



An
Bord
Pleanála

Inspector's Report ABP-310829-21

Development

Waste recovery and recycling facility of municipal solid waste, comprising; a processing building, ancillary administration building, gated vehicular access off the L3168, and an internal access road with two weighbridges, ESB substation, fuel storage, two underground tanks, underground drainage including underground tank, 33 car parking spaces, 10 bicycle parking spaces, photovoltaic panels on the roof of processing building, security cameras, lighting, boundary fence and mounding on southern boundary, all associated landscaping and site works. An Environmental Impact Assessment Report and Natura Impact Statement have been prepared in respect of the proposed development. The proposed development will require an Industrial Emissions Licence from the Environment Protection Agency.

Location	Ardee Road, Carnabreagh, Dundalk, County Louth.
Planning Authority	Louth County Council
Planning Authority Reg. Ref.	21486
Applicant(s)	Oxygen Environmental ULC.
Type of Application	Permission.
Planning Authority Decision	Refuse
Type of Appeal	Third Party
Appellant(s)	Oxygen Environmental ULC
Observer(s)	<ol style="list-style-type: none"> 1. Kieran Quigley 2. Carnabreagh Residents and Neighbours Association, 3. Noel Mc Nally (et al) 4. Tom O Donoghue 5. Joseph Mc Mahon 6. Caroline & Anne Whately 7. Knockbridge Gun Club 8. John Brennan 9. Oriel River Catchments and Coastal Association 10. Joseph Murray 11. Kevin Barry 12. Fergus Conroy 13. Patricia Grant 14. Joseph Clarke

- 15. John Mc Gahon
- 16. Ryan Duffy
- 17. Brian Kieran
- 18. D & B Williams
- 19. Declan Mc Kay
- 20. Ian and Leona Durnin
- 21. Kevin Hamill
- 22. Brian Whately & Justine
Whately
- 23. Thomas & Josephine Mackin

Date of Site Inspection

21st of September 2022.

Inspector

Karen Hamilton

Contents

1.0 Site Location and Description	7
2.0 Proposed Development	7
3.0 Planning Authority Decision	8
3.1. Decision	8
3.2. Planning Authority Reports	10
3.3. Prescribed Bodies	17
3.4. Third Party Observations	18
4.0 Planning History.....	19
5.0 Policy Context.....	20
5.1. National Policy	20
5.2. Regional Policy	20
5.3. Louth County Development Plan 2021-2027	21
5.4. Natural Heritage Designations	23
6.0 The Appeal	23
6.1. Grounds of Appeal	23
6.2. Applicant Response	29
6.3. Planning Authority Response	29
6.4. Observations	30
7.0 Environmental Impact Assessment.....	35
7.1. Introduction	35
7.2. Project Description	36
7.3. Alternative Sites	37
7.4. Population and Human Health	39

7.5. Biodiversity.....	41
7.6. Soil, Geology and Hydrogeology.....	42
7.7. Water	44
7.8. Air Quality and Climate	47
7.9. Noise and Vibration.....	50
7.10. Traffic and Transportation.....	52
7.11. Material Assets	56
7.12. Cultural Heritage.....	57
7.13. Landscape and Visual Assessment	57
7.14. Cumulative and Interactive Effects.....	59
7.15. Reasoned Conclusion.....	60
8.0 Appropriate Assessment.....	61
8.1. Introduction	61
8.2. Compliance with Article 6(3) of the Habitats Directive.....	61
8.3. Screening for Appropriate Assessment - Test of likely significant effects ...	62
8.4. Brief Description of the Development.....	62
8.5. Submissions and Observations.....	63
8.6. European Sites.....	64
8.7. Assessment of likely significant effects.	66
8.8. Screening Determination.....	67
8.9. The Natura Impact Statement	67
8.10. Potential Impact on identified European Sites at risk of effects	68
8.11. Appropriate Assessment of implications of the proposed development on each European Site	69
8.12. Conclusion of Appropriate Assessment	70

9.0 Assessment.....	71
9.1. Principle of Development	71
9.2. Impact on the Visual and Residential Amenity	77
9.3. Traffic and Transport.....	79
10.0 Recommendation	81
11.0 Reasons and Considerations	81

1.0 Site Location and Description

- 1.1. The site is a greenfield/ agricultural site (c. 2.6ha) located within the townland of Carnabreagh, Dundalk, Co. Louth. The site is located to the north of the Ardee Road and the M1 motorway runs along the east of the site. Access onto the motorway is c. 1km south via Junction 16 (Dundalk South). 110kV power lines travers the northern part of the site.
- 1.2. The site is slightly undulating and bound by mature trees and hedging. There is a grass verge along the front of the site adjoining the main road. Residential properties are located to the south, on the opposite side of the Ardee Road, and to the southwest.

2.0 Proposed Development

- 2.1. The proposed development would comprise of:
 - A waste recovery and recycling facility for the treatment of up to 90,000 tonnes per annum of municipal solid waste, including;
 - A processing building with a floor area of c. 9,263m² to a maximum height of 13.85m, ancillary administration building (floor area of c. 252m² and 5.4m in height),
 - Gated vehicular access off the L3168 (Ardee Road) and an internal access road;
 - Two weighbridges, ESB substation (c 42m²) fuel storage, two 40m³ underground tanks, underground drainage including c. 385m³ underground tank,
 - 33 no. car parking spaces, 10 no bicycle parking spaces, and photovoltaic panels on the roof of processing building.
 - Additional works include security cameras, lighting, boundary treatment to include 2m high boundary fence and 1-1.5m mounding on southern boundary and all associated landscaping, plant, site and construction works on an overall site of c.2.6ha.

- 2.2. An Environmental Impact Assessment Report and Natura Impact Statement have been prepared in respect of the proposed development.
- 2.3. The proposed development will require an Industrial Emissions Licence from the Environment Protection Agency in order to operate.

3.0 Planning Authority Decision

3.1. Decision

Decision to refuse permission for 5 no. reasons listed below:

3.1.1. Having regard to:

- i) The process, scale and intensity of operations that will take place at the proposed facility, which would include the treatment and recovery of up to 90,000 tonnes per annum of Municipal Solid Waste;
- ii) The industrial nature of the process that will take place on site;
- iii) The location of the site in an unserved rural area on lands zoned “Commercial Agricultural Store” in the Dundalk and Environs Development Plan 2009-2015.

It is considered that the proposed development would materially contravene the zoning objective for the lands which are zoned “Commercial Agricultural Store” in the Dundalk and Environs Development Plan 2009-2015 and would result in an inappropriate development for this location. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

3.1.2. Having regard to:

- i) The location of the proposed development in a rural landscape that is separated from Dundalk by the M1 Motorway and the traffic the proposed development would generate,
- ii) The scale, bulk and mass of the proposed development which includes a Process Building with a floorspace of 9,263m²,
- iii) The industrial processes that will take place on the site;

iv) The limited area within the curtilage of the site for the parking and turning of HGVs;

v) The requirement to provide a buffer under the 110Kv line that travers along the northern boundary of the site;

It is considered that the proposed development would represent overdevelopment of a limited and constrained site that would be inappropriate for this rural location. The proposed development would be out of character with the scale and pattern of development in the vicinity of the site and by reason of proximity would have an undue negative impact on the existing amenities of nearby residential properties. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

3.1.3. The Environmental Impact Assessment Report accompanying the application does not comply with the requirements of Article 94 and Schedule 6 of the Planning and Development Regulations 2001 (as amended) due to a failure to adequately consider alternative sites and also inadequacy of the environmental criteria to determine the selection of the proposed site. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

3.1.4. The proposed development is to be located off a heavily trafficked local road. The additional traffic movement, in particular HGV traffic, and associated turning movements generated by the proposed development will be a serious hazard for all other road users. The proposed development is therefore contrary to the proper planning and development of the area.

3.1.5. Having regard to the location of the proposed development in an unserved rural area where surrounding properties are dependent on the abstraction of groundwater as a source of drinking water it is considered that the application and accompanying Environmental Impact Assessment Report has failed to demonstrate that the groundwater will be sufficiently protected from contamination from the proposed development and may have the potential to impact on water bodies within the catchment of the site achieving/maintaining a "Good Water Status" as required under the Water Framework Directive. The application and accompanying Environmental Impact Assessment Report has failed to demonstrate that the existing groundwater

would have the capacity to meet the needs of existing residential properties in the area and to cater for the needs of the proposed facility at peak demand, particularly during periods of low rainfall when the volume of water stored in the rainwater harvesting tank would be below that required to meet the water requirement for the processing facility. The proposed development would, therefore, be prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the area planner reflects the decision to refuse permission and the report is summarised as follows:

3.2.2. Environmental Impact Assessment

- Alternatives: Six alternative sites have been submitted. None of the alternative sites are located within lands zoned for industrial use. Given the quantum of sites available for uses in Dundalk it is considered there are opportunities for site selection. No clarification on the catchment area for waste collection is included. The Environmental Impact Assessment Report does not comply with Article 94 or Schedule 6 of the Planning and Development Regulations, 2001 (as amended).
- Population and Human Health: Negative impacts on the population in the vicinity of the site include noise impacts during construction and operation, dirt and dust generated, and increased traffic generated. Employment generated will lead to a positive impact. Mitigating measures are included in the Construction Environmental Management Plan (CEMP). The operation will require an Industrial Emissions (IE) licence from the EPA and omissions will be assessed. It is also considered the proximity of the site to the residential properties will have negative impacts.
- Biodiversity: There is no indication of protected species on the site. Hedgerow removal along the western boundary for the retaining wall is not referenced in the EIAR and the roadside boundary will be removed. Mitigation measures in

the CEMP include measures to avoid any impacts on the surface and foul water through attenuations and drainage design systems.

- Soils, Geology and Hydrology: The proposal will remove the use of the land as agricultural, and the proposal will lead to a permanent negative impact. Groundwater vulnerability classification for the site is “High” and “Extreme”. Rainwater will primarily be used in the processing with the well during dry periods. Impacts include soil compacting, water abstraction, storing of leachate and discharge of storm and foul to the ground. Mitigation measures include monitoring for the IE licence. The impact on the ground water (abstraction) cannot be assessed in the absence of a ground water risk assessment.
- Water: The impact on surface and ground water was proposed along with a separate Site-Specific Flood Risk Assessment (SSFRA). Two sub catchments are included for the purpose of the Water Framework Directive assessments. The operation will use rainwater for processing and groundwater during dry periods. Wastewater will be pumped to a storage tank and taken off site to a suitable authorised wastewater treatment plant under Irish Water (IW) agreements. Potential impacts on the hydrology relate to the operation and the accidental release of hazardous substances and discharges from the site. There is concern in relation to the impact of contamination on the ground water and the impact on maintaining the “good water status” as required under the WFD. There is also concern on the dependence on abstraction for the water supply.
- Air Quality and Climate: There is a potential for odours released during operation. The levels of odour emissions will be set and monitored by the EPA under the IE licence. There is concern the odour released will have a negative impact on the residential properties adjoining the site.
- Noise and Vibration: A baseline noise assessment was undertaken at 4 noise sensitive locations. The baseline levels are c. 55dBA in line with the Louth Noise Action Plan 2018-2023. The proposal will increase noise levels will by 1.2 – 1.5 dBA. Mitigation measures include the requirement for management

for the IE licence. There are concerns the noise will impact the adjoining residents.

- Traffic and Transportation: Vehicle deliveries will be a maximum of 26 trips per day (52 movements). The infrastructure report has requested additional traffic surveys on two junctions. The L3168 was previously a protected route and there is planning history for refusals. There are concerns the proposal will impact the movement and flow of traffic along the L3168.
- Material Assets: There is a 110kV overhead power line across the site. The site layout mitigates against any impact on this line. There is no significant impact on any material assets.
- Cultural Heritage: No recorded monuments, protected sites or archaeological features were identified.
- Landscape and Visual: The site is located within the Muirhevna Plain Landscape Character Area as per the County Louth Landscape Character Assessment (2002). The local area is agriculture. Photomontage drawings illustrate the impact of the building. The building would be dominant in the landscape.
- Cumulative Impacts: The key interactions include:
 - Population, Human Health, Air and Climate and Noise and Vibration.
 - Population, Human Health Traffic and Transportation and Landscape and Visual Assessment

There are concerns pertaining to air quality and climate, noise and vibration, traffic and transport and landscape and visual impact.

- Reasoned Conclusion on Significant Effects: There is a potential impact on the residential property from odours and noise and vibration. The movement of traffic will have a negative impact on the traffic along the L3168. A more detailed analysis of the alternative sites is required.

3.2.3. Appropriate Assessment.

The applicant submitted a Stage 2, Natura Impact assessment. Appendix 1 of the area planners report included an Appropriate Assessment (Signed by a separate planner).

The report of the area planner could not rule out any significant adverse impacts on any European Sites having regard to:

- the absence of a site-specific CEMP,
- the sites vulnerability to pluvial flooding,
- the proposed composting plant on the site, and
- the absence of a comprehensive ground water risk assessment.

3.2.4. Planning Assessment

Principle of Development

- Dundalk and Environs plan 2009-2015 is the operative plan and the site is zoned as Commercial Agricultural Store.
- Light industrial and recycling facilities are open for consideration.
- The nature of operation associated with the agricultural store is significantly different to the proposed development.
- The proposal includes the separation of waste to remove recyclable materials before the remaining waste goes to a facility in County Meath.
- It is unclear from the information the catchment which will be served by the facility i.e., Louth or wider North-East Region.
- There is a need for the facility to meet national recycling targets.

Location of development

- The lands are located on the outside of the Dundalk settlement, isolated from the town.
- It is more appropriate for the proposal to be located on lands zoned as employment.
- The applicant has failed to detail the catchment for the waste.

Proposed operation

- The proposed outputs of the process include the materials recycled, recovered and moisture loss.
- An estimation of the breakdown of materials recycled/ recovered is included.
- The proposal will operate 24hrs a day, 7 days a week with two shifts for employees.
- The operations and location of the car park would have a negative impact on the amenities of properties in the vicinity.

Layout, Design and Height

- The processing building is excessive and would be overbearing and dominant and represent overdevelopment on a constrained site.
- There is a significant amount of excavation required (c. 2m below the public road) with a retaining wall along the north-eastern boundary.
- The boundary treatment along the road includes a concrete wall with a palisade fence and landscaping behind. A more appropriate roadside boundary would be required.

