



An  
Bord  
Pleanála

## Inspector's Report PL24.CH3247/JP0038

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### Development

Pedestrian and Cycleway

### Location

Ringasilloge and Borheen,  
Dungarvan, Co. Waterford

### Local Authority

Waterford City and County Council

### Type of Application

Application for approval made under  
Section 177(AE) of the Planning and  
Development Act, 2000 (local  
authority development requiring  
appropriate assessment)

And

Confirmation of a Compulsory  
Purchase Order under Section 76 of  
the Housing Act

### Prescribed Bodies

Department of Culture, Heritage and  
the Gaeltacht

<b>Objector</b>	Donal Mullins
<b>Date of Site Inspection</b>	10 <sup>th</sup> December 2015, 6 <sup>th</sup> January 2016, 27 <sup>th</sup> June 2016, 15 <sup>th</sup> January 2018
<b>Dates of Oral Hearings</b>	7 <sup>th</sup> January 2016, 28 <sup>th</sup> June 2016, 16 <sup>th</sup> January 2018
<b>Inspector</b>	Emer Doyle

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## 1.0 Introduction

- 1.1. Waterford City and County Council is seeking approval from An Bord Pleanála to undertake a pedestrian and cycleway adjacent to and within part of Dungarvan Harbour SPA which is a designated European site. There are several other designated European sites (SPAs and SACs) in proximity to the proposed works (see further analysis below). A Natura Impact Statement (NIS) and application under Section 177AE was lodged by the Local Authority on the basis of the proposed development's likely significant effect on a European site.
- 1.2. Concurrently, Waterford City and County Council are seeking approval for the compulsory purchase of lands to facilitate the pedestrian and cycleway.
- 1.3. Section 177AE of the Planning and Development Act 2000 (as amended) requires that where an appropriate assessment is required in respect of development by a Local Authority the authority shall prepare an NIS and the development shall not be carried out unless the Board has approved the development with or without modifications. Furthermore, Section 177V of the Planning and Development Act 2000 (as amended) requires that the appropriate assessment shall include a determination by the Board as to whether or not the proposed development would adversely affect the integrity of a European site and the appropriate assessment shall be carried out by the Board before consent is given for the proposed development.
- 1.4. Three oral hearings were conducted by An Bord Pleanála. The first oral hearing was held on 7<sup>th</sup> of January 2016 in relation to an objection received to the compulsory purchase order initially served by the Local Authority. During the course of this hearing, the Senior Planner for the Local Authority submitted a document entitled 'Natural Impact Statement - Ringasillogue Smarter Travel'. This document contained a statement that 'Screening was carried out to determine whether any Natura 2000 site is likely to be impacted by the Dungarvan Smarter Travel Programme in Ringnasilloge. Screening indicated that there were potential impacts on Dungarvan Harbour SPA in which the smarter travel works are located requiring a Stage Two Appropriate Assessment. The Local Authority were subsequently reminded of the provisions of Section 177AE of the Planning and Development Act 2000 and a Section 177AE application was submitted to the Board. A second oral hearing was

held for both the CPO case and the Appropriate Assessment case on the 7<sup>th</sup> of June 2016. A submission made during the course of this hearing by the Department of Culture, Heritage and the Gaeltacht expressed concern in relation to the impacts on Dungarvan Harbour SPA and the absence of any survey work or in combination assessment. The Local Authority was given an opportunity to address both these issues and submitted a response to the Board. This response contained significant information which was the subject of new notices dated the 16<sup>th</sup> of August 2017 and a third oral hearing was held on the 16<sup>th</sup> of January 2018.

## 2.0 Proposed Development

- 2.1. In 2012, Dungarvan Town Council (now amalgamated under Waterford City and County Council) received funding under the Smarter Travel Award. As part of the programme, the upgrading of a footpath and the incorporation of a cyclepath are proposed in Ringnasilloge connecting Borreennatra with the Youghal Road. The location is in an urban setting within the town of Dungarvan between the N25-Youghal Road and the sports centre.
- 2.2. There is an existing footpath that runs in this area and the proposed development will widen the pathway to 2.5m including a new cyclepath that will run adjacent to the footpath on its southern margin.
- 2.3. The total length of the pedestrian and cyclepath proposed is c.860 m. A section of c. 188m is unsurfaced at present. Part of the unsurfaced section is located in private property in the ownership of Mr. Donal Mullins and the Local Authority is proposing to compulsory purchase these lands.
- 2.4. The works include the following:
  - The importation of c. 400m<sup>3</sup> of fill material to create an embankment
  - Drainage works to an area proposed on drawing 102 to alleviate localised ponding issues which have arisen and 2 No. culverts under the proposed embankment on CPO lands as indicated on drawing No. 103
  - Installation of public lighting and ducting for the whole of the walkway for proposed embankment alignment.

- Provision of timber post and rail fencing either side of CPO lands
- Provision of ramp for access purposes within CPO lands
- Bird Information and Dog Control Signs
- Provision of 2 No. anti-vandal benches as shown on drawings.
- Provision of dog fouling bins at commencement of walkway at Youghal Road and at opposite side of car park at Dungarvan Pitch and Putt course.

### **3.0 The CPO**

#### **3.1. Details of CPO documentation:**

#### **3.2. CPO documentation dated 27<sup>th</sup> October 2015**

- Newspaper Notice
- CPO Order
- CPO Map
- Copy of Notice Served on Landowner
- Copy of Registered Post
- Copy of Chief Executive Order for the making of the Order
- Copy of Certificate of Director of Services, Economic Development and Planning that the acquisition of the lands the subject of the Order is in conformity with the planning and development objectives for the area under the Dungarvan Town Development Plan 2012-2018 and in accordance with the Local Government (Planning and Development) Acts, 2000-2006.
- Copy of Certificate of Acting Director of Roads, Human Resources and Emergency Services that the lands the subject of the Order are suitable for the purpose for which they are being acquired and that their acquisition is necessary for that purpose.
- Cover letter by Local Authority.

## 4.0 History of Processing of Cases

- 4.1. Following the first oral hearing dated the 7<sup>th</sup> of January 2016 and the submission of an NIS at the hearing by the Local Authority and reminder from the Board regarding Section 177AE of the Planning and Development Act, the Local Authority submitted a copy of the NIS originally submitted at the oral hearing 'to inform the adjudication of the CPO process'. A letter from the Local Authority dated the 3<sup>rd</sup> of February 2016 stated that 'in the event that the outcome of the CPO process is successful...a Part 8 application and accompanying Natural Impact Statement shall be submitted to An Bord Pleanála in accordance with Section 177AE of the Planning and Development Act 2000, as amended.
- 4.2. A letter from the Board dated the 11<sup>th</sup> of February 2016 advised that the provisions of Part 8 do not apply and an application for approval under Section 177AE of the Act must be made to the Board. The Local Authority were advised that the Compulsory Purchase Order case and the application for approval under Section 177AE could be considered in parallel by the Board.
- 4.3. An application for approval under Section 177AE was subsequently submitted to the Board dated 10<sup>th</sup> March 2016. Accompanying documents included the following:
- Newspaper Notice
  - Natura Impact Statement dated February 2016
  - Drawings 101-107
- 4.4. Following a request from the Board dated 24<sup>th</sup> March 2016, revised documentation was submitted dated the 29<sup>th</sup> of April 2016 including the following:
- List of and Copies of Notices sent to prescribed bodies
  - Natura Impact Statement dated February 2016
  - More detailed drawings 101-108. These drawings included details of drainage, fencing, benches, lighting etc.
  - Cover letter including details relating to flooding, construction details, and mitigation measures proposed.

- 4.5. Following the second oral hearing dated 28<sup>th</sup> of June 2016, the Board issued an F.I. Request dated 7<sup>th</sup> of July 2016. The letter from the Board stated that ‘The further information referred to above should be received by the Board **no later than 5.30pm on the 31<sup>st</sup> of May, 2017.**’
- 4.6. On the 8<sup>th</sup> of June 2017, as no response had been submitted, the Board sent an email to the Local Authority ‘wondering what the up to date position is.’
- 4.7. On the same date, the Local Authority sent an email which stated that they were waiting on a flood assessment and asked for a revised date of completion.
- 4.8. The Board responded that the Local Authority would have to request an extension of time and state the reason why this was necessary. It advised that ‘any such granting of an extension of time is, ultimately, at the discretion of the Board.’
- 4.9. A letter dated the 28<sup>th</sup> of June 2017 from the Local Authority stated that ‘we are confident we will have the full response of all matters raised by ABP by end of July 2017 and we formally request additional time to submit this response.’
- 4.10. A response was submitted by email dated 31<sup>st</sup> of July 2017 and by post dated the 2<sup>nd</sup> of August 2017 which included:
- Cover letter
  - Bird Survey
  - Flood Risk Assessment
  - Natura Impact Statement dated July 2017
- 4.11. A third oral hearing was held on the 16<sup>th</sup> January 2018.

## 5.0 **Site and Location**

- 5.1. The proposed walking/ cycling route follows an existing pathway from the Youghal Road to the Sports Centre in Dungarvan, Co. Waterford. The route was described at the oral hearing as an ‘unofficial pathway’. There are ‘private property’ and ‘no trespass’ signs on the land in the ownership of Mr. Mullins. The route runs to the south of a number of private houses and housing estates and Dungarvan Pitch and Putt Course. Lands in the ownership of Mr. Mullins forms part of the CPO which is



running concurrently with the appropriate assessment case. Mr. Mullins lands comprise of a single storey house with a long back garden which slopes downwards towards the coast. There is a grass berm located close to the boundary of the CPO lands. It is intended that this garden will be split with a section 12.5m in width required by the Local Authority for the construction of the pedestrian and cycleway.

5.2. A section of the path of c. 188m is unsurfaced. There are surfaced sections either side of this which vary in width, materials and condition.

