



An  
Bord  
Pleanála

## Inspector's Report ABP308725-20

<b>Development</b>	Replacement of the existing Water Treatment Plant (WTP) with a new WTP and site works.
<b>Location</b>	Dromore West, Cootehill, Co. Cavan.
<b>Planning Authority</b>	Monaghan County Council.
<b>Planning Authority Reg. Ref.</b>	20/300
<b>Applicants</b>	Abbott Ireland Cootehill.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant.
<b>Type of Appeal</b>	Third Party.
<b>Appellant</b>	John Morehart.
<b>Observers</b>	An Taisce.
<b>Date of Site Inspection</b>	12 <sup>th</sup> February, 2021.
<b>Inspector</b>	Paul Caprani.

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## 1.0 Introduction

ABP308725-20 relates to a third-party appeal against the decision of Monaghan County Council to grant planning permission for a replacement water treatment plant together with ancillary works at the Abbott Ireland Nutrition Division Plant located in the northern environs of the village of Cootehill, County Cavan. While the subject site is located in proximity to the settlement of Cootehill, Co Cavan, it is located within the administrative area of Monaghan County Council. The grounds of appeal raise a variety of issues in relation to the validity of the application, the AA screening undertaken as part of the proposed development and the requirement for EIA. An observation was also submitted from An Taisce raising issues in relation to project splitting, Appropriate Assessment Screening and other environmental issues.

## 2.0 Site Location and Description

- 2.1. The subject site is located on the northern outskirts of the village of Cootehill in County Cavan. Despite being located c.1 kilometre to the north of Cootehill the Abbott facility is located within the administrative area of County Monaghan. The R118 Regional Route which runs northwards from the village and towards the settlement of Rockcorry, also runs along the eastern boundary of the facility. The Dromore River flows westwards along the southern boundary of the site from Dromore Lough which is located to the north-east. Lands surrounding the Lough and to the east of the R188 form part of Bellamont Forest a large area of deciduous woodland surrounding Lough Dromore. These lands also accommodate Bellamont House the resident of which has appealed the decision.
- 2.2. The subject site occupies an area of just over 9 hectares and accommodates one large manufacturing building with a gross floor area of 25,290 square metres. The Abbott Cootehill Facility produces nutritional infant formula from milk in a process whereby raw materials are combined with water and then evaporated to produce solid powder products. According to the information contained on file there are essentially two stages to the manufacturing process.

- 2.3. The wet process stage involves the mixing streams of skimmed milk, blended oil, bulk and other minor materials. The wet process production methodology involves blending and heating liquid and/or powdered skimmed milk with water, sucrose, vegetable oils, flavouring, vitamins, minerals and other powdered food stuff ingredients. The liquid mixture produced in the wet process area must be pasteurised and evaporated to reduce bacterial and enzyme activity and significantly reduce the water contents and increase solids content. The condensate from the evaporation process is discharged to the wastewater treatment plant.
- 2.4. Once the liquid product has been evaporated and pasteurised, it is then pumped into two dryers via high pressure pumps. The drying involves the application of heat under controlled conditions to remove the remaining water and to produce a solid product. The product is then packaged and labelled.
- 2.5. The production and manufacturing of the activity all takes place within the confines of the existing building which is located in the southern portion of the site close to the entrance onto the R118.
- 2.6. The existing water treatment plant is located to the north-eastern portion of the main building adjacent to the western boundary of the site. An elevated area of open space separates the existing wastewater treatment plant from the main building on the subject site. It is proposed to accommodate a new water treatment plant on this area of open space. The existing car parking area is located on lands to the east of this open space. The northern portion of the site beyond the wastewater treatment plant is undeveloped.
- 2.7. In terms of surrounding settlement there are a number of dwellinghouses to the north of the subject site located along the R189 which runs to the north-west of the subject site. These three dwellinghouses are located in excess of 100 metres from the northern boundary of the site. A dwellinghouse together with a number of farm buildings are located on lands to the west of the subject site. The appellants house is located approximately 1.1 km to the east of the subject site.

### **3.0 Proposed Development**

- 3.1. Planning permission is sought to replace the existing water treatment plant with a new water treatment plant. The upgrading of the water treatment plant will also

require a technical amendment to the existing EPA licence granted Under P- 0687-02).

- 3.2. The facility will maintain production using the existing water treatment plant throughout the construction and commissioning phase of the proposed water treatment plant. Once the proposed water treatment plant has been fully commissioned, the facility will switch over from the old water treatment plant.
- 3.3. Works associated with the new water treatment plant will comprise of:
- The installation of a concrete slab (2,140 square metres) to facilitate the water treatment building and associated tanks and equipment.
  - The construction of a 514 square metre one storey cavity block building rising to a height of 6 metres partially clad with insulated steel composite cladding panels, aluminium framed double glazed windows and a steel roller shutter door.
  - Also to be located within the concrete slab is a number of external tanks to the water treatment system including the reuse of three existing reservoir tanks with a capacity of 130 cubic metres together with a new reservoir tank with a capacity of 130 cubic metres. These tanks to be located to the east of the main water treatment system.
  - Between the aforementioned reservoir tanks and the water treatment system it is proposed to construct one ozone tank (20 cubic metres) and three contact tanks (30 cubic metres) to be located adjacent to the southern elevation of the water treatment building. To the immediate north of these tanks, it is proposed to provide a GAC backwash/filtered water tank (200 cubic metres).
  - 6 GAC filters and 4 GAC product pumps and backwash pumps are to be located adjacent to the eastern elevation of the water treatment building. On the western side of the building, it is proposed to provide a raw water storage tank (50 cubic metres), an alum dosing tank (30 cubic metres) and a sodium hydroxide dosing tank.

With the proposed water treatment building it is proposed to provide

- two ultra-filtration skids,
- 2 inline feed forward pumps,
- 1 ultrafiltration permeate tank,
- 3 ultraviolet reactor units,
- 2 air blowers,
- 1 flocculation loop, and
- staff welfare and lab facilities.

3.4. It is also proposed to provide a new watermain connecting the proposed water treatment plant to the main facility and the temporary connection to the water treatment plant discharge lines to facilitate testing of the proposed plant during the commissioning phase.

3.5. It is also proposed to install a new fire water ringmain around the north of the existing facility building. A temporary construction compound to the north of the existing car park is also proposed as well as landscape planting measures. During the commissioning phase (two to three months) additional water will be abstracted from the Dromore River<sup>1</sup>. This water will be solely used to test the proposed water treatment plant where it is filtered and chlorinated. This will have no impact on normal wastewater loadings.

## 4.0 Planning Authority's Decision

### 4.1. Monaghan County Council's Decision

4.1.1. Monaghan County Council issued notification to grant planning permission for the proposed development subject to six conditions. The decision was dated 23<sup>rd</sup> October, 2020.

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<sup>1</sup> The original documentation submitted with the application mistakenly referred to the development abstracting water from Dromore Lake. This appears not to be the case, the water will be abstracted from the river and not the lake.

Condition No. 1 related to financial contribution condition.

Condition No. 2 required the applicant to submit a construction waste plan.

Condition No. 3 required details to be submitted with regard to water and wastewater drainage systems.

Condition No. 4 related to surface water discharge.

Condition No. 5 related to archaeology.

Condition No. 6 requires the development to be carried out in accordance with the plans and particulars received.

