Planning Authority therefore considers that the development as proposed would be contrary to the zoning objective for this location of providing for waterfront development and marine related uses and would also be contrary to the requirements of Specific Local Objective 22 as set out in the 2016 - 2022 Dun Laoghaire - Rathdown County Development Plan. The proposed development would therefore be contrary to the proper planning and sustainable development of this area.

2. Having regard to the uniformity of the building design for the proposed quayside block, and the resulting visual scale of the building along its quayside elevation, it is considered that this prominent quayside element is lacking in the quality and distinctiveness of design required for this location and would result in an incongruous and abrupt visual form within the harbour area and would also be seriously injurious to the amenities of adjacent property within the harbour. The proposed development would therefore be seriously injurious to the amenities and visual character of this area and would be contrary to the requirements of Specific local Objective 22, as set out in the 2016-2022 Dun Laoghaire-Rathdown County Development Plan. The proposed development would therefore be contrary to the proper planning and sustainable development of this area.

3. It is considered that the design and layout as proposed significantly isolates the proposed development from the harbour and adjacent coastal area. In particular, the development fails to integrate appropriately with the harbour area and also fails to take advantage of opportunities to address the adjacent coastline through appropriate surveillance from within the subject site. The proposed development would therefore be contrary to Policy LHB9 of the 2016 - 2022 Dun Laoghaire-Rathdown County Development Plan and would be seriously injurious to harbour amenities and public amenities at this location. The proposed development would therefore be contrary to the proper planning and sustainable development of this area.

4.3. An application was made, separately, for permission to demolish the existing structures on the site, per **Reg. Ref. D16A/0916**. This application was refused by the planning authority for

1. It is considered that the existing buildings have the potential to attract and support marine related uses. The demolition of these buildings in the absence of acceptable redevelopment proposals would significantly limit the potential of the harbour area to attract, support and maintain marine related uses and activities and would limit the scale and diversity of such uses, which the harbour area could support. The proposed development would therefore be contrary to the land use zoning objective for this site of providing for waterfront development and harbour related uses, as set out in the 2016-2022 Dun Laoghaire-Rathdown County Development Plan. The

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

2. The buildings proposed for demolition are considered to enclose the harbour quay and inform the existing character and amenities of the immediate harbour area. The demolition of the buildings would significantly reduce the sense of enclosure, both visual and physical, along the quay and would have a seriously injurious impact on the visual amenities and character of this area. In the absence of acceptable redevelopment proposals for the site, it is considered that the demolition works as proposed would be seriously injurious to the existing character and visual amenities within the harbour area and would be contrary to the proper planning and sustainable development of this area.

4.4. An application was made in 2017 for a mixed use development per Reg. D17A/1135. Following a decision by the planning authority to refuse permission and an appeal to An Bord Pleanála, the Board granted permission. The validity of that permission was questioned in judicial review proceedings, which the Board chose not to defend. This resulted in the Board's decision being quashed by the High Court. The application was remitted to the Board, but the application was withdrawn by the applicants in December 2021. This first party appeal does not rely on the quashed decision of the Board.

4.5. The Planners Report indicates that there is 'no current enforcement files found'.

5.0 Policy Context

5.1. Development Plan

DLR County Development Plan 2022-2028

A new DLR County Development Plan, 2022-2028, was adopted on 10th March 2022 and came into force on 21st April 2022. The new Development Plan takes up the policy direction set out in the national and regional planning documents. The overarching Core Strategy, at section 2.6, sets out relevant planning considerations

including the identification of underutilised and/or vacant lands and implementation of active land measures to support compact growth and regeneration.

There are a number of policy statements in the new Development Plan advocating re-use of brownfield/disused urban land, especially near existing services and transportation routes.

Section 2.6.2.1. states, in part, that the achievement of compact growth targets and regeneration will be supported through the implementation of active land management measures which promote the development of infill and brownfield lands.

Section 2.6.2.1 (ii) is a lengthy statement headed Brownfield and Infill Lands and sets out an objective to set up a database of brownfield and infill sites. In part, it states:

"Delivery of a compact growth agenda requires increased focus on re-using previously developed 'brownfield' land, supporting the appropriate development of infill sites, and the re-use or intensification of existing sites. The Planning Authority acknowledges that infill and brownfield development can be more challenging to deliver than greenfield development for a variety of reasons and not least the challenge of integration with existing communities. Furthermore, this approach has to be supported by the requisite social and community infrastructure. However, the extent to which we prioritise brownfield/infill over greenfield development will reduce the rate of land use change and urban sprawl, delivering increased efficiencies in land management and support the Core Strategy objective for a transition to a low carbon society."

Section 4.3.1 of the written statement includes setting out that:

"Housing growth in DLR will occur in either of the following -

- Existing built up areas, promoting compact urban growth through the development in the form of infill development of brownfield sites.
- Creation of new residential communities (refer Core Strategy Map, Figure 2.9, Chapter 2)."

Policy Objective PHP 18: Residential Density, promotes compact urban growth through the consolidation and re-intensification of infill/ brownfield sites. It states:

- “Increase housing (houses and apartments) supply and promote compact urban growth through the consolidation and re-intensification of infill/brownfield sites having regard to proximity and accessibility considerations, and development management criteria set out in Chapter 12”
- “Encourage higher residential densities provided that proposals provide for high quality design and ensure a balance between the protection of existing residential amenities and the established character of the surrounding area, with the need to provide for high quality sustainable residential development”.

Zoning Objective

Under the zoning provisions of the Dun Laoghaire-Rathdown County Development Plan, 2022-2028, the land owned by Bartra at Bulloch Harbour remains divided into two distinct areas (as in the 2016 Development Plan). The rock outcrop area along the foreshore is shown as a proposed Natural Heritage Area and the developable land area (former Western Marine) is zoned **Objective W:** ‘To provide for waterfront development and/or harbour related uses’.

The Plan sets out “**Permitted in Principle**” uses within Objective W include:

“Carpark, Community Facility, Cultural Use, Industry- Light, Offices less than 200 sq.m., Marine Leisure Facility, Open Space, Public Services, Restaurant, Transport Depot”.

“Open For Consideration”

“Advertisements and Advertising Structures, Aparthotel^a, Assisted Living Accommodation, Craft Centre/ Craft Shop, Childcare Service, Civic Use, Doctor/Dentist, Education, Enterprise Centre^a, Hotel/Motel^a, Office Based Industry, Offices^a, Off-License^a, Place of Public Worship, Public House, Sports Facility, **Residential^b**, Residential Institution^b, Science and Technology Based Industry^a, Shop-Specialist, Shop Neighbourhood, Tea Room/Café, Travellers Accommodation.

a: Uses Open for Consideration in Dún Laoghaire Harbour area only.

b: Not permitted in principle or open for consideration in Bulloch Harbour.

Note 1: An objective of this Plan is to protect the harbour/ marine entity of Dún Laoghaire Harbour by facilitating harbour-related uses, but not to confine permitted uses in the harbour to a degree that exclusively attracts those with an interest in

active maritime recreation. Any development proposal should seek to ensure public accessibility to the harbour and shorefront.

Note 2: Any development in the coastal area should have regard to the findings of the Dún Laoghaire- Rathdown County Council Coastal Defence Strategy Study, (2010).

The **Specific Local Objective 28** (SLO 28) as adopted, removes mention of the word "residential", it states:

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

A new sentence was inserted into Section 8.5.2 'Policy Objective GIBB: Coastline, Parks and Harbours' (page 165) as follows:

"Any public realm projects at both Sandycove and Bulloch Harbours shall have regard to the concept proposals that are contained in the 2020 Masterplan for Sandycove and Bulloch Harbours."

A further policy amendment in the Dun Laoghaire-Rathdown County Development Plan, 2022-2028, as adopted in March 2022, concerns "wave overtopping".

Section 6.3 'Coastal Flooding' of Appendix 15 states:

“Significant wave overtopping has also been observed along the DART line between Seapoint and Monkstown and in Bullock Harbour. Analysis also indicated wave overtopping may occur at Booterstown Marsh.

“Whilst development opportunities along the seafront are generally fairly limited, any flood risk assessment should take into account wave overtopping and the potential impact of climate change on sea levels. Despite a site being in Flood Zone C currently, analysis of either of these two factors may show it is not possible to provide a sustainable and long-term development as it is not possible to manage future risks from overtopping and / or climate change. In other cases, depending on the nature and design life of the development, appropriate mitigation may include additional allowances in finished floor levels, emergency planning and business continuity and recovery.

An analysis of coastal risks has been carried out as part of this SFRA, which included a reappraisal of still water sea levels, building upon work undertaken in the ICPSS, and an assessment of wave overtopping potential. The findings of the coastal risk assessment have culminated in wave overtopping risk areas, and the characterisation of the coastal flood risk along the DLR coastline based on still water and wave overtopping risks. A traffic light colour coded map was generated to clearly define coastal flood risk areas and is included in Figure 6-10 to Figure 6-15 and in Appendix B. Further details of this classification system are provided in Section 6.3.1.”

6.3.1 Coastal risk maps:

"The DLR coastline was divided into segments of theorised coastal flood risk exposure. These segments were assigned either a 'High', 'Medium' or 'Low' coastal flood risk. For each segment, the risk was determined based on analysis of the projection model results, considering the present day and sea level rise scenarios that aim to account for both extreme still water level and potential wave overtopping flood risk."

Vulnerability to wave overtopping - Regardless of the Flood Zone, all proposals for development within the extent of the 1% AEP H+EFS wave overtopping outline should be accompanied by an appropriately detailed assessment of overtopping risk.

The relevant wave overtopping zones are shown in a blue hatching on the Amended Flood Zones maps. The appeal site is within the area shown as one that is at risk of wave overtopping, as shown on Map 4 as part of the amendments (March 2022) to the Development Plan 2022-2028. This also includes an adjoining cottage in separate ownership and adjacent residential properties to the south along the quay road. The plan also indicates 'F' for fluvial flooding on the lands. A narrow strip of the western boundary along Quay Road is located within Flood Zone A and Flood Zone B. A portion of the rocky outcrop area to the north of the lands within the applicant's ownership but not included within the developable area is denoted Flood Zone A.

The Development Plan 2022-2028, includes "Appendix 15: Strategic Flood Risk Assessment", together with a new set of "Coastal Risk Maps" showing potential for coastal flooding in Dalkey. On Fig 6 - 12 of the said "Coastal Risk Maps", the quayside in Bullock Harbour is indicated as at "medium risk" of flooding and the

rocky area outside of, and to the rear of, the former Western Marine premises is shown at “high risk”.

5.2. **Bullock and Sandycove Harbours Masterplan 2020**

Dun Laoghaire Rathdown County Council commissioned a Masterplan for both Bullock and Sandycove Harbours in 2020, on foot of Policy OSR15 of Dun Laoghaire- Rathdown County Development Plan 2016- 2022. The purpose of the Masterplan was to provide a context for any future place making and public realm enhancements of the Harbour lands within public ownership, as well as providing a wider context and guidance that could influence the future function and operation of both places.

In relation to Bullock, the Masterplan includes a SWOT analysis (strengths, weaknesses, opportunities and threats). The long list of opportunities includes some of relevance to the current application by Bartra Property (Dublin) Ltd:

- Improved facilities for changing and public toilets would benefit all users.
- Improved access (universal) from Harbour Road would allow greater use of the East Pier.
- More seating is required and places for people to enjoy the location
- The marine function should be emphasised and enhanced
- Harbour activities and leisure uses could be more effectively separated by encouraging more visitor use along the east side of the Harbour
- Use of the East Pier should be maximised during the summer
- The breakwater could be enhanced to help protect the old pier and the recent investment made in its restoration
- The Harbours heritage and history should be emphasised more
- A place to land, a place to park, and a place to change would be a major benefit as a marine user facility
- Surfacing should be upgraded In line with the Dublin Port Company conservation plan

- Visitor access to the rocky foreshore could be improved (e.g. for school/ specialist trips)

The Masterplan sets out a number of objectives as part of a Concept Plan, many of which are concerned with improving access and leisure related facilities.

5.3. Natural Heritage Designations

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

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

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

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

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. **A First Party Appeal** was submitted by Bartra (Dublin) Ltd it is summarised as follows:

- Difficulty in attracting investment into such small harbours.
- The site of the proposed development is occupied by dilapidated industrial structures and an open yard area.
- The proposed development constitutes a major improvement in terms of the built environment and general visual amenity.
- The previous occupants of the property, Western Marine, operated a marine chandlery business, which became unviable and the company was obliged to cease trading.
- The disused site was acquired by Bartra in 2015
- The Western Marine site is small, with a developable area of 0.28ha, which excludes the rocky foreshore. There is clearly a limit to the appropriate development for such a site. The Western Marine site never afforded access to the general public in any way (other than the rocky foreshore lands located outside the developable area).
- Bullock Harbour is very modest in extent. It is also completely unusable at low tide and has limited potential for further marine activity.
- Bullock Harbour is only a "working harbour" in a very limited sense.
- Bullock Harbour attracts a certain number of visitors during the summer months to take boat trips on their own or hired boats to fish. But, it is not well placed to attract significant numbers of additional visitors for any purpose and lacks any major attraction.
- The harbour is not easily visible from the nearest main road, the R119 (Ulverton Road), and is remote from the national road network. The area has relatively limited access to public transport. Dalkey DART station is at the limit

of typical walking distance, at well over a kilometre away. There is a limited bus service on the R119, served by routes 111, 59 and 704

- Bullock Harbour, although locally well known, attracts few visitors. Analysis of the harbour, by economists, shows there is only limited potential for marine based activity.
- Evidence in this regard was submitted with the planning application, but received little consideration by the planning authority (cf. Assessment of the Potential for Commercial Marine based Activity at Bulloch Harbour by KHSK Economic Consultants).
- A new marine chandlery would not be sustainable at this location. These businesses tend to be operated either in more accessible locations or via internet.
- The predominant land use in the Bullock Harbour environs is residential.
- Responsibility for the harbour and environs is split between the Dublin Port Company and the County Council. Both authorities could be said to follow a policy of only low-level intervention.
- The proposed development is consistent with the "masterplan" for the harbour, drawn up by the planning authority.
- The current application is therefore the third proposal (including that withdrawn in December 2021) submitted for planning permission for a new mixed use development of the Western Marine lands submitted by Bartra. We consider that the refusal reasons in the instant case do not include any significant criticism of the design of the buildings, although expressing opposition to the overall layout and, in particular, to the extent of the site area proposed for the residential component. However, the main concern is focused on the question of wave overtopping/flooding and the lack of an "integrated development." This last is stated to be contrary to Development Plan policy, both in terms of the "W" zoning and the Specific Local Objective 22.
- The applicant is very aware that the site at Bullock Harbour presents challenges associated with its location beside the sea. These challenges were

particularly demonstrated by Storm Emma on 2nd March 2018, about which there is abundant information to allow the robust analysis included in this application. The applicant has engaged engineering advice of the highest quality in relation to these issues, namely JBA Consulting, who have specialised expertise in flood risk management, and CS Consulting Group, highly reputable civil and structural engineers. Before the planning application was submitted, the relevant issues were examined in detail. A Site Specific Flood Risk Assessment report, by CS Consulting, was submitted with the planning application. This included a report by JBA titled Bullock Harbour Flood Risk Modelling. The questions posed by climate change, including risk of increased storm frequency and rising sea levels, were considered in detail.

- In the absence of the proposed development, the risks will remain and there will be no interventions to better manage the resultant flows which will exacerbate the situation for existing residents and users of the harbour. The proposed development is an improvement to the existing surface water system.
- The habitable floor levels of the residential units will be set well above any future flood level, allowing for climate change (HEFS- High End Future Scenario), and a plan will be put in place to be implemented by the management company for the development.
- The attached new report by CS Consulting Group, as advised by JBA, submitted here, addresses the criticisms underlying refusal reason No.1 in detail.
- Climate change impacts are to be addressed, but as a residual risk and are dealt with primarily in the design of the proposed development by the setting of floor levels well over any predicted increased flood level, as calculated on the basis of the High End Future Scenario.
- As pointed out by CS and JBA, the majority of the proposed development is located within the Flood Zone C designation, but a small section, located to the north west corner, is in Zone B. The impacts of climate change are dealt with as set out above, primarily by ensuring floor levels of highly vulnerable uses (i.e. residential units) are set well above long term predicted flood levels.

Resilient construction and emergency planning are also employed in this regard.

- In formulating this second refusal reason, the planning authority focused on the "predominance of residential use in the proposal" and the "low percentage of overall floor area" provided for the marine related uses. But, the Development Plan does not require any particular quantum or percentage of development, including marine related, and is entirely silent on this point.
- There is no mention in the Development Plan of any required percentage of any particular type of development. Instead, it seeks "waterfront development and harbour related uses".
- The proposed development includes precisely such uses and these are focused on the waterfront, as the term implies. The area given over to such uses is substantial and there are no uses proposed which are not either permitted in principle or open for consideration under the terms of the Dun Laoghaire Rathdown County Development Plan, 2016-2022.
- The potential for any viable marine related development at Bullock Harbour is constrained. In relation to the current planning application, the proposed marine related uses cannot be secured for delivery without the residential component, which is required to subsidise those proposed marine related uses.
- The KHSK report examines the meaning of the words in the planning authority policies, including "commercial marine-based activity", assesses existing activity at Bullock Harbour, examines comparator small harbours, such as Coliemore, Bray, Balbriggan etc. and considers the financial viability of new or expanded marine related and other commercial activities at Bullock Harbour. The report states that there are no instances of recent successful developments of commercial activities, or the provision of built space for not-for-profit community activities, in any of the small harbours around the Dublin area.
- At Bullock, "the provision of such space would require cross subsidisation from associated development in the harbour". In other words, the proposed

residential component is necessary to underpin the cost of providing for such non-viable commercial or community activities.

