Validation Checklist

Lodgement Number : **LDG-074926-24**
Case Number: **ABP-320815-24**
Customer: **Wild Ireland Defence CLG**
Lodgement Date: **17/09/2024 16:26:00**
Validation Officer: **James Sweeney**
PA Name: **Fingal County Council**
PA Reg Ref: **F23A/0636**
Case Type: **Normal Planning Appeal PDA2000**
Lodgement Type: **Appeal**

Validation Checklist	Value
Confirm Classification	Confirmed - Correct
Confirm ABP Case Link	Confirmed-Correct
Fee/Payment	Valid – Correct
Name and Address available	Yes
Agent Name and Address available (if engaged)	Yes
Subject Matter available	Yes
Grounds	Yes
Sufficient Fee Received	Yes
Received On time	Yes
3rd Party Acknowledgement	Yes
Eligible to make lodgement	Yes
Completeness Check of Documentation	Yes
Valid Lodgement Channel	Yes

BP01 MP

Run at: 18/09/2024 10:25

Run by: James Sweeney

Lodgement Cover Sheet - LDG-074926-24

320815-24 3rd Party

An Bord Pleanála

Multiple

Details

Lodgement Date	17/09/2024
Customer	Sabrina Joyce Kemper & Catherine McMahon
Lodgement Channel	In Person
Lodgement by Agent	No
Agent Name	
Correspondence Primarily Sent to	
Registered Post Reference	

Lodgement ID	LDG-074926-24
Map ID	
Created By	Shirley Connolly
Physical Items included	No
Generate Acknowledgement Letter	
Customer Ref. No.	
PA Reg Ref	

Categorisation

Lodgement Type	Appeal
Section	Processing

Fingal

PA Name	Dublin City Council North
Case Type (3rd Level Category)	

Fee and Payments

Specified Body	No
Oral Hearing	No
Fee Calculation Method	System
Currency	Euro
Fee Paid	220.00
Refund Amount	0.00

Observation/Objection Allowed?	
Payment	PMT-058399-24
Related Payment Details Record	PD-058263-24

BP01M

Appeal Ack Rec ✓ 17/9/24

Run at: 17/09/2024 16:51

Run by: Shirley Connolly

PA Case Details Manual	
PA Case Number	
PA Decision	
PA Decision Date	
Lodgement Deadline	
Development Description	
Development Address	

Appeals Type	

Run at: 17/09/2024 16:51

Run by: Shirley Connolly

An Bord Pleanála Appeal F23A/0636 Dublin Airport Drainage Area Infrastructure

Photo: Baldoyle Bay SAC by Philip Swan

Submission by:
Sabrina Joyce-Kemper
(this address for correspondence)
23 Portmarnock Crescent
Portmarnock
Co Dublin.

Peter Sweetman
Wild Ireland Defence CLG
North Allihies,
Beara,
Cork, Ireland

Date of submission: 17th September 2024

Submission

1. Introduction

1.1 Sabrina Joyce-Kemper on her own behalf and Peter Sweetman of Wild Ireland Defence CLG makes this joint appeal (due to financial constraints) of planning reference F23A/0636. Ms Joyce-Kemper has an advanced diploma in Planning and Environmental law from the Honorable Kings Inn.

1.2 Wild Ireland Defence CLG pursue the objectives of education, advocacy, and activism of all types in the protection, conservation, preservation and defence of the natural environment and the species that habituate it. WID make this appealin order to ensure that the planning application is in progressed in accordance with environmental and planning and development laws

The planning application F23A/0636 is described as follows;

"in the townlands of Pickardstown, Coultry, Huntsown, Forrest Great, Forrest Little, and Collinstown; and to the east of the airfield in the townlands of Cloghran, Corballis, Commons, Toberbunny, Stockhole and Clonshagh.

The proposed development includes upgrades to existing drainage infrastructure and construction of additional drainage infrastructure to improve performance of the surface water management system at Dublin Airport and will consist of:

a. a contamination detection and response (CD&R) system comprising detection devices, network decision points (DPs), control kiosks, and ancillary infrastructure including local access roads, local drainage and communications and power ducts;

b. clean water supply pipelines consisting of large diameter trunk pipelines;

c. airfield contaminated pipelines consisting of large diameter trunk pipelines;

d. upgrades to the West Apron surface water collection network including reconfiguration of the existing network, construction of an underground attenuation tank, installation of a local CD&R system, network DPs and a control kiosks, construction of an underground pollution storage tank, a pumping station, and ancillary development including local ductwork, local access roads and local drainage;

e. upgrades to the existing surface water collection network in the vicinity of the South Apron including reconfiguration of the existing network, construction of network DPs, upgrade of the existing flow diversion structure (FDS) and reconfiguration of the existing Cuckoo supply channel;

f. a central pollution control facility (CPCF) consisting of underground pollution control storage tanks, a pumping station, a discharge pipeline to the Uisce Eireann network, mechanical and electrical equipment, a control building, an electrical substation, and

ancillary development including a local access road, enhanced flood bund, local drainage and ducting;

g. *a CPCF pipeline consisting of a large diameter trunk pipeline;*

h. *a central supervisory control and data acquisition (SCADA) system comprising kiosks and associated electrical power and signal connections;*

i. *repurposing of the central section of the existing Airfield Trunk Culvert (ATC) as a contaminated pipeline; and*

j. *ancillary and associated development including pipework, mechanical and electrical service connections and upgrades, temporary compounds and site works.*

This planning application is accompanied by an Environmental Impact Assessment Report and Natura Impact Statement.

1.3 Two submissions were made by the appellants one to the original application and a second, to Further Information that was deemed Significant Additional Information by the Planning Authority. Both Submissions have been attached at appendix 1 and appendix 2 respectively.

2. Historical and current PFAS Contamination.

2.1 The Appellants are seriously concerned by Fingal County Councils grant of planning, for a drainage area application to deal with contaminated surface water and runoff from the Dublin Airport Campus, when the full extent of PFAS (per- and poly-fluoroalkylated substances) in contaminated soil, surface water, groundwater and receiving waterbodies have not been comprehensively, identified, mapped, quantified and analysed for spectrum of toxic PFAS compounds.

2.2 Without fully identifying the extent of the contamination of PFAS allowing for a comprehensive assessment on the impacts to human health and environment, it is impossible to identify mitigation measures that can prevent significant impacts to Waterbodies, NATURA2000 sites and species that are subject to contamination from the site. The application failed entirely to address whether the infrastructure proposed can indeed identify and remove contaminants such as PFAS from the water runoff it will treat, before discharging to waterbodies.

2.3 PFAS (Per- and Polyfluoroalkyl Substances) are synthetic chemicals widely used in various industrial and consumer products due to their water- and grease-resistant properties. Their persistence in the environment and ability to accumulate in living organisms raise significant concerns about their impact on biological processes and ecosystems, particularly in relation to surface water, groundwater, and river water contamination.

2.4 The dangers of PFAS are have become more prevalent in recent years. Cases in the US including class actions against DuPoint and 3M have raised awareness of the serious health and environmental impacts of PFAS on humans and the Environment. The

situation has prompted the EPA in the US to issue the first guidelines on PFAS levels (see Harvard Law article appendix 3).

2.5 Dangers of PFAS on Biological Processes: Toxicity on Tissues and cells is one major issue, PFAS exposure can cause damage to multiple biological systems, including the liver, kidneys, and immune system. These compounds are known to disrupt lipid and protein metabolism, potentially leading to developmental issues, immune suppression, and cancer risks. The PFAS reports in relation to some identified sites and soil and water contamination in the airport, indicate that there is contamination of water drains and groundwater potentially used for irrigation by Food producers such as Keelings just North of the Dublin airport Campus. **Fig 1** shows the proximity of these sites.

Figure 1: Fruit and Food growers immediately adjacent to contaminated site downstream of surface run off.

2.6 PFAS are also classified as endocrine disruptors, meaning they can interfere with hormonal signaling, which can result in reproductive and developmental abnormalities. The immune system can be particularly vulnerable, as PFAS can reduce the effectiveness of the body's defenses against pathogens .

2.7 Bio accumulation in Species: PFAS tend to bioaccumulate in the tissues of organisms due to their resistance to metabolic breakdown. This is particularly concerning for species higher in the food chain, such as predatory fish, birds, and mammals, which may accumulate high concentrations of PFAS from their prey. Chronic exposure in humans and wildlife can lead to a variety of health

issues, including reproductive toxicity, developmental delays, liver damage, and increased cancer risk.

2.8 Water Contamination and Its Impacts:

2.8.1 *Surface waters* such as lakes and rivers are often contaminated by industrial discharges, firefighting foams, Aircraft de-icing and runoff from sites where PFAS have been used or disposed of. Once PFAS enter surface water, they are highly mobile and can spread over large distances .

2.8.2 Aquatic species such as fish and amphibians absorb PFAS from the water, leading to bioaccumulation. This can harm aquatic ecosystems and eventually affect human populations and predators high on the trophic food web, that consume contaminated fish, shellfish birds etc. (eg Otters, Cetaceans, Humans, Birds). PFAS bioaccumulation in aquatic species such as fish and amphibians can disrupt their development, reproduction, and survival. PFAS accumulation in fish, for instance, can lead to reduced population sizes, impacting the entire aquatic food web. Predatory species such as birds and mammals that feed on contaminated fish are at higher risk of PFAS-related health issues, including liver and reproductive system damage

2.8.3 Groundwater, a vital source of drinking water for many communities, is also vulnerable to PFAS contamination. Due to their high solubility and persistence, PFAS can easily leach into groundwater from contaminated sites. This can include wells used to irrigate crops, water cattle or used for rural human drinking water.

2.8.4 Contaminated groundwater poses a long-term health risk to humans, as PFAS are resistant to conventional water treatment processes, meaning they persist in the water supply for extended periods. Humans are exposed to PFAS primarily through contaminated drinking water and the consumption of affected aquatic species. This exposure can lead to increased cholesterol levels, thyroid disorders, liver damage, and increased risks of cancers .

2.8.5 Rivers often act as conduits for PFAS pollution, carrying contaminants from industrial sources downstream. This results in contamination not only of aquatic ecosystems but also of agricultural lands and drinking water sources, In this case rivers such as the Ward River, Sluice River, Mayne River and Cuckoo Rivers all of which are inputting rivers to NATURA 2000 sites at Baldoyle Bay, Broadmeadow and Malahide Estuary and

2.8.6 Species living in and around contaminated rivers, such as fish, birds, and mammals, can bioaccumulate PFAS, which may lead to reproductive and immune dysfunction. Humans who consume contaminated water or fish are at risk of similar health effects. In this case impacting otters identified by Dublin Airport Survey on otters. (appendix 4).

2.9 PFAS compounds pose significant risks to both environmental and human health due to their persistence, mobility, and potential for bioaccumulation. They contaminate surface water, groundwater, and river systems, leading to long-lasting ecological and health effects. Mitigating PFAS contamination requires advanced remediation techniques and stricter regulatory controls to reduce further contamination. None of which have been identified or put forward as part of this application or by the planning authority's decision.

3. Habitats and Birds Directive. EIA Directive and Water Framework Directive.

3.1 We ask that the inspector read our comments in Appendix 5 which is a submission made on the Dublin Airport Infrastructure project F23A/0781 which is a project that needs to be assessed as cumulative impact to this one in any AA and EIA Assessment. We ask that the Board have regard to the unauthorised development and intensification issues that this project F23A/0781 in conjunction with live ABP case 314485 will have on the instant application contrary to the daa's response to Further information in this application (**see Fig 2)** which indicate there would be no intensification at the airport (flights including night flights, deicing, fueling over an above the current flights and 32 mppa CAP). We now know that this is not the case with an increase in night flights and Cap having been applied for.

2.5.3 Assessment

The objective of the applicant not to increase the risk to the environment at any point temporarily or otherwise is noted.

In addition to stating that it is the intention for there to be no nett reduction in the water quality of the cuckoo stream the response states that all components of the ADP project are interrelated and all are required in order to achieve the project objectives.

It is taken as fact that any intensification of the activities on the airfield in the absence of the implementation of the ADP would lead to an increased risk to the environment. Notwithstanding that elements of the proposal (western apron works) will make available and increase number of stands, it is important to note that the subject application seeks no intensification of the use and is restricted to addressing the impact of existing activity on the environment.

Taking particular account of the acknowledgement of the risks to the environment of the ongoing commercial activities, in the event of permission being granted, consideration should be given to applying a condition to monitor the polluting activity along with a restriction on further intensification thereof.

Fig 2. daa incorrectly claim no Intensification of use. (no regard for F23A/0781 and ABP 314485-22)

3.2 In relation to PFAS we ask that a full examination of the risk, alternatives and mitigation measure be carried out before grant of consent as is required by the Habitats Directive and Water Framework Directive. This will require full identification of contaminated soil and groundwater, quantity of PFAS in water samples, Technology to remove specifically PFAS/ PFOA toxic contamination so that it is not discharges to waterbodies or sewers. Ringsend cannot cope with PFAS contamination, it does not have the resources to remove from effluent. This means

that the discharge from Ringsend must be assessed before any consent that include discharge of contaminated runoff to sewer

3.3 The appellants strongly contest comments made in the Chief executives report at section 2.5.4 (see fig 3.) The DAA cannot take commercial constraints into consideration when failing to comply with the Habitats Directive and Environmental Liability Directive. FCC also are incorrect to the say that the consequences of daa's actions fall outside the remit of this report. Planning consent and Appropriate and EIA assessment are a requirement of planning for this very reason to protect Public and environmental health. The daa and FCC cannot sidestep their responsibilities in relation to historical contamination of lands that both bodies have been aware of for some time but have failed to take action to protect Human health and Environmental Health.

2.5.4 Conclusion

The subject application by the DAA as appointed airport operator, has acknowledged and gone some way to define the nature, extent and consequences of the longstanding and ongoing pollution event arising from airport operations. The DAA have declined to avail of the opportunity to prioritise remediation of the consequences of past and ongoing actions and inactions for stated reasons of a commercial nature. It is important at this point to acknowledge that the purpose of this assessment is to facilitate the planning authority to consider and reach a conclusion on the proposal by the applicant. The consequences of actions or inactions of the DAA to a longstanding known pollution event falls outside the remit of this report. The Planning Authority in asking for Further Information, assessment thereof and any in the making of an decision, are doing so within the context of the application under section 34 of the Planning and Development Act 2000 as amended and will not compromise any action arising under Part VIII of the Planning Act, r or other relevant statutory provision directly or indirectly relevant to the subject matter of the subject application.

In the event of a grant of permission a condition should be attached to allow for changes to be made to the phasing towards addressing the pollution in the shorter term if necessitated by other statutory provisions arising.

Fig 3. daa response to pollution remediation and FCC's refusal to carry out cumulative impact assessment on unauthorised development and existing pollution impacts under Habitats Directive, EIA Directive, Water Framework Directive and Waste Framework Directive.

3.4 The applicants ask that An Bord Pleanála carry out an AA and EIA and WFD assessment that is accordance with the law by requesting all required information needed to assess toxic contamination and prepare robust mitigation measures. Such information should be put out for further consultation.

Yours Sincerely

Sabrina Joyce-Kemper Peter Sweetman (Director Wild Ireland Defence CLG).

Appendix 1 – Appellants first observation F23A/0636 ✓

Appendix 2 – Appellants second observation SAI F23A/0636

Appendix 3 – Harvard Law article ✓

Appendix 4 – Dublin Airport otter report ✓

Appendix 5- Appellants observation to F23A/0781 ✓

Appendix 6 – Acknowledgment Letter from Fingal Co Council. ✓

Planning Observation
F23A/0636
Dublin Airport
Drainage Area
Infrastructure

Photo: Baldoyle Bay SAC by Philip Swan

Submission by:
Sabrina Joyce-Kemper &
Sabrina Joyce-Kemper on behalf of Wild Irish Defence CLG
C/O 23 Portmarnock Crescent
Portmarnock
Co Dublin.

Date of submission: 22nd November 2023

App. 1

Submission

1. Introduction

1.1 Sabrina Joyce-Kemper and Wild Irish Defence CLG wish to make a submission on decision on planning reference F23A/0636. Ms Joyce-Kemper has an advanced diploma in Planning and Environmental law from the Honorable Kings Inn. While we make this planning submission due to the lack of assessment & dual assessment under the EIA Directive and Habitats Directives, we do support the Planning Application but wish to ensure robust mitigation measures are implemented on any historical/ current and future impacts relating to F23A/0636 which is described as follows;

"in the townlands of Pickardstown, Coultry, Huntsown, Forrest Great, Forrest Little, and Collinstown; and to the east of the airfield in the townlands of Cloghran, Corballis, Commons, Toberbunny, Stockhole and Clonshagh.

The proposed development includes upgrades to existing drainage infrastructure and construction of additional drainage infrastructure to improve performance of the surface water management system at Dublin Airport and will consist of:

a. a contamination detection and response (CD&R) system comprising detection devices, network decision points (DPs), control kiosks, and ancillary infrastructure including local access roads, local drainage and communications and power ducts;

b. clean water supply pipelines consisting of large diameter trunk pipelines;

c. airfield contaminated pipelines consisting of large diameter trunk pipelines;

d. upgrades to the West Apron surface water collection network including reconfiguration of the existing network, construction of an underground attenuation tank, installation of a local CD&R system, network DPs and a control kiosks, construction of an underground pollution storage tank, a pumping station, and ancillary development including local ductwork, local access roads and local drainage;

e. upgrades to the existing surface water collection network in the vicinity of the South Apron including reconfiguration of the existing network, construction of network DPs, upgrade of the existing flow diversion structure (FDS) and reconfiguration of the existing Cuckoo supply channel;

f. a central pollution control facility (CPCF) consisting of underground pollution control storage tanks, a pumping station, a discharge pipeline to the Uisce Eireann network, mechanical and electrical equipment, a control building, an electrical substation, and ancillary development including a local access road, enhanced flood bund, local drainage and ducting;

g. a CPCF pipeline consisting of a large diameter trunk pipeline;

h. *a central supervisory control and data acquisition (SCADA) system comprising kiosks and associated electrical power and signal connections;*

i. *repurposing of the central section of the existing Airfield Trunk Culvert (ATC) as a contaminated pipeline; and*

j. *ancillary and associated development including pipework, mechanical and electrical service connections and upgrades, temporary compounds and site works.*

This planning application is accompanied by an Environmental Impact Assessment Report and NaturaImpact Statement.

1.2 Due to a number of planning applications and planning appeals live on Dublin airport developments, we have not had time to give this application a full rundown of the issues with this development. We believe we had identified a number of issues in relation to detail of the planning application and some deficiencies in the application report, documentation and Environmental assessments which, need to be updated in order to constitute a complete application (in accordance with the law), which is capable of being properly assessed by the Planning Authority. We have raised the procedural/ administration issues and deficiencies in the below submission which we believe should require the application to be deemed invalid and require a new application or without prejudice to that argument require substantial additional information.

1.3 Below we lay out the very basic reasons and considerationsin bullet form, in support of our contention that the application must be invalidated and reapplied for or updated. We must reiterate that we support this development which will attempt to reduce the continuous discharge of contaminated surface water and discharge into protected water bodies in North Dublin. We make this submission in order to shore up the omissions in the application documentation and lacunae in environmental screening and assessment and failure to carry out a dual consent process with the EPA in relation to the licensing of additional in fluent to Ringsend that is in breach of its current licensing limits.

2. Administrative / Procedural issues:

2.1 The Development crosses two local authority boundaries and therefore planning areas at the R132 and therefore may be required to be lodged as Strategic Infrastructural Development directly to An Bord Pleanála after the requisite re application consultation.

2.2 In Uisce Eireann pre connection form applicant answers question 31incorrectly as the connection is for storm water (contaminate and so waste water) to sewer. They incorrectly tick the no box. Therefore the application should be remade to Uisce Eireann.

2.3 The applicant failed to carry out an AA on the following NATURA Sites which are hydro logically linked to the development or have pathway receptors to the development.

Ireland's EYE SAC & SPA– Hydraulically linked via Mayne River, Sluice river and via Baldoyle Estuary which has tidal impact of Ireland act (PCBs/ Pop have impact on marine life and trophic food chain impacting marine biodiversity and birds (bird health and reproductive success with PCB bio- accumulation weakening eggs.)

Rogerstown Estuary SAC/SPA – is linked via the ward River has poor status and cumulative impact re uncompliant Swords WWTP

Western Irish Sea SAC - H Hydraulically linked via Mayne River, Sluice river and via Baldoyle Estuary

Rockabill to Dalkey SAC – Pathway receptor from development site contaminated waste water via sewer and WWTP at in the first instance Ringsend WWTP and in the second proposed instance Greater Dublin Drainage Clonshaugh WWTP and pipeline.

