



An  
Bord  
Pleanála

## Inspector's Report ABP-318088-23

### Question

Whether the proposed Coastal Mobility Scheme development to urban public realm, public and non-public roads is or is not development and/or is or is not exempted development.

### Location

Temple Road/Newtown Avenue to junction of Sandycove Avenue West/Sandycove Point, which includes a section of Harbour Road

### Declaration

Planning Authority

Dún Laoghaire Rathdown County Council

Planning Authority Reg. Ref.

REF8923

Applicant for Declaration

Susan Joyce.

Planning Authority Decision

Is exempted development

### Referral

Referred by

Susan Joyce.

<b>Owner/ Occupier</b>	Dún Laoghaire-Rathdown County Council.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	24 <sup>th</sup> September 2024.
<b>Inspector</b>	Terence McLellan

## 1.0 Site Location and Description

- 1.1. The subject site refers to the coastal route stretching from Newtown Avenue to Sandycove Point, a length of approximately 4.5km. Newtown Avenue is currently a two way street linking Temple Road to Seapoint Avenue. No cycle lane is currently provided on Newtown Avenue although there is a refuge for cycles turning right onto Seapoint Avenue. The current layout has a footpath on either side of the road, a single northbound vehicle lane and two southbound vehicle lanes. There are footpaths on either side of the road in addition to car parking and a bus stop on the western side. This section of the route is predominantly residential in nature.
- 1.2. Seapoint Avenue accommodates a two-way segregated cycle lane extending from the junction with Newton Avenue to Crofton Road, implemented as temporary measures in 2020. Vehicular traffic is restricted to one way (westbound) with the exception of a short 200 metre two-way section between Clearwater Cove and Cumberland Street. There are various sections of on-street car parking along this stretch of the route. The two-way segregated cycle lane extends as far as the junction with Crofton Road/Clarence Street. This section of the route passes through a small section of the Monkstown Architectural Conservation Area.
- 1.3. Crofton Road is currently a two-way street linking the Old Dúnleary Road to Queens Road. This section of the route has a footpath on either side of the road, one traffic lane eastbound and one traffic lane westbound for the majority of the road. There are sections of on-street car parking along the northern footpath (including electric vehicle charging facilities) in addition to a bus stop adjacent to the Dún Laoghaire Dart Station and grass verges with mature trees. There are currently no cycle lane facilities on this stretch of the route. The area around Harbour Square is mixed use commercial and residential, with commercial being the predominant use around the Harbour Square itself.
- 1.4. Queens Road is a two-way vehicular street from the Marine Road junction as far as the slip road to the harbour (adjacent to the National Yacht Club). From this point onwards, Queens Road becomes one way to vehicular traffic (north/west bound) and the two way fully segregated cycle lane recommences with some sections of on-street parking on the coastal side. From the Lexicon Library building eastwards, the route is

predominantly residential in nature. A short section of this part of the route passes through the Haigh Terrace to Park Road Architectural Conservation Area.

- 1.5. From Queens Road at the junction with Park Road (People's Park), vehicular traffic is one way south/east bound. There are footpaths on both sides of the road in addition to landscaped verges and car parking areas on the coastal side at Windsor Terrace. This layout, comprising a two-way segregated cycle lane, one-way vehicular traffic, and footpaths on either side of the road, is continued as far as the junction of Marine Parade and Sandycove Avenue. From this point onwards the cycle lane is one way west/south bound, whilst vehicular traffic is one way north/east bound. This section of the route is predominantly residential, although there are some instances of commercial premises at the People's Park end. It is also noted that the route terminates within the Sandycove Point Architectural Conservation Area.
- 1.5.1. The section of road between Newtown Avenue and Harbour Road is designated as the N31. Some of the segregated cycle lanes have already been implemented since 2020 as part of the temporary Coastal Mobility Scheme. The cycle lanes are demarcated by road markings, road surface changes, bollards and kerbs.

## 2.0 The Question

- 2.1.1. A referral was submitted by Susan Joyce of 10 Monkstown Road, Blackrock, County Dublin, questioning as to whether or not the Living Streets: Coastal Mobility Route (Blackrock to Sandycove), constitutes development in accordance with the Planning and Development Act 2000 (as amended) that requires an Environmental Impact Assessment Report and Appropriate Assessment.
- 2.2. Based on the information which was submitted to Dún Laoghaire-Rathdown County Council by the Referrer on 15<sup>th</sup> August 2023, and to the Board on 26<sup>th</sup> September 2023, I consider that the question before the Board is whether the Living Streets: Coastal Mobility Route is or is not development and is or is not exempted development.

## 3.0 Planning Authority Declaration

### 3.1. Declaration

- 3.1.1. A Declaration was issued by Dún Laoghaire-Rathdown County Council on 11<sup>th</sup> September 2023 stating:

*'It is considered that the development comprising the proposals as detailed in the documentation submitted, would constitute development, and would be Exempted Development'*

### 3.2. Planning Authority Reports

- 3.2.1. The Planner's Report contains the following points of note:

- All of the proposed works are within the envelope of a road. The development of a permanent designated and segregated two-way cycle track, to cater for the provision of accessibility along the proposed route, will facilitate the safe use of the public roads by all classes of traffic in accordance with Section 38 of the Road Traffic Act. The works are also stated to enhance accessibility to public bus and rail services.
- In accordance with 38(5) of the Act, Dún Laoghaire-Rathdown County Council is engaging with TII in respect of works to a national road and agreement in principle has been achieved. Engagement remains ongoing, at the time of writing.
- Screening for Appropriate Assessment and Environmental Impact Assessment has been conducted on the temporary 2020 scheme as well as the proposed scheme. The reports conclude that AA and EIA are not required.
- The Coastal Mobility Route is considered to be development but would be exempted development having regard to Section 4(1)(aa) and 4(1)(e) and 179 (6)(bb) of the Planning and Development Act, 2000, as amended.

### 3.2.2. Other Technical Reports

- 3.2.3. **Active Travel (06.09.2023):** Active Travel notes that the description of works as detailed by the Referrer in the Section 5 Application (dated 14/08/23) contains

inaccuracies in scheme description to that which is actually proposed as part of the Living Streets: Coastal Mobility Route (CMR). The scheme is being prepared in accordance with traffic calming measures under Section 38 of the Road Traffic Act 1994. All roads within the scheme are public roads.

- 3.2.4. Reference is made in the submission to the roads within the Dún Laoghaire Harbour Area not being public roads. These were transferred to DLR but for completeness are progressing through the taking in charge process. This is an administrative exercise that will be completed in advance of any decision to proceed with the proposed scheme.
- 3.2.5. Screening for Appropriate Assessment and EIA has been undertaken for both the temporary and the proposed scheme. The scheme is not foreseen to give rise to any significant adverse effects on any designated European sites, alone or in combination with other plans or projects. The scheme does not need to be subject to Environmental Impact Assessment, based on an objective review of the scheme, including its characteristics, location and the likelihood of it causing significant environmental impacts.
- 3.2.6. The proposed CMR scheme can be regarded as comprising works and, therefore, constitutes 'development' for the purposes of the Act. Having regard to Section 4(1)(aa) and 4(1)(e) and 179 (6)(bb) of the Planning and Development Act 2000, as amended the Living Streets Coastal Mobility Route is considered to be exempted development.

## 4.0 Planning History

### *Relevant Precedent Cases*

- 4.1.1. **Griffith Avenue, Dublin 9 - ABP Ref. 310187:** A referral was made to the Board as to whether or not the construction of a cycleway along a section of Griffith Avenue is development and if it is development, whether or not such development is exempted development. The Board determined in November 2021 that the works were development and were exempted development.

## 5.0 Policy Context

### 5.1. Development Plan

5.1.1. The relevant Development Plan is the Dún Laoghaire-Rathdown County Development Plan 2022-2028. The route passes through various different zoning objectives as set out below:

- Objective A' - 'To provide residential development and improve residential amenity while protecting the existing residential amenities'.
- Objective W - 'To provide for waterfront development and harbour related uses'.
- Objective MTC - 'To protect, provide for and/or improve major town centre facilities'.
- Objective MOC - 'To provide for a mix of uses which complements the mixed-use inner core, but with less retail and more emphasis on employment and services'.