#### 4.2. Documentation Submitted with Application

- 4.2.1. The planning application was lodged on 29<sup>th</sup> July, 2020 was accompanied by a completed planning application form, public notices, planning fee and a series of drawings. It was also accompanied by a Planning Report, a Screening for Appropriate Assessment and an Environmental Impact Assessment Screening Report. The contents of these documents are briefly outlined below.
- 4.2.2. The planning report sets out the details of the processing and manufacturing that takes place on site as well as details of the proposed works to be undertaken. It states that the rationale for the proposed development provides Abbott Ireland Ltd with further opportunities to improve the environmental efficiency of the operation by segregating the initial backwash water from the intake screens to the surface water drainage system. The diversion will result in reductions in energy and raw materials input to the water treatment plant and avoid the unnecessary treatment of unpolluted naturally extracted water.
- 4.2.3. The report also states that as the Abbott facility operates on a 24-hour- 7 - day a week basis the proposal will not result in any additional traffic movement during the operational phase. The construction will take place over an 18- month period and will result in an additional 1 to 10 HGV movements per day. The existing road network is deemed sufficient to handle this temporary increase in capacity. The planning report goes on to assess the proposed development in the context of both the Monaghan County Development Plan and Cavan County Development Plan. It is noted that there is no specific land use zoning for the Abbott facility or the lands surrounding it

in the Monaghan County Development Plan. Details of relevant policies and provisions contained in both plans are set out in the planning report. The planning report also details consultations which were undertaken with Monaghan County Council and Inland Fisheries Ireland. It is stated that the facility is licensed under the European Union (Industrial Emissions) Regulations 2013. As such, all environmental emissions are controlled according to established best practice and are monitored on a regular basis.

4.2.4. A separate report for the purposes of Appropriate Assessment screening was submitted. The screening report notes that there are two European sites located within 15 kilometres and within the potential zone of influence of the development. The two closest Natura 2000 sites are the Lough Oughter and associated Loughs SAC (Site Code: 00007) which is located c.14.78 kilometres (as the crow flies) from the subject site. The Lough Oughter SPA is located between c.20 kilometres from the subject site. The site adjoins the Dromore River. The Dromore River flows out of Dromore Lake which is designated as a proposed Natural Heritage Area and makes its way downstream to the Annalee River which in turn flows into the River Erne system. Both the SAC and SPA referred to above form part of this system. Details of the qualifying interests associated with the Lough Oughter SAC and SPA are set out. In terms of predicted impacts, it is stated that a worst-case scenario would only occur where the proposal results in a significant detrimental change in the water quality of the Dromore River either alone or in combination with other plans or projects. Given the level of treatment proposed this scenario is highly unlikely. No operational impacts are anticipated from the implementation of the proposed development and any significant impacts in terms of construction are unlikely. No in-combination effects are anticipated. On this basis it is concluded that the proposed development either individually or in combination with other plans and projects will not have a significant effect on a European site.

4.2.5. An EIAR Screening Report was also submitted. It states that the proposed development does not fall within any of the categories for mandatory EIA under Class 10 or under Class 13. The report also details the proposed works to be carried out and provides details of planning permissions within 2 kilometres of the proposed development. The proposal will not result in any significant use of natural resources or significant reduction of waste. The report in Section 5 goes on to outline the types

and characteristics of potential effects arising from the proposed development making reference to construction and operational impact and where appropriate identifying sensitive receptors. The proposal is assessed in terms of:

- Air quality and climate.
- Biodiversity.
- Cultural heritage archaeology.
- Land and material assets.
- Landscape and visual.
- Major accidents.
- Noise and vibration.
- Population and human health.
- Soils and geology.
- Traffic and transportation.
- Hydrology.
- Flooding.
- Waste resource management.
- Interactive effects.

4.2.6. It is concluded based on the above evaluation that the proposed water treatment plan will not pose any potential impacts on the aquatic environment and that a construction and environmental management plan will ensure that potential nuisances from the construction of the facility will be avoided or minimised. It is considered therefore that the construction, commissioning and operation of the proposed development will generate few additional emissions which would result in a significant environmental impact and therefore an EIAR is not required.

4.2.7. A Water Protection Plan checklist and a Traffic and Transport Assessment Scoping Study form was also submitted.

### 4.3. Planning Assessment

- 4.3.1. A report from Monaghan County Council's Road Engineer states that, having inspected the application, it is considered that the proposal does not alter the existing entrance site boundary or drainage and therefore there is no objection to the proposed development.
- 4.3.2. An observation on behalf of John Morehart of Bellamont House<sup>2</sup>. This observation has been read and noted.
- 4.3.3. A report from the Water Services Section states that there is no objection to the proposed development subject to compliance with three conditions.
- 4.3.4. A report from the Environmental Section notes that the receiving waters are currently classified as "poor status" and has an objective under the Water Framework Directive to restore by 2021. It notes that any new surface water pipes to connect to the existing surface water lines and discharge to the Dromore River shall be via a full retention hydrocarbon interceptor. No further details have been provided and clarification should be sought that this interceptor is adequate to cater for the new water treatment plant.
- 4.3.5. The following conditions should be attached to any grant of permission.
- Prior to the commencement of development, the applicant shall submit confirmation of the technical amendment of the licence granted by the EPA.
  - The applicant is also requested to submit a revised site layout plan detailing further details in relation to water abstraction and drainage system.
  - Further details in relation to the existing interceptor is adequately sized to cater for the proposed development.
  - Further details of bunding arrangements of any chemical storage.
  - Further details to ensure that completely separate foul and surface water drainage systems are in place.
  - Further details in relation to material storage.

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<sup>2</sup> Appellant

- Protocols to ensure that local authorities and inland fisheries are informed of any accidental spillage of fuel.
- Further details of mitigation measures to minimise discharge of silt laden waters into water bodies during the construction phase.
- Further details of the construction waste management plan.
- Further details in relation to the collection and segregation of recyclable waste.

A report from the Department of Culture, Heritage, and the Gaeltacht notes that the proposed development is located in close proximity to Monument MO022-024 - a Fulacht Fia. It is therefore recommended that archaeological monitoring be carried out as part of any grant of planning permission.

#### 4.4. Additional Information Request

4.4.1. The first planner's report sets out details of the proposals and details of the objection received. The development is then assessed in the context of various policies contained in the Monaghan County Development Plan and it is considered that the proposal at this location is acceptable and would be in keeping with the existing land use. It is noted that there is no objection to the proposal from a road safety perspective. Any issues regarding water abstraction from Dromore Lake<sup>3</sup> is a civil matter between the parties. It is noted that no details have been submitted with regard to the permanent decommissioning of the existing water treatment plan and the intended use of that area within the site. Concerns are expressed that the appropriate assessment fails to consider any impact that might arise from the increased abstraction proposed from Dromore Lake and that further information should be submitted in this regard. It is therefore recommended that the following additional information be requested.

1. The applicant is requested to submit details with respect to the permanent decommissioning of the existing water treatment plant on site and the intended use for these lands once this decommissioning has taken place.

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<sup>3</sup> As already referenced, there is no abstraction from the lake itself abstraction occurs downstream.

2. The applicant is advised that the Stage 1 AA screening report fails to consider what impact if any will result from the increased abstraction proposal from Dromore Lake.
3. The applicant is advised that one submission has been received on the proposed development and the applicant is requested to address these comments as far as they relate to planning considerations.

#### 4.5. Further Information Submission

- 4.5.1. Further information was received on behalf of the applicant by AWN Consulting. The pertinent information is set out below.
- 4.5.2. It is stated that the existing water treatment plant is not a standalone feature but is integrated within the utility area to the exterior of the existing manufacturing plant. It is stated that some of the reservoir tanks will be reused and relocated to the new water treatment plant. There is at present no intended use for the various footprints either outside the building or within the building that is currently occupied by the existing water treatment plant equipment. Empty space within the remaining building may be used for storage or workshop purposes.
- 4.5.3. In relation to the revised AA screening report, it is stated for the purposes of clarity that there is no proposed abstraction increased or otherwise from Dromore Lake as part of the application. The abstraction of water will continue to be from the Dromore River. Notwithstanding this, a revised Stage 1 AA Screening Report was submitted which concludes that there is no significant impacts and that no mitigation measures are required regarding the abstraction of water from the Dromore River. This is principally due to the temporary and relatively short period of abstraction and the degree of separation distance between the abstraction point and the European sites. Details of the various points of abstraction are set out in the response. It states that Point A (which is located within the Abbott facility (see Figure 2) is the only abstraction point to support Abbott processes<sup>4</sup>. Point A abstracts water from the Dromore River and not Dromore Lake. An augmentation pump is located within lands owned by Cootehill Area Development Limited at the lower reaches of the lake

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<sup>4</sup> The abstraction point is indicated in photo no.1 attached to this report.

and these lands are not owned by the objector to the proposed development. The permission to abstract water from this point has been in place since 1975 on foot of the parent permission (Planning Ref. 258/73). The submission goes on to address other issues raised in the third-party objection to the development.

