

**IN THE MATTER OF AN APPLICATION TO
AN BORD PLEANALA**

**For Approval of the Railway (Metrolink – Estuary to Charlemont via
Dublin Airport) Order [2022]
ABP-314724-22**

ORAL HEARING

STATEMENT OF EVIDENCE

on

AA/NIS update and EIAR Biodiversity update

by

Andrew Speer

7 March 2024

**MetroLink Oral Hearing
Brief of Evidence of Andrew Speer
AA/NIS update and EIA Biodiversity update**

1 Qualifications and Role on the MetroLink Project

1.1 My name is Andrew Speer. I am employed by Scott Cawley Ltd., as chief technical officer. I hold a BSc (hons) Zoology from the National University of Ireland Galway (2002), a PG Dip in Geographic Information Systems (GIS) from the University of Ulster (2015), and an Adv Dip in Planning & Environmental Law, King's Inns (2019). I am a full member (MCIEEM) of the chartered institute of ecology and environmental management. I am covering the biodiversity and appropriate assessment aspects of the Metrolink project.

1.2 My evidence is concerned with:

1.2.1 Updates to the EIAR, in respect of biodiversity;

1.2.2 Derogation licencing;

1.2.3 Policy changes;

1.2.4 Legislative updates since lodgement of the application for a Railway Order; and

1.2.5 Updates to the NIS.

2 AA/NIS update and EIA Biodiversity update

TII would like to submit to the Inspector the following update documents:

1. EIAR Biodiversity Update Report

2. AA Update Report

3 Executive Summary of key updates/changes and reason for these

Since the date of lodgement of the Railway order application:

3.1 Additional biodiversity baseline surveys were undertaken between May 2022 and March 2023 to verify baseline conditions relating to the EIAR biodiversity and NIS assessments.

The assessment of the likely significant effects of the proposed Project on European sites has been updated to reflect the updates set out and assessed in relation to the NIS updates.

The cumulative impact assessment has been updated since submission of the EIAR.

The air quality assessment has been updated to capture and assess the updated air modelling undertaken.

At the request of the Department of Housing Local Government and Heritage, an otter bypass plan has been developed to facilitate otter movements along the Royal Canal at the proposed Glasnevin Station during construction.

Confirmation is provided that there is no identified need for a derogation licence under Regulation 54 of the European Communities (Birds and Natural Habitats) Regulations, 2011.

New bat survey and mitigation guidance, published since September 2022, has been reviewed with respect to the bat impact assessment for the proposed Project.

New or updated plans published since September 2022 and relevant to biodiversity policy at a national and local authority level have been reviewed for compliance.

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Commencement of the Wildlife (Amendment) Act, 2023 is also noted, which established a legal basis for how public bodies consider biodiversity in carrying out their functions.

Clarifications are provided in relation to the qualifying interests of the Wicklow Mountains SAC and the otter assessment set out in the NIS.

Changes to European site boundaries and changes to European site conservation objectives have been reviewed and assessed.

Two new cSPA sites, the North-West Irish Sea cSPA and the Seas off Wexford cSPA, were proposed for designation since September 2022 and have been assessed. Additional European sites, not previously considered in the AA Screening Report or NIS, have been assessed.

The in combination assessment has been updated since submission of the NIS and AA Screening Report.

4 Updates to the EIAR in respect of biodiversity

4.1 *Baseline Survey Update*

The following additional biodiversity baseline surveys were undertaken between May 2022 and March 2023 to verify baseline conditions relating to the assessment of likely significant effects on biodiversity, given the time that had elapsed since the surveys undertaken for, and published in, the EIAR were completed: habitats (including non-native invasive species), mammal surveys, bat surveys (comprising building emergence, walked transect activity, and bat tree roost surveys), breeding birds, wintering birds, amphibian habitat suitability and reptile habitat suitability.

Section 2 of the EIAR Biodiversity Update Report presents the results of the additional biodiversity baseline surveys and an assessment of the implications of those results on the impact assessment, mitigation strategy, prediction of residual impacts, and compensatory measures proposed for the proposed Project.

