



An  
Bord  
Pleanála

## Inspector's Report

### ABP-314663-22

<b>Development</b>	New wastewater pumping station and modification of Portmarnock Bridge pumping station
<b>Location</b>	Strand Road & Station Road, Maynetown & Burrow (townlands), Portmarnock, Co. Dublin
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	F21A/0389
<b>Applicant(s)</b>	Irish Water.
<b>Type of Application</b>	Planning Permission.
<b>Planning Authority Decision</b>	Grant Permission.
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Sabrina Joyce-Kemper & Catherine McMahon.
<b>Observer(s)</b>	Michael O'Neill for Station Road Apartments CLG.
<b>Date of Site Inspection</b>	3 <sup>rd</sup> April 2024.

**Inspector**

Elaine Sullivan

## Contents

1.0 Site Location and Description .....	4
2.0 Proposed Development .....	5
3.0 Planning Authority Decision .....	6
3.1. Decision .....	6
3.2. Planning Authority Reports .....	7
3.3. Prescribed Bodies .....	9
3.4. Third Party Observations .....	9
4.0 Planning History.....	9
5.0 Policy Context.....	10
5.1. Development Plan.....	10
5.6. Natural Heritage Designations .....	17
6.0 The Appeal .....	17
6.1. Grounds of Appeal .....	17
6.2. Applicant Response .....	24
6.3. Planning Authority Response.....	25
6.4. Observations .....	25
6.5. Further Responses.....	26
7.0 Assessment .....	27
8.0 Recommendation.....	64
9.0 Reasons and Considerations.....	64
10.0 Conditions .....	64
Appendix 1 – Form 1: EIA Pre-Screening	
Appendix 2 – Sluice River Marsh pNHA location	
Appendix 3 – Location of the Quiet Zone in Portmarnock South LAP lands	
Appendix 4 – Quiet Zone Study Area from Citizens Science Survey	

## **1.0 Site Location and Description**

- 1.1. The lands to which the application relates are located the coastal suburb of Portmarnock, approximately 12 kilometres north of Dublin City Centre. The settlement of Portmarnock stretches along the R106 - Strand Road between Malahide and Baldoyle. Most of the commercial development is located along the R106 and most of the suburban development within Portmarnock is located to the north and west of the R106. Development along the southern end of the R106 terminates at the Sluice River which runs along the southern boundary of Malahide Golf Course and to the rear of residential and commercial development fronting onto the R106 before passing under Portmarnock Bridge and discharging into Baldoyle Bay. Baldoyle Bay is designated as both an SPA and SAC.
- 1.2. There is an existing small pumping station on the north-eastern side of the Sluice River. The pumping chamber and wet well are located below ground level. A small kiosk and access to the chamber is located above ground level. The pumping station is surrounded along its northern and western side by palisade fencing. Fencing on top of a stone wall plinth is located along the roadside boundary. Under the current application the existing pumping station is to be decommissioned and replaced by a larger pumping station on adjacent lands. It will no longer function as a 'pumping' station but will continue to collect foul flows from the Portmarnock village area which will be transferred by gravity to the proposed pumping station and onward to the North Fringe Sewer.
- 1.3. The new pumping station is to be located on lands to the immediate south-west of the existing pumping station, adjacent to the southern bank of the Sluice River near to the intersection between Station Road and Strand Road. Station Road runs westwards towards Portmarnock Railway Station and onwards towards the R124. The lands proposed to accommodate the new pumping station are currently undeveloped and open in character and comprise mainly of scrublands. To the immediate west of the proposed pumping station site is 'The Links' residential complex. It comprises two and three storey blocks of apartments on the northern side of the Station Road between the subject site and Portmarnock Railway Station. A small unnamed stream, (known locally as the Millrace stream), runs along the north-western and southern boundary of the site inside the boundary wall which

separates the site from the adjoining road network. There is a signalised junction to the immediate south-east of the subject site where the road splits southwards along the coast road to Baldoyle and westwards towards Portmarnock Railway Station.

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

## **2.0 Proposed Development**

- 2.1. Planning permission is sought for the development of a new wastewater pumping station at Portmarnock with associated rising main connection, gravity sewer connections and modification of the existing Portmarnock Bridge pumping station at Strand Road, Portmarnock.
- 2.2. The development works for the new pumping station would be located on grassland to the south of the Sluice River and to the north and the Millrace stream, and would comprise a rectangular area of approximately 115 x 62m in size.
- 2.3. The new pumping station would include the following below ground works -
  - An inlet chamber,
  - A wet well chamber including emergency pumps,
  - A value chamber,
  - An emergency storage tank which will permit 845 cubic metres of storage, (i.e. 6 hours of storage).

- A flow meter chamber (to maintain correct pressure within the chamber at all times).

Above ground works would include –

- A control and welfare building to include control panels, gantry storage and toilet as well as a vent stack. This building is a rectangular building (4.7 metres by 4.3 metres) providing a total floor area of just over 20 metres. It would have a flat roof structure and rises to a height of 3 metres.
- Ancillary elements of the pumping station include a new entrance and access gate together with boundary fence. A hardstanding area will be provided to allow vehicle access and turning.
- The proposed pump station will have a capacity to pump 147 litres per second (l/s).

- 2.4. The existing pumping station to the north of the Sluice River would be modified through decommissioning the redundant above and below ground plant and equipment, provision of a below ground emergency overflow screening chamber with mechanical screen, a new control kiosk to control the mechanical screen and the retention of the existing wet well.
- 2.5. A gravity sewer underneath the Sluice River would connect the new pumping station with the modified pumping station. Additional works proposed include the completion of a rising main connection to the North Fringe Sewer, decommissioning of the rising main within Strand Road and Coast Road, site entrances for the proposed pumping station, new and replacement boundary fencing, ground level alterations, landscaping and site drainage including SuDS measures.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

Planning permission was granted by the Planning Authority (PA) subject to nineteen planning conditions, which were mainly standard in nature.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

The decision of the PA was informed by two reports from the Planning Officer. The first report dated the 10<sup>th</sup> of September 2021 recommended that Further Information (FI) be sought in relation to four separate issues. The second report dated the 25<sup>th</sup> of August 2022 assessed the applicant's response and recommended a grant of permission.

The report of the PO dated the 10<sup>th</sup> of September 2021 included the following,

- The site for the pumping station and ancillary works lies within areas zoned objectives 'HA – High Amenity' and 'OS – Open Space'. The development is not listed within the zoning matrix for either objective and will be assessed on its merits and contribution to achieving the overall development objectives for the site.
- The PO determined that the development would not result in significant landscape or visual impacts given its location and would be beneficial to public health.
- A requirement for the infrastructure is identified based on the potential for surrounding lands to accommodate up to 1,200 housing units. The existing pumping station has an emergency overflow pipe which discharges into the Sluice River and on to Baldoyle Bay. The new pumping station would pump foul water southwards to the North Fringe Sewer.
- In terms of impacts on residential amenity, the PO is satisfied that a 50m buffer would be provided between the nearest houses and the noise and odour producing parts of the station, (the Inlet Chamber, Wet Well and the Vent Stack), which is required by Objective WT12 of the Fingal Development Plan 2017-2023.
- The PO is satisfied that alternative sites were considered for the development and that the selection of the subject site has been justified.

- A Site-Specific Flood Risk Assessment (SSFRA) was submitted and addresses all issues raised in the previous Board refusal for the development, (ABP Ref. 307641-20).
- There is no requirement for an EIA as the development is not listed as a specific development or project type which is identified in either Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations.
- The PO recommended that Further Information (FI) be requested regarding the ownership of the site, clarification of issues in the NIS, tree protection and landscaping.

The second report of the PO dated the 25<sup>th</sup> of August 2022 assessed the applicant's response and was satisfied that all issues had been appropriately addressed and recommended a grant of permission. The report also notes that the response to further information regarding the NIS was sent to an external consultant for review. Their review is available on the public file.

### 3.2.2. Other Technical Reports

- **Water Services** – No objection. The Flood Risk Assessment considered the combined risk associated with coastal and fluvial mechanisms which was deemed to be the worst-case scenario. The mitigation measures proposed would satisfactorily address flood risk to and from the site.
- **Transportation Planning** – No objection. Works should not compromise the future cycle and pedestrian greenway proposed along the front of the site and the Baldoyle Greenway shall be fully reinstated.
- **Parks and Green Infrastructure Division** – No objection subject to planning conditions. In response to further information the report of the 24<sup>th</sup> of June 2022 notes that the Tree Protection Plan indicates removal for vegetation that is outside of the red line and is therefore not part of the application. Additional planning conditions are recommended.



### 3.3. Prescribed Bodies

- No responses on file.

### 3.4. Third Party Observations

5 no. third party observations were received by the planning authority and are on the public file. The main concerns raised relate to the following issues,

- Suitability of the site.
- Impact on residential amenity of nearby properties.
- Flooding on the site.
- Compliance with zoning objectives.
- Impact on Natura 2000 sites.

## 4.0 Planning History

**ABP-307641, (PA Ref. F19A/0400)** – Planning permission refused by the Board in November 2020 for the development of a new wastewater pumping station and associated pipework to include gravity sewer and rising main connections at Portmarnock, County Dublin. The subject development is broadly similar to this development. The reason for refusal related to the potential of flooding on the site as follows,

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

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. The planning application was assessed under the Fingal County Development Plan 2017-2023, which was the operative Development Plan at the time. The current Development Plan is the Fingal County Development Plan 2023-2029 which came into effect on the 5<sup>th</sup> of April 2023.
- 5.1.2. On review of the contents of both plans I note that there are no material changes between the 2017 County Development Plan and the 2023 County Development Plan as they relate to the appeal site and the current proposal. In both Development Plans the zoning objectives for the site are 'HA – High Amenity' and 'OS – Open Space'. A portion of the subject site which is adjacent to Strand Road is located within an area which has been identified for the preparation of Framework Plan – FP 9B in both the 2017 and 2023 Plans.

#### **Portmarnock South Local Area Plan (LAP) 2013**

- 5.1.3. The grounds of appeal reference the policies and objectives of the Portmarnock South LAP 2013 (extended to July 2023 and now expired) which includes lands to the south of Station Road and to the south of the proposed new pumping station. The site of the proposed pumping station is located outside of the LAP boundary, but pipeline will pass through the LAP lands. Both the existing and proposed pumping stations are located on land which is identified as an 'Ecological Buffer' to the LAP lands. The purpose of the buffer is to protect the integrity of the nationally and internationally designated sites by providing a suitable habitat for key species.
- 5.1.4. Section 9.2 of the LAP relates to wastewater in the area and identifies 'Existing Foul Water Drainage' in the area as an 'Issue Affecting the Local Area Plan'. This section of the LAP also states that, *'The provision of a new main sewer from the LAP lands to the North Fringe Sewer and a new foul water pumping station is required to facilitate development within the plan area'*. The LAP also notes that, *'The existing pumping station at Portmarnock Bridge has limited capacity and a new pumping station and overflow outfall is required, replacing the existing, which will then cater for existing and proposed development. A new sewer through the plan lands and connection to the North Fringe Sewer is also required'*.

- 5.1.5. Although the LAP has expired the longstanding nature of its policies and objectives is acknowledged, some of which have been brought forward to the current Development Plan. Development has commenced on some of the LAP lands.

## 5.2. Fingal Development Plan 2017-2023

- 5.2.1. The 2017-2023 Development Plan was the operational Plan at the time of the appeal. The grounds of appeal reference some of the objectives of this plan and in the interest of clarity I have included those specifically referenced below.

**NH36** - Ensure that new development does not impinge in any significant way on the character, integrity and distinctiveness of highly sensitive areas and does not detract from the scenic value of the area. New development in highly sensitive areas shall not be permitted if it:

- Causes unacceptable visual harm.
- Introduces incongruous landscape elements.
- Causes the disturbance or loss of (i) landscape elements that contribute to local distinctiveness, (ii) historic elements that contribute significantly to landscape character and quality such as field or road patterns, (iii) vegetation which is a characteristic of that landscape type and (iv) the visual condition of landscape elements.

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

**SW02** - Allow no new development within floodplains other than development which satisfies the justification test, as outlined in the Planning System and Flood Risk Management Guidelines 2009 for Planning Authorities (or any updated guidelines).

**SW11** - Ensure that where flood protection or alleviation works take place that the natural and cultural heritage of rivers, streams and watercourses are protected and enhanced to the greatest extent possible.

**SW12** - Require an environmental assessment of all proposed flood protection or alleviation works.

**WT12** - Establish an appropriate buffer zone around all pumping stations suitable to the size and operation of each station. The buffer zone should be a minimum 35 metres – 50 metres from the noise/odour producing part of the pumping station to avoid nuisance from odour and noise.

### 5.3. Fingal Development Plan 2023-2029

**Zoning** - The subject site has two zoning objectives;

- Objective ‘HA – High Amenity’, seeks ‘*To protect and enhance high amenity areas*’, with the overall vision to ‘*Protect these highly sensitive and scenic locations from inappropriate development and reinforce their character, distinctiveness and sense of place. In recognition of the amenity potential of these areas opportunities to increase public access will be explored*’.
- Objective ‘OS- Open Space’ seeks to ‘*Preserve and provide for open space and recreational amenities.*’. The vision for the OS objective is to ‘*Provide recreational and amenity resources for urban and rural populations subject to strict development controls. Only community facilities and other recreational uses will be considered and encouraged by the Planning Authority*’.

**Land-use** - The proposed use is not listed as a land use which is ‘Permitted in Principle’ or ‘Not Permitted’ within the HA zoning objective. In such cases the Development Plan allows for the development proposal to be assessed in terms of its contribution towards the achievement of the Zoning Objective and Vision and its consistency with the policies and objectives of the Development Plan.