5.3. The site adjoins and runs through Dungarvan Harbour SPA (Site Code 4032). Dungarvan Harbour is designated as a Special Protection area under the EU Birds Directive because it regularly supports over 20,000 waterbirds during the non-breeding season making it a site of international importance. In addition it supports internationally important populations of two waterbird species (Light-bellied Brent Goose and Black-tailed Godwit and a further 13 species in numbers of all-Ireland importance. There are two roosting areas adjacent to the site.

5.4. There are no protected structures or recorded monuments within the site.

## 6.0 **Planning History**

6.1. None relevant.

## 7.0 **Legislative and Policy Context**

### 7.1. **CH3247**

7.1.1. Under Section 213(2)(a) of the PDA 2000 a Local Authority may for the purpose of carrying out its functions, including giving effect to its development plan, acquire land by agreement or compulsorily.

7.1.2. The Housing Act 1966 provides for the Board to facilitate any objector to a CPO to make a statement of objection at an oral hearing.

7.1.3. In making its decision the Board is required to consider the report and subsequent recommendation of the inspector conducting an oral hearing in respect of relevant lands subject of a Compulsory Purchase Order.

## 7.2. **JP0038**

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

7.2.2. **European Communities (Birds and Natural Habitats) Regulations 2011:** These Regulations consolidate the European Communities (Natural Habitats) Regulations 1997 to 2005 and the European Communities (Birds and Natural Habitats) (Control of Recreational Activities) Regulations 2010, as well as addressing transposition failures identified in CJEU judgements. The Regulations in particular require in Reg 42(21) that where an appropriate assessment has already been carried out by a 'first' public authority for the same project (under a separate code of legislation) then a 'second' public authority considering that project for appropriate assessment under its own code of legislation is required to take account of the appropriate assessment of the first authority.

7.3. **National nature conservation designations:** The Department of Culture, Heritage and the Gaeltacht and the National Parks and Wildlife Service are responsible for the designation of conservation sites throughout the country. The three main types of designation are Natural Heritage Areas (NHAs), Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) and the latter two form part of the European Natura 2000 Network.

7.4. European sites located in proximity to the subject site include:

- Dungarvan Harbour SPA (4032)
- Glendine Wood SAC (2324)
- Mid Waterford Coast SPA (4193)
- Helvick Head to Ballyquin SPA (0665)

7.5. **Planning and Development Acts 2000 (as amended):** Part XAB of the Planning and Development Acts 2000-2017 sets out the requirements for the appropriate

assessment of developments which could have an effect on a European site or its conservation objectives.

- 177(AE) sets out the requirements for the appropriate assessment of developments carried out by or on behalf of Local Authorities.
- Section 177(AE) (1) requires a Local Authority to prepare, or cause to be prepared, a Natura Impact Statement in respect of the proposed development.
- Section 177(AE) (2) states that a proposed development in respect of which an appropriate assessment is required shall not be carried out unless the Board has approved it with or without modifications.
- Section 177(AE) (3) states that where a Natura Impact Assessment has been prepared pursuant to subsection (1), the Local Authority shall apply to the Board for approval and the provisions of Part XAB shall apply to the carrying out of the appropriate assessment.
- Section 177(V) (3) states that a competent authority shall give consent for a proposed development only after having determined that the proposed development shall not adversely affect the integrity of a European site.
- Section 177AE (6) (a) states that before making a decision in respect of a proposed development the Board shall consider the NIS, any submissions or observations received and any other information relating to:

The likely effects on the environment.

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

The likely significant effects on a European site.

## 7.6. Policy Context

## 7.7. Dungarvan Town Development Plan 2012-2018

### 7.7.1. The zoning map indicates the proposed route.

7.7.2. Under Section 6.10 and 6.11, support for cycling and pedestrian transport modes is outlined further and support for the Smarter Travel concept and in particular 'Go Dungarvan' which sets out the blueprint for the delivery of the integrated and sustainable delivery of a smarter travel future for Dungarvan Town.

7.7.3. The following policies and objectives are relevant:

- Objective CP4: To facilitate appropriate access to the coast and the sustainable development of coastal walkways including recognition of public rights of way.
- Policy ECD19: It is the policy of the Council to continue to promote and facilitate, where possible, the provision of high quality walking and cycling routes in the Town. Routes near the Special Protection Area will be subject to Habitats Directive Assessment.
- Policy ECD 20: It is the policy of the Council to promote Waterford as the 'Walking Capital of Ireland'.
- Objective ECD5: 'To facilitate, as opportunities arise, the sustainable development/ enhancement of tourist trails and designated walking and cycling trails that do not cause landscape or environmental degradation throughout the town and connecting to adjoining areas. The Council shall also encourage the development of off-road cycling at appropriate locations. Trails near Special Protection Areas will be subject to Habitats Directive assessment'.
- Policy INF9: To implement the smarter travel policy framework as produced by the Department of Transport in conjunction with the GO Dungarvan Smarter Travel blueprint for the Town and to encourage the sustainable creation of cycle and pedestrian friendly communities through the provision of cycle paths and other initiatives to curtail the dependency on private motor vehicles whilst seeking to minimise the depletion of hedgerow resource that could potentially arise from cycle path provision.

## 7.8. **Smarter Travel: A Sustainable Transport Future**

7.8.1. The Irish Government policy entitled 'Smarter Travel: A Sustainable Transport Future' which runs from 2009 to 2020, identifies certain key goals and objectives to be met in order to introduce a national sustainable transport network.

## 7.9. **Go Dungarvan**

7.9.1. The National Smarter Travel initiative was introduced through Smarter Travel: A Sustainable Transport Future. The Dungarvan Blueprint for smarter travel under the logo 'GoDungarvan' was then developed. This project was included by the Department of Transport, Tourism and Sport under the Smarter Travel Award for Dungarvan and evidence was given at the first oral hearing in a submission from Mr. J. Mansfield, Local Authority Engineer, that a grant was awarded for this area. Last page of submission identifies this specific proposal as ST068 SR6 Pitch and Putt Track Area – Approved grant of €98,805.

## 7.10. **Get Ireland Active (The National Physical Activity Plan for Ireland)**

7.11. The Government launched Ireland's first ever National Physical Activity Plan in 2016. The key target is to increase the number of people taking regular exercise by 1% a year over 10 years. The Plan sets out various actions to achieve this target including the following:

- Develop and promote walking and cycling in each Local Authority Area.
- Ensure that the planning, development and design of towns and cities promotes cycling and walking with the aim of developing a network of cyclepaths and footpaths.
- Prioritise the planning and development of walking and cycling and general recreational/ physical activity infrastructure.

## 7.12. **Get Ireland Walking**

The GIW initiative was established in 2013 and its vision is 'to empower and support people to choose to walk more often for recreation, transport and health as part of their daily life.' The initiative through a number of strategies under various action plans aims to get more people walking throughout the country. Actions include the creation of opportunities for improved access to lands for recreational walking and to develop and market recreational walking infrastructure.

### **7.13. The National Cycle Policy Framework, 2009-2020**

7.13.1. The mission is to create a strong cycling culture in Ireland while also encouraging recreational cycling. The vision is that all cities, towns and villages in rural areas will be bicycle friendly. The framework identifies the three main benefits of increased participation in cycling, an improved quality of life, a stronger economy and an enhanced environment. The importance of the National Cycle Network in attracting overseas tourists is also outlined. Overall objectives include:

Objective 3: Provide designated rural cycle networks especially for visitors and recreational cycling.

Objective 5: Ensure that all the surfaces used by cyclists are maintained to a high standard and are well lit.

Objective 6: Ensure that all cycling networks- both urban and rural- are signposted to a high standard.

### **7.14. Rural Cycle Scheme Design (2014)**

The purpose of this Transport Infrastructure Ireland publication is to outline design standards and factors that need to be considered by Design Organisations when providing cycling facilities in rural areas.

Table 4.1 of this document was referred to in all three of the oral hearings. This table outlines a range of mandatory widths for cycle facilities. The desirable minimum width of low volume traffic on shared use one way cycle facility with pedestrians is 3m. Standards are also set out for one step below the desirable minimum and two steps below the desirable minimum.

Section 4.11 states that as part of the design process it is important to define whether the facility will attract low or high volumes of pedestrian /cyclist traffic. Low volume facilities are those considered to attract less than 1500 users a day and high volume facilities are those expected to attract greater than 1500 users a day.

## 8.0 Details of CPO

### 8.1. General

- 8.1.1. Waterford City and County Council is seeking to acquire lands compulsorily for the purposes of carrying out a walkway/cyclepath in Dungarvan, Co. Waterford.
- 8.1.2. The lands to be acquired consists of a plot of land with a stated area of 0.058 hectares which consists of part of the rear garden of a private dwelling house in the ownership of Mr. Donal Mullins.

### 8.2. CPO Objection

- 8.2.1. An objection to the CPO was submitted by Mr. Donal Mullins which can be summarised as follows:
  - The dwelling is unique in the area as it enjoys access to the foreshore.
  - The order has erred in the description of the site as 'open space'.
  - The order includes a plot of land which has never been the subject of previous discussions and does not line up with the existing stone pathways either side.

## 9.0 The Natura Impact Statement

- 9.1. Three Natura Impact Statements were submitted during the course of the processing of these two cases – 24.CH3247 and 24.JP0038.
- 9.2. The first Natura Impact Statement was submitted originally during the course of the first oral hearing relating to the CPO case 24.CH3247. This Natura Impact Statement is dated April 2013. A second Natura Impact Statement dated February 2016 was submitted following correspondence between the Local Authority and the Board regarding Section 177AE of the Planning and Development Act. The February 2016 Natura Impact Statement also accompanied the Section 177AE Appropriate Assessment application to the Board. A third Natura Impact Statement dated July 2017 was submitted following the completion of the bird survey of the site.
- 9.3. The Natura Impact Statements identified and characterised the possible implications of the proposed development on the Dungarvan Harbour SPA, in view of the site's

conservation objectives, and provided information to enable the Board to carry out an appropriate assessment of the proposed works.

