



An  
Bord  
Pleanála

## Inspector's Report PL09.248848.

**Development** Permission for operation of a construction and demolition (C&D) Waste recycling facility within an area of a sand and gravel pit previously granted permission for the manufacture of concrete products. The application covers an area of approximately 2.3hectares. The facility will recycle up to 50,000 tonnes per annum of construction and demolition waste. The application provides for:

Modular type building to include an office/canteen/amenity/toilets.

Oil interceptor, silt interceptor & surface water infiltration trenches.

Quarantine area with covered skips.

Wheel cleaning system & renovation/upgrading of an existing wheel wash.

Provision of fuel tanks.

Provision of truck & car parking on existing hard standing area.

All ancillary facilities and operations including crushing and screening on an existing concrete yard.

**Location** Sand & Gravel Pit, Kilglass and Balrinnet, Carbury, Co Kildare.

**Planning Authority** Kildare County Council.

**Planning Authority Reg. Ref.** 17/423.

**Applicant(s)** McKenna Haulage Ltd

**Type of Application** Permission.

**Planning Authority Decision** Refuse Permission

<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	McKenna Haulage Ltd.
<b>Observer(s)</b>	Environmental Action Alliance Ireland.
<b>Date of Site Inspection</b>	2 <sup>nd</sup> November 2017
<b>Inspector</b>	Bríd Maxwell.

## 1.0 Site Location and Description

- 1.1. The appeal site comprises an area of 2.3 hectares located within an extensive established sand and gravel pit of circa 38 hectares located in the townlands of Kilglass and Balrinet approximately 4km to the north of Carbury Village, in Co Kildare. The site lies approximately 7km to the north east of Edenderry, 8.5km to the southwest of Enfield and 10.5km to the southeast of Kinnegad. The area is rural in character with a number of farm holdings, mineral developments and one off dwellings. Access to the site is via an established private access road running north of the county road which serves the established quarry and three residential properties and associated farm buildings. The wider quarry site has been extensively excavated and there are a series of ponds where excavations have exposed the water table.
- 1.2. The appeal site is approximately rectangular in shape with a narrow protrusion from the southwest corner providing access to local road. The main body of the site is occupied by an existing level concrete pad bordered by a low concrete wall along its longer sides. The site has been recently used for concrete manufacture. An agricultural building with temporary structures is located towards the western part of the site with other plant and concrete blocks stored towards the eastern side of the site. Overhead powerlines traverse the northern section of the appeal site. A pond is located to the south-eastern corner of the site. The access road to the site serves three dwellings and agricultural buildings and the sand and gravel quarry. There is an existing wheel wash approximately 70m from the junction with the public road. A weighbridge and adjacent office is also located on the access road (not indicated on the submitted plans).
- 1.3 The site is located within the River Glash sub-catchment which joins with the River Boyne c 5km downstream. This then forms the River Boyne and River Blackwater

SAC an SPA (Site Code 002299 and Site Code 004232 respectively) a further 3km downstream.

## 2.0 Proposed Development

2.1. Permission is sought for the operation of a construction and demolition (C&D) Waste recycling facility within an area of a sand and gravel pit previously granted permission for the manufacture of concrete products. It is envisaged that the facility will recycle up to **50,000 tonnes** per annum of construction and demolition waste.

The application provides for:

- A modular type building to include an office, canteen / amenity / toilets.
- An oil interceptor, silt interceptor and surface water infiltration trenches.
- A quarantine area with covered skips.
- A wheel cleaning system and renovation/upgrading of an existing wheel wash.
- Provision of fuel tanks.
- Provision of truck and car parking on existing hard standing area.
- All ancillary facilities and operations including crushing and screening on an existing concrete yard.

2.2 It is outlined that C&D waste this will be brought to the site directly from construction sites transported mainly by HGVs. Only materials carried by authorised waste collectors will be accepted.

2.3 Application details indicate that the proposed recycling activity falls under the following activities under the Fourth Schedule Waste Recovery Activities:

*R3 Recycling /reclamation of organic substances which are not used as solvents (including composting and other biological transformation processes) which includes gassification and pyrolysis using the components as chemicals.*

*R4 Recycling / reclamation of metals and metal compounds.*

*R5 Recycling. Reclamation of other inorganic materials which includes soil cleaning resulting in recovery of the soil and recycling of inorganic construction material.*

*R11 Use of waste obtained from any of the operations numbered R1 to R10.*

*R13 Storage of waste pending the any of the operations numbered R1 to R12 (excluding temporary storage (being preliminary storage according to the definition of "collection" in Section 5(1) pending collection on the site where the waste is produced."*

2.4 A load inspection area will be provided and visual inspection carried out on each load on initial receipt and after tipping into designated areas. A dedicated quarantine area will be located within the operational area and any unsuitable materials will be returned to source, placed in the quarantine area for disposal to a licensed facility or transported to a suitable waste disposal facility. Materials stored in the quarantine area will be within covered skips. There will be capacity to store at least five days' worth of incoming materials.

2.5 It is envisaged that working hours will be 7am to 6pm Monday to Friday and 7am to 2pm Saturday. Crushing and screening operations on site will take place when suitable material in sufficient volumes is available. Recovery and Recycling activities at the site will involve the loading of previously stockpiled unprocessed material into

a mobile crushing plant using a front end loader or similar machine. Material processed by the crushing and screening will then be transported to designated 'processed' stocking bays. The recycled material will be loaded and dispatched to the customer from the 'processed' stockpiles. Any Rebar (reinforced steel separated from concrete) will be stored in a skip in a designated location prior to the taken off site to a licensed scrap merchant. Wood sorted from waste will be stored in covered skips.

2.6 Anticipated average levels of traffic arising as a result of the operation are in the order of 10 to 15 loads per day. Some vehicles will leave empty and some will leave with recycled products.

2.7 An application for a waste permit application will be made to the County Council under the Waste Management (Facility Permit and Registration) Regulations 2007 as amended by the Waste Management) Facility Amendment Regulations 2008. It is noted that volumes in excess of 50,000 tonne per annum would require a waste licence from the Environmental Protection Agency EPA.

