



An  
Bord  
Pleanála

## Inspector's Report ABP-304149-19

### Development

To construct two digestion tanks, a storage silo, an ESB sub-station for the completion of an agricultural anaerobic digestion facility, and

To retain and complete pasteurisation/pump room/offices, machinery shed, new entrance road onto public road and all associated ancillary site works.

### Location

Dromkeen West, Causeway, Co. Kerry

### Planning Authority

Kerry County Council

### Planning Authority Reg. Ref.

18/762

### Applicant(s)

Sandford Energy Ltd

### Type of Application

Permission & retention permission

### Planning Authority Decision

Grant, subject to 17 conditions

### Type of Appeal

Third Parties -v- Decision

### Appellant(s)

Wym O'Connell

Roy Dineen

Miriam Hanley  
Kerry Education & Training Board  
Jackie & Margaret O'Carroll

**Observer(s)**

Michael & Eileen Brick  
Donal Mulvihill  
Margaret O'Connor  
Dennis O'Connor

**Date of Site Inspection**

18<sup>th</sup> July 2019

**Inspector**

Hugh D. Morrison

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## 1.0 Site Location and Description

- 1.1. The site is located to the SW of the centre of Causeway, a village on the R551 between Ballyduff, in the east, and Ballyheige, in the west. This site is also located 0.3 km to the WSW of the village's southern extremity, which includes Marian Terrace, and due south of the local GAA grounds and Causeway Comprehensive School. It is accessed by means of a farm track off the western side of a local road, the L-1034, which runs southwards from Causeway.
- 1.2. The site is relatively flat, and it lies within a wider area of farmland that shares this characteristic to the east, south, and west. This area is served by a network of open drainage ditches that connect to the River Crompaun to the east, which is a tributary of the River Brick and, ultimately the River Feale, which flows into the Mouth of the Shannon. To the north, the land rises gently and so the majority of the village and the said school are elevated in relation to the site.
- 1.3. The site extends over an area of 1.01 hectares. Its main body is of regular shape. This site has been partially developed with a view to providing an agricultural anaerobic digester facility. The buildings/structures thus constructed are presently in use for the storage of agricultural machinery and fodder. Spoil from the works undertaken to date has been used, in part, for spreading over adjoining land to the west.

## 2.0 Proposed Development

- 2.1. The proposal is for the provision of an agricultural anaerobic digester, which would be designed to handle an annual through put of 14,000 tonnes of largely crops, to generate 500 kW of electricity, and to provide biogas for nearby community buildings. The said tonnage would disaggregate as follows:
  - 5000 tonnes of grass silage,
  - 5000 tonnes of maize silage,
  - 2000 tonnes of sugar beet, and
  - 2000 tonnes of cattle slurry.

These crops and cattle slurry would originate on the applicant's farmlands, which either adjoin the site or lie within the wider locality. The associated farmyard is the village of Causeway.

- 2.2. The proposal comprises elements that are proposed for retention and completion and elements that are proposed as new build construction.

The former elements are as follows:

- The building that would be used to house the pasteurisation process, the combined heat and power engine, and the site office,
- The building that would be used to house machinery,  
(The two buildings would have a floorspace of 325 sqm)
- The new entrance road to the site, which would parallel the existing one on its southern side, and
- All associated ancillary works.

The latter elements are as follows:

- Two digestion tanks (1184 sqm),
- A storage tank, and
- An ESB sub-station (35 sqm).

- 2.3. Additionally, the submitted site layout plan show feedstock storage silos (1350 sqm) and a concrete tank, which have been constructed. A note on this plan states that they have planning permission.

- 2.4. The site is/would be laid out as follows:

- The entrance road would connect with the north-eastern corner of the main body of the site,
- The proposed tanks would be sited centrally with the first of the aforementioned buildings and the sub-station to the east and the second of these buildings and the concrete tank to the north west, and
- The storage silos are to the north of where the tanks would be sited.

## 3.0 Planning Authority Decision

### 3.1. Decision

Following receipt of further information and clarification of this information, draft permission granted subject to 17 conditions. These conditions include the following:

- Under condition 8, the type and quantities of materials are capped, food waste is prohibited, and deliveries are restricted to Mondays to Saturdays between 07.00 and 18.00.
- Under condition 9, environmental monitoring arrangements are set out, e.g. odour, noise, and dust.
- Under condition 12, reporting arrangements for any incidents that may arise are set out.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

Further information and clarification of this information sought.

With respect to the former, the following information was requested:

- Items submitted as “further information” on foot of the proceeding application should be submitted in their own right.
- Revised site layout plan should distinguish completed, retain and complete, and proposed development.
- Elevations for the CHP Engine Room to be corrected.
- Elevations of the machinery garage to be corrected.
- Consequentially, site sections to be corrected.
- Drawings of specified structures to be submitted.
- Clarification with respect to car parking spaces north of the sub-station.
- Clarification of what is envisaged for the eastern side of the storage tank.
- Environmental matters:

- Inconsistencies between drawings to be addressed,
- Flow diagram to be submitted of the process,
- Details of type and quantities of feedstock,
- Confirm the non-use of food,
- Quantity of digestate to be produced and confirmation of on-site storage,
- Details of any liquid feedstock storage,
- Clarify use of concrete tank,
- Clarify use of underground pre-pit,
- Management of any leachate or waste waters arising,
- Clarify where solid digested material would be stored,
- Confirm availability of landbank for the spreading of material and an associated nutrient management plan,
- An up-to-date Article 11 determination from the EPA,
- Continuing validity of 1<sup>st</sup> Stage Authorisation from the Department of Agriculture, Fisheries and the Marine,
- Submission of Air Emission Assessment,
- Submission of Noise Impact Assessment,
- Submission of Odour Emission Assessment,
- Submission of an assessment of potential nuisances, e.g. dust, vermin, or insect infestation, and
- Commentary on staff canteen and toilet facilities.
- Traffic and Transport Assessment (TTA) to be submitted.

With respect to the latter, the following clarification was requested:

- Clarification as to siting of pasteurisation units/tanks,
- Noise Impact Assessment to address the need for a baseline survey, scenario within which multi-noise sources operate simultaneously, and implications of 24/7 working, and

- Clarification of available sightlines at site access point.

### 3.2.2. Other Technical Reports

- Roads: Following receipt of further information and clarification of this information, no objection, subject to conditions.
- Environment: Following receipt of further information and clarification of this information, no objection, subject to conditions.

## 4.0 Planning History

- 11/539: Applicant – Sandyford Energy: Proposal – An agricultural anaerobic digestion facility (1184 sqm), silage/feedstock storage silo (1350 sqm), associated buildings (315 sqm), including ESB sub-station and site works, including new entrance onto public road: Inputs would total 11,315 tonnes per annum, i.e. 8625 tonnes of grass silage + 2500 tonnes of cattle manure, and a subsequent generation of 380kW of electricity: Following receipt of further information, permitted, and final grant issued on 29th February 2012, subject to 12 conditions. No submissions/objections were received from the public.
- 14/276: Applicant – Sandyford Energy Ltd: Proposal – Erect agricultural and food waste anaerobic digestion facility, comprising biomass, feedstock storage and feed facilities (grass silage, maize, farm yard manure), food waste reception (Inputs would total 20,000 tonnes per annum, i.e. 10,000 tonnes of non-food and 10,000 tonnes of food) and processing building, including ESB sub-station, site works and a new entrance onto public road: Following request for further information, application withdrawn.
- A warning letter and enforcement notice were served on the applicant on 4<sup>th</sup> April and 25<sup>th</sup> May 2018, respectively.
- Pre-application consultation occurred on 7<sup>th</sup> June 2018.
- 18/611: Applicant – Sandyford Energy Ltd: Proposal – As under current application: Incomplete and so invalidated.
- ABP-304172-19: Application for leave to appeal the decision made on the current application was granted to Kerry Education and Training Board.

- ABP-304191-19: Application for leave to appeal the decision made on the current application was granted to Jackie and Margaret O'Carroll.

## 5.0 Policy and Context

### 5.1. Development Plan

Under the Kerry County Development Plan 2015 – 2021 (CDP), the site is shown as lying outside the settlement boundary around the village of Causeway<sup>1</sup> and in an area zoned Rural General, which is also a Structurally Weaker Area. Section 12.3.1 of the CDP comments on the said zoning as follows:

*Rural landscapes within this designation generally have a higher capacity to absorb development than the previous rural designations. It is important that development in these areas be integrated into their surroundings in order to minimise the effect on the landscape and to maximise the potential for development.*

Section 13.12 of the CDP addresses agricultural buildings.

Variation 8 to the Kerry County Development Plan 2009 – 2015 comprised a Renewable Energy Strategy 2012 (RES). Under the heading of bioenergy, this Strategy discusses biomass, combined heat and power (CHP), and anaerobic digestion and accompanying Objectives are set out. Amongst these, the following three are of particular relevance to the current proposal:

*NR 7-47: Proposals for the development of a commercial bioenergy should be close to the point of demand and be served by public roads with sufficient capacity to absorb increased traffic flows and adjacent to transport corridors.*

*NR 7-48: In rural areas the planning authority will consider proposals for small scale developments close to the source material and where roads have capacity to absorb increased traffic flows. Such plants should, where possible, be located in proximity to existing agricultural buildings.*

*NR 7-50: Bioenergy installations shall not be permitted in areas where such developments may affect residential or visual amenity.*

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<sup>1</sup> The Causeway Local Area Plan is included within the Tralee/Killarney HUB Functional Local Area Plan 2013 – 2019.

## 5.2. Natural Heritage Designations

- Lower River Shannon SAC (site code 002165)
- Cashen River Estuary pNHA (site code 001340)
- Akeragh, Banna and Barrow Harbour SAC and pNHA (site code 000332)
- Tralee Bay Complex SPA (site code 004188)

## 5.3. EIA Screening

Under the proposal, the following quantities of materials would be used in the process annually:

- 5000 tonnes of grass silage,
- 5000 tonnes of maize silage,
- 2000 tonnes of sugar beet, and
- 2000 tonnes of cattle slurry.

Under Article 2(1)(f) of the Waste Framework Directive 2008/98/EC, “waste” is defined as excluding “straw and other natural non-hazardous agricultural...material used in farming...or for the production of energy from such biomass through processes or methods which do not harm the environment or endanger human health.” Under Article 2(2)(b) of this Directive, “waste” is defined as including “animal by-products...which are destined for use in a biogas...” Such products include cattle slurry.

Under Item 11(a) of Part 2 of Schedule 5 of the Planning and Development Regulations, 2001 – 2019, mandatory EIA is required where waste installations would have an annual intake greater than 25,000 tonnes. Under the current proposal, the annual intake would be 14,000 tonnes, but only 2000 of these would come within the aforementioned definition of “waste”.

The current proposal is sub-threshold and so it requires to be the subject of a preliminary examination. I will address the four questions that arise in this respect:

(i) Is the size or nature of the proposal exceptional in the context of the existing environment?

The site is 1.01 hectares in area and the footprints of the proposed buildings and structures would aggregate to 2894 sqm. Aspects of the proposal would have an agricultural character and aspects would have an industrial character. Causeway Village includes within it agricultural buildings and to the west of this Village lies “Dairymaster” a supplier of agricultural products. Overall the proposal would have the appearance of an agricultural development on the periphery of the Village.

(ii) Will the development result in the production of any significant waste, or result in significant emissions or pollutants?

The proposal is for the retention and completion of an agricultural anaerobic digestion facility. The digestate from this facility would be spread as a fertiliser on the applicant’s farmlands, which lie in the surrounding area and beyond. Impacts from the facility would affect noise, odour, and air quality within the said surrounding area. The applicant states that these impacts would be capable of being satisfactorily mitigated. The Planning Authority is in agreement, while appellants and observers contest the same.

