



An
Bord
Pleanála

Inspector's Report ABP-307353-20

Development

Waste and recycling facility.

Location

Labbadish, Manorcunningham, Co.
Donegal

Planning Authority

Donegal County Council

Applicant(s)

John Caulderbanks

Type of Application

Substitute Consent

Observer(s)

Jim Ferry

Date of Site Inspection

18th October 2023

Inspector

Hugh D. Morrison

Contents

1.0 Introduction	3
2.0 Site Location	3
3.0 The Proposal.....	4
4.0 Planning History.....	5
5.0 Policy and Context.....	7
5.1. National Policy and Advice	7
5.2. Development Plan	7
5.3. Natural Heritage Designations	8
5.4. EIA Screening	8
6.0 Submissions.....	8
6.1. Prescribed Bodies.....	8
6.2. Planning Authority Response	9
6.3. Observations.....	9
6.4. Further Responses	10
7.0 Planning Assessment	10
8.0 Appropriate Assessment	18
9.0 Recommendation.....	25
10.0 Reasons and Considerations	25
11.0 Conditions.....	26

1.0 Introduction

- 1.1. The current application for substitute consent was made following the Board's decision to grant leave to apply for substitute consent to ABP-303162-18 on 11th February 2020. This application was lodged on 17th June 2020. On 9th July 2021, the applicant was invited by the Board, under Section 177K(1C)(a) of the Planning and Development Act, 2000 (as amended), to submit "such information as you consider material for the purposes of the Board's satisfying itself on the question of the existence or not of exceptional circumstances that would justify a grant of substitute consent by the Board." The applicant duly responded to this invitation with a submission, which was received on 3rd August 2021.
- 1.2. The Board considered the above cited submission and it decided that "the information received was sufficient to enable it to assess the exceptional circumstances test." A further public consultation exercise ensued, and the prescribed bodies and the observer were notified of the further information received. Only the latter made a further submission.

2.0 Site Location

- 2.1. The site is located 2.1 km to the south of Manorcunningham and 5.8 km to the east of Letterkenny. It lies to the south of the N14 in the townland of Labbadish and it is accessed off the local road network (L-1274, L-6024, and L-1154). This townland is composed of gently undulating countryside through which flows the Corkey River in a northerly direction. The bridge across this River on the local road network is adjacent to the site and it is accompanied by a cluster of old mill and farm buildings. (The site itself, which lies on the eastern side of the River, was historically used as an industrial alcohol factory). Elsewhere, the local road network is accompanied by one-off dwelling houses and, on the western side of the River, a row of two-storey semi-detached dwelling houses.
- 2.2. The site itself is of rectangular shape and it extends over an area of 0.86 hectares. It maintains a frontage along its southern boundary with the L-1274, which includes the gateway to the site and a pull-in/parking area, behind which is a single storey site office building (93 sqm) and a storage shed (15.68 sqm). The western boundary of the site is continuous with the eastern embankment of the River Corkey. It is enclosed by means of a solid timber fence, and the remaining northern and eastern

boundaries are enclosed by means of security fences. The main cluster of sheds (1320 sqm) within the site is sited centrally with an additional freestanding garage (105.5 sqm) sited towards the north-eastern corner and a weighbridge in the south-western corner of the site. The surrounding yard/circulation spaces are mainly surfaced in concrete with instances of gravel surfacing on the eastern side of the site. The floorspace of buildings on the site totals c. 1537 sqm.

3.0 The Proposal

- 3.1. The development which is the subject of this application for substitute consent is a waste and recycling facility.
- 3.2. The applicant's cover letter and brief description, dated June 2020, elaborates on the activities undertaken, as follows:
 - Door-to-door collections of separated household waste, which is subsequently received, stored, and transferred, and
 - Skip hire and subsequent separation of materials for transfer as appropriate.
- 3.3. Paper, cardboard, plastic, glass, wood, metals, and mixed municipal is stored on site until enough is accumulated for onward transportation to other waste recycling and waste disposal facilities.
- 3.4. The applicant has a fleet of lorries for transportation to and from the site.
- 3.5. The applicant has a waste facility permit (WFP-DL-11-019-01) and a waste collection permit (NWCPO-11-08038-05). His annual intake of waste is as follows:

Class	Tonnage	Material
No. 11	7000	Domestic waste (other than hazardous waste)
No. 8	10,000	Storage of bio-waste and compost
EWC 150101	170	Cardboard
EWC 150152	80	Plastic
EWC 200140	200	Metal

EWC 200301	2300	Mixed dry re-cyclable
EWC 191212	950	Mechanical treated material
EWC 170201	120	Wood waste
EWC 200108	50	Biodegradable kitchen and canteen waste
EWC 190902	1200	Alum sludge collected from WWTPs (not to be unloaded within the facility)

4.0 Planning History

- 94/1794: Temporary retention of activities, including the storage of scrap cars, glass and skips with portacabin office: Subject of appeal PL05.096329. Permitted for 10 years.
- 04/6015: Retention of activities and associated buildings and for the completion of a new roof over the refuse transfer section of the facility. Activities to include:
 - Collection of refuse for daily transfer to landfill.
 - Collection and storage of glass, metals, and paper for transfer to recycling companies. Collected paper is baled on the site prior to transfer for recycling.
 - Collection of scrap vehicles prior to transfer for recycling.
 - Parking and servicing of the refuse truck fleet.
 - Storage of skips.
 - Administration and management of the business.