### 5.2. Natural Heritage Designations

5.2.1. The site is not located within any European sites although some are in close proximity. The nearest European Sites are:

- South Dublin Bay and River Tolka Estuary SPA (004024) – c. 26m.
- South Dublin Bay SAC (000210) – c. 27m.
- Rockabill to Dalkey Island SAC (003000) – c. 1.6km.
- Dalkey Island SPA (004172) – c. 1.6km
- North Dublin Bay SAC (000206) – c. 5.3km.
- North Bull Island SPA (004006) – c. 5.3km.

## 6.0 The Referral

### 6.1. Referrer's Case

6.1.1. The Referrer requests the Board to review the Declaration of the Planning Authority. The grounds for review are summarised as follows:

- The Coastal Mobility Route incorporates works to urban public realm, public, and non-public roads and constitutes development that requires an Environmental Impact Assessment (EIA) and Appropriate Assessment (AA).
- The development entails making permanent an existing temporary development from 2020 that was not assessed, in addition to sections of proposed development.
- Section 38 only applies to public roads. The development comprises a number of sections of Dún Laoghaire Harbour roads that are not public roads. Section 38 cannot therefore be used, and the development would need to follow the Part VIII/EIA process.
- The exemptions set out in Section 179, Subsection (6)(bb) would not apply to the proposal, based on the Applicant's description of the proposed works.
- Section 80(1) of the Planning and Development Regulations 2001 (as amended) prescribes any development which exceeds an estimated cost of €126,000. The works would be expected to exceed this threshold, and the proposed Section 38 procedure cannot apply.
- The Applicant states that the overall area is 7.3 hectares for an overall length of 4.5km. The Referrer states the length to be 4.7km and an overall area of 7.6 hectares.
- EIA is required for development exceeding 2 hectares in a 'Business District'. Some parts of the route pass through a business district. The Applicant claims this to be 1.1 hectares. The Referrer considers it to be 3.4 hectares and therefore considers that a mandatory EIA is required.
- The development incorporates/replaces the existing temporary development however no Appropriate Assessment Screening or Environmental Impact



Assessment Screening was undertaken for the temporary scheme and the reports for the proposed development only consider the additional impacts and not the cumulative impacts, this is project splitting.

- The development does not take into account cumulative impacts which include Bus Connects, Living Streets Blackrock and DLR Connector.
- No assessment has been carried out in relation to traffic, pollution, or noise and there would be wider traffic impacts
- It is stated by the Referrer that a full EIA screening is required having regard to the size and design of the whole project, cumulation with other existing and/or approved projects, pollution and nuisances, risks to human health, and material assets.
- No Appropriate Assessment or EIA screening was undertaken for the temporary development. A full EIAR is required otherwise the development will adversely affect the integrity of European Sites and the conserved objectives [sic].
- Dún Laoghaire-Rathdown needs to consider other forms of assessment and public involvement that encompasses the impacts of the original project and the proposed development.
- It is not clear under what terms the temporary scheme was implemented.
- Section 38 requires approval from the National Roads Authority, it is not evident that this has been obtained.
- The scheme cannot be assessed under Section 38 of the Roads Act and instead needs approval from the Board under Section 175 and 177AE of the Planning and Development Act 2000 (as amended), Section 50 of the Roads Act 1993 or other appropriate Act with regard to EIA and AA respectively.

## 6.2. Planning Authority Response

- 6.2.1. A response from the Planning Authority was received on 23<sup>rd</sup> October 2023. This response was circulated to the parties under Section 131 of the Planning and Development Act 200 (as amended). The response can be summarised as follows:

- Non-statutory consultation was undertaken from 3<sup>rd</sup> July until the 11<sup>th</sup> August 2023 and a CMR Consultation Report was prepared. This was noted by elected members at the DLR Area Committee on 25<sup>th</sup> September 2023.
- Confirmation that all roads in the DLR Harbour area are public roads and have been taken in charge by the Council.
- Transport Infrastructure Ireland have approved the proposed works along the N31 subject to a condition to provide a safe crossing for pedestrians between the bus stops on Crofton Road where there will be a desire line.
- An independent evaluation by Technical University Dublin (2022) indicated that while some traffic may have diverted onto adjacent routes, this settled down over time, particularly with signal adjustment and traffic management by the local authority.
- The report stated that overall, analysis of speeds, volumes and routing suggest that the road network continues to function operationally and although some redistribution of vehicular trips is likely to have occurred, overall vehicular trip levels in the area have reduced.
- The study found that traffic at strategic network points in the Dún Laoghaire / Blackrock area remains lower than pre-pandemic levels, but travel patterns have shifted into off-peak periods. The report notes that this reduction in trip levels may have been within the wider context of the pandemic and consequent changes in movement patterns, however, it is likely that some of the reduction can be attributed to the CMR, with increases in walking and cycling trips evident in particular.
- The study concludes that mobility management is recommended for the area to mitigate the impact of through traffic as well as local traffic, and to ensure that traffic reduction overall is encouraged.
- Guidelines on Traffic Works Procedures: Section 38 of the Road Traffic Act (1994) were published on 12<sup>th</sup> October 2023 and apply to all works undertaken under Section 38 of the Act. Section 5.3 (Multi-faceted Works) states that works which are primarily to enhance bus services or facilities for cyclists also contain ancillary elements such as improvements for pedestrians. The decision on the

appropriateness of using Section 38 or the acceptability of the exemption from Part VIII should be based on the primary purpose of the scheme. If the primary objective is either bus or cycling enhancements, then the exemption should apply.

- AA Screening and EIA Screening was undertaken for the temporary mobility improvement measures in 2020.
- Updated AA and EIA Screening has been undertaken for the proposed scheme.
- The AA Screening Report concludes that the proposed development, individually or in combination with other plans and projects, in the absence of mitigation, will not have a significant effect on any European Site designated under the Habitats Directive and Birds Directive. As a result, an Appropriate Assessment is not required.
- The EIA Screening Report concludes that there is no real likelihood of significant effects on the environment arising from the proposed development and that an EIA is not required.
- It has been found that the proposed development does not correspond to any project type in the Planning and Development Regulations 2001 (as amended). The proposed scheme has nonetheless been assessed in accordance with the criteria given in Annex II of the Directive to determine whether or not it would be likely to have any significant effects on the environment. It is considered that there is no real likelihood of significant effects on the environment arising from the proposed development.

### **6.3. Further Responses**

6.3.1. A further submission was received from the Referrer, addressing the Planning Authority's response. The submission can be summarised as follows:

- The assessment reports do not assess the impact of the original temporary scheme from 2020. There are no baseline appraisals, and no consultations were undertaken prior to implementing the scheme.

- The cumulative impacts of the 2020 scheme and that proposed have not been considered.
- The approach taken is 'Project Splitting' and fails to take into account cumulative impacts which are significant on adjacent roads which have experienced traffic congestion, significant traffic increase, noise and air pollution, increased journey times and deterioration of material assets.
- The CMR public consultation report (September 2023) does not include the Referrers submission, as such the issues raised were not brought to the attention of the elected members of Dún Laoghaire County Council and the robustness of the process is in question.
- The independent evaluation by Technical University of Dublin (TUD) (2022) is not evidence based, data gathered was from 2021, post implementation of the 2020 scheme, the report is clear on the limitations of the data and pre-pandemic data was limited for comparison purposes.
- Ultimately the report does not constitute a traffic impact assessment comparing before and after data in accordance with what would normally be expected. Traffic data can be obtained from a number of sources including the Dún Laoghaire Rathdown traffic data for Monkstown Road which does not seem to have been utilised.
- It is not clear if the taking in charge process is complete as the harbour roads still have 10km/h speed signage which are not permitted on public roads. Scheme proposals for the section of Harbour Road between the Royal St. Georges Yacht Club and the National Yacht Club consist of lands that are outside the current road boundary. Other non-public roads are included.
- New Guidelines issued in accordance with DoT NGSG Circular 3 of 2023 relates to works to be carried out in accordance with Section 38 of the road traffic act, which relates to traffic calming. The guidelines state that where the proposed measure extends outside the boundary of the public road, an alternative approval process is required, Section 38 is not applicable in those circumstances.
- It is noted that exemptions in accordance Section 179(6)(bb) of the planning and Development Act can only apply to works in relation to public bus services or facilities for cyclists. In addition, Section 80 of the Planning and

Development Regulations 2001 prescribes the development types to which the Part VIII procedures shall apply including any development other than those specified above, the estimated cost of which exceeds €126,000.

