



An
Bord
Pleanála

Inspector's Report PL06F.248051

Development	Permission for a change of use from warehouse use to metal recycling use, storage and processing of up to 10,000 tonnes per annum of metal products and materials.
Location	Unit 5 Rosemount Park Drive, Rosemount Business Park.
Planning Authority	Fingal County Council.
Planning Authority Reg. Ref.	FW16A/0069.
Applicant	Blancomet Limited.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	First Party -v- Conditions and Third Party -v- Grant
Appellants	(i) Blancomet Limited, (ii) Thomas Kairyst and Darius Dirstius, (iii) Rosemount Business Park.
Observers	None.
Date of Site Inspection	9 th May, 2017.
Inspector	Paul Caprani.

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1.0 Introduction

- 1.1. PL06F.248051 relates to two third party appeals against the decision of Fingal County Council to issue notification to grant planning permission for a change of use from warehouse use to metal recycling use, storage and processing to cater for 10,000 tonnes per annum at Unit 5 Rosemount Park Drive, Rosemount Business Park, Dublin 15. The grounds of appeal argue that the proposal represents an intensification of use, will set an undesirable precedent, fails to comply with Development Plan zoning and that a number of conditions are open-ended and do not permit third party involvement.
- 1.2. The decision was also the subject of a first party appeal against a financial contribution condition.

2.0 Site Location and Description

The appeal site is located within the Rosemount Business Park which forms part of the Ballycoolin Industrial Estate north of Blanchardstown. The Rosemount Business Park is a large business park accommodating an array of industrial and commercial units ranging from car sale and repair facilities, transport logistics companies, retail and wholesale warehousing and small manufacturing and waste treatment companies. The subject site is located at the end of a cul-de-sac within the Rosemount Business Park. The cul-de-sac contains a number of land uses including an existing metalling recycling centre and alloy wheel fabrication company, a mattress manufacturing/ storage company, a car repair and servicing sales garage and stainless steel production company. Each of these commercial uses are located in large warehouse type buildings with parking to the front. The subject site is located at the north-western end of the cul-de-sac and occupies an area of 0.04681 hectares (4,681 square metres). The appeal site accommodates an L-shaped warehouse in the south-eastern portion of the site while the remainder of the site comprises of an open storage yard. A scrap metal company is located on lands to the rear (north and east) of the subject site while a metal recycling company is located on lands adjacent to the south-western boundary of the site. The subject site is surrounded by palisade fencing.

3.0 Proposed Development

- 3.1. Planning permission is sought for a change of use from warehouse use to metal recycling use for the reception, storage and preliminary processing of up to 10,000 tonnes of metal per annum. After preliminary processing the metal products and materials will be transported off-site for further recovery and treatment.
- 3.2. The Board will note from the planning history contained on file (FW11A/0100) planning permission has already been obtained for a change of use of the existing premises from warehouse to use as a metal recycling use. Condition No. 2 of that permission limited the amount of waste to be handled at the site to 2,500 tonnes per annum. Fingal County Council granted permission on the 19th December, 2011. This permission therefore has withered.
- 3.3. The proposed waste type to be received at the site will include scrap metal both ferrous and non-ferrous, catalytic convertors and lead batteries. It is proposed to install a plant to carry out preliminary treatment of catalytic converters. Information submitted with the application indicates that material will be collected by the company's own transport employees (under a waste collection permit) or will be delivered to the facility by customers by appointment. All incoming material will be weighed and inspected to ensure it conforms with the acceptance criteria. Once the material is accepted, it is placed in an appropriate storage container. Once the full load of this material has accumulated, it will be sent to an agreed facility for further treatment.
- 3.4. In the case of catalytic convertors, some preliminary treatment will take place prior to shipment. This treatment will essentially comprise of crushing. The proposed breakdown of tonnage of waste acceptance is as follows:
- Scrap metals including catalytic convertors – up to 6,000 tonnes per annum.
 - Batteries (lead/acid) up to 4,000 tonnes per annum.

4.0 Planning Authority Decision

4.1. Decision

4.2. Fingal County Council granted planning permission for the proposed development subject to 11 conditions.

4.3. Documentation Submitted with the Application

The application form was accompanied by drawings, public notices and a planning report which sets out details of the proposed development and the potential impacts which could arise in terms of traffic noise, visual impact odour and water pollution.

4.4. Internal Report and Reports from Prescribed Bodies

4.5. A report from the **DAA** stated that there was no objection to the proposed development subject to a condition requiring the storing undercover any organic or putrescible waste which could attract scavenging birds.

4.6. A number of **letters of objection** were submitted arguing that the proposed development would have an unacceptable environmental impact on surrounding developments and therefore should be refused.

4.7. A report from the **Transportation Planning Section** requires additional information with regard to movements to and from the facility, further clarification is sought in relation to visitor and staff parking arrangements and the detailed layout for the proposed access. Details of the weighbridge should also be submitted.

4.8. A report from the **Water Services Section** stated that there is no objection subject to conditions.

4.9. A report from the **Environment Division** requested further information in relation to the nature and layout of activities to be provided on site.

