

**The Secretary**

**An Bord Pleanála**

**64 Marlborough Street,**

**Dublin 1,**

**D01 V902**

**Date:** 24th June 2025.

**From:** Aidan Coffey

c/o **Portus Greenway Limited (t/a Harbour Link)**

Shanagarry North, Shanagarry,

Co. Cork

P25 PP58

**Case Number:** ACP-322816-25

**Re:** Part 8 Planning Notice –Proposed Cork North Docks **North Quays Public Realm & Transport Infrastructure**

## **Request for Further Information:**

### **ACP-322816-25 Request for EIA Screening Determination:**

- 1. A Statement indicating Class of Development set out in schedule 5 of the planning and development regulations 2001 (as amended), whereby it is considered the Commission to issue a direction under the said article 120 in respect of “Sub-Threshold development” as defined at article 92 of the planning and development regulations 2001 (as amended), for a screening determination and EIAR requirement on the said application.**

## **Statement of further information:**

### **Background:**

Cork city council has issued a Part 8 planning notice for the following “**Project**”. Pursuant to the requirements of Part 8 of the planning and Development Regulations 2001 (as amended), where notice has been given on the 28<sup>th</sup> May that Cork City Council plans to carry out the scheme titled: **Cork North Docks Public Realm and Infrastructure**.

An **Environmental Impact Assessment (EIA)** in Ireland, is an important process that identifies and assesses the environmental effects of proposed developments before decisions are made. Assessing the direct and indirect impacts of wide range of environmental factors, including biodiversity, water, air and soil quality, including social and cultural heritage. EIA process is usually required for large-scale developments that have the potential to significantly impact the environment.

It is the process of examining the anticipated environmental effects of a proposed project - from consideration of environmental effects at design stage, through consultation and preparation of an Environmental Impact Assessment Report (EIAR), evaluation of the EIAR by a competent authority and the subsequent decision as to whether the project should be permitted to proceed. An EIA and EIA screening determination report should be carried out by independent assessor so as to have functional separation and should include all aspects including Traffic Impacts, River Usage Impacts, Social inclusion Impacts and Cultural Impacts. It should consider all impacts as a whole and on a wider scale and not be considered lightly as it can have extreme irreversible impacts on society as a whole.

This “project”, ie. the part 8 application **Cork North Docks Public Realm and Infrastructure**, forms a critical part of the current **Cork City Proposed Variation 2 (Cork Docklands) to Cork City Development Plan 2022-2028**, where by notice has been given that Cork City Council, pursuant to Section 13(2) of the Planning & Development Act 2000 (as amended), has prepared a proposed Variation (No. 2) Masterplan to the Cork City Development Plan 2022 – 2028 (as varied) in respect of Cork Docklands.

The project (Variation 2) masterplan as quoted herein, “**Proposed Variation No. 2 (Cork Docklands) incorporates an updated policy framework and guidance for this strategic 147 ha regeneration site, east of the city centre**”

This **147 hectare strategic** site, by its nature to develop over 10,000 residential units, employment for over 25,000 and directly linking to other developments including but not limited to these numerous adjoining developments including “the three Active Travel Greenways, Glanmire to City Greenway, Lee to City Greenway and Cork Harbour Greenway, the proposed Luas Cork, proposed Bus Connects Cork Sustainable Corridors, the Cork city Flood Relief works, the elimination (demolition/de-construction) of the existing car parking at Kent Station and Bus-Connects Cork Sustainable Bus Depot at Kent Station, and the proposed Harbour Link Commuter & Tourist Ferry service for Cork City and Harbour” just to mention a few, but more importantly the Variation 2 itself, should all be considered as part of a cumulative effect with regard to potential of having significant effect on all areas of the said docklands plan.

Cork City council has carried out a Screening Determination on both EIA and AA themselves on just the North Docks segregated Sub-Threshold, with no **functional separation**, and has purposefully segregated this strategic Docklands Development project into five (5) separated “sub-thresholds” to avoid such a critically important process potentially having irreversible social & cultural consequences whilst acting as the Competent Authority.

