

1. History of zoning at Maynetown Portmarnock.

- 1.1 In the Portmarnock South LAP lands that were previously agricultural pre 2005 were zoned residential in Fingal Development Plan. As part of the Portmarnock South LAP, Bird Surveys were carried out to assess the use of the lands as ex situ feeding sites by qualifying interests (SCIs) of Baldoyle Bay SAC. The LAP referenced the following reports and surveys.
- 1.2 Fingal County Councils the Ecological Study of the Coastal Habitats in County Fingal Phase II – Birds (Figure 4 in the document, Fig 1 in this report), http://www.fingalbiodiversity.ie/resources/fingal_coast/2004%20Bird%20Habitats.pdf identified the use of the whole lands at Maynetown which was governed by Portmarnock South LAP by Brent Waders (see red squares).

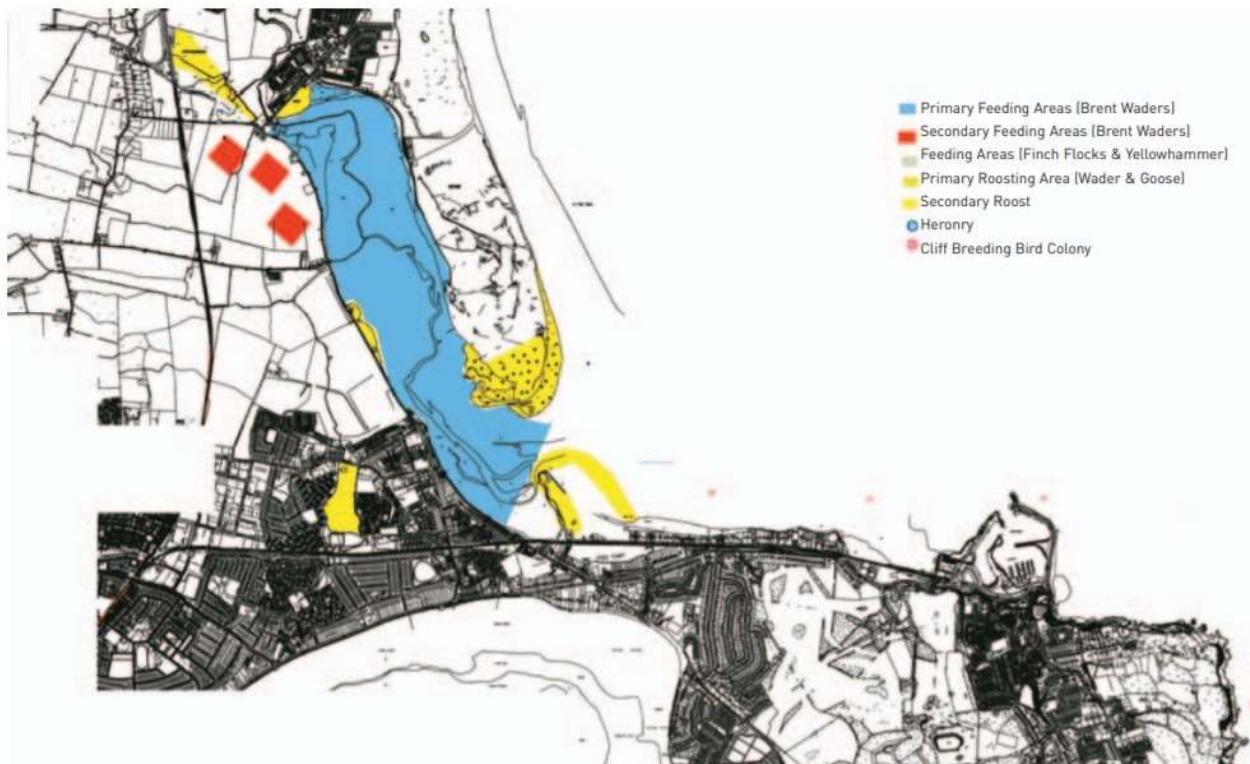


Fig 1. Use of Maynetown by Brent Geese.

