



An
Bord
Pleanála

Inspector's Report

ABP-318309-23

Development

Amending Part 8 application to approved Part 8 (Ref: 2870-15) Royal Canal Greenway Phase 4.

Location

Between Cross Guns Bridge, Phibsborough, Dublin 7 and Ashtown, Dublin 15.

Planning Authority

Dublin City Council North

Applicant(s)

Jacqui McElhinney and Francis Mackey

Type of Application

Environmental Impact Assessment (EIA) Screening Determination under Article 120 (3) (b) of the Planning and Development Regulations 2001, as amended.

Date of Site Inspection

9th February 2024

Inspector

David Ryan

1.0 Introduction

- 1.1. The purpose of this report is to recommend to the Board on whether it should issue a direction to Dublin City Council that the proposed development, comprising a proposed amending Part 8 application of approved Part 8 (Ref 2870/15) Royal Canal Greenway Phase 4 between Cross Guns Bridge, Phibsborough, Dublin 7 and Ashtown, Dublin 15 proposing to widen the existing towpath by realigning the northern bank of the canal at three locations to overcome the need for third party land acquisition, along with associated works and associated ancillary services, should be subject to Environmental Impact Assessment (EIA), which would require the preparation and submission of an Environmental Impact Assessment Report (EIAR).
- 1.2. Under the provisions of Article 120(3)(b) of the Planning and Development Regulations 2001 (as amended), Jacqui McElhinney and Francis Mackey have requested the Board make a screening determination as to whether the proposed development would be likely to have significant effects on the environment. A concurrent and separate application for an Appropriate Assessment (AA) Screening Determination is being considered under ABP-318303-23.
- 1.3. The proposed development comprises a local authority project, under the provisions of Part XI of the Planning and Development Act, as amended, and does not comprise a direct application to the Board.
- 1.4. Dublin City Council has submitted information relating to the various criteria listed in Schedule 7A of the Planning and Development Regulations 2001 (as amended) and an EIA Screening Report prepared on behalf of the Council for the proposed development. Dublin City Council in the submitted documentation outline a screening determination was made and approved on 19th July 2023. The public notice submitted dated 21st September 2023 outlines an EIA Screening has been undertaken and concludes that there is no real likelihood of significant effects on the environment and a determination has been made that an EIA is not required. The applicants contend the proposed development would likely have significant effects on the environment.

2.0 Site Location and Description

- 2.1. The site includes three locations along the northern bank of the Royal Canal between Cross Guns Bridge, Phibsborough Dublin 7 and Ashtown, Dublin 15.
- 2.2. **Section 1** located to the west of Lock 6, includes for a site distance of approx.600m and entails an existing towpath of 3.4 m in width, which extends along a length of an existing stone wall and tapers back to follow the existing embankment approx. 70m west of the Coke Oven Cottages. This section of the Greenway is shared with vehicles and users, providing access to cyclists, pedestrians, residents of Coke Oven Cottages, users of allotment gardens near Lock 7, Waterways Ireland and Iarnród Éireann maintenance vehicles and Cabra Kayak Club. The existing wall has one indent to allow for safe passing of vehicles and pedestrians/cyclists. The path has varying widths outside the Coke Oven Cottages (3.2m – 3.7m) and it narrows to the west beyond the cottages to 2.7m in width.
- 2.3. **Section 2** West of Broombridge includes a site distance of approx.345m where the towpath measuring 1.8m-2m wide is above the level of adjoining industrial sites.
- 2.4. **Section 3** West of Lock 8 includes a site distance of approx.85m where the towpath measures 2.8m wide and is above the level of adjoining Campbells Garage commercial and residential premises.
- 2.5. Habitats within the immediate vicinity of the scheme include canal, buildings and artificial surfaces, amenity grassland, flowerbeds and borders, stonewalls and other stonework, hedgerow, treelines and improved agricultural grassland.
- 2.6. The site is located within the proposed Natural Heritage Area Royal Canal which discharges into the River Liffey which in turn flows into Dublin Bay. Dublin Bay supports a number of sites designated for nature conservation, including North Dublin Bay SAC, South Dublin Bay SAC, South Dublin Bay and River Tolka Estuary SPA, North Bull Island SPA, North-West Irish Sea cSPA.
- 2.7. The site is surrounded by developed land, including industrial, residential, commercial, transportation and St. Pauls Cemetery. Site Section 1 is located to the south of and adjacent to pending Railway Order for Metrolink (ABP-314724-22) and to the east of pending Railway Order for DART+ (ABP-316119-23). North of Site

Section 3 includes a permitted Strategic Housing Development (ABP 306167-19) which is complete.

3.0 Proposed Development

3.1. The proposed development is seeking to provide a premium quality cycle and pedestrian facility with environmental enhancements to encourage and promote cycling and walking in the Dublin Region. As part of the Royal Canal Greenway Phase 4 (between Cross Guns Bridge, Phibsborough, Dublin 7 and Ashtown, Dublin 15 and which is 4.2km in length), a proposed amending Part 8 application to the approved Part 8 (Ref.2870/15) is sought to undertake the following:

- to widen the existing towpath by realigning the northern bank of the canal at the following three locations to overcome the need for third party land acquisition, along with associated works and associated ancillary services:
- West of Lock 6 for approximately 600 metres, realigning by up to 2.15 metres;
- West of Broombridge for approximately 345 metres, realigning by up to 1.4 metres; and
- West of Lock 8 for approximately 85 metres, realigning by up to 1.75 metres
- As part of the works it is proposed to include ducting and associated chambers to ESB standard along the proposed Royal Canal Greenway project. Any future installation and energisation of high voltage cables will be a separate matter for the ESB subject to its own planning processes (as applicable).

3.2. The proposed greenway path will reach up to 4.8m wide at locations, with a 5.5m wide shared route/service vehicle parking area outside Coke Oven Cottages. Verges will be located to landside and canal side. The path subject of the proposal will total a distance of 1.03 km.

3.3. The canal channel is to be dredged where the realignment is proposed to take place. The project has the support of Waterways Ireland as owners of the facility, with the stipulation that a 10m (at the surface) and 5m (at the canal base) wide navigable

channel is maintained within the canal, to facilitate two 4m wide barges to pass with sufficient clearance.

3.4. The reconstruction of the northern canal embankment to facilitate the towpath widening will occur prior to towpath construction. Methods of construction include the following:

- Surplus silt material will be dredged from canal down to original lining (puddle clay in most instances) using tracked machines. This will most likely be done by dewatering the canal and dredging in the dry particularly where there is a potential or known risk of dredging contaminated materials
- Dewatering shall be achieved through the construction of temporary watertight dams or by opening the locks at the downstream end where possible. Where the dewatered section is not bounded by a downstream lock (for example where a bund is established) the canal will need to be dewatered by pumping.
- Fill in northern side of canal with boulders and crushed stone to create the new embankment structure;
- Canal towpath construction methods will include site clearance, removal of existing planting and sod, excavation of existing pavement and base layers and adjacent topsoil areas, install ducting, construction of ducting and associated chambers to ESB standard, deposit and compact fill layers, laying of kerbs, install lighting and CCTV, reinstate sod/planting.