Bull Island SPA- pathway receptor via ringsend impact on eelgrass and brent geese that are linked to Bull island and Baldoyle SPA and SAC

Tolka Estuary SPA- Ringsend sewage overflows and North fringe sewer sewage overflows to Tolka river impacts nitrogen , microplastic Pollutants of emerging concern in waters.

2.4 It was impossible to be able to go through the approx 2500 pages in 5 weeks let alone the two days I had to look through the application. The fact that the EIAR (and NIS) was not in electronic searchable format as statutorily required under the 2014 EIA directive caused great difficulty in trying to locate certain keywords and phrases to zoom in on information and extract or reporduce info to refer to in a submission. This is contrary to the law and the application should be invalidated or without prejudice to that argument a further sufficient time under the EIA directive given to review EIAR and appendices.

2.5 A number of statutory prescribed bodies were excluded.

2.6 I would question the application form that states an IPPC is nor required.

2.6 Dual assessment and consultation with EPA required.

2.7 Application does not demonstrate how water bodies, mayne, sluice and ward rivers will be brought up to good status under the WFD with this application, particularly as the contaminated water will end up in sewers which cannot treat all the contaminants. An alternative of storage and sucker truck removal for proper treatment should be part of an EIA Assessment.

2.8 No mention of unauthorised development of PFAS contaminated soil that has already been excavated without AA or EIAR. Can this application be accepted in section 34.12 of the Planning and Development Act 2001 to present is triggered.

2.9 Ringsend agglomeration and WWTP is not in compliance and is overloaded. This issues must be considered at the time of making the application.

2.10 The GDD WWTP and pipeline cannot be relied on to grant permission in this development as it is not yet consented.

Please invalidate or refuse permission and or have the application updated.

Yours Sincerely

Sabrina Joyce-Kemper

and

Wild Irish Defence CLG

Response to SAI F23A/0636 Dublin Airport Drainage Area Infrastructure

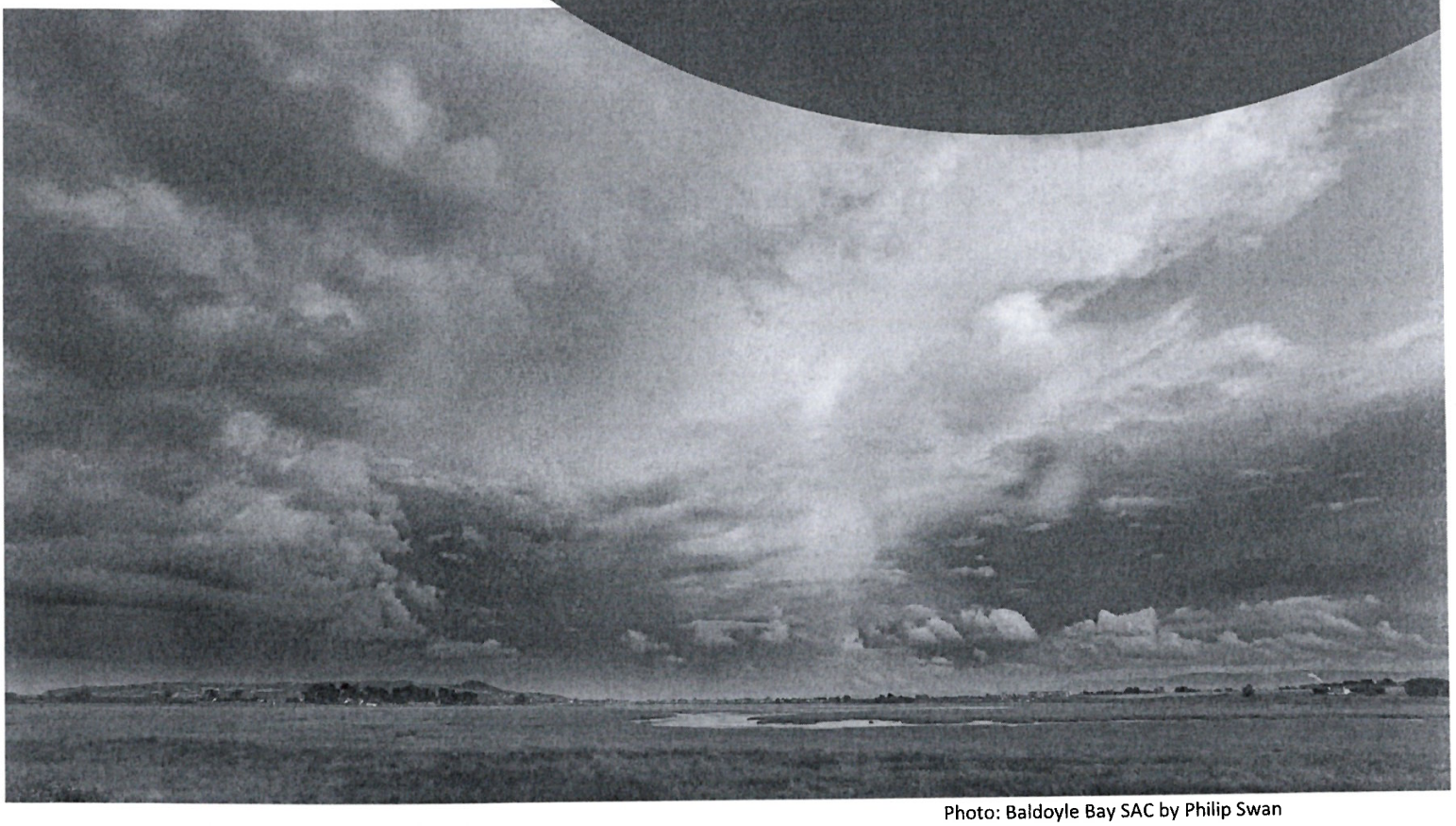

Photo: Baldoyle Bay SAC by Philip Swan

Submission by:
Sabrina Joyce-Kemper
23 Portmarnock Crescent
Portmarnock
Co Dublin.

Date of submission: 30th July 2024

App. 2.

Submission

1. Introduction

1.1 Sabrina Joyce-Kemper makes this submission in response to Significant Additional Information (SAI) on planning reference F23A/0636. Ms Joyce-Kemper has an advanced diploma in Planning and Environmental law from the Honorable Kings Inn. The planning application F23A/0636 is described as follows;

"in the townlands of Pickardstown, Coultry, Huntsown, Forrest Great, Forrest Little, and Collinstown; and to the east of the airfield in the townlands of Cloghran, Corballis, Commons, Toberbunny, Stockhole and Clonshagh.

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f. a central pollution control facility (CPCF) consisting of underground pollution control storage tanks, a pumping station, a discharge pipeline to the Uisce Eireann network, mechanical and electrical equipment, a control building, an electrical substation, and ancillary development including a local access road, enhanced flood bund, local drainage and ducting;

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h. a central supervisory control and data acquisition (SCADA) system comprising kiosks and associated electrical power and signal connections;

i. *repurposing of the central section of the existing Airfield Trunk Culvert (ATC) as a contaminated pipeline; and*

j. *ancillary and associated development including pipework, mechanical and electrical service connections and upgrades, temporary compounds and site works.*

This planning application is accompanied by an Environmental Impact Assessment Report and NaturaImpact Statement.

1.2 In my first submission to this application at section 2.8 of that submission I made the following observation:

No mention of unauthorised development of PFAS contaminated soil that has already been excavated without AA or EIAR. Can this application be accepted in section 34.12 of the Planning and Development Act 2001 to present is triggered.

1.3 The applicant has not assessed the confirmed and existing PFAS contamination in soils and groundwater on the Airport campus. The only comment I can see in the NIS is on page 14 a comment added with RFI which states:

Page 14: Added	Author	06/06/2024 18:18:00

Soils within the airport will require the excavation and there is a possibility that these soils have been contaminated by airport-related activities in the past. . Mitigation measures will be required in relation to soils and soil movements within areas of excavation airside.

1.4 In the response memorandum document the applicant states the following in reply to RFI request 6:

A. PFAS Contamination at daa

Response:

The potential for encountering contaminated material is considered **Chapter 11 - Lands, Soils, Geology and Hydrogeology** of the EIAR. As described in **Section 11.6.1.1**, site investigation and laboratory analysis will be carried out to determine potential contamination of ground that will be excavated during the construction phase, including testing for PFAS. As described, if contaminated soil/water is encountered, it is proposed that it be removed by a licensed waste contractor for treatment or disposal at a suitably licensed facility in accordance with the Waste Management Act 1996 (as amended), the Waste Management (Collection Permit) Regulations 2007 (as amended) and the Waste Management (Facility Permit & Registration) Regulations 2007 (as amended). Where appropriate daa propose to use a structured approach in line with the Environmental Protection Agency's (EPA's) Guidance on the Management of Contaminated Land and Groundwater at EPA Licensed Sites, taking account of best international practice, evolving standards and emerging knowledge and experience in remediation technologies to determine the most appropriate environmental solution for its management. **Section 11.6.1.2** describes the potential for accidental contamination of surface water run-off during construction activity. **Section 11.7** lists mitigation measures to reduce this risk including development of the Construction and Environmental Management Plan (CEMP), measures to control soil excavation to ensure that exposed soils are stable and minimise erosion including ensuring works are carried out within the main excavation site as far as possible, application of pre-treatment and silt reduction measures, and careful management of storage areas. EIAR **Appendix 13.1 - Resource & Waste Management Plan** outlines how to manage contaminated soil should this be identified prior to starting works.

This reply is completely uninformed as I can only presume the planning consultant replied in this manner as daa have not provided their planning consultant with the 4 reports that detail confirmation of PFAS contamination in the soil, groundwater and migration to water bodies. The information coming through from the daa, EPA , Fingal County Council and these reports indicate that the PFAS contamination issue at Dublin Airport first came to light in approx 2016. The reports which are too large to append to this document can be downloaded and reviewed by the planning section at the following links. I request that they are considered as part of my submission.

https://www.dublinairport.com/docs/default-source/sustainability-reports/2021-2023-environmental-monitoring-report.pdf?sfvrsn=36299b4d_2

https://www.dublinairport.com/docs/default-source/sustainability-reports/2021-2023-environmental-monitoring-non-technical-summary.pdf?sfvrsn=cfae8fda_2

https://www.dublinairport.com/docs/default-source/corporate/material-management-design-report-for-the-management-of-impacted-soils-2020.pdf?sfvrsn=fc671644_2

https://www.dublinairport.com/docs/default-source/corporate/groundwater-and-surface-water-risk-assessment-and-remediation-options-appraisal-2021.pdf?sfvrsn=2e845f1a_0

1.5 The planning authority simply cannot carry out an EIA, AA and Water Framework assessment and Waste assessment without comprehensive report from the daa detailing the interaction of this development with existing PFAS contamination currently in soil, groundwater and water bodies. Remediation and decontamination measures capable of preventing PFAS contaminated runoff from impacting water resources, protected sites and from being discharged to sewer and then Ringsend (which has no technology to deal with PFAS contamination) MUST be assessed, mitigation identified, compensation identified for unauthorised reburial of contaminated soils and removal of contaminated soils.

1.6 the current from of application will not prevent the extreme risk to human health, sensitive habitats and the species that live thefre. ROBUST and definitive measure must be identified and implemented as a matter of urgency at full costs to the daa due to their inability to comply with Planning and environmental issues to date on this specific issue.

1.7 Multi party consultation with the EPA, Fingal CC, Health and Safety Authority and daa must commence immediately.

The planning authority have a responsibility under the Local Government Act of 2001 and the Ethics in Public office Act 1995 , in addition to environmental and planning legislation, to act in the public interest.

Yours Sincerely

Sabrina Joyce-Kemper

National & World Affairs

Credit: Justin Sullivan/Getty Images

(P)FASten your seatbelts

Harvard Law alum James Pollack '20 discusses the impact of first-ever federal rules on "forever chemicals" in drinking water

May 01, 2024 By Scott Young

In early 2021, local officials in the Boston suburb of Wayland, MA were confronted with a new weekly responsibility: distributing bottled water to roughly 1,400 homes per week.

App. 3

Samples from the town's Happy Hollow Well had revealed levels of perfluorooctane sulfonic acid, or PFOA, exceeding state limits imposed the previous year by the Massachusetts Department of Environmental Protection. The chemical found in Wayland's water supply is one of six different variations of per-and-polyfluoroalkyls, or PFAS, that Massachusetts caps at 20 parts per trillion.

But Wayland was not alone. Of the 351 municipalities in Massachusetts, 240 have detected PFAS in at least one public water system since the fall of 2020. And 119 of those have reported test results that violate the 20 parts per trillion limit.

On April 10, 2024, the United States Environmental Protection Agency, or EPA, released its much-anticipated federal rule governing drinking water standards for certain PFAS variations, including PFOA.

The new federal limit? Four parts per trillion.

As Reuters reported in April, not everyone supports the new regulation. According to the news service, "The National Association of Manufacturers, the American Chemistry Council and the U.S. Chamber of Commerce said in comments last year to a draft version of the rule that it overstated the benefits of imposing the limits while underestimating costs." Other industry groups, such as the National Association of State Departments of Agriculture, have contended such stringent limits would disproportionately burden rural regions.

Harvard Law alumnus James Pollack '20 is a senior associate at the boutique environmental law firm Marten Law LLP. He and the firm represent drinking water systems polluted by emerging contaminants like PFAS, and he also maintains a regulatory practice supporting consumer product manufacturers. Pollack recently spoke with Harvard Law Today to discuss PFAS pollution, its effect on the legal industry, and its widespread impact across the U.S. and beyond. He says cities and towns are likely in for a wild ride.

James Pollack '20 is a senior associate at the environmental law firm Marten Law. Credit: Marten Law LLP

Harvard Law Today: What are PFAS? What effect do they have on humans and the environment?

James Pollack: PFAS are a family of chemicals. There are somewhere between 3,000 to 13,000 different variations, so broad statements about the entire family can be difficult to make. But what really defines this 'family' is its underlying carbon-fluorine bond and characteristics shared across the family as a result of that uniquely strong bond.

PFAS are stain resistant, water resistant, heat resistant, and friction reducing — very few chemicals have these properties simultaneously, so PFAS have been used in an extremely wide variety of consumer products and industrial processes across the world.

Scientific research on 'legacy PFAS' — the oldest, most regulated types like PFOA and PFOS — has shown just how nasty these chemicals can be. Decades of medical studies have produced evidence that PFOA and PFOS are very disruptive to human biology, affecting a wide range of organs including the kidneys, liver, and thyroid. They have been associated with diabetes, reproductive harms, and many other conditions. It's hard to think of a way that they don't hurt you.

Recent studies on the health effects of PFAS helped inform a new rule that the EPA officially adopted about two weeks ago, which sets a maximum contaminant level of four parts per

trillion. For context, that's a concentration roughly the same as four drops of water in 20 Olympic-sized swimming pools. We're talking really small quantities.

The goal of the new federal rule is essentially to hit nondetectable levels in drinking water. Just to give you an idea of what types of comparisons we should be making, that is the same level required for lead.

HLT: How prevalent are PFAS? How many people are impacted by the new rule?

Pollack: PFAS are highly mobile and uniquely persistent — that's why they get the term 'forever chemical.' The EPA estimates that, under the new rule, the water for 105 million Americans currently violates the MCL for one or more of the regulated PFAS. We're talking about a third of the country needing substantive changes to their water supplies. Keep in mind, Massachusetts is one of just 11 states that has a PFAS drinking water standard currently in place, and state standards are not as stringent as the new federal MCL.

Nationally, the impact will include costly water treatment infrastructure upgrades to implement granular activated carbon filtration or other treatment. In some service areas, it may involve providing bottled water like we've seen in some communities throughout the country. We have a client community outside of a military base that needed bottled water in the same fashion as they did in Flint, Michigan. It may mean changing water sources, like Cambridge did in 2022.

"It's hard to think of a way that they don't hurt you."

Due to the pervasiveness of PFAS in the modern economy, they are found everywhere on earth. There's rainwater that's been found to violate the lifetime health advisory, there's rainwater that violates the new drinking water standard. They're finding PFAS on Everest and in polar bear brains. These are chemicals with unique properties that make them very mobile and extremely resilient on a geologic scale.

PFAS are also resilient in terms of human biology. Once they're in your body, they can continue to accumulate as you become exposed to more and more of them. Your body doesn't really have a great mechanism for getting rid of them.

I'll borrow a term from Harvard [Law School] Professor Richard Lazarus, who used the phrase 'super wicked problem' to characterize the challenge of climate change. I think PFAS pollution is another modern super wicked problem. It presents a unique set of

challenges that make it extremely difficult to solve, in the same way that climate change is uniquely challenging. It is all around us. It is slow moving. And it transcends jurisdictions that can directly influence it.

HLT: Where do PFAS come from? Who has been found responsible for PFAS contamination when a drinking water supply, for instance, has been polluted?

Pollack: A drinking water supply can become contaminated with PFAS by many different sources. These are artificial chemicals not found in nature, so any molecule of PFAS found in the wild was created by humans.

In terms of how they end up in the environment, it could be from industrial sources of pollution because PFAS are used in a wide variety of industrial applications. It could be from the manufacturing of PFAS chemicals themselves; some of the earliest lawsuits around water contamination focused on PFAS manufacturing sites. Here in the United States, one of the most famous PFAS cases — which was the basis for the 2019 film "Dark Waters" — involved contamination in West Virginia from PFAS manufacturing.

The town of Wayland, Mass. distributed bottled water to the public in 2021 because of the elevated levels of PFAS found in its public water sources. Credit: Pat Greenhouse/The Boston Globe via Getty Images

Credit: Pat Greenhouse/The Boston Globe via Getty Images

We're also seeing landfills and landfill leachate as a source of contamination. The application of biosolids can lead to contamination because of contamination in treated wastewaters. These chemicals are really, really hard to remove from the environment. They can get through traditional treatment methods, so they end up in biosolids, which end up in fertilizer and soil.

HLT: What types of lawsuits have arisen out of PFAS drinking water contamination and human exposure?

Pollack: A lot of existing PFAS litigation is, naturally, around the sources of contamination. But we have seen a particular focus on industrial sources of PFAS pollution in an effort to try to clean up or contain PFAS discharge.

For example, there's an MDL [multidistrict litigation] in South Carolina involving thousands of water districts that are working to both identify and remediate PFAS contamination in their water systems. An MDL is when multiple cases from different federal districts are consolidated and transferred to a single forum for pretrial proceedings, discovery, and resolution based on a similar set of facts and legal issues. It's very similar to a class action that allows a defendant or group of defendants to consolidate cases from many different places into a single venue.

The MDL in South Carolina involves a specific source of PFAS contamination known as Aqueous Film Forming Foam [AFFF]. AFFF is firefighting foam made of PFAS that has historically been used to help smother especially dangerous oil and gas fires. Using AFFF at different types of sites, such as firefighting training facilities, airfields, and military bases, has corresponded with a considerable amount of PFAS contamination. So far, a lot of the focus has been on these hotspot areas to identify sources of PFAS contamination and then get the resources necessary to treat the water.

HLT: As you mentioned earlier, the new federal standard just announced on April 10 sets a limit for two of the most prevalent PFAS chemicals, PFOA and PFOS, at four parts per trillion. Once a drinking water source tests above that new EPA limit, what happens next?

Pollack: The remediation process varies depending on particular circumstances, especially if the state has its own regulations already in place. Generally speaking, the first order of business for the drinking water authority is its obligation to notify customers. They have to contact residents and inform them the samples have exceeded limits.

There is a requirement within this new regulation that drinking water authorities must comply with the new maximum contaminant levels by 2029. So, utilities will have five years to bring their drinking water within compliance. This is an extension from the original proposed timeline motivated by the scale and scope of the infrastructure investments required to achieve compliance.

To achieve compliance, a water district may use a variety of strategies such as installing filtration equipment or identifying a noncontaminated source of water [to] pull from instead. We're talking about massive infrastructure projects with huge price tags; it's a serious undertaking.

HLT: What does it take to implement treatment technology capable of removing PFAS from a drinking water supply?

Pollack: For these water systems, it's a staggering cost. Our firm represents water systems across the country that are coming to terms with high levels of PFAS in their drinking water sources and are trying to figure out how to pay for the cleanup. Litigation is one source of funding for that because you don't want to charge your customers for cleaning up something that isn't their fault.

Estimates I've seen from people smarter than me say it's going to cost in the billions of dollars a year to treat PFAS in drinking water. The installation of reverse osmosis filtration, or whatever treatment technology they decide to implement, is very expensive. Everyone is going to be trying to do it at once, too, which will likely make things especially challenging from a supply chain perspective.

