

24/05/24

Decision Record of Determination of Appropriate Procedure for the Orwell Road to Dodder Road Lower Rapid Deployment Scheme.

Introduction

Further to Section 6 of the *'Guidelines on Traffic Work Procedures Section 38 of the Road Traffic Act (1994)'*, October 2023 (Department of Transport), this document is the formal record of the Determination of the appropriate process for Orwell Road to Dodder Road Lower Rapid Deployment Scheme, for this non-statutory public consultation process. A three staged process has been followed in accordance with Sections 6.1- 6.3 of the Guidelines.

The proposed scheme comprises the provision of a dedicated cycle route together with ancillary pedestrian infrastructure upgrade running along the section of Dodder Road Lower between the junction with Orwell Rd and the junction adjacent to the administrative County Boundary (with South Dublin County Council, adjacent to the footbridge at the southern entrance to Orwell Park). This is facilitated by making Dodder Road Lower one way. This scheme is part of the Dodder Greenway. The introduction of the one-way system is being done within South Dublin County Councils administrative area

Stage 1

This stage sets out the key details of the scheme and the applicability of Section 38 of the Road Traffic Act (1994).

Key details of the proposed scheme

The scheme proposals consist of the following:

- Removal of the northbound traffic lane along Dodder Road Lower
- Provision of a 3.0m wide two-way segregated cycle track by way of a bolt down kerb
- Provide a new crossing point on Orwell Road linking Dodder Road Lower and Orwell Gardens
- Addition of c. 20 metres of 2-way cycle track from Orwell Walk to the Orwell Road / Dodder Road Lower junction
- Length of the scheme is c.350 metres
- Full signalisation of the Orwell Road / Braemor Park junction



- Associated ancillary works i.e. updated road markings, new signage etc

Plans and particulars of the scheme are shown on Drawing Numbers: *NTA190002-NTA-SLW_ZZ-S04.5_XX_01-DR-KK-002-Sheet 1 and 2.*