(iii) Is the proposal located on, in, adjoining or have the potential to impact on an ecologically sensitive site or location?

The site does not lie within a Natura 2000 site or a NHA site. There may be a source/pathway/receptor route between this site and watercourses that discharge into the Mouth of the Shannon, which is designated along its coastline as the Lower Shannon SAC.

(iv) Does the proposal have the potential to affect other significant environmental sensitivities in the area?

The site is not within an area of any known archaeological interest.

In the light of the answers to the above cited questions and the discussion of significance of impacts set out in the EPA’s “Guidelines on the Information to be contained in EISs”, I conclude this pre-examination as follows:

Having regard to the nature and scale of the proposal, it is considered that the issues arising from the proximity/connectivity to European Sites can be adequately dealt with under the Habitats Directive (Appropriate Assessment) as there is no likelihood

of other significant effects on the environment. The need for EIA can, therefore, be excluded at this pre-examination stage.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

#### (a) Wym O'Connell of "Papillion", Main Street, Causeway

- The characteristics, location, and potential impacts of the proposal are reviewed. Consequently, the view is expressed that this proposal should have been the subject of a determination as to whether EIA was necessary, prior to its commencement.

The site is upstream of the Lower Shannon SAC and so the proposal should, likewise, have been the subject of a screening exercise for AA.

If EIA or AA are required, then, under Section 34(12) of the Planning and Development Act, 2000 – 2019, the applicant is debarred from making an application to retain unauthorised development.

- The Planning Authority's view that the proposal is for the same development as that which was permitted under application 11/539 is contested with respect to the following considerations:
  - The substantive works undertaken on site occurred after the said permission had expired.
  - These works diverge from that which was permitted, i.e. the siting of buildings and their orientations were different (cf. retention application 18/611, which was invalidated on the grounds of substantially incorrect information).
  - Works which were undertaken while the said permission was extant also diverged from what had been authorised (cf. retention application 18/611, which was invalidated on the grounds of substantially incorrect information).
  - Other works were also undertaken while the said permission was extant, which were not referred to in application 11/539, i.e. a large channel was

constructed, which connects the site to a tributary of the River Feale, excavated material from the site was dumped on adjacent land under the applicant's control, and a mobile home has been installed on the site.

- The development levy required under permitted application 11/539 was partly paid only in 2018.
- The outstanding works set out in the current application also differ from those previously shown in permitted application 11/539, i.e. the sizes of the primary and secondary digester tanks, a fully sealed -v- an open digestate storage tank, siting of emergency flare, heat injection unit, and weighbridge, and the specification of a security gate and external digestate storage/collection area.
- The current proposal and its predecessor differ with respect to the feedstock inputs, digestate outputs, and the amount of energy that would be generated.

In the light of the above considerations, the Board is invited to review the Planning Authority's view that the expired permission legitimises the principle of now considering and permitting the retention of significantly different unauthorised development.

- The Board is also invited to review the use of further information as a vehicle for submitting environmental information, which is equivalent to that comprised in EIAR, and to the disorderly and confusing manner in which this information was submitted.
- Concern is expressed that further information refers to documents that have not been made available, e.g. a Hazard and Operability Study, and the Planning Authority has not undertaken a risk assessment of the proposal.
- Concern is expressed that environmental and biodiversity assessments, which should be made prior to decision, are the subject of condition, e.g. the submission of a Nutrient Management Plan and a Waste Management Plan.
- Attention is drawn to application 14/276 and the Planning Authority's further information requested for an EIS and Screening for AA.

- Attention is drawn to the applicant's waste activities: Application 12/588 for a change of use of an agricultural shed to a biosolids store was permitted and led to the intake of 4000 tonnes of urban waste water treatment sludge for land spreading. The subsequent spreading was carried out in a disorderly manner and led to noxious odours affecting Causeway over a period of weeks. The applicant's statement that the site has not been the subject of complaint is thus incorrect.
- Unlike its predecessor, the current application does not include any staff toilet facilities. Such facilities would be available in the applicant's farmhouse 1 km away through the village of Causeway. Hygiene and public health issues would thus arise.
- Attention is drawn to the size of the site and the standard practice of requiring an Archaeological Impact Assessment for larger sites. Thus, unlike in the present case, under application 14/276, such an assessment was requested by the Department of Arts, Heritage and the Gaeltacht.
- The proposal would contravene Section 7.4.11.2 of the Planning Authority's RES, which refers to impacts upon biodiversity, and similar Objectives of the CDP, i.e. NE 5, 6 & 49.
- Reference is made to Section 7.4.7.6 of the RES, which refers to amenity.
- Reference is made to the LAP's strategy for Causeway.
- Reference is made to Section 7.4.11.1 of the RES and the absence from the application of an environmental constraints map.
- The description of the proposal as an *agricultural* anaerobic digestion facility is questioned, as electricity generated would be supplied to the national grid. Rather as a commercial enterprise it would come within Section 7.4.7.6 of the RES.
- The proposal is further critiqued in the light of the following Objectives of the RES:
  - NR 7-21 and the imperatives of proper planning and sustainable development,

- NR 7-25 and compliance with the Habitats Directive,
- NR 7-26 and compliance with the Habitats Directive,
- NR 7-44 and compliance with the CDP's Development Management Standards,
- NR 7-46 and the need for commercial bioenergy plants to be sited on brownfield sites in industrial areas,
- NR 7-48 and the siting of small-scale bioenergy plants only on farms,
- NR 7-49 and the need to assess the potential impact of the proposal, including the large channel constructed on the site, upon Natura 2000 sites,
- NR 7-50 and the impact upon visual amenity, i.e. the visibility of the proposal from the southern approach to the village and inherently risky nature of the 24/7 proposal and its potential for adverse noise and odour impacts from waste materials and traffic generation.
- NR 7-53 and the need to ensure that the delivery of feedstock would not expend fuel that in terms of carbon would cancel out the savings made by the anaerobic digester as a renewable energy facility.

**(b) Roy Dineen of Dromkeen West, Causeway**

- Attention is drawn to the proximity of Causeway Comprehensive School, GAA grounds, an adult education centre and a creche. That these important uses, which provide significant employment, should be put at risk by the proposal is questioned.
- The advice of the Bioenergy Association with respect to projects in Kerry is quoted. This advice sets out relevant planning policies and objectives and notes the lack of definition as to what constitutes a small-scale facility.
- Attention is drawn to the increase in quantities of feedstock and the higher amount of electricity that would be generated under the current proposal than under its predecessor.
- Attention is drawn to the proposal to provide staff toilet and office facilities off-site in the applicant's farmhouse. Would these facilities be available to all

visitors to the site on official duties, too? In this respect, the provisions of draft conditions 12(c) and 9 are cited, which variously, envisage records being kept on site and third parties being present for monitoring purposes. (The presence of a mobile home, in use as a site office, illustrates the need for a presence on-site). The corollary of the use of the farmhouse as stated would be that inspections would have to be pre-arranged and thus potentially compromised.

- Draft condition 10 is cited.
  - The anti-pollution provisions of item (a) are contrasted with the experience on-site of a channel, which was dug to connect with a tributary to the Crompaun River and resulted in pollution of the same and the creation of spoil heaps on adjacent land. Why, unlike in other cases, was no EIAR required?
  - The bund provisions of item (b) are questioned insofar as their implications for the proposal are unclear. Particular concern is expressed over the potential for overflow from the slurry tank,
  - The requirements with respect to the oil absorbent materials of item (c) are questioned.
  - The requirements with respect to an oil separator of item (d) are questioned.
- Draft condition 12 is questioned insofar as it would impinge on the roles of agencies/authorities beyond those of the Planning Authority.
- Attention is drawn to the applicant's alleged mis-handling of sewage sludge and the resulting obnoxious odours that were the subject of complaint to the Environment Department of Kerry County Council.
- Questions are raised as to the usage of a building denoted as "CHP/staff building and ESB sub-station."
- How would run-off from feedstock be handled and pollution risks avoided?
- The accuracy of the submitted site layout plans is questioned with respect to the siting "on-the-ground" of the machinery house/workshop and by extension

other structures. Likewise, confusion arises as to the number of silos proposed.

- Two separate applications would have facilitated clarity, i.e. one for the development needing to be retained and one for the proposed development.
- The Planning Authority's enforcement action is against the development that has been undertaken on site, the entirety of which is unauthorised.
- The current proposal goes beyond the retention and completion of 11/539 and so despite all that has transpired the applicant has received permission for a larger facility than previously authorised.
- The scale of the proposal would be contrary to the LAP's strategy for Causeway and the resulting impacts would adversely affect the amenities of this village.

#### **(c) Miriam Hanley of Causeway**

- The planning history of the site is summarised and the sewage sludge event (referred to by the other appellants above) is recalled.
- Attention is drawn to the narrowness of public roads in Causeway and to their resurfacing, which has resulted in poor surface water drainage with an attendant flooding risk to adjacent properties.
- The impact of the proposal would pose a threat to the continuation of the nearby secondary school, a medical dispensary, and the on-going occupation of dwelling houses.
- Unauthorised works on the site commenced in 2018 and prior to that feedstock was stored thereon with run-off seeping into the ground.

#### **(d) Kerry Education and Training Board**

- The following primary concerns are cited:
  - Increased traffic generation at construction and operational stages has not been fully assessed. Public safety is thus at stake,
  - The Planning Authority's assessment is considered to be flawed and the proposal would materially contravene Objective NR 7-48, and

- Potential air quality and odour impacts may, in the absence of sufficient information, be significant.

The appellant requests an oral hearing.

- The appellant has submitted reports from its planning, environmental, and traffic consultants. The first of these reports is summarised below. (It also summarises the key findings of the other reports).
  - The SEAI publication entitled “Planning Guidance: Recommendations for Bioenergy Projects in Ireland” states that, where projects would be near to sensitive locations such as schools, they should be assessed from a public safety perspective. However, neither the applicant nor the Planning Authority carried out such an assessment.
  - Objective NR 7-48 of the RES envisages small-scale developments only in rural areas. Given that the facility would have an annual throughput of 14,000 tonnes and given that it would operate on a 24/7 basis all year round, it would be a medium-scale development and so, as Objective EP-11 of the CDP recognises the RES, the said Objective would be materially contravened.
  - Causeway Comprehensive School and the GAA Clubhouse and Grounds are highly sensitive receptors with respect to air quality and odours.

In relation to the former, no details of the specific air dispersion model used to assess emissions from the proposed stack are given and details of the stack and its usage are inadequate, e.g. would any abatement system be installed. The height of the stack relative to other proposed buildings may be too short to ensure a proper dispersion of emissions.

In relation to the latter, odour emissions beyond the site boundaries have not been quantified. Such emissions should have been modelled and, in the absence of such an exercise, there is no basis to conclude that complaints would not arise. No odour control systems have been proposed.

- The potential exists, especially during the construction stage, for the proposal to indirectly affect Natura 2000 sites by means of contaminated surface water run-off entering watercourses that flow ultimately into such sites. Accordingly, a NIS should have been prepared and so, in its absence, the proposal should be refused.
- The applicant's TTA fails to address the safety of school children being dropped off and collected during the annual harvest period.

