



An  
Bord  
Pleanála

## Inspector's Report ABP-315940-23

<b>Development</b>	Drainage Upgrade Works.
<b>Location</b>	Dunmore East Harbour, Dunmore East, Co. Waterford.
<b>Planning Authority</b>	Waterford City and County Council
<b>Planning Authority Reg. Ref.</b>	221007
<b>Applicant(s)</b>	Department of Agriculture, Food & Marine.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Paul Barrow.
<b>Observer(s)</b>	Peter Sweetman Greagoir O'Cathasaigh.
<b>Date of Site Inspection</b>	14 <sup>th</sup> March 2024.
<b>Inspector</b>	Peter Nelson

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## **1.0 Site Location and Description**

- 1.1. The site is located in Dunmore East, County Waterford and includes a section of the Harbour Village. The proposal is for drainage works; therefore the site is linear. The site extends from the western section of The Harbour Village and extends in front of a number of harbour-related units before turning toward the cliff wall and then out towards the sea. The units adjoining the linear site include East Pier Fish Shop/Takeaway, Irfish Ltd, Dunmore East Fisherman's Co-op, Woodstown Bay Shellfish Operations and Tawnagh Ltd.
- 1.2. To the south of the site is a car park, and to the north is the Dunmore East Fisheries Centre. To the east is the Dunmore East Harbour.
- 1.3. The drainage works are to serve the surrounding business premises on The Harbour Village Road. The stated site size is 0.1130 hectares.

## **2.0 Proposed Development**

- 2.1. Permission is sought for drainage upgrade work at the Dunmore East Harbour.
  - 2.1.1. The development will consist of the following works:
    - A new foul water drain, 245m in length, will be installed along Harbour Village Road to connect foul effluent from an existing business premises. This foul effluent will then be discharged into the public network. The connection to the Irish Water pumping station will be carried out in accordance with the requirements of Irish Water.
    - A section of the existing drain and outfall (106m in length) will be replaced where the current capacity is compromised due to compacted material in the system.
    - Existing rock armour will be removed locally over the route of the outfall to facilitate the new pipeline. The rock armour will be removed locally over the route of the outfall to facilitate the new pipeline. The rock armour will then be replaced and grouted into place.

### 3.0 Planning Authority Decision

#### 3.1. Decision

Waterford City and County Council granted permission for the proposed development on the 12<sup>th</sup> February 2023, subject to 5no. conditions.

Condition No.3 is of note:

*‘This planning permission is predicated upon the developer obtaining the necessary consent (and complying with all conditions) from Irish Water to connect to the water and foul drainage networks. No development shall commence until such time as the developer has obtained a connection agreement with Irish Water for the provision of water services necessary to enable the proposed development.*

*Reason:*

*To ensure an adequate standard of development and in the interest of the proper planning and sustainable development of the area.’*

#### 3.2. Planning Authority Reports

##### 3.2.1. Planning Reports

The main points raised in the planning report dated the 27<sup>th</sup> January 2023 can be summarised as follows:

- Noted that the development will result in a slight improvement in water quality as sanitary and trade effluent discharging untreated will be treated.
- Currently, there is no segregation between foul and surface water, and foul water is being discharged directly into Waterford Harbour.
- The proposed foul drain will collect foul effluent from the existing businesses, connect it to an Irish Water pumping station, and then be directed to the public network.
- The Stage 1 AA and Water Framework Directive screening and EIAR screening document have been reviewed, and it is the opinion of the Planning

Authority that the proposed development would not be likely to have a significant effect on a Natura 2000 Site and an EIA is not required.

### 3.2.2. Other Technical Reports

The main points raised in the Heritage Officers report dated the 26<sup>th</sup> January 2022 can be summarised as follows:

- The proposed development will not incur direct loss or disturbance to the qualifying interest habitats of The Hook SAC or give rise to significant effects on their conservation objectives.
- The proposal will have a positive effect on local water quality, which is in the interest of the favourable conservation conditions of habitats and species that occur in the impact zone of the proposed development in the River Barrow and River Nore SAC.
- It is concluded that the proposed development will not give rise to significant effects on the conservation objectives of the Natura 2000 Network.

### 3.3. Prescribed Bodies

None.

### 3.4. Third Party Observations

Three observations were received on the planning file. The main points raised can be summarised as follows:

- The Department of Agriculture Food and the Marine is not the relevant authority to make the application.
- It appears that the application represents project splitting.
- There are serious water quality issues in the Waterford Estuary.

- Without knowledge of future volumes and type of effluent to be discharged the impacts of this development and its consequential ongoing discharge on a cumulative basis have not been adequately assessed.
- The application has not satisfied legal requirements.
- Waterford City and County Council has failed to assess the overall development and its constituent parts in compliance with the requirements of the Habitats Directive.
- The development must be assessed for compliance with the requirements of the Water Framework Directive.
- The development is within the Zone of Influence of a number of SAC's and SPA's.
- The proposed development would have significant effects on the environment.
- The application has not considered the cumulative impacts of the development on several other proposed and permitted developments, all of which impact negatively on the environment.
- The AA screening has failed to consider the impacts arising from a foreshore licence which will be required to facilitate the proposed works.

## 4.0 Planning History

### **P.A. Ref: 2051**

Permission was granted on the 9<sup>th</sup> July 2020 for the retention of a pedestrian footbridge from the car park to the coastal walk, concrete path and steps and associated lighting and site work from the car park down to the harbour, and a section of fencing on the western boundary of the car park.

### **P.A. Ref: 18869**

Permission was granted on the 21<sup>st</sup> February 2019 for the demolition of an existing industrial building and associated concrete platform and ramps.

## 5.0 Policy Context

### 5.1. Development Plan

The Waterford City and County Development Plan 2022-2028 is the operational plan for the area. The plan came into effect on the 19<sup>th</sup> July, 2022.

