



An
Bord
Pleanála

Inspector's Report

ABP-313721-22

Development

(1) Erection of a waste transfer station contained within the existing building, (2) construction of a civic amenity bring centre and all associated site works and (3) all associated site works and services, footpaths, upgrading of site access and boundary fence, bicycle parking racks, additional car parking spaces and landscaping.

Location

Milk Isle, Bonagee, Letterkenny , Co. Donegal.

Planning Authority

Donegal County Council

Planning Authority Reg. Ref.

2150424

Applicant(s)

Starrus Eco Holdings Ltd.

Type of Application

Permission.

Planning Authority Decision

Grant permission

Type of Appeal

Third Party

Appellant(s)

Davide Gallazzi.

Observer(s)

None.

Date of Site Inspection

6th December 2022.

Inspector

Barry O'Donnell

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1.0 Site Location and Description

- 1.1. The subject site has a stated area of 0.54ha and is located at Bunnagee, east of Letterkenny Town Centre, in an area characterised by commercial and industrial uses. The subject site forms part of a larger commercial yard that contains a unoccupied portal frame building, an office building and an external yard area.
- 1.2. The yard comprises a mix concrete and hardstanding and appears to partly used by the adjacent Tinney's Oil operation, for the storage of vehicles and plant and machinery.
- 1.3. The site is accessed via the L1114-2, which connects to the N14 to the south. The access road is a cul-de-sac arrangement, providing access to the various commercial and industrial uses along its length and terminating at an Irish Water wastewater treatment plant to the north of the site.
- 1.4. The subject site is adjoined to the south by the Tinney's Oil distribution business, which contains a forecourt area and fuel dispensing pumps, open storage of materials and a number of buildings. It is adjoined to the north by a vehicle testing centre. The River Swilly lies to the east.

2.0 Proposed Development

- 2.1. The proposed development entailed within the public notices comprises: -
 - A waste transfer station contained within an existing building (1,856m²), having an annual waste intake of up to 24,500 tonnes per year;
 - A civic amenity bring centre (408m²) to the east of the existing building; and
 - Associated site works including services, footpaths upgraded site access and boundary fence, parking and landscaping.
- 2.2. The application included the following supporting documents: -
 - Natura Impact Statement
 - Environmental Impact Assessment Screening Report.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority granted permission on 12th May 2022, subject to 21 No. conditions.

Condition 2 restricts use of the facility, to use as a waste transfer station / recycling facility and civic amenity bring centre.

Condition 3 restricts operating hours to 7am-7pm Monday to Saturday.

Condition 5(a) states that parking areas, access road and turning areas shall be surfaced in a porous material with minimum thickness of 40mm.

Condition 8 states that noise levels measured at the nearest residences shall not exceed 55dBA between 8am-8pm and 45dBA between 8pm-8am and that any exceedance of these limits requires submission of proposals for amelioration.

Condition 9 requires provision of a native hedgerow along the fenceline of the site.

Condition 10 requires the site frontage or roadside drain to be piped, in accordance with proposals to be agreed.

Condition 15 requires provision of visibility splays of 2.4m x 50m in each direction from the site access.

Condition 16 requires implementation of recommendations contained within the Road Safety Audit.

Condition 18 requires implementation of mitigation measures contained within the NIS.

Condition 19 requires bulk fuel storage tanks to be bunded, with a capacity of 110% of that of the tank.

Condition 21 requires payment of a financial contribution of €4,717.40 in accordance with the adopted development contribution scheme.

3.2. Planning Authority Reports

- 3.2.1. Planning Reports dated 27th April 2021, 15th March 2022 and 9th May 2022 have been provided. The first report states that the development is acceptable under the

‘Established Development’ zoning and in accordance with development plan policies that support the provision of services for collection, treatment and disposal of waste. No concerns are expressed regarding visual impact or impacts on adjacent property. Issues identified by internal consultees are acknowledged and the report recommends that additional information be requested in relation to:

- Compliance with EPA guidance,
- Waste storage volumes,
- Road safety and trip generation,
- Surface water drainage, and
- Appropriate assessment.

3.2.2. The Report included an Appropriate Assessment screening, which determined that Stage 2 Appropriate Assessment is required, and an Environmental Impact Assessment Screening, which determined that mandatory EIA was not required. The report provided an initial view that sub-threshold EIA was not required, but did not reach a formal determination regarding same.

3.2.3. The second report followed receipt of the AI response. It summarises and responds to the individual AI response items and recommends that the applicant should be requested to publish new site notices.

3.2.4. Regarding Appropriate Assessment, the report states that the NIS provided as part of the AI response was considered, including proposed mitigation, and it was determined that the development would not adversely affect the integrity of any European site.

3.2.5. The third report followed a period of further consultation, following the publication of new site notices. It recommends that permission be granted subject to 22 No. conditions. Recommended condition No. 5, which relates to the provision of an access channel or other drainage trap, was subsequently identified for omission from the Planning Authority’s decision.

3.2.6. Other Technical Reports

A report by the Planning Authority’s **Senior Executive Scientist** dated 23rd March 2021 has been provided, which recommends conditions as part of a grant of permission.

MD Engineer reports dated 29th March 2021 and 16th February 2022 have been provided. The first report advises of potential conflict with the Ten-T route corridor and the N56. The report recommends that a traffic impact assessment and road safety audit should be submitted. The second report recommends that the applicant should contribute to maintenance of roads and drainage on approach to the site and that a contribution of €40,000 should be levied (120m x 6m @ €50 per sqm is the identified calculation).

Planning Authority **National Roads Office** reports dated 14th April 2021 and 18th February 2022 have been provided. The first report advises that whilst the site lies partly within the preferred options corridor for the Ten-T Priority Route Improvement Project, Donegal, the site/development does not affect progression of the project. The submission advises that the development may affect the local access road to the site from the N56. The second report followed the AI response and recommends that additional information be requested in relation to the proposed road layout and drainage proposals.

A **Building Control** report dated 1st April 2021 has been provided, which advises of the requirement to comply with building regulations and to apply for disability access and fire certificates.

A **Chief Fire Officer** report dated 1st April 2021 has been provided, which expresses no objection to the development.

The Planning Officer's report indicates that the **Waste Regulation** department was consulted on the application and that verbal comments were provided, which welcomed the proposal in principle but which sought clarification regarding the proposed layout, fire safety measures and the pattern of waste storage and transfer from the site.

3.3. Prescribed Bodies

- 3.3.1. Transport Infrastructure Ireland made submissions dated 31st March 2021 and 13th April 2022, both of which advise that the proposal is inconsistent with Spatial Planning and National Roads Guidelines for Planning Authorities (2012) as it could prejudice plans for the design of the Ten-T scheme.

- 3.3.2. The Department of Community, Heritage and Local Government made a submission on 5th May 2021, which expresses concern regarding the appropriate assessment and environmental impact assessment screening reports submitted with the application. The submission advises that Appropriate Assessment is required and that full EIA should be undertaken.
- 3.3.3. The Planning Report indicates that Irish Water, the Office of Public Works, An Taisce, Inland Fisheries Ireland and the Environmental Protection Agency were also consulted on the application but did not make a submission.

3.4. Third Party Observations

- 3.4.1. A number of letters of objection were received, the issues raised within which can be summarised as follows: -
- Need for the development,
 - EIA/AA,
 - Surface water drainage,
 - Inadequate application details,
 - Inadequate information regarding processes forming part of the development,
 - Risk of fire,
 - Road and traffic safety.