Residential amenity

- There are three residential properties in the vicinity which may be impacted by the proposal (further assessed in detail in the EIA).

Traffic and Transport

- There will be c. 26 HGVs vehicles delivering to the site daily.
- There are concerns in relation to the right turning movements into the site and the potential impact on the free-flowing movement of traffic along the L3168.
- Estimated output materials c. 62,550 tonnes per annum will be removed.
- Further information was recommended from the Transport Section in relation to the movement of waste and the impact on the traffic along the L3168.
- Car parking provision of 33 no. car parking spaces is acceptable.

- There is limited detail in relation to the parking and internal circulation for HGVs and it has not been adequately demonstrated there is sufficient space for turning on the site.

Water Supply and Wastewater Treatment for Staff.

- Water supply is from a private well and wastewater will be treated in an on-site treatment plant.
- A site suitability test was undertaken, and the trial hole and tests were carried out within the proposed percolation area.
- The Environment Section recommended further information on the supervision of the treatment system.
- Water for the operations will be primarily sourced from a rainwater harvesting tank which can store 1 week of process water demand (100m³). During dry spells the water will be taken from the on-site well system.
- The impact of the proposal on groundwater is discussed in the EIA (potential leachate from operation and abstraction for works).
- No details are included on the groundwater flows and location of wells.

Surface Water

- Collected in a rainwater harvesting.
- Excess will go to a soakaway.
- Contaminated run-off will discharge to the underground tank.
- The monitoring of storm water management will be required under EPA licence to ensure the impact on water bodies within the catchment of the site can achieve "Good Water Status" as required under the Water Framework Directive (WFD).

Conclusion

- The applicant has failed to demonstrate the proposal is compatible with the site in an unserviced rural area.
- The applicant has failed to demonstrate there is no suitable location on employment generated lands.

- The limited size of the site, constraints from the 110kv line would lead to overdevelopment on the site.
- The proposal will have a negative impact on the residential amenities.
- There are concerns the proposal will lead to a negative impact on the groundwater by way of contamination and excessive abstraction.
- The traffic movements would create a traffic hazard.

Attached Memo from the Senior Planner

- A memo from the Senior Planner was attached to the area planner's report, amending refusal reason number 2 to include the impact on residential amenity.
- The senior planner also recommended the removal of condition No 5 as the EIAr adequately addressed the impacts on the environment and the proposal would be the subject of an IE license and therefore the EPA license would control the emissions.

3.2.5. Other Technical Reports

Environment Section: Further information requested in relation to:

- groundwater risk assessment,
- person who will supervise the installation of the treatment system.
- Location of wells within 100m of the site and percolation area and ground water flow;
- Relocation of trial holes from the percolation area,
- Location of all percolation areas within 100m of the site,
- Appendix B of the site suitability form complete,
- Details of Noise/ odour abatement.

Infrastructure Section: Further Information request on the following:

- Compliance with Table 10.3 and TII Publication- Sight Stopping Distance (SSD)

- Copies of third-party agreements where any works outside the applicant's control are required for the sightline requirements.
- Traffic impact assessment for two junctions (N52 & L3168) and (L3168 & L7165).
- Details on the volume of traffic expected to be created.
- Details of sightlines and access to the agricultural land to the north
- The gradient of the access road shall not be greater than 2% for 7m from the junction

3.3. Prescribed Bodies

- 3.3.1. Transport Infrastructure Ireland (TII): No objection subject to mitigation measures implemented.
- 3.3.2. Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media: No objection to the impact on the archaeological impacts subject to a condition requesting pre-development testing.
- 3.3.3. Environmental Protection Agency (EPA):
- The proposal may require and Industrial Emissions (IE) Licence under Class 11 of the EPA Act 1992.
 - The EPA has not received a licence application.
 - The applicant should submit the EIAR with any IE application.
 - The PA will be consulted as part of the processing of the IE licence, should it be required.
 - The EPA will assess all matters to do with emissions to the environment from activities proposed.
 - If any activities cannot be effectively regulated under licence the EPA will not grant the licence.
 - If the EPA decide to grant a licence for such activity it will incorporate conditions necessary to ensure the appropriate standards are applied.

- The EPA cannot determine a licence application until planning permission has been granted.

3.4. Third Party Observations

The report of the area planner notes c. 120 submissions (list included in Appendix 2 of the report). I have read these submissions and note the observations to the appeal include similar issues (as summarised below). I have summarised the main topics raised within the third-party submissions below:

- Non compatibility with the land use zoning.
- Overdevelopment of the site.
- Impact on traffic and transport.
- Insufficient information in the Natura Impact Statement.
- Deficiencies in the Environmental Impact Assessment Report.
- Impact on the ground water supply.
- Impact on the cultural heritage of the site.
- Negative visual impact on the rural landscape.
- Appropriate location within Dundalk Urban Area.
- Compliance by the applicant to EPA regulations.
- Impact on the wildlife.
- Impact of the amenity of the adjoining residents.
- Quality of information submitted.
- The proposal is supported and will assist in serving the expanding town.

4.0 Planning History

Reg Ref 08/106

Permission refused for a commercial entrance off the Dundalk N52 (Old) road to Ballybarrack. The proposed entrance was to service lands, zoned to provide for commercial agricultural store. Three reasons for refusal are summarised below:

1. The site is located along the edge of the N52 where the development plan restricts access apart from limited exemptions. The proposed does not fall within the exemptions.
2. The sightline visibility is poor and would endanger public safety by reason of traffic hazard.
3. The applicant has failed to display the required sightline (215m x 4.5m x 1.05m) for commercial development on public roads.

Reg Ref 07/1290

Permission refused for a commercial entrance off the Dundalk N52 (old) to Ballybarrack. The proposed entrance was to service lands, zoned to provide for commercial agricultural store. Three reasons for refusal are summarised below:

1. The access is prohibited off a protected route and will be a material contravention of the development plan.
2. The proposed development would endanger public safety by reason of traffic hazard and right turning movements.
3. The development would result in a further traffic hazard as the sightline to the north is restricted by the existing motorway bridge parapet and crash barrier.

Reg Ref 03/322

Permission refused for a commercial agricultural store, bord na mona unit and associated site works for one reason summarised below:

1. The proposed is to be located off an important route, at a location where the maximum speed limit applies the movements generated will be a serious hazard to other users.

Permission refused for an agri-sale store.

5.0 Policy Context

5.1. National Policy

- 5.1.1. Guidelines for Planning Authorities and An Bord Pleanála on carrying out Environmental Impact Assessment (August 2018)

5.2. Regional Policy

- 5.2.1. Eastern and Midland Regional RSES

- Section 10.5 deals with Waste Management

The Eastern and Midlands Regional Waste Management Plan 2015-2021 includes the waste management policy for the region.

- Regional Policy Objective (RPO) 10.25 – Waste Management

Development plans shall identify how waste will be reduced, in line with the principles of the circular economy, facilitating the use of materials at their highest value for as long as possible and how remaining quantum of waste will be managed and shall promote the inclusion in developments of adequate and easily accessible storage space that supports the separate collection of dry recyclables and food and shall take account of the requirements of the Eastern and Midlands Region Waste Management Plan

- 5.2.2. Eastern Midlands Region Waste Management Plan 2015-2021

- Section 16.4.1: Pre-treatment Infrastructure

Policy E1 and E2: Authorisation of Local Authorities, EPA and An Bord Pleanála to ensure any processing activity can demonstrate that treatment is necessary and will improve quality and add value to output materials generated on the site.

- Section 16.4.2: Public Civic Amenities and Bring Centres.

Policy E3a: Local Authorities to maintain and develop existing bring infrastructure.

Policy E3: Support for private sector of bring infrastructure subject to appropriate statutory approvals.

Policy E6: Waste facility permit to develop a Class 10 waste treatment activity, as defined by the Third Schedule Part 1 of the Waste Management (Facility Permit and Registration) Regulations 2007 (as amended), to provide bring facilities for the acceptance of non-hazardous wastes from members of the public and business.

5.3. **Louth County Development Plan 2021-2027**

Zoning

The site is located on land zoned for Rural Housing Policy Zone 2

- Table 3.3: Rural Policy Zone 2 is defined as an Area Under Strong Influence
- Table 3.5: Local Housing Need Qualifying Criteria in Rural Policy Zone 2

Economy and Employment

Policy Objective EE3

To facilitate and support the sustainable growth of the economy in County Louth whilst maintaining and improving environmental quality. This economic development policy shall strive to deliver the following key aims:

- To strengthen existing employment centres supported by enterprise, innovation and skills;
- To strengthen the integration between employment, housing and transportation with a view to promoting compact urban areas and reducing car dependency;
- To promote measures to improve the County's attractiveness as a location for investment and increase entrepreneurial activity;
- To improve the cluster-specific business environment by putting in place a favourable business ecosystem for innovation and entrepreneurship that supports the development of new industrial value chains and emerging industries;

- To facilitate economic growth by consolidating existing industrial and commercial areas and by ensuring that there is an adequate supply of serviced employment lands at suitable locations;
- To promote the regeneration of underutilised industrial and town centre areas in a manner which enhances the local economy and encourages a sequential approach to development; and
- To provide for a range of business accommodation types, including units suitable for small business.

Policy Objective EE 54

- To support the development of small-scale rural enterprises where the scale and nature of the enterprise is appropriate for the location and surrounding land uses

Policy Objective EE55

- To support rural entrepreneurship and rural enterprise development of an appropriate scale at suitable locations in the County.

Waste Management

Policy Objective TOU 21 (Drogheda)

- To seek best-practice environmental management and climate proofing of tourism related developments and activities to include the circular economy, energy efficiency, waste management, procurement and recycling.

Policy Objective ENV 24

- To implement and support the provisions of the Eastern-Midlands Region Waste Management Plan 2015-2021 or any subsequent plan and EU Directives/Policies

Policy Objective ENV 25

- To support the development of an additional recycling centre in the Mid-Louth area.

Policy Objective ENV 26

- To facilitate the provision of adequate waste recovery and disposal facilities in appropriate locations, as deemed necessary in accordance with the requirements of the current 'Eastern Midlands Region Waste Management Plan' and any subsequent plans.

Transport

- Section 13.16.17: Development Management Standards for Roads
- Section 13.16.17: Entrances and Sightlines
- Table 13.13: Minimum visibility standards for new entrances

5.4. **Natural Heritage Designations**

The site is located c. 4km to the east of the Dundalk Bay pNHA, Dundalk Bay SPA (side code 004026) and Dundalk Bay SAC (site code 000455).

The site is located c. 2.5km to the northeast of Stephenstown pond pNHA (site code 001803) and c. 5.2km to the south of Drumcah, Toprass and Cortial Loughs pNHA.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The grounds of appeal are submitted from an agent on behalf of the applicant in relation to the refusal of permission by the PA. A response to each of the refusal reasons is summarised below:

6.1.1. Background

- Context and rationale for the proposal.
- The site location is ideal considering the positioning along the M1.
- There are constraints on the site, including the 110kV.
- A description of the proposed development is included including the processing building, the administration building, access and circulation etc.

- A series of landscaping measures are put in place to mitigate against any visual impacts.

6.1.2. Reason for refusal 1: Zoning Objective

- The Dundalk and Environs Development Plan 2009-2012 includes a zoning for Common Agricultural Storey (CAS) with industrial and recycle facilities open for consideration.
- As these uses are open for consideration there is no direct conflict with the zoning objective.
- The zoning objective refers to the rural environment. It is argued that the layout and design minimise the impacts of the proposed development of the surrounding area.
- The architectural character and scale are like that expected from a 'commercial agricultural store'.
- The proposal is of a greater quality than that which would normally been seen on agricultural store.
- The Deeside Country Store and Agricultural Services is a good example of a comparison development of a similar scale.
- The location is highly accessible and will have no negative impact on any sensitive receptors.
- Examples of the locations of other similar developments around the country (Figure 5.3 and Table 5.1) are included and located throughout the country.
- A good example of a similar facility is Beauparc, Navan, Meath (rural setting and handles c. 250,000 tpa waste)
- Examples of permitted development in Kilcock (PL17.244408) and Meath (SA/140011).
- The alternative sites were considered in detail in the EIAR. The site was considered to have the least environmental impacts.

- The land use zoning in the Draft Louth Development Plan 2021-2027 is noted as “white lands” which does not provide a list of land uses open for consideration.
- The Board should consider a grant of permission under Section 37 (2) as the proposed development is of a strategic and national importance.
- In relation to the national/ strategic importance the waste recovery and recycling facility as the first pre-treatment facility of its kind and is considered of strategic importance.
- The proposal accords with the Regional Spatial Economic Strategy as it will enable recycling elements to be extracted and further processed with either solid recovered fuel (SRF) or refuse derived fuel (RDF) going to suitably licenced facilities.
- The draft development plan promotes recycling and permits appropriate enterprise outside the urban areas. The proposal will help achieve the east targets and implement the eastern-midlands region waste management plan 2015-2021.
- The processing of the tonnage of waste on the site is comparable to those facilities outlines in the examples
- The pre application meeting did not raise as issues with the principle of the proposal at this location nor any material contraventions of the plan.

6.1.3. Reason 2: Scale of Buildings and Design

- The proposal includes a high-quality design
- The proposal includes a compact form.
- The use of materials will mitigate any impact on the surrounding area.
- Landscape mitigation measures are included in the EIA.
- A Landscape Visual Impact Assessment (LVA) notes the visibility is limited due to the topography and the location of the site.
- The residual effects of the building are considered moderate and not significant impacts.

- Once the mature landscaping has grown around the site, the impact on the adjoining residents will be minimised.
- Traffic volumes will not give rise to a significant adverse impact or change the character of the area.
- There is appropriate turning space for HGVs with a turning circle at the northwest of the processing building
- The issues in relation to HGV turning etc are not raised in the Infrastructure Section Report or at pre planning.

