



An  
Bord  
Pleanála

## Inspector's Report ABP-311637-21

### Development

A Regional facility for the Importation, screening and recovery of inert soil and stones over a ten-year period. Separation of all vegetation including root systems (rhizomes) for disposal. Associated works including wheel wash, weighbridge, office & welfare facilities. The application is accompanied by a Natura Impact Statement.

### Location

Newtown, Bonnetstown, Co. Kilkenny

### Planning Authority

Kilkenny County Council

### Planning Authority Reg. Ref.

20637

### Applicant(s)

Envirico Limited.

### Type of Application

Permission.

### Planning Authority Decision

Refuse Permission

### Type of Appeal

First Party

### Appellant(s)

Envirico Limited.

**Observer(s)**

Bonnettstown Community (Waste  
Action) Group.

Joan Teehan.

**Date of Site Inspection**

15<sup>th</sup> of September 2022.

**Inspector**

Stephanie Farrington

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## 1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of 12.01ha, is located in the townland of Newtown, Bonnettstown, a rural area north-west of Kilkenny City. The site consists of two distinct areas. The roadside portion of the site is brownfield and was previously occupied by a vehicle recycling facility known as “Mulhalls”. This area of the site comprises a concrete yard and an overgrown hardcore area. It is adjoined by existing light industrial buildings to the west which are accessed via a separate entrance from the LS5025.
- 1.2. The remainder of the site consists of 4 no. agricultural fields located to the south of the hardcore area and further east. These fields are enclosed by a treeline and hedgerow boundary. A pheasant pen is located within one of the eastern fields (field D as identified within the biodiversity report). Drainage ditches are present in some of the fields and a pond is located in the north-eastern boundary of the eastern most field (field E as identified within the biodiversity report).
- 1.3. Access to the site is provided via the LS 5025 via 2 no. separate entrances including a gated agricultural overgrown pathway access and a gated access to the hardstanding area.
- 1.4. Existing development within the vicinity of the site includes agricultural land, forestry (to the east) and residential units along the LS5025 and to the south. The northern portion of the site is adjoined by warehouse format buildings which are in commercial use (“dive and marine contractors”).

## 2.0 Proposed Development

- 2.1. The proposed development is described as follows within the revised public notices submitted in conjunction with the applicant’s response to significant further information:

*“The development will consist of a regional facility for the professional management of soils where there is a suspicion or evidence of the presence of root systems (rhizomes) of invasive species, the soils will be importation, screened and recovered, in a phased manner with resultant increase in finished land height of approximately 1.4m on 8.05hectares at a maximum rate of 24,000 tonnes per annum with*

*cumulative tonnage of 192,000 tonnes, over a 10 year period. The screening process involves separation of all vegetation including root systems (rhizomes) which will be reexported from the site to a licensed disposal facility. Access and screening of material will be carried out using an existing permitted vehicular entrance, concrete yard and hard standing area (previously authorised under 11/272) associated works including the provision of a weighbridge, wheel wash, office and welfare facilities, temporary berms and screening, and associated civil works including use of modular concrete walling on concrete pad as well as undergrounding and/or relocation of electricity transmission lines within the site; all on a total site area of 12.01hectares. The application is accompanied by a Natura Impact Statement”.*

2.2. The following documentation was submitted in conjunction with the application:

- Planning Report
- Letter of Consent
- Statement of Agronomic Benefit of the Proposal by Agricultural Advisor
- Specifications/ Brochure for Eco Welfare Pod
- Appropriate Assessment Natura Impact Assessment
- EIAR Screening Report
- Archaeological Impact Assessment Report
- Invasive Species Management Plan
- Project Details Report
- Preliminary Ecological Assessment

2.3. The following additional documentation was submitted in conjunction with the applicant’s response to the request for further information:

- Biodiversity Report
- Preliminary Ecological Assessment
- EIAR Screening Report
- Natura Impact Statement

- Invasive Species Management Plan
- Noise Impact Report
- Invasive Species Risk Assessment
- Summary of queries raised through public submissions

### 3.0 Planning Authority Decision

#### 3.1. Decision

Kilkenny County Council issued a notification of decision to refuse permission for the development in accordance with the following reasons and considerations:

1. *“Having regard to the information submitted with this planning application and the revised reports submitted as further information, the internal and external referral reports received and having regards to the precautionary principle, the Planning Authority is not satisfied that the applicant has demonstrated that the proposed development will not have a significant adverse impact on the residential amenities of the area and on the surrounding and receiving environment and biodiversity. Furthermore, it is considered that the applicant has failed to demonstrate that the proposed development individually, or in combination with other plans and projects would not adversely affect the integrity of the River Barrow and River Nore SAC and SPA. Therefore, it has not been demonstrated to the satisfaction of the Planning Authority that the proposed development would not have negative impacts on the environment, would not seriously injure the amenities, or depreciate the value of property in the vicinity or would not adversely affect the integrity of River Barrow and River Nore SAC and SPA. The development as proposed would therefore be contrary to the proper planning and sustainable development of the area”.*

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

#### Initial Planner's Report (16<sup>th</sup> of November 2020)

The initial planner's report recommends a request for further information. The following provides a summary of the main points raised.

- The report outlines that the public notices are misleading as they refer only to "inert waste" namely soil and stone and do not specify that it is intended to provide "*a regional facility for the professional management of soils where there is a suspicion or evidence of the presence of roots systems (rhizomes) of invasive species*". The report recommends the submission of revised public notices.
- The report refers to the EIA Screening report submitted in conjunction with the application in accordance with the requirements of 7A of the Planning and Development Regulations 2001. A number of potential impacts on the receiving environment are identified which have not been quantified and therefore it cannot be ruled out that there will not be a significant impact on the environment. The planners report identifies a number of inaccuracies within the report in terms of the description of the baseline environment, particularly in terms of the reference to the lack of residential development in the vicinity of the site. The report cross refers to the Schedule 7 determination which outlines that further information is required.
- The planner's report refers to the Natura Impact Statement (NIS) submitted in support of the application. The report outlines that a number of measures which are stated in the NIS to be included within a Construction Method Statement are generic measures for large scale construction development and do not relate to the application site. The report cross refers to the submission on the application from the Department of Culture Heritage and the Gaeltacht who have requested a significant amount of further information in relation to the NIS.
- The report refers to the pilot nature of the proposed development which has not been tried or tested to date in Ireland.

- A detailed request for further information is recommended (29 Items). Items raised include the following:
  - Submission of to a revised NIS which addressed the detailed comments of the Department of Culture Heritage and the Gaeltacht,
  - Submission of an Ecological Impact Assessment and Noise Impact Assessment,
  - Details of NPWS Licence for Transport and Biosecurity Certification, proposals for the long-term management and Biosecurity of the application site,
  - Details of the downstream route of the drainage ditches on site and proposals to address potential pollution,
  - Justification for the proposed 700mm thickness layer,
  - Details of staff numbers,
  - Confirmation if a Ministerial Licence has been applied for the facility in accordance with the European Communities (Birds and Natural Habitats Regulations 2011;)
  - Revised proposals which maximise the sightlines at the proposed site entrance.
  - Revised drawings which illustrate the application site boundary in light of the anomalies within the submission of the application drawings;
  - Revised Preliminary Ecological Report and EIAR Screening which address inaccuracies in the description of the baseline environment.
  - Response to 3<sup>rd</sup> party submissions.
  - A revised EIA Screening report in accordance with the guidance set out within the Government Guidelines for Planning Authorities and An Bord Pleanála on carrying out Environmental Impact Assessment (August 2018).
  - Revised public notices which provide a full description of the exact nature of the development.



Planner's Report on FI Response (16<sup>th</sup> of September 2021)

The planner's report provides a summary and assessment of the applicant's response to the FI request. The following points are raised:

- The revised NIS does not address the concerns raised within the request for further information.
- The report refers to the Invasive Species Risk Assessment submitted in response to the FI request. The planner's report highlights that the biosecurity concerns of the proposed operation have not been addressed fully within the assessment.
- No clarification has been provided in relation to staff numbers on site.
- The revised site entrance proposals are unclear on the submitted drawings. The planner's report cross refers to the report from the Roads Department in KCC which recommends clarification of further information.
- The report concludes that the applicant has failed to adequately address the potential impacts of the proposed development on the residential amenity of neighbouring properties, the biodiversity within and beyond the site and the applicant has failed to demonstrate that the development would not give rise to groundwater and surface water pollution. On the basis of the information deficiencies within the application and the precautionary principle a refusal of permission is recommended.
- The Planning Authority are precluded from requesting any further information due to statutory time constraints set out within the Planning and Development Regulations 2001 – 2021.

The planner's report recommends that permission is refused for the development broadly in accordance with the reason cited within the planning authority's notification of decision to refuse permission for the development.

### 3.2.2. Other Technical Reports

#### Environmental Impact Assessment Schedule 7 Determination (16<sup>th</sup> of November 2020)

The following provides a summary of the main points raised within the EIA Schedule 7 Screening Determination:

- The determination identifies the mandatory EIA thresholds identified under Schedule 5, Part 2. The development does not fall within the mandatory thresholds for 1. Agriculture, Silviculture and Aquaculture or 11. Installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of this Schedule.
- The Determination outlines that the following potential impacts are not addressed within the application: *“full details for the management of surface waters, pollution and nuisance including the potential spread of invasive species through natural drainage and potential livestock grazing and risk to human health”*.
- Under the heading of Location of the Proposed Development it is stated that the potential impact on groundwater and surface water run-off resulting in the potential spread of invasive species has not been addressed. The potential impact of the development on adjoining forestry is not addressed. The screening determination also raises concern in relation to the potential impact on Natura 2000 and adjacent residential properties.
- The EIA Screening report does not address potential impacts on the following: biodiversity, soils and geology, water resources, climate change and human health and population.
- The extent of impact cannot be classified as local in nature due to the potential of spread of invasive species. A full assessment of impacts beyond the site is required.
- The magnitude and probability of impact is uncertain having regard to the fact that this is first development of its type in Ireland.
- The proposed development is for a 10-year period. However due to the potential presence of invasive species which can lay dormant for up to 20

years, the potential for impacts beyond the life of the permission are uncertain and have not been addressed within the application. Further assessment is required on this basis.

- The determination recommends further information in relation to potential significant effects on biodiversity, water resources, soil and geology, climate change, population and human health within and beyond the subject site.

*Environmental Impact Assessment Screening Determination (16<sup>th</sup> of September 2021)*

An updated Screening Statement was submitted by the applicant in conjunction with the FI response. The following provides a summary of the key points raised in KCC's revised Schedule 7 Screening Determination:

- It is considered that it has not been demonstrated based on scientific data that surface water management to ground will not have an adverse impact on water quality and biodiversity beyond the site.
- The Revised EIAR Screening report and further information submitted include additional detail in relation to surface water management and livestock grazing within the overall site.
- The revised reports submitted outline that proposed mitigation measures such as earthen berms along the site boundaries and the land drains within the site will prevent any potential spread of invasive species outside of the site. A monitoring programme is also proposed in this regard.
- A Revised NIS has been submitted as further information. Potential impacts on SAC's and SPA's within 15km of the site are not addressed specifically.
- Having regards to the revised EIAR Screening report, the noise impact report and all other information submitted on the 23<sup>rd</sup> of August 2021, it is considered that the magnitude and complexity of the impact of the proposed development is not significant.
- Having regard to the further information submitted, it is considered that the extent of potential impacts on the environment and on the biodiversity within and beyond the site in particular have not been fully assessed in the short, medium and long term.

- The proposed development is for a 10-year period. However, due to the potential presence of invasive species which can lay dormant in soil for up to 20 years, the potential for impacts beyond the life of the permission are uncertain and have not been addressed in the application.
- Having regard to the nature and location of the proposed development, the further information submitted with the application and the outstanding issues of concern which have not been addressed, namely the potential impacts on biodiversity within and beyond the site and the long term potential impacts where invasive species can lay dormant for up to 20 years, it is considered that the proposed development is likely to have significant environmental impact and therefore it is considered that an Environmental Impact Assessment Report is required.

Roads Report (dated 12<sup>th</sup> of November 2012\*)

- The initial roads report recommends a request for further information which includes revised proposals to maximise sightlines from the proposed site entrance.
- The report outlines that this may be achieved by relocating the existing entrance westward and/or by setting back of the adjacent boundary behind the sight visibility line.

(\* The roads report dated 15/09/2021 refers to earlier report dated 12<sup>th</sup> of November 2020).

Roads Report (15<sup>th</sup> of September 2021)

- The report cross refers to the Roads report dated the 12<sup>th</sup> of November 2020.
- The report refers to the applicant's FI response which includes a relocated site entrance.
- The report outlines that sightlines may be impacted by the existing boundary wall and the adjacent property road frontage to the west. The report recommends that the applicant should demonstrate achievement of sight lines and visibility splay from the revised site entrance.

- The report outlines that having regard to the bio-security control measures required for the development, there is concern in relation to the use of the existing field access on the eastern side of the entrance which may not have the appropriate control measures. The report recommends that the existing field access should be permanently closed in the interest of traffic safety.

Environment Section (12/11/2020)

- The initial report from the Environment Section outlines that “*serious concerns exist regarding the untried processes and management controls related to this facility and the potential for the propagation of Invasive Species on the site following the 10-year timeframe and potential for propagation beyond the boundaries of the site*”.
- The report recommends a detailed request for further information.

