An Bord Pleanála

Inspector's Report

ABP-318408-23

Development	Upgrading of existing wastewater treatment plant. A Natura Impact Statement (NIS) was submitted with the application.
Location	Newmarket-on-Fergus Wastewater Treatment Plant, Boheraroan, Newmarket-on-Fergus, County Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	22/1095
Applicant(s)	Uisce Éireann
Type of Application	Planning Permission
Planning Authority Decision	Notification to Grant
Type of Appeal	Third Party
Appellant(s)	Mr. Michael Duffy
Observer(s)	None
Date of Site Inspection	15th August 2024
Inspector	Gary Farrelly

1.0 Site Location and Description

1.1. The subject site has a stated area of 8.96 hectares and comprises the Newmarket-on-Fergus wastewater treatment plant (WWTP) compound as well as public roads and lands north of the compound up to the River Rine approximately 4km north. The River Rine flows in an east to west direction into the River Fergus and Shannon estuaries. The public road network between the River Rine and the compound comprises of the regional road R-458 (known as Ennis Road) and a residential estate road.

1.2. The WWTP compound is located to the southwest of the town centre and is bounded to the west by Lough Gash, to the west/northwest by the Boheraroan stream which flows from east to west into Lough Gash, and to the east and south by the Boheraroan housing estate. Access to the compound is from the north via the Kilnasoolagh Park housing estate.

1.3. The WWTP operates under an existing wastewater discharge licence, No. D0079-01 (WWDL), approved by the Environmental Protection Agency (EPA), and it currently discharges final effluent and stormwater overflows into Lough Gash. The existing primary discharge point from the WWTP is located at the existing final effluent sump at the western side of the compound. The existing plant has an organic capacity of 5,000 population equivalent (PE).

1.4. The existing compound comprises of the following features and structures; inlet manhole with screen, sampler, flume channel, grit classifier, control building, forward feed pump sump, oxidation ditch, 2 no. clarifiers, aeration tank, 1 no. storm storage tank, sludge holding tank, sludge dewatering house and final effluent pump chamber.

2.0 Proposed Development

2.1. The proposed development will provide an upgrade of the treatment efficiency of the existing WWTP. It does not seek to increase the capacity of the WWTP. The development within the compound of the WWTP will comprise of the construction of a new terminal wet well pumping station (PS) with associated valve chambers which will transfer effluent and any stormwater overflows (SWOs) for discharge to the River Rine.

2.2. The existing inlet to the WWTP comprises of 3 no. SWOs to Lough Gash. These will be modified to firstly provide screening at the overflow locations which will retain solids

within the sewer network and then direct the screened overflows to the terminal PS for discharge.

2.3. A new combined sewer overflow (CSO) storage tank with a capacity of 516m³ is proposed to be constructed in the northeast corner of the compound and which will be fed by CSO pumps within the proposed PS wet well. Flows within the storage tank will be returned via a new pumped return chamber adjacent to the storage tank.

2.4. A new standby generator will be installed to the west of the existing control building in order to eliminate the risk of power failure which would prevent the discharge and storm pumps from operating. An emergency high level overflow will be installed within the PS wet well which will connect to the existing stormwater drainage within the WWTP and discharge through the existing storm overflow pipe to the Boheraroan stream.

2.5. The existing final effluent chamber will be retained and modified to forward the combined flows which have received secondary treatment within the WWTP to a new flocculation tank, before gravitating to two tertiary treatment filter units. A bypass pipeline will also be installed.

2.6. Two new 7.5m³ chemical storage tanks, with associated emergency shower and dosing infrastructure, are proposed along the southern section of the compound (between the existing clarifier and existing aeration tank). Stage one of the dosing will take place at the outlet of the oxidation ditch on stream one and at the outlet of the aeration tank on stream two. Stage two of the dosing will take place at the inlet of the proposed flocculation tank so that sufficient mixing can be achieved upstream of the proposed tertiary treatment filter units.

2.7. Final effluent will flow from the filter units, via gravity, through a final effluent backwash and sampling chamber which consists of duty/standby backwash pumps. It will then gravitate to a discharge manhole adjacent to the PS where the treated flows will combine with the pumped return storm flows from the proposed PS.

2.8. The works within the WWTP compound will also comprise of a new section of access road to serve the new treatment filter, the construction of a new kiosk to house electrical control panels which will control the operation of the PS, storm storage tank, dosing facilities and tertiary treatment units. Additional external lighting is proposed within the compound.

2.9. The proposed development outside of the WWTP compound will comprise of a new 4.41km section of 400mm diameter rising main from the pumping station, which will pass through the WWTP entrance gate and under the Boheraroan stream, under the road network through Kilnasoolagh Park housing estate, northwards along the regional road R-458 and under an access road and lands to the east of the M-18 motorway. The rising main will end at the foreshore of the River Rine where it will discharge through an outfall diffuser head within the centre of the main channel of the river. The outfall will contain 3 no. 225mm diameter diffuser heads to disperse flow evenly across the river channel.

2.10. The application and appeal was accompanied by the following documentation:

- Planning Report;
- Report to Inform the Screening of Appropriate Assessment and Natura Impact Statement;
- Ecological Impact Assessment; and
- Construction Environmental Management Plan.

3.0 Planning Authority Decision

3.1. Decision

In considering the application, the planning authority (PA) sought further information on a range of issues, including the following:

- It considered that there was insufficient information to determine if the placement of the rising main through the saltmarsh habitat would adversely affect the integrity of the habitat. As a result, a revised NIS was requested to provide clarity on the efficacy of the mitigation measures on the translocation of the saltmarsh habitat/turf and the assessment of the residual risk in terms of the failure to maintain the turf prior to its translocation back to the site.
- It requested peer reviewed literature on temporary damage and disturbance to Qualifying Interest (QI) habitat during the construction phase and examples of similar projects.

- It requested surveys of salmonid and lamprey within the River Rine.
- It requested the submission of an emergency incident response plan in consultation with Inland Fisheries Ireland and the submission of a biosecurity plan to account for the spread of invasive species.
- It requested details of the temporary construction compound and details of the procedure for the removal of cofferdam to ensure no release of sediments.
- It requested an updated CEMP to account for the additional information, and
- It requested the submission of an archaeological impact assessment (AIA).

The PA decided to grant permission by Order dated 12th October 2023, subject to 7 no. conditions.

- Condition 2(a) required that all mitigation measures set out in the NIS are carried out in full under the supervision of an environmental clerk of works.
- Condition 2(b) required the undertaking of confirmatory otter surveys in advance of commencement of any works within 150 metres of the works areas and no more than 10-13 months prior to commencement of works.
- Condition 2(d) required the amendment of the CEMP to incorporate the appointment of the contractor and environmental clerk of works.
- Condition 2(e) required the submission of a reinstatement report on how the saltmarsh habitat would be restored, the monitoring of the re-establishment of the habitat and a program of reseeding if the translocation is unsuccessful.
- Conditions 4 and 5 related to mitigation measures outlined in the archaeological impact assessment (AIA) and underwater archaeological monitoring.
- Condition 6 related to the submission of a construction waste management plan, the submission of a traffic management plan and maintenance access plan.
- Condition 7 required the payment of a financial contribution amounting to €4,973.44.

3.2. Planning Authority Reports

Planner's Reports

There are a total of 2 no. area planner (AP) reports which assessed the need for the upgrade works, the various consent processes, the alternatives considered by the developer, the principle of the development, traffic, visual amenity, ecology, flood risk, residential amenity and archaeology and built heritage. The AP undertook an AA screening determining that an NIS was required. The AP concurred with the report of the environmental assessment officer and considered that there was no risk of adverse effects on any European sites. A grant of permission was recommended subject to 7 no. conditions which was endorsed by the Senior Executive Planner.

Other Technical Reports

Environmental Assessment Officer (EAO) (*reports dated 2nd February 2023 and 5th October 2023*)

- The EAO's original report noted the comments from the Department and recommended further information. The second report noted that the key physical change that would take place as part of the project was the translocation (on a temporary basis) of the saltmarsh habitat associated with the installation of the rising main. This report undertook an appropriate assessment and considered the mitigation measures and alternative solutions provided within the NIS. The EAO considered that Article 6(4) (IROPI) did not need to be applied given the proven efficacy of the mitigation measures. The EAO considered that there was sufficient evidence to allow the PA to conclude that there would be no adverse effects on the integrity of the associated European sites. A number of conditions were recommended.

Road Design (*reports dated 23rd January 2023 and 23rd August 2023*)

- It recommended conditions including for a maintenance access plan to be agreed with the PA.

Municipal District Office (*emails dated 30th December 2022 and 20th January 2023*)

- It had no objection to the development subject to a road opening licence.

Fire Officer (*report dated 5th January 2023*)

- This report raised no objection.

3.3. Prescribed Bodies

Inland Fisheries Ireland (IFI)

It stated that an appropriate schedule of the coffer dam works would be required, manholes to be accessible at all times by IFI staff, a requirement that the ECoW would have the authority to stop works, the implementation of all mitigation measures, the checking for lamprey where excavations are taking place in the river and for IFI to be notified in advance of commencement of works. It had no objection to the proposed development.

Transport Infrastructure Ireland (TII)

It noted the proximity of the development to the M-18 motorway and future active travel scheme. It stated that it would rely on the PA to abide by official policy affecting national roads.

Development Applications Unit (DAU) (Department of Housing, Local Government and Heritage)

It originally requested that an AIA be carried out as further information and after submission of the further information it recommended conditions with regards to archaeological requirements during works and underwater archaeological monitoring.

It also assessed the NIS and considered that more information was required on a number of issues including on how the excavated salt meadow turfs would be stored and maintained in good condition and the timeline. It considered that there was potential for an adverse effect on the integrity of the salt meadows if the habitat did not re-establish itself fully. It also requested suitable peer reviewed literature and examples of projects regarding the assumed lack of long term effects on QI habitat arising from temporary damage. After submission of the updated NIS at further information stage the DAU did not provide further comment.

Irish Aviation Authority (IAA)

It had no observations to make.

Uisce Éireann (UÉ)

It had no objection to the development subject to a connection agreement.

3.4. Third Party Observations

A total of 2 no. third party submissions were received which raised concerns on a number of issues including appropriate assessment, compliance with the requirements of the water framework directive, the uploading of documents on the planning register and concerns with previous local authority applications being screened out from AA.

4.0 Relevant Planning History

PA ref. 08/8015 (*works within existing WWTP compound*)

The local authority approved Part 8 consent for improvement works to the existing wastewater treatment plant. These works included a new primary settlement tank, clarifier and storm water overflow tank in order to facilitate an increase in the capacity of the WWTP to 5,000 population equivalent.

PA ref. 17/8004 (*Latoon Creek bridge to the west of proposed outfall location*)

The local authority approved Part 8 consent for development works to Latoon Creek Bridge including structural repairs. An appropriate assessment screening report was submitted with the application which found that there was no likelihood for significant negative impacts on any Natura 2000 site. The local authority determined that there were no risk of adverse effects to the European sites.

PA ref. 22/8007 (*site of access road to River Rine, under M18 motorway and existing bridge over River Rine (Carnelly Bridge)*)

The local authority approved Part 8 consent for a new 4 metre wide 1.185km long cycling infrastructure. An appropriate assessment screening report was submitted with the application and found that there was no potential for any negative impacts on the qualifying interests of the Lower River Shannon SAC and River Fergus SPA. The local authority determined that the proposed development would not be likely to have significant effects on a European site.