6.1.4. Reason No 3: Alternative Sites Considered

- Article 94, Schedule 6, paragraph 2 (b) of the Regulations, 2001 (as amended) refer to a reasonable list of alternatives and the reasons for choosing these alternatives.
- A list of reasonable alternatives has been submitted.
- The proposal complies with the EIA requirements.
- A list of case law on the consideration of alternatives is included (*Holohan v An Bord Pleanála*, [2017] IEHC 268 and *Kemper v An Bord Pleanála*, [2020] IEHC 601).
- There is only a requirement for the EIAR to include those alternatives studied by the developer.
- Recycling facilities are permitted in four of the land use zonings in the Dundalk and Environs Development Plan 2009-2015, located in the settlement boundary and close to high density housing.
- It is considered the 6 sites provided as alternatives are sufficient to comply with the EIA requirements.
- There are no significant environmental impacts perceived.
- Every scenario is not required for the alternative sites, and this should not be a reason for refusal.
- There is a need for additional Municipal Solid Waste (MSW) treatment capacity in County Louth and within the north-east region.

- The Coes Road treatment facility can accept municipal waste but cannot treat it.
- The Indaver site in County Meath thermally recovers MSW.

6.1.5. Reason 4: Road Safety

- The Roads Section requested additional technical information on the application although did not recommend a refusal of permission.
- The entrance has been designed to comply with the requirements of the CDP and are more than the requirements of the TII.
- SSD is usually used for new or realigned roads.
- The L3168 is a relatively straight road. A minimum of 160m can be achieved in both directions (aerial photography submitted).
- A TIA has been submitted. This includes a junction analysis at the N52/L-3168 and the L-3168/L-7165 at morning and evening peak hours.
- There will only be a slight increase in the RFC (Ratio of Flow to Capacity) at the junction N52/L-3168 and no increase in RFC at the junction L-3168/L-7165.
- The information in the TIA shows the junctions will move well and there will be no impact on the traffic flows.
- Traffic generated by the proposal (52 waste collections movements and 1 staff) will not have a significant impact on the volumes of traffic and it is less than the 10% (threshold for required traffic assessments).
- The access to the agricultural lands is shown on submitted maps and is outside the applicant's control. The access to these lands will remain unchanged.
- The access road gradient inclines less than 2%.

6.1.6. Reason 5: Groundwater Contamination

- An assessment of the groundwater impact is presented in Chapter 9 of Volume II of the EIAr.

- The refusal by the PA relates to both groundwater quality (risk of contamination) and groundwater quantity (demand and water levels).
- There is a difference between the additional information request by the Environment Section and the reason for refusal by the PA.
- In relation to the ground water quality:
 - The WFD status of the groundwater status is good.
 - Under an IE licence periodic groundwater monitoring is required.
 - SuDS is integrated into the design and storm water will be discharged to the ground at greenfield rates.
 - Process water will generate 5m³ a week with 34m³ recirculated back into the process. An underground tank (40m³) will be emptied every two weeks and transported off site under licence. There is no pathway from this source to the groundwater.
 - Foul water from the sanitary (canteen etc) will be collected in a treatment system with no risk to groundwater.
 - Fire water requires a retention volume of 11,903m³. The building has been constructed at a lower level to the surrounding hard stand to act as an effective sump. While this water would pose a potential risk to groundwater contamination, there is no pathway to the ground water and therefore no risk.
 - Fuel storage is on site at a location fully bunded.
 - There are three private wells in the vicinity and the risk to these wells is negligible.
 - The impact on groundwater is fully mitigated.
- In relation to groundwater quantity:
 - There will be two reasons for abstraction, the first is the domestic water need and the second is backup for the process plan when there is insufficient rainwater harvesting water.
 - The domestic demand of water for 18 staff is c. 1.2m³ per day.

- The process demand is c. 13.7m³ per day.
- The tanks are capable of storing 100m³ of water and groundwater will only be used when this is empty during dry spells.
- The rainfall calculations taken from Met Eireann data are used to estimate the monthly rainfall collection. At the lowest during July the rainfall harvesting potential per day is 17.8m³ (average rainfall 61.4mm).
- Examples of other similar facilities with similar water connections.

6.2. Applicant Response

The applicant is the appellant.

6.3. Planning Authority Response

6.3.1. A response from the PA was received in relation to the first party appeal and the issues raised have been summarised below:

- The nature of the operations associated with the proposed development are akin to industrial type development through the processing of waste.
- Although recycling is one of the outcomes the main use is industrial.
- The operation is inappropriate at this location.
- The nature and use of the site is significantly different from a Commercial Agricultural Store.
- The proposal would materially contravene the zoning objective of the Dundalk and Environs development plan.
- It is noted the issue of material contravention was not raised during preplanning although this would not prejudice the outcome and the scale of operation may not have been evident.
- The impact of the proposal on the movement of traffic is a concern.
- The road is heavily trafficked and there are poor sightlines.

- Given the amount of traffic during site inspection the horizontal and vertical alignment of the road and the location beside the bridge, the development would give rise to a serious traffic hazard.
- Further information may have addressed some of the issues around groundwater although having regard to the substantive reason for refusal it was prudent to include reference to same in the refusal.

6.4. Observations

6.4.1. Twenty-three observations have been received. These have been submitted from residents in the vicinity of the site, resident's associations (Solicitor's submission), an elected member from Dundalk and equestrian business. The issues raised throughout the observations are similar, therefore I have summarised these under common themes below.

6.4.2. Zoning Objective

- The proposal will not preserve or enhance the surrounding rural environment.
- The proposal can only be open for consideration where it is not in conflict with the zoning objective.
- The proposal requires extensive works to the rural area and is in contravention with the zoning objective.
- This is the only zoning for a commercial agricultural store in the county and there are no comparisons to be made.
- The site is not a suitable location for this development.
- Only low intensity uses should be considered as open for consideration at this location.
- The Board does not have the jurisdiction to revisit the planning authority's reason in relation to the material contravention and conclude different unless certain criteria can be reached.
- The applicant has not demonstrated the threshold for a material contravention can be reached.

- The applicant states the proposal is of regional importance rather than national.
- The proposal does not meet the requirements of S37 (2) (b).
- The county development plan is under review and the proposal would not be in keeping with the seven-year development of the county.

6.4.3. Alternative Sites

- The site is only the most appropriate because of its ownership.
- Land ownership is not a planning matter.
- The proposal does not comply with Article 94 and Schedule 9 of the Regulations.
- The EIAR alternatives should be a comparison of impacts between several options.
- The main alternatives should consider reasonable alternatives.
- The onus is on the developer to ensure the competent authority was able to carry out the EIA.
- The applicant's reference to the *Kemper* case is not relative as the EIA related to the size of the site rather than alternatives.

6.4.4. Site Suitability

- The site is not suitable to accommodate the recycling of 90,000 tonnes of waste.
- The local area is not equipped to cater for the municipal waste of the north-east.
- The surrounding area is agricultural.
- The M1 motorway provides a clear distinction between the urban area and the countryside.
- Additional generated visuals/ photomontages have been submitted to illustrate the scale of the building.
- There is a lack of services in the vicinity.

- Increase in flies/ pests and impact on residential properties and business.
- The site is overdevelopment and the 36% site coverage is not realistic as the buffer for the electrical lines is not included and misleading.

6.4.5. Impact on residential amenity

- The proposal will increase foul odours and affect the residents of the area. It is stated in the application that there is 30% of emissions into the atmosphere.
- The use of water will impact the wells in the vicinity.
- The proposal will devalue the property in the vicinity.
- Increased light pollution.
- Construction works over two years will have a negative impact.

6.4.6. Strategic Importance

- The applicant has requested the proposal is deemed of strategic importance. If this is the case, it should be located within Development Zone 5.

6.4.7. Pre-planning Meeting

- The preplanning does not necessarily mean the proposal is acceptable.
- The planner undertook a full a thorough assessment.
- Concern was raised in the pre planning meeting to the applicant's reliance on the bored well. And lack of assessment of water supply in dry weather.

6.4.8. Traffic and Transport

- A minimum of 75m with a setback of 4.5m for the visibility splays.
- The L3168 does not have a straight alignment as suggested in the grounds of appeal.
- The junction does not meet the separation distance set down in the Traffic Management Guidelines (Department of Transport) Sect 7.8.
- There are no hard shoulders along the road as stated in the EIAR.

- The applicant acknowledges that left turning onto the public road is dangerous although makes provision of large vehicles to turn left by providing a 20m left turn junction radius.
- There is no pedestrian or cycle access from Dundalk.
- Traffic counts are during Covid-19 and not representative.
- The lorry movement will negatively impact the movements along the road.
- There have been very serious traffic accidents along this road and the EIAR only includes accidents up until 2016.
- The plans for a park and ride facility by Louth County Council, 690m from the site have not been included in the proposed.
- For development on a road with an 80km/ph speed limit a 160m SSD distance is required
- The application should have included a road safety audit.
- The applicant states that most of the traffic will be from the N52.
- There is no right-hand turning filter lane.
- The 2016 TRA statistics are out of date.

6.4.9. Groundwater, Surface Water and Flooding

- There is insufficient information in Chapter 9 and 10 of the EIAR to undertake an assessment of the impact on the groundwater and the WFD.
- There is no characterisation of the quantitative or chemical status of the relevant waterbody.
- The abstraction register has not been referenced and should be as the maximum abstraction rate of 49m³/day.
- There is no allowance for climate change in the groundwater assessment (i.e., dryer summers).
- Some of the water bodies are classified as very high important receptors and have not been assigned a WFD status by the EPA (Ramparts, Fane and Dundalk Bay transitional water body) These may potentially be affected.

- There is a drain along the entire western boundary.
- There are c. 100 houses within 980m of the site.
- The site slopes to Tates and Carrans Park Stream which discharges to the Dundalk Bay and there is risk of contamination
- A freshwater stream near the site flows into the river Fane. The WFD classification for this river is currently good.
- The facility will be using 49,000 litres of water per day which will reduce the groundwater resources. The private wells will be dry.
- There is concern the large septic tank will have a negative impact on the adjoining residential septic tanks.
- The wastewater treatment system is c.15m from the stream which runs along the west.
- The source-pathway-receptor model in the FRA is incorrect as the risk of blockage is very high considering it gets blocks and overflows on a regular basis.

6.4.10. Biodiversity

- There is no overwintering bird survey.
- There was only one field study undertaken.
- Agricultural fields at the rear of the site are subject to a GLAS scheme, long term biodiversity protection.
- The risk to water pollution is considered significant
- The transporting of waste will lead to increase in CO² emissions.
- The increase in seagulls in the area will have a detrimental impact on the yellowhammer and buzzards.
- It will be detrimental to the reintroduction of the grey partridge in the area.
- The NIS does not include the proposed park and ride and therefore the cumulative impact cannot be assessed.

- The NIS survey is only undertaken on one day, insufficient to conclude no significant impact.

6.4.11. Other

- There was limited consultation which is against the Aarhus Convention rights.
- Details of Oxygen group noncompliance with EPA guidelines.

7.0 Environmental Impact Assessment

7.1. Introduction

- 7.1.1. The proposed development includes for the construction and operation of a waste recovery and recycling facility which will use a Mechanical Biological Treatment (MBT) operation to treat up to 90,000 tonnes of waste per annum (tpa) of Municipal Solid Waste (MSW).
- 7.1.2. An Environmental Impact Assessment Report (EIAR) is required to accompany an application which is equal or exceeds development of a class set out in Schedule 5 of the Planning and Development Regulations, 2001. An EIAR may also be required for sub-thresholds development where it is considered it would be likely to have significant effects on the environment.
- 7.1.3. Schedule 5, Part 2, 11 (b), Other Projects, requires the submission of an EIAR for “Installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of this Schedule”. The applicant has determined the proposal may be deemed as disposal due to the waste element and submitted an EIAR. I consider this reasonable.
- 7.1.4. I have assessed the EIAR submitted with the application, and I consider that the EIAR includes the direct and indirect significant effects of the project on the following environmental factors:
 - Population and human health
 - Biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC

- Land, soil, water, air and climate;
- Material assets, cultural heritage and the landscape

7.1.5. In carrying out an independent assessment, I have examined the information submitted by the applicant, including the EIAR, as well as the written submissions made to the Board including the PA, the applicant, the prescribed bodies and members of the public. This section should be read in conjunction with the Appropriate Assessment (Section 8.0) and planning assessment (Section 9.0) below.

7.2. Project Description

7.2.1. The proposed development includes for the construction and operation of a waste recovery and recycling facility which will use a Mechanical Biological Treatment (MBT) operation to treat up to 90,000 tonnes of waste per annum (tpa) of Municipal Solid Waste (MSW). The waste is dried in tunnels to drive off the moisture content, the recyclable materials are removed and then the residual material dispatched either solid recovery fuel (SRF) or refuse derived from fuel (RDF).

7.2.2. The works associated with the waste recovery and recycling facility of municipal solid waste, comprises of the following,

- a processing building,
- ancillary administration building,
- gated vehicular access off the L3168 and an internal access road with two weighbridges,
- ESB substation, fuel storage, two underground tanks, underground drainage including underground tank,
- 33 car parking spaces and 10 bicycle parking spaces,
- photovoltaic panels on the roof of processing building, security cameras, lighting, boundary fence and mounding on southern boundary, all associated landscaping and site works.

7.3. Alternative Sites

- 7.3.1. Chapter 4 deals with the main reasonable sites considered for locating the proposed development. Six sites, including the subject site, within the northeast region were considered as reasonable alternatives to the subject site as summarised below:

Site	Location	General Description
1.	Carnabreagh, Co.Louth	Subject site. Agricultural tillage. Local Access. Natural Surface water regime. Development Zone 4.
2.	Killineer, Co. Louth	Former Quarry Site. Regional Access. Natural Surface Water regime. Development Zone 4.
3.	Castlebellingham, Co. Louth	Agricultural tillage. Regional Access. Natural Surface Water Regime. Development Zone1.
4.	Philipstown, Co. Louth	Patrial Landfill site. Regional Access. Natural Surface water regime. Development Zone 5.
5.	Carranstown, Co. Meath	Agricultural. Regional Access. Natural Surface water regime. Landscape Area 7 (Meath CDP)
6.	Kilshane Cross, Co. Dublin	Agricultural. Regional Access. Close to a recorded monument.