Environment Section (16/09/2021)

The report prepared in respect of the applicant’s FI response recommends a refusal of permission on the basis of serious concerns in relation to the operation and aftercare of the proposed facility. The main concerns relate to the following:

- a. The applicant has not adequately addressed the concerns in the proposed monitoring of the deposited soil for regrowth of root systems, both in the frequency of inspections and duration in years following completion.
- b. Monitoring of surrounding areas outside of the facility (including dwelling and gardens) has not been adequately addressed.
- c. No scientific basis for the applicant’s statement that invasive species are not distributed by animals during grazing has been provided.
- d. The report questions the effectiveness of the control measures to ensure that all root materials are removed via the wheel wash system and prevented material from entering the soak pits during overflow. Percolation testing at adjacent locations suggest the location may have insufficient infiltration capacity.
- e. The effectiveness of the surface water system for the intake and sorting area with regards to root removal, flooding and dust suppression.

- f. Concerns regarding foraging birds in the intake area is not adequately addressed.
- g. Concerns are raised in relation to the use of Kelly Blocks and their effectiveness in preventing the migration of contaminated material through the block joints.
- h. Concerns are raised in relation to the unintended material deposition of material to surrounding properties via HGV's.

The report recommends that permission is refused for the development accordance with the following reasons and considerations.

1. *The applicant has failed to adequately demonstrate that the proposed development will not cause adverse effects on the surround and receiving environment in the short, medium and long term. In this regard the risks associated with the development have not been adequately assessed.*
2. *The siting of the proposed development within an agglomeration of existing properties is not considered to be appropriate.*

### 3.3. Prescribed Bodies

Department of Tourism, Culture, Arts, Gaeltacht, Sport, and Media (29<sup>th</sup> of October 2020)

- The observation recommends a request for further information.
- The observation sets out detailed comments in relation to the Natura Impact Statement. The points raised include evidence to demonstrate that the proposed 2 year monitoring period is sufficient, monitoring outside of the site boundary, impact of grazing animals, details of chemical treatment and potential impacts on surface and groundwater, impact of future agricultural use of the lands and potential spread of the Japanese Knotweed, details of the entire project including transportation, biosecurity measures for transportation of the soils to prevent contamination along route, measures to prevent sediment and vegetative material from washdown area from entering the drainage channel, demonstration that the proposed 7m sterilisation zone is sufficient to prevent spread of invasive species and to prevent soil run off to

drainage channels, potential for contamination of groundwater from herbicides. A site survey should be undertaken to demonstrate the presence of other a qualifying interest of the River Barrow and River Nore SAC.

- The submission outlines that an Ecological Impact Assessment (EclA) should be submitted.

Department of Tourism, Culture, Arts, Gaeltacht, Sport, and Media (20<sup>th</sup> November 2020)

- Cross refers to the observation/recommendations issued on the 29<sup>th</sup> of October 2020.
- The submission relates to heritage related observations and recommends the inclusion of an archaeological condition in the instance of a grant of permission.

Department of Tourism, Culture, Arts, Gaeltacht, Sport, and Media (15<sup>th</sup> of September 2021)

- Email correspondence received confirming that the Department has no further observations to make on the case at this time and the Department may submit observations/recommendations in relation to the application at a later stage in the process.

### 3.4. **Third Party Observations**

Submissions on the application were received during the initial public consultation period and the applicant's FI response. The key points raised primarily reflect those detailed within the observations on the appeal.

## 4.0 **Planning History**

- PA Ref: 19/908: application deemed withdrawn in November 2020 for a single storey office building including services and new foul water treatment system, landscaping with all ancillary services and associated site works.

- PA Ref: 20/726: permission granted by KCC in July 2021 for a single storey office building including services and new foul water treatment system, landscaping with all ancillary services and associated site works.
- PA Ref: 11272: Permission granted in February 2012 for the following works to a vehicle end of life treatment facility: (i) retention of extension to workshop, (ii) retention for construction of additional workshop/office building and permission for change of use of part of workshop for public use (iii) retention of change of use of agricultural land to short-term storage for end of life vehicles including construction of hard surfaces and installation of oil/water separator and associated works (iv) permission for construction of parking and vehicle drop off area and modification to site boundary. A Waste Licence is required for the activities on site.
- PA Ref: 542/85: Permission granted for workshops/garage for commercial purposes, consisting of the repair and dismantling of cars and sale of car parts.

## 5.0 Policy Context

### 5.1. Development Plan

#### **Kilkenny City and County Development Plan 2021-2027**

- 5.1.1. At the time of the assessment of the application, the Kilkenny County Development Plan 2014-2020 was the operative development plan for the area. The application was assessed by Kilkenny County Council in accordance with the policies and objectives of this plan.
- 5.1.2. The Kilkenny City and County Development Plan 2021-2027 was adopted on the 3<sup>rd</sup> of September 2021 and the Plan came into effect on the 15<sup>th</sup> of October 2021. I have assessed the proposal in accordance with the provisions of the Kilkenny City and County Development Plan 2021-2027.

#### *Settlement Hierarchy*

- 5.1.3. The appeal site is located in an unzoned rural area outside any designated settlements as identified in the Development Plan. The site is located within an area



designated as an “Area Under Urban Influence” within Figure 7.1 Rural Housing Strategy.

#### Chapter 7 – Rural Development – Diversification

- 5.1.4. Section 7.7 of the Plan outlines that the diversification of the rural economy from mainstream farming can both supplement existing rural incomes and add to the richness of the rural area. Farming has been diversifying into areas such as horticulture, forestry and agri-tourism. The Council will support the development of agriculturally related industries, which are environmentally sustainable and considered a suitable use, subject to the protection of heritage and amenities.
- 5.1.5. The Plan outlines that industries that are not directly related to agriculture will however be encouraged to locate to settlements so as to support the creation of economies of scale which will underpin the vitality and vibrancy of these rural settlements.

##### *7.7.1 Development Management Requirements*

- 5.1.6. The development management standards outline that a high standard of design and maintenance will be required in all developments in rural areas. The Plan furthermore outlines that agriculture developments will be constructed and located so as to ensure that there is no threat of pollution to ground or surface waters.

#### Chapter 9 – Heritage, Culture and Arts

- 5.1.7. Section 9.2.10 of the Development Plan relates to Invasive Species. This outlines that invasive non-native plant and animal species (animals and plants that are introduced accidentally or deliberately into a natural environment where they are not normally found) are a significant threat to biodiversity. They can negatively impact on native species, can transform habitats and threaten ecosystems causing serious problems to the environment, buildings and the economy.
- 5.1.8. The Council will seek to prevent the spread of invasive non-native species.

##### *Development Management Requirements:*

- To require relevant development proposals to address the presence or absence of invasive alien species on proposed development sites and (if necessary) require applicants to prepare and submit an Invasive Species Management Plan where such a species exists to comply with the provisions

of the European Communities (Birds and Natural Habitats) Regulations 2011-2015.

- For proposals connected to surface water systems, risks associated with the spread of crayfish plague shall be considered and applicants should submit a crayfish plague management strategy where appropriate.

### Chapter 10 – Infrastructure and Environment

5.1.9. Section 10.2.29 relates to Waste Management. Objective 10G seeks *“To implement the Southern Region Waste Management Plan”*.

### 5.2. **A Waste Action Plan for a Circular Economy – Ireland’s Nation Waste Policy 2020-2025**

5.2.1. Ireland is divided into three regions (Connacht-Ulster, Southern, and Eastern-Midlands) for waste planning purposes. A waste management office has been established in each region to formulate and co-ordinate the implementation of the plans. The current plans cover the period 2015-2021, and the preparation of a ‘Waste Action Plan for a Circular Economy’ will be key to the formation of the replacement plan. The replacement plan in turn will be central to the achievement of national policy goals and targets.

5.2.2. The Section in the Plan entitled Permit Exemptions seeks to *“prioritise the introduction of regulations to allow for Article 24 exemptions for the on-site treatment of invasive alien plant species”*. The Plan outlines that: *“This material is currently transported to appropriate off-site facilities for treatment and the introduction of such exemptions will help to mitigate the environmental risks associated with such transportation”*.

### 5.3. **Climate Action Plan 2023**

5.3.1. The Climate Action Plan outlines actions that are required up to 2035 and beyond, as part of Ireland’s effort towards addressing climate change. The Plan implements the carbon budgets and sectoral emissions ceilings published by Government in 2022 and sets a roadmap for actions to halve emissions by 2030 and reach net zero no later than 2050.

5.3.2. Of relevance to the appeal, Section 15 relates to Transport and it advances an ‘avoid-shift-improve’ approach and advises of the importance of integrated transport

and spatial planning to reducing greenhouse gas emissions. Relevant 'key metrics' for the transport sector are a 20% reduction in total vehicle kms and a 50% reduction in fuel usage.

- 5.3.3. Regarding 'waste' Section 19.9.3 outlines that Ireland has made significant progress in managing waste streams, particularly in improving recycling rates, and that a range of policy tools were successful including widespread segregation of waste, which allows for capture of recyclables and biodegradable waste. The section goes on to state that already-successful policy tools need further improvement, particularly developing better prevention strategies; improving capture rates; and reducing both contamination and the amount of non-recyclable materials.

#### 5.4. **National Hazardous Waste Management Plan 2021-2027**

- 5.4.1. Difficult Wastes are discussed in Section 5.10 of the Plan. The term "difficult wastes" is commonly used to refer to wastes that by their nature and physical properties pose problems for disposal and require special management to avoid nuisance and pollution or where physical properties of the wastes create serious handling problems. Wastes can also be considered difficult if there is no available treatment technology to allow it to meet waste acceptance criteria limits or if the technology has not yet been commercially proven. Difficult wastes may or may not be hazardous; and include:

- Out of date ordnance and marine flares.
- Non-resaleable seized/confiscated controlled substances.
- Ship & cargo wastes.
- Noxious weeds.

- 5.4.2. The Plan outlines that after habitat loss, invasive species are the second biggest threat to biodiversity worldwide, and the biggest threat on islands.

#### 5.5. **National Planning Framework**

- 5.5.1. National Strategic Outcome 9 seeks the- Sustainable Management of Water, Waste and other Environmental Resources. In relation to Managing Waste, the NPF seeks to ensure that: "*Adequate capacity and systems to manage waste in an environmentally safe and sustainable manner. Adequate capacity and systems to*

*manage waste, including municipal and construction and demolition waste in an environmentally safe and sustainable manner and remediation of waste sites to mitigate appropriately the risk to environmental and human health”.*

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

## 5.6. **Regional Spatial and Economic Strategy for the Southern Region**

- 5.6.1. Invasive Species Invasive non-native plant and animal species are cited as the second greatest threat to biodiversity worldwide after habitat destruction. They can negatively affect native species, transform habitats and threaten whole ecosystems, causing serious problems to the environment, agriculture and the economy. RPO 127 of the RSES relates to Invasive Species and outlines that it is an objective to:

- a. Support coordination between the Region’s local authorities in terms of their measures to survey invasive species in their counties and coordinate regional responses;
- b. Encourage greater awareness of potential threats caused by invasive species and how they are spread;
- c. Carefully consider and implement the management of invasive species where there is a corridor, such as hydrological connections to European Sites in order to prevent the spread of invasive to sensitive sites.

- 5.6.2. RPO 107 – relates to the Regional Waste Management Plan for the Southern Region 2015-2021 and outlines that *“it is an objective to support innovative initiatives that develop the circular economy through implementation of the Regional Waste Management Plan for the Southern Region 2015-2021 and its successor”.*

## 5.7. **National Biodiversity Action Plan**

- 5.7.1. The Plan addresses pressures on Ireland’s biodiversity and ecosystem services and outlines that: *“The main threats and pressures reported on EU protected habitats and species in Ireland are from agriculture, forestry and fisheries, natural system modifications (including drainage), mining and quarrying (including peat extraction),*

*climate change, pollution, and invasive and problematic species. Habitat loss is also recognised as an ongoing pressure”.*

5.7.2. Objective 4 – Target 4.4 seeks to Harmful invasive alien species are controlled and there is reduced risk of introduction and/or spread of new species.

#### 5.8. **Southern Region Waste Management Plan 2015-2021**

5.8.1. The Waste Management Plan sets out a framework for the minimisation and management of waste in the region. The strategic vision of the plan is to rethink the approach to waste, by viewing waste streams as valuable material resources.

5.8.2. Section 16.5 sets out Environmental Protection Criteria for waste-related activities requiring consent. Policy G3 aims to *“ensure there is a consistent approach to the protection of the environment and communities through the authorisation of locations for the treatment of wastes”.*

5.8.3. Environmental Protection Criteria for the General Environment as identified within the Plan include the following:

- To prevent the spread of Invasive Alien Species (IAS), where waste material is transported from one location to another, an IAS survey of source and receptor sites will be conducted by a suitably qualified person. If IAS are found, preventative measures will be implemented to prevent the onward spread of the plant/animal material including: employment of good site hygiene practices for the movement of materials into, out of and around the site; ensuring that imported soil is free of seeds and rhizomes of key invasive plant species; adherence to any national codes of practice relating to prevention of the spread of IAS (including both Ireland and Northern Ireland Codes of Practice);
- In order to protect habitats which, by virtue of their linear and continuous structure (e.g. rivers and their banks) or their contribution as stepping stones (e.g. ponds or small woods), are essential for the migration, dispersal and genetic exchange of wild species, these features will be protected as far as possible from loss or disruption through good site layout and design;
- To protect river habitats and water quality, ensure that no development, including clearance and storage of materials, takes place within a minimum

distance of 15 m measured from each bank of any river, stream or watercourse;

- Impact from a transport perspective will be assessed including road access, network, safety and traffic patterns to and from the proposed facility in accordance with road design guidelines and/or relevant LA guidelines in relation to roads; and
- There are existing, closed or uncommenced landfills which could be used for alternative waste activities as they are considered brownfield sites; also, suitably zoned, other brownfield sites could be used for alternative waste activities. Sites that offer opportunities to integrate differing aspects of waste processing will be preferred choices. This will ensure maximum efficiency of waste processing.

