



An
Bord
Pleanála

Inspector's Report PL.247650

Development	Permission for existing industrial (waste recycling, recovery and transfer) buildings, completion of works of existing building and 5 no. roller shutter doors. Extension of wall along southern boundary
Location	Killaloonty, Tuam. Co Galway.
Planning Authority	Galway Co Council
Planning Authority Reg. Ref.	16/274
Applicant(s)	Wheeley Environmental Services Ltd Permission.
Planning Authority Decision	To Grant Permission
Type of Appeal	Third Party
Appellant(s)	1.Tuam Anglers Association 2.Larkin Engineering Street Products
Date of Site Inspection	February 27 th , 2017
Inspector	Breda Gannon

1.0 Site Location and Description

- 1.1. The site is located at Tuam Business Park, off Weir Road in Tuam. Co Galway. It is located approximately 3km northwest of Tuam town centre. The business park contains a number of industrial/commercial premises. The appeal site is located at the rear of the estate and is accessed by the internal estate road which runs parallel with Weir Road. The road then forms a right angle bend extending westwards along the southern banks of the Clare River, terminating at the subject site.
- 1.2. The site, which has a stated area of 1.4 ha, is bounded to the north by the Clare River. To the east there is an existing industrial premises (Larkin Engineering). To the south and west there are agricultural fields. The site contains 5 no. warehouse buildings, of concrete block construction with a metal cladding finish to the sides and roof. The area to the front has been concreted and car parking provided.
- 1.3. The site entrance is located to the east of the site, beside which there is ramped access to a weighbridge, with a weighbridge office located on its northern side. There are a limited number of car parking (6 no. spaces) close to the site entrance.
- 1.4. Outside the business park to the south, the Weir Road provides access to a number of single residential properties and more recently developed housing estates (Carrigweir, The Pottery) and some business properties closer to the town. To the north the predominant land use is agriculture. The Tuam Bypass is currently under construction less than 500m to the south.

2.0 Proposed Development

- 2.1. The development is described as follows in the public notices submitted in support of the application;
- 2.2. Permission is sought to retain existing industrial (waste recycling, recovery and transfer buildings (4493.2 sq.m) including loading ramp, existing weighbridge, weighbridge office, existing 2.2m high wall, shuttered concrete retaining wall, existing drainage including 65,000 litre rainwater harvesting tank and all ancillary site development works.

- 2.3. Permission is sought for the completion of works to the final section of the existing building and the installation of 5 no. roller shutter doors. Permission is also sought for the extension of the retaining wall 125.88 meters along the southern boundary.
- 2.4. The application relates to an activity requiring a Waste Management Facility Permit from Galway Co Council.
- 2.5. The application is supported by the following documents;
- Planning Report, prepared by Tom Phillips & Associates & Enviroguide Consulting,
 - Traffic Impact Report, prepared by Stephen Reid Consulting,
 - Flood Risk Assessment, prepared by Envirologic, and,
 - Assessment for Screening, prepared by Ecology Ireland.

3.0 Further information

Further information was sought on the application on 29/4/16 relating to the following matters;

- Clarification of aspects of AA Screening Report,
- Details of annual intake of waste,
- Car parking for employees,
- Industrial process converting plastic cartons into plastic pellets,
- Justification for development in flood zone.
- Odour control.

A response to these matters was submitted on 10/10/16.

4.0 Planning Authority Decision

4.1. Decision

The planning authority decided to grant permission for the development subject to 13 no conditions, which contains the following conditions of note;

Condition No 2 – The permission does not permit the existing retaining/boundary wall along the eastern boundary.

Condition No 3 – Controls the use of the facility i.e. solely for the purpose of dry waste recycling, with no intensification of use. Precludes other waste types being accepted at the facility including biodegradable municipal food or garden waste, hazardous waste and liquid waste including sludge.

Condition No 5 – Controls advertising.

Condition No 6 – Requires that the mitigation measures outlined in the Flood Risk Assessment to be implemented within 3 months of the grant of permission.

Condition No 7 – All operations associated with material recovery and storage to take place indoors.

Condition No 8 – Controls hours of operation.

Condition No 10 – Noise levels.

Condition No 11 – Annual intake of waste not to exceed 20,000 tonnes per annum. Register of waste to be maintained.

Condition No 12 – Financial contribution.

Condition No 13 – Bond.

4.2. **Planning Authority Reports**

4.2.1. Planning Reports

The Planning Officer's report of 28/10/16 notes that a previous application was invalidated on foot of evidence at the time with respect to AA Screening and EIA. Since then there have been proceedings in the District Court which have been appealed to the Circuit Court. During the proceedings, the court advised that an effort to resolve the issues be made and this has resulted in the subject application

It is stated that the planning authority has undertaken screening for Appropriate Assessment and has concluded that the development will not have a significant impact on the designated site(s).

It is stated that during the site visit the site was also operating as a transfer station for general waste. The activity is included in the application for retention but was not

previously permitted on the site. Notwithstanding the applicant's submission there are three elements that should be omitted from the development.

(a) The facility was never permitted as a waste transfer station and given its location with adjoining businesses, it is considered that this element should not be permitted.

(b) The planning authority does not consider that the boundary wall is exempt and it is not included in the development description. It should therefore be omitted from the permission.

(c) The manufacture of plastic pellets is not part of the development proposed and is a separate process. The activity cannot form part of the current permission.

It is concluded that as the proposal which seeks retention had permission for the use of dry recyclable material (albeit only a small portion of the buildings now on site) and given that the site is zoned for industrial purposes and that screening for full AA has been screened out, the planning authority considers it appropriate to grant permission subject to conditions.

4.2.2. Other Technical Reports

None.

4.3. **Prescribed Bodies**

An Taisce in their submission of 7/4/16 note that Preliminary Screening for EIA and AA is required as the site is on the Clare River which drains into Lough Corrib SAC.

It is noted that the level of retention of unauthorised structures in the application shows significant disregard to the planning conditions attached to the operation of the site since the original decision to grant permission. The issue of compliance operation needs to be addressed including the actual volume and types of waste passing through the site. It is noted that the annual intake at the facility is limited to 5000 tonnes, but reference is made in a submission from A & L Goodbody Solicitors to an annual volume of residual waste that can be consigned from the facility forward for onward transport as 7000 tonnes.

Notwithstanding the content of the Goodbody submission it is considered that the EIA issue has not been adequately resolved due to questions regarding actual

tonnages of material being moved through the site. AA Screening is also required due to location sensitivity.

4.4. **Third Party Observations**

Observations on the application were received from Noel Larkin, Director of Larkin Engineering and from Richard Jordan on behalf of Tuam Anglers Association. The issues raised are similar to those raised in the appeal and will be discussed in more detail below in the assessment.

5.0 **Planning History**

03/1053 – Planning permission granted for the retention of existing roller shutter door and surface water drainage discharge and change of use to a materials recovery and management facility including overnight parking of vehicles, office and administration associated with waste collection business on the site. The decision was upheld in a subsequent appeal made to the Board (PL07.205296).

6.0 **Policy Context**

6.1. **Development Plan**

The operative development plan is the **Tuam Local Area Plan 2011-2017**. The site is located in an area zoned for industry (Zone 1). The plan states that;

'Zone 1 will be taken to include the use of land for industry/manufacturing, repairs, science and technology, warehousing, distribution, open storage, waste materials treatment and recovery and transport operating centres. The development of inappropriate mixes of uses will not normally be encouraged'

The following policies are relevant;

Policy WM2: Ensure that the following priorities are applied in relation to waste management:

(a) To prevent and minimise the harmful effects of waste;

(b) To encourage and support the recycling and recovery of waste including green, organic and construction and demolition waste and the recovery of energy from waste;

(c) To ensure that waste that cannot be prevented, recycled or recovered is disposed of without causing environmental pollution;

(d) To ensure that effect is given as far as possible to the polluter pays principle.