Permission was granted subject to conditions, one of which restricted the duration of the permission to 10 years from 13th April 2004.

- 08/40101: Erection of extension to existing commercial shed to cater for the storage of glass, metals, and paper for transfer to recycling companies. Collected paper is baled on site prior to transfer for recycling. Also, the reroofing of existing shed.

Permission was granted subject to conditions, one of which restricted the duration of the permission to a “limited period which shall expire in tandem with the concurrent temporary permission on the site, planning permission 04/6015 refers, to which this permission is ancillary.

- 13/50276: Extension of duration of permission (08/40101) for 5 years was granted on 15th April 2013.
- 14/50396, 14/50442, and 15/51037 all for the continuation of waste collection and recycling facility were in each case invalidated.
- Enforcement enquiry UD 1810: Warning letter issued, followed by enforcement notices dated 26th June 2018:
 - Notice A states that “The use of lands as a waste facility without the benefit of planning permission has taken place at DM Waste, Labbadish, Manorcunningham, Co. Donegal”, and
 - Notice B states that “All of the structures located within the DM Waste site have to be removed.”
- ABP-303162-18: Leave for substitute consent granted on 11th February 2020. Initially, any substitute consent application should have been lodged by 5th May 2020. However, due to Covid-19, this period was extended to 22nd June 2020.
- 20/50833: Continuation of waste collection and recycling facility on existing site: Withdrawn on 1st September 2022: Re-application to be made once the Board’s decision on the current application for substitute consent has been made.

5.0 Policy and Context

5.1. National Policy and Advice

- National Planning Framework

NPO 56: Sustainably manage waste generation, invest in different types of waste treatment and support circular economy principles, prioritising prevention, reuse, recycling and recovery, to support a healthy environment, economy and society.

- A Waste Action Plan for a Circular Economy: Ireland's National Waste Policy 2020- 2025

5.2. Development Plan

Under the Donegal County Development Plan 2018 – 2022 (CDP), the site is shown as lying within a rural area under strong urban influence, which is of moderate scenic amenity.

The following objectives and policies are of relevance to the application:

- *WES-O-8: To encourage the reduction, reuse and recycling of waste.*
- *WES-O-9: To seek to provide adequate services for:*
 - ♣ *The collection, treatment and disposal of household waste; and*
 - ♣ *The collection, treatment and disposal of commercial and industrial waste, where appropriate through partnership with the private sector.*
- *WES-P-5: It is a policy of the Council to prevent and minimise waste, to encourage and support material sorting and recycling, and to ensure that waste is managed and treated without causing environmental pollution.*
- *WES-P-6: It is the policy of the Council to manage and maintain a high level of service at Recycling Centres and to ensure this is provided in the most cost effective manner.*
- *WES-P-7: It is the policy of the Council to ensure that all commercial materials recovery facilities within the County are appropriately licensed/permitted and are operating within the terms of their licences/permits.*

5.3. Natural Heritage Designations

- Lough Swilly SAC (002287)
- Lough Swilly SPA (004075)

5.4. EIA Screening

Under the leave to apply for substitute consent application ABP-303162-18, the applicant was requested to submit further information with respect to Schedule 7A of the Planning and Development Regulations, 2001 (as amended). In the light of this further information, the reporting inspector proceeded to assess the proposal under Schedule 7 of these Regulations. She concluded that “the issues arising from the proximity/connectivity to European Sites can be adequately dealt with under the Habitats Directive (Appropriate Assessment) as there is no likelihood of other significant effects on the environment. The need for environmental impact assessment is, therefore, not required.”

6.0 Submissions

6.1. Prescribed Bodies

- Inland Fisheries Ireland: Requests that the mitigation measures cited in Section 9 and Table 9.1 of the applicant’s NIS dated March 2020 be specifically conditioned.
- HSE (Environmental Health Service): Possible impacts on ground and surface waters commented upon as follows:
 - No assessment of the WWTS and percolation area has been submitted in the NIS.
 - No monitoring of surface water quality prior to its discharge is proposed.
 - No assessment of any impact on nearby wells has been made.
 - All waste to be stored indoors, leachate to be collected and transported to a licenced disposal facility, and records of the same kept.