4.10. A report from the **Environmental Health Officer** states that there is insufficient detail with regard to the storage, handling and processing of catalytic convertors and lead batteries on site.

4.11. The initial planner's report requested additional information in respect of the following issues:

- An Article 11 declaration from the EPA to clarify the nature of the waste authorisation for the activity which is to take place on site.
- Further details in relation to storage, processing and treatment of batteries and catalytic convertors and any other metal on site.
- The source of each waste stream proposed to be accepted.
- The volume, nature and percentage of deliveries by customers that are proposed by appointment and whether access from the members of the public is proposed.
- Details of all plant machinery proposed to be installed.
- Details of any hazardous content including dust which may be released from the catalytic convertors proposed to be accepted.
- Details as to whether or not refuelling is proposed to take place on site and whether or not there will be storage of chemicals and liquids on site.
- Details of the type of material and batteries which are proposed to be accepted on site and the proposed tonnage of each type of waste to be handled.
- Details of the proposed procedures for and the locations of the loading and unloading of each vehicular type at the site.
- Details of the procedures for the recording of accurate tonnages of waste in and out of the site.
- Details of the proposed processes to be undertaken on site including the toxicity of the proposed intake, the length of time for which material will be stored, the location of which material will be stored and whether material other than the proposed catalytic convertors will undergo further processing on site.
- The number of people employed on the subject site.
- The hours of operation.
- Further details in relation to traffic handling arrangements including the internal movements required to operate on site, the segregation of staff, visitor parking

together with pedestrian routes and the proposed access to the site and weighbridge.

- Details of proposed landscaping and boundary treatments.
- Details of ownership as to the relation of the proposed development granted planning permission under Reg. Ref. FW11A/0100 as well as any relationship which might exist between the owners of the subject proposed development and the ownership of Unit 6D Rosemount Business Park which is operated by “Euro Scrap Metal”.

4.12. Further Information Received

Further information was received on 25th August, 2016.

It is stated that the activity will require a waste facility permit from Fingal County Council. The quantities of batteries will be less than 1,000 tonnes. Once planning is obtained and the applicants are operating under a waste facility permit it is the intention to apply for a licence to the EPA to accept up to 4,000 tonnes of batteries. However, it is not proposed to accept any more material than is being applied for in total i.e. 10,000 tonnes per annum.

- In relation to the storage and processing of batteries, it is stated that batteries accepted on site will be stored initially in a plastic bunded container before being weighed, placed on a pallet and shrink wrapped as per standard industrial practice. At this point in time no further processing is proposed.
- Details of the processing of catalytic convertors is also detailed in the submission.
- Batteries, scrap metal and catalytic convertors will be accepted from several sources which include garages, vehicle recyclers and heavy metal recovery operators.
- Approximately 80% of the applicant’s customers will have the material collected by the applicant. All other customers will only be able to deliver materials by appointment. Any company or individual delivery material must be pre-approved by the site manager.

- Details of the proposed plant and machinery to be installed on site are set out and are contained in Appendix 2.
- All processes carried out at the plant will be contained within a dust controlled environment with fugitive dust captured by a closed 'fill tech' system. Any material from the processing of catalytic convertors that may be deemed hazardous are fully contained within the closed collection system.
- All plant on site with the exception of a gas powered forklift, will be powered by electricity. All cleaning and maintenance fluid will be stored on appropriate hardstanding areas with secondary containment.
- Details of the proposed waste types are set out in Table 1 of the response. It is stated that the proposed waste types will be broadly in line with that permitted under the applicant's existing Parkwest facility.
- With regard to the procedures for the loading and unloading of each vehicle type details are contained in Appendix 3 of the submission.
- Details of the proposed weighbridge to be provided on site are provided on the information submitted.
- Details of the proposed processes are described in the original report and are reiterated in the additional information response. The number of people to be employed will be 3 office staff and 3 to 6 warehouse staff with 3 to 5 van drivers. The facility will operate between the hours of 8am and 6pm weekdays and 8am to noon on Saturdays.
- Details of the proposed traffic handling arrangements are set out in Appendix 3 of the response.
- Details of the proposed landscaping are indicated on Drawing 002 submitted with the additional information response.
- The current applicant is the full owner of the property which includes the original grant of planning permission under FW11A/100 and the response states that there is no relationship between the owners of the subject proposed development and the ownership of Unit 6d adjacent.
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4.13. Clarification of Further Information

On 21st September, 2016 the applicant was requested to submit the following clarification of additional information.

- It is noted that the handling and treatment of catalytic convertors is a designated hazardous waste therefore it has the potential to demonstrate significant effects on the environment. The applicant is requested to submit an environmental impact statement in support of the application.
- The applicant is requested to clarify through the submission of an Article 11 declaration from the EPA that a waste authorisation for the activity proposed at the subject site exists.
- The applicant is requested to clarify the personal protective equipment which personnel within the facility will wear particularly in the catalytic convertor decanning unit.
- The applicant is requested to clarify further details in relation to vehicular and pedestrian traffic within the facility.
- Further clarification in relation to the landscaping is also requested.

