



An
Bord
Pleanála

Inspector's Report ABP-313835-22

Development	A proposed stormwater storage tank and overflow outfall gravity sewer
Location	Lands locally known as the Celestica/Motorola site, Junction of Glen Ellan Road and Balheary Road, and at/on Balheary Road, Swords, Co. Dublin.
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F21A/0476
Applicant(s)	Gerard Gannon Properties
Type of Application	Permission
Planning Authority Decision	Grant Permission with Conditions
Type of Appeal	Third Party
Appellant(s)	Sabrina Joyce Kemper
Observer(s)	None
Date of Site Inspection	6 th December 2022

Inspector

Elaine Power

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1.0 Site Location and Description

- 1.1. The subject site is located c. 1km north of Swords Village, at lands locally known as the Celestica/Motorola site at the junction of Glen Ellan Road and Balheary Road and includes a spur under Balheary Road to provide connectivity to the Broadmeadow River.
- 1.2. The site has a stated area of. 0.663 ha. It is currently a greenfield site and is surrounded by palisade fencing. It is bound to the north by the National Museum of Ireland - Collections Resource Centre building and to the west by surface car parking associated with the building. To the south the site is bound by Glen Ellan Road, with St. Colmcille's GAA club located on the opposite side of the road. To the east the site is bound by Balheary Road with commercial uses on the opposite side of the road. The Broadmeadow River is located c. 350m north of the subject site.

2.0 Proposed Development

- 2.1. The proposed development consists of a proposed stormwater storage tank with overflow outfall gravity sewer to the Broadmeadow River with associated manholes, proposed vehicular / service access onto Balheary Road, landscaping, boundary treatments and all associated engineering works to facilitate the development.
- 2.2. A Natura Impact Statement has been submitted with the application.

3.0 Planning Authority Decision

3.1. Decision

- 3.2. A 10 year permission was granted subject to 15 no. standard conditions.
 - *Condition 1* clarified that permission was granted for the scheme submitted by way of further information on the 15th February 2022 and by way of clarification of additional information on the 29th April 2022.
 - *Condition 2* clarified the extent (10 years) of the permission.

- *Condition 3* clarified that permission is subject to relevant licensing requirements

3.3. **Planning Authority Reports**

3.3.1. **Planning Reports**

Planner's Report 2nd November 2021

The initial Area Planners report raised some concerns regarding the proposed development and recommended that further information be requested with regard to 15 no items. These items are summarised below.

1. With regard to the submitted EIA Screening Report the following is required:-
 - (a) Information regard to Schedule 7A of the Planning and Development Regulations, 2001 (as amended).
 - (b) details on the likelihood for production of waste, the quantities involved, temporary storage considerations, if any, and proposed end use.
 - (c) clear consideration of the likely effect of continued future development on the operation and management of the stormwater storage tank on the Swords Wastewater Treatment Plant and on any downstream receiving waters.
 - (d) a clear response on how potential effects on other relevant European Union legislation have been considered,
 - (e) The reference to the European Commission Guidance for EIA Screening (2001) should be updated to the current 2017 version 'Environmental Impact Assessment of Projects: Guidance on Screening'.
2. The submitted AA and NIS should be reconsidered in light of the fact that the proposed development will have the effect of introducing a new point source of potentially polluted / contaminated water into the Broadmeadow catchment and beyond.
3. The preliminary Construction and Environmental Management Plan should be updated to include project specific construction stage method statement.
4. A project specific Ecological Impact Assessment should be prepared.

5. Inland Fisheries Ireland should be consulted prior to resubmission of Further Information.
6. The applicant should liaise with the Water Services section.
7. Confirm whether the sizing of the tank takes cognisance of permitted and proposed developments or any other sources of discharge. Confirm the extent to which the proposed tank would affect the capacity at the Swords WWTP.
8. Clarify if the proposed works would directly physically impact on the Newtown Bridge (RPS. Ref. 907) and to submit details of such.
9. Submit an assessment of the visual impact of the proposed headwall and guardrail at the outfall on both the river bank and the protected structure.
10. With regard to the requirements of the Parks and Green Infrastructure Division:
 - (a) Submit an Arboricultural Method Statement and Tree Protection Plan
 - (b) Submit a Landscape plan
 - (c) submit revised drawings of boundary treatments
11. Submit a comprehensive Construction and Environmental Management Plan.
12. Submit an assessment of the likely impact on waste water discharge and ascertain the requirements of the EPA.
13. Submit confirmation from Irish Water of arrangements for connection of the proposal to the foul network.
14. Submit confirmation from Irish Water setting out, the likely time scale for commencement of operation and proposed length of time the tank would likely be operational.
15. Address third party concerns.

A response to the further information request was received on the 15th February 2022. The documentation was considered by the Planning Authority to be Significant Additional Information. Therefore, in accordance with Article 35(1)(a) revised public notices were published and a new site notice was erected on the 23rd February.

Planner's Report 13th April 2022

The planner's report on the FI response considered that Clarification of Further Information be requested with regard to 4 no. items.

These items are summarised below: -

1. The information submitted does not explore to a satisfactory degree of detail the alternative options to the proposed holding tank solution being:
 - a. The elimination of surface water ingress from the upstream catchment
 - b. The increase of network capacity to the Swords WWTP, and the construction of a holding tank at the WWTP, if required.

The rationale for rejecting these alternatives has not been developed to an acceptable level of detail to enable a robust, objective comparison of all options.

2. Clarify the following information request by Inland Fisheries Ireland: -
 - a. Ownership of the facility
 - b. Detailed design on the outfall structures and a method statement for any works within the riparian zone and river bank.
 - c. Any dewatering of ground water during construction must be treated by infiltration over land or into an attenuation area before discharge off site.
3. Clarify the likely impact on waste water discharges and ascertain the requirements of the EPA.
4. Clarify the timescale for commencement of operation and the proposed length of time the tank would likely be operational.

Planner's Report 23rd May 2022

Following receipt of clarification of further information, the Area Planner's report concludes that having regard to the documentation received, the Planning Authority, considers that the response to the request for clarification of additional information have been satisfactorily addressed. The proposed development is considered to be acceptable and it is not foreseen that there will be a negative impact on the environment or visual amenity of the area. It was recommended that permission be granted subject to 15 no. standard conditions.

3.3.2. **Other Technical Reports**

Water Services Section: Initial report (8th September 2021) sought clarification regarding alternative solutions to the recurring overflow issues; confirmation on the sizing of the tank taking cognisance of external sources of discharge; and confirm the extent to which the tank would affect the capacity of Swords WWTP. Report (11th April 2022) in response to further information submitted considered that the information submitted did not explore to a satisfactory degree of detail the alternative options to the proposed holding tank. It recommended that clarification of further information be requested.

Parks and Green Infrastructure: Report of 16th October 2021 raised no objection in principle subject to conditions

Heritage Officer: Initial report (15th October 2021) raised no objection on archaeological grounds. Report (8th March 2022) in response to further information submitted raised no objection subject.

Conservation Officer: Initial report (14th October 2021) sought clarification regarding potential impact on the Newtown Bridge, Protected Structure, RPS Ref. 907. Report (21st March 2022) in response to further information considered that all concerns were fully addressed.

Environmental Health Officer: Initial report (8th September 2021) no objection subject to standard conditions. Report (24th February 2022) in response to further information submitted raised no objection subject to standard conditions.

Transport Planning Section: Initial report (8th October 2021) no objection subject to conditions. Report (7th March 2022) in response to further information submitted raised no objection subject to standard conditions.