## 5.9. Natural Heritage Designations

The nearest designated European sites to the appeal site, including SAC's and Special Protection Areas (SPA's) include the following:

- River Nore SPA (004233) – 4km
- River Barrow and River Nore SAC (002162) – 4km
- Dunmore Complex pNHA (001859) – 4.6km
- Ardaloo Fen p NHA (000821) – 5.6km
- Inchbeg p NHA (000836) – 7 km
- Spahill and Clomantagh Hill SAC (000849) – 14km
- Spahill and Clomantagh Hill p NHA (000840) – 14km
- The Loughans p NHA (000407) – 14.7km
- The Loughans SPA (000407) – 14.7 km
- Ballykeefe Wood p NHA (000400) – 6.4km

## 5.10. EIA Screening

### Mandatory EIAR

5.10.1. Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended and section 172(1)(a) of the Planning and Development Act 2000, as

amended provides that an Environmental Impact Assessment (EIA) is required for agriculture projects that involve:

*1. Agriculture, Silviculture and Aqua Culture*

*(c) Development consisting of the carrying out of drainage and/or reclamation of wetlands where more than 2 hectares of wetlands would be affected.*

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

5.10.2. There are no wetlands identified on site. The proposed maximum annual site throughput of imported waste soil (24,000 tonnes per annum) is less than the EIA threshold for this activity (25,000 tonnes). On the basis of the above, the development does not fall within the relevant thresholds for a mandatory EIAR.

*Sub Threshold EIAR*

5.10.3. An Environmental Impact Assessment Screening Report was submitted with the application. I have had regard to same in this screening assessment. The information provided is in accordance with Schedule 7 and 7A of the Planning and Development Regulations 2001.

5.10.4. An assessment of the proposal under the criteria set out in Schedule 7 of the Planning & Development Regulations, 2001 (as amended) is provided in the attached EIA Screening Determination and within the Assessment Section of this report.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

A first party appeal was lodged by Peter Bolger Consulting Ltd. on behalf of the applicant in respect of Kilkenny County Council's notification of decision to refuse permission for the development. The following provides a summary of the key points raised:

### *Nature of Proposed Development*

- The appeal provides an overview of the development. The proposal seeks importation, screening and recovery of inert soil and stones, waste class LOW 17 05 04, where the presence of invasive species exists. The screening process is to be both mechanical and manual to remove all vegetation (<1% by weight), recover the soil (99%+) on adjoining lands in a phased manner, and transport the vegetative matter to a licensed facility for incineration. Each phase is then to be monitored for invasive species growth for an appropriate period, with manual picking where necessary and only leaf wipe treatment (no spraying) where persistent re-growth occurs.
- The appeal outlines that the facility will function as a special form of Waste Soil Recovery Facility in that it seeks only soil with invasive species confirmed on the originating site and will provide a regional centre for dealing with this material which is not currently provided for. The low annual and cumulative volumes do not require an EPA waste licence and a Waste Facility Permit is the appropriate dual consent. Currently, such material from the south-east is brought to a licensed facility in north Dublin for deep burial of 100% of the originating soil.

### *Kilkenny County Council Decision*

- The appeal outlines that KCC's decision failed to have regard to the substantial body of technical evidence placed before it, failed to give a reasoned analysis as to the conclusions arrived at, and that the decision arrived at is technically incorrect.
- The Board is requested to give a de novo objective assessment of the application and apply reasonable judgement to the highly mitigated risks outlined in the PA's decision and the regional and national need for the facility proposed.

### *Response to Issues raised within the Planning Authority Reports*

- Item 1: The appeal refers to the proposed treatment of Japanese Knotweed. It is stated that Japanese Knotweed rhizomes may go dormant and re-sprout after 20 years, but all these will be removed by the screening process which



involves both mechanical and human pickers. Any remaining pieces of root and rhizome will be dying from the effects of pre-treatment. The few that are alive will have no ability to go into dormancy and will grow the next season, but they will most will not survive. Any sprouts in the spread soil will be manually removed and only treated with herbicide (glyphosate) if absolutely necessary. The appeal outlines that a weed wiper will be used rather than spray.

- Item 2: The whole process will be fully compliant with NPWS licenses and regulations, including waste regulations.
- Item 3: All deliveries and movements on site will be covered to prevent loss or windblow of material. As stated in Section 3.4 of the Revised NIS, deliveries will not be accepted unless the source material has been tested for contaminants and the loads arriving are still sealed. There will be no accumulation of rejected material, each load is inspected individually and must be removed at time of rejection by the same licensed haulier.
- Item 4: Excess water generated from the washdown area will pass through silt and sediment traps prior to discharge through a closed pipe system to soak pit. The design ensures that no water or sediment from the truck washdown area can enter the drainage channel.
- Item 5: The fields will not be used for depositing soil until they are surrounded by a continuous low berm. The berms will be centred approximately 5-7m from the surrounding hedge or drain and the intervening ground will not be trafficked. It will develop a closed cover of vegetation in the first growing season which will then naturally be re-wilded by species spreading from the hedge banks behind. This will prevent soil run-off to any nearby drains.
- It is not possible to prove that 5-7m will prevent any Knotweed from establishing in this zone, but the berms and this buffer zone will prevent any escape outside of the site. The appeal furthermore outlines that neither of the plants accepted reproduces by seed; they require viable pieces of rhizome to be blown or carried outside the embanked cells.

- Item 6: The appeal outlines that there will be minimal herbicide levels within the spread area as all rhizomes will be treated off site. Minor use on site will be with weed wiper rather than spray. The purpose of the exercise is to extract and re-export all rhizomes that may have glyphosate or its derivatives within the rhizomes. There are no drains or streams on site that would be used by otters for feeding. The animals occasionally travel overland to feeding sites and then navigate along stream banks. The appeal outlines that this would be their only use of the Stony Stream as it is too small to maintain fish and is cut off from the Breagagh and Nore by a shallow hole and underground flow. All streams and drains on site flow eastward, the site drains connect at the NE corner and then flow east through forestry to join the eastern branch of the Stony Stream which discharges to the larger channel at the southern point of the townland. The amount of flow on site is minimal in summer and there is significant ponding when it meets the forest, allowing sedimentation.
- Item 7: The appeal refers to the characteristics of the site which includes pasture fields and hedges which were cut back and cleaned in Autumn 2020. It is stated that there is no other habitat other than field drains and a dried out artificial pond in the NE corner of the site. An EcIA would not provide any more detail than the submitted biodiversity report other than stating that the impact of leaving a bank around each spread cell would be a positive ecological development that would increase on-site biodiversity significantly over its current, strictly agricultural value. This would be considered a habitat gain rather than loss. There are no streams on site where culverting is necessary.
- Item 8: Hedge tidying was carried out before any site survey for flora and fauna and was part of ordinary agricultural management.
- Item 9: Foraging birds/mammals will have no interest in the organic material that will be produced.
- Item 10: The proposal will have low protective berms to protect internal drains in addition to the external drains/streams. This means that stormwater is contained within the development. The low level of compaction of the soil ensures percolation into the soil.

- Item 12: Leaf wiping during the monitoring period is only where re-vegetation is persistent after having manually picked initial re-growth. Leaf wiping means a small brush with minimal herbicide on a leaf with any identified re-growth. It is anticipated that only a small number of plants, if any, would require this in any given year. A small amount of herbicide is used (if required) compared to what is routinely used in most domestic gardens.
- Items 13/14: All water discharges through the NE corner of the site. No surface water run off occurs in the fields as all rainfall penetrates the ground to the water table and then discharges laterally to field drains.
- Item 15: Licensed facilities elsewhere in the country are not required to include biosecurity measures for the original site or for the transportation to the licensed facility. The applicant has offered to inspect each originating site and review the transport arrangement for biosecurity. All deliveries to the facility will not only be pre-approved and inspected but the appropriate licences will be checked prior to dispatch from the originating site.
- Item 17: The Planning Authority has the ability to apply what it sees as an appropriate bond. A rationale for the calculation of the applicants suggested bond of €5,000 (i.e. 2 \* ½ days \* 10 years of ecologist time at €500 per day).
- Item 19: The FI response included a Noise Assessment Report which concluded that the EPA Guidelines for such facilities shall not be exceeded at sensitive locations. The site has a permission for vehicle dismantling and this should be considered by the PA as the baselevel. Walls shall be increased in height at certain locations to ensure noise from the proposed mechanical screening equipment is mitigated.
- Item 21: The PA's rejection of the proposed biosecurity measures appears to be based on the Council's view that the current licensed method for the transportation of Japanese Knotweed is inadequate. The use of a geotextile layer at biosecurity stations is best practice on sites contaminated with Japanese knotweed. The use of a power-washer to wash down trucks and equipment leaving contaminated sites and then inspection by an Invasive Species Clerk of works is also best practice.

- Item 22: The figure of 700mm was chosen based on the depth advised by the UK Environment Agency's Code of Practice, based on the size of the site and anticipated throughput. The intention is not to over compact the soil as to do so might impede re-vegetation and the identification of surviving fragments.
- The proposed nature of the phasing is to allow for maximum opportunity to observe any regrowth at the facility.
- Item 23: The professional staff associated with the development would include a facility manager, an ecologist, a plant operator and 6 manual pickers.
- Item 24: The boundary wall on the adjoining site referred to in the Roads Design Section report is under the control of the applicant. It is proposed to set back the wall behind the visibility splay to achieve the visibility sightline based on a 3.0m setback distance. It is not proposed to use the existing entrance to the north-eastern corner of the site, if required the applicant would agree to a condition that this entrance be decommissioned.

*Screening for Environmental Impact Assessment:*

*Legislative Threshold*

- There are no wetlands on site apart from field drains and an artificial pond which is dry for most of the summer.

*Surface water management*

- All existing drains will be separated from the soil deposition cells by berms, centred 5-7m from the drain. These areas will not be trafficked and compacted so this ground will have adequate infiltration. Flow in the drains is low and there is a ponded area where they leave the site which will settle any suspended material which may arise during construction.

*Absorption capacity of environment*

- There is no possibility of the spread of the invasive species through groundwater.

*Mountains and Forests*

- Since surface water leaves the site through the NE corner flowing then through forestry, an annual check can be made along this line before the

water enters the Stony Stream. The applicant is happy to accept reasonable water monitoring conditions, even though this is not a process water issue.

#### *Protected Areas*

- The River Nore SPA is covered in detail in the NIS along with the River Barrow and River Nore SAC. The Spahill and Clomantagh Hill SAC and Loughans SAC are both out of contact with Newtown. The hills are topographically higher while the Loughans is higher up the Nore catchment on the Goul River. There is no possible linkage with these sites.

#### *Extent of Impact*

- As escape of invasive plant material will be prevented with the mitigation measures outlined in the NIS and elsewhere, and since the potential linkage to the surrounding environment will be monitored, the extent of impact is essentially localised.

#### *Duration of Impact*

- The appeal response outlines that the survival of any small living pieces of rhizome left after the extraction process will be one or two years at most, hence the proposed 2 year monitoring period as each phase is completed. The 20 year figure widely quoted relates to much larger intact rhizomes or clumps of plant which will not pass the mechanical and manual screening process.
- Standard industry practice is to observe 2 years (growing seasons) with no growth in order to declare a site remediated. This is in line with the Property Care Association Code of Practice in the Management of Japanese Knotweed.
- Additional monitoring is proposed by the applicant post completion by an ecologist at the end of each growing season.

#### *Noise*

- A Noise Assessment Report was submitted in response to Planning Authority's FI request which outlined that appropriate EPA thresholds would be met and the increase in noise is marginal. The appeal furthermore refers to

the permission on site for vehicle dis-assembly and is therefore permitted to work to commercial thresholds.

- It is proposed to increase the height of walls at certain locations to ensure noise from the proposed mechanical screening equipment is mitigated.
- One neighbour requested the reduction in height of the proposed eastern earthen berm at the boundary with their property and this has been complied with.

#### *Human Health*

- There is no risk to human health from the specialised nature of this development. There is reasonable distance mitigation for noise and dust which together with the proposed berms results in a low risk to human health.

#### *Precedence for Development*

- The appeal refers to the PA Screening Report which outlines that there is a lack of precedence for such a development and unknown noise impacts. In this regard it is stated that a detailed Noise Impact Assessment was submitted in response to the FI request. The appeal furthermore outlines that there are plenty of soil recovery sites in operation which do not have the level of screening proposed within the subject site.

#### *Biodiversity Impacts*

- An EIAR is required on the basis of concern expressed outside of the site. No reasonable justification is given for this view, and such a view is contrary to the evidence given in many ecological/biodiversity reports submitted by the applicant.
- The proposal is a relatively simple operation with much commonality to standard soil facilities once the soil recovery phase is reached. Substantial mitigations were proposed where any risk has been identified.

#### *General*

- The law requires that detailed reasons are given where issues of NIS/EIAR are being considered and this has not been provided by KCC. The Screening Report by KCC has had no regard to the impact of the mechanical and

manual screening of the material on the near elimination of risk of even moderate re growth or of accidents by soil recovery. It is stated that the PA is flawed in relation to the suggestion that an EIAR is required.