## Points of Contention

-Under the Planning and Development Regulations, 2001

The following applies

---

### Functional Separation: Screening Determination

The Planning Regulations specifically gives guidance, “If a planning authority is acting both as Competent Authority for EIA Screening and as developer (e.g. where a local authority is both promoting an Urban Infrastructure or Active Travel Initiative projects and carrying out the screening for that initiative), to avoid any suggestion that there is a conflict of interest, should ensure that there is a “**functional separation**” between the individuals involved in promoting the initiative and those responsible for making the EIA Screening Determination”. See Article 9a of the EIA Directive (Appendix L). [\(in this instance Cork City Council has not ensured “functional Separation” whilst carrying out a screening determination as it is Cork City Council themselves that has carried out the Screening Determination\).](#)

### Project Splitting:

“Project splitting” “occurs where a development is split up so as to avoid the requirement to carry out an EIA in respect of any aspect of the development. It generally occurs where a development is divided up in such a way so that each element on its own is a sub-threshold and does not require an EIA”.

The Part 8 Notice for [Cork North Docks Public Realm and Infrastructure](#), forms “**part 1 Bundle**” (Sub-Threshold) of the overall project (including 5 Bundles in totality) which appears specifically segregated to avoid the requirement of a full EIAR and AAR (by project splitting) due to the purposeful exclusion of the other bundles 2, 3, 4 & 5 including Bridges exceeding 100 mtrs, Roadways exceeding 2,000 mtrs, Commercial Business district of exceeding 2 hectares.

“Simons on Planning Law” (3rd edition) describes “project splitting” in the following terms at paragraph 14-280: “If a project is identified in a restricted way, this may result in the evasion of the obligation for EIA. For example, if what is in reality only one project is artificially presented as a series of separate projects, it may be that none of these on its own will trigger an EIA. This practice is known as ‘project-splitting’ (sometimes also referred to as ‘salami slicing’)”

An example of this type of “project splitting” arose in the Spanish Roads case<sup>2</sup>, which concerned the construction of an urban ring road in Madrid. This was a complex civil engineering scheme which consisted of improving and refurbishing virtually the whole of the urban ring road surrounding Madrid. Madrid City Council had split the larger project into 15 independent sub-projects and, treated separately, only one of those exceeded the threshold at which an EIA was required. However, the larger project taken as a whole substantially exceeded the threshold for which an EIA would be required. The CJEU in that case noted that 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 EIA when, taken together, they are likely to have significant

effects on the environment. It was clear in this case that the sub-projects were all part of the larger project.

“Functional independence”

The High Court and the Supreme Court in the case of *Fitzpatrick v An Bord Pleanála*, which involved the proposed development by Apple of a data centre at Athenry, County Galway. In *Fitzpatrick*, the development for which planning permission had been sought was a single data centre. A masterplan had been submitted with the application for the single data centre which made clear that it was envisaged that eight data halls would potentially be constructed on the site in the future. The appellants argued that the single data hall formed part of a larger “project”, i.e. the masterplan, and that the masterplan should have been subject to EIA.

The **Cork North Docks Public Realm and Infrastructure “project”** should be considered with the cumulative effect, of the whole Docklands “Masterplan” “Project”, with significant impact on both EIA and AA,

### **Functional/legal dependence:**

This requires all integral parts of a “project”, which are part of the “project” or upon which the project depends, to be included within the scope of any environmental assessment carried out. (in this case the “project” being the Framework or Master Plan should be included and considered in respect of the, Active Travel routes, Bridges exceeding 100 mtrs, Roads exceeding 2,000 mtrs and Bus Connects routes).

### **Functional/legal interdependence:**

This requires consideration of whether there are any factual or legal circumstances which could give rise to an interdependency between two projects. (in the case, the “project” being the Framework or Master Plan should be included and considered in respect of the, the Luas Cork, Active Travel Routes, Bus connects Routes and requirement of traffic impact and river usage study and elimination of existing quays at Customs House Quay and Pontoons in private ownership).