For polluted sources, lowering levels enough to be considered compliant requires extremely careful treatment. The methods we use to eliminate other contaminants don't necessarily work on PFAS, and suppliers have to install a much more intense treatment system with new technology. It's going to be horrifyingly expensive.

"They're finding PFAS on Everest and in polar bear brains. These are chemicals with unique properties that make them very mobile and extremely resilient on a geologic scale."

HLT: How have courts viewed the chain of causation? How has liability been assigned between PFAS manufacturers, the industrial PFAS users, and the utilities distributing drinking water?

Pollack: Well, that's the multi-billion dollar question that's being litigated in forums like the MDL in South Carolina. In the absence of statutory frameworks, tort is like the original environmental law. The case in West Virginia was a toxic tort case. Using tort as a mechanism to try to remediate this contamination has been a solid option and will continue to be an option even with statutory frameworks in place. But those kinds of questions about liability are the subject of the litigation.

The chemical companies that manufactured most of the PFAS in circulation, like 3M and DuPont, have now entered into settlements with most water systems in the country. 3M settled for $10.5 to 12.5 billion, and DuPont settled for $1.185 billion. Those settlements have been approved in the MDL and the money is scheduled to be distributed over the next decade or so.

This was an interesting settlement because the MDL was originally focused on AFFF, but the settlements ultimately adopted ended up applying to all PFAS, not just AFFF. There's also a proposed settlement with Tyco, an AFFF manufacturer.

HLT: One of the unique problems with PFAS is their prevalence, which also suggests a lot of businesses rely on them. From your experience advising on regulatory compliance, are there nonharmful alternatives that do the same thing PFAS chemicals are typically used for?

Pollack: Initially, there was a lot of hope for finding substitutes within the PFAS family. Early on, there was a transition from long chain PFAS to short chain PFAS. Unfortunately, some of those substitutions from legacy PFAS to 'Gen X' chemicals have proven to be disastrous and potentially may have even worse health effects than the originals. Since they are smaller, they are harder to filter out and can lead to much more contamination. As a replacement strategy, substitution within the PFAS family has certainly yielded mixed results at best.

The other strategy is to identify the specific qualities of PFAS that made it an attractive option and find alternatives outside the PFAS family. That's where we're seeing a lot of momentum from a regulatory perspective in the consumer product space. We're seeing people undertaking the research necessary to see what else can do the things they used PFAS to do. In the outdoor apparel space, for instance, they can successfully replace PFAS from a water resistance perspective with relative ease. The challenge is, does that replacement also have oil resistance? What if you get some burrito grease on it? You immediately lose water resistance performance and that is a challenge in certain applications.

For some uses, in some industries, having just the water resistance or just the oil resistance is not a big deal. Do you need food packaging that is indefinitely stain resistant? Or are you okay with wax that maintains stain resistance up until you finish your pizza?

There are trade-offs in convenience and comfort that I think may require some explanation to consumers. Why is my nonstick pan suddenly sticking? Why is my rain jacket not quite as waterproof as it used to be? It's still 95% of the way there, just not that extra little bit.

HLT: Are there any other recent developments worth noting from a legal standpoint? How do you see PFAS contamination disputes playing out going forward?

Pollack: Since setting the new maximum contaminant levels, the EPA has also added legacy PFAS pollution to the Superfund law, which has just as broad potential implications as the newly released drinking water limits. The Superfund law is the mechanism for dealing with the most contaminated sites in the country. Traditionally speaking, Superfund law applies in the classic example of a hazardous site where a bunch of oil or drums of chemicals have been found in a ravine somewhere.

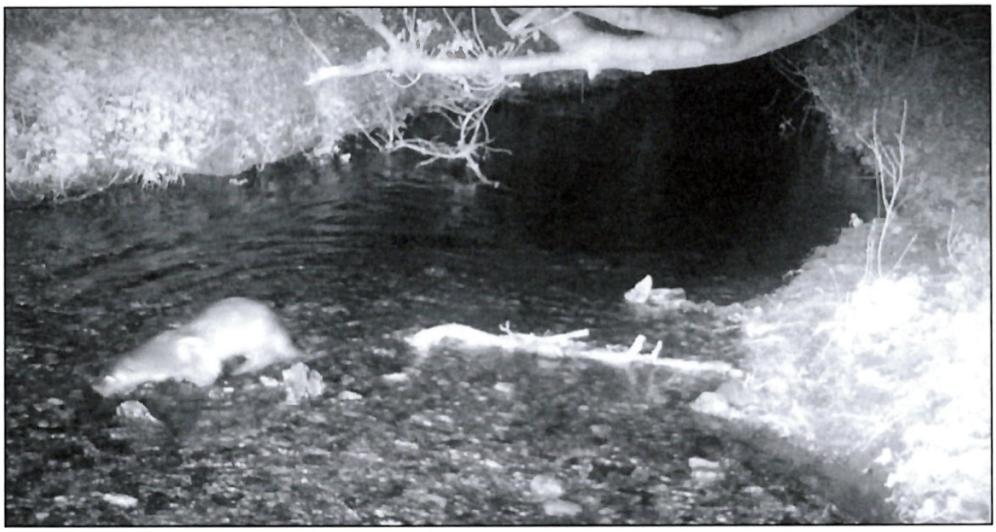
The first step for classic sites is designating the polluted area as a Superfund site under the National Priorities List. With that designation comes a bunch of tools that allow you to clean it up. Then comes the hard work of studying the site, identifying what pollutants are present, measuring levels, and ultimately clean it up. But the first step is to identify a place, a location, that's been contaminated.

Because it's so ubiquitous, though, PFAS pollution presents unique logistic challenges under Superfund law. How do we limit the scope of what should fall under Superfund? What about drinking water systems, farmland, or airports? The EPA has issued an enforcement guidance document saying they're going to use enforcement discretion to decide what is an appropriate time to use their enforcement authority under Superfund law. This is a potentially huge mechanism that can be used to obligate remediation and cleanup and it will be very interesting to see how the Superfund law gets used now that it is on the table.

The PFAS problem is really different from any other contaminant we have encountered in the past. Our legal system is designed to deal with individual chemicals. We build out a method of testing for the chemical, we identify where it is and then it goes through all of the different environmental laws and through tort suit.

The legal challenge with PFAS is that they're actually a family of thousands of chemicals. No test method can identify all of these chemicals, let alone identify individual chemicals past a select few. And they're used in everything. That's what makes this a super wicked problem.

This interview has been edited for length and clarity.



A study of Otter habitat and usage on the Sluice Catchment, Dublin.

Prepared by:

ecologyireland

Project Manager:

[redacted]

Lead Ecologist:

[redacted]

May 2021

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1. Introduction

Fingal County Council has requested further information to inform their consideration of a planning application by daa for a proposed extension to the North Apron at Dublin Airport (F20A/0550). Point 2(a) pf the request for Further Information stated:

> a) Observations received from the Development Applications Unit (DAU) of Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media note that otters have been reported from Abbeyville Lake on the Sluice River system in recent years and as road casualties crossing from the Baldoyle Estuary into the marsh just upstream of the mouth of the Mayne River. As such, to allow evaluation of the potential effects of the proposed development on a species, the otter, afforded a regime of strict protection under the Habitats Directive (92/43/EEC) an assessment of the proposed development on otters particularly otters occurring in the Sluice River system should be submitted. This assessment to include a survey of the Sluice River system and its tributaries for evidence of its use by otters.

The current report details survey work carried out in March-April 2021 on the Sluice River catchment. The purpose of the survey work was to gain an understanding Eurasian Otter (*Lutra lutra*) presence within the catchment; to evaluate habitat quality and to determine how Otters use different stretches of the river. In order to achieve this, a high-resolution approach was adopted by surveying the entire stretch of river on foot from source to mouth as well as employing remote trail camera technology.

The surveys were carried out by Ecology Ireland Wildlife Consultants Ltd. and their associates. Ecology Ireland is a leading independent ecological consultancy led by [redacted] (BSc PhD MCIEEM). [redacted] has over 20 years of experience in professional consultancy and is an expert in terrestrial mammals and birds. [redacted] (BSc) is a specialist aquatic ecologist with over 10 years of experience in consultancy. [redacted] is particularly skilled in riparian habitat and river morphology assessments and he has carried out full catchment level assessments of Otters and their prey. He is currently undertaking a large scale Otter survey of Cork City and the Cork Harbour area, which covers 14 watercourse catchments and 6 coastal areas, and includes aspects such as the identification of pressures, threats, food sources and important areas, as well as DNA analysis of spraints and fur to assess population dynamics. Additionally, he has experience in surveying other mustelid species, notably having carried out a number of mink surveys on offshore islands which are internationally important breeding grounds for seabirds, as well as planning and executing a mink eradication on one island.

1.1 General River characteristics

The Sluice River rises in the townland of Forrest Great, it flows in an easterly direction and at Forrest Little Golf Club, is joined from the south by the Forrest Little Stream which rises in the grounds of the northern section of Dublin Airport. It flows east for c. 8km under the R132, the M1, the R107 and the R104 before and is joined from the north and south by a number of drainage ditches and small streams before flowing into Baldoyle Bay coastal wetlands at Portmarnock Bridge.

The bedrock of a catchment largely determines water chemistry. The Sluice catchment is made up of tournaisian limestone and visean limestone & calcareous shale. Subsoils largely determine riverbed characteristics. The majority of the river corridor is classified as undifferentiated alluvium, which would have been laid down by the river itself. This was derived from the surrounding subsoils of glaciofluvial sands and gravels and variable carboniferous limestone till.

Generations of human activity have led this watercourse to its current form. Mechanical disturbances such as channelisation, re-alignment, vegetation and probably gravel extraction, have greatly reduced the aquatic habitat diversity. A watercourse such as the Sluice in an undisturbed form would consist of riffles, pools and glides intertwined with a variety of erosional and depositional features at different scales create considerable variety in terms of hydromorphology and hence aquatic habitats. Diversity in aquatic habitats is important for biodiversity at all trophic levels within these riverine ecosystems.

1.2 Otter

Ireland continues to remain a stronghold for the European Otter. Four national surveys have been conducted to date. The first in 1980/81 found signs of Otters throughout the country, at 88% of sites surveyed. There was some suggestion of declines in the survey results of 1990/91 and 2004/05 but the most recent survey (2010) indicated recovery to 1980 levels. Otters have two basic requirements: aquatic prey and safe refuges where they can rest. In Ireland, Otter populations are found along rivers, lakes and coasts, where fish and other prey are abundant, and where the bank-side habitat offers plenty of cover. The Otter is an opportunistic predator with a broad and varied diet. In coastal areas fish, crabs and molluscs are eaten. In freshwater areas a variety of fish from sticklebacks to salmon and eels will be taken, while crayfish and frogs can be important locally or seasonally.

Otter populations declined throughout Europe after the 1960s and the species is now very rare or absent from many parts of its former range. The Irish Otter population appears to have remained largely stable and is regarded as a European stronghold. In Ireland Otters are found in a diverse array of aquatic habitats, from small streams to major rivers, upland lakes to coastal lagoons and sandy beaches. However, Otters that live at the coast do need access to some freshwater habitat to bathe. Within these habitats Otters feed on a range of both aquatic and terrestrial prey. Much of the information regarding distribution, habitat use and

diet comes from investigation of Otter tracks and signs. Individual Otters are highly territorial, using droppings (spraints) to mark their home ranges. Favoured locations for depositing spraints are in-stream boulders, bridge footings and grassy tussocks (seats). Within its own territory an Otter may have a number of resting sites (couches) and underground denning sites (holts).

1.1.1. Distribution

In Ireland the Otter population is geographically widespread. In local areas, its presence will depend on the provision of suitable aquatic habitats, sufficient food and cover for resting and breeding. Seasonally, male Otters and juvenile Otters will disperse and Otter signs may be observed in areas where they have not been present hitherto. In recent years the Otter distribution and usage of rivers in Dublin city have been subject to detailed assessment (Macklin *et al*. 2019).

1.1.2. Home range

The territories of Otters can stretch for several kilometres; the total length of the home range dependent on the availability of food. The smallest territories are thought to occur at coastal sites, where territories may be as small as 2km (linear distance). The longest territories occur in upland streams where an individual may have to range more than 20km to find sufficient food. The territories of males tend to be larger than than females and indeed may overlap with a number of female Otter territories. Within their territories an individual Otter may utilise a number of holts. These tend to be natural crevices, associated with the roots of trees growing along river and lake banks. These natural recesses provide the Otter with a holt that frequently has multiple entrances, from which the Otter can escape if disturbed. Whilst individual Otters rarely dig their own holts they will use burrows made by other animals such as Rabbits, Foxes and occasionally Badgers ([redacted] pers obs.). It is possible to build artificial holts to attract Otters to use certain areas. Artificial holts are built to resemble natural holts, with a resting compartment and multiple entrances, these are particularly important where the natural bank side vegetation has been removed.

Other 'natural' resting sites are also used, frequently in dense vegetation and may be associated with frequently used 'runs' and 'slides' into the water.

1.1.3. Reproduction

Otters can breed at any time of year. Scent markings by the females signal to male Otters that the females are ready to mate. The pregnancy lasts for approximately two months after which a litter of cubs is born. A litter usually consists of two or three young, but litters with as many as five have been documented. The cubs remain in the natal holt for up to two months before venturing out on their own, although the mother may move the cubs between holts within her territory periodically. The juvenile Otters sometimes remain as a family group for around six months or longer before the young Otters disperse to establish their own territories.

1.1.4. Foraging

Otters that live in rivers and lakes tend to be completely nocturnal, with a tendency towards being crepuscular. Foraging at night or in turbid water is aided by their highly sensitive whiskers. Otters are principally piscivorous, relying predominantly on salmonids (salmon and trout), eel and small fish species such as stickleback and minnow. However, Otters are not limited to fish and feed opportunistically on a range of prey when available: frogs are frequently eaten by Otters, and the remains of invertebrates, birds and small mammals have also been found in spraints. Crayfish can be very important if the water chemistry allows for their presence. Otters that forage at the coast may have more flexible foraging times linked to the tides. At low tide Otters are observed hunting in the exposed rock pools and seaweed covered rocks for fish and invertebrate prey.

1.1.5. Legal Status

The Otter is classified as 'near threatened' by the IUCN Red List with a decreasing population trend and, as such, is listed in Appendix I of CITES, Appendix II of the Bern Convention (Council of Europe, 1979) and Annexes II and IV of the EC Habitats Directive (92/43/EEC). Otters, along with their breeding and resting places, are also protected under provisions of the Irish Wildlife Acts 1976 to 2012.

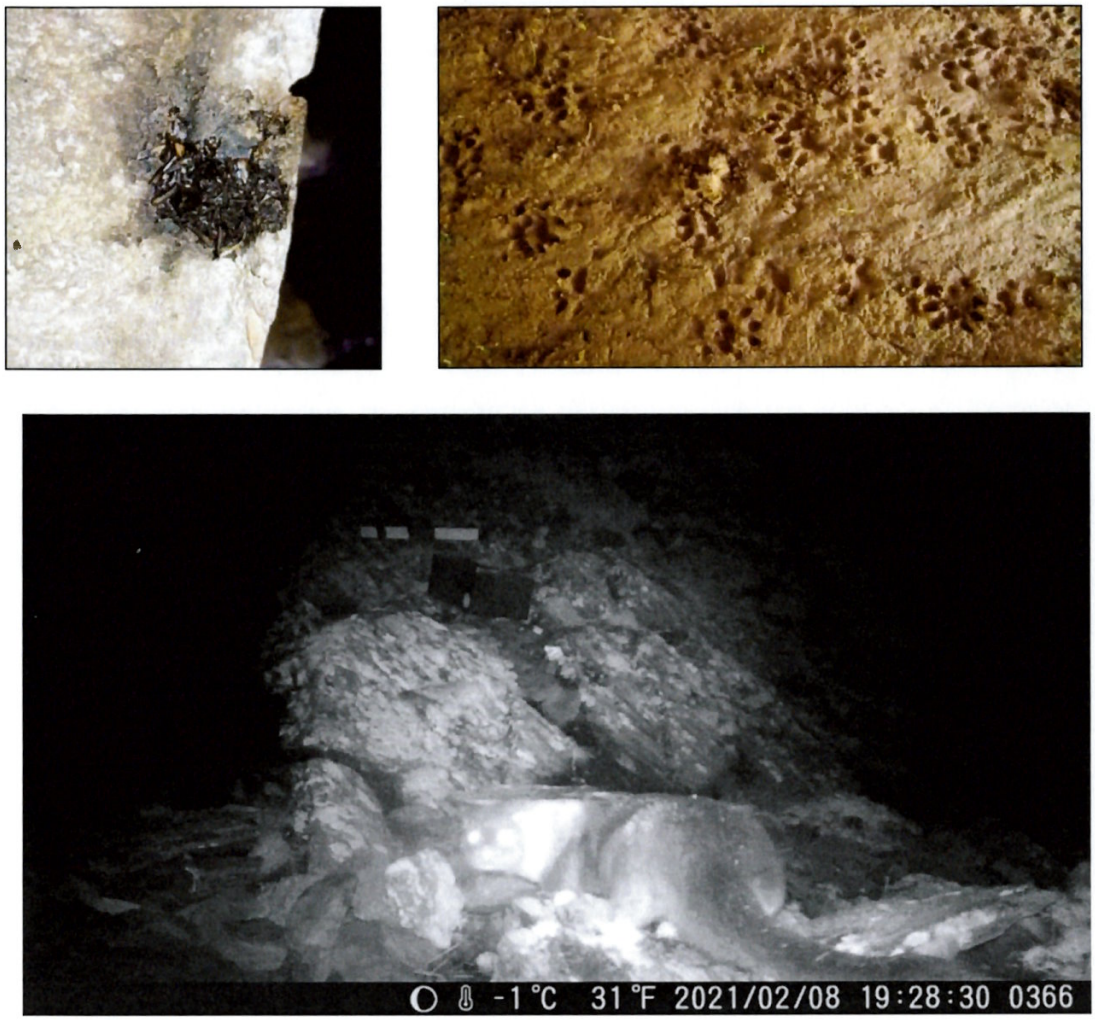


Plate 1. Otter: (From top left clockwise) Spraint marking; Footprints in mud; Adult Otter about to clean its coat in a freshwater pool on the south west coast in February 2021.

2. Methodology

The proposed surveying comprised of a suite of techniques to gain an understanding of the current status of Otter within the catchment.

A **desktop study** was carried out to find information available relevant to the study. A range of online resources were utilized in accessing a variety of information; these included

- the EPA website (www.epa.ie);
- the NPWS website (www.npws.ie);
- the Office of Public Works (www.opw.ie);
- the IFI website (www.fisheriesireland.ie);
- the National Biodiversity Data Centre (www.biodiversityireland.ie);
- the Water Matters website (www.catchments.ie);
- GIS database;
- Range of published papers, documents and articles relevant to the study project.

Electronic resources, including aerial orthophotography, were visited prior to the site walkover in order to get an overview of the site and to inform how best to carry out the survey in terms of on-site methods, health & safety issues, potential limitations & pitfalls, and the context of the river within the greater area. These resources were again consulted during the writing of this report in order to assess the specifics on a variety of parameters and compile them, along with the findings of the on-site survey work, in order to attain an accurate appraisal of the catchment.

The **walkover survey** broadly followed the best practice survey methodology for Otter as recommended by Chanin (2003) and Bailey & Rochford (2006). However, the entire watercourse was surveyed rather than the standard 500m sections from accessible points such as bridges. Where practical and safe, watercourses were surveyed from within the channel, which greatly increases the likelihood of Otter sign detection. The presence of Otters was ascertained during targeted surveys by seeking field signs such as footprints, spraints and slides as well as holts and couches. Field surveying was carried out on the 20th of March and the 4th of April, 2021; warm, dry, bright weather was enjoyed both days.