4.0 Planning History

2150023: (ABP-311514-21) Permission refused by the Board on 4th April 2022 for installation of a bulk LPG storage tank and road tanker filling facilities, fire suppression gantry with associated water storage tank and pump house and ancillary site services. The Board refused permission for 1 No. reason as follows: -

The proposed development is located partly within Lough Swilly Special Area of Conservation (Site Code 002287) and is in close proximity to Lough Swill Special Protection Area (Site Code 004075) to the east. On the basis of the information provided with the application and appeal, and in light of the Stage 2 Appropriate Assessment undertaken, the Board cannot be satisfied that the proposed

development, individually, or in combination with other plans or projects, would not be likely to have a significant effect on the Lough Swill Special Area of Conservation or the Lough Swilly Special Protection Area, in view of the sites' conservation objectives, by reason of the open nature of the east site boundary that allows for direct discharge of surface waters containing suspended solids and/or pollutants to the Special Area of Conservation. In such circumstances, the Board is precluded from granting permission.

5.0 Policy Context

5.1. Donegal County Development Plan 2018-2024

- 5.1.1. Part C of the development plan contains objectives and policies for the towns within the county, including Letterkenny. It also includes land-use zoning maps for each of the towns, with Map 12.1B relating to Letterkenny.
- 5.1.2. The subject site is identified on the zoning map as subject to the 'Established Development' zoning, with an objective *'To conserve and enhance the quality and character of the area, to protect residential amenity and allow for development appropriate to the sustainable growth of the settlement subject to all relevant material planning considerations, all the policies of this Plan, relevant National/ regional policy/guidance including environmental designations and subject to the proper planning and sustainable development of the area.'*
- 5.1.3. The zoning map also identifies that the site lies partially within the route corridor for the Ten-T road improvement project preferred route, where there is an objective *'To conserve and enhance the quality and character of the area, to protect residential amenity, to allow for development appropriate to the sustainable growth of the settlement and to provide for the development of the TEN-T Priority Route Improvement Project, Donegal.'*
- 5.1.4. Relevant policies and objectives include: -

WES-P-5: It is a policy of the Council to prevent and minimise waste, to encourage and support material sorting and recycling, and to ensure that waste is managed and treated without causing environmental pollution.

WES-P-6: It is the policy of the Council to manage and maintain a high level of service at Recycling Centres and to ensure this is provided in the most cost effective manner.

WES-P-7: It is the policy of the Council to ensure that all commercial materials recovery facilities within the County are appropriately licensed/permited and are operating within the terms of their licences/permits.

T-P-10: It is a policy of the Council not to permit development that would prejudice the implementation of a transport scheme identified in the Development Plan.

LK-T-P-6: The Council seeks to improve access into, through and around Letterkenny through the further upgrade and development of Urban Roads and the identification and provision of new Strategic Relief Road Corridors (Map 12.3: 'Transport Map' contained in this part of the Plan refers). The roads and corridors identified are an indicative width of 20 metres.

For planning purposes, in terms of Development Management, all identified Strategic Relief Road Corridors shall be subject to National Roads Standards. Those lands adjacent to and affected by Strategic Relief Road Corridors have been identified for special consideration (Map 12.3: 'Transport Map' that accompanies this part of the Plan). Development proposals which are located within the lands identified shall:

- Consult with the Council Transport Authorities, namely the Roads and Transportation Service, Town Engineer and the National Roads Design Office (NRDO), prior to the submission of any planning application.
- Be required to demonstrate and satisfy that the proposal will not inhibit the future development of the corridor.
- Achieve excellence in road corridor landscaping, including avenue planting in order to develop attractive entrances to and views of the town.
- Provide for the development of public transport 'pick up'/'drop off' points, shelter facilities and future road widening to accommodate increased capacity and/or the provision of public transport corridors to the satisfaction of the Council.

The Strategic Relief Road Corridors are:

- Southern Strategic Relief Corridor, joining the Leck East, Leck West and Swilly Diversion Routes.

- Western Strategic Relief Corridor, connecting Ballymacool and Glencar via Rodgers Burn.
- Northern Strategic Relief Corridor encompassing the Windyhall Route.
- Eastern Strategic Relief Corridor, joining the N56 (New Link Road) and Bonagee Diversion Routes.

Urban Road programmes include the upgrading and rationalisation of the Cullion Road, strengthening to sections of the R250 (Glenties) and strengthening of the R245 (Ramelton) and the development of new roads as appropriate (Map 12.3: 'Transport Map,' contained in this part of the Plan, refers).

WES-O-9: To seek to provide adequate services for:

- The collection, treatment and disposal of household waste; and
- The collection, treatment and disposal of commercial and industrial waste, where appropriate through partnership with the private sector.

5.2. National Planning Framework

NPO56: 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.

5.3. Northern & Western Regional Assembly Regional Spatial and Economic Strategy 2020-2032

- 5.3.1. Section 8.4 discusses Waste Infrastructure. It advises that the provision of waste infrastructure is a necessary component for the future development of the region and can be of equal importance to other infrastructure in securing economic development. The section goes on to state that lands zoned for industrial use are suitable for waste infrastructure and that such facilities should be located as close as is feasible to where the waste is generated.

5.4. Climate Action Plan 2023

- 5.4.1. 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.

- 5.4.2. Actions are set out under a number of separate sectoral headings, including; agriculture, transport, built environment, industry, electricity, public sector, land use/forestry, the marine environment and the circular economy. Section 5 states that the most important changes to society and the economy will relate to electricity generation, buildings, transport, agriculture and land use.
- 5.4.3. 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.
- 5.4.4. 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.

5.5. Natural Heritage Designations

- 5.5.1. The site is located adjacent to Lough Swilly SAC (Site Code 002287) and Lough Swilly SPA (Site Code 004075), which are adjacent to the east boundary of yard in which the site is located.
- 5.5.2. The River Swilly is also identified as a proposed Natural Heritage Area, known as Lough Swilly Including Big Isle, Blanket Nook and Inch Lake (Site Code 000166).

5.6. EIA Screening

- 5.6.1. Class 11(b) of Schedule 5, Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:
- *Installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of this Schedule.*
- 5.6.2. An Environmental Impact Assessment Screening Report was submitted with the application, which states that the proposed development is a project listed in Annexe II of the Directive, but that the proposed annual intake falls below threshold at which the requirement for EIA is mandatory.
- 5.6.3. Regarding the requirement for subthreshold EIA, the Screening Report includes information required under Schedule 7A of the Regulations at Section 4 and it states that due to a combination of the site location, project characteristics and potential impacts, there is unlikely to be any significant adverse environmental impact. In this context, the Screening Report concludes that there is no requirement for sub-threshold EIA.
- 5.6.4. The appellant submits that there is a requirement for EIA, on the basis of the nature of the project and the proposed annual intake.
- 5.6.5. Under the 2014 EIA Directive, the term 'waste disposal' is to be construed in the wider sense, covering all operations leading to waste disposal or recovery. A waste transfer station operates at the initial phase of both waste disposal and recovery and, in this context, I consider it is an installation for the disposal of waste. In view of this, I am satisfied that the proposed development comes within the aforementioned Class 11(b).
- 5.6.6. Regarding the requirement for mandatory EIA, the application documents state that the annual intake for the proposed facility is 24,500 tonnes. It is therefore below the threshold for mandatory EIA.
- 5.6.7. Regarding the requirement for sub-threshold EIA, Schedule 7 of the Planning and Development Regulations 2001-2023 provides the following criteria, against which an assessment should be made prior to any determination: -

- Characteristics of the proposed development,
- Location of the proposed development, and
- Types and characteristics of potential impacts.

5.6.8. I am satisfied that the applicant has provided adequate information to enable assessment under the aforementioned Schedule 7 and I consider the proposed development in the context of the above-outlined criteria below.

Characteristics of the proposed development

a) The size and design of the whole of the proposed development

5.6.9. The waste transfer station is to be housed within an existing unoccupied industrial building, which has a gross floor area of 1,856m². The applicant states that all waste acceptance, partial segregation and temporary storage will take place within the building and that no storage will take place externally. The facility will have an annual intake of 24,500 tonnes and waste storage will be for a temporary period, prior to bulk dispatch off-site.

