



An  
Bord  
Pleanála

## Inspector's Report

### ABP-307657-20

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<b>Development</b>	Construction of an underground wastewater pump station.
<b>Location</b>	Balcarrick Road, Ballymastone, Donabate, Co. Dublin.
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	F19A/0243
<b>Applicant(s)</b>	Irish Water
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellants</b>	Brian and Fiona Gallagher
<b>Observers</b>	Councillor Paul Mulville and Corina Johnston.
<b>Date of Site Inspection</b>	13 <sup>th</sup> October 2020.
<b>Inspector</b>	Patricia Calleary

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## 1.0 Introduction

- 1.1. This assessment report relates to a proposed development by Irish Water of an underground wastewater pump station in Donabate, County Dublin. Following a decision by Fingal County Council to grant permission for the development, a third party appeal was received by the Board and two observations on the appeal followed.

## 2.0 Site Location and Description

- 2.1. The appeal site, with a stated area of 0.32 hectares, is located to the east of Donabate, within the townland of Ballymastone, in north County Dublin. The site is flat and mainly grassed over, with some gravel area to the front which is stated to be used for car parking in association with the football pitch to the north/rear of the site. Access is off from the south off a local road, Balcarrick road (also known as New road) and this local road with the new Donabate distributor road to the west. The boundaries to the south and east are marked by mature trees/hedgerows. The boundary to the west is marked by a post and wire fence and the boundary to the north is unmarked with open connection between the site and the football pitch to its north. Drainage ditches are located along the east and west site boundaries. Overhead powerlines traverse the site. There are a number of single houses on sites to the east, including a house immediately east of the site. Donabate Golf Club is located in close proximity to the east and Donabate Beach is located c. 1.7km to the east.

## 3.0 Proposed Development

- 3.1. The proposed development is for a pump station associated with Irish Water's wastewater network. It would comprise the following:
- An underground wastewater pump station (a wetwell) with roof level up to 0.35m above ground level;
  - An underground emergency (wastewater) storage tank with a capacity of 650 m<sup>3</sup> and a roof level 0.35m above ground level;

- An underground water tank with a capacity of 6m<sup>3</sup> and a roof level 0.15m above ground level;
- Valve and flowmeter chambers;
- Chemical dosing facility for odour control;
- Kiosks, relocated parking, landscaping, fencing, pipework and all associated development.

3.2. The existing access off the local road (Balcarrick / New road) would remain, but it would be modified to accommodate construction traffic and post construction, the existing gate would be positioned further back from the local road.

3.2.1. The pump station would cater for current and future domestic wastewater flows from Corballis and Ballymastone catchments. It would pump domestic wastewater collected in the pump station / wetwell to the Portrane wastewater treatment plant.

3.3. In addition to the standard planning application documentation and drawings, the application was accompanied by a Planning Report, Environmental Impact Assessment Screening Report, Appropriate Assessment Screening Report, Site Specific Flood Risk Assessment Report, Archaeological Screening Assessment Report and an Ecological Impact Assessment Report.

3.4. The response to a request for further information was accompanied by revised and additional drawings, including details of buffer exclusion zones (Odour and Noise), details of proposed access arrangements and an updated Environmental Impact Assessment Screening Report.

## 4.0 Planning Authority Decision

### 4.1. Decision

4.1.1. The Planning Authority issued a notification of a decision to **GRANT** permission subject to nine conditions, the following which are of note:

- Condition 2: requires the pumping station to be in accordance with Irish Water Code of Practice (IW-CDS-5030-03) and the Greater Dublin Regional Code of Practice for Drainage Works, and a requirement for the submission of revised surface water drainage proposals;

- Condition 3: construction operation times, noise and vibration limits (construction and operation), requirement for an odour control management plan (operation);
- Condition 4: landscaping details and a tree bond of €7,000;
- Condition 5: archaeological monitoring;
- Condition 6: transportation and drainage requirements;
- Condition 7: requirement for a Construction Management Plan.

## 4.2. Planning Authority Reports

### Planning Reports

4.2.1. Following initial assessment, the Planning Officer recommended seeking further information on the following:

- compliance with the setback requirements of Objective WT12 of the Fingal Development Plan and with Irish Water's Code of Practice IW-CDS-5030-03;
- a revised Environmental Impact Assessment (EIA) screening report addressing issues of odour nuisance and vibrational noise.

4.2.2. Following receipt of further information, in noting the relocated position of the pump station and the nature of the development, the planning officer considered that the development would be supported by policy contained within the Fingal Development Plan, including ensuring adequate provision of wastewater infrastructure.

4.2.3. A grant of permission was recommended.

### Other Technical Reports

- Water Services: No objection;
- Parks Division: No objection;
- Transportation: No objection;
- Community Archaeologist: No objection, condition recommended;
- Environmental Health Officer (Health , Air and Noise Unit): Satisfied with additional information submitted.

### 4.3. **Third Party Observations**

- 4.3.1. Third party observations were received from local residents, including the owners of the property which directly adjoins the appeal site to the east. An observation was also received from Councillor Paul Mulville and Corina Johnston (Local Area representative).

### 4.4. **Prescribed Bodies**

- None.

