



An
Bord
Pleanála

Inspector's Report ABP307641-20

Development	New wastewater pumping station and associated network infrastructure to include gravity sewer and rising main connections.
Location	Station Road, Portmarnock, County Dublin.
Planning Authority	Fingal County Council.
Planning Authority Reg. Ref.	F19A/0400.
Applicant	Irish Water.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party
Appellants	Catherine McMahon and Sabrina Joyce Kemper.
Observers	None.
Date of Site Inspection	23 rd November 2020.
Inspector	Paul Caprani.

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2.0 Introduction

ABP307641-20 relates to a third party appeal against the decision of Fingal County Council to issue notification to grant planning permission for a new wastewater pumping station and associated pipework to include gravity sewer and rising main connections at Portmarnock, County Dublin. The grounds of appeal incorporate wide ranging concerns relating to procedural matters, flood risk and other environmental matters.

3.0 Site Location and Description

- 3.1. The lands to which the application relates are located in Portmarnock a coastal suburb approximately 12 kilometres north of Dublin City Centre. The settlement of Portmarnock stretches along the R106 - Strand Road between Malahide and Baldoyle. Most of the commercial development is located along the R106 and the vast majority of suburban development within Portmarnock is located to the north and west of the R106. Development along the southern end of the R106 terminates at the Sluice River which runs along the southern boundary of Malahide Golf Course and to the rear of residential and commercial development fronting onto the R106 before passing under Portmarnock Bridge and discharging into Baldoyle Bay. Baldoyle Bay is designated as both an SPA and SAC.
- 3.2. There is an existing small pumping station on the north-eastern side of the Sluice River. The pumping chamber and wet well are located below ground level. A small kiosk and access to the chamber is located above ground level. The pumping station is surrounded along its northern and western side by palisade fencing. Fencing on top of a stone wall plinth is located along the roadside boundary. Under the current application the existing pumping station is to be decommissioned and replaced by a larger pumping station on adjacent lands.
- 3.3. The new pumping station is to be located on lands to the immediate south-west of the existing pumping station, adjacent to the southern bank of the Sluice River near to the intersection between Station Road and Strand Road. Station Road, as the name suggests runs westwards towards Portmarnock Railway Station and onwards

towards the R124. These lands proposed to accommodate the new pumping station are currently undeveloped and comprise in the main of scrublands which do not appear to be used on a regular basis for grazing¹. To the immediate west of the proposed new pumping station is 'The Links' residential complex. It comprises of two and three storey blocks of apartments on the northern side of the Station Road between the subject site and Portmarnock Railway Station. A small unnamed stream runs along the north-western and southern boundary of the site inside the boundary wall which separates the site from the adjoining road network. A mini roundabout is located at the T-junction to the immediate south-east of the subject site where the road splits southwards along the coast road to Baldoyle and westwards towards Portmarnock Railway Station.

- 3.4. The proposed development also involves the construction of a new pipeline route southwards roughly parallel and to the west of the Coast Road. The new pipeline route is located within an area of green space adjacent to a proposed off-road cycleway and runs southwards towards the townland of Maynetown at Grange. Approximately, 600 metres south of the proposed pumping station the proposed pipeline alignment veers in a south-westerly direction across agricultural lands and across the regional route R123 before extending further southwards and traversing beneath the Mayne River before terminating at the north-eastern environs of an ongoing development of residential units at Clongriffin and Stapollin on the northern outskirts of Baldoyle. The termination point of the proposed pipeline under the current application is located to the immediate east of the North Dublin Suburban Railway Line.

4.0 Proposed Development

- 4.1. The existing Portmarnock wastewater catchment forms part of the north Dublin drainage and north fringe interceptor sewer catchment. The Portmarnock area comprises three separate pumping stations which sequentially collect part of the overall catchment. The northern part of Portmarnock Village drains into the existing Strand Pumping Station. From here loads are pumped into a manhole on the Strand

¹ Documentation submitted by Irish Water suggest that the lands have been the subject of intensive grazing.

Road which flows by gravity and discharges to the Portmarnock Bridge Pumping Station which is currently in operation on the north side of the Sluice River. Loads are then pumped southwards to a gravity sewer along the coast road. The network then discharges to the Mayne Bridge pumping station where flows are once again pumped to a header manhole before discharging directly into the north fringe sewer. The north fringe sewer drains to the Sutton Pumping Station which is transferred across Dublin Bay to the Ringsend Wastewater Treatment Plant for treatment.

4.2. Information submitted with the application indicates that the existing pumping station consists of an underground wet well containing two submersible pumps and a shallow underground valve chamber together with a small above ground control kiosk and welfare building. The existing pumping station does not have any dedicated emergency storage but does include an emergency overflow pipe which discharges into the Sluice River. The existing pumping station regularly overflows into the Sluice River via this emergency overflow pipe. It is stated that the existing Portmarnock Bridge pumping station is understood to be at capacity in terms of foul flows and Fingal County Council have advised Irish Water that the station becomes significantly overloaded by stormwater inflow during significant rainfall events.

4.3. The proposed development will comprise of the following:

A new pumping station located within a rectangular area approximately 115 metres by 62 metres in size. Below ground it is proposed to provide:

- A wet well including emergency pumps.
- A valve chamber.
- An emergency storage tank which will permit 845 cubic metres of storage (24 hours of storage).
- An inlet chamber.
- A flow meter chamber (to maintain correct pressure within the chamber at all times).
- It is also proposed to provide a control and welfare building to include control panels, gantry storage and toilet as well as a vent stack. This building is a rectangular building (4.7 metres by 4.3 metres) providing a total floor area of

just over 20 metres. It incorporates a flat roof structure and rises to a height of 3 metres. Stone cladding is proposed for the external elevation.

- Ancillary elements of the pumping station include a new entrance and access gate together with boundary fence. A hardstanding area will be provided to allow vehicle access and turning. Landscape planting will also be provided and a SuDS drainage system will also be incorporated into the overall design.
- The proposed pump station will have a capacity to pump 147 litres per second.

5.0 Planning Authority's Decision

5.1. Decision

- 5.1.1. Fingal County Council issued notification to grant planning permission subject to 15 conditions.

5.2. Documentation Submitted with the Planning Application

- 5.2.1. The planning application was lodged on 30th August, 2019. The application was accompanied by the following documentation:

- A completed planning application form.
- Public notices.
- Letters of the landowner's consent to the making of the application.
- A Planning and Environmental Considerations Report.
- A Landscape and Visual Impact Report.
- A Flood Risk Assessment.
- An Outline Construction Management Plan.
- A Screening for Appropriate Assessment.
- A Natura Impact Statement.
- Site layout plans and drawings.

5.3. Internal Reports

- 5.3.1. A report from the Parks Division notes that the proposal includes the removal of a significant number of trees. It is requested that a complete survey including an arboricultural impact assessment be submitted. The mature trees on site should be assessed for the potential to support roosting bats. The applicant is requested to submit a revised landscaping plan and provide weekly progress reports in respect of works in proximity to the greenway.
- 5.3.2. A report from the Environmental Health Air and Noise Unit states that the above development is acceptable subject to a total of five conditions.
- 5.3.3. A report from the Development Applications Unit of the Department of Culture, Heritage and the Gaeltacht notes that the proposed development is largescale in extent and will have significant impacts on a number of known and potential monuments along the course of the pipeline. In this regard an Archaeological Impact Assessment should be submitted.
- 5.3.4. A report from the Water Services Department requests additional information in relation to the creation of a buffer zone of 50 metres or more between the pumping station and surrounding developments in accordance with Objective WT12 of the development plan.
- 5.3.5. The applicant is also requested to submit additional information in relation to flood risk including a justification test for the development at this specific site.
- 5.3.6. A report from Irish Water states that there is no objection to the proposed development.
- 5.3.7. An independent report by Scott Cawley Limited on behalf of Fingal County Council notes a number of omissions and discrepancies in the Natura 2000 Impact Assessment submitted.
- 5.3.8. A report from the Transportation Planning Section requires additional information in respect of footpath improvements together with further details of as to how the proposed development facilitates the provision of a cycle link through the site and whether or not it is intended to incorporate a future link in respect of the internal access road.
- 5.3.9.

