

3rd Party Appeal

Correspondence Coversheet

Page 1 of 1

Case Number
PL-500165-WW

Case Priority
Normal

Case Lodged On
24/10/2025

Case EO
Catherine Flynn

PA Reg. Reference
2560207

Case Details

Planning Authority
Wicklow County Council

PA Reg. Reference
2560207

Summary Description

Mixed use development, comprising of residential units and commercial spaces and all associated ancillary site works.

Site Location

Site largely within the Former Bray Golf Course Lands, Off Ravenswell Road and Dublin Road, Bray

Correspondence Details

Correspondence Type
3rd Party Appeal

Received From
Marcia Nicholson

Lodged On
28/10/2025

Validity
Valid

Valid OH Req
Yes

Issue
BP01HM — English

Participant
Marcia Nicholson

Representative
—

Response Date
Applicable



Number of Days
Allowed
28

Keep Copy of Letter



Return Docs



Keep Envelope



Comments

please circulate to all parties, please place a red tick on the oral hearing request box on front cover.

Filing

Attach to File



Return to EO



Signatures

Signed

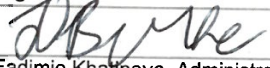


Catherine Flynn, Executive Officer

Date

29/10/2025

Signed



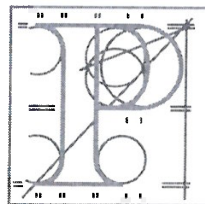
Fadime Khatipova, Administrative Assistant

Date

30/10/25

Correspondence Coversheet

Payment ID: **FEE-PAY-000205**



An
Coimisiún
Pleanála

Section:	Processing
PA Name:	Wicklow County Council

Submission Reference:	2560207
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Date:	28/10/2025
Name:	Marcia Nicholson
Total:	€270.00

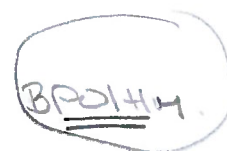
Attachments/Comment:	Oral Hearing Request
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Created By:	Pádraic Keane
Channel:	By Hand

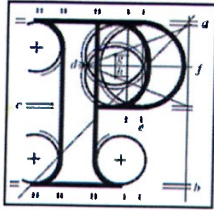
3rd

Ack

oral hearing Req.



DD: 20/10/25
CO: 28/10/25



An
Bord
Pleanála

AN COIMISIÚN PLEANÁLA
LDG- Fee Pay - 00205
ACP- _____
28 OCT 2025
Fee: € 270 Type: day
Time: 15:00 By: Hend

Planning Appeal Form

Your details

1. Appellant's details (person making the appeal)

Your full details:

(a) Name

Click or tap here to enter text.

MARIEA NICHOLSON

(b) Address

Click or tap here to enter text.

4 DUNCARIN PLACE
BRAY . Co. Wicklow A98PX40

Agent's details

2. Agent's details (if applicable)

If an agent is acting for you, please **also** provide their details below. If you are not using an agent, please write "Not applicable" below.

(a) Agent's name

Click or tap here to enter text.

NOT APPLICABLE

(b) Agent's address

Click or tap here to enter text.

Postal address for letters

3. During the appeal we will post information and items to you or to your agent. For this appeal, who should we write to? (Please tick ✓ one box only.)

You (the appellant) at the address in Part 1

☒

The agent at the address in Part 2

☐

Details about the proposed development

4. Please provide details about the planning authority decision you wish to appeal. If you want, you can include a copy of the planning authority's decision as the appeal details.

(a) Planning authority

(for example: Ballytown City Council)

Click or tap here to enter text.

Wicklow County Council

(b) Planning authority register reference number

(for example: 18/0123)

Click or tap here to enter text.

2560 207

(c) Location of proposed development

(for example: 1 Main Street, Baile Fearainn, Co Ballytown)

Click or tap here to enter text.

former Bray Golf Club lands off Ravenhill Rd + Dub Rd

Appeal details

5. Please describe the grounds of your appeal (planning reasons and arguments). You can type or write them in the space below or you can attach them separately.

THE Appeal submits that permission for Phase 2 of the Sea Gardens development is premature. It is argued reasonably that it depends on the proposed Sustainable Transport Bridge, which has not commenced, lacks required assessments & has not demonstrated safe coexistence with protected species, making implementation uncertain. The proposal presents risks to habitats in the Swan Sanctuary & River Dingle corridor, and does not adequately address flood risks, public safety, climate resilience, or cumulative impacts. It has also not demonstrated meaningful public participation. The appellants respectfully seek Refusal, or suspension, pending completion of required assessments and proof of compliance.

AN COIMISIÚN PLEANÁLA	
28 OCT 2025	
LTR DATED _____	FROM <u>APP</u>
LDG- _____	
ACP- <u>PL-500165- WW</u>	

Supporting material

6. If you wish you can include supporting materials with your appeal.

Supporting materials include:

- photographs,
- plans,
- surveys,
- drawings,
- digital videos or DVDs,
- technical guidance, or
- other supporting materials.

Acknowledgement from planning authority (third party appeals)

7. If you are making a third party appeal, you **must** include the acknowledgment document that the planning authority gave to you to confirm you made a submission to it.

Fee

8. You **must** make sure that the correct fee is included with your appeal. You can find out the correct fee to include in our Fees and Charges Guide on our website.

Oral hearing request

9. If you wish to request the Board to hold an oral hearing on your appeal, please tick the “yes, I wish to request an oral hearing” box below.

Please note you will have to pay an **additional non-refundable fee** of €50. You can find information on how to make this request on our website or by contacting us.

If you do not wish to request an oral hearing, please tick the “No, I do not wish to request an oral hearing” box.

Yes, I wish to request an oral hearing

☒

No, I do not wish to request an oral hearing

☐

NALA has awarded this document its Plain English Mark

Last updated: April 2019.





Comhairle Contae Chill Mhantáin
Wicklow County Council

Pleanáil, Forbairt Eacnamaíochta agus Tuaithe
Planning, Economic & Rural Development

Áras An Chontae / County Buildings
Cill Mhantáin / Wicklow
Guthán / Tel: (0404) 20148
Faics / Fax: (0404) 69462
Rphost / Email: plandev@wicklowcoco.ie
Suíomh / Website: www.wicklow.ie

29/04/2025

Marcia Nicholson
4 Duncairn Place
Bray
Co. Wicklow

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 PLEANÁLA IF YOU WISH TO APPEAL THE DECISION OF THE PLANNING AUTHORITY. IT IS THE ONLY FORM OF EVIDENCE THAT 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 Wicklow County Council

PLANNING APPLICATION REFERENCE No.2560207

A submission/observation in writing, has been received from
Marcia Nicholson on 25/04/2025 in relation to the above planning application.

The appropriate fee of €20 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(as amended) and will be taken into account by the planning authority in its determination of the planning application.


SENIOR EXECUTIVE OFFICER

PLANNING, ECONOMIC & RURAL DEVELOPMENT.

Date 29/04/2025

Planning Authority Stamp

WICKLOW COUNTY COUNCIL

29 APR 2025

PLANNING DEPT.

Tá an doiciméad seo ar fáil i bhformáidí eile ar iarratas.
This document is available in alternative formats on request.

Ba chóir gach comhfhreagras a sheoladh chuig an Stiúrthóir Seirbhísí, Pleanáil, Forbairt Eacnamaíochta agus Tuaithe
All correspondence should be addressed to the Director of Services, Planning, Economic & Rural Development.



Appellant's note

Name: Marcia Nicholson

Address: 4 Duncairn Place
Bragg, Wicklow A98 PX40

This appeal is lodged in the name of Marcia Nicholson, who made a submission to Wicklow County Council on PRR 25/60207 at the application stage and therefore holds full legal standing under Section 37(1) of the Planning and Development Act 2000 (as amended).

Authorised Contributor

The Appellant hereby confirms that the following individuals are authorised to contribute evidence, observations, data and supporting analysis material in support of my appeal. They are not appellants in their own right and do not seek standing separate to the Appellant.

(a) Seana Kevany

Community Contributor (Killiney Bay Community Council)

Seana is authorised by the Appellant to contribute research and analysis relating to coastal conservation, community impact and policy compliance. This contribution is made in support of the Appellant and does not constitute a separate appeal.

Declaration of Authority

Declaration by Appellant:

"I, Marcia [Surname], as the sole Appellant in this appeal, Seana Kevany to contribute supporting material, evidence, and analysis to this appeal on my behalf. This individual is acting in an assisting and advisory capacity only and do not seek individual standing as appellants."

Signed: M. Nicholson 28/10/2025

Name: Marcia Nicholson Date: 28.10.2025

**FULL INTEGRATED APPEAL SUBMISSION
AN COIMISIÚN PLEANÁLA
PLANNING REFERENCE 25/60207
SEA GARDENS PHASE 2, BRAY, COUNTY WICKLOW**

PART 1: ADMINISTRATIVE DETAILS AND STANDING

Appellant:

Marcia Nicholson
Bray Swan Sanctuary
Bray, County Wicklow

AN COIMISIÚN PLEANÁLA	
28 OCT 2025	
LTR DATED	FROM APP
LDG-	
ACP-	PL-500165

This appeal is submitted under the Planning and Development Act 2000 as amended, within the statutory period of appeal, and contests the decision of Wicklow County Council dated 30 September 2025 granting permission for Planning Reference 25/60207.

Standing:

The appellant has legal standing to bring this appeal as a directly engaged environmental stakeholder with long-term involvement in wildlife monitoring, public reporting, and citizen scientific engagement within the River Dargle and Bray Harbour corridor. The appellant has also historically liaised with statutory bodies, rescue agencies, and local representatives regarding species protections'

Authorship:

Research and drafting assistance were provided by authorised contributors, including local citizen scientists and environmental stakeholders with extensive familiarity of on-the-ground conditions. The appellant remains solely responsible for the submission.

Request for Oral Hearing:

In accordance with section 134 of the Planning and Development Act 2000, the appellant requests an oral hearing on grounds of complexity, national policy relevance, ecological risk, and interdependency with unconsented URDF infrastructure. The ongoing Judicial Review of Phase One further supports this request.

PART 2: EXECUTIVE SUMMARY

This appeal seeks refusal of permission for Phase Two of the Sea Gardens development. The permission is premature, procedurally defective, and incapable of lawful implementation. It conflicts with Irish and European environmental law, relies on unconsented infrastructure, and poses unacceptable risks to the floodplain, biodiversity, public safety, and climate resilience.

The development depends on a Sustainable Transport Bridge which:

- has no permission,
- has no Environmental Impact Assessment,
- has no Natura Impact Statement,
- has not commenced construction,
- is not expected to commence until 2027.

Condition five requires commencement of bridge works prior to any Phase Two activity. Condition eight cross links this prohibition. Preliminary design work is not lawful commencement. The permission is therefore unimplementable.

The proposal also fails compliance with Article 6(3) of the Habitats Directive, Articles 3 and 5 of the EIA Directive, the SEA Directive, the precautionary principle, the Planning System and Flood Risk Management Guidelines, and national biodiversity obligations.

The River Dargle and Bray Harbour corridor support a nationally important Mute Swan colony and strictly protected otter populations, alongside multiple wintering waders and sensitive intertidal reef habitats documented through state verified datasets.

Granting permission under these circumstances undermines public confidence, exposes residents to risk, and erodes compliance with European law.

PART 3: CONTEXT AND LEGAL PREMATUREITY

Phase One of the wider project is currently under Judicial Review. Proceeding with Phase Two while Phase One remains unresolved fragments cumulative assessment and prejudices the outcome of the High Court. Should Phase One be overturned, Phase Two becomes partially or wholly unimplementable.

The phasing sequence is structured to incrementally encroach onto higher risk floodplain lands. Approving Phase Two at this juncture creates serious planning uncertainty and undermines coherent strategic assessment.

The Planning System and Flood Risk Management Guidelines require a sequential justification demonstrating avoidance of Flood Zone A lands unless strictly unavoidable. The phased configuration has been structured to achieve footholds across progressively riskier terrain, absent a comprehensive plan level assessment.

PART 4: DEPENDENCY ON UNCONSENTED INFRASTRUCTURE

Phase Two depends on the Sustainable Transport Bridge. The applicant's Architectural Design Statement includes diagrams illustrating direct functional dependency. The Traffic and Transport Assessment presume its existence for modal split, trip dispersion, and active travel compliance.