## 5.0 **Planning History**

- 5.1. There is no planning history associated with the appeal site. Planning applications on sites in the immediate vicinity include several residential development proposals and the following application relates to the adjoining site to the east:

- F12A/0190 – Planning permission was granted by Fingal County Council (October 2012) to construct a new dwelling, garage, playroom and a wastewater treatment system;

The Donabate Distributor Road is located to the east of the site with the following relevant planning history:

- PL06F.KA0018/PL06.HA0031 – An Bord Pleanála approved the Donabate Distributor Road – Phase 1 (July 2011).

## 6.0 **Policy Context**

### 6.1. **National and Regional Planning Policy**

- 6.1.1. **Project Ireland 2040: National Planning Framework (NPF)** references the critical importance of investment in water services infrastructure in terms of implementation of the National Development Plan. National Objective 63 sets out the aim for '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'.

6.1.2. **Regional Spatial and Economic Strategy (RSES) for the Eastern and Midland Regional Assembly (EMRA)** contains policies to support Irish Water and the relevant local authorities in planning strategically for long-term growth.

## 6.2. **Local Planning Policy**

6.2.1. The **Fingal Development Plan 2017-2023** is the applicable plan for the area. The site is zoned 'OS- Open space' (To preserve and provide for open space and recreational amenities) within the Fingal Development Plan. The site lies outside of the **Boundary of the Local Area Plan 2016 (LAP)** lands.

6.2.2. Applicable planning policies and objectives are set out and considered in the assessment below.

## 6.3. **Natural Heritage Designations**

6.3.1. The closest European site relative to the appeal are the Malahide Estuary Special Area of Conservation (SAC) and the Malahide Estuary Special Protection Area (SPA), which, at its nearest point are located c.1 km south of the site. Rogerstown Estuary SAC and Rogerstown Estuary SPA are located c.2km north of the proposed development. These and other European sites that have the potential for connectivity to the project are listed and considered under the heading 'Appropriate Assessment – Stage 1 Screening' below.

## 6.4. **Environmental Impact Assessment**

6.4.1. The proposed development is not of a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations 2001-2020 (hereinafter referred to as the 'Regulations') requiring a mandatory or sub-threshold Environmental Impact Assessment (EIA).

## 7.0 **The Appeal**

### 7.1. **Grounds of Appeal**

7.1.1. An appeal was received from the owners of the site and house located immediately east of the appeal site, Brian and Fiona Gallagher, c/o O'Neill Town Planning Consultants. The appeal is accompanied by a civil engineering report prepared by WTW Consultants Ltd. The following sets out the principal points raised in the appeal.

- request the Board to require the applicant to submit an Environmental Impact Assessment Report (EIAR), having regard to Article 109(1) of the Regulations;
- site notice display did not comply with the Regulations and as such the application should have been deemed invalid;
- the impact of the proposed development on the appellants' residential amenities has not been properly assessed;
- the revised proposal does not meet the required setback of 15m to the property boundary;
- noise and odour impacts would reduce the enjoyment of the appellants' property;
- deep excavations and high-water table adjacent to appellants' property was not considered in the design;
- construction traffic would cause traffic congestion and difficulties in accessing and egressing appellants' property;
- proposed development is contrary to the provisions of Objective Z04 (transitional zones) of the Fingal Development Plan and it is not appropriate to locate the development adjacent to a residential property with further development potential;
- proposed development is contrary to Objective DMS44 (Protection of areas with a unique identified residential character);
- alternative sites were not properly assessed;
- the proposed development represents a material contravention of the Development Plan;
- proposal to provide car-parking to the rear of the pumping station may result in anti-social behaviour, particularly at night-time.

## 7.2. Applicant's Response

- the appeal submits that the development is not supported by the land use objective 'OS – Open Space' contained within the Fingal Development Plan;



- the development would meet the objectives of the Development Plan, particularly Objective WT01;
- the development would not harm the character of the area through design, character, density or height;
- the proposed development relates only to the wastewater network and is not a class of development specified in Schedule 5 of the Planning and Development Regulations and the requirement for EIA does not arise;
- there is no requirement to consider alternative sites, however, other sites were considered as good practice;
- the proposal was amended to relocate the proposed development towards the west of the site (as submitted at further information stage);
- measures have been incorporated to control noise and odour. A buffer of 35m between the residential property to the east and the elements of the development most at risk from producing odour and noise is provided (Dwg. MDW0795APA0013 Rev 106);
- the relevant considerations in determining this application do not include Irish Water Code of Practice, as the code is intended to outline acceptable typical design and construction details that are required from other parties for proposals which are intended to connect to the Irish Water network;
- with the adoption of conditions 7, 8 and 9 of the notification of a decision to grant permission, the construction stage of the development would not have an unacceptable impact on the neighbouring amenity;
- significant measures have been undertaken to ensure the proposed development would not have a negative impact on the amenity of neighbouring properties;
- site investigations have been carried out and the applicant is aware of the ground conditions and the level of rock to be removed;
- car parking would only be used during the day and would be somewhat overlooked by the neighbouring football pitches;

- the site notice was erected in accordance with the planning and development regulations.

### 7.3. Planning Authority's Response

- the site selection considered a number of factors and the proposed site was considered the optimum location for the proposed pumping station taking account of all the assessment criteria;
- the proposed pumping station was relocated so that the main odour and noise producing elements of the proposal are outside the 35m buffer zone and in accordance with Objective WI12 of the Fingal Development Plan;
- conditions were attached to ensure monitoring of noise, odour and dust;
- there will be limited visual impact above ground;
- recommends that in the event that the Planning Authority's decision is upheld, Condition No.4 (landscape plan) is included in the Board's Order.