Accompanying Documents include:

- Correspondence from FPLOGUE Solicitors on behalf of applicants dated 18th October 2023
- Cover letter from Dublin City Council dated 20th November 2023 with attached copy of newspaper notice, Waterways Ireland letter of consent, Amending Part 8 Report
- Ecological Impact Assessment

- Environmental Impact Assessment Screening Report (Appendix C: Archaeological, Architectural and Industrial Heritage Assessment, Appendix D: Architectural Heritage Impact Assessment)
- Appropriate Assessment Screening Report
- Otter Derogation Licence and Otter Survey
- Photomontages
- Drawings and text description of drawings

4.0 Planning History

2870/15 – Proposed Royal Canal Greenway, Sheriff Street Upper, Dublin 1 to Ashtown, Dublin 15, consisting of three phases, Phase 2 to 4 inclusive, approved by DCC 07th Dec 2015. Phase 1 running from Guild Street to Sheriff Street Upper is already constructed. Phase 2: Sheriff Street Upper, Dublin 1 to North Strand Road, Dublin 1. Phase 3: North Strand Road, Dublin 1 to Phibsborough Road, Dublin 7. Phase 4: Phibsborough Road, Dublin 7 to Ashtown, Dublin 15 - The proposed works shall comprise the construction of c. 4.3 km of cycle and pedestrian route from Phibsborough Road, Dublin 7 - Cross Guns Bridge to Ashtown, Dublin 15 along the northern towpath. The works traverse past Broome Bridge (Protected Structure) and H.S. Reilly's Bridge (Protected Structure). A Toucan (pedestrian and cycle) crossing is proposed at Broombridge Road/ Broome Bridge. In addition, for all 3 Phases of the Scheme the proposed works shall include: the provision of new public lighting, CCTV, gateways to prevent inappropriate motor vehicle access and other ancillary services along the entire route.

- 4.1. There are a number of recent planning applications made in the vicinity of the site, which relate to transport, residential, commercial and other developments. This includes the permitted ABP 306167-19 Strategic Housing Development which included 435 apartments at Ratoath Road and Hamilton View, Pelletstown, Dublin 11 which is complete, and the permitted ABP 307656-20 Strategic Housing Development which included 725 apartments at Pelletstown, Ashtown, Dublin 15, located to the west of the site. Part of the site is adjacent to the pending Railway

Order for Metrolink (ABP-314724-22) and the pending Railway Order for DART+ (ABP-316119-23).

5.0 Legislative and Policy Context

5.1. Roads Act 1993, as amended:

- 5.1.1. The development the subject of this EIA Direction request comprises a walking and cycling facility. The proposed development at **Section 1** from Lock 6 along the length of the existing wall will be realigned to permit 2 cars to pass at slow speed and space for pedestrian and cycle users. Outside the Coke Oven Cottages realignment will provide a shared route/service vehicle parking area.
- 5.1.2. **Section 68(1) of the Roads Act** references a cycleway and states that a 'cycleway' means "a public road or proposed public road reserved for the exclusive use of pedal cyclists or pedal cyclists and pedestrians". As outlined part of scheme will entail a walking and cycling facility with a shared route for cars.
- 5.1.3. **Section 50(1)(a) of the Roads Act, 1993 (as amended)**, lists road developments in respect of which there is a mandatory requirement to carry out Environmental Impact Assessment (EIA) as follows-
- (i) the construction of a motorway,
 - (ii) the construction of a busway,
 - (iii) the construction of a service area, or
 - (iv) any prescribed type of proposed road development consisting of the construction of a proposed public road or the improvement of any existing public road.

With regard to category (iv), I note that Article 8 of the Roads Regulations 1994 (S.I. 119 of 1994) states that: "The prescribed types of proposed road development for the purpose of subsection (1)(a)(iii) of section 50 of the Act shall be –

- a) the construction of a new road of four or more lanes, or the realignment or widening of an existing road so as to provide four or more lanes, where such new, realigned or widened road would be eight kilometres or more in length in a rural area, or 500m or more in length in an urban area;
- b) the construction of a new bridge or tunnel which would be 100m or more in length."

- 5.1.4. Under **Section 50(1)(b)**, if An Bord Pleanála considers that any road development proposed (other than development to which Section 50(1)(a) applies) consisting of the construction of a proposed public road or the improvement of an existing public road would be likely to have significant effects on the environment it shall direct that the development be subject to an Environmental Impact Assessment.
- 5.1.5. Under **Section 50(1)(d)**, a road authority is required to decide whether or not a proposed development consisting of the construction of a proposed public road or the improvement of an existing public road would be likely to have significant effects on the environment, where it would be located on a European Site, a nature reserve, land designated as a refuge for fauna or land designated a natural heritage area.
- 5.1.6. **Section 50(1A)** states unless An Bord Pleanála is satisfied that a road development that is proposed consisting of the construction of a proposed public road or the improvement of an existing public road (other than development to which section 50(1)(a) applies):
- (i) would not be likely to have significant effects on the environment, or
 - (ii) would be likely to have significant effects on the environment,
- the Board shall require the road authority to provide it with information on the characteristics of the road development proposed and its likely effects on the environment.

5.2. **Planning and Development Act 2000, as amended**

- 5.2.1. **Section 172(1)** states that an EIA shall be carried out in respect of certain applications for consent for proposed development. This includes applications for 'sub threshold' development, namely those which are of a Class specified in Part 2 of Schedule 5 of the PDR, but do not exceed the relevant quantity, area or other limit specified and the competent authority determines that the proposed development would be likely to have significant effects on the environment.
- 5.2.2. **Section 172(1A)** specifies that the above is relevant to development that may be carried out by the local authority under Part X.

5.3. Planning and Development Regulations 2001, as amended

- 5.3.1. **Article 120(3)(b)** states that any person at any time before the expiration of 4 weeks beginning on the date of publication of the notice may apply to the Board for a screening determination as to whether a development proposed to be carried out by a local authority would be likely to have significant effects on the environment.
- 5.3.2. **Article 120(3)(c)** indicates that such applications for screening determination shall state the reasons for the forming of the view that the development would be likely to have significant effects on the environment and shall indicate the class in Schedule 5 within which the development is considered to fall.
- 5.3.3. **Schedule 5** sets out the classes of development where EIA is required.
- Part 1: Sets out the development classes which are subject to mandatory EIA.
 - Part 2: Sets out development classes subject to EIA where they exceed a certain threshold in terms of scale or where the development would give rise to significant effects on the environment.
- 5.3.4. **Schedule 7** sets out the criteria for determining whether a development would, or would not be likely to have significant effects on the environment, under three headings:
1. Characteristics of the proposed development.
 2. Location of the proposed development.
 3. Types and characteristics of potential impacts.
- 5.3.5. **Schedule 7A** relates to information to be provided by the applicant or developer for the screening of sub-threshold development for the purposes of EIA. Schedule 7A information relates to the following:
1. A description of the proposed development, including in particular—
 - (a) a description of the physical characteristics of the whole proposed development and, where relevant, of demolition works, and
 - (b) a description of the location of the proposed development, with particular regard to the environmental sensitivity of geographical areas likely to be affected.