4.14. Clarification of further information was received on 23rd December, 2016.

- In relation to a requirement for an EIS, it is stated that screening for environmental impact statement was deemed adequate to support the application and this is attached as Appendix 1.
- An application for Article 11 was made to the EPA for a number of industry European Waste Codes. The relevant Article 11 declaration is attached in Appendix 2.
- With regard to personal protective equipment, it is stated that all operatives will wear steel toe capped/steel soled boots and other protective clothing. A risk assessment for the activities is attached as Appendix 3.
- Further details in respect of vehicular and pedestrian traffic within the proposed development is addressed in Appendix 4. It concludes that the volumes of traffic generated by the proposed development will not be

significant and can be adequately managed by proposed measures including defined parking areas, loading bays and signage/internal speed limits and associated management procedures.

- Finally, the clarification of additional information sets out details of a visual impact assessment.

4.15. **Further Assessment by the Planning Authority**

A report from the **Parks Planning Section** states that the drawing submitted is not acceptable. However, in the event of permission being granted an appropriate landscaping condition should be attached. Details are set out in the report.

A report from the **Water Services Section** stated that there is no objection subject to conditions.

A report from **Irish Water** stated that there is no objection subject to conditions.

A number of **observations** were submitted reiterating objections to the proposed development.

The **Planner's Report** details the information submitted including the request for additional information and clarification of additional information and notes the various issues raised in the third party observations on the various reports contained on file. It concludes that the principle of development on site is acceptable subject to appropriate conditions. It is stated, that provided that the proposed development is fully contained within the existing building, it is considered that the proposal will not be "high impact" as defined in the technical guidance notes for use classes in the Fingal Development Plan and is therefore an acceptable use under the GE zoning. The environmental issues around a waste facility permit will be fully assessed under that separate procedure. It is therefore recommended that planning permission be granted for the proposed development.

In its decision dated 27th January, 2017 Fingal County Council issued notification to grant planning permission on 27th January, 2017.

5.0 Planning History

- 5.1. Details of five history files are contained in a pouch to the rear of the file. The relevant history files are set out below.
- 5.2. The parent permission **Reg. Ref. F97A/0697** relates to the grant of planning permission for six light industrial/warehouse units at Rosemount Business Park. Permission was granted on 18th November, 1997.
- 5.3. Under **Reg. Ref. F5A/1605** planning permission was granted at Unit 5 (subject site) for a single storey extension to the north-west and north-east elevations of the existing light industrial/warehouse building. Permission was granted on 26th October, 2006.
- 5.4. Under **Reg. Ref. FW10A/0167** planning permission was granted at Unit 1 Rosemount Business Park for a change of use of existing premises from plant hire to use as a metal recycling facility including the collection, sorting, grading of metal products and materials. Permission was granted on 30th March, 2011.
- 5.5. Under **Reg. Ref. FW11A/0044** planning permission was granted to TD Euro Scrap Metals at Unit 6d (south-west of the subject site) for the change of use from transport haulage to metal recycling including the collection, sorting and grading of metal products and materials prior to being transported off site for further recycling.
- 5.6. Under **Reg. Ref. FW11A/0100** planning permission was granted to TD Euro Scrap Metal Limited for a change of use of part of the existing premises (212 square metres) at Unit No. 5 Rosemount Business Park from warehouse use to metal recycling use including the collection, sorting and grading of metal products and materials prior to products and materials being transported off site for further recycling. Condition No. 2 limited the maximum tonnage of material to be received on site to 2,500 tonnes per year.

6.0 Grounds of Appeal

6.1. Grounds of Third Party Appeal

6.1.1. *Appeal on behalf of Rosemount Business Park Management Limited*

- A third party appeal by Brock McClure Planning and Development Consultants was submitted on behalf of Rosemount Business Park Management Limited. The grounds of appeal are outlined below.
- The appeal sets out the site description and location, the proposed development, the planning history associated with the site and its surrounding,, and the policies and provisions contained in the Fingal Development Plan as it relates to the development in question. The grounds of appeal go on to review the decision of Fingal County Council. It is suggested that the review of the application by the Planning Authority did not address all issues of concerns and these concerns are outlined in the grounds of appeal.
- It is argued that the proposed development at present is having a significant impact on adjoining units in terms of noise and general disturbance. Having regard to the fact that the presence of similar type facilities in the immediate vicinity, the cumulative impact is deemed to be inappropriate and is adversely affecting the ability of the business park to attract other enterprises in the area. The proposal is also considered a security risk with hours of operation of up to 8pm at night. Concerns are expressed that there will be a requirement for increased levels of security within the business park.
- The existing facility has a capacity for 2,500 tonnes of material. The increase in capacity to 10,000 tonnes is considered unacceptable and disproportionate in terms of intensification.
- It is also suggested that such an intensification of use is contrary to the zoning objective for the site. It is considered that the use proposed is more akin to a “waste disposal and recovery facility (high impact)” which is not permitted

under the current GE zoning. Reference is made to the Environmental Scientist's report from Fingal County Council which details the processes for decanning catalytic convertors. And it is suggested that facilities of this nature are in fact more appropriate to zoning Objective HI which provides for heavy industry.