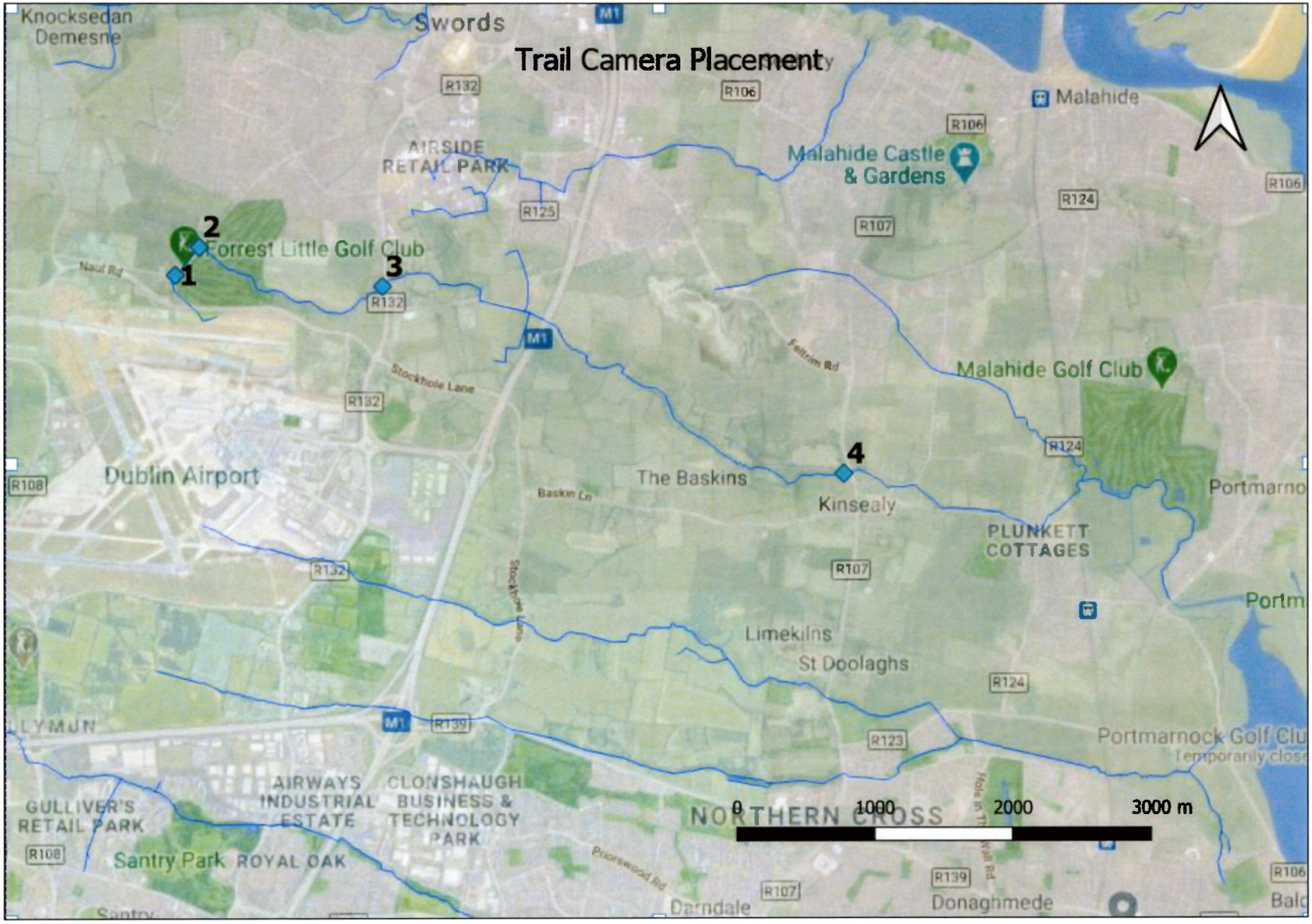
During the river walkover, as well as looking for signs of Otter, an appraisal was made of the aquatic habitats, the riparian habitats, the physical and hydromorphological characteristics. Notes were taken on large scale field maps. Aquatic habitat assessment was conducted in line with the methodology presented in the Environment Agency's 'River Habitat Survey in Britain and Ireland Field Survey Guidance Manual 2003' (EA, 2003). Habitats of use to the various life stages of salmonids are assessed based on the information provided in the book "Trout and Salmon. Ecology, Conservation and Rehabilitation." Crisp (2000). Lamprey ammocoete habitat quality as well as the suitability of adult spawning habitat was assessed based on the information provided in Maitland (2003) and Gardiner (2003).

Trail cameras were deployed at four locations for two weeks to confirm Otter presence and determine the pattern of usage of these areas (Figure 2.1).

An **Otter suitability appraisal** was carried out by combining the results from the Otter activity walkover survey, the fish habitat assessment, the riparian and hydromorphological characteristics, and the trail camera survey findings. As part of this, potential breeding areas[1] were also identified using the criteria laid out in Liles (2003). Nationally, there has been comparatively little research directed specifically towards identifying and protecting Otter breeding sites, and there is a lack of detailed contemporary information on local Otter breeding activity.

[1] It is important to note that a distinction is made between a breeding site and a natal den. The term breeding site is used to describe an area of land, whereas the natal den is taken to be the small space occupied by the female when she gives birth

Figure 2.1 The deployment locations of Trail Cameras along the Sluice River catchment.



3. Results

Otter field signs have been historically recorded on the Sluice River, in particular close to Malahide Golf Club (Goodwillie 2008). Otters have not been recorded airside at Dublin Airport ([redacted] pers comm.). The NBDC has no contemporary records of Otter along the Sluice. Even in cases where Otters are not holding territory, they are often observed ranging up small streams, exploring potential foraging and breeding habitat (pers obs.). Where they occur, Otters leave detectable and often long-lasting field signs to indicate their presence.

3.1 Field Signs – Walkover survey 2021

A stream walkover began at the perimeter fence of Dublin Airport. At this point, the stream is culverted, and it emerges from a 500mm concrete pipe 100m down Forrest Road, halfway between the Naul Road Junction and the Cooks Road Junction. On the ground, signs of Otter were first recorded 200-300m d/s of the Forest Little Golf Course, with a single spraint on a boulder. This first sign was approximately 1.2km downriver of the rivers source with the next recorded sign of Otter 500m downstream of that location, where Mink, *Mustela vison* and Otter were marking the same landmark; a plywood board sloped along the bank into the stream. Shortly downstream of that point on the river, there were spraints at the R132 bridge. Bridges are usually marked territorially by Otter. Bearing out this observation, the next mark was over 1.5km downstream at the M1 bridge, where a double spraint was noted. The next marking location was approximately 2km downstream within the Abbeyville private grounds. There was quite a bit of activity observed at Abbeyville with footprints and three sprainting sites (two of which were heavily used). East of the railway line, a number of areas containing prints were found. The watercourse here is tidal, much of the land is reclaimed from from coastal wetlands; as a result, fine sediment is plentiful and this area lends particularly well to displaying footprints. A burrow was found here which was deemed to be a holt due to the presence of a slide and associated footprints nearby. The holt showed signs of a low degree of usage prior to the survey, and, as Otters will utilise a number holts within their range, its importance was beyond the scope of this study to quantify. Part of the Baldoyle wetlands area was also walked. The heaviest activity of the current survey was found where the Mayne River enters the sea at the Baldoyle wetlands. A summary map showing the location of field signs is shown in Figure 3.1.

The summary of spraints recorded during the walkover is presented in Table 3.1 with Figure 3.2 illustrating the collection locations.

Table 3.1 Spraints collected during the 2021 survey walkover – see Figure 3.2 for location map.

Spraint ID	Number of spraints	Age	Contents	Comment
1	1	Old	Bird/small mammal bones	Furthest sign upstream
2	3	Old	Smooth	Mink also marking the same site
3	2	Old and fresh	Bird/small mammal bones	In barrel culvert under bridge
4	2	Old and fresh	One jelly, one with fish bones	Marking the R132 bridge
5	5-6	From old to fresh	Varied, fish and bird/small mammal bones	Well used marking site
6	1	Old	Fish bones	
7	2	Old and Fresh	Fish and bird/small mammal bones	
8	7-8	From old to fresh	Varied. Fish and bird/small mammal bones	Well used marking site, Marking bridge
9	3	From old to fresh	Crustaceans, fish and bird/small mammal bones	
10	1	Fresh		Marking bridge
11	10+	From old to fresh	Varied. Crustaceans, fish and bird/small mammal bones	On the Mayne River, not the Sluice, well used marking site, most prominent marking site found during the survey

Figure 3.1 Distribution of field signs along the Sluice River.

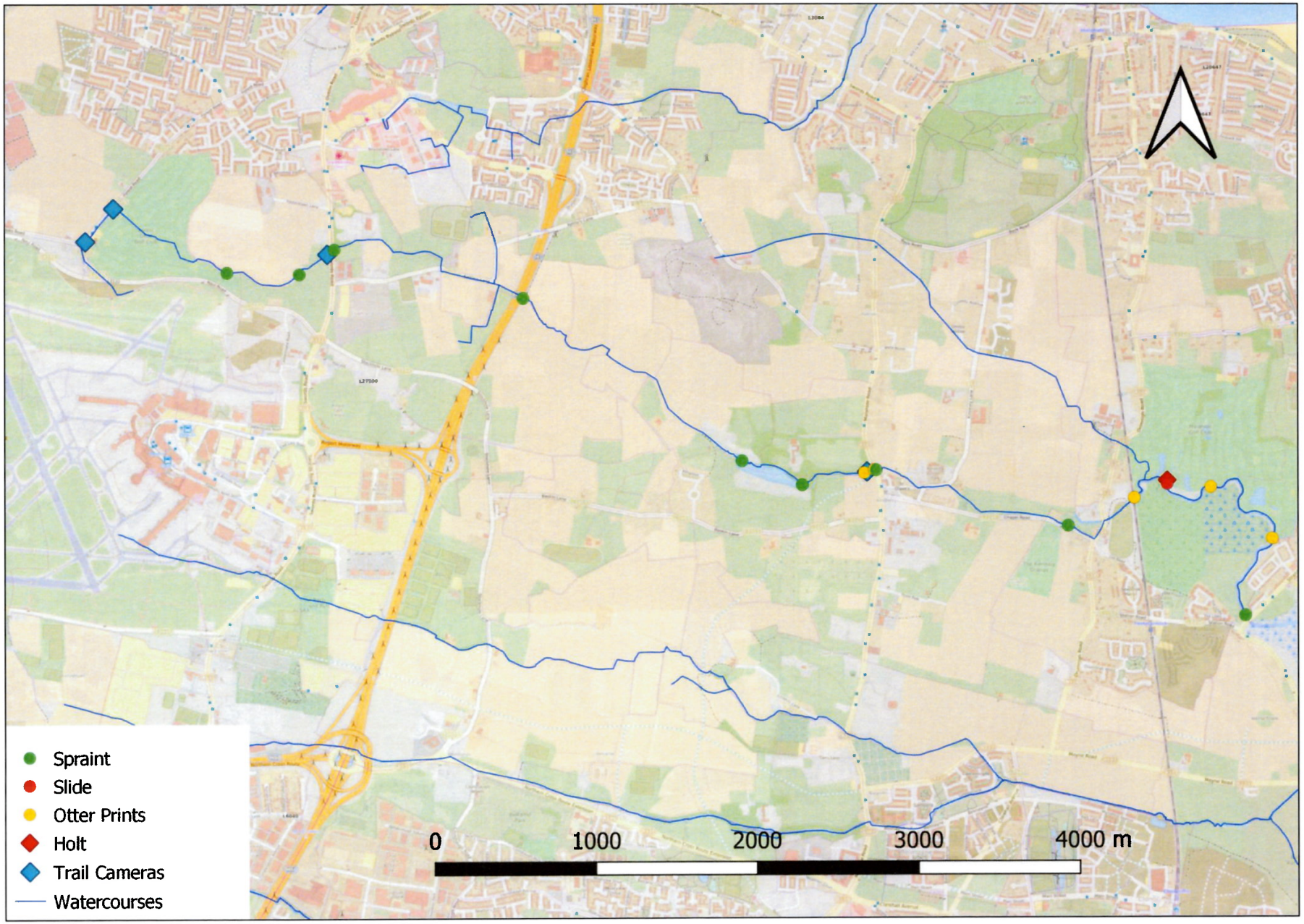
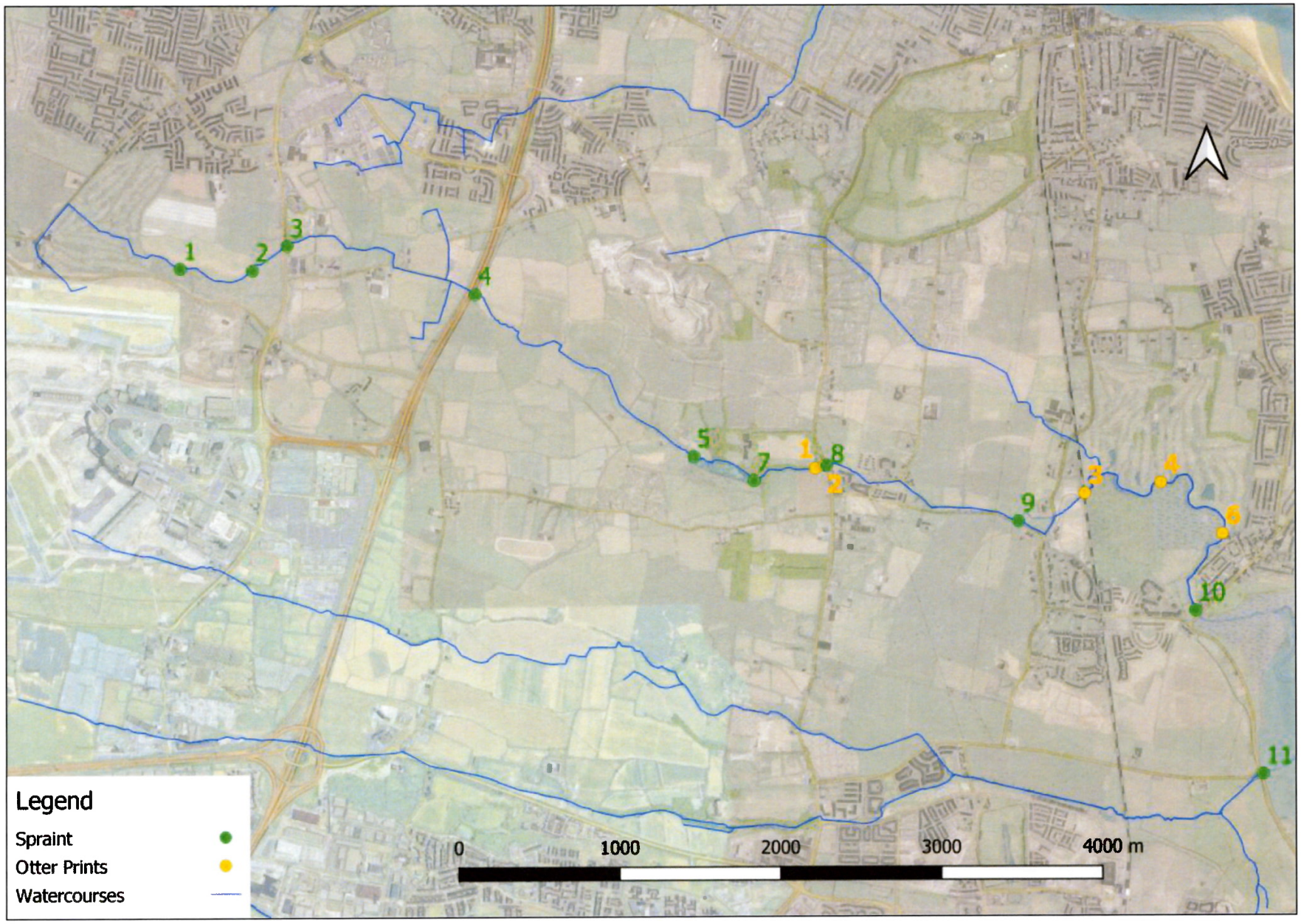


Figure 3.2 Map of Otter spraints and prints recorded during March-April walkover surveys in 2021.



3.2 Trail Cameras

Four cameras were placed along the watercourse from the 20th of March until the 4th of April a period of 15 days. Cameras 1 and 2 were placed close to Dublin Airport to collect information on the Otter activity in the vicinity of the airport. Camera 3 was placed upstream of the R132 bridge crossing. The stream flows through a barrel culvert at this crossing, and the road is on an embankment elevated well above the level of the floodplain; a feature that would funnel Otter through the culvert. As with cameras 1 and 2, this camera location was selected to get a good understanding of Otter activity in the upper reaches of the stream near Dublin Airport. Camera 4 was placed along the border of the grounds of a large private dwelling in Abbeyville, Kinsealy (hereafter the Abbeyville private grounds). The camera was placed 30m upstream of the R107 bridge crossing. This area was selected based on a number of parameters: strong signs of Otter activity (sprainting and prints), good fisheries suitability and hydromorphology and good vegetative cover.

Cameras 1 and 2 recorded no Otter activity[2]. Camera 3 had no direct photographs of Otter, however, a suspect looking wake was photographed in the river with the cause of the wake out of frame. This wake could have been made by a range of animals including Otter, Mink, Rat, *Rattus norvegicus*, Dog or simply livestock accessing the river.

Camera 4 captured a large amount of Otter activity, with a total of 12 passes made. The passes, which were captured during late March and early April, were dated as follows:

Date	20th	21st	22nd	23rd	24th	25th	26th	27th	28th	29th	30th	1st	2nd	3rd	4th
No. Of passes	1	1	0	1	1	0	2	1	1	1	1	2	0	1	0

Examples of the captured trail camera images are shown in Appendix A to this report.

3.3 Water Quality

It was decided to attain a kick sample to attain information on the status and condition of the river in order to inform the fish habitat assessment and the Otter suitability appraisal. The findings of the water quality survey were in line with the findings of the EIAR Surface Water Section (Section 7.10)

Attaining a Q-value is the standard methodology of assessing the biological water quality of a watercourse in Ireland. It is the biotic index utilised by EPA staff and sub-consultants to score watercourses as part of the Water Framework Directive and is an effective tool for Aquatic Ecologists in determining the condition of aquatic environments. The method involves placing a kick-sample net (250mm width, 500µm mesh size) in a suitable riffle and kicking (vigorously disturbing) the riverbed for a standard duration of time (2 minutes). Aquatic invertebrates from the sample are then identified and classified according to their sensitivity to pollution;

[2] Other animals were present including stoat and rat; see photographs in Appendix A

Groups A, B, C, D and E (where Group A are the most sensitive and group E are the most tolerant of pollution). As per Toner *et al*. 2005, relative numbers of each individual taxa are compiled and analysed such that each sampling site is then assigned a Q-value, a nationally recognised number that denotes water quality (Table 3.2).

Table 3.2 Q-rating scheme.

Q Value	WFD Status	Pollution Status	Condition
Q5 or Q4-5	High Status	Unpolluted	Satisfactory
Q4	Good Status	Unpolluted	Satisfactory
Q3-4	Moderate Status	Slightly polluted	Unsatisfactory
Q3 or Q2-3	Poor Status	Moderately polluted	Unsatisfactory
Q2, Q1-2 or Q1	Bad Status	Seriously polluted	Unsatisfactory

Asellus aquaticus, Elmis aenea **and** ***Bithynia tentaculata,*** **all pollution tolerant indicators dominated the aquatic macroinvertebrate community in the River Sluice at the Forrest Little Golf Course (Plate 3.1).** ***Baetis rhodani, Glossosomatidae, Lymnaea peregra*** **and** ***Planorbis carinatus*** **were also present. A value of Q3 was given; this corresponds to 'Poor Status' under the Water Framework Directive. Similarly, 3 sites on the Sluice main channel which were surveyed as part of the EIA in 2018/2019, were found to have poor status, and a fourth found to have poor/moderate status.**

Asellus aquaticus, Elmis aenea and *Bithynia tentaculata*

Plate 3.1 Pollution tolerant macroinvertebrate species.

3.4 Fish Habitat Assessment

The stream is considered too small, and hydromorphologically damaged from generations of human activity, to be occupied by salmon *Salmo salar*; and it is probably a long time since a population was present. Trout *Salmo trutta* are present to a certain extent in small areas of suitable habitat. The use of the watercourse by anadromous trout[3] is a matter of the operational regime of the tidal sluice-gate at Portmarnock Bridge; if it is permanently closed sea-run trout will most likely not be able to enter, however if it is routinely opened on a rising tide they are likely to use this watercourse to spawn.

The watercourse is considered too small for sea lamprey *Petromyzon marinus*, and the Portmarnock Bridge tidal sluice-gate is an impassable barrier for them if it remains closed. River lamprey *Lampetra fluviatilis* could potentially make their way through the tidal sluice to spawn in the watercourse. Brook lamprey *Lampetra planeri* are present in the stream. Elvers/glass eels would most likely make their way through the tidal sluice gate and populate the river where appropriate refuge habitat exists for them. Three-spined stickleback *Gasterosteus aculeatus* are present in some areas, and minnow *Phoxinus phoxinus* are likely to be present. Gudgeon *Gobio gobio* and stoneloach *Barbatula barbatula* may potentially be present but are unlikely. Flounder *Platichthys flesus* are present in the lower reaches.