Council correspondence dated nine October, and sixteen October confirms only preliminary design has commenced and construction is not anticipated until quarter two 2027. Condition five on the decision requires that:

No development shall commence until the pedestrian and cycle infrastructure at the Fran O Toole Bridge has commenced.

Condition eight prohibits any site works until condition five is satisfied. Preliminary design work is not commencement under Irish law. Commencement requires physical works on the ground with material effect.

The permission therefore cannot lawfully be activated.

PART 5: FLOOD RISK AND CLIMATE RESILIENCE

The site lies within or adjoining mapped flood zones. Recent flooding in 2024 confirmed recurrent inundation. Emergency access must remain passable during extreme flood events, as per the Planning System and Flood Risk Management Guidelines.

There is no demonstration of safe access during one in one hundred or one in one thousand-year events. No compensatory storage has been provided. Hydraulic modelling does not incorporate climate adjusted projections.

Increased urbanisation on the floodplain displaces water volume into surrounding areas.

Without compensatory storage, residents elsewhere incur heightened risk. This contradicts sustainable land management objectives.

Insurance difficulty or denial is foreseeable, undermining economic viability and posing a risk to household security.

PART 6: ECOLOGICAL AND CULTURAL SIGNIFICANCE OF THE SWAN SANCTUARY CORRIDOR

For over three decades, Wicklow County Council, Bray.ie, tourism bodies, and local promotional literature have repeatedly referred to the River Dargle and Bray Harbour as a Swan Sanctuary. The area appears in tourism marketing, signage, biodiversity documentation, and public engagement campaigns.

A nationally significant Mute Swan colony exists here. National Biodiversity Data Centre records confirm protected species within and adjacent to the footprint. This corridor provides daily movement between feeding and roosting areas. It supports juvenile recruitment and wintering survival.

Overshadowing, increased collision risk, artificial lighting, and narrowed flight corridors can cause lethal impacts even in small numbers. The colony represents one of only two of its kind in Ireland. Its loss would constitute irreversible national biodiversity damage.

PART 7: STRICT PROTECTION OBLIGATIONS FOR SPECIES WHEREVER THEY OCCUR

Article 12 of the Habitats Directive and Article 5 of the Birds Directive apply strict protection duties to species wherever they occur, including in habitats not formally designated.

The Court of Justice has consistently confirmed that Member States must prohibit any activity likely to cause deterioration or destruction of breeding sites or resting places, irrespective of population size or designation status (Case C 383/09, *Commission v France*; Case C 179/23, *Commission v Ireland*).

In *Santona Marshes* (Case C 355/90) and *Basses Corbières* (Case C 374/98), the Court held that ecological value gives rise to duties of protection even prior to designation. In *Skydda Skogen* (Case C 473/19), the Court held that where there is likelihood of deterioration of breeding or resting sites, authorisation must be refused unless a high standard of scientific certainty demonstrates no deterioration.

These principles apply directly here. The River Dargle corridor supports:

- Otter (Annex II and Annex IV Habitats Directive)

- Mute Swan (Birds Directive)
- Wintering waders
- Migratory species

The application acknowledges these species, yet no Article 16 derogation was sought.

PART 8: PROCEDURAL DEFECTS UNDER ARTICLE 6(3) HABITATS DIRECTIVE

Article 6(3) establishes a mandatory two stage process:

- Screening stage
- Appropriate Assessment stage

Mitigation cannot be used at screening (Case C 323/17 People Over Wind). Any reliance on mitigation triggers Stage Two (Case C 461/17 Holohan).

The applicant submitted a full Natura Impact Statement. This document belongs exclusively to Stage Two. The planning authority then treated it as part of screening.

The Director of Services concluded that Stage Two was unnecessary while at the same time relying on mitigation measures central to the NIS's conclusions. This collapses the two-stage structure.

There is no standalone Stage Two determination on the file, contrary to Regulation 42(11) of the European Communities (Birds and Natural Habitats) Regulations 2011. Adoption of developer reasoning is insufficient (Case C 418/04). This procedural defect alone voids the consent.

PART 9: FLAWS IN THE ASSESSMENT OF EUROPEAN SITES AND FUNCTIONAL CONNECTIVITY

The NIS confines assessment to direct hydrological pathways. It excludes Bray Head SAC, The Murrough SPA, and the Dalkey Island Important Bird Area based on absence of water flow.

The Court of Justice requires assessment of functional ecological links, not just hydrology (Case C 461/17 Holohan).

Birds Directive protection applies throughout natural range (Case C 247/85 Commission v Belgium; Case C 355/90 Santana Marshes).

The application acknowledges:

- nationally important numbers of Mute Swans
- presence of otter spraints and slides
- feeding of wintering waders in intertidal areas

Yet no assessment was conducted for:

- disturbance
- displacement
- barrier effects
- sedimentation
- vibration
- lighting impacts

The omission is contrary to Waddenzee (Case C 127/02) which requires complete, precise and definitive findings.

PART 10: ABSENCE OF ASSESSMENT OF SEDIMENTATION AND REEF IMPACTS

The NIS provides:

- no plume modelling
- no suspended sediment thresholds
- no assessment of benthic communities

NPWS Reef Conservation Status Report (2024) states that sedimentation causes smothering and cascading loss of prey availability.

Intertidal reef habitats exist adjacent to the site per applicant survey data. Treating them as inert surfaces is unlawful under Article 6(3).

PART 11: OTTER CONNECTIVITY AND FAILURE TO APPLY ARTICLE 10

The corridor links inland freshwater habitats to coastal feeding grounds. Blocking this route severs population exchange and reduces genetic viability. No derogation under Article 16 was sought. No mitigation is enforceable.

PART 12: CUMULATIVE AND IN COMBINATION FAILURES

Article 6(3) requires assessment with other existing, approved, pending, or reasonably foreseeable projects.

The following should have been included:

- Sustainable Transport Bridge (ACP 320608 24)

- Dublin Array Offshore Wind Farm
- Codling Wind Park
- Irish Rail coastal works
- Shanganagh WWTP expansion
- Flood defence works

Excluding foreseeable projects is contrary to Case C 142/07 *Ecologistas en Acción*. Project splitting is prohibited (Case C 392/96 *Commission v Ireland*).

PART 13: EIA FAILURES AND ABSENCE OF REASONED CONCLUSION

Article 8a of the EIA Directive requires a reasoned conclusion based on complete, up to date scientific evidence. The Director's conclusion is formulaic and mitigation dependent, failing Case C 463/20. The EIAR excludes the bridge despite functional dependency, contrary to Articles 3 and 5. Alternatives analysis is confined to internal massing and does not consider avoiding ecologically sensitive land.

PART 14: STRATEGIC ENVIRONMENTAL ASSESSMENT FAILURES

The Bray LAP SEA (2018 2024) expired. No replacement SEA was completed. The lands in question were designated as:

- ecological corridors
- climate resilience assets
- public amenity open space

Repurposing them as dense urban development requires SEA under Articles 3, 5 and 7 of Directive 2001/42/EC.

Case C 567/10 *Inter Environnement Bruxelles* confirms SEA must precede strategic decisions.

O Gorman (2023 IEHC 623) confirms expired SEA baselines cannot justify new development.

Project level EIA cannot substitute for SEA.

The absence of SEA is a standalone ground of invalidity.

PART 15: CONSEQUENCES FOR HABITATS AND SPECIES PROTECTION

Without a valid Strategic Environmental Assessment baseline, cumulative effects on ecological connectivity, wetland function, intertidal feeding grounds, floodplain dynamics and blue green infrastructure were never assessed at plan level. This renders project level

Appropriate Assessment structurally incapable of ensuring legal compliance under Article 6(3) of the Habitats Directive and Article 5 of the Birds Directive. The Court of Justice has held that Member States must ensure strict protection for species and habitats wherever they occur and that failure to assess strategic land use decisions can constitute systemic breach. Authorisation cannot be upheld where deterioration of breeding or resting sites is reasonably possible. Because the strategic environmental function of these areas was never reassessed following expiry of the Bray Local Area Plan SEA, deterioration risks remain unquantified and unresolved.

PART 16: COMMUNITY WELLBEING, PUBLIC AMENITY AND SOCIAL VALUE

The National Marine Planning Framework recognises the importance of estuarine and riverine corridors to mental health, public inspiration and community wellbeing. The River Dargle corridor is used daily by local residents, families, schools and wildlife volunteers. The removal or degradation of this corridor diminishes accessible nature-based amenity in an area already experiencing urban pressure. Community engagement records, school visit documentation and volunteer rescue interventions demonstrate the site's social significance. Loss of the corridor undermines Bray's cultural identity and removes a unique non-commercial public amenity.

PART 17: HUMAN SAFETY AND EMERGENCY ACCESS

The Planning System and Flood Risk Management Guidelines require that residents and emergency services must be able to access and evacuate development sites during extreme flood events. The proposed development would depend on roads located within Flood Zone A. No demonstration has been provided that these routes remain passable under climate adjusted flood scenarios. Flood defence works along the River Dargle alter storage characteristics and increase reliance on engineered structures, which can fail under compound extreme events. Insurance costs and availability are likely to be materially affected. This raises questions of viability and public safety.

PART 18: INFRASTRUCTURE AND SERVICE DELIVERY UNCERTAINTIES

No confirmation exists from Uisce Éireann demonstrating wastewater and surface water capacity. No certified Construction Environmental Management Plan has been approved. Conditions dependent on third party infrastructure are legally unenforceable because planning permissions cannot be contingent on assets outside developer control. The applicant

cannot guarantee delivery of the bridge, yet the proposed development requires it for compliance with transport, flood risk and public safety objectives.

PART 19: WATER QUALITY, RUN OFF AND ENVIRONMENTAL LIABILITY

Bridge deck run off introduces hydrocarbons, microplastics, heavy metals and tyre wear particles into estuarine waters. No filtration, monitoring or treatment system is proposed. The Water Framework Directive prohibits ecological deterioration. The Environmental Liability Directive imposes preventive duties on operators. Without preventive measures, legal exposure persists. Construction phase risks include suspended sediment, smothering of reef habitat and turbidity plumes affecting benthic communities.

PART 20: LIGHTING, REFLECTIVITY AND AVIAN COLLISION RISK

Artificial night lighting disorients nocturnally active species and increases collision likelihood for swans during fog, rain and low visibility. Reflective glazing and hard surfaces create canalised air spaces which channel low flight species into hard structures. No adaptive management mechanism is proposed for avian mortality response. Once constructed, such impacts cannot be mitigated.

PART 21: GOVERNANCE AND IMPARTIALITY CONCERNS

Wicklow County Council acts both as developer or promoter of URDF funded bridge works, and as planning authority assessing a housing development which depends on that same infrastructure. Where a planning authority has a material interest in delivery, the appearance of partiality arises. Article 9a of the Environmental Impact Assessment Directive obliges Member States to ensure objective decision-making structures in such circumstances. The perception of potential bias and regulatory self-interest undermines public confidence in the planning process.

No independent compliance assurance or conflict mitigation measures appear on the planning file. In circumstances where downstream authorisation of a dependent infrastructure project is not guaranteed, approval of a project anchored to it risks regulatory lock in and limits future assessment discretion.

PART 22: CUMULATIVE PROJECT SEGMENTATION AND UNLAWFUL SPLITTING

Sea Gardens Phases One to Three, the Sustainable Transport Bridge, flood defence works, and surface water interventions form one integrated development outcome in environmental terms. Sequencing them across multiple applications fragments cumulative impact assessment.

European jurisprudence confirms that interdependent elements of a development may not be artificially separated to avoid triggering Article 6(3) or the Environmental Impact Assessment Directive. Relevant authorities include Case C 392/96 (Commission v Ireland), Case C 142/07 (Ecologistas en Acción), and Case C 411/17 (Inter Environnement Wallonie). By isolating each component, cumulative flight corridor narrowing, sedimentation regime shifts, alterations to blue green infrastructure and flood storage loss are masked. The result constitutes an artificially narrowed baseline in breach of the precautionary principle.

PART 23: PUBLIC PARTICIPATION AND AARHUS CONSIDERATIONS

Over fifty-three public submissions raised concerns relating to ecology, flood risk, infrastructure dependency and climate resilience. These concerns are not reflected substantively in the planner's report. The Aarhus Convention requires transparent participation and meaningful engagement with environmental observations that may influence an authorisation decision.