- 9.4. The first two Natura Impact Statements are largely similar. The third statement was altered and updated following the commissioning of a winterbird survey by the Local Authority.

## 10.0 Consultations

10.1. The application was circulated to the following bodies:

- Health and Safety Authority
- Health Service Executive
- Environmental Protection Agency
- Department of Community, Energy and Natural Resources
- Southern Regional Assembly
- Department of Environment, Community and Local Government
- Minister of Transport, Tourism & Sport
- Inland Fisheries Ireland
- National Parks and Wildlife Service
- Waterways Ireland
- The Heritage Council
- An Chomhairle Ealaíon
- Fáilte Ireland
- An Taisce



Responses were received from the National Parks and Wildlife Service at the oral hearings dated the 28<sup>th</sup> of June 2016 and the 16<sup>th</sup> of January 2018. No other prescribed body has made a submission.

## 10.2. Department of Culture, Heritage and Local Government Submissions (NPWS)

### 10.2.1. Submission to Oral Hearing dated 28<sup>th</sup> June 2016

- Department does not disagree with the conclusion of no adverse effects on the SPA due to the direct loss of this area to upgrade to a cycle path.
- Evidence from international and Irish research that walkways can increase disturbance to overwinterbirds.
- Significant deficiency in NIS in relation to up to date data on where roosts are located, by what birds and during which part of winter.
- No in-combination assessment of Dungarvan Harbour SPA in the NIS.
- In terms of mitigation measures, signage alone for dog walkers is likely to be insufficient to avoid disturbance impacts.
- Similar issues to the current case were found at a greenway in Cork adjacent to Cork Harbour SPA and a photograph was submitted showing fencing in this area.
- It was considered the following would provide a robust basis for appropriate assessment:
  - (a) Assessment based on up-to-date baseline data on feeding and roosting of birds.
  - (b) Inclusion of screening in fencing to screen those areas of the greenway considered to be at risk of disturbance
  - (c) An in-combination assessment of disturbance at areas where disturbed birds, if so predicted, are likely to fly to.

### 10.2.2. Submission to Oral Hearing dated 16<sup>th</sup> January 2018

- Discrepancy in relation to the timing of works between the NIS and the bird survey. This matter can be addressed by condition.
- Mitigation measures should include re-design of the path in the sensitive mid-section where it is adjacent to the salt marsh roost together with physical measures to prevent loose dogs accessing the foreshore.
- Details submitted regarding lighting which can be summed up as keep it low, keep it shielded, and keep it long.
- In-combination Assessment of birds at Kilminion site in relation to disturbance levels at Kilminion and future disturbance at this site is not a like for like comparison as birds are roosting far away from the site in Kilminion whereas they are roosting directly adjacent to the current site. Also large areas of the pathway are fenced in at Kilminion. The Bird Survey indicated that there are two roosting spots in close proximity to the site. These areas are indicated in Figure 5 of the Bird Survey.
- There remains reasonable scientific doubt that the currently proposed route and design of the walkway and cyclepath will have no adverse impacts on the SPA. This is because of the probability of the abandonment of the salt-marsh roost by wintering birds due to increased levels of disturbance.

## 11.0 Summary of Oral Hearings

### 11.1. CPO Oral Hearing CH3247 – 7<sup>th</sup> January 2016 (First Oral Hearing)

The main points of the hearing are as follows:

#### **Local Authority:**

- The cycleway and walkway is an objective of the Development Plan and funding for it was awarded under the Go Dungarvan project.
- This was an established route through repeated usage.
- Mr. O' Mahony, Senior Planner submitted a Natura Impact Statement.

- Clarification in relation to the townland of the site- Bohreen townland is the correct townland. The correct townland is in the schedule but the townland of Ringnasilloge is in the order.
- Claire Hartley, Freedom of Information Officer stated that she had released records of all documents held on file to the objector.
- The Local Authority stated that the Freedom of Information Request was being used as a 'red herring' and that 'it had nothing to do with what we're talking about today.'
- It was stated by the Local Authority that no meaningful discussions had taken place with the objector in relation to access issues as the objector was unwilling to engage with the Local Authority.
- The Local Authority presented alternative options they had examined and stated that alternative options weren't viable.
- The Local Authority stated that these matters in relation to access, fencing, boundary treatment and lighting weren't fully decided at this stage.
- The Local Authority stated that the lands closer to the foreshore were not suitable due to impacts on the SPA and risk of flooding.
- The concluding statement of the Local Authority was that the correct townland was referred to in the Schedule, there was more than enough information for the Board's purposes and the Freedom of Information is a matter for another forum. It was stated that devaluation of lands was a matter for arbitration.

**Objector:**

- The objector considered that he hadn't been engaged with properly by the Local Authority and he hadn't been furnished with documentation to which he's entitled.
- It was considered by the objector that he hadn't been given access to all documents such as the costings prepared by Enda Kirwan (consultant employed by the Local Authority).
- Mr. Mullins considered that the project would have a detrimental impact on the enjoyment of his land.

- It was queried how the objector would be able to access the other part of his land the other side of the CPO lands.
- Questions were asked in relation to access, fencing, boundary treatment and lighting on behalf of the objector.
- Mr. Mullins asked that alternative lands could be considered within his lands - those closer to the foreshore.
- The concluding statement on behalf of the objector was that the proposed development would have a detrimental impact on his property, he was offering alternative lands closer to the foreshore, and he was not finished with Freedom of Information.

#### 11.2. **Combined CPO CH3247/ JP0038 – 28<sup>th</sup> June 2016 (Second Oral Hearing)**

##### **Local Authority:**

- Bernadette Guest, Heritage Officer made a submission in relation to the Further Information Request by the Board.
- It was noted that a site notice was erected at the site which referred to Part VIII in the header. However, this was erected inadvertently and a site notice is not required under the legislation.
- An error was also referred to in correspondence by email from the Heritage Officer, Bernadette Guest on April 4<sup>th</sup> 2016 where an opening line referred to Section 175AE. There is no Section 175AE in the Planning and Development Act. The correct section of the Act is referenced in the second paragraph of that same correspondence. This was clarified in an email from Bernadette Guest to John McCarthy (Engineer representing Objector) on 6<sup>th</sup> April 2016 in response to his email of the same date.
- The conclusion of the Natura Impact Statement was that the nature and scale of anticipated habitat loss at the edge of the SPA boundary arising from the proposed development is not significant i.e. it will not undermine the conservation objectives for the site and will not cause a significant loss to the favourable condition of the SPA's wetland habitat in the context that to be favourable the

permanent area occupied by wetland habitat should be stable and not significantly less than the area of 2,219 ha.

**Objector:**

- The objector stated that the information submitted by the applicant was insufficient to determine the design and the impact on a European site and the process was not managed correctly and that errors made by the Local Authority were confusing.
- The full documentation in relation to the file was not available at the Local Authority offices when the objector visited. His submission to the oral hearing states that 'he has found them to be evasive and elusive'.... and he 'considers the entire application process to be flawed.'
- Submissions were prepared by the Local Authority in relation to both a Part VIII application and a Section 177AE application which were very confusing for the objector.
- The Local Authority Engineer tasked with preparing the documentation incorrectly called it a Part VIII application and Part VIII is shown on the drawings submitted.
- The TII publication in relation to design of cycleways was referred to and it was considered that the design proposed cannot comply with any of the criteria outlined.
- Access to the lands to the south of the objector's lands was questioned as it is not clear how it is intended to access these lands. Queries were raised in relation to maintenance of these lands.
- It was stated that construction impacts were not dealt with in any meaningful way.

**National Parks and Wildlife Service:**

- The National Parks and Wildlife Service was represented by Dr. Jervis Goode.
- The summing up of his evidence at the second oral hearing is outlined in Section 10.2.1 of this report.
- He considered that there was insufficient information to make a robust assessment of the case and further information was required including a bird survey, appropriate fencing specific to the site after a bird survey was carried out

and roosting areas were identified and an in-combination assessment of disturbance at areas where disturbed birds, if so predicted, are likely to fly to.

### 11.3. Combined CPO CH3247/ JP0038 – 16<sup>th</sup> January 2018 (Third Oral Hearing)

#### Local Authority:

- Bernadette Guest Heritage Officer stated that following the second oral hearing a survey of wintering birds was carried out together with an assessment of in-combination disturbance in Dungarvan Harbour including assessment of in-combination effects with other similar pedestrian and cycleways in the area and identification of locations where disturbed birds might be displaced to.
- The conclusion of the report was that if the appropriate environmental protections measures are in place and adhered to then it is anticipated that potential impacts should be imperceptible to moderate negative.
- The findings of this were incorporated into the Natura Impact Statement.
- In response to questioning by the Inspector, it was stated that no consultation with the National Parks and Wildlife Service took place.
- It was stated that on the two days the planning department office was closed, the objector should have presented himself to the customer service office.
- The Local Authority stated that the pedestrian and cycleway would work without lighting but there may be pressure to provide lighting in future and that maximum effort would be made to curve away from the shore.
- The ramps shown start outside the CPO boundaries. It was stated by Gillian Flynn, Local Authority engineer that these could be redesigned with a steeper gradient within the boundary.
- Discussion came up regarding the widths of the CPO lands. There are a number of drawings on file with different widths. The oral hearing was adjourned to allow the Local Authority to establish the correct width. It emerged that the official CPO map was on an A4 sheet which stated 1:1000 on A3 sheet. The map prepared by Enda Kirwan, an external consultant which had a stated width of 10.73m dated

the 10<sup>th</sup> of March and the 29<sup>th</sup> April 2016 was incorrect. The correct width of the CPO lands is 12.5m.