5.0 Policy Context

5.1. European Directives

- Urban Wastewater Treatment Directive (91/27/EEC) (‘*UWWTD’*)
  In October 2022 the Commission revised the Directive which was provisionally agreed between the Council and the Parliament on 29th January 2024. It was formally adopted by the Council on 5th November 2024 and is to be signed and published in the Official Journal of the EU.
- Water Framework Directive (2000/60/EC) (‘*WFD’*)
- Habitats Directive (92/43/EEC)
- Birds Directive (79/409/EEC, as amended by 2009/147/EC)
- EIA Directive (2011/92/EU, as amended by 2014/52/EU)

5.2. Clare County Development Plan 2023-2029

It is an objective of Clare County Council:

CDP 3.3 Appropriate Assessment, Strategic Environmental Assessment and Strategic Flood Risk Assessment

a) To require compliance with the objectives and requirements of the Habitats Directive, specifically Article 6(3) and where necessary 6(4), Birds, Water Framework, and all other relevant EU Directives and all relevant transposing national legislation;

b) To require project planning to be fully informed by ecological and environmental constraints at the earliest stage of project development and any necessary assessment to be undertaken, including assessments of disturbance to species, where required together with the preparation of both statutory and non-Statutory Ecological Impact Assessments (EcIA);

c) To protect, manage and enhance ecological connectivity and improve the coherence of the Natura 2000 Network;

d) To require all proposals to ensure there is ‘no net loss’ of biodiversity within developments;

e) To ensure that European sites and Natural Heritage Areas (designated proposed NHAs) are appropriately protected;

f) To require the preparation and assessment of all plans and projects to have regard to the information, data and requirements of the Appropriate Assessment Natura Impact Report, SEA Environmental Report and Strategic Flood Risk Assessment Report contained in Volume 10 of this development plan; and

g) to require compliance with the objectives of the Water Framework Directive and support the implementation of the 3rd Cycle River Basin Management Plan (and any other iteration during the lifetime of the plan).

CDP 11.32 Wastewater Treatment and Disposal

a) To support the implementation of Uisce Éireann Investment Plans and to advocate the provision, by Uisce Éireann, of adequate wastewater treatment facilities to accommodate the target population and employment potential of the county in accordance with the statutory obligations set out in the EU and national policy and in line with the Core Strategy and Settlement Hierarchy set out in this plan;

b) To support the role of Uisce Éireann Investment Plans in taking into account seasonal pressures on critical wastewater treatment service infrastructure and climate change implications in the design of all relevant projects;

c) To advocate for the on-going provision, maintenance and upgrade of wastewater treatment infrastructure in the county;

CDP 15.4 Requirement for Appropriate Assessment

a) To implement Article 6(3) and where necessary 6(4) of the Habitats Directive and to ensure that Appropriate Assessment is carried out in relation to works, plans and projects likely to impact on European sites (SACs and SPAs), whether directly or indirectly or in combination with any other plan(s) or project(s); and

b) To have regard to Appropriate Assessment of Plans and Projects in Ireland – Guidelines for Planning Authorities 2009 or any updated version.

Compliance with Zoning

CDP19.3 To require development proposals to comply with the zoning of the subject site in settlement plans and local area plans.

5.3. National Policy

- Project Ireland 2040 – National Planning Framework (2018) and National Development Plan 2021-2030

  National Policy Objective 63

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

- Climate Action Plan 2024
- Water Action Plan 2024 – A River Basin Management Plan for Ireland (Department of Housing, Local Government and Heritage)
- Water Services Strategic Plan 2015
  - *The Water Services Strategic Plan 2050 is currently at Draft stage.*
- Ireland's 4th National Biodiversity Action Plan (NBAP) 2023-2030
  - The NBAP includes five strategic objectives aimed at addressing existing challenges and new and emerging issues associated with biodiversity loss. Section 59B(1) of the Wildlife (Amendment) Act 2000 (as amended) requires the Board, as a public body, to have regard to the objectives and targets of the NBAP in the performance of its functions, to the extent that they may affect or relate to the functions of the Board. The impact of development on biodiversity, including species and habitats, can be assessed at a European, National and Local level and is taken into account in our decision-making having regard to the Habitats and Birds Directives, Environmental Impact Assessment Directive, Water Framework Directive and Marine Strategy Framework Directive, and other relevant legislation, strategy and policy where applicable.

5.4. Regional Policy

- Regional Spatial and Economic Strategy for the Southern Region

Regional Policy Objective 211 – Irish Water and Wastewater

It is an objective to support the implementation of Irish Water Investment Plans (prepared in five-year cycles) and subsequent investment plans, to align the supply of wastewater treatment facilities with the settlement strategy and objectives of the RSES and Metropolitan Area Strategic Plans for Cork, Limerick-Shannon and Waterford. Support the role of Irish Water Investment Plans in taking into account seasonal pressures on critical service infrastructure, climate change implications, and leakage reduction in the design of all relevant projects.

5.5. National Guidance

- Appropriate Assessment of Plans and Projects in Ireland, Guidance for Planning Authorities (Department of Environment, Heritage and Local Government, 2009)
- Guidelines for Planning Authorities and An Bord Pleanála on carrying out Environmental Impact Assessment (Department of Housing, Planning and Local Government, 2018)
- Urban Wastewater Treatment Directive (91/271/EEC) Procedures and Criteria in relation to Storm Water Overflows (Department of the Environment, 1995)

5.6. Natural Heritage Designations

The existing WWTP compound is located adjacent to Lough Gash Turlough Special Area of Conservation (SAC) (Site Code 000051). This is also a proposed Natural Heritage Area (pNHA). The proposed outfall within the River Rine is located within the Lower River Shannon SAC (Site Code 002165). The River Shannon and Fergus Estuaries Special Protection Area (SPA) (Site Code 004077) and Fergus Estuary and Inner Shannon, North Shore pNHA are located approximately 50 metres west of the proposed outfall location within the River Rine.

5.7. Environmental Impact Assessment (EIA) Screening

Having regard to the nature, size, location and purpose of the proposed development which does not propose an increase in the capacity of the existing WWTP and to the criteria set out in Schedule 7 of the Planning and Development Regulations 2001, as

amended, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environment impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required. I refer the Board to Appendix 1 with regards to this preliminary examination.

6.0 The Appeal

6.1. Grounds of Appeal

A third-party appeal was lodged to the Board on 8th November 2023 by Mr. Michael Duffy. The grounds of appeal are summarised as follows:

- The current NIS and AA cannot be determined as a proper baseline assessment cannot be made for the current proposal as the PA screened out the need for AA for works to Latoon Creek Bridge (PA ref. 17/8004) which is located 40/50 metres downstream of the proposed works. There is no way of knowing the damage done to the SAC/SPA by the incorrectly sanctioned works and the current NIS and AA is an attempt to include a retrospective AA for the bridge. The PA failed to consider any environmental assessments carried out in respect of the adjacent M18 motorway bridge.
- As matters stand, the R458 bridge is unauthorised development because the required AA was not carried out. Reference is made to ECJ Case C-215/06 and C-261-18 in relation to the EIA Directive 86/337/EEC and 97/11/EC.
- The NIS does not address alternative discharge locations.
- The appropriate assessment carried out by the PA does not reference the EPA's website for the assessment of the ongoing operation of the plant. There is no assessment of the existing or proposed capacities of the WWTP or current and future population equivalent (PE) for the agglomeration.
- Within the NIS no information is provided in terms of the volume, make up, frequency or statutory requirements regarding the stormwater overflows that will be discharged to the River Rine via a wet well pumping station (section 3.2 of submitted NIS) or whether the existing WWTP is compliant for such overflows

and whether the discharge of untreated sewage was considered for the new discharge location.

- An emergency high level overflow will be installed to the wet-well and connected to existing stormwater drainage within the plant, however, there is no information on where this existing stormwater drainage discharges to or where the high level overflow will discharge to and whether there will remain a continuing discharge of untreated sewage directly to groundwater.
- No assessment of the required stormwater storage volume for the agglomeration is provided including no assessment of the condition of the network or evidence of actual loadings of the plant. The details of the stormwater tank are indicative and not specific and therefore are not in accordance with the Planning and Development Act or EU Directives.
- There is no description of the existing plant provided and the drawings do not fully describe the existing or proposed extensions to the plant. The dimensions and capacities of aeration tanks, oxidation ditches, clarifiers and stormwater tanks are not provided.
- There is no supporting documentation to show how the PE for the plant was determined. There is no supporting data for the DWF (dry weather flow), the peak hydraulic capacity, the current or average hydraulic loading, organic capacity as constructed, organic loading or the remaining organic capacity. There are no details of the current or proposed hydraulic retention times, sludge retention times or volumetric loading rates.
- There is no information on the number or location of all stormwater overflows, frequency of use, volume or duration of discharge and no calculation is provided on the stormwater storage capacity required.
- It is questioned why it would be necessary to install a bypass line around the tertiary filter.
- The adequacy of the PA's environmental reports is questioned. Reference is made to alternatives considered by the applicant, however, no details are provided in the submitted application or NIS.
- No minutes of pre-planning consultations are provided on file.

- The PA did not undertake an appropriate assessment and therefore the PA was precluded from making a decision. The determination within the PA's screening on 11/10/23 is that an NIS is required, the day before the notification to grant. The PA made no effort to seek scientific information other than the submitted NIS.
- AA cannot have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all scientific doubt as to the effects of the works proposed. The PA did not seek scientific information other than the submitted NIS. If an adverse effect or if some doubt remains the precautionary principle applies.
- There was no meaningful PA assessment of the further information response and reference is made to ECJ Case C-50-09 in that both an investigation and an analysis is required to reach as complete an assessment as possible of the direct and indirect effects of the project. Response 1(g) states that the stream crossing is likely to be by means of a trenchless technique which is an ambiguous statement that the decision maker does not go behind in the AA.
- The effectiveness of mitigation measures needs to be considered to facilitate an assessment as to whether such measures themselves, or in-combination with the project, are likely to have significant effects on the environment. If they are not fully described it is not possible for the decision maker or the public to consider whether there are likely significant effects on the environment.
- The consent process is questioned in terms of no co-ordination between the planning application, the foreshore licence to be submitted to the Minister and with the EPA. Reference is made to ECJ C-50/09 where the Commission criticised the fact that the Irish legislation fails to impose any obligation on planning authorities and the Agency to coordinate their activities, and that situation is contrary to Articles 2-4 of Directive 85/337.
- A material contravention of the Clare County Development Plan 2023-2029 occurs as no proper appropriate assessment was carried out with reference to Sections CDP 1.1.3 and CDP 15.2.3 and Objectives CDP3.3 and CDP 15.4.

- The decision does not turn on whether or not this proposal would be an improvement on the status quo and is not the determining factor.
- The last EPA Annual Environmental Report (AER) for the subject WWTP was in 2019. Some of the figures in the AER do not have units attached. The application refers to 7 discharge locations, however, the AER only refers to one and claims that it is monitored with no figures provided.
- The stormwater summary claims 3417m3 of untreated sewage was discharged in the last year with no figures to support this and there is no mention of existing stormwater storage capacity or what volume of storage is actually required to comply with the EU directive, as national legislation does not address stormwater overflow discharges at all.
- The PA did not have proper regard to my submission and the decision of the PA is so compromised that it should be overturned by the Board.

6.2. Applicant Response

The Applicant responded to the grounds of appeal on 6th December 2023. The response is summarised as follows:

- The development is required to ensure compliance with the existing wastewater discharge licence conditions issued by the EPA. Condition 3.7 and Schedule C.1 of the licence (WWDL No. D0079-01) requires that the existing discharge to groundwater (Lough Gash) ceases and that an alternative is sought. This was required to happen no later than December 2019 which highlights the need and urgency for the development and that the current situation be resolved.
- The proposed upgrading of the WWTP is to provide an alternative discharge location as well as additional tertiary treatment to ensure compliance with the Water Framework Directive. For clarity, the development will provide greater treatment efficiency but not an increase in treatment capacity. The existing 5,000 PE will remain unchanged.
- The submitted NIS and further information were provided in accordance with the provisions of the Habitats Directive, the Act and Regulations and European Commission and Irish guidance on AA. Numerous surveys were conducted by

specialists to inform the NIS and provide the best scientific evidence available for the assessment (listed under Section 2.2 of the NIS).