### 3.0 **Planning Authority Decision**

#### 3.1 **Decision**

By order dated 12<sup>th</sup> June 2017 Kildare County Council decided to refuse permission for the following three reasons:

1. *The economic chapter of the Kildare County Development Plan 2017-2023 has regard to national and regional policy, in particular the principles of the National Spatial Strategy 2002-2020 and the Regional Planning Guidelines 2010-2022 to consolidate development into designated settlements and to appropriately manage rural development.*

*Given the proposed use and proximity of lands zoned for employment / industrial purposes to cater for such developments, it is considered that the proposal would undermine the provisions of the Kildare County Development Plan in particular*

*objectives ECD1 and ECD2 which seek to develop zoned lands for economic activity, would set an undesirable precedent for similar types of development in rural unzoned lands and would therefore be contrary to the proper planning and sustainable development of the area.*

*2. Given the proposed use and proximity of lands zoned for employment / industrial purposes to cater for such development, it is considered that the proposal would undermine the provisions of the Kildare County Development Plan in particular objectives ECD1 and ECD2 which seek to develop zoned lands for economic activity, would set an undesirable precedent for similar types of development in rural unzoned lands and would therefore be contrary to the proper planning and sustainable development of the area.*

*3. It is considered that the content of both the submitted “Environmental Assessment” report and ‘Natura Impact Statement’ are inadequate by reason of an absence of sufficient information in regard to:*

*Compliance with the provisions of Article 5(1) of EIA Directive 2011/92/EU;*

*Potential impacts on flora and fauna arising from the proposed development.*

*The discharge of stormwater*

*Flood risk*

*The capacity of the existing road network to accommodate further HGV movements in the locality, and*

*The assessment of cumulative impacts arising from the proposed development.*

*Such issues result in a lack of clarity in regard to assessment of the likely environmental impacts of the proposed development and prevent the planning authority from carrying out a thorough assessment of the proposed development. In the absence of such information, to permit the proposed development would be contrary to the provisions of objective WM17 of the Kildare County Development Plan which aims to ‘facilitate the development of waste management infrastructure that is of an appropriate scale and is related to the needs of the county and the Eastern and*

*Midlands Waste Region, subject to the protection of the environment, landscape character, road network and the amenities of the area. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.”*

## **3.2 Planning Authority Reports**

### **3.2.1 Planning Reports**

- Planner’s report notes that the proposal involves the establishment of a new enterprise in this rural area. In relation to the EIS analysis, it noted that there is a pathway from the site via surface water and wastewater flows to the River Boyne. Further information is required in respect of stormwater treatment and discharge. It is noted that the OPW maps indicate pockets of pluvial flooding within the site which has not been examined within the EIS. It is noted that the road network in the vicinity of the site shows signs of distress due to high volume of HGV traffic. No assessment of alternative sites. The assessment of cumulative impacts is insufficient given the extent of quarrying activities in the area. No information regarding origin of materials and destination for recycled materials. No specific locational justification for the development on these lands given the proximity of lands zoned employment / industrial purposes to cater for such development. Refusal was recommended.

### **3.2.2 Other Technical Reports**

- Water Services Report indicates no objection subject to conditions.
- Transportation Department – Further information required in relation to sightline and demonstration of compliance with condition 36 of previous permission 07/184. Issues raised in road safety audit including swept path analysis in relation to the entrance should be addressed. The surrounding road network is showing severe signs of distress due to high volumes of HGV traffic. Internal site traffic management to be outlined.
- Environment Section Report. Further information is required in relation to the classification of waste. Risk of environmental pollution arising from open sorting,



storage and crushing of waste noted. Clarification is required in relation to the proposal for stormwater discharge. Details required in relation to polishing filter and trial holes should to be kept open for inspection. A signed copy of site characterisation form should be provided. Further information regarding impact of the proposed development on air quality from a competent environment consultant.

- Environmental Health Officer's report indicates no objection subject to conditions regarding dust noise and wastewater disposal.

### 3.2.3 Prescribed Bodies

- Submission from An Taisce asserts that the applicant needs to demonstrate that noise, dust traffic and other impacts arising from the development can be mitigated.

### 3.2.4 Third Party Observations

- Environmental Action Alliance Ireland asserts that the application is defective. The development comprises an activity requiring a waste license. The EIS is legally flawed and inadequate. Application fails to consider sustainable development, democracy, human rights or the rule of law. Contravention of the Aarhus Convention. Application fails to consider the Waste Management Act 1996 or European Communities (Waste Directive) Regulations 2011. Eastern Midlands Regional Waste Management Plan 2015-2021 and SEA report not taken into account. No Natura Impact Statement provided.

## 4 Planning History

**The following previous applications pertain to the site:**

- **14/1805** Mirror application refused for three reasons as follows:

*"In the absence of percolation test results as requested as part of the 'further information' requested dated 18/02/2015, it cannot be determined if the soil is suitable to adequately treat the effluent / run off arising from the waste activities proposed at this site. It is therefore considered that the proposed development would cause serious ground and surface water pollution, would be prejudicial to public*

*health and would therefore be contrary to the proper planning and sustainable development of the area.*

*Documentation as submitted on the 17/0/2015 shows uncovered waste bays and an associated quarantine area. The processing of waste in the open would give rise to the risk of environmental pollution. Furthermore, no office, canteen or washing facilities form part of the proposed development. The proposed development would therefore be prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.*

*Having regard to the nature of the proposed development which includes the operation of a construction and demolition waste recycling facility which would exceed the threshold for a class of development as set out in class 11(b) of Part 2 of Schedule 5 of the Planning and Development Regulations, 2001, (as amended) (Installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of the schedule), the proposed class of development requires the submission of an environmental Impact Statement. Accordingly, in the absence of an Environmental Impact Statement, the Planning Authority considers that it is precluded from considering a grant of permission in this instance.”*