Policy WM3: Ensure the provision of quality cost effective waste infrastructure and services, which reflect and meet the needs of the community and to ensure that the polluter pays principle is adhered to in all waste management activities.

6.2. Natural Heritage Designations

The AA Screening Report submitted with the application identifies the Natura 2000 sites within 15km of the subject site, which are discussed in more detail under Appropriate Assessment.

7.0 The Appeal

7.1. Grounds of Appeal

1. Tuam Anglers Association

In 2004, An Bord Pleanála granted permission to WERS Waste subject to 15 no. conditions. None of the conditions were complied with. The tonnage allowed has been exceeded each year, the permitted waste types have not been adhered to with trucks containing hazardous waste, biodegradable municipal food and garden waste, liquid waste including sludges on site. The operating hours have not been complied with and no development contribution or bond has been paid. When the embankment was constructed along the river bank it was left in such a rough condition that it is impossible for anglers to safely fish this part of the river. In 2009, Galway Co Council granted a waste facility permit to WERS Waste. This should never have been granted as the facility was not in compliance with planning.

Galway Co Council have increased the tonnage permitted from 5000 to 20,000 tonnes and allowed the operating hours to change without an application being made for same. It was stated in response to further information that there would be no resource requirement, including water abstraction. WERS Waste are currently extracting water from two different points on the river for use on the site, one located adjacent to the borehole and the other 100m up the side stream at the back corner of the site (photos enclosed which also show the pipes in the Clare River).

This site floods every year. The reinforced concrete wall at the western end of the site is over 1m above yard level. A video was submitted to Galway Co Council showing the water level at the top of the retaining wall. A large diesel pump has been used on numerous occasions in an effort to remove water from the site. Should a fire occur on the site, the drainage on site would be incapable of dealing with it.

There is a borehole for monitoring water pollution at the site, but records of any samples taken over the past 14 years could not be sourced. There is no stipulation by the planning authority for water sampling or water monitoring below the site. The EPA closed the site in 2012. Waste is not permitted to be stored outside the buildings and the photos show this is not the case.

The facility poses a threat to the Clare River and Lough Corrib SAC, a source of drinking water for most of Galway.

2. Larkin Engineering Street Products

A wall has been built without planning permission between Larkin Engineering and the WERS waste site. The wall is 24 ft high and 100 ft long and supposed to act as a fire wall. It is unsafe with no visible supports, built too close to Larkins Engineering building, with rubbish now lodging between the wall and Larkins property. No planning permission was sought for the wall.

The WERS facility poses a serious fire risk to Larkin Engineering. Since granted the recycling permit, WERS have erected a new building. None of the buildings have planning permission and one is attached to Larkin's property without proper fire priority. It was agreed that a wall be erected to prevent the spread of fire, but the wall that is erected does not constitute a proper fire wall. Larkin Engineering require that the building be removed leaving a proper 2m gap. Due to the nature of Larkin's

business, they also pose a fire risk to WERS, but Larkin's has planning permission and WERS do not.

The operation of the facility has resulted in major littering of Larkins property. Despite notifying Galway Co Co, the EPA and WERS, the problem persists. This results in blocking of gutters on a weekly basis. The company operates a strict waste management regime within its site and has attained ISO14001 accreditation. The amount of airborne litter lodged in accessible and inaccessible areas of the factory and yard means that the company is under increased pressure to keep the accreditation. Maintaining ISO14001 is vital to the company attaining export business.

A rain harvesting system was installed by Larkin Engineering in 2010, but due to the amount of litter, dust and debris landing on roofs, the filters were constantly being blocked, pumps destroyed making the system inoperable. The planning permission stipulates that all waste to processed, loading and unloaded indoors. This has never been adhered to.

There is inadequate parking to serve both staff and customers of WERS Waste resulting in customers parking on Larkin's property. The lack of parking and loading space results in trucks turning in Larkin's area, which causes serious risk to customers and staff and creates insurance issues.

The original planning permission for a recycling facility required that a reed bed be installed. As the facility grew the reed bed was removed and a concrete apron installed. Permission should be refused as the owners show a total lack of respect for the environment, including the Clare River, which feeds directly into Lough Corrib.

The operation of the waste facility results in rodent, fly infestations, with impacts on the adjacent business. Odours have threatened evacuation of Larkin's property. The facility is not suitable in its current location and permission should therefore be refused. There are also visual impacts associated with waste trucks stopped outside the facility before they enter the weigh bridge, which results in an unsightly image at the front of Larkin's property.

7.2. Applicant Response

Response to appeal by Larkin Engineering

Boundary Wall - The appellant's comments in relation to the party wall are entirely disingenuous. The construction of the party wall was initiated by WERS in full consultation with Larkin Engineering, to provide a dividing wall between the two properties. WERS sought to engage with Larkin Engineering in all aspect of the design and construction of the wall, ensuring that the wall meets all necessary fire certification. The wall has been constructed and completed to the standards as required to ensure that it will function as a fire wall (appended documentation includes certification of wall).

Condition No 2 of the planning authority's decision seeks to omit this boundary wall. The wall is an inherent part of the planning application and it is requested that the Board revise or omit this condition, so as to ensure that the wall is retained as part of the planning permission.

Whilst the appellant states that WERS pose a significant fire risk to their property, the planning application seeks to regularise permission for structures and all matters relating to Fire Certification will be fully addressed by Galway Co Council. The issues raised are therefore unfounded and should be dismissed by the Board.

Litter – It is acknowledged that there have been litter issues arising from the operation of the facility in the past, where materials were kept at the front of the facility and for some periods were uncovered. These matters have been fully addressed within the context of the planning application. The central element of the retention permission relates to the inclusion of roller shutter doors to the facility, resulting in materials being covered and all operations being undertaken indoors. Materials are also brought to the rear of the facility, further reducing potential litter arising from the site.

WERS have made significant steps to regularise their operation to cover waste/recycling materials and to ensure that operations are undertaken indoors at all times. The potential for wind borne litter emanating from the site has been mitigated by the applicant. WERS will continue to undertake full site maintenance including daily cleaning to ensure the management of all litter related issues.

Insurance – Matters relating to insurance have no relevance in the planning application and the Board is requested to dismiss this from the appeal.

Notwithstanding this, it is noted that the area of the site is well managed and WERS

have all appropriate insurances to cover the proper and orderly operation of their business.

Car parking – There is ample car parking for both staff and visitors to the WERS facility. Regular customers to the facility park within the grounds. It is not within the power of the applicant to control less frequent customers who may inadvertently park in the Larkin Engineering car parking spaces. The application does not involve an intensification of use of the site and as a result does not generate any additional requirement for car parking at the facility. It was confirmed in the response to further information (revised site layout) that there are 30 no. spaces for staff and 3 no. visitor spaces. A car sharing programme is in operation at the facility and not all of the staff travel to work by car. Parking in excess of that required for staff and customers is being provided at the facility and accordingly the claim made by the appellant are unfounded.

WERS will comply with Condition No 9 of the planning authority's decision and ensure that parking is properly delineated, which will assist in setting out clear customer car parking at this location.