### Chapter 11 Infrastructure and Utilities -

- **Uisce Éireann** - It is a Strategic Aim of the PA ‘*to continue to support Uisce Éireann’s strategic water service projects and infrastructure improvements*

*and engage to facilitate the timely delivery of the water services infrastructure necessary to support Fingal's settlement hierarchy, sustainable growth and mitigation and adaptation to climate change, in line with national and regional policy. Fingal will continue to support the implementation of the UÉ Water Services Strategic Plan, 2015 (and any subsequent plan) and key projects in order to maintain and improve existing services and service further growth'.*

- **Policy IUP1 – Uisce Éireann** - Support Uisce Éireann's strategic water service projects and infrastructure improvements and engage with them to facilitate projects that deliver the water services infrastructure necessary to support Fingal's settlement hierarchy, sustainable growth and mitigation and adaptation to climate change in line with national and regional policy.
- **Policy IUP4 – Uisce Éireann projects** - Support Uisce Éireann in delivering key water service projects in the County, as per Table 11.1 (of Chapter 11). The Pumping Station upgrade at Portmarnock Bridge is listed as a key project in Table 1.1.
- **Policy IUP12 – Flood Risk Management** - Ensure the continued incorporation of Flood Risk Management into the spatial planning of the County of Fingal, to meet the requirements of the EU Floods Directive and the EU Water Framework Directive and to promote a climate resilient County.
- **Policy IUP13 – Protection of Fingal's Floodplains, Wetlands and Coastal Areas** - Protect and enhance the County's floodplains, wetlands and coastal areas subject to flooding as vital green infrastructure which provides space for storage and conveyance of floodwater, enabling flood risk to be more effectively managed and reducing the need to provide flood defences in the future.
- **Objective IU07 – Buffer zones** - Establish an appropriate buffer zone around all pumping stations suitable to the size and operation of each station. The buffer zone should be a minimum 35 metres – 50 metres from the noise/odour producing part of the pumping station to avoid nuisance from odour and noise. For small scale developments (less than 15 houses) a smaller buffer zone may be agreed with the Planning Authority.

- **Objective IUO17 – Strategic Flood Risk Assessment** - Implement and comply fully with the recommendations of the Strategic Flood Risk Assessment prepared as part of the Fingal Development Plan 2023–2029
- **Objective IUO19 – Medium Range Future Scenario Climate Change Predictions** - Surface water designs must include ‘Medium Range Future Scenario Climate Change Predictions’.
- **Objective IUO26 & DMSO210 – Riparian Corridors** - Establish riparian corridors free from new development along all significant watercourses and streams in the County:
  - Ensure a minimum 10m wide riparian buffer strip measured from the top of the bank either side of all watercourses. This minimum 10m wide riparian buffer strip applies to lands within development boundaries— i.e. within designated settlement boundaries (as per Fingal County Council’s Settlement Hierarchy set out in Chapter 2, Planning for Growth, Table 2.20).
  - A minimum 48m wide riparian buffer strip is required in all other areas outside of development boundaries.
  - Where lands encompass urban and rural areas, a transitional approach from the urban riparian requirements to the rural riparian requirements may be appropriate and will be assessed on a case-by-case basis.
  - Notwithstanding the above, cognisance must be taken of Flood Zone A and B, as outlined in the SFRA.

## **Chapter 14 – Development Management Standards**

- **Objective DMSO154 – Ecological Corridors** - Protect and enhance the ecological corridors along the following rivers in the County by ensuring that no development takes place, outside, development boundaries within a minimum distance of 48m from each riverbank along the main channels of following rivers Liffey, Tolka, Pinkeen, Mayne, Sluice, Ward, Broadmeadow, Ballyboghil, Corduff, Matt and Delvin, Bracken River, Daws River, Richardstown River, Turvey River (see Green Infrastructure Maps). A minimum 10 m wide riparian buffer strip applies to lands within development

boundaries. Additional width may be required to provide for additional protections of sensitive habitats, as appropriate.

- **Objective DMSO155– Ecological Corridors in Urban Areas** - Any redevelopment of existing properties and brownfield sites within 25m from each riverbank along the main channels of following rivers Liffey, Tolka, Pinkeen, Mayne, Sluice, Ward, Broadmeadow, Ballyboghil, Corduff, Matt and Delvin, Bracken River, Daws River, Richardstown River, Turvey River shall provide opportunities for multi-functional green infrastructure, including features which intercept and filter surface water from the site before discharging into the river. These features include, but are not limited to: green roofs, reinforced grass parking bays and water gardens. The use of underground attenuation as part of the redevelopment of existing properties or brownfield sites will not be accepted.
- **Objective DMSO160 – Riparian Corridors** - Require development proposals that are within riparian corridors to demonstrate how the integrity of the riparian corridor can be maintained and enhanced having regard to flood risk management, biodiversity, ecosystem service provision, water quality and hydromorphology.
- **Objective DMSO164 – Coastal Flooding** - Prohibit development within areas liable to coastal flooding other than in accordance with The Planning System and Flood Risk Management – Guidelines for Planning Authorities 2009 issued by the Department of the Environment, Heritage and Local Government and the Office of Public Works. Prohibit development within areas liable to coastal flooding under existing to 1m sea-level rise flood scenarios other than in accordance with The Planning System and Flood Risk Management – Guidelines for Planning Authorities 2009 issued by the Department of the Environment, Heritage and Local Government and the Office of Public Works.
- **Objective DMSO199– Buffer Zones around Pumping Stations** - Establish an appropriate buffer zone around all pumping stations suitable to the size and operation of each station. The buffer zone should be a minimum 35 metres – 50 metres from the noise/odour producing part of the pumping

station to avoid nuisance from odour and noise. For small scale developments (less than 15 houses) a smaller buffer zone may be agreed with the Planning Authority.

#### 5.4. **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.

The site is located with the ‘Dublin Metropolitan Area’. The Metropolitan Area Strategic Plan (MASP), which is part of the RSES, aims to align growth with enabling infrastructure to promote quality infrastructure provision and capacity improvement, in tandem with new development and aligned with national projects and improvements in water and wastewater, sustainable energy, waste management and resource efficiency.

The following are considered relevant:

- **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.
- **RPO 10.10:** Support Irish Water and the relevant local authorities in the Region to eliminate untreated discharges from settlements in the short term, while planning strategically for long term growth in tandem with Project Ireland 2040 and in increasing compliance with the requirements of the Urban Waste



Water Treatment Directive from 39% today to 90% by the end of 2021, to 99% by 2027 and to 100% by 2040.

- **RPO 10.11:** EMRA supports the delivery of the wastewater infrastructure set out in Table 10.2, subject to appropriate environmental assessment and the planning process.
- **RPO 10.12:** Development plans shall support strategic wastewater treatment infrastructure investment and provide for the separation of foul and surface water networks to accommodate the future growth of the Region.

#### 5.5. **National Planning Framework - Project Ireland 2040**

National Strategic Outcome 9 relates to the Sustainable Management of Water and other Environmental Resources and states the following -

*Investment in water services infrastructure is critical to the implementation of the National Development Plan. The current Water Services Strategic Plan by Irish Water will be updated in the light of the policies in the National Planning Framework addressing the requirements of future development, while also addressing environmental requirements such as obligations under EU Water Framework Directive mandated River Basin Management Plans*

#### 5.6. **Natural Heritage Designations**

- 5.6.1. The site is not a designated SAC or SPA. It is adjacent the Baldoyle Bay SAC and SPA. A Natura Impact Statement (NIS) accompanies the application. The potential impacts of the development on the designated site are addressed in full in Section 7.9 below.

### 6.0 **The Appeal**

#### 6.1. **Grounds of Appeal**

The grounds of appeal include the following,

Procedural Issues and Unauthorised Development -

- The appeal queries the planning status of the rising main shown in the application drawings. The description of the development includes the 'completion of a rising main connection to North Fringe Sewer'. The appellant contends that a section of the rising main was installed in conjunction with the Baldoyle to Portmarnock Walk and Cycleway which was permitted by the Board under JP06F.300840 on the 24<sup>th</sup> of July 2018 and does not include a rising main.
- The appellant refers to correspondence between the applicant and the Planning Authority in support of their argument, copies of which are appended to the appeal.
- It is argued that the applicant installed the rising main when the development was subject to an Appropriate Assessment and possibly EIA. As such under Section 34(12) of the Planning and Development Act 2000 (as amended), (hereinafter referred to as 'the Act'), Fingal County Council is precluded from granting the subject application. The third party is not satisfied that the issue was addressed in the report of the PO and requests that the Board reject the application under the powers conferred them under Section 34(12) of the Planning and Development, Maritime and Valuation (Amendment) Act 2022.

#### Previous Applications –

- The application has not been presented 'de novo' and is treated as a response to further information arising from the previous Board decision, ABP-Ref. 307641-20. The grounds of appeal argue that the archaeology report, arborist report and prescribed body consultations have not been included.

#### Alternative Options –

- The appellant suggests that the development could be accommodated in the original planned location on an alternative site on the other side of the Coast Road which would be more efficient and require less physical intervention. This option was not acknowledged by the applicant or the PA. The current proposal does not include green roofs or renewable energy sources which should be considered.

## Flooding –

- The development site is designated as a flood plain and an area of high flood risk and is identified as ‘high risk, vulnerable infrastructure’. Previous attempts to rezone the land were rejected by Fingal on the grounds of flood risk and ecological sensitivity. A historical report from Fingal Water Department is referenced and appended to the appeal.
- As the site was not zoned for development it was not subject to Strategic Environmental Assessment in the Development Plan or LAP.
- The construction of the underground parts of the development will involve displacement of large amounts of soil which will impact on natural groundwater drainage. It is not clear if the combined impact of replacing soil with physical structures and raising the site levels would result in flooding in adjoining areas.
- The grounds of appeal argue that the flood risk assessment failed to carry out hydrology modelling and to model for the tidal node cycle. Wave inundation and storm surge were also not considered.
- There was a lack of assessment of potential overflows to the Sluice River or Millrace Stream.
- The impacts of permitted application F20A/0392 were not considered in terms of flow of flood waters from the site which will flow to Portmarnock Bridge. The cumulative impact of this development was not considered in the AA and EIA.
- The site is vulnerable to flooding from surface water and flooding has also occurred at the front of the site, on the R106 and at the roundabout.
- The appellant does not agree with the Justification Test carried out for the FRA and have carried out their own Justification Test for the appeal. (The appellants note that a swale of 5m<sup>3</sup> is proposed for surface water attenuation, but no provisions are made to accommodate the displacement of water from underground structures.
- Works to alleviate flood risk at the Portmarnock Bridge, as set out in the Fingal East Meath Flood Risk Assessment and Management Study

(FEMFRAMS), have not been carried out to date and this remains a flood risk which should be considered cumulatively.

- The appellant queries whether the implications of sea level rise from global warming have been considered. The Fingal Climate Change Action Report 2019-2024 specifically highlights the subject site as a major tidal and fluvial flood risk for Fingal. The GDSDS suggested a minimum level of 4m OD for the site.
- The development does not have an Oil Separator which could have impacts on European Sites.
- Previous input from the Sea Fisheries Protection Agency noted the sensitivities of shellfish in the area and the importance of not causing pollution / runoff from the development. Consultation with the SFPA did not take place in this application.
- The development fails to meet the required buffer zone for noise and odour / the Links Apartments and the Sluice River.

#### Zoning Objective –

- The appellant does not agree that the development is compatible with the zoning objectives for the site and is of the opinion that the opinion that the PA did not provide sufficient reasons as to why the development does not materially contravene the Development Plan. Objective NH36 of the 2017-2023 Development Plan is referenced as are protected views.
- The appeal submits that several objectives from the Development Plan, the Portmarnock South LAP and the Portmarnock Urban Centre Strategy (PUCS) have been contravened. The objectives relate to visual impact, riparian corridors, conservation objectives for European sites, flood risk, water quality, residential amenity and environmental considerations.

**Note** – Specific Development Plan objectives referenced by the appellant are listed in Section 5.1 of this report. The Portmarnock South LAP has expired and the PUCS is not a statutory plan.

## EIA and EIAR –

- The appellant submits that the proposed development should trigger the requirement for EIAR based on the screening requirements set out in the EIA Directive 2014. The appeal sets out an argument that the proposed development comes within Article 120(1)(b)(iii) of the Planning and Development Regulations and that there is a real likelihood of significant effects on the environment arising from the proposed development.
- The proposed development will connect to the North Fringe Sewer which flows to Sutton Pumping Station and on to the Ringsend WWTP. The Ringsend WWTP is currently over capacity and in breach of its licence, the Urban Wastewater Treatment Directive and the Water Framework Directive. Any increase in intake at the plant, such as the additional connection from the proposed development, could impact on the workings of the plant and its discharge to water.
- The development would trigger amendments to licences issued by the EPA for Ringsend Treatment Plant and Portmarnock Pumping Station. Statutory Instrument SI214/2020 (European Union Wastewater Discharge Regulations 2020) requires the EPA to be the coordinating authority for EIA and AA, and not An Bord Pleanála.
- The appeal highlights issues regarding the lack of status of the Sluice River and Mayne Estuaries under the Water Framework Directive and contends that this impacts on the full assessment of designated sites under the Habitats Directive.

## Project Splitting –

- The appellant contends that the inclusion of part of the Portmarnock to Malahide cycleway represents project splitting as the cycle way has not been subject to AA. This section of the route cannot be assessed in isolation and may impact on whether an EIA would be required for the remainder of the route.