3.4. **Prescribed Bodies**

The Environmental Protection Agency, the Department of Housing, Local Government and Heritage, Irish Water and Inland Fisheries Ireland made a submission to the planning authority. A summary of the comments received are summarised below:

- 3.5. ***Environmental Protection Agency:*** The submission quotes Section 44 of the Waste Water Discharge (Authorisation) Regulations 2007 which relates to consultation by a planning authority and An Bord Pleanála.
- 3.6. ***Department of Housing, Local Government and Heritage:*** DAU report 12th October 2021 recommended that standard archaeological conditions be attached to any grant of permission.
- 3.7. ***Irish Water:*** Report of the 19th October 2021 recommended standard conditions. Report dated 4th March 2022 provided further details of the proposed stormwater tank and notes that the applicant has engaged with Irish Water. No objection in principle. Report dated 10th May 2022 provides further details of the proposed stormwater storage tank and raised no objection in principle to the proposed development subject to standard conditions.
- 3.8. ***Inland Fisheries Ireland:*** Report dated 9th March 2022 raised concerns regarding a negative impact on the Broadmeadow River; ownership details; and detailed design. Report dated 6th May 2022 raised no objection subject to all discharges being in compliance with the European Communities (Surface Water) regulations 2009 and the European Communities (Groundwater) Regulations 2010.

3.9. **Third Party Observations**

Third party submissions were received from Sabrina Joyce-Kemper and Cllr. Joe Newman. The concerns raised are similar to those of the appeal.

4.0 **Planning History**

ABP-313302-22: There is a current Strategic Housing Development Application for the removal of temporary structures and the construction of 377 no. residential units and a creche. This proposed development incorporates the proposed stormwater storage tank and overflow outfall gravity sewer.

No other relevant planning history on the subject site.

5.0 Policy Context

5.1. Fingal County Development Plan 2017 - 2023

The site is zoned ME-Metro Economic Corridor with the associated land use objective *to facilitate opportunities for high-density mixed-use employment generating activity and commercial development and support the provision of an appropriate quantum of residential development within the Metro Economic Corridor.*

There is an objective on this site to protect and preserve woodlands, trees and hedgerows.

Relevant Policies include the following: -

Objective WT01: Liaise with and work in conjunction with Irish Water during the lifetime of the plan for the provision, extension and upgrading of waste water collection and treatment systems in all towns and villages of the County to serve existing populations and facilitate sustainable development of the County, in accordance with the requirements of the Settlement Strategy and associated Core Strategy.

Objective WT02: Liaise with Irish Water to ensure the 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 WT04: Investigate the potential for the provision of temporary wastewater treatment facilities for new developments where a permanent solution has been identified and agreed with Irish Water but not yet implemented and where the provision of such a facility is environmentally sustainable, meets the requirements of the Habitats Directive, and is in accordance with the recommendations of the EPA and where adequate provision has been made for its maintenance.

Objective WT08: Prohibit the discharge of additional surface water to combined (foul and surface water) sewers in order to maximise the capacity of existing collection systems.

5.2. ***Eastern and Midland Regional Assembly – Regional Spatial and Economic Strategy (RSES) 2019.***

The RSES is underpinned by key principles that reflect the three pillars of sustainability: Social, Environmental and Economic, and expressed in a manner which best reflects the challenges and opportunities of the Region. It is a key principle of the strategy to promote people's quality of life through the creation of healthy and attractive places to live, work, visit and study in.

The following RPOs is of particular relevance:

RPO 7.11: For water bodies with 'high ecological status' objectives in the Region, local authorities shall incorporate measures for both their continued protection and to restore those water bodies that have fallen below high ecological status and areas 'At Risk' into the development of local planning policy and decision making any measures for the continued protection of areas with high ecological status in the Region and for mitigation of threats to waterbodies identified as 'At Risk' as part of a catchment-based approach in consultation with the relevant agencies. This shall include recognition of the need to deliver efficient wastewater facilities with sufficient capacity and thus contribute to improved water quality in the Region.

5.3. ***National Planning Framework***

The National Planning Framework addresses the issue of 'making stronger urban places' and sets out a range of objectives which it considers would support the creation of high quality urban places and increased residential densities in appropriate locations while improving quality of life and place. Relevant Policy Objectives include:

- National Policy Objective 57 Enhance water quality and resource management by: Ensuring flood risk management informs place-making by avoiding inappropriate development in areas at risk of flooding in accordance with The Planning System and Flood Risk Management Guidelines for Planning Authorities; Ensuring that River Basin Management Plan objectives are fully considered throughout the physical planning process; Integrating sustainable water management solutions, such as Sustainable Urban Drainage (SUDS), non-porous surfacing and green roofs, to create safe places.

- National Policy Objective 63: Ensure the efficient and sustainable use and development of water resources and water services infrastructure in order to manage and conserve water resources in a manner that supports a healthy society, economic development requirements and a cleaner environment.

5.4. **Natural Heritage Designations**

The following 15 no. Natura 2000 sites that are within 15km of the site:

- Malahide Estuary SAC (000205) c. 800m east of the subject site
- Malahide Estuary SPA (004025) c. 800m east of the subject site
- Rogerstown Estuary SAC (000208) c. 4km north east of the subject site.
- Rogerstown Estuary SPA (004015) c. 5km north east of the subject site.
- Rockabill to Dalkey Island SAC (003000) 9km east of the subject site
- Baldoyle Bay SAC (000199) c. 10km south east of the subject site
- Baldoyle Bay SPA (Site Code 004016): c. 10km south east of the subject site
- North Bull Island SPA (004006) c. 12km south east of the subject site
- South Dublin Bay and River Tolka Estuary SPA (Site Code 004024): c. 11km south the subject site
- North Dublin Bay SAC (000206) 12km south east the subject site
- South Dublin Bay SAC (000210) 15km south east the subject site
- Ireland's Eye SAC (002193) c. 13km south east of the subject site
- Ireland's Eye SPA (004117) c. 13km south east of the subject site
- Lambay Island SAC (000204) c. 14km east of the subject site
- Lambay Island SPA (004069) c. 14km east of the subject site.

5.5. **EIA Screening**

- 5.5.1. An Environmental Impact Assessment Screening Report was submitted with the application to Fingal County Council and an updated An Environmental Impact Assessment Screening Report was submitted by way of further information on the 15th February 2022. I have had regard to same in this screening assessment. The information provided is in accordance with Schedule 7 and 7A of the Planning and

Development Regulations 2001. The EIA Screening Report identifies and describes adequately the direct, indirect, secondary and cumulative effects of the proposed development on the environment.

5.5.2. Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended and section 172(1)(a) of the Planning and Development Act 2000, as amended provides that an Environmental Impact Assessment (EIA) is required for infrastructure projects that involve:

- Item 10(b): Urban Development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere.
- Item 15: Any project listed in this Part which does not exceed a quantity, area or other limit specified in this Part in respect of the relevant class of development but which would be likely to have significant effects on the environment, having regard to the criteria set out in Schedule 7.

5.5.3. The proposed development comprises the provision of a stormwater storage tank with a capacity of 2,250m³ on a site with a stated area of 0.6ha . The tank includes an overflow outfall gravity sewer to the Broadmeadow River, c. 350m north of the site, with associated manholes, proposed vehicular / service access onto Balheary Road, landscaping, boundary treatments and all associated works necessary to facilitate the development. The surface of the tanks would be slightly above the road level and would be finished in a permeable hard standing. The boundary of the tank would be finished in grass. This site would not require a stormwater drainage network. The site is located in the urban area (other parts of a built up area). The site is, therefore, below the applicable threshold of 10ha.

5.5.4. There are limited excavation works proposed to construct the stormwater storage tank. Having regard to the relatively limited size and the location of the development, and by reference to any of the classes outlined above, a mandatory EIA is not required. I would note that the development would not give rise to significant use of natural resources, production of waste, pollution, nuisance, or a risk of accidents. The site is not subject to a nature conservation designation. The proposed development would

use the public drainage services of Irish Water and Fingal County Council, upon which its effects would be marginal. An Appropriate Assessment Screening Report was submitted with the application which notes that the proposed development individually or in combination with other plans and projects would not adversely affect the integrity of the European Sites and that associated environmental impacts on these sites, by reason of loss of protected habitats and species, can, therefore, be ruled out.