- Land use planning cannot be divorced from consideration of such issues and should be based on some evidence. In the current instance, the planning authority has indicated a wish for a greater percentage of an alternative land use in the development. A reading of the KHSK report, which amasses an impressive array of evidence, indicates that the approach of the planning authority to consideration of the appropriate use mix at the Western Marine site is not well founded.
- Whilst there is a quotation from the KHSK report in the planning authority's own report, at page 45, there is no indication of any serious consideration of the KHSK report findings.
- In any case, it is clear that the potential of Bullock Harbour to attract and maintain economically viable "good marine related uses" of any kind is most limited.
- Contrary to the views expressed in the planning authority report, Bullock Harbour is not a "working harbour" in any full sense. Essentially, it is a place to moor some small boats, with a minor element of other marine leisure activity and a small commercial element. The KHSK report goes into detail on this point and summarises the present level of commercial activity as consisting of "some commercial boat hire and occasional shellfish sales in Bullock Harbour, but the scale of activity is very limited indeed. The businesses appear to be run on a seasonal, ad hoc, and weather dependent basis and more likely to be marginally viable.
- The potential for much greater use of the harbour is constrained by its small size, its lack of water at low tide, the disposition of rock outcrops near its entrance and difficult currents on the approach. The harbour has only the most basic facilities, including a paucity of changing and sanitary facilities, and Dublin Port company removed the only crane.
- In the absence of significant cross subsidisation from residential development, redevelopment is most unlikely. Furthermore, provision of additional

commercial or other marine related accommodation at Bullock, over and above that now proposed, carries a strong risk of resulting in empty, disused space.

- Submit that a reasonable number of different uses are proposed in terms of "scale and diversity of uses". It is not clear what other "good marine related uses" could be attracted to the site and operate on a financially sound basis.
- Submit that the range and type of uses proposed on a 0.28ha site overlooking the harbour is appropriate.
- It also seems that the current owners of the harbour, Dublin Port, have no development intentions. The County Council has confined its own activity at the harbour to normal provision of services and upkeep of the public road. Its last significant intervention was the construction of the effluent pumping station several years ago, now an Irish Water installation.
- Do not accept that a mixed use development, which includes substantial waterfront development and harbour related uses and otherwise contains uses which are permitted or open for consideration, can reasonably be deemed contrary to or in conflict with the zoning objective. We submit that the proposed development is of a type which the Dun Laoghaire Rathdown County Development Plan 2016-2022, zoning objective "W" seeks to provide for and, therefore, that it accords with the said zoning objective.
- The development is also required to have regard to the special nature of the area in terms of the height, scale, architecture, and density of built form. The design of the buildings and the public square, by de Blacam and Meagher Architects, has been informed by the pattern of existing development along the eastern side of Bullock Harbour. Notwithstanding some elements of merit, the existing streetscape along the eastern side of the harbour currently terminates in a visually unattractive composition of poor-quality industrial structures at the Western Marine site. The proposed development would considerably improve this situation.
- The proposed development on the former Western Marine site will introduce an architecturally coherent termination to the quayside streetscape, with a fine

new public square, framed by buildings of varying heights and sizes, with pitched roofs of a domestic scale.

- The end of the quayside will be defined by a well-considered three storey block overlooking the mouth of the harbour. The development is composed to integrate into the existing urban grain along the quayside, whilst not mimicking the existing buildings. The architectural composition of the buildings has been carefully arranged to gradually step up in scale along the quayside to achieve an appropriate termination of the streetscape along the eastern side of the harbour. The buildings vary in height, being one, two and three storeys, with the well-proportioned three storey building forming a definitive end to the harbour frontage. All the buildings to the harbour front are designed as pitched roofed structures with their gables facing the harbour, bringing the scale down to that of the domestic architecture of the nearby existing quayside houses.
- A single storey building is to occupy the approximate location of the existing Western Marine office structure of the same approximate height, adjacent to Castle View cottage. At the back of the new public square, the proposed craft boat workshop steps up to a two-floor scale.
- The three houses are designed so that the ground floor contains ancillary accommodation and entrance areas, and the upper floors contain the main habitable rooms. This part of the site was apparently quarried in the past so that it is bounded by high rocks and a high stone wall.
- In relation to the scale of the proposed development, we do not consider that a development of two and three storey buildings should be deemed "high", especially when considering the environs of the site at Bullock Harbour, with the three storey "Pilot View" apartments on elevated ground to the east and the five/six storey curtain wall of Our Lady's Manor nursing home forming the termination of views southwards across the harbour.
- There are few distant views into the site, that from the Forty Foot bathing area being the most significant. Nearer views are relatively restricted, due to topography. The critical views are included in the Mode/works montages, including from the sea, and show the development would sit comfortably into

its setting. The proposed development is appropriate in terms of scale and modelling and would make a positive visual contribution to the area.

- The architectural design achieves a strongly defined public realm, whereby the new public square will constitute a nodal point for Bullock Harbour, which it currently lacks. In urban design terms, the replacement of the dilapidated sheds by the public square, framed by the proposed buildings, constitutes a major enhancement of the visual environment of Bullock Harbour. In addition, the rocky foreshore area, designated as a proposed Natural Heritage Area, is to be handed over from private ownership to public ownership in perpetuity and at no cost to the County Council. This area will, therefore, be formally integrated into the public realm, which is a significant planning gain.
- The area on which it is proposed to carry out the development is a dilapidated industrial site, which has never been a public amenity - indeed something of a disamenity in visual terms. We submit that a logical structure has informed the architect's design for the proposed scheme, paying proper respect to both the established pattern of development in the vicinity and to good urban design practice.
- Submit that the proposed development complies more than adequately with the Specific local Objective 22, as set out in the County Development Plan, 2016-2022.
- Note that since the decision to refuse permission was made, the DLR County Development Plan, 2022-2028, was adopted on 10th March 2022. The new plan removed "residential" from the open for consideration category in land use zone "W", but only in respect of Bullock Harbour. Similarly, mention of the word "residential" has now been omitted from the Specific Planning Objective 28 (formerly 22).
- These changes to the recently adopted Development Plan were made contrary to the advice of the Chief Executive of the Council.
- Believe these changes made by the elected members are highly irregular, ignore the evidence relating to the viability of the harbour and these lands, have been inserted without any useful or clear explanation or justification,

appear deliberately designed to interfere with this pending planning application (and any other similar) and are discriminatory, being applicable only to the lands in our client's ownership.

- Believe that it is open to the Board to consider the application on its merits, notwithstanding these changes.
- The proposed development will greatly enhance and expand the public realm at Bullock Harbour.
- The planning authority did not cite any concerns in the reasons in respect of natural heritage in the decision to refuse permission. But the report of the planning officer, relying on certain criticisms from the Biodiversity Officer, expressed certain concerns. We attach a short note from JBA regarding some of the said criticisms and a commentary from the ecologists, Scott Cawley in relation to these matters.
- We also note the planning authority considered that an Appropriate Assessment could not be concluded. We do not accept this criticism and we note that exhaustive surveys have been carried out of the site and environs, as set out in the Natura Impact Statement, and all factors relevant to the carrying out of an Appropriate Assessment were included in the Natura Impact Statement. No otter halt was detected close to the location of the proposed development, notwithstanding the planning authority assertion to the contrary.
- In respect of the Black Guillemot, this is recorded in the NIS at paragraph 68 as foraging and/or roosting within or adjacent to the proposed development site. This is noted as a non-SCI species notwithstanding its amber listing (medium conservation concern).
- We are very confident there is sufficient information before the Board to carry out an Appropriate Assessment on the basis of the NIS and that it can be objectively concluded, following an examination, analysis and evaluation of the relevant information, including in particular the nature of the predicted impacts from the proposed development, that the proposed development will

not adversely affect (either directly or indirectly) the integrity of any European site, either alone or in combination with other plans or projects.

- The challenges relating to development along the coast are significant and will become more significant in future years. They will require innovative approaches to development or, alternatively, abandonment of whole stretches of coastline, Bartra (Dublin) Ltd has addressed these issues as they pertain to the brownfield, including the particular issues raised by the planning authority, in a forthright manner. The proposals to address surface water drainage and wave overtopping have been drawn up by experts in this field. Appropriate measures have been included to ensure convenience and safety in this environment. But in the absence of the proposed development, the situation at Bullock Harbour will remain unmanaged, including future flows of surface water, with additional consequences for existing residents and users of the harbour.
- We note that none of the reasons for refusal given by the planning authority refer to "material contravention" of the development plan, so, strictly, the Board is not limited by section 37(2)(b) of the Planning and Development Act, 2000, as amended.

6.1.2. **A Third Party Appeal** was submitted by The Bulloch Harbour Preservation Association CLG, it is summarised as follows:

- Requests that an Oral Hearing be held
- The appellant submits that additional reasons for refusal, related to the points of objection, should be added to those given by the planning authority, in relation to the following:
 - Habitats Directive/ Wave Overtopping – Impacts on Ecology have not been properly assessed.
 - EIA Directive
 - Historic Heritage, Seascape and Visual Impact (adverse impact upon Bullock Harbour a recorded monument and protected structure)
 - Exclusion of Residential Use from the Land Use Zoning Objective 'W'

- There should be an Environmental Impact Assessment of the proposed development on the basis of alleged significant impacts on the environment.
- Fundamental failing in the AA screening and the NIS to protect designated species. Potential impacts on habitats and species in close proximity to the proposed development (during construction and operation).
- The 2020 High Court Case No.600 determined the need for a NIS
- Concern as to conflict of interest by Scott Cawley, given their involvement in the previous application and the advice given.
- Conclusions in respect of hydrological impacts are of concern.
- Contaminated surface water could under storm surge conditions could impact the water in Bullock Harbour and potential SCI species, mammals and birds.
- Grey seals and terns are frequent in the harbour. All wild birds, and their nests and eggs, are protected under the Wildlife Acts. 21 wintering and early spring migrant bird species, of which 16 are SCI species, were recorded within or adjacent to the proposed development during wintering bird surveys between December 2020 and March 2021, and September and November 2021.
- The surface water run – off shown in table 3.2 of the JBA report is significant and there is no justification for adopting the Q50 volume when the worst case scenario must be examined.
- Assumption of low surface water run off is not correct and this assumption has implications for the NIS, which is reliant on this conclusion.
- NIS conclusions which are reliant on the Hydrology report are not robust,
- No account has been taken in the NIS of the potential impact of the development as constructed and whether bird flight activity and bat activity will be impacted or whether loss of bird life could result due to collision impacts with the buildings and in particular glass elements.
- The height of the structures rise to 14.7m which is substantially higher than existing buildings.

- While supporting fauna, bird and bat surveys have been submitted they have not had regard to more up to date surveys from the NPWS and there is need for a rigorous evaluation of all of the documentation and the supporting hydrology studies.
- A storm event has the possibility of creating a pollution event and possibly an environmental emergency event, which triggers the need for RIA of the project. The proposed development fails to comply with the EIA Directive 2114/52/EU
- The visual impact of the development would breach national and local policy in respect of seascapes and would detract from the setting of Bullock Harbour.
- The proposed height, scale and massing is excessive given the constraints of the site.
- Bullock Harbour is a Protected Structure and Recorded Monument, the proposed visually dominant buildings would materially affect the Harbour.
- The proposed design would adversely impact views of Bullock Harbour from Ulverton Road and from the sea.
- Overtopping of waves and projectiles onto the development site (especially during storm events) present a risk to health and safety of residents and visitors. This also presents a risk to property, including vehicles on the site.
- Allowing residential development on a site with such a residual risk is not consistent with orderly planning.
- There is likely to be a risk to health and safety and damage to property.
- Concern with respect to the size of the proposed culvert which outfalls into the harbour at a point along the east quay. This may result in reduced capacity to drain the site and the area behind the existing random rubble boundary wall on the east side of the site.
- Concern with respect to culvert sizes, flooding and surface water drainage.

- The scouring effect of deliberately directing water across the public road and historic quay is likely to result in acceleration of wear and damage to the public roads and quays.

6.2. Applicant Response

- Extensive information has been submitted by the applicant. This is based primarily on work of Scott Cawley over many months of surveys and site inspections at Bullock Harbour, supplemented by documentary sources and as detailed in the Ecological Impact Assessment, the AA screening and the Natura Impact Statement. The curriculum vitae of each of the qualified and experienced persons in Scott Cawley involved in the preparation of the documents is set out therein.
- The appellant has offered no expert evidence to support certain claims regarding ecological impacts, instead relying generally on remarks by the DLR Biodiversity Office.
- The appellant has criticised the result of survey information in respect of terns at Bullock Harbour, but this criticism is not supported, being based entirely on an unsubstantiated statement that "local knowledge would suggest that tern activity in the harbour and over the site is much more prevalent than indicated".
- Incorrect categorisation of the badger as an Annex II species under the Habitats Directive, whereas badgers are not protected under the said Directive.
- The appellant has exaggerated the heights of the proposed buildings.
- The proposed three storey houses are 11m from the finished ground floor level to the main parapet level and 13.7m to the topmost level.
- The proposed three storey, pitched roofed block containing a retail unit at ground floor and an apartment in the upper two floors is 12.405m high measured from the ground floor to the ridge of the pitched roof.
- Wave overtopping calculations are based on industry standard approaches. These rely on the many assumptions made within the component models. JBA have utilised industry standard software and publicly available data on wave climate. It is pointed out that there will always be differences in the outcome from

different models although calibration can bring these differences closer. The model used for wave climate in this case by JBA is the 10 SWAN model, which is appropriate for a development of this scale.

- The ANN overtopping tool was used and is appropriate to this site. It is accepted that the calculated volumes are significant and fit within the observed envelope, but these can be managed by the measures proposed. The contention by the appellant that the site is not safe to be developed is incorrect.
- The constraints of the environment are acknowledged and appropriate measures are proposed to ensure the safe occupation of the buildings, including an emergency plan for the development, as would be standard for any man made or natural peril, such as fire, loss of services etc.
- The majority of the site is within Flood Zone 'C' and appropriate measures have been taken to deal with any wave overtopping issues.
- Submit that there is ample information before the Board to reach a conclusion that the proposed development is not likely to have significant effects on the environment, either by itself or cumulatively with other existing and permitted development.
- The visual impact of the new development is a noticeable improvement on the existing structures, none of which were suitable for effective reuse, while the public facilities offered will add much to the social and environmental amenity of the place.
- The composition is well modulated and cleverly varied to reduce the overall scale and impact of the new buildings.
- Design proposed is not out of place alongside the neighbouring one and two-storey houses.
- Inspection of the site layout plans, existing and proposed, shows there is little change proposed to the levels on the site and that the floor levels of the proposed houses are only raised by the minimum necessary.
- Changes to the recently adopted Development Plan were made contrary to the advice of the Chief Executive of the Council, who essentially considered that any

planning application including residential at the Bartra site in Bullock Harbour should be considered on its merits.

- Changes made by the elected members are highly irregular, ignore the evidence relating to the viability of the harbour and these lands, have been inserted without any useful or clear explanation or justification, appear deliberately designed to interfere with this pending planning application (and any other similar) and are discriminatory.
- It is open to the Board to consider the application on its merits, notwithstanding these changes.
- The Board will note that permission was not refused by DLR County Council for material contravention of the 2022 Plan.
- Bartra Property (Dublin) Ltd has instructed lawyers to prepare proceedings by way of an application for judicial review to question the validity of the changes, including, in particular, amendment no. 239, which purported to change the land use matrix for lands zoned Objective 'W'. The first party undertake to keep the Board informed about any relevant court order made.
- Highlight that the decision of the High Court in the case of Balcadden Road SAA Residents Association v An Bord Pleanala [2020] IEHC 586, where the judge found that a previous decision of the Board, quashed in the High Court but referred to by the Board's Inspector in a subsequent planning application, was an irrelevant consideration.
- In the absence of the proposed development, the situation at Bullock Harbour will remain unmanaged, including future flows of surface water, with additional consequences for existing residents and users of the harbour.
- The challenges relating to development along the coast are significant and will become more so in future years. Bartra (Dublin) Ltd has addressed these issues as they pertain to this brownfield site in a forthright and structured manner.
- Appropriate measures have been included to ensure convenience and safety in this environment, thereby improving the situation for existing residents. The proposals in relation to biodiversity, surface water drainage and wave

overtopping have been drawn up by experienced experts in their respective professions.

- Request the Board to grant permission for the redevelopment of this serviced brownfield site.
- The observations of wave overtopping at Bullock Harbour show the mechanism that needs to be simulated, which is different from the traditional estimation of overtopping volumes per linear length of a coastal defence. At this site there are significant volumes of overtopping to be managed, which has been done in the past through the sluice and channel arrangement within the site.
- This development acknowledges that wave overtopping is a natural peril that needs to be managed in the following manner:
 - Containment of the majority of the overtopping volume behind the boundary wall and enhanced conveyance back into the sea
 - Use of the natural shelter provided to the open spaces and access points on the harbour side of the development by the construction of the development
 - The residents would be connected with their location and in the more extreme overtopping events would restrict their movements and be kept safe within their homes.
 - No intervention from blue light services is needed or expected now or in the future.
 - No additional defence measures by the developer or from the public purse are planned or relied upon to keep the residents safe.
 - An emergency plan for the development would be put in place as would be standard for any man made or natural peril, such as fire, loss of services etc
- The site suffers from overtopping and impulsive overtopping waves with high energy and volume. This is acknowledged and it is proposed to keep residents safe by employing a simple management plan based on containment. In the inner areas of the development, it will be wet and have flowing water exiting through the 3 drainage routes. The videos provided for the various events show local residents and users of the harbour drive and

walk around through these conditions without hinder or fear. These are conditions appropriate to a coastal harbour development.