Please note that Sections 1 through 10 are referred to as the Sluice River in the EPA website (EPA 2021). Sections 1 and 2 are referred to as the Forrest Little Stream in the EIAR, from Section 3 onwards, the Stream is referred to as the Sluice in the EIAR.

Tributaries and Drainage Ditches

There are a number of tributaries and drainage ditches joining the Sluice Main Channel from both the north and the south which are not identified as watercourses in the EPA website or on the OSI mapping. These are varied in character and flow volume, but none are of any fisheries value except perhaps for stickleback and eel[4]. Many drainage ditches are subject to pressures such as drying out, regular mechanical maintenance, eutrophic conditions, anoxic conditions etc. Of note here are the Wad Stream and Kealy's Stream, both of which drain the eastern section of the proposal. Both streams are highly modified streams, essentially drainage ditches. As described in the EIAR, both streams are assigned "Poor Status" (Q3 or Q2-3) in terms of water quality. Both streams have low flow volume, and are likely to experience extremely low flows during times of exceptionally dry weather, and the pressures associated with this[5] would prevent the development of populations of most freshwater fish species.

Section 1

This section of the watercourse is underground (culverted) and is not suitable for fish. It is therefore of no particular use to fish other than for the supply of water.

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[3] Sea-run brown trout *Salmo trutta*

[4] Eel once occupied all manner of drainage ditch, but drastic decline in recruitment has rendered this a much rarer occurrence

[5] Reduced dissolved oxygen, increased temperature, increased BOD and COD, increased predation

Section 2

Overall, this section of the stream exhibits poor habitat for fish. The stream has been channelised, most likely during the building of Forrest Road, and currently follows the road alignment on the southeastern side of the road. The volume of water flowing through the stream is small, and the original channelling works routed the stream into a channel that is too wide and deep to achieve any degree of naturalness.

Parts of both banks are framed by man-made stone walls. The combination of the artificial channel, the stone walls and the absence of mobile gravels have resulted in this area being poor in aquatic habitat diversity. Steeper areas of the stream are characterised by straight riffles, less steep areas by straight glides; in all there is very little habitat diversity present. The stream is likely to suffer droughts during times of little precipitation and may dry out (or almost dry out) in exceptional circumstances. The stream bed is heavily silted in parts: the first 100m of this section is heavily silted, however, it decreased in severity after that point. Straw and sandbags appear to have been deployed and settled out the heaviest of the sediment load within the upper 100m. The two artificial ponds present in the golf course (Section 3) appear to have filtered/settled out the remainder of the silt, and below the second pond, there is no evidence of additional silt in the watercourse. There is some cover present by way of riparian trees, however the proximity of Forrest Road is creating a large amount of disturbance negating the advantages brought about by whatever cover is present. The poor state that the stream in terms of aquatic habitat diversity means that this section of the watercourse has very little fisheries potential, it is sub-optimal for trout, containing no holding and spawning habitat and poor-quality rearing habitat. There is no suitable lamprey spawning habitat, nor is there optimal larval beds. Eels may be present in small numbers where suitable habitat exists[6]. No minnow or stickleback were seen.

Section 3

Section 3 is exhibiting some pressures as outlined in the following: The instream habitats are of poor quality and offer little variety except downstream of each of the three stone bridges where the bridge arches are funnelling flood waters in a manner that has created, and is maintaining, nice pool habitats. The bed of the stream is made up of a relatively homogeneously sized gravel which would have the potential to become mobile and form nice instream habitats if appropriate measures were taken[7]. However, the lack of obstacles and the channelised nature has resulted in this mobile gravel being dispersed as a flat shallow bed offering little variation and hence little decent habitat for fish. There are no holding pools for adult trout except for at the three bridges, and parts of the two pond areas. That said, the bed of each pond is covered with a heavy layer of leaves and other detritus which is exhibiting signs of anoxia[8].

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[6] Refuges such as under rocks, tree roots, submerged walls, semi-permanent debris etc

[7] e.g the placement of large wood, random boulders etc

[8] emitting gas bubbles and containing black fermented plant matter

There is some poor spawning habitat for trout at the tail of the bridge pools, and there is no quality rearing habitats for young salmonids. There is some suboptimal lamprey ammocoete habitat within the ponds, however, it is likely that the majority of each pond is too anoxic to be of use to lamprey. There is no eel habitat present. There is some suitable habitat for stickleback and possibly minnow; again this is within the pond area but the water was clear and no fish were seen during a 10 minute observation using polarized sun glasses. Additionally, there is a sluice gate at the end of the upper pond through which the flow is leaking; this is a certain blockage to fish passage for all fish except eel. Blockages to fish passage prevent the re-population of upstream areas following events such as severe droughts, and in some instances may lead to gene pool issues for any population upstream.

Section 4

This section is characterised by a high degree of riparian cover. Again, the stream bed is a relatively homogeneously sized gravel which is derived from the surrounding subsoils of glaciofluvial sands and gravels. This section of the stream sits inside a short tight V-shaped valley, the northern slope of which is tillage, and the southern slope being scrub and rough grazing. The majority of the instream habitats are glides and smooth riffles, however, there are 5 decent holding pools for adult trout with some reasonable spawning habitat for trout at the tail of each. There is some optimal lamprey ammocoete habitat in pockets, and also some sub-optimal habitat along the margins in places. Decent eel habitat is rare but present. Stickleback and minnow may be present in the slower glides, though none were seen.

Section 5

Section 5 is mainly made up of a slow, deep glide which is an area of deposition. Accumulations of high-quality fine sediment and detritus along both banks, along with reasonable spawning gravels upstream, suggest that this area is important for brook/river lamprey. It is likely that there are some resident trout, though none were seen in the long unbroken glides. The habitat is also suitable for stickleback and minnow, though again, none were seen during the walkover. The land use of the northern bank is low intensity agricultural grazing, and the southern bank is scrub.

Section 6

This section runs through an equestrian centre, and the riparian area is heavily managed by way of vegetation clearing, ornamental planting, pedestrian access, private bridge etc. Aquatic habitats are generally riffles and glides, and there is a marked difference in sediment characteristics, with a lot of cobble present, along with some boulders. At the beginning of this section there is a large pool which is present as a result of flood waters exiting the barrel culvert of the R132 bridge crossing. This pool is important as a holding pool for trout. The rest of this section has some potential as trout rearing habitat but is not considered optimal habitat for this purpose.

Section 7

Section 7 flows through an agricultural area, with tillage to the north and pastures to the south. Aquatic habitats are generally riffles and glides, with a lot of cobble present, along with some boulders. Riparian cover is good, and maintains connectivity the entire way through this

section. There are some holding pools and spawning areas for adult trout, as well as rearing areas for juveniles. There is reasonable eel habitat with submerged large stones and overhanging banks. There is some stable optimal lamprey ammocoete habitat as well as spawning habitat.

Section 8

This section of the watercourse is in relatively good condition hydromorphologically, and as a result it exhibits good diverse habitats for fish. There are some holding pools and spawning areas for adult trout. Spawning areas are largely free of siltation and hence an oxygen rich intra-gravel zone is available for the development and refuge of eggs and alevins. Rearing areas for juvenile salmonids are plentiful. There is reasonable eel habitat with submerged large stones, tree roots, and overhanging banks. There is some stable optimal lamprey ammocoete habitat, particularly behind fallen logs and backwaters. The pond is likely to contain trout, stickleback and minnow, as well as frog *Rana temporaria* and potentially newt *Lissotriton vulgaris.* The intact mature woodland is crucial in maintaining the quality of this section of river, as it excludes mechanical disturbance, provides shade, provides high quality terrestrial input[9], and generates large deadwood[10].

Section 9

The upper half of this section is quite developed, with a number of housing estates flanking the watercourse. That said the river corridor is reasonably well vegetated and enjoys a low degree of management. The lower half runs through a less urbanised area and exhibits a good degree of cover. Riffles, pools and glides are present in healthy proportions. The riverbed is mainly cobble, gravel, and sand with the occasional boulder and depositional area of fine sediment. Trout, lamprey, eel, stickleback and minnow are all likely to be present within this stretch. Flounder are also likely to venture up here from the tidal areas.

Section 10

This section of the river is tidal and extends from the railway bridge to Portmarnock Bridge. There is a golf course present north of the river (Malahide Golf Course), and land use south of the river is mainly scrub and rough grazing. This section is subject to ongoing arterial drainage, with the most recent excavations happening less than a year before the time of this walkover. Section 10 is most likely populated by flounder and marine/estuarine invertebrates. Present on a spoil heap from recent excavations were the remains of *Cerastoderma edule* and what appeared to be *Tellinidae.* The operational regime of the tidal sluice at Portmarnock Bridge would have a large influence of fish species and biomass present within this section.

[9] Terrestrial insects, leaves etc

[10] Large deadwood is increasingly recognised as a driver and maintainer of aquatic habitat diversity

Plate 3.2 This image is an example of lamprey spawning and nursery habitat, and was taken in Section 9

4. Otter Suitability Appraisal

The following is an appraisal of the stream in terms of its suitability for Otter. This was informed by combining the results from the Otter activity walkover survey, the fish habitat assessment, the riparian and hydromorphological characteristics, and the trail camera survey findings. For convenience and continuity, the same "Sections" are used as were used in the Fish Habitat Assessment. Figure 4.1 summarises the appraisal of the survey sections for Otter habitat suitability. Please note that Sections 1 through 10 are referred to as the Sluice River in the EPA website (EPA 2021). Sections 1 and 2 are referred to as the Forrest Little Stream in the EIAR, from Section 3 onwards, the Stream is referred to as the Sluice in the EIAR.

4.1 Tributaries and Drainage Ditches

There are a number of tributaries and drainage ditches joining the Sluice Main Channel from both the north and the south which are not identified as watercourses in the EPA website or on the OSI mapping. These are varied in character and flow volume, but none are of any fisheries value except perhaps for stickleback and eel. Many drainage ditches are subject to pressures such as drying out, regular mechanical maintenance, eutrophic conditions, anoxic conditions etc. Of note here are the Wad Stream and Kealy's Stream, both of which drain the eastern section of the proposal. Both streams are highly modified streams, essentially drainage ditches. As described in the EIAR, both streams are assigned "Poor Status" (Q3 or Q2-3) in terms of water quality. Both streams have low flow volume and are likely to experience extremely low flows during times of exceptionally dry weather, and the pressures associated with this would prevent the development of populations of most freshwater fish species. Tributaries and drainage ditches have varying degrees of cover, some of which may be sufficient for Otter, however, the limited availability of prey means that Otter are unlikely to forage these except on a very occasional basis. If a drainage ditch is connecting two areas of importance for an Otter (e.g. a ditch draining a wetland to a stream) then it may be used to commute instead of crossing open ground, however, the tributaries and drainage ditches in question are not connecting the Sluice River to any decent foraging ground.

4.2 Section 1

This section of the watercourse is underground and is not suitable for fish. It is therefore of no use to Otter other than for the supply of water. Some Otters will use covered drains to cross roads or other exposed areas [redacted] *pers obs*) should suitable areas be available, however covered drains used are generally short, unlike this section which appears to be over 300m long (EPA, 2021).

Plate 4.1 The Forrest Little stream emerging from the subterranean drain/culvert at the boundary between Sections 1 and 2.

4.3 Section 2

There is some cover present by way of riparian trees, however the proximity of Forrest Road is creating a large amount of disturbance negating the advantages brought about by whatever cover is present. The poor state that the stream is in terms of aquatic habitat diversity has effectively eliminated the potential for fish. The fact that the stream is running for 600m along Forest Road means that disturbance would be a major issue for Otter. The presence of settled silt in the recent past has deteriorated the condition of the stream in the short-medium term, however this stretch of the stream was not suitable for Otter prior to this. Two cameras were placed within this section for a period of 15 days, and no footage of Otter was captured. In all this section of the watercourse is unsuitable for Otter.

Plate 4.2 Section 2 running parallel to Forrest Little Road

4.4 Section 3

The lack of instream habitat diversity has vastly reduced the availability of prey for Otter within this section. The absence of riparian cover due to rigorous vegetation management[11] renders this section unsuitable for foraging Otter. Additionally, it is unlikely that a commuting Otter would use this area due to the lack of cover. Camera 2 was placed just upstream of this section, and no Otter were detected in over two weeks of recording. No signs of Otter were found in this area during the walkover survey.

[11] Chemical weed control appears to be relied upon heavily here.

Plate 4.3 Section 3, the golf course

4.5 Section 4

This section is characterised by a high degree of riparian cover and enjoys relative seclusion from human activities; as such it has the potential to be suitable for Otter, however its potential is limited to a certain extent by prey availability. Two marking spots for Otter were found within this stretch, the first containing one spraint and the second with three spraints. The first marking spot was the furthest upstream that Otter signs were found during this walkover study.

4.6 Section 5

Camera 3 was placed upstream of the R132 bridge crossing. The stream flows through a barrel culvert at this crossing, and the road is on an embankment elevated well above the level of the floodplain; a feature that would funnel Otter through the culvert. During the 15 days that the camera was deployed, it had captured no direct photographs of Otter, however, a suspect looking wake was photographed with the cause of the wake out of frame[12]. Section 5 is mainly made up of a slow, deep glide which is an area of deposition. Accumulations of high-quality fine sediment and detritus along both banks, along with reasonable spawning gravels

[12] Of course this wake could not be confirmed as Otter as it may have been made by a range of animals including mink, rat, dog or even livestock accessing the river.

upstream, suggest that this area is important for brook/river lamprey. The land use of the northern bank is low intensity agricultural grazing, and the southern bank is scrub which doesn't offer much riparian cover but does offer refuge/escape options for Otter close to the stream. Section 4 immediately upstream offers good cover but relatively poor fish biomass, and it is likely that these sections in combination are visited occasionally by foraging Otter.

4.7 Section 6

Prey availability in this section is limited. There is some potential as trout rearing habitat but it is not considered optimal. A marking spot with two spraints was present at the R132 bridge which was the upstream end of this section. Camera 3 was placed upstream of the R132 bridge crossing and captured no direct photographs of Otter during the 15 days that the camera was in operation. Section 6 runs through an equestrian centre, and the riparian area is heavily managed by way of vegetation clearing, ornamental planting, pedestrian access, private bridge etc. As such, the degree of cover for foraging and commuting Otter is low, and the degree of human disturbance is quite high, and so it is likely that this area is only occasionally used by Otter.

4.8 Section 7

Section 7 flows through an agricultural area, with tillage to the north and pastures to the south. Aquatic habitats are generally riffles and glides, with a lot of cobble present, along with some boulders. Riparian cover is good, and maintains connectivity the entire way through this section, and the density of cover in combination with the agricultural surrounds make the river corridor quite secluded. Prey availability appears fair to good, with appropriate habitats for trout, eel, lamprey, and minnow and stickleback. This area is likely to be used regularly by Otter to forage and commute.

4.9 Section 8

This section of the watercourse is in relatively good condition hydromorphologically and as a result it exhibits good diverse habitats for fish. The area contains good quality habitats for all life stages of trout. There is some stable optimal lamprey ammocoete habitat and spawning gravels. Spawning areas for trout and lamprey are largely free of siltation and hence an oxygen rich intra-gravel zone is available for the development and refuge of eggs and alevins. Eel, stickleback and minnow also likely to be present.

The pond within this section may contain frog and potentially newt. The mature woodland through which this section flows provides excellent cover, as well as providing potential holt features, and is crucial in maintaining the quality of this section of river. Four spraint sites containing 15-17 spraints of different ages were found within this section during the site

walkover. In addition, two sets of footprints were found. Trail camera 4 was placed 30m upstream of the R107 bridge and captured a large amount of Otter activity, with a total of 12 passes made during the 15 day recording period. Undoubtedly, this is an important area for Otter. Indeed, given the amount of activity recorded in the area, combined with the high quality cover, low degree of disturbance and high degree of prey availability, it is possible or even likely that this is a "breeding site."

It is important to note that a distinction is made between a breeding site and a natal den. The term breeding site is used to describe an area of land, whereas the natal den is taken to be the small space occupied by the female when she gives birth and where the cubs stay for up to three months. A paper by Liles (2003) claims that, in terms of conservation, the identification and protection of the breeding site should be treated as a priority. Natal dens are obviously important, but their existence and security will often depend on the integrity of the wider breeding site in which they are found. The term breeding site is used here to describe an area large enough to provide a breeding Otter with:

- Security from disturbance;
- One or more potential natal den sites;
- Play areas for cubs;
- No risk of flooding; and
- Access to a good food supply.

Plate 4.4 Section 8, the camera was placed looking upstream at a shallow riffle

4.10 Section 9

The upper half of this section is quite developed, with a number of housing estates flanking the watercourse. That said the river corridor is reasonably well vegetated and enjoys a low degree of management. The lower half runs through a less urbanised area and exhibits a good degree of cover. Trout, lamprey, eel, stickleback, minnow and flounder are all likely to be present within this stretch. With that in mind, sufficient cover and prey availability are present in this stretch to suggest that Otter would routinely use this stretch to forage and commute.

Plate 4.4 Section 9; a representative image of this section of river

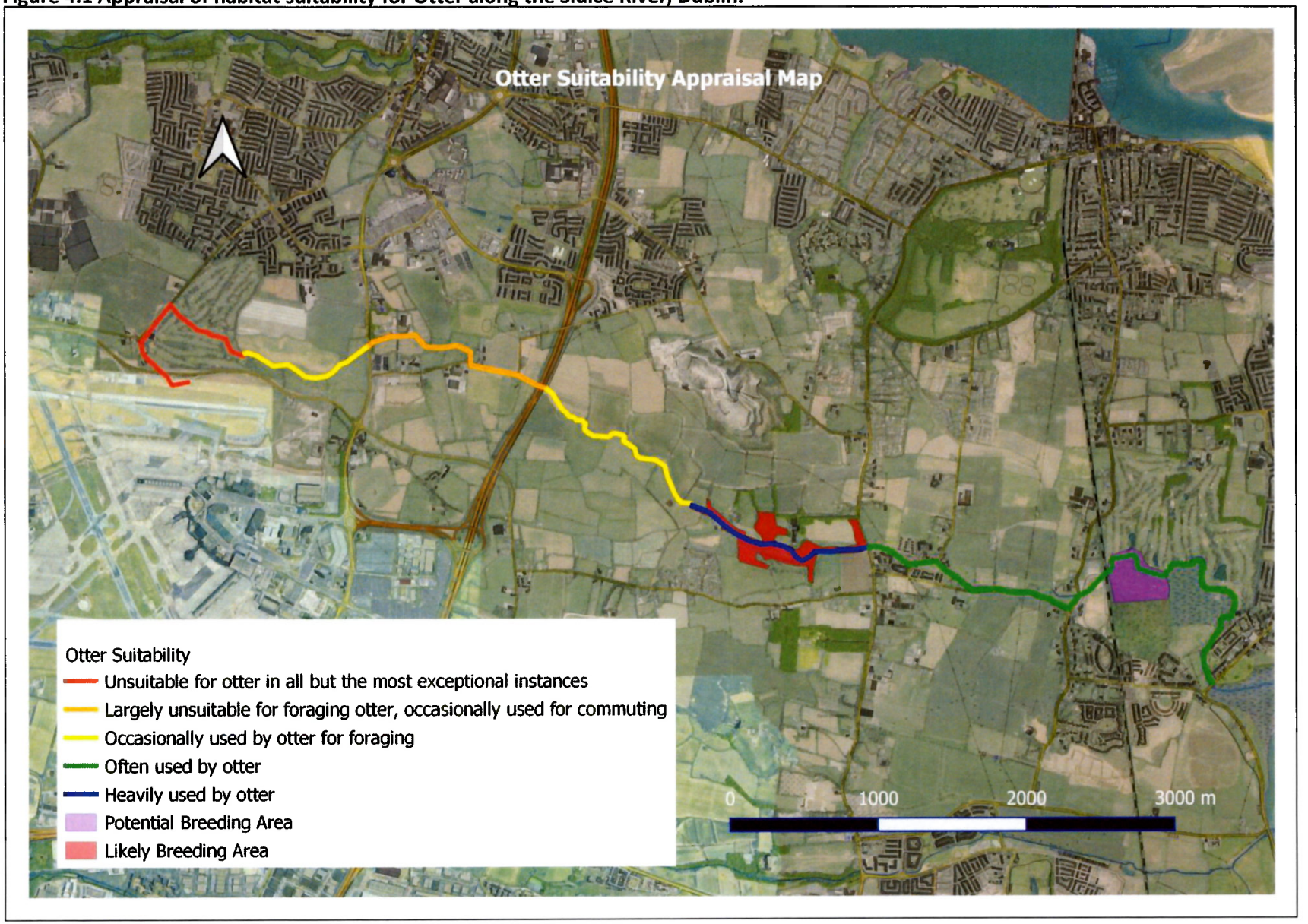
4.11 Section 10

This section of the river is tidal and extends from the railway bridge to Portmarnock Bridge. There is a golf course present north of the river, and land use south of the river is mainly scrub and rough grazing. Vegetative cover is excellent, particularly in the southern bank, and in general, the area is quite secluded. There was quite a bit of activity here, with a holt, a slide, three sets of prints and a spraint. It should be stated here that the detection rate of prints within this section is likely to be vastly elevated above the detection rates elsewhere in the river system due to the presence of tidal muds. The holt exhibited signs of low to medium levels usage and was identified as a holt due to the presence of a nearby slide and associated prints. Otter will utilise multiple holts within their range, some as resting places, and some as natal dens. Given the proximity to the coastal wetlands and access to moderately productive freshwater foraging grounds it is probable that this is an important area for Otter and as the area is relatively secluded and well-vegetated, it may even be considered by a female to use as a breeding area.