#### 4.6. Final Planner's Report

4.6.1. The further information submitted assessed in the planner's report is noted and it is considered that the applicant has provided clarity with respect to the future use of the area currently occupied by the wastewater treatment plant. It is also considered that matters of concerns raised in respect of AA and in the third party submission has also been adequately assessed and it is therefore concluded that the proposed development is acceptable in principle and accords with the provisions of the Monaghan County Development Plan. On this basis it is recommended that planning permission be granted for the proposed development.

#### 5.0 Planning History

5.1.1. Details of one application are attached in a pouch to the rear of the file. Under Reg. Ref. 10/580 planning permission was granted for the upgrade of the existing effluent treatment plant to include a new balanced tank, a new clarifier tank, coagulation tank, flocculation tank and new tertiary filter at the said facility. Monaghan County Council granted planning permission on the 10<sup>th</sup> February, 2011 subject to four conditions.

Details of other, more minor applications are also set out in the planner's report contained on file. There are two current application with Monaghan Co Council relating to the site.

- Reg. Ref. 20/433 relates to an extension to the existing facilities to provide additional warehouse storage, laboratory area and office space together with other ancillary works and
- 20/490 relates to the relocation of a site entrance, security hut, new internal access road and signage.

5.1.2. Both these applications are at additional information stage and no decision has been made at the time of writing this report.

## 6.0 Grounds of Appeal

6.1. The decision was the subject of a third-party appeal on behalf of Mr. John Morehart of Bellamont House, Cootehill, County Cavan. The appeal was submitted on behalf of Mr. Morehart by Joe Bonner, Town Planning Consultant. The grounds of appeal are outlined below.

It is argued that the proposed development is invalid on a number of counts including:

- The applicant is required under Article 18 of the Planning and Development Regulations 2001 to make reference to the requirement of an IPCC licence in the public notices. No such reference was made in the public notices. It is argued that as the proposed development will exceed the water discharge limit of the original licence this effectively means that a new licence is required. On this basis it is argued that the application cannot be considered any further.
- It is also stated that the documentation submitted with the application incorporates an incorrect description of the location of the water treatment plant. The information states that the proposed water treatment plant is located to the south-east of the existing wastewater treatment plant. The site of the proposed development is in fact located to the north-west of the existing wastewater treatment plant. While this fact was not picked up by the Planning Authority the fact of the matter is that the existing wastewater treatment plant is located to the south-east of the proposed site.
- The application is noted for the absence of drawings and details of the existing water treatment plant that is proposed to be replaced. For this reason, there is a level of confusion and this is evident from Item No. 1 of the request for further information. It is argued that the details given in the applicant's response does not compensate the requirement to provide drawings.

- The fact that the applicant is proposed to increase the rate of abstraction from the Dromore River from 2,800 cubic metres per day to 4,500 cubic metres per day should have been referred to in the description of the development.
- 6.2. If the Board does not invalidate the application, it is noted that the application proposed to extract a substantial amount of additional water from Dromore Lake on a daily basis over a period of 2 to 3 months. Before determining any such application, it is recommended that additional information be sought in relation to the infrastructure and piping which was originally laid to serve the factory together with the legislation under which the abstraction of water was permitted. This information would provide a better understanding of the existing potential impacts on Dromore Lake.
- 6.3. There is no information on the planning file to suggest that the Water Services Section reviewed the submission lodged on behalf of Mr. Morehart when dealing with the original application and that his concerns were taken into account. It is suggested that Condition 3(a) of the Planning Authority's grant of planning permission should have in fact been requested as additional information. No details are provided as to what the old water treatment plant would be used for, what type of storage is proposed and whether or not such storage will require planning permission. Clarity on these matters is required.
- 6.4. It is requested that the Board Inspector and the in-house ecologist examine the AA screening report in detail and the conclusions contained therein. The Board are also requested to note that the screening report makes reference to the fact that on occasion, water is pumped by the applicant from Dromore Lough to facilitate the overall running of the development at low water levels. It is therefore argued that the abstraction of water from Dromore Lough is an integral part of the operation of the Abbott facility. It is suggested that each and every part of the overall development is interconnected, and the applicant cannot separate the pumping of water from Dromore Lough from the activity which is seeking permission in this instance.
- 6.5. It is also noted that the AA screening report has not considered potential impacts of the increased discharge from the plant during the commissioning phase and for that reason the screening report is considered incomplete.

- 6.6. It is noted that Abbott Ireland have applied for permission for a separate development under Reg. Ref. 20/433 which involves an extension to the existing facility including a warehouse extension and associated laboratory area, ancillary office and staff facilities. The proposal also involves a tower extension to facilitate ingredient storage and loading. It appears that this particular development has not been assessed in the AA screening report in terms of in combination effects.
- 6.7. The Board are asked to assess the impact of the proposed development and not simply accept the findings of the AA screening report. It is stated this is a reasonable stance having regard to the recent bog/landslide in County Donegal in respect of a wind farm development (ABP300460-17).
- 6.8. Concern is expressed that the original planning files relating to the site from the 1970s are not available. It is imperative that the applicant should make all relevant documents available to inform the Planning Authority that they are indeed operating in accordance with long established grants of planning permission. In that case the current appellant will have no more reason to object to the planning applications for further development.
- 6.9. It is stated that the current application is the 25<sup>th</sup> application that has been lodged in respect of the facility in question. Reference is made to Part 10 of the Planning and Development Regulations 2001 and in particular Class 7(c) installations for the manufacture of dairy products, where the processing capacity would exceed 50 million gallons of milk equivalent per annum. It is stated that the proposed water treatment plant is an integral part of a much larger development which has grown incrementally over time and it is not clear from publicly available information the exact point in time the site became a facility that falls into this EIA category. It is noted that an EIS was submitted with a previous application Reg. Ref. 02/915 but it has not been possible to view the file and it is not clear if an EIA was carried out in respect thereof. As the abstraction of water from Dromore River and Dromore Lake are an integral part of the overall development, the Board now need to re-examine the entire development with respect to its obligation under the EIA Directive.
- 6.10. In relation to the pumphouse, it is stated that the applicant has failed to explain or most importantly to provide details by way of drawings of the location of the pipes that connect the pumphouse to the water source in Dromore Lough and has not

explained how the water is extracted from the lake. The only logical explanation is via pipe infrastructure on Mr. Morehart's lake property.

- 6.11. Given the scale and extent of impacts of the extraction now proposed which is in excess of 1.6 million cubic metres per annum, both clarity and precision in respect of the pumping arrangements is required.

#### Appendices

- 6.12. Also attached are two separate reports prepared by Forest Environmental Research and Services Limited which peer review the AA screening report submitted. It concludes that the report prepared by Moore Group have failed to demonstrate with any degree of precision or accuracy that the proposed wastewater treatment plant<sup>5</sup> does not have potential to have significant negative impacts on Natura 2000 sites in question. In accordance with the precautionary principle, it is not possible to exclude that the proposed development could have impacts on Lough Oughter and associated Lough SAC and the Lough Oughter complex SPA. The preparation of a Natura Impact Statement should therefore have been required for the proposed development. It is noted that the appropriate assessment screening report has not undertaken an examination of the attributes that are used to define the site-specific conservation objectives for the same qualifying interests in other sites which would have ensured the full ecological implications of the proposed development on the conservation objectives and ecological integrity of the European sites was properly undertaken. It is suggested that there is a lack of information regarding the conservation objectives of Natura 2000 sites within the zone of influence.
- 6.13. The reference to only generic conservation objectives within the appropriate assessment screening report is a critical flaw. The conclusion within the AA screening report that none of the conservation areas will be affected by the project is entirely without any evidence. Indeed, the existing data would indicate a very real and significant potential impact on species comprising of the qualifying interests of Lough Oughter and associated Loughs both of which are in the zone of influence from the proposed development.