## **List of Schedules & Classes for Consideration :**

Under the Planning and Development Regulations, 2001 below is a list of schedules and Classes for consideration of Significant Impact set out hereafter:

---

(note Harbour Link’s reasoning comments in Blue)

### **Schedule 7 Class 1 (a) & (b) to the 2001 Regulations.**

Characteristics of proposed development.

#### **Class 1: The characteristics of proposed development, with particular regard to—:**

(a) the size and design of the whole of the proposed development, (should include the whole Docklands development, Masterplan and Framework and not project splitting).

(b) cumulation with other existing developments and/ or development the subject of a consent for proposed development for the purposes of section 172(1A)(b) of the Act and/or development the subject of any development consent for the purposes of the Environmental Impact Assessment Directive by or under any other enactment, [\(in this case should consider the cumulation of the entire docklands development and subject consents for adjoining Active Travel routes, Bus Connects sustainable corridors and Bonded Warehouses and City Quays to mention a few. But should also consider the social and cultural heritage of the River and surrounding buildings and quays\).](#)

## **Schedule 7 Class 2 (viii) to the 2001 Regulations 1**

### **Class 2. Location of proposed development**

**The environmental sensitivity of geographical areas likely to be affected by the proposed development, with particular regard to—**

[\(viii\) landscapes and sites of historical, cultural or archaeological significance.](#)

[\(adjoining the City's Maritime Culture when considering the City Quays and City Basin, where the two channels meet at the widest point of the city channels, which forms a critical part of Corks Maritime Heritage\).](#)

## **Schedule 7 Class 3 (a) (b), (d) (e) (f) & (g) to the 2001 Regulations 1**

**Class 3. Types and characteristics of potential impact, the likely significant effects on the environment of proposed development in relation to criteria set out under paragraphs 1 and 2, with regard to the impact of the project on the factors specified in paragraph (b)(i)(I) to (V) of the definition of 'environmental impact assessment report' in section 171A of the Act, taking into account—**

(a) the magnitude and spatial extent of the impact (for example, geographical area and size of the population likely to be affected), [\(new population and existing population of surrounding areas\)](#)

(b) the nature of the impact, [\(Biodiversity, Traffic, River usage, Social and Cultural\)](#)

(d) the intensity and complexity of the impact, [\(Traffic, River usage, Social and Cultural\)](#)

(e) the probability of the impact, [\(Biodiversity, Traffic, River usage, Social and Cultural\)](#)

(f) the expected onset, duration, frequency and reversibility of the impact,

(g) the cumulation of the impact with the impact of other existing and/or development the subject of a consent for proposed development for the purposes of section 172(1A)(b) of the Act and/or development the subject of any development consent for the purposes of the Environmental Impact Assessment Directive by or under any other enactment, and

(h) the possibility of effectively reducing the impact.

## **Schedule 7A Class 1,2 & 3 to the 2001 Regulations**

### **INFORMATION TO BE PROVIDED BY THE APPLICANT OR DEVELOPER FOR THE PURPOSES OF SCREENING SUB-THRESHOLD DEVELOPMENT FOR ENVIRONMENTAL IMPACT ASSESSMENT.** (in this case to be considered as a cumulative effect of the project as a whole)

#### **Class 1.**

##### **A description of the proposed development, including in particular—**

(a) a description of the physical characteristics of the whole proposed development and, where relevant, of demolition works, and (in this case the demolition of the existing River Rescue & Recovery shed along the quay side, with no replacement, this Rescue and Recovery shed plays a critical role in recovering the unfortunate bodies of often suicides in the region of Cork rivers, direct and immediate access is always required. The de-construction of a critical Car Park for Kent Station and no replacement of same to allow for critical sustainable parking needs)

(b) a description of the location of the proposed development, with particular regard to the environmental sensitivity of geographical areas likely to be affected. (in this case the whole development considering the Active Travel through the development and how it's linked directly to the Glanmire to City Active Travel routes in development and its extension and linkage to the Cork to Waterford Active Travel Greenway and the effects on the environment).

