



An
Bord
Pleanála

Inspector's Report

ABP-314210-22

Development	Middle Wad Flood Alleviation Scheme - Contract E: Clontarf Outfalls Project
Location	Clontarf Road, County Dublin.
Local Authority	Dublin City Council
Type of Application	Application for approval made under Section 177(AE) of the Planning and Development Act, 2000 (local authority development requiring appropriate assessment)
Prescribed Bodies	Department of Housing, Local Government and Heritage
Date of Site Inspection	22/12/2022
Inspector	Conor McGrath

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1.0 Introduction

Dublin City Council is seeking approval from An Bord Pleanála to undertake drainage works adjacent and discharging to a European Site within Dublin Bay, namely, South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024). Other designated European sites (SPAs and SACs) in proximity to the proposed works include South Dublin Bay SAC (Site Code: 000210), North Dublin Bay SAC (000206) and North Bull Island SPA (004006). A Natura Impact Statement (NIS) and application under Section 177AE was lodged by the Local Authority with An Bord Pleanála, on the basis of likelihood of significant effect of the proposed development on a European site.

2.0 Site location and description

- 2.1. The proposed development is located in Clontarf, Dublin 3. The development relates to works to existing surface water drainage infrastructure which runs north-south under the Clontarf Road and across the grassland amenity area toward the shoreline of the Tolka Estuary. This infrastructure comprises part of the Wad River drainage channel, which drains a large catchment in the north Dublin area.
- 2.2. To the north of the Clontarf Road, the development involves works on Strandville Road and on public footpaths adjacent to Clontarf Garda Station, and within the site of the adjacent commercial Seapoint Building. The remainder of the works occur within / under the area of public amenity space between the Clontarf Road and the shoreline, which is under grass and which includes a public walking / cycle route along the shore. The estuary is tidal in nature, with exposed mudflats at low tide, which are designated as part of the South Dublin Bay and River Tolka Estuary SPA and North Dublin Bay pNHA. The interface along the shore comprises an area of rock armour and includes an existing surface water outfall. There are a small number of mature trees located at the top of the rock armour adjacent to the proposed works area. To the east of the main works area is a public car park.

3.0 Proposed Development

The proposed development is described as comprising the following:

- The sealing of four manholes to the north of the Clontarf Road to prevent flooding of adjacent properties.
- Construction of a new splitter chamber and a parallel culvert within the green space between the Clontarf Road and the shoreline to improve conveyance capacity. Submitted documents indicate that a section of culvert was previously installed within this green space, which is currently unconnected, and which is to be incorporated into the new culvert.
- Construction of a new outfall headwall with suitable flap valves at the foreshore to the west of the existing surface water outfall headwall. This headwall can be recessed into the existing rock armour to minimise the intrusion into the mudflats/silts.
- Remedial works to the existing partly collapsed outfall headwall, which will effectively result in its replacement / modification so that it matches the configuration of the proposed new adjoining headwall
- Ancillary operation and maintenance works.
- A temporary construction compound will be established in the public car park to the east.
- The proposed works will require a temporary diversion of the existing walking / cycle route along the shoreline during construction works.

The four manholes to be sealed on the northern side of the Clontarf Road are located as follows;

- 2 no. within the access road along the western boundary of the commercial Seapoint Building. It is stated that works on private lands are to be undertaken by way of agreement and with affected landowners.
- At the junction of Strandville Avenue East and Clontarf Road.
- Within the public footpath on the northern side of Clontarf Road.

It is stated that the proposed works will not alter the operation of the existing outfall and that the works are designed to improve conveyance in the culverts to prevent upstream flooding. The provision of non-return valves on the outfalls will prevent tidal ingress back into the stormwater system during high tides. It is predicted that works will take place over an 8-week period.

The Planning Statement indicates that flood relief works under the Wad Flood Alleviation Study, of which the subject development forms part, were previously approved under PA Ref. 3161/12. This element of the development was not completed and the requirement for this current application is stated to arise on foot of a subsequent ruling of the European Court of Justice which places a question mark over the previous AA Screening process.

3.1. **Accompanying documents:**

The application is accompanied by the following documents:

Volume 1:

- Section 1. A copy of the newspaper notices
- Section 2. A list of the prescribed bodies to which notice was sent and a copy of each notice.
- Section 3. DCC AA Screening Determination.
- Section 4. Natura Impact Statement with appended AA Screening Report.
- Section 5. EIA Screening Report.
- Section 6. Archaeological Screening Assessment.
- Section 7. Intertidal Archaeological Assessment.
- Section 8. Ecological Impacts Memorandum.
- Section 9. Outline Construction Environmental Management Plan.
- Section 10. Planning Statement.

Volume 2:

- Planning Drawings (A1 drawings) including site location plan; site layout plan; and plans, elevations, and sections.

3.2. **Further Information**

Further information was sought from the applicants in October 2022 in relation to the following matters:

1. The inclusion of the proposed temporary works compound in the application and in the assessment of the effects of the proposed development on the environment and of the likely significant effects on European sites.
2. The findings of previous ground investigations and soil analysis undertaken to determine the presence of contaminated materials / contaminated ground at this location, and the potential adverse effects of the release of contaminants on the integrity of European Sites.
3. Clarification with regard to the requirement for the existing Wad culvert to be “over pumped” during construction.

A response to the request was received on 21/11/2022, which was considered to constitute significant further information. The response included:

- A Cover Letter describing the response to each item raised.
- A revised Natura Impact Statement.
- A copy of the results of previous ground investigations (August 2021)

The further information cover letter noted the following points:

- It acknowledges that the temporary work compound is not exempted development and has thus been included in the assessment of effects in the NIS.
- Mitigation measures for the temporary compound were included in the NIS.
- There will now be no storage of topsoil in the compound.
- The NIS is amended to assess the potential for release of contaminants.
- Temporary diversion of the live Wad Culvert over the works area will be required to facilitate the development.