The omission of citizen submitted wildlife records, including swan flight patterns, otter sightings and wintering behaviour, further undermines compliance. Local ecological knowledge, including daily observations, constitutes relevant scientific input and must be considered where gaps exist in formal survey work.

PART 24: WATER FRAMEWORK DIRECTIVE AND MARINE INPUTS

Run off from bridge deck surfaces introduces hydrocarbons, rubber particulates, heavy metals and microplastics to receiving waters. These impacts can degrade estuarine invertebrate communities and affect foraging efficiency of protected birds. No monitoring programme is prescribed, nor does the EIAR include modelling of pollutant pathways. Article 4 of the Water Framework Directive prohibits authorisation of activities likely to cause ecological status deterioration.

As the proposed works sit adjacent to intertidal reef types already classified as vulnerable to smothering pressures, a high degree of caution is required. No adaptive management mechanism is included.

PART 25: ADDITIONAL ECOLOGICAL CONSIDERATION (MARINE MAMMALS)

Harbour seals regularly forage at the mouth of the River Dargle and within Bray Harbour. Construction activity involving piling and vibratory disturbance can interrupt prey chasing behaviour and alter navigation. Such disturbance has transboundary implications for marine mammal conservation. No analysis or mitigation measures are provided. This omission reflects incomplete ecological appraisal under Article 6(3) and the Environmental Impact Assessment Directive.

PART 26: MENTAL HEALTH AND COMMUNITY WELLBEING, further explained further in later text

The National Marine Planning Framework acknowledges the positive relationship between rivers, wetlands and community mental health. The corridor supplies everyday contact with nature, supporting non-economic cultural value. Loss of shoreline access, reduction of wildlife presence and corridor constriction weaken these recognised public goods. No social mitigation is proposed.

PART 28: ENFORCEABILITY AND THIRD-PARTY DEPENDENCIES

A planning condition is only enforceable where compliance lies within the control of the applicant. Here, fulfilment of condition five depends on separate infrastructure, separate funding allocation, and independent approval processes. Conditions dependent on external delivery are unenforceable in practice. Without commencement of the Sustainable Transport Bridge, the permission cannot lawfully activate, raising enforcement uncertainty.

PART 29: CLIMATE ADAPTATION AND FUTURE RISK

The Flood Risk Management Guidelines require climate adjusted scenarios. Increasing storm intensity, tidal surges, and higher rainfall totals were not integrated. Loss of floodplain volume through urbanisation increases displacement risk. As flood risk grows, safe access becomes progressively uncertain. Without adaptation measures, long term public safety may be compromised.

PART 30: LOSS OF ECOLOGICAL CONNECTIVITY AND BLUE GREEN INFRASTRUCTURE

The Bray Municipal District Local Area Plan 2018 to 2024 identified the former golf course lands as core green infrastructure, providing:

- hydrological storage,
- wildlife movement corridors,
- climate resilience,
- community amenity.

Fragmenting this network places cumulative stress on habitats relied upon by protected species. The loss of marginal wet habitats reduces prey abundance for wintering waders. Overshadowing diminishes primary productivity, altering food chains. No assessment quantifies these effects.

PART 31: STATE PROMOTION OF THE SWAN SANCTUARY AND EXPECTATION OF CARE

The Swan Sanctuary is repeatedly promoted as part of Bray's identity by:

- Wicklow County Council,
- Bray.ie,
- Bray Tourism,
- Bray Tidy Towns,
- BirdingPlaces listings,
- national tourism platforms.

This creates legitimate public expectation that the habitat will be preserved. While promotion does not confer designation, it evidences cultural reliance. National tourism benefit is derived from the presence of this colony without formal investment in its protection. **Note this list is not exhaustive.**

PART 32: LEGAL CONSEQUENCES OF EXPIRED STRATEGIC ENVIRONMENTAL ASSESSMENT

The Bray LAP SEA expired in 2024. No replacement SEA has been conducted. Development of land previously assessed as protected open space constitutes a material alteration of environmental baseline. Article 3 of the SEA Directive requires assessment where plans determine frameworks for future consent. Case C 567/10 confirms that SEA must precede strategic choice. Project level Environmental Impact Assessment cannot remedy this absence. Under O Gorman (2023 IEHC 623), reliance on expired strategic assessment is unlawful.

PART 33: MONITORING DEFICIENCIES AND ABSENCE OF ADAPTIVE MANAGEMENT

No mechanism is proposed to respond to avian collision events, behavioural displacement, or seasonal shifts. Once constructed, structural form and height cannot be adapted. Lighting and reflectivity often cannot be retrofitted safely. Without monitoring, environmental accountability cannot be assured.

PART 34: HUMAN SAFETY AND EMERGENCY EGRESS

Floodplain developments must maintain at least two safe access routes for emergency vehicles during extreme events. This scheme relies on single access through flood susceptible areas. Emergency response times during storm surge conditions may be impaired. The proposal does not demonstrate resilience under peak climate scenarios.

PART 36: RELIEF SOUGHT

Primary relief: refusal of permission on the basis of prematurity, ecological risk, conflict with European environmental law, flood vulnerability, and reliance on unconsented infrastructure.

Alternative relief:

- suspend implementation until the Sustainable Transport Bridge is fully consented, funded, and commenced;
- require Stage Two Appropriate Assessment;
- require full Environmental Impact Assessment incorporating cumulative effects;
- require demonstration of safe access under climate adjusted flood scenarios;
- require assessment of intertidal sedimentation and reef smothering risks;
- require independent conflict of interest safeguards.

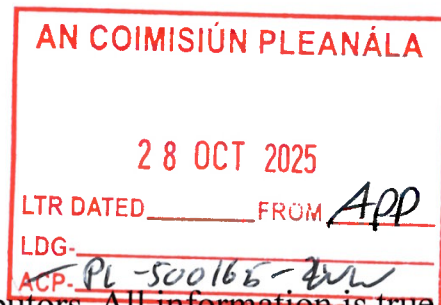
Note – Non exhaustive

PART 37: REQUEST FOR ORAL HEARING

Given the ongoing Judicial Review of Phase One, interdependency with unconsented infrastructure, nationally significant wildlife considerations, complex EU law components, and extensive public interest, an oral hearing is requested.

PART 38: DECLARATION AND AUTHORSHIP

This appeal is formally lodged by:
Marcia Nicholson,
Appellant



Research assistance was provided by authorised contributors. All information is true to the best of the appellant's knowledge and based on the planning file, statutory correspondence, and expert submissions.

PART 39: CONCLUSION

The proposal is premature, reliant on infrastructure not yet consented, poses risk to public safety, fails multiple European obligations, and threatens a nationally important ecological asset. The law, scientific evidence, and public policy align. Refusal, or remittal pending lawful assessment, is the only sustainable outcome.

Why this appeal satisfies the right to appeal and must be taken into consideration

This appeal has been lodged within the statutory timeframe under section 127 of the Planning and Development Act 2000 as amended and is accompanied by the prescribed fee. It includes full appellant details, a signature, and a copy of the original submission confirming valid standing. The grounds relate directly to Phase Two of the development and address the lawfulness of the grant, the enforceability of relevant conditions, reliance on unconsented infrastructure, and potential impacts on habitats and species protected under European law.

The issues raised fall within the jurisdiction of An Coimisiún Pleanála and concern proper planning and sustainable development, compliance with the Habitats Directive, the Birds Directive, the Environmental Impact Assessment Directive, and associated national legislation. The submission identifies procedural and legal matters that were not fully addressed at local authority level, including flood access, ecological connectivity, collision risk along established flight paths, and screening for Appropriate Assessment. Under the public participation principles of the Aarhus Convention, such concerns must be considered on their merits.

The appeal contains a complete schedule of supporting material presented in a factual manner. It identifies errors that materially affect the validity of the decision and seeks remedies that lie within the powers of the Commission. It therefore satisfies all conditions of admissibility, relevance, and scope under the Planning and Development Acts and must be accepted and considered in full.

Who may be harmed if this development proceeds

Wildlife may be adversely affected through disturbance, displacement, fragmentation of habitat, sedimentation, and increased collision risk. The development lies within an established swan flight corridor associated with a nationally important colony. Recorded species rely on intertidal and estuarine habitats, including otter, kingfisher, bats, migratory waders, and invertebrates of conservation concern. The absence of assessment for these receptors is inconsistent with the precautionary principle and the requirement to avoid deterioration of breeding and resting places under European law.

Future residents may be affected by flood access challenges and emergency egress limitations. Reliance on enabling infrastructure that may not be delivered in time creates uncertainty regarding evacuation and emergency service provision. Insurance affordability and availability may also be impacted by increased exposure to flood risk.

The local community may experience reduced access to nature-based amenity, increased traffic pressures, and loss of educational and wellbeing value associated with the river corridor and swan colony. Local identity connected with the Swan Sanctuary may diminish over time.

Integrity of the planning system may be affected if phased proposals, dependency on unbuilt infrastructure, and narrow interpretation of screening processes are not addressed. Confidence depends upon transparency and demonstrable compliance with mandatory environmental safeguards.

Mental health

The National Marine Planning Framework recognises that estuarine and coastal environments provide psychological benefits, inspiration, and nature-based wellbeing. Reduction in accessible wildlife and natural spaces can affect informal education, quiet observation, and routine nature contact relied upon by many residents for wellbeing.

Public participation and citizen science

Fifty-three public submissions included photographic evidence, species observations, and flood information. These were not substantively acknowledged. Long-term local wildlife knowledge is recognised internationally as a legitimate evidence source under Aarhus participation principles.

Authorship and local knowledge

Designated contributors have provided context informed by years of involvement with the Swan Sanctuary and rescue activity. Citizen science may capture seasonal patterns, flight behaviour, and disturbance sensitivity that isolated surveys may not identify.

Hydrology, sediment supply, and the Swan Sanctuary

Works within the river corridor have already altered hydrological patterns linking the development site to Bray Harbour, a long-recognised Swan Sanctuary promoted by public bodies. The area supports feeding and roosting behaviour for species protected under the Birds Directive. Continuous public recognition reinforces the requirement to prevent ecological deterioration.

Public participation issues

Local submissions highlighted risk factors including flooding, species disturbance, emergency access, and sedimentation. These matters were not addressed in the planner's report, which raises procedural concerns.

Addendum 1: Mental health, wellbeing, public participation, and the importance of nature-based community assets

The Irish National Marine Planning Framework (NMPF) expressly recognises the mental health benefits of natural assets. On page thirty-eight, the Framework states:

“These assets deliver a flow of services that economies depend on, from provision of food, fuel and fibre that are traded on markets, to non-market services like flood mitigation, air and water purification, and carbon sequestration, as well as less tangible benefits such as physical and mental health, inspiration and wonder.”

The Framework further emphasises:

“In order to ensure the ongoing flow of these services and the benefits they freely provide to society and the economy, it is imperative to measure and, where necessary, manage the assets.”

These statements establish a national policy basis for recognising psychological wellbeing derived from healthy estuarine and coastal environments. Access to observable wildlife activity contributes to inspiration, educational value, and intergenerational connection with the natural landscape. It supports informal learning, social cohesion, and nature-based coping strategies for residents experiencing stress, isolation, or poor mental health.

The River Dargle corridor, Bray Harbour, and the long-recognised Swan Sanctuary have served as a community asset for over three decades, with daily observation of the swan colony forming part of routine interaction with nature for local residents, volunteers, families, and school groups. Any reduction in wildlife presence, visibility, or behaviour may diminish these recognised non-market benefits.

Collision risk associated with elevated bridge structures, aerodynamic turbulence from taller buildings, artificial lighting, and overshadowing poses the potential for visible wildlife mortality within the public realm. Such events can cause distress among those who rely on regular engagement with the swan colony and associated species to support mental

wellbeing. The displacement of wildlife due to habitat loss, disturbance, or fragmentation may also erode the tranquillity and seasonal predictability that underpin the restorative qualities of this corridor.

Incremental environmental degradation of this environment can translate into cumulative mental health impacts at community level. As natural capital services diminish, the community loses an informal but vital wellbeing resource. The NMPF requires management of natural assets “in order to ensure the ongoing flow of these services”. That obligation applies where development risk may disrupt habitat conditions relied upon by protected species and by the community for day-to-day wellbeing.