- There are two drawings on the CPO file- one is on A3 sheet and measures as 12.5m in width. The second one is on A4 sheet and scales as c.9m on 1:1000 scale. However, this A4 drawing says that the scale is 1:1000 on A3 sheet. According to information submitted by the objector at the hearing, the A4 sheet formed part of the official documentation.
- The Section 177AE case shows the width of the CPO lands to be fenced as 10.731m in cross section X3 dated the 10<sup>th</sup> of March 2016 and as 10.731 in cross section X3 on drawings dated the 29<sup>th</sup> of April 2016. Drawing WFD/AW/01 attached to the Local Authority Response dated 2<sup>nd</sup> of August 2017 indicated a width of 12.5m.
- The numbers predicted for using the cycle path were from an existing counter on Fr. Twomey walk and were in the order of 250 users a day.
- The solicitor for the Local Authority summed up that the Local Authority were carrying out an objective of the Development Plan.

**Objector:**

- John McCarthy on behalf of the objector stated that documentation was not available at the times and dates indicated in the press notice.
- The planning office was closed between 1 and 2 each day and on Friday the 24<sup>th</sup> of November 2017 and Monday the 27<sup>th</sup> of November.
- It was also stated that the documents on file were incomplete.
- The solicitor for the objector referred to the confusion the errors made by the Local Authority had caused and considered that the Local Authority had not handled the case in a satisfactory manner. It was stated that ‘the project was not necessary and that best engineering practice had not been thought of’. He stated that ‘words fail me to describe how incompetent the whole exercise has been.’

**National Parks and Wildlife Service:**

- Dr. Jervis Goode represented the NPWS and his submission is summarised in Section 10.2.2.

- He stated that dogs straying off the path are the most serious threat and signs alone are an inadequate mitigation measure.
- There remains reasonable scientific doubt of the conclusions reached.
- The ideal type of landscaping at this location is briars which is similar to what is already there.
- Dr. Jervis Goode asked a question in relation to enforcement of conditions as the conditions required in relation to landscaping and lighting were very precise. He was concerned in relation to who would carry out enforcement if these works were not carried out properly by the Local Authority. The inspector advised that the Board had no role in relation to enforcement but would advise the Board regarding his concerns.

## **12.0 Compulsory Purchase Order Assessment**

### **12.1. Community Need/ Purpose for CPO Acquisition**

12.1.1. I carried out 4 No. site inspections, conducted 3 No. Oral Hearings and examined all submissions and documentation on file and would be satisfied that Waterford City and County Council have not established a need for the proposed development.

12.1.2. One objection only has been submitted to the Compulsory Purchase Order from the landowner, Mr. Donal Mullins. The land take required by the Local Authority would divide the land of the landowner and the landowner expressed concern that he would have no direct access to the land between the CPO lands and the foreshore. The landowner was also concerned in relation to flooding and devaluation of property. He was also concerned regarding loss of amenity and that the division of his land would create a 'no mans land' in the area between the CPO lands and the foreshore. There is no suggestion that the objector is opposed to any community need that may arise from the proposed development. Indeed the objector queried if the Local Authority could develop lands closer to the foreshore within his land ownership rather than the subject lands so that the pedestrian and cycleway could be developed without as much disruption to his lands.



- 12.1.3. The zoning map in the Dungarvan Town Development Plan 2012-2018 identifies the proposed route as a path. There is also strong support in the Development Plan for cycling and pedestrian travel and support for the smarter travel concept. The land between the Youghal Road and the Sports Centre (otherwise known as the Pitch and Putt Track Area) has been designated as a Walking/ Cycling Route in a Stage II Submission to the Department of Transport as part of the Go Dungarvan Smarter Travel awards. The case made by the Local Authority is that this route is already an established walkway through repeated usage. However, the figures submitted in the bird survey carried out in between December 2016 and March 2017 indicate that the walkway is very lightly used with numbers varying between no users and 61 in hourly counts carried out. The average number of people using the walk in the hourly counts was 11.
- 12.1.4. It was pointed out at the oral hearings that the existing use is restrictive and extremely wet in poor weather conditions. I accept this as I have carried out 4 No. inspections on the site, 3 of which have been in the months of either December or January and one of which was in June. In the Winter months, the route is difficult to use and is very wet and difficult to pass in parts. There are also a number of 'No Trespass'/ 'Private Property' signs on the objector's land so less people would be likely to use the walk at present for that reason.
- 12.1.5. The Board queried the predicated use of the path in the Further Information Request dated the 7<sup>th</sup> of July 2016. The Local Authority noted that the closest pedestrian and cyclist counter to the scheme was located at Fr. Twomey's walk approximately 500m from the proposed scheme. The daily average at this location is 231 pedestrians and 28 cyclists. On this basis the Local Authority predicted an average increase of number of 250 walkers and cyclists on a daily basis if the link from Youghal Road to Dungarvan Sports Centre was completed.
- 12.1.6. On the basis of the survey work already carried out on the existing use during the Winter months and the predicated usage, I consider that there would be a very low volume usage. Table 4.1 of the NRA TD 300/14 Rural Cycle Design defines low volume traffic as less than 1,500 users a day. The town of Dungarvan is already served by a number of attractive walks including the Fr. Twomey walk and The Waterford Greenway, both of which are in very close proximity to the site. In response to questions from the Inspector at the hearing, it was established that it

would be difficult to link this route with the Waterford Greenway and there were no proposals to do so.

12.1.7. Having regard to the above, I question whether an adequate case and justification has been made for the CPO of the subject lands in terms of community need. It is my opinion that a case for acquisition needs to be demonstrated by the Local Authority in order to justify the CPO. I consider that having regard to the low numbers predicted and the availability of similar walkways and cycle routes in the vicinity of the site, inadequate justification of overriding public need has been put forward for the proposed acquisition at this time.

## 12.2. The extent and suitability of lands sought for acquisition

12.2.1. The land take proposed for acquisition is rectangular in shape and has a stated area of 0.058 hectares.

12.2.2. It has come up as an issue at all three oral hearings whether or not Mr. Mullins can get access to his lands closer to the foreshore as the CPO lands would separate these lands from the main portion of lands associated with his residence. Mr. Mullins expressed concern that the proposed CPO would have a detrimental impact on the enjoyment of his land and he would have no direct access to the foreshore. He stated that he had plans to develop a foreshore garden at this location. At the first oral hearing it was queried how it was envisaged Mr. Mullins would be able to maintain and access his lands at this location. The response from the Local Authority engineer was that this would have to be decided further down the road as up to now the landowner had not engaged with the Local Authority.

12.2.3. Following the second oral hearing dated the 28<sup>th</sup> of June 2016, an F.I. Request was issued by An Bord Pleanála dated the 6<sup>th</sup> of July 2016 as follows: '7. Please clarify if it is the intention to allow for the landowner to have access to the portion of lands to the south of the proposed CPO lands and how this will be achieved. Please provide appropriate design drawings as necessary.'

12.2.4. A response from the Local Authority was received dated the 2<sup>nd</sup> of August 2017 together with a drawing WFD/AW/01. This indicated that the CPO lands was 12.5m wide and indicated ramps which started **outside** the boundary of the CPO lands.

- 12.2.5. At the third oral hearing dated the 16<sup>th</sup> of January 2018, the width of the land take was queried as there are a number of different drawings on file each with differing widths. On the original CPO file, there are two drawings - an A3 drawing which scales at 12.5m for the width of the plot and an A4 drawing which scales at c.9m. It emerged at the third hearing that the only drawing given to the objector as part of the official CPO documentation was the A4 drawing which says on it 'Scale 1:1000 on A3 sheet'. Drawings submitted to the Board dated 10<sup>th</sup> of March 2016 and 29<sup>th</sup> of April 2016 state a width of 10.731m for the plot. The third oral hearing was adjourned for clarification regarding the correct width of the plot and the Local Authority clarified that the width of the plot is 12.5m and that the official documentation served on the at objector was the A4 drawing which scales at c.9m. It also emerged that the drawings dated 10<sup>th</sup> of March 2016 and the 29<sup>th</sup> of April 2016 were not prepared directly by the Local Authority but were prepared by an external consultant for the Local Authority – EKCE and this may have contributed to the confusion.
- 12.2.6. At the third oral hearing, the Local Authority were advised by the Inspector that in terms of compulsory acquisition, the Board could not consider lands outside the confines of the formal CPO boundary as described in the notice. In response to questioning, the Local Authority were satisfied that a suitable access ramp could be redesigned within the confines of the CPO lands only, however, this would result in a ramp with a steeper gradient.
- 12.2.7. The response from the objector dated the 4<sup>th</sup> of September 2017 in relation to the access drawings states the following: 'The proposals and works now put before An Bord Pleanála cannot be implemented within the confines of the CPO process. The associated works cannot be accommodated within the defined lands. The design approach adopted most recently and as demonstrated in the document of 31<sup>st</sup> of July 2017 provides further evidence of obvious conflict with best engineering principles. To support this observation, An Bord Pleanála will be aware of the age profile of Mr. Mullins. The gradient of the access ramps does not comply with good practice and is not suitable for the use of wheelchairs and other walking aids. The nature of the surface provided and the absence of intermediate rest points, platforms etc. further compromise the safe use of the 'ramps' indicated.'
- 12.2.8. I have examined the drawing submitted to An Bord Pleanála dated the 2<sup>nd</sup> of August 2017 and whilst it is not to any stated scale, I am satisfied that the gradient can be

calculated based on the stated measurements on the drawing. It would appear from the drawings presented, that the ramp connecting the two parcels of land is currently designed at a slope of 1:10. However, this includes lands outside of the area of the CPO. The Local Authority stated at the oral hearing that the ramp could be redesigned within the CPO lands however this would increase the gradient. Whilst this has not been designed by the Local Authority yet, having regard to the lands available within the 12.5m width, the ramp slope would increase to an estimated 1:8 which is above the slope gradient of 1:12 set out under 'Buildings for Everyone: A Universal Design Approach (Chapter 1: External Environment and Approach'. Accordingly, I am not satisfied that the ramp is suitable or safe for its intended purpose.