5.5.5. Appendix B of the report comprises a Statement in Accordance with Article 299(1)(b)(ii)(II)(c) of the Planning and Development Regulations, 2001 (as amended). It is noted that Part 23 of the Regulations relates to Strategic Housing Developments only. Notwithstanding this, I note that the following assessments / reports have been taken into account: -

- Appropriate Assessment Screening Report, the Natura Impact Statement, the Preliminary Construction, Environmental Waste Management Plan and the Stormwater Overflow and Receiving Stream Assessment (Broadmeadow) Assimilation Simulation Evaluation Report have had regard to the Habitats Directive (92/43/EEC), the Birds Directive (2009/147/EC) and to the Water Framework Directive (WFD) (Directive 2000/60/EC).
- The Preliminary Construction, Environmental Waste Management Plan also had had regard to the Clean Air for Europe (CAFÉ) Directive 2008/50/EC and Directive 2002/49/EC Environmental Noise.
- The Site-Specific Flood Risk Assessment (FRA), the Engineering Services Assessment Report and the Preliminary Construction, Environmental Waste Management Plan which had regard to the Floods Directive (Directive 2007/60/EC) Risk Assessment.
- The EIA Screening Report had regard to the Strategic Environmental Assessment (SEA) Directive (2001/42/EC) and to the SEA carried out for the Fingal County Development Plan 2017 – 2023.
- It is noted that the proposed development is not especially vulnerable to risk of major accidents as there are no substances to be stored as part of the proposed development that would be controlled under the Seveso Directive 82/501/EEC, Directive 96/82/EC, Directive 2012/18/EU.

5.5.6. I am satisfied that all relevant assessments have been identified for the purpose of EIA Screening.

5.5.7. I have completed an EIA screening determination as set out in Appendix A of this report. I consider that the location of the proposed development and the environmental sensitivity of the geographical area would not justify a conclusion that it would be likely to have significant effects on the environment. The proposed development does not have the potential to have effects the impact of which would be rendered significant by its extent, magnitude, complexity, probability, duration, frequency, or reversibility. In these circumstances, the application of the criteria in Schedule 7 and 7A, to the proposed sub-threshold development, demonstrates that it would not be likely to have significant effects on the environment and that an environmental impact assessment is not required before a grant of permission is considered. This conclusion is consistent with the information provided in the applicant's report. It is noted the planning authority raised no concerns regarding EIA or the impact of the wider area.

5.5.8. A Screening Determination should be issued confirming that there is no requirement for an EIAR based on the above considerations.

6.0 The Appeal

6.1. Grounds of Appeal

A third party appeal was received from Sabrina Joyce Kemper. The concerns raised in the appeal are summarised below:

- This application cannot legally proceed as it requires an amendment to the Swords Wastewater Treatment Plant. It should have been taken by Irish Water with the consent of the applicant.
- Section 44 of the Waste Water Discharge (Authorisation) Regulations, 2007 requires consultation to take place with the EPA. No consultation has occurred.
- Concerns that EPA are not aware of some discharge points to local watercourses and that Irish Water do not monitor water quality from these discharge points. No assessment has been provided of the water bodies that the storage tank would discharge too. There is no identification of the status

and impact under the Water Framework Directive. This application is premature until discharge points have been notified and assessed by the EPA and added to the licence of the Swords WWTP.

- A dual assessment by the EPA is required to ensure that the impact of this development on the environment has been qualified and deemed acceptable or unacceptable in law.
- An assessment of the potential Environmental impacts and damages must be fully addressed by the Board before any grant of permission.
- Reference to Commission V Ireland C-50/09 which states that the EIA must take place before giving consent.
- Reference is made to Kemper V An Bord Pleanála and others IEHC601 2020. An EIA is required to detail the potential impacts of the storage tank and outfall of potential raw sewerage to the River Ward, which is a pathway to the Broadmeadow Estuary SAC and SPA. Details should include any changes in capacity and issues arising in the Swords WWTP and the cumulative impact.
- The EIA screening report did not consider all discharge points and is flawed.
- The development is sub-threshold, however, there will be an impact on the environment. Fundamentally disagree that an EIA is not required.
- The development is not in accordance with the Water Framework Directive.
- No assessment has been provided as to how the development would improve capacity in the Swords WWTP.
- Concerns raised regarding the robustness of the Receiving Stream Assessment Report.
- Ownership of the stormwater tank is unclear.
- Alternatives have not been fully considered.
- The applicant did not consult the NPWS.
- The proposed development is required to accommodate unsustainable development.

- This application is also included in an SHD application. A dual application is not permissible in accordance with the Planning and Development Act, 2000. There are also serious public participation issues arising from this dual application.

6.2. Applicant Response

The applicant submitted a detailed response to the third party appeal on the 18th July 2022. It included a legal response, a response to the appeal and the resubmission of documents submitted with the application, in this regard the Engineering Assessment Report, the Flood Risk Assessment Report, the Preliminary Construction, Environmental and Waste Management Plan, the Response to the Request for Further Information Report and the Clarification of Additional Information Response letter. To avoid repetition within the submitted documents the overall response to the grounds of appeal is summarised below: -

- This application is for a stormwater storage tank and not a wastewater treatment plant. The tank is required for flood protection reasons. This is an urban development project.
- This project is to address known constraints within the existing public foul network. The proposed development would improve wastewater management in the catchment.
- Irish Water developed the Stormwater Model that led to the selection of the volumetric requirement of the proposed stormwater tank. The tank is designed to assist in all zoned development in its catchment.
- The applicant is not obliged to apply for a technical amendment to the WWTP. It is a separate development. Notwithstanding this, EIA is not required for technical amendments to WWTP licences.
- There is no requirement under article 44 of the Wastewater (Authorisation) Regulations 2007. An Bord Pleanála and the EPA are not involved in a joint assessment of the proposed development as this is not an EIA development. It is at the discretion of the Board to ask the EPA if it agrees with the assessment

as to whether the proposed development is likely to have a significant impact on waste water discharge.

- The Board have experience in understanding and accepting specialist reports.
- It is not a breach of the Urban Waste Water Treatment Directive to do something to improve the management of urban waste water discharges.
- EIA is not required for a storage tank. The extracts from law cases are not relevant in this instance.
- The development is in accordance with the WFD. The reports submitted detail that the proposed development would not cause a deterioration in water quality or status whether alone or in combination with other discharges.
- The proposed tank is part of efforts to bring the water in the catchment from Poor Status to Good Status.
- The appellant has not identified any relevant significant discharges that have not already been submitted in the EIA screening. The development is sub-threshold.
- The AER report for the Swords WWTP and the unregistered SWOs are irrelevant. It is a matter for the EPA and Irish Water.
- The Swords WWTP has the capacity to treat the existing discharges in conjunction with discharges from the proposed development and from zoned lands in the area.
- The discharge from the proposed tank would be infrequent, only during extreme storm events.
- The WWTP receives the same type of stormwater, however, the proposed tank would temporarily divert wastewater that has been contaminated and massively diluted with stormwater, enroute to the WWTP and delay its arrival to the WWTP.
- From a planning point of view it is irrelevant who owns the asset or lands.
- There is no legal obligation to consider alternatives, although the applicant did do so.

- An AA screening was carried out in accordance with appropriate guidelines and best practice.
- It is permissible in planning law to lodge 2 applications in respect of the same development. This application was lodged more than 6 months before the SHD application. It is not misleading.
- All reports have been completed by experts in their fields.

6.3. **Planning Authority Response**

No further comments.

6.4. **Observations**

None

7.0 **Assessment**

- 7.1. The main issues in this appeal relate to the requirement for the stormwater storage tank and its impact on the environment and Appropriate Assessment requirements. The main planning issues can be dealt with under the following headings:

- Principle of Development
- Water Services
- EIA
- Appropriate Assessment.

7.2. ***Principle of Development***

- 7.2.1. The proposed surface water storage tank is located on a site that is zoned ME-Metro Economic Corridor. The vision for these lands is *'to provide for an area of compact, high intensity/density, employment generating activity with associated commercial and residential development which focuses on the Metro within a setting of exemplary urban design, public realm streets and places, which are permeable, secure and within a high quality green landscape... in a phased manner subject to the necessary*

provision of social and physical infrastructure'. Utility infrastructure is permissible under this zoning objective. I am satisfied that the stormwater storage tank is necessary infrastructure as it would allow for continued development in the Oldtown / Mooretown catchment and is, therefore, in accordance with the zoning objective. It is noted that the planning authority and third party raised no objection to the principle of the development.