- The submitted NIS and planning report identify that the design capacity and the existing wastewater treatment plant will remain unchanged.
- The assimilative capacity calculations, which are included in the WDL, for the relocation of the treated effluent discharge were completed based on achieving the emission limit values of the extant wastewater discharge licence and ensuring that achievement of 'Good' status of the River Rine is not impeded.
- The mitigation measures in Section 6 of the NIS will ensure no adverse effect, alone and in-combination with other plans or projects, on the integrity of any European Site, in light of the site's conservation objectives.
- All licenced or authorised sewage systems typically operate with the potential for stormwater discharges to enter the aquatic environment untreated or with limited treatment. Stormwater overflows (SWOs) are a necessary sewage asset to prevent flooding to property or roads and are operational during heavy rainfall events. The development will provide increased SWO storage, increased screening for SWOs/emergency overflows (EOs), increased treatment and, therefore, will provide a sewage and treatment system which is in accordance with the requirements of the WFD.
- The design of the wastewater treatment plant upgrade, including the design of the SWOs, EOs and combined sewer overflow (CSO) storage tank, is in accordance with the relevant Uisce Éireann (UÉ) standards and specifications which ensure compliance with the Wastewater Discharge (Authorisation) Regulations 2007. External international standard documents including the Water Industry Mechanical and Electrical Specifications (WIMES), British Standards, and National Standards Authority of Ireland are directly referenced throughout and help to form the basis of the UÉ standards and specifications.
- The existing WWDL lists one stormwater overflow which discharges to the Boheraroan Stream and therefore to Lough Gash. During the process of the WWDL review, two existing additional SWOs were identified.

- It is proposed to change an existing SWO at the Boheraroan stream to an emergency overflow which will only operate in the unlikely event of a simultaneous power failure and failure of the new proposed standby generator, or in the event that all discharge pumps (duty/assist/standby) break simultaneously. The likelihood of either of these scenarios occurring is extremely low.
- All three SWOs are required to cease discharging to Lough Gash and will discharge along with the primary discharge (treated effluent) to the River Rine through the proposed outfall discharge, to comply with Condition 3.7.1 of the WWDL. The WWTP will be required to retain an EO at the Boheraroan stream.
- All SWOs into the proposed discharge pumping station will be screened to ensure that the majority of solids are retained within the wastewater inflow to the plant, which will minimise potential impact to the receiving waters.
- The proposed CSO storage tank will store additional flows arising from extreme overflow events (exceeding a discharge pump rate of 100 litres per second) prior to discharge to the River Rine. The frequency of extreme events is not quantifiable as it is based on extreme rainfall events. The sizing of the CSO tank has been calculated based on accommodating a total incoming flow arriving at the WWTP in excess of the proposed discharge pump rate from the proposed terminal pump station, following a 30 year 0.5 hour storm event.
- The proposed bypass pipeline on the tertiary treatment system is a prudent design measure and is proposed to be installed primarily as a failsafe option in the unlikely event that one tertiary filter fails and the other filter requiring maintenance. This would allow the remaining treatment processes to continue operation until completion of the maintenance / repair works.
- UÉ has submitted applications to all three consenting and competent authorities from whom consent / authorisation is required for the development and operation of the development (i.e. planning permission, foreshore consent and wastewater discharge licence process).
- UÉ publish annual environmental reports (AERs) for all WWTPs that are under their management on an annual basis and are available to view on its website.

The subject WWTP has been compliant with its extant licence emission limit values during 2019 and 2022 as detailed within the AERs.

- It is important to highlight that the EPA are the competent authority on all discharges to the aquatic environment from sewage systems which are owned, operated and managed by UÉ. Therefore, the EPA will be responsible in setting emission limit values under the licence review to ensure that potential effects on the receiving water bodies are strictly limited and controlled.
- The aim of the WWDL is to achieve good surface water status in addition to complying with standards and objectives established for associated European sites.
- The development is supported within the Clare County Development Plan 2023-2029 through the acknowledgement that wastewater treatment infrastructure is important to future economic development, quality of life and sustainable growth. The works will ensure the sustainable growth and development of Newmarket-on-Fergus so that it is not negatively impacted by infrastructure constraints, whilst ensuring compliance with regulatory standards to protect water quality.
- It is respectfully requested that the Board upholds the decision of the PA.

6.3. Planning Authority Response

The PA responded to the grounds of appeal on 6th December 2023 and it referred the Board to the considerations set out in the planner's report on the application. It respectfully requested that the Board upholds the PA's decision and considered that as the proposed development is for improvement and upgrade works to the existing WWTP, the success of the application would be of benefit to the wider environment and quality of wastewater treatment at this location.

7.0 **Assessment**

7.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, the reports of the planning authority and having inspected the site, and having regard to relevant local, regional and national policies and guidance, I consider that the substantive issues in this appeal to be considered are as follows:

- Appropriate Assessment *(addressed under Section 8 below)*
- Principle of the Development
- Existing Wastewater Treatment Plant Operation
- Proposed Stormwater Overflows (SWOs)
- Emergency Overflow (EO)
- Tertiary Treatment

7.2. The Board should note the proposed development relates to an upgrade in the treatment efficiency at the existing wastewater treatment plant (WWTP) by providing an alternative discharge location, combined sewer overflow (CSO) storage and additional tertiary treatment. Condition 3.7.1 of the existing ref. D0079-01 wastewater discharge licence (WWDL)[1] requires that all discharges directly to groundwater (i.e. to Lough Gash) ceases before 31st December 2019. It is not proposed to increase the capacity of the facility, as described by the applicant in both the application documents and the response to the grounds of appeal. The organic capacity of the plant is designed to cater for a population equivalent (PE) of 5,000 as specified by the WWDL and previous planning history on the subject site (PA ref. 08/8015).

7.3. The Board should also note that a specialist report from the inspectorate ecologist (IE) accompanies this report under Appendix 3 which assesses the impact of the construction of the rising main and outfall diffuser within the River Rine on two qualifying interests of the Lower River Shannon SAC; Atlantic salt meadows (1330) and Mudflats and sandflats not covered by seawater at low tide (1140).

[1] https://epawebapp.epa.ie/licences/lic_eDMS/090151b2807e8dc2.pdf
https://epawebapp.epa.ie/licences/lic_eDMS/090151b2807e91cf.pdf

Principle of the Development

7.4. The WWTP compound is located within the settlement boundary of Newmarket-on-Fergus and on lands zoned 'utilities' under the Clare County Development Plan 2023-2029 (CDP), where the objective is to reserve such lands for the existing and future provision of key infrastructural services and for the upgrading of existing services and infrastructure relating to, inter alia, wastewater treatment services. The routing of the rising main within the road network to the River Rine is located within unzoned lands.

7.5. Therefore, I consider that the proposed development would be in accordance with the zoning objectives of the CDP and specifically objective CDP19.3.

7.6. Furthermore, the Board should note that the Newmarket-on-Fergus WWTP is part of Uisce Éireann's (UÉ) Capital Investment Plan 2020-2024, and therefore, I consider the proposed development would be in accordance with objective CDP11.32(a) and (c) of the CDP, as well as national policy objective 63 of the National Planning Framework and regional policy objective 211 of the Regional Spatial and Economic Strategy for the Southern Region, having regard to the nature and purpose of the proposed development.

Existing Wastewater Treatment Plant Operation

7.7. I acknowledge that the appellant has raised a number of queries in relation to the existing situation at the WWTP in terms of the capacity of the plant and in relation to the absence of such information in the application.

7.8. The Board should note that much of this information is available within UÉ's annual environmental reports (AERs) which are submitted to the EPA and are available for public viewing on the EPA website. These reports are a requirement of all EPA WWDLs and provide a summary of environmental performance over the previous year. The most recent AER for the subject WWTP on the EPA website is from 2023[2] and therefore is the most relevant for the purposes of this assessment.

Existing Plant Performance

7.9. Having reviewed the 2023 AER, I note that the final effluent of the plant is compliant with the emission limit values (ELVs) and minimum percentage reductions for biochemical oxygen demand (BOD), chemical oxygen demand (COD), suspended

[2] https://leap.epa.ie/licence-profile/D0079/compliance/return/b4d98254-b61d-ef11-a367-0050568a2d1a

solids (SS), nitrogen (N), phosphorous (P) and PH as set by the WWDL and the Urban Wastewater Treatment Directive 91/271/EEC (UWWTD). I note that the findings of this AER is also consistent with the EPA site inspection from 29th March 2022, with samples taken confirmed to have complied with condition 3 of the WWDL.[3]

7.10. With regards to the appellant's specific points on the hydraulic and organic load at the plant, this information is provided under Section 2.1.4.2 of the 2023 AER. The peak hydraulic capacity is outlined as 3,300m³ per day with the daily dry weather flow, annual maximum and average loading well below the hydraulic capacity. Furthermore, the plant is operating well below the 5,000PE organic capacity.

Existing Stormwater Overflows (SWOs)

7.11. The Board should note that SWOs are structures or devices that relieves the system of excess flows during periods of rainwater or melting snow in the sewered catchment where the excess flow is discharged to receiving waters. UÉ has described this as a necessary asset to prevent flooding of property and roads during heavy rainfall.

7.12. The Board should also note that Condition 3.5 of the WWDL requires that all SWOs should be in compliance with '*DoECLG Procedures and Criteria in Relation to Storm Water Overflows', 1995'*. The 2023 AER describes the 1 no. confirmed SWO (Ref. SW002) as of 'low significance'. Table 1 of the DoECLG document describes 'low significance' as a dilution greater than 8:1 where there is no interaction with other discharges. Furthermore, the Board should note that it is a requirement under Condition 3.5.3 of technical amendment A of the WWDL that discharges from SWOs shall not cause environmental pollution.

7.13. Whilst the 2023 AER only describes 1 no. confirmed SWO (ref. SW002), I note that within UÉ's response to the grounds of appeal it states that during the process of the licence review it has identified two existing additional SWOs. I note that SW002 appears not to be monitored as the number of times it was activated or the total volume discharged in 2023 is described as '*unknown*'. However, there appears to be no obligation to monitor or measure the volume or frequency of such SWOs. I do recognise that the October 2024 EPA report 'Urban Wastewater Treatment in 2023'

[3] https://leap.epa.ie/licence-profile/D0079/compliance/sitevisit/231b5cd4-f87d-ec11-a33f-0050568a2d1a

acknowledges that in general UÉ needs to collect better information about such overflow discharge and are currently installing monitoring equipment.

7.14. Notwithstanding this, the Board should note that the proposed development seeks to cease these discharges to Lough Gash, with the exception of an emergency overflow (EO), and therefore it is my view that the absence of this information does not preclude the Board from determining this application.

Lough Gash Water Quality

7.15. As part of the 2023 AER, monitoring was provided upstream and downstream of the discharge point. The monitoring identified a deterioration of water quality downstream, however, considered it was not known whether this was caused by the WWTP. However, I also note that Section 5.4 of the applicant's submitted Natura Impact Statement (NIS) states that "*filamentous algae was noted in the turlough near the current outfall which is evidence of eutrophication*". Notwithstanding this, the Board should note that the proposed development seeks to cease discharges to Lough Gash (with the exception of an emergency overflow) and to improve the treatment efficiency of the WWTP, including the provision of additional tertiary treatment.

7.16. With regards to the Water Framework Directive (WFD), I note that the overall groundwater status of Lough Gash is classed as 'Good' (2016-2021) and not at risk of meeting its environmental objective of good or high status.[4] Furthermore, the status of the Boheraroan stream is classed as 'Poor' (2016-2021).[5]

Overall Conclusion

7.17. Having regard to the above, the Board should note that the performance of the existing WWTP is in compliance with the ELVs as set down by the WWDL and the UWWTD, and that there is both organic and hydraulic capacity within the WWTP. Furthermore, having regard to the relocation of the outfall to the River Rine, which has a greater assimilative capacity than Lough Gash/Boheraoran stream to accommodate such discharge, I consider that there is adequate justification for the proposed development as it will increase the quality of effluent discharged and will ensure that the Lough Gash

[4] https://www.catchments.ie/data/#/waterbody/IE_SH_G_259?_k=7wzpzv
[5] https://www.catchments.ie/data/#/waterbody/IE_SH_27B670560?_k=xq219q

and Boheraroan stream waterbodies can achieve good ecological status under the WFD.

Proposed Stormwater Overflows (SWOs)

7.18. I note the appellant raises a number of concerns with regards to the absence of detail in relation to the volume, make up, frequency and statutory requirements of the SWOs that will be discharged to the Rine River and concerns that there was no assessment of the required stormwater storage volume and that the details in relation to the stormwater tank are not specific.