The site is zoned GZT Zone – Light Industry/High Technology/Manufacturing Campus Development. The objective of this zone is to *‘Provide for light industry, general enterprise, business development, office, research and development and high technology/high technology manufacturing type employment in a high quality built and landscaped environment.’*

#### Policy

##### **C&M 01 Protecting our Coast and Marine**

All development proposals will be required to comply with standards and legal requirements of the following where they apply;

- National Seascape Character Assessment.
- NMPF National Marine Planning Framework.
- Marine Area Planning Act (2021).
- Geological Survey Ireland Coastal Vulnerability Index (CVI).

##### **BD 05 Protection of European Sites**

Projects giving rise to adverse effects on the integrity of European sites (cumulatively, directly or indirectly) arising from their size or scale, land take, proximity, resource requirements, emissions (disposal to land, water or air), transportation requirements, duration of construction, operation, decommissioning or from any other effects shall not be permitted except as provided for in Article 6(4) of the Habitats Directive, viz. There must be a) no alternative solution available, b) imperative reasons of overriding public interest for the project to proceed; and c) Adequate compensatory measures in place.

### Specific Development Objective

**DM08:** It is a policy of the Council to support the development of the harbour area for tourism/leisure and commercial uses including the provision of a boating marina whilst also facilitating the development of a new breakwater and port.

## **5.2. Natural Heritage Designations**

River Barrow and River Nore: Special Area of Conservation (002162)- 3.5km NE of the site.

Hook Head: Special Area of Conservation (000764)- 3.8km E of the site.

Tramore Dunes and Backstrand: Special Area of Conservation (00671)- 5km NW of the site.

Bannow Bay: Special Area of Conservation (00697)-9.7km NE of the site.

Lower River Suir: Special Area of Conservation (002137)- 10.4km NW of the site.

Seas off Wexford: Special Protection Area (004237)- 2.5km SW of the site.

Tramore Back Strand: Special Protection Area (004027)- 5.1km W of the site.

Bannow Bay: Special Protection Area (004033)- 11.4km NE of the site.

Mid-Waterford Coast: Special Protection Area (004193)- 11.9km W of the site.

## **5.3. EIA Screening**

I note that drainage improvement works are not an activity listed in Part 1 and Part 2 of Schedule 5 of the Planning and Development Regulations. Notwithstanding this, in relation to the proposed development consideration was also given to the following activities listed in Part 1 of Schedule 5:

13. Wastewater treatment plants with a capacity exceeding 150,000 population equivalent as defined in Article 2, point (6), of Directive 91/271/EEC.

and listed in Part 2 of Schedule 5:

10. Infrastructure Projects:

(b) (iv) Urban development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere.



Having regard to the nature and scale of the proposed development, which is for drainage upgrade works at the Dunmore East Harbour, there is no real likelihood of significant effects on the environment arising from the proposed development.

Therefore, the need for environment impact assessment can be excluded at preliminary examination, and a screening determination is not required.

The EIA Pre-Screening and Preliminary Examination is discussed further in Section 7 Assessment of this report.

See Appendix 1 of this report for further information (EIA Form 1: Pre-Screening and Form 2: EIA Preliminary Examination).

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

The main points of appeal can be summarised as follows:

- The Minister and the Department of Agriculture Food & the Marine is not the competent/relevant authority to make the application.
- Irish Water and Waterford County and City Council are the statutory bodies vested with the function of erecting outfalls for the purposes of wastewater management.
- It appears that the application is part of a larger future project (project splitting)
- There are serious water quality issues in the Waterford Estuary.
- The applicant has not adequately assessed the impacts of this development and its consequential ongoing discharge on a cumulative basis together with the current pressures on the protected waterbody.
- The environmental report fails to properly assess the cumulative impacts of the other pressures in the harbour.

- The EIA & AA screening reports fail to assess the cumulative effect of the outfall alongside existing pressures and the existing pipe.
- The AA screening report acknowledges potential risk factors and relies on dilution for any contaminants entering the water body.
- The AA screening conclusions are flawed, and an AA is necessary.
- The AA screening has failed to consider the impacts arising from a required Foreshore Licence.
- Sufficient particulars and/or appropriate scaled drawings have not been submitted.
- The public notices have not been erected in compliance with the Planning and Development Regulations.
- The EIA screening report has not considered alternatives.
- The Local Authority has ruled out the requirement for an EIAR without assessing the subthreshold impacts.
- The Local Authority has failed to consider the 'at risk' nature of the waterbody properly.
- The development should have been refused as the high-status protection of the water body cannot be guaranteed.

## 6.2. Applicant Response

The main points raised in the applicant response dated the 23<sup>rd</sup> March 2023 can be summarised as follows:

- This technical application is intended to improve the drainage infrastructure supporting the industrial estate.
- The documentation submitted clearly describes the limited nature of the development and provides environmental and ecological assessments to indicate no potential significant effects upon the designated sites.
- Class 21 of the planning and development regulations would normally apply to this land.

- As the Minister is not an industrial undertaker but the site owner, it was decided to apply for planning permission.
- The proposed development is not part of a larger or future project.
- The proposed development will result in an improvement in water quality, and therefore, there is no potential for cumulative impacts to occur.
- Any future connection agreements made to Irish Water will be subject to the required statutory consents and, therefore, do not need to be considered as part of this application.
- While the designated sites are hydrologically connected, there is no potential for impacts, and no mitigation measures are required to avoid impacts on water quality within the two European sites.
- The legal opinion sought confirms that a foreshore lease or licence is not required for development carried out by the Minister on State foreshore.
- Waterford City and County Council had no issue with the erected site notice, the planning drawings or the submitted reports.
- The development is not a type of development which would require a mandatory EIAR.
- There are no requirements as part of the EIA screening to consider alternatives to the proposed development.
- The Water Framework Directive Screening concluded that the proposed development will not negatively impact the Water Framework Directive status of the Waterford Harbour and will improve local water quality.
- The improvement in water quality will ensure compliance with the EU Shellfish Waters Directive, EU (Wastewater Discharge) Regulations 2022 and the Bathing Water Quality Regulations 2008.
- The EU Directive on Control of Major-Accident Hazards involving Dangerous Substances is not applicable.
- The appeals points raised are not accompanied by any technical or expert assessment.