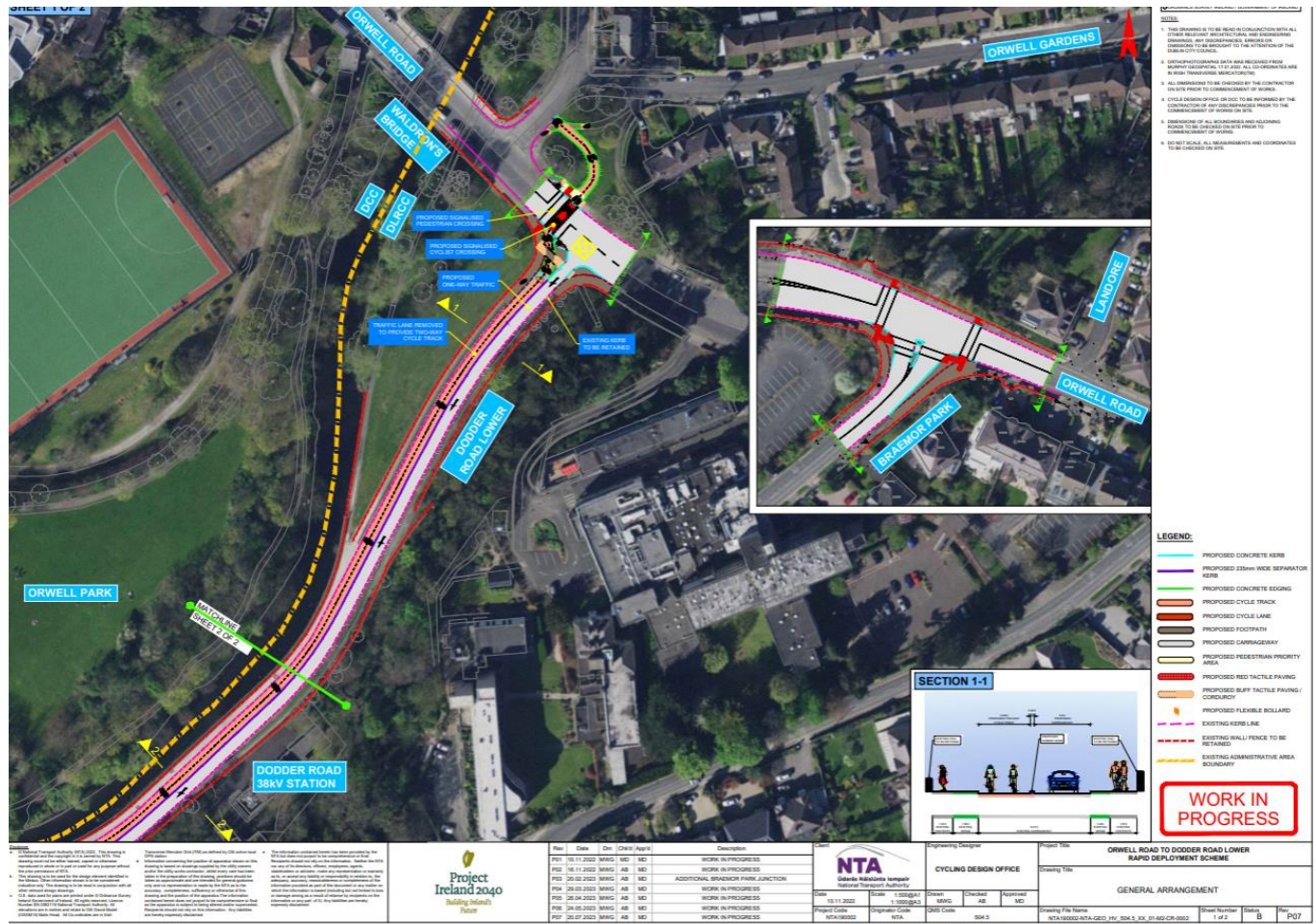


Figure 1 Drawing Numbers: *NTA190002-NTA-SLW_ZZ-S04.5_XX_01-DR-KK-002-Sheet 1*



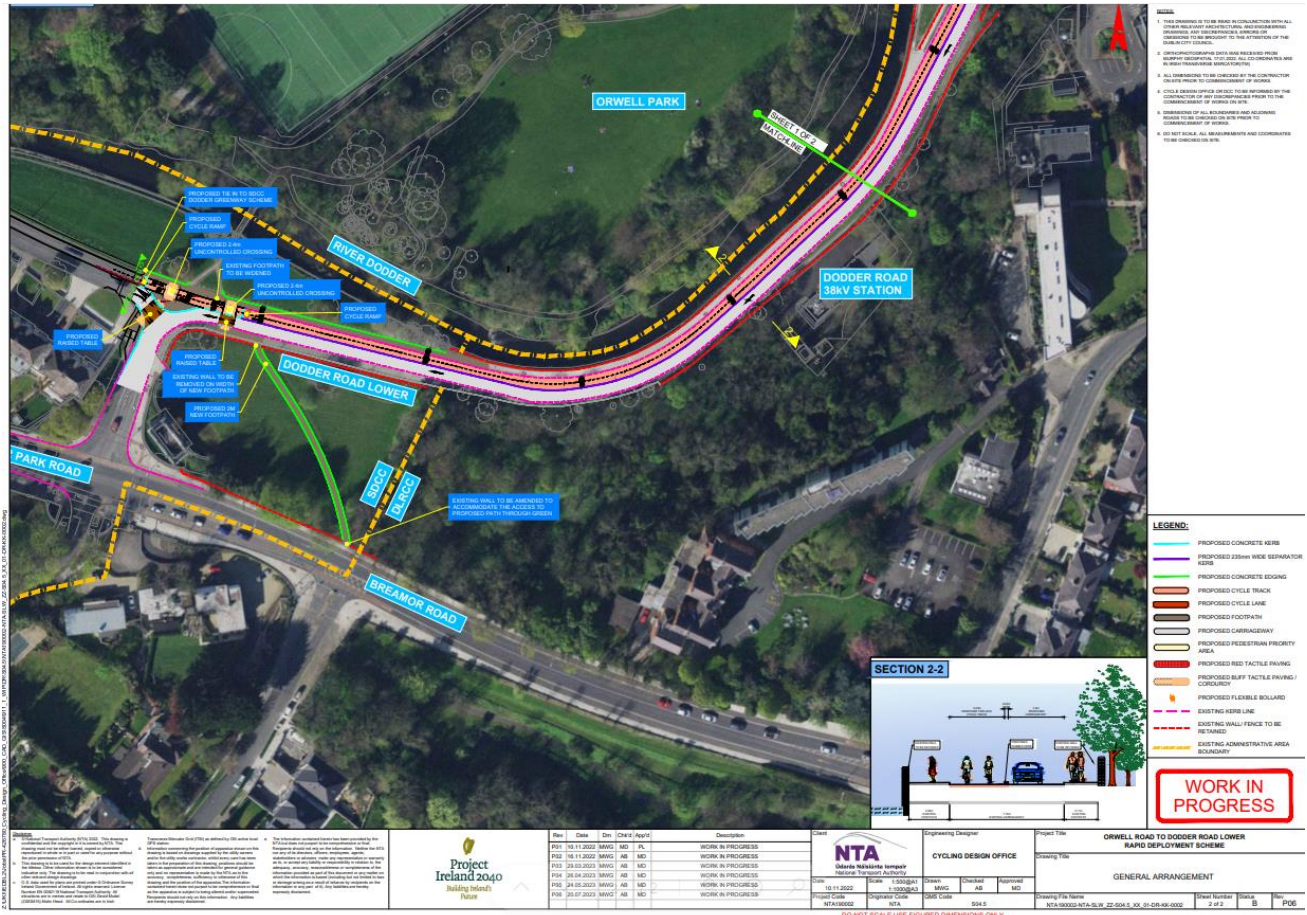


Figure 2 Drawing Numbers: NTA190002-NTA-SLW_ZZ-S04.5_XX_01-DR-KK-002-Sheet 2

Scope of Section 38 of the Road Traffic Act (1994)

Section 38 relates to the provision or removal of traffic calming measures by a road authority *“in respect of public roads in their charge.”*

A *“public road”* means in accordance with Section 2 of the Roads Act 1993 *“a road over which a public right of way exists and the responsibility for the maintenance of which lies on a road authority”*.

“Traffic calming measures” are defined in of Section 38(9) of the Road Traffic Act 1994 as meaning:

“measures which —

(a) enhance the provision of public bus services, including measures which restrict or control access to all or part of a public road by mechanically propelled vehicles (whether generally or of a particular class) for the purpose of enhancing public bus services, or



(b) restrict or control the speed or movement of, or which prevent, restrict or control access to a public road or roads by, mechanically propelled vehicles (whether generally or of a particular class) and measures which facilitate the safe use of public roads by different classes of traffic (including pedestrians and cyclists), and includes for the purposes of the above the provision of traffic signs, road markings, bollards, posts, poles, chicanes, rumble areas, raised, lowered or modified road surfaces, ramps, speed cushions, speed tables or other similar works or devices, islands or central reservations, roundabouts, modified junctions, works to reduce or modify the width of the roadway and landscaping, planting or other similar works.”