- **UD6659** Warning Letter issued in respect of non-compliance with conditions of SU20046 and 07/184.
- **SU09.SU0046** Substitute consent for continuance of use of the existing quarry and all associated site works.
- **QRA-03-020 (Section 261A)**
- **09.098683 95/1236** Permission for concrete batching plant, a readymix plant and truck wash, a block yard, truck and car parking facilities and retention of office, wheel wash and weighbridge. Appeal was in respect of 5 conditions and resulted in modification.
- **QU19** Quarry pit registered under Section 261 of the Planning and Development Act 2000-2012.
- **PL09.237685 (07/184)** Continuation of extraction from existing quarry void (Development consequent to Section 361 registration no QY19)

## Adjoining Lands

- **07-977** Permission granted to Roadstone to extend life of sand and gravel pit totalling 23.2ha.
- **205039 02/1475** Permission granted for extraction of sand and gravel over an area of 7.8 hectares and all associated development on an overall site of 13.9 hectares.

## 5 Policy Context

5.1 Quarries and Ancillary Activities Guidelines for Planning Authorities 2004 notes that *“Recycling of concrete requires that it be crushed to smaller sizes in order to meet the grading requirements for specified materials and thereby be made suitable for beneficial re-use in various construction applications. Such crushing is similar to typical rock crushing in a quarry, and would thus be a compatible use. The availability of a choice of raw aggregates and construction-and-demolition (C and D) waste-derived aggregates for the purposes of new construction would also serve to limit the depletion of natural resources;”*

5.2 **National Waste Report: “A Resource Opportunity – Waste Management Policy in Ireland”** (DOECLG, July 2012). This policy document sets out the roadmap for Ireland to move away from a dependency on landfill, reduce waste and maximise recovery. The policy is predicated on the EU Waste hierarchy and sets out a range of measures across the 5 tiers namely prevention and minimisation, reuse, recycling, recovery and disposal. This mandates local authorities to develop waste management plans in compliance with the Waste Framework Directive.

### 5.3 Eastern Midlands Regional Waste Management Plan 2015-2020.

5.3.1 Kildare is one of 12 local authority areas in the Eastern Midland Waste Region. The Eastern Midlands Region Waste Management Plan 2015-2021 notes that Construction and Demolition C&D waste is listed in Chapter 17 of the European Waste Catalogue and C&D Waste is an EU Priority Waste stream.

- 5.3.2 At 7.3.1 “The estimate of C& D waste arisings for the region in 2012 is 1.91 million tonnes, a reduction compared to 2011. As the construction sector begins to record increasing activity during 2014, the importance of construction and demolition plans and their enforcement must be stressed. Equally, the appropriate processing facilities need to be in place to facilitate increased reuse, recycling and recovery of this waste stream.”
- 5.3.3 At 11.2.2 Management of C&D Waste in the Region it is noted that “Given the sharp decrease in the number of operational landfills nationally, which have been a significant outlet for C&D waste in the past, alternative recovery options will be required to facilitate the recovery of C&D waste arising in future years. Concrete stone and other masonry type waste can be crushed and screened and used as substitute for virgin quarried stope material in a variety of engineering applications if the appropriate technical criteria have been met, e.g. road construction, access tracks for agricultural or forestry holdings. Quarries also frequently require large quantities of soil material to fill voids and for other remediation and landscaping applications.
- 5.3.4 In assessing progress against targets at 11,.2.3 it is noted that the EC (Waste Directive) Regulations, 2011 sets a 70% target for reuse, recycling and recovery of man-made C&D waste in Ireland by December 2020. The EPA reported that Ireland had achieved this target with a recovery rate of 97% being reported. Backfilling activities account for a significant portion of the recovery rate, with recycling of C&D waste not as prevalent.
- 5.3.5 The importance of precision in terms of consistency with regard to waste classification in accordance with EWC codes is highlighted and reference is made to Articles 27 and 28 of the European Communities (Waste Directive) Regulations 2011 which sets out the grounds by which a material can be deemed to be a by-product rather than a waste (Article 27) and the grounds for deeming a material to be no longer a waste (Article 28).
- 5.3.6 C&D fines materials produced from the trammelling or screening of C&D wastes may contain contaminants such as gypsum, glass and biodegradable waste. C&D fines

may be suitable for landfill cover, subject to EPA agreement, and will likely require ongoing testing and verification to be carried out to ensure that only suitable material is being applied. Other options for the reuse or recovery of C&D fines must be tracked as waste movements. Section 11.2.2 presents an overview of construction and demolition waste management activities within the region. It identifies that in 2012, 41% of all recorded C&D Waste collected and managed in the region comprised inert soil and stones.

5.3.7 The plan notes the need for better coordination between local authorities is in the region to ensure that facilities are planned and developed at suitable sites which do not present a risk to European designated sites and existing biodiversity and habitats. It is recommended that the lead authority liaise with relevant stakeholders (including the EPA and DAHG) to ensure appropriate measures are in place for the control and spread of invasive alien species at backfilling sites within the region.

## **5.4 Development Plan**

5.4.1 The Kildare County Development Plan 2017-2023 refers.

- Chapter 7 Infrastructure includes policies on Waste Management. At 7.6.5 the Council's strategy for sustainable environmental management "seeks to conform to European and National Waste Strategies in matters relating to the production, handling, treatment and disposal of waste within the county and to co-operate with and participate in the preparation of regional plans for the collection, treatment handling and disposal of waste."
- WM1 is to Implement European Union, National and Regional waste related environmental policy, legislation, guidance and codes of practice to improve management of material resources and wastes.
- WM3 to support the implementation of the Eastern-Midlands Region Waste Management Plan 2015-2021 by adhering to overarching performance targets policies and policy action.