#### **Class 2.**

A description of the aspects of the environment likely to be significantly affected by the proposed development. (in this case Traffic Impacts on the Alfred Street and Horgan's Quay junction), river users impacted by the lack of access to the river).

#### **Class 3.**

A description of any likely significant effects, to the extent of the information available on such effects, of the proposed development on the environment resulting from—(in this case the lack of information on River Users, links to Active Travel routes and lack of traffic impact statements with particular regard for other major infrastructure projects such as Luas Cork and Bus Connects Cork).

### **A. Schedule 5 Infrastructure Projects- Class 10 (B)( Part 2 of the 2001 regulations)**

- (i) Construction of more than 500 Dwelling units on said site. (in this case upto 10,000 dwellings)
- (ii) Construction of a car-park providing more than 400 spaces, other than a car-park provided as part of, and incidental to the primary purpose of, a development. (in this case the need to construct a Sustainable Car Park, to replace the car parking taken away by the project)
- (iv) Urban development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere. (in this case when considering the "Project" as a whole). (In this paragraph, "business district" means a district within a city or town in which the predominant land use is retail or commercial use). (in this case upto 25,000 jobs)

## **B. Schedule 5 Infrastructure Projects – Class 10 (e) (Part 2 of the 2001 regulations)**

New or extended harbours and port installations, including fishing harbours, not included in Part 1 of this Schedule, where the area, or additional area, **of water enclosed would be 20 hectares or more**, or which would involve the reclamation of 5 hectares or more of land, or **which would involve the construction of additional quays exceeding 500 metres in length**. (in this case the construction of Pontoons for water access and River Usage along the entirety of the City Quays circa 2,200 mtrs in total).

## **C. Schedule 5 Infrastructure Projects- Class 10 (f) (of Part 2 of the 2001 regulations)**

- (iii) Canalisation and **flood relief works**, where the immediate contributing sub-catchment of the proposed works (i.e. the difference between the contributing catchments at the upper and lower extent of the works) would exceed 1,000 hectares or where more than 20 hectares of wetland would be affected or **where the length of river channel on which works are proposed would be greater than 2 kilometres**. (in this case Flood Relief works on the river channel exceeding 2 kilometres)

## **D Schedule 5 Infrastructure Projects- Class 10 (h) (Part 2 of the 2001 regulations)**

(H) **(All tramways, elevated and underground railways, suspended lines or similar lines of a particular type, used exclusively or mainly for passenger transport**. (in this case Light Rail Tramways & Suspended Overhead Cables for Proposed Luas Cork)

## **E. Schedule 5 Tourism & Leisure - Class 12 (b) (Part 2 of the 2001 regulations)**

(B) Sea water marinas where the number of berths would exceed 300 and fresh water marinas where the number of berths would exceed 100. (in this case (mixed seawater / freshwater river) marina berths & pontoons that could exceed 100 berths, subject to river usage study).

## **F. Schedule 6 Information to be contained in an EIS – Class 2 (Part 2 of the 2001 regulations)**

(b) A description of the aspects of the environment likely to be significantly affected by the proposed development, including in particular:

- human beings, fauna and flora, (in this case human Social & Cultural Heritage, along with the flora and fauna effects due to the adjoining areas of the Active Travel routes)
- material assets, including the architectural and archaeological heritage, and the cultural heritage (in this case the architectural & archaeological of the city quays and Bonded warehouses, among other maritime features of the docklands area).
- the inter-relationship between the above factors

(in this case, the relationship with Cultural Heritage of the Cork City Maritime Heritage and the architectural and archaeological heritage of the city Quays, the relationship with the archaeological heritage of the Cork Bonded Warehouses and of the Kent Station & McMahons Builders Yard and (former ship yard and shipbuilding basin. The cultural heritage of the River rowing clubs, including the Lee Rowing and Currach Rowing clubs, including the cultural heritage of the people of Cork using the river for access and amenities, which will be covered in an River Usage Study as part of the EIAR)

**G. Schedule 7 Criteria for determining whether a development would or would not be likely to have significant effects on the environment – Class 1**