Hours of operation – WERS operate fully in accordance with the existing conditions of the permission (PL07. 205296). They undertake the majority of waste transfer activities which have the potential to be odorous after 6 pm, to minimise impacts on personnel and customers of adjoining property. On occasion, the machinery within the facility operates outside of the time specified as they cannot be switched off due to the processes being undertaken (such as machinery used to process plastic pellets). These processes do not result in additional staffing or truck movements outside the permitted hours of operation.

No rationale was provided by the planning authority for the change to the permissible hours of operation (Condition No. 8). The hours as per the parent permission to 8pm are the correct hours for the operation of the facility. Requests that the Board revise the wording of this condition to reflect the parent permission.

Trucks -The appellant sets out a range of claims with respect to truck movements to and from the facility, which are asserted to cause serious concerns to staff/customers. The WERS facility is located in an area zoned for industrial purposes and the presence of articulated/waste trucks at the facility is

commensurate with the wider activities and structures within the light industrial environment. There is ample space within the site for all trucks entering the facility and progressing to the weighbridge and any queueing which may occur outside Larkin Engineering is minimal. Trucks undertake turnaround manoeuvres within the WERS site, before exiting.

WERS operates a modern fleet of lorries which are largely sealed and so any odour from the trucks is minor and transient. To ascribe the poor condition of the roads within the estate solely to WERS, is misleading. All industrial/commercial facilities within the business park will generate heavy loaded vehicular trips. The traffic associated with the operation of the facility has been assessed and it is considered that no significant impacts on the local or wider road network occurs.

Odour – The planning application seeks to regularise a range of measures which have largely addressed odour issues at the facility i.e. roller shutter door and the resultant enclosure of all materials during storage and sorting processes. These steps have significantly improved odour control issues at the facility.

The Odour Management Plan submitted as part of further information is currently being implemented. WERS will continue to implement the provisions of the Plan and undertake all appropriate measures to ensure that the odour issues arising from the operation of the facility are addressed.

Infestation – The applicant has a rodent management plan in place at the facility. All appropriate measures have been undertaken to date by WERS to ensure that the plant runs in accordance with best practice in terms of rodent management.

Reed Bed – The issues raised by the appellant is of no relevance to the appeal. The reed bed was previously in use at the subject facility. However, in accordance with the principles of proper and sustainable development, on the completion of the Tuam Waste Water Treatment Plant, WERS decommissioned the reed bed system. All foul effluent from the facility is now discharged to the WWTP. The revision to the services at the facility is outside of the planning application and is therefore not relevant to the appeal. It does however represent a more sustainable approach to the management of discharge from the site.

Response to appeal by Tuam Anglers Association

Compliance with conditions - Contrary to the assertions made, the applicant has substantially complied with all conditions of the parent permission. The business within the site has grown since the time of completion of all compliance matters. The planning application documentation sets out the sequence of events that has led to the current planning application in this regard.

Drawings were submitted on behalf of the applicant in May 2004 to enclose existing Building No's 1 & 2. Whilst it is the applicant's contention that these buildings form part of the development as originally permitted, they are included as part of the application for retention. WERS subsequently upgraded the technology they used at the facility to produce a higher quality product from Polyethylene and Polypropylene wastes. The materials recovery facility required the provision of additional dry and secure storage areas for processing this material and for installing machinery in accordance with Best Available Technology. This led to the construction of Building No 3 for the provision of the Plastic Compound Facility. It is applicant's contention that this building was exempted development in accordance with Class 21 of Schedule 2 of the Planning and Development Regulations 2001 (as amended). Notwithstanding this the building is also included as part of the application.

To operate in compliance with the Waste Facility Permit WFT/G/09/0002/01, it was necessary to ensure the segregation of the waste streams processed for recovery at the facility. Subsequently, there was an additional unauthorised extension to the north-west and buildings 4 & 5 were constructed to house waste before being sent off-site. The planning application seeks to complete the construction of Building No 5 to ensure that the building is fully enclosed.

The site contains a weighbridge which is exempted development under Schedule 2 Part 1, Class 21(a) (iii) of the Planning and Development Regulations 2001-2013 and does not require retention. Retention is being sought for the weighbridge office unit (36.6 m²) which is a vital component to the operation of the site.

The planning application also seeks the retention of the reinforced concrete wall on the western boundary notwithstanding the applicant's view that this is exempted development. The wall was built as a mitigation measure against flooding to replace a reed bed that was removed. The Flood Risk Assessment carried out in support of

the application highlights the effectiveness of this wall as a flood defence mechanism and recommends extending the wall along the southern embankment.

The works that have been undertaken have largely originated from the conditions of the parent permission. The current application seeks to regularise works that have been undertaken at the site over and above the parent permission.

Permission 14/1004 – It is incorrect to state that there is no difference between the current application and Reg Ref No 14/1004 that was invalidated by the planning authority. At the time the site contained unbanded containers which were identified as a potential source of risk to the river. These have been removed off the site.

The AA Screening Report considered the development on the site in the context of the Clare River, which forms part of Lough Corrib SAC, as well as other Natura 2000 sites within 15 km of the site. Full AA Screening has been carried out for the current planning application, which is materially different to the previous application. The AA Screening had full regard to the operational processes intended for the site and sets out a range of mitigation measures including Environmental Reporting, mitigation measures during construction period, with particular regard to the extension of the existing berm wall. The applicant is happy to comply with all mitigation measures identified in the AA Screening Report.

Water pipes – Photos have been included with the appeal which shows pipes, which are stated by the appellant to be used for the purposes of water extraction. Only one of the pipes is for water, the other is an electrical cable. The water pipe as shown is for a water pump which would be used in emergency situations only, as a supplement to water from the wells on site. It has not been used to date.

Flood risk – No video evidence has been submitted showing flooding to the top of concrete wall at the western side of the site. Notwithstanding this, it is understood that this is the highest water level recorded on the site, representing a once off event in 2015. The flood did not come to the full height of the wall, but partially up its height. The statements by the Third Party are a gross exaggeration of flooding on the site.

A Flood Risk Assessment has been carried out. The planning authority have included Condition No 6 which requires mitigation to be implemented. WERS will

fully implement this condition to ensure all appropriate mitigation measures are in place having regard to flood risk management at the site of the facility.

Waste licence – The waste licence is the effective control in relation to the quantity of waste which is accepted at the facility. The licence allows WERS to accept up to 25,000 tonnes per annum at the facility for recovery or recycling. The permit actually permits up to 50,000 tpa but waste intake is restricted by the EIA threshold limit of 25,000 tonnes (WFP/G/09/0002/01). The amounts of waste accepted is set out in the response to further information and is in accordance with the Waste licence for the site.

Nature of waste – Hazardous or liquid waste is not accepted at the facility.

Biodegradable waste is not intentionally brought to the facility. However, on occasions it comes into the facility through normal waste collection. It is sorted and removed from the site.

Operational hours – WERS operate fully within their permitted operational hours as set out in the parent permission.

River embankment – The section of the embankment referred to was constructed to act as a visual screen, to protect the site from flooding and to protect the river from the facility. It was never intended as an amenity facility. It is on private property and should the anglers wish to fish here, consent would be required from the applicant. The anglers fish directly opposite the facility so there is no reduction in the amenity associated with this pursuit.