4.0 **Planning History**

4.1. **PA Ref. 3161/12:** Part 8 approval for measures identified in the overall Wad Drainage Catchment Study was granted in January 2013, comprising:

- Inlet structure in Clanmoyle Road green area.
- Pedestrian bridge in the Clontarf Golf Course.
- Retaining wall along the boundary of Clontarf Golf Club and the railway.

- Sports netting around the boundary of the Clontarf Golf Club
- Inlet and outlet structures and attenuation storage in Clontarf Golf Course.
- Outfall into Clontarf Foreshore adjacent to Clontarf Road.

Certain other works identified in the flood study were not included in this application.

It is indicated that construction of the approved Clanmoyle Flood Alleviation Scheme was completed in 2015, although the new outfall culvert to the sea in Clontarf was not constructed, and that now comprises the subject of the current S.177AE application.

5.0 Legislative and Policy Context

5.1. **The EU Habitats Directive (92/43/EEC):** Article 6(3) and 6(4) require an appropriate assessment of the likely significant effects of a proposed development on its own and in combination with other plans and projects which may have an effect on a European Site (SAC or SPA).

5.2. **Nature conservation designations:** The proposed development occurs immediately adjacent to / within South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024). Other European sites located in within the wider area include:

- North Dublin Bay SAC (000206), approx. 2.5km east of the site.
- North Bull Island SPA (004006), approx. 2.5km east of the site.
- South Dublin Bay SAC (000210), approx. 3.5km southeast of the site.

5.3. **Planning and Development Acts 2000 (as amended):** Part XAB of the Planning and Development Acts 2000-2017 sets out the requirements for the appropriate assessment of developments which could have an effect on a European site or its conservation objectives. S.177AE refers to development by or on behalf of a local authority.

Section 177(AE)(1) and (2) requires that where an appropriate assessment is required in respect of a development, a local authority shall prepare a Natura impact statement and that the development shall not be carried out unless the Board has approved it with or without modifications.

Section 177AE (6) (a) states that before making a decision in respect of a proposed development the Board shall consider the NIS, any submissions or observations received and any other information relating to:

- The likely effects on the environment.
- The likely consequences for the proper planning and sustainable development of the area.
- The likely significant effects on a European site.

5.4. National and Regional Policy

5.4.1. National Planning Framework

The NPF notes that flooding is a cross-sectoral issue that can affect all aspects of life, and that can be influenced, positively or detrimentally, by actions in many other sectors. Of particular importance is the consideration of potential future flood risk in planning and development management, and infrastructure planning and design.

NPO 41:

- a: Ensure that Ireland's coastal resource is managed to sustain its physical character and environmental quality.
- b In line with the collective aims of national policy regarding climate adaptation, to address the effects of sea level changes and coastal flooding and erosion and to support the implementation of adaptation responses in vulnerable areas".

NPO 57: Enhance water quality and resource management by:

- Ensuring that River Basin Management Plan objectives are fully considered throughout the physical planning process.
- Integrating sustainable water management solutions, such as Sustainable Urban Drainage (SUDS), non-porous surfacing and green roofs, to create safe places.

Figure 9.2 identifies core objectives of Flood Risk Management including, inter alia, improving the understanding of flood risk and ensure flood risk management in accordance with best practice.

5.4.2. Climate Action Plan 2023

Section 22. Adaptation, notes that the most immediate risks to Ireland from climate change are predominantly those associated with changes in extremes, such as floods, droughts, and storms.

Ireland's primary adaptation policy response to these challenges is set out in the National Adaptation Framework 2018. Sectoral Adaptation Plans were approved and published in October 2019. Work in the area of flood-risk management provides a good illustration of the adaptation principle. Flood-risk prevention strategies make use of assessments of long-term changes in flood intensity and frequency based on climate projections. This informs the building of long-term resilience into flood defences by designing them to cope with conditions that may arise in the future.

5.4.3. National Adaptation Framework Planning for a Climate Resilient Ireland 2018

Chapter 3: A New Framework for Delivering Climate Resilience

The planning process provides an established means through which climate change adaptation objectives can be integrated and implemented at local level. Planning legislation already requires different levels of the planning process to address climate change.

In terms of emergency planning, flood risk prevention strategies often make use of assessments of long-term changes in flood intensity and frequency based on climate projections. This can build long term resilience into flood defences to cope with conditions that may arise in the future.

5.5. Flood Risk Management Climate Change Sectoral Adaptation Plan, prepared under the National Adaptation Framework (OPW) 2019

The long-term goal on climate adaptation for flooding and flood risk management is to promote sustainable communities and support our environment through the effective management of the potential impacts of climate change on flooding and flood risk.

The assessments under the CFRAM Programme indicate potentially significant increases in the flood impact and the number of properties that could become at risk. Flood relief schemes that are currently in construction or under design, or that are planned as set out in the FRMPs will however protect many of the properties that would otherwise become prone to flooding in future scenarios, or the schemes have, or will be, designed taking account of climate change and the need for adaptation.

5.5.1. Regional Spatial and Economic Strategy for the Eastern and Midland Region

The strategy recognises that floods are a regular occurrence, and that the flood risks will increase due to more frequent extreme weather events and sea level rise linked to climate change. Regional policy objectives include:

RPO 7.12: Future statutory land use plans shall include Strategic Flood Risk Assessment and avoid inappropriate zonings and development in areas at risk of flooding, and integrate sustainable water management solutions to create safe places in accordance with the Flood Risk Assessment Guidelines.

RPO 7.13: EMRA will work with local authorities, the OPW and other relevant departments and agencies to implement the recommendations of the CFRAM programme to ensure that flood risk management policies and infrastructure are progressively implemented.

RPO 7.14: Local authorities shall take account of and incorporate into local planning policy and decision making, the recommendations of the Flood Risk Management Plans (FRMPs), including planned investment measures for managing and reducing flood risk.