### *Appendices*

The following correspondence is attached to the appeal:

- Appendix A: KCC Notification of Decision to Refuse permission
- Appendix B: KCC Further Information Request
- Appendix C: Response to FI Request
- Appendix D: KCC Planning Report
- Appendix E: KCC EIA Screening Report

## **6.2. Planning Authority Response**

Kilkenny County Council's response to the 1<sup>st</sup> party appeal outlines that the Planning Authority has no further comment on the appeal. The correspondence refers to the planner's report and internal referral report received from the Environment section.

## **6.3. Observations**

2 no. observations were submitted in respect of the first party appeal. The following provides a summary of the main issues raised within the observations.

Bonnettstown Community (Waste Action) Group C/O Mr. Stephen Colgan, Newtown, Bonnetstown, Tullaroan Road, Kilkenny, R95C8NH

- The observation sets out the group's strong objection to the development. It is requested that the contents of the original application and the significant further information response are also taken into consideration. A copy of these submissions are attached to the appeal. The observation focuses on the points of appeal submitted to the Board.

### *Japanese Knotweed*

- The appeal is based on the premise that it is appropriate to treat Japanese Knotweed and other invasive species off-site from its original location. No

evidence is provided to demonstrate that beyond scientific doubt that this activity does not pose threat to human health or the environment. The basis of the appeal is unfounded. The observation refers to ABP Ref 304462-19 which, it is stated, sets a precedent for the unsuitability of such a facility in an area close to residential dwellings and an SAC.

#### Nature of Development

- The development is industrial in size, scope and nature and is not mainly for the purpose of improvement of agricultural land. The main purpose of the development is to establish a commercial enterprise to mechanically and manually treat soil and stone contaminated with invasive species prior to land spreading and the pre-treated soil and stone in the adjoining fields.

#### Material Contravention of Kilkenny County Development Plan 2014-2020

- Industrial development in a rural area is not in accordance with the objectives of the Kilkenny County Development Plan 2014-2020. A grant of permission would constitute a material contravention of the County Development Plan.

#### Natura Impact Statement

- The observation outlines that the revised NIS is inadequate. The revised NIS fails to provide a scientific basis for the adequacy of a 2-year monitoring period for Japanese Knotweed. The NIS does not address the risk of grazing animals or transportation by birds or the risk of contamination to groundwater from herbicides or the transport of rhizomes via flood waters.
- The observation cites guidance from the TII Publications GE-ENV-01105 The Management of Invasive Alien Plant Species on National Roads December 2020 which outlines that preference should be given to treating Japanese Knotweed in its original location to limit the risk of further spreading of the plant. The methods proposed by the applicant do not comply with the controls set out within the guidance and therefore pose a risk of introduction and spread of invasive species at the proposed development site and beyond.
- The observation refers to the statement in the NIS which outlines that entire project including transportation and recovery of roots and other vegetation must be undertaken by Hauliers with an NPWS Invasive Species Transport



Licence and the material must be suitable for disposal at the facility. The NIS does not address the security of loads arriving at the facility and is therefore inadequate.

- The revised NIS does not assess the risk of failure of vehicle coverings or a vehicle carrying this material being involved in a road traffic accident and is therefore inadequate. The proposed measures to cover vehicles with a tarpaulin are inadequate. The TII guidance states that only vehicles that are deemed to be biosecure shall be used to transport contaminated soil.
- The revised NIS does not demonstrate that the proposed mitigation measures are effective to prevent sediment and vegetative material from the truck washdown area from entering drainage channels. No specification is given for the inspection and maintenance of silt and sediment traps and the procedures for emptying them. The application fails to demonstrate beyond all reasonable scientific doubt, that the activity will not pose a risk to Natura 2000 sites or to the environment.
- The NIS does not provide a scientific rationale to support the statement that a 7m sterilisation zone (or 5-7m sterilisation zone as referred to in the appeal documentation) is adequate to prevent the spread of Japanese knotweed and to prevent soil run off to drainage channels.
- The observation outlines that contamination of groundwater through herbicide use, both on site and application of glyphosphate to soil at the source site before its arrival on site, should be assessed. The applicant states that there are no drains or streams on site that would be used by otters for feeding but no survey is provided to verify this statement. The observation relates to the wash-down area from the picking area and outlines that a silt trap will not prevent water contaminated with glyphosphate from entering the watercourse. No information on the brand or formulation of the glyphosphate is provided or demonstration of its approval for aquatic use. The revised NIS is therefore inadequate.

#### *Biodiversity Report*

- The Planning Authority's request for an EclA has not been sufficient addressed. The observation refers to the submitted Biodiversity report and

outlines that this does not address Item 7 of KCC's further information request. The destruction of hedgerows prior to applying for planning permission demonstrates a disregard for the protection and enhancement of biodiversity. No restoration plan is provided that ensures the planting of native hedge and species.

### *EIA Screening*

- The observation refers to the revised EIA screening report which indicates the procedure for storage of material from the screening and picking process. This does not address the issue of vegetation picked up by mammals or birds from the screening area or from the field and does not address the issue of windborne material in an area where high wind speeds are prevalent.
- The FI response illustrates the downstream route of the watercourse/drainage ditch where it discharges from the site to lands outside of the applicant's control. The application does not demonstrate how there will be no surface water discharge to the downstream watercourse. No hydrological assessment has been carried out.
- The observation refers to the applicant's statement that other licensed facilities elsewhere in the country are not required to include biosecurity measures for the originating site or for the transportation to a licensed facility. In this regard the submission outlines that other licensed facilities are not screening this material, nor are they spreading this material across a field but are burying the material in a controlled environment or incinerating it and as such, the activities are not comparable.
- No information has been provided to demonstrate that a €5,000 bond is sufficient to cater for the potential future and long-term management and security measures. No detailed aftercare management plan has been submitted.
- Biosecurity Risk: An unsigned Invasive Species Risk Assessment is submitted. The biosecurity concerns are not addressed within the submitted further information.

### *Access and Traffic*

- The revised entrance proposals are unclear in relation to the existing entrance to the north-east corner of the site. There is a concern around the safety of the proposed site entrance. The local rural road is a narrow local road with bends and poor sightlines. It is unsuitable for the type and volume of traffic associated with the proposed development. No assessment of traffic flows or impact of HGV movements has been provided within the application. The volume of heavy vehicles will have a detrimental impact on the surface of roads within the area. The traffic information provided does not address the traffic associated with the proposal or in combination with the existing “dive and marine contractors” present adjacent to the site or other developments in the area.
- The increase in HGV traffic will result in significant traffic impact including road safety, damage to roads, environmental nuisance such as noise, vibrations and dust associated with such vehicles. The applicant has not submitted an assessment of the suitability of the local road surface, a Road Safety Audit or adequate details of the proposed haul routes.

### *Environmental Impact*

- KCC have determined that there was inadequate information on the following environmental factors: human health, biodiversity, land, climate, risk of major accidents and disasters and baseline scenario. The revised EIA Screening Report does not adequately address environmental factors. Kilkenny County Council have determined that an EIAR is required given the potential impacts on biodiversity within and beyond the site and the long-term potential impacts where invasive species can lay dormant for 20 years.
- The observation refers to the assertion by the applicant that the proposed facility has much commonality to standard soil facilities. This is rejected by the observer.
- The applicant would be required to operate under a licence granted by the NPWS, however the applicant has not produced any evidence of engagement with the NPWS.

## *Conclusion*

- Residents in the area are concerned that the proposed presents an environmental risk and is therefore not in accordance with the proper planning and sustainable development of the area.
- The applicant's further information response and appeal lacks robust scientific evidence demonstrating that the proposed development will not give rise to wind and waterborne transportation of invasive species rhizomes and does not provide any significant level of comfort that there is not risk of impact to the SAC identified or their qualifying interests.
- No Ecological Impact Assessment has been submitted.
- The Board is requested to uphold the planning authority's decision to refuse permission for the development.

## Joan Teehan, Gaulston, Rathmoyle, Co. Kilkenny

- The observer is an adjoining landowner of 2.15 acres.
- The observation cross refers to submissions made on the original application and at further information stage. Copies of these submissions are attached to the appeal.
- The observation raises concern in relation to the impact of the development on the adjoining landholding. In particular concerns are raised in relation to the build up of above ground water behind the berms into the adjoining site.
- The observation raises concern in relation to the potential impact of Japanese Knotweed on the Lacken Group Water Scheme Concrete Reservoir located at the upper end of the observer's site.
- The observation raises concern in relation to the impact of the proposal on the economic viability of the adjoining landholding in the context of sale of silage and hay. The existing purchaser has raised concerns relating to the spread of invasive species.
- The application seems to accept that there would be escape of invasive species.

- The bond is only for 10 years and is vastly insufficient. It covers only infestation removal and not any potential property damage i.e. potential water reservoir damage and subsequent leakage onto the observers adjoining landholding.
- The proposal will increase driving risk for all road users in the locality.
- The observation raises concern in relation to the risks and nuisances of the Envirico Ltd. operation for a minimum of 10 years without benefit and a very probable chance of economic loss in income and capital value.

## 7.0 Assessment

### 7.1. Introduction

- 7.1.1. This is a first party appeal against the decision of Kilkenny County Council to refuse permission for a regional facility for the professional management of soils where there is a suspicion or evidence of the presence of root systems (rhizomes) of invasive species. The issues raised within the reason for refusal relate to adverse impact on the residential amenities of the area and on the surrounding and receiving environment and biodiversity together with potential for impact upon the River Barrow and River Nore SAC and SPA. Kilkenny County Council's Screening Determination furthermore outlines the requirement for and EIAR to accompany the application. 2 no. third party observations have been lodged in respect of the appeal.
- 7.1.2. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, and inspected the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:
- Principle of Development/Compliance with Policy
  - Potential for spread of Invasive Species
  - Scope of Application
  - Environmental Impact Assessment
  - Appropriate Assessment

## 7.2. Principle of Development/ Compliance with Policy

- 7.2.1. The proposal comprises the development of a regional facility for the professional management, importation, screening and recovery of soils where there is a suspicion or evidence of the presence of root systems (rhizomes) of invasive species.
- 7.2.2. A rationale for the proposal is set out within the application documentation. This outlines that the applicant Envirico are a leading invasive species control contractor who have been involved in several projects dealing with the treatment of Japanese Knotweed in the manner proposed within the subject application on the site of origin.
- 7.2.3. The application documentation outlines that Envirico currently export soils with rhizomes for incineration off several projects to the Netherlands and elsewhere. It is stated that the current alternative treatment options are not economically viable in the long term, being deep burial or incineration of the entirety of the soil, which must be exported prior to incineration. The proposal seeks to provide a local/regional facility resulting in lower transport and treatment costs and a significantly lower carbon footprint. The site will serve all sizes of development where carrying out such treatment on site is not an option and where the current cost of soil treatment, either deep burial or total incineration at great expense on mainland Europe is prohibitive.
- 7.2.4. The planning submission outlines that the need for this facility currently extends beyond the south-east region and it is likely that facilities of this nature will be a regional feature in the near future. It is stated that the site will primarily serve the South- East Region but will have a demand from further afield while a regional network of facilities is established.
- 7.2.5. The application outlines that the development will require a dual consent of a Waste Facility Permit for a single waste class, LOW 17 05 04, as well as an application for permission.

### *Compliance with Policy*

- 7.2.6. At the time of the assessment of the application, the Kilkenny County Development Plan 2014-2020 was the operative development plan for the area. The application was assessed by Kilkenny County Council in accordance with the policies and objectives of this plan. The Kilkenny City and County Development Plan 2021-2027 was adopted on the 3<sup>rd</sup> of September 2021 and the Plan came into effect on the 15<sup>th</sup>

of October 2021. I have assessed the proposal in accordance with the policies and objectives of the operative Development Plan namely the Kilkenny City and County Development Plan 2021-2027.

- 7.2.7. The observation on the appeal by Bonnettstown Community (Waste Action) Group outlines that the proposal constitutes a material contravention of the Kilkenny County Development Plan 2014-2020 on the basis of the development of an industrial development within a rural area. The site is located within an unzoned rural area outside of any settlement boundary identified within the Kilkenny City and County Development Plan 2021-2027. I note that Kilkenny County Council do not cite material contravention of the Development Plan within their reason for refusal. I have considered the principle of the proposal on its merits and in accordance with the relevant provisions of the Development Plan and guidance set out within the Southern Region Waste Management Plan.
- 7.2.8. The application documentation outlines that the proposed development reflects the established use on the site. In this regard I note that the appeal site comprises two distinct areas. The brownfield area of the site and was previously occupied by a vehicle recycling facility known as “Mulhalls” a facility which has permission for workshop/offices/end of life vehicle facility (PA Ref: 11/272). The remainder of the site consists of agricultural lands. The existing brownfield hardstanding area of the site will accommodate the mechanical and manual screening of imported soil and stones prior to the screened material being recovered through deposition on the adjacent farmland. The planning application includes a statement from an Agricultural Advisor which states the agronomic benefits to the site through the proposed land reclamation works. This outlines that at present the site consists of low-lying, relatively poor quality, wet and rushy agricultural land and the proposed agricultural land with improved agronomic gain.
- 7.2.9. While I note the previous use of the site, I consider that the potential impact of the proposal on the amenities of the surrounding area is a key consideration in assessing the principle of the development. The proposal seeks to develop a regional scale waste facility for the professional treatment of soils where there is evidence of root systems of invasive species. Section 10.2.29 of the Kilkenny City and County Development Plan relates to Waste Management and Objective 10G seeks: *“To implement the Southern Region Waste Management Plan”*.

