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# **Screening for Appropriate Assessment**

Proposed Residential Development at the  
East Wall Road, Dublin 3

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## Executive Summary

This *Screening for Appropriate Assessment* report has been prepared by NM Ecology Ltd on behalf of Dublin City Council (the applicant), as part of a Part 8 application at East Wall Road, Dublin 3. The proposed development will involve the demolition of a derelict office building, the clearance of the remainder of the site, and the construction of up to 68 new residential units.

In accordance with their obligations under the *European Communities (Birds and Natural Habitats) Regulations 2011* (SI 477/2011), the competent authority must assess whether the proposed development could have 'likely significant effects' on any Natura 2000 sites. This document provides supporting information to assist the authority with an Appropriate Assessment screening exercise, including: a description of the proposed development, a review of the site's environmental setting, details of Natura 2000 sites within the potential zone of impact, an appraisal of *source-pathway-receptor* relationships, and an assessment of potential impacts.

Hydrological and hydrogeological connections to the *South Dublin Bay and River Tolka Estuary SPA* were considered, but subsequently ruled out. As a result, there are no pathways to this or any other Natura 2000 site within 5 km of the proposed development site. Therefore, we conclude that the proposed development will not cause direct, indirect or in-combination effects on any Natura 2000 sites, and thus that Appropriate Assessment is not required.

## **1 Introduction**

### **1.1 Background to Appropriate Assessment**

Approximately 10% of the land area of Ireland is included in the European Network of Natura 2000 sites, which includes Special Protection Areas (SPAs) to protect important areas for birds, and Special Areas of Conservation (SACs) to protect a range of habitats and species. Legislative protection for these sites is provided by the *European Council Birds Directive (79/409/EEC)* and *E.C. Habitats Directive (92/43/EEC, as amended)*, which are jointly transposed into Irish law by the *European Communities (Birds and Natural Habitats) Regulations 2011 (SI 477/2011, as amended)*.

Regulation 42 (1) states that: “*Screening for Appropriate Assessment of a plan or project for which an application for consent is received [...] 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 [any Natura 2000 sites].*” To ensure compliance with this regulation, planning authorities must screen all planning applications for potential impacts on Natura 2000 sites. Supporting information may be requested from the applicant to assist with this process.

This document provides background information to assist the competent authority with a *Screening for Appropriate Assessment* exercise for the proposed development. It includes a description of the proposed development, a review of the site’s environmental setting, details of Natura 2000 sites within the potential zone of impact, an appraisal of *source-pathway-receptor* relationships, and an assessment of potential impacts.

### **1.2 Statement of authority**

This report was written by Nick Marchant, the principal ecologist of NM Ecology Ltd. He has an MSc in Ecosystem Conservation and Landscape Management from NUI Galway and a BSc in Environmental Science from Queens University Belfast. He is a member of the Chartered Institute of Ecology and Environmental Management, and operates in accordance with their code of professional conduct.

He has fourteen years of professional experience, including eleven years as an ecological consultant, one year as a local authority biodiversity officer, and two years managing an NGO in Indonesia. He provides ecological assessments for developments throughout Ireland and Northern Ireland, including wind farms, infrastructural projects (roads, water pipelines, greenways, etc.), and a range of residential and commercial developments.

### 1.3 Methods

This report has been prepared with reference to the following guidelines:

- *Appropriate Assessment of Plans and Projects in Ireland* (Department of the Environment, Heritage and Local Government, 2009)
- *OPR Practice Note PN01: Appropriate Assessment Screening for Development Management* (Office of the Planning Regulator 2021)
- *Assessment of plans and projects significantly affecting Natura 2000 sites: Methodological guidance on the provisions of Article 6(3) and (4)*, E.C., 2002.
- *Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater and Coastal* (Chartered Institute of Ecology and Environmental Management, 2018)

In accordance with Section 3.2 of *Appropriate Assessment of Plans and Projects in Ireland*, the screening exercise was conducted using the following steps:

1. Description of the project and local site characteristics
2. Identification of relevant Natura 2000 sites, and compilation of information on their qualifying interests and conservation objectives
3. Assessment of potential impacts upon Natura 2000 sites, including:
  - Direct impacts (e.g. loss of habitat area, fragmentation)
  - Indirect impacts (e.g. disturbance of fauna, pollution of surface water)
  - Cumulative / 'in-combination' effects associated with other concurrent projects
4. Screening Statement with conclusions

A desk-based study was carried out using data from the following sources:

- Plans and specifications for the proposed development
- Engineering documents prepared by RPS Group for the proposed development, including the *Hydrogeological and Flood Risk Assessment Report*, *Contaminated Land Assessment*, *Drainage and Watermain Design Report*, *Outline Construction and Demolition Waste Management Plan*, and *Outline Construction Management Plan*
- Qualifying interests / conservation objectives of Natura 2000 sites from [www.npws.ie](http://www.npws.ie)
- Bedrock, soil, subsoil, surface water and ground water maps from the Geological Survey of Ireland webmapping service ([www.gsi.ie/mapping.htm](http://www.gsi.ie/mapping.htm)), the National Biodiversity Data Centre (<http://maps.biodiversityireland.ie/>), and the Environmental Protection Agency web viewer (<http://gis.epa.ie/Envision/>)
- The *Dublin City Development Plan 2016 - 2022*, and details of permitted or proposed developments from the local authority's online planning records

All web-based resources were accessed between March and December 2021. A walkover survey was carried out on the 12<sup>th</sup> of May 2021.

## 2 Description of the Project

### 2.1 Environmental setting

#### Site location and surroundings

The proposed development site (hereafter referred to as the Site) is adjacent to East Wall Road in the east of Dublin City Centre (Figure 1). It formerly contained a concrete production facility, which comprised a number of industrial buildings and concrete-surfaced storage yards. Most of the buildings were demolished in 2009, and the majority of the Site now consists of fragmented concrete surfaces. There were no green areas in the original development, but some parts of the Site have been colonised by ruderal vegetation and scrub in recent years.



**Figure 1. Site and immediate surroundings**

The northeastern boundary of the Site is formed by East Wall Road, and the River Tolka is located on the far side of the road, approx. 15 m from the site boundary. The southeastern and southwestern boundaries of the Site are formed by residential gardens, and the north-western boundary by a fire station. The broader surroundings consist mainly of residential developments, with some public open space (Fairview Park) and industrial units.

#### Geology and soils

The site is underlain by dark limestone and shale, which is a locally-important aquifer. Subsoils and soils are made ground, and parts of the Site consists of damaged concrete surfaces.

### Hydrology

The River Tolka is located 15m northeast of the proposed development site, on the far side of East Wall Road. It is estuarine at this location, and thus subject to tidal movements. It flows to the east and meets the coast at Eastpoint Causeway, approx. 750 m downstream.

Under the Water Framework Directive status assessments 2013 – 2018, the freshwater section of the River Tolka (which is upstream of the Site) is of Poor status, the transitional waters of the River Tolka are of Moderate status, and the coastal waters of Dublin Bay are of Good status.

## **2.2 Site investigations**

Ground investigations, groundwater monitoring and contaminant testing was undertaken at the Site in 2021, and the results are presented in the *Hydrogeological and Flood Risk Assessment Report* and *Contaminated Land Assessment* (RPS 2021) that accompany this application. Information relevant to this screening assessment is summarised below.

### Groundwater and soils

Potential groundwater connections between the Site and River Tolka are considered in Section 3.2.2 'Hydraulic Connection' of the *Hydrogeological and Flood Risk Assessment Report*. Standpipe data from the Site was compared with tide levels in Dublin Port, as follows:

- *"The observed maximum groundwater levels in BH4 & BH9 are 0.50 and 0.41 mOD respectively, while the maximum tide level at Dublin port is in the order of 1.4 mOD during the recorded period.*
- *This significant level difference between the Dublin Port / Tolka River Water level and the borehole groundwater level suggests no active direct hydraulic connection between these.*
- *Any temporal variations in the groundwater levels during the recorded period can be considered as imperceptible."*

On this basis, it is concluded that *"there does not appear to be a hydraulic connection between groundwater at / in the vicinity of the proposed development site and the Tolka river."*

### Contaminated land

Some contaminants have been recorded at the Site, as reported in the *Contaminated Land Assessment* (RPS 2021). Soil chemistry analyses were undertaken in July 2021, and some samples exceeded Landfill Waste Acceptance Criteria Limits, e.g. for total organic carbon, total petroleum hydrocarbons and / or metals. These contaminants will be removed from the Site during the construction of the proposed development.