- The TII response is conditional, and no provision has been made for it in the final scheme.
- There is no evidence of consultation with the Garda Commissioner required by the Roads Act.
- DLR note that formal acceptance was received from TII to the proposed CMR scheme design layout where it interacts with the N31 on 16th October 2023 subject to a condition that "A safe provision for pedestrians to cross between the Bus Stops on Crofton Road where there will be a desire line shall be provided". It is however noted that such provision has not been included in the final scheme proposals as submitted.
- DLR state that AA and EIA Screening were carried out in 2020 relation to the existing temporary scheme by CAAS Ltd and are included in the submission to the Board, but these reports are not available.
- It is evident from the updated reports received that the starting point for the assessment was in 2023, when the traffic had already been diverted and not more appropriately pre 2020 when the temporary scheme removed the N31 southbound traffic.
- Although the existing coastal mobility development was implemented in 2020 as an emergency measure, it is not clear as to whether such works were carried out in accordance with Section 38 of the Road Traffic Act 1994 and/or whether it was exempted under the Environmental Impact Assessment Directive of the EU (No 2011/92/EU) of the European Parliament and of the Council as amended.
- DLR needs to consider an assessment and public involvement that encompasses the impacts of the existing temporary and the proposed CMR developments.

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act, 2000

7.1.1. In order to assess whether or not the works in question constitute development that is exempted development, regard must be had to the following items of legislation:

#### 7.1.2. Section 2- Interpretation.

(1). In this Act, except where the context otherwise requires -

“exempted development” has the meaning specified in Section 4.

“public road” and “road” have the same meaning as in the Roads Act, 1993.

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...

#### 7.1.3. Section 3 - Development.

(1). In this Act, except where the context otherwise requires, "development" means the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land...

#### 7.1.4. Section 4 - Exempted Development.

(1). The following shall be exempted developments for the purposes of this Act—

(aa). development by a local authority in its functional area (other than, in the case of a local authority that is a coastal planning authority, its nearshore area).

(e). development consisting of the carrying out by a local authority of any works required for the construction of a new road or the maintenance or improvement of a road.

(4) Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

#### 7.1.5. Section 179 - Local Authority Own Development.

(1)(a). The Minister may prescribe a development [other than development to which section 179A applies] or a class of development for the purposes of this section

where he or she is of the opinion that by reason of the likely size, nature or effect on the surroundings of such development or class of development there should, in relation to any such development or development belonging to such class of development, be compliance with the provisions of this section and regulations under this section.

- (2). The Minister shall make regulations providing for any or all of the following matters:
  - (a). The publication by a local authority of any specified notice with respect to proposed development;
  - (b). requiring local authorities to —
    - (i) (I) notify prescribed authorities of such proposed development or classes of proposed development as may be prescribed, or
    - (i)(II) consult with them in respect thereof, and
    - (ii) give to them such documents, particulars plans or other information in respect thereof as may be prescribed;
  - (c). The making available for inspection, by members of the public, of any specified documents, particulars, plans or other information with respect to proposed development;
  - (d). The making of submissions or observations to a local authority with respect to proposed development.
- (6). This Section shall not apply to proposed development which –
  - (bb). Consists of works, other than works involving road widening, to enhance public bus services or improve facilities for cyclists provided under section 95 (as amended by section 37 of the Road Traffic Act 1994) of the Road Traffic Act 1961 or under section 38 of the Road Traffic Act 1994.

## **8.0 Other Legislation for Context**

### **8.1. Roads Act 1993**

#### **8.1.1. Section 2 – Interpretation.**

(1). In this Act, except where the context otherwise requires –

“public road” means a road over which a public right of way exists and the responsibility for the maintenance of which lies on a road authority.

‘road’ includes –

- (a) any street, lane, footpath, square, court, alley or passage,
- (b) any bridge, viaduct, underpass, subway, tunnel, overpass, overbridge, flyover, carriageway (whether single or multiple), pavement or footway,
- (c) any weighbridge or other facility for the weighing or inspection of vehicles, toll plaza or other facility for the collection of tolls, service area, emergency telephone, first aid post, culvert, arch, gully, railing, fence, wall, barrier, guardrail, margin, kerb, lay-by, hard shoulder, island, pedestrian refuge, median, central reserve, channelliser, roundabout, gantry, pole, ramp, bollard, pipe, wire, cable, sign, signal or lighting forming part of the road, and
- (d) any other structure or thing forming part of the road and —
  - (i) necessary for the safety, convenience or amenity of road users or for the construction, maintenance, operation or management of the road or for the protection of the environment, or
  - (ii) prescribed by the Minister;

## 8.2. Road Traffic Act 1994

### 8.2.1. Section 38 – Traffic Calming Measures

“traffic calming measures” means measures which—

- (a) enhance the provision of public bus services, including measures which restrict or control access to all or part of a public road by mechanically propelled vehicles or powered personal transporters (whether generally or of a particular class) for the purpose of enhancing public bus services, or
- (b) restrict or control the speed or movement of, or which prevent, restrict or control access to a public road or roads by, mechanically propelled vehicles or powered personal transporters (whether generally or of a particular class) and measures which facilitate the safe use of public roads by different classes of



traffic (including pedestrians, people driving powered personal transporters, and cyclists), and includes for the purposes of the above the provision of traffic signs, road markings, bollards, posts, poles, chicanes, rumble areas, raised, lowered or modified road surfaces, ramps, speed cushions, speed tables or other similar works or devices, islands or central reservations, roundabouts, modified junctions, works to reduce or modify the width of the roadway and landscaping, planting or other similar works.

## **9.0 Assessment**

### **9.1. Is or is not development**

- 9.1.1. The provision of a two-way segregated cycle lane with all relevant ancillary works and roads improvement (incorporating landscaping, crossings, raised tables and street /cycle furniture) would constitute works as it involves construction in the form of the provision of bollards, kerbs, raised table crossings, and ancillary pedestrian/street and cycle furniture. Works required to segregate the cycle lane from the vehicular carriageway constitute alterations to the existing roadway. I am therefore satisfied that the proposal constitutes ‘works’ under the definition set out in Section 2 of the Act, and therefore constitutes development as per Section 3 of the Act.

### **9.2. Is or is not exempted development**

- 9.2.1. Section 4 of the Act covers exempted development and Section 4(1)(e) states:

*“development consisting of the carrying out by a local authority of any works required for the construction of a new road or the maintenance or improvement of a road”.*

- 9.2.2. In my opinion, the provision of a cycle lane and ancillary development within the envelope of a road would fall within the category of maintaining or improving an existing road, having regard to the definition of a Road under Section 2(1) the Roads Act 1993, as set out in detail at paragraph 8.1.1 above.

- 9.2.3. Section 179 of the Planning and Development Act 2000 relates to development carried out by or on behalf of a local authority. Subsections 1 to 4 of this Act sets out the statutory requirements the Planning Authority must comply with when carrying out development in its own area.

9.2.4. Section 179(6) defines circumstances where such requirements do not apply. This includes subsection 179(6)(bb) which reads as follows:

*“works other than works involving road widening to enhance public bus services or improve facilities for cyclists provided under Section 95 (as amended by Section 37 of the Road Act 1994) of the Road Planning Act 1961 or under Section 38 of the Road Traffic Act 1994”.*

9.2.5. It is clear from the above subsection that works to improve facilities for cyclists, such as the provision of a two-way segregated cycle lane, do not fall under the statutory requirements for Planning Authorities to advertise or accept submissions under the statutory provisions of Section 179. The Planning Authority have confirmed that the development is being carried out under Section 38 of the Road Traffic Act 1994 and as such the exemption set out in Section 179(6)(bb) would apply.

9.2.6. The Referrer considers that Section 38 cannot be applied in this instance for the following reasons:

- Section 38 only applies to public roads and the development includes sections of Dún Laoghaire harbour roads which are not public roads and sections that are outside of the current road boundary.
- It is not clear if the taking in charge process is complete as the harbour roads still have 10km/h speed limit signage, which are not permitted on public roads.
- Section 38 requires approval from the National Roads Authority, it is not evident that this has been obtained and the Transport Infrastructure Ireland response is conditional, and it is not clear that provision has been made for this in the final scheme.
- There is no evidence of consultation with the Garda Commissioner, as required by Section 38.
- Guidelines state that where the proposed measures extend outside the boundary of the public road, an alternative approval process is required, Section 38 is not applicable in those circumstances.
- The exemptions in Section 179(6)(bb) of the planning and Development Act can only apply to works in relation to public bus services or facilities for cyclists.