### 6.3. Planning Authority Response

The main points raised in the Planning Authority Response dated the 23<sup>rd</sup> March 2023 can be summarised as follows.

- The submissions/observations were considered in the assessment of the proposed development.
- The appeal does not include any additional grounds for overturning the Council's decision to grant planning permission.
- It is the opinion of the Planning Authority that the details lodged with the application are in accordance with the requirements of the Planning and Development Regulations 2001, as amended.
- The Heritage Officer that concluded that she was satisfied that the proposal would not have significant effects on objectives under the Habitats, EIA or Waste Framework Directive.

### 6.4. Observations

#### Peter Sweetman

The main points raised in the observation by Peter Sweetman can be summarised as follows:

- Based on the total lack of certainty in the information submitted, it is not possible for ABP to carry out an assessment under Article 6(3) of the Habitats Directive, which would remove all reasonable scientific doubt as to the effects of the works proposed on protected sites.
- The Planning Authority makes no assessment as required under the Habitats Directive.
- It is the duty of the Planning Authority to make an assessment of the proposed Irish Water connection to the foul and water drainage networks to ensure that it will not be contrary to Environmental Protection Legislation.

#### Greagoir O'Cathasaigh

The main points raised in the observation by Greagoir O’Cathasaigh can be summarised as follows:

- The role of the Department of Agriculture, Food and the Marine in this application is not transparent.
- The issue of landowner consent has not been addressed.
- The EIA Screening Report is based on a ‘preliminary’ layout drawing and not the same layout drawing that accompanies the planning application.
- In the EIA Screening Report, the entire area of the works needs to be identified.
- No background analysis has been done on the existing site.
- The impacts of the wastewater system have not been considered in the EIA Screening Report.
- It is not possible for An Bord Pleanála to consider this application, in terms of the assessments required under EU Directives without having a copy of the stormwater overflow standards that are being relied on by Irish Water on this sewerage system.
- There is not enough information before the Board to allow it to determine the likely impacts of this development on shellfish and Natura 2000 habitats and species.
- The omission from the EIA Screening Report also serves to handicap the AA Screening.
- Given the lack of information, it is not possible for ABP to adopt the assumptions in the AA Screening Report regarding the impacts on the aquatic environment when the proposed development is in operation.

## **6.5. Further Responses**

### **6.5.1. Department of Agriculture, Food and the Marine**

The main points raised in the observation by the Department of Agriculture, Food and the Marine can be summarised as follows:

- The purpose of the development is to improve the environment by ensuring that water discharged from the Dunmore East Harbour area does not result in the emission of pollutants to the water environment.
- The primary element of the work is to remove untreated/raw sewage from the existing outfall and redirect it to the Uisce Eireann wastewater network for treatment and discharge.
- The second element of the work is to provide an outfall to the harbour adjacent to the existing outfall to maintain the capacity of the existing outfall, which is severely blocked with hard material.
- The Dunmore East Harbour and foreshore belong to the State.
- The claim that no geotechnical reporting was undertaken for the project is incorrect. Site investigations, samplings and laboratory testing were conducted and informed the design of the project.
- It is incorrect to claim that the proposed development is an 'intrinsic' part of a wastewater treatment plant.
- If the appellant has issues relating to the wastewater treatment plant, this is a separate matter and should be addressed with Uisce Eireann.
- The Department of Agriculture, Food and the Marine is required under section 3 of the Local Government (Water Pollution) Act 1977 as amended to prevent discharge of polluting matters to water.
- The appellant has not provided credible evidence that the proposed development will have a significant effect on the integrity of a European site in view of its conservation objectives.
- Through its existing obligations, the Department of Agriculture, Food and the Marine will ensure that no risk of contamination to surface water occurs during any lease of their premises.

#### 6.5.2. Woodstown Bay Shellfish Ltd.

The main points raised in the observation by Woodstown Bay Shellfish Ltd. (WBS) can be summarised as follows:

- The Department of Agriculture, Food and the Marine is not the relevant authority to make the planning application.
- The EIA Screening Report and the AA Screening Report have failed to assess the in-combination effects.
- The EIA screening report is based on preliminary drawings which are not legible.
- The EIA has not considered the issue of alternatives in a manner consistent with its obligations under the EIA Directive.
- The EIA screening report fails to comply with the objectives and requirements under the Water Framework Directive (2000/60/EC) and the Habitat Directive (92/43/EEC)
- Extensive environmental assessments need to be carried out to determine the effect of the proposed development and its effluent on the bathing waters and the WFD objective.
- Further clarification is required relating to the stormwater overflow standards that are being relied upon by Irish Water.
- An Appropriate Assessment is necessary in circumstances where risk has been identified in the screening assessment as a result of Hydrological connection and pollutants.
- WBS supports Wild Ireland Defence that there are no properly described projects, and the scheme is not based on any physical assessment of the existing combined sewer system or the stormwater pipe system proposed to join the new stormwater pipe and outfall.
- The AA screening assessment has clearly identified lacunae in the process adopted by the local authority.

- The AA screening report fails to account for all other marine life and mobile species in the other European Sites within 15km of the proposed development.

## 7.0 **Assessment**

7.1. Having examined the application details and all other documentation on file. Including all of the submissions received in relation to the appeal, the reports of the local authority, having inspected the site, and having regard to the relevant local/regional/national policies and guidance, I consider that the substantive issues in this appeal to be considered are as follows:

- Procedural Issues.
- Water Quality.
- EIA Screening.
- Appropriate Assessment.