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<sup>5</sup> It appears that the peer review may have been undertaken on the basis that the proposal being a WWTP rather than a WTP.

- 6.14. Reference is made to Case C-258/11 which established that determinations in respect of AA cannot not have lacuna and must contain complete precise definitive findings.
- 6.15. It is noted also that water abstraction can alter the hydrological regime to the ecological integrity of any riparian/lacustrine ecosystem yet this potential impact is not assessed.
- 6.16. Finally, the report suggests that the in combination impacts were not readily identified having particular regard to a separate application on site for an extension to the facility the construction of which could last up to 18 months.
- 6.17. A separate report was submitted which comprises of a peer review of the biodiversity section of the EIA screening report. It concludes that the biodiversity section of the EIA screening report has not even fulfilled the minimum requirements for establishing an ecological baseline in the form of a basic desk review. In the absence of any form of baseline ecological data the identification of potential negative impacts on the biodiversity resource at present is not possible. Therefore, any conclusion that the proposed development will have no significant effect on biodiversity is critically flawed.

## **7.0 Appeal Responses**

### **7.1. Planning Authority's Response to the Grounds of Appeal**

- 7.1.1. A response was received by An Bord Pleanála on 26<sup>th</sup> January, 2021.
- 7.1.2. With regard to the development description, reference is made to Article 18 and Article 19 of the Planning Regulations and it is emphasised that a brief description of the nature and extent of the development is required so as to inform the public of the proposed development and to alert them as to the nature and extent. It is not required to go into excessive details. The notice also states that the site operates in compliance with a licence issued under Part 4 of the EPA Act 1992 thereby indicating that the facility is one which requires a licence. There is no requirement for the public notices to refer to the fact that an amendment to the EPA licence is required. Any reference to same could render the notices confusing to the public.

- 7.1.3. With regard to water abstraction from the Dromore River the proposal relates to the upgrading of the existing water treatment plant on site. The abstraction of water from the adjacent waters in order to operate the facility has existed in excess of 40 years under Reg. Ref. 73/584. There is no change to the points of water abstraction proposed as part of this upgrade. All the works proposed to necessitate this upgrade are contained within the red line of the south boundary and no works are proposed on third party lands. As such no letter of consent from a third party is required for the validation of this application.
- 7.1.4. It is stated that history files are available for viewing at Monaghan County Council offices and it is regrettable that the appellant was not advised of this when enquiries were made. The files are not scanned and available for online viewing. Details of some of the history applications pertaining to the site are detailed in the submission response. It is noted that in the case of 02/915 an EIS was submitted with the application. The abstraction of water element was considered in the EIS submission under Chapter 7 of this application.
- 7.1.5. What is proposed in this instance is a reconfiguration of the general facility and upgrade of the existing water treatment plant. It is not proposed to expand the existing works but rather carry out an upgrade to ensure improved efficiencies. The likely significant effects arising as a consequence of the proposed development have been satisfactorily identified, described and assessed. Having regard to the full documentation submitted with the planning application as well as the additional information the screening for AA and EIAR it is considered that the proposed development accords with the policies of the development plan and is in accordance with the proper planning and sustainable development of the area. On this basis the Board are requested to uphold the decision of the Planning Authority.
- 7.2. Applicant's Response to the Grounds of Appeal**
- 7.2.1. A response was submitted on behalf of the applicant by Awn Consulting. The response is set out below.
- 7.2.2. By way of introduction it is stated that:
- Apart from a small testing period of c.2 to 3 months the proposed water treatment plant replacement will result in reduced, not increased requirements for water abstraction from Dromore River.

- It is also stated that the original application documents contained in error on a number of occasions reference to water being abstracted from Dromore Lake rather than Dromore River. This was corrected and clarified in the additional information submitted to the Planning Authority.
- It is also stated that the abstraction from Dromore River is under an EPA IED Licence. The ecological augmentation from Dromore Lake is an ecological protection measure for the entire Dromore River system independently operated by Abbot on behalf of Inland Fisheries Ireland under an IED Licence.

7.2.3. In relation to the validity of the application the following is stated.

- The facility already has an Industrial Emissions Directive Licence under the EPA Act. The proposed replacement of the water treatment plant requires a technical amendment and not a new licence or licence review.
- It is stated that water treatment plans are not covered by the IED Directive and as such there is no applicable class under the EPA Act. Therefore, as a standalone development the replacement for the water treatment plant would not require a licence from the EPA. Furthermore, the replacement water treatment plant with the exception of a period of 2 to 3 months will not exceed the limit set out in the current IED Licence once commissioned and fully operational. As such, it comes within the scope of the current IED Licence. The proposal does not increase production capacity and produces less environmental emissions therefore it does not trigger a new IED Licence. Notwithstanding the above it is brought to the public's attention that the site operates in compliance with a licence issued under Part 4 of the EPA Act 1992.

While the appellant states that the application seeks to increase water discharge volumes to 4,500 cubic metres per day over a 2 to 3 month period. The response to the grounds of appeal indicate that this is not the case. The maximum discharge of clean water is 4,300 cubic metres per day and this may never be reached. Where it is reached it will only be for a few days during that 2 to 3 month commissioning period.

- With regard to the location of the water treatment plant the planning application drawings and documents submitted as part of the application show beyond any doubt that the proposed replacement water treatment plant will be located on a grassed area to the south-east of the existing wastewater treatment plant and not to the north-west as claimed by the appellant.
- With regard to ownership issues, it was made clear in the additional information submitted that there is no requirement for consent from Mr. Morehart (appellant). The proposed development does not envisage/propose any major abstraction of water from the land which is owned by or under the control of the appellant.
- With regard to the drawings submitted Articles 22 and 23 of the Planning and Development Regulations 2001 set out requirements regarding the content of planning applications for proposed developments (as opposed to existing developments). All planning drawings were submitted in accordance with the articles of the Regulation.
- With regard to sufficient detail of the description of the proposed development it is reiterated that there is no increase in abstraction (with the exception of the 2 to 3 month period), and no increase in discharge therefore any reference in description of the proposed development to an increase in the rate of extraction or discharge would be incorrect.

7.2.4. It is again reiterated that there is and never has been any abstraction from Dromore Lake. There is an ecological augmentation pump which Abbott operate and maintain on behalf of Inland Fisheries Ireland. It is only ever run when Inland Fisheries require it or where the flow rate in the Dromore River falls below 14,500 cubic metres per day. Any augmentation occurs on average less than once per annum. It is not a compensatory measure to allow Abbot to continue their abstraction from Dromore River. Since the operation of this ecological augmentation pump in 1980, there has never been a need to bring about anything close to a 0.38 metre drop in lake levels. The response to the grounds of appeal go onto comment on the various internal reports prepared by Monaghan County Council and responds in the context of the issues raised in the grounds of appeal. It appears that the appellant is of the opinion

that the consultation should have occurred with Irish Water however, the proposal does not have any connection to any infrastructure served by Irish Water.

- 7.2.5. Any further use of the space currently housing the existing wastewater treatment plant will be determined at some stage in the future and the applicant will ensure that all planning requirements will be adhered to.
- 7.2.6. With regard to appropriate assessment issues raised by way of additional information it is stated that the appellant has selectively quoted from the AA screening report and has omitted pertinent aspects of this report.

With regard to in combination effects, it is contended that the in combination effects in respect of the subsequent application lodged for an extension to the facility should be assessed at the point where the second application is being considered by the Planning Authority. The subsequent application for the warehouse and office extension is currently the subject of an additional information request by Monaghan County Council. The first application is a standalone development which has proved to have no significant impacts on Natura 2000 sites. The second application is currently being assessed in respect of in combination effects of the two proposed developments. The AA screening report submitted did assess the potential for replacement of the water treatment plan on European sites in combination with existing plans and projects. Details of the methodology used to assess the potential in combination effects is set out in the response.