Waste storage – Appellants final three photographs were taken at the site in 2012 and are entirely irrelevant to the subject appeal. A significant amount of work has been undertaken on the site since that time, with waste now fully maintained within the buildings. The more recent photographs show bags of plastic pellets which are produced on site. These are ordinarily kept in sealed containers. These are a by-product of the waste process and are odourless. The photos show the peak level of storage of these pellets outside and that ordinarily all pellets are maintained indoors. In respect of the other photos which show full blue skips, the appellant has submitted a photo of the site at the worst time of the day, immediately after large loads of material have been discharged and before the materials have been pushed back into the building. This is not depicting normal operations and is misleading in this respect.

The applicant seeks to regularise the structures on the site and to ensure that all material is kept indoors.

7.3. Planning Authority Response

No response to the grounds of appeal were submitted by the planning authority.

7.4. Responses to Section 131 Notice

1. *Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs*

The site is located immediately adjacent to the River Clare and Lough Corrib cSAC. It is within the floodplain of the River Clare and the majority of the site is in 'Flood Zone A'. The flood risk assessment identifies the contamination of flood water from waste material on site in a flood event as a primary concern. It also identifies that flood defences including extending and raising the height of measures in place, are feasible at the site

The 'Assessment for Screening' identifies Lough Corrib cSAC as the European site most at risk from the proposed development. It identifies the qualifying interests of the site and provides narrative, which excludes the potential for any significant effects on these features. The review and analysis is not carried out with respect to the conservation objectives of the site; these objectives which are generic are included as an appendix in the report.

The key risk appears to be that of contamination of surface waters in the Clare River, and in Lough Corrib downstream as a result of flooding or emissions to surface waters. This is not analysed with respect to water quality data or the water quality sensitivities of the qualifying interest habitats and species which are likely to occur locally or downstream. Furthermore, the likely effects of the development in combination with other plans and projects, taking existing baseline conditions and trends into account have not been examined. The construction of the M17/N18 Gort to Tuam road scheme, the Milltown and Claregalway wastewater treatment plants and the Claregalway arterial drainage scheme are major current projects which should be considered in the potential context of in-combination effects.

The conservation objectives are to maintain or restore the favourable conservation condition of the habitats and species in the site. All are water dependent and impacts on the Clare River and on water quality arising from the development could result in or perpetuate significant effects in the European site in view of its conservation objectives.

The River Clare discharges to Lough Corrib, which contains 3. No. Annex 1 lake habitats and the Annex 11 aquatic species, Slender Naiad. The conservation objectives for the lake habitats are known to be to restore these habitats, and Slender Naiad, to favourable conservation condition in the SAC. The objective for Lough Corrib is to achieve High Ecological Status under the Water Framework Directive and oligotrophic status, as defined by the OECD fixed boundary system. Any impacts arising from the development should be considered in these contexts when screening for appropriate assessment is being carried out.

2 *Tuam Anglers Association response to applicant's submission.*

The applicant's agent is very selective on what he classes as substantially complying with the parent permission. Twelve of the sixteen conditions have not been complied with (Conditions 3, 4, 5,6, 7 ,8, 9,10,11,13,15 and 16). Reference is made to Condition No 6 but it is taken out of context. The requirement to enclose the refuse containers did not authorise an increase in floor area from 850m² to c.2.500m². The Waste Facility Permit should never have been granted by Galway Co. Council as Article 18.4 of the Waste Facility Registration Regulations, 2008 requires that a permit should not be granted unless the local authority is satisfied that the facility is compliant with planning, or, is exempt from planning permission.

The fuel containers, which are stated to be removed are located in another part of the site. The suggestion that water pipes are for emergency purposes only is false. By the applicants own admission 21,376 tonnes in 2014; 22090 tonnes in 2015 and for 9 months of 2016 was 16,570 tonnes entered the site. Hazardous waste is regularly accepted at the site e.g. paint cans, thinners, lacquers and solvents. Private household waste is also accepted such as florescent tubes, TV's, household waste, paint cans etc,.

The hours of operation are not complied with. Waste arrives every Bank Holiday Monday and waste is unloaded into sheds. All WERS waste trucks collect recyclable

and domestic waste as they are split into two and should not therefore enter the site which is authorised as a material recovery facility only.

Waste is constantly stored outside. The photographs of 2012 were taken before the site was closed by the EPA. The photograph of plastic pellets that are claimed to be kept in sealed containers was taken in November 2016. On February 5th WERS site was videoed where bags of pellets were again stored outside. Waste is not fully maintained within the building as stated.

With regard to the water pipes, it is correct to say that one pipe is for water and the other is electrical to drive the pump. Both pipes run up the side of the building and across the roof to the rainwater harvesting tank. There is no marking or detailing of any well on the site and if one does exist what precautions are being taken to ensure that it is not been contaminated.

There is a large diesel pump on the site to keep water out. 2015 was not the first time that water levels were to the top of the reinforced concrete wall and with climate change water levels are likely to increase. Tuam Angler's would always have fished the section of the river adjacent to the river embankment and its loss is a reduction in the amenity of the river.

No bond or development contributions were ever paid by WERS. The applicant are currently being brought to the circuit court by Galway County Council for non compliance with planning conditions. As the development is so close to the Clare River and there are no controls in place over what waste/contaminants are brought to the site, the threat to the river which flows into Lough Corrib cannot be overlooked, as the source of most of the drinking water for Galway City and County.

A DVD is enclosed of truck movements on Bank Holiday Monday, March 28th 2016 (Easter Monday), flooding on December 6th-8th 2015, photographs taken in Sunday February 5th, 2017 to support the evidence provided and to contradict the statements and evidence made by Tom Phillips & Associates on behalf of WERS waste.

3. *First Party response to Tuam Angler's submission*

Unauthorised Development – It would appear that Mr Jordan is somewhat confused by the current application. Retention permission is being sought to address any unauthorised development on the site.

Fuel Containers – There was an unbunded fuel storage tank for refuelling vehicles on the site, located in the front yard of the WERS facility. This tank was removed and placed inside one of the sheds and is now banded. The issue was not the existence of the tank but its unbanded status.

Water pipes – The site uses harvested rainwater and water taken from a well on the site. The well is located adjacent to the southwest corner of Shed No 5. The well is lined with a large corrugated pipe that is visible. The well is not connected to the ditch on the western boundary and WERS do not take water from the ditch. The well is entirely sealed and all surface water falling on the site is drained to the sewers. The well cannot therefore be contaminated by the activities on the site.

Rainwater is harvested from the roofs of the buildings with any surplus being discharged to the ditch on the western boundary of the site (via the orange pipe shown in video). The rainwater is the primary source of water to keep the storage tank filled (fire fighting purposes). In dry periods the well is used to top up the tank. A pipe has been placed in the river should water be required in an emergency. The pipe leading from the pump has to be maintained full of water to ensure supply in case of an emergency.

Outside storage of waste -The issues that existed which resulted in outside storage of waste have been addressed. The plastic pellets are not a waste but a product and are fully recycled plastics. They are stored in the large white one tonne bags shown in the video and photographs. As they are not a waste, they can be stored outside awaiting dispatch to customers.

Waste accepted at the site -The site does not accept hazardous waste. As with any other waste facility, arrangements are in place should hazardous material be found in non-hazardous waste. This waste is placed in sealed containers and shipped off site to appropriately licensed facilities for disposal. With regard to the drain cleaning service operated by WERS, this consists of a vacuum tanker that is used to clean drains. The vehicle and the service are fully licensed and does not discharge any waste it collects at the WERS facility. All waste is disposed of correctly to the Tuam Waste Water Treatment facility. When the vehicles is not in use it is regularly parked at the facility.

Operating hours – WERS collect waste on Bank Holiday Monday's for their customers convenience. The trucks enter/exit the site but no other activities are undertaken.