### 7.4. Observations

7.4.1. The two observations raised similar concerns to those raised in the appeal and included the following additional concerns:

- site is in a low-lying coastal area with a history of flooding;
- without the construction of the new Beaverstown pumping station, greater flood risk would arise on lands in the catchment of Beaverstown stream;
- Irish water was requested to investigate the quality of water from an aquifer located on the Council owned lands at Ballisk/Ballymastone;
- impacts could arise on the yellow hammer, a red-listed bird species;
- refers to a decision made by An Bord Pleanála to refuse permission for wastewater infrastructure in County Cavan;
- lack of public consultation;
- concerned with the history of malfunction of sewerage plants at various locations.

## 7.5. Prescribed Bodies

7.5.1. The Board referred the appeal to the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media (Development Applications Unit) who responded with the following comments:

- Notes the proximity of the site to four European Sites (Malahide Estuary SAC, Malahide Estuary SPA, Rogerstown Estuary SAC and Rogerstown Estuary SPA) and the potential for hydrological and/or hydrogeological pathways
- The European sites referred to has various Qualifying Interests (QIs) and Special Conservation Interests (SCIs), which would be likely to be detrimentally affected by pollution arising from any sewage leakage from the pump station due to malfunction and this has not been referenced in the AA Screening report
- Requests that the Board satisfies itself fully that the design of the pumping station is such that there is no possibility of leakage of sewage from the station to surface or ground water and hence to the European sites as a result of failure of the installation.

7.5.2. The Board also referred the appeal to An Taisce and The Heritage Council. No responses were received.

## 8.0 Assessment

### 8.1. Introduction

8.1.1. Having read through the file and noting the matters raised by all parties and having attended the site, I consider the substantive planning issues which arise in this application and appeal, and which I have dealt with in this assessment, relate to the following:

- Principle and Policy
- Character and Amenities
- Residential Amenity
- Traffic and Car Parking

- Excavation and High Water Table
- Flood Risk
- Requirement for EIA
- Other Matters

## 8.2. Principle and Policy

8.2.1. The appeal submits that the development is not supported by the land use objective 'OS – Open Space' contained within the Fingal Development Plan. On review of the categories of development that are 'permitted' and 'not permitted' within 'OS' lands, the specific development category does not fall within either and therefore, as is set out in Section 11.1 (Land Use Zoning Objectives) of the plan, the development is required to be assessed in terms of its contribution towards the achievement of the zoning objective and vision. The **zoning objective** is to 'preserve and provide for open space and recreational amenities'. The **vision** sets out to 'provide recreational and amenity resources for urban and rural populations subject to strict development controls. Only community facilities and other recreational uses will be considered and encouraged by the Planning Authority.'

8.2.2. A number of objectives relating to water services infrastructure are set out in the plan.

- Objective WT01 (liaise with Irish Water for the provision, extension and upgrade of wastewater collection and treatment systems);
- Objective WT02 (liaise with Irish Water to ensure provision of wastewater treatment systems in order to ensure compliance with existing licences, EU Water Framework Directive, River Basin Management Plans, the Urban Waste Water Directive and the EU Habitats Directive);
- Objective WT03 (facilitate the provision of wastewater treatment plans and networks).

8.2.3. The proposed development is clearly consistent with the above objectives and therefore the principle to locate the development in an area with an 'OS' land use objective can be considered appropriate. Notwithstanding the concerns raised by the appellants that the development would lie contrary to Objective 'Z04', which sets out

the requirements for transitional zones, I am satisfied that the proposed development cannot be considered an abrupt transition in scale and use, having regard to the nature and scale of the development. I have dealt with the matter of residential amenity under separate heading below.

- 8.2.4. Having regard to the above, I am satisfied that the siting of the development on 'OS' zoned lands is acceptable in principle and the development is consistent with the wider policies and objectives of the Fingal Development Plan.

### 8.3. **Character and Amenities**

- 8.3.1. The grounds of appeal consider that the proposed development would not be in keeping with the character of the area and would be contrary to Objective DMS44 (to protect areas with a unique, identified residential character). Given the nature and scale of the development, with the majority of the physical infrastructure either below ground or only slightly elevated above ground level and the proposals for landscaping, there would not be potential for development to harm the character of the area or cause an unacceptable diminishment of the amenities or residential character of the adjoining houses. It can also be concluded that the physical elements of the proposal would not be contrary to Objective DMS44.

### 8.4. **Residential Amenity**

- 8.4.1. A substantive matter raised in the grounds of appeal and by observers to the appeal, centres around a concern that the current proposal would result in inadequate separation distances between the pump station and neighbouring residences, particularly the neighbouring house located on the adjoining site to the east. It is submitted that the applicant has not complied with Irish Water Guidelines and with Objective WT12 of the Fingal Development Plan. In response, the appellants refer to Objective WT12 of the development plan and the setback requirements in the Code of Practice for Wastewater Infrastructure Connections and Developer Services (Document IW-CDS-5030-03).
- 8.4.2. Objective WT12 requires the provision of a buffer zones to be provided around all pumping stations suitable to the size and operation of each station. It sets out that the buffer zone should be a minimum of 35 metres to 50 metres from the noise/odour producing part of the pumping station to avoid nuisance from odour and noise.