RPO 7.15: Local authorities shall take opportunities to enhance biodiversity and amenities and to ensure the protection of environmentally sensitive sites and habitats, including where flood risk management measures are planned.

5.6. Local Policy

5.6.1. Dublin City Development Plan 2022-2028

The grassland area between Clontarf Road and the shoreline is zoned Objective Z9: *To preserve, provide and improve recreational amenity, open space and ecosystem services*. Within this zone, permissible uses include public service installations.

Lands to the north of Clontarf Road, are zoned Z3: *To provide for and improve neighbourhood facilities*. Public service installations are permissible within this zone. The definition of *Public Service Installations* in the plan includes all service installations necessary for drainage.

Section 3.3 recognises the climate change challenge of rising sea levels and more frequent and severe rainfall events contributing to increased flooding and flood risk. To respond to this challenge, it will be necessary to adapt the response to flood risk management to address the impacts of climate change.

Policy CA2: Mitigation and Adaptation

To prioritise and implement measures to address climate change by way of both effective mitigation and adaptation responses in accordance with available guidance and best practice.

Objective CAO1: Dublin City Council Climate Change Action Plan

To implement Dublin City Council's 2019 Climate Change Action Plan in consultation and partnership with stakeholders including the Dublin Metropolitan Climate Action Regional Office (CARO), Codema, residents and elected representatives.

Policy CA27: Flood Risk Assessment and Adaptation

To address flood risk at strategic level through the process of Strategic Flood Risk Assessment, and through improvements to the city's flood defences.

Chapter 9, Sustainable Environmental Infrastructure and Flood Risk

Policy SI14: Strategic Flood Risk Assessment

To implement and comply fully with the recommendations of the Strategic Flood Risk Assessment prepared as part of the Development Plan, including all measures to mitigate identified climate change and flood risks,, and to have regard to the Flood Risk Management Guidelines (2009),

Policy SI18: Protection of Flood Alleviation Infrastructure

To put in place adequate measures to protect the integrity of flood alleviation infrastructure in Dublin City and to ensure new developments or temporary removal of any flood alleviation asset does not increase flood risk, while ensuring that new flood alleviation infrastructure has due regard to nature conservation, natural assets, open space and amenity values, as well as potential climate change impacts.

Policy SI19: Provision and Upgrading of Flood Alleviation Assets

To facilitate the provision of new, or the upgrading of existing, flood alleviation assets where necessary and in particular, the implementation of proposed flood alleviation schemes, on the, **Wad** rivers as well as Clontarf Promenade, and any other significant flood risk areas being progressed through the planning process to completion during the lifetime of the 2022-2028 Dublin City Development Plan, with due regard to the protection of natural heritage, built heritage and visual amenities, as well as potential climate change impacts.

Chapter 10 Green Infrastructure and Recreation

Policy GI9: European Union Natura 2000 Sites

To conserve, manage, protect and restore the favourable conservation condition of all qualifying interest/special conservation interests of all European sites.

Policy GI13: Areas of Ecological Importance for Protected Species

To ensure the protection, conservation and enhancement of all areas of ecological importance for protected species, and especially those listed in the EU Birds and Habitats Directives, including those identified as supporting the favourable conservation condition of any European sites, in accordance with development standards set out in this plan.

Policy GI41: Protect Existing Trees as Part of New Development

To protect existing trees as part of new development, particularly those that are of visual, biodiversity or amenity quality and significance. There will be a presumption in favour of retaining and safeguarding trees that make a valuable contribution to the environment.

5.7. **Dublin City Development Plan 2022-2028 Strategic Flood Risk Assessment**

Section 2.4 *Existing Flood Management Infrastructure and Strategies*, notes that DCC and its partners have implemented several measures and projects to address the main flood risks including construction of Wad River Flood Alleviation Scheme, Clanmoyle Road Phase 1. Phase 2 from Clontarf Golf Club to coast at detailed design stage.

Area Assessment and Justification Tests:

Area: Coastal 26. Clontarf Alfie Byrne Road to Wooden Bridge

This area includes the eastern end of Fairview and Clontarf Road from the Malahide Road to the Wooden Bridge. Inland flood risk areas include the culverted Wad River 200m east of Alfie Byrne Road, lower ends of Strandville Road, Hollybrook Road, St. Laurence Road and Seaview Road North.

Development in this area is mainly low to medium density residential with some commercial and sports areas. This area is protected by the existing sea wall except for the last 250m east of Alfie Byrne Road. Some flood defence options are being considered, however, it will be a number of years before they can be implemented. The area is at extreme sensitivity to Climate Change both for direct tidal inundation and overtopping of sea walls, and through increased and more severe wave action.

All surface water in this area needs to be carefully managed and provision made for significant rainfall events during high tides. A one-year high tide event should be assumed during a 100-year rainfall event.

6.0 **The Natura Impact Statement**

This application under s.177AE was accompanied by a Natura Impact Statement (NIS) which was revised at further information stage. The NIS scientifically examines the proposed development and provides the required information to enable the Board to carry out an appropriate assessment of the proposed works.

The NIS contains a summary of the Screening Assessment and a description of the proposed development. European Sites relevant to the assessment and a description of the receiving environment are set out in sections 4 & 5. Section 6 identifies and characterises the potential for adverse effects on the integrity of

European Sites, while section 7 considers in-combination effects. Section 9 concludes that, subject to mitigation measures identified in section 8, the proposed works either individually or in-combination with other plans or projects will not adversely affect the integrity of European Sites in view of the site's conservation objectives.

7.0 Consultations

7.1. The application was circulated to the following bodies:

- An Taisce.
- An Chomhairle Ealaíon.
- Fáilte Ireland.
- Inland Fisheries Ireland.
- Department of Housing, Planning and Heritage (Foreshore Unit).
- Irish Water.
- Department of Culture, Heritage and the Gaeltacht
- The Heritage Council

7.2. A response was received from the Department of Housing, Planning and Heritage, on 23/09/2022, which made makes the following points:

Archaeology:

- Conditions recommended. including implementation of the mitigation strategy set out in the Intertidal Archaeological Impact Assessment, and archaeological supervision of site works.