In addition to the above legislation, Section 3 of the ‘*Guidelines on Traffic Work Procedures Section 38 of the Road Traffic Act (1994)*’ provides a non-exhaustive list of works that would fall within the definition of traffic calming measures.

Does the proposal fall into the Scope of Section 38?

The works consist of:

- Removal of the northbound traffic lane along Dodder Road Lower
- Provision of a 3.0m wide two-way segregated cycle track by way of a bolt down kerb
- Provide a new crossing point on Orwell Road linking Dodder Road Lower and Orwell Gardens
- Addition of c. 20 metres of 2-way cycle track from Orwell Walk to the Orwell Road / Dodder Road Lower junction
- Length of the scheme is c.350 metres
- Full signalisation of the Orwell Road / Braemor Park junction
- Associated ancillary works i.e. updated road markings, new signage etc

These works are “*measures which facilitate the safe use of public roads by different classes of traffic (including pedestrians and cyclists)*”.

Apart from a c. 20 metre 2-way cycle track from Orwell Walk to the Orwell Road / Dodder Road Lower junction which passes through open space, all the interventions as set out above are located within the boundaries of public roads as defined by Section 2 of the Roads Act 1993. This part of the works will be commented on further below in Stage 3.

It is therefore considered that these works are traffic calming measures consistent with the definition set out in Section 38(9) of the Road Traffic Act (1994) and Section 3.2 of the Department of Transport Guidelines.