**(Part 2 of the 2001 regulations)**

1. *Characteristics of proposed development*, in particular:

- the size of the proposed development,
- the cumulation with other proposed developments,
- the use of natural resources,

(In this case the cumulation effects of the proposed developments of the Docklands as a whole, including the numerous Active Travel Greenways, proposed Luas Cork, proposed Bus Connects Cork Green Corridors, the Cork city Flood Relief works, the elimination (demolition/de-construction) of the existing car parking at Kent Station and Bus-Connects Cork Sustainable Bus Depot at Kent Station, and the proposed Harbour Link Commuter & Tourist Ferry service for Cork City and Harbour” just to mention a few. )

**H. Schedule 7 Location of proposed development - Class 2**

**(Part 2 of the 2001 regulations)**

The environmental sensitivity of geographical areas likely to be affected by proposed development, having regard in particular to:

- the absorption capacity of the natural environment, paying particular attention to the following areas:

(e) areas classified or protected under legislation, including special protection areas designated pursuant to Directives 79/409/EEC and 92/43/EEC,

(h) landscapes of historical, cultural or archaeological significance.

(in this case Historical, Cultural & Archaeological significance of City Quays and the River usage in relation to special protection areas, as the cumulative effect).

**I. Schedule 7 Characteristics of potential impacts - Class 3**

**(Part 2 of the 2001 regulations)**

The potential significant effects of proposed development in relation to criteria set out above, and having regard in particular to:

- the extent of the impact (geographical area and size of the affected population)
- the transfrontier nature of the impact,
- the magnitude and complexity of the impact, (10,00 homes and 25,000 jobs)
- the probability of the impact, (The Traffic impact entering the city on the N8 route)
- the duration, frequency and reversibility of the impact. (the frequency & reversibility of Bridges and the effects of trams, buses and traffic).



## J. Schedule 8 Tables for the purposes of Part 11 Impact on Environment

### Table 1

#### ***Development Categories***

(Part 2 of the 2001 regulations)

1. Provision of hotel, hostel or holiday accommodation, or housing.
2. Provision of schools, crèches or other educational or childcare facilities, training centres, hospitals, convalescent homes, homes for the elderly or sheltered accommodation.
3. Retail developments greater than 250 square metres in gross floor space.
4. Structures for community and leisure facilities, greater than 100 square metres in gross floor space.
5. Provision of facilities or use of land for activities likely to attract more than 1,000 people at any one time. (in this case the provision of facilities for River side activities and River Users for riverside event facilities and along with River access for regatta's and festivals).
7. Provision of parking facilities for more than 200 motor vehicles. (in this case for Kent Station and Sustainable transport initiatives).
8. Transport links, including public roads. Effects of Luas Cork, Bus Connects, Active Travel and Frequency of Junction on Alfred Street Junction of Horgan's Quay.

## European Union Council Directive 85/337/EEC

The European Union Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment as amended, sets out:-

Pursuant to Article 191 of the Treaty on the Functioning of the European Union, Union policy on the environment is based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should, as a priority, and **be rectified at source**.

Effects on the environment should be **taken into account at the earliest possible stage** in all the technical planning and decision- making processes.

The principles of the assessment of environmental effects should be harmonised, in particular with reference to the projects which should be subject to assessment, the main obligations of the developers and the content of the assessment.

General principles for the assessment of environmental effects should be laid down with a view to supplementing and coordinating development consent procedures governing public and private projects likely to have a major effect on the environment.

(in this case, Cork City Council acting as the developer and the Approved Competent Authority by carrying out its own screening determination, is conflicted and no “functional separation” and not in the best interest of the public. Facilitated by the action of project splitting and in doing so specifically avoiding and EIA and AA ).

**EU EIA Directive “Objectives”:** Amending legislation (Directive [2014/52/EU](#)) was adopted in 2014

The Environmental Impact Assessment (EIA) Directive relates to the assessment of the effects of certain public and private projects on the environment. It aims to ensure a high level of environmental protection and that environmental considerations are integrated into the preparation and authorisation of projects.