- 7.3.2. Table 4.1 of the EIAR scores each of the sites based on the land use zoning, site access, potential impact to human environment and natural environment. In relation to the land use zoning, the subject site scores as good. This scoring has regard to the zoning within the Dundalk and Environs Development Plan, whilst those sites zoned within the CDP are classified as poor. Access is classified as good for all sites apart from the Philipstown site which was moderate due to the distance from a major transport route. The impact on human health was low in most of the site apart from that close to the Castebellingham/Duleek village. In all instances it was considered the impact on the surface water was low. Visual impact of the proposal was classified as having moderate to low visual impacts.

- 7.3.3. The third reason for refusal by the PA related to the absence of appropriate sites within the alternatives, stated below.

3. The Environmental Impact Assessment Report accompanying the application does not comply with the requirements of Article 94 and Schedule 6 of the Planning and Development Regulations 2001 (as amended) due to a failure to adequately consider alternative sites and also inadequacy of the environmental criteria to determine the selection of the proposed site. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

- 7.3.4. The report of the area planner also noted the absence of alternative sites on industrial zoned lands and within the Dundalk settlement. Concern was also raised in a significant number of observations regarding the absence of appropriate alternative sites to allow the siting on the proposed development, and it was stated that the applicant's reference to the *Kemper*¹ case (discussed below) is not considered relevant as it only relates to the size of the site rather than the location.
- 7.3.5. The grounds of appeal do not consider the PA reason for refusal is acceptable. Reference to the requirements of Article 94, Schedule 6, paragraph 2 (b) of the Regulations, 2001 (as amended) are noted and the applicant considers those alternatives submitted include a reasonable list of alternatives and the reasons for choosing these alternatives. A list of case law on the consideration of alternatives referenced *Holohan*² and *Kemper* and it is considered the provision of alternatives is a matter for the developer. The applicant does not consider the siting of the waste facility in Dundalk is reasonable, given the amount of high-density housing. The use of existing waste facilities in Louth and Meath are not considered as viable options to address the need for additional Municipal Solid Waste (MSW) treatment capacity in County Louth and within the north-east region.
- 7.3.6. I note reference to legal cases by both the grounds of appeal and the observers. I do not intend to use these within my assessment as I consider they both contain a different set of circumstances, not specifically related to the proposed development.
- 7.3.7. Schedule 6 (d) of the of the Planning and Development Regulations requires "A description of the reasonable alternatives studied by the person or persons who prepared the EIAR, which are relevant to the proposed development and its specific

¹ *Kemper v An Bord Pleanála*, [2020] IEHC 601

² *Holohan v An Bord Pleanála*, [2017] IEHC 268

characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the proposed development on the environment”.

- 7.3.8. Section 3.4 of the EIA Guidelines³ includes guidance on the provision of alternatives. The main use of alternatives is to ensure the potential for significant adverse effects is avoided at an early stage in the planning process. This guidance places the onus on the developer to describe “reasonable” alternatives in the EIAR although input can be sought on the relevant alternatives during any “scoping” process with the Competent Authority. I note the applicant did not undertake any scoping with the PA.
- 7.3.9. I note those alternatives submitted in the EIAR, as listed above, and whilst I consider an urban and/ or serviced location should have been considered, I also note the onus is on the developer to detail the reasonable alternatives. I have addressed the issue of site suitability within my assessment below (Section 9.0) and the Board will note my concerns relating to the location of the proposed development on the subject site, which I do not consider comply with proper planning and sustainable development on the area. I consider the implications of the site location and those environmental concerns are adequately addressed throughout my assessment of other environmental impacts and compliance with the national, regional and local planning policy.

7.4. Population and Human Health

Introduction

- 7.4.1. Chapter 6 deals with population and chapter deals with human health. A background to the population profile of the county and the immediate electoral division (Haggardstown) is provided.

Submissions

- 7.4.2. A significant number of the third-party submissions are from residents who live in the vicinity of the site. Concern is raised in relation to both the construction of the facility and the operation of the waste facility where the noise, dust and emissions from transferring the waste and the processing of waste on site will have a negative

³ Guidelines on the information to be contained in Environmental Impact Assessment Report EPA (2022)

impact of the amenities of those residents in the vicinity of the site. One such submission refers to the absence of a site-specific CEMP (Volume III of the EIAR).

Planner's Report

- 7.4.3. The report of the area planner notes the results from the odour modelling and the installation of an odour control system and mitigation measures around the operation of the site. Aside from these measures included the relationship between the proposal and the residential properties was considered to have a significant negative effect on the population and human health. The second reason for refusal noted the proximity of the site to existing amenities of nearby residential properties which was considered to have an undue negative impact. No specific reference to dust, noise or odours is included in the reason for refusal.

Impacts

- 7.4.4. Increased noise levels, dust/odour emissions, traffic disruption and congestion are considered to be the main negative impacts on the population from construction and operation activities. The employment of 18 staff at the facility is considered a positive impact.

Mitigation

- 7.4.5. Mitigation in the Construction Environmental Management Plan (CEMP) include measures to limit dust emissions, remove material spillage, stockpiling any materials which may be easily resuspended and the use of barriers around generators. Appropriate controls noise and dust will be addressed under the Industrial Emissions (IE) Licence⁴. The grounds of appeal consider compliance with the EPA licence requirements is sufficient to prevent any significant negative impact on the surrounding population.

Assessment

- 7.4.6. Overall, I consider the greatest impacts from the proposal on the population and human health are the increased levels of noise and odour and dust emissions. I note the analysis throughout the EIAR relating to the odour, noise and dust have been dealt with in detail elsewhere in the EIAR. The conclusion of these assessment notes

⁴ The proposal may require an Industrial Emissions (IE) Licence under Class 11 of the Environmental Protection Agency (EPA) Act 1992

the regulation and monitoring of the emission activities by the EPA through the IE licencing. This aside they remain planning considerations and whether the EPA can restrict the emissions of the operation though the licence is irrelevant in my assessment of the impact on the amenities of residents in the vicinity of the site.

- 7.4.7. Having regard to the location of the site, adjacent to three dwellings and in the vicinity of c. 12 dwellings, the characteristics of the facility, including the transportation of waste, processing of waste and the hours of operation (07:00-00:00 Monday to Saturday) I consider the proposed development has the potential to have a significant negative impact on the amenities of the occupants in the vicinity of the site.

Conclusion

- 7.4.8. The use of best practice methods will reduce significant negative impacts from construction although I do not consider the environmental impacts associated with the operational phase can be adequately mitigated to prevent any significant negative impact on the surrounding residential amenity.

7.5. Biodiversity

Introduction

- 7.5.1. Chapter 8 deals with biodiversity. The site is currently in agricultural use and is surrounding by mature hedgerows. Three trees are located along the boundary of the site. The proposal includes the removal of hedgerows along the front boundary, L3168, to accommodate the entrance. A small ditch runs along the western side of the site and connects into a river/stream c. 1km to the south.
- 7.5.2. Surveys for wintering birds, aquatic species, bat roosting/activity, bird breeding, invertebrate and amphibian were undertaken. The reports concluded that the site is not used for foraging or roosting bats, the habitats are unlikely to support wintering birds and there were no signs of any other mammals or invertebrates present on the site. The site is not located within a European Site and a Natura Impact Statement was submitted which concluded no significant effects on any site.

Submissions

- 7.5.3. Third party submissions have raised concern in relation to the impact on biodiversity. The concerns relate to the timing of the surveys, the increase in seagulls, absence of an overwintering bird survey and the overall negative impact on biodiversity.

Impacts and Mitigation

- 7.5.4. The impacts on biodiversity include water pollution, loss of biodiversity and removal of agricultural lands. Mitigation measures include the removal of the hedgerow outside the breeding bird season, new hedgerow planting and treatment of wastewater and surface water.

Assessment

- 7.5.5. I note the site is not included within any European site and I have addressed the impact of the proposal on overwintering birds within the Appropriate Assessment which concluded no significant effect on any conservation objectives of those European Sites within Dundalk Bay. I consider the most significant impact on biodiversity is the loss of valuable agricultural lands and those indirect impacts from this loss. I have assessed the impact on water within the section (Section 7.7) below and the impact on the rural environment (Section 9.1 and 9.2) and I have concerns in relation to the location of an industrial type of development at this location.

Conclusion

- 7.5.6. There are no habitats of conservation significance within the site. The main natural habitat of conservation concern is the drainage ditch and roadside hedgerow, and I am satisfied mitigation measures are included within the proposal to prevent any significant negative impact on the biodiversity. I am satisfied that they have been appropriately addressed in terms of the application and the information submitted by the applicant and that no significant adverse direct, indirect or cumulative effects on biodiversity are likely to arise.

7.6. Soil, Geology and Hydrogeology

Introduction

- 7.6.1. Chapter 9 deals with soils, geology and hydrogeology. The site is located on lands with a “high” GSI vulnerability in the majority of the site and “extreme” vulnerability

along the front of the site, beside the road⁵. The site is relatively flat with the highest point at the northeast of the site (45 AOD) gradually failing to the west and south of the site (c. 39 AOD).

- 7.6.2. The EIAR used the Teagasc soil type classification and notes soils on the site are acidic brown earths and brown podzolic soil group. Data from the EPA states the subsoils are sandstone and shall till (Lower Palaeozoic) with medium⁶. Bedrock or subcrop close to the surface is along the front of the site, adjoining the road.
- 7.6.3. Site investigations (Appendix 9.1) included seven boreholes drilled on the site. Bedrock as encountered between 3.1 mbgl and 12.20 mbgl, water strike at 3.70mbgl. There was a substantial amount of silt/clay types of soils recorded in addition to gravel. This coincides with the applicant's Site Characterisation form (Appendix B of Volume III).
- 7.6.4. Section 9.3.3.1 of the EIAR notes the site within the Louth Groundwater Body (LGB). This is a poorly productive bedrock aquifer. The EIAR notes low permeability of some subsoil deposits with a high proportion of the effective rainfall quickly discharging to streams in the GWB. Flow paths are likely to be short with groundwater discharging rapidly to the streams and small springs.
- 7.6.5. Groundwater recharge for the site is 60% of effective rainfall (378mm/year). There is a maximum recharge capacity to the aquifer of 100mm/year.

Impacts and Mitigation

- 7.6.6. Impacts during construction include the accidental emissions and release of hazardous substances which can affect the quality of groundwater, infiltration of contaminated surface run-off on groundwater and the loss of soils reserves through the construction of hardstanding and structures on the site. Mitigation measures listed in the CEMP include the use of standard construction methods.
- 7.6.7. Impacts during operation are like those during construction and relate to the potential for contaminants to leak into the groundwater through the storm and foul. Mitigation measures with soakaways, oil/fuel interceptors and underground storage tanks will prevent any contamination.

⁵ <https://gis.epa.ie/EPAMaps/>

⁶ <https://gis.epa.ie/EPAMaps/>

Assessment

- 7.6.8. Whilst the EIAR notes the groundwater abstraction for use by the staff, rainwater harvesting is proposed during the main operation of the processing with groundwater use during dry periods (13.m³ per day). The applicant does not anticipate this quantum of groundwater abstraction will significantly impact the groundwater reserves, although the PA considered a groundwater risk analysis is required to determine both the impact on resindeital properties and the proposal for the treatment of leachate. As stated below the fifth reason for refusal relates to the impact of the proposed development on the water bodies (Water Framework Directive).
- 7.6.9. I have serious concerns in relation to the soil conditions on the site (which are unable to retain large periods of water) and the impact of the collection of rainwater for processing. I consider the rainwater harvesting will prevent the groundwater recharging and ultimately affect the groundwater reserves. The applicant has not submitted a groundwater risk assessment and no analysis of this impact has been undertaken. I have elaborated on this below, but I consider, in the absence of detailed investigations and analysis (not present in the EIAR) the proposed development would have a significant negative impact on the soils, geology and hydrogeology.

Conclusion

- 7.6.10. I am not satisfied that all impacts have been appropriately addressed in terms of the application and the information submitted by the applicant and I consider there is a potential for significant adverse direct, indirect or cumulative effects on soil, geology and hydrogeology are likely to arise.

7.7. Water

- 7.7.1. Chapter 10 deals with Water. Drinking water for the canteen will be sourced from a private well at a rate of c. 1.2m³ per day. Rainwater will be collected and used for the processing facility c. 13.7m³ per day and during dry spells the groundwater will be used for the processing facility. Wastewater from the staff facilities will be treated in a WWT facility and discharged to the ground and the contaminated water from the processing facility will be collected in a storage tank (100m³), emptied every two

weeks, and treated at an authorised wastewater treatment plant under agreement with Irish Water.

- 7.7.2. The site is in the Newry, Fane, Glyde and Dee WFD Catchment and between the Fane and the Castletown WFD SubCatchment⁷. There are no surface water features in the vicinity on the site and a drainage ditch along the western boundary.
- 7.7.3. Annual rainfall and potential evapotranspiration measures at Dunsany weather station are listed in Table 10.4. Effective rainfall was recorded as 389.4 mm/year.

Fifth reason for refusal

- 7.7.4. The fifth reason for refusal by the PA relates to the impact on the groundwater as summarised below:
- The location in an unserviced rural area,
 - The dependence on abstraction of groundwater as a drinking source,
 - The absence of the EIAR to determine no impact on the water bodies and the required of the WFD to “maintain/achieve” good water status”
 - The absence of the information to demonstrate no impact on the groundwater availability for the existing residential properties during peak demands and low rainfall.
- 7.7.5. The grounds of appeal refer to both the impact of contamination and the impact from abstraction on the groundwater. The grounds of appeal note the WFD status if “good”, monitoring of the groundwater is required under the IE licence, and the use of the underground tanks will ensure the contaminated water is not discharged to the groundwater.

Submissions

- 7.7.6. Third party submissions, residents in the vicinity of the site, raised concern in relation to the impact of the proposal on their private drinking supplies.

Surface Water

- 7.7.7. The surface water status of three water bodies within the vicinity of the site are listed in the EIAR. The Fane River waterbody is unassigned although considered at risk,

⁷ <https://gis.epa.ie/EPAMaps/>

the Fane Estuary is unassigned and considered not at risk and the Inner Dundalk Bay (transitional water) has a “moderate” status and considered “at risk” of not achieved the WFD objectives. It is not considered the proposal will impact any surface water bodies due to absence of any direct hydrological links or the Dundalk Bay due to the absence of rivers or streams in the immediate vicinity of the site.