5.4. **Additional Information Request**

5.4.1. The original planner's report assesses the proposed development and recommends additional information in relation to the following:

- Submit a revised layout plan indicating the provision of a 50-metre buffer from all residential properties including the apartments located on Station Road.
- A further flood risk assessment that fully accounts for climate change considerations and addressing the effect of a potential breach of the existing flood defence mechanism and associated residual risk.
- Further details of a justification for site selection in the context of the flood risk management guidelines.
- The submission of a revised layout plan that provides footpath improvement along the southern boundary of the site (Station Road).
- A revised layout plan that facilitates the provision of a cycle link through the site which forms part of the Malahide/Sutton Cycleway.
- Further details to clarify if a future link for lands to the west where the internal access road abruptly ends at the western boundary of the site is under consideration.
- The submission of an aboricultural impact assessment.
- Further details in relation to landscaping.
- Submission of a construction management plan showing compounds and storage of all materials outside the line of tree protection measures.
- A revised Natura Impact Statement addressing perceived omissions and clarifications in the said document.

5.5. **Additional Information Submission**

- The additional information received by Irish Water is briefly summarised below:
- A constraint clearing drawing is submitted to clearly indicate that the 50 metre noise/odour buffer zone as required by Objective WT12 has been met.

- A site-specific flood risk assessment has been revised to take into account climate change considerations which satisfactorily addresses the issues raised by the Planning Authority.
- Flood design in relation to fluvial, pluvial and coastal flooding has been incorporated into the pumping station site including raised ground levels and floor levels to reduce flood risk. The site-specific flood risk assessment has been updated to include a justification test. The proposed development is deemed to satisfy the justification test through the design of the proposed development. Any flood risk has been reduced to acceptable levels and the justification test requirements have been met.
- Drawings are submitted showing that the existing footpath width of approximately 2.8 metres is replicated along Station Road as part of the proposed development.
- Details of the proposed cycle link is indicated on drawings submitted with the additional information.
- The section of the access road which turns in a north-westerly direction has been provided to enable the safe turning of maintenance vehicles which may be required during the operation of the pumping station. The access road at the western boundary has been minimised as far as possible and will have raised curving to demarcate its end.
- An arboricultural impact assessment has been prepared and submitted. It states that a total of 9 trees will be required to be removed to facilitate the proposed development (pumping station and rising main).
- A revised landscape plan has also been submitted.
- A construction management plan is also submitted showing details of compound stockpile storage area, silt fencing and settlement and concrete washwater systems etc.
- An archaeological impact assessment was also submitted.
- A revised Natura Impact Statement was submitted addressing the concerns outlined in the Planning Authority's further information request.

- Finally, it is stated that a meeting was held with the Water, Transportation and Planning Sections of Fingal County Council on two occasions in November 2019 and the main points of discussion are summarised.

5.6. Further Assessment by the Planning Authority

- 5.6.1. A report from the Water Services Department states that there was no objection to the proposed development in terms of surface water disposal, flood risk, water supply or foul sewer.
- 5.6.2. A report from the Parks Division recommended that three conditions be attached in the case where planning permission is granted.
- 5.6.3. An archaeological report comments on the information submitted and recommends that archaeological monitoring be undertaken during the works being carried out.
- 5.6.4. A further report on behalf of Fingal County Council prepared by Scott Cawley Ecologists in respect of the revised Natura Impact Statement submitted states that all items raised have been satisfactorily addressed and it is concluded that with the implementation of the design and mitigation measures proposed, there will be no adverse impact on the integrity of any European site.
- 5.6.5. A report from the Transportation Planning Section generally expresses satisfaction with the proposed additional information. However, it is stated that the internal access road should have a minimum width of 5 metres and should be agreed in writing with the Planning Authority prior to the construction of the proposed development. Further details in relation to the crossover of the proposed pedestrian cycleway shall be agreed in writing with the Planning Authority prior to construction.
- 5.6.6. A further planning report details and assesses the additional information submitted and concludes that the proposed development would represent a much needed improvement in wastewater infrastructure in the area within undeveloped zoned lands and is in accordance with the strategic objective of the Fingal County Development Plan which seeks to ensure adequate provision of wastewater infrastructure to facilitate further development of lands in the Portmarnock area. On this basis it is recommended that planning permission be granted for the proposed development.

6.0 Planning History

- 6.1. No history files are attached.
- 6.2. The local authority planner's report notes that there is no planning history related to the subject site. The report does note a number of planning applications in the vicinity of the proposed pipe network to the south of the pumping station. This includes the provision of 150 residential units at Station Road, Portmarnock, County Dublin to the south-west of the proposed pumping station.
- 6.3. Fingal County Council also submitted an application to An Bord Pleanála for the Baldoyle and Portmarnock Pedestrian and Cycle Scheme under Section 177AE to provide approximately 1.8 kilometres of pedestrian and cyclepath adjacent to the Coast Road to the south of the roundabout. The works also included a new 4 metre wide bridge over the main river as well as the upgrading of junctions and the provision of pedestrian crossing facilities at either end of the scheme on the Coast Road. The scheme was approved by An Bord Pleanála in July 2018 (ABP300840).
- 6.4. To the west of the subject site planning permission was granted for 153 residential units together with three retail units, café, restaurant and medical unit under Reg. Ref. ABP305619.

7.0 Grounds of Appeal

- 7.1. The decision of Fingal County Council to issue notification was the subject of a third party appeal by Sabrina Joyce-Kemper and Catherine McMahon. The grounds of appeal are outlined below.

7.2. Procedural Matters

- Despite the request for additional information issued by the Planning Authority new notices were not requested. It is argued that the additional information submitted by the applicant was substantial in nature and this should have required the trigger for new notices to ensure that appropriate public consultation took place.
- Due to Covid-19 restrictions and procedures the appellant was informed that the time for submissions was altered and reduced by almost a week which

constrained the applicant from elaborating fully on the concerns in respect of the proposal.

- The objection was submitted on the 19th June and it is contended that the Planning Authority determined the application within two hours. It is argued that a few of the concerns raised in the objection were directed to the appropriate internal departments for consideration.
- Documentation including the pre-planning meetings were not contained on file and have not been made available to the applicant by the time the appeal was made.

7.2.1. Flooding Issues

- The site does not meet the required buffer zones for riparian woodland of 15 and 30 metres as set out in the development plan. The site is on a floodplain and the riparian banks are an important mechanism to allow the swelling of the river to protect areas further up the stream.
- The site is located in an area which is subject to fluvial, pluvial and tidal flooding. Photographs are attached showing the level of flood events at the site. Raising the level of development may result in the displacement of waters elsewhere which will affect the natural floodplain.
- The flood protection works in this instance should trigger the need for EIA.

7.2.2. Zoning Objective

- The site is contrary to the zoning objective set out in the development plan on the basis that there is potential for adverse impacts in relation to odour and noise pollution. These impacts do not sit comfortably with the protection of sensitive and scenic locations.
- No appropriate photomontages have been submitted to demonstrate that the proposal constitutes good urban design and provides a vibrant and active streetscape.
- Efforts to rezone the land were resisted previously on the basis that it would have a negative impact on the ecology of the lands in question. It was

considered that the site was completely unsuitable for development because of the vulnerable ecological sensitivity.