12.2.9. In my view, it is imperative for Mr. Mullins to be able to access and maintain both plots of his land. The current land take would not allow him to do this safely. I accept that the ramp would be over the required gradient for a short distance only and the guidelines allow some flexibility in relation to short distances. However, this issue was highlighted from the first oral hearing and the Local Authority were given ample opportunity to design access for the objector. The only drawing that the Board have at the moment provides for access outside the confines of the CPO lands and it would appear that if it could be redesigned so that it is within the CPO lands, the gradient would be over the recommended gradient. As such, I am not satisfied that the land-take proposed for the CPO is sufficient to ensure the delivery of access to both parcels of land either side of the CPO lands at appropriate standards.

### 12.3. **Compatibility with Development Plan Provisions**

12.3.1. The zoning map of the Dungarvan Town Development Plan 2012-2018 indicates a path at this location however neither a walkway or cycleway at this location are specifically referred to in the Plan. Furthermore, it was claimed at the oral hearing that the provision of a pathway around Western Bay was an objective of the plan, however this is not the case. Under Section 5.11 of the Plan, it is recognised that 'walking is steadily becoming one of the main recreational pastimes in the County.' Under Section 6.10 and 6.11 support for cycling and pedestrian transport modes is outlined further and support for the Smarter Travel concept and in particular

‘GoDungarvan’ which sets out the blueprint for the delivery of the integrated and sustainable delivery of a smarter travel future for Dungarvan Town.

- 12.3.2. The proposed walkway/ cyclepath would be consistent with Objective ECD 5: ‘To facilitate, as the opportunities arise, the sustainable development/enhancement of tourist trails and designated walking and cycling trails that do not cause landscape or environmental degradation throughout the town and connecting to adjoining areas. The Council shall also encourage the development of off-road cycling at appropriate locations. Trails near Special Protection Areas will be subject to the Habitats Directive Assessment’. It would also be consistent with Objective CP4 ‘To facilitate appropriate public access to the coast and the sustainable development of coastal walkways including recognition of public rights of way.’

The proposal is also consistent with Policy ECD 19 and Policy ECD 20 which support the provision of high quality walking and cycling routes in the town and promote Waterford as the ‘Walking Capital of Ireland’. It is policy under ECD 20 to implement the smarter travel policy framework as produced by the Department of Transport in conjunction with GoDungarvan Smarter Travel blueprint for the Town and to encourage the sustainable creation of cycle paths and pedestrian friendly facilities through the provision of cycle paths and other initiatives. According to evidence submitted at the first oral hearing, this project was named in the Local Authorities bid to the Department of Transport and formed part of a Stage II submission to the Department of Transport by the Local Authority.

- 12.3.3. I am satisfied that the development of a pathway around Western Bay is in accordance with the Development Plan policy and objectives.

#### **12.4. Consideration of alternatives to meet community need**

- 12.4.1. With regard to the consideration of alternatives, two alternatives were suggested at the first oral hearing. The first one was looping around a number of housing estates in the area. The Local Authority stated that they had examined this and considered that it wasn’t viable, that it was unsuitable and that it would attract far more objections from local residents.
- 12.4.2. The second alternative examined was developing the path closer to the foreshore. Mr. Mullins stated that this would be his preference as it would not destroy his land

by splitting it. He said that he would find this 'personally devastating'. The Local Authority responded that this would cause a risk to people due to waves and the Natura Impact Statement was against this and that it could create a flood risk. There was a lot of erosion in this area and it was best if the pathway was kept back from the shore.

- 12.4.3. I would accept that the route around the existing housing estates would not be as attractive an option in terms of visual impact, was not outlined in the Development Plan zoning, was not identified as a proposed project in the Smarter Travel Award and would be a much longer and less direct route than the current proposal.
- 12.4.4. In relation to the objectors preferred route, I note that Item 4 of the F.I. Request dated the 7<sup>th</sup> of July 2016 is as follows: 'An alternative site for the proposed pedestrian and cycleway on the objector's lands looping around the foreshore was suggested at the oral hearing. The Local Authority considered that this site would not be suitable due to risks to people from wave action, flooding of the route and impacts on the Dungarvan Harbour SPA. Please provide full supporting details and analysis which enabled the Local Authority to discount this as a viable alternative option.'
- 12.4.5. The response submitted to the Board on the 2<sup>nd</sup> of August 2017 stated that 'the proposed route in this section provides a buffer of 40m between the SPA boundary and the walkway and will direct users away from the area of saltmarsh habitat and bird roosting areas as detailed in Figure 5 of the Bird Study. Looping around the route and the foreshore could potentially increase disturbance closer to the SPA and the roosting area.' I would also accept that if the route is relocated closer to the foreshore, there would appear to be concerns in relation to impacts on the conservation objectives of Dungarvan Harbour SPA. In this regard I note that the submission from the NPWS submitted to the third oral hearing states: '...mitigation should also include moving the path as far as possible away from the foreshore rather than the reverse.'
- 12.4.6. In terms of flood risk assessment, the F.I. Request issued dated the 24<sup>th</sup> of March 2016, asked the Local Authority for details of any flood risk assessment carried out. The response dated the 27<sup>th</sup> of April 2016 stated that OPW coastal flood mapping prepared for the Irish Coastal Protection Strategy indicates that a small area in the eastern section of the site is subject to a 1 in a 200 year flood event. Following the

third oral hearing, a second F.I. Request was issued dated the 7<sup>th</sup> of July 2017 as follows: 'Having regard to the information provided with the application and at the oral hearing, it is considered that the proposed pedestrian and cycleway route may be liable to risk of flooding. The flood risk assessment should specifically address the impact on flooding of the proposed embankment for the pedestrian and cycleway across the lands subject to the objection to the associated CPO.'

12.4.7. Section 4.4 of the document entitled 'Flood Risk Assessment' refers to the 'alternative route discussion'. Figure 4.1 demonstrates an alternative route looping around the foreshore. The site survey levels recorded along the seaward extent of the embankment are between 2.07mOD and 2.11mOD, further topographic survey does not exist but it is assumed that the levels will drop below 2mOD by some margin. It is stated that 'the result of the decrease in level would mean that the walkway would present a greater barrier to the predominant wave direction and greater environmental risk. Adopting a policy that utilises a lower elevation or at grade would result in a walkway that will presumably be flooded during high spring tides at a minimum. Whilst the risk of flooding a walkway can be managed in terms of warning the general public and preventing use during high tidal level the disruption of the route at such high frequency would have to be considered in terms of usability/ viability.'

12.4.8. Given the issues and concerns in relation to flooding and impacts on the SAC in relation to the foreshore route and the length and indirectness of the less attractive route looping around the housing estates, I am satisfied that reasonable alternatives have been examined by the Local Authority and that these have not been found to be appropriate in the subject circumstances.

### **13.0 Assessment of application for approval under Section 177AE**

13.1. Under the provisions of Section 177AE(6) of the Planning and Development Act, 2000 (as amended), the Board is required to consider the following in respect of this type of application:

- The likely consequences for the proper planning and sustainable development of the area, and
- The likely effects on the environment of the proposed development,

- The likely effects of the proposed development upon a European Site.

### **13.2. The likely consequences for the proper planning and sustainable development of the area**

- 13.2.1. The proposal is to upgrade an existing footpath and incorporate a cyclepath together with the provision of street lighting and seating. The existing pathway is unsurfaced for a length of c. 188m with c.45m of this unsurfaced area in the CPO lands.
- 13.2.2. Section 12.3 of this report accesses the compatibility of the project with the Development Plan provisions and the proper planning and sustainable development of the area.
- 13.2.3. Dungarvan, through its bid in the Smarter Travel area completion, has set its own blueprint, Go Dungarvan, for the integrated and sustainable delivery of a smarter travel future for the town. The plan sets out the actions to be implemented over a five year period subject to appropriate funding streams coming available. The submission by Mr. Mansfield at the oral hearing dated the 7<sup>th</sup> of January 2016 indicated an extract from their Stage II submission to The Department of Transport dated April 2010 on which the smarter travel award of €7.2M was based. The pitch and putt track area was identified as part of this submission (ST068 SR6 Pitch and Putt Track Area with an approved grant of €98,805). A map attached to the submission also indicated the route of the proposed scheme as a cycling and walking route.
- 13.2.4. This route is indicated in the Development Plan zoning map though is not specifically mentioned as an objective. There is a high level of support in the Development Plan for walking and cycling routes and for the implementation of the GoDungarvan Smarter Travel Project. This proposed scheme at Ringnasilloge is one of a number of infrastructural projects that have been given approval by the Department of Transport as part of the overall grant award for the GoDungarvan Smarter Travel Project.
- 13.2.5. I am satisfied that the proposal to construct a pedestrian and cycleway at this location would be consistent with the proper planning and sustainable development of the area subject to an assessment of the effects on the environment and the integrity of the Natura 2000 network.