- WM5 Provide promote and facilitate high quality sustainable waste recovery and disposal infrastructure and technology in keeping with the EU waste hierarchy and to adequately cater for a growing residential population and business sector.
- WM10 to encourage waste prevention, minimisation, reuse, recycling and recovery as methods of managing waste.
- WM12 To ensure the provision of waste management facilities in County Kildare is subject to the specific requirements of the Eastern Midlands Region Waste Management Plan 2015-2021.
- WM17 Facilitate the development of waste management infrastructure that is of an appropriate scale and is related to the needs of the county and the Eastern and Midlands Waste Region, subject to the protection of the environment, landscape character, road network and the amenities of the area.
- **Chapter 5 Economic Development Enterprise and Tourism includes policy ECD1** Policy to facilitate and support the growth of the economy in Kildare and the Greater Dublin Area in a sustainable manner and in accordance with the RPGs economic strategy (or the forthcoming Regional Spatial and Economic Strategy)
- **Chapter 10 Rural Development** In relation to commercial / Industrial Development in Rural Areas at 10.6 Rural Enterprise in relation to the extractive industry it is noted that “aggregate resources are important to the general economy and provide a valuable source of employment in some areas of the county. The Department of the Environment and Local Government Report ‘Preventing and Recycling Waste – Delivering Change’ (2002) calls for the re-use or recycling of 85% of construction and demolition (C and D) waste by 2013. If achieved, this target, together with other national sustainable development objectives and a levelling off of construction activity, is likely to lead to a decrease in the rate of extraction of aggregates in the future. The nature of the extractive industry is such that the industry is required to be developed where the resource occurs and may give rise to land-use and environmental issues that must be considered in the planning process. It is necessary to ensure that aggregates can be sourced without significantly damaging the landscape, environment, groundwater and aquifer sources, road network, heritage and / or residential amenities of the area.”

- Development Management Standards are set out at Chapter 17. At 17.10.2 in relation to Construction and Demolition Waste it is stated that:

*“Construction and demolition waste management plans should be submitted as part of development proposals for projects in excess of any of the following thresholds:*

- *New residential development of 10 units or more;*
- *New developments other than above, including institutional, educational, health and other public*
- *facilities, with an aggregate floor area in excess of 1,250 sq metres;*
- *Demolition / renovation / refurbishment projects generating in excess of 100 cubic metres in volume of C&D waste; and*
- *Civil engineering projects generating in excess of 500 cubic metres of waste materials used for development works on the site.*

*A Construction and Demolition Waste Management Plan, as a minimum, should include provision for the management of all construction and demolition waste arising on site, and make provision for the reuse of said material and / or the recovery or disposal of this waste to authorised facilities by authorised collectors.*

*Where appropriate, excavated material from development sites should be reused on the subject site.”*

## **5.5 Natural Heritage Designations**

5.5.1 The site is not located within nor directly adjacent to any Natura 2000 site.

- The site is located within the catchment of the Glash River which flows into the River Boyne and River Blackwater SAC and SPA (Site Codes 002299 and 004232)

Other designated sites in the areas include

- Mount Heavey Bog SAC 9km to the northwest.
- Lough Derries SAC 9.2km south
- Ballyfanagh Lake SAC 15.5km south east.

## 6 The Appeal

### 6.1 Grounds of Appeal

6.1.1 The appeal is submitted by Williams Planning and Environmental, on behalf of the First Party, McKenna Haulage Ltd. The grounds of appeal are summarised as follows:

- Existing hardstanding area provides an ideal surface for the processing of C&D waste.
- The landowner lives in the centre house to the west of the access road to the site and owns the other two houses and supports the planning application.
- The purpose of the application is to process C&D waste which comprises principally waste concrete, bricks into a reusable product (construction aggregates).
- Note significant lack of recycling and recovery facilities for C&D waste accessible to construction contractors and subcontractors within the county and within the Eastern Midlands Waste Region Plan area.
- Note paper written by PJ Rudden former President of Engineers Ireland outlining the threat to major infrastructure and housing projects arising from lack of facilities for dealing with C&D waste.
- Refusal of consent ignores the purpose of all relevant waste policies at EU, national, regional and local level which support the proposed development.
- Proposed development is categorised within the waste hierarchy as waste recycling.
- None of the reasons for refusal of the earlier mirror application (14/1805) suggested that the development was contrary to the policies in the Kildare County Development Plan 2017-2023, national and regional policies contained in the NSS or the Regional Planning Guidelines 2010-2022.
- Objective of the County Development Plan to recycle at least 85% of C&D waste and Regional Planning Guidelines support the provision of recycling waste facilities.



- Proposed development fully accords and is in compliance with ECD 1 and ECD 2 of the County Development Plan. Planning policies and waste policies refer to the overarching objective to encourage C&D waste recycling facilities.
- The maximum distance that aggregates or waste are considered to be able to travel from an economic perspective is generally considered to be about 30 miles. In the context of the site, apart from nearby towns this radius also incorporates the northern, north western and western areas around Dublin
- Two of the four sites currently within the county that have permits for processing waste including concrete have been granted within sand and gravel pits therefore the proposed development cannot therefore set a precedent.
- Of the four sites with waste permits for processing concrete in neighbouring South County Dublin three of the four are within quarries although restricted in use or access and with respect to the remaining site this does not carry out C&D processing.
- As regards the second reason for refusal, sand and gravel pits are considered to be suitable locations for C&D recycling / recovery operations as operations are considered to be compatible. As they are resource based by their nature they are located within rural areas.
- Proposal cannot be viewed as a small scale enterprise in a rural area outside a designated employment centre. Table 10.2 is not relevant to waste management infrastructure.
- Permission already granted on the site for an industrial use.
- Neither the Planning Authority nor the applicant are required to address directly the provisions of EU Directives. The provisions of EU directives are transposed into national law and associated regulations.
- In relation to impacts on flora and fauna, the proposed C&D waste facility is to take place on a long established area of concrete hard standing. The area is devoid of significant flora. EIS and accompanying report submitted with the application for substitute consent concluded that there was no significant

impact on any designated sites or protected flora and fauna as a result of sand and gravel operations.