- Concerns were expressed that any overflows which occur at the pumping station could impact on SACs downstream. The failure to assess any possibility of overflow into the adjoining waterbodies is contrary to the Habitats Directive and Appropriate Assessment.
- It is not accepted that the proposed siltation interceptor to the Sluice River during construction will not impact on receiving waters. It is not accepted that the swale will act as an appropriate interceptor filter during the substantial construction phase of the proposal.

7.2.3. Residential Amenity Issues

- Ground floor and upper floor verandas on the apartments to the north-west encroach the buffer zone of the proposed pumping station and as such it is argued the verandas will be adversely affected in terms of noise and odour.

7.2.4. EIA Requirement

- An EIAR should be submitted on the basis that there is a real likelihood of significant effects on the environment arising from the proposed development given the sensitivity of the site and the potential for significant impacts in terms of construction, biodiversity, flooding, noise and odour.
- A pumping station at this location has not been the subject of any strategic environmental assessment.
- There is no provision for a pumping station at this location under the Portmarnock South Local Area Plan.
- The proposed development is part of the Local Area Reinforcement Project which includes a number of contracts for pumping stations. By separating the projects into smaller contracts on the same sewer network improvement programme, it is argued that there could be an argument for the avoidance of EIA through project splitting.
- The decommissioning and incorporation of some of the infrastructure associated with the old infrastructure should have been included in the

application. This will include the under-river connection between the old and new pumping station.

- There is nothing to stop the applicant from leaving in place the old pumping station and continuing to operate the same. This could give rise to significant cumulative impacts.
- The Fingal County Council Planning Portal suggests that the site of the current and new application form part of the same overall application. This likewise suggests that cumulative impacts should have been assessed.
- No reasonable alternatives were considered for the location of the pumping station.
- The proposal could result in a significant displacement of an identified “quiet zone” for Brent Geese and Lapwing in the wetland areas adjacent to the site.
- It is also suggested that part of the rising main has been partially laid/constructed under the Baldoyle to Portmarnock Cycle Route. This would represent a significant waste of taxpayers’ money should the development not proceed/secure planning permission.
- No assessment was undertaken with regard to the potential impact of the proposal on protected mammals such as bats, otters and the European Eel all of which are protected under the Wildlife Act.
- Data in relation to birds for the Baldoyle SPA is out of date.
- No risk assessment of the difficulties of connecting the rising main to the pressurised North Fringe Sewer has been identified or discussed.
- Issues in relation to the route of the rising main and the calculations for sizing the storage tank appear to be flawed.

7.2.5. A total of 15 appendices is attached to the ground of appeal. These are set out below.

- The original letter of objection to Fingal County Council in respect of the proposal.
- Details of emails between the applicant and Fingal County Council with regard to the closing date for submissions.

- Details of rezoning proposals for the site in question.
- Details of refusal of planning permission for an equestrian stable building on the lands in question.
- Details of the Sluice River marsh flora and fauna assessment.
- Details of the citizen sign survey of the quiet zone for Light Bellied Brent Geese at Maynetown, Portmarnock (April 2020).

8.0 Appeal Responses

8.1. Fingal County Council's Response to the Grounds of Appeal.

8.2. A response from Fingal County Council dated 10th August, 2020 states that the application was assessed against the policies and objectives of the Fingal County Development Plan and existing government policy and guidelines. The proposal was assessed having regard to the development plan zoning objective as well as the impact on adjoining neighbours and character of the area. An Bord Pleanála is requested to uphold the decision of the Planning Authority and grant planning permission for the proposed development which is a significant piece of infrastructure required to allow the development of zoned land in the immediate vicinity. In the event that the planning decision is upheld, the Planning Authority request that Conditions 3 and 5 are included in the Board's determination.

8.3. Applicant's Response to the Grounds of Appeal

A response was received on behalf of Irish Water from Mott McDonald. The response is summarised below.

- It is stated that the proposed pumping station is critical to provide necessary wastewater infrastructure to facilitate the planned residential development earmarked for Portmarnock South. It is stated that there is insufficient space within the existing Portmarnock Bridge pumping station to provide the infrastructure required to cater for the enlarged pumping station.
- In relation to procedural issues, it is stated that Irish Water have acted in accordance with the requirements of the Planning and Development Act 2000

and it is within the remit of Fingal County Council to determine whether or not it deems further information to be significant. It is apparent that Fingal County Council in this instance considered the information not to be significant.

- The Portmarnock Local Area Plan identifies that there is a requirement of a new pumping station to facilitate the development of residential lands zoned.
- In relation to compliance with zoning objectives, it is stated that utility installations are a class of development which is neither 'permitted in principle' nor 'not permitted' within the zoning objective and as such will be assessed in terms of the contribution towards the achievement of zoning objectives. It is considered that the proposed development, which is mostly located underground, is not incongruous with existing surroundings. Having regard to the scale of siting and nature of the proposed development below ground together with the proposed landscape it is considered that the proposal is fully in compliance with the zoning objectives of the site.
- Irish Water have revised the site layout to maximise distances between existing residential properties and the pumping station to minimise any potential odour and noise generation nuisance. The revised site layout has been arranged to comply with Objective WT12 of the Fingal County Development Plan.
- The riparian buffer is slightly less than the required 30 metres prescribed in Objective WQ05 for the Sluice River. The movement of the pumping station compound towards Station Road would result in an increase in loss of fluvial floodplain. The proposed site layout allows for the 10 to 15 metre buffer from all other watercourses to be met. The pumping station has been designed to ensure that it does not contravene objective WQ04 or WQ05 and it is stated that the mitigation measures set out in the NIS will prevent any adverse impact on the integrity of European sites.
- In relation to flood risk, it is stated that the swale provides compensatory storage for the site that will be directly lost due to the ground raising requirements at the site. There will be no net loss to the fluvial floodplain as a result of the proposed development. It is stated that the proposed site drainage and SuD features will manage fluvial risk to the site and ensure that

there is no increase in flood risk resulting from the proposed development. It is stated that the site-specific flood risk assessment adequately assess the risk of the combined fluvial and tidal events. The site-specific flood risk assessment was considered to be acceptable by Fingal County Council Water Services Section.

- It is stated that there is no requirement for an EIA to be undertaken on the basis that the development is not listed as a project type under Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations, 2001 (as amended). The Natura Impact Statement and Flood Risk Assessment have addressed the key environmental concerns arising from the proposed development. No likelihood of significant environmental effects was concluded in either report. The outcome of the Natura Impact Statement confirmed that the proposed development, including the flood protection works, will not result in any significant environmental effects on European sites.
- The NIS submitted addresses the effects of the proposed development in combination with the Kinsealy Pumping Station, Portmarnock Bridge Pumping Station and the Greater Dublin Drainage Irish Water Projects together with the greenway and residential developments proposed for Portmarnock South. The cycle path proposed by Fingal County Council from Station Road to Strand Road was assessed in Section 6.1 of the NIS. The cycleway will be the subject of its own planning and environmental assessment process by Fingal County Council hence no in combination effects are anticipated.
- With regard to the existing quiet zone for Brent Geese and other birds it is stated that all vegetation, including vegetation along the pipeline route will be cleared outside the bird nesting season and the Brent Geese wintering season. A pre-construction survey for all elements of the project will thus be undertaken to identify any potential impact on nests. It is stated that any disturbance to Brent Geese or Lapwing will be imperceptible. In addition, no works will be undertaken in proximity to the mouth of the Mayne River and as such there will be no potential for disturbance to the nesting Shelduck. It is considered that appropriate surveys were undertaken of the SPA area and therefore no gaps in the information exist. No instream works will be

undertaken within the watercourses and as such there will be no barrier to the movement of migrating eels.