- 7.2.7. With regard to EIA screening, the Board are requested to refer to Section 2 and 6 of the EIAR screening report. The response suggests that there is no case for EIA as the proposal constitutes a replacement facility which operates under planning law and in accordance with an IED Licence and the proposal merely represents a replacement of an existing water treatment process.
- 7.2.8. In relation to the pumphouse, it is stated that the ecological augmentation pump and its associated infrastructure is of no relevance to the current planning application.
- 7.2.9. Also provided to the response as Attachment A is a technical report on behalf of the applicant by Moore Group which provides a response to the peer review report submitted with the grounds of appeal. First and foremost, it appears that the peer review report refers to a wastewater treatment plant and not a water treatment plant. In the case of a wastewater treatment plan it may be expected the emissions to

surface and/or groundwater would occur. However, for the water treatment plant there are no such emissions to surface or groundwater. Contrary to what is stated in the peer review report there is no abstraction from Dromore Lake. Therefore, no potential impacts in this regard could exist. While there are emissions to stormwater this amounts to 8.1 cubic metres of stormwater and was fully assessed in the AA screening report.

7.2.10. Reference is made to the lack of sufficient information with regard to avifauna and mammals in Dromore Lake. However, the Board are requested to note that Dromore Lake is a pNHA and not a Natura 2000 site. Any lack of detailed ecological assessment does not negate the fact that no impact will occur. As there is no aspect of the replacement of the existing water treatment plant which will impact on the source pathway receptor. It is argued that no potential impact can exist.

7.2.11. Similar conclusions are reached in the report in respect of biodiversity for the purposes of EIAR screening. It is stated that established best practice in EIA screening confirms that desktop based studies are sufficient for the purposes of screening. It is reiterated that the proposal is not a new development it is a replacement development for which EIAR is not required.

## 8.0 Observations

8.1.1. An observation was submitted by An Taisce. The submission from An Taisce to An Bord Pleanála argues that:

- The appropriate assessment does not meet the requirements of Article 6(3) of the EU Habitats Directive as it does not consider the potential downstream impact of the proposal on the Erne Catchment, of which the Dromore River is a significant tributary.
- It is considered that the proposal could constitute project splitting on the basis that it is one of three current applications for an intensified use of the site (Reg. Ref. 20/300 new water treatment plant, 20/443 increased storage and office facilities and Reg. Ref. 20/490 amendments to road access and ancillary services). It is stated that these proposals have a range of direct and indirect impacts including water abstraction, wastewater discharge, milk production and transport. The EIA screening report looked at this proposal as

a standalone project only and did not provide adequate assessment on abstraction levels and did not address cumulative impacts.

- 8.1.2. Also attached is the submission by An Taisce to Monaghan County Council at application stage. The submission to Monaghan County Council also raised issues in relation to wastewater, surface water, construction impacts. The submission notes that there is no assessment or appraisal of the sustainability of the supply chain of dairy farms to the facility for Ireland and Northern Ireland. Concerns were also expressed in relation to water quality, biodiversity loss, greenhouse gas emissions and potential ammonia emissions as a result of the bovine agricultural process which feed the facility.

## 9.0 Development Plan Provision

- 9.1. The site is governed by the policies and provisions contained in the Monaghan County Council Development Plan 2019 – 2025.
- 9.2. The subject site is not governed by any land-use zoning provision/objective.
- 9.3. Policy ICP1 of the development plan requires that proposals for industrial and commercial developments will be permitted subject to the following:
- (a) Industrial and commercial development shall be located in or adjacent to settlements where infrastructure has been provided in line with the principles of sustainable development.
  - (b) A change of use for the redevelopment of the existing industrial lands/buildings will be considered acceptable where it is being clearly demonstrated to the satisfaction of the Planning Authority that the loss of the industrial use is justified on the grounds of amenity, operation, economic benefit to the county or to secure the future of a building of historical or architectural merit.
  - (c) New industrial/commercial uses or the expansion of existing industrial uses within settlements.
  - (d) The provision of a buffer zone of up to 15 metres in width where sensitive uses adjoin to ensure the amenities of adjacent properties are not adversely affected.

- (e) The provision of high-quality layout scheme which demonstrates that the proposed buildings are not dominated by extensive car parking, hardstanding or roads and that the topography of the surrounding landscape are respected as appropriate.
- (f) The provision of a detailed quality landscape plan, planning schedule and planting programme with all applications to include semi-mature indigenous trees that will reduce the visual impact of the proposed buildings.
- (g) The redevelopment of redundant mushroom/poultry and pig units within 2.5 kilometres of designated settlements for light industrial units may be permitted subject to compliance with all other usual planning considerations.
- (h) Small scale indigenous industrial/commercial development in the rural area outside of designated settlements may be permitted where it can be demonstrated that:
  - (i) There is no alternative suitable site within the boundaries of nearby settlements.
  - (ii) The design of the development can integrate with the surrounding landscape.
  - (iii) The associated traffic generated by the proposal is appropriate for the surrounding road network and will not result in unsustainable traffic movements and will not necessitate road improvements that would damage the character of rural roads in the area.
  - (iv) The proposal will not detract from the character of the rural landscape.
- (i) Any external storage is adequately screened from the public domain/road and any adjoining residential properties.

#### 9.4. Natural Heritage Designations

There are no Natura 2000 sites located within the vicinity of the subject site. The nearest Natura 2000 sites are the Lough Oughter and associated Loughs SAC (Site Code: 000007) is located approximately 14.7 kilometres to the west of the subject site. Lough Oughter Complex SPA (Site Code: 004049) is located c.20 kilometres to the west of the subject site.

## 9.5. EIAR Screening Determination

- 9.5.1. The proposed development has been the subject of an Environmental Impact Assessment Screening Report where it was concluded that the construction, commissioning and operation of the proposed development would generate few additional emissions and therefore no EIAR is required with the planning application. The issue in relation to whether or not an EIAR is required is evaluated in greater detail in my assessment below.

## 10.0 Assessment

### 10.1. Introduction

- 10.1.1. It is important from the outset to clarify the nature of the works which are proposed under the current application. I consider that if the Board restrict its deliberations to the application before it, many of the issues raised in both the third-party appeal and the observation can be set aside, and do not require a detailed evaluation or deliberation. Many of the issues raised particularly in the third-party appeal relate to wider issues concerning the overall operations on site and not necessarily to the application before the Board. For the purposes of clarity, I would reiterate that the permission sought under the current application and appeal before the Board involves the following:

- The replacement of an existing water treatment plant with a new more efficient water treatment plant which is considered fit for purpose and more suitable to meet the needs of improved operational efficiencies for the operations on site. It therefore constitutes the replacement and upgrading of ancillary infrastructure which support the production of infant formula milk on the subject site.
- The proposal before the Board does not involve or relate to any form of wastewater treatment associated with the existing operations on site.
- The proposed development does not involve any additional abstraction of water to cater for the new water treatment plant. The only exception to this relates to a small testing period of 2 to 3 months duration where both water treatment plants will be operating in tandem. (The appeal response indicates

that any additional abstraction will only occur on occasion and will not occur continuously over that 2 to 3 month period, if at all). Furthermore, and subsequent to the testing period, the water treatment plant will result in reduced, not increased requirements in terms of water abstraction.

- The method and location of abstracting water will remain the same (as indicated at Point A in the map submitted by the applicant to Monaghan County Council in its response to the grounds of appeal).
- Any temporary potential increase in abstraction for a 2 to 3 month period will be the subject of a separate application for a technical amendment to the operating licence and this issue will be determined by the EPA.

10.1.2. The Board are requested to keep the above matters in mind when determining the current application and appeal.

## 10.2. Matters to be Considered

10.2.1. I have read the entire contents of the file including the various documentation submitted to accompany the application. I have also had particular regard to the Planning Authority's decision, the issues raised in the third-party appeal and observation, and I have visited the subject site and its surroundings.