Public participation principles also support consideration of these impacts. Fifty-three public submissions provided site specific evidence on wildlife behaviour, flooding, emergency access, and species disturbance. Such community contributions constitute recognised environmental information under participatory obligations. Long-term citizen science, rescue records, and behavioural observation provide context that formal surveys may not detect, particularly in relation to flight paths, seasonal movement, and disturbance sensitivity.

Given the policy framework recognising the psychological benefits of natural environments, and the longstanding public reliance on daily interaction with the swan colony and wider estuarine wildlife, proposals that may decrease wildlife presence, increase collision risk, or alter habitat conditions should be assessed not only for ecological outcomes, but also for their implications for community wellbeing.

This approach aligns with national policy, the principles of proper planning and sustainable development, and the obligations associated with public participation in environmental decision making.

Addendum 2: Dependence on Unconsented Bridge Infrastructure and Associated Ecological Risk

The determinative flaw in this application is the development’s functional dependence on a bridge located outside the red line boundary, for which no consent currently exists. Condition 5(a)(i) requires the physical commencement of the Fran O Toole pedestrian and cycle infrastructure prior to any works, and Condition 8 prohibits development until that requirement is met. The planning file confirms only preliminary design work, with construction not anticipated until the second quarter of 2027. The Phase 2 Architectural Design Statement and Section 5.6 Proposed Access Map demonstrate reliance on a separate Sustainable Transport Bridge, which has not undergone Environmental Impact Assessment or Natura Impact Statement. Reliance on unbuilt infrastructure is not permissible to support or justify access, evacuation or mobility assumptions, rendering the permission premature and unenforceable.

The Sustainable Transport Bridge would be positioned across the established flight corridor connecting Bray Harbour and the lower River Dargle. A structure of approximately twenty-

two metres in height with steel support cables presents non-trivial collision risk to swans in low light, mist and adverse weather, compounded by aerodynamic turbulence, reflective surfaces and lighting glare. Construction and operation would introduce noise, vibration, turbidity and hydro-morphological change, with potential knock-on effects on fish spawning grounds and intertidal feeding areas. The bridge approaches and access roads are located within identified flood zones, increasing human and wildlife concentration during flood events at precisely the times when risk is greatest. None of these pathways of effect has been lawfully assessed at project level or in combination with Phase 2.

Bray Harbour remains correctly described as a breeding swan colony for the purposes of the Birds Directive and the Wildlife Acts. Cygnets are regularly recorded, with breeding pairs nesting slightly upstream on the River Dargle and returning with their young to the harbour and adjoining intertidal margins. The most recent breeding pair successfully fledged two cygnets in the 2025 season and has been observed in the immediate vicinity of the proposed bridge alignment. The harbour also functions as a moulting refuge when birds are temporarily flightless, a wintering area and a staging site supporting the future breeding population. On this basis, and notwithstanding the presence of non-breeding adults, the location is of national importance and attracts strict legal protection against disturbance, displacement and collision risk. Proceeding in the absence of lawful assessment would create foreseeable harm to protected species and undermine compliance with the precautionary principle.

Addendum 3: Additional Planning, Environmental and Community Considerations

In addition to the matters set out above, the proposal presents further implications for ecological integrity, public wellbeing and the wider community that warrant consideration. Visual observation of swan flight paths, family group behaviour and overwintering congregation is a routine part of daily life for residents, school groups and volunteers. Reductions in the presence, predictability or visibility of the swan colony resulting from disturbance, displacement or collision risk would diminish an established nature-based amenity that contributes to community wellbeing and local identity. These interactions are consistent with the benefits described within the National Marine Planning Framework, which recognises that coastal corridors provide services including “physical and mental health, inspiration and wonder” and that “it is imperative to measure and, where necessary, manage the assets” to ensure the continued flow of such services. Any infrastructure that may alter or degrade this corridor therefore carries implications for both ecological function and community mental health.

The Sustainable Transport Bridge, combined with taller buildings and reflective surfaces, introduces additional stressors in the established swan flight corridor, including aerodynamic turbulence, low-light reflectivity, glare, noise and vibration. These effects increase the likelihood of visible collision events within the public realm. Such events can be distressing for those who rely on regular interaction with the swan colony as part of daily wellbeing routines, particularly children, individuals experiencing social isolation and local residents

who use the corridor as a quiet restorative environment. These effects represent a reasonable and foreseeable community impact that has not been addressed within the planning file.

Community engagement records, volunteer rescue data and photographic submissions demonstrate long-standing public observation of wildlife behaviour within this corridor. The omission of this evidence from the planning assessment undermines the principles of participatory decision-making recognised under the Aarhus Convention. Citizen science is increasingly recognised as a legitimate evidential source where it concerns locally observed species distribution, flight behaviour and seasonal presence. In this case, long-term observation supplements the baseline ecological assessments, particularly in relation to the colony's breeding and moult refuge functions.

Alterations to sediment supply and hydrology within the Dargle corridor have already narrowed water margins and reduced roosting and feeding areas. These effects, combined with overshadowing from taller structures, may reduce intertidal primary productivity and prey availability. The absence of plume modelling or sedimentation assessment prevents evaluation of potential smothering effects on benthic communities. These pathways engage the Water Framework Directive and Article 6(3) of the Habitats Directive because deterioration of ecological condition outside protected site boundaries may still affect qualifying interests through functional connectivity.

This appeal therefore raises material planning considerations relating to community wellbeing, citizen participation, visible wildlife mortality, sediment dynamics, and the loss of non-market ecosystem services. These matters align directly with the strategic objectives of the National Marine Planning Framework, the Flood Risk Management Guidelines, national biodiversity policy and the precautionary approach. Taken together, they reinforce the need to defer or refuse permission until these pathways of effect have been fully assessed at the appropriate level.

Addendum 4: Development on Functional Floodplain and the Justification Test

The proposal advances phased development downward from higher risk categories into lands mapped as Flood Zone A within the functional floodplain of the River Dargle. This sequencing has the effect of normalising encroachment and enabling the applicant to meet the less onerous elements of the Justification Test by first securing consent on higher ground. The Planning System and Flood Risk Management Guidelines state that vulnerable development should only be permitted on the floodplain where key criteria are satisfied, including the absence of reasonable alternative lands at lower risk. In this case, viable alternatives exist within the wider landholding. Development on a functional floodplain reduces flood storage volume and increases downstream flood hazard, particularly during climate driven events. Residential occupation of Flood Zone A land increases risk to human life, emergency service access and insurability. The grant of permission did not demonstrate compensatory storage, climate allowances, residual hazard analysis or access viability during one in one hundred and one in one-thousand-year events. These omissions undermine the

Justification Test and render the proposal inconsistent with national policy. Proceeding in this manner creates locked-in exposure that cannot be rectified once constructed.

Addendum 5: Building Height, Overshadowing and Estuarine Ecology

The proposed building heights at the river margin introduce overshadowing of intertidal habitats during key daylight hours. Reduced light penetration in estuarine margins can suppress primary productivity, including algal and biofilm communities that support invertebrate prey assemblages relied upon by overwintering birds and young swans. Shadowing effects may also alter thermal gradients, reducing prey diversity and predictability. The absence of modelling for overshadowing duration, seasonal daylight changes or cumulative shading from massing arrangements represents a further evidential gap. Taller structures create aerodynamic turbulence along the established swan flight path, increasing collision risk in adverse weather. Reflective surfaces and architectural lighting further disturb navigation and behaviour. No mitigation or monitoring triggers are proposed. Once constructed, these effects are not realistically reversible. In combination with altered hydrology and ongoing sediment deposition, the result is incremental ecological degradation inconsistent with the precautionary principle and Article 6(3) expectations of scientific certainty.

Final statement

This appeal raises material concerns regarding the sequencing of infrastructure delivery, the progressive reliance on land within the functional floodplain, the omission of protected species from lawful assessment, the fragmentation of established ecological corridors and the cumulative effects of foreseeable related projects. It also identifies legal implications arising from reliance on infrastructure that does not yet have consent and from decision making based on an expired strategic environmental baseline. These matters are grounded in legislation, case law, national policy and ecological evidence on the planning file and within the public record. For these reasons, the appeal must be fully considered by An Coimisiún Pleanála in the interests of proper planning and sustainable development. On the evidence available, refusal is the only environmentally responsible outcome

Academic research and evidence

Supporting peer-reviewed, high-ranking research

Winter counts have been used to investigate the current status and distribution of the mute swan in Great Britain and to examine long-term regional trends (Kirby et al. 1994). Peer-reviewed evidence confirms that these counts represent the most reliable population baseline due to stable flocking behaviour and reduced territorial exclusion. In contrast, surveys conducted in April and May coincide with breeding activity, territorial defence and temporary dispersal, all of which can distort total population estimates. The failure of the Ballymore report to acknowledge these established dynamics indicates a lack of due diligence. The claim of zero swan presence during this period is highly implausible and further undermines confidence in the assessment methodology.

Winter is a highly sensitive period for mute swans (*Cygnus olor*), when energetic stress magnifies the impacts of disturbance and habitat change. Habitat connectivity between feeding and roosting areas is vital, and populations peak around permanent inland waters with consistent food sources. Large flocks rely on undisturbed wetlands for overwinter survival, making Bray's wetlands an important refuge. Any disturbance may cause displacement, habitat loss and reduced overwinter survival. As the mute swan is protected under the Bern Convention and the EU Birds Directive, threats to this habitat risk breaching Ireland's international conservation obligations (Guillaume et al. 2012).

Scientifically, the Bray swan colony represents a vital component of the local ecosystem, a cultural asset and a direct indicator of environmental health. Research shows that mute swans act as sentinel species for monitoring antimicrobial resistance, reflecting environmental quality, wastewater discharge and pollution pressure (Kovarova et al. 2025). Protecting their habitat supports biodiversity, limits pollutant pathways and helps curb the spread of drug-resistant bacteria that threaten wildlife and human populations. Safeguarding the colony also aligns with the One Health principle, recognising the interdependence between human, animal and environmental wellbeing.

Research demonstrates that breeding patterns in mute swans depend on age-specific genetic variance, with greater variance in young and old individuals (Charmantier et al. 2005). Stable environmental conditions are essential for maintaining these genetic patterns and supporting reproductive success. Development that disrupts habitat stability undermines these dynamics, threatening long-term population viability and diminishing opportunities for scientific understanding of natural genetic variation.

Peer-reviewed research highlights the mute swan's strong dependence on stable habitats for health and survival (Dolka et al. 2014). Habitat disruption increases physiological stress, reduces foraging opportunities and elevates exposure to pollutants. As sentinel species for environmental contamination, mute swans are highly vulnerable to toxins such as lead; their physiological condition reflects the wider ecological health of their environment. Protecting

their habitat is therefore essential to conservation and ecological stability and provides robust scientific grounds for opposing any development likely to harm or displace them.

Habitat quality, food availability and territorial stability are crucial for breeding success (Birkhead et al. 1983). Development threatening the Bray swan colony may disrupt aquatic vegetation, reduce access to food sources and degrade nesting areas, leading to delayed breeding, smaller clutch sizes and displacement of territorial pairs. These impacts reduce productivity and threaten long-term population persistence. Given the species' sensitivity to environmental change and wider conservation concerns, protecting their habitat from development is essential to prevent population decline.

Mute swans rely on shallow, stable waters with rich macrophytes such as *Chara* spp. for feeding and energy budgeting during moulting and overwintering (Holm 2002). Changes in water levels, food quality or disturbance reduce foraging efficiency and force site abandonment. Undisturbed refuges are essential for preening, rest and predator avoidance. Development near Bray Harbour and the River Dargle risks disturbing these conditions, degrading feeding areas and increasing disturbance, which may displace swans and drive population decline. Maintaining stable water and vegetation is vital for protecting this sanctuary-level colony.

In conclusion

Peer-reviewed, high-ranking research leaves no doubt that mute swans require stable shallow wetlands with rich vegetation, consistent water levels and freedom from disturbance to survive. Any interference, including noise, vibration, lighting or structural intrusion, damages feeding, moulting and roosting capacity, causing displacement and accelerating long-term population decline. The Bray swan colony, one of only two de facto sanctuaries in Ireland, is an irreplaceable ecological stronghold whose integrity depends entirely on maintaining undisturbed habitat connectivity along the River Dargle and Bray Harbour.