**(e) Jackie & Margaret O'Carroll of Dromkeen West, Causeway**

- Land use zoning, proximity and health hazard:
  - The applicants own land adjoining the subject site and they express concern that the proposal would have serious repercussions for their agricultural use of this land. They also express concern over the implications for the nearby Causeway Comprehensive School.
  - In the light of the CDP and the LAP, the subject site can reasonably be described as a transition zone between the said School and the wider countryside. It is also adjacent to an existing dwelling house and lands with the potential for residential development as part of any future expansion of the village. The introduction of the proposal would thus be inappropriate from a land use perspective.
- Lack of AA Screening:
  - The applicant did not undertake a screening exercise for AA. As the subject site is located within the north-western area of Kerry, there are several Natura 2000 sites within this area. A hydrological pathway between this site and the Lower Shannon SAC exists and an airborne one, too, maybe applicable. Neither the proposal nor the resultant land spreading of digestate has been assessed. In the absence of a screening exercise and any Stage 2 NIS that may have been required as a result, it cannot be concluded that there will be no adverse effects on the integrity of Natura 2000 sites and so, under Objective NR 7-26 of the CDP, a refusal is called for.
- Insufficient EIA Screening and Planning Legislation:

- The Planning Authority's screening for sub-threshold EIA fails to explicitly engage with Schedule 7 of Part 2 of the Planning and Development Regulations, 2001 – 2019. The view is expressed that such an EIA should have been undertaken (cf. application 14/276). Under Section 34 of the Planning and Development Act, 2000 – 2019, in the absence of AA and EIA a refusal should ensue.
- Requirement for EPA waste facility permit, IPPC license and other environmental licenses:
  - The view is expressed that activities on the site require a waste facility permit and that reference to the same should be made within the description of the proposal. The view is also expressed that the proposal should be the subject of an IPPC license.
  - Attention is drawn to the applicant's submission to the public consultation of the Department of Communications, Climate Action and Environment on its document entitled "Renewable Heat Incentive-Design Options and Implementation." This submission described the current proposal as accepting poultry manure. However, such acceptance is not referred to in the current application and, significantly, it is not addressed in the odour assessment.
  - The relevance of otherwise of the Seveso Regulations is not addressed and no assessment of the potential risk of explosion has been undertaken. Likewise, no External Emergency Plan has been prepared.
- Poor quality and lack of required documentation submitted with the planning application:
  - Exception is taken to the applicant's approach in carrying out unauthorised development and then seeking its retention.
  - The submitted application is unclear as to what refers to the elements to be retained and what refers to the elements of pure proposal. Furthermore, certain constructed elements have not been included in the list of ones for retention.

- The description of the proposal is incomplete insofar as it does not refer to the proposed CHP Engine.

## 6.2. Applicant Response

The applicant has responded to the appellants. It begins by making the following points:

- Attention is drawn to application 11/539, which was granted permission, and which attracted no submissions or objections from the public. Wide ranging discussions were undertaken with neighbours concerning the installation of a district heating system. The site was selected, due to its proximity to an ESB sub-station and to facilitate the said heating system.
- Attention is drawn to the permits and licences that the applicant has obtained for the proposal.
- The site is 400m away from a municipal waste water treatment plant. The view is expressed that, consequently, the surrounding area of the site is unsuited to other development, apart from that of the proposal.
- The chronology of development on the site is summarised. Work commenced in 2014 and continued until 2017, when the applicant was advised to apply for retention and completion.
- The applicant outlines how they have contracted with Weltec Biopower for the installation of the plant that would be comprised in the proposal. This firm has installed over 300 such plants, including 10 plants in N. Ireland, some of which were near to villages, too. The applicant also outlines how its directors have attended courses on the running and maintenance of anaerobic digester plants.
- The applicant emphasises the difference between a biomass plant and the small-scale farm-based anaerobic digestion facility, such as that which is currently proposed. The site is integral to the proposal as it facilitates the ready supply of feedstock and subsequent return of digestate through land spreading, thereby obviating the continuation of longer feedstock journeys to other destinations.

By way of response to **appellant (a)**, the following points are made:

- That the proposal would be “inherently high-risk” is cited alongside the prevalence of farm-based anaerobic digesters in several European countries.
- The appellant overlooks the proximity of the ESB sub-station to the site and the opportunity that the proposal would afford to supply a district heating system to local community facilities.
- The size of the proposal is such that EIA is unnecessary.
- The contention that works on site were undertaken only after the expiry of permitted application 11/539 is challenged, i.e. the majority were undertaken before.
- A Plan for Hazard Analysis and Critical Control Points (HACCP) would be prepared once the proposal is built, in accordance with the normal timing of such Plans.
- The applicant’s agricultural consultant will prepare a comprehensive Nutrient Management Plan.
- The directors of Sandford Energy Ltd farm a total of c. 450 acres of land. Feedstock from this land would be used in the proposal and 500 kW of electricity generated thereby for the national grid.
- The proposal would be screened from the village by proposed tree planting.

By way of response to **appellant (b) and (c)**, the following points are made:

- Moisture content in feedstock varies from year-to-year. Consequently, drier feedstock would be lighter and so the maximum of 14,000 tonnes would not always be reached.
- With respect to toilet facilities, a portaloo would be available during the construction phase and a w.c. at the farmhouse. A water supply would be available on the site and a site office would ensure the availability of all relevant records.

- The channel at issue was cleaned out by the applicant as part of normal maintenance only.
- The anaerobic digester cited as requiring to be the subject of EIA is much larger than that proposed by the applicant.
- No manure would be stored on the site as distinct from in the slurry tank.
- The site would be bunded by means of an earthen bank.
- The importation and spreading of sewage sludge were the subject of a once off contract in 2012, which has not been repeated.
- The mobile home will only be on the site during the construction phase.
- Any reference to the walled silos being the subject of the enforcement notice is misplaced.
- Any reference to the LAP is misplaced, as the site lies outside the ambit of this Plan.

The applicant refers to the following matters, too:

- Objectives NR 7-47, 4-51, and 4-52 of the RES, which express support for bioenergy plants.
- Gas Networks Ireland are, in principle, supportive of renewable gas projects.
- The benefits of district heating systems.
- The benefits of the proposal are set out within the context of renewable energy imperatives.
- Guidelines for Anaerobic Digestion in Ireland published by Cre in 2018.

By way of respond to **appellant (d)**, the following points are made:

- One of the directors of Sandford Energy Ltd is an Assistant Principal of Causeway Comprehensive School and he testifies to the interest that the current proposal has generated in anaerobic digesters and their possible wider use on farms in North Kerry.

- The applicant has appointed a project supervisor for the proposal, who is presently managing comparable projects in N. Ireland. He will be responsible for a complete Safety Management Plan for the site.
- Examples of anaerobic digesters being permitted near a hospital and a local nursing home and church are cited.
- The proposal would not materially contravene Objective NR 7-48, as it would be a small-scale farm-based one, which would generate 500 kW. (Medium size and large ones generate 550 kW – 2 mW and over 2.1 mW, respectively).
- The applicant’s environmental consultant has interacted with appellant (d)’s consultants. The following points are made:
  - The applicant undertakes to carry out an air quality and odour dispersion modelling assessment and to submit the same to the Planning Authority.
  - The proposed CHP unit would incorporate a catalytic converter.
  - Noise from the proposal would fall within the recommended limit for the school and noise from traffic would be slight, i.e. typically 2 deliveries daily.
  - School traffic at the entrance adjacent to the site entrance is limited to c. 30 parents/guardians only. Sugar beet would be grown on lands adjoining the site and so its transportation would not entail the use of public roads. Slurry would be transported on these roads. However, return trips would entail the transportation of digestate and so the number of traffic movements would be minimised thereby. These trips would be timed to avoid school opening and closing times and overall the busiest time of the year would coincide with the school holidays.
  - Suggested mitigation measures for traffic are accepted, e.g. a steam wash facility for traffic exiting the site.

By way of respond to **appellant (e)**, the following points are made:

- The appellant’s land does not border the subject site, but other lands within the ownership of one of the directors.

- Attention is drawn to the ESB sub-station and the associated existing wirescape, which would increase in the future due to likely connections to permitted wind and solar farms. These factors add to the unsuitability of the area, discussed above, for conventional development.
- Attention is drawn to the proposed bunding of and tree planting around the site.
- The considerable distances that exist between the site and Natura 2000 sites is emphasised.
- Attention is drawn to the digestate, which would be an organic fertiliser that would replace the use of artificial ones.
- Application 14/276 was the subject of a request for EIA. However, food waste was part of this proposal, whereas it is not now part of the current one. This application was withdrawn.
- The EPA has confirmed that the proposal does not require a waste permit license.
- The chronology of development on the site is summarised and the applicant undertakes to complete the proposal speedily, if planning permission is granted by the Board.

The applicant states that, under the Department of Communications, Climate Action and Environment, projects, such as the proposal, which qualify under Refitt 3, are required to generate electricity by 29<sup>th</sup> September 2019 and so a decision from the Board is requested by 14<sup>th</sup> August 2019.

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

Attention is drawn to the nature of the current application, which seeks the completion of the proposal previously permitted under 11/539. Substantial works have been begun on site and this application is for essentially the same proposal, with differences pertaining only to the quantity and mix of biomass that would be treated. Its grant was influenced strongly by the previous permission and the resulting establishment of the principle of locating an anaerobic digestion plant on the site.

Attention is also drawn to the input of Environment and Roads consultees and to the conditioning of the draft permission.

The Planning Authority has also responded to points raised by appellants (d) and (e) as follows:

- With respect to (d), concerns over the safety of the proposed CHP Engine Room and Causeway Comprehensive School are set aside on the basis of the size and siting of this Engine Room some 300m away from the said School. The concern, too, that the proposal would materially contravene Objective NR 7-48 is set aside as this Objective refers to small scale developments, whereas the current proposal would be a larger one, which Objective NR 7-47 would be supportive of.
- With respect to (e), concerns over a range of issues are addressed in terms of how they were dealt with at the application stage.

#### **6.4. Observations**

The observers raise the following concerns:

- The proposal would pose a high risk to the neighbouring village with adverse implications for public health. No risk assessment has been undertaken
- Additional traffic generation would pose a risk to particularly school children.
- Gas emissions would lead to a deterioration in air quality.
- Noise generated by the proposal itself and the traffic generated by it.
- Rodent and vermin infestation and the attendant risk to public health.
- Adverse impacts upon the landscape setting of the village and the local community, e.g. property values.
- The proximity of the site to the village and the resulting prospect of unpleasant odours.
- The proposal would risk contaminating the soil and surface and ground waters. No hydrogeological or hydrological assessments were undertaken.
- The proposal should be the subject of EIA and AA.

- The possible use of unapproved materials in the process.

## 6.5. Further Responses

None

## 7.0 Assessment

7.1. I have reviewed the proposal in the light of the CDP, LAP, relevant planning history, the submissions of the parties and the observers, and my own site visit. Accordingly, I consider that the current application and appeals should be assessed under the following headings:

- (i) The current proposal and the planning history of the site,
- (ii) The application stage and the draft permission,
- (iii) Land use, the description of the proposal, and size categorisation,
- (iv) The absence of w.c. facilities,
- (v) Archaeology,
- (vi) Biodiversity,
- (vii) Visual amenity,
- (viii) Environmental impacts affecting amenity,
- (ix) Public safety,
- (x) Traffic, access, and parking,
- (xi) Water, and
- (xii) Screening for AA.

### **(i) The current proposal and the planning history of the site**

7.2. The Planning Authority state that their decision was arrived at in the knowledge that permission had previously been granted for an agricultural anaerobic digestion facility on the site (application 11/539). Precedent for accepting the principle of such a facility on this site therefore exists.