10.2.2. For the purposes of determining the current application and appeal, I consider the following issues to be pertinent.

- Validity of Application
- Monaghan County Council's Assessment of the Application
- Abstraction of Water Issues
- Planning History associated with the Site
- EIA Issues/In Combination Effects/Project Splitting
- Other Issues
- Appropriate Assessment Issues

I intend to deal with each of these issues under separate headings below.

### 10.3. Validity of Application

10.3.1. The grounds of appeal argue that the application should have been invalidated on a number of grounds including:

- The planning notice did not specifically refer to the fact that the development comprises of an activity which requires an IPPC licence or a waste licence
- There are inaccuracies in the drawings.
- There is an absence of consent to carry out works on lands outside the applicant's control.
- There is an absence of drawings relating to the existing wastewater treatment plant.
- And the public notices do not describe in sufficient detail the nature and extent of development.

10.3.2. In relation to the public notice not making specific reference to an IPPC or waste licence I would note the following;

10.4. Firstly, the activity being conducted on site already has the benefit of an EPA Licence specifically an industrial emissions licence (IED Licence) and this is clear from the information contained on file P-678-02). What the applicant requires in this instance is a technical amendment to a licence and I note that the Planning and Development Regulations and in particular Article 18 of the said Regulations does not make any reference to the need to advertise this fact in a planning notice. The applicant in the response to the grounds of appeal makes reference to SI No. 137/213 Environmental Protection Agency (Industrial Emissions) (Licensing) Regulations 2013 where it is noted that a technical amendment to a licence such as that proposed, does not involve the requirement for newspaper notification. It is my considered opinion that Article 18 of the Planning and Development Regulations 2001 requires reference in the public notice in the case where a new application for a licence or a full licence review is necessary. I do not consider it necessary under the provisions of Article 18 that any minor technical amendment to the licence is required to be advertised under the Planning and Development Regulations. I do not consider that the applicant in this instance is trying to mislead the public in respect of the development consents sought or required. The planning notice also makes it

abundantly clear that the Abbott Cootehill site operates in compliance with a licence issued under Part IV of the EPA Act 1992. If it were a requirement of the Planning Regulations to refer to technical amendments to licenses in the public notices, I would consider that would be specifically referred to in Article 18 as follows:

(iv) *“where the application relates to development which comprises or is for the purposes of an activity requiring an integrated pollution prevention and control licence or waste licence or “technical amendment of a licence” (my addition) an indication of that fact”*. As this is clearly not the case, it is reasonable to conclude that no such reference is required in the public notices.

- 10.5. Finally, in relation to this matter if the Board conclude that the applicant should have specifically referred to the technical amendment to the licence in the public notices, rather than invalidate the application as suggested in the grounds of appeal, it is open to the Board to request that the applicant furnish new public notices and invite submissions from the parties in respect of same. It is not in my view necessary or appropriate to invalidate the application on these grounds.
- 10.5.1. With regard to the accuracies of drawings, the third party appellant appears to be incorrect in suggesting that the description of the proposed water treatment plant is incorrect. The applicant is totally correct in stating that the proposed water treatment plant is located to the south-east of the existing wastewater treatment plant. The appellant in this instance appears to be confused and appears to be mixing up the existing wastewater treatment plant (located to the north-west of the appeal) and the existing water treatment plant which is located to the south of the site adjacent to the eastern elevation of the main building.
- 10.5.2. The grounds of appeal also suggest that the applicant in this instance in abstracting water from Dromore Lough involves works on third party lands beyond the boundary of the site. I consider that this issue has been adequately clarified by the applicant in response to the additional information request by Monaghan County Council. It is clear from the information submitted to the Council that (a) the point of extraction is located on Dromore River and not Dromore Lough and (b) the location of the abstraction point is not located within lands owned by the third-party appellant.

- 10.5.3. In relation to the absence of drawings concerning the existing wastewater treatment plant, I am satisfied that the applicant has complied with the requirements of the Planning and Development Regulations in providing adequate levels of detail in respect of the proposed water treatment plant. Article 23(1)(d) requires drawings of elevations of any “proposed” structure. There is no requirement to provide that level of detail in respect of other structures outside what is proposed under the application.
- 10.5.4. Again, I would reiterate that if the Board reach a different conclusion in this regard, rather than invalidating the application as suggested in the grounds of appeal it could invite the applicant to submit details of the existing water treatment plant to a level of detail specified. I would however reiterate that I consider that such drawings are not necessary in this instance and would do little to assist the Board in adjudicating on the current application.
- 10.5.5. To suggest that the applicant may use the existing water treatment plant for the purposes of unauthorised development is pure speculation and should be dismissed out of hand by the Board. There is nothing to suggest that the applicant will use lands associated with the existing water treatment plant for unauthorised works/uses.

## 10.6. Monaghan County Council's Assessment of the Application

- 10.6.1. A large section of the grounds of appeal detail and critique the procedures undertaken by Monaghan County Council in assessing the application including the additional information request and the applicant's response to the additional information request. It is not proposed to assess or evaluate the procedures undertaken by Monaghan County Council in this regard as the Board are not in a position to retrospectively direct Monaghan County Council to deal with the application in accordance with the requirements of the third party appellants. The way in which Monaghan County Council choose to assess and adjudicate on the information submitted is a matter for Monaghan County Council and not the Board. In this regard, whether or not Monaghan County Council condition a requirement to be undertaken by the applicant in granting planning permission, rather than requesting further information in relation to this issue, is again a matter for Monaghan County Council and not An Bord Pleanála. An Bord Pleanála should be

satisfied that there is sufficient information in the planning application, grounds of appeal, and response to the grounds of appeal by both the applicant and the Planning Authority in order to adequately assess the development before it. It is my considered opinion having regard to the entirety of the information contained on file that there is sufficient information to allow the Board to adequately adjudicate upon and determine the application and appeal before it.

#### 10.7. **Abstraction of Water Issues**

- 10.7.1. I consider that the grounds of appeal have somewhat confused and conflated issues in respect of water abstraction and the ecological augmentation pump which Abbott operate and maintain on behalf of Inland Fisheries Ireland. It is clear from the information on file and from the drawings submitted by the applicant in the response to additional information, that no abstraction of water from Dromore Lake takes place in order to feed the water treatment plant on site. It is acknowledged that the original planning report made reference to abstraction of water from Dromore Lake but this has been clarified in subsequent information submitted and appears to have been accepted by the appellant albeit with some confusion concerning the same as contained in the grounds of appeal.
- 10.7.2. With regard to the ecological augmentation pump it appears that this pumphouse is used for the purposes of maintaining the ecological functions of the Dromore River during exceptionally dry weather flows. It has nothing to do with the activities for which the current application for planning permission is sought rather it is used to maintain water flows and water levels in the Dromore River when required. Whether or not it is appropriate to pump water from the lake to augment flows in the river represents a civil/legal matter between the parties involved and is not in any way related to the current application before the Board.

#### 10.8. **Planning History associated with the Site**

- 10.8.1. I would again reiterate that the current application before the Board relates to the replacement of an existing water treatment plant with a new water treatment plant on continuous lands to the north of the main building. Any issues with regard to the statutory or private consent under which the piping was originally laid to serve the factory are not germane or relevant to the current application before the Board. An Bord Pleanála is not an enforcement authority which is required to ensure that

development granted almost half a century ago was carried out in accordance with the plans and particulars lodged. It appears that no evidence has been provided in the grounds of appeal to suggest that the applicant erred in law or deviated from the grant of planning permission under previous applications. It is my considered opinion that the Board should dismiss any arguments put forward in the grounds of appeal which suggest that previous permissions undertaken may not have been in accordance with the development consent granted.