6.2. Planning Authority Response

- The proposed regularisation of the waste recycling and transfer facility by means of the grant of a substitute consent to the current application is supported by the PA. The following commentary is provided:
 - “The development is a long established, fully licenced, well-run family business that provides an essential service refuse collection and waste recycling facility within the County.”
 - The principle of the development complies with CDP objectives WES-O-8 & 9, and the development is supported by CDP policies WES-P-5, 6 & 7.
 - The PA concurs with the conclusion of the NIS that “subject to the implementation measures set out in Section 9.1, the development will not have a significant adverse effect on the qualifying interests of the Lough Swilly SAC and SPA.”

6.3. Observations

The observer commented upon the originally submitted application as follows:

- Leave to apply for substitute consent is unconstitutional and contrary to EU law.
- Appropriate assessment was needed before the commencement of development.
- The location of the site beside a Natura 2000 river is unnecessary as there are alternative sites within an 8km radius.
- The development is unauthorised and yet it continues to operate.

The observer commented upon the further information as follows:

- No exceptional circumstances exist to justify the grant of substitute consent.
- Attention is drawn to the planning history of the site, which involved “retention permissions”, i.e., by definition, the subject of unauthorised development.
- Attention is drawn to the extant enforcement notices and the view is expressed that to grant substitute consent would “fly in the face of public policy”.

- Attention is drawn to the Board's decision ABP-304086-19 in which the applicant failed to demonstrate that exceptional circumstances existed.

The observer comments on matters pertaining to the applicant's compliance or otherwise with waste management facilities regulations, which lie outside the ambit of the planning system.

6.4. Further Responses

The applicant welcomes the PA's response.

7.0 Planning Assessment

7.1. I have reviewed the proposal in the light of the National Planning Framework (NPF), the Donegal County Development Plan 2018 – 2024 (CDP), the planning history of the site, the submissions of the applicant, the Planning Authority (PA), and the observer, and my own site visit. Accordingly, I consider that this application for substitute consent should be assessed under the following headings:

- (i) Legalities,
- (ii) Policy and planning history,
- (iii) Land use, traffic, and residential amenity, and
- (iv) Water.

(i) Legalities

7.2. The observer raises several questions of a legal nature.

- He questions the constitutionality and consistency with EU legal requirements of the leave to apply for substitute consent provisions of the Planning and Development Act, 2000 – 2023 (hereafter referred to as the Act). Clearly, these questions would need to be tested within their relevant legal forums. They lie beyond the jurisdiction of the Board.
- He questions why the applicant's business continues to operate on the site, when the relevant planning permissions for it have lapsed and the site is the subject of enforcement notices. These are questions for the PA, as it is the body empowered to undertake planning enforcement.

- He questions whether exceptional circumstances exist to allow the applicant to make an application for substitute consent. The Board has previously considered this question. Under ABP-303162-18, it concluded that exceptional circumstances did exist, and so the applicant was allowed to make an application for substitute consent. Under the current application, the Board, under Section 177K(1C)(a) of the Act, requested that the applicant address this question again. The further information thus submitted was judged by the Board to be “sufficient to enable it to assess the exceptional circumstances test.”

7.3. Turning to the submitted further information, this further information now needs to be the subject of the exceptional circumstances test, which is set out in Section 177D(2) of the Act. I will consider each strand of this test below.

(a) Whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive.

- 7.4. The application does not relate to a development, which due to its size and location, requires to be informed by an EIAR, and so it is not subject to the EIA Directive.
- 7.5. The application does relate to development that is informed by a rNIS, and so it is subject to the Habitats Directive. This rNIS, and its assessment, provides the opportunity for the purpose and objectives of the Habitats Directive to be upheld, and so they would not be circumvented.

(b) Whether the applicant had or could reasonably have had a belief that the development was not unauthorised.

- 7.6. The applicant has submitted a log of the planning history of the site, which I have summarised under Section 4.0 of my report. From this log it is clear that the parent permission for the waste and recycling facility on the site (04/6015) ran until 2014, and a subsequent permission for an extension to a shed on the site (08/40101) ran until 2018. The two differing cessation dates in these permissions were a source of confusion. Nevertheless, the applicant sought permission for the continuation of the waste and recycling facility under three separate applications, each of which was invalidated. While the PA advised the applicant to apply for retention permission, with legislative changes, this option was superseded by the need for substitute

consent. He, thus, applied for leave to apply for substitute consent (ABP-303162-18), which was granted as precursor to the current application.

- 7.7. In the light of the planning history of the site, I consider that some confusion attended both the expiry of the planning permissions for the site between 2014 and 2018 and the appropriate means of obtaining authorisation for the continuation of the waste and recycling facility, following which the applicant has sought to attend to the deficiency arising from the absence of a NIS and an appropriate assessment of the waste and recycling facility. Accordingly, I consider that the applicant could reasonably have had a belief that the development was not unauthorised for the key period in question, i.e., 2014 to 2018, after which he has been intent upon seeking authorisation.

(c) Whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired.