- 8.4.3. I note that Irish Water's Code of Practice referenced is a technical document which outlines acceptable design and construction standards that are required by Irish Water from parties who wish to connect development to the Irish Water network. It is not referenced in planning policy set out in the Fingal Development Plan.
- 8.4.4. A drawing entitled 'Buffer Exclusion Zones – Odour and Noise (MDW0795APA0013 Rev, 106)' was received by the Planning Authority at further information stage. The noise and odour emitting elements are shown sited 15m from the neighbouring boundary. The noise emitting element is shown located c.32m from the appellant's house to the east and the odour emitting element is located 35m from the house.
- 8.4.5. The applicant has put forward measures to minimise noise, vibration and odour. During operation, noise levels are stated to comply with EPA Guidance Note for Noise (NG4), 2016. It is stated that no significant pure tone sound or impulsive noise elements would be emitted from the plant. The proposals would be surrounded by a 2.4m high perimeter fence and 1m wide boundary hedge which would provide acoustic screening. I am satisfied that subject to a condition to regulate operating noise, the proposal is acceptable from a noise perspective. I do not consider that during operation, unacceptable vibration would arise. Any vibration that would arise during construction would be limited and would be over a short-term timescale and acceptable.
- 8.4.6. To address odour, it is stated that the pump station (wetwell) and emergency wastewater storage tank have each been designed with adequate odour abatement to mitigate any negative impact on the surrounding receptors. Air ventilation would be controlled and regulated through the use of activated carbon filters. Chemical dosing with ferric nitrates would be provided as an additional order control measure. A separate cleaning system for the emergency wastewater storage tank is proposed to ensure that it is kept clean and operating as designed.
- 8.4.7. I note the report on file from the Environmental Health Officer with the Air and Noise Unit did not object to the proposal and recommended conditions regarding noise levels.
- 8.4.8. When taken in conjunction with the noise and odour mitigation measures proposed, the development has been designed to ensure that potential noise and odour-generating elements are at an acceptable set back distance from the nearest

dwelling house and would be compliant with Objective WT12 set out in the Fingal Development Plan. Accordingly, I am satisfied that, subject to conditions, the separation distances available between the plant and the sensitive receptors, including the appellant's house to the east, and other houses in the area, are acceptable. Overall, I am satisfied that subject to appropriate conditions, the proposals would not give rise to unacceptable impacts on residential amenity and permission should not be withheld for this reason.

## **8.5. Traffic and Car Parking**

- 8.5.1. Concerns are raised that the use of an area on the site for car parking would lead to anti-social behaviour. The car parking is currently used for parking for users of the nearby football pitch, assumingly on an informal basis. This practice would continue. There is no evidence that anti-social behaviour attributed to car-parking on the site is currently an issue, for example, no litter was evident during my site inspection or raised as an issue in the appeal, and neither is there evidence that such would arise as a result of the development. Concerns have also been raised that construction activity would cause traffic congestion and lead to difficulties for the appellant accessing and egressing their property. Having regard to the nature and scale of the development and with the adoption of normal good construction practice, no congestion would conceivably arise and there would be no such difficulties in accessing the neighbouring property. Subject to the attachment of a condition regarding a construction stage traffic management plan be submitted to the Planning Authority, I am satisfied that permission should not be withheld on the basis of unacceptable traffic impacts.

## **8.6. Excavation and high-water table**

- 8.6.1. Concerns have been raised in the appeal around the deep excavations, including excavating of rock, and high-water table proximate to property. The applicant has stated that they have carried out a site investigation and are aware of the volume of rock to be removed from site. Results of infiltration tests were submitted to the Planning Authority at further information stage which indicate a water table of between 0.18m and 0.3m below ground level. The depths of excavation are not specifically outlined, however the depths of the structures shown on drawings received by the Planning Authority indicate the depth of the pump station below

existing ground level as 4.3m-5.15m (emergency wastewater storage tank) and 6.3m (pump station) to the base of the foundation (Drawing MDW0795APA0005 Rev 101 refers).

- 8.6.2. Water and groundwater impacts are not likely to be significant having regard to the nature and scale of the development which would not require any significant earthworks beyond excavations for the structures. In accordance with standard practice, a construction and environmental management plan (CEMP) is proposed to be prepared and complied with by the contractor. In the event of a grant of permission, this requirement should be strengthened by attaching a suitably worded planning condition.

### 8.7. **Flood Risk**

- 8.7.1. The issue of flooding has been raised by observers. It is submitted that the land is low-lying and is vulnerable to coastal flooding. The applicant did not respond to this issue specifically, however, a site-specific flood risk assessment was submitted with the application and is contained on the Board's file. It is evident that the site is outside of the zone of tidal influence by reference to the Fingal East Meath CFRAM Study. It is located within 'Flood Zone C' with a low risk of flooding and having regard to Table 3.2 (Matrix of vulnerability versus flood zone) of the 'Planning System and Flood Risk Management' guidance document, the development is considered 'appropriate' within such a flood zone. The site specific flood risk assessment has concluded that the proposed development would not increase the risk of flooding downstream. Having regard to the information provided, including the drainage design, and to the prevailing site characteristics and to the nature and extent of the development proposed, I am satisfied that the development would not result in any increase in flood risk vulnerability either on the site or downstream of the development.