5.6.10. The civic amenity bring centre element is to be housed externally and will accommodate household dry recyclables such as glass, cans, paper, etc and will also accommodate hazardous household wastes such as paint tins, pesticide/herbicide containers, aerosols, oil filters, electronic waste, batteries etc. All wastes gathered at the site are removed to permitted facilities elsewhere, for processing and onward recycling/disposal.

5.6.11. The development involves what I consider to be modest revisions to the envelope of the industrial building, the provision of a new surface water drainage system (together with improvements to existing pipes that route through the site), the provision of new boundary treatments and the provision of a hard surfaced yard area.

5.6.12. Proposed hours of operation are 7am-7pm Monday to Saturday.

b) Cumulation with other existing and/or approved projects

5.6.13. The site is located on previously developed land, in an area of established commercial and industrial uses, which includes a Tinney's Oil fuel depot to the south and a vehicle test centre to the north.

5.6.14. It is also located adjacent to the Lough Swilly SAC/SPA complex, which encroaches to the eastern boundary of the yard that contains the subject site.

5.6.15. The applicant clarifies that a waste transfer station is the initial phase in waste collection and recovery/disposal and, in this context, there is reliance on authorised facilities elsewhere, stated to be in Dublin and Donegal. There is potential for cumulative impacts at these other sites, but each site itself is subject to mandatory EIA or the need to screen for EIA, in view of its functional role as part of a facility for the disposal of waste.

c) Demolition works

5.6.16. The development does not involve proposed demolition.

d) Use of natural resources / production of waste / pollution / nuisances

5.6.17. The site is previously developed and involves modest revisions to the envelope of the industrial building, the provision of a new surface water drainage system (together with improvements to existing pipes that route through the site), the provision of new boundary treatments and the provision of a hard surfaced yard area. The use of natural resources as part of the development is limited.

5.6.18. Wastes stored on the site are indicated as being held on-site for up to 7 days prior to bulk dispatch off-site, for onward processing and recycling or disposal.

5.6.19. Regarding pollution, the applicant states that no processing of waste will take place on site and that waste will be stored internally. The potential for such incidents therefore relates to surface water discharges, in view of the direct connection to the Lough Swilly SAC/SPA complex to the east.

5.6.20. There is also a risk of fire, which is inherent with a facility such as this, but I note that a Fire Prevention and Response Plan was submitted with the application, which outlines a series of systems and procedures that will be put in place to mitigate the risk of fire and to respond to a fire, in that event.

5.6.21. Regarding nuisances, the construction and operational phases are likely to generate some noise but this is set against a background of the other commercial and industrial uses in the area, which includes other uses that involve regular HGV movements.

Location of the proposed development

a) The existing and approved land use

5.6.22. The site is located on previously developed land, in an area of established commercial and industrial uses. I do not consider the proposed development would have a significant adverse impact in terms of land use.

b) The relative abundance, availability, quality and regenerative capacity of natural resources in the area and its underground / the absorption capacity of the natural environment

5.6.23. The site is in close proximity to Lough Swilly SAC/SPA, sites which are designated under the Habitats Directive. The site itself does not contain any suitable ex-situ or beneficial habitat for biodiversity.

5.6.24. There are no densely populated areas proximate to the site.

5.6.25. There are no sites in the area that are designated for historical, cultural or archaeological significance.

Types and characteristics of potential impacts

5.6.26. This relates to the environmental factors outlined at Section 171A(b)(i) of the Act, i.e. (i) population and human health, (ii) biodiversity, (iii) land, soil, water, air and climate, (iv) material assets, cultural heritage and the landscape and (v) interactions.

5.6.27. **Population and human health:** There are no residential neighbourhoods in the vicinity of the site. Impacts arising from the development will be confined to those people working in the vicinity of the subject site and same relate to noise, odour and risk of fire. Noise will be related to HGV traffic and machinery operation within the site and I am satisfied that this is of a similar nature and order to other commercial and industrial operations in the vicinity and would not be significant. Risk of fire is an inherent risk for a waste transfer station but mitigation is incorporated, in the form of processes and procedures which are intended to reduce the risk of fire and minimise risks to human health in the event of a fire. The impact of a fire is likely to be significant but I am satisfied that the probability of such an event is low and adequate mitigation has been incorporated to minimise the risk to human health. I note that there is an oil distribution depot on the adjacent site to the south, but I am satisfied that the physical separation between the waste transfer building and the adjacent

site (c. 50m) is adequate. Odour may arise, given the nature of the material stored on the site but I do not consider the impact would be of a significant order.

- 5.6.28. **Biodiversity:** The site itself does not contain any beneficial habitat for biodiversity but is located adjacent to the Lough Swilly SAC/SPA complex and is connected to these sites via surface water and overland flows. Subject to implementation of proposed mitigation (I have also recommended elsewhere in this report that a sediment screen be installed along the east site boundary in order to ensure run-off containing suspended and/or pollutant content does not discharge to the SAC or SPA sites) and adherence to best practice, I am satisfied that significant effects on biodiversity are unlikely.
- 5.6.29. **Land, soil, water, air and climate:** The previously developed nature of the site, together with proposed modifications to the site surface and operations to contain and treat surface water and additional mitigation that I have recommended elsewhere in my report (I have recommended that the proposed palisade boundary treatment should be replaced by a block wall, in order to provide an impermeable barrier to overland flows) are such that the impact of the development on land, soil and water is likely to be negligible. I consider significant air and vibration impacts are unlikely, in view of the nature of the development. A limited impact on climate associated with the transport of waste to and from the site is likely, but I am satisfied that the impact is minor and would note that the provision of a waste transfer station allows for more efficient transport, by using bulk transport rather than multiple trips by smaller vehicles.
- 5.6.30. **Material assets, cultural heritage and the landscape:** There are no protected structures, recorded monuments or designated landscapes in the vicinity of the site. The site is itself previously developed and is located in an established industrial area. The development involves modest alterations to an existing building and site improvement works. I am satisfied that significant effects on material assets, cultural heritage or the landscape are unlikely.
- 5.6.31. **Interactions:** Interactions arise between (a) population and human health and climate and (b) biodiversity and water. In respect of population and human health and climate, the issue relates to the impact of HGV movements to and from the site. The number of daily/weekly HGV movements is unstated but I am satisfied that the

impact will not be significant and would note that the provision of a waste transfer station allows for efficient transport patterns, by using bulk transport rather than multiple trips by smaller vehicles. The Climate Action Plan 2023 seeks to reduce transport emissions by 50% by 2030 and this involves reducing trip generation. In respect of biodiversity and water, the issue relates to water quality within the adjacent Lough Swilly SAC/SPA sites and the hydrological functioning and biodiversity characteristics of these sites. I have outlined previously that proposed modifications to the site surface and operations to contain and treat surface water and additional mitigation that I have recommended elsewhere in my report are such that the impact of the development is likely to be negligible.

Transboundary impacts

5.6.32. I am satisfied that transboundary effects do not arise as part of the development.

Conclusion

5.6.33. In view of the above assessment, I conclude that the proposed development does not require an Environmental Impact Assessment as it is not likely to have significant effects on the environment by virtue of its nature, size or location. The site is set in a commercial and industrial context and involves modest works to the envelope of the existing industrial building, together with other site improvement works. Wastes are to be stored on the site temporarily, for partial segregation prior to bulk transfer off-site, and no processing of waste will take place.