#### 10.9. EIA Issues/In Combination Effects/Project Splitting

10.9.1. The An Taisce submission suggests that three separate planning applications have been lodged on the subject site in the recent past which has amounted to project splitting. The three applications in question are:

- Reg. Ref. 20/300 – new water treatment plant
- Reg. Ref. 20/433 – extension to the existing facilities to provide additional warehouse storage, laboratory area and office space together with other ancillary works and
- 20/490 which relates to the relocation of a site entrance, security hut, new internal access road and signage.

10.9.2. The An Taisce submission does not elaborate as to how the three developments in question are being subdivided in order to circumvent the need for an EIAR. It is my considered opinion that the three developments if assessed in conjunction would not be of a sufficient size and scale to trigger either a mandatory or sub-threshold EIAR. The only class of developments which an EIAR might be conceivably be required in this instance would be under

10.9.3. *Class 7 (c) installations for the manufacture of dairy products, where the processing capacity would exceed 50 million gallons of milk equivalent per annum.*

10.9.4. While the overall operations relate to the manufacture of milk formula, the current application before the Board relates to a water treatment plant and will not involve the intensification of milk formula production on site.

10.9.5. Class 10 Infrastructure Projects including:

- (l) Ground water abstraction and artificial groundwater recharge schemes where the volume of water abstracted or recharged would exceed 2 million cubic metres.
- (m) Works for the transfer of water resources between river basins where the annual volume of water abstracted or recharged would exceed 2 million cubic metres
- (b)(iv) Urban Development which would involve an area greater than two hectares in the case with business district, 10 hectares in the case of other parts of the built up area and 20 hectares elsewhere<sup>6</sup>.

10.9.6. The proposed development in this instance does not relate to or, approach any of the thresholds which would trigger a mandatory EIA in this instance. The An Taisce submission does not outline the rationale as to how the combined nature of the three projects in this instance would trigger the requirement for either a mandatory or subthreshold EIAR. In the absence of the rationale as to why and EIAR is required? it is difficult to directly and specifically address An Taisce's concerns in this regard.

10.9.7. The third-party appellant goes further and argues that the Abbott facility has, subsequent to the parent permission in 1973, obtained some 25 separate grants of planning permission for various development proposals on the subject site. Many of these being granted subsequent to the transposition of the original EIA Directive (SI No. 349 of 1989). It is suggested that the cumulative impact could trigger the need for an EIAR. The grounds of appeal suggest that *"the proposed water treatment plant is an integral part of a much larger development that has grown incrementally over time and it is not clear from the publicly available information or descriptions of developments from the planning applications, the exact point in time the site became a facility which falls within EIA category of No. 7 food industry that would require a mandatory EIAR"*. Again, I consider the grounds of appeal are attempting to conflate

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<sup>6</sup> The latter threshold of 20 hectares would apply in this instance having regard to the location of the existing facility in a rural area.

the current application before the Board and the overall activities being undertaken on site. What is proposed in this instance is the replacement of an existing water treatment plant which would result in the long-term in a reduction in the water volumes to be abstracted from the Dromore River to cater for production at the facility. The current application does not relate to the facility overall but only relates to an ancillary element of a facility which already has the benefit of planning permission and an IED Licence. The Board will also note that previous developments pertaining to the site have, where appropriate, been subject to the EIA process (Reg. Ref. 02/195). As Monaghan County Council submission points out, the abstraction of water element was considered in the EIAR. Finally, in relation to this matter I would refer the Board to the following facts in relation to the application.

- The proposal before the Board does not represent a new development in addition to existing development on site. It constitutes a replacement of an existing plant.
- There are no increase in environmental emissions or no intensification of uses proposed under the current application. The proposal will result in a slight reduction in abstraction in the longer term and therefore the environmental impacts are likely to be less than that associated with the existing water treatment plant.

On the above basis I think any arguments in respect of EIAR requirement can be dismissed.

#### 10.10. Other Issues

10.10.1. The grounds of appeal make reference to ground stability issues and in particular peat stability issues associated with a grant of planning permission for a windfarm in Donegal (ABP300460-17). I do not consider any peat stability/slippage issues associated with an upland blanket bog area in Donegal has any relevance to the provision of a new water treatment plant within the confines of an existing developed industrial facility on the outskirts of Cootehill.

10.10.2. I would also refer the Board to the submission from An Taisce to the Planning Authority in respect of the original application which was appended to the observation submitted to the Board. This submission raises a number of issues in

respect of biodiversity loss, greenhouse emissions, water quality issues and sustainability in the built supply chain as well as ammonia emissions causing air pollution from the bovine agricultural processes. These issues in my view are not relevant or pertinent to the current application before the Board. While they may be germane wider issues associated with national industry as a whole, particularly those related to agriculture and agricultural production, I reiterate again that the current application before the Board relates to a replacement water treatment plant which would perform the same effective and operating function as the existing water treatment plant. The existing facility currently operates in accordance with the planning permission and IED Licence granted.

## 11.0 Appropriate Assessment Issues

11.1.1. In this section of my report I propose to assess and evaluate the Stage 1 Appropriate Assessment Screening Report submitted with the application before assessing the specific issues raised in the grounds of appeal in relation to AA and AA screening.

### 11.2. Stage 1 Appropriate Assessment

11.2.1. As stated above the Abbott Facility currently abstracts water under licence from the Dromore River downstream of Dromore Lake. Current abstraction rates fluctuate on a day to day basis averaging approximately 1,570 cubic metres per day with the maximum volume extracted over any 24 hour period being 2,800 cubic metres per day. This is well within the EPA Licence limit of 3,200 cubic metres per day.

11.2.2. The water treatment plant proposed in the long term will result in a reduction of water abstraction by approximately on average 250 cubic metres per day. However, as already pointed out above in my assessment, for a period of 2 to 3 months during the commissioning of the new water treatment plant, average abstraction rates will increase to c.3,000 cubic metres per day (still within the EPA limits) to a maximum of 4,300 cubic metres per day. This will only occur, if at all, on occasion and not consistently. During the operational phase therefore the only potential adverse impact which could occur will arise from a maximum intake of abstracted water from the Dromore River and this would only occur on occasion during a 2 to 3 month period during the initial testing of the new facility. I reiterate that any such increase in

abstraction will be the subject of a separate technical amendment to the EPA licence.

- 11.2.3. The Appropriate Assessment Screening Report in my view correctly identifies any sites that could potentially be affected in the vicinity of the works to be undertaken. These sites include the Lough Oughter and associated Loughs SAC (Site Code: 000007) which, as the crow flies, is just less than 15 kilometres from the subject site. The Dromore River which links up to the Annalee River to the south-west which feeds into the lakes in question at Ballyhaise and Butler's Bridge; incorporates a very circuitous route and as such, I estimate in hydrological terms, the subject site is located perhaps in excess of 20 kilometres from the nearest said SAC.
- 11.2.4. The Lough Oughter Complex SPA is located further to the south-west beyond Butler's Bridge is located at its closest point c.20 kilometres to the south-west.
- 11.2.5. The qualifying interests associated with the Lough Oughter and associated Loughs SAC include the following:
- *Natural eutrophic lakes with magnopotamion or hydrocharition vegetation.*
  - *Bog woodland.*
  - *The otter.*
- 11.2.6. Lough Oughter Complex SPA (Site Code: 004049) accommodates the following qualifying interests.
- *Wetland and water birds.*
  - *Widgeon.*
  - *Whooper Swan.*
  - *Great Crested Grebe.*
- 11.2.7. In terms of potential impacts on the SAC, it is considered that no potential impacts could arise from the construction phase. The only potential impacts would potentially arise from increases in sediment run-off or hydrocarbon or chemical spillage associated with site machinery etc. The appeal site in which the works are to be carried out are located at their closest point c.145 metres from the banks of the Dromore River. There is c.80 metre buffer zone of riparian woodland between the subject site and the river which would assist in intercepting any potential surface

water run-off. Perhaps more importantly any potential pollution episode that may occur in terms of excessive siltation or hydrocarbon/chemical pollution into the river would flow approximately 20 kilometres before reaching the SAC in question. Over this distance significant dilution and dispersion would take place to the extent that any potential impact on the qualifying interests associated with the SAC would be infinitesimal.