7.2.2. There is an objective on this site to protect and preserve woodlands, trees and hedgerows. It was noted during my site visit on the 6th December 2022 that there are no mature trees, woodlands or hedgerows within this site. This is also noted in the Arboricultural Report which states that there are no trees in the area of the works. However, the Arboricultural Report does note a number of trees to the east and west (either side) of Balheary Road. It is recommended that where possible the works should be limited to the hard carriageway, to avoid tree related damage. It is my opinion that this could be addressed by way of condition. Having regard to the objective to protect and preserve woodlands, trees and hedgerows the provision of a new native hedge around the boundary of the development site is welcomed.

7.2.3. Concerns are raised in the third party appeal that the proposed development has also been included as part of a current Strategic Housing Development (SHD) Application (ABP – 313302-22). It is noted that this application was lodged with Fingal County Council c. 7 months prior to the SHD application being lodged with An Bord Pleanála. It is permissible to lodge 2 no. applications for the same development simultaneously and it is my view that this application should be assessed on its merits.

7.3. **Water Services**

7.3.1. The proposed development comprises a stormwater storage tank with an overflow outfall gravity sewer to the Broadmeadow River, c. 350m north of the site, with associated manholes, proposed vehicular / service access onto Balheary Road, landscaping, boundary treatments and all associated works necessary to facilitate the development. The surface of the tank would be slightly above the road level and would be finished in a permeable hard standing. The boundary of the tank would be finished in grass. This site would not require a stormwater drainage network.

- 7.3.1. The applicants Engineering Assessment Report notes that there are existing constraints within the foul network as a result of groundwater / stormwater egress which results in the foul water system regularly surcharging during heavy rainfall. Currently during heavy rainfall events surface / storm water and foul waters discharge, uncontrolled into the River Ward, at a low point c. 200m upstream of the subject site and at the Swords WWTP itself. The Ward River flows to the Broadmeadow River and ultimately discharges to the Malahide Estuary. It is envisioned that the proposed storage tank would store stormwater that is currently discharged unimpeded to the Ward River.
- 7.3.2. The tank includes an overflow outfall pipe to the Broadmeadow River. However, this would only function when the storage tank surcharges beyond the proposed (2,250m³) capacity of the tank. Any overflow outfall from the tank would be discharging to a fast moving heavily diluted / surcharged river. It is also noted that the overflowing waters from the tank would be largely surface water. The tank would discharge back to the foul water sewer by gravity once the rainfall passes and the levels of surface water in the foul network drop.
- 7.3.3. The information submitted by the applicant states that Irish Water have undertaken a model review of the constraints within the network and determined that a tank of 1 in 5 year event (2,250m³) is required. The proposed development would provide sufficient capacity to allow for development on zoned lands within the catchment of Oldtown / Mooretown / Holybanks. It is noted that these lands were zoned for development in the Fingal County Development Plan 2017-2023 and that the development plan was subject to a strategic environmental assessment in accordance with the SEA Directive (2001/42/EEC).
- 7.3.4. I note the existing constraints within the foul network and having regard to the information submitted I am satisfied that the tank would improve the capacity of the foul network and prevent the discharge of pollutant material to the Broadmeadow River, and ultimately the Malahide Estuary during a 1 in 5 year storm event. The applicants Stormwater Overflow and Receiving Stream Assessment Assimilation Simulation Evaluation Report notes that the tank would also result in significant reductions over the existing situation for the 1 in 10 year event (81% reduction), the 1

in 20 year event (72% reduction) and the 1 in 30 year event (68% reduction). While the concerns of the third parties are noted, I am satisfied that the provision of this storage tank would alleviate existing constraints in the network and would significantly improve the existing situation, where uncontrolled flooding of foul network currently occurs.

7.3.5. The third party considers that the proposed development can not proceed as it requires an amendment to the Swords Waste Water Treatment Plant licence. This appeal relates to a storage tank and not a wastewater treatment plan. The information submitted indicates that the Swords Wastewater Treatment Plant has existing capacity. This treatment plant currently caters for 90,000PE. The proposed development would not impact on the volume of stormwater ultimately received at the Swords WWTP. However, it would provide storage during extreme rainfall events which would temporarily divert wastewater enroute to the WWTP. I am satisfied that there is no requirement to amend the WWTP licence.

7.3.6. The third party raised concerns that alternative options to alleviate the constraints in the network had not been fully considered. The applicants Engineering Assessment Report notes that other possible solutions to the existing constraints in the network were considered by Irish Water. One solution included the removal of groundwater and surface water infiltration from the foul network. This solution was ruled out as the catchment is very large and would require extensive surveying and repairs. There are also third party ownership issues. The upgrading of the existing outfall sewer from Balheary Road to the Swords WWTP was also considered. This solution was also ruled out due to third party ownership issues and as the upgraded sewer would result in larger flows discharging to the Swords WWTP at times of heavy rainfall, when the treatment plant would be under the most pressure. Alternative locations for the storage tank were also considered. The subject site was selected as this area is the lowest point along the foul water network that can be accessed by an adjacent road and facilitates an overflow to the Broadmeadow River, via gravity. I am satisfied that the proposed development is an appropriate solution to the existing constraints within the foul water network. It is also noted that the subject site is zoned and that there is no requirement to consider alternative projects or locations.

- 7.3.7. The third party also raised concerns that the proposed development is not in accordance with the Water Framework Directive. The applicants Engineering Assessment Report notes that the status of the section of the Broadmeadow River related to the proposed discharge point is Poor and its environmental risk is qualified by the Water Framework Directive as 'At Risk of not achieving good status' (source www.epa.ie). The information submitted, which is robust and evidence based, clearly indicates that the proposed tank would not cause a deterioration in water quality or status whether alone or in combination with other discharges.
- 7.3.8. In conclusion, I have no objection to the proposed stormwater storage tank and associated works and I am satisfied that it would help to alleviate the current constraints within the foul network and in my opinion is an appropriate solution. It is noted that the submission from Irish Water to the planning authority as part of the application stage raised no objection to the proposed development.

7.4. *Environmental Impact Assessment*

- 7.4.1. The third party appeal considered that an EIAR is required to fully assess the impact of the development on the environment. As noted above in Section 5.5 there are limited excavation works proposed to construct the stormwater storage tank. Having regard to the relatively limited size (c. 0.6 ha) of the site and the urban location of the development, and by reference to any of the classes outlined above, a mandatory EIA is not required. The development would not give rise to significant use of natural resources, production of waste, pollution, nuisance, or a risk of accidents. The site is not subject to a nature conservation designation. The proposed development would use the public drainage services of Irish Water and Fingal County Council, upon which its effects would be marginal. An Appropriate Assessment Screening Report was submitted with the application which notes that the proposed development individually or in combination with other plans and projects would not adversely affect the integrity of the European Sites and that associated environmental impacts on these sites, by reason of loss of protected habitats and species, can, therefore, be ruled out.
- 7.4.2. I have completed an EIA screening determination as set out in Appendix A of this report. I consider that the location of the proposed development and the environmental sensitivity of the geographical area would not justify a conclusion that it would be likely

to have significant effects on the environment. The proposed development does not have the potential to have effects the impact of which would be rendered significant by its extent, magnitude, complexity, probability, duration, frequency, or reversibility. In these circumstances, the application of the criteria in Schedule 7 and 7A, to the proposed sub-threshold development, demonstrates that it would not be likely to have significant effects on the environment and that an environmental impact assessment is not required before a grant of permission is considered. This conclusion is consistent with the information provided in the applicant's report. It is noted the planning authority raised no concerns regarding EIA or the impact of the wider area.

7.4.3. A Screening Determination should be issued confirming that there is no requirement for an EIAR based on the above considerations.

7.4.4. The third party also raised concerns that the proposed development should be referred to the EPA for assessment. Having regard to the considerations outlined above and in the Screening Determination, attached in Appendix A, it is my view that there is no requirement for an EIAR. Therefore, I am satisfied that there is no requirement under Article 44 of the Wastewater (Authorisation) Regulations 2007 for the application to be referred to the EPA.