Stage 2: EIA and AA Screening Process

Stage 2 refers to the determination of the need for Environmental Impact Assessment (EIA) or Appropriate Assessment (AA). CAAS, on behalf of the Active Travel Section has undertaken screening for Environmental Impact Assessment (EIA) and Appropriate Assessment (AA) as part of the design process and in advance of commencement of any works. Dún Laoghaire-Rathdown County Council (DLRCC) has, as Competent Authority, carried out AA and EIA Screening Determinations.

Environmental Impact Assessment

The EIA Screening Report prepared by CAAS concludes “It is considered that the Orwell Road to Dodder Road Lower Rapid Deployment Scheme does not need to be subject to Environmental Impact Assessment and no Environmental Impact Assessment Report is required for it.

This conclusion is based on an objective review of the proposed scheme, including its characteristics, location and the likelihood of it causing significant environmental effects.”

The EIA Screening Report has been considered and evaluated by the Senior Planner for the area and the Director of Services for Planning and Economic Development, Dún Laoghaire-Rathdown County Council, who are satisfied that the EIA Screening Report gives full consideration to the relevant legislative context; sets out the requirements for mandatory and sub-threshold EIA; and agrees with the contents and conclusion set out in the Screening Report as follows:

“Having regard to the foregoing, the proposed Orwell Road to Dodder Road Lower Rapid Deployment Scheme does not trigger a mandatory EIA under the EIA Directive 2011/92/EU as amended or the Planning and Development Regulations 2001, as amended or the Roads Act 1993, as amended and Road Regulations 1994. Further, the Council (as Competent Authority) determine, for the reasons set out above and in the EIA Screening Report, that the proposed development, is not likely to have significant effects on the environment due to the nature, scale or location of the proposed development relevant to areas of environmental sensitivity and the types and characteristics of potential impacts, cumulation of effects with those arising from other existing and/or proposed projects and measures to avoid or prevent what might otherwise have been significant adverse effects on the environment.”

The Council concludes:

“The Council determines that no significant impacts on the environment will arise from the construction or operation of the proposed Orwell Road to Dodder Lower Rapid Deployment Scheme and that an EIA is therefore not required and an EIAR is not required to be prepared.

Therefore, it has been concluded, for the reasons set out above and in the EIA Screening Report, that the proposed development, by itself or in combination with other projects, is not likely to have a significant effect on the environment and accordingly that an Environmental Impact Assessment is not required. An EIAR is therefore not required.”



Appropriate Assessment

The AA Screening Report prepared by CAAS states that:

“It is concluded by this AA Screening Report that the proposed scheme is not foreseen to have any likelihood of significant effects on any European sites, alone or in combination with other plans or projects – and therefore any potential for significant effects on any European site as a result of the proposed scheme can be ruled out. This conclusion is made in view of the conservation objectives of the habitats or species for which these sites have been designated. Consequently, this report informs the competent authority undertaking the Appropriate Assessment process that the proposed scheme does not need to be subject to Stage Two Appropriate Assessment and a Natura Impact Statement is not required.”

The AA Screening Report has been examined and evaluated by the Senior Planner for the area and the Director of Services for Planning and Economic Development, Dún Laoghaire-Rathdown County Council, who are satisfied that the AA Screening Report gives full consideration to the relevant Directives and legislation and agrees with the contents and conclusion set out in the AA Screening Report and the reasons therein. DLRCC has, in its AA Screening Determination stated that

“on the basis of objective information and in view of best scientific knowledge and applying the precautionary principle, for the reasons set out above and in the AA Screening Report, it has been concluded that the proposed development (Orwell Road to Dodder Road Lower Rapid Deployment Scheme), individually or in combination with other plans or projects¹, without relying on any mitigation measures, will not have a significant effect on any European Sites, in view of the sites’ conservation objectives, and that there is no reasonable scientific doubt in relation to this conclusion.

Consequently, a Stage Two AA and a Natura Impact Statement (NIS) is not required.”

Stage 3: Applicability of Part 8 Procedure

As EIA and AA is not required for the proposed development the next stage is to examine the Section 38 project relative to the applicability of the Part 8 Procedure.

Section 179 of the Planning and Development Act 2000 (as amended) and Part 8 of the Planning and Development Regulations 2001 relates to certain development carried out by or on behalf of a local authority.