- For all the above reasons it is submitted that the proposed development would set an undesirable precedent and therefore is wholly contrary to the proper planning and sustainable development of the area.
- Also attached to this submission is a report from **AWN Consulting** which suggests that there is a vagueness and uncertainty around the acceptance classification and management of waste materials proposed to be accepted to this facility, specifically in relation to the catalytic convertors and batteries. Due to the nature of hazards associated with the waste proposed for acceptance, the Board are recommended to overturn the decision of the Planning Authority and refuse permission.

6.1.2. Appeal on behalf of TD Euro Scrap Metal Limited, Unit 6 Rosemount Park.

- A submission was received from NESA Environmental Consultants. The grounds of appeal are outlined below.
- In relation to Condition No. 2 which states that "prior to the commencement of development, the applicant shall submit revised plans and elevations which show no storage containers of any types within the curtilage of the subject site and which are located outside the warehouse".
- The appellants have concerns that the revised plans and elevations to be decided in such a manner between the applicant and the Planning Authority effectively excludes any third party review and consequently excludes the opportunity of any third party comment. Such details should be submitted prior to any decision being made.
- It is also suggested that the removal of these containers and the relocation of them indoors would reduce the capacity and throughput at the facility. This in turn may result in the applicant being forced to process some material outside the confines of the building.

- Reference is made to Condition 4c which requires “that exposed surfaces and entrances to the site should be dampened during dry windy conditions in the interest of controlling fugitive dust”.
- It is argued by including this condition, the Planning Authority is effectively accepting that fugitive dust will arise from the proposed development. The Planning Authority should ensure that the applicant should operate on the basis that no fugitive dust emissions arise.
- Condition No. 6 states that the applicant shall conform with the requirements of the Planning Authority with regard to details of revised access and visitor parking and layout in order to provide separate segregated access to the visitor parking and these details shall be agreed in writing with the Planning Authority prior to the commencement of development. Again it is argued that the Planning Authority’s is effectively removing the opportunity for any third party to comment or make an observation with regard to the new access arrangements.
- Condition No. 8 relates to the submission and agreement of a landscape plan. Again it is argued that Fingal County Council is proposing to remove the opportunity for the right of any third party to comment or make an observation or make an objection to the landscaping plan for the subject site.

6.2. **Grounds of First Party Appeal**

- The first party specifically appealed Condition No. 11 which requires the developer to pay the sum of €12,371 as a contribution towards expenditure that was and is proposed to be incurred by the Planning Authority in respect of public infrastructure and facilities benefitting the development.
- It is argued that the planning permission sought under this application was for a change of use only, and does not involve any changes to the existing building on site. There will be considerable investment required in order to restore the building back up to the standard and comply with the conditions of the permission. It is also noted that an oil/water interceptor and the landscaping plan will require a significant spend. The proposed development is in an industrial estate with a well-established industrial area with good

infrastructure including roads, water and lighting. In view of this the figure is deemed excessive.

- Reference is made to other similar type decisions in the area where no or much lesser charges were attached.
- It is stated that the change of use is exempted from development, there is no retention of any unauthorised development on the site and there is no increase in any floor area. It is noted that a significant intensification of other similar type units did not attract such significant financial contributions. It is requested that the Board declare the development as being exempt from development contributions in accordance with the precedent set by the Planning Authority in respect of other decisions.

7.0 Appeal Responses

7.1. Response on behalf of Fingal County Council

- A response from the Planning Authority was received on 27th March, 2017.
- In relation to the first party appeal it is stated in paragraph 10(i)(r) that change of use applications are exempt unless the revised use constitutes a substantial intensification of use of the buildings or services. Notwithstanding the comments submitted by the appellant, the Planning Authority remains of the opinion that the proposed development will represent a substantial intensification of use, changing from a warehouse with a recycling use accepting 2,500 tonnes per annum to the current proposal of 10,000 tonnes per annum.
- With regard to the third party appeal submitted by Brock McClure the Planning Authority is of the opinion that the proposed development will not have an undue impact on the existing surrounding development and in particular the amenities of the area. It is noted that the processing on site and consequent storage of materials will occur indoors.

- The Planning Authority acknowledge that the proposal represents an intensification of use however considers that the acceptance and throughput of 10,000 of materials per annum can be adequately accommodated.
- It is considered that the particular use proposed is appropriate for the zoning provision of the site. The proposed development is considered to accord with the use class “waste disposal/recovery facilities” “excluding high impact” which is a use class which is “permitted in principle”. The development has a low potential for impact in terms of odour, noise, dust and other nuisances. Reference is also made to Condition 3(a) requiring the proposed development to obtain a waste facility permit or licence whichever is necessary.
- With regard to undesirable precedent, it is stated that planning permission for the proposed development has been granted on the basis of the merits of the application.
- With regard to the third party appeal submitted by NESA Environmental Consultants, the Planning Authority consider that the conditions attached relate to matters of detail and as such it is entirely appropriate and in accordance with the Development Management Guidelines for Planning Authorities (June 2007). The Board are therefore requested to uphold the decision of the Planning Authority and grant planning permission for the proposed development.