The exemptions would not apply to the proposal, based on the Applicant's description of the proposed works.

9.2.7. On the basis of the above, the Referrer considers that Section 38 cannot apply, and that the development would need to follow the Part VIII process. It is further stated by the Referrer that the project would not be exempt under the Part VIII process as it prescribes any development which exceeds an estimated cost of €126,000 and that the works would be expected to exceed this threshold.

9.2.8. The scope of works permitted under Section 38 of the Road Traffic Act 1994 is set out in detail at paragraph 8.2.1 above. A public road is defined in the Roads Act 1993 as a road over which a public right of way exists and the responsibility for the maintenance of which lies on a road authority, including:

- any street, lane, footpath, square, court, alley or passage,
- any bridge, viaduct, underpass, subway, tunnel, overpass, overbridge, flyover, carriageway (whether single or multiple), pavement or footway,
- any weighbridge or other facility for the weighing or inspection of vehicles, toll plaza or other facility for the collection of tolls, service area, emergency telephone, first aid post, culvert, arch, gully, railing, fence, wall, barrier, guardrail, margin, kerb, lay-by, hard shoulder, island, pedestrian refuge, median, central reserve, channelliser, roundabout, gantry, pole, ramp, bollard, pipe, wire, cable, sign, signal or lighting forming part of the road, and
- any other structure or thing forming part of the road and —
  - necessary for the safety, convenience or amenity of road users or for the construction, maintenance, operation or management of the road or for the protection of the environment, or
  - (ii) prescribed by the Minister;

9.2.9. I am satisfied that the project relates to works that are within the envelope of a public road having regard to the definition set out above. In any event, the Planning Authority have confirmed that the roads within the Dún Laoghaire Harbour Area were transferred to the Council by Ministerial Order and that the taking in charge process has been completed.

9.2.10. Section 38(5) of the Road Traffic Act 1994 states that measures shall not be provided or removed without the prior consent of the National Roads Authority (Transport Infrastructure Ireland). The Planning Authority have confirmed that Transport Infrastructure Ireland have formally accepted the works. I note the Referrer's point that this is conditional. This is acknowledged by the Planning Authority and the condition requires provision of a safe crossing for pedestrians between the bus stops on Crofton Road where there will be a desire line. There is nothing in the project that would present an impediment to compliance with this condition in the final scheme and I do not consider that it's inclusion would remove the project from the provisions of Section 38.

9.2.11. I acknowledge the Referrer's concern that there is no evidence of consultation with the Garda Commissioner, as required by Section 38(3)(a) of the Road Traffic Act 1994. Guidelines issued by the Department of Transport dated October 2023 (Guidelines on Traffic Works Procedures – Section 38 of the Road Traffic Act 1994), state at Section 4 (Prescribed Measures), that the requirements set out in subsections 3(a), 3(b) and 3(c) are not mandatory and the associated requirement in subsection (4) is not applicable and is not in operation. On that basis there is currently no statutory requirement to consult with the Garda Commissioner.

9.2.12. The Referrer states that, based on the Applicant's description of the project, the exemptions set out in Section 179(6)(bb) cannot apply, as the exemption is restricted to works in relation to public bus services or facilities for cyclists. Based on the submissions from the Planning Authority, I consider that the project in its entirety consists of the provision of a two-way segregated cycle lane on the coastal side of the road from Newtown Avenue to Sandycove Point incorporating:

- Alterations to road layouts and the provision of one way traffic to accommodate the two way cycle lane.
- Construction of kerbs and/or bollards to provide segregation from two-way cycle lanes and vehicular traffic and a change to road surfaces to use buff antiskid surfacing along cycle route and replacing existing rapid-build temporary kerbs along the full length of the Coastal Mobility Route.

- Integrated cycling comprising better connections between Blackrock, Seapoint, Dún Laoghaire and Sandycove, complementing plans for Living Streets Dún Laoghaire where a reduced traffic environment will be created.
- Fifteen new raised pedestrian crossings, junction tightening and footpath improvements to make road crossing safer and easier for pedestrians.
- Improved landscaping and public spaces at Longford Terrace, Queens Road, Marine Parade and Sandycove Harbour in addition to improvements at the Queens Road harbour area, incorporating bike stands, seating and pedestrian crossing points.

9.2.13. The Referrer argues that the exemptions set out in Section 179 of the Act would not apply on the basis that some of the works relate to public realm and other non-cycling related development. It can be inferred that this concern relates primarily to landscaping improvements as well as the pocket park proposals at the Queens Road harbour area, Marine Avenue, and Sandycove Point. I would again draw the Boards attention to the Guidelines issues by the Department of Transport. Section 5.3 of the Guidelines relates to multi-faceted works and states:

*“Frequently, works which are primarily to enhance public bus services or improve facilities for cyclists, also contain other ancillary elements such as improvements for pedestrians, possibly in the form of upgraded footpaths or upgraded pedestrian crossings. It is recommended that a decision on the appropriateness of utilising either the Section 38 procedure or the applicability of the exemption from the Part 8 Procedure is made based on the primary purpose of the scheme.”*

*“If the primary purpose of the project does not relate to bus or cycling enhancements, then the exemption set out in Section 179(6)(bb) of the Planning and Development Act of 2000 does not apply. On the other hand, if the primary objective is either bus or cycling enhancements, then the exemption should apply, notwithstanding that there may be other elements associated with the project.”*

9.2.14. It is my opinion that the overwhelming objective of the project is the provision of a segregated two-way cycle lane from Newtown Avenue to Sandycove Point. In my view the upgraded pedestrian crossings and the associated landscaping works are ancillary to this overriding objective, including, on balance and having regard to the entirety of the scheme and its core purpose, the proposals at Queens Road harbour area, Marine

Avenue, and Sandycove Point. I am therefore satisfied that the provisions of Section 179(6)(bb) would apply in full, also having regard to the scope of works permitted under Section 38 of the Road Traffic Act 1994 and the aforementioned guidelines. However, should the Board disagree with my conclusion on this particular matter then I am satisfied that the works proposed at Queens Road harbour area (drawing 13 of 18), Marine Avenue (drawing 16 of 18), and Sandycove Point (drawing 18 of 18) could be carved out of the declaration and a Split Decision could be issued.

- 9.2.15. Having noted the Referrer's view that the scheme should be subject to the Part VIII procedure and that the exemptions under Part VIII would not apply based on estimated costs, I am satisfied, on the basis of the foregoing, that the purpose of the project and the associated works are "to enhance public bus services or improve facilities for cyclists", which are being delivered under Section 38 of the Road Traffic Act 1994, and are therefore exempted from the normal local authority Part VIII planning process having regard to Section 179(6)(bb) of the Act.

### 9.3. **Restrictions on exempted development**

- 9.3.1. It is considered by the Referrer that the development requires both Appropriate Assessment and Environmental Impact Assessment, although the Board will note that the Referrer predicates this on Sections 175 and 177AE of the Act, which do not apply in this instance. The Board will also note that the Planning Authority have considered the matter against Article 9(1)(iii) of the Planning and Development Regulations 2001, as amended. However, the restrictions on exemptions under Article 9 only relate to exempted development classes set out under Article 6 of the Regulations. These exemptions relate to classes specified in Column 1 of Schedule 2 of the 2001 Regulations (as amended) and are not relevant to the development.
- 9.3.2. The relevant restrictions on exemption are set out in Section 4(4) of the Planning and Development Act 2000 (as amended) which states that development shall not be exempted development if an Environmental Impact Assessment or an Appropriate Assessment of the development is required.

#### Appropriate Assessment

- 9.3.3. Screening for Appropriate Assessment was undertaken on both the temporary 2020 scheme and the proposed scheme. I have considered both screening exercises and I

have based the following Appropriate Assessment screening exercise on the comprehensive development.