2. A description of the aspects of the environment likely to be significantly affected by the proposed development.
3. A description of any likely significant effects, to the extent of the information available on such effects, of the proposed development on the environment resulting from—
 - (a) the expected residues and emissions and the production of waste, where relevant, and
 - (b) the use of natural resources, in particular soil, land, water and biodiversity.
4. The compilation of the information at paragraphs 1 to 3 shall take into account, where relevant, the criteria set out in Schedule 7.

5.4. City Development Plan

- 5.4.1. The Dublin City Development Plan 2022-2028 is the relevant plan. The canal is zoned Z11 Waterways Protection with objective 'To protect and improve canal, coastal and river amenities'. The lands adjacent to the canal are zoned Z9 Amenity/Open Space Lands/Green Network with objective 'To preserve, provide and improve recreational amenity, open space and ecosystem services'. The canal is designated as a conservation area in the CDP.

5.5. Natural Heritage Designations

- 5.5.1. The site is located within the proposed Natural Heritage Area Royal Canal (site code 002103).
- 5.5.2. The site is located upstream of Dublin Bay and European Sites North Dublin Bay SAC (site code 000206), South Dublin Bay SAC (site code 000210), South Dublin Bay and River Tolka Estuary SPA (site code 004024), North Bull Island SPA (site code 004006), North-West Irish Sea cSPA (site code 004236).

6.0 Request for EIA Determination

6.1. Applicants Request

- 6.1.1. Jacqui McElhinney and Francis Mackey have made an application under the provisions of Article 120 (3) (b) requesting the Board to make an EIA Screening

Determination. The application was prepared by FPLogue Solicitors. The applicant's submission is summarised as follows:

- Materials published by DCC are incomplete to make lawful screening determination. If further information sought by Board request opportunity to make further comments.
- Applicant have made referral for AA screening determination pursuant to Regulation 250(3)(b) PDR2001 and this determination should precede EIA screening since if the project is screened in for AA an EIAR is mandatory (I note ABP Ref. 318303-23 which has been discharged).

Preliminary Observation

- DCC has withheld details of otter, otter drawing locations in appendices of Ecological Impact Assessment Report. No legal basis for selective publication of file, report should be published and otter Derogation Licence refers to these and are not in public domain.
- DCC has not published screening determination which is required by EIA Directive, and right to refer AA Screening to Board is prejudiced. Board prejudiced by not having access to information.

Class within Schedule 5

- Proposed development involves "realignment" of more than 1,000 meters of Royal Canal at three locations to widen towpath. Canal to be narrowed. Purpose of proposed scheme is to construct cycleway, which under Irish law is classified as a "Road".
- Project within at least two categories of project requiring EIA Screening: a. Construction of Roads (Projects not included in Annex I) (Para 10(e) of Annex II of the EIA Directive); and b. Inland waterway construction not included in Part 1 of Schedule 5 PDR2001 which would extend over a length exceeding 2km (paragraph 10(f)(i) of Part 2 of Schedule 5).

Reasons for forming the view that the development would be likely to have significant effects on the environment

- Competent authority must examine project having regard to selection criteria listed in Annex III to Directive 2011/92 (Schedule 7 PDR2001).
- Preliminary examination must accord with EIA Screening procedure which requires submission of Schedule 7A information by developer and competent authority to apply EIA screening process.
- From above, following observations made.

PAH and other contamination

- Applicants residents of Coke Oven Cottages note lack of chemical analysis of the proposed sediment to be excavated (§2.6.3.6 of the EIA Screening Report). Information provided by DCC appears to overlook Waterways Ireland report (Royal Canal Level 6 Sediment Sampling Methodology and Results April/May/July 2013) indicating high levels of PAH (polycyclic aromatic hydrocarbons), arising from creosote contamination of the canal bed. Creosote is highly toxic, classified as a Grade 1B carcinogen by the European Union. PAH is on the priority list of chemicals under the Water Framework Directive.
- DCC commissioned some limited sediment sampling including either side of Coke Oven Cottages, no results are presented. Appears Council proposing to defer assessment of contamination post-consent and impossible to compare sampling results with those of Waterways Ireland or get impression on nature and degree of contamination and attendant risks to the environment.
- Proposal to assess contamination post consent is unlawful and breach of the EIA Directive which requires likely significant effects on the environment to be identified in advance of development consent.
- Identified mitigation is not specific (nor can it be since contamination not characterised) and cannot objectively eliminate the risk of a likely significant effect on the environment from hazardous materials in canal bed sediment. In light of issues Board must conclude there are likely significant effects on the environment and that an EIAR is required.

Water Framework Directive (WFD)

- EU law requires EIA Screening report to contain data necessary to assess effects of a project on waterbody status in light of criteria and requirements in Article 4(1) of the WFD (by analogy with Case C-535/18 IL).
- Documentation must detail for public impact project will have on status of water bodies to verify compliance with obligations in Article 4 of WFD. Data must show whether project is liable to result in deterioration of body of water.
- Incomplete file does not enable effective public participation in decision-making process and satisfy requirements in Article 6 of EIA Directive. Documents are devoid of meaningful technical analysis of water quality despite proposal to extract potentially hazardous materials, to drain parts of canal and infill more than 1,000 meters of canal bank.
- EIA Screening report incorrectly states Royal Canal WFD waterbody status is currently “under review” which is not a status under WFD. Appears authors do not understand difference between status and risk under WFD. “Review” is characteristic of risk rather than status. According to EPA data, the status of the Royal Canal is “good” but the WFD Risk is “under review”.
- EIA Screening report does not identify reason why Royal Canal is identified as “Review” and this is a basic input into an EIA Screening.
- EIA Screening report does not discuss quality elements of waterbody status and are required for assessment. Competent authority must be confident, to a standard of scientific certainty that project will not cause status of any quality element to fall and cause a deterioration of waterbody.
- EIA Screening report indicates detailed assessment of contamination will be done post-consent, and construction methodology will be developed post consent by agreement between DCC, IFI, WI. Impermissible to rely on post-consent assessment and mitigation for EIA Screening determination. As screening report identifies no likely significant effect on water quality, it has incorrectly relied on incomplete information and on an irrelevant factor and/or undefined and uncharacterised mitigation measures.

- Project proposes changes to hydromorphology of canal. No characterisation of the hydromorphological status of canal, no assessment of impact of project on hydromorphology which is lacuna in information.
- For reasons set out likely significant effects on water quality cannot be excluded

Otter

- Concern with omission of otter information and project includes activities which have effects otherwise prohibited by Article 12 of Habitats Directive but for the derogation. Clear that there are certain effects on otter which are significant in light of strict protection afforded to otter under EU law.
- Because of this identified certain significant effect an EIAR is required. EIA procedure introduces safeguards to protect environment including examination of alternatives and monitoring which are not otherwise required and is consistent with judgments in Namur Est (Case 463/20) and Hellfire Massey Residents Association (Case C-166/22).

Bats

- EIA Screening report acknowledges bats recorded in area and may be impacted by habitat loss and disturbance. Artificial lighting of construction area presents risk to bats. The report states studies are currently in progress to examine impact of lighting on bat behaviour on Royal Canal and that lighting design has yet to be developed. While physical components for lighting will be installed during construction it will not be operational until a suitable regime is agreed with NPWS and DCC. It is submitted firstly there is no assessment or consideration of effect of habitat loss and disturbance impacts during construction phase which introduces a lacuna into the EIA Screening which is required to consider all potential environmental effects from the project. Secondly the way lighting design is left over to post consent agreement is incompatible with EU Law which requires prior assessment and prior determination as to whether derogation from Art.12 of Habitats Directive will be required.