- Any risk identified in relation to the connection to the North Fringe Sewer will be assessed during the detailed design process.
- With regard to the rising main route it is stated that it is not technically feasible for the proposed Portmarnock South pumping station to connect to the existing network on the coast road. On the basis that the Mayne Bridge pumping station is at capacity and therefore unable to accept additional flows. Therefore, the rising main associated with the Portmarnock South pumping station is proposed to bypass the Main Bridge pumping station.
- With regard to the calculations for the sizing of the emergency storage tank, the calculation of the 24 hour storage area is based on the dry weather flow which is calculated at 845 cubic metres.

9.0 Planning Policy

9.1. National Planning Framework

- 9.1.1. The National Planning Framework sets out details of key future growth enablers for Dublin and these include:
- 9.1.2. Ensuring that water supply and wastewater needs are met by new national projects to enhance the city and the wider Greater Dublin Area's Water Supply and increased wastewater treatment capacity.
- 9.1.3. Section 9.4 of the Plan relates to water quality. In this regard it is noted that urban wastewater treatment plant compliance and remedial actions are key term short priority to approve water quality. In the longer-term, capacity issues will need to be resolved to meet growing demand to 2040 and beyond.
- 9.1.4. National Policy Objective 63 seeks to ensure the efficient and sustainable use and development of water resources and water services infrastructure in order to manage and conserve water resources in a manner that supports a healthy society, economic development requirements and a cleaner environment.

- 9.1.5. National Strategic Outcome 9 specifically relates to sustainable management of water and other environmental resources. One of the outcomes in this regard is to:
- Eliminate untreated discharges from settlements in the short term while planning strategically for long term growth.
 - Implement the Greater Dublin Strategic Drainage Study through the large capacity of existing wastewater treatment plants (Ringsend) and providing a new treatment plant in North County Dublin known as the Greater Dublin Drainage Project.
 - Approve storm water infrastructure and improve sustainable drainage and reduce the risk of flooding in urban environments.
 - Increase compliance with the requirements of the Urban Wastewater Directive from 39% today to 90% by the end of 2021 and 99% by end 2027 and 100% by 2040.

9.2. Fingal County Development Plan 2017 – 2023

- 9.2.1. The site is governed by two separate land use zoning objectives. Lands for the proposed pumping station to be located to the north of Strand Road and Station Road and adjacent to the Sluice River as governed by the land use zoning objective 'HA – High Amenity' which seeks '*to protect and enhance high amenity lands*'. The provision of pumping stations or any other type of public service utility is not listed as a use under this land use zoning objective. The plan states that uses which are neither permitted in principle or not permitted will be assessed in terms of the contribution towards the achievement of the zoning objective and vision.
- 9.2.2. The northern section of the proposed rising main adjacent to the coast road is governed by the zoning objective 'OS – Open Space' which seeks '*to preserve and provide for open space and recreational amenities*'.
- 9.2.3. That portion of the proposed sewer to the south of the R123 (Mayne Road) is also designated as a 'high amenity area'.
- 9.2.4. Chapter 7 of the County Development Plan relates to movement and infrastructure. In relation to foul drainage and wastewater treatment, the plan states that the

provision of a well maintained quality wastewater treatment infrastructure is essential to facilitate sustainable development of the county in line with the settlement and core strategy while protecting the environment and public health. Irish Water is now responsible for the treatment and disposal of wastewater where public wastewater facilities exist in towns and villages.

9.2.5. The plan notes that wastewater to the south of the county include Howth, Baldoyle, Sutton, Portmarnock, Santry, Meakstown and Blanchardstown discharges to the regional wastewater treatment plan at Ringsend operated by Dublin City Council. Ringsend was designed for a capacity of 1.64 million PE but is now operating slightly above this. It is necessary to upgrade and expand the treatment plant to its maximum capacity which is estimated to be 2.1 million PE.

9.2.6. Specific objectives set out in the development plan in relation to water treatment include the following:

- *Objective WT01*

Liaise and work in conjunction with Irish Water during the lifetime of the Plan for the provision, extension and upgrading of wastewater collection and treatment systems in all towns and villages of the County to serve existing populations and facilitate sustainable development of the County, in accordance with the requirements of the settlement strategy and associated core strategy.

- *Objective WT03*

To facilitate the provision of appropriately sized and located wastewater treatment plants and networks including a new regional wastewater treatment plant and the implementation of other recommendations of the Greater Dublin Strategic Drainage Study in conjunction with relevant stakeholders and service providers, to facilitate development in the County and region and to protect the water quality of Fingal's coastal and inland waters through the provision of adequate treatment of wastewater.

- *Objective WT07*

Require that all new developments to provide separate foul and surface water drainage systems and to incorporate sustainable urban drainage systems.

- *Objective WT08*

Prohibits discharge of additional surface water to combine (foul and surface water) sewers in order to maximise the capacity of existing collection systems.

- *Objective WT12*

Seeks to establish an appropriate buffer zone around all pumping stations suitable to the size and operation of each station. The buffer zone should be a minimum of 35 to 50 metres from the noise/odour producing part of the pumping station to avoid nuisance from odour and noise.

9.2.7. In relation to surface water and flood risk management the following policies are relevant:

- *Objective SW01* seeks to protect and enhance the county's floodplains, wetlands and coastal areas subject to flooding as vital green infrastructure which provides space for storage and convenience of floodwater, enabling flood risk to be more effectively managed and reducing the need to provide flood defences in the future and ensure that development does not impact on important wetland sites within river/stream catchments.

- *Objective SW02*

Allow no new development within floodplains other than development which satisfies the justification test as outlined in the Planning System and Flood Risk Management Guidelines 2009 for Planning Authorities.

9.2.8. Chapter 7 of the development plan also relates to water quality.

- *Objective WQ04* seeks to protect existing riverine wetland and coastal habitats and where possible create new habitats to maintain naturally functioning ecosystems while ensuring that they do not impact negatively on the conservation objectives of any European sites.
- *Objective WQ05* seeks to establish riparian corridors free from new development along all significant watercourses and streams in the county. Ensure a 10 to 15 metre wide riparian buffer strip measured from the top of the bank on either side of the watercourse except in respect of the Liffey, Tolka, Pinkeen, Mayne, Sluice and other rivers where a 30 metre wide

riparian buffer strip from the top of the bank to either side of all watercourses outside urban centres is required as a minimum.

- Objective SW12 requires an environmental assessment of all proposed flood protection or alleviation works.

9.3. The Portmarnock South LAP

- 9.3.1. The Portmarnock South Local Area Plan was originally adopted in 2013 and has been extended up to the 6th July, 2023. It provides a framework for the development of c.86 hectares of land to the south of Portmarnock stretching between the DART line and the coastal area of Baldoyle Bay and between Station Road to the north, and Mayne Road to the south.
- 9.3.2. Section 9.2 relates to wastewater network and treatment. It notes that the Portmarnock South LAP is part of the North Fringe Sewer catchment. Wastewater generated from residential development within the Portmarnock South LAP will be directed into the North Fringe Sewer from where wastewater will be transported to and treated in the Ringsend Wastewater Treatment Plant. The provision of a new main sewer from the LAP lands to the north fringe sewer and a new foul pumping station is required to facilitate development within the plan area. An existing foul water pumping station is located outside of the plan lands close to Portmarnock Bridge and serves the surrounding area. It notes that Portmarnock Bridge pumping station has had a history of overflowing but did not have any recorded overflows last year. This is mainly due as a result of the improved equipment at Portmarnock Bridge. However, it is acknowledged that the pumping station is nearing capacity.
- 9.3.3. The plan for development of the Portmarnock South LAP lands provides for a new pumping station which will replace the existing Portmarnock Bridge pumping station and allow for the Mayne Bridge pumping station to be downsized. The new pumping station will have a minimum 24-hour overflow storage tank which will effectively deal with overflow situations. However, the provision of an overflow pipe is still required for those exceptional events where a combination of failures occur. A detailed design of the new pumping station and associated outfalls will be subject to planning approval, appropriate assessment and a foreshore licence.