Although relatively minor in nature, the changes to terrestrial habitats recorded in 2022 do alter the areas of habitat loss calculated and presented in Table 15.17 of the EIAR. An updated version of Table 15.17 of the EIAR to capture those terrestrial habitat changes is presented in Section 2.3 of the EIAR Biodiversity Update Report.

The overall likely significant residual effects on biodiversity, considering the mitigation and compensatory measures proposed, remain as published in Section 15.9 of the EIAR. The proposed Project is likely to have a significant residual negative effect, at the local geographic scale, as a result of drainage ditch habitat loss and loss of yellowhammer breeding habitat.

4.2 *Designated Sites Update*

The assessment of the likely significant effects of the proposed Project on designated sites has been reviewed to capture and reflect the updates set out and assessed in the AA Update Report. Following the review, the conclusion presented in Section 15.6.1.1 of the EIAR biodiversity chapter remains that the proposed Project will not result in any residual impact, either during construction or operation, on any European site, or any associated proposed Natural Heritage Areas (pNHAs), as the potential impact pathways connecting the proposed Project to these European sites and pNHA sites are fully mitigated.

4.3 *Cumulative Impact Assessment Update*

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The cumulative impact assessment has been reviewed and updated since the EIAR was published in September 2022 (as presented in the Cumulative Impacts Addendum Report). None of the new projects assessed give rise to any likely significant negative cumulative residual effects on biodiversity.

4.4 Air Quality Assessment Update

In December 2022, after the EIAR and NIS had been submitted, Transport Infrastructure Ireland (TII) published new guidance documents and standards for EIAR with respect to Air Quality, updating the methodology for assessing ecological receptors and provided a strategy for the inclusion of NH₃ within modelling. As a result the air modelling was updated, as presented in the *Chapter 16 Air Quality, Ecology Related Addenda to EIAR* report.

In light of the above, the potential impacts of the proposed Project, associated with induced traffic and air quality impacts during construction or operation, on proposed Natural Heritage Areas has been reviewed and an updated assessment presented in Section 5 of the EIAR Biodiversity Update Report (noting the European sites are assessed in the context in Section 5 of the AA Update Report). The assessment relates to Bog of the Ring pNHA, Knock Lake pNHA, Rogerstown Estuary pNHA, Malahide Estuary pNHA, Feltrim Hill pNHA, Santry Demesne pNHA, the Royal Canal pNHA, Liffey Valley pNHA, North Dublin Bay pNHA and the Grand Canal pNHA, due to their proximity to the affected road network.

The assessment concluded that the proposed Project will not give rise to any likely significant effects to designated areas for nature conservation as a result of air quality impacts associated with the proposed Project.

4.5 Royal Canal (Glasnevin Station) Otter Mitigation Plan

In response to the submission by the Department of Housing Local Government and Heritage, an otter bypass plan has been developed to facilitate otter movements along the Royal Canal at the proposed Glasnevin Station during construction. The details of the mitigation strategy are set out in Section 10 of the EIAR Biodiversity Update Report.

5 Derogation licencing

Otter, and the seven bat species recorded within the study area for the proposed Project, are listed on Annex IV of the EU Habitats Directive and are afforded strict protection under Article 12 of the Habitats Directive and Regulation 51 of the European Communities (Birds and Natural Habitats) Regulations, 2011.

The assessments undertaken and presented in Chapter 15 Biodiversity of the EIAR, and in the EIAR Biodiversity Update Report, in relation to otter and bat species do not, based on the baseline information available, identify the need for a derogation licence under Regulation 54 of the European Communities (Birds and Natural Habitats) Regulations, 2011.

5.1 Guidance Updates

Two biodiversity guidelines relating to bat survey and mitigation have been published since September 2022.