5.6.34. The Lough Swilly SAC/SPA complex is an environmentally sensitive receptor in close proximity to the site but I am satisfied that adherence to best practice and the implementation of proposed mitigation measures are adequate to ensure that significant adverse impacts are unlikely to arise. Issues related to Lough Swilly SAC/SPA are also dealt with elsewhere in my report, under the Appropriate Assessment heading.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The grounds of appeal can be summarised as follows: -

- EIA
 - The development proposes an annual intake of 24,500 tonnes, which is just below the threshold for mandatory EIA. But the applicant states that it is forecast to facilitate incremental growth. An increase of 2% on the annual intake would result in exceedance of the threshold.
 - The EIA Screening report is limited in its extent and consideration was only given to issues requested by the Planning Authority. Consideration should have been given to the broad scope of the EIA Directive, given the nature of the proposal. The absence of an EIA means there is no comprehensive assessment of potential effects on the environment.
 - In the absence of an EIA, permission should be refused.
- Oil interceptor
 - Consent was provided by Barry Fuels Ltd to use of an existing oil interceptor but this is not a binding contract.
 - The survey on the drainage pipe network identifies that a lack of maintenance may be contributing to the presence of oil downstream of the interceptor. The applicant undertakes to replace the interceptor but there is no confirmation of the acceptability of this by Barry Fuels Ltd.
 - The applicant separately proposes in a report provided by Greentrack Consultants to make a connection to a new interceptor on the site. This approach would make proposals to access the Barry Fuels Ltd interceptor redundant and result in a lack of clarity as to whether which proposal will be implemented.
 - The Greentrack Consultants proposal for a new interceptor contradicts proposals on drawing No. 211_013-ORS-Z0-00-DR-C-410 to locate an attenuation tank in the same area.
- Site ownership
 - A substantial amount of site improvement work is required but it is unclear if the applicant will undertake this work.
- Wastewater treatment

- Effluent discharging from the site will change, with likely increases in nutrient presence. There is no confirmation from Irish Water that the municipal WWTP can accommodate this changed nature of effluent.
- Facility yard / drainage
 - The application drawings indicate that run-off from the north of the site would escape the surface water drainage system and would enter the neighbouring site. It is unclear if the yard is designed in such a way as to convey all run-off to collection points.
 - There is a risk of pollution of groundwater, in view of the nature and condition of the yard and surface water drainage system.
 - Ireland is required to achieve 'good' water quality status for all rivers by 2027 under the Water Framework Directive. The River Swilly is currently classed as 'moderate'. The applicant has not adequately assessed the risk of pollution or provided a plan for monitoring water quality within the River Swilly.
- Fire risk
 - Waste facilities are prone to fires. This proposal is located next to a gas, coal and fuel depot. The fire report submitted with the application does not adequately consider the proximity of the site to this neighbouring high-risk site.
- Appropriate assessment
 - The NIS submitted with the application does not adequately consider potential impacts on Annex II species, Annex IV species, Annex I bird species and the Flora Protection Order (2015).
 - Inadequate consideration was given to cumulative impacts associated with other development in the area.
 - The Board refused permission for Ref. ABP-311514-21 due to concerns regarding the River Swilly and adjacent European sites.
 - A separate Natura Impact Statement Review Report is appended to the appeal, which responds in detail to the NIS.
- Traffic

- Local road L11142 was not assessed regarding its condition and ability to accommodate heavy traffic, the safety of other road users, street lighting and responsibility for ongoing maintenance.

6.2. Applicant Response

6.2.1. The applicant responded to the appeal on 4th July 2022. The contents of the submission can be summarised as follows: -

- Annual intake
 - 24,500 tonnes per annum is considered to be well-beyond the maximum volume that the facility will handle in its first operational years and is more than adequate for the foreseeable future.
 - Exceedance of 24,500 tonnes per annum cannot occur without further permission.
- EIA
 - The development is sub-threshold, will operate within an existing building in a commercial estate and the operations involved are simple.
 - The EIA screening assessment undertaken has had regard to the EIA Directive.
- Oil interceptor
 - Conditions 12 and 13 of the Planning Authority's decision are referenced, which require remedial works, installation of new drains and a new interceptor.
 - Drawing No. 211_013-ORS-Z0-00-DR-C-410 identifies an interceptor upstream of the attenuation tank, which accords with best practice.
- Site ownership
 - The site is owned by Barry Fuels Ltd and leasing arrangements are irrelevant to the appeal.
- Wastewater treatment
 - The facility will employ max. 5 people and does not require a new wastewater connection.
- Facility yard / drainage

- It is proposed to undertake works to ensure that run-off is adequately conveyed to collection points, as shown on drawing No. 211_013-ORS-Z0-00-DR-C-410. Conditions 4, 5, 10 and 11 are referenced.
- There will be no impacts on surface water quality as there is no processing on site, tipping and storage takes place inside the building and all surface water will pass through an interceptor and will be attenuated prior to discharge from the site.
- Fire prevention
 - A comprehensive fire prevention and response plan was submitted with the application. There is no processing proposed on the site, with waste stored and moved promptly from the site.
- Appropriate assessment
 - Greentrack Consultants respond to this aspect of the appeal.
 - Each of the NIS authors holds a recognised primary and relevant scientific qualification
 - Water quality: The surface water management report submitted with the application identifies defects within the existing drainage system and also proposes improvement works to improve surface water drainage. Mitigation is also identified to avoid contamination during construction and operational phases.
 - Spoil and waste disposal: all waste generated within the facility will be dealt with by the facility operators.
 - Cumulative effects: References to the adjacent development refused under Ref. ABP-311514-21 are not relevant because that project is not consented.
 - Surveys: Surveys were undertaken in accordance with best practice.
 - Water analysis: Water quality was analysed as part of the NIS and mitigation is incorporated to avoid impacts.
 - Mitigation: Measures proposed are commonplace for developments of this nature.

- A number of issues raised within the appellant submission are irrelevant to appropriate assessment.
- Traffic
 - Issues regarding traffic were addressed by the Road Safety Audit and Traffic and Transport Assessment submitted with the application. The development will involve modest hourly trips.

6.3. Planning Authority Response

6.3.1. The Planning Authority made a submission on the appeal on 1st July 2022, the contents of which can be summarised as follows: -

- EIA
 - Any increase in annual intake from 24,500 will require permission.
 - The development is sub-threshold and its nature is not likely to have any adverse environmental impacts.
- Site ownership
 - A grant of permission does not in itself authorise the applicant to carry out development. Replacement of the oil interceptor can only take place with agreement.
 - Conditions attached to the decision to grant permission require the development to be carried out in accordance with associated drawings.
- The building has an existing wastewater connection. No increase in demand arises and therefore no issues within its operation arise.
- Regarding fire risk, the development is subject to building regulations requirements and will be regulated by waste licence, both of which consider fire risk.
- Regarding appropriate assessment, the Planning Authority concurs with the findings of the NIS.
- The site is brownfield in nature and is accessible and sustainable. The Board is requested to uphold the decision to grant permission.

6.4. Observations

6.4.1. None.

6.5. Prescribed Bodies

6.5.1. The appeal was circulated to The Heritage Council but no responding submission was received.

7.0 Assessment

7.1. Having inspected the site and considered the contents of the appeal, I consider the main planning issues in the assessment of the proposed development are as follows:

- Principle of development;
- Impact on the Ten-T priority route improvement project;
- Access;
- Surface Water Drainage;
- Risk of fire; and
- Appropriate Assessment.

7.2. Principle of Development

7.2.1. The proposed development is located on land that is subject to the 'Established Development' zoning, the objective for which identifies that development appropriate to the sustainable growth of the settlement will be allowed, subject to material planning considerations.

7.2.2. The proposed waste transfer station use would be housed within an existing unoccupied industrial building, which has a gross floor area of 1,856m², and the civic amenity bring centre element would be housed externally. As part of the application the applicant has clarified that all waste acceptance, partial segregation and temporary storage will take place within the building and that no storage will take place externally. The waste transfer station will have an annual intake of 24,500 tonnes and waste storage will be for a temporary period, prior to bulk dispatch off-site. The bring centre will accommodate household dry recyclables such as glass, cans, paper, etc and will

also accommodate hazardous household wastes such as paint tins, pesticide/herbicide containers, aerosols, oil filters, electronic waste, batteries etc.