- It is outlined there is an identified risk that activities prohibited by Article 12 of the Habitats Directive are possible both during construction and operation. Follows from case-law of Court of Justice that, in this case the execution of the project is subject to requirement for assessment and development consent in Article 2(1) of Directive 2011/92 involving developer applying and obtaining derogation from protection measures prescribed in provisions of national law transposing Articles 12 and 13 of Directive 92/43, and where Ireland confers power to grant derogation, that potential derogation must necessarily be adopted before development consent is given.
- In relation to EIA Screening, full lighting design has to be specified and assessed at this stage.
- During construction mitigation proposed is to reduce the use of artificial lighting to the “extent and timeframe necessary”, presumably not aimed at the necessity of species protection but the necessity of carrying out the work. This approach does not eliminate the risk of likely significant effects on the environment.

pNHA

- EIA screening report contains no assessment/surveying of features, flora/ fauna associated with pNHA, no discussion of likely significant effects although contemplated since report says mitigation measures will need to be developed (§2.3.2). Incorrectly describes project as “replacing and upgrading of existing towpath and ecological enhancements”. Likely significant effects on pNHA cannot be ruled out and EIAR required.
- Concludes why an EIAR is required.

6.2. Schedule 7A Information (EIA)

- 6.2.1. Schedule 7A of the Planning and Development Regulations, 2001 (as amended), relates to information to be provided for the screening of sub-threshold development for the purposes of EIA. The planning authority was requested to submit the

information set out in Schedule 7A of the Regulations and to make any submissions or observations they may have in relation to the matter.

- 6.2.2. The planning authority's response to the Board's request for Schedule 7A information was submitted with a letter dated 20th November 2023. This includes for an Environmental Impact Assessment Screening Report.
- 6.2.3. DCC outline the EIA Screening Report which is appended, determined that the proposed development does not exceed thresholds that trigger mandatory requirement for EIA and that the proposed development is deemed sub-threshold development. This sub threshold assessment was undertaken in accordance with Schedule 7 of P&DR 2001, as amended.
- 6.2.4. DCC outline a screening determination was made and included in Pre-Part 8 Planners Report, dated 18th July 2023, and was approved by A/Senior Planner 19th July 2023 and Deputy City Planner 19th July 2023 and is appended.
- 6.2.5. DCC will not be concluding Chief Executive Report, prior to ABP making determination.

6.3. Screening for Appropriate Assessment

- 6.3.1. The AA screening report submitted provides a description of the proposed development, its receiving environment and identifies European Sites within a zone of influence. The AA screening report concluded that the project is not likely to have significant effects on any European site, in view of best scientific knowledge and the Conservation Objectives of the sites concerned.
- 6.3.2. I note that the development is subject of a separate request for AA Screening under Art.250 (ABP. Ref. 318303-23).

7.0 Assessment

7.1. Introduction

- 7.1.1. The proposed development proposes to widen the existing towpath by realigning the northern bank of the canal at the three locations, with the canal channel to be

dredged where the realignment is taking place. Ducting and associated chambers to ESB standard, and public lighting are also proposed. The extent of works are described in Section 3.0 of this report.

7.1.2. The following matters are considered relevant in the assessment of whether the submission of an EIAR is required:

- Assessment of project type/class of development under Schedule 5 of the Planning and Development Regulations (PDR) 2001, as amended, relevant to the proposed development, and under the Roads Act 1993 (as amended).
- Assessment of relevant thresholds under Part 2 of Schedule 5 of the PDR.
- Assessment of proposed development under the criteria set out Schedule 7 of the PDR.

7.1.3. An assessment of the proposal against the above criteria is carried out in the sections that follow.

7.2. Relevant Project Type / Class of Development

7.2.1. The Planning Authority in its EIA Screening Report outlines the project is informed by Schedule 5 in the P&D Regulations 2001 as amended, in relation to being a sub threshold development, while it is submitted the proposed development does not require a mandatory EIA under the Roads Act 1993.

7.2.2. I consider that the proposed development is listed as a type of infrastructure project under Part 2 of Schedule 5 of the P&D Regulations 2001 as amended, and also under the Roads Act 1993 (as amended). The site of the proposed development is located within an urban area, on zoned lands, governed by Dublin City Development Plan 2022-2028. While the site area is not outlined, the site (greenway and canal) including for a total distance of c.1.03km is estimated to be c. 1.3 – 1.4 ha in area.

7.2.3. I consider that the classes of development which would be potentially applicable to the proposed development are the following as outlined in Part 2 of Schedule 5 of the P&DR 2001, as amended:

Class.10 (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.

Class 15. 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.

7.2.4. **Section 68(1) of the Roads Act** references a cycleway and states that a 'cycleway' means "a public road or proposed public road reserved for the exclusive use of pedal cyclists or pedal cyclists and pedestrians". I consider that the proposed greenway would constitute a 'cycleway', as defined in the Roads Act. The Roads Act outlines '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". It is considered that part of the proposed greenway includes a 'public road', as defined in the Roads Act.

7.2.5. Section 50(1)(e) of the Roads Act requires that, in deciding whether a proposed road development would or would not be likely to have significant effects on the environment, the Board shall take into account the criteria specified in Annex III of the EIA Directive. EIA Screening is therefore required.

7.3. **Assessment of relevant thresholds under Part 2 of Schedule 5 of the PDR.**

7.3.1. The threshold cited under Class 10(b)(iv) in the Regulations is 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'. The proposed development would be accommodated on an estimated site of c.1.3 - 1.4 hectares. Therefore, while the proposed development is of a Class listed in Part 2, it is sub-threshold for mandatory EIA.

7.3.2. The referrer outlines the project comes within the categories of project for which EIA Screening is required under Construction of Roads (Projects not included in Annex I) (Para 10(e) of Annex II of the EIA Directive). As outlined in 7.2.5, it is considered that under Section 50 of the Roads Act, an EIA Screening is required.

7.3.3. The referrer outlines the project comes within category of project for which EIA Screening is required in Class 10. (f) (i) Part 2 Schedule 5. I note the class and

threshold cited under Class 10. (f) (i) is 'Inland waterway construction not included in Part 1 of this Schedule which would extend over a length exceeding 2 kilometres'. Part 1 Class 8 (a) relates to 'Inland waterways and ports for inland waterway traffic which permit the passage of vessels of over 1,350 tonnes'. While the proposed development would involve the realignment of the northern bank of the canal for a distance of 1.03km and construction works to and within the canal, I consider that the proposed development does not fall into the category of a project involving inland waterway construction for inland waterway traffic. Therefore, I consider the proposed development would not fall within this Class listed in Part 2.

- 7.3.4. As the proposed development is considered to be a public cycleway, public road, it is considered that Class 10 (dd) of the P&DR 2001 as amended (All private roads which would exceed 2000 metres in length) is not applicable
- 7.3.5. An assessment as to whether the proposed development should be subject to EIA having regard to the criteria set out Schedule 7 of the Planning and Development Regulations 2001 (as amended) is set out below.