- 7.3. Normally, where precedent exists, such as in this case, an applicant could expect that the principle of accepting a comparable proposal would follow, unless there has been a material change of planning circumstances in the intervening period of time. The Planning Authority did not identify any such changes nor did the appellants and the observers.
- 7.4. Appellant (a), especially, critiques the weight that the Planning Authority gives to the aforementioned precedent, on the basis that the current and previous proposals can be distinguished from one another, in his view, to such an extent as to undo any reliance upon precedent. In this respect, he cites the following considerations:
- The quantity and type of feedstock would differ: previously 11,315 tonnes (8625 grass silage + 2500 cattle manure) whereas now 14,000 tonnes (12,000 grass and maize silage and sugar beet + 2000 cattle slurry).
  - Electricity generation: previously 380 kW whereas now 500 kW.
  - Changes in the siting, orientation, and sizes of buildings/structures/tanks (cf. drawing no. 10-011-330 dated 24<sup>th</sup> June 2011 and drawing no. 330-200-A dated 27<sup>th</sup> July 2018).
  - New elements are now proposed: a weighbridge and a security gate.
  - A new drainage channel has been dug to the SW of the site.
- 7.5. All the parties acknowledge and accept the first and second of these considerations.
- 7.6. The third consideration invites a comparison between the two site layout plans. Generally, the original one provides greater detail than the revised one. As to particular changes, the orientation of the machinery building is shown as altered slightly, the CHP Engine Room building would be wider and higher, and the two digester tanks would have marginally greater diameters at 20.6m compared to 20m.
- 7.7. Whereas the pre-pit hatch is shown on both plans, only the original plan shows the accompanying circular pre-pit. By contrast, only the revised plan shows the rectangular concrete tank, which is in-situ in a different position and which is accompanied by a note to the effect that it has planning permission. The discrepancy in this respect has not been addressed. It is possible that compliance with condition 7 attached to the permission granted to application 11/539 resulted in this change insofar as this condition required that the pre-pit be “constructed in accordance with

the relevant Department of Agriculture and Food specification.” However, no confirmation to this effect has been submitted.

- 7.8. The fourth consideration encompasses incontestably new elements, albeit of an ancillary nature to the facility.
- 7.9. The fifth consideration is contested: the applicant states that the works in question were undertaken to a pre-existing drainage channel rather than the formation of a new one. I observed this channel on site and, in the light of evidence from the Ordnance Survey (OS), too, take the view that there was a pre-existing channel to the north but that this appears to have been extended beyond the SW corner of the site in a southerly direction in recent times to connect with the east/west drainage channel that runs under Drehidaclare Bridge (on the L-1034) to the south of the site.
- 7.10. Appellant (a) and the applicant differ over when the works that have occurred on site were undertaken. The former states that they were undertaken after the expiry of the planning permission in question, whereas the latter states that the majority were undertaken before. Clearly, some works at least were undertaken after, insofar as they prompted an enforcement enquiry to be opened. These works are unauthorised, on the basis that they occurred without the benefit of an extant planning permission. It is therefore appropriate that they be the subject of the “retention and completion” arm to the current application.
- 7.11. In the light of the foregoing comparison of the original and revised applications for the site, I take the view that the scale of the process would now be greater, and some details of the elements comprised in the proposed works have changed. In essence though, the proposal is still for an agricultural anaerobic digestion facility on the same site as previously received planning permission and so the precedent for such a facility has, in principle, been established by virtue of this permission. Clearly, the difference in scale may have a bearing on planning considerations and, as indicated above, the question as to whether or not there has been any material change of planning circumstances is pertinent, too.
- 7.12. I conclude that the original planning permission for an agricultural anaerobic digestion facility on the site means that there is, in principle, precedent for such a facility and that the Planning Authority acted appropriately in giving weight to the same.

## **(ii) The application stage and the draft permission**

- 7.13. Appellants critique aspects of the Planning Authority's handling of the application and its reliance upon certain conditions.
- With respect to the former, the use of a further information request to obtain environmental information that would be typically included in an EIAR is cited, as is the applicant's incremental response to this request.
  - With respect to the latter, the use of compliance conditions to address outstanding environmental matters is cited, as are ones that would rely upon third party agencies to ensure that they are complied with.
- 7.14. In relation to the first bullet point, I note that some of the environmental information submitted is akin to that which might be comprised in an EIAR. That does not however mean that an EIAR is required. I would refer the Board to my EIA Screening of the current proposal. (While appellant (a) draws attention to the Planning Authority's request that an EIS be submitted under application 14/276, the proposal at that time was for a larger facility (20,000 tonnes annual throughput) that would critically have accepted food waste, i.e. 10,000 food and 10,000 non-food). I note, too, the incremental manner of the applicant's response and, whereas this is not ideal, acceptance of the same is a procedural matter that lies within the Planning Authority's ambit.
- 7.15. In relation to the second bullet point, I note the advice of the Development Management Guidelines on the use of compliance conditions to the effect that such use is inappropriate where they might affect the amenities of third parties. I will discuss the implications of this advice in relation to specific subjects elsewhere in my assessment. I note, too, the advice of these Guidelines with respect to the enforceability of conditions that rely upon third parties for their compliance. As a rule, such reliance is inappropriate and so such conditions should be avoided.
- 7.16. I conclude that, as the Board's assessment is on a *de novo* basis, the opportunity exists to review the conditions attached to the Planning Authority's draft permission.

### **(iii) Land use, the description of the proposal, and size categorisation**

- 7.17. Under the CDP and the LAP, the site lies outside the village of Causeway and in an area zoned Rural General. The County's Renewable Energy Strategy 2012 (RES) remains valid. This Strategy recognises the significant potential that exists in Kerry for bioenergy and that the agricultural sector has a role to fulfil in this respect. Section 7.4.7.4 discusses anaerobic digestion and Section 7.4.7.6 discusses location and impacts of bioenergy projects and it includes Objectives NR 7-44 to 7-55.
- 7.18. Appellant (a) questions the description of the proposal insofar as it is described as being an agricultural anaerobic digestion facility and yet it would supply electricity to the national grid and so should be considered a commercial one. Under Article 18(1)(d) of the Planning and Development Regulations, 2001 – 2019, descriptions should encapsulate the "nature and extent of development". I consider that, insofar as the proposed facility would process agricultural crops and animal waste from the applicant's farm<sup>2</sup> and insofar as the digestate from this process would be used as an organic fertiliser in the same farm, the nature of this facility can reasonably be described as agricultural.
- 7.19. Appellant (e) draws attention to the omission of any explicit reference to the CHP Engine from the description of the proposal. The description does refer to the retention and completion of "pasteurisation/pump room/offices" whereas the submitted plans refer to CHP Engine Room/Building. The application is also accompanied by a Schematic Diagram of the process and a further diagram of the Pasteurisation Unit.
- 7.20. I note that the site plan (drawing no. 10-011-330 dated 24<sup>th</sup> June 2011), which accompanied application 11/539 showed a pump room between the two digesters. The outline of such a room is shown on the current site plan (drawing no. 330-200-A dated 27<sup>th</sup> July 2018), but it is not named. I note, too, that, by way of response to the Planning Authority's request for clarification of further information, the applicant confirmed that the pasteurisation unit would be housed in the building on the eastern

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<sup>2</sup> The applicant is Sandford Energy Ltd and the directors of this firm are Maurice, Kevin, and Timothy Leahy. These family members variously own the site and the parcels of land comprised in the associated farm. I have thus adopted the convention in my assessment of referring to the farm as the "applicant's farm".

side of the site, which would also house the CHP Engine. This building would be used as a site office, too.

- 7.21. Given this understanding of the proposal, the said description does refer to the building on the eastern side of the site, although it omits to refer to its use in connection with the CHP Engine. Thus, the “extent” of this building’s usage has not been expressed in the description of the proposal. Likewise, a comparison of this description and the submitted site plan indicates that there is ambiguity concerning the siting of the pump room.
- 7.22. Turning to the size of the proposal, the parties disagree as to whether it should be categorised as small or medium sized. Section 7.4.7.4 of the RES states that “Plants can vary in scale from small schemes treating the waste from an individual farm through-medium sized centralised facilities dealing with wastes from several farms, (potentially supplemented by crops such as maize grown specifically to feed the digester), to sizeable industrial AD plant handling large quantities of municipal waste.” Further guidance on the question of size is set out in a document, published by the Composting and Anaerobic Digestion Association of Ireland, entitled “Guidelines for Anaerobic Digestion in Ireland.” This document states the following: “On-farm systems are very common in Europe and typically process energy crops such as grass and maize silage as well as animal slurries. They normally range in scale from less than 100 kWel to 500 kWel systems and a standard on-farm AD plant includes feedstock reception facilities, digestion tanks, CHP unit, and end storage.”
- 7.23. The current proposal would be an agricultural one which would be linked to the applicant’s farm. This proposal would generate 500 kW. Accordingly, I consider that it is reasonable, in the light of the foregoing advice, to categorise it as a small scale one.
- 7.24. Of the above cited RES Objectives, the following one is of particular relevance to small scale facilities: Objective NR 7-48, which states “In rural areas the planning authority will consider proposals for small scale developments close to the source material and where roads have capacity to absorb increased traffic flows. Such plants should, where possible, be located in proximity to existing agricultural buildings.”

- 7.25. The applicant has submitted a plan showing the farm in question. The lands comprised in the same, include the site and adjoining lands, and separate lands to the north, both partially in the village where the farm yard and house are sited, and further to the north again. Feedstock would be drawn from this farm. Given the location of the farm yard, the siting of the proposed facility beside existing farm buildings would not be appropriate in this case. Considerations with respect to the road network are discussed below under the tenth heading of my assessment.
- 7.26. Objective NR 7-50 of the RES is also of relevance. It states that “Bioenergy installations shall not be permitted in areas where such developments may affect residential or visual amenity.” This Objective will be discussed in relation to other subjects elsewhere in my assessment.
- 7.27. Appellants draw attention to the likely sterilising effect of the proposal upon the expansion of the village in a southerly direction. The applicant has responded to this concern by stating that the presence of a municipal WWTP and an ESB sub-station already pose constraints on such expansion. I note that the current LAP does not envisage such expansion. I note, too, from my site visit the popularity of house building on more elevated plots to the north of the village centre.
- 7.28. I conclude that, as a small-scale agricultural facility, the proposed anaerobic digestion facility would, in principle, be appropriate from a land use perspective. I also conclude that the description of the proposal falls short in its extent and that the submitted site plan is insufficiently detailed to fully elucidate this proposal.

**(iv) The absence of w.c. facilities**

- 7.29. Appellants draw attention to the absence of w.c. facilities from the proposal and they express concern over attendant hygiene and public health. The applicant has responded by stating that such facilities would be available a short distance away in the farmhouse located in the centre of the village. It also states that, as the site would be connected to the public mains, water would be available for hand washing and boot cleaning.
- 7.30. I note that, under application 11/539, w.c. facilities were initially proposed, but then omitted. I note, too, that, as the applicant proposes to run both the proposed anaerobic digestion facility and the surrounding farm, there would be an overlap in personnel. In these circumstances, the use of the w.c. in the farmhouse would be

practical. However, the corollary of such a scenario is that the facility and the farm would need to be tied in perpetuity. If the Board is minded to grant permission, then a condition tying one to the other would be needed.

7.31. I conclude that, provided the proposed facility is tied to the applicant's farm, the proposed w.c. arrangements can be acceded to.

#### **(v) Archaeology**

7.32. Appellant (a) draws attention to application 14/276 for the site, under which the Department of Arts, Heritage and the Gaeltacht requested that, due to the size of the proposal, a condition requiring an Archaeological Impact Assessment (AIA) be attached. He contends that the current proposal should be so conditioned.