Flooding- The comments in relation to flooding are made without any engineering basis. The video and photographs do not show the WERS facility flooded or even nearly flooded as claimed. The diesel pump is not for flood prevention but to manage surface water on the site in extreme weather. The site contains a surface water sump on the western boundary. It collects water that would otherwise run into shed no 4 in such event. The water in the sump is then pumped using the diesel pump into the rear yard where it discharges into the foul sewer.

Fishing rights – The river has never been fished in this location from the northern bank. This is because even before the bund on the site was formed, there was a significant and steep bank at the river's edge along the subject site boundary. For this reason, the landscaping plan, required by Condition No. 13 of the parent permission, as agreed with Galway Co Council, did not provide for fishing.

4. *Larkin Engineering's response to Tuam Anglers Association submission*

Fully supports Tuam Anglers Association (TAA) submission. Notes non-compliance with various conditions of the planning permission issued with respect to the subject site (Condition No's 3, 4, 5, 6 and 7). Agrees that the facility is located on the wrong site. The Clare River and Lough Corrib are being subjected to potential pollution due to site location and extremely poor management.

Evidence of flooding on the site has been submitted and a water pump does not provide sufficient protection against flooding. The TAA state that a water pipe is used to extract water from the river. It is unclear if a well was ever constructed on the site. It is unclear where water exits from the gully at the rear of the site, where trucks and skips are washed.

Agrees with the TAA that this is the wrong location for this operation and appeal to An Bord Pleanála to refuse permission for the development. This will ensure that the environmental stability of the area will prevail. The location of the facility poses a major threat to the Clare River and management operates illegally and irresponsibly. It is believed that the continued operation of the facility will adversely affect Larkin's

business and other businesses in the park and possibly cause an environmental disaster to the Clare River and Lough Corrib.

5. *Larkin Engineering response to applicant's response*

Larkin Engineering have tried to find an amicable solution to the problems WERS cause but the problems persist due to lack of care and bad management. Galway Co. Council have made numerous visits to the facility and the situation may improve for a few days but would quickly deteriorate. The EPA closed the facility at one point. In recent weeks WERS have had a major clean up because they are seeking planning permission. Larkin's Engineering require the assistance of the Board to rectify the wrongs of the past.

WERS pose a major fire hazard to Larkin Engineering. It was agreed that a wall would be built to a height of 1m above Larkin's west facing gable, with 2m clear space between the two buildings. This was not adhered to. A half mass concrete and half block wall was constructed without planning permission running diagonally to Larkin's building, with a 150mm gap at the front and 4m at the back, with holes which rodents are coming through. This does not constitute a fire break. Stanchion A on Photograph 11 forms part of the wall that is not fire proofed and is rusting. It may in time fall into Larkin's building. Photograph 21 shows major damage to the side sheeting on Larkins building. The wall built by WERS does not allow enough space to allow the sheeting to be repaired. The result is water ingress to Larkin's building. A total removal of the wall is the only solution and a proper certified fire wall built at a minimum 2m distance from the west side of Larkin's building.

Larkin Engineering installed a waster harvesting system in the past which is now decommissioned due to the amount of litter and debris from WERS blocking the system. The water quality is of concern. WERS still continue to litter Larkin's property and buildings (Photographs 1-6). There is a build-up of litter between the buildings with no way of accessing the divide to clean the area. Dust is blowing towards Larkin's property from a barrelling machine on WERS property (Photograph 7). All of the waste is not stored indoors. Storage of waste occurs in outside skips and silos. There is clear evidence of rubbish being left in uncovered skips and being piled up at the rear of the building (Photographs 8-9).

There is inadequate on site car parking to cater for WERS customers forcing them to use the space in front of Larkin's property, which deprives their customers/visitors of car parking space. It is also evident from the attached photographs that there is inadequate space on the site to cater for the traffic generated by the proposed development. No truck can enter WERS site while the weigh bridge is occupied. This results in obstruction at the front of Larkin's property. Larkin's is therefore hampered on a daily basis by the lack of proper facilities at WERS. WERS account for 80% of the truck and traffic movements in the business park which causes major damage to the access road. It is disingenuous for applicant's agent to state that WERS have solely paid for maintenance works to the access road within the estate at a cost of €25,000. All the businesses in the estate pay an annual fee for the upkeep of the estate. The statement that 40 vehicles enter and exit WERS daily is also misleading as the applicants are seeking permission to process 50,000 tpa and with 30 car parking spaces.

Larkin's car parking is being used to sustain an unauthorised development. WERS do not have insurance to cover their customers who park illegally on Larkin's property. Larkin's will ultimately be held responsible if a WERS customer has an accident on Larkin's property. Insurance must therefore be viewed as an intricate part of this submission because it has an adverse impact on Larkin's, while being unable to control or contain the situation created by WERS.

The photographs prove that WERS domestic trucks do enter the site. They are operating the site without a permit. The site is not large enough to handle the amount of waste being processed properly. Larkin's are spending up to 5 times more on rodent and pest prevention measures than a similar sized operation, because they are located beside a waste facility. The windows cannot be opened during the summer months due to flies and insects. The reed bed on site was removed to make way for unauthorised building and without the benefit of planning permission. Waste collection trucks are being parked on the site overnight, in contravention of the conditions of the permission. The company does not operate within the permitted working hours.

The embankment, constructed to prevent flooding, is not working effectively. (Photographs 18A & 18B shows floods that occurred in 2015). The Clare River feeds into Lough Corrib which is the main source of water for Galway city. Pollution of the

Clare River will ultimately pollute Lough Corrib. The Consultants state that the floods were the highest ever recorded on the site. There is no supporting evidence produced to back up this statement.

8.0 **Assessment**

8.1. I consider that the main issues that arise for determination by the Board in respect to this appeal relate to the following:

- Principle of the development.
- Unauthorised development.
- Impacts on adjoining property.
- Traffic and Parking.
- Flooding.
- Appropriate Assessment.

1. Principle of the development

The development is located in an area zoned for industrial purposes where waste facilities are considered acceptable. The development generally accords with Policy WM2 of the LAP which supports the recycling and recovery of waste. The principle of a materials recovery and management system has been accepted by the Board in its previous decision to grant permission for the development on the site (PL 07.205296). I accept that the development is acceptable in principle on the site, subject to proper planning and sustainable development considerations.

2. Unauthorised development

The parent permission facilitated the change of use of an existing building on the site to use as a materials recovery and management facility. A new materials storage building was also authorised located in the south eastern corner of the site. It was intended to use the facility to sort and bale recyclable waste collected from door to door and from bring banks in addition to processing source recyclable waste such as cardboard, glass etc from commerce and industry. As detailed in the application, it was intended that the facility would be a relatively small processing up to 5,000 tonnes per annum. Galway County Council subsequently granted WERS a Waste

Facility Permit (WFP-G 09-0002-01) for the operation of a waste recovery and management facility with an annual intake not exceeding 50,000 tonnes.

The development existing on the site bears no resemblance to that permitted under the parent permission. There has been a significant increase in floor area with 4 no. new large warehouse type buildings erected, in addition to a weighbridge office, weighbridge, loading bay, shed, walls etc. The current application seeks to regularise this development. It is contended by the appellants' that the development is unsuitable for the current site and has resulted in significant impacts on the amenity of adjoining property. Issues are raised regarding litter, odour, dust, traffic/parking, flooding and impacts on the River Clare and Lough Corrib SAC. Each of these matters is discussed in more detail below.