7.4. Assessment of the development under the criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended)

- 7.4.1. Schedule 7 of the Planning and Development Regulations 2001 (as amended) lists the criteria for determining whether a development would or would not be likely to have significant effects on the environment under the following headings:
- Characteristics of proposed development.
 - Location of proposed development.
 - Types and characteristics of potential impacts.
- 7.4.2. Each of these criteria is assessed below.

7.5. Characteristics of the Proposed Development

Size and design of proposed development

- 7.5.1. The proposed development is seeking to provide a premium quality cycle and pedestrian facility with environmental enhancements to encourage and promote

cycling and walking. The proposed development is described at Section 3.0 of this report. While the stated site area is not set out it would involve an estimated area of c.1.3 – 1.4 ha. The proposal includes the following main elements: to widen the existing towpath by realigning the northern bank of the canal by up to 1.4m - 2.15m at three locations for a distance of 1.03km (EIA Screening Report states widening at Coke Oven Cottages will be up to 2.6m); the path will be 4.8m wide at locations, with a 5.5m wide shared route/service vehicle parking area at one location, verges will be located to landside and canal side; paths will include asphalt layer laid to finish; ducting and associated chambers to ESB standard; public lighting; canal dredging. The reconstruction of the northern canal embankment to facilitate the towpath widening will occur prior to towpath construction.

- 7.5.2. It is noted that the full extent of the design of the proposed development has not been set out. The EIA screening report outlines that the final public lighting regime will be informed by trial results and bat surveys to be undertaken in Summer 2023.
- 7.5.3. The scale and size of the development is significantly below the threshold for mandatory EIA as set out in the Roads Act and significantly below the threshold set out in Part 2 of Schedule 5 of the PDR for Class 10(b)(iv). Article 8 of the Roads Regulations states that: “The prescribed types of proposed road development for the purpose of subsection (1)(a)(iii) of section 50 of the Act shall be –
- a) the construction of a new road of four or more lanes, or the realignment or widening of an existing road so as to provide four or more lanes, where such new, realigned or widened road would be eight kilometres or more in length in a rural area, or 500m or more in length in an urban area;

Class.10 (b) (iv) Part 2 of Schedule 5 of the P&DR 2001 relates to 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.

Potential for Cumulative Impacts with Other Projects

- 7.5.4. The proposed development site comprises three locations along the northern bank of the Royal Canal. The site is surrounded by developed land, including industrial, residential, commercial, transportation infrastructure and a cemetery. The site is already used by pedestrians, cyclists and vehicles.

- 7.5.5. The nature and scale of the proposed development will involve the widening of the existing towpath by up to 1.4 - 2.15m at three locations totalling a distance of 1.03km and will include for canal dredging. The proposed scheme is an amending Part 8 application to approved Part 8 Royal Canal Greenway Phase 4 (which is 4.2km in length). It is noted the approved Part 8 includes public lighting within 3 phases. Having regard to the nature and scale of the development, the site context, and the existing approved Part 8 scheme, it is considered there is a potential for cumulative impacts to arise. This relates to impacts on species and biodiversity. The proposed development and its lighting scheme together with the approved lighting scheme has a potential for bat species to be negatively impacted by way of habitat fragmentation and barrier effects.

Nature of any demolition works

- 7.5.6. Demolition works are not identified. The proposed development will include for the excavation of existing towpath pavement and base layers and adjacent topsoil areas.

Use of Natural Resources, Production of Waste, Pollution and Nuisances

- 7.5.7. Potential for production for waste will arise in relation to the excavation of existing towpath pavement and base layers and adjacent topsoil areas, canal dredging. The EIA screening report outlines how small amounts of natural material, construction and general waste will be generated during construction works. To inform the project design sediment sampling was undertaken within the canal in 2020 for waste acceptance criteria, chemical heavy metals and pesticides. Contaminated sediment was indicated at locations along canal. The EIA screening report outlines the disposal avenue for contaminated material excavated will be determined in accordance with the actual level of contamination and Waste Acceptance Criteria following a comprehensive laboratory analysis of the material that will take place prior to construction. It is outlined all hazardous sediment waste and non-hazardous waste will be removed off-site to EPA licensed facilities and will accord with relevant environment guidance and an approved Construction Environmental Management Plan. I note the actual level of contamination is not outlined in the EIA Screening Report. Furthermore, the Royal Canal Level 6 Sediment Sampling Methodology and Results April/May/July 2013 (Waterways Ireland 2013) accompanying the applicants submission indicates the canal bed is contaminated with PAH (polyaromatic

hydrocarbons) and creosote contaminated material in the canal adjacent Coke Oven cottages. While surface water runoff and sources of contamination are sought to be dealt with by way of an Environmental Operating Plan and CEMP to be developed prior to construction, from the above it is considered there is uncertainty in relation to the existing physical characteristics of the contaminated sediment to be disturbed, dredged, excavated and removed from the canal. I consider that to enable an assessment of likelihood of the project to have significant effects on the environment, the physical characteristics of proposed development and the production of wastes are required to be identified, and these and any application of mitigation measures to address same where relevant, cannot be left over to an assessment at post consent stage. On the basis of the above, insufficient details have been provided on waste generation and the presence of contaminated sediment within the watercourse and I am not satisfied that significant adverse impacts on the environment and water by way of waste production or pollution would not arise.

- 7.5.8. While the proposed development has the potential to give rise to pollution and nuisance at the construction stage by way of noise, dust and traffic generation with the potential to impact on the amenities of neighbouring dwellings, I consider these potential impacts would be of short duration (total construction phase of 12 months) and these environmental emissions would be controlled by way of a standard Construction Environmental Management Plan (CEMP). I therefore consider these impacts would be unlikely to have a significant effect on the environment.
- 7.5.9. In relation to use of natural resources and biodiversity, the EclA outlines that a total of 2,500 sq m of canal habitat will be permanently lost to accommodate the widening of the existing towpath into the canal and there will be loss of riparian habitat. The EclA outlines there will be 512 m of scrub habitat loss and 140 m of hedgerows and treeline habitat loss. The EIA Screening report outlines there is a potential for loss of nesting bird habitat and habitat degradation. The EIA Screening Report outlines riparian buffers will be reinstated and vegetation is to be replaced with native species, and canal bank vegetation will regrow and recover over time.
- 7.5.10. The EclA outlines otter activity and that two active holts, three inactive holts, two crouches have been recorded within the study area. The EIA Screening Report outlines that the proposal has the potential to impact on otter through habitat loss, fragmentation and barrier effect, pollution of watercourses or disturbance to resting

or breeding places. A derogation licence will be required, with a derogation licence from the Department of Housing, Local Government and Heritage dated 12th September 2023 included in documentation submitted. A pre-construction otter survey will be carried out prior to works with excavations covered/escape ramps used during construction. I consider that the proposed development has the potential to affect otter by way of habitat loss, fragmentation, barrier effects, disturbance and water quality. I note certain information on otter have not been made public, which I consider relates to avoiding disturbance and persecution of otter. It is considered the above approach in relation to otter species and measures undertaken in the project and Part 8 process are standard and would enable impacts on the species to be mitigated.