### Existing drainage infrastructure

An underground utility survey of the Site and surrounding area was carried out in 2021; key results are presented in the *Hydrogeological and Flood Risk Assessment Report*. Based on the

results of the survey, the engineers have concluded that *“it is likely that all surface water generated on site is infiltrating to ground within the site. There is no evidence of stormwater infrastructure out falling to the Tolka River.”* On this basis, it assumed that all rainwater on the Site soaks to groundwater.

### **2.3 Description of the proposed development**

The proposed development will consist of up to 68 no. residential units, comprising 1 – 3 bedroom apartments. The primary access point will be from East Wall Road, and it will lead to paved internal roads and parking spaces. Communal outdoor space will be provided.

#### Contaminated land remediation

Contaminants that are potentially hazardous to human health were found at a number of locations within the Site, including elevated levels of Total Petroleum Hydrocarbons (TPHs), Polycyclic Aromatic Hydrocarbons (PAHs) and asbestos. A disused oil tank is also present.

To avoid negative impacts on human health, and to comply with the Dublin City Development Plan, the contaminated land will be remediated at the start of the construction process. This will involve the removal and off-site disposal of up to 4.00 m of soil / made ground in residential and open space areas, and up to 1.20 m of soil / made ground under the proposed car park. The oil tank will also be removed. Any surface water or groundwater containing these contaminants will either be removed from the site in sealed containers for treatment at a specialist facility, or will be channelled to a soakaway within the Site.

When complete, the excavations will be backfilled with clean material.

#### Operational foul and surface water management

Foul water will be discharged to a local authority foul sewer on East Wall Road and conveyed to the Ringsend Waste Water Treatment Works.

To comply with the Dublin City Development Plan, surface water from the proposed development will be managed using Sustainable Urban Drainage (SUDS) principles. Green roofs will provide attenuation and evapotranspiration, and permeable paving will be used in some areas to allow soakage to ground. Runoff from roofs and hard surfaces will be collected in gutters and drains, passed through hydrocarbon and silt interceptors, and attenuated in a tank in the north of the Site. It will then be discharged at a controlled rate to a combined sewer via East Wall Road, as agreed by Irish Water. .

#### **2.4 Other nearby developments (potential in-combination effects)**

The Site is in an urban setting in Dublin city centre. It is included in zone Z4 of the *Dublin City Council Development Plan 2016 – 2022*, for which the planning objective is “*to provide for and improve mixed-services facilities*”. It was included on the vacant sites register for Dublin City Council; this signifies that the local authority considers it suitable for housing but it has not yet been put forward for development.

Live and recently approved planning applications in the vicinity of the site were reviewed on the online planning records of Dublin City Council (DCC). An application was submitted in January 2021 at 14D Poplar Row (north-west of the Site) for the demolition of a dwelling and construction of a mixed-use development comprising a commercial unit and a number of one-bedroom apartments (planning reference 2108/21). It was accompanied by an Appropriate Assessment screening report that concluded there was no risk of impacts on Natura 2000 sites, and DCC concurred with this conclusion in the Planner’s Report. There are a number of other similar residential developments along Poplar Row (e.g. 3900/18, 3601/18) for which similar screening conclusions were reached.