## NIS issues –

- The grounds of appeal query whether the site is an ex-situ site for birds. A citizen science survey on nearby lands, known as the Quiet Zone, is referenced regarding the presence of Brent Geese, other waders and Lapwing. The impact of the proposal on ex-situ sites in terms of disturbance is questioned.
- No assessment of the impact of the proposed pipe-jacking and vibrations would impact on the underground burrow nesting sites of Shelduck, which is an SCI of Baldoyle Bay SPA.
- Appropriate restrictions on construction works between October and April when overwintering Light Bellied Brent Geese use the site were not included.
- No assessment or survey of protected mammals such as bats or otters were completed.
- No reference was made to impacts on migrating European Eel. Smooth newts and frogs have been identified on the Sluice lands and Brown Shrimp have been identified in the waters.

#### Land Ownership –

- The appellant queries the ownership of the site. The CPO for the site was completed in 2019. The application states that Uisce Éireann are the owners of the site but Land Registry does not show them as the owners.
- O'Flynn Construction are registered as the owners of the site and do not appear to be party to the CPO.
- The appellant queries whether Uisce Éireann has the authority to apply for planning permission without the written consent of the registered owner.
- The appellant is of the opinion that Uisce Éireann do not have the power to CPO land under the Water Services Act. They also believe that, as the previous application for the development, (ABP- 307641-20, F19A/0400), was refused and the CPO follows the application, then Uisce Éireann must submit a CPO application again. It is also put forward that Uisce Éireann did not properly consider other route options as they were tied to the CPO.

- The appellant suggests that the Board should get a legal opinion on these issues.

The following enclosures were submitted with the appeal -

- Appendices A-C - Copies of drawings from the planning application.
- Appendix D- Copy of letter from the appellant to Fingal County Council querying the planning status for the rising main shown on planning drawings.
- Appendix E – Copy of response from Fingal County Council.
- Appendix F – J – E-mail correspondence between Uisce Éireann, Fingal County Council.
- Appendix K – Report on a Councillor’s motion to rezone land at Portmarnock, (purported to be the subject site), from Green Belt and Open Space to Residential.
- Extract from Fingal Water Services Report on planning application F06A/1077.
- Appendix K (2) – Documentation relating to planning application F06A/1077, (refused by the PA) including Planners Report, Water Services Report, Parks Department Report and the decision of the Board to refuse the development on appeal, Board Ref. PL06F.220084.
- Appendix K (3) – Report dated the 15<sup>th</sup> of February 2007 on Councillor’s motion to designate ‘three fields to the east of the Sluice Marsh’ as an SPA.
- Appendix K (4) – Letters from 1995, 1997, 1998 which relate to recommendations to add the Sluice River Marsh to Baldoyle Bay pNHA.
- Appendix M – History of zoning at Maynetown, Portmarnock.
- Appendix L – Citizen Science Survey of Quiet Zone for Light Bellied Geese Maynetown Portmarnock, Winter 2019 / 2020. Herpetofauna of the Sluice River Marsh – a report for the Portmarnock Community Association April 2021.

- Appendix M – Ecological study of Sluice River Marsh, Portmarnock – a report for Fingal County Council October 2021, Bat Survey Sluice Marsh Portmarnock 2021.
- Appendix O – Sluice River Marsh Flora and Fauna Assessment – May 2008.
- Appendix P - A submission to the Fingal County Development Plan 2023-2029 from Inland Fisheries Ireland

## **6.2. Applicant Response**

- 6.2.1. A response from the applicant was received on the 19<sup>th</sup> of October 2022. The response notes that the current application has not resulted in any significant changes to planning considerations since the application lodged in 2019, (F19A/0400) and subsequent appeal in 2020 (AB307641-20).
- 6.2.2. The Site-Specific Flood Risk Assessment (SSFRA) was reviewed and revised to ensure that the issues raised by the Inspector in the previous appeal were addressed. Each of the points raised were addressed in turn in the SSFRA.
- 6.2.3. To address concerns raised by the appellant in relation to the ‘age’ of bird surveys used in the NIS, additional bird survey data was commissioned and obtained for a study area of Baldoyle Bay.
- 6.2.4. The response included an Estuarine Bird Survey (2021-2022) Report. The report contains the methodology and results of estuarine bird surveys undertaken for the Portmarnock Wastewater Pumping Station. The surveys were undertaken between November 2021 and March 2022 inclusive and covered the northwestern part of Baldoyle Bay SPA and adjoining fields to the north and south.
- 6.2.5. Based on the survey data the proposed pumping station site is not used regularly by wintering birds and the dense overgrown habitat in this area is unsuitable for wintering birds. The proposed pumping station will not infringe on areas used by wintering birds in the local area. The assessment findings in the NIS will not change as a result of the 2021/2022 bird surveys and other information supplied by the appellant.



### **6.3. Planning Authority Response**

A response was received from the Planning Authority on the 28<sup>th</sup> of October 2022 and includes the following,

- The application was assessed against the policies and objectives of the Fingal Development Plan 2017-2023 and existing government policy and guidelines.
- The PA would draw the attention of the Board to the planning history for the site. The PA considers that the applicant has overcome the previous reason for refusal and is providing a significant piece of infrastructure which is required to serve the development within the immediate and wider vicinity of Portmarnock.
- It is requested that the Board uphold the decision of the PA and that a financial contribution in accordance with the Council's Section 48 Development Contribution Scheme is applied.

### **6.4. Observations**

One observation was received. The observation was submitted on behalf of Station Road Apartments CLG, who are the management company for 'The Links' apartment development on Station Road. In summary, the following issues were raised,

- Of immediate concern to the observers is the proximity of the Links apartment development to the proposed development and the impact it could have on the amenity of the apartments in terms of noise and/or odour.
- A minimum buffer zone of 30m – 50m is required in the Development Plan. Private open space for a number of apartments is within 65m of the development and communal open space is approximately 30m.
- Additional concerns relate to the impact of the proposal on the nearby Natura 2000 sites and the potential for impacts regarding flood risk.
- There is a concern regarding the impact of the encroachment onto the adjoining Sluice buffer zone would have on the Natura 200 sites in the vicinity of the development as well as the potential impact on the Sluice Marsh pNHA.

Concerns were also raised regarding the potential impact on flooding in the area.

- The third party is of the opinion that the location of a utility installation on lands zoned HA – High amenity would materially contravene the zoning objective for the site, which seeks to protect high amenity lands.
- It is submitted that despite Sluice River Marsh 2008 survey identifying pipistrelle bats at the subject site, no assessment was carried out and no surveys on protected species were submitted with the application.

## **6.5. Further Responses**

- 6.5.1. A further response was received by the appellant on foot of the first party's response. Issues raised include –
- 6.5.2. The appellant objects to the submission of bird surveys from 2021/2022 and is of the opinion that they cannot be considered under Section 129(4) of the PDA as amended. The appellant is of the opinion that the results cannot be adequately interpreted in the absence of raw data. The survey area and survey results are also questioned.
- 6.5.3. The appellant notes the absence of breeding bird surveys and is of the opinion that this conflicts with observations of lapwings nesting.

The following documents were appended to this response –

- Submission from Paul Lynch – Chairman of the Fingal Branch of Birdwatch Ireland
- Submission from David Dillon – Fingal Birdwatch Ireland
- Copy of SI No. 275 of 2010
- Copy of IAC Archaeology Report – 2019.
- Copies of Flood Maps from Fingal Strategic Flood Risk Assessment
- Copy of Freedom of Information Request No 2005/119
- Copy of National ASI Survey Sluice River Marsh from 1993 and 1999
- Copy of Planning application for Station Road, Portmarnock from 1995

- Copy of correspondence re the sale of land in proximity to the Sluice River Marsh from 1998
- Copy of Freedom of Information Request No AIE004/2019

## 7.0 **Assessment**

7.1. Having examined the application details and all other documentation on file, including all the submissions received in relation to the appeal, and having inspected the site, and having regard to the relevant local/regional/national policies and guidance, I consider that the main issues in this appeal can be addressed under the following headings,

- Principle of Development
- Procedural Issues
- Residential & Visual Amenity
- Flood Risk
- EIA and EIAR
- Appropriate Assessment

### 7.2. **Principle of Development**

7.2.1. The existing pumping station in Portmarnock is operating at capacity and a new pumping station is required to facilitate new development. This has been acknowledged and included in local planning policy in the Portmarnock South LAP 2013-2023, the Fingal Development Plan 2017-2023 and the current 2023-2029 Development Plan. In the 2017 Development Plan, 'Objective Portmarnock 6' sought to, *'Prepare and/or implement a Local Area Plan for lands at Portmarnock South to provide for strategic development of the area as a planned sustainable mixed use residential development subject to the delivery of the necessary infrastructure. (Refer to Map Sheet No. 9, LAP 9.A).'* The current Development Plan also commits to the implementation of the LAP and supports infrastructure projects which will help to achieve the LAP objectives, (Policy IUP1 – Uisce Éireann and Policy IUP4). I am satisfied that, based on historic and current planning policy, that a

need for a new pumping station and infrastructure works has been identified and that the principle of such development is acceptable.

- 7.2.2. I note that the LAP was prescriptive in setting out a location for the new pumping station, which was initially planned for the north-east section of the plan lands. The location of the proposed pumping station is outside the LAP boundary and on land which is zoned HA – High Amenity. The pipeline from the pumping station to the south, would be located on land which is zoned OS – Open Space. The grounds of appeal questioned the site selection process for the pumping station and the compatibility of the infrastructure with the zoning objectives for the site.
- 7.2.3. The application states that 4 site options were considered, the locations of which are shown in Figure 1.2 of the application's Planning Report. They were selected based on the proximity to the lands to be served by the utility and to ensure that the selected location will allow the largest area of lands to drain by gravity to pumping station. This requires a location which is at the lowest point in the pumping station catchment.
- Option 1 was to expand the existing station but there was not enough space to accommodate the development.
  - Option 2 was identified in the LAP's Green Infrastructure and Landscape Strategy and was proposed on land to the south of the entrance to the Portmarnock Greenway and to the south-west of the Coast Road. This site was discounted as it became part of the SuDS strategy for development. A large attenuation pond reduced the available lands to develop the pumping station and made it unfeasible. The site would also potentially result in direct impact on Baldoyle Bay SAC from its associated link sewer.
  - Option 4 was on land to the north-west of the existing pumping station. Technical constraints on utility connections and a requirement for the deepest gravity sewer connection, (minimum of 6m deep), made the site less preferable due to the increased working area requirements, construction impacts and an extended construction programme.
  - Option 3 was the subject site and was chosen as it was most suitable and had the least technical constraints and the least environmental/ecological impacts.

I am satisfied that the application has explained and justified the site selection process for the new pumping station and that the development can be considered within this context.

- 7.2.4. There are two zoning objectives for the site. The pumping station would be located on land zoned objective 'HA – High Amenity', which seeks *'To protect and enhance high amenity areas.'* The gravity sewer pipeline would be in land zoned objective 'OS- Open Space' which seeks to *'Preserve and provide for open space and recreational amenities.'*
- 7.2.5. The proposed use is not listed as a land use which is 'Permitted in Principle' or 'Not Permitted' within the HA or OS zoning objectives. In such cases the Development Plan allows for the development proposal to be assessed in terms of its contribution towards the achievement of the Zoning Objective and Vision and its consistency with the policies and objectives of the Development Plan. The vision for the HA objective is to *'Protect these highly sensitive and scenic locations from inappropriate development and reinforce their character, distinctiveness and sense of place. In recognition of the amenity potential of these areas opportunities to increase public access will be explored'*. The vision for the OS objective is to *'Provide recreational and amenity resources for urban and rural populations subject to strict development controls. Only community facilities and other recreational uses will be considered and encouraged by the Planning Authority'*.
- 7.2.6. The existing pumping station serves a population of approximately 8,000 people. The Portmarnock South LAP allows for the development of an additional 1,200 homes. Development has now commenced on the LAP lands and the current foul sewer infrastructure does not have capacity to transfer flows from the planned development to the zoned LAP lands.
- 7.2.7. I consider that the works to accommodate the proposed pumping station will not result in a significant impact on the character, distinctiveness, and sense of place of the subject site. The site is currently vacant and is located between two housing developments on the periphery of Portmarnock village. Most of the infrastructure will be located underground and the only substantial above-ground structure would be a single storey control and welfare building of approximately 20 square metres and 3 metres in height. Having regard to the surrounding pattern of development along

this stretch of Strand Road, I consider the proposal to be modest in scale. Furthermore, a landscaping plan has been proposed for the overall site and a swale will be installed to the front of the welfare building which will further soften the appearance of the building. The development will also improve access to the lands by accommodating a part of the Sutton to Malahide cycle route within the site. Given the critical nature of the infrastructure proposed, the modest scale of the building, its location on the periphery of the village and the proposals to landscape the site, I am satisfied that the proposed development would not be contrary to the overall vision for the HA zoning objective and that the development can be assessed on its merits. I am also satisfied that the proposed works to take place within lands which are zoned OS would not be contrary to the vision for this zoning as the works would be temporary and subterranean and would not restrict the overall use of the lands for recreation.

- 7.2.8. The appellant claimed that as the site was not considered in the Strategic Environmental Assessment (SEA) for the Development Plan as its not zoned for development. The SEA carried out for the Development Plan assessed the likely effects of the policies and objectives of the Plan on the environment. On this basis the SEA also ensures that the Development Plan contains sufficient policies and objectives to limit the impacts of future development on the environment. I am satisfied that the SEA for the Development Plan included such considerations and is robust enough to allow for the consideration of development that is not specifically listed based on its character and potential impacts. As noted above, the Development Plan also allows for the consideration of development which is not specifically listed within the zoning matrix.