Bat Surveys for Professional Ecologists: Good Practice Guidelines (4th edition) (Collins (ed.), 2023) was published by the UKs Bat Conservation Trust in September 2023, more than 12 months after the bat surveys informing the MetroLink EIAR were completed. Therefore, changes to the survey methodologies set out in the BCT guidance document are not reflected in how the MetroLink bat survey data was collected. Nevertheless, the bat survey programme and methodologies applied between 2018 and 2022 were undertaken with reference to *Environmental Guidelines Series for Planning and Construction of National Roads* (NRA, 2005- 2009) and *Bat Surveys for Professional Ecologists: Good Practice Guidelines (3rd edn)*

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(Collins (ed.), 2016) and the survey methodologies were robust and provide sufficient information to inform the impact assessment and mitigation strategy presented in the EIAR.

The *UK Bat Mitigation Guidelines* (Reason and Wray, 2023) were also published in September 2023. The *Bat Mitigation Guidelines for Ireland V2* (NPWS, 2022), used to inform the bat mitigation strategy for the proposed Project, remain the current best practice Irish guidelines. The bat mitigation strategy developed for the proposed Project was designed with reference to *Environmental Guidelines Series for Planning and Construction of National Roads* (NRA, 2005- 2009) and *Bat Mitigation Guidelines for Ireland V2* (NPWS, 2022), ensuring the protection of bats during construction and operation of the proposed Project.

6 Policy Updates

The following new or updated plans, relevant to biodiversity policy at a national and local authority level, have been published since September 2022:

- (a) Ireland's 4th National Biodiversity Action Plan 2023–2030
- (b) TII Biodiversity Plan 2023
- (c) TII Landscape Plan 2023
- (d) Dublin City Development Plan 2022-2028
- (e) Dublin City Biodiversity Action Plan 2021-2025
- (f) Fingal Development Plan 2023–2029
- (g) Fingal Biodiversity Action Plan 2023-2030

The proposed Project is compliant with all biodiversity protective policies and objectives set out in Ireland's 4th National Biodiversity Action Plan 2023–2030 and the Dublin City Biodiversity Action Plan 2021-2025. The proposed Project also complements the TII Biodiversity Plan 2023 and the TII Landscape Plan 2023.

The proposed Project is not in full compliance with the following plan level biodiversity protective policies and objectives which relate to providing a biodiversity net gain, protecting ecological corridors and the green infrastructure network (including habitats such as trees, hedgerows and woodland) – see also the *MetroLink Planning Report, Update February 2024*:

- (a) Dublin City Development Plan 2022-2028: Policy GI16 and Objective GIO23
- (b) Fingal Development Plan 2023–2029: Policies GINHP2, GINHP10, GINHP20 and GINHP21, objectives GINHO2, GINHO4, GINHO21, GINHO30, GINHO41 and GINHO44, and development management standards DMSO125, DMSO140, DMSO154, DMSO155, DMSO156, DMSO159 and DMSO 160
- (c) Fingal Biodiversity Action Plan 2023-2030: Appendix XIV: Planning Requirements – Corridors

TII have reached agreement with both Dublin City Council and Fingal County Council to include additional conditions in the Railway Order relating to the mitigation strategy and moving further towards compliance with plan level biodiversity protective policies and objectives. For example, conditions relating to the protection and retention of trees and hedgerows, landscaping design and, in the case of Fingal County Council, replacement of all trees or hedgerows being removed to facilitate the proposed Project.

7 Legislative Updates

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Section 5 of the Wildlife (Amendment) Act, 2023, commenced on 17th November 2023, inserted Part VA Biodiversity into the Wildlife (Amendment) Act, 2000 which sets out how certain public bodies are to consider biodiversity, and in particular the objectives and targets in a National Biodiversity Action Plan, in performing their functions. This is addressed in the update to the EIAR Biodiversity Update Report.

8 Updates to the NIS

8.1 *Additional Baseline Surveys*

The following additional ecological baseline surveys were undertaken between May 2022 and March 2023 to verify baseline conditions relating to the assessment of effects on European sites, given the time that had elapsed since the surveys undertaken for, and published in, the AA Screening Report and NIS were completed: habitats (including non-native invasive species), otter, breeding birds and wintering birds.