7.19. UÉ has stated that all licenced and authorised sewage systems typically operate with the potential for SWOs to enter the aquatic environment untreated or with limited treatment. UÉ also states that the 516m³ combined sewer overflow (CSO) tank has been designed to deal with low probability storm events up to the 30-year 0.5-hour event. UÉ states that the design of the SWOs, emergency overflow and combined sewer overflow (CSO) storage tank is in accordance with the relevant UÉ standards and specifications which ensure compliance with the Wastewater Discharge (Authorisation) Regulations 2007.

7.20. UÉ states that 3 no. SWOs will discharge to the River Rine through the proposed outfall discharge. It is stated that all SWOs into the proposed discharge pumps will be screened to ensure the majority of solids are retained at the WWTP.

7.21. I acknowledge that the WWTP currently does not discharge to the River Rine and therefore there will be a new effect on this river as a result of the proposed discharge relocation.

7.22. It is my view that the CSO storage tanks will improve the overall functioning of the wastewater treatment plant. The Board should note that the construction of such tanks is supported by the 1995 SWO Guidelines which states that such tanks are "*increasingly recommended as an alternative to the up-sizing of downstream capacity for reducing or eliminating storm water overflows. These tanks operate on the principle that flows in excess of the downstream capacity can be contained until the storm has sufficiently abated to allow the stored storm water to be returned to the sewer*".

7.23. Whilst the 1995 SWO Guidelines recommends a tank size for a design event for a storm of one hour duration with a return period of 5 years, UÉ has designed its CSO

storage tank to accommodate a 30-year 0.5 hour storm event which I note is beyond such recommended standard.

7.24. Having regard to the above, it is my view that the 516m³ CSO storage tank will improve the overall functioning of the WWTP, will ensure that the WWTP is not overloaded during periods of heavy rainfall and is a measure supported by the 1995 SWO Guidelines. Furthermore, it is my view that this additional storage represents an adequate adaptation measure that ensures that the WWTP can respond to potential future climate change impacts and therefore complies with the provisions of the Climate Action Plan 2024 in this regard.

Emergency Overflow (EO)

7.25. I note the appellant's concerns regarding the emergency overflow (EO) and the absence of any information on where it will discharge to and whether there will remain any discharge of untreated sewage to Lough Gash.

7.26. The Board should note that UÉ has stated it is proposed to change 1 no. SWO which is currently discharging to Lough Gash to an EO. UÉ states that this will only be operated as a result of a simultaneous power failure or if all discharge pumps break simultaneously. UÉ has also stated that this scenario is extremely low. I consider this response to be satisfactory and the feature will ensure the WWTP continues to operate in the event of an emergency.

Tertiary Treatment

7.27. I note the appellant's questioning of the need for a bypass line around the proposed tertiary filter. UÉ has stated that this is to be installed as a failsafe option in the unlikely event that one tertiary filter fails and the other is undergoing maintenance so that the treatment processes can continue operation. Again, the Board should note that I consider this response to be satisfactory and ensures the WWTP can continue to operate in the event of failures. Furthermore, the Board should note that there would continue to be secondary treatment in any such event as currently provided. Therefore, there would be no diminution of treatment standards from the existing situation if the use of the bypass line was required.

7.28. Whilst I acknowledge that this is not questioned by the appellant, the Board should note that the use of tertiary treatment is supported by the UWWTD and which will

greatly improve the treatment of the wastewater by reducing nitrogen and phosphorus and thereby limiting eutrophication. Therefore, having regard to this and to the level of dilution available within the River Rine and Fergus estuary, I consider that this feature of the proposed development will greatly improve the quality of effluent discharging from the WWTP.

Other Issues

7.29. The appellant has raised a number of concerns regarding the absence of details on the submitted drawings. The Board should note that a number of the structures questioned by the appellant represent works that have already been approved planning permission under application ref. 08/8015. Furthermore, I note that the PA validated the application and therefore was satisfied with the content of the application. The Board should note that having reviewed the drawings, I am satisfied that they fully illustrate the extent of the proposed works and are in compliance with the requirements of Articles 22 and 23 of the Planning and Development Regulations 2001, as amended.

7.30. With regards to the appellant's frustrations regarding the three consent procedure and the absence of co-ordination, I consider that such concerns are outside of the remit of the Board. The application was submitted in accordance with national legislation.

8.0 Appropriate Assessment (AA)

8.1. I have concluded under Appendix 2 of this report that the proposed development could result in significant effects on the Lower River Shannon SAC, the River Shannon and River Fergus Estuaries SPA and Lough Gash Turlough SAC, in view of the conservation objectives of a number of qualifying interest features of those sites, and therefore, have determined that Appropriate Assessment (stage 2) under Section 177V of the Planning and Development Act 2000, as amended, of the proposed development is required.

8.2. As stated under paragraph 7.3 above, this AA is accompanied by a specialist report from the Inspectorate Ecologist (IE) which has assessed the impact of the construction of the rising main and outfall diffuser within the River Rine on two qualifying interests of the Lower River Shannon SAC; Atlantic salt meadows (1330) and Mudflats and sandflats not covered by seawater at low tide (1140).

(a) <u>Baseline Condition of River Rine</u>

8.3. Firstly, I acknowledge that the appellant has raised concerns that this application seeks to include a retrospective AA for an existing bridge (i.e. Latoon Creek bridge) to the west of the outfall location in the River Rine. The Board should note that this bridge was subject to a Part 8 application in 2017 (ref. 17/8004) that was approved by the local authority and the works have since been completed. The appellant states that as an AA was not carried out for this project a proper baseline assessment cannot be made for the subject project as there is no way of knowing the extent of damage done to the European sites.

8.4. The Board should note that this Part 8 application was in relation to structural repair works to an existing bridge which I note is different in terms of its nature and scale to that of this application. In that instance and in accordance with national legislation, the PA was the competent authority and screened out the need for appropriate assessment prior to the grant of consent and prior to commencement of the development. It should also be noted that this part 8 application was subject to public consultation and was circulated to a number of prescribed bodies.

8.5. Having regard to the above, I cannot accept the argument that this project seeks to provide a retrospective AA for the completed bridge works and I note that the appellant has not provided any evidence that the completed works to the bridge have damaged the SAC or SPA.

8.6. With regards to the appellant's comments that no environmental assessments in relation to the M18 Motorway bridge were considered, the Board should note that this project was completed in 2007 and, therefore, I would consider that any such assessments to be outdated for the purposes of this project. The appellant should note that the National Parks and Wildlife Service's (NPWS) supporting documents for the Lower River Shannon SAC and the River Shannon and River Fergus Estuaries SPA are from 2012 and therefore provide a more up-to-date detailed analysis of the baseline environment of the European sites.

8.7. Furthermore, the Board should note that the applicant has undertaken a number of onsite surveys, including a benthic survey within the River Rine on 20th June 2022 and fishery surveys within the River Rine in March and May 2023. I consider that these surveys provide an adequate assessment of the baseline condition of the River Rine.

(b) Natura Impact Statement (NIS)

8.8. The application included a Natura Impact Statement (NIS) which examines and assesses the potential adverse effects of the proposed development on the Lower River Shannon SAC, River Shannon and River Fergus Estuaries SPA and Lough Gash Turlough SAC. The methodology of the NIS included a desktop study and a number of field surveys which I have noted within Appendix 2 and under paragraphs 8.6 and 8.7 above. The Board should note that I am satisfied that the applicant's NIS was prepared by suitably qualified and experienced ecologists in line with current best practice guidance, provides an assessment of the potential for adverse effects on the site integrity of the Lower River Shannon SAC, River Shannon and River Fergus Estuaries SPA and Lough Gash Turlough SAC and includes prescribed mitigation measures to ensure no adverse effects on the integrity of these European sites. The applicant's NIS concluded that "*the proposed development alone and in combination with other projects and plans, including the implementation of mitigation measures, it can be concluded that no adverse effects on the integrity of any European sites will arise, in view of the site's conservation objectives*."

8.9. Having reviewed the documents, submissions and consultations with IFI, the NPWS and Department's Development Applications Unit, I am satisfied that the information allows for a complete assessment of any adverse effects of the development on the conservation objectives of the following European sites, alone or in-combination with other plans and projects:

- Lower River Shannon SAC (Site Code 002165)
- River Shannon and River Fergus Estuaries SPA (Site Code 004077)
- Lough Gash Turlough SAC (Site Code 000051)

(c) Alternative Discharge Locations

8.10. The appellant raises concerns that the submitted NIS does not address alternative discharge locations. The Board should note that Article 6(4) of the Habitats Directive references alternative solutions if there is a negative assessment of the implications of the site and the project must proceed for imperative reasons of overriding public interest (IROPI). It should be noted that the NIS did not reach such a determination.

8.11. Notwithstanding this, I note that section 1.4 of the submitted planning report (November 2022) does provide an analysis of alternative locations. It states that the proposed discharge location (Option 1) was selected as the most favourable of three potential discharge options as it, inter alia, presented the shortest rising main construction distance from the WWTP, all works would be completed within public lands and assimilative capacity calculations determined that there were sufficient dilutants available in the receiving waters to ensure the Good status of the River Rine was not hindered. Option 2, which proposed to discharge to the Shannon wastewater network 5km south of Newmarket-on-Fergus, was discounted on the basis of potential insufficient capacity of the Shannon network and Shannon WWTP to accept and treat effluent flows and option 3, which proposed to discharge to a downstream section of the Boheraroan stream 3.5km southwest of the WWTP, was not deemed to be suitable due to the limited assimilative capacity of the Boheraroan stream which would potentially prevent it from achieving Good status under the Water Framework Directive. Based on the information before me, I consider these conclusions to be reasonable.

(d) <u>Appropriate Assessment of implications of the proposed development</u>

8.12. The following is a summary of the objective scientific assessment of the implications of the proposed development on the qualifying interest features of the European sites using the best scientific knowledge in the field. All aspects of the project which could result in significant effects are assessed and mitigation measures designed to avoid or reduce any adverse effects are considered and assessed. The Board should note that I have had regard to the specialist report of the Inspectorate Ecologist which is attached under Appendix 3 of this report and to the following guidance:

- Appropriate Assessment of Plans and Projects in Ireland, Guidance for Planning Authorities (Department of Environment, Heritage and Local Government, 2009)
- Assessment of plans and projects significantly affecting Natura 2000 sites. Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC (European Commission, 2001)
- Managing Natura 2000 sites. The provisions of Article 6 of the Habitats Directive 92/43/EEC (European Commission, 2019)

8.13. The Board should also note that I have had regard to the Clare County Development Plan 2023-2029 Natura Impact Report, SEA Report and Strategic Flood Risk Assessment Report in accordance with objective CDP3.3(f), to the existing operational performance of the plant as recorded within the AERs on the EPA website, to the EPA site inspection reports, which detail that the plant is operating in compliance with emission limit values in accordance with the UWWTD and WWDL and to the Urban Wastewater Treatment Directive (91/271/EEC) Procedures and Criteria in relation to Storm Water Overflows (Department of the Environment, 1995).

8.14. I have also had regard to the 'survey report for waterfowl numbers, usage and distribution on the River Shannon and the River Fergus Estuaries 2017-2018' which was completed as part of the Strategic Integrated Framework Plan for the Shannon Estuary. The survey is described as the most comprehensive waterbird survey of the estuaries ever undertaken with the counts carried out monthly between May 2017 and April 2018. I note from the findings of the survey that the location of the proposed outfall is within subsite OH535 which was recorded to have a lower density of wintering birds despite the area having the most extensive area of intertidal habitat. The lower sections of the River Shannon and River Estuaries comprised of a much higher density of intertidal waterbirds.

(e) <u>European Sites</u>

8.15. The following sites are subject to appropriate assessment:

(a) Lower River Shannon SAC

(b) River Shannon and River Fergus Estuaries SPA

(c) Lough Gash Turlough SAC

8.16. A description of the site and its Conservation and Qualifying Interests/Special Conservation Interests, are set out as part of my assessment within Appendix 4 of this report and within the submitted NIS. I have also examined the Natura 2000 data forms as relevant (including the NPWS' Article 17 Species and Habitats reports) and the Conservation Objectives supporting documents for these sites available through the National Parks and Wildlife Service's website.