### 7.2. **Procedural Issues.**

- 7.2.1. The appellant states that the Department of Agriculture, Food & the Marine is not the competent or relevant authority to make the application and that Irish Water and Waterford City and County Council are the statutory bodies vested with the function of erecting outfalls for the purpose of wastewater management.
- 7.2.2. In the appeal response, the applicant states that the works to which the applicant refers are in the Minister's ownership. Under Section 4(2) of the Fisheries Harbour Centres Act 1986, the Minister is obliged to maintain and improve apparatus in the Harbour.
- 7.2.3. Given that the applicant is the stated owner of the site, I am satisfied that the applicants have provided sufficient evidence of their legal interest for the purposes of the planning application.



- 7.2.4. The appellant states that the planning application lacks critical information, and it appears that this application is a small part of a larger future project. In response, the applicant stated that the proposed drainage upgrading works are not part of a larger project and are an upgrade to unsatisfactory drainage infrastructure serving industrial units in the Fishery Harbour Centre. The appellant has not provided any evidence of project splitting. I consider that this is stand alone project and is not part of a larger project.
- 7.2.5. The appellant has also stated that the applicant has not provided sufficient particulars and appropriate drawings and that the public notice has not been erected in a manner that is compliant with the regulations. In terms of the content of the planning application and alleged irregularities in the erection of the site notice, I note that both matters were considered acceptable by the planning authority. I am satisfied that this did not prevent the concerned party from making representations. The assessment represents my de novo consideration of all planning issues material to the proposed development.

### **7.3. Water Quality**

- 7.3.1. The appellant states that the Water Framework Directive places a specific obligation on the Local Authority to ensure enhanced protection of water bodies and Dunmore Harbour is under pressure and at risk. It is also stated that the submitted technical reports accompanying the application have failed to properly consider how the application should have been treated given the 'at risk' nature of the water body. The appellant submits that permission should have been refused as the Minister cannot guarantee the high-status protection of the water body.
- 7.3.2. The proposed development involves laying a new foul drain southeast of the site to connect to the Irish Water pumping station. The applicant states that the foul drainage from East Pier will be diverted into this drain to connect to the Irish Water Network. Currently, untreated raw sewerage and commercial waste are being discharged directly to the sea at the existing outfall location.
- 7.3.3. I note on the submitted drawing no. P803: Proposed Drainage Layout that there are two connections to the proposed foul sewer serving the fish shop and take away to the east of the site and the Tawnagh Building to the west. No connections to the new

foul sewer have been shown to the remainder of the buildings on this section of the pier.

- 7.3.4. A copy of a letter from Uisce Eireann confirming a connection offer has been submitted with the planning application. The submitted Technical Report states the connection application is for a low flow from the East Pier Fish Shop/Takeaway solely, with the intention to increase the flow allowed for subject to a future application by future potential tenants of one of the premises. The connection agreement will allow the East Pier Fish Shop/Takeaway premises to discharge foul water into the Uisce Eireann sewer network to be treated at the Dunmore East Wastewater Treatment Plant (WWTP).
- 7.3.5. I note that the foul drainage flow rates detailed in the Engineering Drainage report submitted with the application appear to include all of the industrial units in the Harbour Village.
- 7.3.6. The Uisce Eireann Wastewater Treatment Capacity Register indicates that the Dunmore East Wastewater Treatment Plant has spare capacity. The Dunmore East Sewage Scheme included the construction of a new wastewater treatment plant in Dunmore East. One of the observers raised concerns relating to the omission of any reference in the EIA screening report regarding how the wastewater treatment plant is currently being operated. I have been guided by the Uisce Eireann Wastewater Treatment Capacity Register, which indicates spare capacity in the treatment plant, and I note that the discharge of trade and sewage effluents from the Uisce Eireann Wastewater treatment plant is regulated by the Environmental Protection Agency. If the Board is minded to grant permission, I recommend that a condition be attached requiring the developer to enter into a wastewater connection agreement with Uisce Eireann.
- 7.3.7. The EPA Water Framework Directive has designated the waters at Wexford Harbour to be 'At Risk'. The waterbody is currently at 'Moderate Status'. Due to moderate invertebrate status and dissolved oxygen content, it is not meeting 'Good Status'.
- 7.3.8. No segregation between foul and stormwater is currently in place, and foul water is discharged directly to Waterford Harbour. The proposed improvement works will eventually prevent untreated foul water from being discharged into Waterford Harbour. The proposal also includes a new 375mm pipe along the east of the yard

towards the existing outfall, where the supplementary outfall is proposed to operate in parallel with the existing outfall pipe. Stormwater from these business premises and existing process seawater from one of the tenant occupancies will continue to be discharged through this outfall. The applicant states that no changes to the quantities or contents of existing effluents are proposed.

7.3.9. A Water Framework Directive Screening of Waterford Harbour has been submitted with the planning application. This report highlights that no segregation between foul and stormwater is currently in place, and untreated foul water is discharged directly to Waterford Harbour. The report states that any potential impact of the proposed development on the status and risk of Waterford Harbour under the Water Framework Directive has been screened out due to the following;

- *‘Very small volume of discharge at the outfall into a tidal harbour, which is a very large volume of water.’*
- *‘The volume of this discharge will decrease significantly, and its quality will improve by removing foul discharge into the public sewer.’*

7.3.10. The screening report also assessed the impact of the proposed development on the Emission Limit Values (ELV) relating to the Dunmore East Wastewater Treatment Plant. It concluded that due to the low flow volume from the proposed development to be treated in the Dunmore East Wastewater Treatment Plant, the ELVs are not likely to be impacted.