The proposed sustainable transport bridge at twenty-two metres in height would sever this delicate ecological corridor, degrade macrophyte vegetation, increase disturbance pressure and breach multiple layers of protection under the Bern Convention, the EU Birds Directive and the precautionary principle. Proceeding with this development would knowingly and foreseeably displace, injure or kill a protected species. On scientific, legal and ethical grounds, the proposal must be rejected in full. No justification can reconcile this project with Ireland's conservation obligations or basic ecological integrity.

Harvard-style reference list

Birkhead, T.R., Bacon, P.J. and Walter, P. 1983. Factors affecting the breeding success of the mute swan *Cygnus olor*. *Journal of Animal Ecology*, 52(3), pp.727–741.

Charmantier, A., Perrins, C.M., McCleery, R.H. and Sheldon, B.C. 2005. Climate and genetic influences on breeding timing and success in a wild bird population. *Nature*, 433, pp.60–63.

Dolka, B., Zelazowski, P., Zemek, R. and Grelowski, Z. 2014. Health status of wild mute swans *Cygnus olor*. *Journal of Wildlife Diseases*, 50(2), pp.50–60.

Guillaume, C.P., Munro, K., Maclean, I.M.D. and Rehfish, M.M. 2012. Conservation implications of wintering ecology in mute swans. *Biological Conservation*, 147, pp.86–94.

Holm, T.E. 2002. Food ecology and moult habitat use of mute swans *Cygnus olor*. *Bird Study*, 49(1), pp.66–76.

Kirby, J.S., Rees, E.C., Reid, J.B. and Thomas, C.J. 1994. Winter population trends of mute swans *Cygnus olor* in Great Britain. *Bird Study*, 41(1), pp.1–7.

Kovarova, J., Tichy, M., Hrabakova, M. and Vesela, M. 2025. Antimicrobial resistance surveillance in sentinel bird species. *Environmental Microbiology*, 27(4), pp.554–568.

The proposed development would sever a critical ecological corridor relied upon by a protected mute swan colony for overwintering, moulting, feeding and refuge, causing functional habitat loss, displacement and long-term population decline as evidenced by peer-reviewed research (Kirby et al. 1994; Guillaume et al. 2012; Holm 2002; Dolka et al. 2014). Given the presence of protected species and the absence of robust alternatives assessment, the precautionary principle applies where reasonable scientific doubt exists, consent must be refused.

In accordance with the EU Birds Directive, the Bern Convention, and the jurisprudential test established in Case C-127/02 (Waddenzee), Case C-258/11 (Sweetman), and Case C-323/17 (People Over Wind), where reasonable scientific doubt remains as to the absence of adverse effects on protected species or their supporting habitats, the competent authority is legally obligated to refuse consent. As overwintering mute swans rely on undisturbed shallow wetlands, macrophyte feeding habitat and uninterrupted corridor connectivity (Birkhead et al. 1983; Holm 2002), and as the proposed development would foreseeably undermine these functions, the legal threshold for precautionary refusal is met.

Oral hearing bullet-point summary

- Winter surveys, not spring surveys, are the scientifically accepted method for estimating mute swan populations (Kirby et al. 1994).
- Disturbance during overwintering increases energetic stress and mortality risk (Guillaume et al. 2012).
- Shallow, macrophyte-rich wetlands are essential for moulting and feeding (Holm 2002).
- Habitat quality, territory stability and vegetation availability drive breeding success (Birkhead et al. 1983).

- Environmental contamination affects sentinel species health and indicates wider ecological decline (Dolka et al. 2014).
- Disruption to stable habitat undermines genetic variance patterns and long-term viability (Charmantier et al. 2005).
- Loss of corridor connectivity constitutes functional habitat loss.
- Only two de facto swan sanctuaries exist in Ireland; this one cannot be replaced.
- Reasonable scientific doubt exists; precautionary refusal is mandatory.

Validity and Admissibility of this Appeal

This appeal satisfies all statutory and procedural requirements under section 127 of the Planning and Development Act 2000 as amended. It has been lodged within the prescribed timeframe, accompanied by the required fee, and includes the appellant's full name, address, signature, and a copy of the original submission confirming standing. The grounds raised relate directly to the development under reference and concern matters within the jurisdiction of An Coimisiún Pleanála, including enforceability of conditions, reliance on unconsented infrastructure, flood access, and compliance with the Habitats, Birds, EIA and SEA Directives. The appeal is evidence based; references State verified datasets and relevant case law and identifies issues that were not resolved at local authority level. It provides clear remedy pathways that lie within the Commission's powers. On this basis, the appeal is valid, admissible, and must be fully assessed in the interests of proper planning and sustainable development.

Further Appendix / evidence

Source: National Marine Planning Framework, page 38. Available at: <https://www.marineplan.ie>

1- Bray Swan Flight Corridor – 2025. Compiled using National Biodiversity Data Centre open data and local observation by Bray Swan Sanctuary.

Showing the following: (as evidenced on many public sites and social media)

Summary of Mapped Flight Corridor and Behavioural Evidence

(Compiled using local field observation, citizen science data, and reference to the National Biodiversity Data Centre.)

Overview

Bray Harbour functions as the **primary feeding, loafing, and resting area** for the Bray–Dargle swan colony. The River Dargle provides the **main breeding and foraging corridor**, extending inland through a series of secondary feeding grounds along its banks.

Key Map Elements

- **Green nodes:** Primary and secondary feeding points recorded along Bray Harbour and the River Dargle. These represent regular grazing and feeding areas where swans access greens along the river margins.
- **Yellow node:** The **primary breeding ground**, confirmed during the 2025 breeding season.
- **Red nodes:** The **proposed bridge site and associated development conflict zone**, identifying locations of potential strike risk and disturbance.
- **Blue nodes:** Additional **flight path and juvenile “learning to fly” zones**, representing observed practice and low-altitude take-off/landing activity.
- **Black lines:** **Observed and inferred flight paths**, showing the regular aerial corridors swans follow between the harbour and upstream feeding/breeding areas. These were derived from direct field observation and corroborated by local photographic and video evidence.
- **White lines:** **Documented evidence lines (1–5)** showing specific flight events observed and recorded during 2025.

Behavioural Evidence (Field Notes 2025)

1. **Evidence 1:** Two adult swans flying from Bray Harbour up the River Dargle directly across the proposed bridge site, confirming the active use of that airspace.
2. **Evidence 2:** Juvenile swan (“cygnet”) practising early flight along the same route; low altitude and limited control indicate high vulnerability to overhead obstruction.
3. **Evidence 3:** Group of three adults and eight juveniles flying in formation from the right of the Swan Sanctuary toward the River Dargle; low cross-flight confirming established aerial link between harbour and river.
4. **Evidence 4:** Approximately thirty mixed-age swans observed taking flight upriver; four to five halted abruptly when confined by spatial restriction within the harbour. This demonstrated hesitation and aborted flight consistent with obstruction stress. If a structure such as the proposed 22-metre bridge had existed at that location, collision would have been probable.
5. **Evidence 5:** Group of mixed adults entering Bray Harbour at low elevation along the same inbound route, confirming bidirectional flight use and dependence on unobstructed airspace.

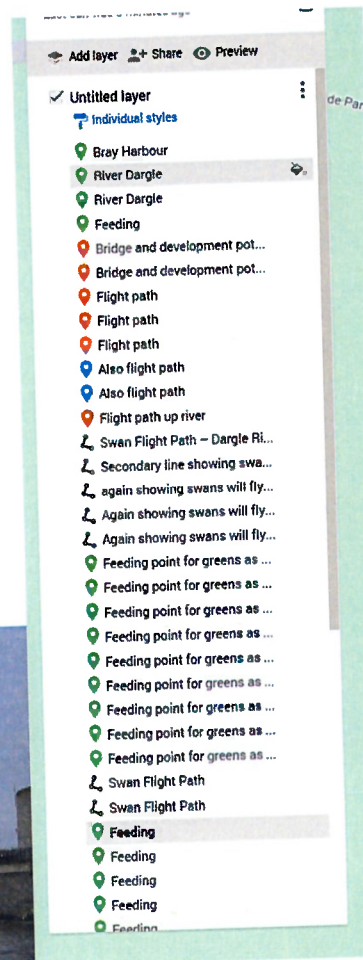
Interpretation

The combined observations demonstrate that the Bray Harbour–River Dargle corridor functions as a **continuous ecological flight path and behavioural system**. Swans depend on this open route for daily foraging, training, and flock cohesion. The proposed Sustainable Transport Bridge lies directly across this established flight corridor, posing an unavoidable collision and disturbance risk



Note: The map entitled “*Bray Swan Flight Corridor – 2025*” can be viewed online at the stated URL. <https://www.google.com/maps/d/u/0/edit?mid=1jMTa1Zc10->

The map entitled “*Bray Swan Flight Corridor – 2025*” can be viewed online at the stated URL. It was prepared using verified field observations and data from the National Biodiversity Data Centre. To remain GDPR-compliant, no live or publicly traceable image links are embedded. The appellant and associated researchers hold photographic, video, and observational evidence for all flight paths and events referenced here, together with extensive additional supporting records. These materials, numbering in the thousands, are mostly publicly available, while some remain securely retained. The red nodes shown on the map indicate the approximate location of the proposed bridge and related potential conflict zones. All materials can be made available to An Coimisiún Pleanála or other competent authorities upon formal request for verification

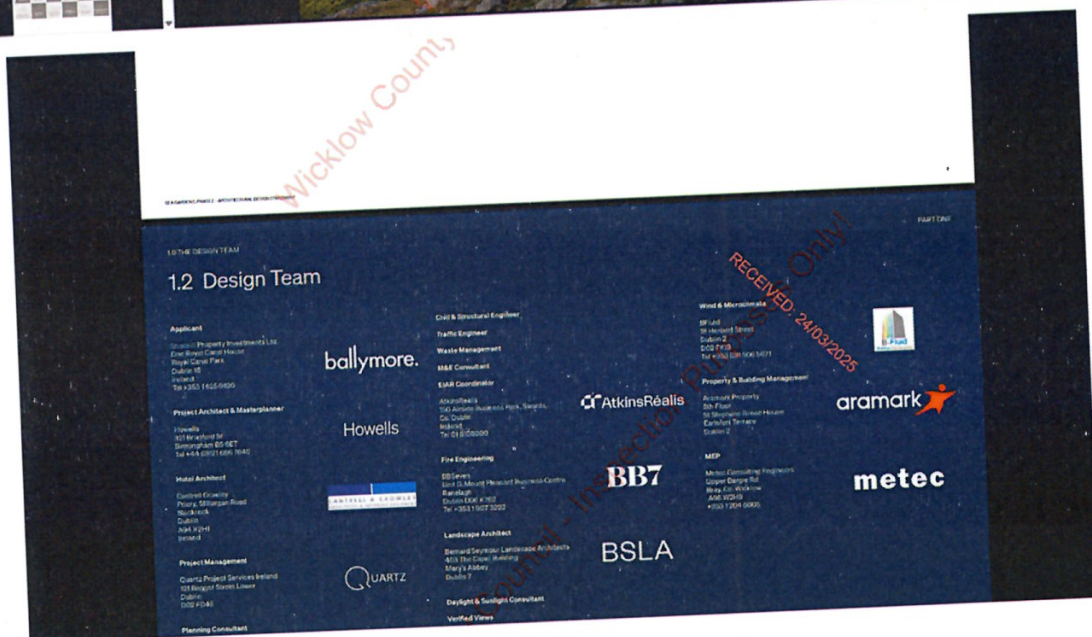
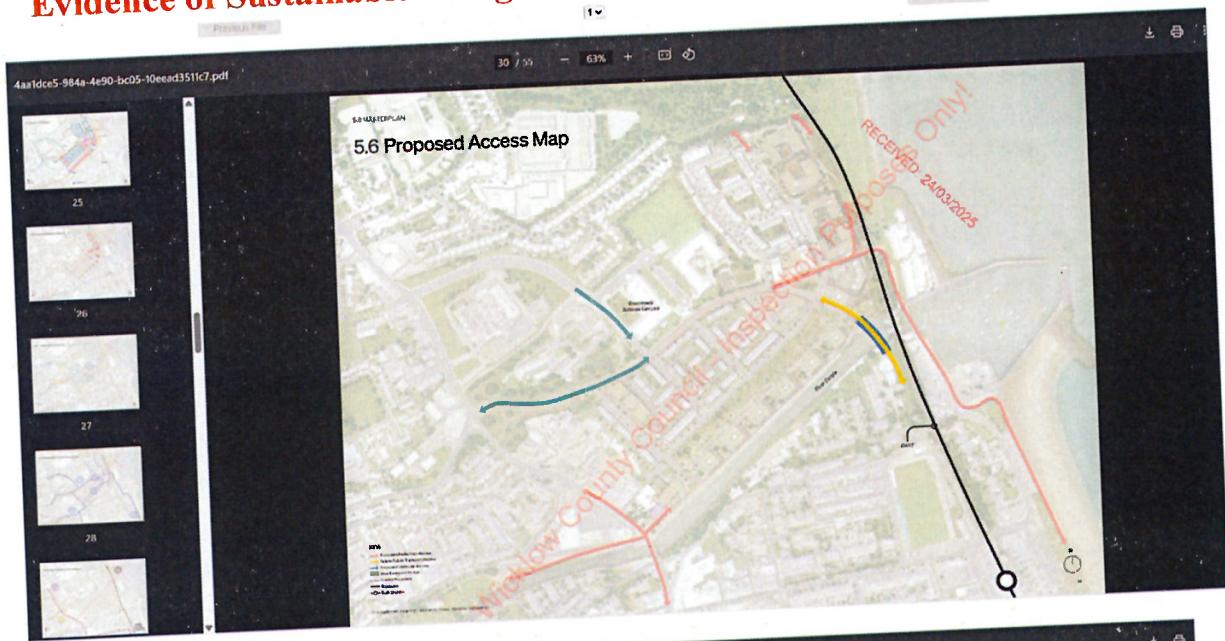


node layers

Fig 1 and 2 clearly showing Bridge size and location and height Source; Both pictures available from save Bray website