- 7.5.11. Bats were recorded within the study area. During construction there is potential for bats to be impacted by habitat loss, disturbance, connectivity, with artificial lighting being used. The EIA screening report outlines lighting will be restricted to the minimum extent and timeframe necessary, and the effects will be slight and short term in nature, with no lighting directly onto the canal. The EclA outlines operational phase impacts include potential habitat fragmentation and barrier effects. The EIA Screening report outlines that for the operational stage, DCC is funding trials to survey the impact of public lighting on bat behaviour on the Royal Canal. Public lighting poles and ducting will be installed as part of the project, however the final lighting regime including timing, colour, lux levels will be informed by trial results and bat surveys to be undertaken in Summer 2023, and preferred lighting regime will be agreed with DCC public lighting in consultation with NPWS prior to commissioning. It is noted that mitigation measures for bats in relation to lighting at operational stage are not outlined and no derogation process being required is outlined for bats at either the construction or operational stages in the EIA Screening Report. The EclA outlines surveys have recorded 4 bat species in the study area and Daubentons Bat is light sensitive and more vulnerable to the introduction of artificial lighting than other species. As there is a presence of bats along the canal, that details of the final operational lighting regime has not been outlined, assessed or been subject to bat surveys, with the final scheme being left over to be agreed prior to commissioning, that there is a potential for bat species to be negatively impacted by way of habitat loss and disturbance at construction stage and habitat fragmentation and barrier

effects at operational stage, there is doubt in relation to the full significance of the effects of the proposed scheme on bats and the environment. Likely significant effects on bats which are an Annex IV species, subject to strict protection under the Habitats Directive (92/43/EEC) and as recognised in Article 3 (1) (b) of Directive 2011/92/EU and recital 11 to Directive 2014/52/EU, therefore cannot be excluded. Due to the absence of sufficient information to exclude doubt as to whether the proposed development will have significant effects on the environment, biodiversity and bat species, I consider that an EIA is justified.

- 7.5.12. Construction requirements will be imposed during works to prevent pollutants and sediment discharging to the watercourse, which could otherwise continue downstream into Dublin Bay and its associated Natura Sites and potentially negatively affect water quality. As dredging has the potential to disturb sediment and impact water quality, water levels are to be lowered by way of dewatering to prevent disturbed silt being transported downstream to European designated sites.
- 7.5.13. An AA screening report has been prepared, which concludes that the project is not likely to have significant effects on any European sites, in view of best scientific knowledge and the Conservation Objectives of the sites concerned. The Board will note that AA Screening has been undertaken for the project in ABP 318303-23 and it was concluded that there is a realistic potential for significant impacts to biodiversity.

Risk of Major Accidents and/or disasters including those caused by climate change.

- 7.5.14. Having regard to the nature, scale and characteristics of the proposed development, it is considered it would not lead to the risk of a major accident.

Risk to Human Health

- 7.5.15. The proposed development site is used for water based recreational purposes, cycling, walking. It is outlined in the EIA Screening Report that the canal site includes hazardous sediment waste and that during construction works there is potential for water quality impacts by way of increased levels of suspended soils. The report outlines how construction requirements will be implemented by the contractor to prevent pollutants and sediments discharging to the Royal Canal, which will require the water levels being lowered to prevent any disturbed silt being transported

downstream. Details outline how the contractor shall implement an Environmental Operating Plan consistent with TII construction guidelines. Having regard to the nature, scale and use of the proposed development, the risk to human health arising from water contamination, air pollution, etc is considered to be negligible and can be controlled through standard best practice construction methods.

- 7.5.16. Conclusion - I consider the proposed development would likely result in a significant use of natural resources by way of biodiversity. I am also not satisfied that significant adverse impacts would not arise in relation to the production of wastes, water pollution and resulting impacts on species, habitats, European Sites, and biodiversity.

7.6. Location of Proposed Development

Existing and approved land use

- 7.6.1. The proposed development comprises improvements to an existing public amenity in an urban location, with the principle of a greenway accepted and permitted at this location in Reg.Ref.2870/15. The proposed development as an amendment to the permitted scheme is considered to be compatible with the existing use of the land as a navigational channel, transport corridor and for amenity/recreational purposes, in accordance with the zoning objectives 'Waterways Protection' (Z11) and 'Amenity/Open Space Lands/Green Network' (Z9). The canal is designated as a conservation area in the CDP. I am satisfied that no significant adverse impacts in relation to land use are likely to arise.

Abundance, availability, quality and regenerative capacity of natural resources

- 7.6.2. The site entails the Royal Canal pNHA. Habitat will be lost/damaged within the footprint of the proposed scheme with a total of 2,500 sq m permanently lost to accommodate the widening of the existing towpath. The EclA outlines there will be 512 m of scrub habitat loss and 140 m of hedgerows and treeline habitat loss. The applicant contends that the EIA screening report does not contain an assessment of features, flora or fauna associated with the pNHA with no discussion of likely significant effects with the report outlining how mitigation measures will need to be developed. I note the information provided in the EIA Screening report which outlines

appropriate mitigation measures will be in place to ensure the proposed development does not impact on the relative abundance, quality and regenerative capacity of the pNHA. I also note the proposed development will not result in a direct loss of high value habitats, notwithstanding the habitats onsite being a resource for various species. However, it is considered that there is a potential for significant environmental effects on the pNHA habitat by way of pollution, owing to the uncertainty in relation to the physical characteristics of the contaminated sediment to be removed from the waterbody. This has the potential to impact on the regenerative capacity of the pNHA at this location. In addition, the fragmentation of hedgerow/treeline habitat and the introduction of artificial lighting into the area has the potential to impact on the regenerative capacity of biodiversity by way of bat species.

- 7.6.3. Natural resources in the area include the Royal Canal which flows into Dublin Bay, which includes designated SPAs and SACs. As highlighted, there is the potential for impacts to arise on water quality at the construction phase of the project, owing to the uncertainty in relation to the existing physical characteristics of the contaminated sediment to be removed from the canal. The Board will note that AA Screening has been undertaken for the project and it was concluded that there is a realistic potential for significant impacts on biodiversity.

Absorption capacity of the natural environment

- 7.6.4. The absorption capacity of the environment refers to the ability of the proposed development to be accommodated with particular reference to a number of natural environment types as identified in Annex III of the EIA Directive as follows:
- 7.6.5. **Wetland, riparian areas, river mouths** – the subject site includes the Royal Canal pNHA and its riparian areas, which will be affected by the project. The EIA screening report outlines how impacts to the canals water quality and riparian fringe will be mitigated through best practice and implementation of standard mitigation. The EIA Screening Report outlines how riparian buffers will be reinstated and vegetation is to be replaced with native species, and canal bank vegetation will regrow and recover over time. Having regard to the uncertainty in relation to the physical characteristics of the contaminated sediment onsite which is to be removed, I am not satisfied that

the natural environment/riparian areas would have a capacity to absorb the proposed scheme.