### **7.3. Procedural Issues**

- 7.3.1. The grounds of appeal raised a number of procedural issues which are addressed under separate headings below.

#### **Unauthorised Works**

- 7.3.2. A section of the gravity sewer pipeline (approximately 460m) has been laid within the Baldoyle to Portmarnock Greenway. This is noted in the application and is referenced on the drawings. The appellant claims that this part of the development

was not subject to the proper planning consents or appropriate assessment and that the connection to the proposed development would constitute a connection to unauthorised development.

- 7.3.3. It is not within the remit of the Board to determine whether unauthorised development has occurred or not. The appellant is correct in stating that the Baldoyle to Portmarnock Greenway was permitted by the Board under ABP Ref. 300840-18. This application was subject to an EIAR and Appropriate Assessment and does not reference the installation of a section of pipeline within the cycleway. However, there are other legislative mechanisms for the provision of infrastructure on PA owned lands which are available to the PA or the applicant as a Statutory Body. The PA has not included any comment on this matter in response to the appellant. Should the Board consider it appropriate to seek further comment on this matter they may do so. However, as the Board is assessing the proposed development in its entirety and de novo, I do not consider this to be necessary.
- 7.3.4. An EIAR and NIS was submitted with ABP Ref. 300840-18 and considers the impact of the Greenway on the nearby European sites of Baldoyle Bay SPA and Baldoyle Bay SAC. The NIS and the Appropriate Assessment of the Board noted the potential adverse effects of the Greenway proposal, which included disturbance and pollution during the construction stage and loss of habitat. The installation of the pipeline within the greenway carriageway would not have resulted in any additional impacts that would not have been adequately addressed by the mitigation measures proposed for the construction of the cycleway. In addition the pipeline would not have resulted in any significant additional impacts that were not considered in the EIAR. On that basis, I am satisfied that the installation of the pipeline in conjunction with the cycleway would not prejudice any environmental objectives in the Development Plan. As the application is for the completion of the rising main, I am satisfied that the Board can assess the application on this basis.

### **Project Splitting**

- 7.3.5. A reservation for a section of the Portmarnock to Malahide cycleway is provided on the site of the new pumping station. This section of the cycleway forms part of the overall Sutton to Malahide Greenway and would connect with the Baldoyle to Portmarnock cycle and pedestrian route which has been completed. The cycleway

would share the site access from Station Road and travel behind the pumping station to avoid constraints at Portmarnock Bridge. The appellant contends that the inclusion of a section of the cycleway has not been subject to Appropriate Assessment and is the first phase of the Portmarnock to Malahide cycleway. As such, it represents project splitting of the cycle route.

- 7.3.6. The applicant's response is clear that space for the cycleway has been reserved within the site and will not be delivered under the subject application. The cycleway design is still being prepared for the Portmarnock to Malahide route and proposals went out to public consultation in 2022. This project will be subject to its own statutory consent process in due course and will be assessed in its entirety. Having read the application details and the applicant's response it is clear that the full route of the Portmarnock to Malahide cycleway will be subject to a separate planning consent process and that project splitting will not occur.

#### **Land Ownership and CPO**

- 7.3.7. The grounds of appeal states that land registry does not list the applicant, Uisce Éireann, as the owner of the site and queries whether they have sufficient interest to apply for the development in the absence of letters of consent from the owners listed with land registry. The appellant does not believe that Uisce Éireann has the powers to CPO land under the Water Services Act and submits that as the previous application was refused, (ABP – 307641-20), then a separate CPO is required for a subsequent application.
- 7.3.8. This issue was raised by the appellant during the application stage and the PA issued a request for further information to the applicant to demonstrate that lands within the red line boundary were within their ownership. The applicant's response to the request from the PA included letters of consent from the relevant landowners, (Alyse McCarthy, O'Flynn Construction, Monobrio DAC and Fingal Director of Services – Tourism & Cultural Development Department). Section 1.4 of the Planning Report for the application also sets out the tests that must be satisfied for CPO as set out in Part XIV of the Planning and Development Act and are satisfied that Uisce Éireann have met these requirements. I note to the Board that the CPO was appealed to the Board under ABP – 304883-19. However, all objectors withdrew their objections, and the appeal did not go ahead.



- 7.3.9. For the purposes of the application, I am satisfied that the applicant had demonstrated that they have sufficient legal interest in the land to lodge the application and that the Board has all the relevant details before them to make an informed decision.

#### **De Novo Application**

- 7.3.10. The ground of appeal contend that the application has not been presented 'de novo' and is treated as a response to further information arising from the previous Board decision, (ABP-Ref. 307641-20). The grounds of appeal argue that the archaeology report, arborist report and prescribed-body consultations have not been included.
- 7.3.11. I have reviewed the information contained in the application and I am satisfied that it allows for a full assessment of the proposed development. I note that the applicant has amplified the information which relates to the reason for refusal of the previous permission. As the Board refused the permission based on one issue, I consider this to be a reasonable response.

#### **7.4. Residential Amenity**

- 7.4.1. The grounds of appeal argue that the development does not provide sufficient separation distance between the pumping station and nearby residential development. Third party observations also raise the issue of proximity of the pumping station to The Links development and the impact it may have on residential amenity in terms of noise and odour. Concerns were also raised about whether sufficient riparian corridors would be retained as a result of the development.
- 7.4.2. Objective IU07 of the Development Plan requires an appropriate buffer zone around all pumping stations suitable to the size and operation of each station. The buffer zone should be a minimum 35 metres – 50 metres from the noise/odour producing part of the pumping station to avoid nuisance from odour and noise. At its closest point the above ground control and welfare building would be approximately 45m from the veranda on the eastern elevation of The Links apartment development. It is acknowledged that lands adjoining pumping stations may be the subject to an odour nuisance. However, the most likely causes of odour associated with the development relate to the proposed inlet chamber, wet well chamber and to a lesser extent valve chamber. These buildings are between 47 and 60m from eastern elevation of The Links apartment building and the vent stack from the wet well

chamber is approximately 60m from the apartments. The separation distances and the buffer zone provided are in accordance with the requirements of the Development Plan as set out in Objective IU07. Furthermore, the AA Screening Report states that noise from the station during the operational stage the below ground chambers operating pumps will have sealed chamber covers which will ensure no noise disturbance beyond the compound boundary.

- 7.4.3. Objectives IU26 and DMSO210 require a minimum 10m wide riparian buffer strip on both sides of water courses on lands within designated settlement boundaries. Drawings submitted with the application show that the development will have a separation distance of approximately 20m between the closest part of the underground emergency storage tank and the river bank. This is the closest structure to the water course and as such I am satisfied that the development will provide an adequate riparian buffer strip.

## **7.5. EIA and EIAR**

- 7.5.1. The appellant considers that the proposed development would have a significant environmental impact and that the proposed project comes within the meaning of Article 120(1)(b)(iii) namely that there is a real likelihood of significant effects on the environment arising from the proposed development. Article 120 of the Planning and Development Regulations relates to sub-threshold EIAR. A sub-threshold EIAR can only be required in respect of specific classes of developments, which are listed in Part 1 and Part 2 of Schedule 5 of the Planning and Development Regulations 2001 (as amended). As the proposed development does not fall within a class of development listed in Schedule 5 there is no requirement for the applicant to submit a subthreshold EIAR
- 7.5.2. The appellants also considered that Schedule 7 would be triggered by the proposed development in terms of the criteria for determining whether a development would or would not be likely to have a significant effect on the environment. Schedule 7 of the Planning and Development Regulations identifies criteria for determining whether a development listed in Part 2 of Schedule 5 should be subject to an EIAR. As noted above the proposed development does not fall within a class of development

identified in Schedule 5, therefore, the provisions of Schedule 7 do not apply and there is no requirement for the applicant to submit a subthreshold EIAR.

- 7.5.3. The appellants further state that given the issues relating to construction and operational impacts, flood risk, risk of environmental pollution, noise and odour impacts and taking into account the precautionary principle an EIAR requirement should be triggered. The application was accompanied by supporting documentation including a Planning Report which addressed Archaeology, Landscaping and Traffic issues, a Flood Risk Assessment, Appropriate Assessment Screening Report and a Natura Impact Statement. These documents provide an assessment of the proposed development in the context of alternatives considered and potential impacts on biodiversity, water quality, flooding, traffic, archaeology, and landscape. I consider that there is sufficient information on file to adequately assess the environmental impact arising from the proposed development.
- 7.5.4. Given the nature of the development, which comprises the decommissioning of one pumping station which is at capacity and the construction of a new pumping station with rising main to facilitate new and existing development, the relatively limited scale of the works and the location of the proposed development I am satisfied 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.

### **Wastewater Licence Considerations**

- 7.5.5. The appellant contends that the increase in Population Equivalent that the pumping station will process as part of the Ringsend Agglomeration and the fact that an old pumping station will be decommissioned and a new one installed will require an amendment to the Ringsend Treatment Works licence for the increase in PE from new connections and a new emissions discharge form for Portmarnock pumping station. It is argued in the appeal that Statutory Instrument (SI) 214/20 requires that where applications that involve an application (or amendment) to a Waste Water Discharge Licence, the EPA must be the coordinating competent authority for EIA and AA.

The SI referred to relates to an amendment to the European Union (Waste Water Discharge) Regulations. Wastewater discharge licences are regulated by the EPA

or the Local Authority. Within the context of the SI referred to, the term 'application' relates to an application for a licence or the review of a licence (where an EIAR is or was a requirement for a grant of permission) for the purposes of wastewater discharge. As noted above the development does not require EIA and licencing is not within the remit of this appeal. I note upgrade works have commenced on the Ringsend Wastewater Treatment works extension permitted under ABP.301798-18 and the facility is subject to EPA licencing (D0034-01) and associated Appropriate Assessment Screening.

### **Ecological Impacts**

- 7.6. The grounds of appeal submitted historical ecological reports which relate to the Sluice River Marsh and queried whether the impact on bats, otter, European Eel, Smooth Newt had been considered. The importance of the Sluice River Marsh habitat is acknowledged, and the decision of the PA reflects this. However, the area identified as the Sluice River Marsh (and proposed Natural Heritage Area) is outside of the red line area and the development site, (See Appendix 2 for location). The proposed works will minimise disruption to the Sluice River and Millrace stream watercourses using pipe-jacking or similar methods which will pass under the watercourses. Mitigation measures and construction methods outlined in the NIS will prevent pollution from entering the watercourses and impacting on waterborne species. There may be disturbance to mammals in the area during the construction works but these will be short-term and temporary. Most of the site is open grassland which would not be suitable for bats. A small number of trees will be removed from the pumping station site along Station Road. However, given the location of the trees in an urban area and close to residential development, it is unlikely that the removal of the trees would impact on any foraging or commuting routes for bats. Should planning permission be granted, a condition could be attached to ensure that all trees to be removed should be inspected for bat roosts prior to the commencement of any works.
- 7.6.1. Condition No. 4 of the PA's decision requires that the applicant appoint a suitably qualified and experienced ecologist to supervise and monitor the ecological impacts and protective measures proposed, including pre-commencement surveys. I am satisfied that a condition of this nature would be sufficient to prevent any significant ecological impacts from the development and recommend that a condition of a

similar nature be attached to the Board's decision should they be minded to grant permission.

#### **7.7. Material Contravention –**

- 7.7.1. The appellant is of the opinion that the proposal contravenes several objectives contained in the Fingal Development Plan 2017-2023, and in particular Objectives NH36, SW11, SW12 SW01, SW02, WT12. The 2017 Plan has been replaced by the Fingal Development Plan 2023-2029 Plan. Objectives contained in the LAP are also referenced but as the LAP has now expired the Development Plan objectives are relevant.
- 7.7.2. I have reviewed the objectives referenced by the appellant under the previous Development Plan and compared the objectives of the current Development Plan to them. The appellant is of the opinion that the proposal would contravene objectives contained in the 2017 Development Plan which related to riparian corridors, the protection of riverine and wetland coastal habitats, flood risk, surface water treatment and the protection of sensitive environments and designated sites. I have reviewed the objectives pertaining to these issues in the current Development Plan and have addressed the issues under separate headings in this report. I am satisfied that the current proposal does not materially contravene the objectives of the Fingal Development Plan as the information contained in the application demonstrates that the development can address all the concerns raised regarding impacts on sensitive sites, designated sites, appropriate buffer zones and flood risk.

#### **7.8. Flood Risk**

- 7.8.1. One of the main grounds of the appeal relates to flood risk on the site and the potential for the development to cause an increased risk of flooding to nearby development. A Site-Specific Flood Risk Assessment (SSFRA) was submitted with the application. However, the appellant contends that the assessment fails to adequately assess how raising the ground level on the site will affect the flood plain and how the underground storage structures will displace groundwater and limit the capacity for drainage on the flood plain. The appellant is also of the opinion that the

SSFRA did not take account of a combined fluvial, pluvial, and tidal event; of the tidal node cycle that occurs every 18.6 years; storm surge and wave inundation; previously permitted development in the area, and climate change.