An assessment of the implications of the proposed Project on European sites, in light of the 2022/23 baseline data updates, has been carried out and is presented in Section 2 of the AA Update Report. It remains the case that, considering the additional 2022/23 ecological baseline survey results, the proposed Project will not adversely affect the integrity of any European sites, either alone or in combination with other plans or projects.

8.2 *Changes to Qualifying Interests or Special Conservation Interests*

By way of clarification, although the Annex I oligotrophic isoetid lake habitat [3130] was assessed in the AA Screening Report and NIS in relation to the Wicklow Mountains SAC, it is not a qualifying interest habitat of that European site. Further explanation is provided in Section 3.1 of the AA Update Report.

8.3 *Changes to European site Boundaries*

The European site spatial data published by the National Parks and Wildlife Service has been updated several times since the AA Screening Report and NIS were published in September 2022. However, updates to SAC or SPA site boundary data only affected the following four European sites identified as being at risk of impacts from the proposed Project: Wicklow Mountains SAC, The Murrough SPA, the new North-West Irish Sea cSPA and the new Seas off Wexford cSPA.

Changes to the Wicklow Mountains SAC were of a local and minor nature and it remains the case that the proposed Project will not adversely affect the integrity of the Wicklow Mountains SAC, either alone or in combination with other plans or projects.

Although The Murrough SPA boundary was significantly increased in size and is now 3km closer to the proposed Project and encompassing a substantial offshore area, it remains the case that the proposed Project will not adversely affect the integrity of The Murrough SPA, either alone or in combination with other plans or projects.

An assessment of the two new cSPA sites, the North-West Irish Sea cSPA and the Seas off Wexford cSPA, is included in Section 3.2 of the AA Update Report.

8.4 *Changes to Conservation Objectives*

The published conservation objectives for the following six European sites were updated from generic version 9.0 to first order site-specific conservation objectives in October 2022: Skerries Islands SPA, Lambay Island SPA, Ireland's Eye SPA, Howth Head Coast SPA, Dalkey Islands SPA and The Murrough SPA. The changes are considered in Section 3.3 of the AA Update Report and it remains the case that the proposed Project will

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not adversely affect the integrity of these European sites, either alone or in combination with other plans or projects.

It is noted that the National Parks and Wildlife Service are reviewing, updating and republishing European site conservation objective documents on a continuous basis. Further revisions may be published at any time which will require consideration and assessment as part of the AA process.

8.5 *Proposed New candidate Special Protection Areas (cSPAs)*

Two new candidate SPA (cSPA) sites have recently been proposed for designation and, therefore, were not considered or assessed in the AA Screening Report or NIS submitted to An Bord Pleanála in September 2022: the North-West Irish Sea cSPA in July 2023, and the Seas off Wexford cSPA in January 2024

An assessment of the implication of the proposed Project on these cSPA sites has been carried out and is presented in Section 3.4 of the AA Update Report. The assessment concluded that the proposed Project would not adversely affect the integrity of either European site, either alone or in combination with any other plans or projects.

8.6 *Additional European Sites Considered*

The new North-West Irish Sea cSPA covers a large marine area that is contiguous with, and supporting, 13 other existing SPA sites, three of which were not previously considered in the AA Screening Report or NIS: the River Nanny Estuary and Shore SPA, the Boyne Estuary SPA and Dundalk Bay SPA.

These sites are assessed in Section 3.5.1 of the AA Update Report. Each of the three sites are beyond the zone of influence of the proposed Project and beyond the regular commuting or foraging range of all the SCI species. Therefore, the proposed Project is not likely to have a significant effect on the River Nanny Estuary and Shore SPA, Boyne Estuary SPA or Dundalk Bay SPA, either alone or in combination with other plans or projects.

The new Seas off Wexford cSPA covers a large marine area that is contiguous with and supporting a number of other existing SPA sites: Cahore Marshes SPA, The Raven SPA, Wexford Harbour and Slobbs SPA, Lady's Island Lake SPA, Tacumshin Lake SPA, Saltee Islands SPA, Ballyteigue Burrow SPA, Keeragh Islands SPA and Bannow Bay SPA.