### 8.8. **Requirement for EIA**

- 8.8.1. The grounds of appeal submit that the proposal forms part of a larger project which includes a wastewater treatment plant and an outfall to the sea. It is contended that the larger project would provide for over 12,000 persons and therefore is subject to EIA and that the application should have been accompanied by an EIAR. I consider this matter below.



- 8.8.2. The proposed development relates to the wastewater network and does not include any wastewater treatment on site or outfall from the site to sea. It is stated that the proposed development would not require any increase in capacity of the existing waste-water treatment plant in Portrane, North Dublin. I am satisfied that the wastewater pump station proposed is a standalone project for the purpose of assessing the requirement for EIA. Annex I of Directive 2014/52/EU amending Directive 2011/92/EU (hereinafter the 'EIA Directive') lists projects for which EIA is mandatory and Annex 2 lists projects which may require an EIA subject to thresholds imposed by Member States or which fall to be determined on a case by case basis. As transposed into national legislation, Schedule 5 of the Regulations is relevant.
- 8.8.3. Part 1 of Schedule 5 of the Planning and Development Regulations 2001, as amended lists classes of development which of their nature would be likely to have significant environmental impacts and for which a mandatory EIAR is required. This reflects the Annex I requirements for mandatory EIA.
- 8.8.4. Part 2 of Schedule 5 also identifies classes of development and associated thresholds for which an EIA is required. There is also a requirement that developments falling within these classes and which lie below the thresholds set out in Part 2, may trigger a requirement for EIA, often referred to as 'sub-threshold' development for the purposes of EIA.
- 8.8.5. The proposed development does not fall within any of the classes of development in either Part 1 or Part 2 of Schedule 5 to the Regulations.
- 8.8.6. I note that the application was accompanied by an EIA Screening report containing the information specified in Schedule 7A of the Regulations. It was submitted on the basis that in the applicant's view the development might be considered as a class of development under Schedule 5 Part 2. Specifically, the following classes were set out:
- **class 10 (Infrastructural Projects) (g)** - Dams and other installations designed for the holding back or permanent storage of water, where a new or additional amount of water held back or stored exceeds 10 million cubic metres.

- **class 11 (Other Projects (c))** - Waste water treatment plants with a capacity greater than 10,000 population equivalent as defined in Article 2, point (6), of Directive 91/271/EEC not included in Part 1 of this Schedule.

8.8.7. Having considered these two classes of development, I remain of the firm view that the development of a wastewater pump station, does not fit within these two aforementioned classes of development and does not constitute sub-threshold development for the purposes of EIA.

8.8.8. Article 109(2B)(a) of the regulations requires that **where an application for sub-threshold development** is accompanied by the information specified in Schedule 7A, or where such information is requested by the Board, the Board is required to carry out an examination of at the least, the nature, size or location of the development for the purposes of a screening determination.

8.8.9. As I have concluded above that the development is not of a class within Schedule 5 (Part 2) of the Regulations, such development cannot be considered sub-threshold development. Accordingly, notwithstanding that the applicant submitted an EIA screening report (including Schedule 7A information), noting again that the development does not constitute sub-threshold development for the purposes of EIA, a preliminary examination for the purposes of screening as set out in Article 109(2B)(a) of the regulations is not required in this case.

## 8.9. **Other Matters**

### Site Notice

8.9.1. It is contended in the grounds of appeal that the site notice was not displayed in accordance with the Regulations and as such, the application should have been deemed invalid. In response the applicant sets out details of the erection and continued display of the notice. This matter is one which is adjudicated by the Planning Authority. I am satisfied that this did not prevent the concerned party from making submissions or observations. The above assessment represents my *de novo* consideration of all planning issues material to the proposed development.

### Alternatives

8.9.2. The applicant submitted a methodology for its selection of the appeal site. Concerns have been raised in the grounds of appeal that alternative sites were not properly

assessed. As the development is not subject to EIA, the need to consider alternatives is not a requirement. The development now proposed is being assessed on its merits.

### Material Contravention

- 8.9.3. It is stated in the grounds of appeal that the proposed development would result in a material contravention of the development plan. As set out above, the type of development is not precluded in lands zoned 'OS' as set out in the Fingal Development Plan 2017-2023 (Sheet 7: Donabate-Portrane). I am satisfied that any policies and objectives referenced in the grounds of appeal are not sufficiently specific so as to justify the use of the term 'materially contravene' in terms of normal planning practice. The Board should not, therefore, consider itself constrained by Section 37(2) of the Planning and Development Act 2000, as amended.

## **9.0 Appropriate Assessment**

### **9.1. Introduction**

- 9.1.1. Article 6(3) of Directive 92/43/EEC (Habitats Directive) requires that any plan or project not directly connected with or necessary to the management of a European site(s), but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site(s) in view of the site(s) conservation objectives. The Habitats Directive has been transposed into Irish law by the Planning and Development Act 2000 as amended, and the European Union (Birds and Natural Habitats) Regulations 2011-2015. In accordance with these requirements and noting the Board's role as the competent authority who must be satisfied that the proposal would not adversely affect the integrity of the European site(s), this section of my report assesses if the project is directly connected with or necessary to the management of European Site(s) or in view of best scientific knowledge, if the project, individually or in combination with other plans or projects, is likely to have a significant effect on any European Site(s), in view of the site(s) conservation objectives, and if a Stage 2 Appropriate Assessment and the submission of a Natura Impact Statement (NIS) is required.