### 13.3. The likely effects on the environment of the proposed development

13.3.1. I consider that the likely effects of the proposed development on the environment can be assessed under the following headings:

- Flooding/ Hydrological Impacts
- Ecological Impact
- Landscape and Visual Impact
- Traffic
- Human beings

#### 13.3.2. Flooding/ Hydrological Impacts

13.3.2.1. A Flood Risk Assessment Report dated the 2<sup>nd</sup> of August 2017 was submitted by the Local Authority in response to a Further Information Request. The site is within Flood Zone A/B. A review of the South Eastern Catchment Flood Risk Assessment and Management Study confirms that tidal flooding is the main flooding threat to the site. Figure 3.2 shows the flood mapping for Dungarvan Harbour and shows that the site is within the 0.5%, 0.1% and 10% AEP extents. The fluvial flood maps for the area, provided by the CFRAM, confirm that the area is not at risk of fluvial flooding. Using information from The Irish Coastal Protection Strategy Study, it is observed that the site lies within the 0.1% and 0.5% AEP flood extents. The nearest water level estimation node (S35) to the development site is located just within the mouth of Dungarvan Harbour. The 0.1% and 0.5% AEP Flood events are 2.77mOD and 2.62mOD respectively. The proposed level of the new walkway and cyclepath is 3.20mOD at its lowest level, which is significantly above the current 0.1% and 0.5% AEP Flood Events. The proposed walkway is therefore considered to be at low risk of flooding.

13.3.2.2. The raising of the walkway levels through the CPO lands gives rise to the potential creation of an isolated low spot on the northern (landward) side caused by severance of the normal surface water flow path. In terms of mitigation, it is proposed by the Flood Risk Assessment (Section 4.3) to maintain the connection between the landward and seaward (southern) sides by the creation of 2 No. 600mm culverts. The culverts will allow the ingress of seawater to the landward side and also

the conveyance of any surface water across the embankment to the seaward side. It is proposed that a small swale feature will be developed within the CPO boundary. It is advised as a mitigation measure in the Flood Risk Assessment that the materials proposed for use below the current ground levels should be as permeable or more permeable than the current bulk permeability within the ground so as to avoid backing up of groundwater up gradient (north – landward) and water logging or ponding of groundwater. I consider such measures reasonable.

13.3.2.3. In terms of the Flood Risk Management Guidelines, the walkway and cycleway is a water compatible land use which can be located in Flood Zone A or B without the need to apply for a justification test. On the basis of the information submitted, I consider that proposed development will not result in flooding elsewhere and that the development is compatible with the flood risk management guidelines.

### 13.3.3. **Ecological Impact**

13.3.3.1. The most significant potential impacts arise in relation to wintering waterbirds and these are discussed in more detail within the Appropriate Assessment.

13.3.3.2. Two conservation targets are set for each of the qualifying interests of water bird species in Dungarvan Harbour SPA, firstly that the long term population trend is stable or increasing and secondly that there should be no significant decrease in the numbers or range of areas used by waterbird species, other than that occurring from natural patterns of variation.

13.3.3.3. Survey work carried out indicated that the increased levels of activity during the construction phase have the potential to cause increased levels of disturbance to wintering waterbirds. At its worst, this impact could lead to waterbirds failing to use the known roosts in the area. The peak number of Dunlin using Roost 1 was 510 which equates to 26% of the total population of Dungarvan Harbour SPA. Therefore, it was concluded that the impact would be potentially significant with regard to the population trend.

- 13.3.3.4. The two most significant impacts in the construction phase were in relation to lighting of a pathway that was not previously lit and the impact from dogs veering off the pathway. I am satisfied that the impacts from light could be successfully mitigated against having regard to the details submitted in the NIS and the detailed submission from the NPWS at the third oral hearing.
- 13.3.3.5. The NIS proposed only signage as a mitigation measure for dogs straying off the path. This has been shown not to be successful as some dog owners will still stray off the path. Fencing was discussed at the second oral hearing. Item 3 of the F.I. Request dated the 7<sup>th</sup> of July 2016 was as follows: 'Following completion of the up to date baseline information you may be required to provide details of mitigation. This might include (should it be deemed necessary) fencing of particular locations to prevent pedestrians straying off the track with dogs and disturbance to any identified roosting areas. You will note that an example of such was indicated in Fig. 2 of the submission of the Department of Arts, Heritage, and the Gaeltacht at the oral hearing.'
- 13.3.3.6. The Birds Survey indicated that there were two roosting areas in close proximity to the route. There is potential for impact from uncontrolled dog walking where people with dogs veer off the path. The mitigation measure of fencing was not referred to in either the Bird Survey or the revised NIS and no drawings of fencing have been submitted other than for the CPO lands. There was no consultation with the NPWS. The key concern of the NPWS was in relation to the fact that the area adjoins a large urban residential area and the path would be used by people and dogs during the hours of darkness when previously this use would have been very limited. It was suggested by the NPWS at the third oral hearing that all of the shore side of the pathway could have a dog proof fence.
- 13.3.3.7. I consider that there are concerns in relation to wintering waterbirds and that insufficient information is available in relation to mitigation measures and redesign of the pathway to address these concerns. The concerns and possible mitigation measures were discussed at the second oral hearing and the Local Authority was given the opportunity to consult with the NPWS and put forward proposals to address these concerns. I would therefore be of the opinion that the Board cannot be

satisfied, based on the information available, and including the conclusions of the NPWS, that the proposed development will not have significant adverse effects on wintering waterbirds of international importance including Light-bellied Brent Goose and Black-tailed Godwit two species of international importance and Golden Plover and Bar-tailed Godwit, two Annex 1 Species.

#### **13.3.4. Landscape and Visual Impact**

13.3.4.1. In terms of the visual impact of the proposed development, there is an existing unofficial trackway at this location which has been formed over the years through repeated usage. The trackway would be formalised and upgraded into a pedestrian and cycle route. This route would have fencing, lighting and seating, none of which are present at the moment. There is no pathway for a small section of the route. I am of the view that the works involved are minor in nature, would be compatible with the existing environment and would serve to improve the existing walkway. Having regard to the existing development at this location and the proposed works which are relatively minor in terms of visual impact, I am satisfied that the submitted proposal is unlikely to give rise to any significant loss of visual amenity.

#### **13.3.5. Traffic**

13.3.5.1. No vehicular traffic is currently permitted to use the route and the proposed development will not alter this. In terms of pedestrian traffic, there is very limited usage of the track during the winter months. Table 9 and Table 10 of the Winter Bird Survey demonstrate a number of hourly counts of walkers and bicycle usage along the route adjacent to roost areas 1 and 2. The numbers of walkers recorded varied from 0 to 61 and the numbers of bicycles varied from 0 to 53 with weekends being the busiest for both categories. There is no information available on existing Summer usage, however this is likely to be relatively low given that parts of the route are unsurfaced at present and there are two 'Private Property' 'No Trespass' signs on either side of Mr. Mullins land. The predicted usage is based on a walk 500m from the site where there is an existing pedestrian and cyclist counter. The daily average at this location is 231 pedestrians and 28 cyclists. Having regard to the minimal

numbers of pedestrians and cyclists predicted, I am of the view that the impact of same is of a very limited significance.

### 13.3.6. **Human Beings**

13.3.6.1. During the course of construction works there is an inherent potential for the generation of increased levels of noise and dust, however considering that such works will be temporary in nature, I am satisfied that the short-term impacts arising from same will not give rise to any undue loss of amenity to surrounding properties. Whilst there are a number of housing estates and individual houses to the north of the route, I consider that due to the distance from the route, they are unlikely to be unduly impacted on by either noise or dust during the operational phase. I consider that there could be significant benefits to locals and to the wider population during the operational phase in terms of a positive impact on human health from recreational use associated with the availability of a walkway and cycleway in close proximity to an urban area.

### 13.4. **The likely significant effects on a European site**

13.4.1. The areas addressed in this section are as follows:

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

### 13.4.2. **General**

13.4.3. Compliance with Articles 6(3) of the EU Habitats Directive: The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications

for the site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal will not adversely affect the integrity of the European site.

#### 13.4.4. **The Natura Impact Statement**

13.4.5. The background to this application is that the Compulsory Purchase Order was not accompanied initially by a Natura Impact Statement, however this was introduced for the first time during submissions made by the Senior Planner at the Oral Hearing dated the 7<sup>th</sup> day of January 2016. A statement was contained therein that 'Screening was carried out to determine whether any Natura 2000 site is likely to be impacted upon by the Dungarvan Smarter Travel Programme in Ringasillogue. Screening indicated that there were potential impacts on Dungarvan Harbour SPA in which the site of the smarter travel works are located requiring a Stage Two Appropriate Assessment'. In a letter to the Local Authority dated the 21<sup>st</sup> of January 2016, ABP reminded the Local Authority of Section 177AE of the Planning and Development Act 2000 as amended and advised that in the absence of a formal screening determination and/or formal application to the Board under Section 177AE, any confirmation of the making of the compulsory acquisition order for the purposes identified might, amongst other matters, be considered to be premature. The Local Authority responded to the Board dated the 3<sup>rd</sup> February 2016. The response stated that it was considered that the Part 8 process was precluded because the planning authority did not have sufficient legal interest along the entire pathway route and stating that if the CPO process was successful, a Part 8 application and accompanying Natura Impact Statement would be submitted to ABP in accordance with Section 177AE of the Planning and Development Act 2000, as amended. The Board replied to this letter dated the 11<sup>th</sup> of February 2016 advising the Local Authority that Part 8 provisions do not apply where the preparation of a Natura Impact Statement is required. Instead an application must be made for to the Board under Section 177AE of the Act.

13.4.6. An application was made to the Board under 24.JP0038 dated the 10th of March 2016 with the NIS that was submitted at the oral hearing. A revised NIS was

submitted dated the 29th of April 2016 in response to a Further Information Request by the Board. A further revised NIS dated July 2017 was submitted following the 2nd Oral Hearing which described the proposed development, the project site and the surrounding area and which was undated following the bird survey. The NIS outlined the methodology used for assessing potential impacts on the habitats and species within Dungarvan Harbour SPA that have the potential to be affected by the proposed development. It predicted the potential impacts for Dungarvan Harbour and its conservation objectives and suggested mitigation measures.