Evidence of Sustainable Bridge within MASTER PLAN OF sea gardens



The proposed bridge is also referenced within the Sea Gardens masterplan materials submitted by the applicant, Shankill Investment Properties, prepared by Howells, further indicating functional reliance on this unconsented infrastructure

 **Comhairle Contae Chill Mhantáin**
Wicklow County Council
Pleanáil, Forbairt Eacnamaíochta agus Tuaithe
Planning, Economic and Rural Development

Áras An Chontae / County Buildings
Cill Mhantáin / Wicklow
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Suíomh / Website: www.wicklow.ie

PLANNING & DEVELOPMENT ACTS 2000 (as amended)

NOTIFICATION OF DECISION TO GRANT

Shankill Property Investments Limited
C/O Carlos Lara Gonzalez
RPS Group - West Pier Business Campus
Dun Laoghaire
County Dublin
A96N6T7

Planning Register Number: 25/60207

Valid Application Received: 24/03/2025

Further Information Received Date: 08/08/2025

In pursuance of the powers conferred upon them by the above-mentioned Act, Wicklow County Council has by Order dated 30/09/2025 decided to **GRANT PERMISSION** for development of land, namely:-

reasonably assume - bridge here

mixed-use development comprising 293 no. residential units, commercial spaces (total gross floor area c. 10,778 sq.m), retail/retail services spaces (total gross floor area c. 8,155 sq.m), car and bicycle parking for residents and visitors, open spaces and associated supporting development infrastructure. The residential component will consist of: (i) 94 no. terraced houses (2-3 storeys in height) comprising 62 no. 3-bedrooms and 32 no. 4-bedrooms; all houses are provided with private open space, internal storage space, and refuse storage. (ii) 106 no. duplex own-door units (2-3 storeys in height) comprising 53 no. 2-bedrooms located at ground level and 53 no. 3-bedrooms at the upper floor level; all duplex own-door units are provided with private open space, internal storage space, and refuse storage. (iii) 61 no. apartments in Block E (3-15 storeys in height) consisting of 9 no. 1-bedroom, 35 no. 2-bedrooms, 9 no. 3-bedrooms and 8 no. 4-bedrooms and residential amenity spaces (c. 602 sq.m); all apartments are provided with balconies or terraces, internal storage space, and refuse storage within 1 no. internal refuse storage area on the undercroft floor level; (iv) 32 no. apartments in Block H (3-4 storeys in height) consisting of 18 no. 1-bedroom, 12 no. 2-bedrooms and 2 no. 3-bedrooms; all apartments are provided with balconies or terraces, internal storage space, and refuse storage within 2 no. internal refuse storage areas on the ground floor level; The commercial and retail/retail services component will consist of: (i) Block E comprising 1 no. public house (c. 804 sq.m), 2 no. retail units (combined c. 908 sq.m); (ii) Block G (1-2 storeys in height) comprising 3 no. retail units (total gross floor area c. 2,550 sq.m); (iii) Block H comprising 1 no. medical centre (c. 706 sq.m), 1 no. childcare facility (c. 762 sq.m), and 1 no. retail unit (c. 94 sq.m); and (iv) Block I (3-7 storeys in height) comprising 1 no. hotel of 150 no. rooms (c. 10,016 sq.m) with associated wellbeing centre and pool (c. 1,169 sq.m), wedding/function venue (c. 633 sq.m), rooftop restaurant (c. 883 sq.m), and 1 no. retail unit (c. 408 sq.m). In addition, the proposed development will also comprise the provision of supporting and ancillary infrastructure, including 532 car parking spaces, 1,003 bicycle parking spaces, open spaces, and all associated ancillary site works at Site largely within the Former Bray Golf Course Lands, Off Ravenswell Road and Dublin Road, Bray, Co. Wicklow

Ta an dtuairisc seo ar fáil i bhformáid eile ar iarratas.

Ambiguous language

The Phase Two grant of permission includes ambiguous references to “supporting ancillary infrastructure” and “supporting development” without specifying whether this relates to the proposed Sustainable Transport Bridge outside the red line boundary. In the context of the masterplan drawings and mobility diagrams, such wording could reasonably be interpreted as referring to the unconsented bridge. This lack of clarity creates uncertainty regarding which infrastructure is relied upon to satisfy access, safety and mobility requirements. Where interdependent works are described in broad terms rather than identified transparently, there

is a risk of project splitting and incomplete cumulative assessment, contrary to the principles of full and integrated environmental evaluation.

Compliance

Gerard O'Brien

From: Siobhan O'Brien
Sent: Thursday 16 October 2025 11:50
To: Gerard O'Brien
Subject: FW: Bray Bridge Update

compliance

From: Ken Sweeney <KSweeney@ballymoregroup.com>
Sent: Thursday 16 October 2025 11:33
To: Planning - Planning and Development Secretariat <plandev@wicklowcoco.ie>
Subject: FW: Bray Bridge Update

External Sender - From: (Ken Sweeney
<KSweeney@ballymoregroup.com>)
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Good morning planning,

I refer the email thread below. We recently received a Notification to Grant Permission ref 25/60207.

Condition 5a(i) where it states that we cannot commence until the pedestrian bridge at Fran O'Toole bridge commences.

You will see I have been in communication with your transportation / infrastructure team, who have confirmed that consultants have been appointed, and preliminary design has commenced.

Can we assume that the project has now commenced and this Condition 5a(i) is satisfied as it does not specifically state "commence construction"

I look forward to hearing from you in due course and happy to chat on a call if required.

Kind regards,

Ken Sweeney
Senior Development Manager

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+353 (0) 1 625 9100

ballymore.

Ballymore Group
One Royal Canal House
Royal Canal Park,
Dublin D15 DKW4

WICKLOW COUNTY COUNCIL

16 OCT 2025

PLANNING DEPT.

Condition 5(a)(i) prohibits commencement of Phase Two until the Fran O'Toole pedestrian and cycle infrastructure has physically commenced on site.

www.ballymoregroup.com

From: Fiachra O'Connor <FOConnor@wicklowcoco.ie>
Sent: 09 October 2025 14:35
To: Ken Sweeney <KSweeney@ballymoregroup.com>
Subject: RE: Bray Bridge Update

Hi Ken,

Thanks for getting in touch. Regarding the proposed upgrade works on the Fran O'Toole bridge, I can advise as follows:

- A consultant has been appointed to progress the scheme from Phase 3 Preliminary Design through to Phase 7 Close-Out and Review.
- The programme of delivery is 27 months. It is anticipated that construction works will commence in Q2 2027 (subject to Statutory processes, availability of funding etc).
- Specific to your query, I can confirm that the preliminary design phase has already commenced.

Regarding the planning conditions, I did not have any input or influence on this, so I would suggest that you contact the planning department directly to seek clarification on condition 5a(i).

Feel free to give me a call on my mobile number below if you have any further queries.

Kind Regards,

Fiachra O'Connor | A/Senior Executive Engineer Transportation, Infrastructure Delivery & Emergency Services
Address: Wicklow Council, Wicklow Administrative Centre, Phoenix, Greystown, Wicklow, Co. Wicklow

✉ Tel: +353 (0)1 271 20100
✉ Mob: +353 (0)87 271 2000
✉ E Mail: foconnor@wicklowcoco.ie
✉ Website: <http://www.wicklow.ie>



From: Ken Sweeney [mailto:KSweeney@ballymoregroup.com]
Sent: Monday 6 October 2025 16:23
To: Fiachra O'Connor
Subject: FW: Bray Bridge Update

Hi Fiachra,

I hope this email finds you well.

I work with Cathal Dalton in Ballymore, and we just received last week a decision on our Phase 2 planning application. You will see the decision (copy attached) includes a condition 5 relating to the commencement / delivery of the pedestrian / cycle way on Fran O'Toole Bridge. Condition 5 is shown below from planning ref 25/60207

2

The Senior Engineer of Wicklow County Council confirmed that they had no input into, or influence over, the design or delivery programme of the proposed bridge.

AN COIMISIÚN PLEANÁLA

28 OCT 2025

LTR DATED _____ FROM APD

LDG-

ACP-

PL-500165-WW



Newspaper Evidence: Published Expert Commentary on Swan Flight Path and Collision Risk

A published newspaper article (as seen in Appendix and Evidence) provides corroborative testimony from experienced wildlife rescuers and long-standing volunteers who have monitored swan behaviour in Bray Harbour and along the River Dargle for many years. These contributors state that the harbour swans regularly fly up and down the river corridor using the precise route on which the proposed Sustainable Transport Bridge would be located. The article records historical incidents in which swans have been injured or killed through collision with overhead infrastructure in the same general flight corridor, with reports noting that between fifty and sixty swans were impacted by collisions with power and transport cables over the course of several years.

The individuals quoted have practical experience in rescuing swans that have collided with these structures and reference established visibility challenges, including low light conditions, mist and poor manoeuvrability. The article also notes that Bray Town Council previously recognised this issue more than a decade ago through the installation of reflectors on cables to reduce collision risk.

In the context of this appeal, this material constitutes an independent and publicly accessible source confirming that the swan flight path is both established and collision sensitive. It aligns with citizen science records, National Biodiversity Data Centre mapping, photographic logs and seasonal observation patterns referenced elsewhere in this submission.

The publication demonstrates that collision risk in this corridor is a known, recurring and documented phenomenon rather than a speculative concern.

The article therefore supports the position that structures of height, with cables, reflective surfaces or lighting effects placed within this corridor require formal assessment under the Habitats and Birds Directives. It further substantiates the importance of retaining unobstructed flight space in this location in order to prevent foreseeable harm to protected species.

Evidence and Appendix -

Mapping and Species Evidence

All relevant mapping is publicly available and clearly shows the relationship between the river corridor, the functional floodplain and the proposed building site. While not every map is reproduced within this document, all pertinent mapping can be located in the public planning file and associated online datasets. The illustrative example included here demonstrates the floodplain extent, site layout and the proximity of the proposed development to sensitive areas. This material should be read alongside the other mapping referenced in the Appendix and Evidence.