7.5. ***Appropriate Assessment***

7.5.1. The applicant has prepared an AA Screening and a Natura Impact Statement (NIS) as part of the application. The AA screening report concluded that hydrological pathways exist to the Malahide Estuary. It is considered that there is potential for large quantities of sediment to be washed into the Estuary, due to the proximity of works to the River Broadmeadow, with significant effects to habitats within the Malahide Estuary SAC, and species within the Malahide Estuary SPA. An NIS has been prepared in respect of the effects of the project on Malahide Estuary SAC and Malahide Estuary SPA. The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U and section 177V of the Planning and Development Act 2000 (as amended) are considered fully in this section.

Compliance with Article 6(3) of the Habitats Directive

- 7.5.2. The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of the site 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 in view of the site's conservation objectives. The competent authority must be satisfied that the proposal will not adversely affect the integrity of the European site before consent can be given. The proposed development is not directly connected to or necessary to the management of any European site and therefore is subject to the provisions of Article 6(3).
- 7.5.3. The applicant has submitted a Screening Report for Appropriate Assessment and a Natura Impact Assessment. The Screening Report was prepared by Openfield Ecological Services. The report sets out the mythology, provides a description of the site location identifies and provides a brief description of European Sites within a possible zone of influence of the development, a brief description of the proposed development, an assessment of the potential impacts arising from the development and an assessment of potential in-combination effects. The Screening Report notes that due to the planned works in close proximity to the Broadmeadow River there is potential for sediment and other dangerous construction substances to be washed into Malahide Estuary which means that significant effects to the Malahide Estuary SAC and SPA cannot be ruled out.
- 7.5.4. Having reviewed the documents and submissions, I am satisfied that the submitted information allows for a complete examination and identification of all the aspects of the project that could have an effect, alone, or in combination with other plans and projects on European sites.

Stage 1 AA Screening

- 7.5.5. The project is not directly connected with or necessary to the management of a European Site and, therefore, it needs to be determined if the development is likely to have significant effects on a European site(s). The proposed development is examined in relation to any possible interaction with European sites designated Special

Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site in view of the conservation objectives of those sites

Brief Description of the Development

- 7.5.6. The applicant provides a description of the project in the Screening Report (page 6). The development is also summarised in Section 2 of my report. In summary, the proposed development comprises the construction of a stormwater storage tank and overflow outfall gravity sewer to the Broadmeadow River with associated manholes, proposed vehicular / service access onto Balheary Road, landscaping, boundary treatments and all associated engineering works to facilitate the development. The stormwater tank is proposed to eliminate a source of ongoing and uncontrolled pollution from the River Ward. Stormwater would be diverted into the tank and any overflows from the tank would discharge to the Broadmeadow River. The net impact on water quality will be positive, primarily by reducing the frequency and magnitude of uncontrolled overflow events. The development site is located in a urbanised environment close to noise and artificial lighting. The site is highly modified. No flora or fauna species for which Natura 2000 sites have been designated were recorded on the application site.

Submissions and Observations

- 7.5.7. Concerns are raised in the appeal that the proposed development would have a negative impact on the designated sites in the Malahide Estuary. As outlined in Section 3.4 above, the submissions received by the planning authority from the DAU and Inland Fisheries Ireland raised no objection in principle to the development.

Zone of Influence

- 7.5.8. The proposed development is not located within or immediately adjacent to any European Site.
- 7.5.9. Appropriate Assessment Guidance (2009) recommends an assessment of European sites within a Zone of Influence of 15km. However, this distance is a guidance only and a potential Zone of Influence of a proposed development is the geographical area

over which it could affect the receiving environment in a way that could have significant effects on the Qualifying Interests of a European site. In accordance with the OPR Practice Note, PN01, the Zone of Interest should be established on a case-by-case basis using the Source- Pathway-Receptor framework and not by arbitrary distances (such as 15km). The Zone of Influence may be determined by connectivity to the proposed development in terms of:

- Nature, scale, timing and duration of works and possible impacts, nature and size of excavations, storage of materials, flat/sloping sites;
- Distance and nature of pathways (dilution and dispersion; intervening 'buffer' lands, roads etc.); and
- Sensitivity and location of ecological features.

7.5.10. The AA Screening Report (page 11) notes that the 15km radius is an arbitrary distance and that impacts can occur at greater distances. Designated sites within 15km of the subject site are indicated in Figure 4.

7.5.11. The AA Screening report identifies 15 no. Natura 2000 sites that are within 15km of the site. The qualifying interests and features of interest for these designated sites are provided in the AA Screening Report (pages 13 -30)

<i>Malahide Estuary SAC (000205) c. 1.5km east of the subject site</i>	
<i>Conservation Objective</i>	To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.
<i>Qualifying Interests/Species of Conservation Interest</i>	Mudflats and sandflats not covered by seawater at low tide [1140] Salicornia and other annuals colonising mud and sand [1310] Atlantic salt meadows (<i>Glauco-Puccinellietalia maritima</i>) [1330] Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410] Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes) [2120] Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]
<i>Malahide Estuary SPA (004025) c. 1.5km east of the subject site</i>	
<i>Conservation Objective</i>	To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA

<i>Qualifying Interests/Species of Conservation Interest</i>	<p>Great Crested Grebe (<i>Podiceps cristatus</i>) [A005]</p> <p>Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046]</p> <p>Shelduck (<i>Tadorna tadorna</i>) [A048]</p> <p>Pintail (<i>Anas acuta</i>) [A054]</p> <p>Goldeneye (<i>Bucephala clangula</i>) [A067]</p> <p>Red-breasted Merganser (<i>Mergus serrator</i>) [A069]</p> <p>Oystercatcher (<i>Haematopus ostralegus</i>) [A130]</p> <p>Golden Plover (<i>Pluvialis apricaria</i>) [A140]</p> <p>Grey Plover (<i>Pluvialis squatarola</i>) [A141]</p> <p>Knot (<i>Calidris canutus</i>) [A143]</p> <p>Dunlin (<i>Calidris alpina</i>) [A149]</p> <p>Black-tailed Godwit (<i>Limosa limosa</i>) [A156]</p> <p>Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157]</p> <p>Redshank (<i>Tringa totanus</i>) [A162]</p> <p>Wetland and Waterbirds [A999]</p>
<i>Rogerstown Estuary SAC (000208) c. 4km north east of the subject site.</i>	
<i>Conservation Objective</i>	To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.
<i>Qualifying Interests/Species of Conservation Interest</i>	<p>Estuaries [1130]</p> <p>Mudflats and sandflats not covered by seawater at low tide [1140]</p> <p>Salicornia and other annuals colonising mud and sand [1310]</p> <p>Atlantic salt meadows (<i>Glauco-Puccinellietalia maritimae</i>) [1330]</p> <p>Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410]</p> <p>Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes) [2120]</p> <p>Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]</p>
<i>Rogerstown Estuary SPA (004015) c. 5km north east of the subject site.</i>	
<i>Conservation Objective</i>	To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA
<i>Qualifying Interests/Species of</i>	<p>Greylag Goose (<i>Anser anser</i>) [A043]</p> <p>Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046]</p> <p>Shelduck (<i>Tadorna tadorna</i>) [A048]</p>