7.2.3. The presence of commercial and industrial uses in the area of the site is established, including an oil storage and distribution depot on the adjoining plot. I am satisfied that the proposal, which is primarily located within an existing unoccupied commercial building, is consistent with the zoning objective and established pattern of development in the area and is also supported by objective WES-O-9 of the development plan, which supports the provision of services for the collection, treatment and disposal of household, commercial and industrial wastes.

7.2.4. In view of the above, I consider the development is acceptable in principle, subject to consideration of other relevant factors below.

7.3. Impact on the Ten-T Priority Route Improvement Project

7.3.1. The subject site falls partly within the route corridor for the Ten-T priority route improvement project preferred route, Section 2 - N56/N13 Letterkenny to Manorcunningham. Development plan map 5.1.6 identifies a c.300m wide preferred route corridor for this project.

7.3.2. The initial MD Engineer report and the Transport Infrastructure Ireland submissions on the application advise of the likelihood of conflict with the preferred route corridor for the route.

7.3.3. The Planning Authority's National Roads Office also commented on the application, advising that the site is part-located within the preferred options corridor but that the development will not affect progression of the project.

7.3.4. Having given consideration to the information provided with the application and appeal, I note that it is the southern-most part of the site that lies within the route corridor. In view of the comments of the National Roads Office, I am satisfied that the development is unlikely impact the progression of the Ten-T project and it would be unjustified to refuse permission on this basis.

7.4. Access

7.4.1. The appellant expresses concern regarding the condition of the access road and its ability to accommodate heavy traffic associated with the development. Concerns are

also expressed regarding the safety of other road users, street lighting and responsibility for ongoing maintenance.

- 7.4.2. The initial MD Engineer report on the application also expresses concern regarding potential impacts on the road network to the south (the report identifies potential impacts on the N56 but the comments appear to relate to the N14), which is itself subject to improvement works and which includes redesign of the access to the L1114-2. The National Roads Office submission also identified that the development may impact the access road leading to the site from the N14, but the submission states that any such impact will be addressed by the Ten-T Project.
- 7.4.3. Access is proposed from the L1114-2, which connects to the N14 and which serves other commercial and industrial sites in the area. The road is a cul-de-sac arrangement, terminating at the Irish Water WWTP to the north of the site. The road appears to have been widened/improved on a piecemeal basis over time and I noted on my site inspection that it displays signs of cracking in the area of the Tinney's Oil site, which is likely related to HGV traffic.
- 7.4.4. Regarding the ability of the road to accommodate traffic associated with the development, I note that it is currently used by commercial traffic, including heavy goods vehicles, and it is sufficiently wide to accommodate two-way traffic flows. As I have previously stated, the access road displays signs of cracking and I consider that it requires upgrade in order to accommodate further HGV traffic. I note in this respect that the MD Engineer recommended that a contribution of €40,000 should be levied toward the maintenance of roads and drainage on approach to the site (the Board will note that this request was not included as a condition on the Planning Authority's decision). I consider the section of road from the Tinney's Oil site entrance to the proposed access point (which I estimate measures approx. 225m) requires upgrade as part of the development.
- 7.4.5. Regarding the impact of traffic more generally, a Traffic and Transport Assessment was submitted at the AI stage, which models likely trip generation associated with the development. The TTA predicts that the development will generate moderate traffic levels and will not negatively impact on the operational capacity of road junctions closest to the site. I note that following receipt of the TTA, the Planning Authority did not express any concern in this regard.

- 7.4.6. Subject to the above-outlined road upgrade, I am satisfied that the road is capable of accommodating development traffic. Should the Board decide to grant permission, I recommend a condition be attached to the Order requiring a special financial contribution under S48(2)(c) of the Act in respect of improvements to the L-1114-2 in the area of the site.
- 7.4.7. The Planning Authority's decision requires that visibility splays of 2.4m x 50m should be provided in both directions from the site access. It appears to me that the required northward sightline cannot be achieved as the sightline is impeded by the warehouse building, which restricts visibility to the north to c.15m. Proposed sightlines are not outlined on the application drawings. I would advise the Board that there is a vehicle test centre to the north of the site, so there is likely to be daily traffic routeing southward past the site access. The volume of such traffic and average vehicle speeds are unclear and the Board may wish to clarify this as a New Issue prior to making a decision.
- 7.4.8. Regarding the concerns for the safety of other road users, I acknowledge that the Road Safety Audit submitted at the AI stage identifies that there is a lack of pedestrian routes to the site and it questions whether this absence will place pedestrians at risk. There is no footpath along the L1114-2 and whilst the provision of a footpath would improve accessibility, in view of the nature of the proposal I am satisfied that there is unlikely to be a demand for pedestrian access to the site and I consider it would be unreasonable to require the applicant to fund the provision of such facilities. The TTA predicts that the development will generate moderate traffic levels and I am satisfied that there is no increased risk to the safety of other road users.
- 7.4.9. I share the concerns of the RSA regarding the internal layout of the site. Pedestrian routes around the site are not identified and, in view of the proposal internal road layout, this may result in conflict between HGVs and pedestrians. Should the Board decide to grant permission I recommend a condition be attached requiring the applicant to submit and agree proposals for identified pedestrian routes within the site and an external lighting scheme.

7.5. **Drainage**

Surface water drainage

- 7.5.1. Surface water is proposed to drain to an oil interceptor and attenuation tank adjacent to the northeast corner of the site before discharging to a proposed concrete headwall to the east. In line with the recommendations of a CCTV survey provided at the AI stage, the applicant also proposes to investigate and repair the existing surface water network on the site. The proposed surface water drainage system is shown on drawing No. 211_013-ORS-Z0-00-DR-C-410.
- 7.5.2. The appellant expresses concern that there is a risk of groundwater pollution, in view of the current condition of the yard and that the applicant may not be able to deliver on proposals to connect to and/or an existing interceptor that is in third party ownership. He also states that the application drawings indicate that run-off from the north of the site would escape the surface water drainage system and would enter the adjoining site.
- 7.5.3. In responding to the appeal, the applicant states that works are proposed to ensure that run-off drains to collection points, as shown on drawing No. 211_013-ORS-Z0-00-DR-C-410. The applicant also states that the interceptor is located upstream of the attenuation tank, in accordance with best practice.
- 7.5.4. Drainage drawing No. 211_013-ORS-Z0-00-DR-C-410 identifies that groundworks will be undertaken, with the intention of ensuring that site levels falls to the centre from the east site boundary. However, it appears to me that the proposed levels fall to the north-east corner of the site where, together with a proposed open boundary fence, may give rise to run-off discharging onto third party land. To ensure such a situation does not arise and to ensure that surface waters are retained and drained within the site, I consider a block wall should be provided along the site boundaries instead of the proposed palisade fence, to provide an impermeable barrier to surface water flows. This can be controlled by condition, should the Board decide to grant permission.
- 7.5.5. I note the recommendations of the Drainage Condition Report, in respect of the existing surface water drainage network. In general, the proposed repair and upgrade of this network will further improve the drainage characteristics of the site.
- 7.5.6. As the appellant states, drawing No. 211_013-ORS-Z0-00-DR-C-410 identifies that an existing oil interceptor to the east of the site will be replaced. This interceptor is on third party lands and, as such, its replacement cannot be controlled as part of a grant of permission. However, it appears to me from the drainage drawing that the

interceptor serves the Tinney's Oil site to the site and is not intended to serve the proposal. For completeness, should the Board decide to grant permission, I recommend a condition be attached requiring that all surface water run-off from the subject site shall drain to the proposed interceptor and attenuation tank at the northeast corner of the site, prior to discharge.