- 9.3.4. Objective WW1 seeks to ensure that all required drainage infrastructure including the installation and commissioning of a pump station and network are completed and operational following the completion of the first 100 dwellings prior to the commencement of any further developments.
- 9.3.5. Objective WW2 seeks to ensure separation of foul and surface water effluent through the provision of separate sewage and surface water run-off networks.
- 9.3.6. Objective WW3 seeks that all foul infrastructure shall be designed and constructed in accordance with the Greater Dublin Regional Code of Practice for Drainage Works and comply with the Greater Dublin Strategic Drainage Study.
- 9.3.7. Objective WW4 seeks to ensure compliance with the Urban Wastewater Treatment Directive.
- 9.3.8. Section 9.2.1 relates to odour control buffer zones. It is noted that lands adjoining pumping stations may be subject to odour nuisance. It is deemed appropriate to establish a buffer zone around these plants for odour sensitive developments such as houses, schools and nursing homes etc. The buffer zone should be 50 metres measured from the odour producing unit of the proposed pumping station given the size of the plant, adjoining residential development, the prevailing wind and the risk of odour nuisance.

10.0 Planning Assessment

I have read the entire contents of the file, visited the subject site and its surroundings and have had particular regard to the issues raised in the grounds of appeal. I consider the pertinent issues in determining the current application and appeal before the Board are as follows:

- Principle of Development
- Procedural Issues
- Flood Risk
- Compatibility with Zoning Objective
- Residential Amenity Impacts – Noise and Odour
- EIA Requirement/Project Splitting/Cumulative Impacts

- Other Issues
- Appropriate Assessment

10.1. Principle of Development

- 10.1.1. National, regional and local policy would all support the provision of appropriate infrastructure in order to provide sufficient wastewater treatment facilities in order to facilitate appropriate development and improve water quality. Reference is made above to the National Planning Framework which seeks to ensure the efficient and sustainable use of water services and infrastructure that supports a healthy society, economic development requirements and a cleaner environment.
- 10.1.2. There are also numerous policies in the Fingal County Development Plan (2017 – 2023) including Objective WT01 which seeks to ensure the extension and upgrading of wastewater collection and treatment systems in all towns and villages in the county to serve existing populations and facilitate the sustainable development of the county. The Portmarnock South Local Area Plan is more prescriptive in respect of wastewater treatment infrastructure required to serve the area. It clearly states that the plan for development of the Portmarnock South LAP lands to the immediate south-west of the proposed pumping station, is predicated on the provision for a new pumping station which will replace the existing Portmarnock Bridge pumping station. It is stated that this will be required following the completion of the first 100 units on the lands in question. The Plan is also prescriptive in stating that the pumping station will be required to have a minimum of a 24-hour overflow storage tank which will effectively deal with overflow situations. The Plan notes that there is very limited capacity in the existing Portmarnock Bridge pumping station and it is therefore a pre-requisite of all development within the planned lands that drainage infrastructure which, includes the pumping station and outfall and associated pipe network are operational following the completion of the first 100 dwellings.
- 10.1.3. It is apparent therefore that the provision of a new pumping station is an important pre-requisite to any development of lands designated and zoned in the Portmarnock South LAP for residential development. And it is the policy of both the Fingal Development Plan and the Portmarnock South Local Area Plan to ensure that such drainage infrastructure is in place to cater for the wider development objectives of

Portmarnock South. There is no doubt therefore in my opinion that the principle of a new pumping station to serve Portmarnock is acceptable in principle and is fully in accordance with planning policy as set out.

10.2. Procedural Issues

10.2.1. The grounds of appeal suggest that the additional information was of such a significant nature that it necessitated the requirement for revised public notices. Whether or not the applicant was required on foot of the additional information submitted, to publish new notice was ultimately a matter for Fingal County Council in adjudicating on the application. The additional information submitted included a revised Natura Impact Statement and a more site-specific flood risk assessment. These documents were already submitted with the original application and the additional information merely requested that revisions be made to the said documents. It is acknowledged that an additional archaeological testing report and an arboricultural impact assessment report was also submitted. It is debatable whether such information submitted was so fundamental as to require new public advertisements. A point worth noting is the fact that there was only one observation/objection to the proposal and that was from the current appellant. It is also apparent from the grounds of appeal that the appellant in this instance was fully aware of the additional information submitted and as such, the objector/appellant was in no way prejudiced in making the appeal submission as the appellant was fully aware of the documentation submitted by way of additional information. Perhaps more importantly the documentation submitted by way of additional information was available to the appellant in formulating the grounds of appeal and this enables both the appellant to make coherent and comprehensive arguments as to why the development should not proceed on the basis of all of the information submitted to the Planning Authority, and subsequently enables the Board to assess the entirety of the application and the arguments set out in the grounds of appeal on a *de novo* basis.

10.2.2. Should the Board consider it appropriate it is of course open to it to request the applicant to readvertise specifically stating details of the documents submitted to the Planning Authority by way of additional information and inviting further submissions on foot of this advertisement. However, as the Board is assessing the proposed

development in its entirety and de novo, I do not consider it necessary that it embarks on this course of action.

10.2.3. In relation to other procedural issues, the grounds of appeal argue that due to Covid-19 restrictions, time periods were restrained for both submitting objections and in the case of the Planning Authority adjudicating on the application in the context of all the issues raised in the appeal submission. An Bord Pleanála is not in a position to retrospectively alter the permissible time periods for lodging an objection to the Planning Authority. However, it should be noted that the appropriate time period in accordance with the legislation was afforded to the appellant in submitting a third party appeal to the Board and the proposed development in the context of the grounds of appeal will be assessed in its entirety and de novo by An Bord Pleanála in determining the proposal. The Board in adjudicating on the current application will assess it in the first instance and therefore will give all issues adequate consideration in its assessment.

10.2.4. With regard to information purportedly missing from the local authority file again the Board are not in a position to comment on this matter particularly as no information/explanation has been proffered by Fingal County Council in its response to the grounds of appeal.

10.3. **Flood Risk**

10.3.1. Concerns are expressed in the grounds of appeal that the proposed development could give rise to significant flood risk. Photographs are submitted from February 2020 which clearly indicate surface water flooding on the site in question. Concerns are also expressed that the site-specific flood risk assessment did not assess the cumulative impacts arising from pluvial, fluvial and coastal flood events simultaneously.

10.3.2. The applicant submitted the flood risk assessment and on foot of additional information request, Irish Water submitted a more detailed site-specific flood risk assessment. The assessment submitted does acknowledge that historic flood events have been recorded adjacent to the pumping station site, but not on the subject site according to the documentation submitted. This conclusion is certainly at odds with the information submitted in the grounds of appeal which clearly provide evidence of the site being flooded.