<i>Conservation Interest</i>	Shoveler (<i>Anas clypeata</i>) [A056] Oystercatcher (<i>Haematopus ostralegus</i>) [A130] Ringed Plover (<i>Charadrius hiaticula</i>) [A137] Grey Plover (<i>Pluvialis squatarola</i>) [A141] Knot (<i>Calidris canutus</i>) [A143] Dunlin (<i>Calidris alpina</i>) [A149] Black-tailed Godwit (<i>Limosa limosa</i>) [A156] Redshank (<i>Tringa totanus</i>) [A162] Wetland and Waterbirds [A999]
<i>Rockabill to Dalkey Island SAC (003000) 9km east of the subject site</i>	
<i>Conservation Objective</i>	To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.
<i>Qualifying Interests/Species of Conservation Interest</i>	Reefs [1170] Phocoena phocoena (Harbour Porpoise) [1351]
<i>Baldoyle Bay SAC (000199) c. 10km south east of the subject site</i>	
<i>Conservation Objective</i>	To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.
<i>Qualifying Interests/Species of Conservation Interest</i>	Mudflats and sandflats not covered by seawater at low tide [1140] Salicornia and other annuals colonising mud and sand [1310] Atlantic salt meadows (<i>Glauco-Puccinellietalia maritimae</i>) [1330] Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410]
<i>Baldoyle Bay SPA (Site Code 004016): c. 10km south east of the subject site</i>	
<i>Conservation Objective</i>	To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA
<i>Qualifying Interests/Species of Conservation Interest:</i>	Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046] Shelduck (<i>Tadorna tadorna</i>) [A048] Ringed Plover (<i>Charadrius hiaticula</i>) [A137] Golden Plover (<i>Pluvialis apricaria</i>) [A140] Grey Plover (<i>Pluvialis squatarola</i>) [A141]

	Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157] Wetland and Waterbirds [A999]
<i>North Bull Island SPA (004006) c. 11km south east of the subject site</i>	
<i>Conservation Objective</i>	To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA
<i>Qualifying Interests/Species of Conservation Interest</i>	Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046] Shelduck (<i>Tadorna tadorna</i>) [A048] Teal (<i>Anas crecca</i>) [A052] Pintail (<i>Anas acuta</i>) [A054] Shoveler (<i>Anas clypeata</i>) [A056] Oystercatcher (<i>Haematopus ostralegus</i>) [A130] Golden Plover (<i>Pluvialis apricaria</i>) [A140] Grey Plover (<i>Pluvialis squatarola</i>) [A141] Knot (<i>Calidris canutus</i>) [A143] Sanderling (<i>Calidris alba</i>) [A144] Dunlin (<i>Calidris alpina</i>) [A149] Black-tailed Godwit (<i>Limosa limosa</i>) [A156] Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157] Curlew (<i>Numenius arquata</i>) [A160] Redshank (<i>Tringa totanus</i>) [A162] Turnstone (<i>Arenaria interpres</i>) [A169] Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179] Wetland and Waterbirds [A999]
<i>South Dublin Bay and River Tolka Estuary SPA (Site Code 004024): c. 11km south east the subject site</i>	
<i>Conservation Objective</i>	To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA.
<i>Qualifying Interests/Species of Conservation Interest</i>	Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046] Oystercatcher (<i>Haematopus ostralegus</i>) [A130] Ringed Plover (<i>Charadrius hiaticula</i>) [A137] Grey Plover (<i>Pluvialis squatarola</i>) [A141] Knot (<i>Calidris canutus</i>) [A143] Sanderling (<i>Calidris alba</i>) [A144] / Dunlin (<i>Calidris alpina</i>) [A149] Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157] Redshank (<i>Tringa totanus</i>) [A162] Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179]

	<p>Roseate Tern (<i>Sterna dougallii</i>) [A192]</p> <p>Common Tern (<i>Sterna hirundo</i>) [A193]</p> <p>Arctic Tern (<i>Sterna paradisaea</i>) [A194]</p> <p>Wetland and Waterbirds [A999]</p>
North Dublin Bay SAC (000206) c. 12km south east the subject site	
<i>Conservation Objective</i>	To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected
<i>Qualifying Interests/Species of Conservation Interest</i>	<p>Mudflats and sandflats not covered by seawater at low tide [1140]</p> <p>Annual vegetation of drift lines [1210]</p> <p>Salicornia and other annuals colonising mud and sand [1310]</p> <p>Atlantic salt meadows (<i>Glauco-Puccinellietalia maritimi</i>) [1330]</p> <p>Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410]</p> <p>Embryonic shifting dunes [2110]</p> <p>Shifting dunes along the shoreline with <i>Ammophila arenaria</i> [2120]</p> <p>Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]</p> <p>Humid dune slacks [2190]</p> <p><i>Petalophyllum ralfsii</i> (Petalwort) [1395].</p>
South Dublin Bay SAC (000210) 13km from the subject site	
<i>Conservation Objective</i>	To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected
<i>Qualifying Interests/Species of Conservation Interest</i>	<p>Mudflats and sandflats not covered by seawater at low tide [1140]</p> <p>Annual vegetation of drift lines [1210]</p> <p>Salicornia and other annuals colonising mud and sand [1310]</p> <p>Embryonic shifting dunes [2110]</p>
Ireland's Eye SAC (002193) c. 13km south east the site	
<i>Conservation Objective</i>	To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.
<i>Qualifying Interests/Species of</i>	<p>Perennial vegetation of stony banks [1220]</p> <p>Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]</p>

<i>Conservation Interest</i>	
<i>Ireland's Eye SPA (004117) c. 15km south east of the subject site</i>	
<i>Conservation Objective</i>	To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA
<i>Qualifying Interests/Species of Conservation Interest</i>	Cormorant (<i>Phalacrocorax carbo</i>) [A017] Herring Gull (<i>Larus argentatus</i>) [A184] Kittiwake (<i>Rissa tridactyla</i>) [A188] Guillemot (<i>Uria aalge</i>) [A199] Razorbill (<i>Alca torda</i>) [A200]
<i>Lambay Island SAC (000204) c. 14km east of the subject site</i>	
<i>Conservation Objective</i>	To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.
<i>Qualifying Interests/Species of Conservation Interest</i>	Reefs [1170] Vegetated sea cliffs of the Atlantic and Baltic coasts [1230] Halichoerus grypus (Grey Seal) [1364] Phoca vitulina (Harbour Seal) [1365]
<i>Lambay Island SPA (004069) c. 14km east of the subject site</i>	
<i>Conservation Objective</i>	To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA
<i>Qualifying Interests/Species of Conservation Interest</i>	Fulmar (<i>Fulmarus glacialis</i>) [A009] Cormorant (<i>Phalacrocorax carbo</i>) [A017] Shag (<i>Phalacrocorax aristotelis</i>) [A018] Greylag Goose (<i>Anser anser</i>) [A043] Lesser Black-backed Gull (<i>Larus fuscus</i>) [A183] Herring Gull (<i>Larus argentatus</i>) [A184] Kittiwake (<i>Rissa tridactyla</i>) [A188] Guillemot (<i>Uria aalge</i>) [A199] Razorbill (<i>Alca torda</i>) [A200]

	Puffin (<i>Fratercula arctica</i>) [A204]
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- 7.5.12. The proposed development has no potential source pathway receptor connections to any other European Sites.
- 7.5.13. I agree with the AA Screening Report and consider that only the designated area of sites within the Malahide Estuary could reasonably be considered to be within the downstream receiving environment of the proposed development and on this basis these sites are subject to a more detailed Screening Assessment.
- 7.5.14. I am also satisfied that the potential for impacts on the other designated sites can be excluded at the preliminary stage due to the separation distance between the European site and the proposed development site, the nature and scale of the proposed development, the absence of a hydrological link, the subject site provides no ex-situ habitat for any of the waterbird/seabird species and an absence of relevant qualifying interests in the vicinity of the works and to the conservation objectives of the designated sites.

Screening Assessment

- 7.5.15. The Conservation Objectives and Qualifying Interests of sites of the Malahide Estuary SAC and the Malahide Estuary SPA are outlined in the table above.

Consideration of Impacts

- 7.5.16. It is considered that there is nothing unique or particularly challenging about the proposed urban development, either at construction or operational phase.
- 7.5.17. The subject site is located c. 1.5km east of the Malahide Estuary and c. 300m south of the Broadmeadow River, which flows to the Malahide Estuary. Water quality is not a target for the maintenance of any of the QI's within the Malahide Estuary.
- 7.5.18. There is a direct pathway from the development site to the Broadmeadow River, during exceptional overflow events from the storage tank. Currently during heavy rainfall events surface / storm water and foul waters discharge, uncontrolled into the River Ward, c. 200m upstream of the subject site. The Ward River flows to the

Broadmeadow River and ultimately discharges to the Malahide Estuary. The proposed storage tank would store stormwater that is currently discharged unimpeded to the Ward River. The infrastructure includes an overflow outfall pipe to the Broadmeadow River. However, this would only function when the storage tank surcharges beyond the proposed 2,250m³ capacity of the tank. It is noted that the overflowing waters from the tank would be largely surface water and that any overflow outfall from the tank would be discharging to a fast moving heavily diluted / surcharged river. The capacity of the tank was agreed with Irish Water and modelling indicates that it represents the 1 in a 5 year flood event. Therefore, the proposed storage tank would reduce the potential for contaminants, currently present, from entering the designated sites within the Malahide Estuary. The tank would discharge back to the foul water sewer by gravity once the rainfall passes and the levels of surface water in the foul network drops.