- The Conceptual Site Model (CSM) identified that direct source-pathway linkages between the site and open water (Bullock Harbour and Dublin Bay) are in place. A Construction Environmental Management Plan (CEMP) to break these linkages, was prepared for the planning submission. The CEMP included several mitigation measures to provide protection to the marine environment, for example, the requirement of the contractor to ensure 110% bunding of fuel tanks on site and the removal of all diesel storage tanks from the site if Met Eireann issues a storm warning. These actions will prevent hydrocarbons release to marine water in a storm/over topping event. These actions and control measures required by the contractor as outlined in the CEMP, will ensure that the levels of impact during a storm event, on the marine environment will not be significant. This information was used to support the findings of the Natura Impact Statement for the proposed development.
- The proposed works to strengthen the existing boundary wall, the provision of a new storm water culvert and in an extreme scenario to allow surface waters drain from the site have been designed to minimise the potential risk to the site from this potential flooding source. Therefore, it is deemed appropriate to allow residential units to be situated on the site as measures and protocols have been developed to manage the potential risks involved from storm water generated from wave over-topping events and to ensure that residents can safely remain in place until the storm passes.
- The Natura Impact Statement (NIS) and Ecological Impact Assessment (EclA) report prepared by Scott Cawley supported the findings of the EIAR Screening Assessment. The EIAR Screening Report, the NIS and the EclA identified the presence of protected habitats and species around the site but concludes that there will be no adverse impact on these habitats and species. The EIAR Screening Report concluded that an EIAR was not required for the development. This finding was supported by Dun Laoghaire Rathdown County Council.

- The proposed drainage arrangements for an extreme event would require that excess storm water flows are carried under a commercial unit and flow across the Quay into the Harbour. This is the current situation, with overland flow exiting the site through the entrance and cutting off the existing *Castle View* Cottage to the north of the existing entrance. The video footage submitted to the Board shows storm water draining through the subject site and across the Quay. The proposals will ensure that no existing or proposed dwelling would be affected by utilising an overland flood route, as the proposal is to direct overland flow routes under a commercial unit and into the Bay further along the Quay.
- While there is a possibility that overland flows would result in abrasion or a deterioration of the surface upon overland flow route, to date there is no evidence of same. Should the frequency of the overland flow increase the duration and hydraulic magnitude of same would not have a detrimental affect beyond the normal wear and tear of a trafficked area.
- The appellant raised concerns that the site should not be counted as being in *Flood Zone 'C'* and as such the site is unsuitable for residential dwellings. The DLR Development Plan, 2016- 2022, indicates that the location for the housing units is located in *Flood Zone 'C'*. The draft Development Plan, 2022 - 2088, also keeps this designation. The draft Development Plan does note that the site is subject to potential flooding issues due to wave overtopping and as such this should be investigated as part of the required *Site-Specific Flood Risk Assessment*. The submitted application has quantified the volume of storm water from the action of wave over topping and provided a means for its safe disposal. The proposed dwellings have finished floor levels which would place them outside of any potential flood level.
- The location of the gullies can be relocated, if required to ensure no off-site flooding occurs during intense rainfall events.
- Natura Impact Statement: Affirm that all factors relevant to the carrying out of an Appropriate Assessment were included In the Natura Impact Statement. We are confident there is sufficient information before An Bord Pleanala to carry out an Appropriate Assessment on the basis of the NIS and that it can

be objectively concluded, following an examination, analysis and evaluation of the relevant information, including in particular the nature of the predicted impacts from the proposed development, that the proposed development will not adversely affect (either directly or indirectly) the integrity of any European site, either alone or in combination with other plans or projects.

- The proposed development red line boundary extends to the rocky habitats within the pNHA, however the red line boundary of the footprint of construction works is outside the pNHA boundary.
- There will be no works within the pNHA.
- It is noted that pNHAs are not assessed in the AA Screening or Natura Impact Statement reports as they are not designated under the Habitats Directive. The assessment for pNHAs and their species and habitats are presented in the EclA accompanying the application.

6.3. Planning Authority Response

- Response received it refers the Board to the planners report and considers that the grounds of appeal do not raise any new issues.

6.4. Observations

Some 48 Submission were received and they are collectively summarised as follows:

Flood Zone & Wave Overtopping

- Flooding, Wave overtopping, damage during storms, surface water
- Inadequacies in information has not been addressed.
- Site is unsuitable for residential dwellings.
- Use of glazing facing the sea in more extreme overtopping events could prove dangerous to residents – would restrict their movements. Unless more substantial internal structural shielding is being proposed (maybe an escape room) it is hard to see residents being kept safe.
- There is a reason why to date no residential dwellings have been built on this site.

- Damage during storms occurs to the Harbour and to existing single storey residences.
- Storms are occurring more frequently, climate change.
- The amount of surface water during overtopping is significant and dangerous – risk of injury to human life.
- Surface water regularly carries debris which is a danger to both buildings and people in the vicinity.
- Permission should not be given for a development which depends on an emergency evacuation plan for the safety of its residents.
- Sea level rises at Dublin Bay has been confirmed as faster than expected, in new research by Maynooth university.
- Extensive photographic and video evidence of the scale and intensity of the overtopping.
- Concern that overtopping volumes could be managed safely back to the sea.
- Drainage proposals by the applicant are not credible. The proposed development fails the Justification Test, does not accord with the sequential text to avoid the location of vulnerable residential use in a flood risk zone and would not comply with the principles for flood risk management set out in the National Flood Risk Management Guidelines. The proposal will increase over land flood risk on Bullock Quay.
- Severe overtopping can occur from a Force 5 or Force 6 wind – it is the sustained wind direction that generates the conditions.
- Overtopping does not involve one or two isolated waves but persistent waves sometime every minute or two – over a period of hours.
- Storm Emma was an example of where severe overtopping occurred which included rocks and debris thrown up by the sea.
- Storm Emma lasted 4 days – how could residents be locked into or out of their houses for this length of time.

- Overtopping at Bullock Harbour is exacerbated by high tides, local and specific conditions. No government body or public agency monitors overtopping at Bullock and cannot prepare residents of Bullock for such events.
- There would be a requirement for a local agency or OMC to manage warnings. National severe weather warnings are of limited use in Bullock Harbour and can be dangerously misleading.
- The idea that an emergency plan will mitigate the inherent danger of this site is unviable, naïve and dangerous.

Waterfront / 'W' Zoning

- Missed opportunity to create a really meaningful development for all to enjoy.
- Bullock Harbour has huge historical and cultural significance.
- Important part of the Heritage of Dalkey.
- This is a unique opportunity to create a local amenity for marine and outdoor leisure activities.
- Absurd to build on one of the last few remaining boatyards on the east coast, beside a functioning harbour and public slipway.
- The only harbour on this stretch of coast providing a large public slipway with safe sheltered access to the waters of Dublin Bay.
- The proposed residential development is contrary to the W zoning objective and to the SLO and is thus contrary to the proper planning and sustainable development.
- In light of evidence of wave overtopping and flooding, the W zoning is entirely justified on grounds of health and safety alone.
- Negative impact to Trident Sub-Aqua Club (SAC) Clubhouse
- Proposed development has no local support and would be detrimental to the use and amenity of Bullock Harbour.

- Relocation of fishermen's huts away from the harbour would be counterproductive.
- Concern that relocation of the huts would give rise to negative knock on impact to sale of fish, fishermen doing their jobs and loss of passive surveillance of the harbour in the case of users getting into difficulty.
- No substantive change to the plans from the previous application.

Residential Use

- Residential use on this site is contrary to the new County Development Plan 2022- 2028 W Zoning and contrary to objective SLO 28.
- The making of the CDP is a reserved function of elected members. This role is a function of local democracy, however inconvenient that may be for vested interests.
- The matter of insurance has not been addressed
- The proposal would place the OMC responsible for the proposed development in an impossible position, unclear how they could obtain basic public liability insurance.
- Serious danger to life from wave overtopping.
- Loss of opportunity to develop the harbour for marine related uses and marine leisure and community facilities – unique location.
- The proposal would help to destroy the heritage of many and be of highly dubious benefit to a very few.
- Bullock Harbour has always been used as an amenity very well used by boats users, anglers, kayakers, swimmers and visitors. For Bartra to suggest otherwise is false.

Negative Residential Amenity Impact

- Concern as to the impact of 3 very large houses located to the north of and to the back of 'Castle View' (Blue Cottage). Totally overshadow the one storey cottage.

- Roof gardens would give rise to overlooking to rear bedrooms and living space, garden area.
- Roof gardens are not suited to such an exposed open sea area and do not enhance the seascape. Danger of furniture blowing off the roof gardens and causing damage / danger to low lying residents.
- Concern as to impacts upon insurance of existing residences if the new houses get damaged or flooded.
- The western marine building has been flooded many times.
- Concern of structural damage to surrounding properties during construction works and excavation of foundations.
- Blasting could do structural damage to bed rock.
- Road safety concerns and car parking capacity as both are restricted at Bullock Harbour. Bringing additional vehicles into the Harbour area would give rise to congestion.
- No public toilet proposed
- Concern construction traffic would give rise to traffic hazard due to narrow restricted width of harbour road.
- Concern with respect to noise and general disruption during construction.

Heritage Sea Scape and Visual Impact

- Scale and Mass of the proposal is inappropriate and insensitive to the rocky seascape of the site.
- View 'F' of the VIA clearly indicates that the proposed development would have a profound effect on the seascape.
- Assessment of the impact of the scheme as 'moderate' renders the scheme unacceptable in the context of the historic harbour.
- 3 large detached houses and 1 large apartment is excessive and insufficient marine use proposed.

- The height of the buildings is excessive and cannot be successfully integrated into such a historically important site.
- The development would dominate the harbour.
- Out of character and detrimental to the area
- Inappropriate to the location and heritage of the site
- Totally insensitive to the rocky seascape of the site and the landscape of this historically significant harbour.
- The visual impact assessment submitted is distorted
- A visual impact which is considered moderate is not acceptable in this historically important harbour
- No such development should be permitted in the absence of a Master Plan for Bullock Harbour
- Historic landscape and seascape should not be irreparably damaged by the building of such monstrosities.

Habitats Directive

- The proposed development fails to comply with the requirement of the Habitats Directive 92/43/EEC and the NIS is flawed.
- The Biodiversity officers report triggered the potential of significant adverse effects on the environment. This triggers the need for EIA: The site location is sensitive as :
 - It incorporates a pNHA designated area.
 - Evidence of badger activity, species protected under the wildlife Acts, as amended.
 - There is evidence of an Otter holt within 250 m
 - The overland run off to the Harbour creates a significant risk of a pollution event.
 - Harbour porpoise and seals frequent the Harbour.
 - Black guillemots are nesting in the harbour walls

- The dichotomy between the Councils concerns and the applicants inadequate survey work poses difficulties.
- Additional survey work was not undertaken to address the Biodiversity Officers concerns.
- Local knowledge of widespread tern activity in the harbour is widespread.
- The fact the council was not in a position to carry out an AA of the development based on the Biodiversity officers report is of concern
- Neither the Doyle Kent or Scott Cawley reports address the fundamental problems and concerns identified.
- Failure of management of mitigation or failure to move plant material off site in the event of a storm could result in a significant pollution incident.
- In relation to marine mammals Scott Cawley accepted that no dedicated marine mammal survey was undertaken and justify this on the basis that ‘No works were proposed in the harbour.’ However, the volumes of wave overtopping water run-off and the risk of contaminated material to be contained in that runoff and the risk during storm conditions justified the need for such a study. Seals and harbour porpoise have been identified around the harbour area.
- The council Biodiversity Report identified a litany of failures in the NIS. They have not been addressed.
- The hydrological report supporting the NIS does not adequately anticipate the direct impact upon marine mammals or bird life, or protected SCI, within Bullock Harbour and its vicinity who may be impacted from contaminated run off from the site during storm conditions thereby undermining the conclusions of the NIS.

6.5. Further Responses

- 6.5.1. A response by REID Associates has been received on behalf of the third party appellant, Bullock Harbour Preservation Association CLG, Mount Salus House, Mount Salus Dalkey, it is summarised as follows:

- The proposed development fails the justification test, does not accord with the sequential test to avoid the location of vulnerable residential use in a flood risk zone and would not comply with the principles for flood risk management set out in the National Flood Risk Management Guidelines.
- The hydrology report supporting the NIS does not adequately anticipate the direct impact on marine mammals or bird life, or protected SCI, within Bullock Harbour and its vicinity who may be impacted from contaminated run off from the site during storm conditions.
- A storm event has the possibility of creating a pollution event and possibly an environment emergency.
- The proposed scale height and massing is excessive given the tight constraints of the seascape site context enclosed by natural rock outcrops and abutting Bullock Harbour a Protected Structure and recorded monument.
- Impact upon a protected structure and recorded monument.
- The proposal contravenes the Waterfront ('W') zoning objective.
- Unacceptable safety hazard to future residents.
- Contravenes objective SLO 28 as it comprises mainly of a residential scheme – 1640 sq. m comprises the dominant use with associated mixed commercial harbour use at ground floor level.
- The developers appeal documentation has made no attempt to address the deficiencies in the storm wave overtopping assessment so the issues relating to wave overtopping identified in the previous RPS report (February 2022) remain.
- The risk to pedestrians and damage to vehicles on this site are high.

6.5.2. 29 of the 48 Observers submitted further responses to the first party appeal and appeal response. These included: 1. Monica Smyth and others, 2. Finola O'Neill, 3. Michael Mullen, 4. Siobhan and Damian Gill, 5. James Keogh, 6. Paul Morrison, 7. J. Rozand and Nuala Rozand, 8. Daniel and Rita Merity, 9. Maura Lee West, 10. Ethna Blake, 11. Peter Sellers, 12. Peter Kerruish, 13. Susan McDonnell Dalkey Community Council & Others, 14. Sinéad O'Brien, 15. Leonard McDonnell, 16.

Patricia Byrne, 17. P.J Drudy, 18. Trident Sub Aqua Club (Paul McNamara), 19. John and Ann Perry, 20. Derek Sheil, 21. Marybeth Sheil, 22. Síobhan McDermott, 23. Danielle Byrne, 24. Ian Mulvihill, 25. Patrick Kearns, 26. Alan Winter, 27. John Earle, 28. Paul Kelly and 29. Brian Meyer. No new issues were raised and I refer the Board to the issues raised in the observations summarised in section 6.4 of this report above.

6.5.3. Two additional responses were received from Damien and Evelyn Power and Bullock Harbour Residents Association. The response by Bullock Harbour Preservation Association CLG raises similar issues raised in their 3rd Party Appeal, see section 6.1.2 of this report above and their response to the first party appeal see section 6.5.1 of this report above, no new issues were raised. The observation / response to the first party response by Damien and Evelyn Power is summarised as follows:

- The decision to refuse permission is the correct decision.
- This is an opportunity for a really meaningful development of the harbour.
- A possible solution that DLRCC purchase the site and develop it for marine and community uses.
- Bullock harbour is of huge historic and cultural importance.
- The site is prone to overtopping during north easterly storms.
- The site is unsuitable for residential development.
- The scale, mass and height of the proposal is excessive.
- The proposed development would be dominant on the harbour.
- Would destroy the current vista and increase residential and commercial activity in a confined area beside the open, unprotected harbour walls.

7.0 Assessment

7.1. Introduction:

There is a protracted planning history on the subject site. An application was made for a mixed use scheme in 2016, on foot of Reg. Ref. D16A/0906, and it was refused permission by the planning authority in February 2017. The decision of the planning authority was not appealed. The development proposed per Reg. Ref. D16A/0906 included a two and three storeys high block along the quayside, with seven marine based units at ground floor level, including a cafe, and six residential units overhead and to rear. Behind the front block, three houses were proposed, each three storeys high, with roof terraces.

Three reasons were given for the decision by the planning authority to refuse permission, summarised as follows:

- The development as proposed would be contrary to the zoning objective for this location of providing for waterfront development and marine related uses and would also be contrary to the requirements of Specific Local Objective 22 as set out in the 2016 - 2022 Dun Laoghaire -Rathdown County Development Plan.
- The proposed development would be seriously injurious to the amenities of adjacent properties within the harbour and visual character of the area.
- The development fails to integrate appropriately with the harbour area and also fails to take advantage of opportunities to address the adjacent coastline through appropriate surveillance from within the subject site.

7.2. An application was made, separately, for permission to demolish the existing structures on the site, per Reg. Ref. D16A/0916. This application was refused by the planning authority for two number reasons summarised as follows:

- The demolition of these buildings in the absence of acceptable redevelopment proposals would significantly limit the potential of the harbour area to attract, support and maintain marine related uses and activities and would limit the scale and diversity of such uses, which the harbour area could support.

- The demolition of the buildings would significantly reduce the sense of enclosure, both visual and physical, along the quay and would have a seriously injurious impact on the visual amenities and character of this area.

7.3. A further application was made in 2017 for a mixed use development on foot of Reg. D17A/1135 / ABP-301237-18 (see section 4.0 above of this report for detail of this proposed development). Following a decision by the planning authority to refuse permission and an appeal to An Bord Pleanála, the Board granted permission ABP-301237-18. The validity of that permission was questioned in judicial review proceedings, which the Board chose not to defend. This resulted in the Board's decision being quashed by the High Court. The application was remitted to the Board, but the application was withdrawn by the applicants in December 2021.

7.4. The subject development (set out in detail in section 2.0 of this report above) entails demolition and removal of the existing industrial single storey warehouses and sheds (1220 sq. m) on the site and the construction of a mixed use development, including marine based commercial, community and leisure facilities and four residential units. The development will also include a new public square adjoining the harbour. The proposal includes an NIS and is similar in nature to the application sought under D17A/1135, which did not include an NIS. The subject application was refused permission for four number reasons set out in full in section 3.0 of this report above and summarised hereunder:

- The proposed development is located in an area which has been identified as potentially liable to flood events and significant wave overtopping. The proposed development has not included adequate measures to minimise flood risk. The proposal to provide new residential development within Flood Zone A in particular, the proposed apartment over commercial units, would not be in accordance with the requirements of Section 4.7 and 5.1 of Appendix 13 (Strategic Flood Risk Assessment) of the Dun Laoghaire Rathdown County Development Plan 2016-2022.
- The amount of site area reserved for residential use is excessive and seriously compromises the achievement of a quality mixed use and integrated development with adequate and appropriate provision for waterfront, marine and harbour related activities. That the proposal would be contrary to the 'W'

zoning objective for this site and would also be contrary to the requirements of Specific Local Objective 22 as set out in the 2016 - 2022 Dun Laoghaire - Rathdown County Development Plan.