7.3.11. In one of the observations, concern has been raised that extensive environmental assessments need to be carried out to determine the proposed development's effect on bathing waters. I note that the current Bathing Water Quality designation for Counsellors' Strand and Dunmore Strand is Good Water Quality.

7.3.12. Given that the proposed development will segregate foul and storm water on Harbour Village and direct the foul drainage to be treated at the Dunmore East Wastewater Treatment Plant, I consider that the proposed development will marginally improve the water quality in Wexford Harbour and will not impact on achieving the goals of the Water Framework Directive of reaching good status.

#### **7.4. EIA Screening**

- 7.4.1. The appellant states that the Environmental Impact Assessment Screening Report submitted with the planning application is flawed as it does not consider the issue of alternatives. Criteria to determine whether projects by virtue, inter alia, of their nature, size or location should be subject to EIA are set out in Schedule 7 to the 2001 Regulations, as amended (Annex III of the 2014 Directive). The consideration of alternatives is not required at the EIA Preliminary Examination stage.
- 7.4.2. The appellants also commented that the EIA Screening Report failed to assess the cumulative effect of such an outfall alongside existing pressures and the existing pipe.
- 7.4.3. The proposed development is a minor alteration to the existing harbour development. The proposed development will upgrade the existing drainage and improve the discharges by separating foul drainage, which will be discharged to the wastewater treatment system, and surface water, which will be discharged to the estuary.
- 7.4.4. Currently, there is no segregation between foul and surface water discharge onsite, and therefore, there will be an improvement in the local water quality. As the proposed development improves the current situation, the issue of significant cumulative effects will not arise.
- 7.4.5. One of the observers raises concerns about the lack of detail in the Environmental Screening Report. Having regard to the criteria set out in Schedule 7 of the Planning and Development Regulations, I consider that the information contained in the Environmental Impact Assessment Screening Report and the details and particulars included with the planning application are sufficient for An Bord Pleanála to ascertain if there are real or significant effects on the environment, and whether an EIAR is required.
- 7.4.6. Section 5.3 and Appendix 1 of this report deal with the EIA Screening of the proposed development.

## **7.5. AA Screening**

- 7.5.1. An Appropriate Assessment Screening Report, dated November 2022, carried out by Maone O'Regan Environmental, was submitted as part of the planning application. I note that the Seas off Wexford SPA was designated after the preparation of this Screening Report.
- 7.5.2. In one of the observations, it is stated that given the lack of certainty in the information submitted, it is not possible for An Bord Pleanála to make a decision to grant permission. I consider that adequate details, drawings, and technical information have been submitted with the application to make a complete and definitive conclusion as to the effect of the proposed development on any European Site.
- 7.5.3. The appellant states that the AA screening report failed to include cumulative impacts with respect to the many pressures on the harbour. As part of the requirements Section 177U (4) of the Planning and Development Act 2000 when screening for Appropriate Assessment, I have investigated the potential effects of other plans and projects seeking consent, and any effects of completed plans or projects, any extant permission not yet started and any ongoing projects subject to regulatory review.
- 7.5.4. I also note that the Specific Development Objective DM08 contained in the Waterford City and County states that 'It is a policy of the Council to support the development of the harbour area for tourism/leisure and commercial uses including the provision of a boating marina whilst also facilitating the development of a new breakwater and port.' This Development Plan includes an Appropriate Assessment (Appendix 20) which concluded that the Waterford City and County Development Plan 2022-2028 will not adversely affect the integrity of the Natura 2000 Network either alone or in combination with other plans or projects.
- 7.5.5. The appellant also states that the applicant has failed to consider the impacts arising from a Foreshore License in the AA. The applicant states that a legal opinion confirms that a foreshore lease or licence is not required for development carried out by the Minister on State foreshores. I note that now under section 282(1)(b) of the Planning and Development Act 2000 (as revised) a person is eligible to make a planning application on a site partly in the nearshore area of the coastal planning

authority and partly on land if they are the owner of the land without a maritime area consent or licence granted under section 3 of the Act of 1933. Therefore, the applicant is entitled to apply for permission for the proposed development, which has been screened in accordance with Section 177U (4) of the Planning and Development Act 2000 (as amended).

7.5.6. In accordance with Section 177U (4) of the Planning and Development Act 2000 (as amended) and on the basis of objective information, I conclude that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects. It is, therefore, determined that Appropriate Assessment (stage 2) [under Section 177V of the Planning and Development Act 2000] is not required.

7.5.7. This conclusion is based on:

- Objective information presented in the Screening Report
- The scale of the proposed development.
- Distance from European Sites,
- The limited zone of Influence of potential impacts is restricted to the immediate vicinity of the proposed development.
- Standard pollution controls that would be employed regardless of proximity to a European site and effectiveness of the same.
- The proposed improvement in water quality when operational.
- Any impacts predicted would not affect the conservation objectives.
- Any potential effects of other plans and projects seeking consent, any effects of completed plans or projects, any extant permission not yet started and any ongoing projects subject to regulatory review.

7.5.8. No measures intended to avoid or reduce harmful effects on European sites were taken into account in reaching this conclusion.

7.5.9. Please refer to Appendix 2 for the AA Screening Determination

## **8.0 Recommendation**

Having regard to the foregoing assessment, it is considered that the proposed development should be granted for the following reasons and considerations in accordance with the following conditions.

## **9.0 Reasons and Considerations**

Having regard to the zoning objective of the subject site, the provisions of the Waterford City and County Development Plan 2022-2028, especially policy C&M 01, BD 05 and specific development objective DM08 and to the nature and scale of the proposed drainage works, it is considered that subject to compliance with the conditions set out below that the proposed development would be acceptable and would not seriously injure the water quality of Waterford Harbour or the amenities of the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## **10.0 Conditions**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Prior to commencement of development, the developer shall enter into wastewater connection agreement(s) with Uisce Eireann.