- 1.3 Another report for Portmarnock South LAP NIS also commissioned by Fingal county council identifies the same area as a feeding site for a number of qualifying species for the SPA. The Portmarnock Lap quotes:

Informal consultation was also undertaken with Irish Brent Goose Research Group regarding lands to the south of the LAP area (Baldoyle-Stapolin) and the Portmarnock South LAP lands. It was noted that the LAP lands used by Brent geese is dependent on whether, and where, winter cereals have been planted, with the geese being attracted to winter cereals. It was noted that this was not the case during the 2012/2013 winter, in the past large numbers (1000+) have been observed, particularly in the field which slopes up from the coast road within the east of the LAP lands. (pers. comm., Resightings Co-ordinator, Irish Brent Goose Research Group, 2013).

- 1.4 The same report identifies main pressures and threats to light bellied Brent geese habitats as the following: Habitat loss/degradation (human induced) – agriculture, infrastructural development, human settlement, tourism, recreation, dams, invasive species; accidental mortality – collision; persecution; pollution – global warming, sea level rise, water pollution; natural disasters – drought, storms, flooding; changes in native species dynamics – competitors, pathogens/parasites; poor regeneration, restricted range; human disturbance – recreation, transport, agricultural, industrial.

1.5 The Portmarnock South Lap NIS <https://www.fingal.ie/sites/default/files/2019-03/Portmarnock%20South%20LAP%20AA%20Natura%20Impact%20Report.pdf> same report illustrates the use of the lands by birds from a Pierce and Dillon 2011 survey (Fig 3 within document and Fig 2 in this report) and the report also states:

Bird species of Baldoyle Bay SPA, in particular LightBellied Brent Geese are known to use lands surrounding the SPA for feeding. A section of the agricultural lands adjoining the SPA, in the vicinity of C4 were noted to be of major importance with records of between 401-1450 Light bellied Brent Geese recorded from this area (Benson, 2009). Loss of feeding habitat may result in negative impacts upon qualifying interests of the SPA.



Figure 3: Study Area C with location of recorded wintering birds highlighted in green in relation to the LAP lands. (Pierce and Dillon, 2012)

FIG 2.

1.6 The importance of the site is confirmed in the Wintering bird survey of the lands surrounding the Baldoyle Estuary December to February 2011 – 2012 (report attached) which was commissioned as part of the South Portmarnock LAP. It states; ***“This winter bird survey has demonstrated that the surrounding farmlands, amenity grasslands and golf club lands are important habitats for birds linked to the Baldoyle Estuary and should be viewed as being ecologically linked and not divorced from the estuarine areas. In times of hard weather, storms, high tides and low human disturbance times e.g. dawn/ night times birds frequently move from the estuarine areas onto the surrounding lands for additional feeding or roosting needs. This valuable mix of land use together with the estuarine wetland habitats produces this diversity, if the mix stays as it is this level of diversity should continue. The survey has found that the surrounding arable farmland in particular is an important feeding habitat for wader species from the estuary as well as winter finches, skylarks and buntings. The arable croplands location so close to the estuary allows this rich biodiversity to develop. If the surrounding arable lands are re-zoned then the diversity and numbers of the bird species that give the SPA status to the Baldoyle Estuary may be affected.”***

1.7 As is confirmed by Fingal County Council own reports , there was substantial use and reliance on the land by species protected by the designation of Baldoyle Bay SPA and that the experts deemed this ex situ feeding site as ecologically linked to Baldoyle SPA. The Aafor Portmarnock South LAP identified that the plan would remove important feeding and roosting habitat, which was correct but then went on to incorrectly propose completely inadequate mitigation measures rather than what was required which was compensatory measures. The steps taken next, were then and continue to be in breach of the Habitats Directive and Birds Directive.

The Council suggested the following as mitigation (not compensation).

- i). Designation of Bird Quiet Zone (see fig 3)
- ii). Clearing of Murragh Spit (see fig. 5)
- iii). The availability of existing sports pitches in the area for feeding.