- 7.2.10. Policy G3 of the Southern Region Waste Management Plan aims to “*ensure there is a consistent approach to the protection of the environment and communities through the authorisation of locations for the treatment of wastes*”. While the plan does not identify specific locations for future waste related activities it provides guidance on the siting of such activities. Environmental Protection Criteria for waste related activities requiring consent are set out within Section 16.5 of the Southern Region Waste Management Plan. The protection criteria, as detailed in Section 5.6 of this report, relate to measures to prevent the spread of invasive species, measures to protect water courses, habitats and water quality, options for co-locating of waste activities and assessment of traffic impact.
- 7.2.11. On the basis of the information submitted in conjunction with the application and the appeal, and having regard to the contents of the observations on the appeal, submissions on the application, reports from Kilkenny County Council and statutory consultees I am not satisfied that the applicant has provided a sufficient rationale for the siting of the proposed regional waste facility or demonstrated adherence to the Environmental Protection Criteria set out within the Southern Region Waste Management Plan. In this regard, I am not satisfied that the proposal is in accordance with Objective 10G of the Kilkenny City and County Development Plan 2021-2027 which seeks: “*To implement the Southern Region Waste Management Plan*” or Policy G3 of the Southern Region Waste Management Plan.

### **7.3. Potential for Spread of Invasive Species**

- 7.3.1. The principal reason underpinning Kilkenny County Council's reason for refusal relates to the potential of spread of invasive species from the site to surrounding areas and associated impacts on residential amenity, the environment, biodiversity and Natura 2000 sites. Such concerns are reflected within the observations on the appeal and the submissions on the planning application, internal reports in KCC from the Environment Section and within the submission on file from the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media.
- 7.3.2. The applicant's Planning Submission outlines that the proposed development is similar and, post screening of the inert material no more environmentally sensitive than many other soil recovery facilities in the region. The main difference is that it will focus on dealing with soils which have been assessed as probably having vegetation



which includes invasive species root systems. I consider that the difference between the proposed facility and other soil recovery facilities to be significant.

- 7.3.3. At the outset, I consider it important to set out the proposed processes and control measures within the facility as sets out within the application documentation.

#### Processes

- *Screening Area*

- 7.3.4. It is proposed to construct offices, weighbridge and wheel wash in the area inside access gate, and to use this area to manage imported soil and recording all materials in and out of the facility. HGV deliveries will arrive at the site access, have documentation checked and then proceed to the weighbridge before depositing the contents of the truck into the screening area. The truck departs via the dedicated wash down facility directly in front of the exit.
- 7.3.5. The stockpile and screening areas comprises of concrete hardstanding, surrounded by walls of Kelly Blocks with geotextile to prevent any particles from exiting. A dedicated excavator will be located within the stockpile area in order to tidy the incoming material and load the Screening Plant. Large stones and stones will be separated on the Screening Plant and other material will continue onto the conveyor belt for hand picking by a team of operatives.
- 7.3.6. Hand pickers will remove all visible plant material from the soil and stones and place these in tonne bags. These bags will be securely sealed at the end of the day and placed in a sealed skip for storage for later disposal to an off-site waste facility.
- 7.3.7. The screened soils and stones will fall directly into a waiting trailer which will be moved to the soil deposition area by a designated tractor.

- *Soil Treatment and Recovery*

- 7.3.8. Material will be taken to the deposition area by a dedicated tractor and trailer. The contents will be tipped adjacent to the area it will be spread. The tractor will not enter any area where material has already been deposited.
- 7.3.9. The soils will be recovered, in a phased manner with resultant increase in finished land height of approximately 1.4m on 8.05 hectares at a maximum rate of 24,000 tonnes per annum with cumulative tonnage of 192,000 tonnes, over a 10 year

period. The site is divided into 4 land parcels, along field boundary lines, as identified in the Site Layout Plan Drawing no. J665-PL03-002 with just one phase to receive soil at any time. Each parcel of land will receive two layers of soil over the course of the development resulting in 4 areas with 8 phases of development.

7.3.10. The 4 land parcels are identified as Phase 1 & 5, Phase 2 & 6, Phase 3 & 7 and Phase 4 & 8. The planning statement states that the phasing arrangement is such that each area of soil recovery can be monitored for re-growth of invasive species plants over a minimum of two-year period. When all land has received a single layer of soil the process reverts to Phase 1 where a second layer of soil is applied (0.7 to 0.8m in depth) and the process of seeding and monitored again.

7.3.11. Soil and stones LOW Class 17 05 04 will be imported, screened and spread as described above in two layers over the entire site and graded to achieve a natural landform with stormwater draining naturally along and off the final grassed surface.

#### Control Measures

7.3.12. An Invasive Species Management Plan prepared by Envirico was submitted in conjunction with the planning application and an updated Invasive Species Management Plan was submitted in response to Kilkenny County Council's request for further information. Section 5 of the Invasive Species Plan relates to Invasive Species Management and identifies the procedures and processes which will be followed on site to ensure that there is no significant risk of spreading invasive species. The procedures identified to mitigate against the spread of invasive species relate to procedures at the site of origin, within the screening area and within the deposition area. Details of monitoring are also provided. The key measures are summarised below:

#### Site of Origin

- Request to Receive Waste – once a request is received a copy of the Invasive Alien Species Management Plan will be requested from the client and examined by the site management. If acceptable, Envirico will issue a provisional letter of acceptance in order for the client to apply for a Transport Licence from the NPWS.
- NPWS Transport Licence to be received by the proposed site of origin.

- Envirico personnel will visit the site of origin before a letter of acceptance is issued. They will confirm the identification of invasive species, inspect the site and biosecurity features and discuss steps that will be taken to ensure biosecure excavation and loading of material. Both Japanese Knotweed and Winter Heliotrope must be treated with a glyphosate-based herbicide a minimum of 2 weeks before excavation, and a record kept of the treatment. Each load that arrives on site must be accompanied by a completed Certificate of Biosecurity.
- The Management Plan outlines that the procedures undertaken at the site of origin is above and beyond current requirements of Irish Waste facilities licensed to accept soils and stones containing Japanese Knotweed.

#### Arrival on Site

- Paperwork will be checked before entry is permitted. The truck will follow to the weighbridge and then reverse into the tipping area. The truck drives off the ramp and across the weighbridge before driving into the dedicated wash down facility directly in front of the exit.
- The truck will be washed and certified as clean before exiting the site. The material washed off the truck will fall to a grid and will be inspected daily. Water will be collected in water recycling tanks for reuse within the wash down area. These tanks will serve as silt traps and will contain a boom to remove hydrocarbons. Overflow will drain to a soakpit.
- All water that results on site will either be recycled for site operations, or will soak away through the soakpit, therefore there will be no hydrological connection with any watercourse.

#### Screening of Soil and Stones

- All hand-picking operatives will wear white coveralls and wellington boots and these clothes will not leave the site.
- Water flow will be managed carefully through the site. Surface water will flow into a drainage channel at the southern end of the screening area. A bypass separator and heavy duty silt trap will be installed through which water will pass before being drained to a Soakpit.

### Deposition of Screened Material

- The deposited material will be spread and graded to a depth of no more than 800mm by a designated machine. This machine will remain at the deposition area until ready for a complete washdown.
- A 2m high and 7m wide berm will be created by stripping the topsoil prior to depositing the material. This will ensure no invasive species can grow beyond site boundaries of the site and negates the need for a root barrier membrane to be installed along the perimeter.
- The berm is extended to 12m in width in the vicinity of the border of the deposition area with a neighbouring property.

### Site Monitoring

- All areas of the site in operation will be checked for invasive species on a weekly basis during the growing season (April to October).
- Prior to entering the Deposition Area, staff will set up a Portable Washdown Area adjacent equipped with water, a boot cleaner, bucket and stiff bristled brushes. Staff will pass through this area as they exit the deposition area. PPE will be securely stored on site.
- Any regrowth will be excavated by hand on site in order to remove all root/rhizome material and added to the vegetation to be removed off site. If regrowth is persistent a herbicide will be applied directly (leaf wiping) to the leaves of the plant. This ensure there can be no contamination of soil from spray falling on the ground. Only an aquatic approved formulation of glyphosate-based herbicide will be used to trat any persistent regrowth.
- Detailed records of herbicide application will be maintained.
- The deposition area will continue to be monitored until a minimum of 2 growing seasons have passed with no regrowth. The timeframe for monitoring is in accordance with current UK best practice regulations (INNSA, PCA Code of Practice). Following two consecutive years of no regrowth the land can be returned to agricultural use.

7.3.13. I have had regard to the documentation submitted in support of the application and appeal including the Invasive Species Management Plan and the Natura Impact Statement which set out mitigation measures at operational phase of the development including monitoring. The Invasive Species Management Plan outlines that procedures identified will be followed to ensure that there is no significant risk of spreading invasive species into the wider environment at any stage of the soil recovery process. An invasive species Risk Assessment is also submitted in support of the application which outlines that the risk of spread of invasive species is low with the implementation of mitigation/control measures. I note that the excavation and transportation of soils containing Japanese Knotweed is subject to a NPWS Licence and as such is required to conform to the controls imposed by such a licence. All trucks entering the site will be required to conform to site bio-security measures and will leave via a wheel wash.

7.3.14. Notwithstanding the above, on review of the application and submitted documentation, I question the principle of the effectiveness of the proposed process for the removal of invasive species. No evidence of testing of the effectiveness of the proposed process is detailed within the application which demonstrates the effectiveness of the proposed treatment solution. While the application documentation outlines that the proposed treatment process has been tested on origin sites of invasive species no details are set out within the documentation in terms of the results or monitoring period. I have had regard to the guidance for the control and treatment of Japanese Knotweed and invasive species as set out within the following publications:

- Inland Fisheries Ireland- Best Practice Guidelines for the Control of Japanese Knotweed;
- Invasive Species Ireland Japanese Knotweed - Best Practice Management Guidelines;
- National Roads Authority- Management of Noxious Weeds and Non-Native Invasive Plant Species on National Roads;

7.3.15. As detailed within Section 5 of this report the treatment of invasive species at their original location is recommended in a number of policy documents. A Waste Action Plan for a Circular Economy – Ireland’s Nation Waste Policy 2020-2025 seeks to

*“prioritise the introduction of regulations to allow for Article 24 exemptions for the on-site treatment of invasive alien plant species”* in order to alleviate the environmental risks associated with the transportation of material.

7.3.16. The guidance document *“Invasive Species Ireland Japanese Knotweed - Best Practice Management Guidelines”* outlines that there are currently three means by which Japanese knotweed can be eradicated from sites, namely:

- Long-term treatment with herbicides (it can take up to 3 years of herbicide treatment with monitoring and follow up control for up to 5 years).
- Excavation and disposal at a licensed landfill site.
- Excavation, deep burial (at a depth of at least 5m) and/or bunding on site prior to treatment with herbicide.

7.3.17. The proposed treatment process at the regional treatment facility seeks a deviation from the processes identified above and I see no evidence within the application of this process being tested at the scale of the proposed facility. I refer to the concerns raised in relation to the operation and aftercare of the proposed facility within the report on the application from the Environment Section in Kilkenny County Council. Serious concerns are raised within the report in relation to:

- monitoring within the soil importation area,
- lack of monitoring outside of the site boundary,
- distribution of rhizomes by animals and birds
- effectiveness of the proposed control measures within the screening area (i.e wheel wash, surface water area, Kelly blocks).

7.3.18. Concerns relating to the underlying assumptions for the proposed treatment process was also set out within the submission on the application by the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media (dated 29th of October 2020). I do not consider that these are satisfactorily resolved within the application or appeal documentation.

7.3.19. I have serious concern in relation to the effectiveness of a number of the proposed control measures which I do not consider are appropriately addressed within the application or appeal. I consider that insufficient detail has been provided in relation

to the processes within the screening area including specifications for the wheel wash area which is located in close proximity to the site exit, details of areas within the screening area and storage of removed infected material.

- 7.3.20. Within the planting area, I do not consider that the applicant has provided sufficient information to certify that the proposed 7m sterilisation zone is sufficient to negate against the spread of Japanese Knotweed to adjoining drainage channels and landholdings. The NRA guidance document Management of Noxious Weeds and Non-Native Invasive Plant Species on National Roads outlines that the area of infestation can extend 7m horizontally. The environmental protection criteria as sets out in the Southern Region Waste Management Plan 2015-2021 outlines that *“To protect river habitats and water quality, ensure that no development, including clearance and storage of materials, takes place within a minimum distance of 15 m measured from each bank of any river, stream or watercourse”*.
- 7.3.21. I do not consider that the potential long-term impact of the facility, beyond the lifetime of the operation has been appropriately addressed within the application. Japanese Knotweed rhizomes material can be as small as 0.7 grams and have been known to regenerate into new plants, these rhizomes can lay dormant for periods of up to 20 years. The appeal outlines that all rhizomes will be removed by the screening process which involves both mechanical and human pickers. I consider that the suggested that all soils will be deemed free from invasive species during the operation of the facility (10 years) and relying on all plant fragments within multiple tonnes of soil to be picked out, leaves significant room for error to occur. I furthermore consider that the proposed monitoring outside of the site and timeframe for monitoring is limited on the basis that the operational phase of between 8-10 years.
- 7.3.22. I do not agree with the applicant’s statement that the potential impacts can be successfully contained within the site. The guidance document Invasive Species Ireland Japanese Knotweed - Best Practice Management Guidelines outlines that it is particularly important to consider Japanese knotweed in the wider environment around a particular site. If Japanese knotweed is growing on an adjacent site, or upstream of a site on a riverbank, then no matter how good on-site Japanese knotweed control is, Japanese knotweed may recolonise recently cleared sites. The Guidelines outline that: *“an understanding of the wider context is necessary to*

*determine if eradication or control efforts are likely to be successful*". I consider the off site monitoring measures set out within the application are limited in this regard, particularly in respect of impact on third party residential properties and potential for spread to the forest adjoining the site.