7.5.19. Having regard to the information submitted I am satisfied that the tank would significantly improve the capacity of the foul network and prevent the discharge of pollutant material to the Broadmeadow River, and ultimately by extension, the Malahide Estuary during a 1 in 5 year storm event. The applicants Stormwater Overflow and Receiving Stream Assessment Assimilation Simulation Evaluation Report notes that the tank would also result in significant reductions over the existing situation for the 1 in 10 year event (81% reduction), the 1 in 20 year event (72% reduction) and the 1 in 30 year event (68% reduction). While the concerns of the third parties are noted I am satisfied that the provision of this storage tank is required in order to protect local receiving waters, irrespective of any potential hydrological connection to Natura 2000 sites and that the proposal would significantly improve the existing situation, where uncontrolled flooding of foul network currently occurs.

7.5.20. The surface water pathway could also create the potential for an interrupted and distant hydrological connection between the proposed development and European sites in the Malahide Estuary. During the construction phase, standard pollution control measures would be put in place. These measures are standard practices for urban sites and would be required for a development on any urban site in order to protect local receiving waters, irrespective of any potential hydrological connection to Natura 2000 sites. In the event that the pollution control and surface water treatment

measures were not implemented or failed I am satisfied that the potential for likely significant effects on the qualifying interests of Natura 2000 sites in the Malahide Estuary from surface water run-off can be excluded given the distant and interrupted hydrological connection, the nature and scale of the development and the distance and volume of water separating the application site from Natura 2000 sites in the Malahide Estuary (dilution factor).

- 7.5.21. The proposed development would not increase the loading to the Swords Wastewater Treatment Plant.
- 7.5.22. The Preliminary Construction, Environmental and Waste Management Plan submitted by way of further information on the 15th February 2022 states that all waste from the construction phase would be disposed of by a registered facility.
- 7.5.23. The site is located in an urban area and has not been identified as an ex-situ site for qualifying interests of a designated site. I am satisfied that the potential for impacts on wintering birds can be excluded due to the characteristics of the subject site, the separation distances between the European sites and the proposed development site, the limited size of the site and the absence of a direct ecological or hydrological pathway.

Cumulative In-Combination Effects

- 7.5.24. I am satisfied that there will be no potential cumulative effects given the nature and scale of the proposed development and the distance to any European sites.

AA Screening Conclusion

- 7.5.25. It is evident from the information before the Board that on the basis of the nature and scale of the proposed development on serviced lands, the nature of the receiving environment which comprises a built-up urban area, the distances to the nearest European sites and the hydrological pathway considerations, submissions on file, the information submitted as part of the applicant's Appropriate Assessment Screening report that, by itself or in combination with other development, plans and projects in the vicinity, the proposed development would not be likely to have a significant effect on the Malahide Estuary SAC (000205) or Malahide Estuary SPA (004025), or any European Site in view of the conservation objectives of such sites.

- 7.5.26. In reaching my screening assessment conclusion, no account was taken of measures that could in any way be considered to be mitigation measures intended to avoid or reduce potentially harmful effects of the project on any European Site. In this project, no measures have been especially designed to protect any European Site and even if they had been, which they have not, European Sites located downstream are so far removed from the subject lands and when combined with the interplay of a dilution affect such potential impacts would be insignificant. I am satisfied that no mitigation measures have been included in the development proposal specifically because of any potential impact to a Natura 2000 site.
- 7.5.27. I note the applicant submitted a Natura Impact Statement (NIS). In deciding to prepare and submit a NIS the applicant states that the precautionary principle was being applied. I am of the opinion that the application of the precautionary principle in this instance represents an over-abundance of precaution and is unwarranted.
- 7.5.28. 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 (000205) or Malahide Estuary SPA (004025), or any European site, in view of the sites' Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

8.0 Recommendation

It is recommended that permission be granted subject to conditions

9.0 Reasons and Considerations

Having regard to the zoning objective of the subject site, its location within an existing urban area and to the nature and scale of the proposed development it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable and would not seriously injure the amenities of the area or give rise to water pollution. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on the 8th September 2021 as amended by the further plans and particulars submitted on the 15th February 2022 and 29th April 2022 a, 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. All trees along Balheary Road shall be retained and maintained with the exception of the following: -
 - a. Specific trees, the removal of which is authorised in writing by the planning authority to facility the development.
 - b. Trees which are agreed in writing by the planning authority to be dead, dying or dangerous through disease or storm damage, following submission of a qualified tree surgeon's report, and which shall be replaces with agreed specimens.

Retained trees shall be protected from damage during construction works. Within a period of 12 months following the completion of the stormwater storage tank, any planting which is damaged or dies shall be replace with others of similar size and species, together with replaces planting required under paragraph (b) of this condition.

Reason: In the interest of visual amenity and biodiversity.

3. The applicant shall enter into a connection agreement with Irish Water, prior to commencement of development.

Reason: In the interest of public health.

4. Drainage arrangements, including the disposal and attenuation of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

5. Site development and building works shall be carried out only between the hours of 0700 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 amenities of property in the vicinity

6. 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 hours of working, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety.

7. The developer shall pay to the planning authority a financial contribution 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. Details of the application of the terms of the Scheme 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 the proper application of the terms of the Scheme.

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.

Elaine Power
Senior Planning Inspector

21st December 2022

A. CASE DETAILS

An Bord Pleanála Case Reference	ABP-313835-22	
Development Summary	A stormwater Storage Tanks with overflow outfall gravity sewer to the Broadmeadow River with associated manholes, proposed vehicular / service access onto Balheary Road, landscaping, boundary treatments and all associated engineering works to facilitate the development	
	Yes / No / N/A	Comment (if relevant)
1. Was a Screening Determination carried out by the PA?	Yes	The PA was satisfied that the proposed development is not likely to have significant effects on the environment and it considered that EIA and the preparation of an EIAR was not required for this project
2. Has Schedule 7A information been submitted?	Yes	Specially addressed by way of further information
3. Has an AA screening report or NIS been submitted?	Yes	A Stage 1 AA Screening Report and a NIS were submitted with the application
4. Is a IED/ IPC or Waste Licence (or review of licence) required from the EPA? If YES has the EPA commented on the need for an EIAR?	No	No
5. Have any other relevant assessments of the effects on the environment which have a significant bearing on the project been carried out pursuant to other relevant Directives – for example SEA	Yes	<ul style="list-style-type: none"> Appropriate Assessment Screening Report, the Natura Impact Statement, the Preliminary Construction, Environmental Waste Management Plan and the Stormwater Overflow and Receiving Stream Assessment (Broadmeadow) Assimilation Simulation Evaluation Report have had regard to the Habitats