In its decision to grant permission for the original development the Board under the provisions of Condition No. 4 restricted the use of the facility to a materials recovery and management facility. Under Condition No. 5 the annual intake at the facility was limited to 5000 tonnes. I draw the attention of the Board to the Planning Report submitted in support of the current application which states;

'The application does not involve an intensification of use or alterations to the permitted operation of the waste facility. There are no additional traffic movements or interactions on the site as a result of the proposed works subject to this application'.

The Board will note from the response to further information that over 4 times the permitted tonnage is now being accepted at the facility (21,377 tonnes in 2014, 22090 tonnes in 2015 and 16,570 for the first 9 months in 2016). The applicant seeks to justify this on the basis of the Waste Facility Permit granted by Galway Co Council, which permits up to 50,000 tonnes to be accepted at the facility. It is stated that intake is maintained under 25,000 tpa to ensure that the development does not exceed the threshold for EIA. It is clear that there is significant intensification of use of the facility, which is being operated in direct contravention of Condition No. 5 and which does not form part of the development description.

The facility is also being operated in contravention of Condition No. 4 of the parent permission which limits the operation of the facility to a material recovery and management facility. The AA Screening report notes that municipal solid waste is accepted (for bulking and transfer). The Odour Management Plan also identifies the

waste streams handled at the plant, which includes green waste and the use of the site as a transfer station for household waste, activities which are excluded by the existing permission. The applicant has also confirmed that segregated plastic waste is shredded, melted down and processed into plastic pellets. Notwithstanding applicant's arguments that the process is a 'recovery' activity, it was not proposed or authorised under the original permission and is not included for retention in the current application.

The applicant has also confirmed that the facility has operated outside the hours permitted under Condition No.7 and that waste has been stored outdoors in contravention of Condition No.6. The site is also being operated in contravention of Condition No 11 regarding parking of vehicles not directly associated with the recycling facility and I note that car/truck spaces has not been delineated on the ground as required. The appellants' also refer to other breaches such as non-payment of financial contributions, bond etc, which I am not in a position to verify.

One of the issues raised by Larkin Engineering relates to the wall erected by WERS along the common boundary between the two properties. This wall is a substantial construction extending along the eastern site boundary. Contrary to the assertions made by the applicant, I do not consider that the wall could be considered to be exempted development. The wall is a new structure and is not required *for the maintenance, improvement or other alteration of a structure*' as specified under section 4(1)(h) of the Planning and Development Act 2000, amended. The wall is therefore unauthorised and retention is not sought as part of the current application. This position was accepted by the planning authority, which excluded the wall from the decision to grant permission (under Condition No 2).

I accept that significant development has taken place on the site without the benefit of planning permission. This development has facilitated a significant intensification in the use of the site, which is not included in the development description. I do not consider that the Board can authorise the retention of the buildings in the absence of clarity on the full nature and extent of the development being carried out on the site. The intensification of use and the different processes being carried out are in contravention of the parent permission and accordingly, I recommend that the Board refuse planning permission for the development on that basis.

3. Impacts on adjoining property

Issues regarding litter odour and dust nuisance have been raised in the submissions. It is clear from the photographs appended to the appeals that open storage of waste has occurred on the WERS site, which would result in these impacts. My inspection of the site would also indicate that all waste is not properly contained within the confines of the buildings. The rear of the buildings are open and exposed and there are repairs required to weather proof buildings (the western side of Building No 5 and the roof of the shed to the rear). As conditions exit, there is potential for material to become airborne and for drains, pipes and gutters to become blocked with significant impacts on the amenity of these properties. The handling of waste streams, particularly household and green waste would create significant potential for odour nuisance.

Whilst I did not detect any odour during my inspection of the site, I accept that during the summer months, odour and dust nuisance could potentially be a nuisance due to the open nature of the waste buildings. I note that it is intended to fully enclose buildings No. 4 and 5 (C & D facility) to ensure that potential odour associated with the recycling and recovery of waste is not released externally and that fugitive dust emissions are controlled. I would point out to the Board that the rear of Building No 1 (mixed municipal waste) is not fully enclosed and the tipping of waste in this area, particularly if it contained biodegradable material could potentially continue to pose odour related issues for the adjoining property.

As noted a substantial wall has been constructed on the common boundary with the property to the east (Larkin Engineering) and issues were raised regarding its stability and its ability to act as a fire wall. The applicant's response is supported by a letter of certification from Gabriel Mc Hugh Building Consultants, which states that the wall has been constructed and completed as per specification and that it complies with relevant regulations. It states that the fire wall will act as a fire break between the two properties. Details of the application do not appear to have been forwarded to the Fire Authority, which would have provided guidance on this matter. My observations are as follows. The wall is substantial, extending along the entire length of the eastern boundary. It screens the appeal site from the adjacent premises and will help to prevent, to some extent, the migration of litter and material onto

adjoining property. I accept that the manner of construction in such close proximity to adjacent property would create access difficulties for maintenance, repairs etc.

The wall is part mass concrete part concrete blocks and would appear to be in the region of 20m in height, dropping down in elevation towards the rear boundary. Standing beside the wall, its height combined with the construction methodology, with limited vertical support, creates concerns regarding its stability. As noted, the retention of the wall does not form part of the development description and accordingly is not open for consideration by the Board in the context of the appeal.

I accept that the completion of works to Building No 5 and the enclosure of buildings will help to mitigate existing odour, dust and litter impacts associated with the facility. I also accept that the effectiveness of these measures will be dependent on good management practices, which the evidence suggests has not been a feature of site operations in the past. I consider that should the handling of household waste and green waste continue on the subject site, there is potential for odour to persist, particularly as the rear of Building No 1, is not fully enclosed.

4. Traffic and Parking

The site is accessed off the Weir Road via an internal concrete surfaced access road that runs through the business park. The road runs parallel to Weir Road and then takes a sharp turn to the west to run parallel with the River Clare. It provides access to a number of business premises along its route, before terminating at the subject site. The Tuam Bypass is currently under construction. It will remove extraneous traffic from the town improving the capacity of the existing network in the town. I note that there will be no connection for traffic between the bypass and Weir Road and no impact on traffic flows as a result.

A Traffic Impact Report supports the application. It investigated weighbridge data (vehicles transactions IN/OUT) over a period of 17 months between September 2014 to January 2016. The number of transactions IN ranged from 912 vehicles/per month in quieter months to 1,124 vehicles per month during peak months. In terms of arrivals per day this would equate to 36 to 43 vehicles per day across a six day week depending on the time of year. The number of vehicles (unladen) leaving the site would double the number of movements per day. There would also be vehicles which would remove processed waste and recycling materials from the site, equating

to 4.6 movements in and out per day. Allowing for 30 staff cars arriving at the facility the site generates approximately 78 vehicles movements in and 78 vehicle movements out per day spread across the operational hours (06.00-17.00 hours). This would include a range of vehicles including refuse trucks, HGV's transporting processed waste out, smaller trucks, skip trucks, etc.

The traffic report concludes that the continuation of operations at the subject site will not impact negatively on Weir Road (which has relatively low traffic flows). It is noted that flows are higher on the south (town) side of Weir Road as the majority of staff, visitor and delivery traffic generated by the various businesses in the Business Park access to/from the N17 junction in Tuam town centre. Traffic flows on the junction will ease with the completion of the bypass. Start times for staff on-site and refuse truck crews are 6am and accordingly the facility does not impact on commuter or morning school run peak in the town. It also concludes that there will no impact on the operational capacity of the business park access, which has low volumes turning in/out, despite sightlines which are lower than current NRA DMRB requirements.