Plate 4.5 Section 10; the tidal sluice at Portmarnock Bridge

Plate 4.6 Section 10; the spoil from a recent dredging operation

Figure 4.1 Appraisal of habitat suitability for Otter along the Sluice River, Dublin.



5. Conclusion

In summary, the upper reaches of the Sluice River and its tributaries in the vicinity of Dublin Airport are unsuitable for Otter in all but the most occasional of circumstances. There is not enough prey available to support resident Otter and anything more than infrequent casual occurrence of Otter is unlikely.

In terms of the Forrest Little Stream, Section 1 is subterranean and completely unsuitable for Otter, while Section 2 receives too much disturbance from the public road which runs adjacent. Additionally, pressures of water quality, hydromorphology and instream habitat diversity issues have rendered the stream very unproductive in terms of prey biomass, and effectively unsuitable for Otter. This is backed by the by the fact that 2 trail cameras left recording in this stream for 15 days failed to capture footage of Otter.

The Wad Stream and Kealy's Stream drain the eastern section of the proposal and flow into the Sluice in the Abbeyville area. Both streams are highly modified streams, essentially not much more than drainage ditches. As described in the EIAR, both streams are assigned "Poor Status" (Q3 or Q2-3) in terms of water quality. Both streams have low flow volume and are likely to experience extremely low flows during times of exceptionally dry weather and the pressures associated with this would prevent the development of populations of most freshwater fish species. Both of these small watercourses have varying degrees of cover along their length, however, the limited availability of prey means that Otter are unlikely to forage in these with any regularity whatsoever.

In terms of the Sluice Stream main channel, Section 3 is completely devoid of riparian vegetation due to persistent application of weed-killer which is a significant deterrent to foraging Otter due to lack of cover. This section is experiencing pressures in terms of water quality, hydromorphology and instream habitat diversity also, which combine to present a watercourse where fish are essentially absent; another significant deterrent to foraging Otter. Sections 4 and 5 contained evidence use by Otter in the form of spraints, however this area is used relatively lightly as confirmed by 15 days of trail camera monitoring without definitive Otter footage. Sections 6 and 7 are also lightly used by Otter. Sections 4 through 7 have improved hydromorphology and instream habitat diversity which improves prey availability. Undoubtedly, the stretch of river between Abbeyville Lake and the coastal wetlands is more important for Otter. Sections 8 through 10 contained far more signs of Otter and displayed better fish habitat and vegetative cover, with the productive foraging grounds of the coastal wetlands and Abbeyville Lake at either end of this stretch. A trail camera at Abbeyville captured footage of Otter 11 days out of 15. A holt which exhibited signs of low to medium levels of usage was identified in section 10, along with a slide and footprints. In all, sections 8, 9 and 10 (more coastal sections) are important areas for Otter, as they provide prey and cover within a riparian corridor connected to the rich foraging grounds of the coastal wetlands.

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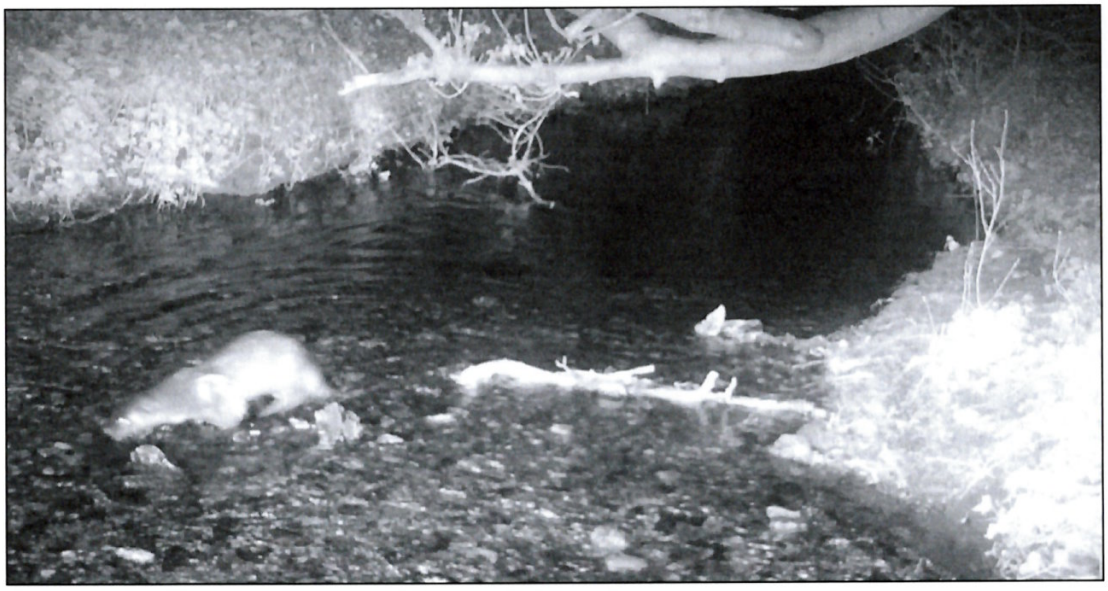
Appendix A – Trail Camera Images

Sluice River Catchment 2021

Trail Camera Photographs of Interest

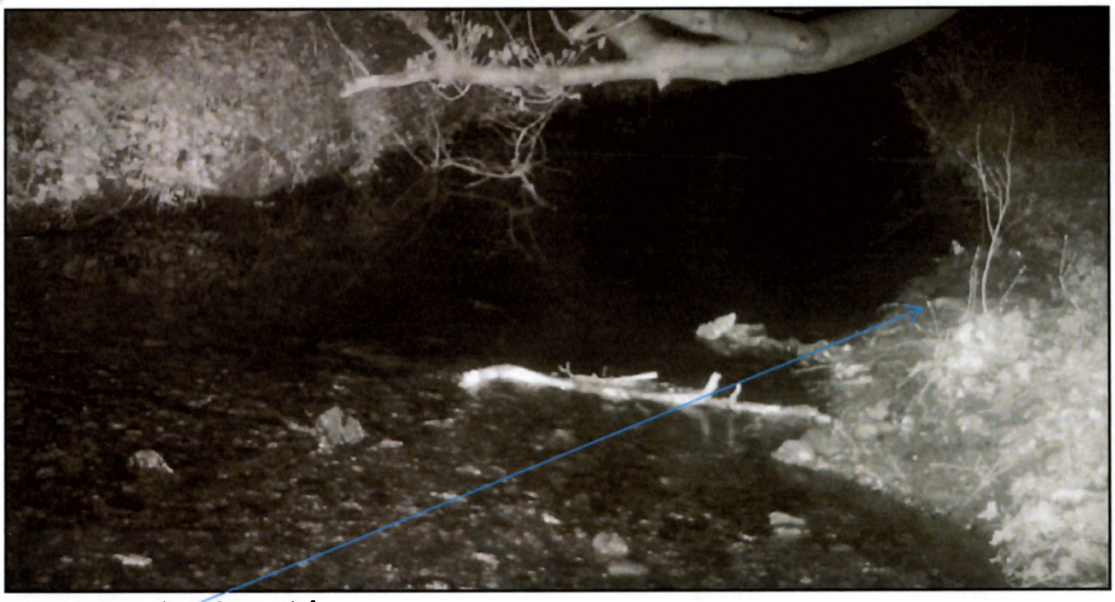
Camera 4; *an Otter having entered the water from the gently sloped bank*



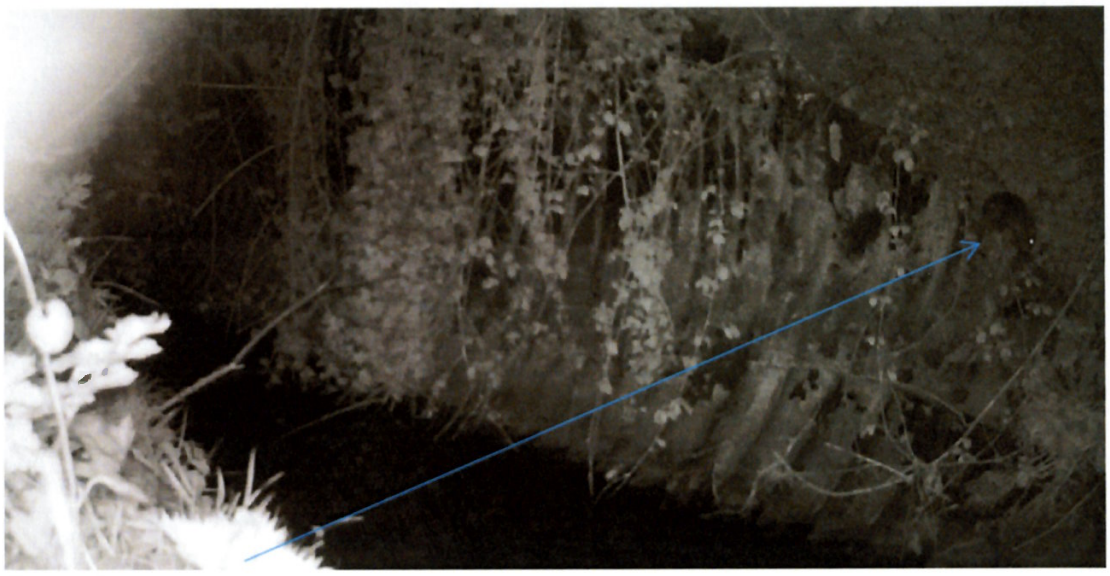
Camera 4; an Otter making its way down the shallow riffle

Camera 4; a red fox

Camera 4; a grey heron was seen on several occasions hunting



Camera 4; an American mink



Camera 3; a brown rat

Camera 2; an Irish stoat

Planning Observation
F23A/0781
Dublin Airport Infrastructure

Photo by Ameya Khandekar on Unsplash

Submission by:
Sabrina Joyce-Kemper (individual) &
Sabrina Joyce-Kemper on behalf of Wild Irish Defence CLG
C/O 23 Portmarnock Crescent
Portmarnock
Co Dublin.

Date of submission: 29th January 2024

APP 5

Submission

1. Introduction

1.1 Sabrina Joyce-Kemper as an individual and on behalf of Wild Irish Defence CLG wish to make a joint submission objecting to planning reference F23A/0781. Ms Joyce-Kemper has an advanced diploma in Planning and Environmental law from the Honorable Kings Inn. This planning submission has been made due to the lack of proper assessment & dual assessment under the EIA Directive and Habitats Directives, while supporting aspects of the Planning Application there is a need to ensure robust mitigation measures are implemented on any historical/ current and future impacts relating to F23A/0781 which is described as follows;

An increase in the capacity of the airport from the permitted combined capacity of Terminal 1 together with Terminal 2 of 32 million passengers per annum (32mppa) (as referenced by condition no. 3 of ABP Ref. No. PL06F.220670 (F06A/1248) and condition no. 2 under ABP Ref No. PL06F.223469 (F06A/1843)) to 40 million passengers per annum (40mppa). b) The increase to the capacity will include all attendant airport operations at Dublin Airport. The proposed increase in passenger numbers will supersede and replace condition no. 3 of ABP Ref. No. PL06F.220670 (F06A/1248) and condition no. 2 under ABP Ref. No. PL06F.223469 (F06A/1843). The provision of airport infrastructure to include 11 Project Elements.

1.2 In its current from this application cannot be supported due to missing documentation, failure to cumulatively assess impacts under EIAR and NIS, dual applications to Fingal County Council that render any consents incapable of being enforced, use of this application to amend other application conditions, the use of the application to attempt to retain unauthorised development, failure to carry out surveys and provide information. These issues are detailed in the reasons and considerations laid out in the below submission.

1.3 Without prejudice to the arguments contained in this submission, the observers adopt all other submissions/ observations made to this planning application.

1.4 Due to a number of planning applications and planning appeals that were live on Dublin airport developments just before and after this application was submitted, and the fact that there are over 7000 pages in this application, there has not had been sufficient time afforded by the Planning Authority to give this application a full rundown of the issues with this development. Fingal County Council have failed apply the provisions of articles 6(6) and 6(7) of the EIA directive. Upon receiving a letter from Sabrina Joyce-Kemper raising this issue (Appendix 1) FCC claimed that they kept to the limitations of Section 34 of the P&D Act . As such it must now be suggested that either the council is incorrect in its defence in relation to its application of article 6 of the EIA Directive or the provisions of Section 34 of the Planning and development Act are in conflict with Primary legislation of the EIA Directive and as such the EIA directive has not been fully transposed into national legislation.

1.5 A number of issues in relation to detail of the planning application and some deficiencies in the application report, documentation and environmental assessments have been identified which,

need to be updated in order to constitute a complete application (in accordance with the law), which is capable of being properly assessed by FCC. There are too many issues that may invalidate the application in addition to important missing documents and lack of consultation time so this submission is basic and will limit itself to raising the procedural/ administration issues and deficiencies in the application which should require the application to be deemed invalid and require a new application or without prejudice to that argument require substantial additional information. These issued are raised in Section 2 below.

1.6 This development consent application overlaps with other live planning applications with Fingal County Council and An Bord Pleanála. Most notably the Drainage Area project in Element 6 and the underground tunnel in Element 4 both of which form development in other planning applications by the daa. There are also planning applications already in train or on appeal for the North Apron. When an appeal is live with ABP an applicant is precluded from lodging another similar application. There are also serious issues with two potential consents or overlapping consents existing for one development element that would frustrate the ability to enforce a planning consent. There is a statutory requirement regarding making a similar planning application within 6 months that requires a yellow site notice. These issues may make this planning application invalid.

2. Unauthorised Development and Invalid procedure.

2.1 In the first instance F23A/0781 application a should never have been accepted by the Local Authority. Elements of the application include amendments to planning consents that have conditions that have been breached by the daa. Those breaches constitute unauthorised development as they do not comply with the limitations imposed by the planning consents granted most notably:

- ABP PL06F.*217429* - Condition 5 in relation to limit of 65 movements of flights between 23:00 and 07:00 has been breached.

-ABP PL06F.*217429* - Condition 1 – in relation to the consented flight paths as per plans, particulars and EIS lodged with the application has been breached.

-ABP 06F.220670 - Condition 3- in relation to 32mmpa combined cap on Terminal 1 &2 has been breached in 2019 and in 2023.

-ABP 06F.217429 was never subject to an Appropriate Assessment either during the original application in 2007 or the extension of permission in 2017. While a very basic EIA was carried out in 2007 no updated EIA was carried out in 2017, contrary to Habitats and EIA Directive. This lacunae in the law has been amended by section 42(8) of the P&D Acts 2000 to present.

2.2 It is contended that this application should be refused by Fingal County Council as per 34(12) of the Planning and Development Act(s) 2001 to present, A planning authority ***shall*** refuse to consider an application to retain unauthorised development of land where the authority decides that if an application for permission had been made in respect of the development concerned before it was commenced the application would have required that one or more than one of the following was carried out:

(a) an environmental impact assessment,

(b) a determination as to whether an environmental impact assessment is required, or

(c) an appropriate assessment.

2.3 As the unauthorised development listed at 2.1 would have required EIA and AA screening and assessment, the applicant cannot make this planning application as FCC are precluding from considering the application under Section 34.12. In fact the only way for the daa to legally attempt to regularise the aforementioned unauthorised development is via the substitute consent process.

2.4 Breach of 32mppa capacity:

The applicant breached the 32 mppa limit in condition 3 of ABP 220670 in 2019 (32.9 mppa). This figure is based on the daas own figures as officially declared to the Dept of Transport (see Appendix 2). While the daa has for some reason delayed the publication of the last quarter and December 2023 figures, our calculations put the passenger number north of 33 mppa. This means that the excess capacity was unauthorised development and no EIA or AA of the 32.9 capacity or 2023 approx 33mppa was ever carried out. Confirmation of this should be sought from the daa.

2.5 Therefore as per required by the Habitats and Birds Directives a remedial EIA and AA must be completed as part of substitute consent process. As this application is looking to increase the mppa to 40 million and had not referenced the excess unauthorised operational development, this application cannot be in accordance with the law as it seeks to effectively retain unauthorised development requiring AA and EIA assessment. To confirm the 2023 breach FCC should seek the official 2023 passenger numbers in order to reassert their statutory obligation to refuse to consider the application under Section 34(12).

2.6 Change to consented flight paths:

The flight paths on commencement of the parent permission for the North Runway in August 2022, were not in accordance with the actual permission granted and were in breach of Condition 1 of ABP 217429. This application deals with an increase in flight movements to allow for an increase in capacity from 32mppa to 40 million mppa while utilising the new flight paths put in place by IAA and daa. This application therefore engages land use planning which is intrinsically linked and inseparable from the flight paths that have informed the guidance on the Fingal development plan since 2006.

2.7 The development plan has based its noise zones and its public safety **(see fig 1.)** zones on the permitted flight paths as assessed in the original EIS. To change the permitted flight paths that have shaped how Fingal has developed since the grant of planning for the North Runway is to materially contravene the current and past Fingal Development plans and maps. Houses and estates were built on the basis of the land planning assessment tied to the original "straight out" flight paths. The IAA may decide that a change is required but any changes they recommend must be put forward for planning consent to include EIA and AA assessment of the changes as they directly influence the sustainable and proper planning on Fingal.

2.8 The originally permitted paths have been breached since Aug 2022 when the permission conditions and permission came into operation. In an attempt to rectify the situation daa tried to bring the as operated flight paths closer to those originally permitted but this does not change the fact that the Airport development has not been in compliance with the plans and application consented in 2006 and 2017 as per condition 1. The whole development is unauthorised development due to the use of incorrect flight paths. Remedial EIA and AA must be carried out to identify compensation measures for unauthorised impacts of the development. New flight paths will need a variation of the Fingal development plan and all associated public consultations and assessments (SEA, AA, EIA) As such this application cannot be approved in law.

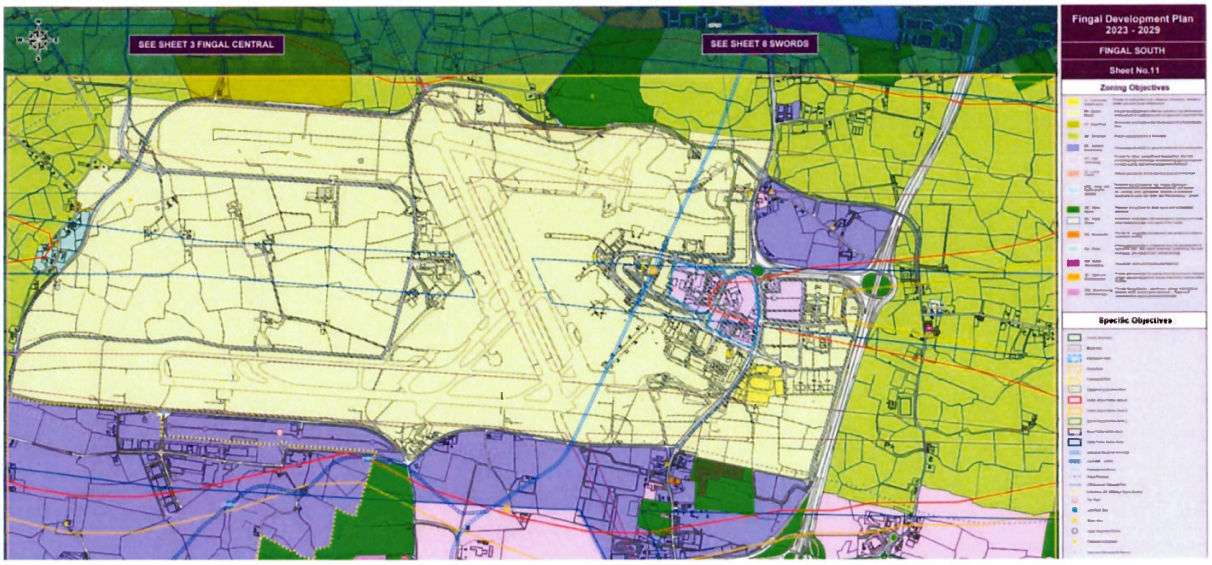


Figure 1: Map 8 for swords Fingal development plan inner PSZ in red and outer PSZ in blue.