Nature Conservation

- The findings of the NIS are noted.
- The NIS provides a comprehensive suite of measures to avoid detrimental effects on European Sites during construction.
- The conclusion that the development will not adversely impact on the integrity of European Sites is accepted.
- Condition recommended requiring the contractor to agree a CEMP with the planning authority incorporating the mitigation measures identified in the NIS.

No further submissions were received from consultees in response to the significant further information submitted to the Board.

7.3. Public Submissions:

No third party / public submissions have been received.

8.0 Assessment

8.1. The likely consequences for the proper planning and sustainable development of the area:

- 8.1.1. The proposed development comprises works to address existing flooding risk, previously identified in the Wad Drainage Catchment Study. The proposed drainage works were part of a set of flood alleviation works previously approved under Part 8 approval under reference 3161/12. Those works are understood to be largely complete, with the exception of the subject works. The proposed works are aligned with policies and objectives to address flooding and climate change impacts at local, regional and national level. I note that the Clonmoyle and the Wad Flood Alleviation Schemes are both identified as actions under the Dublin City Climate Action Plan 2019-2024. Within the Z9 zone, such public service works are acceptable in principle.

The original application excluded the temporary works compound on the basis that it comprised exempted development. Following a request by the Board for further information, the application and environmental assessments were amended to include these elements of the development.

8.2. The likely effects on the environment

- 8.2.1. The proposed works are relatively minor in nature. The sealing of manholes will involve the removal and replacement of the existing manholes and replacement of any brick access chimney with a new RC chimney. While construction activity will give rise to noise and dust emissions, these are not expected to be significant in

scale or duration. Any disturbance or disruption to residents or occupiers of the adjacent properties will be minor. There will be longer-term benefits to the occupiers of such properties in terms of reduced flood risk, and significant impacts on the amenities of the area are not therefore anticipated.

- 8.2.2. New culvert works will result in some restriction on public pedestrian and cycle access to this area of the seafront for the duration of construction activity. A diversion around the works area is identified in the submitted documentation, via the Clontarf Road. While there will be some impact on users of this area and visual impacts during construction, the disruption will be temporary in duration and significant impacts on the amenities of the area are not anticipated. Access will be reinstated on completion and no operational impacts are anticipated.
- 8.2.3. The development proposes the establishment of a temporary construction compound within the existing public car park to the east of the works area. The use of this car park will reduce the availability of c.34 no. public parking spaces in the area, however, the duration of such impact is relatively short (estimated 8 weeks). While there will be some disruption to users, it is not considered that such temporary impacts would be significant negative in nature. Siting the construction compound on the existing car park will reduce the footprint of disturbance of existing amenity grassland and facilitate reinstatement of the lands following completion of works.
- 8.2.4. The proposed development provides for improved conveyance of surface waters to the shoreline to alleviate upstream flood risk, and would also improve storage capacity during periods of high tide. There are no additional or new flows being connected to the system, and no material changes to the quality of waters discharging to the shore are anticipated as a result of the proposed development.
- 8.2.5. The application is accompanied by an Archaeological Screening Assessment and an Intertidal Archaeological Impact Assessment. The site is not located within any identified zone of archaeological potential or proximate to any recorded monument, and no terrestrial archaeological features are predicted to be impacted by the proposed development. I note that the lands within the amenity grassland area have previously been subject to disturbance and other drainage works.
- 8.2.6. Greater archaeological potential arises in the intertidal area and detailed surveys were therefore undertaken of this area. I note the submission from the Dept. of

Housing, Local Government and Heritage and conclude that subject to the identified mitigation measures and the conditions recommended by the Dept, the proposed development would not give rise to any unacceptable impacts on the archaeological or cultural heritage of the area.

- 8.2.7. The potential presence of contaminated soils within the site is referenced in application documentation. Site investigations undertaken in 2021 reported elevated levels of hydrocarbon and zinc within the site, however, based on the recorded levels it is reported that the samples tested may potentially be classified as inert or non-hazardous. There remains potential for contamination to be identified during site development works, and where this is the case further investigation and remediation will be required. The NIS recognises this potential and proposes therefore that any groundwater entering excavations will be pumped out and tankered off-site for treatment, thus removing the potential for mobilisation of contaminants and transport to the marine environment.
- 8.2.8. The application is accompanied by an Ecological Impacts Memorandum. Terrestrial habitats on the site (grassland and rock armour) are generally described as being of low importance, although they are potentially used by wintering birds. The intertidal mudflats are identified as an Annex 1 habitat, which are frequented by wintering birds. Existing elder trees on the shoreline are described as being of high biodiversity value, and a requirement for some trimming of branches is identified. The report notes that the removal of two trees may, however, be required to facilitate the development.

The memorandum identifies general construction mitigation measures, however, the principle measures are the timing of works to avoid impacts on wintering birds, minimising disturbance of grassland habitats and use of pre-cast concrete sections to avoid use of wet concrete where possible. Replacement tree planting will be undertaken where tree removal is required. A construction environmental management plan is to be agreed prior to commencement of construction. The memorandum concludes that no significant long-term ecological impacts are expected, subject to the identified mitigation measures. The description of potential impacts in the memorandum appears to be reasonable and I generally concur with the conclusions therein.

9.0 **The likely significant effects on a European site:**

The areas addressed in this section are as follows:

- Compliance with Articles 6(3) of the EU Habitats Directive
- The Natura Impact Statement
- Appropriate Assessment

9.1. **Compliance with Articles 6(3) of the EU Habitats Directive:**

The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) 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.

The proposed development is not directly connected with or necessary to the management of any European Site and the planning authority have determined that Stage II assessment is required.