- 7.7.8. The surface waterbodies have the potential to be impacted from groundwater abstraction and any changes in the local hydrological scheme.

Groundwater

- 7.7.9. The ground water status of the site between 2013-2018 was “good”. As stated above the proposal includes groundwater abstraction for the staff canteen, processing during dry periods and as reserves for any fire accidents.
- 7.7.10. The impacts from the construction on groundwater include contamination from accidental spillage. Mitigation measures include the use of the CEMP during construction.
- 7.7.11. During operation local impacts on the hydrological regimes and potential lowering of the water table are possible. Mitigation measures include restriction of abstraction to maximum rates so the water table will not be adversely impacted.

Flood Risk Assessment

- 7.7.12. The site is in Flood Zone C. A Flood Risk Assessment was submitted with the application which notes the drainage ditch along the western boundary and considers a potential risk to pluvial flooding. Proposed mitigation measures include a stormwater pipe network, geocellular infiltration soakaway, a rainwater harvesting tank and a use of a sealed contaminated water tank. Having regard to the location of the site, the design of the proposed development I do not consider there is any risk to fluvial or coastal flooding on a site-specific flood risk assessment is not required.

Assessment

- 7.7.13. Chapter 9 of the EIAR provides detail on the ground conditions on the site. It is stated that the soils have low permeability of some subsoil deposits with a high proportion of the effective rainfall quickly discharging to streams in the GWB. This means that the ground does not have high levels of water retention and is fed generally from the available rainwater.

- 7.7.14. Table 10.10 notes the potential impact of groundwater abstraction on the local hydrological regime. The maximum yield of abstraction will be used as a mitigation against any impact and whilst it is not considered a significant impact, the EIAR notes the importance of the receptor as very high.
- 7.7.15. I have serious concerns in relation to the information contained within the EIAR. In the first instance the applicant states that the groundwater recharge is 60% of the effective rainfall yet the proposed development includes the collection of rainfall for the processing activity. This raises concerns as to the recharge availability of the groundwater supplies (once the rainwater has been removed). In addition, the EIAR does not sufficiently address the water reserves and impact during a fire. The grounds of appeal note three private wells within 100m of the site. No hydrological assessment or groundwater risk assessment has been submitted detailing the recharge values of the groundwater reserve or the Zone of Contribution (ZoC).

Conclusion

- 7.7.16. Based on the absence of sufficient information in relation to the impact on groundwater and ultimately the ground water levels, I cannot conclude that the proposed development would not have a potential for significant adverse direct, indirect or cumulative effects on water on the site and in the vicinity. In this regard, I consider the proposal should be refused for reason of the potential impact on the hydrological regime which in turn could have a significant negative impact on the water supply to the surrounding residential properties.

7.8. Air Quality and Climate

Introduction

- 7.8.1. Chapter 11 deals with air quality and climate. The site is located within EPA monitoring Zone C network. The Air Quality results indicate the levels of NO_x, PM₁₀ and PM_{2.5} are below the national and WHO levels.
- 7.8.2. A “new-generation” steady-state Gaussian plume model was used to assess pollutant concentrations and odour emissions with modelling at four locations around the boundary of the site.

- 7.8.3. Greenhouse gases will be emitted from the movement of traffic, industrial emissions from electricity to power the plant and indirect emissions from the recycling operations. Construction traffic will be directed toward the N52 and will only slightly increase emissions.
- 7.8.4. Guidelines from a German government source notes the limitations of monthly dust levels at 350mg/m²/day as an annual average.
- 7.8.5. Like dust, there is no legislative limit for odours in Ireland. The EPA Guidance Note AG4 provides a guideline for various industries and for waste sites with a guideline value of 1.5 O_{UE}/m³ as a 98th percentile of hourly averages at five worst-case sensitive receptors. Odour modelling at the receptors indicate no values greater than 1.32 O_{UE}/m³ (R4).

Submissions

- 7.8.6. The main concern in relation to the air quality and climate stems from the potential negative impact from odour emissions from the processing plant. The grounds of appeal note the proposed development will be subject to emission restrictions under the terms of the IE licence, the materials are delivered in sealed trucks and odours are collected within the processing building.

Impacts

- 7.8.7. Impacts during construction arise from dust dispersion, increased CO₂ emissions from construction traffic 2019. The impact on the adjoining properties is considered temporary slight adverse impact. The recycling of materials will reduce landfill levels, reducing emissions and complying with the Climate Action Plan.

Mitigation

- 7.8.8. During construction the CEMP requires the dampening or covering of materials being transported and the use of wheel wash facilities. The processing facility is designed to reduce odour emissions through a sealed unit and odour collection.

Assessment

- 7.8.9. A memo from the Senior Planner (dated 17th of June 2021) noted the facility would be subject to an IE licence by the EPA. EPA correspondence noted that should a licence be received by the Agency all matters to do with emissions would be

assessed. If these could not be regulated a licence would not be granted. No specific comments on the proposed development were received by the EPA.

- 7.8.10. Whilst I note the applicant states that the processing facility can operate within the EPA odour limits for such a waste facility, I have serious concerns in relation to the location of the site.
- 7.8.11. The EPA Guidance⁸ provides guidance for odour assessment. The use of European Odour Units (OU_E) is used to express the multiples of odour concentration and Table 3.1 of the guidance notes this processing sector as the most offensive (1.5 OU_E/m³ as a 98th%ile of hourly averages). The elements of FIDOL are also used as odour impact criteria, Frequency, Intensity, Duration, Offensiveness and Location at sensitive receptors. Having regard to the worst levels at R4 location when combined with the persistence of the operating facility over the duration of a 24-hour period (hours of operation 07:00- 00:00 Monday to Saturday.) I would consider the frequency of exposure would have a significant negative impact on the amenity of residents in the vicinity of the site
- 7.8.12. The EPA guidance also notes that each source with the odour pathway should be modelled, i.e., the operational transport etc. These additional assessments have not been included in the EIAR and although it is stated the transportation are closed units, I consider they have the potential for negative odour emissions and should be included in any assessment. The EPA guidance also notes that compliance with the odour standards does not reduce any requirements to ensure an activity does not cause a nuisance.

Conclusion

- 7.8.13. Having regard to the location of the site and the information contained in the EIAR and the national guidance on odour emissions, I consider the operation of the facility, including the movement of waste transportation, has the potential to have a significant negative impact on the residential amenity of those occupants in the vicinity of the site.

⁸ Odour Emissions Guidance Note (Air Guidance Note AG9), EPA 2019 [Technical Report template, embedded Dublin \(epa.ie\)](#)

7.9. Noise and Vibration

Introduction

- 7.9.1. Chapter 12 deals with Noise and Vibration. The strategic noise maps from the County Louth Noise Action Plan 2018-2023 are referenced as baseline noise on the site. The action plan states that these maps are generated by Transport Infrastructure Ireland (TII) for national and regional roads and give predictions for two noise indicators L_{den} and L_{night} . Appendix D of the noise action plan includes illustrations of noise levels along the major transport routes, the subject site is located within a area mapped with noise levels between 55- 59 L_{den} dB. Site Specific baseline noise survey was undertaken during the day at three noise sensitive locations. The average daytime noise at the sensitive receptor locations was between 56-53 LA_{F90} (level exceeded for 90% of the time under consideration). The site-specific noise levels are generally in line with the noise action plan mapping.
- 7.9.2. The guidance from the EPA⁹ states that noise from major sources is regarded as affecting an area if it causes either an L_{den} value of 55dB(A) or greater, or an L_{night} value of 50 dB(A) or greater anywhere within the area. Due to the proximity of the site within 7.5km of a motorway the site is not classified as a quiet area for the purposes of setting the noise levels. Section 4.3 of the EPA guidance provides typical values for noise from licenced sites as follows (not a quiet area):
- Daytime (07:00 to 19:00hrs) – 55dB $LA_{r,T}$;
 - Evening (19:00 to 23:00hrs) – 50dB $LA_{r,T}$;
 - Night-time (23:00 to 07:00hrs) – 45dB $LA_{eq,T}$.
- 7.9.3. The EIAR includes a predicted worst-case scenario for the noise generated during both the construction and the operation of the site.

Submissions

- 7.9.4. The third-party observations, submitted from residents in the vicinity of the site, are concerned the noise levels generated from both the construction, traffic movements and the processing facility will have a negative impact on their residential amenities.

⁹ [NG4 Guidance Note \(January 2016 Update\) \(epa.ie\)](https://www.epa.ie/publications/NG4_Guidance_Note_January_2016_Update.pdf)

- 7.9.5. I note the report of the area planner raised concern in relation to the proximity of the proposed development to the noise sensitive receptors. Any analysis of the data presented in the EIAR is not evident from the planner's report.

Impacts from Construction

- 7.9.6. During construction noise levels of up to 80 LA_{eq} (2 x road lorry 39t) and 87 LA_{eq} for hydraulic hammering. It is assumed that over 1 hour all mobile plant will be operational for 80% of the time. Table 12.7 notes the average noise levels at NSL 1 during construction will be 69 LA_{eq (T)} dB. The applicant notes the TII guidelines¹⁰ for site clearance is 70 LA_{eq (1 hr)} dB.
- 7.9.7. The baseline for construction traffic is taken from the traffic surveys in February 2021, an average of 160 heavy vehicles are recorded to pass the site (north and south) (Table 13.1). The percentage of HGVs is 12 % (base year) and it is predicted the increase to 13% HGVs will represent a predicted increase in noise levels of 0.1 dBA.

Impact from Operation

- 7.9.8. A noise modelling exercise was undertaken to predict the noise levels during operation. Table 12.9 includes the operation noise sources. Machinery used in continuous with sound pressure levels up to 95.0 Db (unweighted) per band. The modelling results conclude the predicted noise from the operation would be 44.3 L_{night} (dBA) at NSL1 which represents a predicted change in 1.2-.1.5 dBA (from the baseline levels). This is considered negligible in the long term.
- 7.9.9. The traffic associated with the operation of the site is predicted to increase from 12% HGVs (2021 base year) to 14 % HGVs (2037 design year) with a predicted noise level increase from 65.0 dBA to 66.4 Dba. As stated above, the baseline noise levels recorded along the front of the site where 56-53 LA_{F90} generally in line with the noise action plan mapping (55- 59 L_{den} dBA). I do not consider these baseline levels correspond with the applicant's base year levels to predict the percentage increase on noise levels from operational traffic (65.0 dBA) and therefore I do not agree with the applicant's conclusion that the impact at the noise receptors is negligible.

¹⁰ Good Practice Guidance for the Treatment of Noise during the Planning of National Road Schemes (TII, March 2014)

Mitigation

- 7.9.10. Mitigation measures proposed during the operation of the facility relate to the design of the facility, the use of sound compound and equipment, implementation of a CEMP, compliance with the terms of an IE licence and the management of HGVs.

Assessment.

- 7.9.11. The impact of the noise levels from the construction of the facility ($80 L_{pA(max)slow}$ dB) will be significant. Whilst the EIAR notes these levels are in line with the TII guidance I note these guidelines relate to construction of national road schemes. I note the construction on the site will be short term (c. 2 years) but having regard to the location of the site within an urban area and proximity to private dwellings I consider the magnitude of this impact will be significant.
- 7.9.12. I note that the EPA is responsible for setting the limits for noise for any IE licence and operation of the waste facility although as stated above, I have concerns in relation to the baseline noise levels used to predict the level of increase of the operational traffic. I also note the hours of operation range between 07:00-0:00 seven days a week, therefore constant noise levels of 65.0 dBA would not be appropriate. Therefore, I am also concerned the increase level of operational traffic would have a significant increase and impact on the surrounding environment. This traffic would not necessarily be regulated by an IE licence.

Conclusion

- 7.9.13. Having regard to the information in the EIAR, I am not satisfied that the potential impacts have been appropriately addressed in terms of the application and the information submitted by the applicant is sufficient to conclude and that no significant adverse direct, indirect or cumulative effects on noise and vibration are likely to arise.

7.10. Traffic and Transportation

Introduction

- 7.10.1. Chapter 13 deals with traffic and transport. The site is located along a Local Road (L3168) previously a protected road in the county development plan. The planning history on the site includes refusals of permission, having regard to the impact of any

proposed development on the movement along the protected route. The road is no longer classified as a protected route in the county development plan. Access into the agricultural field is located to the northeast of the site (not within the site layout or applicants' ownership).

- 7.10.2. The proposal includes a new access into the site to accommodate the proposed development. Traffic movements relate to the movement of 18 staff into the site and the delivery of waste on 26 HGVs (c. 52 movements per day).

Submissions and PA report

- 7.10.3. The report of the area planner raised concern in relation to the impact of the movement and flow of traffic along the L3168. The Infrastructure Section requested additional information on the entrance details, third party agreements, traffic movements and right turning into the site. Traffic surveys for an additional two junctions were also requested. I have dealt with the design of the entrance in the planning assessment below (Section 9.3).

Traffic Surveys

- 7.10.4. Section 13.2.1 of the EIAR notes traffic surveys were undertaken in February 2020 along the L3168 and the N52. These were updated in line with February 2021 flows (typical non-covid flows). The timing of the traffic surveys during Covid was raised by the observers although I note the applicant has amended these to reflect a 58% increase, which I consider reasonable.
- 7.10.5. Figure 13.1 of the EIAR, includes the locations of the two points for the traffic survey. The first to the front of the site (along the L3168) and the second along the N52 (just off the exit of J16 on the M1). I note those counts along the L3168 are representative of the typical flows past the site. Whilst the traffic survey along the N52 would not be representative of those typical traffic flows along the L3168 the proposal directs traffic leaving the facility towards the N52 as it is a national route providing primary access from the M1. This aside, I note the weekly average daily flow (with 58% increase) along the L3168 is 1,586 northeastbound and 1,116 southwestbound would not be considered excessive.

Impact on the L 3168

- 7.10.6. The results from the traffic survey along the N52, and other survey points, are used to show the annual average daily traffic (AADT) on a section of a road. These figures have then been used to assess the impact of the proposed development on the L3168 when the facility is operating at full capacity.
- 7.10.7. The TTA concludes that the impacts would not be significant (i.e., not exceed 10% of the traffic flow on the adjoining road). Table 13.7 includes the percentage impact for the L3168 up to design year (2037) while Table 13.8 includes the percentage impact on the N52 for the same period. The percentage change in the design year along the L3168 is not expected to be greater than 2.4%.
- 7.10.8. The report of the PA considered the proposal would interfere with an already heavily trafficked route. I note the figures from the traffic counts indicate the traffic flows significantly less than the N52 and although this would be expected, given the status of the N52, I do not consider an additional 2.4% increase of traffic would significantly impact the traffic flows along the L2168.