- The lack of an integrated design approach and the almost exclusive use of the majority of the site area for residential use would seriously erode and weaken the existing 'W' land use zoning objective.
- The proposal if permitted, would be visually and physically segregated from the rear of the development site with no meaningful integration, visually or functionally. Fails to respond appropriately to the unique site context. The proposed development would be seriously injurious to the special character and amenities of the harbour area and contrary to the requirements of Specific Local Objective 22.

7.4.1. The Board is advised that the application site comprises two distinct elements with the developable lands limited to the more southerly extent of the site area which are occupied by a series of vacant buildings / warehouses and an open yard area that previously accommodated the workshops and boatyard associated with the former 'Western Marine Ltd.' chandlery business. The remainder of the site comprises a rocky outcrop along the shoreline to the north of the existing building complex which serves as a public amenity and it is proposed to transfer ownership of this area to the Local Authority.

7.5. The subject appeal relates to both a third party appeal and a first party appeal against the reasons for refusal. I highlight that 144 third party submissions were received, 48 observations and a further 29 submissions (in addition to those from Prescribed Bodies) have been submitted to the proposed development. It is my intention to assess the application with respect to the reasons for refusal, in the first instance, and, secondly, having regard to the updated technical information submitted with the first party appeal.

7.6. The proposed development is assessed under the following headings:

- **Principle, Zoning and Use.**
- **Overall Design and Layout / Visual Impact / Urban Design Considerations**
- **Flooding / Drainage Considerations**
- **Biodiversity**
- **Impact on Residential Amenity**
- **Traffic Implications**
- **Other issues**
- **Appropriate Assessment**
- **Environmental Impact Assessment (screening)**

7.7. Principle, Zoning and Use

7.7.1. The proposal was assessed by the PA under the Dun Laoghaire Rathdown County Council Development Plan 2016-2022. However, the operative County Development Plan is now the Dun Laoghaire Rathdown County Development Plan 2022 – 2028. The subject site retains the same primary zoning objectives under the new CDP. The subject site at Bullock Harbour remains divided into two distinct areas (as in the 2016 Development Plan). The rock outcrop area along the foreshore is shown as a proposed Natural Heritage Area (pNHA) and the developable land area (former Western Marine) is zoned Objective “W”: ‘To provide for waterfront development and/or harbour related uses’.

7.7.2. The Plan sets out “Permitted in Principle” uses within Objective “W” zone which include:

“Carpark, Community Facility, Cultural Use, Industry- Light, Offices less than 200 sq. m., Marine Leisure Facility, Open Space, Public Services, Restaurant, Transport Depot”.

7.7.3. 'Open For Consideration' uses Include:

“Advertisements and Advertising Structures, Aparthotel^a, Assisted Living Accommodation, Craft Centre/Craft Shop, Childcare Service, Civic Use, Doctor/Dentist, Education, Enterprise Centre^a, Hotel/Motel^a, Office Based Industry, Offices^a, Off-License^a, Place of Public Worship, Public House, Sports Facility, **Residential^b**, Residential Institution^b, Science and Technology Based Industry^a, Shop-Specialist, Shop Neighbourhood, Tea Room/Café, Travellers Accommodation.

a: Uses Open for Consideration in Dún Laoghaire Harbour area only.

b: Not permitted in principle or open for consideration in Bulloch Harbour.

Note 1: An objective of this Plan is to protect the harbour/ marine entity of Dún Laoghaire Harbour by facilitating harbour-related uses, but not to confine permitted uses in the harbour to a degree that exclusively attracts those with an interest in active maritime recreation. Any development proposal should seek to ensure public accessibility to the harbour and shorefront.

Note 2: Any development in the coastal area should have regard to the findings of the Dún Laoghaire- Rathdown County Council Coastal Defence Strategy Study, (2010).

7.7.4. The Specific Local Objective (SLO) 22, 'Bullock Harbour' remains now numbered SLO 28 as adopted, it is significant in the context of the subject application, it removes mention of the word "residential", it states:

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

7.7.5. Regard being had to the foregoing, of some significance, to this proposal is the fact that under the provisions of the new Dun Laoghaire Plan, 'Residential' development is "Not" 'permitted in principle' or 'open for consideration' within the "W" zoning pertaining specifically to Bullock Harbour. Also, as set out above, SLO 28, 'Bullock Harbour', removes mention of the word "residential".

- 7.7.6. The subject development (set out in detail in section 2.0 of this report above) entails the construction of a mixed-use development, including marine based commercial, community and leisure facilities and four residential units, incl. 3 houses and 1 apartment. Cognisance is had to the first party appeal and applicants' argument's with respect to viability for any sole marine related development at Bullock Harbour. It is strongly submitted that the proposed marine related uses cannot be secured for delivery without the residential component, which is required to subsidise those proposed marine related uses.
- 7.7.7. I have considered all of the arguments in respect of the principle of the land use zoning (to provide for waterfront development and harbour related uses and the requirement of SLO 28). I have considered the detailed supporting documents (see list of same set out in section 2.2 of this report) incl. the 'Assessment of the Potential for Commercial Marine-Based Activity at Bulloch Harbour by KHSK Economic'. I have also considered refusal reason number 2 and the PA's opinion with regard to the significant imbalance and predominance of residential use in the proposal and having regard to the low percentage of overall floor area being provided for the marine related uses together with the low developable site area being provided to support and service such uses, it is considered that insufficient provision has been made for waterfront, harbour and marine related uses.

Table 1

Total Floor Area Proposed	2,290 sq. m
Residential Development	1,647 sq. m (72%)
Commercial Cafe	108 sq. m (4.7%)
Marine Commercial, Leisure / Community Development	535 sq. m (23.3%)

- 7.7.8. It is considered that the amount of site area reserved for residential use is excessive and seriously compromises the achievement of a quality mixed use and integrated development with adequate and appropriate provision for waterfront, marine and harbour related activities. This point is also strongly argued in the third party appeal and observations received.

- 7.7.9. While I would generally have sympathy to the argument that residential uses could underpin, complement and support the vibrancy, viability and attractiveness of the proposed development as a mixed-use marine commercial and leisure / community based development which delivers on objectives for waterfront uses at this location. I would concur with the assessment of the Planning Authority that difficulties arise in reconciling the submitted scheme with the policy objectives for the site. The intent of the previous Development Plan for this site, upon which DLRCC made its decision, is to provide for a mixed-use scheme incorporating a variety of commercial marine-based activities and public water-based recreational uses with an ancillary / subsidiary residential element. It was the opinion of the Planning Authority that, in light of the significant imbalance and predominance of residential use, insufficient provision has been made for waterfront, harbour and marine related uses.
- 7.7.10. I note that this matter of extent of residential development was raised in the previous application D17A/1135 (similar levels of residential to mixed use marine, commercial, café and leisure were proposed under that proposal) and the opinion of the PA remains unchanged. It is notable that 'residential' use was open for consideration under the 'W' zoning objective for Bullock Harbour and SLO 22 allowed for residential use under the prevailing statutory CDP 2016 – 2022 at the date of that decision.
- 7.7.11. The appropriate forum for review of land use zoning (of the 2016 – 2022 CDP) and Objective 22 (also of the 2016 – 2022 CDP) as it relates to Bullock Harbour and the wider viability of marine related uses and the need to subsidise them through the inclusion of a residential component was considered during the course of a review of the Development Plan.
- 7.7.12. In this regard I note the Bullock and Sandycove Harbours Masterplan 2020, which is of relevance. The purpose of the Masterplan was to provide a context for any future place making and public realm enhancements of the Harbour lands within public ownership, as well as providing a wider context and guidance that could influence the future function and operation of both places.
- 7.7.13. In relation to Bullock, the Masterplan includes a SWOT analysis (strengths, weaknesses, opportunities and threats). The long list of opportunities includes some of relevance to the current application, set out as follows:

- Improved facilities for changing and public toilets would benefit all users.
- Improved access (universal) from Harbour Road would allow greater use of the East Pier.
- More seating is required and places for people to enjoy the location.
- The marine function should be emphasised and enhanced.
- Harbour activities and leisure uses could be more effectively separated by encouraging more visitor use along the east side of the Harbour.
- Use of the East Pier should be maximised during the summer.
- The breakwater could be enhanced to help protect the old pier and the recent investment made in its restoration.
- The Harbours heritage and history should be emphasised more.
- A place to land, a place to park, and a place to change would be a major benefit as a marine user facility.
- Surfacing should be upgraded In line with the Dublin Port Company conservation plan.
- Visitor access to the rocky foreshore could be improved (e.g. for school/ specialist trips).

7.7.14. Cognisance is had that refusal reasons 2 and 3 of Reg. Ref. D22A/0006 cite the significant imbalance and predominance of residential use in the proposal and the lack of an integrated design approach and the almost exclusive use of the majority of the site area for residential use would seriously erode and weaken the 'W' land use zoning objective for the site of providing for waterfront, marine and harbour related uses.

7.7.15. Given the County Development Plan change and the exclusion of residential from the 'W' land use zone at Bullock Harbour, I cannot agree, with the first party's position that to exclude residential development from the 'W' zoned lands at Bullock Harbour ignores the evidence relating to the viability of the harbour and these lands. I note for the attention of the Board the first party's submission that Bartra Property (Dublin) Ltd has instructed lawyers to prepare proceedings by way of an application for judicial review to question the validity of the changes, including, in particular, amendment no. 239, which purported to change the land use matrix for lands zoned

Objective 'W'. The first party assert that they will undertake to keep the Board informed about any relevant court order made.

7.7.16. It is open to the Board to consider the application on its merits, notwithstanding these changes. The Board will note that permission was not refused by DLR County Council for material contravention of the 2016 - 2022 Plan. Given the change in 2022 – 2028 current statutory Development Plan policy and the amendment to exclude 'residential development' from the 'W' zone in Bullock Harbour, in my opinion, it is clear that housing development is not permitted on the subject lands zoned 'W' and therefore the proposal represents a material contravention of the 2022 - 2028 DLRDCC County Development Plan which came into effect on the 21st April 2022 and therefore should be refused. I tend to agree with the PA and third party submissions that the proposal would undermine the existing land use zoning objective for this site and would compromise the harbour's ability to attract and maintain good marine related uses. It would also limit the scale and diversity of uses, which the harbour could support and would be contrary to the zoning objective for this site which is to provide for waterfront development and harbour related uses.

7.7.17. I highlight that Section 37(2) of the Planning and Development Act 2000 (as amended) provides for the Board to grant permission where the proposed development materially contravenes the development plan, subject to paragraph (b) where it considers:

(i) the proposed development is of strategic or national importance,

(ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or

(iii) permission for the proposed development should be granted having regard to regional spatial and economic strategy for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or

(iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.

7.7.18. While it is open to the Board to grant permission pursuant to the provisions of section 37 (2) of the Planning and Development Act 2000, as amended. I do not consider that the proposed development would comply with 37(2) (b) (i), (ii), (iii) or (iv).

7.7.19. I am not open to a material contravention of the Plan in this instance. The DLRDCDP 2022 – 2028 is a new Development Plan which was subject to analysis by the OPR and no issues were raised with respect to use classes included and exclusion of 'Residential' from the 'W' zone in Bullock harbour. I see no reason to materially contravene such a new Development Plan should the Board disagree it is open to them to do so and grant permission pursuant to the provisions of 37(2)(b), relevant Guidelines under Section 28 of the Act and Government Policy Housing for all.

7.8. Overall design and layout / visual impact / urban design considerations

7.8.1. Refusal reason number 4, set out in full in section 3.2 of this report above considers among other considerations that the proposal to develop a series of 3 no. detached dwelling houses to the rear of the site, if permitted, would be visually and physically segregated with no meaningful integration. It is considered that the proposal fails to respond appropriately to the unique site context or to the special character of the area and does not strengthen or reinforce a positive sense of place at this location. It is also considered contrary to the requirements of SLO 22.

7.8.2. The proposed development site occupies a prominent position at the entrance to Bullock Harbour from Dublin Bay on lands which have been zoned as 'W' with the stated land use zoning objective 'To provide for waterfront development and harbour related uses'. As set out in the preceding section of this report, SLO 22, 'Bullock Harbour' now numbered SLO 28 as adopted, in the DLRDCDP 2022 - 2028, requires "That any development shall form part of a mixed-use scheme which will include commercial marine-based activity and public water-based recreational uses and shall have regard to the special nature of the area in terms of the height, scale, architecture and density of built form".

7.8.3. The case has been put forward that the subject proposal involves the redevelopment of an under-utilised and dilapidated property which presently detracts from the special character of the harbour surrounds and thus would make a positive

contribution to the wider area (N.B. The Board is advised that the application site comprises two distinct elements with the developable lands limited to the more southerly extent of the site area which are currently occupied by a series of vacant buildings / warehouses and an open yard area that previously accommodated the workshops and boatyard associated with the former 'Western Marine Ltd.' chandlery business. In terms of design and layout the proposal comprises two elements (i) the mixed use, partial three-storey, quayside construction and (2) The three number three storey detached dwelling houses located to the rear of the site.

- 7.8.4. It is pertinent to note that there is no fundamental changes to the urban design consideration of the subject proposal to that previous proposal sought under Reg. Ref. D17A/1135, see planning history section of this report above. While the previous proposal incorporated two 2 bed-room apartments the subject application proposes one 4-bedroom apartment at the same location. The design, height, scale and massing and the layout of the scheme remains the same. The opinion of the PA in respect of visual impact and design are therefore well known to the first party.
- 7.8.5. I tend to agree with the opinion of the PA that the wider setting of the Harbour has been somewhat compromised by the development of Pilot View apartments and the nearby Nursing Home. Any new development on this site presents an opportunity to make a positive contribution to the area which respects the character of the harbour. The harbour is a recorded monument (and is noted in the Record of Protected Structures appendix of the Development Plan).
- 7.8.6. In my opinion, the overall design, scale, height and composition of the quayside element of the proposed development represents an appropriate addition to the area. This element of the proposal contributes to a sense of place reinforcing the traditional harbour/quayside architecture with a mix of forms, heights, materials and uses. The new construction represents a considerable improvement over the existing dilapidated buildings on site which detract from the amenity of the area and will make a positive contribution to this waterfront / harbourside location, the wider setting of which, as acknowledged, has already been seriously compromised by inappropriately designed development.
- 7.8.7. With respect to the proposal to develop 3 No. detached dwelling houses to the rear of the site, in the first instance, as set out above, this aspect of the development

gives rise to particular concern as regards adherence to the applicable land use zoning objective 'W' (i.e. To provide for waterfront development and harbour related uses) and Specific Local Objective No. 28: 'Bullock Harbour' which excludes residential use class within Bullock Harbour 'waterfront' zoning.

- 7.8.8. In the second instance, I would have concern whether 'highly vulnerable' residential development should be avoided in areas at risk of flooding. The matter of flooding and wave overtopping and suitability of the subject site for residential development is discussed in detail in a succeeding section of this report.
- 7.8.9. The third consideration of urban design and visual impact of the residential element, in my opinion, is therefore somewhat subsidiary to the two foregoing considerations. This being said, I tend to agree with the assessment of the planning authority that the proposed housing fails to provide for any meaningful integration in terms of a visual, physical or functional relationship with the quayside. I too consider that the overall scale and height of the proposed housing is excessive and responds poorly to the site context in that it will dominate views from the opposing side of the harbour and would have a negative visual impact on the surrounding townscape and in particular on the view of Bullock Harbour when viewed from Harbour Road.
- 7.8.10. I would also have concern to the location of the fisherman's huts, remote from the quayside, to the cul de sac arrangement for pedestrians and lack of public access through the site to the rocky foreshore and back to the quayside.
- 7.8.11. I consider that the inclusion of a 'public square' to the front of the proposed craft boat building / storage facility would serve to open up the quayside to a greater extent and is compatible with this waterfront / harbourside location and could potentially serve to increase the attractiveness of Bullock Harbour.
- 7.8.12. The report of the case planner has further elaborated on the rationale to refuse permission by stating that the scheme makes inadequate provision for suitable servicing, accessibility, and parking arrangements to serve the marine and harbour related uses. It is also stated that the overall design and layout of the proposal, with particular reference to the severance of the proposed dwelling houses from the quayside element of the scheme, fails to achieve a sufficiently high quality and integrated form of mixed use development that includes adequate provision for waterfront, marine and harbour related activities.

- 7.8.13. In addition, it has been asserted that the development as proposed would seriously compromise the harbour's ability to attract and maintain quality marine-related uses and would undermine the scale and diversity of any such uses which the harbour could support.
- 7.8.14. Having visited the site and having reviewed all of the material on file. I consider that, the wider benefits accruing from the redevelopment of this brownfield site through the introduction of more active uses along the waterfront should be welcomed. Given the exclusion of residential from the zoning objective, however, regardless of arguments with respect to viability and commonplace nature of residential accommodation in the redevelopment of waterfront / harbourside locations, each site is unique, all planning applications must be examined on a case by case basis.
- 7.8.15. Overall, I am not satisfied that the design, layout and visual impact of the three number three storey (412 sq. m) detached houses would visually integrate at this location. I would agree with the third party arguments submitted that the overall scale and height of the proposed housing is excessive and responds poorly to the site context. It does not have regard to the special nature of the area in terms of the height, scale, architecture and density of built form and therefore conflicts with SLO 28 "Bullock Harbour".
- 7.8.16. I highlight the submission by the Dept. of Housing, Local Government and Heritage Submission 2 Architecture, set out in detail in section 3.3.2 of this report above. It too raises concerns with respect to visual impact of the development on the character of the harbour and its historic structures and features.
- 7.8.17. I agree that a selection of photographic images to describe any revised proposal from a wider range of views would be beneficial, including from the sea and publicly accessible areas of the outcrop and with the nineteenth century villas adjoining.