- 7.8.2. Planning history for the site includes ABP-307641-20 which related to a similar development for a new pumping station and pipeline. This development was refused by the Board for one reason which related to the potential for the development to increase flood risk on the site or to property in the vicinity, (see Section 4.0 of this report for full refusal reason). In their report, the Planning Inspector (PI) noted that the SSFRA did not address the cumulative impacts from simultaneous fluvial, pluvial, and coastal flooding and that no consideration was given to the displacement of groundwater from the large underground tanks. The PI also raised queried the capacity of the proposed swale and whether it was sufficient to manage the increase in run off caused by the development.
- 7.8.3. In their response to this appeal the applicant states that the SSFRA submitted with the application was revised and reviewed to address the concerns raised in the previous application. The revised SSFRA included additional flood modelling, joint probability modelling and detailed assessment of groundwater flood risk.
- 7.8.4. I have reviewed the SSFRA and it follows the format and guidance contained in the Planning System and Flood Risk Management Guidelines for Planning Authorities (2009). Stage 1 of the assessment focuses on Flood Risk Identification using OPW predictive flood maps, the Strategic Flood Risk Assessment (SFRA) for the Fingal Development Plan, site investigation works and topographical survey information. The development is identified as ‘Highly Vulnerable’ and the predictive maps show that the site is within Flood Zones A<sup>1</sup> and B<sup>2</sup> for coastal and fluvial flooding. Integrated Map Number 257 from the OPW’s National Preliminary Flood Risk Assessment (PFRA) project indicates that the site is not at risk from pluvial flooding in the 1 in 100 (1% AEP) or more extreme rainfall scenarios. Past flood events in the area were also considered. Using the source – pathway – receptor model, Stage 1 of the SSFRA determined that the site of the proposed pumping station had a high risk

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<sup>1</sup> Flood Zone A relates to land where the probability of flooding is highest, i.e. greater than 1% AEP or 1 in 100 for river flooding, or 0.5% or 1 in 200 for coastal flooding.

<sup>2</sup> Flood Zone B relates to land where the probability of flooding is moderate, i.e. between 0.1% or 1 in 1000 and 1% for river and coastal flooding.

of coastal and fluvial flooding, a medium risk from pluvial flooding and a low risk of groundwater and sewer flooding.

- 7.8.5. Following the 'Stage 1 – Flood Risk Identification', an Initial Flood Risk Assessment was carried out. This part of the assessment examined the existing flood mapping for the area to identify the spatial extent of flooding at the subject site and surrounding area and considered the potential impacts of climate change.
- 7.8.6. For the consideration of coastal flooding, information was taken from the OPW's Irish Coastal Protection Strategy Study (ICPSS) predictive maps. These maps show the tidal flood events with allowances for climate change under two scenarios; the Mid-Range Future Scenario (MRFS) which includes a +500mm mean sea rise and the High-End Future Scenario (HEFS) which includes a +1000mm mean sea level rise. The ICPSS scenarios consider up to the year 2100. The design life of the station is 50 years. When deciding on the flood design level for the proposed pumping station, the MRFS was taken over the HEFS as the applicant anticipates that the pumping station will be upgraded or replaced before the sea level rises predicted in the HEFS are realised. The highest anticipated coastal flood level on the site, (the 1 in 1000 Annual Exceedance Probability (0.1% AEP)) plus an allowance for climate change under the MRFS was found to be 3.91m OD.

**Note** – The appellant states that the Tidal Node Cycle that occurs every 18.6 years has not been considered. The maps used to inform the coastal flooding models are the OPW ICPSS tidal flood extents maps. It is unclear if the Tidal Node Cycle has been included in these maps. However, they are the national reference maps for flood information and are accepted as a standard source of information on coastal flooding. On that basis, I am satisfied that they contain sufficient information to make an informed assessment of the coastal flood risk on the site.

- 7.8.7. Using scenarios from the Fingal East Meath Flood Risk Assessment Management Study (FEM FRAMS), which included allowances for climate change based on the MRFS and the HEFS, the predicted fluvial flood levels on the site for a 0.1% AEP event under the MRFS was 2.74m OD and 2.89m OD in the HEFS. (Existing levels of the site range from 2.5 – 3m OD).
- 7.8.8. In terms of pluvial flood risk, the SSFRA notes that the topography of the site will be raised. No depressions are proposed, and surfaces will generally include cross-falls

directing surface water away from equipment and preventing ponding on site. A SuDS system comprising a swale, with check-dams and orifice plate chamber to restrict discharge rates, has been designed to compensate for loss of impermeable areas. Historic pluvial flooding in the area is noted and the assessment states that the overall risk to the pumping station is low and the development will have no detrimental impact on the pluvial flood risk of surrounding areas.

- 7.8.9. Initial groundwater assessments involved taking geological logs from boreholes and trial pits indicated 'made ground' of varying thickness (less than 0.2m to 2.3m); estuarine silty or clayey sand or gravel (less than 1m to 3.5m thick); at least 6m thickness of very stiff sandy, gravelly, cobbly clay (glacial till) with limestone bedrock at least 10m below ground level. Water levels across the site were found to be 1-2.7m below ground level and infiltration rates at two trial pits were found to be very low, (no water infiltrated during a 1-hour test). The site conditions indicate that the site would have very low recharge, (i.e. the process of rain filling up an aquifer) and very low transmissivity of water through the soils.
- 7.8.10. The SSFRA states that groundwater flows will be displaced laterally by the installation of the underwater tanks. The geological setting is not disposed to the occurrence of groundwater flooding as the deposits on the site are not transmissive enough to provide sufficient amounts of groundwater to flood the surface and isolate the surface from the lower bedrock, which is of moderate permeability.
- 7.8.11. The reduction of soils because of the underground structures was calculated to result in a 206.4m<sup>3</sup> loss of field capacity, which equates to a reduction on the capacity of the unsaturated zone (USZ) to retain water once drained. A maximum loss of <7% soil storage capacity was calculated because of the development, which represents a low impact to underground storage in the overall hydrological system. This loss only relates to the USZ which is calculated to be 3m deep. Below this level the ground is permanently saturated. A total of 5m<sup>3</sup> will be lost from the functional flood plain as a result of the development. The capacity of the swale was modelled on this calculation and would provide compensatory storage of this level in response.
- 7.8.12. As initial investigations found that flood risk exists on the site, a detailed flood risk assessment was carried by the applicant. The detailed assessment reviewed the,
- Combined risk from fluvial, pluvial and coastal flooding



- Proposed development plans
- Completion of the justification test
- Residual risk and
- Mitigation measures.

In the assessment of a combined flood event the probability of a joint extreme flood event was found to be very rare. Tidal flood gates are in place at Portmarnock Bridge. The joint probability analysis carried out included three scenarios for fluvial and tidal flooding, with and without the flapped tidal gate at Portmarnock Bridge as follows,

Scenarios modelled with the flapped gate	Scenarios modelled without the flapped gate
1% AEP Fluvial x 1% AEP Tidal	2% AEP Fluvial x 0.1% AEP Tidal
1% AEP Fluvial x 0.1% AEP Tidal	1% AEP Fluvial x 0.1% AEP Tidal
0.1% AEP Fluvial x 0.1% AEP Tidal	0.1% AEP Fluvial x 0.1% AEP Tidal

7.8.13. The exercise found that the highest flood levels of 3m OD are predicted for the combined flood event of the 0.1% AEP coastal flood and the 0.1% AEP fluvial flood event without the tide flap gates on Strand Road. This is well below the proposed ground level of 4m. The proposed finished floor level of the pumping station building is 4.2m. This provides a freeboard of 1.197m above the highest flood level of a combined extreme fluvial and tidal event and is above the 750mm freeboard level recommended in the Strategic Flood Risk Assessment (SFRA) for the 2017 Fingal Development Plan.

7.8.14. A new SFRA was prepared for the 2023 Development Plan. Section 6.5.3 of the 2023 SFRA sets out the 'Design Levels and Freeboard' for development. For Coastal/Tidal flooding, a Highly Vulnerable receptor/development in a scenario where the flood level from a 0.1% AEP HEFS event would require a +250mm freeboard level. For fluvial flooding, this would be the greater of two scenarios; Scenario A would be an event of 0.1% AEP (Present day / Flood Zone B) flood level +500mm freeboard or, Scenario B which would be a 0.1% AEP HEFS flood level +250mm freeboard. I have assessed the results of the scenario modelling from the SSFRA against the requirements of Section 6.5.3 of the SFRA and the development

can achieve the freeboard levels required in the 2023 SFRA. Table 4.2 of the SSFRA sets out the results for Predicted Coastal Flood Levels and Table 4.5 demonstrates that the freeboard requirement for fluvial flooding can be achieved.

- 7.8.15. Additional hydraulic modelling was carried out to confirm the displacement of flood water for the fluvial flood scenarios and its impact to the site and surrounding area. The results of the modelling are set out in Table 5.2 and Figure 5.4 of the SSFRA and show that there would be an insignificant impact on flood risk to areas adjoining the site, especially housing. The modelling also showed that raising the ground level of the site would have an insignificant impact on the peak flood water level in the Sluice River as the proposed development and the raised ground levels would be outside of the predicted fluvial flood extents and only the very easterly side of the raised area overlaps with the predicted flood levels. In addition, the SuDS swale will lower the existing ground levels and provide enough compensatory storage.
- 7.8.16. The Flood Risk Management Guidelines require the conditions of the Justification Test to be met where highly vulnerable development is proposed in Flood Zone A and B. The Justification Test is contained in Section 5.6 of the SSFRA. For the Boards information, I have summarised the applicant's responses below,

<b>The Justification Test –</b>	
<b>Test 1</b> - The subject lands have been zoned or otherwise designated for the particular use or form of development	The applicant notes the need for the PS as stated in the LAP and argues that the appropriateness of the development on the site can be judged by its requirement to facilitate the development of the zoned lands in the LAP. The site was selected from a number of options as it was the most suitable and there is no viable alternative.
<b>Test 2</b> - The proposal has been subject to an appropriate flood risk assessment that demonstrates	
(i) the development will not increase flood risk elsewhere and if practicable will reduce overall flood risk.	The PS will not be at risk from flooding as the finished floor level will be above the 0.1% AEP flood level with climate change allowance.  Mitigation measures include SuDS which will restrict run off rates and provide compensatory flood storage. There will be zero impact on the peak fluvial flood level along the Sluice River for

	<p>events up to 0.1% AEP when comparing pre and post development scenarios.</p> <p>The cumulative impacts arising from a joint pluvial, fluvial, and coastal flood event were assessed and demonstrated that the design levels were sufficient to accommodate combined flooding from the 0.1% AEP fluvial and 0.1% AEP coastal flood event. The combined pluvial flood event was not considered relevant as the site is greenfield with run-off to local watercourses.</p>
(ii)	<p>The development includes measures to minimise flood risk to people, property, the economy, and the environment etc.</p> <p>Hydraulic modelling demonstrated that the development will not increase flood risk to surrounding areas during fluvial events. SuDS measures will restrict run-off rates from pluvial events. Emergency back-up measures will address the residual risk of sewer flooding, which is categorised as a low risk.</p>
(iii)	<p>The development includes measures to ensure that residual risks to and from the development can be managed to acceptable levels etc.</p> <p>Residual risk from coastal flooding is addressed by raising the ground levels to 4m OD, which is above the 0.1% AEP flood level. This level has considered all sources of flooding including fluvial, pluvial, coastal, groundwater and artificial infrastructure flooding.</p>
(iv)	<p>The development proposed addresses the above in a manner that is also compatible with the achievement of wider planning objectives etc.</p> <p>The development has been developed in accordance with the policies of the Fingal Development Plan and the Planning System and Flood Risk Guidelines. The sequential approach has been applied and SuDS measures have been applied.</p>

7.8.17. Residual risks are outlined in the SSFRA, and the mitigation measures outlined in Section 5.8 will address these risks. Mitigation measures include raising the ground level for the welfare and control building to 4m OD with an internal finished floor level of 4.2m, the inclusion of a new SuDS system including swale to provide

compensatory storage and to deal with surface water run-off, and the provision of 6-hour emergency storage in the event of an emergency or power outage. The appellant queried the capacity of the emergency storage tank and submitted that as the pump forward capacity of the new pumping station will be 147 litres per second the 845m<sup>3</sup> capacity of the storage tank did not equate to 6 hours of storage. This issue was not addressed directly by the applicant but was also raised in the previous appeal, (ABP-307641-20). In their response to the previous appeal, the applicant stated that the calculation of the 24-hour storage area is based on the dry weather flow which is calculated at 845 cubic metres. The pump capacity is designed to cope with peak incoming flows that occur over a short period of time. Therefore, it is not necessary to provide storage at this level. I consider this response to be reasonable. The impetus for the development is to provide more capacity in the system. If the pumping station was operating at capacity on an ongoing basis, then it would not meet its requirements.

7.8.18. I have reviewed the information contained in the SSFRA and the application and I am satisfied that the applicant has met the requirements of the Justification Test as per the Planning System and Flood Risk Guidelines. Whilst the land use was not specifically included in the land use zoning, the Development Plan allows for it to be considered on its merits. I note the presence of the historic pumping station on the adjacent site which is also zoned 'HA' and the long-standing objectives of the LAP and Development Plan to provide a new pumping station in Portmarnock. As noted in Section 7.2 above, I am satisfied that the proposed development would not be contrary to the overall vision for the HA zoning objective and can be assessed on that basis. The SSFRA has addressed the concerns raised in the previous appeal and by the appellant regarding the combined risk from coastal, fluvial and pluvial risk and has demonstrated that surrounding properties will not be at any additional flood risk as a result of the development. Sufficient design measures have also been incorporated to prevent flood risk to the development itself. The displacement of flood capacity in the soils from the underground structures was also addressed and the reasoning for the capacity of the swale was also outlined.

7.8.19. Furthermore, I note that the report of the Water Services department of the PA had no objection to the flood risk assessment or the surface water drainage. Comments issued by the PA note that the finished floor levels proposed are in accordance with

the OPW's flood risk management guidelines and that the proposals and mitigation measures comply with the Flood Risk Guidelines. The PA are satisfied that the previous reasons for refusal as set out in the Board decision have been adequately addressed.