2.9 The inner and outer public safety zones (PSZ) which stringently inform the land use planning for Fingal and are included on all development plan maps, are based on the originally permitted flight paths. This zone identifies the risk to the public and infrastructure of potential aviation accidents and provides for lower densities and restricted development in these areas in order to minimize mortality and damage rates in the event of an accident. I have attached the PSZ report for Dublin airports and the PSZ maps based on the permitted flight paths in Appendices 3 and 4 of this report. No changes can happen to permitted flight paths without planning consent and variations to the current Fingal Development plan and SEA for the development plan.

2.10 Figures 2 and 3 on the following pages show the new developments that have been built since the original permission was granted. These developments were restricted by the flight paths land use planning in the development plans. Some would have had density restrictions on estates and no schools or hospitals could be build or were restricted within inner and outer zones. On the other side of the coin if we were to suspend the planning and environmental acts for a minute and presume that flight path changes were allowed without consent, the how are we to stop high density building or educational facilities being built in the most dangerous zones under new paths. How do we asses the impact on annex species flight paths and habitats that

may not have previously been impacted? How do we mitigate for Human impacts (noise and health) that have shifted to communities under the new paths, if we haven't assessed the impacts? The answer is we cant and that is why new flight paths are legally intertwined with land planning and require planning consent and EIA / AA assessment.

2.11 It is clear that the flight paths are intrinsically linked to the Public Safety Zone and any deviation form the paths consented in 2007 is a material contravention of the development plans and unauthorised development that would require an EIA and AA to assess the impact on the changes to new airspace (bird strikes) and on land based habitats now under new flight paths. The site map for the development in the instant application also must be extended to include flight paths, this fact may invalidate application. There is also legal risk for FCC in that they have refused applicants planning permission on the basis of their developments not conforming with the requirements of the PSZ. They cannot say that the PSZ is no longer accurate without call into question decisions that relied on its zoning in the FCC dev plan maps.

2.12 Below are some of the planning policies and objectives from Fingal Development Plan that tie the flight paths and land use planning together in a legally binding manner.

3.5.15.6 Housing within the Airport Noise Zones The development of new housing for those who are not involved in farming will be actively resisted within the area delineated by Noise Zone A for Dublin Airport. However, consideration will be given to the development of new housing for those not involved in farming but who have family homes within Noise Zone A, in locations on suitable sites outside Noise Zone A but within five kilometres from that noise zone. To ensure that the need to live as close as possible to the existing family is met and to avoid undue pressure on certain areas of the Greenbelt, the M1 will provide an east-west boundary, with those living to the east being considered for housing on suitable sites to the east, and those living to the west being considered for housing on suitable sites to the west. Site selection should ensure that the rural character of the area is maintained and that multiple sites on single landholdings are avoided.

Objective SPQHO82 – Rural Settlement Strategy and Airport Noise Zone A Apply the provisions of the Rural Settlement Strategy, only with regard to 'New Housing for Farming Families' as set out within this Chapter, within the Airport Noise Zone A, and subject to the following restrictions: ¨ Under no circumstances shall any dwelling be permitted within the predicted 69dB LAeq 16 hours noise contour. ¨ Comprehensive noise insulation shall be required for any house permitted under this objective. ¨ Any planning application shall be accompanied by a noise assessment report produced by an independent specialist in noise assessment which shall specify all proposed noise mitigation measures together with a declaration of acceptance of the applicant with regard to the result of the noise acceptance report.

Policy DAP4 – Transitioning to a Low Carbon Economy Ensure that all developments comply with the Climate Action Objectives and the Circular Economy and Waste Management Objectives in the Dublin Airport Local Area Plan 2020, or any subsequent LAP or extension of same.

National Policy Objective 65 set out in the Department of Housing Planning and Local Government (DHPLG) National Planning Framework 2040, February 2018, to: "Promote the pro-

active management of noise where it is likely to have significant adverse impacts on health and quality of life and support the aims of the Environmental Noise Regulations through national planning guidance and Noise Action Plans."

Policy DAP6 – Health of Residents and Aviation Noise Protect the health of residents affected by aviation noise, particularly night-time noise.

Objective DAO14 – Aircraft Movements and Development Restrict development which would give rise to conflicts with aircraft movements on environmental or safety grounds on lands in the vicinity of the Airport and on the main flight paths serving the Airport, and in particular restrict residential development in areas likely to be affected by levels of noise inappropriate to residential use. Objective DAO15 – Ongoing Review of Operation of Noise Zones Review the operation of the Noise Zones on an ongoing basis in line with the most up to date legislative frameworks in the area, the ongoing programme of noise monitoring in the vicinity of the Airport flight paths, and the availability of improved noise forecasts.

Objective DAO18 – Safety Promote appropriate land use patterns in the vicinity of the flight paths serving the Airport, having regard to the precautionary principle, based on existing and anticipated environmental and safety impacts of aircraft movements. Objective DAO19 – Review of Public Safety Zones Support the review of Public Safety Zones associated with Dublin Airport and implement the policies to be determined by the Government in relation to these Public Safety Zones.

Policy DAP8 – Community Engagement Support the ongoing and continued engagement with neighbouring airport communities to ensure that the environmental impacts associated with the development proposals are carefully managed and mitigated through land use planning and environmental monitoring and review processes. Policy DAP9 – Support for the Local Community Support the local community impacted by the expansion of Dublin Airport in efforts to prevent the fragmentation of their community.

Objective DAO24 – Housing Development and Dublin Airport Noise Zones Restrict housing development in order to minimise the potential for future conflict between Airport operations and the environmental conditions for residents, in accordance with the Dublin Airport Noise Zones 2019.

2.13 The points 2.6-2.12 above should be read with the conclusion of the original ABP inspectors report for the parent permission (whom the Board overruled) as we feel it is pertinent to the importance of legal and robust assessments of actual impacts on human and non human communities.

ABP 217429 Inspectors report page 101:

"The matter of noise is particularly problematic and despite the extent of information provided on the subject and the opportunities provided to the applicant to address certain issues I consider that the information before the Board remains materially deficient, namely with regard to the 'significant effects' in terms of night time noise and, in the light of increasing evidence of

the correlation of aircraft noise and cognitive skills of children, the ability of schools to be insulated so as to provide the necessary indoor noise levels of 45dBA above which significant effects would occur.

In view of the importance of these issues and their potential material negative impacts on the affected communities and schools, in my opinion it is incumbent on the applicant to provide the necessary information in a format which is easily interpreted without recourse to conjecture or inference so as to allow the Board to make a proper assessment. The repeated failure by the applicant to provide this information has to be considered fatal at this stage and I do not consider it possible that a reasonable expectation in terms of the extent of the impacts in terms of noise can be made on which the Board can realistically make an informed decision.

As I have acknowledged above the proposal accords with national, regional and local policy and its strategic importance is accepted. I would suggest, however, that the advancement of the scheme would effectively require a section of the population to accept the impacts and inconvenience arising for the benefit of the wider community. In the interests of fairness and transparency I would suggest that a positive decision in this instance, should it be predicated on such reasons, should only be countenanced where the full facts as to nature and extent of the potential impacts are available and detailed so that the Board and all persons who are thus affected are cognisant of the potential ramifications. This is not the case in this instance and I do not consider that the material deficiencies which remain could be addressed, in any manner, by way of condition. I therefore recommend that permission for the above described development be refused for the following reasons and consideration

REASONS AND CONSIDERATIONS 1. It is considered that the proposed northern parallel runway, taken in conjunction with the existing southern runway 10R/28L and cross-wind runway 16/34, would result in a material extension in the geographical area and population that would be affected by Dublin Airport in terms of noise and public health and safety risk. These impacts are considered material. The impacts relating to noise would be only partially offset by the proposed mitigation measures in terms of the insulation and buy-out schemes. It is therefore considered that the altered noise environment and increase in aircraft noise both during the day and at night which would arise as a consequence of the proposed development, coupled with the increased risk in terms of public health and safety would, seriously injure the amenities of property and community facilities within the affected areas and would be contrary to the proper planning and sustainable development of the area. 2. Having regard to the correlation between aircraft noise and the development of childrens' cognitive skills the Board is not satisfied on the basis of the submissions made in connection with the planning application and the appeal that the proposed mitigation measures in terms of insulation of schools which would be affected by the proposal would be adequate to ensure a maximum internal classroom noise level of 45dBA LAeq. In the absence of this information it is considered that the proposal would endanger the health and safety of persons attending the said schools and would be contrary to the proper planning and sustainable development of the area. 3. Having regard to the proposed increase in night time flights on the existing southern parallel runway which would be facilitated by the proposed northern parallel runway the Board is not satisfied, on the basis of the submissions

made in connection with the planning application and appeal, that either the full nature and extent of the increase in night time noise, the significant effects which may arise from same or the extent of the areas and populations which would be affected by same have been satisfactorily identified and quantified. It is considered measures proposed reinforced by conditions and monitoring can ensure that a suitable noise environment can be maintained within classrooms and school buildings generally. In coming to the above decision, the Board noted that, in addition to planning controls, Dublin Airport would in the future be subject to the new noise control regime introduced under the EU Environmental Noise Directive 2002/49/EC and the Environmental Noise Regulations, 2006.

Note: The Board considered both this application and the application for Terminal 2 together and took account of the cumulative impacts of the proposed developments. The Board considered that the EIS and the EIS Addendum supplemented by the further information submitted to the planning authority and the Board, including at the oral hearing, together with the Inspector's report provided for an appropriate Environmental Impact Assessment of the likely significant impacts of the proposed development.

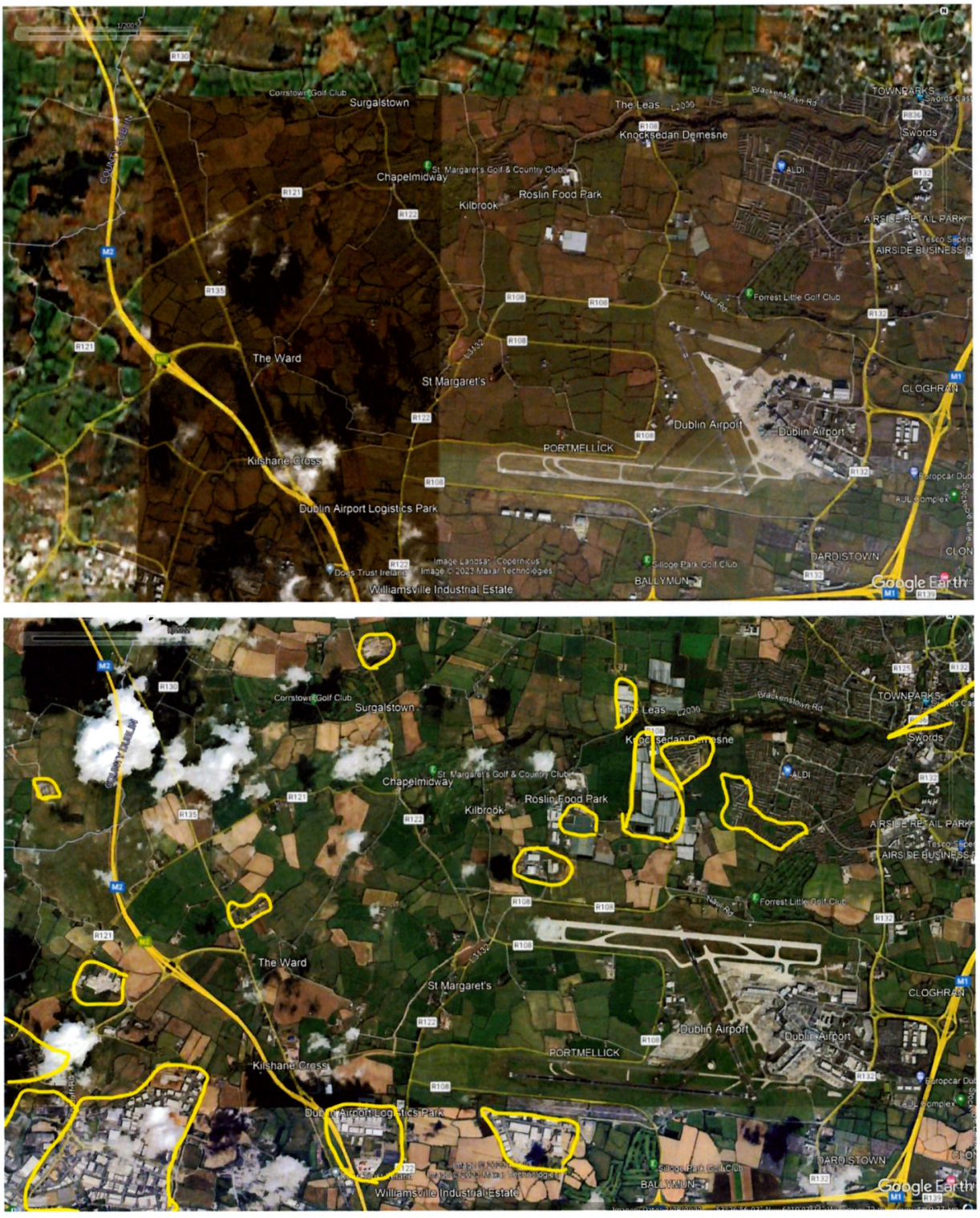


Figure 2 – development before and after comparison west runway lands upper 2006, lower 2023

Fig 3. d**evelopment before and after comparison East of runway lands upper 2023, lower 2006**

2.14 **Breaches of planning conditions:** It must be noted that the applicant has breached planning conditions in relation to number of night movements in excess of that permitted under condition 5 and in relation to the permitted flight paths/ tracks that were assessed in the original EIS and informed the making of multiple development plans in relation to spatial planning and the identification of public safety zones and policy on public safety zones which are also adopted in the current Fingal Development plan.

2.15 In fact the applicant as voting members of the Dublin Airport slot co-ordination committee have knowingly and willfully and with full knowledge of their legal obligations, decided to potentially breach planning and environmental regulations in relation to the operating conditions included in this application , which are attached to the grant of the parent planning permission for the North Runway. They have done so after full discussions and risk assessments, when deciding co-ordination parameters for Summer 2023/Winter 2023 and Summer 2024 slots some months in advance of the slot periods. The slot decisions are attached at Appendix 5, 6 and 7.

2.16 These conditions that the slot decisions assessed and decided to contravene are:

3(d) of the North Runway Planning Permission (Fingal County Council Reg. Ref. No. F04A/1755; ABP Ref. No.: PL06F.217429 as amended by Fingal County Council F19A/0023, ABP Ref. No. ABP-305289-19). Condition 3(d) and the exceptions at the end of Condition 3 state the following:

3(d). Runway 10L-28R shall not be used for take-off or landing between 2300 hours and 0700 hours except in cases of safety, maintenance considerations, exceptional air traffic conditions, adverse weather, technical faults in air traffic control systems or declared emergencies at other airports.'

2.17 **Condition no. 5 of the North Runway Planning Permission** (Fingal County Council Reg. Ref. No. F04A/1755; ABP Ref. No.: PL06F.217429 as amended by Fingal County Council F19A/0023, ABP Ref. No. ABP-305289-19) which provides as follows:

On completion of construction of the runway hereby permitted, the average number of night time aircraft movements at the airport shall not exceed 65/night (between 2300 hours and 0700 hours) when measured over the 92 day modelling period as set out in the reply to the further information request received by An Bord Pleanála on the 5th day of March, 2007. Reason: To control the frequency of night flights at the airport so as to protect residential amenity having regard to the information submitted concerning future night time use of the existing parallel runway'

2.18 The net effect of the slots decisions, is, if and when they were implemented, constituted an potential intentional breach of the planning permission operating conditions. This fact, that the committee which included the applicant may have acted with intent to breach Planning conditions, will not sit well with the Courts when the current JR of FCC enforcement, case is at hearing stage. The Courts expect parties to have "clean hands" / not to have partaken in unfair conduct. Actively assessing the risk of adhering to planning conditions 3(b) and 5, when deciding the slot S23 parameters and voting to potentially breach them anyway in favour of economic market concerns,raises the legal violation of "the clean hands doctrine". An FCC as a competent authority must also comply with legislation under section 34(12) of the planning act

in relation to unauthorised development and whether the breach was carried out in a deliberate manner, which we could be supported by the slot co-ordination decisions. The P&D act of 2000 allows for a planning application to be refused based on previous actions of the applicant if they were considered *mal fides*.

2.19 We wish to point out to the planner that currently active Winter 2023 slots and the future Summer 2024 slot decisions are relevant evidence that must be considered by the planner to be proof of the applicants intention and knowledge to continue to breach the operating conditions and restrictions of the parent permission some of which make up this application. Section 6.2.2. of the Worldwide Airport Slot Guidelines (WASG)[1] states;

6.2.2 The coordination parameters represent the maximum capacity available for allocation considering the **functional limitations** at the airport such as runway, apron, terminal, airspace, and ***environmental restrictions*** (emphasis added)

In the document the co-ordination parameters are described as follows:

Coordination Parameters: the maximum capacity available for allocation at an airport considering the functional limitations at the airport such as runway, apron, terminal, airspace, and environmental restrictions declared by the airport or ***other competent body.*** *(emphasis in bold added)*

2.20 Aas the applicant has failed to comply with the sustainable planning conditions put in place by ABP in 2007, it falls to FCC to find that the applicant cannot benefit from a breach of planning consent and that the current application should be refused on the basis that no AA was ever carried out on the parent permission in contravention of the Habitats and Birds Directives.

2.21 **Competition Law.** As a member state of the EU, Ireland and its competent authorities required to comply with EU law particularly in relation to the single market. In order to ensure a level playing field, the legislation on State aid (Article 107 and 108 of the Treaty on the Functioning of the European Union (TFEU)) and competition (Articles 101 to 109 TFEU — mergers, alliances, price-fixing, etc.) applies to the air transport sector.

2.22 EU rules ensure that all carriers, European and non-European, are granted the same rights and same opportunities to access air-transport-related services. This may not, however, be the case in some third countries where discriminatory practices and subsidies may give unfair competitive advantages to air carriers from those third countries. Competition law is in place in order to regulate anti competitive conduct within the single market.

2.23 The applicant by taking part in a process to potentially breach planning and environmental regulations that apply to all member states equally, Fingal CC if they accpt the application may be seen to be breaching EU internal market competition law. Other airports in EU member states must comply with regulations and the terms of their planning permission and operating licenses. daa by potentially seeking to dis-apply apply the same rules that other Airports in EU member states must adhere to in relation to EIA, AA and compliance with planning consents,

1 https://www.iata.org/contentassets/4ede2aabfcc14a55919e468054d714fe/wasg-edition-2-english-version.pdf

could be gaining an unfair advantage in enticing airlines to use Dublin Airport due to poorer regulation.

2.24 To be lawful at the point of application for amendment, the previous operational application of the parent consent that this application seeks to amend must have complied with the planning conditions, as implemented under EU planning and environmental law. If it did not, section 34(12) is a legitimate remedy the Board can utilise to nullify the unlawful consequences of a breach of EU law. Namely habitats directive, EIA directive and competition law.

2.25 **State Aid Issues.** DAA are a semi state company (albeit commercial), but have recently received substantial state aid and subsidies from the state particularly during and after the covid restrictions had an economic impact on the airport. Recent judgments from the European Courts in Luxembourg have confirmed that the construction and operation of an airport may constitute an economic activity , which are subject to the TFEU rules on State aid.

2.26 As local government/ competent authority, if Fingal County Council;

a) allow or facilitate the applicant to benefit from amending a planning consent in breach of Planning and Environmental law, and

b) allow them to regularise a potential breach of competition law by making a decision to grant this application

- are they aiding and rewarding the daa (a semi state body) and the airlines to benefit economically from non compliance with an EU regulatory regime? Could this be seen as giving state aid to the airport? And is the form of state aid illegal under the TFEU?