(f) Operational Phase Impacts

8.17. The main aspects of the proposed development during the operational phase that could adversely affect the conservation objectives of these European sites include the following:

- Impact on water quality due to discharge of organic waste and/or nutrients and inadequate wastewater treatment.

8.18. The NIS outlines that assimilative capacity modelling finds that the waters of the River Rine have sufficient capacity to support the discharge within emission limit values (ELVs) and given the nature of the benthic communities recorded in the River Rine and based on the ELVs which will be required, any effluent from the proposed outfall will have little or no impact on the benthic environment of the river. The outfall diffuser is designed to avoid fish entrainment.

8.19. I note that the proposed development does not propose to increase the 5,000PE organic capacity of the WWTP but proposes to increase the treatment efficiency by providing increased storage for SWOs (which is supported by the 1995 Guidelines) and incorporating additional tertiary treatment within the treatment process. Having regard to the nature of the development, to the existing operational performance of the WWTP, to my assessment of the SWOs under Section 7 above, to the dilution available within the River Rine and Fergus estuary, to the requirement for the WWTP to comply with the ELVs under the WWDL and UWWTD, I consider that the operation of the proposed development would not adversely affect the integrity of these said European sites, or any other European site, in view of the sites' Conservation Objectives.

8.20. In contrast, as described within the NIS, the removal of discharge to Lough Gash SAC has the potential to reduce nutrients entering the SAC which I consider to be a positive outcome. Whilst an existing treated effluent discharge of 436m^3 per day to the turlough will be lost the Board should note that this is an artificial flow which does not constitute part of the natural hydrological regime.

8.21. Therefore, having regard to the above, I am satisfied that the operational phase of the development will ensure no adverse effects on the site integrity of any European site, in view of their conservation objectives.

(g) Construction Phase Impacts

8.22. The main aspects of the proposed development during the construction phase that could adversely affect the conservation objectives of these European sites include the following:

- Potential loss of estuarine habitat as a result of the installation of the rising main and outfall.
- Potential permanent loss of saltmarsh habitat if it does not re-establish itself.
- Potential damage associated with escapement of silt during the construction phase within the River Rine and Boheraroan stream; with many of the habitats and freshwater qualifying interest species dependent on water quality, an impact of sufficient magnitude could undermine the site's conservation objectives.
- Potential damage to riparian and river habitats and species associated with inadvertent spillages of cement, hydrocarbons and/or other chemicals during the construction phase;
- Potential mortality of aquatic species within pumps during dewatering of the River Rine.
- Potential noise disturbance to SPA QI species and other QI species (including ex-situ) during the construction works.
- Potential dust deposition as a result of construction works
- Localised dewatering of the turlough as a result of excavation works within the karst limestone rock to accommodate the underground wet well.

(h) Mitigation Measures

8.23. Section 6 of the submitted NIS outlines a number of mitigation measures to prevent any adverse effect on the site integrity of any European site. It is stated that no mitigation measures are required for the operational phase. The Board should note that I am in agreement with this conclusion having regard to paragraphs 8.17 to 8.21 above.

- Confirmatory otter surveys to be undertaken in advance of commencement of works within 150 metres of the works areas and no more than 10-12 months prior to construction commencing.
- No works to take place within 150 metres of an otter holt where breeding females or cubs are present and any works within 150 metres of such a holt will only take place after consultation with the NPWS.
- The employment of an ecological clerk of works (ECoW) to supervise works and advice on mitigation measures implementation.
- The employment of an independent environmental clerk of works (EnCoW) to review and comment on pre-construction survey reports, mitigation proposals and monitoring and compliance reports generated by the ECoW.
- The instream works within the River Rine to take place between July and September during the fishery closed season with the sheet piles for the cofferdam to be installed during low tide and when the flow in the river is low.
- The erection of silt curtains around the sheet piles to trap and contain sediment and silt that may be disturbed.
- The removal of the sheet piles via vibratory extraction to minimise disturbance and during low tide and when the flow in the river is low.
- Concrete will be transported to the site and no on-site batching will take place. Pours to only take place in isolated dry works areas and where pumping is required to maintain a dry works area the pumps will be turned off during the pour and until the concrete is hardened. Silt buster discharge will be monitored during the concrete works.
- Mobile equipment to be housed in suitably sized bunds to intercept any leaks or spills.
- Fuelling and lubrication of plant and equipment to take place in the construction compounds or laydown areas.
- Spill kits and hydrocarbon absorbent packs will be stored in the cabin of each vehicle and will be inspected on a weekly basis.

- The implementation of trenchless construction techniques at the Boheraroan stream crossing by competent and experienced specialist contractors with silt and sediment controls and water retention within the works area. Works will not be carried out during extreme rainfall or high flows events and will be carried out in accordance with IFI Guidelines on protecting fisheries during construction works.
- Monitoring of the Boheraroan stream works including the load stress and the volume of cuttings produced to ensure no over cutting takes place and that hole cleaning is maintained. Mud returns will be pumped to a circulation system trailer.
- An emergency incident response plan will be developed in consultation with IFI in order to address incidents including release of sediments.
- Dust suppression techniques and installation of solid screens/barriers around any dusty activities.
- The undertaking of a survey for the mobile aquatic species salmonids and lamprey by a suitably qualified and experienced ecologist prior to works commencing.
- The isolated works area to be de-fished under licence before dewatering takes place and if pumping is required to maintain the dry area the pumps will be fitted with mesh to prevent intake of aquatic species.
- The erection of sound reducing hoarding within 150 metres of the River Rine to reduce noise impacts. The Board should note that I am satisfied that this mitigation measure is sufficient having regard to the area not representing a high density location for wintering birds as outlined under paragraph 8.14 above.
- All plant to be operated and maintained in accordance with the manufacturer's recommendations.
- The carrying out of a pre-construction invasive species survey prior to commencement of works. All machinery will be steam cleaned prior to entering and before leaving the site.

Saltmarsh Habitat

8.24. Table 6.6 of the submitted NIS outlines specific mitigation measures in relation to the loss of saltmarsh habitat:

- The employment of an experienced botanist who has managed upper saltmarsh habitat translocation previously.
- The carrying out of a detailed baseline monitoring mapping survey of the saltmarsh/reedbed prior to commencement of the development to identify any creeks and pans within the area to be impacted.
- The surveying of the vegetation of the proposed pipeline corridor to provide a baseline.
- The selection of a temporary storage area for the excavated saltmarsh turves and the surveying of the vegetation composition of this storage area. The area will be cleared to produce a level surface and covered with a layer of wooden bog maps to prevent mixing of soil material between the storage area and the excavated turves and to facilitate early reinstatement of the turves..
- Works to the salt marsh habitat will be undertaken outside of the marked area using a long arm excavator.
- Turves of salt marsh will be carefully removed and stored in the order they were excavated with the vegetation side up within the storage area. They will be tightly packed to minimise drying out of their edges. The outer edges of the overall group will be covered in Geojute, coir mesh or similar to ensure no erosion occurs during high tide events.
- The turves will be monitored daily by the ECoW and will be watered as required. The maximum timeline for storage will be 4-6 weeks.
- The turves will be reinstated at the locations from which they were originally excavated and any small gaps will be filled with salt marsh soil and will be inspected by the EnCoW and daily monitoring by the ECoW to ensure the turves do not dry out.

8.25. It is stated that if the reinstatement fails, alternative methods will be incorporated such as seeding the open mudflat within the saltmarsh with seed material from the local

saltmarsh habitat. I note that the conservation objective is to restore its favourable condition based on the area being stable or increasing with no decline or change in habitat distribution and to maintain more than 90% of the saltmarsh area vegetated. I have reviewed NECR205[6] and the NPWS supporting document – coastal habitats (2012) and note that the habitat is not rare and is found over a wide area of the SAC. It is described as the dominant saltmarsh habitat at the site being recorded at all 10 sub-sites surveyed by the SMP (McCorry and Ryle, 2009), including the subject site SMP0082.

8.26. I have also had regard to the specialist report of the ABP inspectorate ecologist (IE) which is attached under Appendix 3 of this report. The IE is in agreement with the conclusions reached in the NIS with regards to Atlantic Salt Meadows (1330) and intertidal flats (1140) and that the mitigation to translocate and reinstate the saltmarsh will be effective with a high degree of confidence provided it is implemented in full as set out in Table 6.6 of the NIS. This is based on the experience with the Corrib Gas Pipeline saltmarsh translocation and reinstatement, which the NIS quoted 'Louise Denning PhD thesis (December 2017)' considered a success as well as the Corrib Biodiversity Action Plan 2021-2026. This project used the same methods, involved similar mid-upper marsh habitat and taking into account that it affected a significantly larger area of 0.2 hectares (compared to 0.04 hectares for the subject development) and it had a more species diverse area of habitat. The vegetation composition of the proposed development site includes species which have been shown to be suited to this approach.

8.27. I also note that the IE specialist report acknowledges that should the re-instatement fail and re-profiling and re-seeding is required, the consequences of this would be slower recovery time post-construction and the risk of the negative indicator species Spartina anglica (which is the main factor behind unfavourable condition of the QI in the site) colonising areas of bare mud / disturbed soil. However, it is noted that this species is less likely to colonise the more estuarine conditions present at the subject site and colonisation by sea club-rush or common reeds already present at the site is

[6] Small-scale effects: How the scale of effects has been considered in respect of plans and projects affecting European sites - a review of authoritative decisions - NECR205 (naturalengland.org.uk)

more likely. Therefore, I am satisfied that this does not represent a compensatory measure.

8.28. Therefore, having regard to the above, to the mitigation measures proposed, and to the extent of effected saltmarsh habitat being 0.04 hectares which accounts for 0.008% of the total 495 hectare habitat within the SAC, I consider that adverse effects on the integrity of the European site in relation to QIs 1330 and 1140 can be excluded and there is no reasonable doubt remaining as to the absence of such effects.

8.29. Overall, I consider the mitigation measures outlined within the submitted NIS to satisfactorily address the potential site effects highlighted in paragraph 8.22 above.

(i) <u>In-combination Impact</u>

8.30. With regard to potential in-combination effects, having reviewed the Department of Housing, Local Government and Heritage's National Planning Application database and EIA Portal and the Clare County Council's planning register, I consider that there is potential for an in-combination effect with the Part 8 application (Ref. 17/8004) which was approved by Clare County Council in 2017. As stated under paragraph 8.4 above, this related to structural repair works which have been completed and which was subject to an appropriate assessment screening. The local authority determined that there was no potential for significant effects on the European sites.

8.31. Furthermore, there is Part 8 approval for new cycling infrastructure within the subject site and under the M-18 motorway bridge (PA Ref. 22/8007). A screening for appropriate assessment accompanied this application and the local authority determined that there was no potential for any significant effects on the Lower River Shannon SAC or the River Shannon and River Fergus Estuaries SPA.

8.32. Having regard to the above, to the nature of this proposed development and to the implementation of mitigation measures outlined under paragraphs 8.23 to 8.25 above, I am satisfied that the in-combination impact of this project, and any other project or plan, will not affect the overall integrity of the European Sites.

(j) <u>Appropriate Assessment Determination</u>

8.33. The proposed development has been considered in light of the assessment requirements of Sections 177U and 177V of the Planning and Development Act 2000, as amended. Having carried out screening for Appropriate Assessment of the project,

I concluded that it may have a significant effect on the Lower River Shannon SAC (Site Code 002165), the River Shannon and River Fergus Estuaries SPA (Site Code 004077) and Lough Gash Turlough (Site Code 000051). Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of these sites in light of their conservation objectives.

8.34. Following an Appropriate Assessment, I have ascertained that the proposed development, individually or in combination with other plans or projects, would not adversely affect the integrity of these said European sites, or any other European site, in view of the sites' Conservation Objectives. This determination is based on a complete assessment of all aspects of the proposed project and there is no reasonable doubt as to the absence of adverse effects.