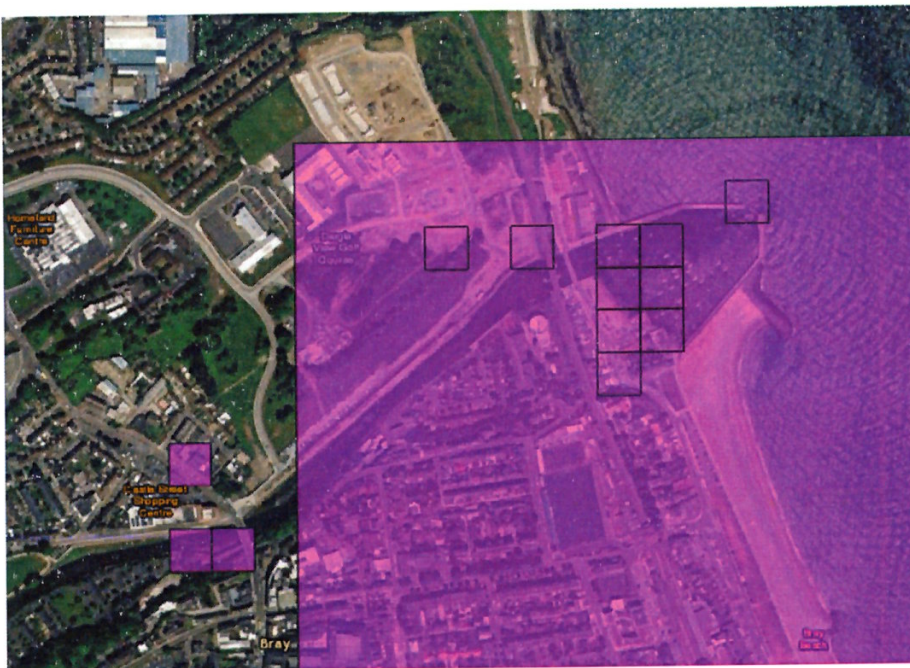
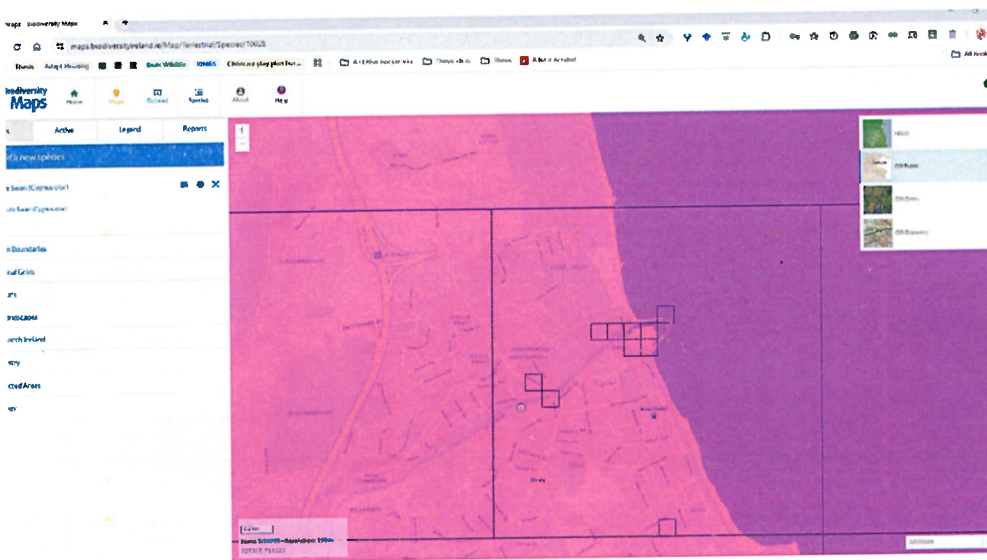
The National Biodiversity Data Centre mapping evidence is material to this appeal because it provides state-verified, spatially precise records of protected species within and adjoining the Sea Gardens Phase Two lands and the proposed Sustainable Transport Bridge alignment. The confirmed presence of Mute Swan (*Cygnus olor*) and Otter (*Lutra lutra*) within overlapping one hundred metre and two-kilometre grid cells engages the legal test for a likely significant effect under Article 6(3) of the Habitats Directive. In such circumstances, a full Stage Two Appropriate Assessment supported by a Natura Impact Statement is required prior to consent. Screening alone is not legally sufficient where protected species are recorded on or adjacent to the development footprint.

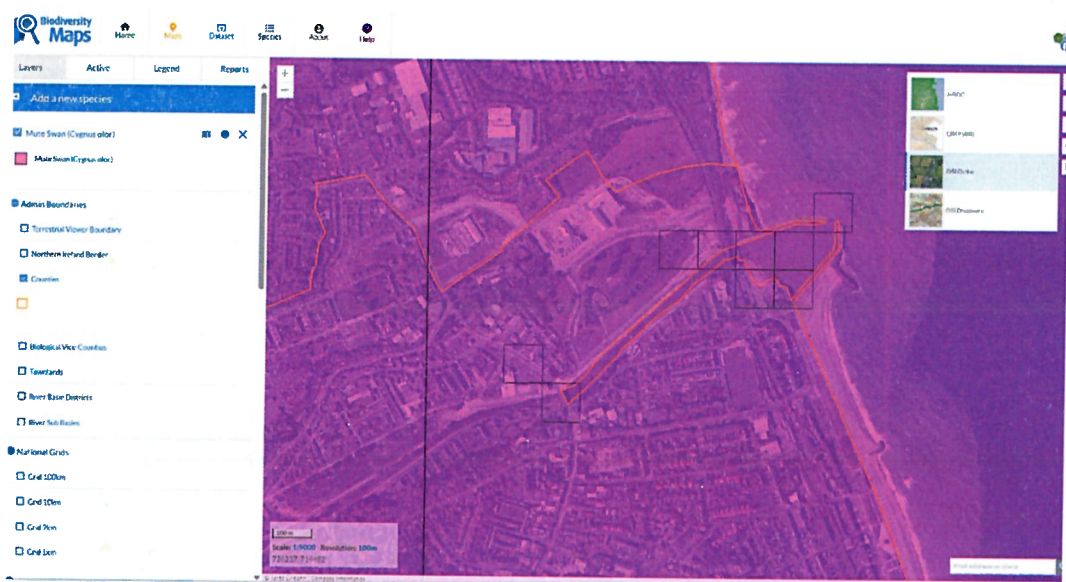
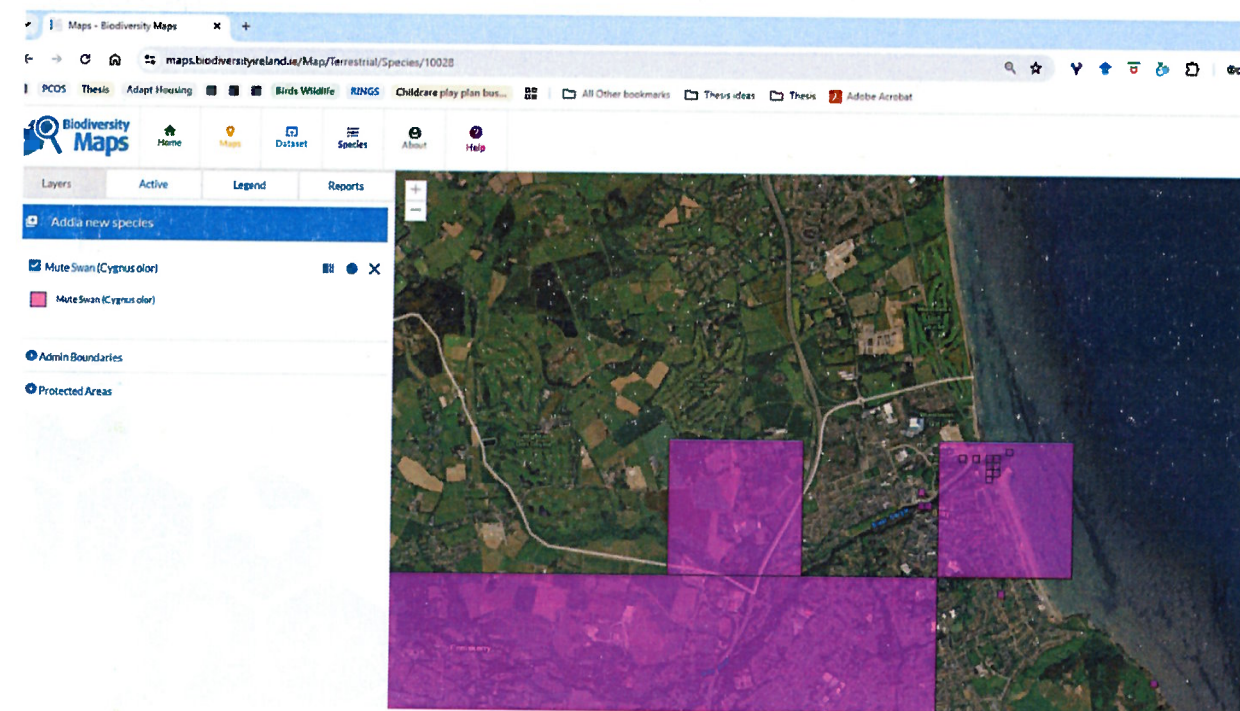
These records demonstrate continuous occupancy along the River Dargle and Bray Harbour, confirming the corridor's function as a foraging, movement and refuge pathway. This is consistent with functional ecological connectivity between upland habitats and the coastal zone and requires assessment of cumulative and in-combination effects, including with the unconsented Sustainable Transport Bridge. The mapping furthermore confirms that these records coincide with the same floodplain lands on which Phase Two construction and bridge approaches are proposed, substantiating collision, disturbance and displacement risk to protected fauna.

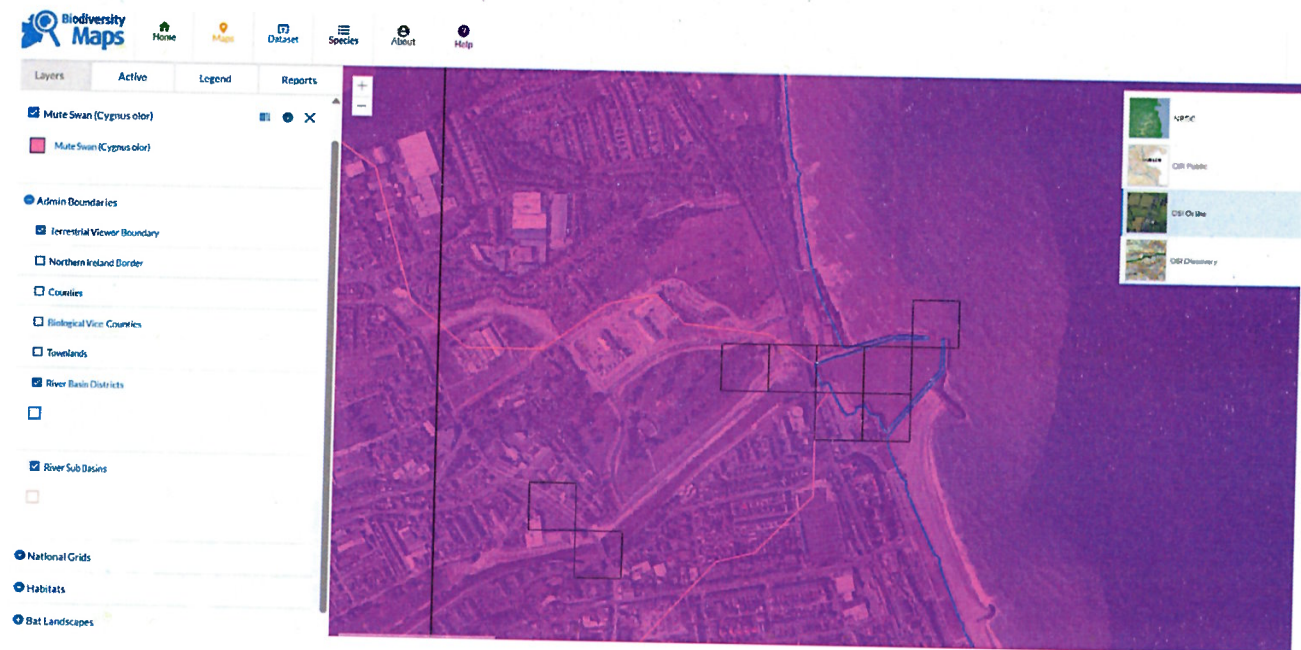
The data in question are generated by the State's national biodiversity authority and cannot be set aside without reasoned scientific justification. Their omission from the planner's report and environmental screening exercise represents a procedural flaw and engages the

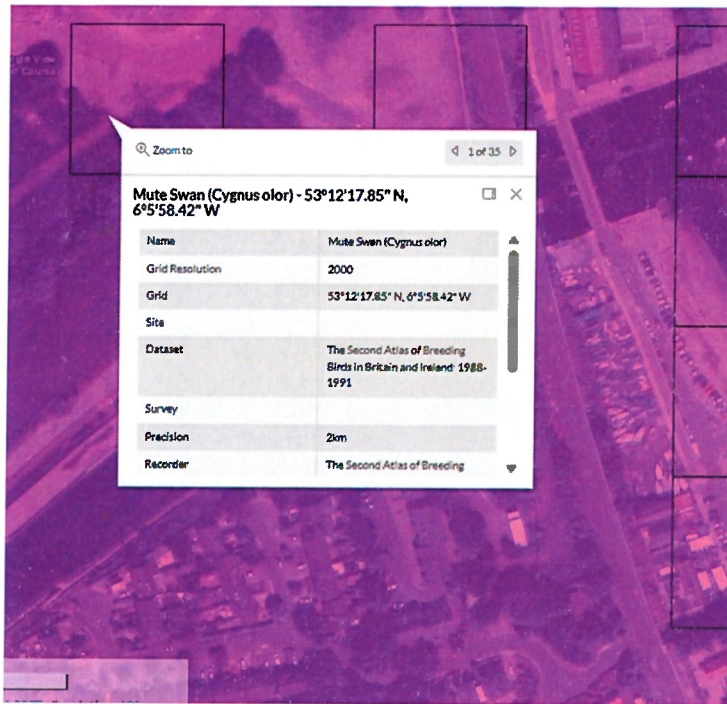
precautionary principle. The verified overlap between the development footprint and recorded habitats also activates obligations under the Environmental Liability Directive. Proceeding in the absence of mitigation or lawful assessment risks biodiversity damage for which liability may attach.