Foul drainage

- 7.5.7. Wastewater is proposed to drain via the existing network, which the applicant states is adequate to serve the development. I note that the Drainage Condition Report identifies multiple issues with a section of the existing network and recommends that it should be replaced as a matter of urgency. A requirement to upgrade the affected section can be controlled by condition, should the Board decide to grant permission.
- 7.5.8. The applicant expresses concern that the characteristics of effluent discharging from the site will change, with likely increases in nutrient presence, but this concern appears to be related to the treatment of waste on the site. As has been stated previously, there is no treatment of waste on the site and I am satisfied that there is no risk of additional contaminants entering the public sewer network arising from the development.

7.6. Risk of Fire

- 7.6.1. At the AI stage the applicant was requested to demonstrate how the proposed design and layout complies with EPA guidance on fire safety at non-hazardous waste transfer stations and civic amenity facilities. In response to the request, the applicant provided a Fire Prevention and Response Plan, prepared by O'Callaghan, Moran & Associates.
- 7.6.2. The appellant expresses further concern regarding fire risk and whilst I acknowledge that there is a risk of fire at a facility such as this, in my view, it does not automatically give rise to a justifiable reason to refuse permission. The Chief Fire Officer did not object to the development and I am satisfied that there are controls available under separate codes to mitigate the risk of fire.

7.7. Appropriate Assessment

Compliance with Article 6(3) of the Habitats Directive

- 7.7.1. 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.

Background on the Application

- 7.7.2. The applicant submitted a Natura Impact Statement (including Appropriate Assessment Screening), prepared by Greentrack Environmental Consultants, at the additional information stage, following a request from the Planning Authority. The NIS document provides a description of the proposed development, identifies European sites within a possible zone of influence and identifies potential impacts.
- 7.7.3. Having reviewed the documents and submissions on the file, I am satisfied that the information allows for a complete examination and identification of any potential significant effects of the development, alone, or in combination with other plans and projects on European sites.

Need for Stage 1 Appropriate Assessment Screening

- 7.7.4. Under Article 6(3) of the Habitats Directive, an Appropriate Assessment must be undertaken on any plan or project not directly connected with or necessary to the management of a European site but likely to have a significant effect on the site in view of its conservation objectives.
- 7.7.5. The proposed development is not directly connected with or necessary to the management of a European site and accordingly is subject to the provisions of Article 6(3).

Brief description of the development

- 7.7.6. A description of the proposed development is provided at Section 1 of the NIS. The development is also described at Section 2 of this Report. In summary, permission is sought for a waste transfer station contained within an existing building (1,856m²), with an annual waste intake of up to 24,500 tonnes per year, a civic amenity bring centre (408m²) and associated site works including services. The site has a stated area of 0.54ha and is located at Bunnagee, east of Letterkenny Town Centre.
- 7.7.7. The submissions from the appellant, applicant and Planning Authority are summarised as Section 6 of this Report. The Board will note that the appellant provided a Natura Impact Statement Review Report, prepared by BW Consulting Engineer Ltd, as part of the appeal. A submission was also received from the Department of Community, Heritage and Local Government (DAU) and is summarised at Section 3 of this report.

7.7.8. Taking account of the characteristics of the proposed development, in terms of its location and the scale of works, I consider the following impact mechanisms require examination:

- Disturbance of species of conservation interest within a European site,
- Potential impacts on water quality within a European site arising from surface water discharges from the site.

European Sites

7.7.9. The Appropriate Assessment Screening within the NIS identifies the following sites as falling within a 15km search zone: -

- Lough Swilly SAC (Site Code 002287), c.25m east,
- Lough Swilly SPA (Site Code 004075), c.40m east,
- Leannan River SAC (Site Code 002176), c.7.9km east,
- Ballyar Wood SAC (Site Code 000116), c.8.3km north,
- Lough Fern SPA (Site Code 004060), c.9.7km north,
- Derryveagh and Glendowan Mountains SPA (Site Code 004039), c.13.9km northwest,
- River Finn SAC (Site Code 002301), c.15km southwest.

7.7.10. In addition the above, I note that Cloghernagore Bog and Glenveagh National Park SAC (Site Code 002047) lies c.15km west.

7.7.11. Regarding Ballyar Wood SAC, Leannan River SAC, River Finn SAC, Derryveagh and Glendowan Mountains SAC and Lough Fern SAC, the Screening states that there is no hydrological connection to the subject site and discounts each site on this basis. There are no drains or open watercourses within the site which would provide any connectivity to any of these sites or, additionally, to Cloghernagore Bog and Glenveagh National Park SAC. In view of this, and taken together with the separation distance from the subject site, I am satisfied that there is no possibility of significant effects on these sites, arising from the proposed development, and I am satisfied that each site can be excluded at this stage.

7.7.12. Lough Swilly SAC and SPA are in very close proximity to the site and are connected to it by the existing site surface water drainage network and overland surface water flows. Summaries of both sites are provided in the table below.

European Site (code)	List of Qualifying interest /Special conservation Interest
<u>SAC</u>	
Lough Swilly SAC (Site Code 002287)	Estuaries, Coastal lagoons, Atlantic salt meadows, Molinia meadows on calcareous, peaty or clayey-silt-laden soils, Old sessile oak woods with Ilex and Blechnum in the British Isles, Otter
<u>SPA</u>	
Lough Swilly SPA (Site Code 004075)	Great Crested Grebe, Grey Heron, Whooper Swan, Greylag Goose, Shelduck, Wigeon, Teal, Mallard, Shoveler, Scaup, Goldeneye, Red-breasted Merganser, Coot, Oystercatcher, Knot, Dunlin, Curlew, Redshank, Greenshank, Black-headed Gull, Common Gull, Sandwich Tern, Common Tern, Greenland White-fronted Goose, Wetland and Waterbirds

7.7.13. In respect of Screening, the Appropriate Assessment Screening Report concludes that: -

‘Following the assessment as detailed in this Stage 1 Screening Report for Appropriate Assessment, it is concluded that significant effects on the Natura 2000 network arising from the proposed development, either individually or in combination with other plans or projects, cannot be excluded at this stage. Therefore stage 2 Appropriate Assessment is required.’

Evaluation of potential effects

Disturbance of species of conservation interest within a European site

7.7.14. The NIS includes an Environmental Noise Survey, which provides survey results for 8 No. locations in the vicinity of the site. The survey indicates that recorded noise is greatest along the L1114-2 approach to the site (locations N1 and N4) and that this is

attributable to HGV traffic. Other elevated noise levels are the surveyed locations closest to active industrial units and the WWTP.

- 7.7.15. The construction and operational phases will generate noise and activity in proximity to the European sites, but species of conservation interest within both sites are already likely to experience and be habituated to some disturbance associated with commercial uses and human activity in the wider area, given the presence of a number of commercial and industrial businesses in the immediate vicinity of the site. I also note that the proposed development is located within an existing commercial yard, in an area where there is already ongoing activity associated with the Tinney's Oil business. I am satisfied that the potential for likely significant disturbance effects on SCI bird species of the SPA is low and can be excluded.

Potential impacts on water quality within a European site arising from surface water discharges from the site

- 7.7.16. As I have stated previously, the site forms part of a larger commercial yard that the SAC boundary abuts. The eastern boundary of the yard is enclosed by a palisade fence and there is no impermeable barrier in place to restrict surface waters from discharging directly into the SAC. The proposed development also incorporates a palisade fence on the eastern site boundary, so there is similarly no impermeable barrier in place to contain surface waters within the site.
- 7.7.17. The development has the potential to result in the deterioration of water quality within the SAC, on foot of direct surface water discharges containing suspended solids or pollutants during construction and operational phases. The Appropriate Assessment Screening Report identifies the source-pathway-receptor connection between sites and determines that further assessment of potential impacts is required on the basis of the issue.
- 7.7.18. Lough Swilly SPA encroaches to the eastern side of the flood embankment but is hydrologically connected to the SAC via drainage channels within the embankment. Impacts on water quality within the SAC may affect the feeding habitat of SCI bird species of the SPA.
- 7.7.19. In view of the above, the proposed development may have significant effects on Lough Swilly SAC and SPA, and therefore, the carrying out of an Appropriate Assessment of the proposed development is necessary.