1.8 These measure are insufficient and in breach of the Habitats Directive for the following reasons;

- i) The Bird Quiet Zone was already within the area identified as a feeding area and already in use, for Brent Geese. You cannot mitigate or compensate with the same land that is being impacted by a project or plan.
- ii) The Murragh spit was already within the Baldoyle Bay SPA and therefore cannot be considered as creating habitat to mitigate habitat loss. (see fig 4.)
- iii). The existing sport pitches were already used by the Brent Waders for Feeding at that time see Fig 6. Benson 2005 so the availability of these pitches could not be consider as the brent wader population were already utilising these pitches in addition to Maynetown to nourish themselves at high tide and during low eelgrass production in the estuary. The removal of habitat loss at Maynetown therefore gave them less available feeding spots so the sports areas highlighted could never be considered mitigation.



Fig 3: Portmarnock South LAP Masterplan with Quiet Zone for Brent Geese and Lapwing

1.8 If we were to apply what happened to the Birds habitat at Maynetown to a human scenario, it would be the equivalent of calling up to someone's house and saying we recognise that your right to use your house is protected by the constitution (Habitats Directive) and if we take away any part of it we shall supply equivalent accommodation space to compensate you for taking your house.

However after recognising that you use your whole house we are going to designate the Kitchen as your living space (the Quiet Zone) we know you already used it but now we have officially identified it as yours. We will then take the rest of your house for our own use, but you will be OK as you still have your garden (the Murragh Spit) that you already had use of and was designated for you. However we are going to regift the Garden again for our legal obligation of compensating you for commandeering the rest of your living space. You also have access to a network of restaurants that you regularly eat in that are shared by other uses and people (the existing Sports Pitches see fig 6 -L Benson illustration identifying lands already in use by LBBG for foraging), which we will take into account, in order to alleviate our legal responsibility not to reduce your eating areas. So to sum up we are taking your whole house for our purposes but you get to live in the kitchen, this is a fair and equitable arrangement.

1.9 But it is not a fair and equitable arrangement and the legislation governing this is unyielding in this regard. S.I. No. 477/2011 - European Communities (Birds and Natural Habitats) Regulations 2011. Part 4 section 27 (4) Public authorities, in the exercise of their functions, insofar as the requirements of the Birds Directive and the Habitats Directive are relevant to those functions, **shall** (a) take the appropriate steps to avoid, in candidate special protection areas, pollution and deterioration of habitats and any disturbances affecting the birds insofar as these would be significant in relation to the objectives of Article 4 of the Birds Directive, (b) **outside those areas, strive to avoid pollution or deterioration of habitats, and steps to avoid, in European Sites, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated in so far as such disturbance could be significant in relation to the objectives of the Habitats Directive.**



Fig. 6. L Benson 2009 identified feeding locations for Brent Geese.

- 1.10 An Bord Pleanála has already correctly applied this legal test in An Bord Pleanála decision- Board Direction BD-001078-18 ABP-302225-18 for a planning application by Crekav Ltd.. This decision reinforces the proposition that this land rezoning should not have been granted permission due to direct habitat loss that would result from construction of SUDS wetland, The decision reads as follows: *“Having regard to the fact that the subject is one of the most important exsitu feeding sites in Dublin for the Light-bellied Brent Goose, a bird species that is a qualifying interest for the North Bull Island SPA and having regard to the lack of adequate qualitative analysis and accordingly the lack of certainty that this species would successfully relocate to other potential inland feeding sites in the wider area, as proposed as mitigation for the development of the subject site in the submitted Natura impact statement, the Board cannot be satisfied, beyond reasonable scientific doubt, that the proposed development, either individually or in combination with other plans and projects, would not adversely affect the integrity of these European sites in view of the sites’ conservation objectives.”*
- 1.11 The legislation is clear. If the competent authority considers the mitigation measures are sufficient to avoid the adverse effects on site integrity identified in the appropriate assessment, they will become an integral part of the specification of the final plan or project or may be listed as a condition for project approval. If, however, there is still a residual adverse effect on the integrity of the site, even after the introduction of mitigation measures, then the plan or project cannot be approved (unless the conditions set out in Article 6(4) are fulfilled).
- 1.12 The test was not applied to the Maynetown lands in relation to appropriate compensation habitats when the Portmarnock South LAP was introduced and assessed. It is clear from the illustrations (fig 7) that the physical site size of feed habitat lost was not equally mitigated or compensated for by the created of equivalent sized feeding habitat on new lands not already used or designated for the protection of Special Conservation interests of Baldoyle SPA. As such the previous rezoning was illegal and must now be corrected with the AA and EIA for this Portmarnock South Phase 1D SHD, which must under law take into account the failure to actually compensate like for like for the loss of feeding and roosting habitat.