7.9. Flooding / Drainage Considerations

- 7.9.1. A number of parties have raised significant concerns regarding the potential impacts of overtopping to the site which may exacerbate flooding on adjacent lands. Overtopping refers to the phenomena of waves containing projectiles such as debris and rocks crashing onto adjacent lands during extreme weather events. It is contended that due to climate change, this is occurring more frequently at Bullock

Harbour and that overtopping at the subject site may cause injury to perspective residents and to property. Video evidence has been submitted by some parties showing flooding during extreme weather events, inter alia, recent storm Emma (March 2018). Concerns have also been raised regarding safety of potential residents and the adequacy of the surface water attenuation proposal.

7.9.2. Section 3.3, of this report, sets out interdepartmental reports and I note the report of the drainage department which recommends refusal of the apartment over the commercial units located within Flood Zone A and recommends refusal of the three proposed houses due to flood risk to people, property, the economy and the environment. It is considered that inadequate measures are proposed to minimise flood risk and provisions for emergency services access and thus the proposal fails Sections 2(i) and (ii) of Box 5.1 of the Justification Test for development management (The Planning System and Flood Risk Management Guidelines). The drainage report requests that further information is required for the commercial units. The applicant will need to address not only extreme events but will also have to have to deal with fluctuating water levels and future mean sea water level rise from the impact of climate change that would require, for all intents and purposes, the commercial units to have permanent defences in place for the 5.0% AEP event if not the 2% AEP event. Further information is also requested with respect to surface water drainage, inter alia, to demonstrate sufficient storage, how inlets and outlets of the culvert and proposed stormwater sewer will be kept clear of blockages, assess the impact of MRFS (Mid-Range Future Scenario) and HEFS (High-End Future Scenario) on the surface water drainage proposals, demonstrate sufficient SuDs measures and compliance with GSDSDS requirements.

7.9.3. On the basis of this report, the Planning Authority have stated that they have serious concerns with respect to the proposed development in terms of flooding and recommend refusal. Refusal reason number one, set out in detail in section 3.2 of this report considers that the proposed development is located in an area which has been identified as potentially liable to flood events and significant wave overtopping. That the proposed development has not included adequate measures to minimise flood risk, and has not included adequate measures to ensure that residual risks to the area and/or development can be managed to an acceptable level. The proposal to provide new residential development within Flood Zone A, namely the proposed

apartment over commercial units, would not be in accordance with the requirements of Section 4.7 and 5.1 of Appendix 13 (Strategic Flood Risk Assessment) of the Dun Laoghaire Rathdown County Development Plan 2016-2022.

- 7.9.4. I highlight for the attention of the Board that the PA recommend that in the event that a grant of permission was to be considered for the proposed development, it is recommended that the items raised in the drainage planning report be considered in full by the applicant.
- 7.9.5. Coastal flooding, wave over topping, flood zones, flood zone mapping and the potential impact of climate change on sea levels are all detailed in the Dun Laoghaire Rathdown County Development Plan 2022 – 2028 as summarised under section 5.0 of this report above.
- 7.9.6. The Development Plan 2022-2028, includes "Appendix 15: Strategic Flood Risk Assessment", together with a new set of "Coastal Risk Maps" showing potential for coastal flooding in Dalkey. On Fig 6 - 12 of the said "Coastal Risk Maps", the quayside in Bullock Harbour is indicated as at "medium risk" of flooding and the rocky area outside of, and to the rear of, the former Western Marine premises is shown at "high risk".
- 7.9.7. A portion of the subject site at Bullock Harbour is within Flood Zone C. A narrow strip of the western boundary along Quay Road is located within Flood Zone A and Flood Zone B. A portion of the rocky outcrop area to the north of the lands within the applicant's ownership but not included within the developable area is denoted Flood Zone A.
- 7.9.8. The subject site is within the area shown as one that is at risk of wave overtopping, as shown on Map 4 as part of the amendments (March 2022) to the Development Plan 2022-2028. This also includes an adjoining cottage in separate ownership and adjacent residential properties to the south along the quay road. The plan also indicates 'F' for fluvial flooding on the lands.
- 7.9.9. Section 6.3 'Coastal Flooding' of Appendix 15 of the DLRDCDP 2022 – 2028 states: "Significant wave overtopping has also been observed along the DART line between Seapoint and Monkstown and in Bullock Harbour. Analysis also indicated wave overtopping may occur at Booterstown Marsh.

Whilst development opportunities along the seafront are generally fairly limited, any flood risk assessment should take into account wave overtopping and the potential impact of climate change on sea levels. Despite a site being in Flood Zone C currently, analysis of either of these two factors may show it is not possible to provide a sustainable and long-term development as it is not possible to manage future risks from overtopping and / or climate change. In other cases, depending on the nature and design life of the development, appropriate mitigation may include additional allowances in finished floor levels, emergency planning and business continuity and recovery”.

7.9.10. The subject proposal includes proposals for reinstatement and enhancement of existing surface water drainage system in response to best available climate change and wave data, including

- (v) Recommissioning/reinstatement of existing surface water sump with sluice gate in the eastern part of the land holding;
 - (vi) Construction of a new 300mm storm sewer to run from existing sump across the development area of the site to connect to the existing 300mm outfall culvert discharging under the Bullock Harbour quay road;
 - (vii) Construction of an additional overflow culvert to run inside the existing development area boundary wall for 46.3m along the eastern and northern edges of the development area;
 - (viii) Provision to redirect extreme storm event overflows into a new culvert under the proposed boat storage facility prior to discharge onto quay side (which overflows currently discharge onto the quayside immediately adjacent existing residential property).
- Stabilisation of the existing development area boundary wall and repair with natural coursed granite stone.
 - A new support wall in concrete will be erected inside section (34.8 m long) of the existing development area boundary wall at rear and north side of site.

7.9.11. A site specific flood risk assessment (SSFRA) (January 2022) and an Engineering Services Report has been submitted by the applicants consultants CS Consulting Group / JBA Consulting. The first party appeal responds to the concerns raised in

the drainage planning report and to refusal reason number one. It submits that the Flood Zone definition is correct within the SFRA and is without the addition of climate change. Climate change impacts are dealt with in the setting of floor levels, as applied in the development.

- 7.9.12. The proposed housing units have a finished floor level of 4.65mAOD. The one apartment unit over the commercial unit can be accessed from the rear, with an entrance level of 4.702mAOD. Therefore, all the proposed dwelling have access level above the extreme 1-in-1000 (0.1 %) level increased by +1 000mm for the predicted high-end future scenario.
- 7.9.13. The Local Authority has queried whether the Justification test, notably parts 2(ii) & 2(iii) of Box 5. I (Justification Test for development management) of the Planning System and Flood Risk Management Guidelines have been satisfied.
- 7.9.14. Part 2 (i) & (ii) states:

“Has the proposal been subject to an appropriate flood risk assessment that demonstrates:

- (i) The development proposed will not increase flood risk elsewhere and, if practicable, will reduce overall flood risk?
- (ii) Does the development proposed include measures to minimise flood risk to people, property, the economy and the environment, as far as reasonably possible?

- 7.9.15. It is submitted that the proposed development will not increase the likelihood of flooding elsewhere. The current site topography would allow storm water either generated on site or draining on to the site to be directed back into the sea without the risk of increasing flooding to adjacent properties. The proposed development will also aid in the reduction of overall flood risk in the environs of the development. The proposal to direct storm water from the east of the scheme directly back into the sea, via the proposed construction of a new culvert and the proposed emergency overland flood route through a commercial property will allow 'Castle View', Bullock Harbour a safer entry/ egress opportunity than currently exists. At present sea spray which lands in the subject land's drains through the existing entrance and across the quay, impeding access to 'Castle View'. Therefore, the proposed works will improve

the management of flood waters in the wider Bullock Harbour area. If a 'do nothing' approach is taken the current situation will deteriorate in the future decades.

7.9.16. Measures have been included in the development to manage the overtopping risks by channelling water safely through and under the development. Spray will remain a feature of the development, but this has no safety issues and containment of the occupants within the development and sheltered access and egress shows that risk to people is acceptable.

7.9.17. The first party refute that if an emergency plan is included in a development it is flawed. It is submitted that emergency plans are included in developments for fire, electrical failure and indeed floods, including tidal, fluvial pluvial etc. This will be the responsibility of the management company and the occupiers would be fully briefed. There are many examples of development where flood emergency plans are included. Closure of basement car parks in the case of a flood, installation of barriers are all in common usage across Local Authorities in the greater Dublin area. These measures are applied to the residual risks. These are risks that occur with an extreme event beyond the design standard, or a failure of a defense. The proposed emergency plan is correctly based on the present day risks and demonstrates that the Justification Test criteria 2 (iii) is satisfied.

7.9.18. In relation to Part 2(iii):

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

7.9.19. The Council noting that the commercial units should have permanent defences in place for the 5.0% & 2% AEP, (Annual Exceedance Probability) events. The proposal as designed would have the predicted 5.0% & 2% AEP levels, 2.95mAOD & 2.87mAOD respectively.

7.9.20. It is contended that safe access & egress arrangements for the commercial units can be achieved due to the proposed finished floor levels of the units and the current I - in-200 & I-in-1000 flood levels as per the Councils Flood Zone Mapping from the Development Plans SFRA.

- 7.9.21. It is submitted that the provision for emergency services access, as per the Justification Test para 2 (iii) is not required as the default position will be evacuation during forecast high surge tides, increased for predicted climate change. Again, Justification Test 2 (iii) is passed for any future scenarios. No future flood management measures are considered necessary at this location.
- 7.9.22. There is ambiguity and disagreement with respect to Flood Zone Mapping. The first party maintain that the site is mostly zoned Flood Zone C with a portion of the north western boundary within Flood Zone B. The PA are of the opinion that the north western portion of the site is within both Flood Zone A and B and that the commercial units and first / second floor apartment is located within Flood Zone A.
- 7.9.23. I consider there is some difficulty in ascertaining the precise location of the differing flood zones due to the scale of the mapping provided with the Council's Strategic Flood Risk Assessment. However, from a review of Map 4 as part of the amendments (March 2022) to the Development Plan 2022-2028, it is clear, that a portion of the site to the north western boundary along Quay Road is located within Flood Zone A and Flood Zone B. Wave overtopping is applicable to the overall site and the site is in an area of flood risk concern. I am therefore of the opinion that the PA is correct in its assessment of the proposal.
- 7.9.24. I acknowledge the extensive SSFRA carried out by the first party to the extensive modelling, assessment of risk from all potential sources of flooding and the necessity for the implementation of suitable mitigation measures where appropriate. In addition to addressing the reason for refusal and the issues raised in the drainage department report the first party appeal addresses a number of queries of different aspects of the submission, concerning wave overtopping analysis, use of the SWAN model and emergency planning. However, I believe it is central to the proposal that residential development is 'not permitted' or 'open for consideration' within the Waterfront, 'W', zoning objective for Bullock Harbour. This fundamentally impacts whether the proposal meets the first criterion of the justification test for development management (The Planning System and Flood Risk Management Guidelines), which states:

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

7.9.25. Residential use is ‘not permitted’ or ‘open for consideration’ as per Zoning Objective “W” Bullock Harbour in the statutory DLRDCC Development Plan 2022 – 2028.

7.9.26. In assessing the foregoing, I cannot concur with the applicant that the proposed development broadly complies with the wider land use zoning and development objectives applicable to the site and thus satisfies this initial criterion of the Justification Test.

7.9.27. In my opinion, given the site location in an area which is prone to (tidal and overland) flooding and wave overtopping, the policies and objectives of the County Development Plan 2022 – 2028, amendment to SLO 28 and the provisions of the *‘Planning System and Flood Risk Management, Guidelines for Planning Authorities’*, it is appropriate to apply the precautionary principle in this instance and to adhere to the risk-based sequential approach to flood risk whereby ‘highly vulnerable’ (residential) development should be avoided in areas at risk of flooding. In this respect, I would also highlight the risk to public safety and property (i.e. the future occupants of the proposed housing and the physical construction works, including the notable extent of glazing at first and second floor levels to the rear of the detached dwelling houses) given the exposure to significant wave overtopping events (and the debris carried by same) and the overt reliance on emergency planning as a mitigation measure against the impact of same.

7.9.28. Residential development has been specifically omitted from these lands in the newly adopted, statutory County Development Plan, and the proposal is therefore contrary to the provisions of the *‘Planning System and Flood Risk Management, Guidelines for Planning Authorities’*, I am not satisfied that it has been adequately demonstrated that the subject site is suited to highly vulnerable residential development or that the proposal would result in a satisfactory residential environment for future residents. I therefore recommend that permission be refused on such grounds.

7.10. **Biodiversity**

7.10.1. The Applicant has submitted a suite of reports and drawings as part of the application submission with respect to the Biodiversity including;

- Environmental Impact Assessment Screening Report,
- Appropriate Assessment (AA) Screening Report,
- Natura Impact Statement (NIS),
- Bat Report,
- Ecological Impact Assessment (EclA),
- CEMP,
- Hydrology Report and
- A Landscape Plan.

7.10.2. A report from the Biodiversity Officer (dated the 23rd February 2022) is set out in detail in section 3.3.2 of this report above. It recommends that additional information is sought with respect to a long list of concerns raised. Some of which include:

- The Impact of flooding, overtopping and climate change in the future and how the proposed site will be protected or adapted in the face of these impacts. This is relevant to biodiversity in terms of how any future proposed protection measures, such as hard structures, if required may impact on the adjacent coastal habitats and associated species.
- Habitat Surveys Limitations given that habitat and flora surveys were completed outside the appropriate season, which is viewed by the Biodiversity Officer as a limitation, especially in relation to those habitats within the zone of influence of the proposed development that are important habitats.
- Impact on boundary wall as it is unclear as to how this area will be impacted by the proposed development directly or indirectly and there are no details provided of how it will be managed in the future.
- It is noted that it appears that no assessment of the potential increased activities associated with the proposed development on the surrounding area and harbour. A request is made for an assessment of any activities during operation where relevant and any assessment be supported by scientific data.

- Impact on Marine Mammals and request for the NIS and EclA take into account the occasional usage by seal species and harbour porpoise of these areas.
- Impact on Otter and request for an assessment to clearly demonstrate how this species can be protected.
- Impact on Breeding Birds and concern that no reference is made to breeding Black Guillemots.
- Habitat degradation as a result of hydrological impacts and a request for a number of items to be taken into account in terms of water quality, in terms of assessment and mitigation regarding water quality in the NIS, EclA and any supporting reports.
- Habitat enhancement for Biodiversity with the incorporation of pollinators and grasses into Landscape Plan,
- Need for a Biodiversity Management Plan for the rocky coastline and associated habitats.
- Landscape Plan and planting proposal to include an ecologist input.
- CEMP to include more details of mitigation measures.
- Request that the Applicant clearly demonstrates how items raised in the Biodiversity Officers report are addressed in the EclA, NIS and the other assessments.

7.10.3. The Biodiversity Officer's report recommends that additional information is required in order to address these items. The PA did not cite any concerns in the reasons for refusal in respect of natural heritage.

7.10.4. Based upon information received, the Biodiversity Officer's report and the screening assessment carried out by Dun Laoghaire-Rathdown (report on file), the Planning Authority considers that additional information would be required to comprehensively assess the matter of the potential Impacts of the proposed development on the integrity of any European Site and that Appropriate Assessment (AA) could not be concluded. I highlight that AA is assessed separately in this report.

7.10.5. The first party dispute the findings of the Biodiversity officers report. It is submitted that that exhaustive surveys have been carried out of the site and environs, as set out in the Natura Impact Statement, and all factors relevant to the carrying out of an Appropriate Assessment were included in the Natura Impact Statement. No otter halt

was detected close to the location of the proposed development, notwithstanding the planning authority assertion to the contrary. Nevertheless, the species is discussed in some detail in the NIS, notably at par. 6.5.1. which states:

“Bullock Harbour and the nearby rocky shores and coastal waters of the Irish Sea in the immediate vicinity of the proposed development provide suitable habitat for foraging and commuting otter. Otters are regularly encountered along the County Dublin coast, as shown by e.g. the Dublin City Otter Survey 22 and by the records on the NBDC database. The nearest SAC designated for otter is the Wicklow Mountains SAC, c. 123km south-west of the proposed development. The proposed development is located in the same sub-catchment as the Wicklow Mountains SAC, however, considering the size of otter territories in Ireland, and its location relative to the Wicklow Mountains SAC, otters potentially using the adjacent coastline do not form part of or support any SAC population. Otters will not be impacted by construction related disturbance at c. 150m of the proposed development, considering they are largely nocturnal, and majority of the construction works will be carried out during daytime. In addition, otters regularly using the coastline are anticipated to be habituated with certain amount noise and disturbance from humans, considering the pre-existing background noise associated with traffic and residential dwellings in the surroundings, therefore impacts from noise and/or increased human presence during construction and/or operational stage will be negligible”.

7.10.6. It is submitted in the first party appeal that Black Guillemot is recorded in the NIS as foraging and/or roosting within or adjacent to the proposed development site. This is noted as a non-SCI species notwithstanding its amber listing (medium conservation concern).

7.10.7. I note the detailed response by JBA consultants and Scott Cawley Ltd (for the applicant) to the comments of the Biodiversity officer, included in Appendix 2 of the first party appeal.

7.10.8. It is submitted that Section 3.3.1 *Conceptual Site Model (CSM)* of the JBA Hydrology Report refers to re fueling, leakage of oil and lubricants from machinery on site, wet cement runoff and associated increases in pH and runoff of exposed rock and soil

that may contain concentrations of suspended solids, hydrocarbons and elevated pH, as potential sources of pollutants from the site during construction.

7.10.9. Section 3.2 of the Hydrology Report assesses the pathways for a potential pollutant (the source) into the environment. The pathways listed by JBA in the Hydrology Report include direct hydrological links to Dublin Bay, wave overtopping and indirect pathways to Natura 2000 via the Irish Water Ringsend WWTP. Dispersion of air borne dusts during demolition and construction was also cited as a potential pathway to a receptor(s).