#### Compliance with Article 6(3) of the Habitats Directive

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

#### Background

- 9.3.5. Screening reports for Appropriate Assessment have been submitted as part of the referral. Appropriate Assessment Screening Report prepared by CAAS dated July 2020 and Appropriate Assessment Screening Report prepared by MKO dated October 2023, both in relation to the Coastal Mobility Route. The screening reports provide a description of the development and identify European Sites within a possible zone of influence of the development.
- 9.3.6. Both reports concluded that the development would not give rise to any significant adverse effects on any designated European sites either alone or in combination with other plans and projects. Having reviewed the documents and submissions, I am satisfied that the information allows for a complete examination and identification of any potential significant effects of the development, alone, or in combination with other plans and projects on European sites.

#### Screening for Appropriate Assessment- Test of likely significant effects

- 9.3.7. The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on any European site. The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects.

#### Brief description of the development

- 9.3.8. The overall scheme proposes the implementation of coastal mobility interventions aimed at promoting and facilitating walking and cycling, including the provision of segregated two-way cycleways from Newtown Avenue in Blackrock to Sandycove and the Forty Foot bathing area through the reallocation of road space and introducing a one-way system for vehicles. Some of these works were previously undertaken on a

temporary basis in 2020 and the proposal incorporates upgrading these sections to make them permanent in addition to the provision of new sections of cycle path. This includes new raised pedestrian crossings, changes to road layout and traffic flow and improved landscaping and public space on foot of the proposed two-way segregated cycle lane. Full details are provided in Section 2.2 of the 2020 screening report and 2.2.1 of the 2023 screening report. Taking account of the characteristics of the proposed development in terms of its location and the scale of works, the following issues are considered for examination in terms of implications for likely significant effects on European sites:

- Construction impacts (installation of kerbs, signage, bollards, segregation, road surfacing, planters/landscaping and street furniture/cycle parking stands).
- Operational (modal segregation, removal of on street parking).

#### Submissions and Observations

9.3.9. It is stated by the Referrer that Appropriate Assessment is required otherwise the development will adversely affect the integrity of European sites and their conservation objectives.

#### European Sites

9.3.10. The development site is not located in any European site. The nearest European Sites are:

- South Dublin Bay and River Tolka Estuary SPA (004024) – c. 26m.
- South Dublin Bay SAC (000210) – c. 27m.
- Rockabill to Dalkey Island SAC (003000) – c. 1.6km.
- Dalkey Island SPA (004172) – c. 1.6km
- North Dublin Bay SAC (000206) – c. 5.3km.
- North Bull Island SPA (004006) – c. 5.3km.

9.3.11. The screening reports identify European sites within a 15km Zone of Influence. In my opinion, only the nearest European Sites of Dublin Bay - South Dublin Bay and River Tolka Estuary SPA (004024), and the South Dublin Bay SAC (000210) are of relevance. The remainder of the European sites of Dublin Bay outlined above are further separated from the site by coastal waters.



9.3.12. The entirety of the development is separated from the relevant European sites by road, Dart lines, and other physical infrastructure such as foot paths and landscaping. There are no physical direct connections between the development and the European sites and whilst it is noted that there are weak indirect connections via the municipal drainage system and storm water drainage, the nature and scale of the works are such that no upgrades are required to the existing drainage network and the development would not put any additional loading on the existing infrastructure.

9.3.13. Regard is also had to potential impacts from noise (construction and human activity) however this is not considered to be significant given the small-scale nature of the proposed works in context and the location within an urban area

#### Mitigation measures

9.3.14. No measures designed or intended to avoid or reduce any harmful effects of the project on a European Site have been relied upon in this screening exercise.

#### Screening Determination

9.3.15. The proposed development was considered in its entirety in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually or in combination with other plans or projects would not be likely to give rise to significant effects on any of the identified European sites, in view of the site's Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is not therefore required. This determination is based on the following:

- The location of the site within an urban serviced area and the distance/barriers to the relevant European sites.
- The nature of the works and the non-invasive construction methods proposed.
- The nature of the development, the lack of direct hydrological pathways and the fact that the development would not place additional loading on the existing drainage network, with no requirement for upgrades.

#### Environmental Impact Assessment Screening

9.3.16. An Environmental Impact Assessment screening exercise was undertaken for the 2020 temporary scheme and an updated screening exercise was undertaken for the 2023 proposal. I have considered both of these reports.

#### Mandatory Thresholds

9.3.17. This proposed development is of a class of development included in Schedule 5 to the Planning Regulations. Schedule 5 to Part 2 of the Planning Regulations provides thresholds at which mandatory EIA is required based on the Class of development. The initial EIA Screening Report from 2020 concluded that the project did not correspond to any prescribed project type and has no real likelihood of causing significant environmental effects. The 2023 screening report on the other hand concludes that the most relevant Class of development within Part 2 (Schedule 5 is urban development in relation to Infrastructure projects as set out in Class 10. I would agree with this approach and the relevant thresholds of Class 10 are as follows:

- Class 10(b)(iv) - Urban development, which would involve an area greater than 2 ha in the case of a business district\*, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere. \*a 'business district' means a district within a city or town in which the predominant land use is retail or commercial use.

9.3.18. In terms of urban development (Class 10(b)(iv)), I consider that the site is within part of a 'built-up area' where the 10ha threshold applies. The screening report acknowledges that some buildings in Dún Laoghaire along the Old Dúnleary Rd, Crofton Rd, Harbour Rd and Queens Rd are in mixed uses with a predominance of commercial use. It is noted that these parts of the proposed scheme route could be considered as 'Business Districts' where a 2ha threshold would apply. It is stated in the screening report that the combined length of these sections of the route is approximately 1.1km equating to approximately 1.1ha which would be below the threshold for a business district.

9.3.19. The Referrer argues that sections of the section of the route passing through a business district would be 3.4 hectares and therefore considers that a mandatory EIA is required on that basis. It is also argued by the Referrer that the proposal constitutes 'project splitting'.

9.3.20. In terms of 'project splitting', I note that the temporary scheme and the proposed scheme have both been screened for Environmental Impact Assessment. I have also

conducted my screening assessment based on the development as a whole, having regard to both reports. I am therefore satisfied that the approach would not constitute 'project splitting'.

9.3.21. From my site inspection and review of the submission documents, I consider that the section of the route that could potentially be considered to pass through a business district would equate to 1.7 hectares and would still be below the 2 hectare threshold. I therefore agree that on the basis of Class 10 of the Planning and Development Regulations 2001 (as amended), a mandatory EIA would not be required.

9.3.22. The screening reports also consider the development against the criteria set out for mandatory EIA in the Roads Act 1993 (as amended) and the Roads Regulations 1994, specifically:

- S. 50(1)(a)(i)(ii), and (iii) of the Roads Act, 1993 (as amended).
- S. 50(1)(b) of the Roads Act, 1993 (as amended).
- S. 50(1)(c) of the Roads Act, 1993 (as amended).
- S. 50(1)(d) of the Roads Act, 1993 (as amended) as amended by the European Union (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011), reg. 56(7)(a) and reg. 56(7)(b).
- Article 8 of the Roads Regulations, 1994 (Part V Environmental Impact Assessment).

9.3.23. It is considered that the proposed development does not satisfy the criteria contained therein and on that basis an EIA would not be mandatory under that legislation either and I would agree with this conclusion.

#### Sub Threshold Development

9.3.24. Item (15)(b) of Part 2, Schedule 5 of the Regulations provides that EIA will be required for 'Any project listed in this Part which does not exceed a quantity, area or other limit specified in this Part in respect of the relevant class of development, but which would be likely to have significant effects on the environment, having regard to the criteria set out in Schedule 7'.

9.3.25. Environmental Impact Assessment is required for development proposals of a class specified in Part 1 or 2 of Schedule 5 that are sub-threshold where the Board

determines that the proposed development is likely to have a significant effect on the environment. For all sub-threshold developments listed in Schedule 5 Part 2, where no EIAR is submitted or EIA determination requested, a screening determination is required to be undertaken by the competent authority unless, on preliminary examination it can be concluded that there is no real likelihood of significant effects on the environment.

9.3.26. The screening reports provide the necessary information for screening this sub-threshold development for Environmental Impact Assessment, considering the development against the criteria of Schedule 7 including:

- 1) Characteristics of the proposed development
- 2) Location of the proposed development, and
- 3) Characteristics of potential impacts.