Reason: In the interest of public health.

3. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

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

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Peter Nelson  
Planning Inspector

3<sup>rd</sup> July 2024



## Appendix 1 - Form 1

### EIA Pre-Screening

<b>An Bord Pleanála Case Reference</b>	315940-23		
<b>Proposed Development Summary</b>	Drainage Upgrade Works		
<b>Development Address</b>	Dunmore East Harbour, Dunmore East, Co. Waterford		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	X
		<b>No</b>	
<b>2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?</b>			
<b>Yes</b>			EIA Mandatory EIAR required
<b>No</b>		X	Proceed to Q.3
<b>3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?</b>			
		<b>Threshold</b>	<b>Comment (if relevant)</b>
<b>No</b>			
<b>Yes</b>		Class 10 (b)(iv) Urban development, Class 11.(b) (c) wastewater treatment plants.	Proceed to Q.4

4. Has Schedule 7A information been submitted?		
No	X	Preliminary Examination required
Yes		Screening Determination required

Inspector: \_\_\_\_\_ Date: \_\_\_\_\_

**Form 2**  
**EIA Preliminary Examination**

<b>An Bord Pleanála Case Reference</b>	315940-23	
<b>Proposed Development Summary</b>	Drainage Upgrade Works	
<b>Development Address</b>	Dunmore East Harbour, Dunmore East, Co. Waterford	
<p><b>The Board carries out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations.</b></p>		
	<b>Examination</b>	<b>Yes/No/ Uncertain</b>
<p><b>Nature of the Development</b></p> <p>Is the nature of the proposed development exceptional in the context of the existing environment?</p>	The proposed development for an upgrade to drainage works consisting of a new foul water drain, 245m in length and the upgrade of the existing drain and outfall for stormwater only is not exceptional in the context of the existing harbour environment.	No
<p>Will the development result in the production of any significant waste, emissions or pollutants?</p>	Given the limited units which the drain will serve, it will not result in the production of any significant additional waste, emissions or pollutants.	No
<p><b>Size of the Development</b></p> <p>Is the size of the proposed development exceptional in the context of the existing environment?</p>	The size of the proposed drain and upgrade works is not exceptional in the context of the existing harbour environment.	No
<p>Are there significant cumulative considerations having regard to other existing and/or permitted projects?</p>	As there are no significant existing and/or permitted projects there are no significant cumulative considerations.	No
<b>Location of the</b>		

<p><b>Development</b></p> <p>Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location?</p> <p>Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?</p>	<p>The site includes the waters of the Waterford Harbour and is hydrologically connected to The River Barrow and River Nore SAC, Hook Head SAC and the Seas of Wexford SPA. Given the proposed improvement in discharge to waters of Waterford Harbour the development will not have the potential to significantly impact on an ecologically sensitive site or location. The hydrological link is the subject of the AA screening in my report.</p> <p>The proposed development does not have the potential to significantly affect other significant environmental sensitivities in the area.</p>	<p>No</p> <p>No</p>
<p style="text-align: center;"><b>Conclusion</b></p>		
<p><b>There is no real likelihood of significant effects on the environment.</b></p> <p>EIA not required.</p>		

**Inspector:** \_\_\_\_\_ **Date:** \_\_\_\_\_

## Appendix 2

### AA Screening Determination

#### Screening for Appropriate Assessment

#### Screening Determination

##### Description of the project

I have considered the Drainage Upgrade Works of Dunmore East Harbour in light of the requirements of S177U of the Planning and Development Act 2000 as amended.

An Appropriate Assessment Screening Report dated November 2022 carried out by Maone O'Regan Environmental was submitted as part of the planning application. I note that the Seas off Wexford SPA was designated after the preparation of this Screening Report.

The subject site is located on the Dunmore East Harbour and includes a direct outfall into the sea. The site is the following approximate distances from the listed protected sites:

Site Name	Code	Approximate Distance	Direction
River Barrow and River Nore SAC	002162	3.5 km	NE
Hook Head SAC	000764	3.8 km	E
Tramore Dunes and Back Strand SAC	004027	5 km	NW
Bannow Bay SAC	000697	9.7 km	NE
Lower River Suir SAC	002137	10.4 km	NW
Seas off Wexford SPA	004237	1.65 km	S
Tramore Back Strand SPA	004027	5.1 km	W
Bannow Bay SPA	004033	11.4 km	NE
Mid-Waterford Coast SPA	004193	11.9km	W

The proposed development comprises of a new 375mm diameter uPVC along the most direct route across the existing yard towards the existing outfall location where a supplementary outfall is to be provided to operate in parallel with the existing outfall pipe.

A new foul water drain is to be provided from the southeast of the site to connect to the Irish Water pumping station via Harbour Village. The foul water drainage from the East Pier will be diverted into this drain to connect to the Uisce Eireann network.

### Potential impact mechanisms from the project

The project will improve discharges into the sea by separating foul drainage from process and surface water. The foul water is intended to be discharged to the wastewater treatment system and process and surface water to be discharged into the estuary.

As the development is not in or immediately adjacent to a European site, it is considered there will not be any direct impacts. The nearest site, the Seas off Wexford SPA, is c.1.6km from the site.

Potential surface water pollution from construction-related activity can include the release of sediments/silt, hydrocarbonates, and other construction-related pollutants. The site is adjacent to the waters of Waterford Harbour, so there is a hydrological link. It is considered that there are three protected sites within a zone of Influence from potential surface water pollution: River Barrow and River, Nore SAC, Hook Head SAC and the Seas off Wexford SPA.

It is stated that works will be conducted at low tide, and in-water works will not be required; therefore, effects on aquatic species associated with noise can be dismissed. Given the distances to the nearest protected site, it is considered that the construction noise will not present a risk to the waterfowl qualifying interest.