9.2. **The Natura Impact Statement**

The application is accompanied by an NIS which contains a Stage I Screening Assessment. The Screening Assessment concluded that significant effects on the following European Sites could not be excluded;

- South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024),
- South Dublin Bay SAC (Site Code: 000210),
- North Dublin Bay SAC (000206),
- North Bull Island SPA (Site Code: 004006)

Other European sites were excluded from further assessment based on the lack of direct or indirect pathways to the project.

The assessment concluded that likely significant effects from the proposed works adjoining the Clontarf Road could not be ruled out in respect of the following:

- Disturbance to wintering waterbirds utilising the mudflats from construction works,
- Disturbance to wintering waterbirds utilising the grassland areas from construction works,
- Damage to fauna within the fine sand to sandy mud with *Pygospio elegans* and Crangon crangon community complex,
- Loss of feeding habitat for wintering waterbirds arising from the loss of grassland habitat within the proposed works area,
- Loss of feeding habitat for wintering waterbirds arising from damage to fauna within the Fine sand to sandy mud with *Pygospio elegans* and Crangon crangon community complex,
- Risk of pollution from oil spill, other pollutants / leachate during construction works to the marine environment,
- Damage to marine communities from sediment deposition,
- Underwater noise and vibration impacts on marine mammals should pile driving be required in the marine environment.
- Potential trampling impacts during the construction phase on grassland habitats of importance for wintering birds.
- Potential release of contaminants to the adjoining Fine sand to sandy mud with *Pygospio elegans* and Crangon crangon community complex in the SPA, should contaminated soil be encountered during the works

It was therefore concluded that AA and production of an NIS was required. I consider the conclusions of the Screening Assessment to be reasonable.

The Stage II NIS is set out as follows:

Section 1.0 sets out the introduction, including methodology.

Section 2.0 summaries Screening for AA.

Section 3 describes the site and the proposed development.

Section 4 describes the relevant European Sites.

Section 5.0 describes the receiving environment.

Section 6.0 assesses the effects on the integrity of European Sites.

Section 7.0 deals with potential in-combination effects.

Section 8.0 identifies mitigation measures.

Section 9.0 sets out the conclusions of the Assessment.

I note that section 1.5 describes the methodology for the assessment which included desktop studies, ornithological field surveys and consultation with relevant parties. During the winter of 2020/21, an ornithological study of waterbird usage of the estuarine section and adjacent grasslands in this area was undertaken, while previous bird survey data for the area was also reviewed and informed the assessment.

The NIS concludes that subject to implementation of the identified mitigation measures the proposed works individually or in combination with other plans or projects will not adversely affect the integrity of European Sites. I am satisfied that the NIS and supporting documentation provides adequate information in respect of the baseline conditions, clearly identifies the potential impacts, and uses best scientific information and knowledge. Details of mitigation measures are provided.

9.3. **Appropriate Assessment**

Having regard to the information and submissions available, including the NIS and the further information received on 21/11/2022, the nature, size and location of the proposed development and its likely direct, indirect and cumulative effects, the source pathway receptor principle and sensitivities of the ecological receptors, I consider that the following European Sites are relevant for the purposes of Stage 2 appropriate assessment on the basis of likely significant effects.

- South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024),
- South Dublin Bay SAC (Site Code: 000210),
- North Dublin Bay SAC (000206),
- North Bull Island SPA (Site Code: 004006)

Other sites occurring within the wider area, including Rockabill to Dalkey Island SAC (003000), Howth Head Coast SPA (004113) and Howth Head SAC (000202), can be screened out from further assessment because of the nature of their Conservation Objectives, Qualifying and Special Conservation Interests, the nature and scale of the proposed works, the separation distances and the lack of a substantive linkages between the proposed works and those European sites in order for likely significant effects to arise.

I concur with the conclusions of the applicant’s Screening Assessment and NIS in this regard.

9.3.1. **Relevant European sites:**

The Conservation Objectives and Qualifying Interests, including any relevant attributes and targets for relevant European sites are set out below.

Site	Conservation Objective	Distance (c.)
South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024),	To maintain the favourable conservation condition of species listed as conservation interests of this site and the wetland habitat as a resource for regularly occurring migratory species.	Adjacent
A046 / Brent Goose A130 Oystercatcher A137 Ringed Plover A141 Grey Plover (removal proposed) A143 Knot A144 Sanderling A149 Dunlin A157 Bar-tailed Godwit A162 Redshank A179 Black-headed Gull A194 Arctic Tern	Attributes and Targets Long term population trend stable or increasing. No significant decrease in the range, timing or intensity of use of areas, other than from natural patterns of variation	

Site	Conservation Objective	Distance (c.)
A192 Roseate Tern A193 Common Tern	Attributes and Targets No significant decline in population, distribution, prey biomass. No significant decline in productivity for common tern. No significant increase in barriers to connectivity. No adverse effect or disturbance of Common Tern breeding sites. No adverse effect / disturbance of roosting sites.	
A999 Wetlands	Attributes and Targets Stable habitat area	

Site	Conservation Objective	Distance (c.)
South Dublin Bay SAC (Site Code: 000210)	To maintain or restore the favourable conservation condition of Annex I habitats for which the site has been selected.	3.2km (via hydrological pathway)
1140 Mudflats and sandflats not covered by seawater at low tide	Habitat area is stable or increasing, Community extent: Maintain the extent of the Zostera-dominated community, Community structure: Conserve the high quality of the Zostera-dominated community. Community distribution: Conserve the Fine sands with <i>Angulus tenuis</i> community complex in a natural condition.	
1210 Annual vegetation of drift lines 1310 Salicornia and other annuals colonising mud and sand 2110 Embryonic shifting dunes	Not defined	