9.0 Water Framework Directive (WFD)

9.1. UÉ has stated that the purpose of this project is to comply with the WFD with discharge standards being set to maintain 'Good' status in the water quality of the River Rine. The Board should note that the proposed outfall location within this section of the River Rine is located within the catchment of Shannon Estuary North (Code 27) and within the transitional waterbody of the Fergus Estuary in which the ecological status is classed as 'moderate' and the chemical status is classed as 'good' (2016-2021). The overall status is therefore classed as 'moderate' and 'at risk' of not meeting its environmental objective of good or high status under the WFD.[7]

9.2. Whilst the waterbody is currently not classed as 'Good', the Board should note that I consider that it is unlikely that the project would cause any significant deterioration or change in the water body status. I also consider that the project would not prevent attainment or potential to achieve the WFD objective. My reasoning for this conclusion is due to the purpose and nature of the proposed development which will improve the level of treatment to be achieved in the WWTP by providing additional tertiary treatment and CSO storage, to the existing operational performance of the WWTP being in accordance with its WDL and the UWWTD, to the mitigation measures

[7] https://www.catchments.ie/data/?_gl=1*j0kwr3*_ga*MjA4NDA3MjgzOC4xNjk4ODUxOTE3*_ga_TPK2CK9KEX*MTcyODMwNjExNy4xMDcuMS4xNzI4MzA4MDExLjAuMC4w#/waterbody/IE_SH_060_1100?_k=aprpkk

proposed as part of the construction phase and to the level of dilution available within the River Rine and Fergus estuary.

9.3. Furthermore, having regard to the limited assimilative capacity of the Boheraroan stream and to the relocation of the discharge from the Boheraroan stream/Lough Gash, this will assist in ensuring that the 'Poor' water quality of this waterbody is improved in accordance with the WFD.

9.4. Therefore, I am satisfied that the proposed development complies with the urban wastewater environmental measures set out under the Water Action Plan 2024 and objectives CDP3.3(a) and (g) of the Clare County Development Plan 2023-2029.

10.0 Material Contravention

10.1. I note the appellant's arguments that the proposed development materially contravenes the Clare County Development Plan 2023-2029 (CDP). The issue appears to be on AA grounds as objective CDP15.4 of the CDP is referred to. However, the full description of objective CDP3.3(a)-(f) is also referenced and therefore I will address each subsection of this objective accordingly.

10.2. Having regard to my assessment above, the Board should note that I consider that the project will not adversely affect the integrity of any European site and therefore I consider that the proposed development does not materially contravene objective CDP15.4 or objective CDP3.3(a), (c), (e) or (f) of the CDP in this regard. I am satisfied that the application has been fully informed by an adequate NIS and Ecological Impact Assessment in accordance with objective CDP3.3(b).

10.3. Furthermore, I consider that the project complies with the objectives and requirements of the Habitats Directive, Birds Directive, WFD and UWWTD and therefore I consider the project does not materially contravene objective CDP3.3(a) or (g) in this regard.

10.4. Whilst there will be temporary removal of saltmarsh habitat this will be reinstated. If the reinstatement fails proven and reliable alternative methods will be utilised and therefore, I consider that the proposed development does not materially contravene objective CDP3.3(d) in this regard.

10.5. Therefore, I concur with the PA and am satisfied that a material contravention does not arise, and therefore, the requirement under Section 37(2)(b) does not arise in this instance.

11.0 **Recommendation**

I recommend to the Board that permission is **Granted**, subject to conditions, for the reasons and considerations set out under Section 12 below.

- The Board should note that the EPA are responsible in setting emission limit values under the WWDL and therefore no such condition is recommended in this regard.
- The PA recommended a reinstatement report detailing how the saltmarsh habitat will be restored, a procedure for monitoring, a report on its success and if it is unsuccessful to undertake a program of reseeding. I am satisfied that the submitted NIS has adequately addressed the methodology for restoration, and I am satisfied that Condition no. 2 below adequately addresses the remaining requirements of the PA's condition.
- Whilst I note that the PA conditioned for confirmatory otter surveys, as this is outlined as a mitigation measures within the submitted NIS, I consider that condition no.2 below is sufficient.
- I have recommended a condition for a final Construction Environmental Management Plan (CEMP) to be submitted to the PA for approval, as outlined within Section 6.1 of the NIS, which incorporates all mitigation measures set out in the NIS as well as ensuring that all vehicles are not operated on the saltmarsh either side of the River Rine as recommended by the Inspectorate Ecologist.
- Finally, the Board should note that condition nos. 13 and 14 below are described exactly as worded by the Development Applications Unit of the Department of Housing, Local Government and Heritage.

12.0 **Reasons and Considerations**

Having regard to the provisions of:

(a) The Habitats Directive 92/43/EEC, the Birds Directive 79/409/EEC as amended by 2009/147/EC, the Urban Wastewater Treatment Directive 91/271/EEC, the Water Framework Directive 2000/60/EC and the EIA Directive 2011/92/EU as amended by 2014/52/EU;

(b) The Clare County Development Plan 2023-2029 including objectives CDP3.3 (Appropriate Assessment), CDP 11.32 (Wastewater Treatment and Disposal) and CDP 15.4 (Requirement for Appropriate Assessment);

(c) The National Planning Framework including national policy objective 63;

(d) The Regional Spatial and Economic Strategy for the Southern Region including regional policy objective 211;

(e) The Water Action Plan 2024;

(f) The Water Services Strategic Plan 2015;

(g) The Climate Action Plan 2024;

(h) The National Biodiversity Action Plan 2023-2030;

together with the established site context and pattern of development in the area, to the nature and purpose of the development to increase the treatment efficiency of the existing Newmarket-on-Fergus wastewater treatment plant which will provide a higher quality of discharged effluent, to the operational performance of the existing wastewater treatment plant being in accordance with the emission limit values set out under the EPA wastewater discharge licence and Urban Wastewater Treatment Directive 91/271/EEC, to the available hydraulic and organic capacity of the existing wastewater treatment plant, to the River Rine's 'moderate' classification under the Water Framework Directive, to the level of dilution available within the River Rine and Fergus estuary and to the range of proposed mitigation measures set out in the submitted Natura Impact Statement and Ecological Impact Assessment, it is considered that the proposed development, subject to conditions, would result in a satisfactory standard of effluent discharge in line with licence requirements being discharged into the River Rine, would assist Ireland in meeting its obligations set down

under the European Union Directives, national legislation and policy, would not result in an adverse impact on the environment and would not be prejudicial to public health. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

13.0 **Conditions**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the plans and particulars submitted to the planning authority on the 2nd day of August 2023 and on the 18th day of August 2023, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to the commencement of development and the development shall be carried out in accordance with the agreed particulars.

   Reason: In the interest of clarity.

2. The mitigation measures contained in the submitted Natura Impact Statement (NIS), shall be implemented in full.

   Reason: To protect the integrity of European sites.

3. The mitigation measures contained in the submitted Ecological Impact Assessment, shall be implemented in full.

   Reason: To protect the environment.

4. Site preparation and construction shall adhere to best practice and shall conform with the requirements of Inland Fisheries Ireland.

   Reason: For the protection of fisheries during construction works.

5. An environmental clerk of works shall be engaged on site for the duration of the works to supervise, monitor and ensure the strict implementation of all mitigation measures set out in the documents referred to above.

   Reason: In the interest of the proper planning and sustainable development of the area and to ensure the preservation of the integrity of the qualifying interests associated with Natura 2000 sites in the vicinity.

6. Odour levels at the site boundary shall comply with an odour concentration limit of 3 ouE/m3 on a 98th percentile basis of hourly averages. Procedures for the purpose of determining compliance with this limit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

   Reason: To protect residential amenity of property in the vicinity.

7. All external lighting within the proposed development shall be sufficiently cowled so as to ensure that light spillage beyond the boundary of the site is minimised.

   Reason: In the interest of residential amenity

8. The attenuation and disposal of surface water shall comply with the requirements of the planning authority for such works and services. No surface water from the site shall be permitted to discharge to the public road or adjoining properties.

   Reason: In the interest of public health.

9. Prior to the commencement of development, the developer shall submit to the planning authority for written approval a detailed Construction and Environmental Management Plan. This plan shall identify the names, roles and responsibilities of the appointed ecological clerk of works and appointed

contractor, shall clearly identify all measures / commitments as set out in the submitted NIS in relation to construction activities and confirms that all vehicles including excavators are not operated on the saltmarsh either side of the River Rine.

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

10. A detailed construction traffic management plan shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The plan shall include details of arrangements for routes for construction traffic, parking during the construction phase, the location of the compound for storage of plant and machinery and the location for storage of deliveries to the site.

    Reason: In the interest of traffic safety and convenience.

11. Site development and building works shall be carried out between the hours of 08:00 to 19:00 Mondays to Fridays inclusive, between 08:00 to 18:00 on Saturdays and not at all on Sundays and public holidays. Deviation from these times shall only be allowed in exceptional circumstances where prior written agreement has been received from the planning authority.

    Reason: To safeguard the amenity of property in the vicinity.

12. Prior to commencement of development, a Resource Waste Management Plan (RWMP) as set out in the EPA's Best Practice Guidelines for the Preparation of Resource and Waste Management Plans for Construction and Demolition Projects (2021) shall be prepared and submitted to the planning authority for written agreement. The RWMP shall include specific proposals as to how the RWMP will be measured and monitored for effectiveness. All records (including for waste and all resources) pursuant to the agreed RWMP shall be made available for inspection at the site office at all times.

    Reason: In the interest of reducing waste and encouraging recycling.

13. (a) All mitigation measures in relation to archaeology as set out in the Archaeological Impact Assessment (AIA) report (Mizen Archaeology, March 2023) included in application documents shall be implemented in full, except as may otherwise be required in order to comply with the conditions of this permission.

(b) The developer shall engage a suitably qualified Archaeologist to monitor (licensed under the National Monuments Acts) groundworks associated with the development in the vicinity of Recorded Monuments CL042-140 --- (Enclosure), CL042-064001- (Earthwork) and CL042-064002- (Castle - unclassified). The use of appropriate machinery to ensure the preservation and recording of any surviving archaeological remains shall be necessary. No ground disturbance shall take place in these areas in absence of the Archaeologist without his/her express consent.

(c) Should archaeological remains be identified during the course of archaeological monitoring, all works shall be suspended in the area of archaeological interest pending a decision of the Planning Authority, in consultation with the Department, regarding appropriate mitigation (preservation in situ / excavation).

(d) The developer shall facilitate the Archaeologist in recording any remains identified. Any further archaeological mitigation requirements specified by the Planning Authority, following consultation with the Department, shall be complied with by the developer.

(e) The Planning Authority and the Department shall be furnished with a final archaeological report describing the results of any archaeological investigative work/excavation required, following the completion of all archaeological work on site and any necessary post-excavation specialist analysis. All resulting and associated archaeological costs shall be borne by the developer.

Reason: To ensure the continued preservation either in situ or by record of places, caves, sites, features or other objects of archaeological interest.

14. Archaeological monitoring shall be undertaken as follows:

(a) The services of a suitably qualified and suitably experienced archaeologist shall be engaged to carry out archaeological monitoring of all works within the river/riverbanks of the development site, including demolition of historic structures and features, in-stream excavations, ground reduction works, service trenching and all other works as advised by the monitoring archaeologist.

(b) The archaeological monitoring shall be carried out under a Section 26 (National Monuments Act 1930) licence from the Department and in accordance with an approved method statement. The method statement shall lay out the monitoring strategy for each location where works are proposed. Licensed metal detection shall be undertaken in tandem with the monitoring. The method statement shall contain a Finds Retrieval Strategy that includes for the spreading, systematic searching and metal detection of all excavated deposits in order to maximise the retrieval of archaeological objects. A Detection Device consent (Section 2 1987 National Monuments Act) will be required for the metal detecting works. Note a period of 3-4 weeks should be allowed to facilitate processing and approval of licence applications and method statement.

(c) The monitoring archaeologist shall obtain a dive/survey licence (Section 3(5) of the National Monuments Act 1987) in order to facilitate investigation of underwater archaeological materials should they be uncovered/identified.