Junction Analysis

- 7.10.9. A further information request by the Infrastructure Section requested the TTA is upgraded to include additional surveys at two junctions (N52/ L3168) and (L3168/L7165). The response from the grounds of appeal refers to a junction analysis at the N52/L3168 and the L3168/L7165 at morning and evening peak hours which shows that the junctions will move well and there will be no impact on the traffic flows.
- 7.10.10. An analysis of the junction between the L3169/N52 and the L3168/L7165 was carried out using JUNCTIONS modelling software to establish the Ratio of Flow to Capacity (RFC). An RFC exceeding 0.85 (85% of capacity) is approaching capacity. The results of the junction capacity assessment for the design year of 2037 indicate a +0.03 RFC between the “do nothing “and the “do something” scenario. I consider the capacity at the adjoining junctions will not be significantly impacted.

Right turning Junction along the L3168

7.10.11. There are concerns in relation to the right turning movements into the site and the potential impact on the free-flowing movement of traffic along the L3168. I note the design of the L3168 at this location is relatively straight with Stopping Sight Distance of 160m on both directions. Having regard to the design of the road, I do not consider traffic turning right into the site will significantly disrupt the movement of traffic along the road.

Mitigation Measures

7.10.12. The use of a Traffic Management Plan for the operation of the site will include measures for access during an emergency and additional warning signage along the L3168 for the entrance. I note the signage details on drawings relating to the proposed road entrance and sight entrance sightlines includes a no turning left sign onto the L1368. This signage would prevent traffic turning left, towards the rural area and would be directed right towards the national routes which have greater capacity to accommodate additional traffic.

Conclusion

7.10.13. I have assessed the information presented in both the EIAR and the supporting documentation of the EIAR. In relation to the general movement and flow of traffic along the L3168 and those increased traffic volumes, I can conclude there is no significant negative impact on the existing transport network. The Board will note my separate assessment (Section 7.8) on the impact of the construction traffic on the residential amenity, which is considered negative and the design of the entrance (Section 9.3).

7.10.14. Having regard to the information in the EIAR, I am satisfied that the potential impacts have been appropriately addressed in terms of the application and the information submitted by the applicant is sufficient to conclude and that no significant adverse direct, indirect or cumulative effects on traffic and transport are likely to arise.

7.11. Material Assets

Introduction

7.11.1. Chapter 14 deals with Material Assets. The site is agricultural and located in a rural area. There is a 110kV ESB power line along the northern boundary of the site and telecommunications infrastructure along the site boundary on the L3168. The water mains are located c. 400m south-west of the site. There is no public foul sewer in the proximity of the site.

7.11.2. A buffer area has been included around the electricity lines (min 21m as required by ESB), no gas connection or water/wastewater connection is proposed. Reference is provided to other sections of the EIAR, including the traffic and transport, water and soils as evidence that the site can be serviced. It is not considered there will be any impact on the Material Assets and mitigation measures are not proposed.

Submissions

7.11.3. The impact of a fire at the processing building has been raised by third parties. There is concern raised that the groundwater resources will not be available to deal with this accident.

Impact

7.11.4. Table 3.1 of the EAIR guidelines refers to unplanned events (i.e., accidents) as a typical topic which should be included within the material assets section. This has not been addressed. The Board will note my assessment on the impact of the proposal on water and having regard to the absence of sufficient information relating to the impacts on the groundwater, I would be concerned no detailed examination of a connection to a public water main is included in the EIAR, particularly having regard to its location c. 400m to the southwest of the site, along a public road.

Conclusion

7.11.5. Having regard to the absence of any assessment for accidents (fire events) and the nature of the activity, which is industrial in nature, I am not satisfied that the impacts on material assets have been appropriately addressed in terms of the application and the information submitted by the applicant. Therefore, I cannot conclude that no significant adverse direct, indirect or cumulative on material assets are likely to arise.

7.12. Cultural Heritage

- 7.12.1. Chapter 15 deals with cultural heritage, including archaeology and architectural heritage. There are no recorded monuments, protected structures to site of arachnological interest on the site or within the immediate vicinity.
- 7.12.2. A submission from the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media notes no objection to the impact on the archaeological impacts subject to a condition requesting pre-development testing.
- 7.12.3. No mitigation measures are considered necessary, having regard to absence of any impact on the cultural heritage. I am satisfied that any impacts have been appropriately addressed in terms of the application and the information submitted by the applicant and that no significant adverse direct, indirect or cumulative effects on the cultural heritage are likely to arise.

7.13. Landscape and Visual Assessment

Introduction

- 7.13.1. Chapter 16 deals with landscape and visual impacts. The site is located within the Muirhevna Plain Landscape Character Area (local importance) as set out in the County Landscape Character Assessment (2002).
- 7.13.2. The main activities during construction involve the site clearance (topsoil, overburden, hedgerows along the L3168), construction of super structure, internal layouts, and landscaping. Construction will take c. 24 months. The proposed works on site include three buildings, an administration building, a processing facility and an ESB substation. The EIAR refers to the processing building as the superstructure. The main processing building is 9,263m² and 13.85m in height and the administration building is 262m² and 5.4 m in height. The external materials on the processing building includes, in the most part, Kingspan insulated panels and render for the office building.
- 7.13.3. Appendix 16.1 of Volume III of the EAIR includes three photomontage illustrations from three locations along the adjoining road (VP01, VP02 & VP04).

Submissions

- 7.13.4. Third party observations include additional generated visuals to illustrate the scale of the building, which is considered inappropriate at this location. The report of the area planner considers the proposed building would be a dominant feature in the local landscape.

Impact

- 7.13.5. The magnitude of the landscape and visual impact has been assessed using the UK Guidelines for Landscape and Visual Impact Assessment (GLVIA)¹¹. Having regard to the methodology in the GLVIA and the baseline characteristics on the site the EIAR concludes that the visual impact of the construction will be small/ negligible and the impact of the building on residential of the dwellings in the immediate vicinity will be medium and negligible to those using the road to pass the site.

Mitigation

- 7.13.6. In concluding the medium visual impact on the adjoining residential properties, the EIAR considered the proposed development would be screened from view by mature woodland in the foreground. The EIAR provides reference to Figure 16.2 in Appendix 16.1 of Volume III refers to a concept landscape scheme for the site (also include as the landscape plan in Drwg MDR1441-RPS-00-XX-M2-A-DG2000) which illustrates the planting of 12 Rootballed Trees (*sorbus aria*) along the front boundary of the site and along the southwest boundary.

Assessment

- 7.13.7. I note the photomontage illustrations in Volume III of the EIAR which clearly illustrate the design and layout of the proposed development. These illustrations are like those submitted with observer's submissions to the proposed development and provide a clear illustration of the visual impact. Whilst the site is not within an area of regional importance or within an area of designated views, I consider the sites location within a rural area is not appropriate for a building of such a scale and industrial design. Having regard to the size of the building (superstructure), the use of Kingspan panelling for the exterior and the location of the building close to the L3168 and

¹¹ Guidelines for Landscape and Visual Impact Assessment, Third Edition, Landscape institute and Institute of Environmental Management & Assessment (2013).

surrounding dwelling, I consider the impact of the building will be significant and negative. I note the proposed landscaping scheme, although, having regard to the scale of the building, I do not consider the trees will provide effective mitigation against a negative impact.

Conclusion

7.13.8. Mitigation measures are not considered sufficient to prevent a significant negative long-term impact on the landscape and visual amenity of the surrounding area. I am not satisfied that any impacts have been appropriately addressed in terms of the application and the information submitted by the applicant and that significant adverse direct, indirect or cumulative effects on the landscape and visual amenity are not likely to arise.

7.14. Cumulative and Interactive Effects

7.14.1. Table 17.1 of the EIAR identifies the possible interactions between the environmental factors. These interactions have also been assessed throughout each section of the EIAR which I have noted within each assessment. Submissions consider the cumulative effects should have considered the Louth County Park and Ride. I am satisfied that those cumulative impacts within each section have been adequately addressed to allow an assessment of the proposed development.

7.14.2. The interactions identified include:

- Population, Human Health, Traffic & Transport, Material Assets, Cultural Heritage and Landscape and Visual Assessment.
- Human Health, Soils, Geology and Hydrogeology, Water, Air Quality and Climate, Noise & Vibration, Traffic & Transport, Material Assets, Cultural Heritage and Landscape and Visual Assessment.
- Biodiversity, Soils, Geology and Hydrogeology, Water, Air Quality and Climate, Landscape and Visual Assessment.
- Soils, Geology and Hydrogeology and Water.
- Air Quality and Climate and Traffic & Transport.
- Traffic & Transport and Material Assets.

7.15. Reasoned Conclusion

7.15.1. The environmental impacts which arise from locating the proposed development within an unserviced rural location have not been fully justified by the information contained in the EIAR. Whilst I acknowledge and support the applicant's argument for the need for a pre-treatment facility such as the proposed development, I do not consider the applicant has fully considered the different environmental impacts of location a similar type of location within a serviced urban environment and the subject site.

7.15.2. Having regard to the examination of environmental information set out above, to the EIAR and other information provided by the developer, the report of the area planner and to the submissions from the prescribed bodies and observers in the course of the application and as part of the grounds of appeal, it is considered that the main significant direct and indirect effects of the proposed development on the environment are as follows:

- The operation of the proposed facility, in particular the movement of waste into and out of the site and the potential for odour nuisance, will have a long term significant negative impact on the residential amenities of the occupants in the vicinity of the site.
- There is insufficient information in the EIAR on the impact of the proposed development on the groundwater. The collection of rainwater for the processing facility can prevent the recharge of the groundwater reserves in and around the site, in combination with the proposed groundwater water abstraction, this will reduce the water levels and have a negative impact on the availability of water for adjoining private wells.
- The noise level from the construction of the facility will be significant and short term. Although the EPA control noise levels through an Industrial Emissions licence, there is concern in relation to the noise levels from the operational traffic and when combined with the proposed hours of operation, will have a significant negative impact on the surrounding environment.

- The scale and mass of the proposed building will have a significant long-term negative impact on the surrounding environment which cannot be effectively mitigated through landscaping.

8.0 Appropriate Assessment

8.1. Introduction

- 8.1.1. The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U and section 177V of the Planning and Development Act 2000 (as amended) are considered fully in this section. The areas addressed in this section are as follows:

- Compliance with Article 6(3) of the EU Habitats Directive
- Screening the need for appropriate assessment
- The Natura Impact Statement and associated documents
- Appropriate Assessment of implications of the proposed development on the integrity each European site

8.2. Compliance with Article 6(3) of the Habitats Directive

- 8.2.1. 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 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 will not adversely affect the integrity of the European site before consent can be given. The proposed development is not directly connected to or necessary to the management of any European site and therefore is subject to the provisions of Article 6(3).
- 8.2.2. The applicant has submitted a Screening Report for Appropriate Assessment and a Natura Impact Statement (NIS) as part of the planning application. They have been

prepared by the applicant's consultants. The AA Screening Report provides a description of the proposed development and identifies European Sites within a possible zone of influence (in this case 15km radius) of the development. Four sites have been assessed as follows:

- Carlingford Mountain SAC
- Dundalk Bay SAC
- Dundalk Bay SPA
- Stabannan -Braganston SPA.

8.3. Screening for Appropriate Assessment - Test of likely significant effects

8.3.1. The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on a European site(s). The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site in view of the conservation objectives of those sites.

8.3.2. The AA screening report concludes that the possibility of significant effects from the proposed development on the following Natura 2000 sites cannot be ruled out:

- Dundalk Bay SPA (004026)
- Dundalk Bay SAC (000455)

8.3.3. Having reviewed the documents and submissions, I am satisfied that the information allows for a complete examination and identification of all the aspects of the project that could have an effect, alone, or in combination with other plans and projects on European sites.

8.4. Brief Description of the Development

8.4.1. The proposed development includes for the construction and operation of a waste recovery and recycling facility which will use a Mechanical Biological Treatment (MBT) operation to treat up to 90,000 tonnes of waste per annum (tpa) of Municipal

Solid Waste (MSW). The waste is dried in tunnels to drive off the moisture content, the recyclable materials are removed and then the residual material dispatched either solid recovery fuel (SRF) or refuse derived from fuel (RDF).

- 8.4.2. The proposal includes buildings and associated works for the processing of the waste. The operation of the facility will have 18 staff. Traffic movements relate to the movement of staff into the and the delivery of waste on HGVs (c. 52 movements per day). The staff facilities (domestic) will be served by a private well with wastewater treated on site in a wastewater treatment system. Water for the processing will be in the main from rainwater harvesting and then during dry periods from the private well. It is estimated 5, 025m³ of water per annum is required for the processing. **Leachate** generated from the waste recovery process will be directed to collecting pits, once full they are removed by tankers. **Condensates** are also collected in storage units and transferred to licenced waste treatment facilities. All other additional liquids (contaminated water) will be directed to storage tanks (40m³) and removed from site approximately once per week.

8.5. Submissions and Observations

- 8.5.1. Observations submitted in relation to the appeal have commented on the impacts on the biodiversity of which have been addressed within the EIAR above. Specific comments relating to the Natura Impact Statement (NIS) include the absence of cumulative impacts and the NIS surveys were insufficient (only undertaken on one day).
- 8.5.2. The report of the area planner could not rule out any significant adverse impacts on any European Sites having regard to:
- the absence of a site-specific CEMP,
 - the sites vulnerability to pluvial flooding,
 - the proposed composting plant on the site, and
 - the absence of a comprehensive ground water risk assessment.

8.6. European Sites

8.6.1. The development site is not located in a European site. The Screening Assessment notes a zone of influence around the site at 15km. A summary of European Sites that occur within 15km of the proposed development is presented in the table below.