The NIS was informed by the following studies, surveys and consultations:

- A desk top study
- A wintering bird survey following the oral hearing in June 2016 and a further information request from ABP
- Assessment of human activity associated with the existing walkway

13.4.7. The NIS concluded that, the nature and scale of anticipated habitat loss at the edge of the SPA boundary arising from the proposed pathway is not considered significant involving direct habitat loss of 0.18 HA (total area of Dungarvan Harbour is 2,219HA). The incorporation of mitigation measures will ensure that no adverse impacts on site integrity remain. It was considered that if the appropriate environmental protection measures/ mitigation measures are put in place and adhered to, the potential impacts of the proposed works should be imperceptible to moderate negative.

### 13.5. **Appropriate Assessment**

13.5.1. Having regard to the information and submissions available, nature, size and location of the proposed development and its likely direct, indirect and cumulative effects, the source pathway receptor principle and sensitivities of the ecological receptors the following European Sites are considered relevant to include for the purposes of initial screening for the requirement for Stage 2 appropriate assessment on the basis of likely significant effects.

European sites considered for Stage 1 screening:

European site (SAC/SPA)	Qualifying Interests	Distance
<b>Glendine Wood SAC</b> <b>(002324)</b>	Killarney Fern	c.4.6km
<b>Mid Waterford Coast SPA</b> <b>(004193)</b>	Cormorant Peregrine Herring Gull Chough	c.8.3km
<b>Helvick Head to Ballyquin SPA</b> <b>(000665)</b>	Vegetated sea cliffs of the Atlantic and Baltic Coasts European Dry Heaths	c.6.5km
<b>Dungarvan Harbour SPA</b> <b>(004032)</b>	Great Crested Grebe Light-bellied Brent Goose Shelduck Red-breasted Merganser Oystercatcher Golden Plover Grey Plover Lapwing Knot Dunlin Blacktailed Godwit Curlew Redshank Turnstone Wetlands	Adjacent

13.5.2. Based on my examination of the NIS report and supporting information, the NPWS website, aerial and satellite imagery, the scale of the proposed development and



likely effects, separation distance and functional relationship between the proposed works and the European sites, their conservation objectives and taken in conjunction with my assessment of the subject site and the surrounding area, I would conclude that a Stage 2 Appropriate Assessment is required for one of the four European sites referred to above.

13.5.3. The remaining three sites (namely Glendine Wood SAC (002324), Mid Waterford Coast SPA (004193) and Helvick Head to Ballyquin SPA (000665) can be screened out from further assessment because of the scale of the proposed works, the nature of the Conservation Objectives, Qualifying and Special Conservation Interests, the separation distances and the lack of a substantive linkage between the proposed works and the European sites. It is therefore reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European Site Nos. (002324, 004193 and 000665) in view of the sites conservation objectives and a Stage 2 Appropriate Assessment is not therefore required for these sites.

### 13.6. Stage 2 Appropriate Assessment

13.6.1. Relevant European site – Stage 2 Appropriate Assessment: The relevant site area is Dungarvan Harbour SPA. The Conservation Objectives and Qualifying Interests, including any relevant attributes and targets for this site, is set out below.

Site Name	Qualifying Interests	Distance
1. Dungarvan Harbour SPA (004032)	Great Crested Grebe Light-bellied Brent Goose Shelduck Red-breasted Merganser Oystercatcher Golden Plover	

Site Name	Qualifying Interests	Distance
	Grey Plover Lapwing Knot Dunlin Black-tailed Godwit Bar-tailed Godwit Curlew Redshank Turnstone Wetlands	

## 1. Dungarvan Harbour SPA/site code: (004032)

### 13.7. Description of site:

13.7.1. Dungarvan Harbour SPA is located in the south-west of Co. Waterford and lies at the eastern end of the former valley of the River Blackwater. It is considered to be the 15<sup>th</sup> most important wetland site in Ireland and the second most important wetland in the South-East after Wexford Harbour. Dungarvan Harbour is recognised as a wetland of international importance under the Ramsar Convention of 1971 and was designated a Special Protection Area in 1994.

### 13.8. Conservation Objectives

13.8.1. Detailed conservation objectives for the site were published in 2012. Two conservation targets for each of the bird series listed for the site are that (a) the long-term population trend is stable or increasing, and (b) there should be no significant decrease in the numbers or range of areas used by waterbirds species, other than that occurring from natural patterns of variation. The conservation target set out for

wetlands is that the permanent area occupied by the wetland habitat should be stable and not significantly less than the area of 2.219ha other than that occurring from natural patterns of variation.

### **13.9. Potential direct effects:**

#### **13.10. Construction Phase**

13.11. The development of a new walkway and cyclepath will necessitate the use of machinery with increased levels of activity having the potential to cause increased disturbance to wintering birds. At its worst, this impact would lead to waterbirds failing to use Roost 1. The peak number of Dunlin using Roost 1 was 510 which equates to 26% of the total population of Dungarvan Harbour SPA. The bird survey states that the impact would be potentially significant with reference to attribute 1 (population trend) of the conservation objective and that the displacement of 26% of the population of a waterbird SCI species could therefore be a significant negative impact of a temporary nature during the construction period.

#### **13.12. Operational Phase**

13.13. It was considered that based on the survey work, the use of the upgraded pathway by walkers, bicycles and dogs under control should not lead to significant levels of disturbance to waterbirds. However, concern was expressed that the proposals to extend the path close to the SPA in one section may lead to increased levels of disturbance in a very sensitive location – i.e. adjacent to the saltmarsh roost. At its worst, this impact could lead to waterbirds failing to use the saltmarsh roost.

Similarly to the construction phase, the displacement of 26% of the population of a waterbird SCI could result in a significant negative impact of a permanent nature.

13.14. Currently, the path is unlit and parts are unsurfaced and it is not used to any great extent during the hours of darkness in Winter. During these times the levels of potential disturbance are therefore low. Some waterbird species may use the adjacent grassland for foraging (e.g Oystercatcher, Redshank and Curlew) during the hours of darkness, and to a greater level than during the hours of daylight). The birds survey identified that the addition of lighting to the footpath/cycle path would result in the path being used more by people during the hours of darkness during

winter. This could result in terrestrial and upper shoreline foraging potentially being subject to more disturbance than currently occurs. Therefore, the predicted impact is of a moderate negative impact.

13.15. The waterbirds study recommends that where the footpath extends close to the shoreline, the footpath should be designed to curve away from the shore. Section 7 of the NIS states that 'there is a pinch point in the middle section of the route between the SPA and backing onto residential lands and a point where it appears encroachment on the SPA to carry out the cyclepath is unavoidable. This part of the SPA consists of saltmarsh merging in to mixed sediment shores and is valuable foraging ground for wetland waders and it is proposed that the route should be kept as close to the northern boundary as possible to avoid causing disturbance to birdlife and reducing area of foraging habitat. The section in question is approximately 32m long and 0.18 ha.'

13.16. The main concern is that this location is very sensitive as it is adjacent to a saltmarsh roost. At its worst this impact could result in a significant negative impact of a permanent nature. The birds survey recommends that this area is redesigned. In particular, where the footpath extends close to the shoreline, the footpath should be designed to curve away from the shore. It was also recommended that terrestrial grass to the north of the saltmarsh should be planted with a treeline to provide a buffer between the footpath and the saltmarsh habitat with reduced lighting to further protect the saltmarsh roost. It was considered that if this mitigation was followed the impact would be slight-moderate which would be non-significant. The NIS notes that this area is a pinch point and notes the recommendation of the bird survey, however it is silent on any changes to the route. The Inspector asked a number of questions in relation to this issue at the third oral hearing. The heritage officer stated that they would 'do their best' to keep the path away from the shoreline and the executive engineer stated that they could change the path at this location but not to a huge degree.

**13.17. Potential indirect effects:**

Indirect impacts would include that some studies have shown some waterbird species to be positively affected by artificial lighting such as Redshank.

**13.18. Potential in-combination effects:**

13.19. Item 2 of the F.I. Request dated the 7<sup>th</sup> of July 2016 required an in-combination assessment of disturbance in Dungarvan Harbour SPA. In addition this in-combination assessment should include; a) In-combination effects with other similar pedestrian and cycleways in the area, b) Identification of locations where disturbed birds might be displaced to.

13.20. Two areas were chosen for the wintering birds survey within inner Dungarvan Harbour where coastal walkpath/cyclepath routes are close to the shoreline and SPA boundary as follows- Area 1 Ringnasilloge and Area 2 Clonea to Kilminnion (part of the Waterford Greenway).

13.21. The findings in relation to these areas were incorporated into the Bird Survey. At the third oral hearing, Dr. Goode of the NPWS expressed concern regarding the choice of Area 2. He stated that it was not a like for like comparison as the roosting birds are far away from the pathway in the Kilminnion site and the path is fenced and as such there remains reasonable scientific doubt that the currently proposed route would have no adverse impact on roosting areas. There are two roosting areas adjacent to the pedestrian and cycleway proposed at this location.

13.22. Having regard to the survey work undertaken to date and the information on file which does not identify where disturbed birds might be displaced to and uses a pedestrian and cycleway where roosting birds are far away from the site and which is mainly fenced, it is not considered that there is adequate information in regard to potential in-combination or cumulative impacts arising.

**13.23. Mitigation measures:**

13.24. The NIS and Bird Survey set out a number of mitigation measures proposed which can be summarised under the following headings:

13.25. Disturbance to waterbirds- construction phase

13.26. The bird survey noted that potential impacts could be avoided completely if the construction period is constrained to the time period when the total number of waterbirds are at their lowest. This time period is 1<sup>st</sup> May to 31<sup>st</sup> August. The NIS

stated that 'as the bird interests are mainly wintering waders and wildfowl, timing of works shall be carried out between May and September in order to minimise any disturbance to wintering birdlife from the construction. It was pointed out at the third oral hearing by Dr. Goode of the NPWS that for avoidance of doubt the correct period of construction should be the 1<sup>st</sup> of May to 31<sup>st</sup> of August.