9.3.27. I would draw the Board's attention to traffic concerns raised by the Referrer and their view that the screening reports do not assess the impact of the original temporary scheme from 2020, that there are no baseline appraisals, and that the development fails to take into account cumulative impacts which they consider to be significant on adjacent roads which are claimed to have experienced traffic congestion, significant traffic increase, noise and air pollution, increased journey times and deterioration of material assets. The Referrer notes the report from the Technical University of Dublin (TUD) (Mobility Review July 2022) but does not consider this to be sufficient and that the report does not constitute a traffic impact assessment comparing before and after data in accordance with what would normally be expected.

9.3.28. The scheme was initially implemented on foot of pandemic measures regarding social distancing. It is now proposed to make the temporary works permanent in addition to some additional sections of cycle lane on the route between Newtown Avenue and Sandycove Point. However, the Mobility Review undertaken by the TUD does include a vehicular traffic analysis using data from the TomTom Move database and SCATS data (an urban traffic control system used on certain roads in Dublin), using traffic speed as a proxy for traffic volume and congestion and allowing a review to be undertaken of how traffic movement, trips and speeds have changed during 2020, 2021 and early 2022. It is noted that the dataset contains a high volume of data and I consider its application to be reasonable in these specific circumstances, particularly

given that baseline traffic assessments undertaken post March 2020 would likely have shown suppressed traffic levels, given the pandemic measures implemented at that time.

- 9.3.29. In terms of vehicular traffic volumes, a full vehicle movement count was undertaken at the Junction of Frascati Road/Temple Road/Barclay Court in Blackrock using SCATS data. The report notes that this junction gives an indication of how traffic volumes and patterns changed over the course of the pandemic prior to being impacted by CMR route diversions. Three 2-week time periods were examined: February 2020 (forming the pre-pandemic baseline), September/October 2020, and February 2022. In summary, it is noted that traffic levels in February 2022 were still down when compared to the pre pandemic baseline. Where there were increases this is likely due to other works to make unrelated roads one way and the completion of residential development.
- 9.3.30. Vehicle traffic speeds have also been considered in areas adjacent to the CMR (Monkstown and Glasthule). Five periods were assessed, including February 2020 (as a pre-pandemic baseline), October 2020, February 2021, October 2021, and February 2022.
- 9.3.31. Increased vehicle speeds indicate less congestion and there were notable increases in vehicle speed in February 2021 on foot of pandemic measures but the report notes that there was a gradual stabilisation of speeds in both October 2021 and February 2022. In both Monkstown and Glasthule notable decreases in traffic speeds were observed in October 2020 which could indicate displaced vehicular traffic as a result of the CMR. However, the October 2021 and February 2022 data show traffic speed increases, suggesting a decline in congestion.
- 9.3.32. The report notes that in both Monkstown and Glasthule, there is little change in traffic speed during off- peak hours when comparing February 2020 and February 2022, and Glasthule shows increased traffic speeds during the morning and evening peak. Furthermore, the Monkstown area has traffic speeds broadly consistent between 2020 and 2020 and Monkstown Road has the highest speeds of any street monitored in the area. This would align with the traffic table included in the Referrer's submission that indicates increased traffic volumes on some roads but shows that vehicle speeds have been maintained and, in some instances, have increased.

- 9.3.33. In terms of journey times, comparative vehicle journey times have been analysed for a route between Merrion Gates and Castle Park. This runs parallel to the CMR and would be expected to see spillover traffic. A route between Clonskeagh and Stepside was also analysed to provide context. Journey times have begun to stabilise and the Merrion Gates/Castle Park had largely returned to pre pandemic levels by February 2022 with only a 15 second increase in journey times recorded over the full length of the journey which the report states to be minor at 3.7%.
- 9.3.34. In terms of vehicular movements, the report considers the distributional impact on vehicular traffic following the removal of a vehicle lane on the CMR adjacent to Monkstown and Glasthule. The report notes that there is an increase in the proportional use of Monkstown Road, Carrickbrennan Road, Cumberland Street, Glasthule Road, and Tivoli Road. Likewise, it is reported that there is a decrease Seapoint Avenue, Old Dúnleary Road, and Newtownsmith. A decrease was also noted in terms of the proportional use of Crofton Road, even though it is still two-way.
- 9.3.35. In terms of Monkstown Road, the report notes that approximately 12% of the traffic may be generated locally from within the immediate area as this traffic disappears from network by the end of Monkstown Road. It is stated in the report that approximately 37% of the sample vehicle journeys are 3km and under and it is noted that these journeys have particular potential for modal shift from private to active modes. It is concluded that the analysis of speeds, volumes, and routing indicate that the road networks is functioning and whilst some redistribution of vehicle trips may have occurred, functionality is maintained, and overall vehicular trips have reduced.
- 9.3.36. The report acknowledges that this may be in the context of the pandemic and the resulting changes to movement patterns, but it is demonstrated that the overall changes in traffic behaviour in the region of the CMR are consistent with the wider local authority area.
- 9.3.37. In my opinion, whilst noting the limitations of the report, it does provide a useful comparison between traffic pre-pandemic and post implementation of the CMR. Furthermore, the primary purpose of my review of the TUD report is to gauge the likelihood of significant effects on the environment for the purposes of EIA Screening and, by extension, exemptions under Section 4 of the Act, rather than assessing the

acceptability of the development in transport terms, which is not the purpose of the referral.

9.3.38. I acknowledge that the Planning Authority might reasonably have undertaken an updated traffic assessment for the section of Windsor Terrace that is proposed to have the direction of travel reversed, however, given the limited length of the carriageway affected, I do not consider that this would result in significant negative environmental effects, with any resulting impacts being localised.

9.3.39. In my opinion, the TUD report demonstrates that no significant impacts are experienced or anticipated as a result of the development. Again, I would conclude that resultant impacts would be localised and not of a scale that would warrant the submission of an Environmental Impact Assessment. I have had regard to the characteristics of the site, the location of the proposed development, and the type and characteristics of the potential impacts. Having regard to the screening reports and supplementary information, I have examined the sub-criteria and all submissions, and I have considered all information that accompanied the application and referral.

9.3.40. I have completed an EIA screening assessment of the overall development with respect to all relevant considerations, as set out in Appendix 2 to this report. Having regard to:

- The nature and scale of the proposed development, which is below the threshold in respect of classes 10(b)(i)(iv) and 14 of Part 2 to Schedule 5 of the Planning and Development Regulations 2001-2022;
- The location of the proposed development within a built up, serviced, urban area;
- The availability of mains water and wastewater services to serve the proposed development;
- The location of the development outside of any sensitive location specified in Article 109(4)(a)(v)(I-VII) of the Planning and Development Regulations 2001, as revised;
- The guidance set out in the 'Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development', issued by the Department of the Environment, Heritage and Local Government (2003);

- The criteria set out in Schedule 7 of the Planning and Development Regulations 2001, as revised, and;
- The mitigation identified and recommended in the Environmental Impact Assessment Screening Report.

9.3.41. I am satisfied that the development would not be likely to have significant effects on the environment and that the preparation and submission of an Environmental Impact Assessment Report would not, therefore, be required.

#### Conclusion on Exemption Restrictions

9.3.42. On the basis that the development would not warrant either an Appropriate Assessment or the submission of an Environmental Impact Assessment Report, I consider that the restrictions set out in Section 4(4) of the Planning and Development Act 2000 (as amended) would not apply and that the development would be exempted development.

## 10.0 Recommendation

10.1. I recommend that the Board should decide this referral in accordance with the following draft order.

**WHEREAS** a question has arisen as to whether the Living Streets: Coastal Mobility Route is or is not development or is or is not exempted development:

**AND WHEREAS** Susan Joyce requested a declaration on this question from Dún Laoghaire-Rathdown County Council and the Council issued a declaration on the 11<sup>th</sup> day of September 2023 stating that the matter was development and was exempted development:

**AND WHEREAS** Susan Joyce referred this declaration for review to An Bord Pleanála on the 22<sup>nd</sup> day of September 2023:



**AND WHEREAS** An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Section 2(1), 3(1), 4(1)(e), 4(4) and 179(6)(bb) of the Planning and Development Act, 2000, as amended,
- (b) The Roads Act 1993
- (c) The Road and Traffic Act 1994
- (d) Guidelines issues by the Department of Transport dated October 2023 (Guidelines on Traffic Works Procedures – Section 38 of the Road Traffic Act 1994).