Site	Conservation Objective	Distance (c.)
North Dublin Bay SAC (000206),	To maintain or restore the favourable conservation condition of Annex I habitats and / or Annex II species for which the site has been selected.	2.5km
1140 Mudflats and sandflats not covered by seawater at low tide	Area is stable or increasing. Maintain community extent. Maintain and conserve the extent and high quality of the <i>Mytilus edulis</i> -dominated community. Conserve distribution of Fine sand to sandy mud with <i>Pygospio elegans</i> and <i>Crangon crangon</i> & Fine sand with <i>Spio martinensis</i> community complex.	
1210 Annual vegetation of drift lines	Habitat area increasing. No decline or change in distribution. Physical structure: Maintain the natural circulation of sediment and organic matter. Vegetation structure: Maintain the range of coastal habitats including transitional zones. Vegetation composition: Maintain the presence of species-poor communities with typical species and negative indicator species less than 5% cover.	
1310 <i>Salicornia</i> and other annuals colonising mud and sand	Area stable or increasing and no decline or change in distribution. Physical structure: Maintain, or restore, natural circulation of sediment, creek and pan structure, natural tidal regime. Vegetation structure: Maintain structural height variation within sward, >90% cover outside creeks vegetated. Vegetation composition: Maintain the presence of species-poor communities, no significant expansion of common cordgrass	
1330 Atlantic salt meadows: 1410 Mediterranean salt meadows	Habitat area stable or increasing, No decline or change in habitat distribution,	

Site	Conservation Objective	Distance (c.)
	<p>Physical structure: Maintain natural circulation of sediments and organic matter, maintain creek and pan structure, maintain natural tidal regime</p> <p>Vegetation structure: Maintain range of coastal habitats, structural height variation within sward, > 90% vegetation structure outside creeks, no significant expansion of common cordgrass</p>	
2110 Embryonic shifting dunes	<p>Habitat area stable or increasing, no decline or change in habitat distribution,</p> <p>Physical structure: Maintain natural circulation of sediments and organic matter,</p> <p>Vegetation structure: Maintain range of coastal habitats</p> <p>Vegetation composition: > 95% of sand couch and/or lyme-grass healthy, maintain the presence of species-poor communities with typical species, Negative indicator species to represent <5% cover</p>	
2120 Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes)	<p>Habitat area stable or increasing, No decline or change in habitat distribution,</p> <p>Physical structure: Maintain natural circulation of sediments and organic matter,</p> <p>Vegetation structure: Maintain range of coastal habitats</p> <p>Vegetation composition: > 95% of marram grass and/or lyme-grass healthy, maintain the presence of species-poor communities with typical species, Negative indicator species to represent <5% cover.</p>	
2130 Fixed coastal dunes with herbaceous vegetation (grey dunes)	<p>Habitat area stable or increasing, No decline or change in habitat distribution,</p> <p>Physical structure: Maintain natural circulation of sediments and organic matter,</p>	

Site	Conservation Objective	Distance (c.)
	<p>Vegetation structure: Maintain range of coastal habitats, bare ground <10% of habitat, maintain structural variation within sward</p> <p>Vegetation composition: maintain the presence of species-poor communities with typical species, negative indicator species to represent <5% cover. <5% under cover.</p>	
2190 Humid dune slacks	<p>Habitat area stable or increasing, no decline or change in habitat distribution,</p> <p>Physical structure: Maintain natural circulation of sediments and organic matter and natural hydrological regime,</p> <p>Vegetation structure: Maintain range of coastal habitats, bare ground <5% of habitat, maintain structural variation within sward</p> <p>Vegetation composition: maintain the presence of species-poor communities with typical species, negative indicator species to represent <5% cover, <40% under willow cover, < 5% cover under control.</p>	
1395 Petalwort	<p>No decline in distribution or population size, or in area of suitable habitat.</p> <p>Maintain hydrological conditions.</p> <p>Vegetation structure: Maintain open, low vegetation with a high percentage of bryophytes and bare ground</p>	

Site	Conservation Objective	Distance (c.)
North Bull Island SPA (Site Code: 004006)	To maintain the favourable conservation condition of the bird species listed as conservation interests for this site.	2.5km

Site	Conservation Objective	Distance (c.)
	To maintain the favourable conservation condition of the wetland habitat as a resource for the regularly occurring migratory waterbirds that utilise it	
A046 Brent Goose Branta A048 Shelduck A052 Teal A054 Pintail A056 Shoveler A130 Oystercatcher A140 Golden Plover A141 Grey Plover A143 Knot A144 Sanderling A149 Dunlin Calidris A156 Black-tailed Godwit A157 Bar-tailed Godwit A160 Curlew A162 Redshank A169 Turnstone A179 Black-headed Gull	<p>Attributes and Targets</p> <p>Long term population trend stable or increasing.</p> <p>No significant decrease in the range, timing or intensity of use of areas, other than from natural patterns of variation</p> <p>A999 Wetlands</p> <p>Habitat area should be stable and not significantly less than the area of 1,713 ha.</p>	

9.3.2. Likely Effects on the Integrity of European Sites

The NIS identifies a range of mechanisms for adverse effects on European Sites which are described below. These are considered to satisfactorily and comprehensively address the potential mechanisms for effects on the integrity of the European Sites.

1. Disturbance to wintering waterbirds utilising the mudflats from construction works.

The adjoining mud flats are used by waterbirds throughout the year, particularly from Autumn through to Spring, and construction activity has the potential to result in disturbance of foraging and roosting activity therein. This includes species listed as qualifying interests of the two SPAs, particularly for wintering birds. The existing

freshwater outfall was also previously recorded as being favoured by ducks and waders, including brent geese. The quietest months in terms of waterbirds are stated to be June and July. There is therefore a risk of disturbance during construction, however, operational disturbance is not considered likely.

2. Disturbance to wintering waterbirds utilising the grassland areas from construction works,

Use of the grassland area within and adjoining the site has been recorded by wintering birds, including brent geese, although higher levels of usage are reported in the grassed area to the west / northwest of the works area. There is potential for temporary disturbance of waterbirds during construction activity.

3. Loss of feeding habitat for wintering waterbirds arising from the loss of grassland habitat within the proposed works area,

There will be a temporary loss of grassland during construction activity. Following completion of works, the lands are to be reinstated and reseeded using an appropriate seed mix. Any such loss will therefore be temporary and limited in extent. The relatively low numbers of birds using this area of grassland are also noted.