Through the waters of the Waterford Harbour, the site is hydrologically connected to the River Barrow and River Nore Sac, which supports otters. Otters are predominately found in aquatic habitats along rivers and estuaries and have the ability to disperse from the water. Their territories can extend to over 15km, and therefore, there is potential for the otters to use Waterford Harbour and the coastline surrounding the site. Therefore, further consideration is required for this species to be protected under the River Barrow and River Nore SAC.

### European Sites at Risk

**Table 1 European Sites at risk from impacts of the proposed project**

Effect mechanism	Impact Pathway/Zone of Influence	European Site(s)	Qualifying interest features at risk
Water quality Impairment:  Pollution  Siltation	Hydrologically connected via Waterford Harbour	River Barrow and River Nore SAC (002162)	All water species dependent on high water:  Fresh Water Pearl Mussel, Sea Lamprey, Brook Lamprey, River

			Lamprey, Twaité Shad, Atlantic Salmon, Otter
Noise Disturbance	Hydrologically connected via Waterford Harbour	River Barrow and River Nore SAC (002162)	Otter
Water Quality Impairment	Hydrologically connected via Waterford Harbour	Hook Head SAC (000764)	Reefs, Vegetated Sea Cliffs, Common Bottlenose Dolphin, Harbour Porpoise.
Water Quality Impairment	Hydrologically connected via Waterford Harbour	Seas off Wexford SPA (004237)	Sea Birds:  Red-throated Diver Fulmar  Manx Shearwater, Gannet, Cormorant, Shag  Common Scoter, Mediterranean Gull, Black-headed Gull, Lesser Black-backed Gull, Herring Gull, Kittiwake, Sandwich Tern, Roseate Tern,  Common Tern,  Arctic Tern,  Little Tern,  Guillemot,  Razorbill, Puffin.

#### **River Barrow and River Nore SAC (002162)**

This site consists of the freshwater stretches of the Barrow and Nore River catchments as far upstream as the Slieve Bloom Mountains, and it also includes the tidal elements and estuary as far downstream as Creadun Head in Waterford. Waterford Harbour is a deep valley excavated by glacial floodwaters when the sea level was lower than today. The coast shelves quite rapidly along much of the shore. The site is a Special Area of Conservation (SAC) selected for the following habitats and/or species listed on Annex I / II of the EU Habitats Directive: Estuaries, Tidal Mudflats and Sandflats, Reefs, Salicornia

Mud, Atlantic Salt Meadows, Mediterranean Salt Meadows, Floating River Vegetation, Dry Heath

Hydrophilous Tall Herb Communities, Petrifying Springs, Old Oak Woodlands, Alluvial Forests, Desmoulin's Whorl Snail, Freshwater Pearl Mussel, White-clawed Crayfish, Sea Lamprey, Brook Lamprey, River Lamprey, Twaite Shad, Atlantic Salmon, Otter and Killarney Fern.

#### **Hook Head SAC (000764)**

The areas of conservation interest at Hook Head comprise marine subtidal reefs to the south and east of the Hook Head Peninsula, and also sea cliffs from Hook Head to Baginbun and Ingard Point. The peninsula forms the eastern side of Waterford Harbour, while to the east it adjoins the estuary mouth of Bannow Bay. Hook Head itself is composed of Carboniferous limestone overlain by Devonian Old Red Sandstone and is palaeontologically of international importance. The site is a Special Area of Conservation (SAC) selected for the following habitats and/or species listed on Annex I / II of the EU Habitats Directive: Large Shallow Inlets and Bays, Reefs, Vegetated Sea Cliffs, Bottlenose Dolphin and Harbour Porpoise.

#### **Seas off Wexford SPA (004237)**

This SPA includes the marine waters off the coast of County Wexford which constitute a valuable feeding resource for the seabirds that return every spring to Wexford's coastal and island colonies to breed. Outside of the summer months these relatively shallow coastal waters provide safe feeding and roosting opportunities for a range of marine birds overwintering here or on passage. The Seas off Wexford SPA extends offshore along the majority of the county Wexford coastline and is approximately 3,054 km<sup>2</sup> in area. The site is a Special Protection Area (SPA) under the EU Birds Directive, of special conservation interest for the following species: Common Scoter, Red-throated Diver, Fulmar, Manx Shearwater,

Gannet, Shag, Cormorant, Kittiwake, Black-headed Gull, Mediterranean Gull, Lesser Black-backed Gull, Herring Gull, Little Tern, Roseate Tern, Common Tern, Arctic Tern, Sandwich Tern, Puffin, Razorbill and Guillemot.

It is considered that due to the distance from the subject site, the following protected sites are outside the Zone of Influence of the effects of the project and have been excluded further consideration: Tramore Dunes and Back Strand SAC, Bannow Bay SAC, Lower River Suir SAC, Tramore Back Strand SPA, Bannow Bay SPA, Mid-Waterford Coast SPA.

#### **Likely significant effects on the European sites 'alone'**

**Table 2: Could the project undermine the conservation objectives 'alone'**



European Site and qualifying feature	Conservation objective	Could the conservation objectives be undermined (Y/N)?	
		Water Quality Impairment	Noise Disturbance
<b>River Barrow and River Nore SAC</b>	<a href="https://www.npws.ie/protected-sites/sac/002162">https://www.npws.ie/protected-sites/sac/002162</a>		
Fresh Water Pearl Mussel,	Under Review	N	N
Sea Lamprey	Restore FCS Extent of spawning habitats: No decline	N	N
Brook Lamprey	Restore FCS Extent of spawning habitats: No decline	N	N
River Lamprey	Restore FCS Extent of spawning habitats: No decline	N	N
Twaite Shad	Restore FCS Extent of spawning habitats: No decline	N	N
Atlantic Salmon	Restore FCS Number and distribution of redds: No significant decline in number or distribution. Water quality, Q4	N	N
Otter	Restore FCS Extent of Marine habitat: No significant decline in mapped area; 2.6ha.	N	N
<b>Hook Head SAC</b>	<a href="https://www.npws.ie/protected-sites/sac/000764">https://www.npws.ie/protected-sites/sac/000764</a>		
Reefs	Maintain FCS:	N	N