- Surface water treatment includes a silt trap and an oil interceptor and a constructed drainage blanket. There is no direct surface water link between the application site and the stream which meets the River Boyne 5km downstream.
- C&D waste which will be processed is considered to be inert. A waste permit will be required and typically this will incorporate an extensive list of conditions controlling the types of waste that may be processed and environmental issues relating to the operation of the site.
- As regards traffic capacity in relation to existing road network the traffic and transportation assessment concluded that there is a negligible traffic impact associated with the development and the access junction and road network will continue to operate in an efficient manner well below capacity.
- Anticipated average levels of traffic into and out of the site will be in the order of approximately 10 loads per day, a small proportion of that which existed at the time of permission for sand and gravel pit and the concrete production facility.
- Sand and gravel pit now operates at a low level of output with traffic of the order of no more than 20 loads per week. This level is expected to continue until reserves are exhausted.
- Previously three sand and gravel pit / quarries operated within the locality. The other two have closed and traffic from them has ceased.
- Cumulative impacts have been assessed within the EIS where appropriate.
- Permission for continuation of sand and gravel extraction granted in 2011 for 10 years i.e. until 2021. Due to the decline in the construction industry and reduction in output the life of the sand and gravel reserve exceeds the life of the permission and it is highly probably that a permission to extend the permission for the sand and gravel pit will be sought.
- Site is well screened from outside views and location presents the benefit for return loads from recycled aggregate delivery and sand and gravel delivery.

- Crushing and screening of concrete requires large items of machinery such as mobile crushing and screening plant and these are normally used in quarry operations.
- The relatively low inputs associated with a dedicated C&D waste recycling facility will not justify the significance investment required for location within zoned industrial land. In this respect most dedicated C&D waste facilities in the state take place within quarries / sand and gravel pits.
- The “Quarries and Ancillary Activities, Guidelines for Planning Authorities, April 2004” establish that the production of aggregates from C&D waste is a compatible use within existing quarry operations.
- The proposed development represents a vital element of infrastructure within the construction cycle.
- It is within the remit of the Bord to approve the development for a limited period of time. Should this be the case it is respectfully suggested that a minimum of 10 years would be appropriate to allow sufficient time to gauge the impact of the development and to allow the applicant sufficient time to recover any capital investment.
- Submission of Dr Colin O Reilly, Envirollogic Ltd. confirms that the proposal involves the provision of oil interceptor, silt interceptor and surface water infiltration trenches. BRE 365 infiltration tests were carried out on site with subsoil permeability results used to inform length of infiltration trench required. Refer to drawing showing the infiltration trench layout in the EIS.
- In relation to floodmaps and indication of a single pluvial flood risk area within the site boundary, it is noted that the national preliminary flood risk assessment used a combination of aerial survey and rainfall data. The maps are intended to identify enclosed topographical depressions in the landscape that may be prone to accumulating over 200mmn of water following intense rainfall events. Maps were based on national digital height model (Rader DRM). It is plausible that the Radar DTM identified the stopckpiles and screening berms as raised natural topographical features with the site occupying a depressed position relative to these and therefore identified this part of the site at risk of pluvial flooding. The site does not occupy a

depressed position relative to the natural landscape. In addition to topographical setting, pluvial flooding requires that rainfall intensity exceeds subsoil infiltration rates. As subsoil infiltration capacity is greater than the 1 in 100-year rainfall rate there can be no accumulation of water at the surface where subsoils are exposed. Rainfall landing on the concrete hardstanding pad will be disposed of at greenfield runoff rates. Given the high subsoil permeability underlying and adjacent to the site along with the fact that recent on-site topographical surveying confirms that the area identified as at risk of pluvial flooding is level Envirologic are satisfied that the site is not at risk of pluvial flooding and the proposed development will not result in any increase in flood risk.

## **6.2 Planning Authority Response**

The response of the planning authority indicates that it has no further comment and reference is made to the planner's report.

## **6.3 Observations**

6.3.1 Observations were submitted by Environmental Action Alliance Ireland. Grounds of observation are summarised as follows:

- Development violates ECJ judgements against Ireland Cases C-427/07 C-50/09 and C494/01.
- EIS was not carried out under the provisions of the codified EIA directive 2011/92/EU.
- Application relates to a development which requires waste licence from the EPA however site notice fails to indicate this.
- An EIA cannot be carried out in accordance with the provision of Article 3 of the EIA Directive if the EIA fails to contain the mandatory information in Annex IV of the codified EIA Directive 2011/92/EU.

- Development fails to identify how the waste activities at the facility are consistent with the objectives of the Waste Management Plan for the Region or the Kildare County Development Plan 2011-2017.
- No description of the quantity, nature origin mode of transport and treatment method in respect of waste.
- Application relates to development which comprises an activity requiring a waste licence from the EPA but the site notice fails to indicate this.
- The public was not allowed to effective participation in the decision making process when all operations were open.
- The Planner's report identifies 6 permissions granted on the site however there was no EIA cared out for previous development therefore the applicant must apply for substitute consent with a remedial EIS.

## **7 Assessment**

7.1 I consider that the main issues for deliberation in this appeal may be considered under the following broad headings:

- Principle of Development – Waste Management and Policy Considerations
- Impact on the Amenities of the area
- Environmental Impact Assessment
- Appropriate Assessment Screening

### **7.2 Principle of Development and Waste Management Policy Considerations**

7.2.1 The Waste Management Acts established a waste hierarchy in the order of (a) prevention, (b) preparation for re-use (c) recycling, (d) other recovery and (e) disposal. Construction and Demolition C&D Waste is an EU priority waste stream and has significant recycling potential. The current national policy which articulates the five tier hierarchy is the document "A Resource Opportunity – Waste Management Policy in Ireland" (DOECLG, July 2012). The policy document sets out the roadmap for Ireland to move away from

dependency on landfill, reduce waste and maximise recovery. The Eastern-Midlands Region Waste Management Plan 2015-2021 is the relevant Waste Management Plan for County Kildare. At 7.3.1 it is noted that the appropriate processing facilities need to be in place to facilitate increased reuse, recycling and recovery of the C&D waste stream.