7.2. First Party Response to Grounds of Third Party Appeal

- In relation to the appeal from the Rosemount Business Management Limited, it is stated that there is no anticipated increase in noise associated with the proposed development and in any case the maximum daytime noise permitted will be 55dB(A) and 45dB(A) at night-time as per existing permit conditions. All vehicles and machinery operated on site will be within these parameters.
- Reference in the appeal that the proposal is also considered to be a security risk is unfounded. The proposal is to accept material up to 1700 hours only. Furthermore, Condition 4(g) of the decision to grant only permits activities on site up to 7pm. It is suggested that the current vacant building poses a greater

risk to security to neighbouring business than the one proposed by the applicants.

- In terms of intensification of use, it is stated that the planning application as submitted, has evaluated the impact of intensification in particular through traffic impact and has concluded that the current proposed development will have no greater impact and more likely, a lesser impact than the combined prior use on site.
- With regard to zoning, it is stated that since 2011 four applications for changes of use to metal recycling use have been made within the Rosemount Business Park all of which were granted planning permission. It is noted that no third party appeal or objection was lodged by Rosemount Business Park in respect of the intensification of use for metal recycling from 6,000 to 9,000 tonnes on the neighbouring metal recycling facility operated by O'Reilly Recycling Limited. This facility lies approximately 450 metres away from the proposed development and also lies within the zone General Employment. It is not altogether clear why the management company had not objected to the other application for metal recycling within the business park.
- With regard to the Article 11 declaration from the EPA, it is stated that the applicant did not provide the relevant evidence to illustrate that a waste licence exists but rather provided correspondence from the EPA stating that a waste facility permit is required and that hazardous waste cannot be accepted at the facility under a waste facility permit. Reference is made to Condition 3(a) of Fingal County Council's decision to grant permission which requires the applicant to obtain a waste facility permit and comply with the conditions attached therein. The applicant is in discussion with the EPA and proposes to submit a licenced application to them in the near future in compliance with Condition 3(a). The grant of planning permission does not allow for the processing of batteries, and should it be considered in the future, it shall be the subject of a further planning application.
- It is entirely refuted that the proposed development, if granted, will set an undesirable precedent for future inappropriate metal recycling facilities in the

area. The applicants have compliantly operated with existing development consents and have the extensive experience in the metal recycling industry.

- With respect to the appeal by TD Euro Scrap Metal Limited the following is stated;
- In relation to Condition No. 2 the appellant's contention that the absence of outside storage containers will inhibit the operation is unfounded. It is stated that the three storage containers are not essential or necessary to the applicant's operations. It is noted that the appellants operated a 2,500 tonne facility within a building within an area of 381 square metres. Based on this ratio, a building with a gross floor area of 1,524 square metres would be required to handle 10,000 tonnes. The actual floor area in the case of the current application is 1,684 square metres.
- With regard to the issue of fugitive dust referred to in Condition 4(c), it is noted that a very similar condition was attached to the appellant's change of use on Condition No. 6(17) of the appellant's existing waste facility permit requires access roads and hardstanding shall be swept frequently as required. Compliance with Condition No. 4 will mitigate against the potential for fugitive dust.
- With regard to Condition No. 6 it is stated that the proposed revised access and visitor parking layout will change existing layouts at the site within the boundary and will not affect traffic or the operations of neighbouring facilities.
- With regard to Condition No. 8 which relates to landscaping, it is argued that the appellants are also in contravention with the requirements of Appendix 4 "Design Guidelines for Business Parks and Industrial Areas" of the Fingal County Development Plan 2011 – 2017 where it states that palisade fencing in front of any building line will not be permitted. It is also suggested that the appellants are in contravention of numerous conditions of the waste facility permit. Finally, it is stated that the concerns raised by the appellant do not relate to material planning or environmental reasons but rather are predicated on commercial reasons.
- Appendix 1 of the submission provides a more detailed analysis of the "GE" zoning on site.

7.3. Further Submission on behalf Thomas Kairys and Darius Dirskus

This submission is in response to the other 1st party and 3rd appeals submitted. In relation to the 1st Party appeal against the financial contribution condition, it states that the amount levied by the Planning Authority is justified and warranted and no change in the amount should be considered.

It also agrees fully with the views expressed in the other 3rd Party Appeal namely that:

- The proposal contravenes the zoning as it is a 'high impact' waste activity.
- Constitutes an unacceptable intensification of use.
- The proposal will give rise to significant general nuisance.
- The intake of catalytic converters constitutes a hazardous waste activity.