- 7.8. With the submission of the rNIS, the ability to carry out an appropriate assessment has not been substantially impaired. Furthermore, the lodgement of the current application and its accompanying rNIS has afforded the opportunity for the public to be formally consulted on two occasions, i.e., when the application was originally lodged and when it was the subject of further information. The opportunity for public participation has thereby been afforded, and indeed taken up.

(d) The actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development.

- 7.9. The rNIS states that pollutants from the waste and recycling facility, such as hydrocarbon fuels and lubricants and particles of waste materials, could have been carried by surface water run-off from the site into the Corkey River and onward into Lough Swilly. Water quality could thereby have been adversely affected. However, the mitigation measures cited in the rNIS ensure that the actual or likely adverse effects from such pollutants on the integrity of nearby European sites have not arisen.

(e) The extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated.

7.10. The rNIS states that pollutants from the waste and recycling facility, such as hydrocarbon fuels and lubricants and particles of waste materials, could have been carried by surface water run-off from the site into the Corkey River and onward into Lough Swilly. Water quality could thereby have been adversely affected. However, the mitigation measures cited in the rNIS ensure that the actual or likely adverse effects from such pollutants on the integrity of nearby European sites have not arisen.

(f) Whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development.

7.11. The planning history of the site indicates that the applicant has sought and obtained planning permission in the past, either retrospectively or in advance of carrying out development. Insofar as previous time-limited permissions have expired, the waste and recycling facility is presently unauthorised. However, as outlined above, his current application seeks to overcome the absence of appropriate assessment in the past as a precursor to seeking planning permission for the continuation of the waste and recycling facility into the future.

(g) Such other matters as the Board considers relevant.

7.12. The applicant is the holder of waste collection and waste facility permits for the site.

7.13. Given the above commentary on the strands of the exceptional circumstances test, I consider that the applicant's further information submission meets this test.

7.14. I, therefore, conclude that there is no legal impediment to prevent the Board from proceeding to assess/determine the current application for substitute consent in the normal manner. I also conclude that the application meets the exceptional circumstances test.

(ii) Policy and planning history

7.15. The proposal concerns what is essentially a waste facility within which materials are separated for recycling. National and local planning policies support the principle of waste recycling. Thus, NPO 56 of the NPF, and WES-O-8 and WES-P-5 & 6 of the CDP explicitly support waste recycling, and so, by extension, the principle of the proposal.

- 7.16. The site formerly accommodated an industrial alcohol factory, which was also used for the production of starch, between c. 1935 and the 1970s. The applicant purchased the site in 1980 and used it initially as a scrap metal facility. Since the early 1990s, it has been used for the waste related activities, which are on-going.
- 7.17. Essentially, the parent permission for the current proposal was granted to 04/6015 for 10 years. Application 08/40101 for an extension to the sheds on site was granted, subject to a condition limiting the duration of this extension to that of the parent permission. However, under 13/50276, the permission granted to 08/40101 was extended for a further 5 years until 14th April 2018. Enforcement notices were served on 26th June 2018, and, on 6th December 2018, an application for leave to apply for a substitute consent was lodged with the Board, which was subsequently granted, and the current application was lodged within the requisite period. A further application, 20/50833, was lodged with the PA for the continuation of the use of the site as a waste collection and recycling facility. However, it was subsequently withdrawn pending the determination of the current application.
- 7.18. In the light of the above summary of the planning history of the site, precedent for authorising the proposal exists, albeit on a temporary basis. I have been unable to ascertain definitively why the PA from the outset of waste activities on the site has only granted time limited permissions.
- 7.19. I conclude that national and local planning policies are supportive of the principle of the proposal. I conclude, too, that precedent exists for authorising the proposal, albeit on a temporary basis for reasons that are unclear.

(iii) Land use, traffic, and residential amenity

- 7.20. Under the CDP, the site does not lie within an existing settlement, but rather in the rural townland of Labbadish, through which the River Corkey flows. The bridge crossing of this River within the townland was accompanied historically by corn mills, and the site itself, which lies beside the River, was formerly used as an industrial alcohol factory. Accordingly, precedent exists for its employment usage.
- 7.21. The N14 between Letterkenny and Lifford passes to the north of the site. Access from this national primary route to the site is afforded by the local road network. Clearly, the historic use of the site would have generated vehicular traffic, as does its current use. Distances between the site and the N14 along the local road network are relatively short and the applicant has responded to the challenges posed by the

variable width and alignments of this network by organising vehicle movements so that trips to the site arrive from the east and trips from the site depart to the west. He thereby seeks to avoid scenarios wherein his operational vehicles meet one another while travelling in opposite directions on the local road network.