		<p>Directive (92/43/EEC), the Birds Directive (2009/147/EC) and to the Water Framework Directive (WFD) (Directive 2000/60/EC).</p> <ul style="list-style-type: none"> • The Preliminary Construction, Environmental Waste Management Plan also had regard to the Clean Air for Europe (CAFÉ) Directive 2008/50/EC and Directive 2002/49/EC Environmental Noise. • The Site-Specific Flood Risk Assessment (FRA), the Engineering Services Assessment Report and the Preliminary Construction, Environmental Waste Management Plan which had regard to the Floods Directive (Directive 2007/60/EC) Risk Assessment. • The EIA Screening Report had regard to the Strategic Environmental Assessment (SEA) Directive (2001/42/EC) and to the SEA carried out for the Fingal County Development Plan 2017 – 2023. • It is noted that the proposed development is not especially vulnerable to risk of major accidents as there are no substances to be stored as part of the proposed development that would be controlled under the Seveso Directive 82/501/EEC, Directive 96/82/EC, Directive 2012/18/EU.
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B. EXAMINATION	Where relevant, briefly describe the characteristics of impacts (ie the nature and extent) and any Mitigation Measures proposed to avoid or prevent a significant effect (having regard to the probability, magnitude (including population size affected), complexity, duration, frequency, intensity, and reversibility of impact)	Is this likely to result in significant effects on the environment? Yes/ No/ Uncertain
1. Characteristics of proposed development (including demolition, construction, operation, or decommissioning)		
1.1 Is the project significantly different in character or scale to the existing surrounding or environment?	The development comprises the construction of a stormwater storage tank on lands zoned for development. The nature and scale of the proposed development is not regarded as being significantly at odds with the surrounding pattern of development.	No
1.2 Will construction, operation, decommissioning or demolition works causing physical changes to the locality (topography, land use, waterbodies)?	The proposed development is located within the urban area. The works include excavations to install the storage tank. It is considered that this issue is minor in nature.	No
1.3 Will construction or operation of the project use natural resources such as land, soil, water, materials/minerals or energy, especially resources which are non-renewable or in short supply?	Construction materials will be typical of such urban development. The development of this urban site will not result in any significant loss of natural resources or local biodiversity	No

<p>1.4 Will the project involve the use, storage, transport, handling or production of substance which would be harmful to human health or the environment?</p>	<p>Construction activities will require the use of potentially harmful materials, such as fuels and other such substances. Such use will be typical of construction sites. Any impacts would be local and temporary in nature and implementation of a Construction Management Plan will satisfactorily mitigate potential impacts. No operational impacts in this regard are anticipated.</p>	<p>No</p>
<p>1.5 Will the project produce solid waste, release pollutants or any hazardous / toxic / noxious substances?</p>	<p>Construction activities will require the use of potentially harmful materials, such as fuels and other such substances and give rise to waste for disposal. Such use will be typical of construction sites. Noise and dust emissions during construction are likely. Such construction impacts would be local and temporary in nature and implementation of a Construction Management Plan will satisfactorily mitigate potential impacts.</p> <p>Significant operational impacts are not anticipated.</p>	<p>No</p>
<p>1.6 Will the project lead to risks of contamination of land or water from releases of pollutants onto the ground or into surface waters, groundwater, coastal waters or the sea?</p>	<p>No significant risk identified.</p>	<p>No</p>
<p>1.7 Will the project cause noise and vibration or release of light, heat, energy or electromagnetic radiation?</p>	<p>Potential for construction activity to give rise to noise and vibration emissions. Such emissions will be localised, short term in nature and their impacts may be suitably mitigated by the operation of a Construction Management Plan.</p>	<p>No</p>
<p>1.8 Will there be any risks to human health, for example due to water contamination or air pollution?</p>	<p>Construction activity is likely to give rise to dust emissions. Such construction impacts would be temporary and localised in nature and the application of a Construction Management Plan would satisfactorily address potential impacts on human health.</p>	<p>No</p>

	The proposed stormwater storage tank would not cause a deterioration in water quality or status whether alone or in combination with other discharges. No significant operational impacts are anticipated.	
1.9 Will there be any risk of major accidents that could affect human health or the environment?	<p>No significant risk having regard to the nature and scale of development. Any risk arising from construction will be localised and temporary in nature.</p> <p>The site is not considered to be at risk of flooding.</p> <p>There are no Seveso / COMAH sites in the vicinity of this location</p>	No
1.10 Will the project affect the social environment (population, employment)	Having regard to the nature of the development it would not impact on the social environment.	No
1.11 Is the project part of a wider large scale change that could result in cumulative effects on the environment?	No. This is standalone project to alleviate current constraints within the existing public foul network.	No
2. Location of proposed development		
2.1 Is the proposed development located on, in, adjoining or have the potential to impact on any of the following: <ul style="list-style-type: none"> a) European site (SAC/ SPA/ pSAC/ pSPA) b) NHA/ pNHA c) Designated Nature Reserve d) Designated refuge for flora or fauna e) Place, site or feature of ecological interest, the preservation/conservation/ protection of which is an objective of a development plan/ LAP/ draft plan or variation of a plan 	<p>No European sites located on the site.</p> <p>The proposed development would not be likely to give rise to significant effects on any European Sites.</p> <p>This site does not host any species of conservation interest.</p>	No

2.2 Could any protected, important or sensitive species of flora or fauna which use areas on or around the site, for example: for breeding, nesting, foraging, resting, over-wintering, or migration, be significantly affected by the project?	No such species use the site and no impacts on such species are anticipated.	
2.3 Are there any other features of landscape, historic, archaeological, or cultural importance that could be affected?	No such features arise in this urban location	
2.4 Are there any areas on/around the location which contain important, high quality or scarce resources which could be affected by the project, for example: forestry, agriculture, water/coastal, fisheries, minerals?	No such features arise in this urban location	
2.5 Are there any water resources including surface waters, for example: rivers, lakes/ponds, coastal or groundwaters which could be affected by the project, particularly in terms of their volume and flood risk?	The subject site is located c. 350m south of the Broadmeadow River. The proposed development includes an overflow outfall pipe to the Broadmeadow River. This would only function when the storage tank surcharges beyond the proposed (2,250m ³) capacity of the tank. Any overflow outfall from the tank would be discharging to a fast moving heavily diluted / surcharged river. The overflowing waters from the tank would be largely surface water. The proposed development would significantly improve the capacity of the foul network and prevent the discharge of pollutant material to the Broadmeadow River.	No
2.6 Is the location susceptible to subsidence, landslides or erosion?	No risks are identified in this regard.	No
2.7 Are there any key transport routes(eg National primary Roads) on or around the location which are susceptible to congestion or which cause environmental problems, which could be affected by the project?	No. the proposed development would not be likely to generate additional demand on any key transport routes.	No

2.8 Are there existing sensitive land uses or community facilities (such as hospitals, schools etc) which could be significantly affected by the project?	No. The development would not be likely to generate additional demands on sensitive land uses or community facilities in the area.	No
3. Any other factors that should be considered which could lead to environmental impacts		
3.1 Cumulative Effects: Could this project together with existing and/or approved development result in cumulative effects during the construction/ operation phase?	No developments have been identified in the vicinity which would give rise to significant cumulative environmental effects.	No
3.2 Transboundary Effects: Is the project likely to lead to transboundary effects?	No trans boundary considerations arise	No
3.3 Are there any other relevant considerations?	No	No
C. CONCLUSION		
No real likelihood of significant effects on the environment.	<input type="checkbox"/>	EIAR Not Required
Real likelihood of significant effects on the environment.	<input type="checkbox"/>	EIAR Required
D. MAIN REASONS AND CONSIDERATIONS		
<p>Having regard to: -</p> <ul style="list-style-type: none"> the nature and scale of the proposed development, which is below the threshold in respect of Class 10(b) and 15 of Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended, the location of the site on lands zoned ME-Metro Economic Corridor with the associated land use objective <i>to facilitate opportunities for high-density mixed-use employment generating activity and commercial development and support the provision of an appropriate quantum of residential development within the Metro Economic Corridor</i> in the Fingal County 		

Development Plan 2017-2023. The development plan was subject to a strategic environmental assessment in accordance with the SEA Directive (2001/42/EEC).

- The location of the site within the existing built up urban area, which is served by public infrastructure, and the existing pattern of development in the vicinity.
- The guidance set out in the “Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development”, issued by the Department of the Environment, Heritage and Local Government (2003),
- the location of the development outside of any sensitive location,
- The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended), and
- The features and measures proposed by the applicant envisaged to avoid or prevent what might otherwise be significant effects on the environment, including measures identified in the Engineering Assessment Report, preliminary Construction, Environmental and Waste Management Plan, Specific Flood Risk Assessment and the Appropriate Assessment Screening report.

It is considered that the proposed development would not be likely to have significant effects on the environment and that the preparation and submission of an environmental impact assessment report would not therefore be required.

Inspector

Date _____