8.0 Development Plan Provisions

- 8.1. The site is governed by the policies and provisions contained in the Fingal Development Plan 2017 – 2023. The subject site is zoned GE – 'to provide opportunities for General Enterprise and Employment'. The vision is *'to facilitate opportunities for compatible industry and general employment uses, logistics warehousing activities in a good quality physical environment. General employment areas should be highly accessible, well-designed, permanent and legible. Water disposal and recovery facilities (excluding high impact) are permitted in principle'*.
- 8.2. Section 12.9 of the Development Plan relates to enterprise and employment. In relation to business parks and industrial areas it is stated that all waste recycling areas should be covered/enclosed and appropriately screened from wind and public view.
- 8.3. Chapter 7 of the Development Plan relates to movement and infrastructure. Section 7.5 specifically relates to waste management. In terms of hazardous waste, Objective WM22 seeks to promote the use of clean technology and minimisation of hazardous waste production in industry including small and medium enterprises. Objective WM23 seeks to provide at each of the waste recycling centres facilities for the disposal of hazardous waste such as batteries, waste oil and waste paint.

9.0 Assessment

9.1. I have read the entire documentation on file, visited the site and its surroundings and have had particular regard to the issues raised in the various grounds of appeal. I consider the pertinent issues in determining the application and appeal before the Board are as follows:

- Nuisance in terms of noise and general disturbance.
- The acceptability of intensification under the land use zoning provision.
- Activities proposed and the waste recycling facility.
- Undesirable precedent.
- Conditions attached to the permission.
- Grounds of First Party Appeal.

9.2. Nuisance in terms of noise and general disturbance.

The subject site and the proposed recycling facility within the site is located within a business park and will operate during normal business hours. There are a host of commercial developments in the immediate vicinity which give rise to noise generating activities including traffic movements and HGV movements. Furthermore, the activities undertaken in the vicinity include car repair and accessories, wholesale warehousing and the movements associated with same. Specifically, the Board will note that the proposed development is located adjacent to an existing metal recycling company.

Furthermore, the information contained on file indicates that all storage and preliminary treatment of waste will take place indoors. This will further reduce the potential for significant noise propagation.

I further note that there are no noise sensitive receptors in the vicinity in terms of residential development. All land uses surrounding the site are commercial in nature.

If the Board deem it appropriate, it could consider incorporating a noise condition limiting noise emissions during operation hours. I would request the Board to note however that the applicant has indicated that he may apply, or indeed may be required to apply, for an EPA licence at some future date where it is deemed that the

activity constitutes a Schedule 1 activity under the EPA Act. In such a case the Board would be precluded from incorporating conditions relating to admissions. For this reason, it may not be appropriate to attach a noise condition in relation to the above application. Notwithstanding this fact and having regard to the zoning provisions, the nature of surrounding land uses and the lack of sensitive receptors in the wider area, I do not consider that the proposal will give rise to significant noise issues and for this reason I do not consider that a noise condition is necessary.

In relation to the issue of general nuisance, the specific nature of this nuisance is not elaborated on in the grounds of appeal. However, having regard to the nature and activities undertaken I am satisfied that the proposed development will not give rise to any odour issues. Furthermore, the nature of the waste to be stored is not putrescible waste which would give rise to vermin and odour issues. I am further satisfied that the proposed development will not give rise to any significant levels of fugitive dust or air emissions particularly as the storage and separation of waste is to take place indoors. I am therefore satisfied that the level of noise, general nuisance generated by the proposed development would be acceptable.

9.3. Unacceptable intensification under the land use zoning provision

The proposed use is in my opinion suitable for the zoning objective as it relates to the site. A waste disposal and recovery facility is “permitted in principle” under the zoning objective set out in the development plan. While the development plan indicates that a ‘high impact waste disposal and recovery facility’ would not be suitable on the subject site, the plan does not elaborate as to what constitutes a ‘high impact waste disposal and recovery facility’. I consider that the nature of the activities to be undertaken cannot be regarded as “high impact” as the proposed development only relates to the storage, separation and in some cases preliminary treatment at the facility. It is clear that after storage and separation the metal will be transported for further recycling at a separate facility. Furthermore, in terms of high impact the facility is significantly below the threshold for which an EIA would be required.

The Board will also note that a precedent has been set with the grant of planning permission for other metal recycling facilities within the industrial estate. Planning permission was granted on an adjoining site to the south-west for a scrap metal recycling business and planning permission was also granted at Unit No. 30

Rosemount Business Park for a similar type recycling business. In the case of the latter development planning permission granted by Fingal County Council under FW16A/0141 (granted March, 2017- no appeal) was for a development of a similar size and scale to the nature of works proposed under the current application.

While there can be little doubt that the proposed development constitutes an intensification of use from the handling of 2,500 tonnes per annum to 10,000 tonnes per annum, it does not in my opinion result in an intensification which makes the use incompatible with the zoning objective and by extension therefore, does not result in a development which is necessarily more appropriate for a HI (Heavy Industry) zoning.

9.4. Activities proposed and the waste recycling facility

Concern is expressed that the activities to be undertaken include the processing of hazardous type waste including the decanning of catalytic convertors and the dismantling of batteries. The applicants indicate that they do not propose to accept EWC codes of a hazardous nature other than those mentioned in the information submitted. The Board will be aware that the nature of the activities to be undertaken on site will be the subject of a separate application for a waste permit/licence. In issuing the permit/licence the competent authority will determine which waste can be accepted on site and be the subject of any preliminary treatment. This in my view is a matter for the permit/licencing authority and not the Board. The Board in determining the application must be satisfied that the development is in accordance with the zoning provisions and development plan policy as it relates to the application and is in accordance with the proper planning and sustainable development of the area. Issues in relation to the materials to be processed on site and any potential emissions arising from the processing activities will be the subject of detailed scrutiny at waste permit/licence stage.