7.3.23. In conclusion, based on the information submitted, I consider that the applicants have failed to adequately demonstrate that the proposed treatment process is effective. On the basis of the lack of scientific evidence to substantiate the process proposed the development has the potential to give rise to a facility which could significantly increase the spread of invasive species, and as such would have a seriously negative impact upon the surrounding receiving environment. I recommend that permission is refused for the development on this basis.

#### 7.4. **Scope of the Application**

7.4.1. As detailed above, I question the principle of the development in terms of the effectiveness of the process proposed. I furthermore consider that there are significant information deficiencies within the application in respect of the baseline site environment and potential impacts of the proposal to enable a full assessment of the impact of the proposal to be undertaken.

7.4.2. Kilkenny County Council's reason for refusal outlines that on the basis of the information submitted in conjunction with the application the Planning Authority is not satisfied that the applicant has demonstrated that the proposed development will not have a significant adverse impact on the residential amenities of the area and on the surrounding and receiving environment and biodiversity. Such concerns are raised within the observations on the application. I consider these points below.

##### Impact on Residential Amenity

7.4.3. The site is located within a rural area and adjoined by existing residential properties along the LS5025. The observations on the appeal raise concern in relation to the impact of the development on the residential amenity of adjoining properties. Concerns relating to the spread of Japanese Knotweed, noise/vibration and dust impacts are raised in this context.

- Spread of Invasive Species



7.4.4. I refer to the forgoing section of this report and my concerns raised in respect of the potential spread of invasive species beyond the appeal site. I do not consider that the application has appropriately assessed the potential for the spread of invasive species to adjoining properties and landholdings.

- Noise and Vibration

7.4.5. A Noise Impact Report prepared by Brendan O' Reilly Noise and Vibration Consultants Ltd. was submitted in response to KCC's request for further information. This includes an assessment of the impact of the proposal on nearest noise sensitive receptors (existing dwellings) in the vicinity of the site as identified in Figure 1 of the report. The report identifies that the main noise sources associated with the development will be from the screening trommel and the small loading operating together. The slow movement of trucks on site will generate low noise levels and the 3m high berm will reduce the noise emissions by a minimum of 5dB(A).

7.4.6. Table 3 of the report sets out the Predicted maximum 1hr Leq dBA noise levels from the operation of the facility. This illustrates that NSL 1 to NSL 4 (existing residential units along the LS 5025) are within the relevant noise threshold. The report outlines that the maximum noise level at NSL 5, will be due to the spreading of material. This dwelling is identified within the report as being within 30m of the levelling soil area. The survey outlines that at 40m spreading of material will result in noise levels of 63 dBA and at 160m the activity will give less than 48dBA. The report outlines that activity will be carried out at distance less than 160m for less than a 2 week equivalent in any year.

7.4.7. Section 7 of the report relates to the Assessment of Impacts and outlines that *"noise levels have been predicted based on the nearest activity to local receptors with ameliorative measures in place. The predicted noise levels are well below EPA Guidance and impacts are no more than marginal. The level of ground vibration will be below the human threshold of perception. The predicted noise impact is not significant"*.

7.4.8. On review of the contents of the noise report I consider that the cumulative impact of noise impacts is not adequately addressed. Details of the number, frequency and types of machinery (including road sweeper) to be used and any resultant predictive modelling should have been provided in relation to the fill area the site. In the

absence of these details it is not possible to properly model the cumulative impacts of noise.

7.4.9. In addition to the above, I consider that noise impacts on noise sensitive receptor 5 (existing house to the south of the appeal site) requires clarification. Noise impact should be stated on the basis of the actual distance of the property from the appeal site and having regard to the proposed height of the berm at this location.

- Dust

7.4.10. Observations on file raise concerns in relation to the generation of dust as a result of the proposed activity on site and the resultant impact that this may have on the neighbouring residential dwellings.

7.4.11. Section 2.4.6 of the applicant's EIA Screening Report assesses potential dust impact associated with the proposed development. This outlines that the soil recovery area is compacted hardcore and would not give rise to any significant dust generation. The assessment outlines that the spreading of soil has the potential to generate windblown dust and a number of environmental management measures are proposed to negate against this dust emissions including monitoring at 2 locations on site.

7.4.12. I consider the detail provided to be limited and note that construction and soil stripping stage dust impacts are not addressed. In the absence of such information a proper assessment of potential dust impacts in relation to the existing established residential dwellings cannot be properly carried out.

Impact on Receiving Environment and Biodiversity

7.4.13. Kilkenny County Council's reason for refusal outlines that the applicant has not demonstrated that the proposal will not have a significant adverse impact on the receiving environment and biodiversity. The observations on the appeal raise concern in relation to the potential for spread of invasive species from the site, traffic impact and impact on the local road network, impact of the proposal on water quality, impact on adjoining forestry and impact to biodiversity.

- Water Pollution

7.4.14. Kilkenny County Council and the observations on the appeal raise concern in relation to contamination of existing watercourses, surface water and ground water

on the basis of activities on site. All streams and drains on site flow eastward, the site drains connect at the NE corner and then flow east through forestry to join the eastern branch of the Stony Stream which discharges River Breagagh which flows to the River Nore.

- 7.4.15. The Development Management Standards set out within Section 7.7.1 of the Kilkenny City and County Development Plan outline that agriculture developments will be constructed and located so as to ensure that there is no threat of pollution to ground or surface waters. I do not consider that this has been appropriately addressed or demonstrated within the appeal.
- 7.4.16. The lands are hydrologically connected to the River Breagagh which flows to the River Nore. Insufficient information has been provided in relation to the risk to water quality associated with the spread of invasive species along the watercourse and potential impact on Natura 2000 sites downstream.
- 7.4.17. The process outlined within the application documentation outlines that both Japanese Knotweed and Winter Heliotrope within the site of origin must be treated with a glyphosate-based herbicide a minimum of 2 weeks before excavation. The development is seeking to accept up to 24,000 tonnes of soils per annum, in the absence of any assessment of the potential for water pollution arising from the proposed development as a consequence of herbicides present in accepted soils, I am not satisfied that the applicant has adequately demonstrated that the proposed development will not give rise to pollution of ground water or further deteriorate the water quality of the River Breagagh and River Nore from the potential discharge of contaminated surface water.
- Soils
- 7.4.18. The planning application includes a statement from an Agricultural Advisor which states the agronomic benefits to the site through the proposed land reclamation works. This outlines that at present the site consists of low-lying, relatively poor quality, wet and rushy agricultural land and the proposed agricultural land with improved agronomic gain.
- 7.4.19. Limited information is provided within the application in relation to potential impact on soils and in particular in the context of potential impact of importation of herbicide treated material and impact of regrowth and infestation of invasive species on site.

The conditions of the underlying soils within the hardstanding area of the appeal site should also be addressed having regard to the previous use of this area for storage of vehicles. I note that the Site Characteristics Form submitted on the adjoining site under PA Ref: 20/726 refers to potential for soil compaction and poor permeability within this area.

- Ecology/ Biodiversity

7.4.20. A Preliminary Ecological Assessment and Biodiversity Report are submitted in support of the application. The biodiversity report outlines that the site has a low level of ecological interest because of its agricultural management and lack of habitat diversity. The report outlines that badgers may be present on site and while there is no habitat suitable for otters on site they may pass through. The biodiversity report refers to a bat survey and outlines that small nos. of bats were identified on the hedges and along the agricultural access road. It is stated that the bat fauna would be limited by the open conditions of the site.

7.4.21. On review of the information submitted in conjunction with the application and appeal I consider that there are information deficiencies in relation to the impact of the proposal on the ecology and biodiversity of the site and surrounding areas including the adjoining forestry. As detailed earlier, the proposed process for treatment of invasive species is untested and I question the effectiveness of the process and proposed control measures to negate against the regrowth and spread of invasive species.

7.4.22. I note that rivers, hedgerows, roadsides and railways form important wildlife corridors for native plants and animals to migrate and disperse along, and large infestations of invasive species can block these routes for wildlife. I do not consider that impacts on biodiversity/environment are sufficiently addressed within the application.

- Traffic and Transport

7.4.23. The observations on the appeal raise concerns in relation to traffic impact associated with the development and the capacity of the local road network to cater for the nature of HGV vehicles. The observations also question the adequacy of the proposed site entrance. The Southern Region Waste Management Plan outlines that impact from a transport perspective will be assessed including road access, network, safety and traffic patterns to and from the proposed facility in accordance with road

design guidelines and/or relevant LA guidelines in relation to roads. I consider that there are information deficiencies within the application in this regard.

- 7.4.24. Access to the development is proposed via the LS5025. The public notices refer to the provision of access via the existing entrance. I note that a relocated entrance was provided in response to Kilkenny County Council's request for further information. The Roads Department in KCC raised concern in relation to the achievement of sight lines at the proposed site entrance in light of 3rd party boundary walls to the east. The applicant's response to the grounds of appeal outlines that the applicant has control over the boundary treatment and appropriate sightlines can be achieved. However, I note that no drawings are provided to illustrate same.
- 7.4.25. Traffic Impact is addressed within the applicants EIAR Screening statement. This outlines that the maximum possible site capacity of 24,000 tonnes per annum is taken as being imported over 26 weeks and 5 days per week (130 operational days). This equates to an average importation of 185 tonnes per day (8x5 axel articulated trucks or 11x4 axel rigid trucks) resulting in approximately 8-10 movements into and out of the site per day. On the basis of the operating hours of 8.30am to 6pm this equates to a truck entering and leaving the site every hour. The EIAR Screening report outlines that due to the nature of the specialist nature of the facility there would never be a sudden flow of traffic. The report concludes that any increase in traffic within the area would be minor and no more than that associated with past development.
- 7.4.26. A Waste Action Plan for a Circular Economy – Ireland's Nation Waste Policy 2020-2025 refers to the environmental risks associated with the transportation of invasive species. I consider that potential for risk associated with the spread of invasive species via transportation to the facility or spread to the adjoining road network via vehicles leaving the facility or is not comprehensively addressed within the application. The application documentation details the control measures which will be employed within the screening area to ensure that there is no spread of invasive species from the site to the adjoining road network. As earlier detailed, I consider that the details of proposed procedures within the screening area are limited. No specification is given for the wheel wash and I consider that its location directly adjacent to the site exit could result in a traffic hazard.

## Conclusion

7.4.27. On the basis of the information submitted in conjunction with the application and appeal I am not satisfied that the applicant has demonstrated that the development not seriously impact on residential amenity, biodiversity and the environment. I recommend that permission is refused for the development broadly in line with the planning authority's reason for refusal.

### **7.5. Environmental Impact Assessment**

7.5.1. While not cited as a reason for refusal, Kilkenny County Council's Schedule 7 Environmental Impact Assessment Screening Report outlines that an Environmental Impact Assessment Report is required on the basis that the that the proposed development is likely to have significant environmental impact. Concerns relating to the potential impact of the proposal on the biodiversity within and beyond the site and the long-term potential impacts where invasive species can lay dormant for up to 20 years are raised in this context.

7.5.2. An Environmental Impact Assessment Screening Report was submitted with the application. An updated Screening Report was submitted in response to Kilkenny County Council's request for further information. The applicant's assessment concludes the following:

*"It is concluded that the proposed development is not likely to result in significant effects on the environment and, as such, the proposed project will not be required to proceed to the EIA process".*

7.5.3. Kilkenny County Council's Schedule 7 Screening Determination (16/09/21) concludes that:

*Having regard to the nature and location of the proposed development, the further information submitted with the application and the outstanding issues of concern which have not been addressed, namely the potential impacts of invasive species can lay dormant for up to 20 years, it is considered that the proposed development is likely to have significant environmental impact and therefore it is considered that an Environmental Impact Assessment Report is required".*

7.5.4. The information provided is in accordance with Schedule 7 and 7A of the Planning and Development Regulations 2001. I have considered the documentation submitted

by both the applicant and the local authority in the attached EIA Screening Determination. I have also carried out a site inspection.

7.5.5. Schedule 7 of the Planning and Development Regulations 2001 (as amended) sets out specific criteria by which to determine whether a development would or would not be likely to have significant effects on the environment. These criteria relate to the following:

- Characteristics of the Proposed Development
- Location of proposed development
- Characteristics of potential impacts

7.5.6. I have assessed the development under of these criteria within the attached EIA Screening Determination. I have had regard to the guidance set out within the Guidance for Consent Authorities regarding Sub-threshold Development issued by the Department of the Environment, Heritage and Local Government in August 2003 in completion of the Screening Determination.

7.5.7. Having regard to the scale and characteristics of the proposal and the potential for impact on the receiving environment, to the criteria set out in Schedule 7 of the Planning and Development Regulations 2001-2011, to the advice in paragraphs [5.36 to 5.37] of the Guidance for Consent Authorities regarding Sub-threshold Development issued by the Department of the Environment, Heritage and Local Government in August, 2003, relating to the magnitude and complexity of impact I consider that the proposed development would be likely to have significant effects on the environment and should be subject to an environmental impact assessment within the meaning of Part X of the Planning and Development Act, 2000 to 2011. The proposed development would, therefore, require an Environmental Impact Assessment Report (EIAR) which should contain the information set out in Schedule 6 of the said Regulations.