4. Damage to fauna within the Fine sand to sandy mud with *Pygospio elegans* and *Crangon crangon* community complex due to direct impact and water quality and pollution incidents.
5. Loss of feeding habitat for wintering waterbirds arising from damage to fauna within the Fine sand to sandy mud with *Pygospio elegans* and *Crangon crangon* community complex,

Construction activity taking place within the intertidal area would have the potential to impact on this community complex. Similarly, any discharge of sediment or contaminated waters from the works area to the shoreline has the potential to impact on the community complex and potentially reduce the area of foraging activity of waterbirds in this area.

6. Risk of pollution from oil spill, other pollutants/leachate during construction works to the marine environment. This includes the release of pollutants from potentially contaminated ground.

The release of contaminants or other pollutants to the marine environment could impact on the community complex which attracts foraging waterbirds, and thence impact on these species. This includes the potential release of pollutants from contaminated ground to the shore.

7. Damage to marine communities from sediment deposition,

Sediment deposition in the vicinity of the outfall could impact on marine communities during construction or operation.

8. Acoustic impacts on marine mammals using the marine environment of Dublin Bay and coastal areas should pile driving be proposed to prevent tidal ingress.

Construction activity requiring the use of piles or shutters in the intertidal area has the potential to give rise to noise and vibration impacts on marine mammals, who are particularly sensitive to such emissions.

9. Potential impacts during temporary works.

Siting of the temporary works compound and movement of plant and machinery between the compound and works area could impact on grassland habitats used by foraging wintering birds. There is also potential for spills of contaminants within the compound.

10. Potential release of contaminants to the adjoining Fine sand to sandy mud with *Pygospio elegans* and *Crangon crangon* community complex in the SPA, should contaminated soil be encountered during the works

Interaction with areas of contaminated soils could result in the mobilisation of contaminants and discharge to the estuary.

9.3.3. **Potential In-Combination Effects**

A review of planning decisions in the area does not identify other plans or projects likely to give rise to significant in-combination effects with the proposed development. The applicant's NIS does not identify any other plans or projects giving rise to the likelihood of significant effects on European sites.

9.3.4. **Mitigation Measures**

Section 8 of the NIS identifies both General Construction Measures and Project Specific Measures to mitigate the likely effects on European Sites. These measures are summarised below:

General Construction Mitigation Measures

- Agree a Construction Environmental Management Plan to include all measures identified in the NIS.
- Locate the site compound outside areas of grassland habitat and restrict movement on / access through such grassland areas.
- Standard measures for control and management of pollutants / contaminants.
- Use of precast concrete components to avoid the pouring of concrete or cement, reducing risk of runoff or leachate to the marine environment. Any additional concrete will be subject to dust control measures, protection of wet concrete from rain, and use of reduced alkaline concrete.
- Adherence to relevant legislation and best practice guidance for the protection of water quality including CIRIA C532, IFI Guidelines on Protection of Fisheries.
- Prevent pollutant or chemical spillage from plant and machinery to surface water.
- Standard best-practice measures for construction sites in and adjacent to water and sensitive habitats, including the availability of spill kits and procedures in place in the event of a spill.

Project Specific Mitigation Measures

- The Contractor's Method Statement (and Risk Assessments) will comply with the NIS and Outline Methodology and planning conditions.
- Appoint a qualified ecological clerk of works to oversee works.

- Timing: The main mitigation measure is avoidance of direct disturbance of wintering birds and SPA bird populations by completing the works in June and July. This will allow the adjacent grassland to be reseeded and available for feeding geese and gulls, especially from the mid-winter period (November)
- If works are delayed for longer than the proposed 8-week construction schedule, visual Screening (2m high) will be erected to minimise disturbance to birds arriving in August and using the site up to the following April.
- Delineation of working areas to protect grassland habitat which are used for foraging. Access between the works area and compound will use the existing shoreline paved route.
- Storage of excavated topsoil adjacent to the culvert works area will reduce plant movement and trampling of grassland. No topsoil will be stored in the temporary works compound.
- Use precast culvert elements to avoid pouring of concrete / cement and reduce the risk of runoff or leachate to the marine environment.
- Any disturbed area of grassland will be reinstated and resown with a prescribed grass seed mix. Application of fertiliser to be in accordance with prescribed guidance. Grassland will be managed to be in suitable condition for geese.
- Given the potential to encounter contaminated ground, any groundwater entering excavated areas will be pumped out and tankered away to a licenced facility. There will be no discharge of ground or surface water to the adjacent aquatic environment.
- Any potential contamination identified during works will be investigated, including and remediation measures adopted. (Notwithstanding such measures, I note that the pumping and removal of ground water off-site will interrupt the potential pathway for impacts on the European Sites. There will be no discharge of ground or surface water to the adjacent aquatic environment).
- No machinery or plant will enter the SPA or work from the mudflats. All activity will work from the cycle track above the mudflats during periods of low tides to avoid trampling or compression of habitat with subsequent impact on biota within the mudflats.
- Measures to avoid sediment deposition in the vicinity of the outflow valve during construction include silt fences at the foot of works.

- There will be no sheet piling in the marine environment to avoid potential adverse acoustic effects on marine mammals.
- Works will not alter existing sediment control / management within the catchment and thus no significant operational impacts on marine communities are expected.

9.3.5. **Conclusion:**

I am satisfied that the proposed development individually or in combination with other plans or projects would not adversely affect the integrity of South Dublin Bay and River Tolka Estuary SPA, South Dublin Bay SAC, North Dublin Bay SAC or North Bull Island SPA in light of their conservation objectives subject to the implementation of the identified mitigation measures outlined above. No reasonable scientific doubt remains as to the absence of such adverse effects.