9.5. Undesirable Precedent

I do not consider that the proposal represents an undesirable precedent. The proposal will not give rise to excessive noise or result in nuisances over and above that associated with the existing land uses in the vicinity. The proposal constitutes an

employment generating activity and as such accords with the zoning provisions for the area. Perhaps most importantly there are a number of precedents for similar enterprises existing under this zoning including FW16A/0141 which allows for the processing of up 9,000 tonnes of metal on a site in the business park. I therefore consider that the proposal does not constitute an undesirable precedent.

9.6. **Conditions**

The appeal submitted on behalf of TD Euro Scrap Metal Limited specifically relates to the nature of the conditions attached and argues that the conditions effectively exclude any third party review or involvement of the process and consequently removes the opportunity for any third party to comment or make observations.

In relation to this issue I would firstly argue that the right to appeal in itself offers an opportunity for third party to comment on the conditions imposed. The appeal process offers an opportunity for third parties to express any concerns in relation to the nature of the condition so as the Board may alter or refine the condition if it deems it suitable in order to address third party concerns.

Secondly, in relation to this issue I would argue that the conditions attached in this instance are conditions relating to detail and do not fundamentally alter the principle of development to the extent where it may affect third party rights. I do not consider that any of the conditions which are the subject of the third party appeal in this instance would alter the development to the extent that it may materially impact on commercial enterprises or the amenity of the appellants in any material way.

In relation to Condition No. 2, the applicant is merely requested to submit revised plans and elevations which show no storage containers of any type within the curtilage of the subject site. Thus the Planning Authority are in essence requiring the applicants to ensure that all activities take place within the confines of the building. This, if anything, will ensure that the proposal has a lesser impact on the amenity of surrounding premises. Furthermore, I consider the applicant in response to the grounds of appeal has adequately illustrated, notwithstanding the appellants concerns, that the building is more than adequate to cater for the throughput of scrap metal proposed.

The reference to Condition No. 4(c) that exposed surfaces and entrances to the site should be dampened during dry windy conditions in the interest of controlling fugitive dust is in my opinion a general mitigation measure required to be implemented to ensure good environmental management at the facility. It does not imply that the Planning Authority is effectively accepting that there will be fugitive dust from the proposed development as suggested in the grounds of appeal. The nature of the recycling activity to take place on site would give rise to very little, if any fugitive dust particularly as the storage and separation of metal is to take place within the confines of the building. The incorporation of this condition is an extra mitigation measure to ensure that the transport of materials to and from the site will not have any undue impact on amenities. In fact, the Board could in my view consider omitting this condition altogether.

Likewise, Condition No. 6 merely requires that details be provided in respect of access and visitor parking arrangements within the confines of the site. Again I do not consider it necessary that third parties need be involved or will in any way be materially affected by any agreement reached between the Planning Authority and the applicant with regard to the configuration and location of parking within the subject site.

Likewise, in respect of Condition No. 8, I consider that any landscaping plan relates to matters of detail which can be adequately agreed between the applicant and the Planning Authority without any material impact on the amenity of surrounding enterprises. Details of landscaping to be agreed between the applicant and the planning authority is a standard condition in my view and is regularly attached as a standard condition in decisions issued by the Board.

9.7. Grounds of First Party Appeal

The applicant argues that the financial contribution condition requiring €112,371 as a contribution towards expenditure that was and/or that is proposed to be incurred by the Planning Authority in respect of public infrastructure and facilities benefiting development in the area is excessive. And reference is made to other decisions by the Planning Authority in the vicinity of the subject site where the financial contribution was significantly less than that imposed under the current decision. In response the Planning Authority states that the financial contribution was predicated

on the fact that an intensification of use has occurred on site and therefore the Planning Authority are justified in implementing the financial contribution on the grounds that paragraph 10(i)(r) states that change of use applications are deemed to be exempt from financial contributions unless the revised uses constitutes a substantial intensification of the use of the building and services. The Planning Authority argue in this instance that a substantial intensification of use will take place in the case of the current application.

I fully accept that a substantial intensification of use will result from the proposed development in that the development will accommodate a four-fold increase in throughput over that previously granted on site. The Planning Authority have failed to justify in their response to the grounds of appeal the amount of the development contribution levied in this instance. The adopted Fingal Co. Council Development Contribution Scheme (2016 – 2020) states that the rates of contributions effective from the 1st January, 2017 for non-residential development will be €63.13 per square metre. The gross floor area of the building which is to accommodate the recycling facility in this instance is 1,684 square metres. Based on a levy of €63.13 per square metre the overall development contribution levy in this instance would amount to €106,311 which is slightly below the amount levied by the Planning Authority. If the Board are minded to grant planning permission in this instance, I recommend that based on the figures contained in the Development Contribution Scheme the lesser amount of €106,311 should be levied in this instance.