- 7.6.6. **Coastal zones and the marine environment** – The Royal Canal flows to the River Liffey which flows into Dublin Bay. No works are proposed to be undertaken within the coastal zone or marine environment.
- 7.6.7. **Mountain and forest areas** – the site is not located within or adjacent to a mountain/forest.
- 7.6.8. **Nature reserves and parks** – The nearest nature reserve is the North Bull Island nature reserve located c.5.9km from the site, c.8.3km via hydrological connection.
- 7.6.9. **Areas Classified or Protected under National Legislation; Natura 2000 areas designated by Member States pursuant to Directive 92/43/EEC and Directive 2009/147/EC** – the subject site entails a pNHA Royal Canal and lies upstream of a Nature Reserve. The site is located upstream of 5 European Sites in Dublin Bay which are within a distance of 8.4km of the site and include North Dublin Bay SAC (site code 000206), South Dublin Bay SAC (site code 000210), South Dublin Bay and River Tolka Estuary SPA (site code 004024), North Bull Island SPA (site code 004006), North-West Irish Sea cSPA (site code 004236).
- 7.6.10. The subject site does not include any part of the above SACs/SPAs. There is however the potential for impacts to arise on downstream conservation sites at construction stage due to a surface water pathway and the proximity of the European Sites to the site in terms of habitat degradation and impairment and impact on species, due to impacts on water quality by way of the release of pollutants/contaminants to waterbodies and the disturbance of contaminated sediment in canal.
- 7.6.11. The Board will note that a Screening for Appropriate Assessment report has been prepared by the local authority for the project. This proposed development is also the subject of an NIS Direction application, currently being considered by the Board – ABP-318303 refers. There is uncertainty in relation to the physical characteristics of the contaminated sediment to be removed from the site. Mitigation measures in terms of construction methodologies for the purposes of protecting biodiversity have also been identified in the EIA Screening Report and AA Screening Report. I note these mitigation measures (construction of watertight dams in canal to enable

dewatering process and lower water levels) are required for the protection of European sites. The Natura 2000 Sites conservation objectives seeks to maintain or restore the favourable conservation condition of the QI. On the basis of the above and details submitted I consider that the proposed development is likely to have a significant effect on European Sites in terms of its qualifying interests, which include habitats and species. I therefore consider that the natural environment does not have the capacity to absorb the proposed development without generating significant effects on **Natura 2000 areas**.

7.6.12. In addition, given the aforementioned issues, I am not satisfied that the pNHA would have the capacity to absorb the proposed scheme without generating significant effects on the pNHA.

7.6.13. **Areas in which there has already been a failure to meet the environmental quality standards, laid down in Union legislation and relevant to the project, or in which it is considered that there is such a failure** – The EIA screening report outlines sediment sampling was undertaken within the canal in 2020 for waste acceptance criteria, chemical heavy metals and pesticides. Contaminated sediment was indicated at locations along the canal. I note the actual level of contamination is not outlined in the EIA Screening Report. Furthermore, the Royal Canal Level 6 Sediment Sampling Methodology and Results April/May/July 2013 (Waterways Ireland 2013) accompanying the applicants submission indicates that the canal bed is contaminated with PAH (polyaromatic hydrocarbons) and creosote contaminated material in the canal. From the above it is considered there is uncertainty in relation to the existing physical characteristics of the contaminated sediment to be disturbed, dredged, excavated and removed from the canal.

7.6.14. The referrer has highlighted the existing WFD status of the waterbody as “good” with WFD Risk “under review”. The EIA screening report outlines the WFD waterbody status is currently under review and states no likely significant negative effects are predicted on water, with construction requirements being implemented and include for prevention control measures and de-watering canal proposals. I note the EPA website outlines that the WFD status of the canal waterbody is ‘Good’ and WFD risk is at ‘review’. Given the uncertainty in relation to the physical characteristics of the contaminated sediment to be disturbed, excavated and removed from the site, there is the potential for negative effects to arise on water quality within a waterbody of

‘good’ status. While the EIA Screening Report outlines an Environmental Operating Plan is to be agreed between DCC, IFI and WI, it is noted that no detailed analysis of existing water quality of the waterbody or hydromorphology assessment of the scheme is outlined. Having regard to the above, I am not satisfied that the existing water environment with a WFD status of ‘Good’ has a capacity to absorb unidentified contamination from the proposed development without generating significant effects on the waterbody.

- 7.6.15. **Densely Populated Areas** – The site is located within an urban area within Dublin City with a mix of residential, commercial, industrial and transportation developments located along its route. While the construction stage would result in short term impacts by way of noise, traffic and inconvenience to existing users of the facility, the proposal would benefit the area and has the capacity to absorb the proposed development.

Landscapes and Sites of Historical, Cultural or Archaeological Significance –

- 7.6.16. The site is located within the Royal Canal Conservation Area as outlined in the CDP 2022-2028. The scheme will not impact directly on any recorded protected structures. There are six recorded archaeological monuments within 500m of the proposed greenway and the scheme will not impact on any of these monuments and none are visible from the proposed route. The proposed development will impact directly on the Royal Canal towpath (which is on the Dublin City Industrial Heritage Record) and within the canal channel where realignment is proposed. As the late eighteenth century fabric of the canal towpath has been upgraded at various times in the past and now comprises a tarmac roadway the EIA Screening Report outlines the impact is slight long-term effect. Mitigation measures are set out for the installation of the ESB underground cable joint-bay chambers. There are no protected views along the route. With regard to the above, the likely impact of the development on the landscape, archaeology and heritage is therefore considered to be low.
- 7.6.17. **Conclusion** – On the basis of the information submitted and my site inspection, I consider that the proposed development has the potential to impact on the regenerative capacity of biodiversity, and that the natural environment does not have

the capacity to absorb the proposed development without generating significant effects on the environment, and does give rise to the requirement for EIA.

7.7. Characteristics of the Potential Impact

Nature, Magnitude and Extent of the Impact

- 7.7.1. The extent of the impact in terms of **population and human health** will be limited to the geographical area of scheme running for a distance of over c.1km and the population within the immediate vicinity of this area. There will be limited impacts on local residents due to noise, dust, traffic. This will be of short duration and can be mitigated by good construction and best practice methodologies. The proposed development may accommodate increased users during the operational phase. Given the nature of the development and availability of public transport in the area, significant impacts on the local population are unlikely. There is no potential for major disasters / accidents to result from the development.
- 7.7.2. In relation to **cultural heritage**, with the canal towpath being upgraded at various times in the past and now comprises a tarmac roadway, the impact on the Conservation Area is considered to be low. The scheme will not impact directly on any recorded protected structures. It will not impact on any archaeological monuments with none visible from the proposed route. No potential significant impacts on cultural heritage are therefore anticipated.
- 7.7.3. In relation to **landscape**, there are no protected views along the route. While the removal of treelines and hedgerow will have a visual impact, planting is proposed and impacts are not considered to be significant. No potential significant impacts on landscape are therefore anticipated.
- 7.7.4. In terms of **biodiversity**, there will be loss and disruption of habitat arising from the proposed development and there is the potential for disturbance/displacement of species using the site. While it is considered that the measures taken in relation to otter, including for derogation are standard and acceptable, there is however doubt in relation to the full significance of the effects of the scheme on bats which are present along the canal. The proposed development has the potential to negatively impact bats by way of habitat loss, disturbance, habitat fragmentation and barrier

effects. Likely significant effects on bats which are a protected Annex IV species cannot therefore be excluded. I am therefore not satisfied that there is sufficient information to enable a conclusion that significant adverse effects on biodiversity and the environment arising from the proposed development are unlikely.