This objective is achieved by ensuring that environmental assessment of certain public and private projects listed in Annex I and II to the Directive (airports, nuclear installations, railways, “**roads**”, waste disposal installations, waste water treatment plants, etc.) is carried out prior to their authorisation.

(in this case Roads and the effects on the environment and the lack of Traffic Impact statement and the interaction with other infrastructure projects such as Luas Cork and Bus Connects sustainable travel corridors).

European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018                      S.I. No. 296/2018 -

---

### **“Application for screening for environmental impact assessment”**

#### **Schedule 176A Class 1 - In this section and sections 176B and 176C—**

“screening determination for environmental impact assessment” means a determination made as part of a screening for environmental impact assessment;

(a) as to whether a proposed development would be likely to have significant effects on the environment, and

(b) if the development would be likely to have such effects, that an environmental impact assessment is required.

#### **Schedule 176A Class 2:**

- (a) Subject to section 176B, where a proposed development is of a class standing specified in Part 2 of Schedule 5 to the Planning and Development Regulations 2001 and does not equal or exceed, as the case may be, the relevant quantity, area or other limit standing specified in that Part, an application for a screening for environmental impact assessment in respect of that development may be submitted to the planning authority in whose area the development would be situated.  
(in this case the development of the docklands as a whole, which should be considered as a cumulative effect)
- (b) Subject to section 176B, where a proposed development is of a class standing prescribed under section 176 for the purposes of this paragraph, an application for a screening for environmental impact assessment in respect of that development shall

be submitted to the planning authority in whose area the development would be situated.

(in this case lack of EIA due to project splitting)

- (c) a description of the nature and extent of the proposed development, its characteristics, its likely significant effects on the environment (including the information specified in Schedule 7A to the Planning and Development Regulations 2001) including, where relevant, information on how the available results of other relevant assessments of the effects on the environment carried out pursuant to European Union legislation other than the Environmental Impact Assessment Directive have been taken into account,
- (d) (in this case no River usage study of Traffic Impact assessment, along with no Appropriate Assessment, regarding Natura Impact Statement) .

## Projects that come under Article 4 European Directive

### European Directive Regulations

SELECTION CRITERIA REFERRED TO IN ARTICLE 4(3) (CRITERIA TO DETERMINE WHETHER THE PROJECTS LISTED IN ANNEX II SHOULD BE SUBJECT TO AN ENVIRONMENTAL IMPACT ASSESSMENT)

Article 4 - Class 1. (a) (b) **Characteristics of projects must be considered, with particular regard to:**

(a) the size and design of the whole project; [The Cumulative Effect of significant Impact](#)

(b) cumulation with other existing and/or approved projects; [\(ie Glanmire to City Active Travel Greenway\).](#)

(f) the risk of major accidents and/or disasters which are relevant to the project concerned, including those caused by climate change, in accordance with scientific knowledge; [\(in this case flood relief remedial works, to the River Lee and Traffic Impacts for the Alfred Street and Horgan's quay junction\).](#)

### Article 3 Type and characteristics of the potential impact.

The likely significant effects of projects on the environment must be considered in relation to criteria set out in points 1 and 2 of this Annex, with regard to the impact of the project on the factors specified in Article 3, taking into account:

(a) the magnitude and spatial extent of the impact (for example geographical area and size of the population likely to be affected); (in this case the addition of over 10,000 people in the docklands and regard for critical facilities, [ie such a schools, medical facilities, travel and social and leisure facilities](#))

(b) the nature of the impact; [\(lack of AA Natura Impact Statement\)](#)

(c) the transboundary nature of the impact; [\(ie linking with all the Active Travel routes and its River Usage impact through its boundary with the River Lee\).](#)

(d) the intensity and complexity of the impact; [\(the intensity and complexity of the project with over 10,000 population and over 25,000 employees and how travel, parking, cultural and social inclusion\).](#)

- (e) the probability of the impact;
- (f) the expected onset, duration, frequency and reversibility of the impact;
- (g) the cumulation of the impact with the impact of other existing and/or approved projects;
- (h) the possibility of effectively reducing the impact.