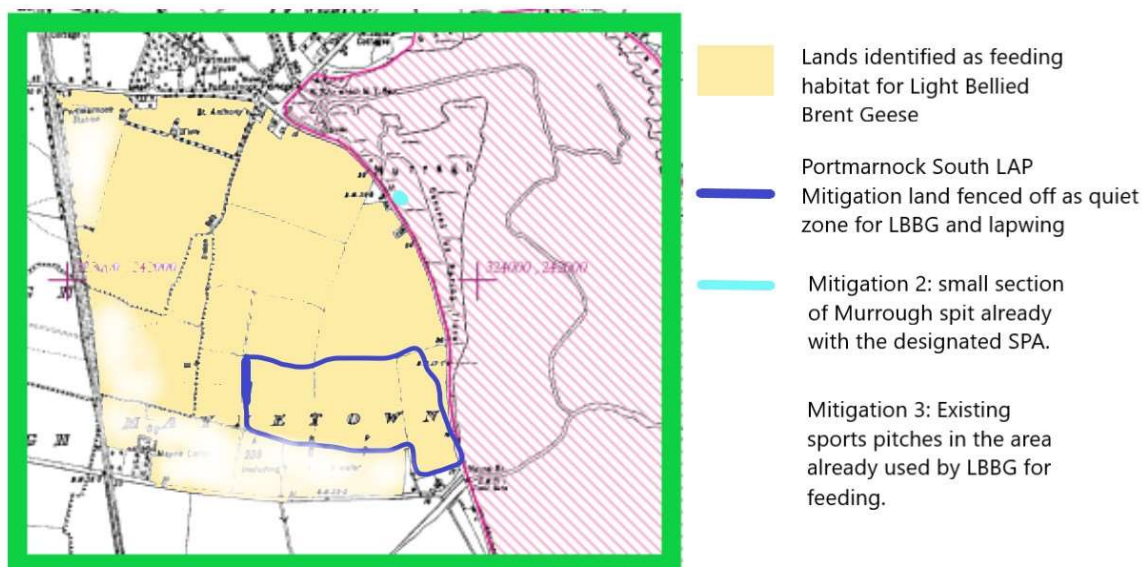


Fig. 7 – visual representation of original feeding habitat in comparison to mitigation habitat.

- 1.13 The Portmarnock South Area Lap NIS therefore incorrectly concluded: *“Once mitigation has been implemented in full, no decrease in favourable conservation status of Brent Geese are predicted and no significant impacts to Baldoyle SPA site integrity will arise as a result of loss of feeding habitat. This assessment has taken account of best available scientific information including a) current and historical Brent data for the fields in question, b) increasing national and local Brent Geese populations c) the species is not red-listed nationally, and d) taking account of mitigation measures including seasonal fencing and management measures of fields to the east and south of the LAP lands for wintering bird species including provision of a quiet zone.”*

1.14 Attached is a copy of a citizen science survey of the Quiet Zone lands which shows the recent and indeed the continued use of lands outside of the fences quiet zone area. It is very clear from this report that compensation and mitigation is still required in relation to the land take of feeding lands for the rezoning of Maynetown for the Portmarnock South LAP. This means that the development NIS is not complete as there are still historical impacts in the continued residential zoning of this area.