7.10.10. An assessment of the Source-Pathway-Receptor (S-P-R) linkages is provided in Table 3.1: *S-P-R Risk Assessment with no Mitigation Measures in Place*. The assessment provides a detailed description of the sources, pathways and receptors during construction and occupancy of the development at Bullock Harbour. JBA's Hydrology Report specifically refers to impacts on Dalkey Islands SAC, and Killiney Bay.

7.10.11. The Preliminary CEMP prepared by JBA describes in Section 6.1 *Sediment Control Practices* that the Main Contractor will prepare a Sediment Management Plan to prevent pollution of marine water during construction work. The CEMP further states that 'to prevent pollution of nearby marine waters, the water emanating from areas of construction will be intercepted and treated, to remove sediment and any other pollutants before being allowed to dissipate.' Sampling of the treated effluent for pH, conductivity, chemical oxygen demand, suspended solids, and hydrocarbons will be required.' The CEMP states that levels of pollutants detected will be compared to the allowable limits given in the Surface Water Regulations. The report outlines the stages of the development when the control of suspended solids will be necessary.

7.10.12. Regard is had to dispersion of pollutants, handling of wet concrete, dust management, noise and lighting set out in the CEMP. The report states that all vulnerable infrastructure such as the site compound, storage areas, fuel tanks etc. will be kept remote from sources of water. Removal of pollutant potential infrastructure and equipment will take place if a storm warning event is forecasted by Met Eireann. I note mitigation measures proposed for management and monitoring of dust and noise.

- 7.10.13. With respect to the area outside of the development boundary wall. I note the first party's response that the overall property boundary includes part of a pNHA. However, the footprint of the proposed scheme is outside the pNHA and no construction is predicted outside of the existing boundary wall, which separates the area to be redeveloped from the Bartra property within the pNHA
- 7.10.14. It is submitted that the presence of ongoing activities would not be changed by virtue of the proposed development and, hence, no significant change in impacts from these activities would arise. The bulk of the land to be developed (construction site) (which would be screened off at construction) would not be accessible to the public and no significant changes in activity adjacent to or along the coastal site would be expected.
- 7.10.15. No dedicated marine mammal survey was undertaken, but their likely presence was acknowledged and considered. No works were proposed within the harbour or in the coastal area. The terrestrial area of the proposed development is to be screened off. Thus, any ongoing activities - coastal activities, fisheries recreation etc. would not be expected to change or result in a change to potential presence of any marine mammal in proximity to the harbour or proposed development.
- 7.10.16. The NIS and EclA relied upon the hydrology report to address potential impacts. The hydrology report which was appended in full to the NIS gave evidence to address water quality issues and as such good site practices and design mitigation were included in the EclA and NIS to ensure no deterioration of the water quality environment at construction stage and at operational stage.
- 7.10.17. The landscape plan was examined by the ecologist who requested that no non-native species to be included in the plan as far as was practical, given the nature of the proposed development site. Most of the species proposed except for coastal grass were considered pollinator friendly species and requested for inclusion in the landscaping plans. Furthermore, protective measures in particular, surface water measures, are included so that there would be no deterioration of coastal habitats including those of the pNHA.
- 7.10.18. It is my opinion that the impact of construction has been sufficiently and transparently assessed in the detailed reports submitted for the site. I consider that the waste management, environmental controls, and environmental monitoring

requirements are robust and do address the concerns raised by the Biodiversity Officer. I am satisfied that the proposal is unlikely to have any significant impact on the pNHA. I am of the opinion Biodiversity issues raised could be dealt with by way of condition and compliance should planning permission be forthcoming.

7.11. Impact on Residential Amenity

- 7.11.1. A number of concerns have been raised by the third party appellant and observers regarding the proposed development and its potential impacts on the neighbouring property. Concern as to the impact of three very large houses located to the north of and to the back of 'Castle View' (Blue Cottage). Concerns of overshadowing and overlooking from roof gardens. It is submitted that the roof gardens are not suited to such an exposed open sea area and do not enhance the seascape. Danger of furniture blowing off the roof gardens and causing damage / danger to low lying residents.
- 7.11.2. In terms of overlooking, I note that House no. 3 is set in excess of 36m from the rear return of 'Castle View' and some 16m from its rear boundary. Given the layout and off set of the front windows opportunities for overlooking will be limited. I note however, the 102 sq. m terrace located at roof level, this has the potential to overlook to the west and to the rear of cottages facing onto Quay Road. I consider that if permission is to be forthcoming that a screen to prevent overlooking to the west could be conditioned. Overall, I consider that the proposed arrangement is similar to many suburban contexts and views to the adjacent property, will be limited given separation distances. The main view from the site are towards the sea that being to the north and east of the proposed houses. I am satisfied in this context, that no adverse overlooking or loss of privacy would occur.
- 7.11.3. In addressing the issue of overshadowing, the applicant has submitted a detailed Daylighting & Sunlight Report. This clearly indicates that due to the overall scale, design, positioning and orientation of the proposed development, with particular reference to the separation of same from adjacent dwelling houses that no adverse overshadowing impacts are likely to arise. The proposed development will not result in on any material diminution of daylight or sunlight to 'Castle View'.

7.11.4. In light of the sites context I do not consider that the proposed development would give rise to any significant detrimental impact on the residential amenity of neighbouring property by reason of overlooking, overshadowing, loss of daylight / sunlight, or overbearing appearance.

7.12. Traffic Implications

7.12.1. Third party concern is raised that bringing additional vehicles into the Harbour area would give rise to congestion. It is argued that car parking capacity is restricted at Bullock Harbour. Concern is raised that construction traffic would give rise to traffic hazard due to narrow restricted width of Harbour Road.

7.12.2. It is proposed to demolish and clear the existing industrial single storey warehouse and sheds on the eastern side of the public road leading towards Bullock Harbour and to develop a mixed use marine commercial, leisure / community and residential based development. The proposal at the Harbour would include the construction of:

- An Apartment;
- Seafood Sales;
- Cafe;
- Kitchen Stores;
- Boat Building Workshop Stores; and
- Marine commercial units.

7.12.3. It is also proposed to construct three new two-storey houses to the rear of these premises, accessible from Bullock Harbour. The houses will be located within a complex, to the south of the premises listed above. Each of the houses will have a minimum of two private parking spaces. Five visitor parking spaces are also proposed within the site. It is also proposed to provide a planted seating area within the site. Each house will include storage for bins.

7.12.4. The site is accessed from Bullock Harbour which is accessed via its junction with Harbour Road. Harbour Road consists of a two-way single carriageway, with one traffic lane in each direction, and is subject to a 50kph urban speed limit. There is an

existing footpath along the eastern side of Bullock Harbour from its junction with Harbour Road which terminates at the access to an existing pumping plant. There are existing public lighting facilities along Bullock Harbour in the vicinity of the proposed development.

- 7.12.5. It is stated in the Quality Audit of the development that vehicle and bicycle parking is proposed outside the commercial marine development along the Quay. However, it is unclear from the plans and drawings submitted where precisely this parking is located. 8 car parking spaces are proposed to serve the 4 residential units and 5 visitor car spaces are proposed. The PA consider that Further Information should be requested, see detail of the Transportation Planning request set out above in detail in section 3.3.2 of this report.
- 7.12.6. The PA consider that the proposed provision of 5 No. visitor car parking spaces to serve 5 No. residential units is excessive, especially when considered in the context of the lack of provision of car parking for non-residential uses. The required provisions outlined within the County Development Plan are inclusive of visitor parking and the proposed provision would result in a significant over-provision of residential car parking, regardless of the scale of the proposed development.
- 7.12.7. I agree that the excess residential car parking spaces should be re-allocate or omitted and that a clear rationale for proposed use of all proposed spaces is submitted. Further consideration should be given to the provision of non-residential parking. A single space suitable for use by disabled persons should be provided in addition to general CDP requirements.
- 7.12.8. I note the detailed report by the transportation department of DLRDCC and I consider that there is merit to that report and that a clear car parking and cycle parking rationale needs to be carried out for the proposed development.
- 7.12.9. I note the garage parking for 2 cars proposed to serve the one 4-bed apartment accessed off Quay Road. I would suggest that it would be preferable to omit these parking spaces and to utilise the space vacated by same in order to provide for a more active use / street frontage, particularly as the surplus parking to the rear of the site would be accessible to the apartments via the alternative eastern access arrangement.

- 7.12.10. I am cognisant of the availability of public transport links, including bus and train services, in the wider area, such as Dalkey station approximately 1km south of the site, I am also cognisant to the traffic demands associated with the historical use of the site which previously accommodated the workshops and boat yard of the former 'Western Marine Ltd.' chandlery business.
- 7.12.11. On balance, whilst I would acknowledge the concerns of local residents, having regard to the limited scale of the development proposed, the likely traffic volumes and speeds along this section of roadway, and the historical use of the site, it is my opinion that the surrounding road network has sufficient capacity to accommodate the additional traffic volumes consequent to the proposed development and that this aspect of the proposal does not pose a risk to traffic / public safety.
- 7.12.12. In terms of the wider servicing requirements of the proposed development, particular concerns have been raised as regards the proposal to narrow the space presently available along the quayside, notwithstanding the provision of a new open 'public square'.
- 7.12.13. As a refusal of permission is recommended in this instance on fundamental grounds of principle of the use, flooding and design I do not intend to go into in-depth assessment on how the car parking arrangement to service the proposed marine and commercial units can be accommodated, it is open the applicant in any revised application to make an argument for the access arrangement, servicing, set down and car parking spaces. Overall, I would be satisfied that the proposed development is capable of being adequately serviced from the quayside without giving rise to unacceptable traffic congestion or unduly impacting on existing harbourside activities.
- 7.12.14. With regard to the potential impact of the construction of the proposed development on the residential amenities of surrounding property, whilst I would acknowledge that the proposed development site is located in a primarily residential area and that any construction traffic routed through same could give rise to the disturbance / inconvenience of local residents, given the limited scale of the development proposed, and as any constructional impacts arising will be of an

interim and finite nature, I conclude that such matters can be satisfactorily mitigated by way of condition and compliance with a robust CEMP.

7.13. Other issues

7.13.1. Prescribed Bodies

Inland Fisheries Ireland,

7.13.2. A report from the Inland Fisheries Ireland, detailed in section 3.4 of this report, has made a number of observations and recommendations with respect to the proposed development. In the event that a grant of permission was to be considered for the proposed development, it is recommended that these items may need to be addressed by way of condition.

Irish Water

7.13.3. A report from the Irish Water, detailed in section 3.4 of this report, has requested that Further Information is sought in order to assess the feasibility of a connection to public water/waste water infrastructure. On the basis of this report, the Planning Authority considers that in the event that a grant of permission was to be considered for the proposed development, it is recommended that the item be considered in full.

7.13.4. I note that the First Party Appeal submits that a query was made regarding the lack of an Irish Waters Confirmation of Feasibility letter. Timelines prevented it being included with the application but a positive response for the development from Irish Water has been received and submitted with the appeal response.

Encroachment and or Oversailing

7.13.5. On review of the plans submitted it is noted that proposed development includes works of demolition and construction on part of the site boundary / party wall of the adjacent property to the south of the existing office / warehouse building . In this regard in the event that a grant of permission was to be considered for the proposed development, it is recommended that the applicant shall be advised that in the event of encroachment or oversailing of the adjoining property, the consent of the adjoining property owner is required. If this written agreement is not obtained the proposed development shall be modified only insofar as is required to do this.

Impact on Harbour Usage and Public Amenities

- 7.13.6. I note the concerns raised by third parties with respect to the impact of the proposed development on the harbors usage and public amenities both during construction and post - construction.
- 7.13.7. The quay provides access to a number of mixed marine related uses and is home to a number of water-based sports and community clubs. With respect to the impact during construction, I consider that such access to the Harbour should be maintained at all times during construction. In this regard It is noted the Construction Management Plan submitted as part of application notes that there are no proposals to introduce road closures or to alter the existing local access (pedestrian & cyclist access) during construction.
- 7.13.8. With respect to the uses / type of the development that is proposed quayside, I would agree with the PA that sea food sales unit, fisherman huts, boat workshop, marine commercial units and community changing facilities would be compatible, would complement and be a positive contribution to the existing harbour uses and public amenity. In addition the introduction of a cafe and new public space would bring a new vitality and active passive surveillance and usage to the Harbour. However, in respect of the principle of the land use zoning I believe insufficient provision has been made for waterfront, harbour and marine related uses. Regard is had to Bullock and Sandycove Harbours Masterplan 2020 which sets out a long list of opportunities for improved facilities and use of the Harbour.

Part V

- 7.13.9. Exemption certificate issued.

8.0 Appropriate Assessment

- 8.1. Appropriate Assessment Screening
- 8.1.1. Compliance with Article 6(3) of the Habitats Directive
- 8.1.2. The requirements of article 6(3) of the Habitats Directive, as related to screening the need for appropriate assessment of a project under part XAB, section 177U 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.
- The Natura Impact Statement and associated documents.
- Appropriate assessment of implications of the proposed development on the integrity of each European site.

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

8.1.4. 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.

8.1.5. 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).

8.1.6. Background on the Application

8.1.7. The applicant submitted an 'Appropriate Assessment Screening' report, prepared by Scott Cawley, undated, as part of the planning application. The applicant provides a description of the proposed development and identifies European Sites within a possible zone of influence of the development. Associated reports were also submitted with the planning application such as a Construction and Environmental Management Plan (CEMP) and an Ecological Impact Assessment (EclA).

8.1.8. The applicant's AA Screening Report concluded that an Appropriate Assessment of the proposed development is required in this instance as it cannot be concluded, on the basis of objective information, that the proposed development, either individually or in combination with other plans or projects, will not have a significant effect on the following European site(s): Rockabill to Dalkey Island SAC, Dalkey Islands SPA, South Dublin Bay SAC, South Dublin Bay and River Tolka Estuary SPA, North

Dublin Bay SAC, North Bull Island SPA, Howth Head Coast SPA, Baldoyle Bay SPA, Ireland's SPA, Malahide Estuary SPA, The Murrrough SPA, Lambay Island SAC, Lambay Island SPA, Rogerstown Estuary SPA and Rockabill SPA.

8.1.9. The applicant submitted a Natura Impact Statement (NIS) with the application. The NIS was prepared by Scott Cawley and is undated.

8.1.10. Screening for Appropriate Assessment – Test of likely significant effects

8.1.11. The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on a European site(s).

8.1.12. 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.

8.1.13. Brief description of the development

8.1.14. The applicant provides a description of the project on pages 7 and 8 of the AA Screening Report, page 8 and 9 of the NIS and elsewhere e.g., page 10 of the Planning Statement. In summary, the development comprises:

- A craft boat building workshop / craft boat storage facility, total area 397 sqm, including first floor area of 94 sqm.
- A single storey building incorporating relocated marine leisure unit (10 sqm), bin store (9 sqm), relocated marine commercial unit (10 sqm) and community water sports changing facility (60 sqm).
- A three-storey building incorporating a cafe (108 sqm) at ground floor and one number (411 sqm) four-bedroom apartment on two levels, at first and second floor, with associated roof terrace at first floor level and two balconies at second floor level and including ground floor entrance and off-street parking (40sqm) for 2 cars.
- A single storey re-located seafood sales outlet (30 sqm) with ancillary bin storage.
- Four number fisherman's huts, (total area 19 sqm).

- A new public square fronting on to the harbour (20.85m wide x 9.00m deep = 187.65 sqm).
- Three number three storey detached houses (each 412 sqm) each with roof terraces and off street covered parking for two cars, with provision for five number visitor car parking spaces.
- Eight public bicycle parking spaces and four bicycle spaces to serve apartment.
- Reinstatement and enhancement of existing surface water drainage system, in response to best available climate change and wave data, including
 - i. recommissioning/reinstatement of existing surface water sump with sluice gate in the eastern part of the land holding;
 - ii. construction of a new 300mm storm sewer to run from existing sump across the development area of the site to connect to the existing 300mm outfall culvert discharging under the Bullock Harbour Quay Road;
 - iii. construction of an additional overflow culvert to run inside the existing development area boundary wall for 46.3m along the eastern and northern edges of the development area; Bullock Harbour Development 7 Appropriate Assessment Screening Scott Cawley
 - iv. provision to redirect extreme storm event overflows into a new culvert under the proposed boat storage facility prior to discharge onto quay side (which overflows currently discharge onto the quayside immediately adjacent existing residential property).
- Stabilisation of the existing development area boundary wall and repair with natural coursed granite stone. A new support wall in concrete will be erected inside section (34.8m long) of the existing development area boundary wall at rear and north side of site.
- The existing south-western vehicular access from Bullock Harbour will be maintained and upgraded, creating a two-way roadway and shared footpath affording access to the proposed dwellings to the rear of the development.

- The development will also include piped infrastructure and ducting; changes in level; site landscaping and all associated site development and excavation works above and below ground.
- The construction stage of the proposed development is estimated to last approximately 12 to 18 months.

8.1.15. The development site is described in full in section 1.0 of this report above and is set out in the Planning Report and the Landscape and Visual Assessment which accompany the application.

8.1.16. Bullock Harbour is located less than a kilometre from Sandycove Village, within 1.2km of Dalkey Village and within 1.5km of Glasthule village. It is within the low-lying coastal strip, which runs southwards from the city boundary to Killiney, which is predominantly residential in character.

8.2. The site subject of this application is located on the eastern side of Bullock harbour.

8.3. The full extent of the applicant landholding at Bullock Harbour includes the former workshop building and boat yard, which are enclosed by high stone walls, and also the rocky coastal strip directly to the north and east. The overall lands in the applicant's ownership measure 0.59 Ha, including the pNHA rocky area (not forming part of the development proper) and the developable area subject of the planning application measures 0.28 Ha.

8.3.1. The area of rock outcrop is a proposed Natural Heritage Area. Although within the red line of the planning application, it does not form part of or includes any of the proposed development. Other land uses in the environs of Bullock Harbour are predominantly residential in nature.