7.33. I note that the permission granted to application 11/539 was not subject to any archaeological condition and that this permission was partially implemented. I note, too, that the impetus for the Department's request was the size of the proposal, which with respect to the physical layout of the site would have been comparable to that envisaged under 11/539. Given that this site has been largely laid out, by virtue of the works undertaken to date, I consider that to require an AIA at this stage would be superfluous.

7.34. I conclude that, given the works that have already been undertaken on site, a precautionary archaeological impact assessment would be unnecessary.

#### **(vi) Biodiversity**

7.35. The site is not in or near to any area of identified ecological interest.

7.36. The proposal would entail the development of farmland to provide an anaerobic digester. Some loss of flora would result, although some would be added in terms of the hedgerow and tree planting that would occur around the perimeter of the main body of the site. The formation of the southerly sightline to the proposed site entrance from the L-1034 would entail the removal of existing trees and a hedgerow. However, they would be replaced by equivalent vegetation in a setback position.

7.37. The proposal itself would lead to the generation of renewable energy and it would result in digestate that would be used as an organic fertiliser on the applicant's farm, thereby replacing artificial fertilisers.

7.38. I conclude that the proposal would be compatible with biodiversity.

### **(vii) Visual amenity**

- 7.39. Under the CDP, the site is zoned Rural General, which is one of three rural zonings and the one which denotes landscapes that are least sensitive to development.
- 7.40. As discussed under the third heading of my assessment, in the particular circumstances of the applicant's farm, it would not be appropriate to site the proposed facility beside existing farm buildings. The site thus selected is to the south west of the village and to the south of the local GAA grounds and Causeway Comprehensive School.
- 7.41. The site lies within an area that is relatively flat to the east, south, and west. To the north, the land rises and so the majority of the village is elevated in relation to the site. Southerly views from the village encompass the site within the context of the said GAA grounds, which include a handball alley, a clubhouse, and a stand, and an extensive school building. Northerly views of the site, on the approach to the village along the L-1034, display it within the immediate context of the existing ESB sub-station, these GAA grounds, and the wider context of the elevated village.
- 7.42. The buildings, structures, and tanks comprised in the proposal are/would be of agricultural appearance and their scale within the aforementioned contexts would be relatively large but not out of proportion with the GAA grounds and adjacent school building. The resulting visual impact would be mitigated by bunds and hedgerow and tree planting to the main body of the site.
- 7.43. I conclude that the proposal would, subject to the screening afforded by planting, be compatible with the visual amenities of the area.

### **(viii) Environmental impacts affecting amenity**

- 7.44. The proposal would have a series of environmental impacts that would potentially affect the amenities of the area, which comprises the Village of Causeway. (Appellants highlight the presence of several community uses, in addition to residential uses, in this Village, i.e. the local GAA grounds, Causeway Comprehensive School, a creche and an adult education centre on the R551, and a medical dispensary). These impacts include noise, odours, air quality, dust, and vermin and insect infestation. I will consider each of them in turn.

- 7.45. Under clarification of further information, the applicant submitted a noise assessment, which included a baseline survey of noise levels at nearby noise sensitive locations. This assessment identifies the noise sources that would arise on site once the proposal is operational (cf. Table 8). Of these the gas flare stack, which would serve the CHP Engine Room, would be the noisiest. However, this stack would only operate briefly during maintenance periods or in the event of an emergency and so any noise impact would be occasional and fleeting. The CHP Engine would be noisy, too. However, provided it is housed within a sound insulation container, the supplier of this Engine reports that at a distance of 10m, a 65 dB(A) noise level threshold would be respected.
- 7.46. Appellant (d) has submitted an environmental noise report, which considers the noise level of the proposal upon Causeway Comprehensive School. This report utilises data set out in the aforementioned Table 8 to calculate the cumulative noise level from all noise sources at the operational site, i.e. 43 dB LAeq. This noise level would come within the relevant 50 dB LAeq threshold applicable to the façade of the school building, which is c. 200m from the site.
- 7.47. Appellant (d) has not raised any objection to the proposal on noise grounds. The observers do express concern in this respect. I note that the proposal would operate on a 24/7 basis and yet only the loudness of noise has been assessed rather than its character. I note, too, that the nearest dwelling houses (350 and 450m from the site) identified in Table 4 of the applicant's assessment have relatively low dB LA90 readings for the mid to late evening, i.e. 40.4 and 39.5. The nearer of these two dwelling houses is to the NE of the site and so the prevailing wind is a factor that needs to be considered, too. In these circumstances, I consider that the applicant's noise assessment has not demonstrated sufficiently that noise from the operational proposal would avoid creating nuisance at these noise sensitive locations during anti-social hours.
- 7.48. Under further information, the applicant submitted an odour assessment, which begins by recognising that the site and its surrounding area are the subject of intermittent odours influenced by existing agricultural activities. It proceeds to discuss how the delivery of feedstock and, in the case of sugar beet its storage on site, would provide an opportunity for odours to be emitted. Once the feedstock is entered into the relevant tanks, it would remain within a closed system. Air emissions

from the CHP Engine via the stack would be odourless and the digestate would be stored in a sealed tank prior to land spreading, where it would emit “minimal odour”. The applicant’s assessment concludes by stating that the stringent odour target of C98, 1-hour 1.5 OUE/m<sup>3</sup> would be capable of being met by the operational proposal.

- 7.49. Appellant (d) has submitted a critique of the applicant’s odour assessment, which draws attention to the absence of any modelling exercise as to the dispersion of odours and whether or not, in the light of the same, the cited stringent odour target would be realistic. It also states that, if deliveries were to take place within a sealed building, then the emission of odours could be mitigated by means of filters before release into the atmosphere.
- 7.50. I note that the odour target is the standard one applied in a bid to ensure that sensitive receptors such as community and residential uses are protected. Given the proximity of the local GAA grounds to the site, especially, the appellant is in order to enquire as to the realism of this target and to draw attention to the absence of any confirmatory dispersion model. In the light of such a model, relevant mitigation measures could be identified, as appropriate. I note, too, the intermittent odour baseline identified by the applicant and the need for this to be elaborated upon to ensure that valid before and after comparisons can be made with any modelling of the envisaged future scenario.
- 7.51. Under further information, the applicant submitted an air quality assessment, which identifies the site as lying within Zone D, i.e. Rural Ireland, where air quality is generally good. Table 2 of this assessment lists the pollutants that would emanate from the proposed stack and their modelled concentration at ground level, along with accepted thresholds in these respects. Concentrations would lie well below their respective thresholds in every case. Table 1 of this assessment indicates that the installation of a catalytic converter to the stack would reduce carbon monoxide emissions.
- 7.52. Appellant (d) has submitted a critique of the applicant’s air quality assessment. Attention is drawn to the absence of an explicit baseline survey of pollutants and questions are posed as to where the ground level concentrations would lie, the appropriateness of the stack’s height, as it would be lower than adjacent buildings, and the implications of pollutants for nearby sensitive locations.

- 7.53. I consider that the applicant's assessment does need to be amplified to "factor-in" any existing pollutants that may be in the air and to address the question of the stack's height, which *prima facie* appears to be too short to ensure the required dispersal of emissions.
- 7.54. The applicant has addressed the issues of dust and vermin and insect infestation. Attention is drawn to the sealed nature of the proposed anaerobic digester facility, apart from the entry point for feedstock, which would be by means of a mixer unit. Feedstock stored in the silos on site would be covered by sheeting and exposed only for the purpose of drawing it across to the said mixer unit. When not in use this mixer would be closed by means of a lid. The risk of dust accumulating and being blown from the site would be limited, and it would be capable of being mitigated by good management practice. Likewise, the risk of vermin and insects would be capable of being mitigated by such management practice, too.
- 7.55. The applicant has responded to the appellant's critiques of its odour and air quality assessments by undertaking to do modelling exercises and to submit the same to the Planning Authority. In effect conditions are invited in these respects and, by extension, to address outstanding matters with respect to noise, too.
- 7.56. Condition 9 of the Planning Authority seeks to address any issues that may arise with respect to environmental impacts by means of monitoring exercises. I consider that such a condition would be appropriate if the applicant had demonstrated that such impacts would not ordinarily affect the amenities of the area to any significant extent. However, in the light of the above discussion, such demonstration with respect to noise, odour, and air quality remains outstanding. In the light, too, of the advice of the Development Management Guidelines, cited above in paragraph 7.15 of my assessment, I consider that it is important that these matters be fully addressed prior to a decision on the current proposal.
- 7.57. I conclude that the applicant has submitted insufficient information to demonstrate that environmental impacts of the proposal would not significantly affect the amenities of the area.

### **(ix) Public safety**

- 7.58. Appellants express concern that the proposal would be inherently at risk of fire or explosion and that plans to address this risk have either not been made available, e.g. a Hazard and Operability Study, or have yet to be prepared, an External Emergency Plan.
- 7.59. The applicant has responded by drawing attention to the successful operation of anaerobic digestion facilities elsewhere in close proximity to settlements. It also undertakes to prepare a Plan for Hazard Analysis and Critical Control Points (HACCP).
- 7.60. I note that the directors of Sandford Energy Ltd have received the Certificate for the Higher Efficiency CHP from the Commission for Regulation of Utilities and that this Commission advises on gas safety. I note, too, that the document entitled "Guidelines for Anaerobic Digestion in Ireland", published by the Composting and Anaerobic Digestion Association of Ireland, advises on safety management and it highlights the obligation that would be placed upon Sandford Energy Ltd to prepare a Safety Statement, which, while being directly relevant to personnel on-site, would be indirectly relevant to the wider public.
- 7.61. I conclude that subject to good management practice the wider risk to the public posed by the proposal would be capable of being satisfactorily addressed.

### **(x) Traffic, access, and parking**

- 7.62. The proposal would generate traffic movements during its construction and operational phases.
- 7.63. In relation to the former phase, the applicant estimates that c. 44 trucks would be in attendance for the purpose of delivering plant and machinery, concrete, trunking, and hardcore over a 1 to 2-month construction period. Trips thus made would be scheduled to avoid the peak times for the adjacent Causeway Comprehensive School and Dairymaster, a large local employer to the west of the village.
- 7.64. In relation to the latter phase, the applicant estimates that, daily, 3 trips would be made for the purpose of (in-bound) delivering cattle slurry and (out-bound) collecting digestate for land spreading, when conditions permit, in accordance with a Nutrient

Management Plan. Seasonally, multiple trips would be made when, typically, on consecutive days feedstock would be harvested and brought to the site. Thus,

- Grass silage would be cut in May,
- Maize silage would be cut in September, and
- Sugar beet would be cut in October.

- 7.65. The applicant anticipates that the former two feedstocks would entail trips on the public road network, while the latter one would entail trips from the adjoining lands comprised in its farm. The applicant resides locally and so is fully aware of, e.g. the use of the local GAA grounds. Trips would thus be timed to avoid peak periods with respect to such usage.
- 7.66. The applicant proposes to complete the construction of an entrance road to the site, which would run on a parallel alignment to the south of the existing farm track. A new access point from the L-1034 would be formed with accompanying sightlines requiring the setting back of hedgerows on either side. The L-1034 is subject to a 50 kmph speed limit and sightlines with y dimensions of 182m, to the north, and 265m, to the south, would be available. On site, 4 car parking spaces would be laid out beside the proposed ESB sub-station.
- 7.67. Appellant (a) and observers express concern that traffic generated by the proposal would pose a risk to children in attendance at the adjacent Causeway Comprehensive School, particularly, during harvest seasons.
- 7.68. The applicant has responded by stating that the primary entrance to the said School is from the R551 rather than the L-1034. Insofar as the entrance to the local GAA grounds is used, too, this is as a secondary entrance and so far fewer children are dropped off and collected via it. The applicant draws attention to the relatively high incidence of farm traffic on the public road network in the vicinity of the village and it reiterates its undertaking to avoid peak school times.
- 7.69. I consider that the traffic likely to be generated by the proposal during its construction phase should be the subject of a construction traffic management plan so that the challenge posed by, e.g. large loads and a higher incidence of HGVs, can be addressed. I consider, too, that, in the light of the applicant's undertakings, the traffic

likely to be generated during the operational phase would be capable of being satisfactorily accommodated on the public road network.