- 7.22. The site entrance/exit is from/to the L-6014, which passes the site's frontage (eastern boundary). The applicant undertook a traffic survey report, which is summarised on his layout map. This report concluded that the overall average speed of vehicles passing the site is 28.4 kmph, and so, under Table 4.2 of the CDP, sightlines with "y" minimum distances of 33m are required. The site layout plan shows the availability of 41m to the east and 39m to the west from the edge of the carriageway adjacent to the recessed site entrance/exit. During my site visit, I observed that there is scope to set back the wall and pillars that provide the northern splay to the entranceway, along with accompanying vegetation in the south-eastern corner of the site, to improve the eastern sightline from an "x" distance of 2.4m. I also observed that the western sightline is presently available from this "x" distance.
- 7.23. The site is on the eastern side of the Corkey River. The majority of dwelling houses within the surrounding area lie on the western side of this River and they are typically accompanied by lengthy rear gardens that run down to it. Several dwelling houses lie to the east of the site, on more elevated ground along the local road network, and one dwelling house lies to the south, albeit within a farm yard. Given these relationships, scope exists for the proposal to affect residential amenity.
- 7.24. The applicant advises that the separation of waste on the site occurs entirely within the sheds in the centre of the site. These sheds have vehicular doors within their northern and southern elevations. During my site visit, I observed within them an excavator on a concrete ramp, which is used to unload waste from vehicles. Waste is then loaded onto a conveyor, which facilitates its separation for subsequent storage and onward transportation.
- 7.25. The above cited separation of waste gives rise to environmental impacts in terms of litter, noise, and odours. These impacts are mitigated by the fact that separation occurs within the sheds. The applicant's rNIS addresses control measures pertaining to these impacts, as follows:
- With respect to litter, where there is a significant risk of loads leading to litter, transportation occurs in covered vehicles.

- With respect to noise, the applicant ensures that vehicles and plant and machinery are well maintained, schedules noisy activities for suitable times to minimise disturbance, and closes vehicular doors when plant and machinery is running.
- With respect to odour, the applicant states that food waste is not recycled on the site, waste is promptly separated for recycling to prevent its degradation, and floor and adjacent yard areas are cleaned on a regular basis.

7.26. The previous permissions granted to 04/6015 and 08/40101 were both subject to conditions, which addressed noise and hours of operation. The former stated that “Noise level shall not be greater than 55 dBA during the day and greater than 45 dBA at night as measured at the site boundaries.” (The applicant’s site layout map shows the locations for noise monitoring around these boundaries, and for air monitoring, too). The latter states that “Hours of operation shall be restricted to between 0700 and 1900 hours Monday to Saturday.” (These are longer hours than the hours of business posted by the applicant as 0900 to 1700 on weekdays only).

7.27. I conclude that the site has historically been in employment use, and so it has generated traffic and environmental impacts in the past. The current use continues this pattern of usage. I conclude that the applicant has taken practical steps to manage vehicular movements along the local road network, which links the site to the N14, and that his site entrance is capable of improvement with respect to its eastern sightline. I conclude that the applicant has outlined controls to mitigate the environmental impacts of the use. Given the historic use of the site, it is thereby capable of being operated in a manner compatible with residential amenity.

(iv) Water

7.28. The site is served by the public water mains.

7.29. The site layout plan indicates that the office building, which includes a kitchen and w.c., is served by a septic tank and a percolation area, which is sited in the north-western corner of the site. Notation outlines the specification of these items and comments that they are “in over 20 years and are working well with no pollution.”

7.30. The site layout plan indicates that the River Corkey flows northwards immediately to the west of the site. The EPA’s river map reports that water quality at the nearest bridge upstream from the site was recorded in 2019 as being Q value 4, i.e., of good

status. The site layout plan also indicates how water run-off is handled throughout the site. Essentially there are the following three systems:

- Rainwater from the extensive western roof planes of the sheds is directed via a gutter to sealed downpipes, which discharge directly into the adjacent Corkey River.
- Rainwater from the yard and water run-off from the vehicle wash are intercepted by gulley traps and directed via drains to two waste oil/petrol interceptors prior to discharge to the Corkey River. Rainwater exiting these interceptors is monitored for water quality.
- Contaminated water run-off is intercepted by gulley traps and sumps within the sheds denoted as Nos. 1 and 4. The gulley trap and sump in shed No. 1 is pumped out by tanker and transported to a treatment depot. (The applicant proposes to construct a larger sump adjacent to this shed in the future). The gulley trap and sump in shed No. 4 drains to a large holding tank in the north-western corner of the site. Gulley traps adjacent to the northern elevation of the sheds also drain to this holding tank, which is pumped out by tanker and transported to a treatment depot.

The applicant's NIS outlines maintenance regimes designed to ensure that the above three systems operate effectively.

- 7.31. During my site visit, I observed that on the eastern side of the site there are gravelled areas, which are used for the parking of vehicles and the storage of skips. I also observed that small portions of the concrete surfaced yards/circulation spaces comprise concrete that has become broken up through use. The former areas and the latter portions drain to the ground and so any water borne hydrocarbon contaminants evade the yard drainage system described under the second bullet point. The hard surfacing of the former areas and the repair and maintenance of the latter portions would rectify this situation.
- 7.32. The OPW's flood maps show the site as being the subject of an indicative fluvial flood risk under medium and low probability scenarios, i.e., 1 in 100 and 1 in 1000 flood risk events. Such scenarios are depicted as affecting the western portion of the site, which is closest to the River Corkey.