Screening Determination

7.7.20. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that Appropriate Assessment is required as it cannot be excluded on the basis of objective information that the proposed development, individually or in combination, will have a significant effect on the following European sites.

- Lough Swilly Special Area of Conservation (Site Code 002287)
- Lough Swilly Special Protection Area (Site Code 004075)

Stage 2 Appropriate Assessment

7.7.21. The NIS examines and assesses potential adverse effects of the proposed development on Lough Swilly SAC and SPA. The assessment is stated to be based on relevant guidance, including *Appropriate Assessment of Plans and Projects in Ireland – Guidance for Planning Authorities (NPWS 2009, revised 2010)* and *Assessment of Plans and Projects Significantly Affecting Natura 2000 Sites: Methodological Guidance on the Provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC (EC, 2002)*.

7.7.22. The NIS assesses potential adverse effects in three separate areas: during construction, during operation and in-combination with other plans or projects. For the construction phase it identifies that improper maintenance of plant and machinery or storage practices may give rise to contaminated run-off entering the European sites. For the operational phase it identifies that inadequate surface water drainage could lead to increased discharge of contaminated surface water and lighting or noise may disrupt SCI of the SPA. No in-combination effects are predicted to arise. Proposed mitigation measures are outlined, in response to identified impacts at the construction and operational phases.

7.7.23. Following assessment, the NIS concludes that: -

‘The proposed project as detailed, either individually or in combination with other plans or projects, will have no significant adverse effects on the integrity of any European sites if all mitigating measures as outlined in Section 6 are implemented.

The proposed development as described will alter the structure or function of any Natura 2000 site or negatively impact the conservation of any qualifying interest / special conservation interest therein.'

Appropriate Assessment of Implications of Proposed Development

- 7.7.24. The following is a summary of the objective scientific assessment of the implications of the project on the qualifying interest features of the European sites using the best scientific knowledge in the field. All aspects of the project that could result in significant effects are assessed.

European Sites

- 7.7.25. The relevant European sites for Stage 2 Appropriate Assessment are Lough Swilly SAC and SPA. This Stage 2 assessment will consider whether or not the project would adversely affect the integrity of the European sites, either individually or in combination with other plans and projects in view of the site's conservation objectives.
- 7.7.26. The main aspects of the development that could adversely affect the conservation objectives of European sites relate to: -
- Impacts on water quality arising from surface water discharges from the site.

Evaluation of Effects

- 7.7.27. The conservation objectives for Lough Swilly SAC are: (1) To maintain the favourable conservation condition of Estuaries in Lough Swilly SAC, (2) To restore the favourable conservation condition of Lagoons in Lough Swilly SAC, (3) To restore the favourable conservation condition of Atlantic salt meadows in Lough Swilly SAC, (4) To restore the favourable conservation condition of Otter in Lough Swilly SAC, (5) To restore the favourable conservation condition of Old oak woodland with Ilex and Blechnum in Lough Swilly SAC.
- 7.7.28. There is a uniform conservation objective for the SCI bird species within Lough Swilly SPA, which seeks to 'maintain the favourable conservation condition' of each species.
- 7.7.29. I have previously outlined that the eastern boundary of the yard is enclosed by a palisade fence and that there is no impermeable barrier in place to restrict surface waters from discharging directly into the SAC. The proposed development also incorporates a palisade fence on the eastern site boundary, so there is similarly no impermeable barrier in place to contain surface waters within the site for the

operational phase. The open nature of the boundary provides an avenue for surface water flows containing suspended solid and/or pollutant content to discharge directly into the SAC during both the construction and operational phases.

7.7.30. The application documents confirm that waste acceptance, segregation and storage will be conducted within the transfer building, with no external storage, and that the civic amenity area will be housed on an impermeable external area.

7.7.31. The site is located adjacent to 'estuaries' habitat and a transitional waterbody and I note that the conservation objectives document identifies the presence of sand/silt/sediment in this habitat. The area is therefore likely to be somewhat robust to some suspended solid content within surface waters. However, in saying this, a pollution event or discharges over a prolonged period may affect the wider ecological functioning of the site, affecting the feeding habitat of SCI of both the SAC and SPA.

7.7.32. I note in this respect that the Natura Impact Statement Review Report provided with the appeal expresses concern that the existing surface water outfall from the yard displays signs of pollutant transfer and that the proposed development will result in further deterioration of receiving water quality. The Report also expresses concern that a flood event would inundate the site and result render the surface water drainage system inoperative.

7.7.33. Section 6 of the NIS contains proposed mitigation measures in respect of the issue. It proposes that: -

- Plant and equipment must be stored in areas less susceptible to pollution incidents and static plant should incorporate drip trays, together with the provision of spill kits.
- Site plant should be inspected every day, with repairs undertaken and major repairs undertaken in a dedicated area.
- Vehicles should be attended during refuelling, with refuelling taking place in a designated area that contain an impermeable surface.

7.7.34. The proposed mitigation contained at Section 6.1.1 of the NIS is likely to be adequate to control the potential for hydrocarbons associated with plant and machinery being transferred to the SAC, but the NIS does not consider the potential discharge of run-off containing for suspended solids during construction of the proposed new hard

surface. I have previously outlined that the open nature of the boundaries to the yard allows for run-off to discharge directly into the SAC and I am satisfied that the construction phase is likely to result in run-off containing suspended solid and/or pollutant content being present on the site. Notwithstanding the absence of consideration by the NIS, I am satisfied that the potential can be mitigated by the incorporation of a sediment screen along the entire east site boundary and would recommend that should the Board decide to grant permission, a condition be attached requiring this to be incorporated as additional mitigation.

- 7.7.35. The NIS does not consider construction management. The development requires excavation and, in view of the close proximity to the SAC/SPA, consideration should be given to spoil heaps, etc. I am satisfied that the incorporation of a sediment screen is adequate to mitigate the potential for run-off containing suspended solids to be discharged to the European sites but I consider that, additionally, a Construction Management Plan should be implemented, with the agreement of the Planning Authority. This plan should address issues such as materials and waste storage, dust suppression measures, parking and site maintenance. This can similarly be controlled by condition.
- 7.7.36. Section 6.1.2 of the NIS contains proposed mitigation for the operational phase, which essentially comprises a new surface water drainage system to serve the site. But I am concerned that the NIS does not consider the fact that the open nature of the east site boundary may continue to allow for direct uncontrolled/untreated discharges from the site. I consider the installation of a palisade fence along the site boundaries is inappropriate and recommend that a block wall should be provided along all site boundaries, to provide an impermeable barrier to surface water flows. I recommend that should the Board decide to grant permission, a condition be attached requiring this to be incorporated as additional mitigation.
- 7.7.37. Regarding the appellant's concerns for the existing surface water outfall, as is set out elsewhere in my report, I have given consideration to the drainage drawing provided and it appears to me that the existing network serves the Tinney's Oil site and is not intended to serve the proposal. I have also recommended, for completeness, that should the Board decide to grant permission, a condition be attached requiring that all surface water run-off from the subject site shall drain to the proposed interceptor and attenuation tank at the northeast corner of the site, prior to discharge. I am satisfied

that this requirement is sufficient to ensure that the development does not allow for discharge of suspended solids and/or pollutants to the European sites. I would also highlight to the Board that the applicant has undertaken, on foot of the recommendations of the Drainage Condition Report, to repair and upgrade the existing surface water network that traverses the site, which will have the effect of improving the drainage characteristics of the site.