- 10.3.3. While the applicant's response to the grounds of appeal states that it is not standard practice to consider the combined effects of pluvial flood events with fluvial or tidal events as suggested in the grounds of appeal, it is nevertheless quite clear from historical information provided in the site specific flood risk assessment that in 2002 a flooding event did occur which was described as being in proximity to the site concerned and occurred as a result of a simultaneous coastal flooding pluvial flooding event (see Table 3.1 Entry 13 of the FRA Report).
- 10.3.4. The flood risk assessment acknowledges that the subject site proposed to accommodate the pumping station is located in an area designated as Flood Zone A where the probability of flooding from rivers and the sea is highest. I also note that the provision of a pumping station in this instance can be classed as 'highly vulnerable development' being essential infrastructure with the potential to create significant sources of pollution. Paragraph 3.5 of the Flood Risk Management Guidelines notes that most types of development should be avoided in Zone A and should only be considered in exceptional circumstances or in the case of essential infrastructure that cannot be located elsewhere. It is therefore suggested that highly vulnerable development such as that proposed is on the whole incompatible with an area designated as being of high probability of flooding.
- 10.3.5. I also note that the flood risk assessment pays cursory attention to the potential for groundwater induced flooding. This risk is assessed to be 'low' in the assessment submitted. It would in my view be appropriate that any flood risk assessment would give at least a cursory examination of the potential impact arising from the provision of large scale underground structures in terms of the potential displacement of groundwater levels in the immediate vicinity of the site. In this instance it is proposed to provide a large-scale emergency storage tank (845 cubic metres) together with a large wet well inlet chamber and valve chamber. This would potentially give rise to local groundwater displacement particularly in areas with low levels of hydraulic conductivity and transmissivity in the groundwater regime. Any alterations in the groundwater regime could reduce the field capacity of the soils in the immediate vicinity thereby potentially contributing to the accentuation of flooding from fluvial or pluvial sources. The implications of such large-scale excavation and insertion of underground infrastructure and its potential implications on the groundwater regime should have been the subject of a more thorough investigation in my view.

- 10.3.6. Lastly, in relation to the issue of flooding the site specific flood risk assessment states that as a mitigation measure ground levels will be raised from the existing levels of 2.5 metres to 3.0 metres OD to new levels of between 4.0 and 4.2 metres OD an increase of between 1 and 1.7 metres. While this may prove to be an effective mitigation to militate against the infrastructure in question from being inundated by flood waters, it is not in my view adequately demonstrated that this will not result in displacement of flood waters elsewhere in the floodplain or beyond.
- 10.3.7. The flood risk assessment suggests that it is proposed to provide a minimum of 5 cubic metres of compensatory storage (to ensure that there is no net loss in the fluvial floodplain). It is also proposed to incorporate SuDS drainage systems to effectively manage any increase in run-off. Having regard to the proposal to increase ground levels between 1.0 and 1.7 metres over an area estimated to be a minimum of 300 square metres, it is questionable that the swale area is a sufficient compensatory measure to address potential flooding concerns elsewhere.
- 10.3.8. Thus, arising from my assessment I would have a number of concerns in relation to flooding and the flood risk assessment submitted with the applications. Chiefly among these concerns is the fact that clear evidence has been presented that the lands in question, despite what is stated in the flood risk assessment submitted, are clearly susceptible to surface water flooding. I would further have concerns that the nature of the infrastructure proposed is classed as highly vulnerable development under the flood risk management guidelines and therefore in my view would be inappropriately located in close proximity to areas which are susceptible to a coastal area which is susceptible to flooding inundation as indicated in the OPW Flood Hazard Maps. The alteration of ground levels and indeed the provision of large-scale underground structures have the potential to alter the natural contours of the area and could result in the displacement of flood waters elsewhere. This is a significant issue as the subject site is bounded to the north-east and south-west by residential development and is also proximate to two important regional thoroughfares.
- 10.3.9. On this basis it is at the very least questionable whether the proposed pumping station should be located on the site in question, particularly as no evidence has been presented that the applicant has investigated alternative sites. Finally, I would state that I have no concerns in relation to the proposed rising main to be located to the south of the pumping station from flood risk perspective.

10.4. Compatibility with Zoning Objective

10.4.1. The grounds of appeal argue that the proposed development contravenes the development plan on the basis that the proposed pumping station is not a permitted use under the land use zoning matrix for the site. The subject site is zoned 'high amenity' in the Fingal Development Plan. Infrastructure utility uses are not listed as either a 'permitted use' or a use that is 'not permitted' under the Fingal County Development Plan. In such circumstances the development plan suggests that such uses not listed would be assessed on their merits and in accordance with the proper planning and sustainable development of the area. What is proposed in this instance is a pumping station on a vacant site on what could be considered either peripheral suburban lands or a suburban infill site to the south-west of the village of Portmarnock. The applicant points out in the response to the grounds of appeal that the substantial elements of the pumping station will be located below ground level and the only substantial structure to be located above ground comprises of a control and welfare building approximately 20 square metres in size and c.3 metres in height. Having regard to the critical nature of the infrastructure proposed which is required to facilitate the provision of approximately 1,500 units, it is considered that the overall development is quite modest in nature and cannot be considered incongruous with its surroundings. In addition, the proposed development in this instance will enable core strategy targets set out in the development plan to be met in relation to providing much needed housing in the area. On this basis I consider a case could be made for granting planning permission for the proposed development based on the overall planning merits associated with the development notwithstanding the fact that it is not listed as a permitted use under the land use zoning objective of the development plan.

10.5. Residential Amenity Impacts - Noise and Odour

10.5.1. The grounds of appeal argue that the proposed development contravenes Objective OC1 of the Portmarnock South Local Area Plan in that this objective seeks to protect residential amenity by ensuring an odour control buffer zone of 50 metres from any new pumping station to existing and future development. It is acknowledged that lands adjoining pumping stations may be the subject to an odour nuisance. In terms of odour, the most likely causes of odour associated with the development relate to the proposed inlet chamber, wet well chamber and to a lesser extent valve chamber.

These buildings are all located within 45 to 50 metres from the veranda and balcony areas associated with 'The Links' residential apartments to the north-west. The location of these elements of the proposal are therefore only marginally below the stipulated separation distances. It would however in my view be problematic to relocate the elements of the pumping station to a position further away from the apartments in question as this would move the development in closer proximity to the Sluice River which in turn would further compromise the ability of the proposal to comply with Objective WQ4 and WQ5 which seeks to establish 30 metre wide riparian buffer strips between development and the Sluice River as set out in the Fingal County Development Plan. The proposed development in this instance falls marginally short of the separation requirements set out under Objective OC1. To refuse planning permission on the basis that elements of the development fall marginally short of the required buffer zone would in my view be disproportionate.

10.5.2. If the Board were disposed towards granting planning permission for the proposed development it could, having regard to the tight separation distances involved between the proposed pumping station and surrounding residential amenities and having regard to the policy referred to contained in the local area plan, consider requesting further information in respect of noise and odour impacts which are likely to arise on surrounding residential receptors.