	Habitat Area: The permanent area is stable, subject to natural processes.		
Vegetated sea cliffs of the Atlantic and Baltic coasts	Maintain FCS: Habitat distribution: No decline subject to natural processes.	N	N
Common Bottlenose Dolphin	Conservation Objective: Not listed (recent addition)	N	N
Harbour Porpoise	Conservation Objective: Not listed (recent addition)	N	N
<b>Seas off Wexford SPA</b>	<a href="https://www.npws.ie/protected-sites/spa/004237">https://www.npws.ie/protected-sites/spa/004237</a>		
Red-throated Diver	Restore FCS. Forage spatial distribution, extent and abundance: Sufficient number of locations, area of suitable habitat and available forage biomass to support the population target	N	N
Fulmarus	Restore FCS. Forage spatial distribution, extent and abundance: Sufficient number of locations, area of suitable habitat and available forage biomass to support the population target	N	N
Manx Shearwater	Maintain FCS Forage spatial distribution, extent and abundance: Sufficient number of locations, area of suitable habitat and available forage biomass to support the population target	N	N
Gannet	Maintain FCS Forage spatial distribution, extent and abundance: Sufficient number of locations, area of suitable habitat and	N	N

	available forage biomass to support the population target		
Cormorant	Restore FCS  Forage spatial distribution, extent and abundance: Sufficient number of locations, area of suitable habitat and available forage biomass to support the population target	N	N
Shag	Restore FCS  Forage spatial distribution, extent and abundance: Sufficient number of locations, area of suitable habitat and available forage biomass to support the population target	N	N
Common Scoter	Restore FCS  Forage spatial distribution, extent and abundance: Sufficient number of locations, area of suitable habitat and available forage biomass to support the population target	N	N
Mediterranean Gull	Maintain FCS  Forage spatial distribution, extent and abundance: Sufficient number of locations, area of suitable habitat and available forage biomass to support the population target	N	N
Black-headed Gull	Maintain FCS  Forage spatial distribution, extent and abundance: Sufficient number of locations, area of suitable habitat and available forage biomass to support the population target	N	N

## **Potential Impairment to Water Quality.**

### Construction:

It is noted that the proposed construction works are small-scale in nature and confined to a small area of the harbour. The qualifying habitats for River Barrow and River Nore SAC are located c.3.5km from the site and are separated from the site by the Waterford Harbour. The Hook Head SAC qualifying habitats are c.3.8km from the subject site and are again separated by the Waterford Harbour. Given the small scale of the construction works and the scale of the waterbody that any potential pollutants or silt will be dispersed, diluted or settled out of the waterbody before reaching the qualifying habitats.

Similarly, given the small scale of the construction work, the proposed adherence to best practice guidance to prevent water pollution, the preparation of a Construction Management Plan (CEMP) and the scale of the waterbody, I considered that there is no risk of significant effect on the conservation objectives to maintain or restore the qualifying species of River Barrow and River Nore SAC.

Given the scale of the separating waterbody, the proposed construction work, the proposed adherence to best practice guidance to prevent water pollution and the preparation of a Construction Management Plan (CEMP), I considered that there is no risk of significant effect on the conservation objectives to maintain or restore the qualifying seabird species of the Seas off Wexford SPA.

### Operational:

The proposed development will result in the foul drainage from East Pier being diverted from into the drain to connect to the Irish Water network. The Uisce Eireann Wastewater treatment capacity register 2023 states that there is spare capacity in the Dunmore East Wastewater Treatment Plant. As there will be an improvement in the water quality entering the sea, I considered that the proposed development will not undermine the conservation objectives of the River Barrow and River Nore SAC, Hook Head SAC and Seas off Wexford SPA.

## **Noise Disturbance**

### Construction:

I consider the limited nature of the construction, its localized nature and the proposed compliance with current construction industry guidelines that there will be no significant effects on the conservation objectives of the of Hook Head SAC, River Barrow and River Nore SAC, and Seas off Wexford SPA.

### Operational:

I conclude that the proposed development would likely have no significant effect 'alone' on any qualifying features of Hook Head SAC, River Barrow and River Nore SAC, and Seas off Wexford SPA. Further AA screening in combination with other plans and projects is required.

**Where relevant, likely significant effects on the European site(s) 'in combination with other plans and projects.'**

After investigating the potential effects of other plans and projects seeking consent, and any effects of completed plans or projects, any extant permission not yet started and any ongoing projects subject to regulatory review, I conclude that the proposed development would have no likely significant effect in combination with other plans and projects on the qualifying features of any European sites. No further assessment is required for the project.

**Overall Conclusion- Screening Determination**

In accordance with Section 177U (4) of the Planning and Development Act 2000 (as amended) and on the basis of objective information, I conclude that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects. It is, therefore, determined that Appropriate Assessment (stage 2) [under Section 177V of the Planning and Development Act 2000] is not required.

This conclusion is based on:

- Objective information presented in the Screening Report
- The scale of the proposed development.
- Distance from European Sites,
- The limited zone of Influence of potential impacts restricted to the immediate vicinity of the proposed development.
- Standard pollution controls that would be employed regardless of proximity to a European site and effectiveness of the same.
- The proposed improvement in water quality when operational.
- Any Impacts predicted would not affect the conservation objectives.
- Any potential effects of other plans and projects seeking consent, and any effects of completed plans or projects, any extant permission not yet started and any ongoing projects subject to regulatory review.

No measures intended to avoid or reduce harmful effects on European sites were taken into account in reaching this conclusion.