9.4. **Appropriate Assessment Conclusions:**

Having regard to the foregoing, I consider that it is reasonable to conclude on the basis of the information on the file, which I consider adequate in order to carry out a Stage 2 Appropriate Assessment, and subject to the implementation of the identified mitigation measures, that the proposed development, individually or in combination with other plans and projects would not adversely affect the integrity of the South Dublin Bay and River Tolka Estuary SPA, South Dublin Bay SAC, North Dublin Bay SAC and North Bull Island SPA , or any other European site, in view of the site's Conservation Objectives. No reasonable scientific doubt remains as to the absence of such adverse effects.

10.0 **Recommendation**

On the basis of the above assessment, I recommend that the Board approve the proposed development subject to the reasons and considerations and to the conditions set out below, including compliance with the submitted details and with the mitigation measures as set out in the NIS.

Reasons and Considerations

In coming to its decision, the Board had regard to the following:

- (a) the EU Habitats Directive (92/43/EEC),
- (b) the European Union (Birds and Natural Habitats) Regulations 2011-2015,
- (c) the Climate Action Plan 2023, Changing Ireland for the Better (Government of Ireland)
- (d) the likely consequences for the environment and the proper planning and sustainable development of the area in which it is proposed to carry out the proposed development and the likely significant effects of the proposed development on a European Site,
- (e) the conservation objectives, qualifying interests and special conservation interests for South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024), South Dublin Bay SAC (Site Code: 000210), North Dublin Bay SAC (000206), and North Bull Island SPA (Site Code: 004006)
- (f) the policies and objectives of the Dublin City Development Plan, 2022-2028,
- (g) the nature and extent of the proposed works as set out in the application for approval and further information received by the Board on 21/11/2022,
- (h) the information submitted in relation to the potential impacts on habitats, flora and fauna, including the Natura Impact Statement,
- (i) the submissions and observations received in relation to the proposed development, and
- (j) the report and recommendation of the person appointed by the Board to make a report and recommendation on the matter

Appropriate Assessment:

The Board agreed with and adopted the screening assessment and conclusion carried out in the Inspector's report that the South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024), South Dublin Bay SAC (Site Code: 000210), North Dublin Bay SAC (000206) and North Bull Island SPA (Site Code: 004006) are

the only European Sites in respect of which the proposed development has the potential to have a significant effect.

The Board considered the Natura Impact Statement and associated documentation submitted with the application for approval, the mitigation measures contained therein, the submissions and observations on file, and the Inspector's assessment. The Board completed an appropriate assessment of the implications of the proposed development for the relevant European Sites, namely South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024), South Dublin Bay SAC (Site Code: 000210), North Dublin Bay SAC (000206), North Bull Island SPA (Site Code: 004006) in view of the site's conservation objectives. The Board considered that the information before it was adequate to allow the carrying out of an appropriate assessment. In completing the appropriate assessment, the Board considered, in particular, the following:

- i. the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects,
- ii. the mitigation measures which are included as part of the current proposal, and
- iii. the conservation objectives for the European Sites.

In completing the appropriate assessment, the Board accepted and adopted the appropriate assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the integrity of the aforementioned European Sites, having regard to the site's conservation objectives.

In overall conclusion, the Board was satisfied that the proposed development, by itself or in combination with other plans or projects, would not adversely affect the integrity of the European Sites, in view of the site's conservation objectives.

Proper Planning and Sustainable Development / Likely effects on the Environment:

It is considered that, subject to compliance with the conditions set out below, the proposed development would not have significant negative effects on the

environment or on the community in the vicinity, would not give rise to a risk of pollution, would not be detrimental to the visual or landscape amenities of the area, would not seriously injure the amenities of property in the vicinity, would not adversely impact on the cultural, archaeological and built heritage of the area or give rise to the creation of a traffic hazard, and would not interfere with existing land uses in the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by An Bord Pleanála on the 21st day of November 2022, except as may otherwise be required in order to comply with the following conditions. Where any mitigation measures set out in the Natura Impact Statement or any conditions of approval require further details to be prepared by or on behalf of the local authority, these details shall be placed on the file and retained as part of the public record.

Reason: In the interest of clarity and the proper planning and sustainable development of the area and to ensure the protection of the environment.

2. Prior to the commencement of development, the local authority, or any agent acting on its behalf, shall prepare in consultation with the relevant statutory agencies, a Construction Environmental Management Plan (CEMP), incorporating all mitigation measures indicated in the Natura Impact Statement in accordance with best practice and protocols

Reason: In the interest of protecting European Sites and sensitive receptors.

3. A suitably qualified ecologist shall be retained by the local authority to oversee the site set up, construction of the proposed development and the site decommissioning phase, and implementation of mitigation measures identified in the Natura Impact Statement. The ecologist shall be present during site

construction works. Upon completion of works, an ecological report of the site works shall be prepared by the appointed ecologist to be kept on file as part of the public record.

Reason: In the interest of nature conservation and the protection of terrestrial and aquatic biodiversity

4. The mitigation strategy set out in Section 6 of the Intertidal Archaeological Impact Assessment (ADCO 22 February 2022) shall be implemented in full. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall

- (a) employ a suitably-qualified archaeologist who (licensed under the national Monuments Acts) shall monitor all site investigations and other excavation works,
- (b) provide arrangements for the recording and for the removal of any archaeological material found during monitoring. The developer shall be prepared to be advised by the National Monuments Service with regard to any mitigation action.

A final report, containing the results of the monitoring, and of any subsequent required investigations / excavations (including, any necessary post-excavation analysis) shall be submitted to the National Monuments Service on completion of all archaeological works.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

5. Prior to the commencement of development, the local authority, or any agent acting on its behalf, shall prepare a Traffic Management Plan for the proposed development as described in section 4.4.1 of the Outline Construction Environmental Management Plan (CEMP). Details to be included in the traffic

management plan shall include the design and operation of the proposed pedestrian and cycle diversion route during the period of construction.

Reason: in the interests of public safety

Conor McGrath

Senior Planning Inspector

13/01/2023