7.2.2 The Kildare County Development Plan 2016-2022 commits the planning authority to have regard to the waste management hierarchy and have regard to the waste management plan. In consideration of the current proposal in the context of the specific policies and objectives of the County Development Plan Development Plan, I note that the Council's strategy in respect of waste is *“to conform to European and National Waste Strategies in matters relating to production, handling, treatment and disposal of waste within the county and to co-operate with and participate in the preparation of regional plans for the collection, treatment, handling and disposal of waste.”*

Policy WM1 Implement EU National and Regional Waste related environmental policy, legislation, guidance and codes of practice to improve management of material resources and wastes.

Policy WM3 To support the implementation of the Eastern Midlands Region Waste Management Plan 2015-2021 by adhering to overarching performance targets, policies and policy action.

I note that the “Quarries and Ancillary Activities, Guidelines for Planning Authorities April 2004 acknowledge the synchronicity between quarry activities and recycling C&D materials. I further acknowledge the evidence in regard to the need for a facility for recovery of C&D waste within the Region and the provision of such a facility is clearly desirable in the interest of sustainable development as part of the Waste Management Plan for the Region. I consider that the principle of such a development is supported by national regional and local planning policies pertaining to waste management.

7.2.3 Whilst the national guidelines and development plan acknowledge the principles enshrined in waste policy little is provided by way of specific policies

for C&D waste by way of guidance in terms of the locational requirements of waste infrastructures. I note in general terms the policy of Kildare County Development Plan in line with the National Spatial Strategy and Regional Planning Guidelines seeks to consolidate development within established urban areas. I also note that the “proximity principle” a core value in European, National and Regional to waste management policy. It is in this context that it is appropriate to proceed in terms of the specific assessment of the development of the development on this site on its own merit.

7.2.4 As regards the case made for siting the proposal at this location, I note that the proposal provides no contextual detail in terms of how it will operate to compliment the adjacent sand and gravel quarry. I note from history permissions pertaining to the sand and gravel extraction a phased restoration of the overall site was envisaged. (Specifically I refer to a stated intention PL09.237695 07/184 for use as a biodiversity site incorporating a mix of woodland, grass wildflower mix, wetlands a mix of plant types and timber boardwalk.) The current appeal provides no information as regards how the current proposal would sit within this context. Rather it is presented as a standalone type development.

7.2.5 The Planning Authority refused permission on the grounds of Economic Development Policies ECD1 and ECD2 and made reference to employment / industrial zoned lands. I have noted above the complimentary nature of quarrying and recycling of C&D waste. I further acknowledge the operational spatial requirements (large machinery and mobile crushing and screening plant) and viability arguments (low inputs and outputs) of such a facility as set out in the first party grounds of appeal. I would tend to concur with the first party that Table 10.2 (“Criteria for Assessment of One-off Enterprises in Rural Areas”) is not relevant to waste management infrastructure. However, I would consider that ideally such facilities should be located close to urban areas where most arisings will be likely to originate. The planning application and appeal has not set out a detailed locational justification of this facility at this location. The proposed use introduces a new type of use on the appeal site without reference to current adjacent uses.

7.2.6 I note the lack of detail with regard to the origin of proposed C&D waste to be transferred to the site. I consider that the location is remote from the origin of the main sources of waste and having regard to the provisions of the current development plan for the area with regard to the consolidation of development within the existing urban footprint, the presumption against the location of economic development proposals within rural unserved areas, and to the proximity principle which is enshrined within waste management policy, it has not been demonstrated that the proposed development would be an appropriate land use for the area. A justification for departure from the policy considerations contained in the development plan has not been demonstrated and the proposed development would therefore be contrary to the proper planning and sustainable development of the area.

### **7.3 Impact on the Amenities of the Area.**

7.3.1 As regards the level of traffic arising, the applicant notes that the level of traffic arising is a small proportion of previous levels pertaining to the site and local area at the height of operations of the sand and gravel pit and concrete production facility. I note issues raised within the road safety audit Stage 1 and the Traffic Report with regard to the visibility of access and substandard geometry in the vicinity, road signage and lighting. I further note that a number of the recommendations within the road safety audit with regard to swept path analysis (para 2.2.2) and maintenance of visibility splays (2.2.3) were not accepted by the first party and no detailed explanation provided. I consider that further information would be required in this regard. I also consider that further detail would be required with regard to the internal circulation within the site and the detail in respect of cumulative impact with the adjacent sand and gravel quarry operation.

7.3.2 As regards the visual impact, the site is well screened and inconspicuous within the locality therefore the visual impact is not significant.



- 7.3.3 As regards impact on residential and rural amenity, I note the assessment of noise and dust impacts. In light of existing operations on the site and subject to good practice mitigation measures I consider that impacts arising are not significant. I refer again to the context of the site and the history of quarrying in this area which has clearly given rise to traffic noise dust and other disturbance. I would consider it reasonable that some degree of certainty be provided to the local community with regard to the timeframe for overall operations on the site and a likely date beyond which disturbance might not be expected to arise. I note the first party submission within the grounds of appeal with regard to a minimum 10-year duration to enable sufficient time to gauge the impact of the development and to recover capital investment.
- 7.3.4 As regards cultural heritage on the basis of the history of quarrying on the site the proposed development will have no direct or indirect impact on any items of cultural heritage including archaeological resources and architectural heritage.
- 7.3.5 On the issue of flooding and the identification of the site in part as at risk of pluvial flooding on OPW flood maps, I note the explanation outlined by Dr Colin Reilly, Consulting Hydrologist with regard to the likely identification by Radar DTM, of stockpiles and berms as raised natural topographical features leading to the conclusion that the site occupies a depressed position relative to these topographical features and therefore at risk of pluvial flooding. I note the further case based on underlying subsoil impermeability that the site is not at risk of pluvial flooding and consider the conclusion to be reasonable.
- 7.3.6 As regards ecological impact, the site per se is dominated by buildings and artificial surfaces with minimal vegetation and is of low conservation value. There is a small artificial pond at the southeastern corner and while this may provide spawning habitat for common frog or smooth newt it is a poor example of this habitat type. No works are proposed within this area. As

regards fauna the site presents few resources for mammals and is not likely to accommodate protected species. I note that the application provides no information with regard to the possible spread of invasive species through the movement of infected soil. I consider that further assessment and formulation of an invasive species management would be required in respect of the development. Given the significant risk arising from same I consider that this matter would require further detailed analysis.