## **7.9. Appropriate Assessment**

- 7.9.1. The grounds of appeal raise concerns regarding the impact of the proposal on the Special Conservation Interests (SCI's) of Baldoyle Bay SPA and SAC as well as other SCIs for nearby SPA's. The accuracy of the information contained in the bird surveys is also questioned, and the appellant contends that the full impact of the proposal on the area known as the Quiet Zone, which is located to the east of the rising main route, was not considered and is a gap in the data. The appeal also claims that the NIS did not consider the cumulative impacts of developments in the area.
- 7.9.2. The appellant has submitted Citizen Science bird surveys taken in the Quiet Zone, (see Appendix 3 for location), in 2020 which they claim contradicts the surveys submitted with the application and show the extensive use of the designated Quiet Zone of Light Bellied Brent Geese. Lapwing nests and chicks were also reported in the Quiet Zone and Bar-tailed godwit were also recorded on the site of the proposed pumping station in 2020.
- 7.9.3. A further submission was received from the appellant on foot of the applicant's response to the grounds of appeal. This submission contained opinions from Paul Lynch, (Chairman of Fingal Branch, Birdwatch Ireland) and Dave Dillon, (commissioned by Fingal County Council to carry out a baseline survey on wintering birds on the Baldoyle Estuary in 2011-2012), in support of the appeal. The opinions support the statements made in the grounds of appeal and reiterate the importance of the Quiet Zone lands for bird species and the importance of the site of the proposed pumping station for foraging and use during high tides.
- 7.9.4. During their assessment of the application, the PA requested that FI be submitted regarding the Natura Impact Statement. FI was requested about –

- Whether wintering bird species other than Brent Geese were considered in terms of disturbance, (bar-tailed godwit is particularly referenced).
- The consideration of the impact of the development on species of SCI from nearby SPA's which could use the site as an ex-situ site.
- Clarification that the impacts of construction methods other than pipe-jacking have been considered and how the aquatic environment would be protected.
- Additional details on the frac-out method proposed to demonstrate the efficacy of the mitigation measures proposed.
- Appropriateness of the Zone of Influence for disturbance from noise.
- Lack of up-to-date survey information.
- The potential impacts of invasive species.
- In-combination assessment of development granted under F20A/0392, (for the development of Lakeside Memorial Park).
- Evidence of the efficacy of grass swales to treat and remove pollutants noted in the NIS.
- Clarification regarding the actual seasonal work restriction that would be applied as a mitigation measure to avoid disturbing the wintering bird season.

The applicant provided a detailed response to the PA's request and all issues were addressed to the satisfaction of the PA. The NIS and the applicant's response to FI were also assessed by an independent consultant, on request from the PA, who were also satisfied that all issues had been addressed. The NIS and the additional information are assessed in full in the following sections of my report.

### **Stage 1 – Screening the need for AA**

- 7.9.5. In this section I consider the proposed development which includes a pumping station, associated infrastructure and pipeline in light of the requirements of S177U of the Planning and Development Act as amended.
- 7.9.6. The application is accompanied with a Screening Report for Appropriate Assessment and a Natura Impact Statement (NIS). The Screening Report concluded that, *'It has been determined that there is potential for effects on the Qualifying Interests and*

*Special Conservation Interests of Baldoyle Bay SAC and SPA. Therefore, the assessment must proceed to State 2 AA and a Natura Impact Assessment prepared to assess the potential for effects on the integrity of European Sites’.*

- 7.9.7. Having reviewed the documents, submissions, I am satisfied that the information allows for a complete examination and identification of any potential significant effects of the development, alone, or in combination with other plans and projects on European sites.

### **Description of the project**

- 7.9.8. A full description of the proposed development is set out in section 2.0 of this report, in Section 2 of the AA Screening Report and in Section 2 of the NIS. The proposed development is for the retention and modifications to the existing wastewater pumping station at Portmarnock Bridge and the construction of a new pumping station with associated rising main connection, gravity sewer connections and associated works. A connection between both pumping stations would be installed under the Sluice River.
- 7.9.9. The development site comprises two elements; the land where the existing and proposed pumping stations are located and the area to the south of this where the rising main connection will be laid. The site of the proposed pumping station currently comprises agricultural grassland with areas of scrub within the centre of the site and along the southern and eastern boundaries. A well-established hedgerow is located along the south-western boundary of the site. The Sluice River flows through the site to Baldoyle Bay. It is approximately 20m to the north-east of the proposed new pumping station site and approximately 10m to the south of the existing pumping station. A stream, known locally as the Millrace stream, runs along the north-western and southern boundary of the proposed pumping station site. The stream is heavily channelised and its outflow to Baldoyle Bay is controlled through a sluice gate. Site surveys identified stands of Japanese Knotweed along the bank of the Sluice River. The proposed pumping station will comprise underground structures and above ground structures.
- 7.9.10. The development site is not connected to or associated with the management of any existing Natura 2000 site. However, the designated sites of Baldoyle Bay SAC (Code 000199) and Baldoyle Bay SPA (Code 004016) are located on the opposite

side of Strand Road to the northerly sections of the development site. Any potential impacts from the proposed development would be most likely to occur during the construction phase of the development. During the operational phase potential impacts would be limited to emergency/storm water overflow and noise / disturbance from maintenance.

7.9.11. During the Construction Phase there is a potential of significant impacts arising from,

- The generation of dust from site clearance and excavation works.
- Disturbance and translocation of Japanese Knotweed which has been observed on site.
- Habitat disturbance and removal.
- Contamination of ground water and surface water from run off containing silt, hydrocarbons, oil and other pollutants.
- Environmental pollution from concrete products.
- Frac-out (escape of drilling fluid) from the proposed pipe-jacking to the receiving environment.
- Noise from pipe-jacking and general construction activities.
- Disturbance of species and habitat from human activity and presence.

During the Operational Phase there is a potential for significant impacts arising from,

- Outfalls to the Sluice River during heavy rain or emergency events.
- Operational noise from equipment and maintenance.

7.9.12. I consider the following European sites to be potentially within the Zone of Influence of the project –

- Baldoyle Bay SPA (004016) – c. 10m from the site at its closest point.
- Baldoyle Bay SAC (000199) - c. 10m from the site at the closest point.
- North-West Irish Sea SPA (004236) - c. 1.5km to the east of the site.
- Malahide Estuary SPA (004025) - c. 2.8km to the north of the site.
- Malahide Estuary SAC (000205) - c. 2.8km to the north of the site.



- Rockabill to Dalkey Island SAC (003000) - c. 4.7km to the east.
- Howth Head Coast SPA (004113) - c. 6.5km to the south-east.
- Howth Head SAC (000202) - c. 4.8km to the south-east.
- Ireland's Eye SPA (004117) - c. 4.7km to the south-east.
- Ireland's Eye SAC (002193) - c. 5km to the south-east.
- North Bull Island SPA (004006) - c. 2.5km to the south.
- North Dublin Bay SAC (000206) - c. 2.5km to the south.

7.9.13. Using the 'source – pathway – receptor' model each site was assessed for potential connections to the development site. There is no physical connection between the subject site and Howth Head SAC, so this site was excluded from further assessment. The Conservation Objectives (CO's) for each of the connected sites were reviewed in light of the potential impacts from the development and a determination was made as to whether the development has the potential to result in significant impacts on the COs for each site. The overarching conservation objectives for European sites seek to restore or maintain the favourable conservation status of habitats and species of community interest. Favourable conservation status of a habitat is achieved when –

- its natural range, and area it covers within that range, are stable or increasing, and
- the specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future, and
- the conservation status of its typical species is favourable.

Favourable conservation status of a species is achieved when –

- population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, and
- the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and

- there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis.

7.9.14. The table below sets out the results of the screening exercise.

European Sites	Connection	Potential for Significant Impacts
Baldoyle Bay SPA (004016)	Direct hydrological connection via the Sluice & Mayne Rivers and the Millrace Stream	Yes – due to the proximity of the site, the predicted impacts, and the hydrological connection.
Baldoyle Bay SAC (000199)	Direct hydrological connection via the Sluice & Mayne Rivers and the Millrace Stream	Yes - due to the proximity of the site, the predicted impacts, and the hydrological connection.
North-West Irish Sea SPA (004236)	Indirect hydrological connection via Baldoyle Bay and the Irish Sea (c. 4km)	No – due to the physical and hydrological distance from the site.
Malahide Estuary SPA (004025)	Indirect hydrological connection via Baldoyle Bay and the Irish Sea	No – due to the physical and hydrological distance from the site.
Malahide Estuary SAC (000205)	Indirect hydrological connection via the Irish Sea	No – due to physical and hydrological distance (c. 9km) between the sites.
Rockabill to Dalkey Island SAC (003000)	Indirect hydrological connection via the Irish Sea.	No – due to the physical and hydrological distance (c. 7.5km) between the sites.
Howth Head Coast SPA (004113)	Indirect hydrological connection via the Irish Sea.	No – due to the physical and hydrological distance between the sites.
Ireland's Eye SPA (004117)	Indirect hydrological connection via the Irish Sea.	No – due to the physical and hydrological distance between the sites.
Ireland's Eye SAC (002193)	Indirect hydrological connection via the Irish Sea.	No – due to the physical and hydrological distance between the sites.
North Bull Island SPA (004006)	Indirect hydrological connection via the Irish Sea.	No – due to the physical and hydrological distance between the sites.
North Dublin Bay SAC (000206)	Indirect hydrological connection via the Irish Sea.	No – due to the physical and hydrological distance between the sites.

## Screening Determination

7.9.15. Having regard to the information presented in the AA Screening Report, the NIS, submissions, the nature, size and location of the proposed development and its likely direct, indirect and cumulative effects, the source-pathway-receptor principle and sensitivities of the ecological receptors, I concur with the applicant's screening determination that there is potential for significant effects from the proposed development alone on Baldoyle Bay SPA and Baldoyle Bay SAC. These European sites are immediately adjacent and ecologically connected to the site and any potential impacts would exert the greatest effect on the European sites in Baldoyle Bay via the hydrological connection of the Sluice River, the Mayne River, the Millrace stream, and the separation distances between the sites.

7.9.16. Due to the dynamic movements of wintering birds, it is reasonable to conclude that impacts generated at the development site could affect SCI bird species from SPA sites in the wider area due to the known interactions and movements between these SPA sites. This has been considered in the screening report and in the consideration of the results of the surveys carried out, the nature of the site itself, its characteristics and the scale of the development proposed, the potential impacts would be related to disturbance during the construction phase. These impacts would be temporary and would not be significant when assessed against the conservation objectives of the SPA's.

7.9.17. The Screening Report submitted with the application did not include the North-West Irish Sea SPA (004236) as it was written before the site was designated. The qualifying interests for the SPA comprise 21 species of seabirds. Attributes to measure the conservation condition of the species include,

- the Breeding population size,
- Spatial distribution,
- Forage spatial distribution, extent, abundance and availability,
- Disturbance across the site and Barriers to connectivity.

I have reviewed the CO's for the North-West Irish Sea SPA and in light of,

- the location of the development site within an urban, coastal area,
- the nature of the greenfield site which does not present a suitable environment for breeding and/or foraging seabirds and

- the scale of the potential impacts from the development, which include noise and disturbance,

I am satisfied that the proposed development would not have the potential for significant impacts on the qualifying interests of the SPA.

7.9.18. Additional European sites were included in the Screening Report submitted with the application. However, these sites are at a further remove from the subject site and having reviewed the CO's for the sites and considered the potential impacts of the development, I am satisfied that there is no likelihood for significant impacts on these sites.

7.9.19. The SCI's for the following sites related to habitats and/or plant species only and as such would not experience impacts from noise. By virtue of the physical separation distance between the sites there would be no impact from dust and the hydrological distance between the sites would dilute any contaminants contained in surface water runoff.

- Malahide Estuary SAC
- Ireland's Eye SAC
- North Dublin Bay SAC

7.9.20. Reefs and the Harbour Porpoise are listed as the SCI's for the Rockabill to Dalkey SAC. The reef habitat will not be disturbed from the works. There is an indirect hydrological pathway between the sites, but the separation distance would ensure sufficient dilution of any contaminants in surface water runoff to avoid any significant impacts. The physical distance between the sites would limit the disturbance to the Harbour Porpoise and the mobile nature of this SCI and the availability of suitable habitat would ensure that no significant impacts would occur.

7.9.21. The following SPA's were considered in the screening assessment,

- North-West Irish Sea SPA
- North Bull Island SPA (SCI's shared with Baldoyle Bay SPA include, Light-bellied Brent Geese, Shelduck, Golden Plover, Grey Plover and Bar-tailed Godwit)

- Malahide Estuary SPA (SCI's shared with Baldoyle Bay SPA include Light-bellied Brent Geese, Shelduck, Golden Plover, Grey Plover, Bar-tailed Godwit, Wetland and Waterbirds).
- Ireland's Eye SPA
- Howth Head Coast SPA

7.9.22. Physical connections between the subject site and the European sites were limited to indirect hydrological connections which would not result in significant impacts due to hydrological distance and the dilution factor. The sites were at sufficient remove from each other to avoid significant impacts from dust and noise. It is possible that the subject site may be used or visited by the qualifying interests of the closest SPA's. However, these species would temporarily avoid the works area and there is sufficient habitat available in the wider area and within the designated sites to avoid significant impacts.