In conclusion, the National Biodiversity Data Centre mapping confirms that protected species occur where construction, access routes and associated infrastructure are proposed. This evidence demonstrates that the permission was granted without assessment to the standard required by the Habitats and Birds Directives and the Wildlife Acts. It supports the position that the decision is procedurally defective and requires refusal or remittal for full Environmental Impact Assessment and Stage Two Appropriate Assessment.

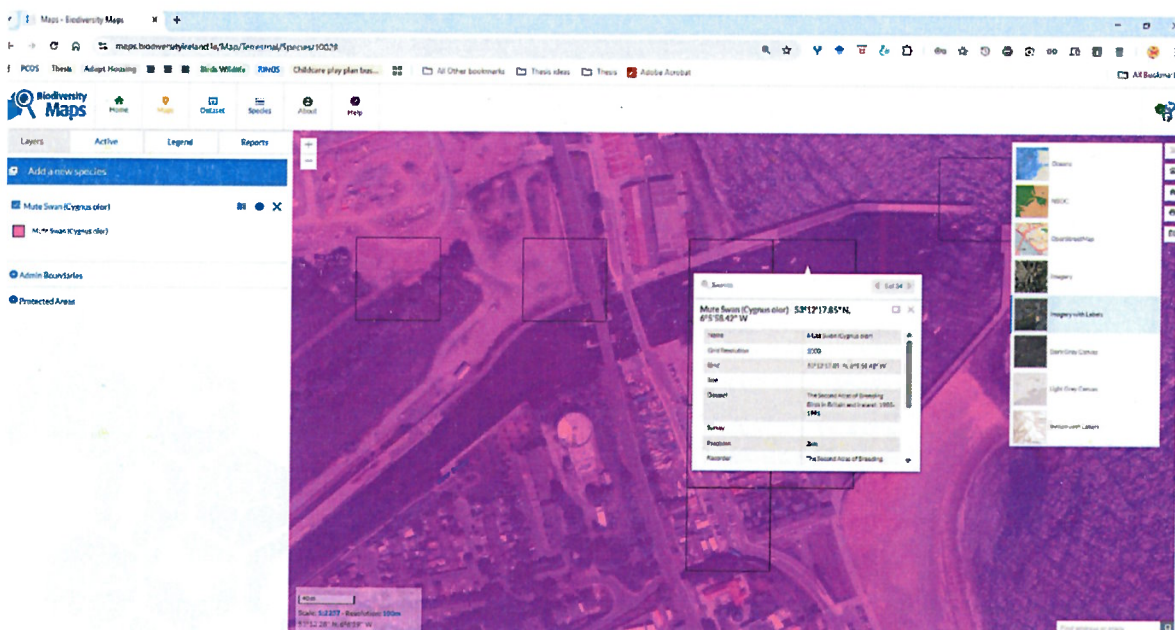






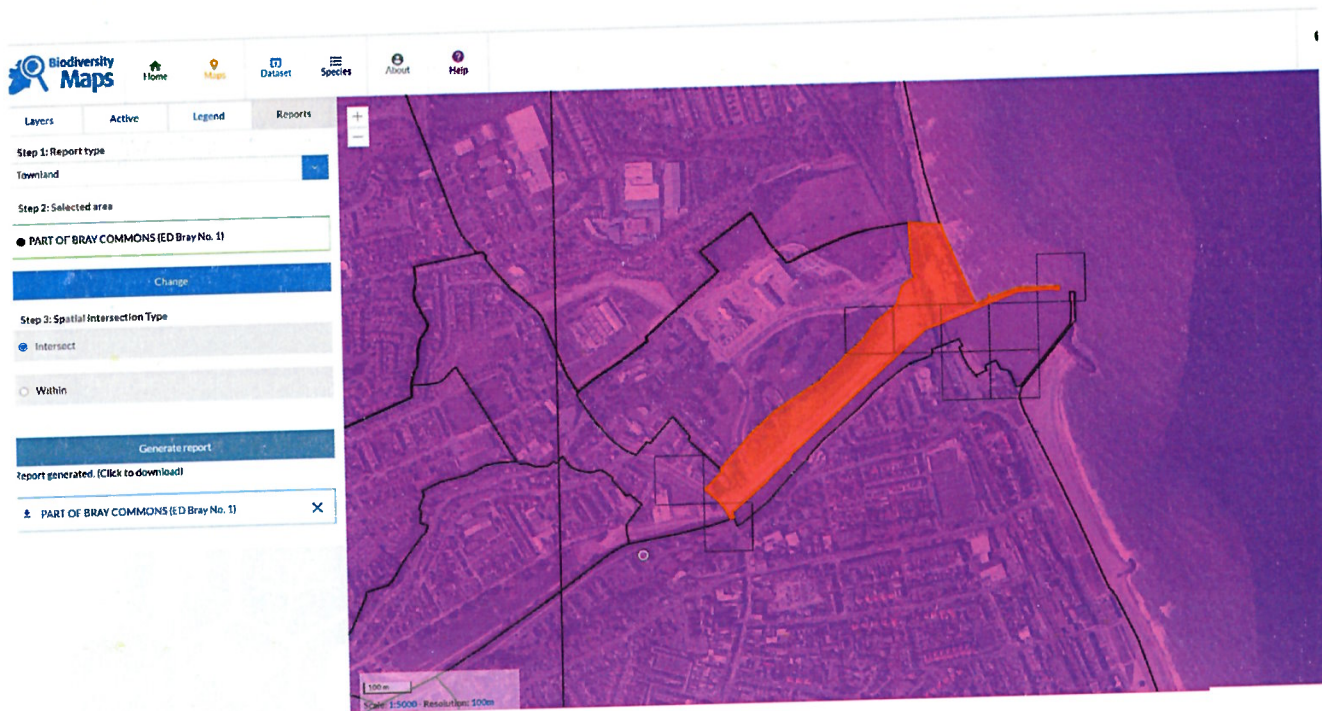


98	Part of Bray Commons (ED Bray No. 1)	Bird	Mute Swan (Cygnus olor)	32	20/03/2023	Birds of Ireland	Protected Species: Wildlife Acts Threatened Species: Birds of Conservation Concern Threatened Species: Birds of Conservation Concern >> Birds of Conservation Concern - Amber List
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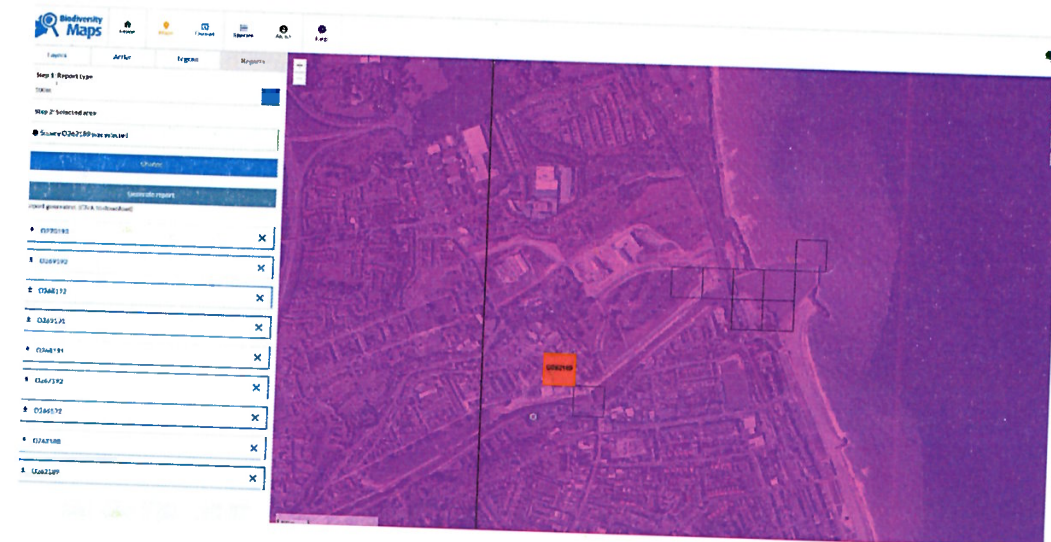




A	B	C	D	E	G	H	I
 Species list for 'PART OF BRAY COMMONS (ED Bray No. 1)'							
							
Quality of Information The National Biodiversity Data Centre makes every effort to ensure the quality of the information available on this website and updates the information regularly. Before relying on the information on this site, however, users should carefully evaluate its accuracy, currency, completeness and relevance for their purposes. The National Biodiversity Data Centre cannot guarantee and assumes no legal liability or responsibility for the accuracy, currency or completeness of the information. To assist the Centre in the provision of high quality information, should you identify an error in any of the information provided, please notify the Centre and every effort will be made to rectify the error.							



A	B	C	D	E	F	G	I	J
Grid square	Species group	Species name	Record count	Date of last record	Title of dataset	Designation		
Custom	Bird	Mute Swan (<i>Cygnus olor</i>)	1	31/08/2018	Birds of Ireland	Protected Species: Wildlife Acts Threatened Species: Birds of Conservation Concern Threatened Species: Birds of Conservation Concern >> Birds of Conservation Concern - Amber List		
Custom	Terrestrial mammal	Otter (<i>Lutra lutra</i>)	1	04/09/2017	Mammals of Ireland 2016-2025	Protected Species: EU Habitats Directive Protected Species: EU Habitats Directive >> Annex II Protected Species: EU Habitats Directive >> Annex IV Protected Species: Wildlife Acts		



Species list for O2619



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28 OCT 2025

LTR DATED _____ FROM APP

LDG-
App. PL-500165-WW

Quality of Information

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Custom	Terrestrial mammal	Hedgehog (<i>Erinaceus europaeus</i>)	2	30/08/2022	Hedgehogs of Ireland	Invasive Species: High Risk Invasive Species (2013 Report) Invasive Species: Regulation S.I. 374/2024 (Ireland)
Custom	Terrestrial mammal	Leisler's Bat (<i>Nyctalus leisleri</i>)	29	07/08/2020	National Bat Database of Ireland	Protected Species: Wildlife Acts Protected Species: EU Habitats Directive Protected Species: EU Habitats Directive >> Annex IV Protected Species: Wildlife Acts
Custom	Terrestrial mammal	Otter (<i>Lutra lutra</i>)	1	07/05/1980	Otter Survey of Ireland 1982	Protected Species: EU Habitats Directive Protected Species: EU Habitats Directive >> Annex II Protected Species: EU Habitats Directive >> Annex IV Protected Species: Wildlife Acts
Custom	Terrestrial mammal	Soprano Pipistrelle (<i>Pipistrellus pygmaeus</i>)	25	06/08/2020	National Bat Database of Ireland	Protected Species: EU Habitats Directive Protected Species: EU Habitats Directive >> Annex IV Protected Species: Wildlife Acts