7.3.7 As regards impact on hydrology and hydrogeology this is addressed in section 3.4 of the EIS. Issue of groundwater quality due to potential contamination with hydrocarbons and silt from transfer and stockpiling of construction waste is assessed in some detail. Surface water treatment design incorporate silt traps, hydrocarbon interceptors and a constructed drainage blanket. I note concerns arising with regard to the open storage of waste and I consider that the question of cumulative impact with established adjacent operations has not been appropriately addressed within the application.

7.3.8 As regards the waste water treatment. I note that the proposal involves the provision of a packaged waste water treatment plant and polishing filter. The site suitability assessment noted that the upper level of the soil / subsoil would not be suitable for treatment and disposal and as the watertable is high. It was therefore recommended that the gravel be replaced with material with a T value of about 20 to allow percolation area to be loaded at a rate of 20 litres/ m<sup>2</sup>. I note the lack of clarity with regard to the operation within the context of the wider quarry site. It is not clear whether the proposed facilities would be shared. Given the presence of sand and gravel and high water table it would be of crucial importance that the effluent treatment system was constructed and maintained to the highest standard. The proposed development gives rise to a very real possibility surface water contamination from effluent treatment on the site.

#### **7.4 Environmental Impact Assessment**

7.4.1 On the matter of the Environmental Impact Assessment, the proposed development falls within the category of prescribed development for the purposes of Part 10 under Schedule 5. Part 2 (11)(b) of the Planning and Development Regulations 2001:

*“Installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of this Schedule.”*

In this regard Environmental Impact Assessment is required.

7.4.2 I note that the provisions of Circular Letter 1/2017 issued by the Department of Housing Planning Community and Local Government (DHPCLG) setting out the transitional arrangements in advance of the commencement of the transposing legislation in respect of the EIA Directive 2014\*52/EU, (Transposition date 16<sup>th</sup> May 2017). The Circular Letter 1/2017 provides that “where an application was made for planning permission or a scoping opinion before 16 May 2017, the 2011 Directive will apply to the whole process.

#### **7.4.3 Compliance with Requirements of Articles 94 & 111 of the Planning and Development Regulations 2001 (as amended)**

7.4.3.1 I would observe that the The EIS contains the information specified in paragraph 1 of Schedule 6 of the Regulations. The EIS-

- Describes the proposal, including the site and the development’s design and size; (I note that the level of detail provided with regard to context and modus operandii, source of raw material etc. is deficient)
- Describes the measures envisaged to avoid, reduce and, if possible, remedy significant adverse effects;
- Provides some data to identify and assess the main effects the project is likely to have on the environment; however is in my view deficient in detail,
- Outlines that alternatives were studied however provides no detail on same or detail on the main reasons for the choice of site and development, taking into account the effects on the environment.
- The EIS contains the relevant information specified in paragraph 2 of Schedule 6 of the Regulations. This includes-

- A description of the physical characteristics of the project and its land use requirements;
- The main characteristics of the process to be pursued; however the level of detail is insufficient
- The emissions arising;
- A description of the aspects of the environment likely to be significantly affected by the proposal;
- A description of the likely significant effects on the environment resulting from the development's existence, the development's use of natural resources, the emission of pollutants and creation of nuisances, and
- a description of the forecasting methods used; and
- There is a summary of the EIS in non-technical language.
- There is an indication of any difficulties (technical deficiencies or lack of know-how) encountered by the developer in compiling the required information (1.9 - no technical difficulties were encountered).

7.4.3.2 The submitted EIS focuses on the significant direct and indirect effects arising from the proposed development. The main likely effects can be identified under the range of headings as follows:

**Population and Human Health**

- Employment and economic impact
- Health and Safety impacts.
- Noise and Dust.
- Visual impact
- Traffic

**Ecology - Flora & Fauna**

- Effects on SPA, SAC pNHA
- Impacts on on-site habitats.
- Species impact.
- Avifauna disturbance.

**Soils and Geology**

- Potential soil contamination from imported material
- Impact on drainage patterns

**- Water.**

- Sediment release
- Contaminated soil, fuel of chemical spillage
- Groundwater flow regime
- Water quality

**Air Quality and Climate,**

- Dust
- Climate Change.

**Noise**

- Traffic
- Residential / rural amenity

**Landscape and Visual Impact**

- Impact on landscape character.
- Impact on listed views and prospects.

**Cultural Heritage**

- Effects on archaeology.
- Impact on structures of heritage significance.

**Material Assets**

- Impact on local road network.
- Impact on land use

7.4.3.3 Interactions Section 3.12 deals with the interaction of the foregoing.

The effects of the interactions between humans and air quality, the visual landscape, flora & fauna and water and soils; and landscape and the natural environment are implicit in the range of preceding issues listed.

7.4.3.4 As regards alternatives, (1.10 of EIS) some consideration is given to site selection though no detail is provided of alternative sites considered. There is some discussion on alternative working methods and alternative design. The dialogue in this regard is however general rather than specific.

**Assessment of the Adequacy of the EIS**

**7.4.3.5** The level of detail provided within the EIS in my view falls short in terms of the consideration of the range of relevant likely significant effects on

environmental receptors. The principal areas of concern relate to water contamination, invasive species and traffic impacts. The general failure within the overall application to address the site context renders the EIS deficient in terms of informing consideration of cumulative and in combination impacts.

7.4.3.6I consider that the EIS is not adequate and is not of an acceptable standard. Specifically, I note deficiencies with regard to cumulative assessment and with regard to considerations of pollution arising from open storage and sorting of waste, potential for particulate matter to become entrained in run off and wastewater treatment. I note that the level of detail provided within the documentation and site drawings with regard to the proposed *modus operandii* on site is deficient. The issue of invasive species and its threat to native flora and fauna, a significant concern in light of the nature of the application, has also not been addressed.