- 7.70. While I raise no objection to the details of the proposed site entrance road, I question the need for the same or the retention of the existing farm track in its presence. During my site visit, I observed that there is little to choose between the existing and proposed access points from the L-1034 in terms of visibility and sightlines. The existing one is closer to the local GAA site entrance and so the proposed one would benefit from being further away from the same. However, as the proposal is linked to the applicant's farm and, as discussed under the fourth heading of my assessment, its farmhouse, I am unable to understand the justification for two site entrances, which from a traffic management and road safety perspective would not be desirable. In these circumstances, I consider that, if the Board is minded to grant permission, then this should be subject to a condition requiring the closure of the existing site entrance, once the proposed one is constructed.
- 7.71. I conclude that the traffic generated by the proposal would be capable of being accommodated on the local public road network and that the proposed new site entrance from the L-1034 would be satisfactory provided the existing one is closed.

**(xi) Water**

- 7.72. The proposal would be supplied with water by the public mains.
- 7.73. Generally, surface water from the site would discharge to a watercourse. However, "All waste water from the silage base or mixer wagon will be allowed to drain into the slurry feedstock and used in the digester."<sup>3</sup> Unlike the site plan submitted under application 11/539 (drawing no. 10-011-330 dated 24<sup>th</sup> June 2011), the current site plan (drawing no. 330-200-A dated 27<sup>th</sup> July 2018) omits to show any details of surface water drainage arrangements. Condition 10 attached to the Planning Authority's draft permission, addresses certain pollution mitigation measures. However, in the absence of a clear understanding of these arrangements, the suitability of the said measures cannot be fully assessed.
- 7.74. The submitted site plan does show an existing land drain along the eastern boundary of the main body of the site. Other land drains within the vicinity of the site are not

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<sup>3</sup> Refer to the Item 9(i) of the applicant's letter of response (dated 14<sup>th</sup> November 2018) to the request for further information.

shown explicitly though. This plan also shows the earthen bunds that have been/ would be formed around three of the four sides to this main body. (The western side would not be bunded). It does state that the proposed internal road would be finished in hardcore. Whether and to what extent the yard associated with the proposed buildings/structures/tanks would be so finished, too, has not been made explicit.

- 7.75. In view of the foregoing omissions and in view, too, of the imperative of maintaining water quality in surrounding land drains, I consider that the submitted information on the surface water drainage arrangements for the site is insufficient for a proper assessment of its efficacy to be made.
- 7.76. Under the OPW's Flood Maps, the site and its surrounding area are not the subject of any identified flood risk.
- 7.77. I conclude that, whereas the proposal would be supplied with water by the public mains and the site would not be the subject of any identified flood risk, insufficient information has been provided to demonstrate that the proposed surface water drainage arrangements for the site would be satisfactory from operational and water quality perspectives.

#### **(xii) Screening for AA**

- 7.78. The site is neither in nor near to a Natura 2000 site. Several such sites lie within a 15 km radius of this site. Of these an c. 7km long hydrological source/pathway/ receptor route would appear to exist between the site and the Lower River Shannon SAC (site code 002165) by means of a network of open land drains that connect to the River Crompaun to the east, which is a tributary of the River Brick and, ultimately the River Feale, which flows into the Mouth of the Shannon.
- 7.79. In the absence of a detailed surface water drainage scheme for the site, as discussed under the eleventh heading of my assessment, there is insufficient information available to facilitate a screening exercise for AA. Accordingly, the precautionary principle applies.
- 7.80. On the basis of the limited information provided with the application and appeal, the Board cannot be satisfied that the proposal individually, or in combination with other plans or projects, would not be likely to have a significant effect on European site no. 002165, or any other European site, in view of the site's Conservation Objectives. In such circumstances, the Board is precluded from granting approval/permission.

## 8.0 Further Information

8.1. In the light of the above assessment of the proposal, I identified the need for further information. The Board in considering the request for an oral hearing and in turning down this request, agreed that further information should indeed be requested of the applicant. Accordingly, the following information was requested:

1. The applicant shall submit a noise assessment of the proposal, prepared by someone with the relevant expertise to do so, that addresses the following factors:

- (a) The character of the noise emanating from the key noise sources, and
- (b) The noise level from the said sources that would arise at the nearest residential properties, allowing for the character of such noise, as appropriate, and also allowing for the effect of the prevailing wind.

The effect of mitigation measures, where required, shall be quantified and presented.

2. The applicant shall submit an odour assessment of the proposal, prepared by someone with the relevant expertise to do so, which demonstrates that the target of C98, 1-hour 1.5 ouE/m<sup>3</sup> would be capable of being met at the nearest sensitive receptor, i.e. the local GAA grounds, allowing for the effect of the prevailing wind. The effect of any mitigation measures, where required, shall be quantified and presented.

3. The applicant shall submit an air quality assessment of the proposal, prepared by someone with the relevant expertise to do so, which takes into account the presence of any pollutants within the air in calculating whether or not the predicted pollutants would be within relevant threshold levels.

The assessment shall also address the height of the proposed stack, which *prima facie* appears too low. A justification for the height of this stack shall be provided in terms of the need to ensure the optimum dispersal of pollutants.

4. The applicant shall submit a public safety assessment proposal, prepared by someone with the relevant expertise to do so.

5. The applicant shall submit a hydrological assessment of the proposal, prepared by someone with the relevant expertise to do so, which shall show all existing and any proposed land drains within the vicinity of the site that would be affected by the proposal.

The applicant shall also prepare a comprehensive and fully detailed on-site surface water drainage scheme, including all measures that would be incorporated within such a scheme to minimise the risk of pollution to the said land drains and groundwater. The scheme shall be fully set out on a site layout plan, which shall also specify relevant finishing materials to road and yard surfaces.

6. The applicant shall submit a Nutrient Management Plan for the proposal.
7. The applicant shall submit a Screening Report for the proposal for the purpose of Stage 1 of Appropriate Assessment, prepared by someone with the relevant expertise to do so.
8. The applicant refers to the possible use of biogas in the heating of community buildings within the vicinity of the site. The submitted application does not indicate how such gas would be provided to these buildings and it does not comment on whether or not such provision is integral to the proposal proceeding. The applicant shall address these matters and submit plans as appropriate.
9. The application includes a letter from the EPA dated 25<sup>th</sup> October 2018, which sets out a series of considerations that have a bearing on whether or not a waste facility permit would be required for the proposal from either the EPA or Kerry County Council. The applicant shall address these considerations and submit a reasoned conclusion as to whether or not such a permit would be required.
10. The proposal is presented as one that would be integral to the farmlands owned and operated by the directors of Sandford Energy Ltd. The absence of on-site w.c. facilities and dependence on such facilities in the associated farmhouse would be consistent with this integration. However, the proposed access arrangements to the site do not show a direct link with the adjoining farmlands and they would facility the proposal operating as a stand-alone

facility by means of a separate access point and road off the L-1034. The applicant shall address these matters and submit revised plans, if appropriate.

11. (a) The submitted site layout plan shows the footprint of a concrete tank along with an accompanying note, which states that it was “granted planning permission”. Under permitted application Planning Authority Ref. 11/539, a circular pre-pit was shown on the equivalent plan, in a different position. The applicant shall address this apparent discrepancy and it shall submit plans in this respect, as appropriate.

(b) The submitted site layout plan shows the outline of a building between digesters nos. 1 and 2. The applicant shall clarify if this building would be the pump room, as shown on the equivalent plan under application Planning Authority Ref. 11/539, and it shall submit plans in this respect, as appropriate.

12. The description of the proposal omits to refer to the Combined Heat and Power Engine. This description shall be expanded upon to include this item and it shall be used in the public advertising of any further information, which it is anticipated would constitute “significant further information”.

8.2. The applicant responded to the above request as follows:

8.3. In relation to Item 1, the applicant has submitted an Environmental Noise Impact Report. This Report is based on a survey that was undertaken of existing noise levels at 3 noise sensitive locations in the vicinity of the site, i.e. Causeway Comprehensive School to the N, Marian Terrace to the NE, and a field to the S. This survey was undertaken during the late evening/early night time of Thursday the 17<sup>th</sup> October 2019. These levels were then compared with the noise levels that would result from the noise emitters comprised in the proposal and the reduction in such levels that would result from separation distances and mitigation measures, i.e. either the housing of equipment or its screening. The resulting noise impact from the proposal at the sensitive receptors would be negligible, i.e. no observable adverse effect.

8.4. In relation to Item 2, the applicant has submitted an Odour Dispersion Model Report. This Report identifies the sources of odour comprised in the proposal, i.e. the silage and maize stores and a feed hopper. The said stores would be uncovered on a daily

basis between 09.00 and 10.00 to allow for silage and maize to be fed into the said hopper. Relevant meteorological data from 2016 – 2018 was obtained from the nearest weather station at Shannon Airport and a model was run to simulate the dispersed odour impacts arising at 5 sensitive receptors, i.e. the GAA clubhouse, Causeway Comprehensive School, the Marion Terrace, the village cross roads, and dwelling houses to the NW and the SE. The resulting predictions indicate that odour impacts would be negligible at these receptors, i.e. they would be below the threshold of 0.3 OUE/m<sup>3</sup>, which indicates negligibility, and they would, in any event, be typical of agricultural odours in the area. (Figure 5-1 of the Report plots the contour of this threshold around the site).

- 8.5. In relation to Item 3, the applicant has submitted an Air Dispersion Model Report. This Report identifies the main air pollutants from the proposed CHP stack (10m high) as Carbon Monoxide and Nitrogen Dioxide. The model used assumes that this stack would operate continuously, and it allows for background levels of the said gases. The same meteorological data was used as in the Odour Dispersion Model Report and the same sensitive receptors were identified. The results of running this model indicate that Carbon Monoxide levels for 1<sup>st</sup> high 8-hour periods would be well within the limits of Directive 2008/50/EC entitled “Air Quality” and Nitrogen Dioxide levels for annual 1<sup>st</sup> high and 1 hour 99.8 percentile would, likewise, be within these limits. (Figures 5-1-1 and 5-2-1 & 2 of the Report plot the relevant contours in these respects).
- 8.6. In relation to Item 4, the applicant has submitted a Safety Assessment Report, although it appears to be a template for the preparation of such a Report.
- 8.7. In relation to Item 5, the applicant has submitted a site layout plan showing surface water drainage and two accompanying more detailed plans, which show how effluent run-off from the silage pits and the slurry delivery and disinfecting area would be handled. It has also provided the following commentary on drainage arrangements:

*The water/effluent from the concrete silage yard will be collected in the drainage channels and piped to the underground slurry pit and then pumped into the digesters. The area surrounding the digesters and storage tank will be finished in washed gravel. The surface water which falls in this area will be collected in underground pipes and piped to the existing drainage channels. All clean water from the eve shoots and water down pipes will be piped directly to the existing drainage channels.*