(d) In order to ensure full communication is in place between the monitoring archaeologist and the works contractor at all times, a communication strategy shall be implemented that provides the monitoring archaeologist with adequate notice of all forthcoming works that require their attendance. Sufficient, suitably experienced and qualified, archaeological personnel shall be in place to cover all aspects of the monitoring works and all in-stream works shall be monitored by a suitably qualified and experience underwater archaeologist.

(e) Should archaeological structures, features, deposits or objects or suspected/potential archaeological structures, features, deposits or objects be found during the course of the archaeological monitoring, the archaeologist

shall be authorised to suspend all construction works in the affected part of the site (as identified by the monitoring archaeologist) in order to facilitate investigative assessment, protection and prompt notification to the Department and other statutory authorities, as required. The developer shall be prepared to be advised by the Department with regard to any ensuing mitigating action. Mitigation may include recommendations for redesign to allow for full or partial preservation in situ, the institution of archaeological exclusion zones, test-excavations, excavations ('preservation by record') and/or monitoring, as deemed appropriate. No construction works should recommence within the affected area until after an amended method statement that describes the mitigation strategy has been submitted, reviewed and agreed in writing by the Department.

(f) The planning authority and the Department shall be furnished with a final archaeological report describing the results of all archaeological monitoring and any archaeological investigative work/excavation required, following the completion of all archaeological work on site and any necessary post-excavation specialist analysis. All resulting and associated archaeological costs shall be borne by the developer.

Reason: To ensure the continued preservation either in situ or by record of places, caves, sites, features or other objects of archaeological interest.

15. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or,

in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

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

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.

Gary Farrelly, MRTPI MIPI
Planning Inspector
14th November 2024

Appendix 1: EIA Preliminary Examination

Form 1 - EIA Pre-Screening

An Bord Pleanála Case Reference	318408-23
Proposed Development Summary	Upgrade of existing wastewater treatment plant including construction of new wet well pumping station, outfall rising main and diffuser, tertiary treatment system, CSO storage tank, 2 no. chemical storage tanks, standby generator and associated works
Development Address	Boheraroan, Newmarket-on-Fergus, County Clare

1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)	Yes	**X**
	No	No further action required

2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?

Yes	**X**	Part 1: Class 13 Wastewater treatment plants with a capacity exceeding 150,000 population equivalent as defined in Article 2, point (6), of Directive 91/271/EEC Part 2: Class 10(b)(iv) Urban development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere. Class 11(c) Wastewater treatment plants with a capacity greater than 10,000 population equivalent as defined in Article 2, point (6), of Directive 91/271/EEC not included in Part 1 of this Schedule. Class 15: Any project listed in this Part which does not exceed a quantity, area or other limit specified in this Part in respect of the relevant class of development but which would be likely to have significant effects on the environment, having regard to the criteria set out in Schedule 7.	Proceed to Q.3

No			No further action required.
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?			
Yes			EIA Mandatory EIAR required
No	**X**		Proceed to Q.4
4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			
Yes	**X**	The existing WWTP has a capacity of 5,000PE and is well below the threshold outlined under Part 1, Class 13 and Part 2, Class 11(c). It is not proposed to increase the capacity of the 5,000 PE WWTP. The WWTP is urban in nature and the area of the compound measures approximately 1 hectare, therefore well below the 10-hectare threshold. The overall site measures 8.96 hectares, is partially located outside the built up area and also below the 10-hectare threshold.	Preliminary examination required (Form 2)
5. Has Schedule 7A information been submitted?			
No	**X**	Screening determination remains as above (Q1 to Q4)	
Yes		Screening Determination required	

Form 2 - EIA Preliminary Examination

The Board carried out a preliminary examination [ref. Art. 109(2)(a), Planning and Development regulations 2001, as amended] of at least the nature, size or location of the proposed development, having regard to the criteria set out in Schedule 7 of the Regulations. **This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.**		
	Examination	**Yes/No/ Uncertain**
Characteristics of proposed development (In particular, the size, design, cumulation with existing/proposed development, nature of demolition works, use of natural resources, production of waste, pollution and nuisance, risk of accidents/disasters and to human health).	The development relates to the upgrading of an existing wastewater treatment plant that has an organic capacity of 5,000PE. There will be no increase in the existing capacity. The plant currently operates in accordance with the ELVs set down by the existing WWDL and UWWTD. There is also sufficient organic and hydraulic capacity within the plant having regard to the 2023 AER. Therefore, having regard to this and to the nature of the development which will further improve the treatment efficiency of the plant by providing additional tertiary treatment and CSO storage it is considered that there will be no significant production of waste, emissions or pollutants. Whilst the stated area of the site totals 8.96 hectares, this is largely due to the 4.41km routing of the rising main to the outfall in the River Rine. The existing compound measures approximately 1 hectare and the proposed upgrades to the WWTP are not considered exceptional in the context of the existing environment.	**No**
Location of development (The environmental sensitivity of geographical areas likely to be affected by the development in particular existing and approved land use, abundance/capacity of natural resources, absorption capacity of natural environment e.g.	The existing WWTP compound is located next to Lough Gash Turlough SAC and pNHA and the location of the new outfall discharge is located within the Rine River within the Lower River Shannon SAC. The new 516m³ combined sewer overflow (CSO) storage tank will be constructed to deal with low probability storm events up to the 30-year 0.5-hour storm event. All SWOs into the proposed discharge pumping station will be screened to ensure that the majority of solids are retained	**No**

wetland, coastal zones, nature reserves, European sites, densely populated areas, landscapes, sites of historic, cultural or archaeological significance).	within the wastewater inflow to the plant, thereby not discharging into the River Rine. An existing SWO which discharges to the Boheraroan Stream is proposed to be changed to an emergency overflow which will only operate in the unlikely event of a simultaneous power failure and failure of the new proposed standby generator, or in the event that all discharge pumps (duty/assist/standby) break simultaneously. An NIS and Ecological Impact Assessment were submitted which propose mitigation measures for protection of water quality and species. No signs of badger or potential roosting features for bats were identified. No linear habitats will be removed for foraging bats.	
Types and characteristics of potential impacts (Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects and opportunities for mitigation).	My appropriate assessment (AA) concludes that the proposed development would not adversely affect the integrity of any European site subject to mitigation measures. Additionally, I consider that the proposed development would not have any significant impact on any national designated sites. Having reviewed the Department of Housing, Local Government and Heritage's National Planning Application database and EIA Portal, Clare County Council's planning register and application refs. 17/8004 and 22/8007, there is no potential for significant cumulative effects with any projects.	**No**

Conclusion		
Likelihood of Significant Effects	**Conclusion in respect of EIA**	
There is no real likelihood of significant effects on the environment.	EIA is not required.	**X**
~~There is significant and realistic doubt regarding the likelihood of significant effects on the environment.~~	~~Schedule 7A Information required to enable a Screening Determination to be carried out.~~	
~~There is a real likelihood of significant effects on the environment.~~	~~EIAR required.~~	

Appendix 2: Appropriate Assessment Screening Determination

Stage 1, Article 6(3) of the Habitats Directive: Screening Determination
I have considered the proposed development in light of the requirements of Section 177U of the Planning and Development Act 2000, as amended. A screening report has been prepared by Mott MacDonald on behalf of the applicant and the objective information presented in that report informs this screening determination.
Description of the proposed development
It is proposed to construct upgrades to an existing wastewater treatment plant within the town of Newmarket-on-Fergus in order to improve the efficiency of the plant. The 5,000 PE design organic capacity of the plant is not proposed to be increased. I have provided a detailed description of the development in my report (Section 2) and detailed specifications of the proposal are provided in the submitted AA screening report and other planning documents provided by the applicant. In summary, the development with a total site area of 8.96 hectares, will consist of 1 no. 516m³ storm storage tank, a pumping station with associated vale chambers and wet well, a tertiary treatment system consisting of 2 no. tertiary filter units and a flocculation tank, 2 no. chemical storage tanks (each with a volume of 7.5m³), an electrical control kiosk, a standby generator, the construction of circa 4.4km of rising main to an outfall diffuser within the River Rine and all ancillary site works.
Consultations and submissions
I note that the applicant consulted with the Development Applications Unit (DAU) of the National Parks and Wildlife Service (NPWS) and with Inland Fisheries Ireland (IFI) in June 2022. I note that both prescribed bodies made submissions on the application. Issues raised by the DAU include the following related to the appropriate assessment process: • Information on how the excavated saltmarsh turves would be stored and maintained in good condition and for how long.

- Information on whether a pre-construction invasive species survey would be carried out.
- The presence of an ecological clerk of works during the installation works at the River Rine.

Issues raised by IFI include the following related to the appropriate assessment process:

- The installation and removal of the cofferdam to be subject to the close season for instream works.
- The inclusion of SWOs within the monitoring of releases from the pump station.
- Implementation of all mitigation measures.

European Sites

Three European sites were identified as being located within a potential zone of influence of the proposed development. The works within the River Rine overlap with the Lower River Shannon SAC (Site Code 002165) and are in close proximity to the River Shannon and River Fergus Estuaries SPA (Site Code 004077). Lough Gash Turlough SAC (Site Code 000051) is located adjacent to the wastewater treatment plant compound.

European Site	Qualifying Interests	Distance	Connections
Lower River Shannon SAC	https://www.irishstatutebook.ie/eli/2023/si/328/made/en/pdf	Outfall location is within SAC	Yes
River Shannon and River Fergus Estuaries SPA	https://www.irishstatutebook.ie/eli/2019/si/329/made/en	C. 50 metres west of proposed outfall location	Yes

Lough Gash Turlough SAC	https://www.irishstatutebook.ie/eli/2018/si/72/made/en	Adjoins the WWTP site	Yes

I note that the applicant included a greater number of European sites in its initial screening consideration with sites within 15km of the development site considered. There is no ecological justification for such a wide consideration of sites, and I have only included those sites with any possible ecological connection or pathway in this screening determination.

Surveys undertaken by the applicant included a walkover survey, a winter bird survey at Lough Gash Turlough and the Rine Esturary at Latoon (from November 2020 to February 2021 and repeated monthly between November 2022 and March 2023), a breeding bird survey on Lough Gash and the river Rine area in May and June 2021, a benthic survey within the river Rine in June 2022 and a baseline fishery survey in the river Rine during March and May 2023.

Likely impacts of the project

Due to the location of the proposed development within the Lower River Shannon SAC it will result in a direct impact on this European site. Furthermore, due to the proximity of the River Shannon and River Fergus Estuaries SPA and to its location downstream of the outfall location, there is potential for direct and indirect impacts on this European site. Whilst no works are proposed within Lough Gash Turlough SAC, there is potential for indirect impacts due to the proximity and Boheraroan stream hydrological link. The applicant has applied the source-pathway-receptor model in determining possible impacts and effects of the proposed development.

Sources of impact include:

- The removal of saltmarsh habitat to accommodate the installation of the rising main and outfall.
- Release of silt and sediment during site works contributing to increased sediment load to receiving water features.
- Release of construction related compounds including hydrocarbons to surface water.

- Increased human disturbance at this site during the construction/installation phase.

Likely significant effects on the European sites in view of the conservation objectives

Based on the information provided in the screening report, site visit, review of the conservation objectives and supporting documents, I consider that in the absence of mitigation measures beyond best practice construction methods, the proposed development has the potential to result in the following impacts:

- Potential damage to the salt marsh habitat, a qualifying interest of the Lower River Shannon SAC due to its removal and temporary storage.
- Potential damage to riparian and river habitats associated with inadvertent spillages of hydrocarbons and/or other chemicals during construction phase.
- Potential damage to the Lower River Shannon SAC and Lough Gash Turlough SAC associated with escapement of silt during the construction phase; with many of the Lower River Shannon SAC habitats and freshwater qualifying interest species dependent on water quality, an impact of sufficient magnitude could undermine the sites conservation objectives.

I concur with the applicants' findings that such impacts could be significant in terms of the stated conservation objectives of the SAC and SPA.

Overall conclusion: Screening determination

In accordance with Section 177U of the Planning and Development Act 2000, as amended, and on the basis of objective information provided by the applicant, I conclude that the proposed development could result in significant effects on the Lower River Shannon SAC, the River Shannon and River Fergus Estuaries SPA and Lough Gash Turlough SAC, in view of the conservation objectives of a number of qualifying interest features of those sites.