10.6. EIA Requirement/Project Splitting/Cumulative Impacts

10.6.1. The grounds of appeal argue that the proposed development will have a significant environmental impact and on this basis the proposed project comes within the meaning of Article 120(1)(b)(iii) namely that there is a real likelihood of significant effects on the environment arising from the proposed development. It is also suggested that the proposal forms part of the overall local network reinforcement project and to assess the current application in isolation would constitute 'project splitting' for the purposes of circumventing EIA. Furthermore, it is argued that if an EIAR is required, any such assessment should take into consideration cumulative effects in the context of the proposed and existing pumping station. Article 120 of the Planning and Development Regulations relate to subthreshold EIARs. However, subthreshold EIARs can only be required in respect of specific classes of developments set out under Schedule 5 Parts 1 and 2 of the Planning and Development Regulations 2001 (as amended). The applicant is correct in stating that

a pumping station is not a class of development for which EIAR is required. On this basis there is no requirement for the applicant to submit a subthreshold EIAR. The Board will also note that documentation accompanied the application including a report on the planning and environmental considerations of the proposed project. This report included an assessment of the proposal in the context of biodiversity, noise, landscape, cultural heritage, soils and geology, air quality, traffic, drainage and flooding. Furthermore, an NIS, a Flood Risk Assessment, a Arboriculture Report and an Archaeological Report was also submitted. I consider that there is sufficient information on file to enable the Board to adequately assess the environmental impact arising from the proposed development. If the Board accept that the proposed development is not a class of development for which EIAR is required any arguments in respect of failure to assess cumulative impacts and project splitting can be set aside. I would request that the Board note that concern is expressed in the grounds of appeal that cumulative impacts may arise in the context of the existing pumping station serving the area if both systems were in operation simultaneously. It is however clear from the information contained on file that the existing pumping station is to be decommissioned.

10.7. Other Issues

10.7.1. An array of other issues were raised in the grounds of appeal and these are more briefly addressed below.

Ecology an Biodiversity Issues

10.7.2. The Board will note that much of the ecology and biodiversity issues are dealt with under a separate appropriate assessment heading below. It is sufficient to note here however that the appellant has suggested that the ecology/biodiversity issues associated with the subject site and its surrounding trigger the requirement for an EIAR. I have already argued above that the development is not a class of development for which an EIAR is required.

10.7.3. In relation to more general biodiversity issues I note that in addition to submitting an NIS (and a revised NIS) the planning and environmental considerations report submitted with the application sets out details of the baseline biodiversity environment and assesses the proposed development particularly during the

construction phase on the wider ecology and biodiversity of the area. It also sets out mitigation measures in relation to site preparation works, civil works and the commissioning of the pumping station. Various mitigation measures are set out in relation to vegetation clearance, pollution control measures and watercourse crossings.

10.7.4. The quiet zone as indicated in the document submitted as Appendix 11 of the grounds of appeal was created as a compensatory habitat as part of the Portmarnock South LAP and is located at the southern end of the LAP in close proximity to the Mayne Road (the R123). This compensatory habitat is located a considerable distance from the proposed pumping station c.1 kilometre away and it is not anticipated that the works associated with the pumping station either during the construction or operational phase will have a significant impact on the “quiet zone” referred to. There may be some temporary disturbance to this “quiet zone” during the construction of the pipeline may have the potential to disrupt this quiet area. However, the impact will be temporary, and it is noted that the alignment of the proposed pipeline skirts the northern and western boundary of this designated “quiet zone”. All vegetation, including vegetation along the rising main route within the bird quiet zone will be cleared outside the bird nesting season and will also be cleared outside the Brent Geese wintering season. Based on the above I consider the proposal will have an acceptable impact on the bird “quiet zone”.

With regard to the bird data contained on file, it is noted that comprehensive ecological surveys were undertaken at the proposed development site in February, 2018 and June, 2020 and that these surveys were undertaken in line with Heritage Council Guidelines. It would appear therefore that the surveys in question are up to date and therefore contrary to what is suggested in the grounds of appeal.

With regard to the issue of connection to the North Fringe Sewer it is noted according to the information contained on file that this sewer is pressurised. However, there is nothing to suggest that an appropriate methodology will not be employed so as to ensure that any connection between the rising main serving the subject pumping station and the north fringe sewer cannot be carried out in accordance with optimum health and safety requirements.

With potential impacts on the European eel and otter, I note the information contained in the revised NIS which includes a number of mitigation measures which would militate against the potential for adverse impacts on water quality on the Sluice River. Furthermore, it is stated that no instream works will be undertaken within the watercourses and therefore there will be no barrier to movement to aquatic species such as the otter or the migrating European eel.

Works Already Carried Out

Reference is made in the grounds of appeal to the Portmarnock and Malahide Cycleway which according to the information contained in the appeal has incorporated part of the proposed sewage network without an appropriate and considered assessment. I cannot verify the veracity of this statement however, any application for a new cycleway between Portmarnock and Malahide will be subject of a separate planning application and will be scrutinised and evaluated on its merits and in accordance with the proper planning and sustainable development of the area.

Emergency Storage Tank

Finally, the grounds of appeal raise concerns in relation to the emergency storage provision to be provided underground at the pumping station. Irish Water have indicated that the volume proposed at 845 cubic metres per day is based on an engineering calculation of the dry weather flow which is the average daily flow from the upstream catchment.

Lack of Alternative Sites Investigated

It would have been appropriate in my view that the applicant, in the interests of providing a more robust evaluation of the suitability of the site for development, explore and provide an assessment of alternative locations which may have been suitable to accommodate a pumping station, particularly in light of the flooding issues associated with the subject site.

10.8. **Appropriate Assessment**

Introduction

10.8.1. This section of the assessment addresses whether or not the proposed development individually or in combination with other plans or projects is likely to have a significant effect on any European site in view of the site's conservation objectives and whether or not a Stage 2 Appropriate Assessment is required. The Board will note from the outset that the proposed development is not connected to or associated with the management of an existing Natura 2000 site.

NIS Submitted

10.8.2. The Board will note that an NIS accompanies the application and that this NIS was subject to a peer review carried out on behalf of Fingal County Council by Scott Cawley Ecological Consultants. The NIS submitted (revised on foot of an additional information request) sets out details of the summary of the screening outcome where it was determined that the proposed development has the potential to result in significant effects on the qualifying interests associated with Natura 2000 sites in the vicinity. The Stage 2 Appropriate Assessment involved the preparation of a Natura Impact Statement which provides details of the project overview and identifies European sites which could be potentially impacted upon; namely the Baldoyle Bay SAC (Site Code: 000199) and the Baldoyle Bay SPA (Site Code: 004016). The NIS notes that the proposed development is located outside both the SAC and SPA boundary and there will be no loss of habitat resulting from the proposal. However, the release of pollution and sediment were identified as pressures on the bentec communities on the SAC and this could impact on the qualifying interests associated with the SAC. Likewise, the release of pollutants arising from construction has the potential to have localised impact on the area of the subtidal and intertidal habitat associated with the Baldoyle Bay SPA (wetlands) this may cause a reduction in suitable wetland areas.

10.8.3. In terms of in combination effects, the decommissioning of the Portmarnock Bridge pumping station, the Greater Dublin Drainage Scheme, the Sutton to Malahide Greenway, the Kinsealy Pumping Station and residential developments in the area are identified as potential in combination effects. The NIS goes on to set out a series of mitigation measures to address sedimentation and pollution and other mitigation

measures to address potential disturbance of bird species associated with the SPA. With the implementation of these mitigation measures the NIS concludes that the project alone and in combination with other projects and plans together with the implementation of mitigation measures demonstrates that no adverse effects on the integrity of either site will arise in view of the site's conservation objectives.

10.8.4. The NIS submitted was the subject of a peer review. It states that all the items raised in the original NIS submitted with the application have been satisfactorily addressed and it is agreed with the conclusions set out in the revised NIS that with the implementation of design and mitigation measures proposed there will be no adverse effect on the integrity of an European site.

10.8.5. For the purposes of completeness, I propose to carry out an independent and comprehensive appropriate assessment exercise in respect of the proposed development.