European Site (code)	List of Qualifying interest (QI) /Special Conservation Interest (SCI)	Conservation objectives
Special Areas of Conservation (SAC)		
Dundalk Bay SAC (000455) c. 4km to the east	Estuaries [1130] Mudflats and sandflats not covered by seawater at low tide [1140] Perennial vegetation of stony banks [1220] Salicornia and other annuals colonising mud and sand [1310] Atlantic salt meadows (<i>Glauco-Puccinellietalia maritimae</i>) [1330] Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410]	To maintain and restore the favourable conservation condition
Carlingford Mountain SAC (00453) c. 10km to the northeast	Northern Atlantic wet heaths with <i>Erica tetralix</i> [4010] European dry heaths [4030] Alpine and Boreal heaths [4060] Species-rich <i>Nardus</i> grasslands, on siliceous substrates in mountain areas (and submountain areas, in Continental Europe) [6230] Blanket bogs (* if active bog) [7130] Transition mires and quaking bogs [7140] Alkaline fens [7230] Siliceous scree of the montane to snow levels (<i>Androsacetalia alpinae</i> and <i>Galeopsietalia ladani</i>) [8110] Calcareous rocky slopes with chasmophytic vegetation [8210] Siliceous rocky slopes with chasmophytic vegetation [8220]	To maintain and restore the favourable conservation condition
Special Protection Areas (SPA)		

<p>Dundalk Bay SPA (004026)</p> <p>c. 4km to the east</p>	<p>Great Crested Grebe (<i>Podiceps cristatus</i>) [A005]</p> <p>Greylag Goose (<i>Anser anser</i>) [A043]</p> <p>Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046]</p> <p>Shelduck (<i>Tadorna tadorna</i>) [A048]</p> <p>Teal (<i>Anas crecca</i>) [A052]</p> <p>Mallard (<i>Anas platyrhynchos</i>) [A053]</p> <p>Pintail (<i>Anas acuta</i>) [A054]</p> <p>Common Scoter (<i>Melanitta nigra</i>) [A065]</p> <p>Red-breasted Merganser (<i>Mergus serrator</i>) [A069]</p> <p>Oystercatcher (<i>Haematopus ostralegus</i>) [A130]</p> <p>Ringed Plover (<i>Charadrius hiaticula</i>) [A137]</p> <p>Golden Plover (<i>Pluvialis apricaria</i>) [A140]</p> <p>Grey Plover (<i>Pluvialis squatarola</i>) [A141]</p> <p>Lapwing (<i>Vanellus vanellus</i>) [A142]</p> <p>Knot (<i>Calidris canutus</i>) [A143]</p> <p>Dunlin (<i>Calidris alpina</i>) [A149]</p> <p>Black-tailed Godwit (<i>Limosa limosa</i>) [A156]</p> <p>Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157]</p> <p>Curlew (<i>Numenius arquata</i>) [A160]</p> <p>Redshank (<i>Tringa totanus</i>) [A162]</p> <p>Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179]</p> <p>Common Gull (<i>Larus canus</i>) [A182]</p> <p>Herring Gull (<i>Larus argentatus</i>) [A184]</p> <p>Wetland and Waterbirds [A999]</p>	<p>To maintain the favourable conservation condition</p>
<p>Stabannan-Braganstown SPA (004091)</p>	<p>Greylag Goose (<i>Anser anser</i>) [A043]</p>	<p>To maintain or restore the favourable conservation condition</p>

8.7. Assessment of likely significant effects.

- 8.7.1. Section 5.3 of the applicants screening report “Assessment of Source Pathway Receptor Model” includes an assessment of the proposed development on any European Site within the Zone of Influence, having regard to the characteristics of the proposed development. The assessment is summarised below:

No Impact

- There are no likely effects on Carlingford and Stabannon- Braganstown having regard to the geographical and spatial context of each of these European Sites.

Potential Impact

- There is a potential indirect pathway between the site and Dundalk Bay SAC/SPA via surface water during construction and operation.
- There is a potential for the spread of Invasive Alien Species during construction
- There is a potential for indirect impacts from stormwater discharges via the groundwater to the Dundalk SPA/SAC.

- 8.7.2. Having regard to the potential impacts listed above specifically the distances from European sites, and the absence of any source-pathway, it can be concluded that the proposed development would have no potential for likely significant effect on the following European Sites:

- Carlingford Mountain SAC
- Stabannon Braganston SPA.

- 8.7.3. Therefore, having regard to the potential for habitat degradation and/or water pollution as a result of hydrological, hydrogeological impacts and introduction/spread of invasive species, it cannot be concluded that there is a possibility for significant effects on Dundalk Bay SAC/SPA.

8.8. Screening Determination

- 8.8.1. The proposed 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 individually (or in combination with other plans or projects) could have a significant effect on 2 European Sites in view of the Conservation Objectives of those sites, and Appropriate Assessment is therefore required for the following:
- Dundalk Bay SAC
 - Dundalk Bay SPA
- 8.8.2. The possibility of significant effects on other European sites has been excluded on the basis of objective information. The following European sites have been screened out for the need for appropriate assessment
- Carlingford Mountain SAC
 - Stabannaon – Braganstown SPA
- 8.8.3. Measures intended to reduce or avoid significant effects on European sites have not been considered in the screening process.

8.9. The Natura Impact Statement

- 8.9.1. The application included a NIS for the proposed Waste processing facility just outside Dundalk. The NIS provides a background on the screening process and examines and assesses potential adverse effects of the proposed development on the following European Sites:
- Dundalk Bay SAC
 - Dundalk Bay SPA
- 8.9.2. The NIS includes the background and screening assessment and detail of all consultations and surveys. Desktop analysis and a field survey on the 16th of February 2021 assisted the screening and appropriate assessment

8.10. Potential Impact on identified European Sites at risk of effects

8.10.1. A description of the sites and their Conservation and Qualifying Interests/Special Conservation Interests, including any relevant attributes and targets for these sites, are set out in the NIS. The following potential impacts have been identified

- Habitat degradation as result of hydrological impacts,
- Habitat degradation as result of hydrogeological impacts,
- Habitat degradation as a result of introducing/ spreading non-native invasive species.

8.10.2. Hydrological.

There is no direct surface water connectivity with the site and the Dundalk Bay. A drainage ditch along the west boundary of the site. The Tates and Carrans Park Stream runs into the River Fane c. 2.5km to the south of the site, which enters Dundalk Bay.

Contaminated surface water run-off, silt run-off or accidental pollution event during construction or operation has the potential to affect the receiving aquatic environment.

8.10.3. Hydrogeological

The groundwater water is generally classified as a poor, unproductive aquifers with highly permeable soils where the water discharges rapidly to nearby streams or small springs. Due to the poor productivity of the groundwater, surface water interaction cannot be ruled out.

An accidental pollution event through construction could affect the water quality of Dundalk Bay via the groundwater. Contaminated groundwater has the potential to undermine the conservation objectives of the Dundalk Bay SPA.

8.10.4. Invasive Species

No invasive species have been recorded within the site.

8.11. **Appropriate Assessment of implications of the proposed development on each European Site**

Dundalk Bay SAC and Dundalk Bay SPA

- 8.11.1. There will be no direct impacts on Dundalk Bay SAC/ SPA as a result of the proposed development. The conservation objectives of the Qualifying Interest habitats area estuaries, mudflats and salt meadows of Dundalk Bay SAC, will support roosting bird species listed as species of special conservation interest in the Dundalk Bay SPA. The field survey did not identify any habitats on site which would support the wintering bird species listed for special conservation interest in the Dundalk Bay SPA.
- 8.11.2. The potential impact on each of these habitats is assessed in Table 6.2 of the NIS as summarised below:
- Contaminated surface water run-off (silts, oils, grit or and other contaminants).
 - Impact on the water quality of Dundalk Bay through ground water contamination.
- 8.11.3. Mitigation measures to protect the water quality and prevent the spread of invasive species is listed in Chapter 7 of the NIS and reiterated in the CEMP, as summarised below:
- Careful control of soil removal and stockpiling of materials to prevent siltation of water courses,
 - Use of ready-mix concrete,
 - Storage of waste materials and location of compounds away from watercourse
 - Strict control and use of hydrocarbons during the construction
 - A project-specific CEMP,
 - Use of an Invasive Species Management Plan during construction,
 - Management and installation of an Environmental Management System (EMS).
 - Emissions testing and monitoring during operations (IE Licence by the EPA).

- Preparation of an Emergency Response Plan (ERP) to manage risk to the storm water network.

8.11.4. In terms of cumulative impacts, Section 7.3 of the NIS provides, and assessment of residual impacts and Table 6.6 includes a list of those permitted development in the vicinity of the site. No projects have been identified which may, in combination with the proposed development, cause a significant negative effect. A third-party submission raised the absence of the council Park and Ride within the cumulative assessment. I note the location of this park and ride to the south of the site, accessed from the N52, I do not consider any cumulative impact would arise from both projects.

8.11.5. In conclusion following an examination, analysis and evaluation of the potential impact of the proposed development on the conservation objectives of Dundalk Bay SAC/SPA, the NIS concludes when considering the best scientific knowledge and using the precautionary approach the proposed development does not pose a risk of adversely affecting the integrity of the Dundalk Bay SAC/SPA. I note those mitigation measures have been specifically tailored to prevent any impact on the surface or ground water quality, which I have assessed and consider reasonable. Having regard to the information in the NIS and considering the mitigation measures, I can conclude that the proposed development would not adversely affect the integrity of the Dundalk Bay SAC/SPA in view of the Conservation Objectives of this site. This conclusion has been based on a complete assessment of all implications of the project alone and in combination with plans and projects.

8.12. Conclusion of Appropriate Assessment

8.12.1. The development of a Waste Management Facility at Carnabreagh, Ardee Road, Dundalk has been assessed in light of the requirements of Sections 177U and 177V of the Planning and Development Act 2000 as amended. Having carried out screening for Appropriate Assessment of the project, it was concluded that it may have a significant effect on the following European sites.

- Dundalk Bay SPA (004026)
- Dundalk Bay SAC (000455)

8.12.2. Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying interests/special conservation interests of those sites in light of their conservation objectives. Following an Appropriate Assessment, it has been ascertained that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the Dundalk Bay SAC or Dundalk Bay SPA or any other European site, in view of the site's Conservation Objectives. This conclusion is based on a complete assessment of all aspects of the proposed project and there is no reasonable doubt as to the absence of adverse effects.

9.0 **Assessment**

The main issues of the appeal can be dealt with under the following headings:

- Principle of Development
- Impact on the Visual and Residential Amenity
- Traffic and Transportation

9.1. **Principle of Development**

Introduction

9.1.1. The first reason for refusal relates to the location of the waste recovery facility at the location within the rural area and on lands zoned for "Commercial Agricultural Store" in the Dundalk and Environs Development Plan 2009-2015.

Having regard to:

- i) The process, scale and intensity of operations that will take place at the proposed facility, which would include the treatment and recovery of up to 90,000 tonnes per annum of Municipal Solid Waste.
- ii) The industrial nature of the process that will take place on site;
- iii) The location of the site in an unserved rural area on lands zoned "Commercial Agricultural Store" in the Dundalk and Environs Development Plan 2009-2015.

It is considered that the proposed development would materially contravene the zoning objective for the lands which are zoned “Commercial Agricultural Store” in the Dundalk and Environs Development Plan (DEDP) 2009-2015 and would result in an inappropriate development for this location. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

- 9.1.2. The grounds of appeal consider the site is suitable for the proposed waste management facility. Reference to other similar scaled industrial and commercial agricultural stores are noted as being suitable for similar sites in rural areas.
- 9.1.3. The grounds of appeal provide reference to both the DEDP 2009-2015 and the Draft Louth County Development Plan 2021-2027 (on public display during the appeal period) and consider the proposal can comply with both. In the case the Board considers the proposal does not comply with the draft county plan, the grounds of appeal consider a material contravention is justified. These points are further elaborated below.

Development Plan Land Use Zoning

- 9.1.4. The Dundalk and Environs Development Plan 2009-2015 was the plan in place at the time of the planning application decision as it had been subsumed into the Louth County Council Development Plan (LCDP) 2015-2021 until it was replaced by a new Local Area Plan by virtue of the provisions of the Electoral, Local Government and Planning and Development Act 2013.
- 9.1.5. During the determination of this planning application the LCDP 2015-2021 was under review and several third-party submissions referred to the policies and objectives of the Draft LCDP 2021-2027. The appeal was submitted to the Board on the 13th of July 2021 and the LCDP 2021-2027 was adopted on the 30th of September 2021.
- 9.1.6. The applicant noted the absence of any land use zoning in the Draft Louth County Development Plan 2021-2027. For the determination of this appeal, the application will be assessed for compliance with the LCDP 2021-2027, as the development plan in place for the decision making. The site is located on lands identified as Rural Housing Policy Zone 2. The grounds of appeal refer to the zoning as “white lands” where there are no uses open for consideration.

9.1.7. Policies and objectives relating to the housing need for Rural Housing Policy Zone 2 are specified in Table 3.5 of the LCDP 2021-2027. The development plan also provides guidance for the appropriate location for rural enterprise within the countryside. Having regard to the grounds of appeal and the information contained in the observers' submissions, I consider all parties were aware of these policies and objectives and I consider it reasonable to assess the proposed development against this development plan, further detailed below.

Site suitability and impact on the rural area

9.1.8. Section 5.19.3 of the LCDP 2021-2027 provides guidance for the location of rural based enterprises. Whilst the plan requires new employment to be directed to serviced sites in settlements, it also recognises there are instances in which a development can be more readily accommodated in a rural area. Policy Objectives EE 55 and EE 59 support rural entrepreneurship and rural enterprise (rural based enterprise) at suitable locations in the County.

- EE 55: To support rural entrepreneurship and rural enterprise development of an appropriate scale at suitable locations in the County.
- EE 59: To secure vibrant and viable rural communities by supporting the development of rural based enterprises.

9.1.9. The grounds of appeal provide reference to other similar developments located in the countryside. It is considered the overall design and layout of the proposed development will minimise any impact on the rural environment, is of a scale which would normally be seen in an agricultural store and is on a highly accessible location. The range of similar developments is listed on Figure 5.3 and Table 5.1 of the applicants appeal submission and both the Deeside Country Storey and Agricultural Service Store and a similar facility in Beauparc, Navan, Meath (rural setting and handles c. 250,000 tpa waste) are put forward as good examples to support the proposal at this location.