8.3.2. Taking account of the characteristics of the proposed development in terms of its location and the scale of works, the following issues are considered for examination in terms of implications for likely significant effects on European sites:

Test of likely significant effects

Based on the baseline and receiving ecological environment and the nature and characteristics of the proposed development the following potential impacts have been identified:

- Habitat loss and fragmentation.
- Habitat degradation as a result of hydrological impacts.
- Habitat degradation as a result of hydrogeological impacts.
- Habitat degradation as a result of introducing/spreading non-native invasive species.
- Disturbance and displacement impacts.

8.3.3. European Sites

8.3.4. The development site is not located in or immediately adjacent to a European site. There are 26 European sites (17 SPA's and 9 SAC's) located in the vicinity of the proposed development. The nearest European site is Dalkey Islands SPA, located c. 990metres to the south-east of the proposed development. The proposed development is hydrologically connected via the surface water network to, and/or its adjacent coastal waters are used by the QI or SCI species of the following European sites: Rockabill to Dalkey Island SAC, Dalkey Islands SPA, South Dublin Bay SAC, South Dublin Bay and River Tolka Estuary SPA, North Dublin Bay SAC, North Bull Island SPA, Howth Head SAC, Howth Head Coast SPA, Baldoyle Bay SAC, Baldoyle Bay SPA, Ireland's Eye SAC, Ireland's SPA, Malahide Estuary SAC, Malahide Estuary SPA, The Murrough Wetlands SAC, The Murrough SPA, Lambay Island SAC, Lambay Island SPA, Rogerstown Estuary SAC, Rogerstown Estuary SPA and Rockabill SPA.

8.3.5. The potential impacts of the proposed development on the receiving environment, their zone of influence (ZOI), and the European sites at risk of likely significant effects are summarised in Table 2 below.

8.3.6. The hydrological and disturbance and displacement impacts associated with the proposed development have the potential to affect the receiving environment and, consequently, have the potential to affect the conservation objectives supporting the qualifying interest/special conservation interests of a European site(s). Therefore, the proposed development is likely to have significant effects on a European site(s).

8.3.7. As the proposed development itself is likely to affect the QIs/SCIs or conservation objectives of a European site(s), there is also the potential for other plans or projects to act in combination with it to result in likely significant effects on European sites.

8.3.8. In assessing the potential for the proposed development to result in a significant effect on any European sites, any measures intended to avoid or reduce the harmful effects of the project on European sites are not taken into account.

Table 2 Summary of Analysis of Likely Significant Effects on European sites within the ZOI.

European Site Name [Code] and its Qualifying Interest(s) / Special Conservation Interest(s) (•Priority Annex 1 Habitats)	Location Relative to the Proposed Development Site	Connections (source, pathway receptor) / Potential Impacts Requiring Mitigation <ul style="list-style-type: none"> • Habitat Loss/Deterioration • Habitat degradation as a result of hydrological impacts • Habitat degradation as a result of hydrogeological impacts • Habitat degradation as a result of introducing/spreading non-native invasive species 	Disturbance and displacement impacts	Considered further in screening Y/N
Special Area of Conservation (SAC)				
Rockabill to Dalkey Island SAC [003000] 1170 Reefs 1351 Harbour porpoise	c. 1km east	<ul style="list-style-type: none"> • There are no European sites within the proposed development boundary. 	None	N

Phocoena phocoena		<ul style="list-style-type: none"> • There are no European sites at risk of hydrological effects associated with the proposed development. • There are no European sites at risk of hydrogeological impacts. • There are no non-native invasive species present on the proposed development site, therefore there is no risk associated with the proposed development to European sites from the spread/ introduction of non-native invasive species. 		
South Dublin Bay SAC [000210] 1140 Mudflats and sandflats not covered by seawater at low tide 1210 Annual vegetation of drift lines	c. 5.5km north-west	As above.	None	N

1310 Salicornia and other annuals colonising mud and sand 2110 Embryonic shifting dunes				
North Dublin Bay SAC [000206] 1140 Mudflats and sandflats not covered by seawater at low tide 1210 Annual vegetation of drift lines 1310 Salicornia and other annuals colonising mud and sand 1330 Atlantic salt meadows (Glauco-Puccinellietalia maritima) 1395 Petalwort Petalophyllum ralfsii 1410 Mediterranean salt meadows (Juncetalia maritimi) 2110 Embryonic shifting dunes 2120 Shifting dunes along the	c. 8.3km north	As above.	None	N

<p>shoreline with Ammophila arenaria (white dunes)</p> <p>2130 Fixed coastal dunes with herbaceous vegetation (grey dunes)</p> <p>* 2190 Humid dune slacks</p>				
<p>Howth Head SAC [000202]</p> <p>1230 Vegetated sea cliffs of the Atlantic and Baltic coasts</p> <p>4030 European dry heaths</p>	c. 8.8km north	As above.	None	N
<p>Ballyman Glen SAC [000713]</p> <p>7220 Petrifying springs with tufa formation (Cratoneurion)*</p> <p>7230 Alkaline fens</p>	c. 9.8km south	As above.		N
<p>Bray Head SAC [000714]</p> <p>1230 Vegetated sea cliffs of the Atlantic and Baltic coasts</p> <p>4030 European dry heaths</p>	c. 10.2km south	As above.	None	N

<p>Knocksink Wood SAC [000725]</p> <p>7220 Petrifying springs with tufa formation (Cratoneurion)*</p> <p>91A0 Old sessile oak woods with Ilex and Blechnum in the British Isles</p> <p>91E0 Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae)*</p>	<p>c. 10.5km south-west</p>	<p>As above.</p>	<p>None</p>	<p>N</p>
<p>Baldoyle Bay SAC [000199]</p> <p>1140 Mudflats and sandflats not covered by seawater at low tide</p> <p>1310 Salicornia and other annuals colonising mud and sand 1330 Atlantic salt meadows (Glaucopuccinellietalia maritima)</p> <p>1410 Mediterranean salt meadows (Juncetalia maritimi)</p>	<p>c. 12km north</p>	<p>As above.</p>	<p>None</p>	<p>N</p>

<p>Wicklow Mountains SAC [002122]</p> <p>3110 Oligotrophic waters containing very few minerals of sandy plains (Littorelletalia uniflorae)</p> <p>3160 Natural dystrophic lakes and ponds</p> <p>4010 Northern Atlantic wet heaths with Erica tetralix</p> <p>4030 European dry heaths</p> <p>4060 Alpine and Boreal heaths</p> <p>6130 Calaminarian grasslands of the Violetalia calaminariae</p> <p>6230 Species-rich Nardus grasslands, on siliceous substrates in mountain areas (and submountain areas, in Continental Europe)</p> <p>7130 Blanket bogs (* if active bog)</p> <p>8110 Siliceous scree of the</p>	<p>c. 12.3km south-west</p>	<p>As above.</p>	<p>None</p>	<p>N</p>
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<p>montane to snow levels (<i>Androsacetalia alpinae</i> and <i>Galeopsietalia ladani</i>)</p> <p>8210 Calcareous rocky slopes with chasmophytic vegetation</p> <p>8220 Siliceous rocky slopes with chasmophytic vegetation</p> <p>91A0 Old sessile oak woods with <i>Ilex</i> and <i>Blechnum</i> in the British Isles</p> <p>1355 Otter <i>Lutra lutra</i></p>				
<p>Ireland's Eye SAC [002193]</p> <p>1220 Perennial vegetation of stony banks</p> <p>1230 Vegetated sea cliffs of the Atlantic and Baltic coasts</p>	c. 12.9km north	As above.	None	N
<p>Malahide Estuary SAC [000205]</p> <p>1140 Mudflats and sandflats not covered by seawater at low tide</p>	c. 16.5km north	As above.	None	N

<p>1310 Salicornia and other annuals colonising mud and sand</p> <p>1330 Atlantic salt meadows (Glauco-Puccinellietalia maritimae)</p> <p>1410 Mediterranean salt meadows (Juncetalia maritimi)</p> <p>2120 Shifting dunes along the shoreline with Ammophila arenaria (white dunes)</p> <p>2130 Fixed coastal dunes with herbaceous vegetation (grey dunes)*</p>				
<p>The Murrugh Wetlands SAC [002249]</p> <p>1210 Annual vegetation of drift lines</p> <p>1220 Perennial vegetation of stony banks</p> <p>1330 Atlantic salt meadows (Glauco-Puccinellietalia maritimae)</p>	<p>c. 19.4km south-east</p>	<p>As above.</p>	<p>None</p>	<p>N</p>

<p>1410 Mediterranean salt meadows (Juncetalia maritime)</p> <p>7210 Calcareous fens with Cladium mariscus and species of the Caricion davallianae*</p> <p>7230 Alkaline fens</p>				
<p>Lambay Island SAC [000204]</p> <p>1170 Reefs</p> <p>1230 Vegetated sea cliffs of the Atlantic and Baltic coasts</p> <p>1364 Grey seal Halichoerus grypus</p> <p>1365 Harbour seal Phoca vitulina</p>	c. 22.3km north-east	As above.	None	N
<p>Rogerstown Estuary SAC [000208]</p> <p>1130 Estuaries [1130]</p> <p>1140 Mudflats and sandflats not covered by seawater at low tide</p> <p>1310 Salicornia and other annuals</p>	c. 23.1km north	As above.	None	N

<p>colonising mud and sand</p> <p>1330 Atlantic salt meadows (<i>Glaucopuccinellietalia maritimae</i>)</p> <p>1410 Mediterranean salt meadows (<i>Juncetalia maritimi</i>)</p> <p>2120 Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes)</p> <p>2130 Fixed coastal dunes with herbaceous vegetation (grey dunes)*</p>				
Special Protection Area (SPA)				
<p>Dalkey Islands SPA [004172]</p> <p>A192 Roseate Tern <i>Sterna dougallii</i></p> <p>A193 Common Tern <i>Sterna hirundo</i></p> <p>A194 Arctic Tern <i>Sterna paradisaea</i></p>	c. 990m south-east	As above.	Disturbance/displacement impacts (noise, vibration and visual disturbance) have the potential to affect foraging QI and SCI species and potentially displace them from feeding grounds	Y
South Dublin Bay and River Tolka	c. 3km north	As above.	Disturbance/displacement impacts	Y

<p>Estuary SPA [004024]</p> <p>A046 Light-bellied Brent goose <i>Branta bernicla hrota</i></p> <p>A130 Oystercatcher <i>Haematopus ostralegus</i></p> <p>A137 Ringed glover <i>Charadrius hiaticula</i></p> <p>A141 Grey glover <i>Pluvialis squatarola</i></p> <p>A143 Knot <i>Calidris canutus</i></p> <p>A144 Sanderling <i>Calidris alba</i></p> <p>A149 Dunlin <i>Calidris alpina</i></p> <p>A157 Bar-tailed godwit <i>Limosa lapponica</i></p> <p>A162 Redshank <i>Tringa totanus</i></p> <p>A179 Black-headed gull <i>Chroicocephalus ridibundus</i></p> <p>A192 Roseate tern <i>Sterna dougallii</i></p>			<p>(noise, vibration and visual disturbance) have the potential to affect foraging QI and SCI species and potentially displace them from feeding grounds</p>	
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A193 Common tern <i>Sterna hirundo</i>				
A194 Arctic tern <i>Sterna paradisaea</i>				
A999 Wetlands and waterbirds				
North Bull Island SPA [004006]	c. 7.4km north	As above.	Disturbance/displacement impacts (noise, vibration and visual disturbance) have the potential to affect foraging QI and SCI species and potentially displace them from feeding grounds	Y
A046 Light-bellied Brent goose <i>Branta bernicla hrota</i>				
A048 Shelduck <i>Tadorna tadorna</i>				
A052 Teal <i>Anas crecca</i>				
A054 Pintail <i>Anas acuta</i>				
A056 Shoveler <i>Anas clypeata</i>				
A130 Oystercatcher <i>Haematopus ostralegus</i>				
A140 Golden plover <i>Pluvialis apricaria</i>				
A141 Grey plover <i>Pluvialis squatarola</i>				
A143 Knot <i>Calidris canutus</i>				
A144 Sanderling <i>Calidris alba</i>				

<p>A149 Dunlin Calidris alpina</p> <p>A156 Black-tailed godwit Limosa limosa</p> <p>A157 Bar-tailed godwit Limosa lapponica</p> <p>A160 Curlew Numenius arquata</p> <p>A162 Redshank Tringa totanus</p> <p>A169 Turnstone Arenaria interpres</p> <p>A179 Black- headed gull Chroicocephalus ridibundus A999</p> <p>Wetlands and waterbirds</p>				
<p>Howth Head Coast SPA [004113]</p> <p>A188 Kittiwake Rissa tridactyla</p>	c. 9.2km north	As above.	Disturbance/displ acement impacts (noise, vibration and visual disturbance) have the potential to affect foraging QI and SCI species and potentially displace them from feeding grounds	Y
<p>Baldoyle Bay SPA [004016]</p> <p>A046 Light-bellied Brent goose</p>	c. 12km north	As above.	Disturbance/displ acement impacts (noise, vibration and visual disturbance) have	Y

<p>Branta bernicla hrota</p> <p>A048 Shelduck Tadorna tadorna</p> <p>A137 Ringed plover Charadrius hiaticula</p> <p>A140 Golden plover Pluvialis apricaria</p> <p>A141 Grey plover Pluvialis squatarola</p> <p>A157 Bar-tailed godwit Limosa lapponica</p> <p>A999 Wetlands and waterbirds</p>			<p>the potential to affect foraging QI and SCI species and potentially displace them from feeding grounds</p>	
<p>Wicklow Mountains SPA [004040]</p> <p>A098 Merlin Falco columbarius</p> <p>A103 Peregrine Falco peregrinus</p>	<p>c. 12.3km south-west</p>	<p>As above.</p>	<p>None</p>	<p>N</p>
<p>Ireland's Eye SPA [004117]</p> <p>A017 Cormorant Phalacrocorax carbo</p> <p>A184 Herring Gull Larus argentatus</p> <p>A188 Kittiwake Rissa tridactyla</p>	<p>c. 12.9km north</p>	<p>As above.</p>	<p>Disturbance/displacement impacts (noise, vibration and visual disturbance) have the potential to affect foraging QI and SCI species and potentially displace them</p>	<p>Y</p>

A199 Guillemot Uria aalge			from feeding grounds	
A200 Razorbill Alca tarda				
Malahide Estuary SPA [004025]	c. 17.3km north	As above.	Disturbance/displacement impacts (noise, vibration and visual disturbance) have the potential to affect foraging QI and SCI species and potentially displace them from feeding grounds	Y
A005 Great crested grebe Podiceps cristatus				
A046 Light-bellied Brent goose Branta bernicla hrota				
A048 Shelduck Tadorna tadorna				
A054 Pintail Anas acuta				
A067 Goldeneye Bucephala clangula				
A069 Red-breasted merganser Mergus senator				
A130 Oystercatcher Haematopus ostralegus				
A140 Golden plover Pluvialis apricaria				
A141 Grey plover Pluvialis squatarola				

<p>A143 Knot <i>Calidris canutus</i></p> <p>A149 Dunlin <i>Calidris alpina</i></p> <p>A156 Black-tailed godwit <i>Limosa limosa</i></p> <p>A157 Bar-tailed godwit <i>Limosa lapponica</i></p> <p>A162 Redshank <i>Tringa totanus</i></p> <p>A999 Wetlands and waterbirds</p>				
<p>The Murrrough SPA [004186]</p> <p>A001 Red-throated diver <i>Gavia stellata</i></p> <p>A043 Greylag goose <i>Anser anser</i></p> <p>A046 Light-bellied Brent goose <i>Branta bernicla hrota</i></p> <p>A050 Wigeon <i>Anas penelope</i></p> <p>A052 Teal <i>Anas crecca</i></p> <p>A179 Black-headed gull <i>Chroicocephalus ridibundus</i></p> <p>A184 Herring gull <i>Larus argentatus</i></p>	<p>c. 20.4km south-east</p>	<p>As above.</p>	<p>Disturbance/displacement impacts (noise, vibration and visual disturbance) have the potential to affect foraging QI and SCI species and potentially displace them from feeding grounds</p>	<p>Y</p>

A195 Little tern Sterna albifrons A999 Wetland and waterbirds				
Lambay Island SPA [004069] A009 Fulmar Fulmarus glacialis A017 Cormorant Phalacrocorax carbo AO18 Shag Phalacrocorax aristotelis A043 Greylag goose Anser anser A183 Lesser black-backed gull Larus fuscus A184 Herring gull Larus argentatus A188 Kittiwake Rissa tridactyla A199 Guillemot Uria aalge A200 Razorbill Alca torda A204 Puffin Fratercula arctica	c. 22.3km north-east	As above.	Disturbance/displacement impacts (noise, vibration and visual disturbance) have the potential to affect foraging QI and SCI species and potentially displace them from feeding grounds	Y
Rogerstown Estuary SPA [004015] A043 Greylag goose Anser anser	c. 22.7km north	As above.	Disturbance/displacement impacts (noise, vibration and visual disturbance) have the potential to	Y

<p>A046 Light-bellied Brent goose Branta bernicla hrota</p> <p>A048 Shelduck Tadorna tadorna</p> <p>A056 Shoveler Anas clypeata</p> <p>A130 Oystercatcher Haematopus ostralegus</p> <p>A137 Ringed plover Charadrius hiaticula</p> <p>A141 Grey plover Pluvialis squatarola</p> <p>A143 Knot Calidris canutus</p> <p>A149 Dunlin Calidris alpina</p> <p>A156 Black-tailed godwit Limosa limosa</p> <p>A162 Redshank Tringa totanus</p> <p>A999 Wetland and waterbirds</p>			<p>affect foraging QI and SCI species and potentially displace them from feeding grounds</p>	
<p>Rockabill SPA [004014]</p> <p>A148 Purple Sandpiper Calidris maritima</p>	<p>c. 31.4km north</p>	<p>As above.</p>	<p>Disturbance/displacement impacts (noise, vibration and visual disturbance) have the potential to affect foraging QI</p>	<p>Y</p>

A192 Roseate Tern Sterna dougallii			and SCI species and potentially displace them from feeding grounds	
A193 Common Tern Sterna hirundo				
A194 Arctic Tern Sterna paradisaea				

8.3.9. Following an examination, analysis and evaluation of the best available information, and applying the precautionary principle, it can be concluded that there is the possibility for significant effects on the following European sites, either arising from the project alone or in-combination with other plans and projects, as a result of potential noise disturbance impacts: Dalkey Islands SPA, South Dublin Bay and River Tolka Estuary SPA, North Bull Island SPA, Howth Head Coast SPA, Baldoyle Bay SPA, Ireland's SPA, Malahide Estuary SPA, The Murrough SPA, Lambay Island SPA, Rogerstown Estuary SPA and Rockabill SPA. In reaching this conclusion, the nature of the project and its potential relationship with all European sites within the zone of influence, and their conservation objectives, have been fully considered.