Issues have been raised in the appeal regarding traffic congestion at the site entrance and inadequate on-site parking. The layout of the site is such that the weighbridge and the weighbridge office are located very close to the site entrance. The weighbridge is accessed by a ramp facilitating single vehicle traffic movement in one direction, either in or out of the site. There is insufficient space between the entrance and the weighbridge to allow vehicles travelling in opposite directions to pass, causing vehicles to queue inside/outside the site entrance. This creates an unsatisfactory arrangement within the business park.

Whilst the revised site layout plan submitted in response to the appeal shows 34 no. staff and customers car parking spaces on the subject site, the tendency for customers is to use those spaces (6 no) close to the site entrance. At the time of my inspection, which was during a period of low activity on the site, all of the spaces except one were occupied. The location of the spaces so close to the weighbridge impacts on traffic safety with the potential for reversing vehicles to collide with traffic entering or exiting from the weighbridge. The remaining spaces at the front of the buildings are accessed via a narrow slip road on the northern side of the weighbridge ramp. There is no signage or active encouragement for customers to use these

spaces, which results in parking outside the site, with implications for Larkin Engineering.

The report does not provide any assessment of the impact of the development on the internal circular road within the business park, or on traffic movement and management within the appeal site. The original facility which was permitted on the site was a much smaller operation with limited implications for traffic. The intensification of the use of the site, incorporating a diversity of waste stream, significantly alters this position, which I consider should have been more comprehensively assessed.

5. Flooding

A Flood Risk Assessment Report was submitted in support of the development. It is clear from historical flood mapping and the photographs that accompany the appeals that the site is within the floodplain of the Clare River and is at risk from flooding. Hydraulic modelling of the river as it passes the site was conducted to assess fluvial flood risk and the predicted 1 in 100 year flood level.

The predicted flood level for the 1 in 100 year event including climate change allowance and incorporating freeboard is 31.64mOD. This places the majority of the site at risk from the 1 in 100 year event. The administration building (30.5mOD) the waste buildings. (30.17mOD), the yard level at the western boundary (29.68mOD), the top of the western wall (31.15mOD) etc are all at risk should the site become inundated. It could also result in the earthen embankment (31.00-31.5m OD) along the northern boundary which was constructed to mitigate flooding from the river being breached. It is noted in the assessment that the design flood level exceeds the Q100 and Q1000 flood level as predicted in the CFRAM model (30.47 and 31.05mOD), but that flows using the CFRAM model were not adjusted for climate change.

The design flood level places the majority of the site within Flood Risk Zone A. As the development is existing, the focus is on the mitigation of flood risk and the hydrological isolation of the site from the surrounding environment. Within the administration building the main offices, staff facilities etc., are located at first floor level, with the ground floor functioning as a reception area for visitors. This reduced

potential damage to property and the risk to human life. The installation of a removable flood gate at the entrance door is recommended.

With regard to the waster reception areas, it is recognised that flooding of these areas has the potential to contaminate water with impacts on water quality. The solution proposed is to protect the site from floods and install flood defences. The original embankment along the northern side of the site was installed on foot of the conditions of the original permission and the 50 year return period.

It is recommended that the banktop height be raised in line with the revised 1 in 100 design flood level of 31.64mOD. It is also recommended that the wall along the western boundary, which has a top elevation of 31.15mOD be raised to the new design flood height of 31.64mOD and that the embankment along the southern boundary be replaced with a shuttered concrete wall of 31.64 mOD. It is further recommended that the foundations of the boundary structures should be deep enough to reach composite bedrock or where this not practicable, to low permeability till. In order to prevent any potential water ingress via the subsurface, it is recommended that the remaining area of infill beside the western boundary be completed as concrete hardstanding.

As noted, the results of the assessment places the majority of the site within Flood Risk Zone A e.g. areas where the probability of flooding from river is highest. (greater than 1% or 1 in 10 for river flooding). *'The Planning System and Flood Risk Management Guidelines for Planning Authorities (DoEHLG, 2009) states the following in relation to such zones;*

'Zone A- High probability of flooding. Most types of development would be considered inappropriate in this zone. Development in this zone should be avoided and/or only considered in exceptional circumstances, such as city or town centres, or in the case of essential infrastructure that cannot be located elsewhere, and where the Justification test has been applied. Only water-compatible development, such as docks and marinas, dockside activities that require a waterside location, amenity open space, outdoor sports and recreation, would be considered appropriate in this zone'.

The development is not located within the town centre, and does not comprise essential infrastructure that cannot be located elsewhere. The planning authority

noted the absence of a Justification Test, providing an assessment of the appropriateness or otherwise of the development in this flood risk area in accordance with the guidelines.

The applicant's response noted paragraph 5.28 of the Guidelines, which provides that where development already exists the sequential approach cannot be used to locate buildings in lower risk areas and that the Justification Test will not apply. It relates to the assessment of minor proposals in areas of flood risk. It covers small infill development, extensions to houses, changes of use and additions to existing commercial and industrial enterprises etc. where are unlikely to raise significant flooding issues unless they obstruct important flow paths, introduce a significant number of people into flood risk areas or entail the storage of hazardous substances.

The Board will note that the parent permission pre-dates the Guidelines which were published in 2009. Having regard to the location of the site in Flood Zone A, it is questionable whether the development as proposed would have been favourably considered. I accept that the only way to protect the subject site from flooding associated with the Clare River is to build continuous and impermeable flood defences around the perimeter of the site as proposed.

5. Appropriate Assessment

The AA Screening Report noted that there are 3 no. European sites within 15km of the appeal site. These include Levally Lough SAC , Shrule Turlough SAC and Lough Corrib SAC. The former two sites (Levally Lough SAC and Shrule Turlough SAC) are located 10.6 km and 13.2 km respectively from the site. There are no hydrological connections between the subject site and these European sites and accordingly they are not brought forward for further assessment. The Clare River, which drains into Lough Corrib SAC, runs adjacent to the northern boundary of the site. It is the only European site which could potentially be at risk from the site.

Lough Corrib SAC is of major conservation importance due to the presence of 14 no. habitats listed on Annex 1 of the EU Habitats Directive, 6 no. of which are given Priority status. It is also designated for a range of Annex 11 species and Ireland's only Annex 11 bat species, Lesser horseshoe bat. Site specific conservation objectives have not yet been adopted for the site. The generic objective is

'To maintain or restore the favourable conservation condition of the Annex 1 habitats and/or Annex 11 species for which the site is selected.

Of the 14 no. Annex 1 habitats, which are listed as qualifying interests of the Lough Corrib SAC, eight terrestrial habitats are screened out due to their location, lack of hydrological links to the site, and because they are considered to be highly unlikely to be at risk from activities on the site. These include Orchid-rich Calcareous Grassland, Molina Meadows; Limestone Pavement; Old Oak Woodlands; Active Bog, Degraded Raised Bog ; Rhynchosporion Vegetation and Bog Woodland.

Due to the potential for hydrological linkages 6 no. remaining freshwater and wetland associated habitats are considered further in the screening report. These include Oligotrophic Water, Hard Water Lakes, Floating River, Cladium Fens, Petrifying Springs and Alkaline Fens.