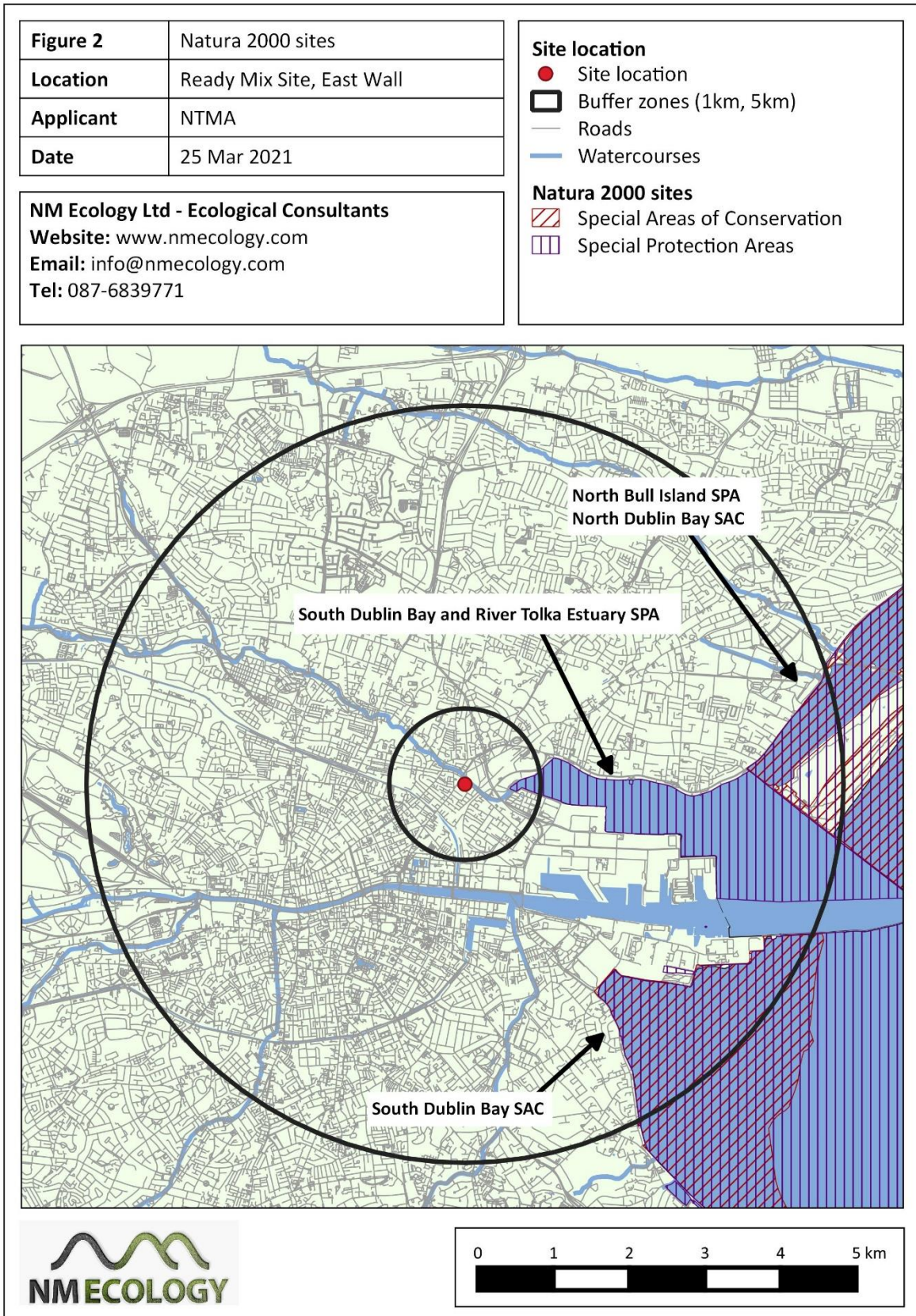
All other recent planning applications in the surrounding area were for small-scale works such as residential modifications / extensions, or changes of use. None of these developments were considered likely to cause in-combination effects.

### **3 Description of Natura 2000 sites**

#### **3.1 Identification of Natura 2000 sites within the zone of influence**

The Site is not located within or adjacent to any Natura 2000 sites. Potential indirect impacts were considered within a zone of influence of 5km, and along associated watercourses. The locations of these sites are shown in Figure 2, and details are provided in Table 1.