- 7.33. The applicant indicates that he has no knowledge of the site having been flooded. During my site visit, I observed that the site is enclosed along its western boundary by a solid timber fence above a slightly raised area, which is enclosed on the site side by a continuous kerb. I also observed that farmland to the north of the site is at a lower level than the site, which has, through being fully developed, been raised. These factors may have allayed any fluvial flood risk that the site faces.
- 7.34. I conclude that the site is capable of being operated in a manner that safeguards the water quality of the River Corkey.

8.0 Appropriate Assessment

Compliance with Article 6(3) of the EU Habitats Directive

- 8.1. The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of the site but likely to have had a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal would not have adversely affected the integrity of the European site before substitute consent can be given.

Screening the need for appropriate assessment

- 8.2. The applicant has submitted a screening report for appropriate assessment as part of its rNIS, which is entitled "Waste and Recycling Storage Facility, Labbadish, Manorcunningham, Co. Donegal: Appropriate Assessment Screening and Natura Impact Statement", and which is dated March 2020.
- 8.3. The screening report was prepared in line with current best practice guidance and provides a description of the development and identifies European sites within a possible zone of influence of the development. This report concludes as follows:

Based on this screening assessment the proposed project has the potential to lead to impacts on the conservation objectives of Lough Swilly SAC and Lough Swilly SPA alone and in combination with other projects. Significant effects on a European site cannot be excluded. Therefore, applying the precautionary principle and in accordance with Article 6(3) of the Habitats Directive, appropriate assessment is required.

8.4. Having reviewed the documents and submissions, I am satisfied that the information allows for a complete examination and identification of any potential significant effects of the development, alone, or in combination with other plans and projects on European sites.

8.5. The applicant provides a description of the project on Page 5 of its rNIS. Essentially, this project is a waste and recycling storage facility. The activities comprised in this facility are as follows:

- *Domestic waste is collected by lorries that have weighing equipment. Each householder separates the waste individually, this waste is collected on a weekly rotation basis with recyclable material one week and mixed municipal waste another week and brought to the facility at Labbadish.*
- *The mixed municipal waste is put into separate secure bunded locations for a short period.*
- *The paper/cardboard is baled within the main building and stored for a short period.*
- *Cardboard, plastics, wood, metals and mixed municipal are all stored in separate areas within the facility until adequate quantity is ready for transportation to other recycling and disposal facilities.*

8.6. The applicant also provides a description of the site on Page 5 of its rNIS: "This site has been in use for the past 27 years as a waste facility. This facility consists of an office, a small garage, a storage shed, a waste separation area, a baler, and two weighbridges..."

8.7. Taking account of the characteristics of the development in terms of its location and the scale of operations, the following issues are considered for examination in terms of implications for likely significant effects on European sites: Pollution of surface

water during the operational phase of the development and, due to its run-off into the Corkey River, the contamination of Lough Swilly into which this River flows.

- 8.8. The site is not located in or immediately adjacent to a European site. The closest European sites are 1.4km to the north north-east, i.e., Lough Swilly SAC (002287), and 2km to the north north-east, i.e., Lough Swilly SPA (004075).

Lough Swilly SAC

- 8.9. The qualifying interests and conservation objectives, i.e., M – maintain their favourable conservation condition, or R – restore their favourable conservation condition, are listed below.

- *Estuaries [1130] – M*
- *Coastal lagoons [1150] – R*
- *Atlantic salt meadows (Glauco-Puccinellietalia maritimae) [1330] – R*
- *Molinia meadows on calcareous, peaty or clayey-silt-laden soils (Molinion caeruleae) [6410] - ?*
- *Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0] – R*
- *Lutra lutra (Otter) [1355] – R*

Lough Swilly SPA

- 8.10. The qualifying interests and conservation objectives, i.e., M – maintain their favourable conservation condition, or R – restore their favourable conservation condition, are listed below.

- Great Crested Grebe (*Podiceps cristatus*) [A005] – M
- Grey Heron (*Ardea cinerea*) [A028] – M
- Whooper Swan (*Cygnus cygnus*) [A038] – M
- Greylag Goose (*Anser anser*) [A043] – M
- Shelduck (*Tadorna tadorna*) [A048] – M
- Wigeon (*Anas penelope*) [A050] – M
- Teal (*Anas crecca*) [A052] – M
- Mallard (*Anas platyrhynchos*) [A053] – M
- Shoveler (*Anas clypeata*) [A056] – M