## **7.5 Appropriate Assessment - Screening**

7.5.1 The obligation to undertake appropriate assessment derives from Article 6(3) and 6(4) of the Habitats Directive. Essentially it involves a case by case examination for a Natura 2000 site and its conservation objectives. Appropriate Assessment involves consideration of whether the plan or project alone or in combination with other projects or plans will adversely affect the integrity of a European site in view of the site's conservation objectives and includes consideration of any mitigation measures to avoid reduce or offset negative effects. This determination must be carried out before a decision is made or consent given for the proposed plan or project. Consent can only be given after having determined that the proposed development would not adversely affect the integrity of a European Site in view of its conservation objectives.

7.5.2 The application is accompanied by a Stage 1 Screening Assessment document compiled by Padraig Fogarty, Openfield Ecological Services. The Natura 2000 sites within 15km are identified as follows:

- River Boyne and River Blackwater SAC 6.3km north
- River Boyne and River Blackwater SPA 6.3km to the north
- Mount Hevey Bog SAC 9km to the northwest
- Long Derries SAC (9.2km south)
- Ballynafagh Lake SAC 15.5km south east

7.5.3 Using the source pathway receptor model to identify European sites which could potentially be affected the screening report notes the lack of any link pathway between source and receptor in relation to the Mount Hevey Bog SAC, Long Derries SAC and Ballynafagh Lake SAC and these are screened out. There is a hydrologic connection between the quarry and River Boyne and for this reason the zone of influence is considered to encompass the River Boyne and River Blackwater SAC and River Boyne and River Blackwater SPA. The distance of the surface water pathway from the site to the River Boyne and River Blackwater SAC and SPA is approximately 6.3km.

7.5.4 The Qualifying interests of the River Boyne and River Blackwater SAC are:

- Alkaline fens [7230]
- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (Alno-Padion, *Alnion incanae*, *Salicion albae*) [91E0]
- *Lampetra fluviatilis* (River Lamprey) [1099]
- *Salmo salar* (Salmon) [1106]
- *Lutra lutra* (Otter) [1355]

7.5.5 The qualifying interest of the River Boyne and River Blackwater SPA is

- Kingfisher (*Alcedo atthis*) [A229]

7.5.6 The screening report submitted asserts that because of the distance separating the lands and the River Boyne and River Blackwater SAC/SPA there is no pathway for direct loss or disturbance to habitats (alluvial woodlands and alkaline fen) or other semi natural habitats that may act as ecological corridors for important species associated with the qualifying interests of the Natura 2000 areas. Similarly, there can be no disturbance to Kingfisher the feature of interest of the SPA.

7.5.7 There is a pathway from the site via surface water and wastewater flows to the River Boyne. It is acknowledged that a deterioration in water quality would impact negatively on their qualifying interest. Water quality impacts have the potential to affect to Atlantic Salmon, Otter and River Lamprey. The report asserts that the proposed development is unlikely to have significant negative effect on water quality as surface water will discharge to an oil / grit interceptor and particulate matter will be removed. Water from the interceptor will percolate to ground and there is no direct discharge to any watercourse.

7.5.8 Reference is made to an NIS carried out for the quarry operations which found that significant negative effects were not likely to arise to Natura 2000 sites. Screening concludes that an analysis of the potential effects to Natura 2000 sites has found that significant effect is not likely to arise, either alone or in combination with other plans or projects that could result in significant effects to Natura 2000 areas in the zone of influence of this project in light of their conservation objectives.

7.5.9 I have noted the conclusions of the submitted screening document. However, I consider that in light of concerns raised above with regard to the treatment of surface water from contaminated areas, wastewater treatment and cumulative



and in combination impacts it cannot be concluded on the basis of the information provided that the proposed development individually or in combination with other plans or projects would not be likely to have significant effect on the River Boyne and River Blackwater SAC in view of the site's conservation objectives.

## **8 Recommendation**

In light of the foregoing assessment I recommend that the Board uphold the decision of Kildare County Council to refuse permission for the following reasons:

### **Reasons**

1. By reason of its location in a rural area remote from the source of raw material on which the operation depends (construction & demolition waste) and having regard to the provisions of the current development plan for the area with regard to the consolidation of development within the existing urban footprint, the presumption against the location of economic development proposals within rural un-serviced areas and the proximity principle, it is considered that it has not been demonstrated that the proposed development would be an appropriate land use for the area and a justification for departure from the policy considerations contained in the development plan has not been demonstrated. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
  
2. The subject facility is located on a 2.3hectare site, within an extensive established sand and gravel pit. Notwithstanding the limited physical works proposed and having regard to the following:
  - (a) the planning and development history of the site and overall landholding of which the site forms part,
  - (b) the submissions on file,

(c) the characteristics of the development, the absorption capacity of the environment, and the characteristics of the potential impact arising from the development proposed, and including the following additional specific concerns in relation to:

- (i) the treatment of surface water from contaminated areas of hardstanding,
- (ii) the capacity of the proposed wastewater treatment system,
- (iii) the risk to native flora and fauna arising from the possible spread of invasive alien species,
- (iii) the traffic and traffic safety impacts arising from the proposed development,
- (iv) impacts on the amenities of the area arising from noise and general disturbance,
- (v) cumulative and in combination impacts arising from existing and permitted development in the vicinity,

the Board is not satisfied based in the information provided that impacts arising have been predicted and appropriately mitigated. Accordingly, the Board is precluded from giving further consideration to the granting of permission for the development the subject of the application and appeal.

3. The Board is not satisfied that the proposed waste recycling facility can be adequately drained by means of a private wastewater treatment system having regard to the ground conditions on site and the nature and scale of the proposed development. The proposed development would, therefore, be prejudicial to public health.

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Brid Maxwell

Planning Inspector

24<sup>th</sup> November 2017