¹) Except as provided for in Article 6(4) of the Habitats Directive, viz. There must be:

- a) No alternative solution available,
- b) Imperative reasons of overriding public interest for the plan to proceed; and
- c) Adequate compensatory measures in place.



S.179(6) sets out circumstances where such requirements do not apply and this includes subsection 179(6)(bb).

179(6). This section shall not apply to proposed development which:

(bb) consists of works, other than works involving road widening, to enhance public bus services or improve facilities for cyclists provided under section 95 (as amended by section 37 of the Road Traffic Act 1994) of the Road Traffic Act 1961 or under section 38 of the Road Traffic Act 1994.

The primary purpose of this scheme is the provision of improved infrastructure for cyclists, while it will also include ancillary upgraded pedestrian infrastructure in the form of pedestrian crossings.

Section 5.3 Multi-faceted Works' of the Department of Transport's Guidelines states:

"Frequently works which are primarily to enhance public bus services or improve facilities for cyclists, also contain other ancillary elements such as improvements for pedestrians, possibly in the form of upgraded footpaths or upgraded pedestrian crossings. It is recommended that a decision on the appropriateness of utilising either the Section 38 procedure or the applicability of the exemption from the Part 8 Procedure is made based on the primary purpose of the scheme. If the primary purpose of the project does not relate to bus or cycling enhancements, then the exemption set out in Section 179(6)(bb) of the Planning and Development Act of 2000 does not apply. On the other hand, if the primary objective is either bus or cycling enhancements, then the exemption should apply, notwithstanding that there may be other elements associated with the project."

It is therefore considered that as the primary purpose of the works are cycling enhancements and that the pedestrian improvements are ancillary, that the Section 38 process is appropriate.

In addition, in terms of the c. 20 metre 2-way cycle track from Orwell Walk to the Orwell Road / Dodder Road Lower junction which passes through open space needs to be considered relative to the relevant articles of the Planning and Development Regulations, 2001 as amended, namely:

80. (1) Subject to sub-article (2) and sub-section (6) of section 179 of the Act, the following classes of development, hereafter in this Part referred to as "proposed development", are hereby prescribed for the purposes of section 179 of the Act —

*80(1)(b) the construction of a new road or the widening or realignment of an existing road, where the length of the new road or of the widened or realigned portion of the existing road, as the case may be, would be—
(i) in the case of a road in an urban area, 100 metres or more,*

80(1)(k) any development other than those specified in paragraphs (a) to (j), the estimated cost of which exceeds €126,000, not being development consisting of the laying underground of sewers, mains, pipes or other apparatus.

Exemptions from Part 8 procedures are considered to apply as the length of the cycle track is c.20 metres and therefore does not exceed the 100-metre threshold of Article 80(1)(b) and the cost will be less than 126,000 euro, and hence does not exceed the cost threshold set out in Article 80(1)(k).



Therefore, it is considered that the proposed development is exempt from the requirement to follow the Part 8 procedure.

Section 95 of the of the Road Traffic Act 1961 (as amended)

In addition to the process set out above the works will include the provision of regulatory signs which will be decided at the detailed design stage. Prior to the provision of these signs, the Commissioner (of An Garda Síochána) will be consulted as required under Section 95 (3)(b) of the Road Traffic Act 1961 (as amended).

Decision Conclusion

On the basis that neither an Environmental Impact Assessment (EIA) nor an Appropriate Assessment (AA) are required, having regard to:

- Section 38 of the Road Traffic Act 1994,
- Section 179(6) (bb) of the Planning and Development Act 2000 (as amended),
- Articles 80(1)(b) and (k) of the Planning and Development Regulations 2001 (as amended)
- Section 5.3 of the Department of Transport 'Guidelines on Traffic Works Procedures: Section 38 of the Road Traffic Act (1994)' (October 2023).

It is considered that that Section 38 of the Road Traffic Act 1994 and Section 95 of the Road Traffic Act, 1961 as amended by Section 37 of the Road Traffic Act 1994, is the correct legislative process under which the proposed works will be carried out.

Furthermore, in accordance with Section 95 (3)(b) of the Road Traffic Act 1961 (as amended); the Road Authority will consult with the Commissioner (of An Garda Síochána) with regard to regulatory signs which will be erected and/or removed on the public road to which these works pertain.



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