1.15 Cumulative impacts:

The quiet zone will be impacted by the Portmarnock phase 1D SHD, Greater Dublin Drainage Project, The Portmarnock reinforcement project – Portmarnock pumping station and rising main (see visual representation of cumulative projects in Fig. 8) . The land will not be fully remediated as there will be permanent wayleaves for maintenance access (disturbance) to the infrastructure that will be built within the site. This includes access chambers, manholes and vents that will be built within the actual quiet zone lands (see Fig. 9 – Access chambers mapped in quiet zones for GDD project) itself as part of these projects. These projects and the permanent infrastructure they contain, will remove grassland and introduce continuous disturbance from service vehicles and Irish water staff maintaining the access chambers and vents. This is in conjunction with the developer now tacking back the quiet zone land identified in pink in Fig. 8 for use as the developments attenuation for polluted SUDS runoff. Its the perfect example of death by a 1000 cuts.

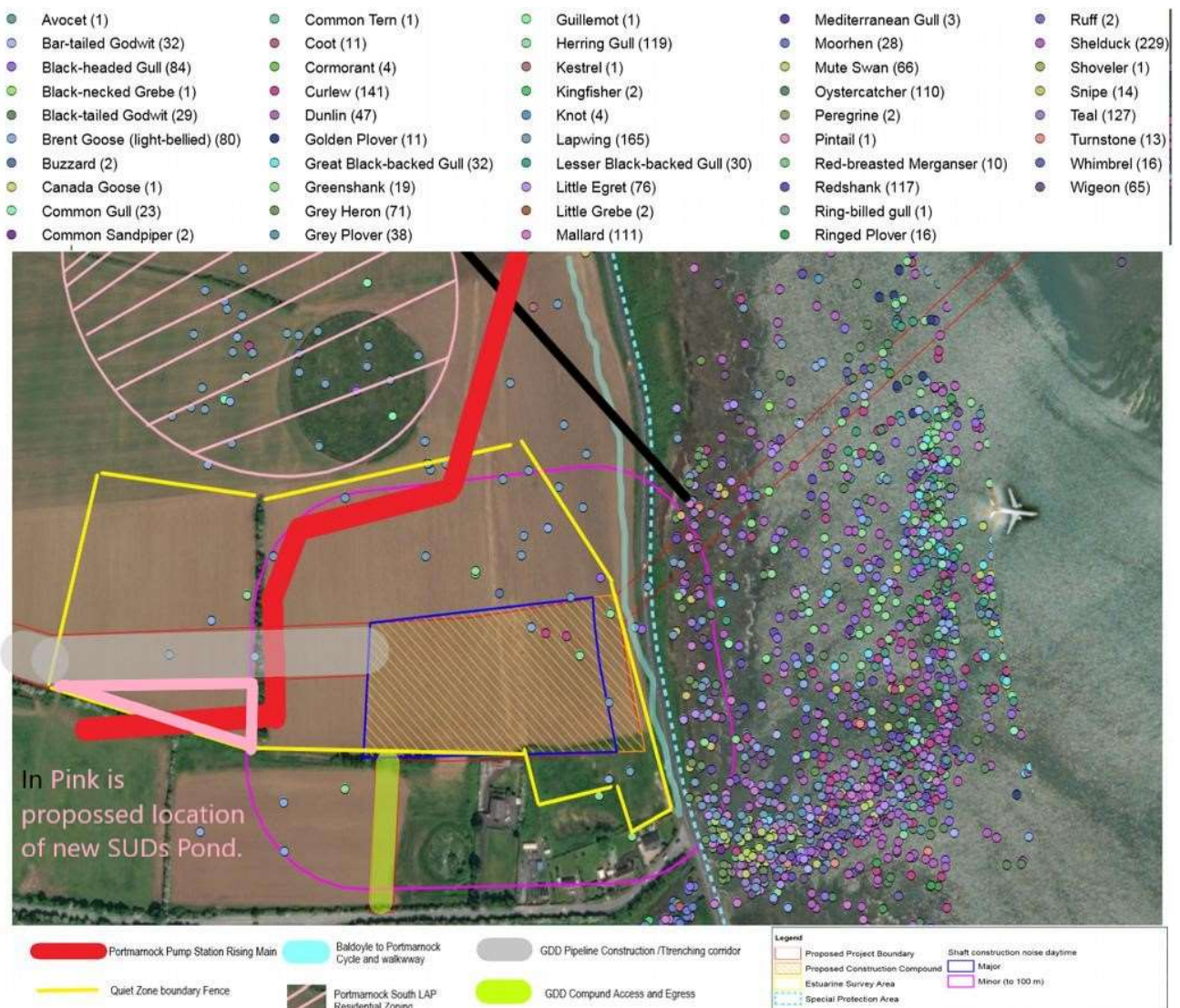


Figure 8. Representation of the cumulative projects that physically impact the Quiet Zone.