7.9.23. In consideration of the source-pathway-receptor model, the proximity of the subject site, the nature of the qualifying interests and the conservation objectives for the sites, there is a potential for significant impacts on the following European sites –

- Baldoyle Bay SAC
- Baldoyle Bay SPA

#### **In combination Impacts –**

7.9.24. The Screening Report considered the in-combination impacts of the following plans and/or projects -

- Greater Dublin Drainage project which would involve the installation of infrastructure across Baldoyle Bay and the discharge of treated wastewater into the sea. (ABP-301908-18 and ABP-312131-21).
- Sutton to Malahide Greenway – the proposed pumping station would provide shared access for part of the cycle way. This project is still in the design stage.
- Portmarnock Phase 1C Housing Development, (ABP-305619-19)

- Construction Haul Road over the Portmarnock South LAP lands, (F20A/0700), to facilitate construction of Phase 1C of the LAP. The haul road is approximately 230m to the west of the development site. A NIS was prepared for the application.

## **Stage 2 - Appropriate Assessment**

- 7.9.25. The following is an objective assessment of the implications of the proposal on the relevant CO's of Baldoyle Bay SPA and Baldoyle Bay SAC based on the scientific information provided by the applicant and taking into account expert opinion and submissions on nature conservation. It is based on an examination of all relevant documentation and submissions, analysis and evaluation of potential impacts, findings conclusions. A final determination will be made by the Board.
- 7.9.26. All aspects of the project which could result in significant effects are assessed and mitigation measures designed to avoid or reduce any adverse effects on site integrity are examined and evaluated for effectiveness. Possible in-combination effects were also considered. A full description of the proposed development and the potential impacts from the construction and operational phases are set out in Section 2 of the NIS.

### **Relevant European Sites:**

- 7.9.27. In the absence of mitigation, the potential for significant effects could not be excluded for:

- Baldoyle Bay SPA
- Baldoyle Bay SAC

A description of the sites and their Conservation Objectives and Qualifying Interests/Special Conservation Interests, including relevant attributes and targets for these sites, are set out in Section 3 of the NIS. I have also reviewed the Conservation Objectives listed for each of the sites on the NPWS website ([www.npws.ie](http://www.npws.ie)).

- 7.9.28. Table 7.1 below summarises the information considered for the Appropriate Assessment and the site integrity test. This information has been compiled from the

information contained in the NIS, the supplementary information for the NIS as requested by the PA, and information from the NPWS.

**Table 7.1 – AA summary matrix for Baldoyle Bay SPA and SAC:**

Baldoyle Bay SPA (004016)			
		Summary of Appropriate Assessment	
Special Conservation Interest (SCI)	Conservation Objectives	Potential Adverse Effects	Mitigation Measures
	To maintain the favourable conservation condition of SCI bird species.		
<b>Light-bellied Brent Goose</b> <b>Shelduck</b> <b>Ringed Plover</b> <b>Golden Plover</b> <b>Grey Plover</b> <b>Bar-tailed Godwit</b>	<p>Long term population trend stable or increasing.</p> <p>No significant decrease in the range, timing and intensity of use of areas other than that occurring from natural variation</p>	<p>Disturbance from noise and visual impacts – Light bellied Brent geese are sensitive to noise when roosting and are known to use lands c. 50m from the development site for foraging.</p> <p>Most roosting and foraging sites for the SCI's (apart from Light-bellied Brent Geese) are found at the southern section of the estuary which are approximately 800m away. The separation distance would prevent significant disturbance.</p> <p>Temporary loss of c. 540m<sup>2</sup> of dry meadow</p>	<p>Construction works at the pumping station site will not be carried out during the wintering bird season, when the SCI's are present, which is between October to April inclusive.</p>

		<p>grassland along the gravity sewer route, which could be used for foraging by Light-bellied Brent Geese.</p> <p>Degradation of water quality from pollution and/or sediment could impact on the habitats and vegetation and the living invertebrates and benthic communities.</p>	<p>Detailed pollution control measures are outlined in Table 6.1 of the NIS to protect water quality during the construction and operational phases.</p>
<b>Wetlands</b>	<p>To maintain the favourable conservation condition of the wetland habitat, estimated at 263ha. The permanent area occupied by the wetland habitat should be stable and not significantly less than 263ha.</p>	<p>Degradation of water quality from pollution and/or sediment could impact on the habitats and vegetation and the living invertebrates and benthic communities.</p> <p>Pollution could impact the long-term foraging prospects for the SCI's and thus impact on the range and distribution of the bird population.</p> <p>Dust deposits could impact plant species by disrupting/preventing photosynthesis or transpiration which could impact on the carrying capacity of the habitat for the SCI species.</p>	<p>Detailed pollution control measures are outlined in Table 6.1 of the NIS to protect water quality during the construction and operational phases.</p> <p>Detailed dust control measures are outlined in Table 6.1 of the NIS.</p>



### **Overall Conclusion – Integrity Test**

The applicant determined that following the implementation of mitigation measures, the construction and operation of the proposed development alone or in combination with other plans and projects will not adversely affect the integrity of this European site.

The NIS considered the in-combination effects of the following developments –

- Greater Dublin Drainage (GDD) project (NIS prepared -works not commenced)
- Portmarnock Phase 1C Housing Development (ABP- 305619-19) (NIS prepared – works commenced)
- Construction Haul Road within the LAP lands (PA Ref. F20A/0700) (NIS prepared – works completed)
- Lakeside Memorial Park development (PA Ref. F20A/0392), (on request from the PA, NIS prepared).
- SHD development permitted under ABP – 312112-21 was not listed in the NIS but has been included in this assessment. This development was also subject to Appropriate Assessment as part of their planning process and was accompanied with an NIS. Works have commenced.

There is a potential for cumulative impacts with permitted developments in proximity to the subject site should construction times overlap. However, as many of the permitted projects are currently under construction it is unlikely that there will be significant overlap of construction time frames. All the permitted developments in proximity to the development site have been subject to Appropriate Assessment as part of their consent process and have set out mitigation measures to avoid significant adverse impacts on any European sites. I have reviewed the mitigation measures proposed for the subject development and I am satisfied that impacts from the development, would be unlikely following the implementation of the mitigation measures proposed.

Based on the information provided, I am satisfied that adverse effects can be excluded for Baldoyle Bay SPA. No wetland habitat loss will occur. Evidence submitted by third parties' states that Light-Bellied Brent Geese have been observed using the site of the proposed pumping station and the area to the south and east of the proposed pipeline. However, the dense overgrown, grassland habitat is unsuitable for wintering birds and is not core or supplementary foraging habitat. Mitigation measures proposed state that all works the pumping station site will take place outside of the wintering bird nesting season. The impact of pipe-jacking on nesting Shelduck was raised in the appeal. These works would be at sufficient remove from suitable nesting habitat to prevent significant impacts or disturbance. No uncertainty remains and the integrity of Baldoyle Bay SPA will not be adversely affected.



### **Overall Conclusion – Integrity Test**

The applicant determined that following the implementation of mitigation measures the construction and operation of this proposed development alone or in combination with other plans and projects (see projects listed above) will not adversely affect the integrity of this European site.

Based on the information provided, I am satisfied that adverse effects can be excluded for Baldoyle Bay SAC in view of conservation objectives of the site.

## **Additional Issues Raised in the Appeal**

### **In-combination Impacts**

The appellant submits that the NIS did not consider the cumulative or in-combination impacts of the proposed development with other plans and/or projects. The NIS considered the in-combination effects of the following developments –

- Greater Dublin Drainage (GDD) project (NIS prepared -works not commenced)
- Portmarnock Phase 1C Housing Development (ABP- 305619-19) (NIS prepared – works commenced)
- Construction Haul Road within the LAP lands (PA Ref. F20A/0700) (NIS prepared – works completed)
- Lakeside Memorial Park development (PA Ref. F20A/0392), (included on request from the PA, NIS prepared).
- SHD development permitted under ABP – 312112-21 was not listed in the NIS. However, this development was also subject to Appropriate Assessment and was accompanied with an NIS. Works have commenced.

The appellant is of the opinion that the following developments should be considered in-combination with the subject development –

- ABP-311315-21 – Park development at the Racecourse Park
- Howth Harbour Extension and Dredging Project
- New Airport runway and lifting of night restrictions.
- Shoreline SHD's 1 and 2 (no further details submitted)

- Lismore Homes SHD – Baldoyle
- Sunrise Windfarm Foreshore licence

7.9.29. The appellant did not provide a reason as to why the developments should be considered in the NIS. An in-combination effect can only occur where a residual non-significant effect from the proposed development could interact with effects from other plans and projects that could also affect the same site. As noted in the NIS, there is a potential for cumulative impacts with permitted developments in proximity to the subject site should construction times overlap. However, as many of the permitted projects are currently under construction it is unlikely that there will be significant overlap of construction time frames. All the permitted developments in proximity to the development site have been subject to Appropriate Assessment as part of their consent process and have set out mitigation measures to avoid significant adverse impacts on any European sites. I have reviewed the mitigation measures proposed for the subject development and I am satisfied beyond reasonable scientific doubt that no adverse effects will arise following implementation of mitigation measures.

### **Bird Surveys**

7.9.30. The appellant submitted a Citizens Science Survey of the Quiet Zone from 2020 and is of the opinion that this survey contradicts the surveys carried out by the applicant in relation to the site application route. The Citizens Science Survey recorded sightings of flocks of Light-Bellied Brent Geese within the Quiet Zone (on areas A, B and C, see Appendix 4 for map) and on the lands adjoining the Quiet Zone from December 2019 to March 2020.

7.9.31. Information that fed into the NIS included a desk study of historical data and bird counts from 2017/2018, low tide foraging and roosting counts carried out at Baldoyle Bay under the I-Webs monitoring programme 2011/2012, and winterbird surveys from 2008, 2013 and 2018. The NIS states that none of the winter bird surveys recorded Light-bellied Brent Geese within the footprint of the proposed works.

7.9.32. An additional survey was submitted by the applicant under a request for further information from the PA. The 'Estuarine Bird Survey (2020/2021) Report' included the full area of the site works proposed within the survey area and covered the period from September 2020 to August 2021. The survey found that no Light-bellied

Brent Geese were recorded on the existing pumping station site, the adjacent field, along the constructed pipeline route or along the last 1km where the pipeline is to be installed. Almost no bird activity was recorded on the proposed pumping station site or wider environs. The only bird activity of note, outside the SPA boundary was at the tidal creek (Millrace Stream) adjacent to the pumping station site. Species recorded in the tidal Creek included small numbers of common waterfowl including Grey Heron, Mallard, and Little Egret. These species forage in the Creek in low numbers (max. 1-2 recorded). All are common widespread, Green-listed species.

7.9.33. The appellant queried the survey data and the absence of the 'raw data'. Section 2 of the survey outlines the methodology used in the survey. It states that two estuarine surveys were carried out per month to ensure the full tidal cycle was covered. The surveys were carried out by professional ecologists, and I have no reason to question the methodology of the study or to query the results which reflect the findings of previous studies carried out Natura Impact Statements for other developments in the surrounding area in 2008, 2013 and 2018.

7.9.34. An additional survey was submitted in the applicant's response to the appeal. This survey was carried out for the period November 2021 to March 2022 and was not completed in time for inclusion in the response to further information requested by the PA. The applicant's response notes that the large field to the north of the proposed pumping station site sporadically attracts wintering birds including Curlew, Lapwing and Black-tailed Godwit. It was formerly a breeding Lapwing site but has not been used in recent years. The proposed project will not infringe on this area. Based on surveys to date the proposed pumping station site is not used regularly by wintering birds and none have been recorded on the site during surveys conducted in 2020/2021 and 2021/2022. Habitat in this area is relatively unsuitable for wintering birds being dense overgrown grassland.

7.9.35. The appellant further queried this response and submitted opinions from two bird experts who also query the results of the bird surveys. No new issues were raised in the response, and I am satisfied that the issues raised have been addressed in the NIS and the other sections of this report.

## **Treatment of Water-Borne Pollution in Swales**

- 7.9.36. The efficiency of the proposed swale in treating pollution was queried by the appellant. This issue was addressed by the applicant in their response to further information. The applicant references guidance from Inland Fisheries Ireland (IFI) contained in the document, *'Planning for Watercourses in the Urban Environment – A Guide to the Protection of Watercourses through the use of Buffer Zones, Sustainable Drainage Systems, Instream Rehabilitation, Climate, Flood Risk and Recreational Planning, 2020'*. They also state that the swale was designed in accordance with the Construction Industry Research and Information Association (CIRIA) SuDS Manual 2015 (C753F) and the Greater Dublin Strategic Drainage Study. All hardstanding areas within the pumping station compound, except for the washdown area for inspecting and cleaning pumping equipment, will drain into the swale. Runoff from the washdown area will drain towards, and be collected by, a dedicated channel drain which will discharge runoff into the inlet chamber of the pumping station for onward conveyance and treatment at the downstream wastewater treatment plant. Pollutants entering the swale are likely to be limited to hydrocarbon runoff associated with maintenance vehicles, which will be limited. The runoff is categorised as low-level pollutant risk and will be attenuated and treated in accordance with the levels set out in Table 2 of the IFI guide.
- 7.9.37. Having reviewed the information submitted by the applicant, I am satisfied that the potential risk from contaminated surface waters has been addressed in the NIS and that the proposed swale has been designed to adequately deal with the proposed levels of pollution in the surface water runoff from the site. On this basis, no reasonable scientific doubt remains regarding the lack of adverse effects of the development on the integrity of the European site. I note that the PA were satisfied with the information submitted with the application and had no objection to the swale or its use in attenuating and treating surface water runoff from the site.