**Table 1: Natura 2000 sites of relevance to the proposed development site**

Site Name	Distance	Qualifying Interests
South Dublin Bay and River Tolka Estuary SPA (site code 4024)	0.6 km east	<b>Habitats:</b> tidal / coastal wetlands <b>Special conservation interests:</b> light-bellied brent goose, oystercatcher, ringed plover, grey plover, knot, sanderling, dunlin, bar-tailed godwit, redshank, black-headed gull (over-wintering populations), arctic tern, roseate tern (passage migrants), and common tern (breeding populations)
South Dublin Bay SAC (210)	3.1 km south-east	<b>Annex I habitats:</b> inter-tidal mudflats / sandflats <b>Annex II species:</b> none
North Dublin Bay SAC (206)	3.7 km east	<b>Annex I habitats:</b> inter-tidal mudflats / sandflats (including patches of <i>Salicornia</i> and other annuals), <i>Spartina</i> swards, salt marshes, annual vegetation of drift lines, embryonic shifting dunes, white dunes, grey dunes, dune slacks <b>Annex II species:</b> petalwort <i>Petalophyllum ralfsii</i>
North Bull Island SPA (4006)	3.7 km east	<b>Habitats:</b> tidal / coastal wetlands <b>Special conservation interests:</b> light-bellied brent goose, shelduck, teal, pintail, shoveler, oystercatcher, golden plover, knot, sanderling, dunlin, black-tailed godwit, bar-tailed godwit, curlew, redshank, turnstone, black-headed gull (all are over-wintering populations)

### 3.2 Conservation objectives

The standard conservation objective for all SACs and SPAs in Ireland is “to maintain or restore the favourable conservation condition of the qualifying interests for which the SAC / SPA has been selected”. In addition, the Department of Housing, Local Government and Heritage has produced detailed conservation objectives for the Natura 2000 sites listed in Table 1. They can be viewed on the website of the National Parks and Wildlife Service (<http://www.npws.ie/protected-sites>), but are not reproduced here in the interests of brevity.

### 3.3 Identification of potential pathways for indirect impacts

Indirect impacts can occur if there is a viable pathway between the source (the Site) and the receptor (the habitats and species for which a Natura 2000 site has been designated). The most common pathway for impacts is surface water, e.g. if a pollutant is washed into a river and carried downstream into a Natura 2000 site. Other potential pathways are groundwater, air (e.g. airborne dust or sound waves), or land (e.g. flow of liquids, vibration). The zone of effect for hydrological impacts can be several kilometres, but for air and land it is rarely more than

one hundred metres. An appraisal of potential pathways for impacts on Natura 2000 sites is provided below.

The *South Dublin Bay and River Tolka Estuary* SPA is located 600m to the east of the Site, or approx. 750 m downstream via the Tolka Estuary. The SPA was designated to protect a range of over-wintering bird species that feed on invertebrates and / or algae in intertidal habitats, as well as some tern species that nest on pontoons in the River Liffey estuary. There is currently no surface water connection between the Site and the River Tolka, because all rainwater on the Site currently soaks to groundwater (refer to Section 2.2). There is no overland pathway between the Site and the River Tolka, because there is a 1 m-high wall between East Wall Road and the river. Groundwater testing demonstrated that there is no groundwater connection between the Site and the River Tolka or coastal waters (refer to Section 2.2), so this can be ruled out as a pathway. A pathway via air can be ruled out due to the distance involved.

The *North Bull Island* SPA, *North Dublin Bay* SAC and *South Dublin Bay* SAC are located in Dublin Bay, between 3.1 and 3.7 km from the Site. The SPA has been designated for a similar range of over-wintering bird species, and the SACs for a range of coastal and intertidal habitats. As noted above, there are no pathways between the Site and the River Tolka. This, in turn, rules out any hydrological pathways to the other SPA and SACs in Dublin Bay. Pathways via groundwater, land and air can be ruled out due to the distances involved.

In summary, all pathways to the Natura 2000 sites in Dublin Bay were ruled out.