7.5.8. An EIAR has not been provided and in the absence of such information, I consider that the Board is precluded from giving further consideration to the granting of permission for the development the subject of the application. I do not consider it appropriate to request an EIAR at the advanced stage of the application / appeal

process that has been reached in this case, as it would not sufficiently enable the involvement of third parties and prescribed bodies in the process.

- 7.5.9. I furthermore refer to the other substantive reasons for refusal set out within this assessment which relate to the principle of the treatment process proposed for invasive species and information deficiencies within the application in terms of impact on residential amenity and the environment and potential impact on Natura 2000 sites.

## 7.6. **Appropriate Assessment**

- 7.6.1. Kilkenny County Council's reason for refusal outlines that the applicant has failed to demonstrate that the proposed development individually, or in combination with other plans and projects would not adversely affect the integrity of the River Barrow and River Nore SAC and River Nore SPA.

### 7.6.2. *Compliance with Article 6(3) of the Habitats Directive*

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

An Appropriate Assessment Natura Impact Statement prepared by Enviroco Ltd. was submitted in conjunction with the application. A detailed request for further information was issued by Kilkenny County Council in respect of the scope and content of the NIS on the basis of points raised within the submissions on the application from the Environment Department in Kilkenny County Council and the submission on file from the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media. A revised Natura Impact Assessment prepared by Roger Goodwillie & Associates was submitted in response to the FI request. In the interests of clarity, references hereunder relate to the updated Natura Impact Statement submitted in conjunction with the FI response, dated June 2021, unless otherwise stated.

Having reviewed the documents I am not satisfied, for the reasons stated further in this assessment, that the information allows for a complete examination and identification of any potential significant effects of the development, alone, or in combination with other plans and projects on European sites.

### 7.6.3. *Screening the need for Appropriate Assessment*



The first test of Article 6(3) is to establish if the project could result in likely significant effects to a European site. This is considered Stage 1 of the appropriate assessment process, that being, screening. The screening stage is intended to be a preliminary examination. If the possibility of significant effects cannot be excluded on the basis of objective information, without extensive investigation or the application of mitigation, a plan or project should be considered to have a likely significant effect and appropriate assessment carried out.

#### 7.6.4. *Test of Likely Significant Effects*

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.

#### 7.6.5. *Brief Description of the Development*

Section 2.2 of the applicants Natura Impact Statement sets out a description of the proposed development and the operational processes.

#### 7.6.6. *Submissions and Observations*

The submission on file from the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media (29<sup>th</sup> of October 2020) raises a number of concerns in relation to the content, scope and underlying assumptions set out within the original NIS submitted in support of the application. A Revised Natura Impact Assessment was submitted in response to the request for further information.

Concerns relating to the impact of the proposal on the designated sites of the River Nore SPA and the River Nore SAC are raised within the submissions on the planning application and the observations on the appeal. The observations on the appeal outline that the revised NIS is inadequate and fails to provide a scientific basis for the adequacy of the proposed 2 year monitoring period for Japanese Knotweed or the 7m sterilisation zone to prevent soil run off to drainage channels. The observations outlines that risks associated with grazing animals, transportation by birds,

transportation of material to the facility and risks of contamination of groundwater are not addressed. Furthermore, it is stated that the NIS does not demonstrate that the proposed mitigation measures are effective to prevent sediment and vegetative material from entering drainage channels and no specification is given for the maintenance of silt and sediment traps and procedures for emptying them.

Kilkenny County Council's notification of decision to refuse permission for the development outlines that the applicant failed to demonstrate that the proposed development individually, or in combination with other plans and particulars would not adversely affect the integrity of the River Barrow and River Nore SAC and River Nore SPA.

#### 7.6.7. *European Sites*

The development site is not located in a European site. A summary the of European Sites that occur within a possible zone of influence (15km) of the proposed development are detailed below.

- River Barrow and River Nore SAC (002162) – 4.2km
- River Nore SPA (004233) – 4.3km
- Spahill and Clomantagh Hill SAC (000849) – 14km
- The Loughans SPA (000407) – 14.7 km

There are no other European sites that have been considered as being potentially within the zone of influence due to the nature and scale of the proposed development, and the distance from and absence of a connection to the appeal site.

A summary of these European sites including their qualifying interests, whether there is a connection (source-pathway-receptor), and possibility of likely significant effects arising are presented in the table below.

European Site (code) Qualifying Interests	Distance from Devt (m)/ Connection (source, pathway, receptor)	Likely Significant Effect	Screening Conclusion
<p><b><u>River Nore SPA (004233)</u></b></p> <p><u>Qualifying Interests:</u></p> <p>A229 Kingfisher (Alcedo atthis).</p>	<p>Distance - 4.3km</p> <p>A hydrological connection existing between the existing drainage ditches on site (source) which outfall to the Stony Stream and then the River Breagagh (pathway) to the River Nore SPA (receptor).</p>	<p>Pollutants reaching the River Nore could impact indirectly on this species through its food (fish)</p>	<p>Screened in for need for AA as effects cannot be ruled out without further analysis and assessment.</p>
<p><b><u>River Barrow and River Nore SAC (002162)</u></b></p> <p><u>Qualifying Interests:</u></p> <p>Estuaries [1130]; Mudflats and sandflats not covered by seawater at low tide [1140]; Reefs [1170]; Salicornia and other annuals colonising mud and sand [1310]; Atlantic salt meadows [1330]; Mediterranean salt meadows</p>	<p>Distance - 4.2km</p> <p>A hydrological connection existing between the existing drainage ditches on site (source) which outfall to the Stony Stream and then the River</p>	<p>Likely significant effects may arise on the water quality in Breagagh River from pollution during construction and/ or operation</p>	<p>Screened in for need for AA as effects cannot be ruled out without further analysis and assessment.</p>

<p>[1410]; Water courses of plain to montane levels with the Ranunculion fluitantis and Callitricho-Batrachion vegetation [3260]; European dry heaths [4030]; Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels [6430]; Petrifying springs with tufa formation [7220]; Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0]; Alluvial forests with Alnus glutinosa and Fraxinus excelsior [91E0]; Desmoulin's Whorl Snail [1016]; Freshwater Pearl Mussel [1029]; White-clawed Crayfish [1092]; Sea Lamprey [1095]; Brook Lamprey [1096]; River Lamprey [1099]; Twaite Shad [1103]; Salmon [1106]; Otter [1355]; Killarney Fern [1421]; Nore Pearl Mussel [1990].</p>	<p>Breaghagh (pathway) to the River Barrow and River Nore SAC (receptor).</p>	<p>phases affecting habitats/species in the river environment.</p> <p>Likely significant effects may arise on the habitat quality of Breaghagh River's riparian corridor/ riverbanks during construction and/ or operation phases affecting species in and/ or along the river environment.</p>	
<p><b><u>Spahill and Clomantagh Hill SAC (000849)</u></b> <i>Qualifying Interest:</i> 6210 Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-</p>	<p>14 km</p>	<p>None arising.</p>	<p>Screened out for need for AA.</p>

Brometalia) (* important orchid sites)			
<b><u>The Loughans SPA (000407)</u></b> <u>Qualifying Interest:</u> 3180 Turloughs	14.7 km	None arising.	Screened out for need for AA.

#### 7.6.9. Identification of Likely Significant Effects

The closest European sites to the appeal site associated with the River Nore. The River Nore has a SPA designation, the River Nore SPA (004233) and a SAC designation, the River Barrow and River Nore SAC (002162), which overlap in parts along the river's length.

As measured from the closest corners of the site, I calculate that the River Barrow and River Nore SAC is approximately 4.2km to the east and the River Nore SPA is approximately 4.3km to the east. The applicant's NIS outlines that the SAC is 4.57km to the east and the River Nore SPA is 4.6km to the east.

The River Nore SPA has a single qualifying interest, the kingfisher bird, the conservation objective for which is to maintain or restore its favourable conservation condition. In terms of the River Nore SPA, the applicants AA Screening conclusion outlines that pollutants reaching the river would impact indirectly on the qualifying interest of the SPA (kingfisher) through its food (fish).

There are activities during the construction and operation phases of the development that could give rise to likely significant effects, on their own and in-combination with other projects, on the qualifying interests of the SPA such that the need for appropriate assessment of the SPA cannot be excluded without further analysis and assessment.

The River Barrow and River Nore SAC consists of the catchments of these two rivers passing through eight counties from the Slieve Bloom mountains in Offaly to the estuary at Creaden (Creadaun) Head in Waterford.

I have reviewed the applicant's Screening for Appropriate Assessment, the NPWS's Conservation Objectives report and accompanying Maps indicating geographic occurrence of certain qualifying interests, Natura 2000 form, and the Site Synopsis.

There is an ecological connection between the appeal site and the SAC, based on the source-pathway-receptor principle. This constitutes a hydrological connection via existing drainage channels on site which flow towards the Stony Stream and the Breaghagh River which intersects with the SAC. Through this connection, during both construction and operation phases, there could be likely effects on the relevant qualifying interest in the river ecosystem due to the potential impact on water quality. The applicant's AA Screening assessment concludes that any sediment or pollution released to field drains has the potential to reach the SAC and have a negative impact on fish and other life.

I therefore consider that there are activities during the construction and operation phases of the development that could give rise to likely significant effects, on their own and in-combination with other projects, on the qualifying interests of the SAC such that the need for appropriate assessment of the SAC cannot be excluded without further analysis and assessment.

The applicants Screening concludes that: *"Any pollution arising from the project has the potential to have an adverse effect since there is a hydrological connection between the site and two Natura 2000 sites"* namely the River Nore SPA and the River Barrow and River Nore SAC.

Kilkenny County Council's Environmental Impact Assessment Screening Determination (16th of September 2021) outlines that all Natura 2000 within 15km of the site are not addressed within the applicant's updated Natura Impact Statement dated June 2021. In this regard I note that the applicants AA Screening identifies 2 no. Natura 2000 sites within the zone of influence of the appeal site, namely the River Nore SPA and River Barrow and River Nore SPA. As detailed, in Table 1 above, the Spahill and Clomantagh Hill SAC (000849) and the Loughans SPA (000407) are also located within 15km of the appeal sites. These sites are not addressed within the applicant revised Screening Statement and NIS dated June 2021 submitted in response to the applicants FI response.

The applicant's first party appeal outlines that the Spahill and Clomantagh Hill SAC (000849) and the Loughans SPA (000407) are both out of contact with Newtown. The Spahill and Clomantagh Hill SAC (000849) are topographically higher and the Loughans SPA (000407) is higher up the Nore catchment on the Goul River. In this regard, the appeal outlines that there is no possible linkage with these sites. I am satisfied that the potential for impacts on the aforementioned Natura 2000 sites can be excluded at the preliminary stage due to the separation distances between the European sites and the proposed development site, the nature of their qualifying interests and the characteristics of intervening development.

#### 7.6.10. *Mitigation measures*

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

#### 7.6.11. *Screening Determination*

The project 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 River Barrow and River Nore SAC (002162) and the River Nore SPA (004233) in view of the site's conservation objectives and qualifying interests, and that appropriate assessment, and submission of a NIS, is therefore required.

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:

- Spahill and Clomantagh Hill SAC (000849)
- Loughans SPA (000407)

#### 7.6.12. *Natura Impact Statement*

The planning application was accompanied by a NIS prepared by Envirico Ltd. dated June 2020. Following a FI request from the Planning Authority, an updated NIS, prepared by Roger Goodwillie and Associates dated June 2021, was submitted as part of the FI response. In the interests of clarity, references to the NIS set out hereunder relate to the report dated June 2021.

The NIS identifies and assesses the potential adverse effects of the proposed development on the qualifying interests of the SAC and SPA. Section 3.1 sets out a list of the qualifying interests of the River Barrow and River Nore SAC and River Nore SPA. The table identifies a potential for impact upon the following qualifying interests:

- 1092- White-clawed crayfish – Tolerant of Q3-4 so unlikely to be affected.
- 1095 Sea lamprey - Spawning requires well oxygenated water with limited algal cover. Impact possible.
- 1096 Brook lamprey, 1099- River lamprey- Spawning requires well oxygenated water with limited algal cover. Impact possible.
- 1106-Atlantic salmon - Spawning requires well oxygenated water with limited algal cover. Impact possible.
- 1355 Otter – Present, no breeding habitat adjacent on site, Otter territories are large and animals adjust to changes in fish species. Impacts to local population unlikely.
- Kingfisher – Feeds at edges of river, no nesting habitat on site. Food could be reduced by a decline in water quality.

Impacts on the remaining qualifying interests within the River Barrow and River Nore SAC are dismissed primarily on grounds of their characteristics, distance from the appeal site and dilution. Having regard to both the nature of the qualifying interests and their location relative to the appeal site I consider that this approach is reasonable.

Section 3.2 outlines that it appears that the potential impacts on Natura 2000 sites relate to water quality in the river, particularly the sediment load, nutrient status but also chemical profile. The NIS outlines that a deterioration in water quality could arise through run off of soils from berms or from the filling procedure, hydrocarbons (including fuels and lubricants) or spills from machinery, and chemicals such as herbicides.