- 8.8. In relation to Item 6, the applicant has submitted a Nutrient Management Plan, entitled “Farmer Full – Fertiliser Plan 2018”, for the applicant’s lands. This Plan would be reviewed annually and a copy of it would be submitted to the Planning Authority.
- 8.9. In relation to Item 7, the applicant has submitted an Appropriate Assessment Screening for Works at the subject site. This Screening concludes that “It is considered that the proposed development 7km from the Lower River Shannon SAC, will have no significant impact on the flora and fauna, conservation interests and the integrity of this, and any other designated Natura 2000 site.” Accordingly, no NIS has been submitted.
- 8.10. In relation to Item 8, the applicant has clarified that it does not propose to provide biogas for the heating of community buildings as part of the current proposal. (Such provision forms part of a long-term plan only).
- 8.11. In relation to Item 9, the applicant advises that Kerry County Council’s Environmental Officer and EPA officials have discussed the question of waste facility permit and they have decided that, as the proposal is for an agricultural anaerobic digester, such a permit would not be required.
- 8.12. In relation to Item 10, the applicant advises that, during the construction phase, a portaloos would be on-site, and, during the operational phase, a waterless compostable eco-toilet would be on-site.
- 8.13. In relation to Item 11(a), the applicant advises that while an underground circular concrete tank was permitted under 11/539, a rectangular one was installed in the same position as the permitted tank and of the same volume.
- 8.14. In relation to Item 11(b), the applicant advises that the previously proposed pump house between digesters numbered 1 and 2 would not now be built, as the necessary pumps would be housed in the same building as the pasteurisation and CHP equipment.
- 8.15. In relation to Item 12, the applicant has expanded the description of the proposal to include an explicit reference to the Combined Heat and Power (CHP) Engine. The revised description used in a public consultation exercise. It read as follows:

*To construct two digestion tanks, a storage silo, Combined Heat & Power Engine (CHP), an ESB substation for the completion of an agricultural anaerobic facility, and to retain and complete pasteurisation/pump room/offices, machinery shed, new entrance road onto public road and all associated site works.*

## 9.0 Responses to Further Information

9.1. Each of the appellants has responded to the further information as follows:

### **(a) Wym O’Connell of “Papillion”, Main Street, Causeway**

9.2. The Odour Dispersion Model Report is critiqued on the following grounds:

- The nearest sensitive receptor is not the GAA clubhouse, but the GAA grounds,
- The Report is not comprehensive in its consideration of the range of odours that would occur, e.g. the release of pressure valves attached to the anaerobic digestion vessels would result in the emission of untreated gases and the burning-off of raw biogases would result in the emission of potentially odourous gases through the CHP stack.

9.3. The Air Dispersion Model Report is critiqued on the following grounds:

- An inadequate range of gases is considered, i.e. several that potentially could be emitted from the aforementioned valves and stack have not been.
- Airborne particulate matter has not been considered.
- Table 1.1 assumes that the CHP stack is 10m high: No drawings of the same have been submitted.

9.4. Attention is drawn to the applicant’s failure to submit a site-specific Public Safety Assessment of the proposal. The appellant outlines his understanding of the risks that anaerobic digester facilities pose to the public. He expresses particular concern over the risk of flash fires and he contends that, as it is not possible to establish that in excess of 10 tonnes of biogas would never be present on the site, under the precautionary principle, the proposal should be regarded as a “lower tier establishment” for the purposes of the Control of Major Accident Hazards Involving

Dangerous Substances Regulations, 2015. The legal case of Halpin v An Bord Pleanala & Others [2019] IEHC 352 is cited in this respect.

9.5. Attention is drawn to the applicant's failure to submit a Hydrological Assessment Report. Attention is also drawn to the submitted drainage plans, which are critiqued on the basis that during high rainfall/flood events pollutants would be transported by surface water run-off to land drains and permeable surfaces would allow pollutants to reach ground water. In this respect, the plans do not make explicit the actual extent of concrete and hardcore surface treatments and the credibility of requiring that the anaerobic digester process receive all soiled waters is questioned, again against the backdrop of high rainfall/flood events.

9.6. The Stage 1 Appropriate Assessment Screening Report fails to acknowledge that the proposal relates in part to works already undertaken. Instead these works are referred to as the baseline for Screening. Undertaking Screening retrospectively would appear to be contrary to Article 6(3) of the Habitats Directive.

Attention is drawn to the AA Screening Report, which refers to an earthen bank that acts as a buffer to surface water run-off from the site. This bank was formed as part of the project and so, as a mitigation measure, it should not be taken into account in undertaking screening. Attention is also drawn to the absence of any assessment of emissions from the proposal, thereby opening up a lacuna in the screening undertaken.

9.7. Attention is drawn to the omission of the biogas heating of community buildings aspect of the proposal. Such omission leaves unanswered the questions as to how this gas would now be stored and what use it would be put to. Furthermore, as the applicant as indicated that such heating would be its long-term plan, its addition in the future would constitute project splitting.

9.8. Attention is drawn to the provisions of the Waste Management Act 1996 (as amended). Under Section 2(b), the input of slurry to the proposed biogas facility would not be exempt and so, under Section 3(1)(g), a waste facility permit would be required.

9.9. Attention is drawn to the proposed "waterless compostable eco-toilet". The siting of this toilet is not shown and how waste from it would be disposed of has not been

addressed. Furthermore, no hand washing facilities would be provided, thereby posing a hygiene risk.

9.10. Attention is drawn to the different shape of slurry tank installed and the omission of a pumphouse, both of which represent departures from the previous permission. Furthermore, the CHP building, the construction of which commenced after this permission expired, does not accord with the siting and orientation of the building that was permitted.

**(b) Roy Dineen of Dromkeen West, Causeway**

9.11. The applicant's response to Item 5 is critiqued as follows:

- The submitted drainage plans are not comprehensive, e.g. the existing channel from the concrete tank to the land drain along the western boundary of the site is not shown. The proximity of this channel to this tank could be a means of conveying disease to the local river network.
- Given rainfall levels in the area and the extensive areas of the site that would drain to the pre-pit and from there to the digesters, the ability of the same to cope with the amount of surface water run-off that would be likely to ensue is questioned.
- Again, the submitted plans fail to show how clean and soiled water would be kept separate and, given envisaged loading and disinfecting activities, the extent of concrete surfacing would be inadequate and yet to extend it further would add to the surface water draining to the aforementioned pre-pit.

9.12. The applicant's response to Item 8 prompts concern over earlier indications that the project would receive food waste or sewage/sludge as inputs in the future.

9.13. The applicant's response to Item 10 fails to address the disposal of waste from the proposed eco-toilet. If the digester facility were to be relied upon in this respect, then it would mark a departure from its nature as an agricultural anaerobic digester. And what of visiting groups to the site, would they use the said toilet without any hand washing facilities? Attention is drawn to the earlier retraction of toilet facilities from the current application, presumably because of soil conditions that would militate against required percolation.

#### **(d) Kerry Education and Training Board**

9.14. The appellant has reviewed the odour, ambient air quality, and noise information submitted by the applicant.

- In relation to odour and ambient air quality, it undertakes a peer review of the information submitted and concludes that the methodology employed, and the odour abatement measures identified would be appropriate. Likewise, the assessment undertaken is deemed to be robust.

The appellant notes that the stack to the CHP would be 10m instead of 3.1m. In the light of this change, the adequacy of the description of the proposal is questioned and the absence of accompanying drawings is highlighted.

9.15. In relation to noise, it undertakes a peer review of the information submitted and the following points are made:

- BS 4142 is used: This standard is appropriate for assessing the impact of noise upon residential properties, whereas one of the sensitive receptors is Causeway Comprehensive School. In this respect, standards set out in the DoES's document entitled "Acoustic Performance in Schools (TGD-021-5), Revision 1, would be appropriate, i.e. an upper limit for classrooms of 50 dB  $L_{Aeq, 30min}$ , which assumes a 15 dB(A) reduction for closed windows.
- The appellant compares their noise assessment with the applicant's one. While the former estimates that the nearest school building would be 200m away, the latter estimates that it would be 260m away: the difference in noise levels is 2dB.
- The 10dB noise reduction from screening needs to be substantiated, e.g. a solid barrier could achieve 5dB, while a higher one could achieve 8dB. In this respect, trees and hedgerows are of no addition.
- While the applicant's assessment is critiqued, the predicted noise level of 39dB  $L_{Aeq}$  is well within the aforementioned upper limit for classrooms, albeit the efficacy of screening remains to be demonstrated.

The appellant reiterates its key concern over traffic.

**(e) Jackie & Margaret O'Carroll of Dromkeen West, Causeway**

9.16. The appellants previously expressed concerns over the proposal have not been allayed by the applicant's further information.

**The Planning Authority**

9.17. has also responded to the further information as follows:

- It notes the conclusion that noise, emissions, and odours would not cause nuisance at the nearest sensitive receptors,
- It concurs with the conclusion of the Appropriate Assessment Screening that Appropriate Assessment would not be necessary,
- It notes, too, the availability of extensive lands for spreading the digestate, and
- It is satisfied that waste authorisation is not required, as all materials would be drawn from the applicant's own farmlands.

9.18. The Planning Authority reiterates that the principle of the proposal was established by the previous, now expired, permission, which led to the undertaking of substantial works on the site and the proposal remains consistent with national and local renewable energy policies and objectives.

**10.0 Further Assessment**

10.1. In the light of the further information submitted by the applicant and the submissions generated by it from four of the five appellants and the Planning Authority, I will revisit those matters from my original assessment that prompted the request for further information. I will utilise the headings from this assessment.

**(iii) Land use, the description of the proposal, and size categorisation**

10.2. Under this heading, I identified the need for the description of the proposal to be expanded to refer to the CHP Engine. The applicant has now done this, and the application has been re-advertised accordingly.

10.3. Appellant (d) has stated that the description should explicitly refer to the accompanying stack, too. However, I consider that insofar as this stack would be integral to the engine, the reference to the CHP Engine effectively encompasses it.

#### **(iv) The absence of w.c. facilities**

- 10.4. While the applicant has reiterated its view that such facilities would, in practise, not be needed on-site during the operational phase of the proposal, it has, nevertheless, proposed a waterless compostable eco-toilet for occasional use. Appellants (a) and (b) have critiqued the same, in terms of lack of information on its siting and operation, e.g. waste disposal arrangements, and hygiene, i.e. the absence of hand washing facilities.
- 10.5. I note that the applicant has not commented upon the inter-dependence of the proposal to the host farm, which arises from reliance upon w.c. facilities in two of the directors' farmhouses. In this respect the proposed eco-toilet would, subject to further details, be at best a supplementary facility. (I note, too, that the inter-dependence of the proposal to the host farm for the project as a whole would obviate the need to retain the existing means of access).
- 10.6. I conclude that if the Board is minded to grant permission, then the conditions discussed in paragraphs 7.30 and 7.70 above would still be needed.

#### **(viii) Environmental impacts affecting amenity**

- 10.7. The applicant has submitted reports on noise, air dispersion, and odour impacts emanating from the proposal. Each concludes that this proposal would be compatible with the amenities of the area.
- 10.8. Appellant (d) undertakes a peer review of the noise report. Notwithstanding several identified gaps and inaccuracies in this report, it concludes that the resulting noise impact would not be the cause of nuisance at Causeway Comprehensive School. The key gap identified is that the applicant has not demonstrated that screening would be capable of effecting a reduction of 10dB(A). In this respect, the submitted site layout plan shows mounding, planting, and wire fencing to the site boundaries, which would be insufficient to affect the said reduction. I anticipate that acoustic fencing would be required to achieve a significant noise reduction. Such fencing would be capable of being conditioned.
- 10.9. Appellant (a) critiques the air dispersion report on the basis that an inadequate range of gases is assessed and particulate material is not assessed. Appellant (d) has peer reviewed this report and concluded that it provides a robust assessment. Both

appellants, however, draw attention to the absence of plans depicting the revised stack.