AA Screening

There are Natura 2000 sites within close proximity of the proposed development. The Baldoyle Bay SAC and the Baldoyle SPA both of which have a common boundary and are located at their closest point c.10 metres to the south-east of the proposed pumping station on the opposite side of the Strand Road (R106). The western boundary of the SAC and SPA are located between 250 and 650 metres from the proposed alignment of the sewer to the south of the pumping station. The subject site is located adjacent to the River Sluice and the proposed rising main traverses the River Mayne to the south of the pumping station. Both rivers are hydraulically connected with the Natura 2000 sites. Having regard to the hydrological connection and the potential impact which could arise in respect of surface water pollution and in relation to noise and physical disturbance particularly associated with the construction works, I would agree with the conclusions set out in the Stage 1 Screening Assessment carried out on behalf of the applicant that potential adverse impacts on qualifying interests and features of conservation interest associated with the Natura 2000 sites cannot be ruled out at screening stage. Therefore a Stage 2 Appropriate Assessment is required. Furthermore, having regard to the proximity of other Natura 2000 sites in the wider area and the fact that the subject site is in no way hydrologically or otherwise connected with other sites, I would likewise agree

with the conclusion set out in the NIS that the impact of the proposed development on other Natura 2000 sites can be discounted.

The qualifying interests associated with the Baldoyle Bay SAC (Site Code: 000199) are as follows:

- *Mudflats and sandflats.*
- *Salicornia mud.*
- *Atlantic salt meadow.*
- *Mediterranean salt meadow.*

10.8.6. The features of conservation interest associated with the Baldoyle Bay SPA (Site Code: 004016) include the following species:

- *Light Bellied Brent Goose.*
- *Shelduck.*
- *Ringed Plover.*
- *Grey Plover.*
- *Golden Plover.*
- *Bartailed Godwit.*
- *Wetland and winter birds.*

10.8.7. The NIS in my opinion also correctly identifies the potential adverse impacts that could arise on the qualifying interests associated with the Natura 2000 sites are as follows:

- Potential for loss of foraging habitat.
- Potential for surface water pollution.
- Potential for noise and physical disturbance and these are assessed in more detail below.

Potential for Loss of Foraging Habitat

The potential for loss of foraging habitat has been identified as a potential threat particularly in relation to the Light Bellied Brent Geese which utilise amenity and

agricultural grasslands located outside the SPA. Studies have been carried out in respect of primary feeding areas for Brent Geese along the North Dublin coastline. It is noted that the site of which the pumping station is to be located does not constitute optimal foraging habitat for the Geese primarily due to the unmanaged and overgrown nature of the site. The studies also indicated that the primary feeding area where the estuarine habitat associated with the SPA. Secondary feeding areas for Brent Geese have also been identified along the alignment of the proposed rising main. Any potential impact arising from the rising main will be temporary during the construction period only as the lands will be reinstated post construction. The main mitigation measures set out in the NIS to mitigate against disturbance relate to the timing of works. Elements of the construction works will be restricted to outside the Light Bellied Brent Geese wintering season (October to April). This measure will ensure that no disturbance will take place during the period when the Brent Geese are using the habitat and therefore the proposal will not result in any loss of foraging habitat.

Potential for Surface Water Pollution

The proposed construction works will have the potential in the absence of mitigation to result in the release of pollutants into adjoining watercourses and therefore into Baldoyle Bay SAC and SPA. The release of surface water pollution into the estuary could have a negative effect on the water quality and the wetland habitat both within the SAC and SPA boundary. Any impact on wetland habitat associated with the SAC and SPA could have a potential adverse indirect impact for the feeding grounds associated with waterfowl species. A series of mitigation measures are set out in Table 7.1 of the NIS which include the creation of minimum buffer zones and 15 metres between construction works and all watercourses. Works will be scheduled for dry conditions to reduce the risk of run-off and construction works will not be undertaken during or immediately after significant rainfall events. Mitigation measures are also set out in the Table in respect of the management of concrete and hydrocarbons on site. Silt fences will also be installed around the perimeter of the works areas and all stockpile material and storage areas within the site will be setback from watercourses. Mitigation measures will also be put in place during dewatering excavations. All removed water will be treated via a sediment tank and filter bag located on site which may involve the use of an “silt-buster”.

Trenchless construction of the pipeline across the unmanned stream and the main river will be carried out by a specialist contractor to ensure that there is no 'frac-out' of bentonite or other fluid during the proposed river crossings.

In-Combination Effects

In terms of in combination effects, the NIS in my view correctly identifies those projects in the vicinity that could potentially have a cumulative impact in conjunction with the proposed development on the Natura 2000 sites referred to. These projects include:

- The decommissioning of the existing Portmarnock Bridge pumping station.
- The proposed outfall pipeline associated with the Greater Dublin Drainage Project which would be routed across Baldoyle Bay approximately 1.1 kilometres to the south-west.
- The Sutton to Malahide Greenway.
- The Kinsealy Pumping Station.
- Residential development in the vicinity.

Many of these projects have yet to receive planning consent and as such it is difficult to assess the potential impact of the proposals on the SACs in question. However, given the proximity of the proposed developments to the Natura 2000 sites in question all projects yet to be commenced will be the subject of a screening for appropriate assessment and where it is found that an NIS is not necessary in combination effects can be ruled out. In the case where a Stage 2 Appropriate Assessment is required it is anticipated, appropriate mitigation measures can be put in place to ensure that the proposals fully comply with the Habitats Directive and the Water Framework Directive and accordingly there will be no potential for in combination effects.

In the case where planning permission has been obtained such as the Greater Dublin Drainage Project, the Kinsealy Pumping Station and the residential developments which have obtained planning permission in the vicinity all these developments have been the subject of appropriate assessment. In each case either the screening report for appropriate assessment or the NIS prepared on foot of the Stage 2 Appropriate Assessment determined that the proposed works would not

result in any impacts on Natura 2000 sites. On this basis it is reasonable to conclude that there is no potential for in combination impacts arising from the proposed development cumulatively with other developments in the area.

Therefore, the proposed development has been considered in light of the assessment requirements set out under Section 177U and 177V of the Planning and Development Act 2000, as amended. Following this appropriate assessment, it has been determined that the proposed development individually or in combination with other plans or projects would not adversely affect the integrity of the Baldoyle Bay SAC or Baldoyle Bay SPA or any other European site in view of the site's conservation objectives. This conclusion is based on a complete assessment of all aspects of the proposed development and there is no reasonable doubt as to the absence of adverse effects.

11.0 Overall Conclusions and Recommendation

Arising from my assessment above it is acknowledged that the principle of a new pumping station is required to serve the development of lands at Portmarnock South which is a key objective in the County Development Plan and the Portmarnock Local Area Plan. However, having regard to the vulnerability of the site to flooding as evidenced in the grounds of the third party appeal, I am not satisfied that the proposed development which is classed as a highly vulnerable development under the Planning and Development System and Flood Risk Management Guidelines would not exacerbate flooding in the wider area and therefore would represent an unacceptable flood risk. On this basis I recommend that the Board overturn the decision of Fingal County Council and refuse planning permission for the proposed development based on the reasons and considerations set out below.

12.0 Reasons and Considerations

Having regard to the location of the site in an area which is prone to flooding and on the basis of the submissions made in connection with the planning application and appeal, the Board is not satisfied that the proposed development which is classed as a highly vulnerable development in “the Planning System and Flood Risk Management: Guidelines for Planning Authorities” issued in November, 2009 by the Department of Heritage and Local Government, would not give rise to an increased risk of flooding on the site or property in the vicinity. The proposed development would, therefore, be prejudicial to public health and safety and would be contrary to the proper planning and sustainable development of the area.

Paul Caprani,
Senior Planning Inspector.

24th November, 2020.