10.0 **Appropriate Assessment**

Having regard to the nature and scale of the proposed development, the nature of the receiving environment, with the site being located in an existing industrial estate and proximity to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

11.0 Conclusions and Recommendations

Arising from my assessing above, I consider that the proposed development is in accordance with the zoning objective for the site and would not give rise to any significant impacts in terms of amenity having particular regard to the presence of similar type facilities in the immediate vicinity. I therefore recommend that planning permission be granted for the proposed development with a revised financial contribution of €106,311.

12.0 Decision

Grant planning permission for the proposed development in accordance with the plans and particulars lodged based on the reasons and considerations set out below.

13.0 Reasons and Considerations

Having regard to the GE zoning objective which seeks to provide opportunities for general enterprise and employment, and the fact that similar type metal storage and recycling facilities are located in the vicinity, it is considered that the proposed development, subject to conditions set out below, would not seriously injure the amenities of the area, be prejudicial to public health and would generally be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

14.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the plans and particulars received by the planning authority as amended by the plans and particulars received on the 25th day of August, 2016, and the 23th day of December 2016, except as may otherwise to be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to the

commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. No storage containers of any type shall be located outside the warehouse within the curtilage of the subject site.

Reason: In the interest of visual amenity and the proper planning and sustainable development of the area.

3. Prior to the commencement of development, the applicant shall obtain as necessary a waste facility permit or licence and shall comply with any conditions attached therein.

Reason: To comply with all statutory requirements.

4. The storage of batteries shall be in suitable containers for hazardous waste details of which shall be agreed with the planning authority prior to the commencement of development and shall be stored within the warehouse on site prior to removal from site for recovery.

Reason: In the interest of public health.

5. Adequate spill control equipment shall be maintained on site at all times.

Reason: In the interest of public health.

6. The applicant shall comply with the requirements of the Waste Management Act 1996 (as amended) in relation to waste stored and generated on site.

Reason: In the interest of public health.

7. The applicant shall ensure that all hauliers of waste to and from the facility shall hold a valid waste collection permit for the waste material collected.

Reason: In the interest of orderly development.

8. A register of all incoming waste deliveries to the site shall be managed and maintained and made available for inspection to the planning authority during normal working hours.

Reason: To ensure a proper record of waste deliveries to and from the site is maintained in order to comply with the permission granted.

9. Water supply and drainage arrangements including disposal shall be agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interest of public health.

10. All storage tanks for fuels and chemicals shall be surrounded by a bunded area capable of retaining 110% of the volume of the largest single tank within the bunded area. The intake and outlet for the tanks shall be positioned inside the bund. Provision shall be made to remove and dispose rainwater so as to ensure that the specified volume is always available within the bund.

Reason: In the interest of public health.

11. The development shall be operated and managed in accordance with an environmental management system (EMS) which shall be submitted by the developer to and agreed in writing with the planning authority prior to the commencement of development. This shall include for the following:

- Proposals for the suppression of on-site noise.
- Proposals for the suppression of dust on site.
- The management of all landscaping.
- Monitoring of surface water quality in any discharges.
- Details of site manager contact numbers (including out of hours) and public information signs at the entrance to the facility.

Reason: In order to safeguard local amenities.

12. The hours of operation of the proposed facility shall be restricted to 8am to 7pm Monday to Friday and 8am to 2pm on Saturdays. No activities shall take place on Sundays or Bank Holidays and no deliveries of materials for recycling either to the site or from the site shall take place before 8am or after 7pm.

Reason: In the interest of amenity.

13. No advertising or advertisement structure shall be erected or displayed on the building or the perimeter fencing or within the curtilage of a site which would otherwise constitute exempted development under the Planning and Development Regulations 2001 (as amended) unless authorised by a further granted of planning permission.

Reason: In the interest of visual amenity.

14. Details of a revised access and visitor parking layout providing a separate segregated access to the visitor parking area shall be agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interest of traffic safety.

15. The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:

- (a) A plan to scale of not less than 1:500 showing –
- (i) The species, variety, number, size and locations of all proposed trees and shrubs which shall comprise predominantly native species such as mountain ash, birch, willow, sycamore, pine, oak, hawthorn, holly, hazel, beech or alder which shall not include *prunus* species
 - (ii) Details of screen planting which shall not include *cupressocyparis x leylandii*
 - (iii) Details of roadside/street planting which shall not include *prunus* species
- (b) Specifications for mounding, levelling, cultivation and other operations associated with plant and grass establishment
- (c) A timescale for implementation

All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of 5 years from the completion of the development or until the development is taken in charge by the local authority, whichever is the sooner, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interests of residential and visual amenity.

16. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development. All existing over ground cables shall be relocated underground as part of the site development works.

Reason: In the interests of visual and residential amenity.

17. The developer shall pay to the planning authority a financial contribution of €106,311 (one hundred and six thousand three hundred and eleven euro) in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine.

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

Paul Caprani,
Senior Planning Inspector.

25th May, 2017.