### **3.4 Habitat suitability for SPA bird species**

The *South Dublin Bay and River Tolka Estuary* SPA and *North Bull Island* SPA support a range of over-wintering bird species. The main habitats of these birds are the coastal mudflats and sandflats of Dublin Bay, but some species also fly inland to feed in terrestrial habitats, including brent geese that feed on grass, and waders (e.g. curlew, oystercatcher) that feed on soil invertebrates. These bird species are relatively large and require some time to take flight, so they usually avoid areas with high levels of human disturbance, and are particularly wary of dogs. Therefore, the inland sites with highest levels of SPA bird activity are typically large, open grassy areas that have relatively low levels of human activity.

The Site consists almost entirely of concrete surfaces, with no suitable feeding areas for the SPA bird species. It is also located in an urban area with a high degree of disturbance. Therefore, we conclude that it does not provide a suitable inland feeding area for any of the SPA bird species.

## **4 Assessment of potential impacts**

### **4.1 Direct impacts**

The Site is not located within or adjacent to any Natura 2000 sites, so there is no risk of habitat loss, fragmentation or any other direct impacts.

### **4.2 Indirect impacts**

#### Contaminated land remediation (construction phase)

As noted in Section 2.3, contaminated soils will be removed from the Site at the start of the construction process. This will involve the removal and off-site disposal of up to 4.00 m of overburden in residential and open space areas, and up to 1.20 m of overburden under the proposed car park. The oil tank will also be removed. Surface water or groundwater containing these contaminants will either be removed from the site in sealed containers for treatment at a specialist facility, or will be channelled to a soakaway within the Site.

The contaminated land remediation is necessary for the protection of human health and to comply with the Dublin City Development Plan, and is not considered a mitigation measure in the context of Appropriate Assessment. Further details are provided in Section 5.

Contaminated material will be removed from the Site in sealed containers. Some contaminated surface water or groundwater may be allowed to soakaway within the Site, but there is no groundwater pathway to any Natura 2000 sites (refer to Section 3.3). Therefore, there is no risk of any contaminants reaching the Natura 2000 sites in Dublin Bay, and thus no risk of negative impacts on their qualifying interests.

#### Other pollutants during construction works (construction phase)

When the above measures are complete, the construction of the proposed development will commence. Construction works generate fine sediments, and may occasionally cause accidental spills of oil or other toxic chemicals, which can be harmful to aquatic / marine habitats and species.

There is no existing surface water drainage infrastructure within the Site, and all rainfall on the Site soaks to groundwater (refer to Section 2.2). The Site has no surface water or groundwater connection with the River Tolka or coastal waters (refer to Section 3.3). Therefore, there is no risk of any pollutants reaching the Natura 2000 sites in Dublin Bay, and thus no risk of negative impacts on their qualifying interests.

#### Foul water management (operational phase)

When the development is operational, foul water will be discharged to a local authority foul sewer on East Wall Road and conveyed to the Ringsend Waste Water Treatment Works

(WWTW). It is the responsibility of Irish Water to oversee the treatment of foul water in the WWTW, and to ensure that it does not have significant effects on Natura 2000 sites off the Dublin coast.

#### Surface water management (operational phase)

Surface water will be managed using Sustainable Urban Drainage System (SUDS) principles. Green roofs will provide attenuation and evapotranspiration, and permeable paving will be used in some areas to allow soakage to ground. Runoff from roofs and hard surfaces will be collected in gutters and drains, passed through hydrocarbon and silt interceptors, and attenuated in a tank in the north of the Site.

It will then be discharged at a controlled rate to a combined sewer via East Wall Road, as agreed with Irish Water. This scenario does not pose any risk to the Natura 2000 sites in Dublin Bay, as the combined sewer would convey the water to the Ringsend WWTW, and because there is no groundwater connection to either the River Tolka or coastal waters (refer to Section 3.3).

### **4.3 Potential in-combination effects**

Some recent planning applications along Poplar Row were identified in Section 2.4. In all cases potential impacts on Natura 2000 sites were ruled out at the screening stage. As the proposed development poses no risk of direct or indirect impacts on Natura 2000 sites, and similar conclusions were reached for all other nearby planning applications, there is no risk of in-combination effects.