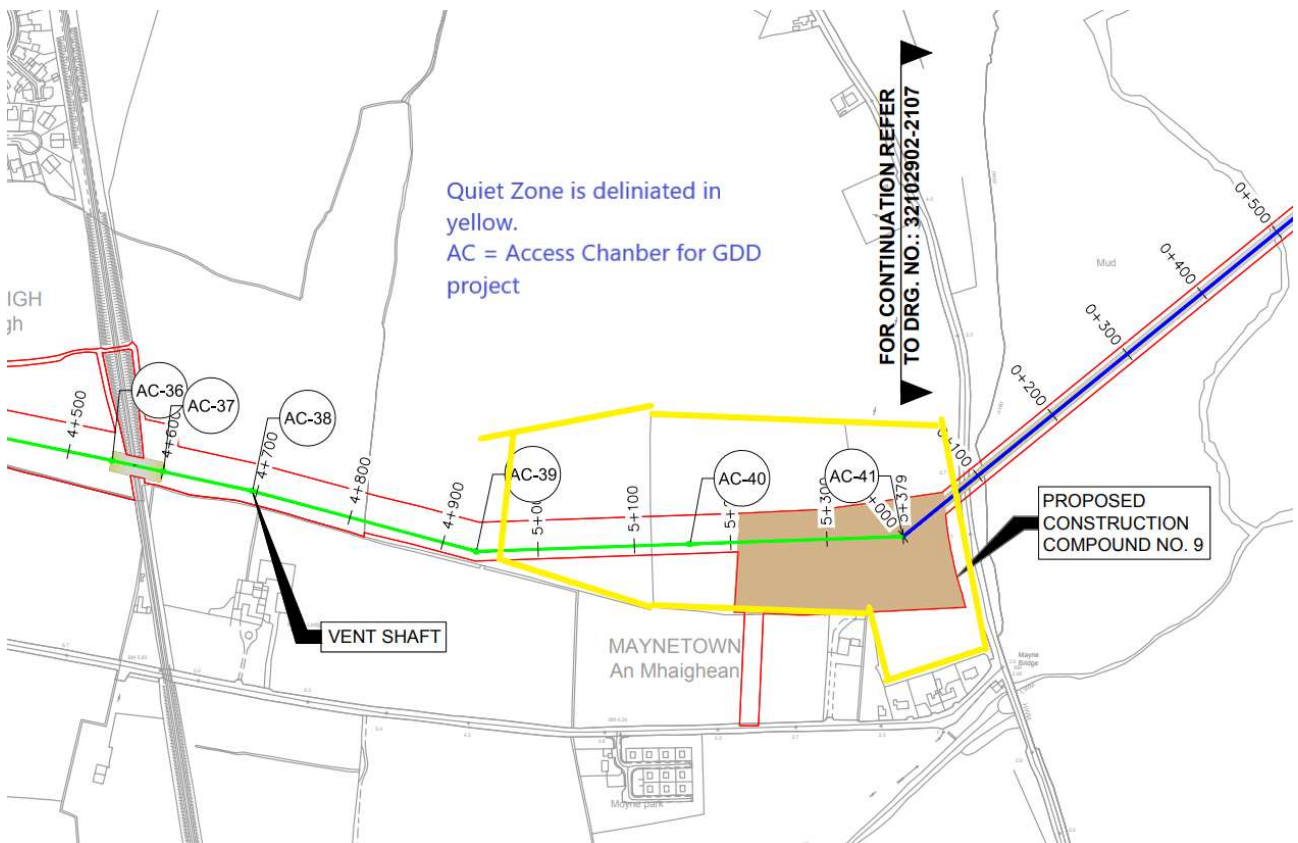


Figure 9. Access Chambers(AC 40, AC41) for GDD Project within Quiet Zone protected area.