### 13.27. Operational Phase

13.28. The two main concerns relate to disturbance by dogs veering off the pedestrian and cycleway and the impacts of the introduction of lighting to an area that is not currently lit and the impact of same on roosting areas.

13.29. The Bird Survey expressed concern in relation to 'the section of the path that extends close to the SPA in the mid-section, and especially if this area is lit at night, could lead to increased levels of disturbance because this is positioned in a very sensitive location i.e. adjacent to the saltmarsh roost. It predicted that at its worst, this impact could result in a significant negative impact of a permanent nature and recommended that the project be redesigned. It suggested that where the pathway extends close to the foreshore the footpath should be designed to curve away from the shore. The N.I.S. noted the conclusions of the Bird Survey in Section 7 (Mitigation) but no proposals were submitted to redesign the path at this location. This matter was discussed at the third oral hearing and Dr. Goode of the NPWS expressed concern in relation to the position of the path indicated in Figure 1 of the N.I.S. The Local Authority heritage officer suggested that that they could do their best to redesign the path and keep it away from the shoreline. The Local Authority engineer stated that the options for moving the path were minimal as they were joining up with two fixed points but that it could be curved slightly to the north.

13.30. In relation to lighting, the NIS recommended that this sensitive mid-section area should have reduced lighting. Section 7.3 (pp15 and 16) assesses the effects of proposed mitigation on bats. The mitigation in relation to lighting does not refer to roosting birds however the main concern in relation to roosting birds is that for the first time the path will be used during periods when it is presently not used or used to a minimal extent including night time and during the winter months. So during the most important time of the year for visiting wildfowl, where previously disturbance

was largely limited to the short winter daylight hours, now this disturbance period will be unlimited. This may lead to an increased level of disturbance to foraging and roosting birds. At the third oral hearing Dr. Goode of the NPWS identified recommendations for wildlife lighting in terms of mitigation which are summarised in his submission (pp 3-4) under 3 headings- keep it low, keep it shielded and keep it long. In response to questioning at the third oral hearing, Dr. Goode said that it was preferable if no lighting was used at all but his concern was that if any incidents occurred, the council may introduce lighting without full consideration. The heritage officer stated that they would work with the recommendations of the NPWS and that whilst the route would work without lighting there could be a demand for same in the future.

13.31. In relation to disturbance by dogs, the NIS (p24) stated that one of the greatest forms of disturbance during winter is loose dogs being allowed to run onto intertidal habitat. Dog owners often do not know that this activity can have a negative effect on wintering waterbirds in terms of increased energy expenditure and reduced survival. 'One recommendation would be to erect signs that not only highlight the unique avian fauna of Dungarvan Harbour, but also illustrate the negative effects and consequences of disturbance.' At the third oral hearing, it was considered by Dr. Goode (p. 4 of submission) 'that signs are inadequate as a complete mitigation for disturbance by dogs as they are ignored by some people'. At the second oral hearing, Dr. Goode had identified that fencing may be appropriate as a mitigation measure. Item 3 of the F.I. Request dated the 6<sup>th</sup> of July 2016 was as follows:

*'Following completion of the up to date baseline information you may be required to provide details of mitigation. This might include (should this be necessary) fencing for particular locations to prevent pedestrians straying off the track with dogs and disturbance to any identified roosting areas. You will note that an example of such was indicated in Fig. 2 of the submission by the Department of Arts, Heritage, and the Gaeltacht at the oral hearing.'*

13.32. At the third oral hearing the Local Authority stated that fencing could be provided along the route of the path in line with the recommendations of the NPWS. However no drawings or proposals for fencing other than on the CPO lands were provided in response to the Further Information Request.

**13.33. Residual effects/Further analysis:**

13.34. No further residual effects are identified following implementation of the recommended mitigation measures.

**13.35. NIS Omissions:**

13.36. I note that the NIS only includes details for reduced lighting on bats and does not provide any details in relation to birds. The details also refer to 'reduced lighting' but are not very specific in terms of design, intensity, spread or shielding. At the third oral hearing, this was noted, however in response to questioning, it was agreed that the mitigation for bats would also apply to birds. I note also that the submission by Dr. Goode to the third oral hearing is very specific and the Local Authority stated that they would comply with the recommendations of the NPWS.

**13.37. Suggested related conditions:**

13.38. To ensure implementation of mitigation measures, conditions should specifically require the submission of a construction management plan and on-site supervision by an ecologist so as to oversee full implementation of agreed measures.

13.39. To ensure no significant disturbance to wintering birds during the construction period it is recommended that the construction period is in accordance with the requirements of the NPWS- i.e 1<sup>st</sup> of May to 31 August. As previously pointed out, there was some ambiguity in the documentation regarding this however, should the Board be minded to grant permission I am satisfied that this condition would address this.

**13.40. Appropriate Assessment Conclusions**

13.41. Having regard to the nature of the proposed works adjacent to and within Dungarvan Harbour SPA, I consider that it is reasonable to conclude on the basis of the information on the file, which I consider adequate in order to carry out a Stage 2 Appropriate Assessment, that the proposed development, individually or in



combination with other plans and projects would adversely affect the integrity of the European site no. 004032 in view of the site's Conservation Objectives.

## 14.0 Recommendation

14.1. I recommend that the application under Section 177AE for the construction of a pedestrian and cycleway is refused (Schedule 1), and consequently that the CPO is annulled (Schedule 2)

### RECOMMENDATION

#### Schedule 1

##### Reasons and Considerations

The Board agreed with the screening assessment and conclusion carried out by the Inspector that Dungarvan Harbour SPA (Site Code 004032) is the European site for which there is a likelihood of significant effects.

The Board considered the Natura Impact Statement and all other relevant submissions and carried out an appropriate assessment of the implications of the proposal for Dungarvan Harbour SPA (Site Code 004032) in view of the Site's Conservation Objectives.

In completing the assessment, the Board considered, in particular, the

- (i) Likely direct and indirect impacts arising from the proposal both individually and in combination with other plans or projects, specifically upon Dungarvan Harbour SPA,
- (ii) Mitigation measures which are included as part of the current proposal,
- (iii) The Conservation Objectives for this European Site,
- (iv) Views of the Department of Culture, Heritage and the Gaeltacht.
- (v) Submissions both on file and made at oral hearings and report of the Inspector

In completing the AA, the Board accepted and adopted the Appropriate Assessment carried out in the Inspector's report in respect of the potential effects of the proposal

on the aforementioned European Site, having regard to the site's Conservation Objectives. The Board is not satisfied that:

- (i) The proposed pedestrian and cycle track would not result in a significant negative impact causing the long term population trend to show a decrease of 25% or more of the total Dungarvan Harbour SPA population of wintering waterbirds SCI species. It is a conservation objective that the long term population trend is stable or increasing.
- (ii) The increased level of usage and the lighting proposed would not lead to an increased level of public use including dog walkers that may in turn incur an increased level of disturbance to foraging and roosting birds.
- (iii) Encroachment of the path, particularly the mid-section of the route as indicated in Figure 3 of the NIS dated July 2017 in what is described as a 'pinch point in the middle section' adjacent to the saltmarsh roost where the route encroaches on the SPA would not lead to increased levels of disturbance particularly if lit at night.
- (iv) Sufficient in-combination assessment has been carried out by the Local Authority, particularly in relation to roosting birds.
- (v) There is adequate information in terms of fencing of the proposed route and this could lead to increased levels of disturbance and where disturbed waterbirds would be displaced to if the saltmarsh roost adjacent to the route was abandoned.

The Board is not satisfied, on the basis of the submissions made in connection with the Section 177AE application, that adequate information has been provided to satisfactorily demonstrate that no adverse effects will occur on the integrity of the European Site from the proposed development.

It is therefore considered that the Board is unable to ascertain that the proposed development will not adversely affect the integrity of a European Site, namely Dungarvan Harbour SPA Site Code 004032 alone or in combination with other planned projects having regard to the conservation objectives of the site. It is considered that the proposed development would, as such, be contrary to the proper planning and sustainable development of the area.

In overall conclusion, the Board is not satisfied that the proposed development would not adversely affect the integrity of the European Site in view of the site's Conservation Objectives.

## **Schedule 2**

### **Reasons and Considerations**

Having considered the objections made to the compulsory purchase order and not withdrawn, the report of the person who conducted the oral hearings into the objections, the purpose for which the lands are to be acquired as set out in the compulsory purchase order and also having regard to the following:

- (i) The purpose of the compulsory acquisition for the provision of a pedestrian and cycleway.
- (ii) The policies and objectives of the Dungarvan Town Development Plan 2012 to 2018.
- (iii) The inadequate case made to justify the need for the proposed acquisition at this time in terms of overriding public need and potential usage.
- (iv) The location of the project adjacent to and partially encroaching on Dungarvan Harbour SPA and the Appropriate Assessment carried out by An Bord Pleanála and the implications of such.
- (v) The lack of sufficient clarity in the plans and particulars provided by the Local Authority with regard to whether the proposed works underlying the acquisition could be appropriately achieved within the confines of the acquisition sought and the implications of such.

It is considered that the Local Authority has not sufficiently demonstrated at this time that a case for the acquisition of lands to provide for the pedestrian and cycleway and to meet the stated need has been made. It is therefore considered that the acquisition by the Local Authority of the lands which are

the subject of the Compulsory Purchase Order is not justified and that the compulsory purchase order shall be annulled.

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Emer Doyle

**Planning Inspector**

11<sup>th</sup> May 2018