- Scaup (*Aythya marila*) [A062] – M
- Goldeneye (*Bucephala clangula*) [A067] – M
- Red-breasted Merganser (*Mergus serrator*) [A069] – M
- Coot (*Fulica atra*) [A125] – M
- Oystercatcher (*Haematopus ostralegus*) [A130] – M
- Knot (*Calidris canutus*) [A143] – M
- Dunlin (*Calidris alpina*) [A149] – M
- Curlew (*Numenius arquata*) [A160] – M
- Redshank (*Tringa totanus*) [A162] – M
- Greenshank (*Tringa nebularia*) [A164] – M
- Black-headed Gull (*Chroicocephalus ridibundus*) [A179] – M
- Common Gull (*Larus canus*) [A182] – M
- Sandwich Tern (*Sterna sandvicensis*) [A191] – M
- Common Tern (*Sterna hirundo*) [A193] – M
- Greenland White-fronted Goose (*Anser albifrons flavirostris*) [A395] – M
- Wetland and Waterbirds [A999] – M

8.11. During the operational phase of the waste and recycling storage facility, pollutants, such as hydrocarbon fuels and lubricants and particles of waste materials, could have been carried by surface water run-off from the site into the Corkey River and onward into Lough Swilly. Water quality could thereby have been adversely affected.

8.12. The qualifying interests that could have been affected by a deterioration in water quality would be as follows:

- In the Lough Swilly SAC: Otter, and
- In the Lough Swilly SPA: All the specified seabirds and wetland and waterbirds.

8.13. In-combination effects from other development sites could potentially have arisen.

8.14. No measures designed or intended to avoid or reduce any harmful effects of the project on a European site have been relied upon in this screening exercise.

8.15. The development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000, as amended. Having carried out screening for

appropriate assessment of the project, it has been concluded that the project either individually or in combination with other plans and projects could have had a significant effect on European sites Nos. 002287 and 004075, in view of their conservation objectives, and appropriate assessment is therefore required.

The rNIS

8.16. The application included a rNIS, which is entitled “Waste and Recycling Storage Facility, Labbadish, Manorcunningham, Co. Donegal: Appropriate Assessment Screening and Natura Impact Statement”, and which is dated March 2020. The rNIS examines and assesses potential adverse effects of the proposed development on the following European sites:

- Lough Swilly SAC (002287), and
- Lough Swilly SPA (004075).

8.17. The rNIS was prepared in line with current best practice guidance, and it concluded that “The rNIS has considered the potential impacts of the proposed development on the features of interest and conservation objectives of Lough Swilly SAC and Lough Swilly SPA. It has identified mitigation measures to reduce or removed the impacts. The rNIS therefore concludes that, provided the mitigation measures described in this document are fully implemented, no significant adverse impacts are expected on the features of interest and conservation objectives of any European site.”

8.18. Having reviewed the rNIS, I am satisfied that the information allows for a complete assessment of any adverse effects of the development on the conservation of the following European sites alone, or in combination with other plans and projects:

- Lough Swilly SAC (002287), and
- Lough Swilly SPA (004075).

8.19. **Appropriate assessment of implications of the proposed development on each European site**

8.20. The following is a summary of the objective scientific assessment of the implications of the project on the qualifying interest features of the European sites using the best scientific knowledge in the field. All aspects of the project which could have resulted in significant effects are assessed, and mitigation measures designed to avoid or reduce any adverse effects are considered and assessed.

8.21. The following sites are subject to appropriate assessment:

- Lough Swilly SAC (002287), and
- Lough Swilly SPA (004075).

The qualifying interests and conservation objectives for these sites are set out above under my screening exercise.

8.22. The main aspects of the proposed development that could have adversely affected the conservation objectives of European sites are: During the operational phase of the waste and recycling storage facility, pollutants, such as hydrocarbon fuels and lubricants and particles of waste materials, could have been carried by surface water run-off from the site into the Corkey River and onward into Lough Swilly. Water quality could thereby have been adversely affected.

8.23. The qualifying interests that could have been affected by a deterioration in water quality would be as follows:

- In the Lough Swilly SAC: Otter, and
- In the Lough Swilly SPA: All the specified seabirds and wetland and waterbirds.

8.24. The applicant's rNIS sets out a series of existing mitigation measures, which would have addressed the factors, which could have adversely affected the integrity of the identified European sites. These mitigation measures are set out in Table 9.1, and they can be summarised as follows:

- The embankment and kerbing along the western boundary with the River Corkey contains rainwater within the adjoining yard.
- Contaminated water run-off is intercepted by gulley traps and sumps within the sorting shed and directed to a large holding tank prior to being transported off site to a treatment depot. The sumps and holding tank are regularly cleaned.
- Gully traps and drainage channels are checked daily to ensure that they are free of vegetation and litter.
- Rainwater goods and roof planes are checked at six monthly intervals to ensure that they are sound and free from vegetation.