It is therefore determined that Appropriate Assessment (stage 2) under Section 177V of the Planning and Development Act 2000, as amended, of the proposed development is required.

Appendix 3: Inspectorate Ecologist Specialist Report

Appendix 4: Summary of Appropriate Assessment

Lower River Shannon SAC (Site Code 002165)					
Summary of Appropriate Assessment					
Qualifying Interest feature	**Conservation Objectives Targets and attributes**	**Potential adverse effects**	**Mitigation measures** *(Detailed within paragraphs 8.23 to 8.25 of this report)*	**In-combination effects**	**Can adverse effects on integrity be excluded?**
Sea Lamprey	To restore the favourable conservation condition. The target is for there to be greater than 75% of main stem length of rivers accessible from the estuary and for there to be no decline in extent and distribution of spawning beds.	• Mortality of aquatic species due to intake in pumps during dewatering in River Rine • Deterioration in water quality	• Instream works during fishery closed season • Pumps to be fitted with mesh to prevent intake of aquatic species • Installation and removal of piles during low tide/flow in river is low • Erection of silt curtains • Vibratory extraction • Concrete pours in dry works area	Having reviewed the Department of Housing, Local Government and Heritage's National Planning Application database and EIA Portal, Clare County Council's planning register and application refs. 17/8004 and 22/8007, there is no potential for in-combination effects that would adversely affect the integrity.	Yes
Brook Lamprey (1096)	To maintain the favourable conservation condition. The target is for, inter alia, access to all water courses down to first order streams, to have at least three age/size groups of lamprey and for there to be no decline in extent and distribution of spawning beds.				Yes

River Lamprey (1099)	To maintain the favourable conservation condition. The target is for, inter alia, access to all water courses down to first order streams, to have at least three age/size groups of lamprey and for there to be no decline in extent and distribution of spawning beds.		• Incorporation of bunds to intercept leaks and spills • Spill kits • Employment of experienced botanist • Baseline monitoring mapping survey prior to works • Removal of turves to a temporary storage area • If reinstatement fails, seeding of open mudflat • Monitoring by ECoW and EnCoW • Confirmatory otter surveys in advance of works • No works within 150m of an otter holt • Dust suppression techniques		
Atlantic Salmon (1106)	To restore the favourable conservation condition. The target is to, inter alia, make 100% of river channels down to second order assessable from the estuary, to have no decline in the number and distribution of spawning redds and to have a q value of at least Q4 at all sites sampled by the EPA.				Yes
Estuaries (1130)	To maintain the favourable conservation condition. The habitat area is estimated at 24,273 hectares and the target is for this to be stable or increasing and to conserve the community types in a natural condition. The community types are illustrated within Map 9 of the	• Deterioration in water quality • Potential for permanent loss/degradation of estuarine habitat			Yes

	NPWS Conservation Objectives document (2012).		• Installation of screens/barriers around works area • Erection of sound reducing hoarding • Use of noise reduction measures on all operating plant • Pre-construction invasive species survey.		
Mudflats and sandflats not covered by seawater at low tide (1140)	To maintain the favourable conservation condition. The habitat area is estimated at 8,808 hectares and the target is for this to be stable or increasing and to conserve the community types in a natural condition. The community types are illustrated within Map 9 of the NPWS Conservation Objectives document (2012).				Yes
Reefs (1170)	To maintain the favourable conservation condition. The target is for the distribution and permanent habitat area of reefs to be stable. The location of this QI is illustrated on Map 8 of the 2012 NPWS Conservation Objectives document being within the River Fergus.				Yes
Atlantic salt meadows (1330)	To restore the favourable conservation condition. There is a total estimated area of 495.43 hectares.	• Potential direct loss of saltmarsh habitat due to installation			Yes

	The target is for, inter alia, the area to be stable or increasing, no decline or change in habitat distribution, maintain creek and pan structure and maintain more than 90% of the saltmarsh area vegetated.	of rising main and outfall			
Mediterranean salt meadows (1410)	To restore the favourable conservation condition. Whilst Map 12 of the 2012 NPWS Conservation Objectives document illustrates this QI approximately 7km downstream, it has been recorded in the vicinity (SMP Shepperton survey station; Brophy et al., 2019)				Yes
Otter (1355)	To restore the favourable conservation condition The target is for there to be, inter alia, no significant decline in their distribution, in their terrestrial, marine and river habitat or in their couching sites and holts.	• Deterioration in water quality • Noise and dust disturbance			Yes
Freshwater Pearl Mussel (1029)	To restore the favourable conservation condition. Having regard to Map 15 of the NPWS Conservation Objective	None	N/A	N/A	Yes

	document, this QI is located upstream of the outfall location within the Cloon River and approximately 40km southwest of the outfall. Therefore, no potential adverse effects are expected.				
Sandbanks which are slightly covered by sea water all the time (1110)	To maintain the favourable conservation condition. Having regard to Map 3 of the 2012 NPWS Conservation Objectives document, this QI is located approximately 65km downstream of the outfall location and therefore no potential adverse effects are expected.	None	N/A	N/A	Yes
Coastal lagoons (1150)	To restore the favourable conservation condition. Having regard to Map 6 of the 2012 NPWS Conservation Objectives document, the nearest lagoon being located at Shannon airport approximately 20km from the outfall location, no potential adverse effects are expected.	None	N/A	N/A	Yes

Large shallow inlets and bays (1160)	To maintain the favourable conservation condition. Having regard to Map 7 of the 2012 NPWS Conservation Objectives document, this QI is located approximately 50km downstream of the outfall, and therefore, no potential adverse effects are expected.	None	N/A	N/A	Yes
Perennial vegetation of stony banks (1220)	To maintain the favourable conservation condition. Having regard to Map 10 of the 2012 NPWS Conservation Objectives document, this QI is located approximately 45km downstream of the outfall, and therefore, no potential adverse effects are expected.	None	N/A	N/A	Yes
Vegetated sea cliffs of the Atlantic and Baltic coasts (1230)	To maintain the favourable conservation condition. Having regard to Map 11 of the 2012 NPWS Conservation Objectives document which illustrates this QI approximately 40km downstream and to the main pressures and threats	None	N/A	N/A	Yes

	associated with the QI as outlined within the NPWS 2019 Article 17 Habitat Assessment, no potential adverse effects are expected.				
Salicornia and other annuals colonizing mud and sand (1310)	To maintain the favourable conservation condition. Having regard to Map 12 of the 2012 NPWS Conservation Objectives document which illustrates this QI approximately 60km downstream, no potential adverse effects are expected.	None	N/A	N/A	Yes
Bottlenose dolphin (1349)	To maintain the favourable conservation condition. Having regard to Map 16 of the 2012 NPWS Conservation Objectives document which illustrates this QI habitat approximately 7km downstream, the critical habitat being approximately 35km downstream and to the main pressures and threats associated with the QI as outlined within the NPWS 2019 Article 17 Species Assessment	None	N/A	N/A	Yes

	no potential adverse effects are expected.				
Watercourses of plain to montane levels with the Ranunculion fluitantis and Callitricho-Batrachion vegetation (3260)	To maintain the favourable conservation condition. The NPWS supporting document for this QI (June 2012) and Map 13 of the 2012 NPWS Conservation Objectives document shows this habitat upstream of the outfall location. There no potential adverse effects are expected.	None	N/A	N/A	Yes
Molinia meadows on calcareous, peaty or clayey-silt-laden soils (6410)	To maintain the favourable conservation condition. Having regard to the pressures and threats associated with this QI, as outlined within the NPWS 2019 Article 17 Habitat Assessment no potential adverse effects are expected.	None	N/A	N/A	Yes
Alluvial forests with Alnus glutinosa and Fraxinus excelsior (91E0)	To restore the favourable conservation condition. Having regard to Map 14 of the 2012 NPWS Conservation Objectives document which illustrates this QI habitat upstream of the outfall, and to the main pressures and threats associated with the QI as	None	N/A	N/A	Yes

	outlined within the NPWS 2019 Article 17 Habitat Assessment no potential adverse effects are expected.				

Overall Determination: Integrity test
Following the implementation of mitigation, the construction and operation of this proposed development will not adversely affect the integrity of the European Site in view of the site's conservation objectives. No reasonable scientific doubt remains as to the absence of such effects.
Note:
Monitoring is included as best practice and does not imply any uncertainty regarding adverse effects or the effectiveness of any mitigation measures.

River Shannon and River Fergus Estuaries SPA (Site Code 004077)					
Summary of Appropriate Assessment					
Qualifying Interest feature	**Conservation Objectives**	**Potential adverse effects**	**Mitigation measures**	**In-combination effects**	**Can adverse effects on integrity be excluded?**
All QI bird species	To maintain the favourable conservation condition of all bird species	• Noise disturbance • Dust disturbance Additionally, potential ex-situ effect on Black headed gull, Scaup, Shoveler and Teal species recorded within Lough Gash.	• Dust suppression techniques • Installation of screens/barriers around works area • Erection of sound reducing hoarding • Use of noise reduction measures on all operating plant • Employment of ECoW and EnCoW • Erection of silt curtains • Vibratory extraction • Concrete pours in dry works area • Incorporation of bunds to intercept leaks and spills • Spill kits	Having reviewed the Department of Housing, Local Government and Heritage's National Planning Application database and EIA Portal, Clare County Council's planning register and application refs. 17/8004 and 22/8007, there is no potential for in-combination effects that would adversely affect the integrity.	Yes
Wetland and Waterbirds [A999]	To maintain the favourable conservation	• Deterioration in water			

	condition of the wetland habitat as a resource for the regularly occurring migratory waterbirds that utilise it				

Overall Determination: Integrity test
Following the implementation of mitigation, the construction and operation of this proposed development will not adversely affect the integrity of the European Site in view of the site's conservation objectives. No reasonable scientific doubt remains as to the absence of such effects.
Note:
Monitoring is included as best practice and does not imply any uncertainty regarding adverse effects or the effectiveness of any mitigation measures.

Lough Gash Turlough SAC (Site Code 000051)					
Summary of Appropriate Assessment					
Qualifying Interest feature	**Conservation Objectives Targets and attributes**	**Potential adverse effects**	**Mitigation measures**	**In-combination effects**	**Can adverse effects on integrity be excluded?**
Turloughs (3180)	To maintain the favourable conservation condition. The target is for, inter alia, a stable area at circa 22 hectares or increasing, no decline in distribution, subject to natural processes, maintain appropriate natural hydrological regime necessary to support the natural structure and functioning of the habitat and to maintain/restore nutrient status appropriate to soil types and vegetation communities.	• Localised dewatering of groundwater due to excavation • Water pollution • Dust deposition There will be a loss of circa 436m3 of WWTP discharge per day, however, this does not form part of the natural hydrological regime.	• Works during the summer when turloughs are dry • Trenchless construction techniques such as pipe jacking, above Boheraroan stream crossing • Silt controls/water retention within works areas • Silt fences • Daily flow monitoring • Emergency incident response plan. • Erection of solid screens and barriers around works areas. • Dust suppression techniques	Having reviewed the Department of Housing, Local Government and Heritage's National Planning Application database and EIA Portal, Clare County Council's planning register and application refs. 17/8004 and 22/8007, there is no potential for in-combination effects that would adversely affect the integrity.	Yes. The removal of WWTP discharge has potential to assist in restoration of the nutrient status.
Rivers with muddy banks with Chenopodion rubri p.p. and Bidention p.p. vegetation (3270)	To maintain the favourable conservation condition. The target is for, inter alia, the area to be stable or increasing, subject to natural processes, no decline in distribution, subject to natural processes, maintain				

	appropriate natural hydrological regime necessary to support the natural structure and functioning of the habitat, and to maintain/restore appropriate water quality to support the natural structure and functioning of the habitat.		• Dust sweeper		

Overall Determination: Integrity test
Following the implementation of mitigation, the construction and operation of this proposed development will not adversely affect the integrity of the European Site in view of the site's conservation objectives. No reasonable scientific doubt remains as to the absence of such effects.

Note:
Monitoring is included as best practice and does not imply any uncertainty regarding adverse effects or the effectiveness of any mitigation measures.