2.27 We know that the airport was given tens of millions in State aid under the COVID 19 Temporary framework and may have benefited from state aid via the adoption of co-ordination slots that may have breached planning and environmental law. But there are conditional provisions placed on State aid by the EU. While the focus of State aid control is the protection of the internal market against distortions of competition, as a general matter of coherence within the EU legal order, the Commission must also ensure that State aid is not contrary to other provisions of EU law, including EU environmental law. In a nutshell to receive State aid the DAA must be in compliance with EU legislation/ regulations. The planners need to be cognisant of this.

3. Appropriate Assessment:

3.1 In submissions in relation to other daa applications I have gone into great detail on the issue of our National Airport never being subject to an appropriate assessment of the cumulative impacts of the Airport development and infrastructure. This situation of significant and consequential lack of implementation of the Birds and Habitats Directive cannot be allowed to continue. The Board have a statutory duty to ensure that EU law is applied in its fullest iteration,

in its decision making process. On some planning consents the applicant has carried out screening, submitted an NIS but only for piecemeal development and never has it even attempted to carry out a robust EIA and AA of the entire Airport campus.

3.2 This position is no longer tenable and must be corrected. The cumulative impacts of the Dublin Airport Campus on our NATURA2000 Network must be assessed. This can also be applied to a master EIAR. Legal precedent would be case C-392/96 which states;

"The purpose of the EIA Directive cannot be circumvented by the splitting of projects and the failure to take account of the cumulative effect of several projects must not mean in practice that they all escape the obligation to carry out an assessment when, taken together, they are likely to have significant effects on the environment within the meaning of Article 2(1) of the EIA Directive."(C-392/96, Commission v. Ireland, paragraphs, 76, 82; C-142/07, Ecologists en AcciónCODA, paragraph 44 ; C-205/08, Umweltanwalt von Kärnten, paragraph 53; Abraham and Others, paragraph 27; C-275/09, Brussels Hoofdstedelijk Gewest and Others, paragraph 36)

3.3 The problem that is frequently encountered in planning applications is that of carrying out an AA on a development and having a finding of no significant effect. Then incorrectly carrying out a cumulative impact assessment by concluding because each development in isolation had a finding of no significant effect then cumulatively there could be no significant effects. This method is manifestly wrong. All effects identified within each development no matter how significant must be assessed in a cumulative matrix. Below at Figures 4 and 5 we give a visual representation via info-graphic of the correct and incorrect methods of cumulative assessment to be used in AA and EIA assessments.

3.4 Taking the correct methodology into consideration we can safely conclude that as previous AA and EIAR did not apply the correct methodology a robust AA and EIA is now required. Based on an initial examination of airport planning consents it is clear that AA and EIA assessments were not always carried out on new development applications. In order to try and rectify this we have compiled a list of planning applications relating to the Dublin Airport campus in Appendix 8, since the implementation of the Habitats Directive in the EU. While some applications are for international modifications there may be capacity, waste and water, traffic components that need to be assessed. DAC certificates and Fire Certificates may or may not require assessments but should still be included in the matrices for cumulative impact.

3.5 The southern runway was built in advance of the implementation of the habitats directive as was the old airport building but their current uses and impact on NATURA2000 sites should be included in cumulative impact assessments.

3.6 In addition to the compliance issues identified earlier, the daa is not is compliance with condition 10 of the parent permission as FCC have deemed their compliance submission unacceptable and not as per the requirements of the condition. This condition directly impacts on the ability of ABP to asses this amendment application in relation to aircraft noise, mitigation and compliance with the NAO.

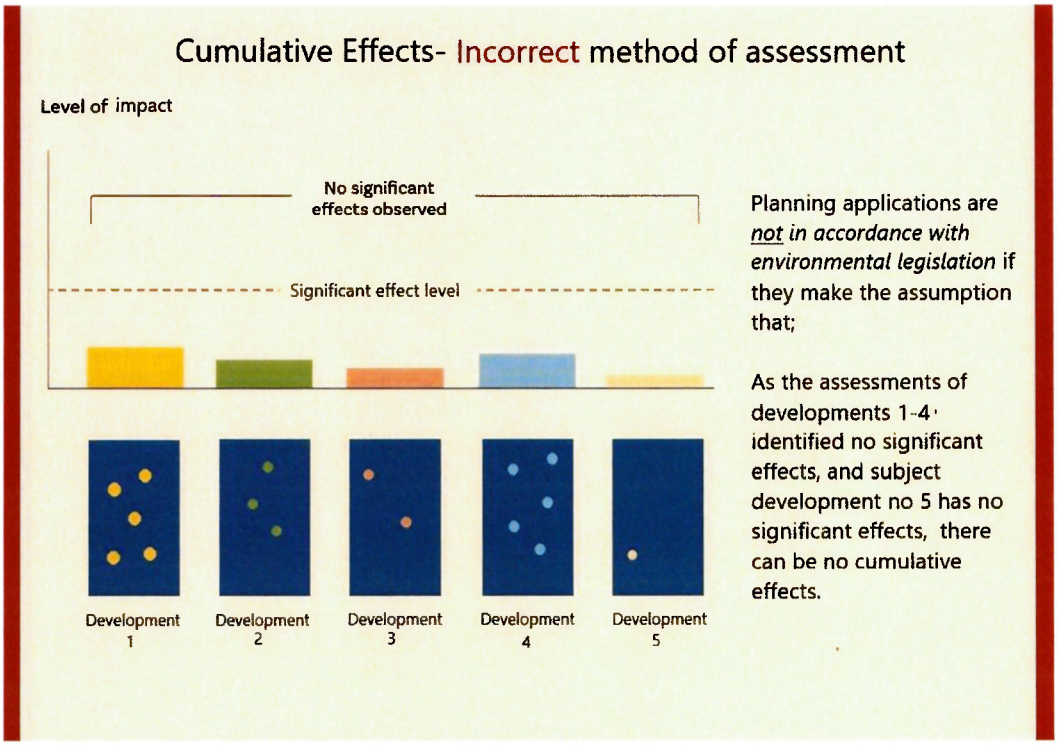


Figure 4: Incorrect method of cumulative assessment.

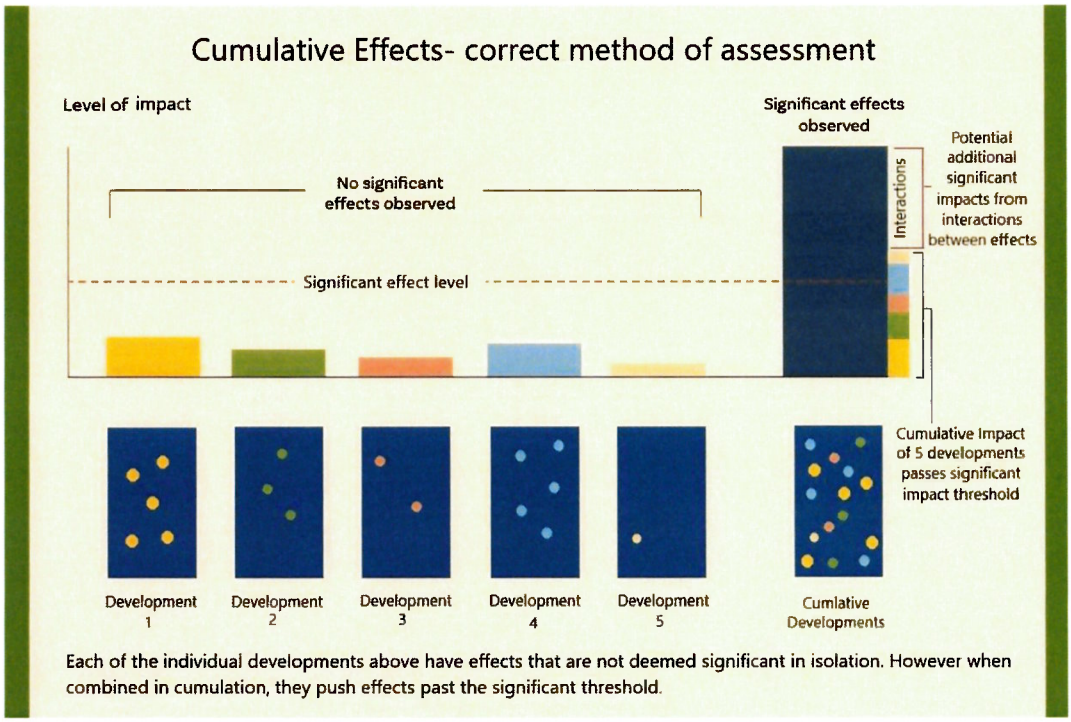


Figure 5. Correct method of cumulative assessment

3.7 Very recent concerns have been raised about PFAS contamination of soils and water information has come to light of 150 tonnes of contaminated soil that may or may not relate to the North Runway consent being removed and sent to the Netherlands for remediation treatment. The PFAS contamination can come from fire fighting foams and de-iceing agents used during the historical operations and operations of the North Runway.

3.8 We tried to locate the water (and Air) emissions monitoring data that may contain this information but it appears that the DAA is also in breach of conditions 21 and 22 of the parent commission in that it is not putting the water and air monitoring raw data online on its website as per the terms of the original grant of permission. It appears that Fingal County Council incorrectly confirmed compliance with these conditions which have not been met, and now are proving a barricade to effective public participation in making this submission. The conditions in question are as follows.

21. A monitoring regime for the monitoring of surface water discharged to streams and the public sewer shall be agreed in writing with the planning authority and shall be fully operational prior to the completion of construction of the runway. Monitoring results shall be submitted to the planning authority on a quarterly basis ***and shall be made available for public inspection on the Dublin Airport Authority's website****. Reason: In the interest of public health and to ensure continuous monitoring of surface water discharges from the site.*

22. The Dublin Airport Authority shall monitor air pollutant concentrations within the environs of Dublin Airport at locations to be agreed with the planning authority. The pollutants to be measured shall include nitrogen dioxide, sulphur dioxide, benzene, carbon monoxide, particulates PM10 and ozone. The measurements shall be undertaken so that concentrations can be compared with compliance of the appropriate National Air Quality Standards. The monitoring network shall include both continuous sampling equipment and passive sampling methods for monitoring the air pollutant parameters. Results obtained from the air quality monitoring network shall be submitted to the planning authority on a quarterly basis, ***and displayed on the Dublin Airport Authority website.*** *The frequency and pollutant parameters shall be reviewed on a yearly basis to ensure adequate monitoring. Reason: To ensure adequate monitoring of emissions and air quality.*

3.9 The impact of PFAS contamination via surface runoff and ground water filtration needs to be assessed as part of this application. All monitoring data must be made available in compliance with the planning conditions. The increase in night flights will mean more planes will need to be de-iced in the colder nocturnal periods. This means an increase in PFAS contamination to surface waters . The Board cannot seek to make a decision without a full assessment via EIA and AA of the impact on SAC/ SPA and the water body catchments that re receiving waters of the Airports surface runoff.

3.10 The assessment under the EIAR does not ask the right questions under Water Framework Directive and does not adequately identify the current status issues, cumulative impacts on water bodies or how this project will lead to improvements in the current status of water bodies and help to prevent any further deterioration. Some of the proposed contaminated surface runoff will going to the sewer and on to Ringsend yet the applicant has not details if

Ringsend can adequately treat the toxic contaminated runoff nor what water bodies that received discharges from the Ringsend agglomeration will be affected. It must be noted that Ringsend is currently over capacity, not in compliance with its current WWDL and is under review by the EPA under new licence application D0034-02. This application appears to propose discharge of contaminated surface waters to sewer and will also mean an increases in wastewater to the Ringsend network with an increase of 32mppa to 40mppa. This must be properly addressed as at this point in time there is no additional capacity at Ringsend.

3.11 Many of the surveys relied upon in the NIS and EIAR are out of date. There is no raw data for surveys, walkover maps, etc, Many wildlife and bird surveys took place before Covid and so it could be argued that lack of human and aircraft disturbance during lock downs may have allowed species to expand their habitats post surveys during covid making any pre covid surveys scientifically risky.

3.12 The NIS is an appendix of the EIAR and not a standalone document. The NIS submitted also appears to be a draft with no revision history, "draft" is written into the header of the document, the NIS is missing information to be confirmed TBC or yet to be inserted into the document with notes by the author to insert sections. The birdstrike data was discussed with a "To be redacted" note, although the table is not redacted and the figures that list the annual bird strike appears to beunder estimated based on official data I have viewed for these years and so it is likely that the data has not been properly updated, due to the unfinished state of the NIS.

3.13 The applicant also relies on a Wildlife management plan as mitigation at AA screening for impacts on protected species yet does not include a copy of the plan, this must be requested by way of further information. The maps identifying locations of bird species at Dublin airport are difficult to read/ assess as the codes for species overlap considerably. There appears to be no data along the flight paths so that disturbance to species under the flight paths for example at Baldoyle BAY SPA and Rogerstown Estuary SPA and Malahide Estuary SPA cant be assessed. Although the appendices for coastal bird studies do appear to be missing, possibly because the draft version NIS was lodged in error. This information/ surveys must be provided. The survey data for overwintering species such as whooper swans and Light Bellied Brent geese is not robust having only occurred during one month in one year. Once the correct NIS is lodged a further public consultation will be statutorily required. Reports on passenger numbers and a detailed list of flight movement for the last 5 years, Water quality monitoring reports and reports on site testing and quantity of remediated soils to date will also be required to be submitted in order to inform the NIS.

3.13 No impacts of CECs, Nitrogen, PFAS(Deicing/ firefighting foam) pollution runoff into SACs hydrologically linked to the airport via the Mayne, Sluice, Ward and Cuckoo rivers was assessed. This is a glaring omission and must be rectified, particularly in light of the large amount of PFAS contaminated soil that the airport has removed for remediation, again without development consent or EIA. AA assessment which is another Unauthorised development issue as indication are that the North runway and environ lands were involved and may actually still contain contaminated soil. Impact of biodiverity along and in those rivers must also be assessed.

4. Other issues:

4.1 The EIA assessment of noise impacts on health only assess under the noise legislation and limited metrics/ parameters that the legislation details. HOWEVER the overarching legislation the EIA Directive and equally the Habitats Directive, which supersede the aircraft and environmental noise legislation, requires that " a WORST CASE SENARIO" must be assessed when it comes to EIA assessment of impacts. This means that the Lmax impacts must also be assessed in actuality and in tandem with the other metrics. The full health impacts at Who recommended levels must also be modeled and assessed in tandem with the noise legislation so that a full worst case scenario can be assessed from the EIA and AA point of view. There is no way around this. This include not using average noise levels when assessing impacts on birds and actual noise levels must be produced and assessed.

4.2 A recent report in December from "We Are The Ditch" identified that Ethna Felten the Head of ANCA is also the deputy Chairperson of Fingal County Council. A quick search of Fingal events confirms this. It is an extraordinary breach of article 3(2) and clause 13 of 594/2014 in relation to the functional separation of ANCA and FCC. This in addition the fact that the Chairperson of ANCA receives rent from FCC her employer is a clear and serious conflict of interest which we believe invalidates all of the work undertaken by ANCA in relation to Dublin Airport while she held both positions. ANCA may need to be involved in the NAO aspects of this planning application and so an investigation must be launched immediately.

4.3 Site notice and newspaper notice are invalid and not in accordance with requirements in relation to applications including NIS and EIAR and public consultation on where to view applications, thus invalidating the application.

4.4 An EIAR must include a list of the experts who have contributed to its preparation, identifying, for each expert, the part or parts of the report for which he or she is responsible/has contributed to, his or her competence and experience, including qualifications where relevant, and any other information demonstrating the contributor's competence. I would have concerns about the actual competency and experience of some of the experts listed in some chapters. For instance chapter 19 on public health does not appear to have the requisite expertise. Dr Martin Hogan is not a consultant in public health medicine but as declared on the chapter is an expert in occupational health a different discipline. I know personally from an interaction with Dr Hogan during an oral hearing for the Greater Dublin Drainage project with ABP, that he made clear that he was not a consultant in Public Health Medicine but occupational health which although he has a distinguished career in, is not the competency that this chapter engages with. I would ask that FCC bring in outside independent expertise to assess and interrogate the EIAR as required by the EIA Directive.

4.5 It is respectfully requested that FCC refuse to consider this application due to the numerous arguments for invalidity of the application and that new pre planning meetings take place with the daa to advise them of how to lodge a valid and legal application in accordance with planning and environmental legislation, with the necessary surveys and robust assessment of impacts.

Yours sincerely

Sabrina Joyce- Kemper

And

Wild Irish Defence CLG

Appendices 1-8 attached.

nhairle Contae Fhine Gall
Fingal County Council

An Roinn um Pleanáil agus
Infrastruchtúr Straitéiseach
Planning and Strategic
Infrastructure Department

Ms. Sabrina Joyce-Kemper &
Sabrina Joyce-Kemper OBO Wild Irish Defence CLG
23, Portmarnock Crescent
Co. Dublin
D13TX84

Date: 24 November, 2023

ACKNOWLEDGEMENT of RECEIPT of SUBMISSION or OBSERVATION on a PLANNING APPLICATION

THIS IS AN IMPORTANT DOCUMENT!

KEEP THIS DOCUMENT SAFELY, YOU WILL BE REQUIRED TO PRODUCE THIS ACKNOWLEDGEMENT TO AN BORD PLEANALA IF YOU WISH TO APPEAL THE DECISION OF THE PLANNING AUTHORITY. IT IS THE **ONLY** FORM OF EVIDENCE WHICH WILL BE ACCEPTED BY AN BORD PLEANÁLA THAT A SUBMISSION OR OBSERVATION HAS BEEN MADE TO THE PLANNING AUTHORITY ON THE PLANNING APPLICATION.

PLANNING AUTHORITY NAME: FINGAL COUNTY COUNCIL

PLANNING APPLICATION REFERENCE NO. **F23A/0636**

A submission/observation has been received from Ms. Sabrina Joyce-Kemper OBO Wild Irish Defence CLG, in relation to the above planning application.

The appropriate fee of €20.00 has been paid. (Fee not applicable to prescribed bodies).

The submission/observation is in accordance with the appropriate provisions of the Planning and Development Regulations, 2001 -2013 and will be taken into account by the Planning Authority in its determination of the planning application.

Donal Moriarty

App. 6.

for Senior Executive Officer

Development: in the townlands of Pickardstown, Coultry, Huntsown, Forrest Great, Forrest Little, and Collinstown; and to the east of the airfield in the townlands of Cloghran, Corballis, Commons, Toberbunny, Stockhole and Clonshagh.

The proposed development includes upgrades to existing drainage infrastructure and construction of additional drainage infrastructure to improve performance of the surface water management system at Dublin Airport and will consist of:

a. a contamination detection and response (CD&R) system comprising detection devices, network decision points (DPs), control kiosks, and ancillary infrastructure including local access roads, local drainage and communications and power ducts;

b. clean water supply pipelines consisting of large diameter trunk pipelines;

c. airfield contaminated pipelines consisting of large diameter trunk pipelines;

d. upgrades to the West Apron surface water collection network including reconfiguration of the existing network, construction of an underground attenuation tank, installation of a local CD&R system, network DPs and a control kiosks, construction of an underground pollution storage tank, a pumping station, and ancillary development including local ductwork, local access roads and local drainage;

e. upgrades to the existing surface water collection network in the vicinity of the South Apron including reconfiguration of the existing network, construction of network DPs, upgrade of the existing flow diversion structure (FDS) and reconfiguration of the existing Cuckoo supply channel;

f. a central pollution control facility (CPCF) consisting of underground pollution control storage tanks, a pumping station, a discharge pipeline to the Uisce Eireann network, mechanical and electrical equipment, a control building, an electrical substation, and ancillary development including a local access road, enhanced flood bund, local drainage and ducting;

g. a CPCF pipeline consisting of a large diameter trunk pipeline;

h. a central supervisory control and data acquisition (SCADA)

system comprising kiosks and associated electrical power and signal connections;
i. repurposing of the central section of the existing Airfield Trunk Culvert (ATC) as a contaminated pipeline; and
j. ancillary and associated development including pipework, mechanical and electrical service connections and upgrades, temporary compounds and site works.
This planning application is accompanied by an Environmental Impact Assessment Report and Natura
Impact Statement.

Location: Dublin Airport, Swords, Co. Dublin

Area: Swords

Applicant: DAA plc

Application Type: Permission

Date Received: 20 October, 2023

THIS IS AN IMPORTANT DOCUMENT!

KEEP THIS DOCUMENT SAFELY, YOU WILL BE REQUIRED TO PRODUCE THIS ACKNOWLEDGEMENT TO AN BORD PLEANALA IF YOU WISH TO APPEAL THE DECISION OF THE PLANNING AUTHORITY.

Please note that all planning applications, including submissions/objections will be published on the Council's website.