Section 3.2.1 of the report outlines that having regard to the characteristics of the proposal the potential escape of invasive plants should be examined with regard to the Natura 2000 sites. The NIS describes the route of travel via the field drains from



the site, it is stated that to become established the fragments would have to travel through the filled drains in the site and through the forestry plantation before reaching the Stony Stream. If root fragments were to be carried down to the Stony Stream and penetrate the underground passages leading to the Breagagh, any impacts on the Natura 2000 sites would be indirect ones; there is no habitat or species in the qualifying interests that would be significantly affected. The result of new colonies would be replacement of existing bushy habitat on the riverbanks by this species, leading indirectly to a change in insect life that could affect fish species. Such an effect would take 10-20 years before having a localised impact.

Section 3.3 provides an overview of the Conservation Objectives of each of the species identified:

- 1092- White-clawed crayfish – To maintain the favourable conservation condition of White-clawed crayfish in the River Barrow and River Nore SAC. The relevant targets are Q3-4 in water quality and the maintenance of habitat heterogeneity.
- 1095 Sea lamprey, 1096 Brook lamprey, 1099- River lamprey- To restore the favourable conservation condition of all three lampreys in the River Barrow and River Nore SAC. The important targets are no diminution of spawning beds but an increase in accessibility of river channels, currently constrained by barriers, weirs etc.
- 1106-Atlantic salmon – To restore the favourable conservation status of Salmon in the River Barrow and River Nore SAC- increase accessibility to spawning beds (to 100% of second order channels), maintain water quality at least at Q4 in all EPA sampling stations.
- 1355 Otter – To restore the favourable conservation condition of Otter in the River Barrow and River Nore SAC – no specific measures are included other than a slight population increase (73% in SAC's to 88%).
- A229 Kingfisher – To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation interests, i.e. *alcedo atthis* (breeding). No specific measures are identified but food and nesting habitat are the most important.

Section 3.3 outlines that water quality is the over-riding factor for each species in these objectives and the loss of suspended solids and/or oil from the project site are therefore the significant risks.

#### 7.6.13. *Mitigation Measures*

Section 3.4 of the NIS sets out mitigation measures and outlines that during construction and operation the potential impacts from this project arise from an escape of suspended soils or of chemical residues or oil to the surrounding field drains which lead to the Breagagh and Nore Rivers. Invasive alien plants could also be spread during operation.

The design and operating measures identified within the NIS to counteract these risks as identified within the NIS are summarised below:

1. Oil stored on site will be in fully bunded containers and refilling will occur in a dedicated area. A spill kit will be provided on site and staff will be made aware of correct procedures.
2. All HGV trucks delivering material to the site will be accepted only if sealed with tarpaulins to prevent loss of unscreened material. They will be on a hard-surfaced area at all times when delivering material and there will be no run off to the hardcore area to the south. The trucks will be washed down before leaving and also go through a wheel-wash. Washings will be drained to a self-contained, recycling unit where the sediment will be treated as contaminated and be dealt with periodically in the screening area.
3. Before material can be accepted for treatment it will be treated for contaminants by an outside lab (Waste Acceptance Criteria Analysis). Only glyphosate-treated rootstocks will be accepted.
4. A low wall of Kelly blocks will be used along the screening area to contain materials. These will have taram placed on the inner faces to form a silt fence, preventing silty water escaping from the screening washdown area.
5. A water bowser will be maintained locally for dust suppression within the site and on the access road. A mechanical sweeper will be on call for accidental spillages.

6. Screening will be carried out under cover and root material will accumulate in a skip for periodic removal. This will be covered when not in use so that birds/mammals have no access to it. Soil will be moved out of the spreading area by a dedicated tractor and tipping trailer. Its load will be covered by tarpaulin and it will be brushed out on emptying before returning to the careening area.
7. The spreading area will be used in phases and will be surrounded by berms. The berms will be a minimum of 7m from hedgerows or drainage ditches or greater in the vicinity of the pond to the NE of the site. The buffer zones will have a function in catching windblown dust/seeds and insulating the cells from the surroundings.
8. As each soil layer is spread it will be sown with grass to stabilise the surface, prevent dust blow into drains and check for any pieces of rhizome that grow. Each area will be checked for a minimum of 2 years and any shoot removed or treated with glyphosate. The haul route shall also be checked regularly in the growing season. The banks of the Stony Stream from Two Mile Bridge on the Kilmanagh Road (R295) to the drainage exist from the forest area will also be examined once a year in the growing season and any plants removed.
9. The grass cover of each field will be grazed only when the final vegetation is complete, but a site inspection will be given to the area before animals are introduced. The grazing action would weaken regrowth.

#### Note on glyphosate

The NIS includes a statement on glyphosate and outlines that this is strongly absorbed by clay materials in the soils and remains in the upper level bound to clay or organic matter, very little escapes to groundwater. The NIS refers to a Canadian study which outlines that maximum reported groundwater concentrations for two compounds, (glyphosate and its breakdown product aminomethyphosphonic acid) at 2.03 and 4.88ppb respectively, are far below the maximum acceptable concentration in drinking water of 280 ppb established by Health Canada 2017. The NIS asserts that the proposed results would be comparable due to the high clay content of the soil.

#### 7.6.14. *Likely effects*

The NIS outlines that the proposal will increase the biodiversity of the whole project site and there are no effects likely to occur to either of the Natura 2000 sites in the catchment.

#### 7.6.15. *Cumulative effects*

There are no likely cumulative effects on the River Nore with other projects.

#### 7.6.16. *Conclusion*

The applicant's NIS concludes that:

*“Once the required mitigation measures are in place and operative, it can be said that there is no likelihood of significant negative effects on the integrity of the River Barrow and River Nore SAC, the River Nore SPA or any of the Natura 2000 network. The project also will not compromise the attainment of the conservation objectives of these sites.*

*This holds for the project by itself or in combination with other projects in the vicinity”.*

#### 7.6.17. *Assessment*

I have considered the NIS along with the information submitted with the application and appeal and have had regard to the mitigation measures outlined above.

Notwithstanding the above conclusions of the NIS, I have concerns in relation to the scope and content of the study. The onus is on the applicant to ensure that adequate and relevant information is submitted to enable an Appropriate Assessment to be carried out. Such an assessment should be based on the best scientific knowledge in the field, of all aspects of the development project which can, by itself or in combination with other plans and projects, adversely affect the European site in light of its Conservation Objectives.

I consider that there are significant information deficiencies within the application in relation to potential water pollution impacts associated with the development. Water quality within the River Barrow and River Nore is a fundamental component of the areas conservation importance.

Construction related impacts relate to the escape of suspended soils or oil to the surrounding field drains which lead to the Breagagh and Nore Rivers. On review of the NIS, I note that construction related mitigation measures cited are limited to a reference relating to the storage of oil on site and a Construction Management Plan

is not submitted in support of the application. In practice these may include standard and site-specific measures, such as those set out in TII publication Guidelines for the Crossing of Watercourses during Construction of National Road Schemes and IFI's IFIs Guidelines on Protection of Fisheries during Construction Works in and Adjacent to Waters. However, in the absence of information on such measures it is not possible to exclude the risk of adverse effects or that the development would not adversely affect the integrity of River Barrow and River Nore SAC and River Nore SPA in view of the conservation objectives of the site. This conclusion is based on the risk of water pollution during construction and the absence of detailed mitigation measures.

In terms of the operational phase of the development, I have significant concerns in relation to the principle of the development on a site which is hydrologically linked to Natura 2000 sites on the basis of water pollution and the potential for the spread of invasive species including Japanese Knotweed to the River Barrow and River Nore SAC and River Nore SPA. Impacts arising from vegetation particles containing Japanese Knotweed entering the watercourse has the potential to spread the species downstream and throughout the European site. Spread of invasive species can occur during transportation, ingress to watercourses, operation of the site and within the fill area.

Based on the information submitted in conjunction with the application and appeal I am not satisfied that the applicant has demonstrated that the proposed process is scientifically robust and there is no certainty of success. The applicant refers to the use of this method on sites where invasive species have been identified but no specific details of the success of this method or the timeframe for monitoring has been provided within the application.

I have concern in relation to the lack of specific detail within the application and appeal documentation in relation to procedures and control measures to be undertaken in the screening area or within the planting area to negate against the spread of invasive species. Within the planting area, I do not consider that the applicant has provided sufficient information to certify that the proposed 7m sterilisation zone is sufficient to negate against the spread of Japanese Knotweed to adjoining drainage channels and landholdings. As detailed earlier in this assessment the Southern Region Waste Management Plan 2015-2021 outlines that: *"To protect*

*river habitats and water quality, ensure that no development, including clearance and storage of materials, takes place within a minimum distance of 15 m measured from each bank of any river, stream or watercourse".* I am not satisfied that the proposed monitoring period of the grow out area is sufficient to negate against regrowth. I furthermore consider that an understanding of the wider context is necessary to determine if eradication or control efforts are likely to be successful. I do not consider that the proposed monitoring outside of the site is comprehensive. I consider that there are information deficiencies within the application in this regard.

I refer to the detailed comments raised within the submission on the application from the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media (dated 29/10/2020) in relation to the operation of the proposed facility. I also note the concerns on the Environment Section of Kilkenny County Council which raises specific concerns in relation to the operation and aftercare of the proposed facility. Such concerns are reflected within the observations on the appeal. I do not consider that these comments have been sufficiently or comprehensively addressed within the updated NIS dated June 2021 or within the appeal.

I consider that the potential for rhizomes to regenerate is uncertain and as such has the potential to result in the spread of invasive species both within the site and to surrounding areas and watercourses.

The development is seeking to accept up to 24,000 tonnes of contaminated soils per annum. I note the reference in the NIS to the use of glyphosate and the cross reference to a Canadian study which outlines that maximum reported groundwater concentrations for two compounds, (glyphosate and its breakdown product aminomethyphosphonic acid) at 2.03 and 4.88ppb respectively, are far below the maximum acceptable concentration in drinking water of 280 ppb established by Health Canada 2017. However, in the absence of any assessment of the potential for water pollution arising from the proposed development as a consequence of herbicides present in accepted soils, I am not satisfied that the applicant has adequately demonstrated beyond reasonable doubt that the proposed development would lead to impacts on soil and ground water. The mitigations within the NIS refer to testing of source site soils for contaminants by an outside lab prior to acceptance on site as part of the Waste Acceptance Criteria analysis but this stage of soil testing appears to be prior to treatment with herbicide.

On an overall basis I am not satisfied that the construction and operational phases of the development would not adversely affect the integrity of the River Barrow and River Nore SAC and River Nore SPA in view of these sites Conservation Objectives. This conclusion is based on the risk of surface and ground water pollution during the operational phase of the development and the potential spread of invasive species from the site during the operational phase of the development.

#### 7.6.18. *Conclusion*

On the basis of the information provided with the application and appeal, including the Natura Impact Statement, and in light of the assessment carried out above, I am not satisfied that the proposed development individually, or in combination with other plans or projects would not adversely affect the integrity of River Barrow and River Nore SAC (002162) and the River Nore SPA (004233), in view of the sites Conservation Objectives. In such circumstances the Board is precluded from granting approval/permission.

## 8.0 **Recommendation**

8.1. I recommend the permission is refused for the development in accordance with the following reasons and considerations.

## 9.0 **Reasons and Considerations**

1. The proposal seeks to develop a regional waste facility within an unzoned rural area to the north-west of Kilkenny City for the professional management, importation, screening and recovery of soils where there is a suspicion or evidence of the presence of root systems (rhizomes) of invasive species. Objective 10G of the Kilkenny City and County Development Plan 2021-2027 seeks: *“To implement the Southern Region Waste Management Plan”*. Policy G3 of the Southern Region Waste Management Plan 2015-2021 aims to *“ensure there is a consistent approach to the protection of the environment and communities through the authorisation of locations for the treatment of wastes”* and Section 16.5 of the Plan sets out a number of Environmental Protection Criteria for waste related activities for the General Environment and European Sites.

On the basis of the information submitted with the application and appeal, and having regard to the characteristics of the proposal, the Board is not satisfied that the proposed development would not have a significant adverse impact on the residential amenities of the area and on the surrounding and receiving environment and biodiversity. It is considered that insufficient information has been submitted to enable the Board to comprehensively evaluate the likely impact of the proposed development on the locality and the wider environment. Therefore, it is considered that the applicant has not adequately demonstrated that the proposed development would be in accordance with Policy G3 of the Southern Region Waste Management Plan 2015-2021, Objective 10G of the Kilkenny City and County Development Plan 2021-2027 and would therefore be contrary to the proper planning and sustainable development of the area.

2. The Board is not satisfied, on the basis of the information provided with the application and appeal that the proposed development individually, or in combination with other plans or projects would not adversely affect the integrity of the River Barrow and River Nore SAC (European Site No. 002162) and the River Nore SPA (European Site No. 004233), in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting permission.
  
3. Having regard to the scale and characteristics of the proposal, to the criteria set out in Schedule 7 of the Planning and Development Regulations 2001-2011, to the advice in paragraphs [5.36 to 5.37] of the Guidance for Consent Authorities regarding Sub-threshold Development issued by the Department of the Environment, Heritage and Local Government in August, 2003, relating to the magnitude and complexity of impact it is considered that the proposed development would be likely to have significant effects on the environment and should be subject to an environmental impact assessment within the meaning of Part X of the Planning and Development Act, 2000 to 2011. The proposed development would, therefore, require an Environmental Impact Assessment Report which should contain the information set out in Schedule 6 of the said Regulations.



In these circumstances, it is considered that the Board is precluded from giving further consideration to the granting of permission for the development the subject of the application.

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

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Stephanie Farrington  
Senior Planning Inspector  
10<sup>th</sup> of May 2023