11.2.8. With regard to potential impacts on the SAC during the operational phase, the potential impact of a temporary increase abstraction rate which would occur on occasion over a 2 to 3 month period will not have any impact on water quality or water flows 20 kilometres downstream from the subject site having regard to the size of the catchment area and potential for recharge, both surface water and groundwater, between the subject site and the SAC.

11.2.9. The conclusion set out therefore in the appropriate assessment screening report that any potential impact can be excluded on the basis of objective information and that the proposed development will not impact on the SAC downstream.

11.2.10. Likewise, in relation to the SPA the proposed development is located within an existing facility c.20 kilometres from the Lough Oughter Complex SPA and therefore will in no way affect any of the qualifying interests or species of conservation interest associated with the SPA.

### 11.3. Specific Issues Raised in the Submissions regarding AA

11.3.1. Both the grounds of appeal and the observation both express a number of concerns in relation to the appropriate assessment undertaken. The An Taisce objection is again generic in its nature stating that the appropriate assessment does not meet the requirements of Article 6(3) of the EU Habitats Directive as it is not considered potential downstream impacts of the proposal on the Erne Catchment of which the Dromore River is a significant tributary. I have argued above based on my own independent assessment above, that the proposed development either during the construction or operational phase has for the reasons set out, no potential to impact on the qualifying interests of either the SAC or SPA in question.

11.3.2. The grounds of the third party appeal includes a peer review of the AA screening assessment undertaken.

- 11.3.3. Concerns are expressed that the habitats occurring on the site and the immediate vicinity of the site are not described within the Appropriate Assessment screening report. It is clear from my site inspection that the existing site on the whole comprises of artificial surfaces. More importantly any description of the subject site will not in any way infer potential impacts that the proposed development will have on European sites located c.15 kilometres (as the crow flies) or 20 kilometres via the pathway) on the SAC.
- 11.3.4. Another critical aspect in relation to the peer review is the fact that the peer review appears to be predicated on the basis that the proposal is for a new wastewater treatment plant at the facility. This would infer that wastewater is being treated and perhaps discharged into the Dromore River. If this were the case, I would agree with the peer review that perhaps a more robust investigation would be required as to the potential impacts which could occur downstream in terms of water pollution. The Board however will be fully aware that the proposal in this instance relates to a water treatment plant which is predicated on water abstraction rather than water discharge into the river. On this basis I would argue that the peer review submitted by the third party appellant is fundamentally flawed on its basic assumptions and therefore much of the conclusions arrived at in the peer review are predicated on the false assumption that a wastewater treatment plant rather than a water treatment plant is being developed on site.
- 11.3.5. Finally, issues with regard to in-combination effects are raised in the submissions. In response to this issue, I would fully concur with the applicant's rebuttal in the response to the grounds of appeal. The EIAR screening report in Section 5.2 carried out an assessment of potential in combination effects. This included a review of the National Planning Application Database relating to developments granted planning permission within 200 metres of the proposed project within the previous 3 years. It notes that there are no plans for other developments in the immediate vicinity of the Abbott site at Cootehill. Having regard to the fact that the proposed development will have no potential adverse impacts on European sites in the vicinity, it is in my view reasonable to conclude having regard to the lack of development in the wider area that no in combination effects will occur. While the third party suggest that other developments for which planning permission is currently being sought within the site should be included for the purposes of assessing in combination effects, I would

disagree with this contention on the basis that these plans and projects are not projects which currently have the benefit of planning permission and indeed may not derive the benefit of planning permission at some future date (it appears from the Monaghan County Council website that both these developments are currently at additional information stage). I am satisfied that the current application for the water treatment plant before the Board will not have any adverse impact on European sites in the vicinity. Should either or both developments currently with Monaghan County Council on the subject site receive planning permission at some future date, it is at that stage that these developments should be assessed in conjunction with permitted and extant development to assess potential in combination effects.

11.3.6. It is not appropriate to assess potential in-combination impact for developments which are currently 'in the pipeline', that may or may not be permitted. In-combination should be predicated on the basis of the proposed development in combination with extant plans or projects.

11.3.7. In conclusion therefore, I consider that the proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000, as amended. Having carried out a screening for Appropriate Assessment it has been concluded that the proposed development individually or in combination with other plans or projects would not be likely to have a significant effect on European Site No. 000007 (Lough Oughter and associated Loughs SAC) or any other European site in view of the site's conservation objectives and an appropriate assessment (and a submission of an NIS is therefore not required). This determination is based on the nature of the works to be undertaken which in the long term will result in reduced abstraction rates from the Dromore River and also the distance between the proposed development and European sites in the wider area. In making the screening determination no account has been taken of any measures intended to avoid or reduce potentially harmful effects of the project on a European site.

## 12.0 Conclusions and Recommendation

Arising from my assessment above I consider that the proposed development is fully in accordance with the proper planning and sustainable development of the area and

therefore the decision of Monaghan County Council in this instance should be upheld.

### 13.0 Decision

Grant planning permission for the proposed development in accordance with the plans and particulars lodged based on the reasons and considerations set out below.

### 14.0 Reasons and Considerations

Having regard to the nature of the proposed development which involves the replacement of an existing water treatment plant with a new water treatment plant within an existing industrial and manufacturing facility, it is considered that the proposed development subject to conditions set out below, would not seriously injure the amenities of the area or property in the vicinity, would not be prejudicial health and would therefore be in accordance with the proper planning and sustainable development of the area.

### 15.0 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 plans and particulars received by the planning authority on the 5<sup>th</sup> day of October, 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 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. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in

accordance with the "Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects", published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

**Reason:** In the interest of sustainable waste management.

3. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health.

4. The new water treatment plant shall not become operational until such time as a technical amendment is secured from the EPA in respect of Licence (P-0687-02).

**Reason:** In the interest of orderly development.

5. The applicant shall ensure that any surface water from the proposed development is discharged to an appropriately sized interceptor.

**Reason:** In the interest of public health.

6. Any hazardous liquid, waste oil or chemical storage containers to be provided on site shall incorporate bunds that are designed to contain 110% of the capacity of the largest storage container located within the bund.

**Reason:** In the interest of public health.

7. Material storage, fuel handling, parking areas and other yard activities shall be managed in a manner which prevents the discharge of polluting matter to ground or surface water.

**Reason:** In the interest of public health.

8. The applicant shall submit and agree in writing with the planning authority prior to the commencement of development an emergency response plan in the case of an accidental spillage of fuel or chemical substances within the site which threatens a watercourse.

**Reason:** In the interest of public health.

9. In the case of an accidental spillage of fuel or machine oil the applicant shall immediately inform Monaghan County Council, Cavan County Council and the Inland Fisheries Board.

**Reason:** In the interest of public health.

10. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including:

- (a) Location of the site and materials compound(s) including area(s) identified for the storage of construction refuse;
- (b) Location of areas for construction site offices and staff facilities;
- (c) Details of site security fencing and hoardings;
- (d) Details of on-site car parking facilities for site workers during the course of construction;
- (e) Details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site;
- (f) Measures to obviate queuing of construction traffic on the adjoining road network;
- (g) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;
- (h) Alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works;

- (i) Provision of parking for existing properties at [specify locations] during the construction period;
- (j) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;
- (k) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;
- (l) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;
- (m) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.

A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the planning authority.

**Reason:** In the interest of amenities, public health and safety.

11. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which 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 (including hydrological and geotechnical investigations) relating to the proposed development, and
- (b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

. The assessment shall address the following issues:

- (i) the nature and location of archaeological material on the site, and
- (ii) the impact of the proposed development on such archaeological material.

. A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

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

. **Reason:** In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

12. . The developer shall pay to the planning authority a financial contribution of €5,140 (five thousand one hundred and forty euro) in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.



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Paul Caprani,  
Senior Planning Inspector

22nd February, 2021.

**DECISION QUASHED**

**DECISION QUASHED**