## 9.2. **Appropriate Assessment – Stage 1 Screening**

- 9.2.1. The first test of Article 6(3) of the Habitat Directive is to establish if the proposed development could cause any likely significant effects on European sites in the context of their qualifying interests and conservation objectives. In this regard, I have considered the applicant's Screening for Appropriate Assessment (AA) Report which provides a description of the surrounding area and of the proposed development. It outlines the potential effects on the European sites which are considered to fall within the zone of influence of the project, in view of their respective conservation objectives.
- 9.2.2. I am satisfied with the methodology used, which followed European and national guidance documents, as listed in Section 3 of the applicant's AA screening report.

## 9.3. **Project Description**

- 9.3.1. The details of the project are set out in Section 2 of the applicant's screening report and I have also set out the overall project details in Section 3 of this report above. The project would broadly comprise the construction of an underground wastewater pump station (a wetwell) and an underground emergency wastewater storage tank and an underground water tank. It would also include a chemical dosing facility using Ferric Nitrate for odour control. An existing access would remain but would be modified to accommodate construction traffic and post construction, the existing gate would be positioned further back from the road.
- 9.3.2. The project description should be read in conjunction with the project documentation and drawings accompanying the application and appeal.

## 9.4. **Description of European Sites**

- 9.4.1. Having regard to the information and submissions available, the nature, size and location of the proposed development and its likely direct, indirect and cumulative effects, the source-pathway-receptor model and sensitivities of the ecological receptors, the European Sites considered relevant to include for the purposes of the initial screening of likely significant effects or uncertainty regarding significance of effects are examined. To that end, I agree that the sites listed in Table 1 (European Sites Considered in the Assessment) of the applicant's AA screening report are those which are relevant. The location of these relative to the proposed development

appeal site are presented in Figure 2 (European Sites considered in the Assessment) of the applicant's AA report.

- 9.4.2. I have had regard to information available on the National Parks and Wildlife Service (NPWS) website including in particular, the listed qualifying interests (QIs)/special conservation interests (SCIs) and conservation objectives for the relevant European sites. I have also had regard to the separation distances from the proposed development and details of their connectivity (pathway). The proposed development is hydrologically connected with the **Malahide Estuary SAC** and the **Malahide Estuary SPA** through the drainage ditch network that runs along the western boundary of the proposed development and is likely to discharge to Malahide Estuary. There is potential for hydrogeological connectivity to the **Malahide Estuary SAC**, the **Malahide SPA**, **Rogerstown Estuary SAC** and the **Rogerstown Estuary SPA** through the Swords groundwater body (IE\_EA\_G\_011) because the groundwater body flows towards the coast and hence a pathway between the proposed development and these sites cannot be excluded.
- 9.5. I am satisfied that the other sites within the wider 15km zone of influence of the appeal site and which were examined by the applicant, can be screened out on the basis that any impacts on these European sites could be ruled out due to the separation distance from the appeal site and the absence of an ecological pathway to the appeal site.
- 9.6. The QIs, SCIs and conservation objectives of the four remaining European sites are set out in summary form in Table 1 below.

**Table 1:** QIs/SCIs and Conservation Objectives of the relevant European Sites

European Site	Qualifying Interests/Special Conservation Interests	Conservation Objectives
Malahide Estuary SAC (000205)	<ul style="list-style-type: none"> <li>• Mudflats and sandflats not covered by seawater at low tide</li> <li>• Salicornia and other annuals colonising mud and sand</li> <li>• Atlantic salt meadows (Glaucopuccinellietalia maritimae)</li> <li>• Mediterranean salt meadows (Juncetalia maritimi)</li> </ul>	Conservation Objectives: <a href="https://www.npws.ie/sites/default/files/protected-sites/conservation/objectives/CO000205.pdf">https://www.npws.ie/sites/default/files/protected-sites/conservation/objectives/CO000205.pdf</a>

	<ul style="list-style-type: none"> <li>• Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes)</li> <li>• Fixed coastal dunes with herbaceous vegetation (grey dunes)</li> </ul>	NPWS (2013)
<p>Malahide Estuary SPA</p> <p>(Site Code 004025)</p>	<ul style="list-style-type: none"> <li>• Great Crested Grebe</li> <li>• Light-bellied Brent Goose</li> <li>• Shelduck</li> <li>• Pintail</li> <li>• Goldeneye</li> <li>• Red-breasted Merganser</li> <li>• Oystercatcher</li> <li>• Golden Plover</li> <li>• Grey Plover</li> <li>• Knot</li> <li>• Dunlin</li> <li>• Black-tailed Godwit</li> <li>• Bar-tailed Godwit]</li> <li>• Redshank</li> <li>• Wetland</li> <li>• Waterbirds</li> </ul>	<p>Conservation Objectives:</p> <p><a href="https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004025.pdf">https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004025.pdf</a></p> <p>NPWS (2013)</p>
<p>Rogerstown Estuary SAC</p> <p>(Site Code 000208)</p>	<ul style="list-style-type: none"> <li>• Estuaries</li> <li>• Mudflats and sandflats not covered by seawater at low tide</li> <li>• Salicornia and other annuals colonising mud and sand</li> <li>• Atlantic salt meadows (<i>Glauco-Puccinellietalia maritimae</i>)</li> <li>• Mediterranean salt meadows (<i>Juncetalia maritimi</i>)</li> <li>• Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes)</li> <li>• Fixed coastal dunes with herbaceous vegetation (grey dunes)*</li> </ul>	<p>Conservation Objectives:</p> <p><a href="https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000208.pdf">https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000208.pdf</a></p> <p>NPWS (2013)</p>