## **5 Notes regarding potential mitigation measures**

### **5.1 Background**

Screening for Appropriate Assessment is based on fixed aspects of the development's design, but cannot consider mitigation measures. There has been a great deal of case law in Ireland in recent years regarding what should or should not be considered a mitigation measure in the context of Appropriate Assessment. Further guidance is provided in the Office of the Planning Regulator's Guidance Note PN01, as follows:

*“The understanding of this issue largely comes from European case law. Following the ‘People Over Wind’ and other judgements, it is clear that in cases where measures are wholly or partially included in order to avoid or reduce impacts to European sites, then they cannot be considered at screening.*

*The rationale for this is that taking such measures into account at screening would undermine the Directive's intention that projects which might affect European sites are carefully assessed and any ‘mitigation’ measures considered as part of this process (i.e. through appropriate assessment).*

*When considering whether certain measures or features of a proposed development such as ‘best practice construction methods’ constitute mitigation measures, the key consideration is what the measures are objectively intended to achieve. If they are wholly or partially included in order to avoid or reduce impacts to European sites, then they cannot be considered at screening.*

*If the purpose of the measure is not to avoid or reduce adverse effects on European sites, then their inclusion in the project does not invalidate the screening, so long as it is clear that the planning authority has not considered such measures in reaching a conclusion of no significant effect.*

*A statement which makes clear that no account was taken of mitigation measures in concluding that the project can be screened out for appropriate assessment should be included in the screening determination”*

## **5.2 Statement regarding mitigation measures for this project**

With reference to the above guidance from the OPR, we wish to elaborate on one aspect of the proposed development - the contaminated land remediation - that could potentially be considered a mitigation measure in another context. Further details are provided below, to demonstrate that it has not been included in order to protect Natura 2000 sites, and thus that it is not a mitigation measure in the context of Appropriate Assessment.

The contaminated land remediation will involve the excavation and off-site treatment of up to 4.00 m of overburden in residential and open space areas, and up to 1.20 m of overburden under the proposed car park, as well as the removal of an oil tank. Any surface water or groundwater containing these contaminants will either be removed from the site in sealed containers for treatment at a specialist facility, or will be channelled to a soakaway within the Site.

The contaminated land remediation is necessary as a human health measure, to ensure the safety of the Site for residents of the development. It is also required under Policy SI23 of the Dublin City Development Plan 2016 – 2022, which is that “*all potentially contaminated sites shall be remediated to internationally accepted standards prior to redevelopment.*” Potential impacts on Natura 2000 / European sites were not a consideration in the inclusion or design of the contaminated land remediation proposal. Therefore, in the context of Appropriate Assessment, it is not a mitigation measure.

## **6 Conclusions**

In Appendix A of the Office of the Planning Regulator *Practice Note PNO1: Appropriate Assessment Screening for Development Management* (OPR 2021), it is stated that the first stage of the AA process can have three possible conclusions:

- 1. It is clear that there is no likelihood of significant effects on a European site**  
The proposal can be screened out: Appropriate Assessment not required.
- 2. It is uncertain whether the proposal will have a significant effect on a European site**  
Further information can be requested to complete the screening, or a Natura Impact Statement must be requested.
- 3. Significant effects are likely**  
A Natura Impact Statement must be requested.

Having considered the particulars of the proposed development, we conclude that this application meets the first conclusion, because there is no risk of direct, indirect or in-combination effects on any Natura 2000 sites. Therefore, with regard to Article 42 (7) of the *European Communities (Birds and Natural Habitats) Regulations 2011*, it can be excluded on the basis of objective scientific information following screening, that the plan or project, individually or in combination with other plans or projects, will have a significant effect on a European site. Therefore, we conclude that Appropriate Assessment is not required.

## References

Chartered Institute of Ecology and Environmental Management, 2019. *Guidelines for Ecological Impact Assessment in the U.K and Ireland: Terrestrial, Freshwater and Coastal* (2nd Edition). C.I.E.E.M., Hampshire, England.

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