## **Appropriate Assessment Conclusion**

- 7.9.38. In screening the need for Appropriate Assessment, it was determined that the proposal for works to the existing pumping station at Portmarnock Bridge, the provision of a new pumping station on an adjacent site and the installation of a new

rising main on lands to the south of the pumping station, had the potential to result in significant effects on Baldoyle Bay SPA and Baldoyle Bay SAC and that Appropriate Assessment was required in view of the conservation objectives of those sites.

7.9.39. Following a detailed examination and evaluation of the NIS all associated material submitted with the planning appeal as relevant to the Appropriate Assessment process and taking into account submissions of third parties, I am satisfied that based on the design of the proposed development, combined with the proposed mitigation measures, adverse effects on the integrity of Baldoyle Bay SPA and Baldoyle Bay SAC can be excluded with confidence in view of the conservation objectives of those sites.

My conclusion is based on the following:

- Detailed assessment of all aspects of the proposed development that could result in significant effects or adverse effects on European Sites within a zone of influence of the development site.
- Consideration of the conservation objectives and conservation status of qualifying interest species and habitats.
- A full assessment of risks to special conservation interest bird species and qualifying interest habitats and species.
- Complete and precise survey data and analysis of wintering birds.
- The proposed development site has been scientifically verified as not being of significance to or an area favoured by SCI bird species at any stage of the wintering or summer seasons.
- Application of mitigation measures designed to avoid adverse effects on site integrity and likely effectiveness of same.
- Consideration and assessment of in-combination effects with other plans and projects.
- The proposed development, alone and in combination with other plans and projects, would not undermine the favourable conservation condition of any qualifying interest feature or delay the attainment of favourable conservation

condition for any species or habitat qualifying interest for these European sites.

## 8.0 Recommendation

8.1. I recommend that planning permission is granted for the development.

## 9.0 Reasons and Considerations

Having regard to the provisions of the Fingal County Development Plan 2023 – 2029, the nature of the proposed development and the character of the surrounding area it is considered that the proposed development, subject to the conditions set out hereunder would not be seriously injurious to the residential and visual amenities of the area or property in the vicinity of the site, would be acceptable in terms of traffic safety and convenience, would not be prejudicial to public health and would accord with both national and regional policy in relation to wastewater. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on the 19<sup>th</sup> day of July 2021 and as amended by the further plans and particulars submitted on the 9<sup>th</sup> day of June 2022, 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.</p> <p>Reason: In the interest of clarity</p>
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2.	<p>All mitigation, environmental commitments and monitoring measures identified in the plans and particulars submitted shall be implemented in full as part of the proposed development, including inter alia:</p> <p>A. Flood Risk Assessment (FRA) including Flood Awareness Plan and Flood Emergency Response Plan</p> <p>B. Tree and Landscape Plan</p> <p>Where such measures 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.</p> <p>Reason: In the interest of development control, public information, and clarity.</p>
3.	<p>Invasive Species</p> <p>The proposed measures for the management of invasive species set out in the Invasive Species Management Plan shall be implemented in full.</p> <p>Reason: In the interest of protecting the environment and to prevent the spread of Japanese Knotweed.</p>
4.	<p>Prior to the commencement of site clearance works the applicant shall appoint a suitably qualified and experienced Project Ecologist to supervise &amp; monitor the ecological impacts &amp; protective measures. The Ecologist shall supervise all site clearance works and check vegetation for nesting birds, bats, bat roosts and other habitats prior to removal.</p> <p>REASON: In the interest of the proper planning and sustainable development for the area.</p>
5.	<p>All mitigation and environmental commitments identified in the Natura Impact Statement shall be implemented in full as part of the proposed development. All works shall be monitored by an Ecological Clerk of Works to ensure implementation of mitigation and environmental commitments.</p> <p>Reason: In the interest of environmental protection.</p>

6.	<p>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.</p> <p>Reason: In the interest of sustainable waste management</p>
7.	<p>Construction works shall only take place between the months of August and April.</p> <p>Reason: To prevent disturbance to nesting birds and species scheduled under the Wildlife Act and the EU Habitats Directive and in the interest of nature conservation.</p>
8.	<p>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.</p> <p>Reason: In the interests of public safety and residential amenity.</p>
9.	<p>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 in respect of both the construction and operation phases of the proposed development. Where such measures 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.</p> <p>Reason: In the interest of environmental protection and public health.</p>

10.	<p>A final boundary treatment and landscaping scheme, in accordance with that submitted, shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. This scheme shall include the following:</p> <p>a) details of all proposed hard surface finishes, including samples of proposed paving slabs/materials for footpaths, kerbing and road surfaces within the development;</p> <p>b) proposed locations of trees and other landscape planting in the development, including details of proposed species and settings;</p> <p>c) details of proposed gates, CCTV, street furniture, including bollards, lighting fixtures;</p> <p>d) details of proposed boundary treatments at the perimeter of the site, including heights, materials and finishes.</p> <p>The boundary treatment and landscaping shall be carried out in accordance with the agreed scheme.</p> <p>Reason: In the interest of visual amenity</p>
11.	<p>A final Tree Protection Plan shall be submitted to the Planning Authority for their agreement. All tree and or hedge removal outside of the red line boundary shall be omitted.</p> <p>Reason: In the interest of the proper planning and sustainable development for the area.</p>
12.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays or public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the amenities of property in the vicinity.</p>
13.	<p>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</p>

	<p>regard, the developer shall:</p> <p>(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</p> <p>(b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.</p> <p>The assessment shall address the following issues:</p> <p>(i) the nature and location of archaeological material on the site, and</p> <p>(ii) the impact of the proposed development on such archaeological material.</p> <p>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.</p> <p>In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.</p> <p>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.</p>
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I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Elaine Sullivan  
Senior Planning Inspector

17<sup>th</sup> April 2024

## Appendix 1 - Form 1

### EIA Pre-Screening

[EIAR not submitted]

<b>An Bord Pleanála Case Reference</b>	ABP-314663-22		
<b>Proposed Development Summary</b>	The development of a new wastewater pumping station with associated rising main connection, gravity sewer connections and modification of the existing Portmarnock Bridge pumping station.		
<b>Development Address</b>	Strand Road & Station Road, Maynetown & Burrow (townlands), Portmarnock, Co. Dublin.		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	X
		<b>No</b>	
<b>2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?</b>			
<b>Yes</b>			
<b>No</b>	X		Proceed to Q.3
<b>3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?</b>			
		<b>Threshold</b>	<b>Comment (if relevant)</b>
<b>No</b>	X		No EIAR or Preliminary Examination required
<b>Yes</b>			Proceed to Q.4

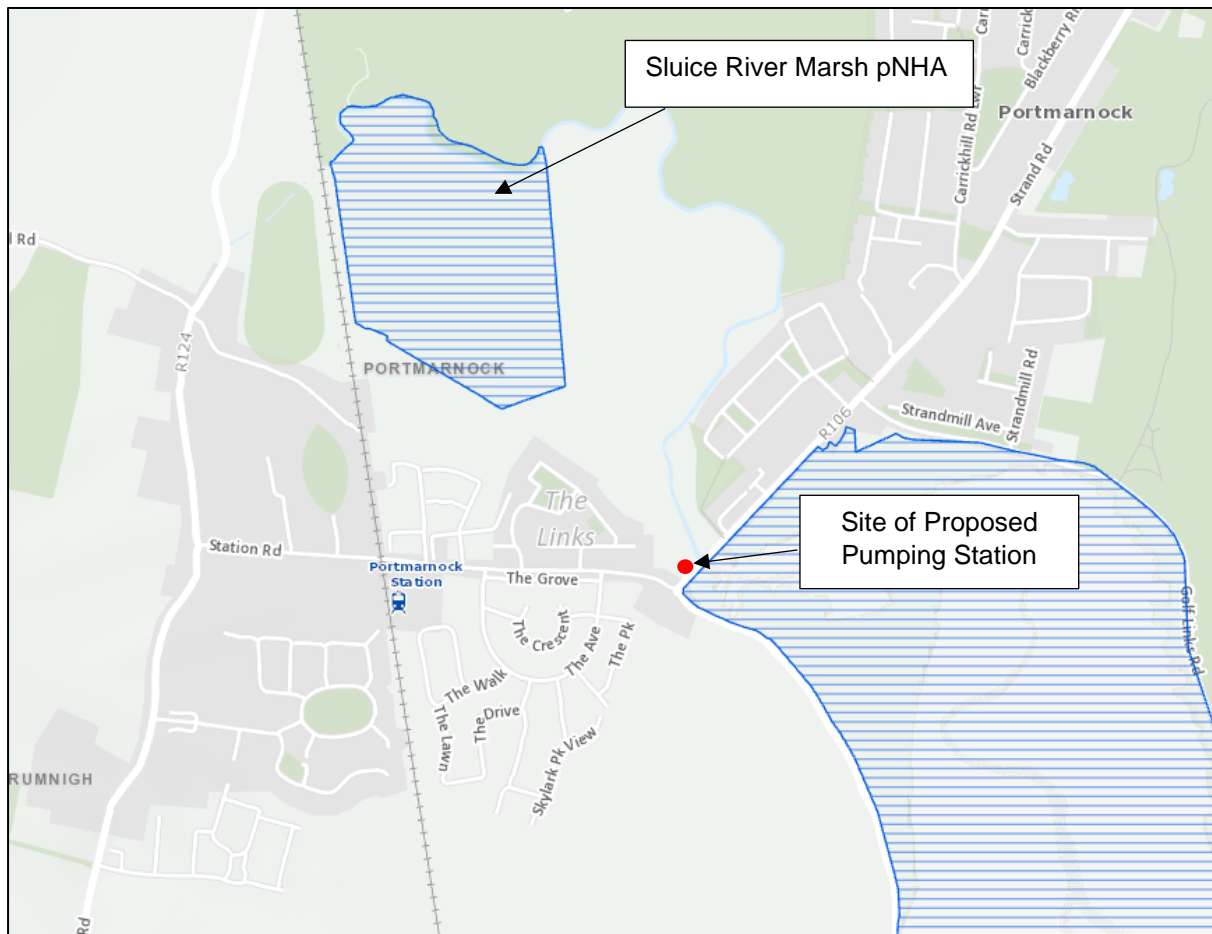
**4. Has Schedule 7A information been submitted?**

<b>No</b>		<b>Preliminary Examination required</b>
<b>Yes</b>		<b>Screening Determination required</b>

**Inspector:** \_\_\_\_\_**Date:** \_\_\_\_\_

## Appendix 2 – Sluice River Marsh pNHA location

(Taken from NPWS maps; [National Parks & Wildlife Service \(npws.ie\)](http://npws.ie))



### Appendix 3 – Location of the Quiet Zone in Portmarnock South LAP lands.

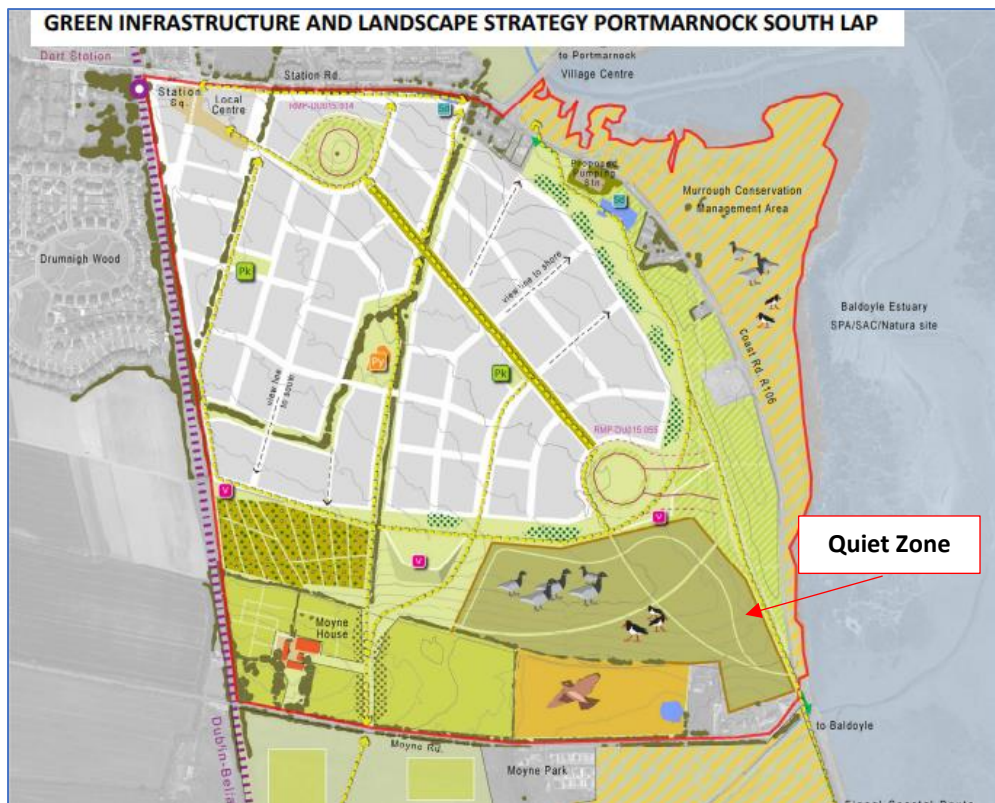


Image taken from the appeal documents which shows the location of the pipeline and the Quiet Zone.



Fig 1. Yellow lines surround QZ area/ Red Indicate rising Main Route/ Pink circle is location of Lapwing nest.



**Appendix 4 – Study Area from Citizens Science Survey – showing area of survey.**



Figure 2: Google Earth satellite view of the study area lands at Maynetown



Figure 4: The Designated Quiet Zone.