



An  
Bord  
Pleanála

**Board Direction**  
**BD-006878-20**  
**ABP-300506-17**

The submissions on this file and the Inspector's report were considered at Board meetings held on 20/09/18 and 06/11/2020.

The Board decided to refuse permission under section 37G of the Planning and Development Act 2000 as amended, generally in accordance with the Inspector's recommendation, for the following reasons and considerations.

In coming to its decision, the Board had regard to the following:

**European Legislation, including of particular relevance:**

- Directive 2014/52/EU amending Directive 2011/92/EU (EIA Directive) on the assessment of the effects of certain public and private projects on the environment.
- Directive 92/43/EEC (Habitats Directive) and Directive 79/409/EEC as amended by 2009/147/EC (Birds Directives) which set the requirements for Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union.
- Directive 2000/60/EC for establishing a framework for Community action in the field of water policy.
- Directive 2006/118/EC concerning groundwater.

**National legislation, including of particular relevance:**

- The European Communities Environmental Objectives (Surface Waters) Regulations 2009, as amended.

- The European Communities Environmental Objectives (Groundwater) Regulations 2010, as amended.

**National and regional planning and related policy, including:**

- The National Planning Framework – Ireland 2040, which contains objectives to increase waste treatment and management capacity and a standardised approach to managing waste.
- The National Development Plan – 2018-2027, which identifies the need to increase capacity in waste management infrastructure to meet existing and future waste management objectives.
- The Regional Policy Guidelines for the Greater Dublin Area 2010-2022.
- The Eastern-Midlands Region Waste Management Plan 2015–2021.

**The local planning policy including:**

The provisions of the Kildare County Development Plan 2017-2023, specifically Policy Objectives WM1; WM3; WM5; WM12/ WM17; and WM18, in addition to Transport Policy MT15 and Policies BL1-BL8 for Boglands.

**The following matters were taken into consideration:**

- (a) the evidence provided with regard to the European, national and regional requirements for the treatment and disposal of wastes, including bottom ash, hazardous waste, and biological waste.
- (b) the nature, scale and design of the proposed development including the new landfill cells and associated infrastructure.
- (c) the evidence submitted with regard to the operation of the existing facility, including traffic impacts and the impact on water quality in the Cushaling catchment.
- (d) the design, layout, and landscaping of the proposed facility.
- (e) the range of proposed mitigation measures set out in the submitted in the documentation lodged including the Environmental Impact Assessment Report and the Natura Impact Statement incorporating appropriate assessment screening.

- (f) the submissions made in relation to the application including those submitted at the oral hearing and the report and recommendation of the Inspector and the additional report provided to the Board by the consultant.

### **Appropriate Assessment: Stage 1**

The Board noted that the proposed development is not directly connected with or necessary to the management of a European Site.

In completing the screening for Appropriate Assessment, the Board accepted and adopted the screening assessment and conclusion carried out in the Inspector's report dated 12<sup>th</sup> of September, 2018, in respect of the identification of the European sites which could potentially be affected, and the identification and assessment of the potential likely significant effects of the proposed development, either individually or in combination with other plans or projects, on these European sites in view of the sites' Conservation Objectives. The Board, in its Direction dated the 20<sup>th</sup> of September, 2018, requested the submission of a Natura Impact Statement in accordance with section 177T(5) of the Planning and Development, 2000 (as amended).

### **Appropriate Assessment: Stage 2**

The Board considered the Natura Impact Statement and all other relevant submissions and carried out an Appropriate Assessment of the implications of the proposed development for the River Barrow and River Nore Special Area of Conservation (Site Code: 002162) in view of the site's Conservation Objectives. The Board considered that the information before it was adequate to allow the carrying out of an Appropriate Assessment.

In completing the Appropriate Assessment, the Board considered, in particular, the following:

- (a) the uncertainty regarding the potential impact of suspended solids and ammonia run-off from the proposed disposal site and/or from drainage works

associated with the works and their potential impact on actual or potential salmonid breeding grounds in the tributaries of the Barrow River.

- (b) the mitigation measures, which are included as part of the current proposal, and
- (c) the conservation objectives to restore the favourable conservation condition of Salmon in the River Barrow and River Nore Special Area of Conservation (Site code: 002162).

In completing the appropriate assessment, the Board accepted and adopted the appropriate assessment carried out in the Inspector's report in respect of the potential effects of the proposal on the aforementioned European site, having regard to the sites conservation status. It is a conservation objective of the aforementioned River Barrow and River Nore Special Area of Conservation (Site Code: 002162) to restore the favourable conservation condition of salmon and the protection and improvement of water quality in potential and existing spawning beds in the upper reaches of the catchment are considered to be significant to this objective.

Having regard to:

- i. The mitigation measures proposed,
- ii. The scientific information set out in the Natura Impact Statement in respect of water quality and habitat status in the upper reaches of the catchment,
- iii. The impact of ammonia arising from the site resulting from the proposed operation and the management of Timahoe Bog,

The Board concluded that the proposed development would adversely affect the favourable conservation status of Salmon because of the potential for raised ammonia levels in the upper reaches of the catchment.

In overall conclusion, the Board was not satisfied that the proposed development, by itself or in combination with other plans or projects, would not adversely affect the integrity of the European Site, in view of the site's conservation objectives.