10.10. I note that the submitted plans depict the stack as originally proposed, i.e. with a height of 3.1m. As revised, it would be 10m. While plans have not been submitted to depict this revision, I anticipate that this omission could be rectified by a condition precedent.

10.11. Appellant (a) critiques the odour report on the basis that an inadequate range of odours is assessed. Appellant (d) has peer reviewed this report and concluded that it provides a robust assessment. Both appellants, however, draw attention to the identification of the GAA clubhouse rather than the GAA grounds as the nearest sensitive receptor.

10.12. I note that Figure 5-1 of the odour report shows that most of the said grounds as well as the clubhouse lie within the area wherein odour from the proposal would not be negligible, i.e. above 0.3 OUE/m<sup>3</sup> and in the case of the clubhouse 0.33 OUE/m<sup>3</sup>. Given that some of the grounds would be closer than the clubhouse, a higher figure could be anticipated, but one well below levels that would normally be judged to be offensive.

10.13. I conclude that, subject to the erection of acoustic fencing, the proposal would be capable of being operated in a manner compatible with the amenities of the area.

#### **(ix) Public safety**

10.14. The applicant was requested to submit a public safety assessment proposal. It has submitted a Safety Assessment Report.

10.15. Appellant (a) critiques this Report for being non-site specific. He expresses particular concern over the risk of flash fires, and he draws attention to the question of biogas storage, which was at issue in the legal case *Halpin v An Bord Pleanala & Others* [2019] IEHC 352. As such gas is now no longer envisaged as being used in the heating of community buildings in the short/medium term, he questions the use to which it would be put and where it would be stored.

10.16. I note that the application is accompanied by an outline of the anaerobic digester process, which was originally submitted as part of application 11/539. This outline states the following under Item 8:

*The gas produced in the digester tanks is pumped to the CHP Engine Room, via filters. The collected biogas is dried and filtered to ensure gas quality prior to entering the CHP Engine. The quality of the biogas entering the Engine is equivalent to natural gas. In normal operations, no gas is stored on site. As the gas is generated in each tank, it is used directly by the CHP Engine.*

10.17. The outline goes onto to discuss how heat generated by the CHP Engine is recovered and used to regulate the temperature of the digester tanks. Presumably, it would be this heat that could be deployed in any future heating of community buildings. Such adaptation of usage would entail the laying of infrastructure that would need to be the subject of a further planning application. Contrary to appellant (a)'s view, I do not consider that its omission from the current application risks project splitting.

10.18. The legal case cited discussed the composition and quantity of biogases that could be present within the anaerobic digestion facility in question. This discussion was prompted by the 10-tonne threshold pertaining under effectively the Seveso III Regulations. The Board received advice to the effect that it was not possible to conclude that the threshold would never be exceeded and so, in these circumstances, it could either

*Demonstrate that the maximum quantity of biogas present on the site at one time could never exceed 10 tonnes. This would have to be done by implementing suitable operational controls to limit the biogas quantities (e.g. monitoring liquid levels in tanks, monitoring biogas concentrations in the vapour spaces of the tanks, use of flaring to manage inventory of required or other measures).*

Or

*Proceed on the basis that the site is a lower tier establishment and prepare and issue a notification to that effect. In this case the operator will also need to ensure that they meet the requirements of SI 209 of 2015 (the Seveso III Regulations).*

10.19. Notwithstanding a critique of the feasibility of the first of these two options, the Board selected this one, only the condition that it subsequently drafted was found to fall short of reflecting the stated advice, i.e. this condition simply capped the quantity of biogas allowable without requiring the submission of a scheme as to how this was to be achieved.

10.20. I consider that the current proposal is analogous to the one considered in the aforementioned legal case. Thus, there is insufficient information available to conclude that the 10-tonne threshold would never be exceeded and so the Board is, again, faced with the two options set out above.

10.21. I note that appellant (a) has drawn attention to the said legal case only following the receipt of further information. I note, too, the valid criticism that the submitted Safety Assessment Report is non-site-specific. In these circumstances, the Board may wish to consider raising these matters with the applicant under another further information request.

10.22. I conclude that public safety remains to be addressed on a site-specific basis.

**(xi) Water**

10.23. The applicant has submitted a site layout plan showing surface water drainage and a slurry flow plan, along with a brief commentary. Appellants (a) and (b) have critiqued this information. They make the following points:

- The submitted information does not include a hydrological assessment of the proposal,
- The depiction of existing drainage channels is incomplete, e.g. one from the vicinity of the concrete tank to the drainage channel along the western boundary of the site is omitted,
- The extent of concrete and hardcore surfacing treatments has not been made explicit,
- The reliance upon the slurry tank to receive soiled water run-off is questioned, especially during periods of heavy rainfall/flood events, and
- The means of ensuring that cleaned and soiled water are kept separate has not been made explicit.

10.24. I essentially concur with the above critique. I note that a comparison of the submitted site layout plan showing surface water drainage with the facility layout plan submitted under application 11/539 indicates that reliance upon the slurry tank to receive soiled water run-off appears to be an innovation under the current proposal. Under both plans, effluent run-off from the feedstock storage silos would be pumped directly to

the pre-pit/slurry tank. However, under the current proposal, soiled water from the slurry delivery and disinfecting area would also drain into this tank, whereas originally it would have passed through a Klarjester by-pass separator into a land drain. Given the presence of a more extensive concrete yard adjoining this area, it is unclear whether surface water from this yard, too, would drain into the said tank.

10.25. In the light of the foregoing paragraph, questions arise as to the compatibility of the proposed reliance upon the slurry tank with the operation of the process itself.

Clearly, if an incompatibility were to arise, then the disposal of soiled surface water would re-emerge as an issue in need of resolution. Likewise, the need to design a drainage system that self-evidently would ensure the separation of soiled and clean surface water remains outstanding.

10.26. I conclude that the applicant has failed to demonstrate that the proposal would be capable of being served by a satisfactory surface water drainage system.

#### **(xii) Screening for AA**

10.27. The applicant has submitted a Stage 1 Screening for AA Report, which concludes that there is no need to proceed to Stage 2 and the submission of a NIS. Appellant (a) has critiqued the validity of the screening exercise thus undertaken on the following grounds:

- It includes works that are already in-situ and so it is partially retrospective,
- It relies on the buffering properties of an embankment to reach its conclusion, and
- It only considers water rather than other emissions from the proposal.

10.28. In relation to the first of these grounds, the current application is two-pronged in the sense that it comprises elements of pure proposal and elements for retention and completion. (The submitted site layout plans showing sections also denote completed elements). Thus, under permitted application 11/539, the project commenced to its present inter-mediatory state, albeit aspects of the implementation to date have been contested, as discussed under the first heading of my assessment. Application 11/539 was the subject of a Stage 1 AA Screening Report undertaken by the Planning Authority, which concluded that “There is no potential for significant effects to Natura 2000 sites.” Thus, insofar as development on-site is

authorised, it has already been the subject of Stage 1 AA Screening. Insofar as such development is being “screened again” as part of the current proposal, such screening can be more accurately described as duplication rather than retrospection.

10.29. In relation to the second of these grounds, under the submitted Screening Report, the applicant assesses the indirect impact of surface water run-off/pollution from the proposal. In doing so, it states that “the site works area is separated from site drains by a high embankment which will serve to buffer any run-off.” This *high* embankment appears to be along the southern portion of the western boundary to the site, as distinct from the mounds shown for the other boundaries. As such, it is not shown on either the submitted plans or their predecessors under 11/539. The embankment is in-situ and so it forms part of the existing topography of the site.

10.30. In relation to the third of these grounds, the other emissions that would emanate from the proposal comprise noise, gases, and odours. Impacts arising would affect the locality of the site only.

10.31. I will undertake a Stage 1 Screening Exercise of the current proposal. In doing so I will draw upon the applicant’s Screening Report, the submissions of the parties with respect to the same, and the NPWS’s website.

10.32. The site is neither in nor near to a Natura 2000 site. Accordingly, the proposal would have no direct impacts upon such sites.

10.33. The site is separated from Natura 2000 sites by considerable distances. The only such site with which it is linked is the Lower River Shannon SAC (site code 002165). The link in question is a hydrological one and it exists via a network of land drains and watercourses, e.g. Crompaun River, which run between the site and the River Brick, which forms part of the said SAC. This link is over a distance of c. 7km.

10.34. Under the proposal, the site would be fully developed to provide an anaerobic digestion facility. During the construction and operational phases of this proposal, it would result in a range of emissions, primarily to the air, but also to local land drains, by way of surface water run-off. Accordingly, indirect impacts upon the Lower River Shannon SAC could arise.

10.35. Specifically, during the construction phase, surface water run-off could bear pollutants, such as hydrocarbons and dust particles, from the site to the said land drains, which are comprised in the network that flows into the River Brick. Likewise,

during the operational phase, surface water run-off could bear pollutants, such as hydrocarbons/disinfectants and fragments of feedstock, from the site to these land drains.

- 10.36. Water quality in the River Brick and the River Feale, which it flows into, is of importance as these rivers support fauna, the following of which are qualifying interests of the SAC: The three Lampreys (Sea, Brook, and River), Salmon, and Otter. The accompanying Conservation Objectives for these faunae are that the conservation status of their habitats should either be maintained or restored.
- 10.37. The applicant's Screening Report does recognise the potential for pollution of the SAC. However, it considers that a high embankment to the site would buffer surface water run-off. This Report also considers that, as the land drains are the subject of dense aquatic vegetation and as there is "a multiple of the 7km direct separation span" between the site and the River Brick, "there is minimal to nil potential for surface water run-off of sediment or polluting material entering the SAC" and so the said Conservation Objectives would be unaffected.
- 10.38. I recognise the factors cited by the applicant. I recognise, too, that, under the eleventh heading of my further assessment, the applicant has failed to demonstrate that the proposal would be capable of being served by a satisfactory surface water drainage system. I am therefore concerned that, under the proposal, a water pollution risk is posed to adjoining land drains and, under heavy rainfall/flood event conditions, the rate of water flow in these drains quickens, thus heightening the risk that pollutants would ultimately reach the SAC.
- 10.39. I, therefore, conclude that, in the absence of a satisfactory surface water drainage system for the proposal, I am unable to be certain that water borne pollutants emanating from the proposal would not significantly effect the Conservation Objectives of the Lower River Shannon SAC. In these circumstances, the Board may wish to request that the applicant submit additional further information in the form of a NIS. In the light of my conclusion, such a request should also address the absence of a satisfactory surface water drainage system for the proposal. (Other items that should be included in such a request are set out under the (ix) heading of my further assessment).

## 11.0 Recommendation

11.1. That permission be refused.

## 12.0 Reasons and Considerations

1. The Board considers that the applicant has failed to demonstrate that the proposal would be served by a satisfactory surface water drainage system. Specifically, the drainage scheme submitted under further information on 24<sup>th</sup> October 2019 fails to depict how soiled and clean water would be kept separate and it fails to explain how the measures proposed for the disposal of soiled surface water would be compatible with the operations of the anaerobic digestion facility, especially during periods of heavy rainfall. Consequently, to accede to the proposal in these circumstances would risk the pollution of adjoining land drains with adverse implications for water quality and, potentially, public health. The proposal would thus be contrary to the proper planning and sustainable development of the area.
2. On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposal individually or in combination with other plans or projects would not be likely to have a significant effect on European site No. 002165, or any other European site, in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting permission.

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Hugh D. Morrison  
Planning Inspector

29<sup>th</sup> April 2020