- The oil interceptors comply with the relevant standard BS EN858-1-2002.
- The oil interceptors are regularly maintained.
- A site-wide maintenance regime is informed by a comprehensive maintenance manual.
- Yard surfaces and boundary treatments are regularly inspected to ensure that they are maintained in good condition.
- Outdoor and indoor surfaces, subject to wear and tear from heavy machinery, are regularly inspected to ensure that they are maintained in good condition.
- Two water monitoring locations are maintained along the Corkey River.
- Surface water outside the buildings is collected in gulley traps and it passes through the oil interceptors before discharging to the Corkey River.
- Wastewater from the vehicle washing facility passes through the oil interceptors before discharging to the Corkey River.
- Rainwater goods, i.e., guttering and downpipes, form a sealed system that discharges directly into the Corkey River.
- Hazardous substances, when not in a secured storage area, are not left unattended.
- Spill kits are kept on site.
- Vehicles are checked and maintained to prevent hydrocarbon leakage.
- Fuels, lubricants, and hydraulic fluids are carefully handled, securely stored, and provided with spill containment.

8.25. With the above cited mitigation measures in place, no residual impacts are foreseen.

8.26. In-combination effects are considered by the rNIS. The PA's planning register was inspected. No permissions for developments downstream of the site, which could have had a cumulative effect were identified.

8.27. I am therefore able to ascertain with confidence that the project would not have adversely affected the integrity of the Lough Swilly SAC and the Lough Swilly SPA.

- 8.28. The waste and recycling storage facility project has been considered in light of the assessment of the requirements of Section 177U & G of the Planning and Development Act 2000, as amended.
- 8.29. Having carried out screening for appropriate assessment, it was concluded that it may have had a significant effect on the Lough Swilly SAC (002287) and Lough Swilly SPA (004075). Consequently, an appropriate assessment was required of the implications of the project on the qualifying features of these sites in light of their conservation objectives.
- 8.30. Following an appropriate assessment, it has been ascertained that the development, individually or in combination with other plans or projects would not have adversely affected the integrity of the European Sites Nos. 002287 and 004075, or any other European site, in view of the sites' conservation objectives.
- 8.31. The conclusion is based on a complete assessment of all aspects of the project and there is no reasonable doubt as to the absence of adverse effects. This conclusion is based on:
- A full and detailed assessment of the project, including mitigation measures, in relation to the conservation objectives of European Sites Nos. 002287 and 004075.
 - An assessment of in combination effects with other plans and projects.
 - No reasonable scientific doubt as to the absence of adverse effects on the integrity of European Sites Nos. 002287 and 004075.

9.0 Recommendation

That substitute consent be granted.

10.0 Reasons and Considerations

Having regard to:

- The National Planning Framework,
- The Donegal County Development Plan 2018 – 2024,
- The planning history of the site, and

- The submitted remedial Natura Impact Statement,

It is considered that, following mitigation, the waste and recycling facility on the site has not had a significant adverse effect on nearby European sites. It is further considered that, subject to compliance with the conditions set out below, it would not have a significant adverse effect on nearby European sites in the future. Thus, to grant substitute consent to this waste and recycling facility would accord with the proper planning and sustainable development of the area.

11.0 Conditions

1.	<p>(a) This grant of substitute consent shall be in accordance with the plans and particulars submitted to An Bord Pleanála with the application on the 17th day of June, 2020, as amended by the further response received by An Bord Pleanála on the 3rd day of August, 2021, except as may otherwise be required in order to comply with the following conditions.</p> <p>(b) This grant of substitute consent relates only to development undertaken, as described in the application, and does not authorise any future development on the subject site.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>(a) All mitigation measures identified within the remedial Natura Impact Statement shall continue to be implemented in full, except as may otherwise be required in order to comply with the conditions attaching to this order.</p> <p>(b) Within twelve weeks of the date of this order, a survey of the existing outdoor hard surfaces on the site shall be undertaken to identify where repairs of broken and dislodged concrete have occurred. This survey shall be accompanied by a timetable for the full repair of the identified broken and dislodged concrete, and it shall be submitted to and agreed in writing with the planning authority.</p> <p>(c) Within twelve weeks of the date of this order, a timetable for the proposed installation of a gulley trap and sump, shown on the site layout</p>

	<p>plan for a position adjacent to the eastern boundary of the site, shall be submitted to and agreed in writing with the planning authority.</p> <p>(d) Within twelve weeks of the date of this order, a timetable for the extension of the existing yard surface water drainage system into the gravelled areas in the eastern half of the site and the hard surfacing of these gravel areas shall be submitted to and agreed in writing with the planning authority.</p> <p>Reason: In order to maintain and improve measures designed to safeguard the water quality of the Corkey River.</p>
3.	<p>Within twelve weeks of the date of this order, a scheme for the improvement of the eastern sightline to the site exit shall be submitted to and agreed in writing with the planning authority. This scheme shall set back the eastern end of the splayed wall and pillars by a minimum of 2 metres from the adjacent carriageway and it shall remove vegetation in the south-eastern corner of the site that is within 2 metres of this carriageway. It shall include a timetable for the implementation of the works to be undertaken.</p> <p>Reason: In the interest of road safety.</p>

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Hugh D. Morrison
Planning Inspector

15th November 2023