**The EIA Directive applies to a wide range of public and private projects.**

Furthermore: The Environmental Impact Assessment (EIA) of Projects is a key instrument of European Union environmental policy. It is currently governed by the terms of European Union Directive 2011/92/EU, as amended by Directive 2014/52/EU on the assessment of the effects of certain public and private Projects on the environment (EIA Directive). Since the adoption of the first EIA Directive in 1985 (Directive 85/337/EEC), both the law and EIA practices have evolved. The EIA Directive was amended by Directives 97/11/EC, 2003/35/EC, and 2009/31/EC.

The Directive and its three amendments were codified in 2011 by Directive 2011/92/EU. The codified Directive was subsequently amended by Directive 2014/52/EU.

This guidance document focuses on the modifications made to the EIA Directive since 2001, with a particular emphasis on the key changes brought about by the most recent 2014 amendment to the Directive, which Member States have to transpose into their national legal systems by 16 May 2017.

The EIA Directive requires that public and private Projects that are likely to have significant effects on the environment be made subject to an assessment prior to Development Consent being given.

Development Consent means the decision by the Competent Authority or authorities that entitles the Developer to proceed with the Project. Before Development Consent can be granted, an EIA is required if a Project is likely to **“impact significantly upon the environment”**.

Article 2(1) of the EIA Directive (see quote 1 below) sets out the Directive’s overarching requirement.

Quote 1: Directive 2011/92/EU as amended by Directive 2014/52/EU Article 2(1) Member States shall adopt all measures necessary to ensure that, before development consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects on the surrounding environment.

The EU guidance documents sets out three stages involved in EIA:

Screening, Scoping, and the Preparation of the EIA Report. The ‘Screening stage’ ascertains whether the Project’s effects on the environment are expected to be significant, i.e. the Project is ‘Screened’ to determine whether an EIA is necessary.

Projects listed in Annex I to the Directive are automatically subjected to an EIA because their environmental effects are presumed to be significant.

Projects listed in Annex II to the Directive require a determination to be made about their likely significant environmental effects. The Member State's Competent Authority make that determination through either a (i) case-by-case examination or (ii) set thresholds or criteria.

(In this instance Cork City Council acting as both the Developer and the competent authority are conflicted, as Cork City Council itself has prepared the Screening Determination of both Environmental Impact Assessment and Appropriate Assessment).

#### Guidance issued by the European Commission in 2015<sup>4</sup> :

states that "Projects for integrated urban transport schemes (e.g. parallel works at different locations to upgrade bus lanes, tramlines, bus, tram and/ or metro stops), could also fall under this project category."

EIA Directive, the 2001 Planning and Development Regulations (hereafter called the 2001 Regulations), the Roads Act 1993 (hereafter called the 1993 Act), and the 1994 Road Regulations (hereafter called the 1994 Regulations) which set out those projects that trigger an automatic EIA.

**EU Directive : Requirements for EIA / EIA Screening of "urban development" projects** If any Active Travel Initiative could constitute "urban development", then: (a) If the area involved is greater than 2 hectares (in a business district), 10 hectares (in other parts of a built-up area), or 20 hectares (elsewhere), an EIA is required; and, (b) If the area involved is below these thresholds, EIA Screening is required, and if "screened in" (i.e. the result of the EIA Screening is that the project is likely to have significant impacts on the environment) then an EIA is required.

## Part 8 Process

A Local Authorities own development which is "screened in" for EIA cannot proceed under the 'Part 8' process (Section 179(6)(e) of the 2000 Act). Where an EIA is required, an EIAR must be prepared and an application for approval must be made to An Bord Pleanála.

(in this case, the Local authority acting as competent authority and developer, without functional separation cannot evaluate a valid screening determination, hence, it cannot determine the cumulative significant effect of an EIA).