The AA Screening Report identifies the species for which the site is selected which includes Freshwater Pear Mussel, White clawed Crayfish, Sea Lamprey, Brook Lamprey, Atlantic Salmon, Otter, and Lesser Horseshoe Bat, Slender Green-Feather-moss and Slender Naiad. It notes that there are no known records of Freshwater Pearl Mussel, Sea Lamprey from the Clare River. Whilst there are no records of White Clawed Crayfish in the river itself, it is known to occur in some of its tributaries. The river hosts high densities of Brook Lamprey and Salmon and Otter also occur.

The habitat in the vicinity of the site is not considered favourable to Lesser Horseshoe Bat, which I note avoids built up areas and artificial lighting. The two water dependent plant species are considered highly unlikely to be impacted by the development due to location. Slender Green Feather-moss has been recorded northwest of Gortachalla Lough above the confluence of the River Clare with Lough Corrib. It is not likely to be affected by the development due to distance and location on the opposite side (west) of Lough Corrib. . Impacts on Slender Naiad are also considered unlikely. It occurs in the northern basin of Lough Corrib, while the Clare River flows into the southern basin.

Of the 9 no. Annex 11 species, 4 no are considered further in the assessment. These are White-clawed Crayfish, Brook Lamprey, Salmon and Otter.

The appeal site does not encroach into the SAC and there will be no direct loss or fragmentation of SAC habitat arising from the retention of the development as proposed. The main potential for impacts on habitats and species that could arise would be from the effects of run-off or discharges into the aquatic environment. The habitats brought forward and of the species for which the SAC is selected are water dependent, whose conservation status would be affected by a deterioration in water quality. There are no natural watercourses within the subject site.

All waste arriving at the facility is deposited in one of the 5 no sheds. According to the information provided by the applicant, the facility accepts mixed dry recyclables, plastic, construction and demolition waste and municipal solid waste (for bulking and transfer only and not processing). Tipping and processing of waste takes place within the buildings and waste water arising is directed to the foul sewer which is discharged for treatment to the Tuam Wastewater Treatment Plant. No foul water run-off is generated in the facility yard with the exception of traffic generated pollutants. This water is collected in a system of drainage gullies and diverted to silt traps and hydrocarbon interception prior to discharge to the foul sewer. Surface water run-off from the front yard collects in a sealed stone filled loading bay on the west of Shed No 5, which is used as a surface water collection tank. The collected water is pumped to the concrete yard at the rear of the buildings for collection in the foul water drainage gullies. The floors of the buildings are noted to be concreted with expansion cracks repaired to prevent ingress of water to groundwater. The information presented in the AA Screening Report suggests that the site is hydrologically isolated from the River Clare in terms of surface water and groundwater.

The buildings proposed for retention are largely complete. Outstanding works are relatively minor in nature including the completion of shed to the rear of Building No 5, the provision of 5 no. roller doors and the extension of the retaining wall along the rear (south) of the site. It is intended that the wall will be constructed on the inside of the existing berm and subject to best practice mitigation measures to protect water quality during construction, I accept that the works can be carried out without impacting on water quality. The qualifying features for which the site is selected and which rely on good water quality (White-clawed Crayfish, Salmon and Brook Lamprey) will therefore not be negatively impacted arising from construction. Otter is

also a qualifying features and is likely to occur along the watercourses in the area. The main threats would be habitat destruction arising from clearance of bankside vegetation, changes to water quality etc. Impacts are mitigated by avoidance i.e the construction of the new wall on the landside of the existing berm and measures to protect water quality.

During the operational stages it is intended that surface water will continue to discharge into the public system preventing potentially contaminated water from entering the adjacent water courses. There will be no discharge of surface water/storm water to adjacent watercourses ensuring that there is no hydrological connection between the site and the River Clare. This will ensure that water quality and the habitats/species which are reliant on it will not be adversely impacted. There will be no significant changes to the operations on site which would be likely to impact on potential otter activity.

It is noted in the Flood Risk Assessment that the ground floor levels of the buildings are below the 1 in 100 year flood level and should floor water enter the buildings there is potential for water to become contaminated and to impact on river quality as it recedes. As the facility exits, the only solution is to install flood defences to protect the site from inundation. This will involve raising the existing embankment along the northern boundary and the wall along the western boundary to a minimum height of 31.64 Mod (i.e above the design flood level). It will also require the replacement of the existing embankment with a new wall of similar height along the southern boundary. It will require that all embankments/raised walls are continuous and impermeable and that the foundations are deep enough to prevent water ingress. To prevent contamination of water through the subsoil, it is recommended that the existing area between Building No 5 and the western boundary be concreted. Subject to these mitigation measures and the proper management of wastewater discharges , I accept that it is possible to protect the site from flooding and the potential impacts on water quality and qualifying features of the SAC.

Cumulative and in-combination effects are considered in the Screening Report. The Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs in its submission refers to large projects such as the construction of the M17/N18 Gort to Tuam road scheme, the Milltown and Claregalway wastewater treatment plants and the Claregalway arterial drainage scheme, which should be considered in the potential

context of in combination effects. It is noted that as part of the screening process for the Tuam Bypass the above projects were considered and potential impacts were screened out. It is noted that all of these projects had AA Screening Reports with no findings of significant impact. The likelihood of significant in-combination effects on Lough Corrib SAC was sufficiently low to allow them to be excluded from further consideration.

The vast size of the entire catchment of Lough Corrib is noted in the AA Screening Report for the proposed development and that it would not be practical to consider all developments that are underway, have recently been completed or are imminent. It notes EC Guidance which suggests that the distance at which plans and projects might meaningfully interact is determined largely by the nature and scale (temporally and spatially) of the likely impacts on the project/plan under consideration;

- 8.1.1. *'In other words, if a given project and its likely zone of influence is contained, due to separation distance from a pathway (cumulative pathway) to a sensitive receptor, then the potential for adverse impacts to add to, and/or act in combination with negative impacts arising from other projects or plans in the wider area is diminished'*

I consider that it has been demonstrated that it is possible to separate the activities on the site from the SAC, such that there is no potential for impacts on water quality through contamination of surface water, groundwater or flooding, such that it would act in combination with other plans/projects to adversely impact on the qualifying features of the Lough Corrib SAC or other Natura 2000 sites in the wider locality.

To conclude, I am satisfied on the basis of the information available, that the proposed development would not be likely to have a significant effect on any European site, either individually or in combination with other plans and projects.

9.0 Conclusion

- 9.1.1. The development is outside the scope of the development previously permitted on the site. The development proposed for retention increases the development footprint and facilitates the significant intensification of the use of the site. The development is not being carried out in accordance with the permission granted in respect of annual waste intake and permitted waste activities. Operating hours are not being adhered to and it has been demonstrated that the operator is not managing

the facility in accordance with the 'good neighbour' principle or in a manner which ensures adequate protection of the environment.

- 9.1.2. Contrary to the applicant's assertions, the works cannot be justified under the terms of the Waste Facility Permit issued by Galway Co. Council.

10.0 Recommendation

- 10.1. Having considered the contents of the planning application, the decision of the planning authority, the provisions of the development plan, the grounds of appeal and the responses thereto, my inspection of the site and my assessment of the planning issues, I recommend that permission be refused for the retention and completion of the development of the development for the reasons and considerations set out below.

11.0 Reasons and Considerations

Having regard to the operation of the facility other than solely as a materials recovery and management facility, the volumes of waste accepted at the site, which exceeds the permitted annual intake of 5,000 tonnes and the nature of the waste streams accepted, it is considered that the retention and completion of the development as proposed would materially contravene the provisions of the parent permission granted under Ref No. PL 07.205296 and would, therefore, be contrary to the proper planning and sustainable development of the area.

Breda Gannon
Planning Inspector

29th March 2017.