## **Environmental Impact Assessment**

The Board completed an environmental impact assessment of the proposed development, taking into account:

- (a) The nature, scale and extent of the proposed development.
- (b) The Environmental Impact Assessment Report and associated documentation submitted in support of the application.
- (c) The submissions from the planning authorities, the observers and prescribed bodies in the course of the application and the submissions of the applicant, planning authority, observers and prescribed bodies during the oral hearing,
- (d) The Inspector's report and consultant's report.

The Board agreed with the summary of the results of consultations and information gathered in the course of the environmental impact assessment, and the examination of the information contained in the Environmental Impact Assessment Report and the associated documentation submitted by the applicant and the submissions made in the course of the application as set out in the Inspector's report. The Board is satisfied that the Inspector's report sets out how these various environmental issues were addressed in the examination and recommendation and are incorporated into the Board's decision.

## **Reasoned Conclusions on the Significant Effects**

The Board considered that the Environmental Impact Assessment Report, supported by the documentation submitted by the applicant, provided information which is reasonable and sufficient to allow the Board to reach a reasoned conclusion on the significant effects of the proposed development on the environment, taking into account current knowledge and methods of assessment. The Board is satisfied that the information contained in the Environmental Impact Assessment Report is up to date and complies with the provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU. The Board considered that the main significant direct and indirect effects of the proposed development on the environment are those arising from the impacts as set out below.

**The main significant effects, both positive and negative are:**

- **Significant negative impacts** on local ecology, specifically ammonia run-off from the site and landholding into local watercourses. It is not considered that the mitigation submitted is sufficient to prevent direct and indirect impacts on the ecology of the upper reaches of tributaries of the River Barrow.
- Significant **negative impacts** on **material assets** as a result of additional traffic loading on public haul roads. Notwithstanding the mitigation measures proposed, the residual impacts could still be significant.
- There is a **significant potential for impacts** on ground and surface waters by way of ammonia emissions from cutaway bog and the disposal activities, with consequent impact on downstream habitats.
- There is potential for a number of slight or short and very localised negative impacts to **biodiversity**. The loss of scrub and woodland habitat on the cutaway bog would reduce the extent of habitat for a range of local species.

The Board completed an environmental impact assessment in relation to the proposed development and concluded that, having regard to the potential downstream effects on the environment of ammonia emissions the proposed development, by itself and in combination with other development in the vicinity, would not be acceptable. In doing so, the Board adopted the report and conclusions set out in the Inspector's report.

**Overall Conclusion**

The proposed development would give rise to impacts which are significantly negative. Environmental impact assessment and appropriate assessment have been considered as set out in the sections above. It can, therefore, be concluded that the proposed development would not be in accordance with the proper planning and sustainable development of the area

## Reasons and Considerations

1. On the basis of the information provided with the application documentation and the further information submitted, including the Natura Impact Statement, and in the light of the potential for the proposed development, in combination with other developments in the area, to continue the ongoing degradation of remaining peat within Timahoe Bog resulting in an excess of ammonia and suspended solids in the Cushaling and Figile Rivers, with a consequent impact in preventing these rivers, part of the Barrow Nore catchment, to develop into suitable habitat for salmonid species, the Board is not satisfied that the proposed development individually, or in combination with other plans or projects would not adversely affect the integrity of European site (Site Code: 002162), in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting permission.
2. Having regard to the complex hydrological and hydrogeological conditions obtaining on-site, to the limited investigation carried out of those conditions and hence to the potentially inadequate mitigation measures associated with the proposed development, it is considered that on the basis of the information submitted with the application documentation and the further information submitted, the development site is unsuitable for a development of the nature and scale proposed, having regard to ongoing excess ammonia concentrations in groundwater and in local watercourses, which include watercourses with potential for salmonid habitat which flow into the River Barrow and River Nore Special Area of Conservation (Site Code 002162). The proposed development would, therefore, have a significant adverse effect on the conservation and protection of the River Barrow and River Nore Special Area of Conservation (Site Code 002162), and would therefore be contrary to the proper planning and sustainable development of the area.

3. The Board is not satisfied, on the basis of the information submitted with the application documentation and the further information submitted, that the subsurface geology of the site is suitable for the proposed hazardous waste cell. It is considered that given the site's high groundwater levels and the uncertainty regarding the nature of the subsurface, that the applicant has not demonstrated that the proposed development would ensure the safe disposal of this material on the site. The proposed development would give rise to a hazard to public health and would, therefore, be contrary to the proper planning and sustainable development of the area.
  
4. Having regard to the proposed development being accessed solely via a sub-optimal network of Regional Roads which run through a series of villages before connecting with the National Road Network, it is considered that the proposed development would generate a significant volume of traffic, including a high number of movements by heavy goods vehicles, and the Board cannot be satisfied on the basis of the information submitted with the application documentation and the further information submitted and the documentation submitted from other parties, that the road network in the vicinity of the site is capable of accommodating this significant additional volume of traffic safely due to the restricted width and capacity of the R402, R403, R407 and R409 in the vicinity of the site. The proposed development would, therefore, give rise to traffic congestion and would endanger public safety by reason of traffic hazard.



## **Schedule of Costs**

In accordance with the provisions of section 37H(2)(c) of the Planning and Development Act 2000, as amended, the Board determined that the amount due to be paid by the applicant to the Board is **€109,723**.

**Board Member**

**Date:** 06/11/2020

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Chris McGarry