These sites are assessed in Section 3.5.2 of the AA Update Report. The following sites are beyond the zone of influence of the proposed Project and beyond the regular commuting or foraging range of all the SCI species and, therefore, the proposed Project is not likely to have a significant effect on them: Cahore Marshes SPA, The Raven SPA, Wexford Harbour and Slobbs SPA, Lady's Island Lake SPA, Tacumshin Lake SPA, Ballyteigue Burrow SPA, Keeragh Islands SPA and Bannow Bay SPA.

There is the potential for four of the Saltee Islands SPA SCI bird species to utilise habitat areas within the Zol of the proposed Project by virtue of their extensive breeding foraging ranges: fulmar, gannet, kittiwake and puffin. Therefore, these species are at risk of impacts from a reduction in water quality in the Irish Sea. An assessment of the implication of the proposed Project on Saltee Islands SPA has been carried out and is presented in Section 3.5.2 of the AA Update Report. The assessment concluded that the proposed Project would not adversely affect the integrity of the Saltee Islands SPA, either alone or in combination with any other plans or projects.

There is also the potential for kittiwake, the SCI species for Wicklow Head SPA, to utilise habitat areas within the Zol of the proposed Project by virtue of the species' extensive breeding foraging range. Therefore, these species are at risk of impacts from a reduction in water quality in the Irish Sea. An assessment of the implication of the proposed Project on Wicklow Head SPA has been carried out and is presented in Section

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3.5.3 of the AA Update Report. The assessment concluded that the proposed Project would not adversely affect the integrity of the Wicklow Head SPA, either alone or in combination with any other plans or projects.

8.7 Otter Assessment

Section 4 of the AA Update Report confirms that the local otter population within the study area that is associated with the River Liffey, the Royal Canal, the River Dodder and the Owendoher River are considered, for the purposes of the assessment presented in the NIS, to support the qualifying interest otter population of the Wicklow Mountains SAC.

Section 5 of the AA update report also clarifies the otter impacts associated with the proposed Project that do, and do not, require mitigation to avoid adverse effects on the integrity of the Wicklow Mountains SAC; including the temporary habitat severance and barrier effect on otter using the Royal Canal assessed in Section 15.4.2.4.1 of the EIAR.

8.8 Air Quality Assessment Update

In December 2022, after the NIS had been submitted, Transport Infrastructure Ireland (TII) published new guidance documents and standards for EIAR with respect to Air Quality, updating the methodology for assessing ecological receptors and provided a strategy for the inclusion of NH₃ within modelling. As a result the air modelling was updated, as presented in the *Chapter 16 Air Quality, Ecology Related Addenda to EIAR* report.

In light of the above, the potential impacts of the proposed Project, associated with induced traffic and air quality impacts during construction or operation, on European sites has been reviewed and an updated assessment presented in Section 5 of the AA Update Report. The assessment relates to Rogerstown Estuary SAC, Rogerstown Estuary, Malahide Estuary SAC, Malahide Estuary SPA and South Dublin Bay and River Tolka Estuary SPA, due to their proximity to the affected road network.

The assessment concluded that the proposed Project will not adversely affect the integrity of any of those European sites as a result of air quality impacts associated with the proposed Project.

8.9 In Combination Assessment Update

The in combination assessment has been reviewed and updated since the AA Screening Report and NIS were published in September 2022 (see Section 6 of the AA Update Report). The conclusion of which was that it remains the case that the proposed Project will not adversely affect the integrity of any European sites, either alone or in-combination with any other plans or projects. No additional mitigation measures are necessary or required following the completion of the in combination assessment.

9 Concluding Statement

We welcome any questions or further discussion, in due course, on the various Appropriate Assessment and biodiversity related updates presented to the hearing.

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APPENDIX 1

Refer to document EIAR Biodiversity Update Report

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APPENDIX 2

Refer to Document AA Update Report