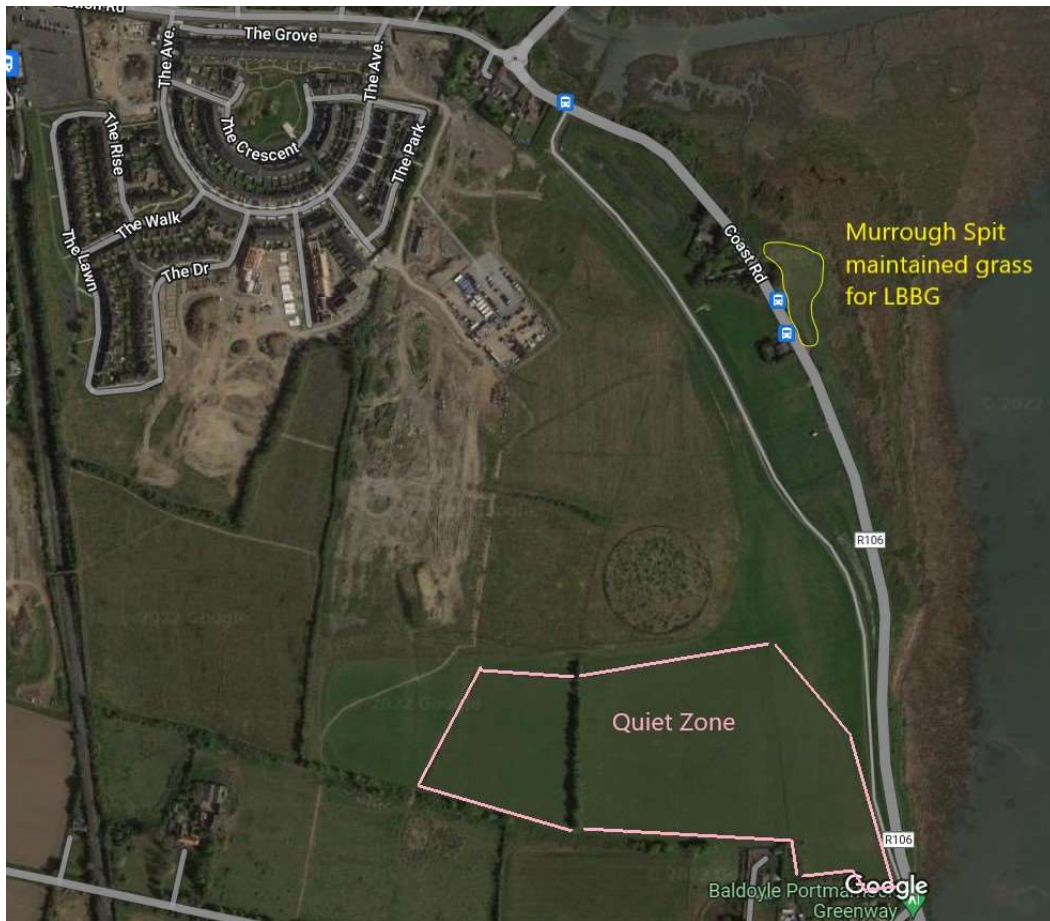


Figure 10. Satellite view of the site with Quiet Zone and Murragh Spit Management area identified.