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) The works refer to development consisting of the carrying out by a local authority of works required for the maintenance or improvement of a road. Specifically, works to improve facilities for cyclists provided under section 38 of the Road Traffic Act 1994, as exempted by Section 179(6)(bb) of the Planning and Development Act 2000 (as amended).
- (b) The primary purpose of the project is the provision of a two-way segregated cycle path.
- (c) The development is not development for which an Appropriate Assessment or Environmental Impact Assessment is required and therefore the restriction on exemption set out in Section 4(4) of the Planning and Development Act 2000 (as amended) does not apply.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3)(a) of the 2000 Act, hereby decides that the Living Streets: Coastal Mobility Route is development and is exempted development.

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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Terence McLellan  
Senior Planning Inspector

30<sup>th</sup> September 2024

**Appendix 1 - Form 1**  
**EIA Pre-Screening**  
**[EiAR not submitted]**

<b>An Bord Pleanála</b> <b>Case Reference</b>	ABP-318088-23		
<b>Proposed Development Summary</b>	Whether the proposed Coastal Mobility Scheme development to urban public realm, public and non-public roads is or is not development and/or is or is not exempted development.		
<b>Development Address</b>	Temple Road/Newtown Avenue to junction of Sandycove Avenue West/Sandycove Point, which includes a section of Harbour Road.		
<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>	No further action required
<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>			

		Threshold	Comment (if relevant)	Conclusion
No				No EIAR or Preliminary Examination required
Yes	X	Class 10(b)(iv) - Urban development, which would involve an area greater than 2 ha in the case of a business district*, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere. *a 'business district' means a district within a city or town in which the predominant land use is retail or commercial use.		Proceed to Q.4

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

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

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



## Appendix 2 – EIA Screening

<b>A. CASE DETAILS</b>		
<b>An Bord Pleanála Case Reference</b>	ABP-318088-23	
<b>Development Summary</b>	Whether the proposed Coastal Mobility Scheme development to urban public realm, public and non-public roads is or is not development and/or is or is not exempted development.	
	Yes / No / N/A	
<b>1. Was a Screening Determination carried out by the PA?</b>	Yes	On the basis of the information submitted on the file, which the Planning Authority considered adequate in order to issue a screening determination, the Planning Authority consider it is reasonable to conclude that there is no real likelihood of significant effects on the environment arising from the proposed

		development and an Environmental Impact Assessment is not required.
<b>2.</b> Is an IED/ IPC or Waste Licence (or review of licence) required from the EPA? If YES has the EPA commented on the need for an EIAR?	No	
<b>3.</b> Has Schedule 7A information been submitted?	Yes	The applicant has submitted Schedule 7A information in the Environmental Impact Assessment Screening Report (Prepared by Barry Transportation Dated 2023).
<b>4.</b> Has an AA screening report or NIS been submitted?	Yes	An Appropriate Assessment Screening Report has been submitted for both the temporary and proposed schemes.
<b>5.</b> Have any other relevant assessments of the effects on the environment which have a significant bearing on the project been carried	Yes	SEA and AA were undertaken in respect of the Dún Laoghaire-Rathdown County Development Plan 2022-2028.

out pursuant to other relevant Directives – for example SEA		
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<b>B. EXAMINATION</b>	<b>Where relevant, briefly describe the characteristics of impacts ( ie the nature and extent) and any Mitigation Measures proposed to avoid or prevent a significant effect</b>  (having regard to the probability, magnitude (including population size affected), complexity, duration, frequency, intensity, and reversibility of impact)	<b>Is this likely to result in significant effects on the environment?</b>  <b>Yes/ No/ Uncertain</b>
<b>1. Characteristics of proposed development (including demolition, construction, operation, or decommissioning)</b>		
<b>1.1</b> Is the project significantly different in character or scale to the existing surrounding or environment?	No, the development comprises works within existing public roads and the scope of the development is not	<b>No</b>

	considered exceptional in the context of the existing environment.	
<b>1.2</b> Will construction, operation, decommissioning or demolition works causing physical changes to the locality (topography, land use, waterbodies)?	No significant demolition works or significant excavations are proposed. Construction works would be small scale in the context of the surrounding environment and non-invasive. There would be no significant alterations to topography, land use or waterbodies.	<b>No</b>
<b>1.3</b> Will construction or operation of the project use natural resources such as land, soil, water, materials/minerals or energy, especially resources which are non-renewable or in short supply?	Construction materials will be typical for a development of this nature and scale. Construction will require the use of natural resources like soil, land and water in addition to materials such as aggregate and concrete. However, the	<b>No</b>

	<p>development requires only small scale/minimal construction works and this will limit the use of resources and materials. All existing trees will be retained and new trees will be planted.</p>	
<p><b>1.4</b> Will the project involve the use, storage, transport, handling or production of substance which would be harmful to human health or the environment?</p>	<p>Construction activities will require the use of potentially harmful materials, such as fuels and other such substances which are typical for construction sites. Any impacts would be local and temporary in nature, particularly given the small-scale works proposed with regard to the overall scope of the project and its context. No significant operational impacts in this regard are anticipated.</p>	<p><b>No</b></p>

<p><b>1.5</b> Will the project produce solid waste, release pollutants or any hazardous / toxic / noxious substances?</p>	<p>Construction activities will require the use of potentially harmful materials, such as fuels and other similar substances and give rise to waste for disposal. The use of these materials would be typical for construction sites.</p> <p>No significant excavations are required, and only minor quantities of waste will be generated from topsoil stripping and resurfacing.</p> <p>Noise and dust emissions during construction are likely, as are typical with construction projects. However best construction practice will be implemented to ensure that noise and dust emissions will be kept within the required limits.</p>	<p><b>No</b></p>
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	<p>Such construction impacts would be local and temporary in nature.</p> <p>Air emissions from the exhausts of construction plant, machinery and haulage trucks have potential to be elevated during construction but are not expected to be significant, given the scale of the proposed scheme and the existing traffic volumes.</p> <p>The development is not anticipated to generate any operational waste. Other operational impacts in this regard are not anticipated to be significant.</p>	
<p><b>1.6</b> Will the project lead to risks of contamination of land or water from releases of pollutants onto</p>	<p>No significant risk identified either during construction or operation. The works are restricted to the existing road, the nearby</p>	<p><b>No</b></p>

<p>the ground or into surface waters, groundwater, coastal waters or the sea?</p>	<p>river waterbody (Brewery Stream) is culverted and the project would make use of existing drainage infrastructure which would not need to be upgraded and would not experience additional loading. Furthermore, there is minimum potential for construction activities to create pathways between contaminants and groundwater resources due to the minimal excavations required during the works.</p> <p>The appointed contractor will be required to prepare a site-specific Construction Environmental Management Plan (CEMP) which will clearly detail all necessary environmental control measures.</p>	
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<p><b>1.7</b> Will the project cause noise and vibration or release of light, heat, energy or electromagnetic radiation?</p>	<p>There is potential for construction activity to give rise to noise and vibration emissions although this would be minimal given the type of works required and potential effects would be localised and short term in nature. Best construction practice will be implemented to ensure that noise and dust emissions will be kept within the required limits and a traffic management plan will be implemented for the duration of the construction works to ensure the maintenance of through traffic and of all site access.</p>	<p><b>No</b></p>

<p><b>1.8</b> Will there be any risks to human health, for example due to water contamination or air pollution?</p>	<p>Construction activity is likely to give rise to dust emissions. Such construction impacts would be temporary and localised in nature and best construction practice would be implemented to ensure that dust emissions would be kept within the required limits. No significant adverse operational impacts are anticipated.</p> <p>In terms of water contamination, the works are restricted to the existing road, the nearby river waterbody (Brewery Stream) is culverted and the project would make use of existing drainage infrastructure which would not need to be upgraded and would not experience additional loading.</p>	<p><b>No</b></p>
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<p><b>1.9</b> Will there be any risk of major accidents that could affect human health or the environment?</p>	<p>No significant risk is predicted having regard to the nature and scale of the development and its locational context. During the construction phase, appropriate management plans would be implemented including, a Construction Environmental Management Plan and a Construction Traffic Management Plan.</p>	<p><b>No</b></p>
<p><b>1.10</b> Will the project affect the social environment (population, employment)</p>	<p>The development would not have any impact in terms of population or employment. The provision of a segregated two-way cycle lane would have beneficial impacts through improved access to walking and cycling, and increased safety for vulnerable road</p>	<p><b>No</b></p>

	users therefore promoting a modal shift to more sustainable mode of transport.	
<p><b>1.11</b> Is the project part of a wider large scale change that could result in cumulative effects on the environment?</p>	<p>Cumulative impacts have been considered, including permitted schemes in the area such as Living Streets Dún Laoghaire, BusConnects, Greater Dublin Area Cycle Network plan and various housing developments and domestic works. No significant negative cumulative impacts are anticipated.</p>	<p><b>No</b></p>
<p><b>2. Location of proposed development</b></p>		
<p><b>2.1</b> Is the proposed development located on, in, adjoining or have the potential to impact on any of the following:</p> <p>a) European site (SAC/ SPA/ pSAC/ pSPA)  b) NHA/ pNHA  c) Designated Nature Reserve</p>	<p>The site is not located within a European Site.  The nearest European sites are:</p> <ul style="list-style-type: none"> <li>• South Dublin Bay and River Tolka Estuary SPA (004024) – c. 26m.</li> </ul>	<p><b>No</b></p>