Rogerstown Estuary SPA (004015)	<ul style="list-style-type: none"> <li>• Greylag Goose</li> <li>• Light-bellied Brent Goose</li> <li>• Shelduck</li> <li>• Shoveler</li> <li>• Oystercatcher</li> <li>• Ringed Plover</li> <li>• Grey Plover</li> <li>• Knot</li> <li>• Dunlin</li> <li>• Black-tailed Godwit</li> <li>• Redshank</li> <li>• Wetland and Waterbirds</li> </ul>	Conservation Objectives <a href="https://www.npws.ie/sites/default/files/protected-sites/conservation-objectives/CO004015.pdf">https://www.npws.ie/sites/default/files/protected-sites/conservation-objectives/CO004015.pdf</a>  NPWS (2013)
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## 9.7. Identification of Likely Significant Effects

### Management of European Sites

- 9.7.1. The proposed development is not directly connected with or necessary to the management of any of the relevant European sites.

### Direct, Indirect or Secondary Impacts

- 9.7.2. The potential direct, indirect and secondary impacts that could arise as a result of the proposed works and which could have a negative effect on the qualifying interests of European sites are identified using the established **source-pathway-receptor** model. The proposed development or site does not overlap any of the sites and no direct impacts are likely.
- 9.7.3. During construction there is potential for the **release of suspended solids** which could be carried to Malahide Estuary SAC and Malahide Estuary SPA through a hydrological pathway. However, however, given the nature of the scale of the work and the short time that soils could be exposed, it is unlikely that sediment of any significant levels would be released that could have any measurable effect on the estuarine sediments. Given that the estuary is subject to sediment influxes as part of the natural deposition and tidal cycle necessary to maintain the sediment balance and ecological functioning, any minor sediment release that could reach the estuary would be highly unlikely to result in a significant effect.

- 9.7.4. During construction, accidental **spillages of pollutants** (hydrocarbons, solvents and cement) could occur, causing such pollutants to be carried via hydrogeological pathways to the Malahide Estuary SAC, Malahide Estuary SPA, Rogerstown Estuary SAC and the Rogerstown Estuary SPA through the Swords Groundwater Body. However, given the limited scale of the development, the standard management and limited use of polluting materials and the length and nature of the pathway which provides limited flow, it is not likely that pollutants would reach any of the four European sites in such quantity, concentration or duration that would create likely significant effects, having regard to their conservation objectives. During operation, a Ferric Nitrate solution would be used as part of the odour control element of the design and the solution has potential to affect organisms' normal metabolism and osmoregulation. However, noting the strict regulation for safe storage and transportation of such chemicals, the risk of groundwater contamination would be insignificant and would not lead to any significant effect on any European site.
- 9.7.5. The DAU raises concern regarding the detrimental effects which could potentially arise as a result of a **leakage occurrence** in the event of a failure of the installation and raises concern that this has not been addressed in the applicant's AA Screening report. I note however, that the design has incorporated two submersible pumps, including a stand-by pump. In addition, an off-line concrete emergency wastewater storage tank is included in the design. In the case of an emergency event, the system is controlled to stop inflows from upstream pump stations in the Corballis area and the wetwell is designed to only receive gravity flows from the Ballymastone area. The wetwell is provided with an emergency overflow above the top water level which would direct excess flow of wastewater to the emergency storage tank. The system is designed with a 24 hour storage volume and no emergency overflow is stated to be required. The storage would be kept clean and empty and hence would be immediately available for use in the event of an emergency. Having regard to the design of the system, I am satisfied that there is no likelihood of leakage of sewage from the pump station or onwards to surface or groundwater and hence to European sites as a result of failure of the installation and no mitigation is required to reach this conclusion.
- 9.7.6. During construction, **noise, vibration and human disturbance** have been examined for effects on SCI fauna species and/or QI habitats and species. In this



instance no significant populations of QI or SCI species lie proximate to the appeal site. In addition, having regard to the separation distance between the construction activities and Malahide Estuary SAC, Malahide Estuary SPA, Rogerstown Estuary SAC and the Rogerstown Estuary SPA, no significant effects are anticipated as a result of noise, vibration or human disturbance. The proposed pumping station would be sited below ground and so during operation, no noise, vibration or human disturbance would be detected on any of the SCI/QI habitats or species at ground level from this source and the proposed development would not lead to significant effects as a result.

- 9.7.7. Based on scientific evidence, significant effects arising from **dust** deposition would not conceivably arise during construction or operation given the modest scale of the development and the physical separation distances between European sites and the project.
- 9.7.8. There are no scheduled **invasive plant species** within the site of the proposed development.
- 9.7.9. Overall, the proposed development would not be likely to give rise to significant effects on the QIs/SCIs of the aforementioned SACs and SPAs having regard to their conservation objectives and taking into account the best scientific knowledge available. No reliance on avoidance measures or any form of mitigation is required in reaching this conclusion.