8.3.10. I note the ambiguity in the AA Screening report submitted with respect to Lambay Island SAC and Rockabill to Dalkey SAC. The summary concluded that there is possibility of significant effects on Lambay Island SAC but not Rockabill to Dalkey SAC albeit both European Sites are mentioned earlier in the report as included where there is a potential for ex-situ noise impacts on QI and SCI species of the sites. I have taken into account the report, in my assessment. I note that the NIS submitted also by Scott Cawley specifically screens out Lambay Island SAC and Rockabill to Dalkey SAC.

8.3.11. The reports of prescribed bodies are set out in detail in section 3.4 of this report. The report by IFI raises concerns with respect to pollution of the adjacent coastal waters from poor on-site construction practices and possible consequent negative impact on the fauna and flora of waters in Bullock Harbour. High levels of suspended solids settling on the seashore and seabed can alter habitats resulting in potential loss of feeding, nursery and spawning grounds for fish. All measures necessary should be

taken to ensure protection of local aquatic ecological integrity, in the first place by complete impact avoidance and as a secondary approach through mitigation by reduction and remedy. The report recommends that:

- Any topsoil or demolition material which is to be stored on site must have mitigations in place to prevent any deleterious material entering the harbour.
- Any dewatering from planned excavation works anywhere on site must be via settlement areas.
- The mitigation measures outlined in chapter 7.5 and 8.4 of EIAR screening report should be made a condition of planning.
- All discharges must be in compliance with the European Communities (Surface Water) Regulations 2009 and the European Communities (Groundwater) Regulations 2010'

8.3.12. I have considered the issues raised by IFI and third parties with respect to habitat degradation as a result of hydrological impacts. Having reviewed the available information, in light of the nature and scale of the proposed development, and the specifics of the site location relative to certain Natura 2000 sites, in my opinion, by employing the source / pathway / receptor model of risk assessment, it can be determined that particular consideration needs to be given to the likelihood of the proposed development to have a significant effect on the conservation objectives of several of the aforementioned sites, including the Rockabill to Dalkey Island Special Area of Conservation, the South Dublin Bay Special Area of Conservation, the Dalkey Islands Special Protection Area, and the South Dublin Bay and River Tolka Estuary Special Protection Area (by reference to their qualifying interests), due to a deterioration in water quality attributable to the proposed works given the hydrological connectivity between the application site and those European sites. In this regard I would advise the Board that the existing and proposed surface water drainage networks on site drain directly to Bullock Harbour and Dublin Bay whilst the discharge of treated effluent from the foul drainage network is also a potential pathway for pollutants between the application site and Dublin Bay.

- 8.3.13. I would refer the Board to Section 3.3 and 3.4 of the applicant's screening exercise (JBA Consulting report attached to the AA screening report) which considers the pressures on water quality within European sites in proximity of the application site.
- 8.3.14. With regard to the discharge of surface water runoff from the site directly into Bullock Harbour during the demolition, construction and operational phases of the proposed development, I would concur with the findings of the screening assessment that the dilution factor and assimilative capacity of Dublin Bay, particularly when taken in combination with the separation distance and the substantial marine open water buffer between the discharge point and surrounding Natura 2000 sites, will ensure that the proposed development is unlikely to give rise to any significant adverse impact on water quality or the qualifying interests of distant Natura 2000 sites.
- 8.3.15. I consider standard construction measures and best practice measures have been identified to ensure that potential pollutant sources are not released during the construction period of the proposed development to the receiving environment such that there will be no risk of adverse effects on the qualifying interests of the SAC within the project's zone of influence. Regard is had to the CEMP and to suitable conditions to be attached to any grant of planning permission in this regard.
- 8.3.16. Given the potential impacts of the proposed development, identified in Table 2 above, on the qualifying interests of Dalkey Islands SPA, South Dublin Bay and River Tolka Estuary SPA, North Bull Island SPA, Howth Head Coast SPA, Baldoyle Bay SPA, Ireland's SPA, Malahide Estuary SPA, The Murrough SPA, Lambay Island SPA, Rogerstown Estuary SPA and Rockabill SPA. I would agree that the proposed development does require an Appropriate Assessment and a Natura Impact Statement (NIS). As noted throughout this report an NIS was submitted with the application.
- 8.3.17. The NIS was informed by best practice guidance for such assessments, desktop and site surveys, including the Ecological Impact Assessment completed for the proposed development, OPW data, NPWS databases, site synopses, Natura 2000 Data Forms and conservation objectives and EPA mapping, National Biodiversity data and Ordnance Survey of Ireland mapping.

- 8.3.18. BirdWatch Ireland was approached in relation to obtaining monthly Irish Wetland Bird Survey (1-WeBS) data for the Bullock Harbour subsite (subsite name: 'East Pier - Bullock Harbour'; subsite code: 0U472) and adjacent subsites to the proposed development site on the 3rd February 2021. This data was received on the 4th March 2021 and included data for count seasons 2012/13, 2013/14, 2014/15, 2015/16, 2016/17, 2017/18 and 2018/19. This data has been included unaltered in Table 2 of Appendix I.
- 8.3.19. A data request was submitted to the National Parks and Wildlife Services for records of protected and rare species within the 10km grid square in which the proposed development is located in, on the 26th November 2021. This data was received on the 29th November 2021.
- 8.3.20. A consultation letter was submitted by email to the Development Applications Unit at the Department of Culture, Heritage and the Gaeltacht on the 26th November 2021. The letter included an outline description of the proposed development, and a request for any comments on the proposal. It is submitted by the first party that no response was issued to Scott Cawley Ltd.
- 8.3.21. It is submitted that a pre-planning meeting between Dun Laoghaire-Rathdown County Council and the developers did not note any issues of biodiversity concern in 2017.
- 8.3.22. Section 5 of the NIS sets out an overview of the proposed development, European sites, habitats, flora and fauna species, hydrology and hydrogeology. Section 6 & 7 contains an assessment of the potential impacts of the proposed development on the identified European Site (i.e. Dalkey Islands SPA, South Dublin Bay and River Tolka Estuary SPA, North Bull Island SPA, Howth Head Coast SPA, Baldoyle Bay SPA, Ireland's SPA, Malahide Estuary SPA, The Murrough SPA, Lambay Island SPA, Rogerstown Estuary SPA and Rockabill SPA). Section 7, specifically paragraph 7.4.1.1 which states: "Measures to Reduce/Prevent Disturbance/Displacement Impacts during Construction"

"Noise levels shall be kept below those levels specified in the National Roads Authority's Guidelines for the Treatment of Noise and Vibration in National Roads Schemes (2004) or such further limits as imposed by Dun Laoghaire Rathdown County Council. The proposed development shall comply with BS

5228 Noise Control on Construction and open sites Part 1: Code of practice for basic information and procedures for noise control (BSI Standards, 2014).

Construction equipment for use outdoors shall comply with the European Communities Regulations - Noise Emission by Equipment for Use Outdoors - SI 241 -2006.

The mitigation measures for the control of noise from the proposed development to reduce/prevent disturbance and displacement impacts on birds during construction and include (but are not limited to) the use of muffler, acoustic screens and portable acoustic enclosure during the noisiest works that exceed 70dB. The contractor will undertake the works with sensitivity to ensure no significant construction noise impact. The contractors will ensure that machinery is serviced regularly and that machinery is switched off when not in use.

An Ecological Clerk of Works (EcOW) will be appointed to monitor construction activities during the noisiest part of the works in order to ensure that noise impacts on SCI species are minimised.

Considering the works carried out will adhere to the best practice guidelines and noise levels will be kept below 70dB - maximum permissible noise levels at the facade of dwellings during construction and the noisiest works comprising of rock breaking and reaching maximum of 70dB with the proposed mitigation measures are short-term and temporary, lasting a maximum of 10 days, and that the extent of suitable alternative foraging habitat within the Dublin Bay, the proposed works have no potential to result in any population level effects on SCI tern species foraging within the vicinity of the proposed development”.

- 8.3.23. Table 11 sets out potential impacts on the conservation objectives of South Dublin Bay and River Tolka Estuary SPA, North Bull Island SPA, Howth Head Coast SPA, Baldoyle Bay SPA, Ireland's Eye SPA, Malahide Estuary SPA, The Murrough SPA, Lambay Island SPA, Rogerstown Estuary SPA and Rockabill SPA, assessment of potential impacts requiring mitigation, is mitigation required and any residual impacts.

- 8.3.24. Mitigation measures are required to reduce/prevent noise impacts and vibration originating from the construction of the proposed development.
- 8.3.25. Following the implementation of mitigation measures, the proposed development poses no risk of affecting the conservation objectives, or the favourable conservation condition, of the special conservation interest species of South Dublin Bay and River Tolka Estuary SPA, North Bull Island SPA, Howth Head Coast SPA, Baldoyle Bay SPA, Ireland's Eye SPA, Malahide Estuary SPA, The Murrough SPA, Lambay Island SPA, Rogerstown Estuary SPA and Rockabill SPA, and there are therefore, no residual direct or indirect impacts associated with the proposed development that could adversely affect the integrity of these European sites.
- 8.3.26. Section 8.1 considers the potential for in-combination effects with the permitted strategic housing development permitted in the vicinity and the wider coastal area and states that there is no likelihood of significant cumulative or in combination effects identified in relation to the proposed development.
- 8.3.27. The NIS concluded that the proposed development will not adversely affect (either directly or indirectly) the integrity of any European site, either alone or in combination with other plans or projects.
- 8.3.28. Cognisance to the foregoing, having reviewed the NIS, all supporting documentation and submissions, I am satisfied that the information allows for a complete assessment of any adverse effects of the proposed development on the conservation objectives of the abovementioned European sites alone, or in combination with other plans and projects.

Appropriate Assessment of implications of the proposed development

- 8.3.29. The following is a summary of the objective scientific assessment of the implications of the project on the qualifying interest features of the European sites using the best scientific knowledge in the field. All aspects of the project which could result in significant effects are assessed and mitigation measures designed to avoid or reduce any adverse effects are considered and assessed.
- 8.3.30. 11.9.2. The following Guidance has been adhered to in my assessment:

- DoEHLG (2009). Appropriate Assessment of Plans and Projects in Ireland: Guidance for Planning Authorities. Department of the Environment, Heritage and Local Government, National Parks and Wildlife Service, Dublin
- EC (2021) Assessment of plans and projects significantly affecting Natura 2000 sites. Revised Methodological guidance on the provisions of Article 6(3) and 6(4) of the Habitats Directive 92/43/EC
- EC (2018) Managing Natura 2000 sites. The provisions of Article 6 of the Habitats Directive 92/43/EEC

8.3.31. The following sites are subject to Appropriate Assessment:

- Dalkey Islands SPA
- South Dublin Bay and River Tolka Estuary SPA,
- North Bull Island SPA,
- Howth Head Coast SPA,
- Baldoyle Bay SPA,
- Ireland's Eye SPA,
- Malahide Estuary SPA,
- The Murrough SPA,
- Lambay Island SPA,
- Rogerstown Estuary SPA and
- Rockabill SPA,

8.3.32. A description of all of site and its Conservation Objectives and Qualifying Interests are set out in the NIS. I have also examined the Natura 2000 data forms and other supporting documents for these sites available through the NPWS website.

8.3.33. In my opinion, having reviewed the development proposals, the main aspect of the proposed development that could affect the conservation objectives of the European site arises from:

- potential disturbance and or displacement of species listed as qualifying interests due to noise, vibration and visual disturbance associated with the proposed

development, taking into account the sensitivity of the qualifying interest species to disturbance effects.

8.3.34. Section 6.0 of the NIS assesses potential Impacts, ZOI and identifying European Sites at Risk of Effects. Section 7.0 sets out Assessment of Effects on European Sites – Tables 5, 6, 7, 8, and 9 summarise the Appropriate Assessment and potential impacts requiring mitigation and residual impacts. The conservation objectives for the European Site's, have been examined and assessed with regard to the identified potential significant effects and all aspects of the project (alone and in combination with other plans and projects). Mitigation measures proposed to avoid and reduce impacts to a non-significant level have been assessed, and clear, precise and definitive conclusions reached in terms of adverse effects on the integrity of European sites.

Appropriate Assessment Conclusion

8.3.35. I am of the opinion that the proposed development has been considered in light of the assessment requirements of Sections 177U and 177V of the Planning and Development Act 2000, as amended.

8.3.36. Having carried out screening for Appropriate Assessment of the project, it was concluded that the proposed development may have a significant effect on 11 of the 26 Natura Sites identified within the ZOI. Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of the European Site's in light of conservation objectives.

8.3.37. 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 Dalkey Islands SPA, South Dublin Bay and River Tolka Estuary SPA, North Bull Island SPA, Howth Head Coast SPA, Baldoyle Bay SPA, Ireland's Eye SPA, Malahide Estuary SPA, The Murrough SPA, Lambay Island SPA, Rogerstown Estuary SPA and Rockabill SPA, or any other European site, in view of the site's Conservation Objectives.

8.3.38. 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 EIA Screening

- 9.1.1. The development (as set out in detail in section 2.0 above) does not involve a class of development set out in Parts 1 and 2 of Schedule 5 of the Planning and Development Regulations, 2001 (as amended). Accordingly, there is no requirement for the applicant to submit an Environmental Impact Assessment Report in this instance.
- 9.1.2. Regard being had to Schedule 7, 'criteria for determining whether a development would or would not be likely to have significant effects on the environment', in particular (1) characteristics of proposed development, (2) location of proposed development and (3) characteristics of potential impacts, that there is no real likelihood of significant effects on the environment arising from the proposed development.
- 9.1.3. Having regard to the nature and scale of the development proposed, the location of the developable lands outside of any protected site and the nature of the receiving environment, the limited ecological value of the lands in question, the availability of public services, the separation from the nearest sensitive location (i.e. the Dalkey Coastal Zone and Killiney Hill Proposed Natural Heritage Area (Site Code: 001206) to the north, and the proposal to adhere to standard construction management practices, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

10.0 Recommendation

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

11.0 Reasons and Considerations

1. The site is located in an area zoned objective 'W', 'To provide for waterfront development and/or harbour related uses', in the current Dun Laoghaire Rathdown County Development Plan 2022 – 2028. The Board considers that the proposed development would materially contravene the zoning objective as set out in this Plan as 'Residential', is 'not permitted in principle' or 'Open for Consideration' within the 'W' zone at Bullock Harbour and would further undermine the achievement of Specific Local Objective No. 28: 'Bullock Harbour' which aims to provide for an appropriate mixed-use redevelopment of the lands in question to include for commercial marine-based activity and public water-based recreational uses. The Board pursuant to the provisions of section 37 (2) (b) of the Planning and Development Act, 2000, is precluded from the granting of planning permission for the proposed development as it is not open to materially contravening the new County Development Plan. None of the provisions of section 37(2) (b) (i) (ii) (iii) or (iv) of the said Act can be relied upon in this case. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

2. Having regard to the location of the proposed development in an area which has been identified as potentially liable to flood events and significant wave overtopping, and to the provisions of the 'Planning System and Flood Risk Management, Guidelines for Planning Authorities' issued by the Department of the Environment, Heritage and Local Government in November 2009, the Board is not satisfied, on the basis of submissions made in connection with the planning application and the appeal, that the subject site is an appropriate location for the scale and type of development proposed or that the proposed development would not result in serious injury to the amenities of persons and property as a result of this. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

3. Given the prominent quayside and coastal location of the proposed development and taking into account the special character of the immediate harbour area, it is considered that the proposed development does not provide for a suitably integrated,

high quality, mixed-use design which considers the site holistically and responds appropriately to the unique character of Bullock Harbour. The proposed development would therefore be seriously injurious to the special character and amenities of the harbour area and would be contrary to the requirements of Specific Local Objective 28 as set out in the Dún Laoghaire-Rathdown County Development Plan, 2022-2028. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

Fiona Fair
Senior Planning Inspector

24.04. 2023

APPENDIX 1

1. Monica Smyth and others
2. Finola O'Neill
3. Michael Mullen
4. Siobhan and Damian Gill
5. Zoe and Pete Devlin
6. Anne Johnston
7. Mark Kilroy and Trish McAdam

8. Christian Morris
9. Pilot View Management
10. James Keogh
11. Paul Morrison
12. J. Rozand and Nuala Rozand
13. Daniel and Rita Merity
14. Maura Lee West
15. Ethna Blake
16. Peter Sellers
17. Peter Kerruish
18. David Byrne
19. Susan McDonnell Dalkey
Community Council & Others
20. Rosaleen Callaghan
21. Sinéad O'Brien
22. Roisin Callaghan
23. Damien Corcoran
24. Leonard McDonnell
25. Dermot and Deirdre Deverell
26. Patricia Byrne
27. Dublin Port Company
28. John McGoldrick
29. A.H Barwise
30. Anne Boylan
31. P.J Drudy
32. Trident Sub Aqua Club (Paul
McNamara)
33. John and Ann Perry
34. Joe Balfe
35. Derek Sheil
36. Marybeth Sheil
37. Jasone O'Carroll
38. Síobhan McDermott
39. Marie Mynes
40. Danielle Byrne
41. Stephanie Whiston
42. Ian Mulvihill
43. Patrick Kearns
44. Desmond Burke-Kennedy
45. Alan Winter
46. John Earle
47. Paul Kelly
48. Brian Meyer