<p>d) Designated refuge for flora or fauna  e) Place, site or feature of ecological interest, the preservation/conservation/ protection of which is an objective of a development plan/ LAP/ draft plan or variation of a plan</p>	<ul style="list-style-type: none"> <li>• South Dublin Bay SAC (000210) – c. 27m.</li> <li>• Rockabill to Dalkey Island SAC (003000) – c. 1.6km.</li> <li>• Dalkey Island SPA (004172) – c. 1.6km</li> <li>• North Dublin Bay SAC (000206) – c. 5.3km.</li> <li>• North Bull Island SPA (004006) – c. 5.3km</li> </ul> <p>The site is adjacent to the Dalkey Coastal Zone and Killiney Hill/Rocheshill Proposed Natural Heritage Area (pNHA). There are no NHA's around the 15km buffer of the proposed scheme. There are no nature reserves, or nature designated areas of refuge for flora or fauna at or near the site of the proposed scheme.</p> <p>The development has been screened for Appropriate Assessment and it has been concluded that the project individually or in</p>	
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	combination with other plans or projects would not be likely to give rise to significant effects on any of the identified European sites, in view of the site's Conservation Objectives	
<b>2.2</b> Could any protected, important or sensitive species of flora or fauna which use areas on or around the site, for example: for breeding, nesting, foraging, resting, over-wintering, or migration, be significantly affected by the project?	The proposed development would not result in significant impacts to protected, important or sensitive species having regard to the nature, scale, and location of the works.	<b>No</b>
<b>2.3</b> Are there any other features of landscape, historic, archaeological, or cultural importance that could be affected?	There are four Record of National Monuments adjacent to the scheme extent. There are number of protected structures located along the proposed scheme route (including Old Dunleary Road, Windsor terrace, Sandycove Avenue).	<b>No</b>

	<p>It is recommended that a licensed programme of targeted archaeological testing and/ archaeological monitoring under licence from the National Monument Service (NMS) be undertaken in this location by a suitably qualified archaeologist prior to commencement of development. Therefore, with suitable mitigation and/or monitoring these effects are not likely to be significant.</p> <p>There are two industrial heritage structures: a Letter box and Gas Lamp.</p> <p>The project also passes through or adjacent to the Monkstown Architectural Conservation Area (ACA), Sandycove Point, Sandycove Architectural Conservation Area (ACA) and Dún</p>	
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	<p>Laoghaire Harbour/ Dún Laoghaire Seafront Candidate Architectural Conservation Area (cACA).</p> <p>Having regard to the nature, scale, and location of the works, it is not considered that significant negative effects would be likely.</p>	
<p><b>2.4</b> Are there any areas on/around the location which contain important, high quality or scarce resources which could be affected by the project, for example: forestry, agriculture, water/coastal, fisheries, minerals?</p>	<p>No such features are in this urban location, with the site separated from agricultural areas and coastal areas by intervening urban lands and road/rail infrastructure.</p>	<p><b>No</b></p>
<p><b>2.5</b> Are there any water resources including surface waters, for example: rivers, lakes/ponds, coastal or groundwaters which could be affected</p>	<p>The proposed scheme does not fall within CFRAM river flood extents. Due to the</p>	<p><b>No</b></p>

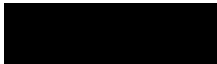
<p>by the project, particularly in terms of their volume and flood risk?</p>	<p>small nature and scale of the proposed works there is no potential flood risk.</p>	
<p><b>2.6</b> Is the location susceptible to subsidence, landslides or erosion?</p>	<p><b>No</b></p>	<p><b>No</b></p>
<p><b>2.7</b> Are there any key transport routes (eg National primary Roads) on or around the location which are susceptible to congestion or which cause environmental problems, which could be affected by the project?</p>	<p>The route incorporates the N31 (Newtown Avenue to Harbour Road) and the R831. The scheme lies adjacent to the R119 which connects to the N31 at Temple Road. There are sustainable transport options available in terms of buses and Dart and the scheme itself promotes sustainable transport in the form of the two-way cycle lane.</p> <p>Impacts during the Construction Phase have the potential for temporary moderate negative effects but</p>	<p><b>No</b></p>

	<p>appropriate management through a Construction Environmental Management Plan and a Construction Traffic Management Plan would mitigate impacts.</p> <p>Overall, traffic on the N31 would be reduced as a result of the one way interventions introduced to accommodate the cycle lane.</p> <p>Some increase in traffic is anticipated as a result of changing the direction of flow on Windsor Terrace but this is not expected to be significant. Traffic and traffic calming would be employed to ensure vehicle speeds remain low.</p>	
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	<p>When reviewing the temporary and proposed schemes the submission was accompanied by a mobility report by TUD which assessed data from February 2020 (pre pandemic and implementation of temporary works) to February 2022 and concluded that the analysis of speeds, volumes, and routing indicate that the road networks is functioning, and overall vehicular trips have reduced.</p> <p>No significant contribution to traffic congestion resulting in significant negative environmental impacts is anticipated to arise from the proposed development.</p>	
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<p><b>2.8</b> Are there existing sensitive land uses or community facilities (such as hospitals, schools etc) which could be significantly affected by the project?</p>	<p>No negative impact anticipated as a result of the proposal.</p>	<p><b>No</b></p>
<p><b>3. Any other factors that should be considered which could lead to environmental impacts</b></p>		
<p><b>3.1 Cumulative Effects:</b> Could this project together with existing and/or approved development result in cumulative effects during the construction/ operation phase?</p>	<p>Other permitted schemes in the wider area have been considered, including Living Streets Dún Laoghaire, BusConnects, and various housing developments and domestic works. however these are no considered to give rise to significant negative cumulative environmental effects in combination with the subject project.</p>	<p><b>No</b></p>
<p><b>3.2 Transboundary Effects:</b> Is the project likely to lead to transboundary effects?</p>	<p><b>No</b></p>	<p><b>No</b></p>

3.3 Are there any other relevant considerations?	No	No
<b>C. CONCLUSION</b>		
No real likelihood of significant effects on the environment.	Agreed <input type="checkbox"/> Yes	EIAR Not Required
Real likelihood of significant effects on the environment.	<input type="checkbox"/>	
<b>D. MAIN REASONS AND CONSIDERATIONS</b>		
<p>Having regard to</p> <ul style="list-style-type: none"> <li>• The nature and scale of the proposed development, which is below the threshold in respect of classes 10(b)(i)(iv) and 14 of Part 2 to Schedule 5 of the Planning and Development Regulations 2001-2022;</li> <li>• The location of the proposed development within a built up, serviced, urban area;</li> <li>• The availability of mains water and wastewater services to serve the proposed development;</li> <li>• The location of the development outside of any sensitive location specified in Article 109(4)(a)(v)(I-VII) of the Planning and Development Regulations 2001, as revised;</li> </ul>		

- The guidance set out in the 'Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development', issued by the Department of the Environment, Heritage and Local Government (2003);
- The criteria set out in Schedule 7 of the Planning and Development Regulations 2001, as revised, and;
- The mitigation identified and recommended in the Environmental Impact Assessment Screening Report 2023.

**Inspector** \_\_\_\_\_

**Date** \_\_\_\_\_

**Approved (DP/ADP)** \_\_\_\_\_

**Date** \_\_\_\_\_