## 9.8. **In-Combination Effects**

- 9.8.1. In terms of cumulative or in-combination effects, given that I have assessed that no significant effects would arise as a result of the project, it cannot be reasonably expected that the works to be undertaken would contribute in any adverse way to such effects with other plans or projects in the area. I have taken into account the plans and projects set out in the applicant's screening assessment which I deem to be those that are relevant.

## 9.9. **Appropriate Assessment Screening Conclusion**

- 9.9.1. It is reasonable to conclude that on the basis of the information on file which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be

likely to have a significant effect on the Malahide Estuary SAC (Site Code 000205), Rogerstown Estuary SAC (Site Code 000208), Malahide Estuary SPA (Site Code 004025), Rogerstown Estuary SPA (Site Code 004015), or any other European site in view of the sites' conservation objectives and a Stage 2 Appropriate Assessment (and a submission of an NIS) is not therefore required. No reliance on avoidance measures or any form of mitigation is required in reaching this conclusion.

## 10.0 Recommendation

10.1. I recommend that planning permission should be **granted**, subject to conditions, for the reasons and considerations set out below.

## 11.0 Reasons and Considerations

### 11.1. Planning Assessment

11.1.1. Having regard to the nature, scale and purpose of the proposed development, to the separation distances of the development from sensitive receptors, it is considered that, subject to compliance with the conditions set out below, the proposed development is consistent with planning policy. In addition, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would be acceptable in terms of traffic safety and groundwater impacts and would not increase the risk of flooding either on the site or elsewhere. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

### 11.2. Appropriate Assessment Screening

11.2.1. The Board noted that the proposed development is not directly connected with or necessary to the management of a European Site. In completing the screening for Appropriate Assessment, the Board accepted and adopted the screening assessment and conclusion carried out in the Inspector's report in respect of the identification of the European Sites which could potentially be affected, and the consideration of the likely significant effects of the proposed development, either individually or in combination with other plans or projects, on these European Sites in view of the sites' conservation objectives. The Board was satisfied that the proposed

development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on the Malahide Estuary SAC (Site Code 000205), Rogerstown Estuary SAC (Site Code 000208), Malahide Estuary SPA (Site Code 004025), Rogerstown Estuary SPA (Site Code 004015), or any other European site in view of the sites' conservation objectives and a Stage 2 Appropriate Assessment (and a submission of an NIS) is not therefore required. No reliance on avoidance measures or any form of mitigation is required in reaching this conclusion.

## 12.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted to the planning authority on the 25<sup>th</sup> day of March, 2020, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to the commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2.
  - a. The maximum noise level at the nearest sensitive receptors during the operation of the proposed development shall not exceed 55 dB(A) rated sound level between 08.00-20.00 Mondays to Friday inclusive, and between 08.00 to 14.00 on Saturdays and it shall not exceed 45 dB(A) at any other time.
  - b. There shall be no tonal (including low frequency tones) or impulsive noise audible at the applicable locations (i.e. locations where the above limits are applicable).
  - c. Procedures for the purpose of determining compliance with noise limits above shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To protect residential amenities of property in the vicinity of the site.

3. The developer shall control odour emissions from the facility in accordance with the measures submitted to the planning authority. A monitoring programme shall be developed to assess the impact of odours from the pumping station site and details of this programme shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This programme shall be undertaken by a suitably qualified person acceptable to the planning authority and the results of the monitoring programme shall be submitted to the planning authority on an annual basis. The developer shall carry out any amendments to the programme required by the planning authority following annual reviews.

**Reason:** In the interest of public health and to protect the residential amenities of the area.

4. Prior to commencement of development, a contract specific Construction and Environmental Management Plan shall be submitted to, and agreed in writing with, the planning authority in respect of the development. The Construction and Environmental Management Plan and Waste Management Plan shall detail and ensure Best Construction Practice and compliance with statutory obligations. Emphasis shall be placed on re-use of excavated material where practical.

**Reason:** In the interest of protection of the environment and to protect residential amenities of the area.

5. Prior to commencement of development, a Traffic Management Plan for the construction phase shall be submitted to, and agreed in writing with, the planning authority in respect of the development. The developer shall comply with the requirements of the planning authority in respect of minimising traffic disruption on the local communities, cleaning and repair of any damage to the public road network during the construction phase.

**Reason:** To protect the public road network and in the interest of traffic safety.

6. Drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works.

**Reason:** To ensure adequate servicing of the development.

7. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays.

Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities of property in the vicinity.

8. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall -

- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation relating to the proposed development,
- (b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and
- (c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

**Reason:** In order to secure the preservation and protection of any remains that may exist within the site.

9. The site shall be landscaped in accordance with the landscape plan received by the Planning Authority and the following shall be complied with.

- (a) Prior to the commencement of the development, a site meeting shall be arranged between the Planning Authority and the appointed arboricultural consultant to agree tree protection measures,
- (b) The landscape works shall be completed within the first planting season following completion of the construction works on site.
- (c) All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

**Reason:** To ensure the protection of the landscape character and residential amenities of the area.

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Patricia Calleary  
Senior Planning Inspector

30<sup>th</sup> October 2020