- 7.7.5. The proposal will have a potential to impact on 5 designated European Sites in Dublin Bay. Significant effects on the environment and the designated European Sites arising from the proposed development therefore cannot be excluded.
- 7.7.6. In terms of **water, land and soil**, it is considered there is uncertainty in relation to the existing physical characteristics of the contaminated sediment to be disturbed, dredged, excavated and removed from the canal. I consider to enable an assessment of likelihood of the project to have significant effects on the environment, the physical characteristics of proposed development are required to be identified. On the basis of the above, insufficient details have been provided on waste generation and the presence of contaminated sediment within a watercourse and I am not satisfied that significant adverse impacts in relation water pollution and the environment would not arise.
- 7.7.7. It is outlined instream works will take place outside of the boating navigation window (mid-March to October). With regard to the nature and scale of the proposed development and the existing landuse, it is considered that the proposed development would have a significant positive impact on **material assets**, by improving connectivity for users along the Royal Canal.
- 7.7.8. Having regard to the nature and scale of the proposed development and works, construction duration and the operational end use, I am satisfied that the proposed development would not give rise to any significant negative impacts in terms of **air and climate**.
- 7.7.9. There is a potential for interactions to arise between the various environmental factors, including water and biodiversity, water and soil and land. As highlighted significant interactions cannot be ruled out such that they would not give rise to significant additional environment impacts. I note that measures proposed in the EIA Screening Report are related to the protection of European Sites (lowering of water levels by construction of dams).

Probability, Intensity and Complexity of Impacts

- 7.7.10. The proposed development will result in habitat loss and disruption and has the potential to result in disturbance to species. There is the potential for water pollution to arise within a waterbody and likely significant effects on the environment arising from the proposed development cannot be excluded.
- 7.7.11. Having regard to the scale and nature of the development where there is a presence of protected species, a presence of contaminated sediment within the canal waterbody of 'good' status which is to be excavated and where the actual level of contamination has not been identified, and where there is a presence of a pathway to European Sites, it is considered that the nature of the environmental impacts is complex and intense.

Expected Onset, Duration, Frequency and Reversibility of the Impact

- 7.7.12. The construction phase will be short term and significant impacts are considered likely to arise as a result of the proposed works. Having regard to the nature of the proposed development, it is expected that impacts arising from operational phase would be on-going and long term. These would be reversible if elements of the constructed scheme were removed.

Transboundary Nature of Impact

- 7.7.13. There will be no transboundary impacts associated with the proposed development.

Cumulation of Impacts

- 7.7.14. The site is zoned Waterways Protection with lands adjacent to the canal zoned Amenity/Open Space Lands/Green Network. The Development plan has been subject to Strategic Environmental Assessment. The proposed scheme is an amending Part 8 application to approved Part 8 Royal Canal Greenway Phase 4 (which is 4.2km in length). Having regard to the nature and scale of the development, the site context, and the existing approved Part 8 which includes public lighting in 3 phases, I consider the potential impacts associated with the proposed development in cumulation with the approved project would be sufficiently significant as to require EIA. This relates to potential impacts on species and biodiversity.

Possibility of Effectively Reducing the Impact

- 7.7.15. An identification of the baseline environment and a screening assessment of likely significant effects of all elements of the proposed scheme, which are not included in the application documentation, would be required to evaluate the possibility of effectively reducing the impact.
- 7.7.16. **Conclusion** – I consider that the proposed development would be likely to have significant effects on the environment and an environmental impact assessment is required in respect of the proposed development.

7.8. Procedural Matters

- 7.8.1. The applicant has requested an opportunity to comment on the Council submission. Having regard to the applicant's submission and the response from DCC, I am satisfied that there is sufficient information on the file and from other sources to enable for a screening determination to be carried out under Article 120 (3) (b) of the P&DR 2001, as amended in this case.
- 7.8.2. The applicants state that DCC has not published its screening determination. DCC have outlined how a screening determination was made and included in the Pre-Part 8 Planners Report. As the Board is the competent authority in relation to a screening determination under Article 120 (3) (b) of the P&DR 2001, as amended, it is considered that the information on file and from other sources has enabled a comprehensive assessment of the scheme and the Board can make its own determination in this instance.

8.0 Recommendation

- 8.1. Having regard to the above assessment, I consider that the proposed development, comprising an amending Part 8 application to approved Part 8 (Ref 2870/15) Royal Canal Greenway Phase 4 between Cross Guns Bridge, Phibsborough, Dublin 7 and Ashtown, Dublin 15, would be likely to have significant effects on the environment. I therefore recommend that Dublin City Council be advised that the preparation and submission of an environmental impact assessment report is required in respect of the proposed development.

9.0 Reasons and Considerations

Having regard to the following:

- (a) Directive 2011/92/EU and Directive 2014/52/EU,
- (b) Directive 92/43/EEC (Habitats Directive) and Directive 79/409/EEC as amended by 2009/147/EC (Birds Directives),
- (c) The criteria set out in Schedule 7 and the information provided in Schedule 7A of the Planning and Development Regulations 2001, as amended,
- (d) The development does fall under Schedule 5, Part 2, Class 15 of the Planning and Development Regulations 2001, as amended, having regard to the criteria set out in Schedule 7,
- (e) The nature and scale of the proposed development which is under the threshold in respect of Class 10b(iv) (Infrastructure – Urban Development) of the Planning and Development Regulations 2001, as amended,
- (f) The insufficiency of information in relation to the public lighting design of the proposed development,
- (g) The uncertainty regarding contaminated sediment proposed to be removed as part of the works and uncertainty regarding associated characteristics of the proposed development,
- (h) The location of the proposed development and the separation distances from the Natura 2000 Sites,
- (i) The hydrological connections between the site and the European sites,
- (j) The potential for significant effects on the environment arising from the proposed development, including likely significant effects on biodiversity and bat species which are an Annex IV species, subject to strict protection under the Habitats Directive (92/43/EEC), and as

recognised in Article 3 (1) (b) of Directive 2011/92/EU and recital 11 to Directive 2014/52/EU,

- (k) The potential for significant effects on the environment arising from the proposed development, including likely significant effects on the Royal Canal waterbody, which is afforded 'good' status under the Water Framework Directive,
- (l) The potential for significant effects on the environment arising from the proposed development, including likely significant effects on Natura 2000 areas North Dublin Bay SAC (site code 000206), South Dublin Bay SAC (site code 000210), South Dublin Bay and River Tolka Estuary SPA (site code 004024), North Bull Island SPA (site code 004006), North-West Irish Sea cSPA (site code 004236), designated by Member States pursuant to Directive 92/43/EEC and Directive 2009/147/EC,
- (m) The potential for significant effects on the environment arising from the proposed development, including likely significant effects on the pNHA Royal Canal (Site code 002103)
- (n) The Dublin City Development Plan 2022-2028,
- (o) The submission made by the applicant requesting a determination and by the local authority, and
- (p) The report and recommendation of the Inspector,

It is considered that the proposed development would be likely to have significant effects on the environment and, accordingly, that the preparation and submission of an environmental impact assessment report is, therefore, required.

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.

David Ryan

Planning Inspector

26th February 2024