9.1.10. In the first instance, I note the proposal for the waste facility is an industrial type of use and not a rural based enterprise, i.e., not specifically linked to the rural. I consider the policies and objectives of the development plan in relation to development in the countryside support proposals which require a location in the countryside. The proposed waste facility does not require to be located on the

subject site, rather it is my opinion that a serviced site (waste and water) would be more appropriate and have a significantly lower impact on the natural environment.

- 9.1.11. In the second instance, the Board will note my EIA undertaken above and the reasoned conclusion which states the proposed development has a potential for odour and noise nuisance, groundwater impacts and negative visual amenity. The environmental impacts of locating a facility of this nature and scale in the rural area, adjacent to residential properties is significant and negative (further detailed below). In this regard I concluded that the site is not the most suitable location to accommodate a large-scale waste processing facility.
- 9.1.12. Throughout both my assessment of the proposed development and my EIA, I have raised serious concerns in relation to both the overarching environmental impacts and the direct negative impacts on those residents in the vicinity of the site and, overall, I do not consider the site is suitable for an industrial type of development of this nature and scale. Having regard to these impacts and the nature and scale of the processing facility (detailed below) it is my opinion that the proposal is contrary to the Policy Objectives EE55 and EE59 as it is not at an appropriate scale nor will it secure vibrant and viable rural communities. Having regard to the Rural Housing Policy Zone 2 on the site and those policies in relation to rural development, I consider the proposal represents a material contravention of the Louth County Development Plan 2021-2027.

Material Contravention

- 9.1.13. Section 37(2)(b) of the Planning and Development Act of 2000 as amended provides that where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with specific criteria. As stated above, the grounds of appeal consider, that where the Board believes the proposal is not in compliance with the zoning in the LCDP 2021-2027, a material contravention is justified under this section of the Act. I have provided an assessment under each of the criteria listed under Section 37 (2) (b) as follows;
- i. the proposed development is of strategic or national importance.
 - ii. there are conflicting objectives in the development plan, or the objectives are not clearly stated, insofar as the proposed development is concerned,

- iii. permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government,

9.1.14. In relation to **Section 37 (2) (b) (i)** the grounds of appeal argue the proposal is the first pre-treatment facility of its kind for the MBT of municipal waste in the region and is considered of strategic and national importance. I note the strategic objectives of the national waste legislation promotes the continued management of waste where less waste goes to landfill, and a greater quantum recycled. The proposed development can accept and treat up to 90,000 tonnes of mixed municipal waste from households and commercial collection operations. It is projected that 30% of the waste intake will be lost as moisture with the remaining 70% recycled or recovered. Whilst it must be acknowledged that the proposal would provide waste recovery and disposal facilities and assist the national targets, I do not consider the sites location is of a strategic or national importance which would require a material contravention of the development plan. The site has not been designated as a waste processing facility in any national or regional plan.

9.1.15. The grounds of appeal do not consider there are any conflicting objectives in the development plan or those not clearly stated which would justify a material contravention under **Section 37(2) (b) (ii)**.

9.1.16. In relation to **Section 37 (2) (b) (iii)** the applicant argues the proposal is supported by the Regional Spatial and Economic Strategy (RSES) for the Eastern and Midlands Regional Assembly (EMRA) where RPO 10.5 requires development plans to identify how waste will be reduced. The Eastern-Midlands Region Waste Management plan 2015-2021 is integrated into the policies of the development plan (Policy ENV 24). This regional plan supports the delivery of pre-treatment infrastructure and public civic amenities and bring centres. The plan does not specify the location of any waste facility rather Policy E1 and E2 indicates the necessary authorisations from the Local Authorities, EPA and An Bord Pleanála to permit any processing activity.

- 9.1.17. Whilst a proposed pre-treatment waste recovery facility would support the regional demand for treatment of waste, the site has not been designated as a strategic location in any current national, regional or even local economic or social plan/ programme, including the National Spatial Strategy, the National Development Plan 2018-2027, the RSES 2019-2031, the previous or current Louth County Development Plan or previous Dundalk and Environs Development Plan or the Eastern Midlands Region Waste Management Plan 2015-2021. The Board will also note my assessment on the site suitability, the potential environmental impacts, and the negative impact on the residential properties which I consider eliminates the use of the site to provide a waste facility at this location to address any regional objectives for the treatment of waste.
- 9.1.18. Therefore, having regard to my assessment above I consider a grant of permission under Section 37 (2) (b) of the Planning and Development Act 2000 (as amended), is not justified in this instance.

Preplanning

- 9.1.19. The grounds of appeal have raised concern in relation to the preplanning discussions undertaken, prior to the submission of the planning application. In this regard they note no major issues of concern had been raised by the PA. The PA response to the grounds of appeal considered the preplanning discussions do not determine the outcome of a planning application. In addition, they note that although further information was requested from other sections, having regard to the substantive reason for refusal it was considered prudent to request other information.
- 9.1.20. A copy of the preplanning minutes accompanied the appeal. These are brief and reference the Commercial Agricultural Store zoning and the land use zoning matrix which includes recycling facilities and industrial as open for consideration. The review of the county development plan was raised as a planning consideration and the applicant was advised to contact the Infrastructure Section.
- 9.1.21. I note the preplanning minutes, which I consider reasonable. I also note the applicant had not undertaken an EIAR or any detailed assessments. In this regard, it would be reasonable the comments from the PA would be brief. This aside, I consider preplanning discussions are intended to guide any prospective applicant and a full and final assessment is undertaken during the application process.

Conclusion

9.1.22. Having regard to the location of the site within a rural area, on lands zoned as Rural Housing Policy Zone 2 in the Louth County Development Plan 2021-2027 and the policies and objectives of the development plan which direct employment activities to settlements or in appropriate rural locations (Policy Objective EE 55 and EE 59) I consider the principle of locating the proposed waste processing facility on this site is not acceptable and to grant permission would be a material contravention of the Louth County Development Plan 2021-2027.

9.2. Impact on the Visual and Residential Amenity

9.2.1. The site is located to the west of the M1, just outside the settlement boundary of Dundalk and Environs. The topography of the site is undulating, and the boundary's include mature trees and hedging. A 110 kv electricity infrastructure runs along the rear of the site. The proposed development includes a new site entrance, one large building for the processing of waste, a more modest building for the staff and office use and an ESB substation. The proposal includes the removal of the front boundary hedge (along the L3168) to accommodate a new entrance.

9.2.2. The third reason for refusal relates to the impact of the proposal within a rural location, as stated below:

It is considered that the proposed development would represent overdevelopment of a limited and constrained site that would be inappropriate for this rural location. The proposed development would be out of character with the scale and pattern of development in the vicinity of the site and by reason of proximity would have an undue negative impact on the existing amenities of nearby residential properties. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

9.2.3. The grounds of appeal consider the building and the associated works are appropriate at this location as they represent a type, normally seen for common agriculture buildings.

Visual Amenity

- 9.2.4. The site comprises of an agricultural field and surrounding by countryside and one-off rural dwellings. The policies and objectives of the development requires the protection of the countryside as a natural resource directing development into settlements and serviced areas. As already detailed in both the EIA and my assessment, it is not considered this site is suitable to accommodate a processing waste facility of such as scale and nature as the proposed development.
- 9.2.5. The landscape and visual impact assessment in the EIA had regard to the design and layout of the proposed development, refers to the main building as a superstructure and does not provide any evidence to suggest that the overall development can be effectively assimilated into the surrounding rural area. In this regard, I consider the location of the processing facility would have a negative visual impact on the amenities of those dwellings in the vicinity of the site but also on the wider surrounding rural area.

Residential Amenity

- 9.2.6. As stated above, the proposed development is located directly adjacent to a one-off rural dwelling and on the opposite side of the road (L3168) from two dwellings. The site is also within the vicinity of c. 12 dwellings (to the south).
- 9.2.7. The EIA concluded that the construction and operation of the proposal had the potential to have a negative impact on the residential amenity of the residents within the vicinity of the site, as summarised below:
- The noise generated from the operational traffic during the hours of operation (07:00-00:00 Monday to Saturday),
 - The impact on the groundwater reserves of the immediate received environment,
 - The potential negative impact from odour emissions from the operation of the processing facility and the transportation of the waste into the site,
 - The negative visual impact from the excessive scale and design of the processing building.

- 9.2.8. Overall, I consider the proposal will have a significant negative impact on the amenities of the residents within the vicinity of the site by reason of the design and layout, transportation of water and operation of the facility.

9.3. **Traffic and Transport**

- 9.3.1. The fourth reason for refusal from the PA related to the impact on the local road and the additional transport generated from the proposed development as detailed below:

4. The proposed development is to be located off a heavily trafficked local road. The additional traffic movement, in particular HGV traffic, and associated turning movements generated by the proposed development will be a serious hazard for all other road users. The proposed development is therefore contrary to the proper planning and development of the area.

- 9.3.2. The Infrastructure Section requested additional information on the following:

- Compliance with Table 10.3 and TII Publication- Sight Stopping Distance (SSD)
- Copies of third-party agreements where any works outside the applicant's control are required for the sightline requirements.
- Traffic impact assessment for two junctions (N52 & L3168) and (L3168 & L7165).
- Details on the volume of traffic expected to be created.
- Details of sightlines and access to the agricultural land to the north
- The gradient of the access road shall not be greater than 2% for 7m from the junction

- 9.3.3. Having regard to the substantive reason for refusal, the PA did not request the additional information and refused for the reason stated above.

- 9.3.4. The grounds of appeal note the request for additional information by the Infrastructure Section although notes that a recommendation for refusal was not included. It is also stated that the entrance design complies with the CDP and greater than the TII requirements and a minimum of 160m can be achieved in both

directions. The grounds of appeal also reference the information in the TIA, which has been dealt with separately in my EIA assessment above.

Visibility Splays

- 9.3.5. As stated above the infrastructure section requested additional information indicating compliance with Table 10.3 and TII Publication- Sight Stopping Distance (SSD). The CDP has since been amended and Table 10.3 has been replaced by Table 13.13 in the current CDP (Minimum visibility standards for new entrances). The minimum sight distance along a local road requires a y distance of 75m and distance of 4.5m (non-domestic development).
- 9.3.6. The entrance drawings submitted with the application includes visibility splays of 4.5m (x) and 75m (y) to the front of the site, outside the site layout red line. The lands are not within the applicant's control or ownership. The visibility splay to the northeast of the site (turning left from the site onto the LS168) traverses the adjoining lands and over the access into the agricultural lands to the east. I note the infrastructure report had raised the absence of any third-party consents as an issue of concern. The grounds of appeal have not submitted any additional documentation on sightline or the design of the entrance.
- 9.3.7. Having regard to the design of the entrance and the absence of any third-party consents, which are necessary to provide unobstructed visibility splays at both directions, I do not consider the site can be adequately serviced. In this regard, I consider the proposal would lead to a traffic hazard and endanger other users of the road, the subject site, and the adjoining site.

Stopping Sight Distance (SSD)

- 9.3.8. Table 3 of the NRA publication of new roads¹² requires an SSD of 160m for a road with a design speed of 85 km/h. Appendix 1.4 of the EIAR: Consultation with ESB Networks, includes a map illustrating layout option for the site. Sightlines at 160m are illustrated and the grounds of appeal includes an aerial photograph illustrating distances of 160m in either direction along the public road. Having regard to the

¹² Design Manual for Roads and Bridges, NRA <https://www.tiipublications.ie/library/DN-GEO-03031-06.pdf>

design of the road, which is relatively straight and flat, the SSD is considered acceptable.

Conclusion

- 9.3.9. Overall, I do not consider the traffic generated from the proposed development would have a significant negative impact on the flow of traffic along the L3168 or the N52, although I have serious concerns in relation to the design of the proposed entrance into the site. The applicant has not adequately demonstrated that they have full control or ownership over the lands into the site or those lands within the sightlines necessary to achieve full unobstructed visibility splays and I consider the proposed development should be refused.

10.0 Recommendation

- 10.1. It is recommended the proposed development is REFUSED for the following reasons and considerations.

11.0 Reasons and Considerations

1. The proposed development is in a rural area, on lands zoned as Rural Housing Policy Zone 2 in the Louth County Development Plan 2021-2027. The policies and objectives of the development plan (Policy Objective EE 55 and EE 59) direct employment activities to settlements or appropriate locations in rural areas. Taking in conjunction with the existing residential properties in the immediate vicinity, it is considered the principle of locating of a waste processing facility on this unserviced site is not acceptable and does not come within the scope of the economic and rural objectives of the Development plan. The proposed development would, therefore, contravene materially the development objective as set out in the development plan and be contrary to the proper planning and sustainable development of the area

2. It is considered that the proposed development would represent overdevelopment of a limited and constrained site that would be inappropriate for this rural location. The proposed development would be out of character with the scale and pattern of development in the vicinity of the site and by reason of its obtrusive nature and proximity would have an undue negative visual impact on the existing amenities of nearby residential properties and the surrounding area. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
3. The proposed development is located along a public road and directly adjacent to an agricultural entrance. The application does not contain sufficient information of all third-party consents to achieve the visibility splays in both directions which are necessary for a safe and unobstructed entrance. It is considered that the proposed development would endanger public safety by reason of traffic hazard because of the additional traffic turning movements the development would generate on a substandard entrance onto the L3168.
4. Having regard to the information provided in the Environmental Impact Assessment Report submitted within the planning application in relation to Air Quality and Climate and Noise and Vibration, in combination with the scale, nature and hours of operation, it is considered the proposed development would have significant adverse impacts on the amenities of the residents in the vicinity of the site. The proposed development, would therefore, be contrary to the proper planning and sustainable development of the area.
5. Having regard to the information provided in the Environmental Impact Assessment Report submitted within the planning application in relation to geology, hydrogeology, and hydrology in the vicinity of the site, the Board is not satisfied, that the groundwater reserves would not be significantly diminished by reason of abstraction and failure to recharge satisfactorily, notwithstanding the proposed use of rainwater harvesting for the processing facility. In this regard, the proposed development has the potential to have a

negative impact on water bodies within the catchment of the site achieving/maintaining a “Good Water Status” as required under the Water Framework Directive. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area and be prejudicial to public health.

Karen Hamilton
Senior Planning Inspector

08th of November 2022