Under the 'Part 8' process, the report by the chief executive to the elected members recommending whether or not that initiative should proceed (prepared under Section 179(3)(a)(i) of the 2000 Act) must include the EIA Screening Determination and must set out the measures, if any, envisaged to avoid or prevent what might have otherwise been significant adverse effects on the environment of the development (section 179(3)(b)(iia) of the 2000 Act).

(in this case an EIA screening with functional separation, from the Developer)

## Automatic EIA required under (roads act)

EIA is also automatically required for “a prescribed type of road development consisting of the construction of a proposed public road or the improvement of an existing public road.” • If the Active Travel Initiative consists of “the construction of a proposed public road or the improvement of an existing public road”:

Consider the prescribed types of road development set out in Regulation 8 of the 1994 Regulations, namely:

“(a) the construction of a new road of four or more lanes, or the realignment or widening of an existing road so as to provide four or more lanes, where such new, realigned or widened road would be eight kilometres or more in length in a rural area, or 500 metres or more in length in an urban area;

**(b) the construction of a new bridge or tunnel which would be 100 metres or more in length.”** (in this case as the is facilitating access for further public transport initiatives project should be considered as a whole, the Active Travel bridge and Luas (Kent Bridge) should be considered as part of this application and its effects on the Environment, with regard to River users, Public Transport, Traffic Impacts and additional Flooding Risks to the city).

## AA Screening on a “Project” & The Habitats Directive

### The Habitats Directive •

**Article 6(3) of the Habitats Directive:** “Any plan or “project” not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in **combination** with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site’s conservation objectives.

(in this case its direct linkage with Glanmire to City Active Travel project currently in construction and in cumulation (combination) with Bus Connects and Luas Cork proposed routes).

In the light of the conclusions of the assessment of the implications for the “**Docklands Development Masterplan**” site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.” (emphasis added).

In the case of the **North Docks Public Realm and Infrastructure plan**, which needs to be considered in combination with the overall Docklands Master Plan, Active Travel Routes and Bus Connects and Luas Cork, projects, its clear there is a requirement for an Appropriate Assessment.

## The Habitats Regulations •

**Article 42 of the Habitats Regulations:** “A screening for Appropriate Assessment of a plan or project for which an application for consent is received, or which a public authority wishes to undertake or adopt, and which is not directly connected with or necessary to the management of the site as a European Site, shall be carried out by the public authority to assess, in view of best scientific knowledge and in view of the conservation objectives of the site, if that plan or project, individually or in combination with other plans or projects is likely to have a significant effect on the European site.”

AA Screening is required for any proposal which constitutes a “plan or project” within the meaning of the Habitats Directive and/or the Habitats Regulations and which is not “directly connected with or necessary to the management of the site as a European Site”.

1 “Plan” and “Project” are broadly defined in the Habitats Regulations (see Key Definitions) and a broad interpretation is generally given to these terms by the Courts. Most Urban Infrastructure “Master Plans” would be regarded as “development of land or on land” or “other land use activities” such that they could arguably be a “project” requiring AA Screening.

### **In the Part “8” Process:**

Where a Local authority own development which is presented for “screening determined” for an appropriate assessment under the ‘Part 8’ process (Section 179(6)(e) of the 2000 Act).

To ensure no conflicts of Interest, its important to ensure that the department/section that makes the AA Screening Determination is different from the department/section which is promoting the Urban Infrastructure initiative, so as to ensure an appropriate “functional separation” between those roles and avoid any suggestion of a conflict of interest arising.

Where appropriate assessment is required, an NIS must be prepared and an application for approval must be made to An Bord Pleanála. Where an initiative has been screened out for EIA and AA and is proceeding under the ‘Part 8’ process. Consideration should also be given to the regulations for a determination as to whether that initiative would be likely to have a significant effect on a European Site, and where such an application is made An Bord Pleanála shall make a determination on the matter as soon as possible.

If An Bord Pleanála determines that the initiative would be likely to have a significant effect on a European Site, then an Environmental Impact Assessment and Appropriate Assessment will be required and an NIS will need to be prepared, and an application for approval must be made to An Bord Pleanála.