- 7.7.38. Regarding flood concerns, I note that available CFRAMS mapping indicates that the site is located in Flood Zone C. The site is therefore considered to be at low risk of flooding and there is nothing in the appellant's submission that would lead me to question this. I also note that the proposed attenuation tank is designed to account for the 1-in-100 year rainfall event. I am satisfied that the risk of a flood event is low and the issue can be excluded at this stage.

In-combination impacts

- 7.7.39. The NIS states that recent applications in the vicinity were reviewed for potential in-combination effects and no such potential impacts arise.
- 7.7.40. Regarding existing developments, the NIS acknowledges that current site conditions allow for surface water flows from adjacent sites to flow into the subject site but that the proposed surface water drainage system caters for this and ensures that all surface water within the site will be drained within an interceptor.
- 7.7.41. I have previously commented on the open nature of the east site boundary and that the proposed palisade fence on this boundary appears to allow for direct uncontrolled/untreated discharges from the site. I have also recommended that a block wall should be provided along the site boundaries, to provide an impermeable barrier to surface water flows. This arrangement will result in an effectively self-enclosed site, from a surface water drainage standpoint, and I am satisfied that it addresses the potential for in-combination surface water drainage effects.
- 7.7.42. I note that the Natura Impact Statement Review Report identifies the existing surface water drainage network on the site as a pathway for in-combination effects, in view of its current condition and surveyed evidence of pollution. I also note that the Report provides the results of water sampling, which is stated to indicate the River Swilly is polluted in the area of the site. I have previously recommended additional mitigation in the form of (a) incorporation of a block wall along site boundaries in place of a

proposed palisade fence, to provide an impermeable barrier to surface waters on the site and (b) a requirement that all surface waters within the site shall discharge to the proposed interceptor and attenuation tank, prior to discharge. I am satisfied that this additional mitigation will address the potential for in-combination effects with other sites using the existing surface water drainage network.

7.7.43. Regarding the potential for in-combination effects with other projects in the area, I have reviewed available planning records in the vicinity of the site and I am satisfied that there are no consented projects which may give rise to in-combination effects. Application Ref. ABP-311514-21, which the Natura Impact Statement Review Report directly identifies as requiring consideration, was refused permission by the Board on 4th April 2022.

7.7.44. Regarding the potential for in-combination effects with plans in the area, the county development plan identifies a c.300m wide preferred route corridor for the Ten-T road improvement project, which traverses part of the subject site. There is no final route or design for this scheme and it has not been granted permission. The final design for this project will be required to incorporate surface water drainage infrastructure and will itself be subject to appropriate assessment, whereby the competent authority must be satisfied that significant effects on European sites will not arise. I am satisfied that, subject to incorporation of adequate infrastructure for the drainage of surface water, the likelihood of significant in-combination effects is low.

Integrity Test

7.7.45. Following the appropriate assessment and the consideration of mitigation measures, I am able to ascertain beyond reasonable scientific doubt that the project would not adversely affect the integrity of Lough Swilly SPA and SAC, in view of the Conservation Objectives for both sites. This conclusion has been based on a complete assessment of all implications of the project alone and in combination with other plans and projects.

Appropriate Assessment Conclusion

7.7.46. The proposed development has been considered in light of the assessment requirements of Sections 177U and 177V of the Planning and Development Act 2000, as amended. Having carried out screening for Appropriate Assessment of the project, it was concluded that it may have a significant effect on the Lough Swilly SAC (Site Code 002287) and SPA (Site Code 004075).

7.7.47. Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of this site, in light of its conservation objectives. Following an Appropriate Assessment, it has been ascertained that the proposed development, individually or in combination with other plans or projects, would not adversely affect the integrity of the European sites, or any other European site, in view of its conservation objectives. This conclusion is based on a complete assessment of all aspects of the proposed development.

8.0 Recommendation

8.1. I recommend that permission for the proposed development be granted, subject to conditions as set out below.

9.0 Reasons and Considerations

Having regard to the 'Established Development' zoning objective which applies to the site under the Donegal County Development Plan 2018-2024, together with support provided by objective WES-O-9 of the development plan, which supports the provision of services the collection, treatment and disposal of household, commercial and industrial wastes, and the location of the site in an area of established commercial and industrial uses, the proposed development would be an appropriate form of development, would not seriously injure the amenities of the area, would not have significant effects on adjacent European sites and would be acceptable in terms of traffic and pedestrian safety. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by additional information submitted on 4 th February 2022, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior
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	<p>to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The proposed waste transfer station shall incorporate a maximum annual intake of 24,500 tonnes.</p> <p>Reason: In the interest of clarity and to control the scale of the development.</p>
3.	<p>The development shall be amended as follows: -</p> <p>The proposed palisade fence along site boundaries shall be omitted and replaced by a 1.8m high block wall, details of which shall be agreed with the Planning Authority prior to the commencement of development.</p> <p>Reason: In order to ensure surface waters are contained and treated within the site prior to discharge.</p>
4.	<p>Prior to the commencement of development the applicant shall submit and agree with the Planning Authority, proposals for pedestrian circulation routes within the site, which should provide for segregation of pedestrians and vehicular traffic within the site.</p> <p>Reason: In the interests of pedestrian safety.</p>
5.	<p>The existing surface water and wastewater drainage networks within the site shall be upgraded in accordance with the recommendations of the Drainage Condition Report prior to the commencement of development.</p> <p>Reason: In the interest of public health.</p>
6.	<p>External lighting shall be provided in accordance with a lighting scheme which shall be submitted to and agreed in writing with the planning authority prior to commencement of the development and which shall ensure that lighting is oriented away from or hooded in order to prevent lightspill beyond the site boundaries.</p> <p>Reason: In the interests of amenity and public safety.</p>

7.	<p>Proposed mitigation measures contained within the Natura Impact Statement shall be implemented in full, except where otherwise required in order to comply with conditions attached to this Order.</p> <p>Reason: In the interests of the protection of biodiversity.</p>
8.	<p>During the operational phase of the proposed development, the noise level from within the boundaries of the site measured at noise sensitive locations in the vicinity, shall not exceed</p> <p>(a) an Leq,1h value of 55 dB(A) (daytime)</p> <p>(b) an Leq,1h value of 50 dB(A) (evening)</p> <p>(c) an Leq, 15 min value of 45 dB(A) at any other time.</p> <p>Reason: In order to protect the amenities of property in the vicinity.</p>
9.	<p>Prior to the commencement of development the applicant shall submit and agree proposals with the planning authority for the installation of a sediment screen along the east site boundary. The agreed screen shall be maintained in place for the duration of the construction phase.</p> <p>Reason: In order to guard against the potential for surface water run-off containing suspended solid and/or pollutant content discharging to the River Swilly during construction.</p>
10.	<p>Surface water drainage arrangements for the proposed development shall comply with the requirements of the planning authority. All surface waters arising within the site shall drain to the proposed interceptor and attenuation tank at the northeast corner of the prior to discharge from the site.</p> <p>Reason: In the interest of public health.</p>
11.	<p>Recommendations contained within the Fire Prevention and Response Plan shall be implemented in full, in accordance with the requirements of the planning authority.</p> <p>Reason: In the interest of fire safety.</p>
12.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400</p>

	<p>hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
13.	<p>The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall include details of intended construction practice, noise and dust management measures, traffic management, parking proposals for construction workers on the site and storage of materials and waste within the site.</p> <p>Reason: In the interests of public safety and residential amenity.</p>
14.	<p>The developer shall pay to the planning authority a financial contribution as a special contribution under section 48(2)(c) of the Planning and Development Act, 2000 in respect of the upgrade of the L-1114 in the area of the site, from the point of the access to the Tinney's Oil site to the point of the proposed access to the subject site. The amount of the contribution shall be agreed between the planning authority and the developer, or, in default of such agreement, the matter shall be referred to An Bord Pleanala for determination. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office.</p> <p>Reason: It is considered reasonable that developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.</p>
15.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the</p>

	<p>area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>
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Barry O'Donnell
Planning Inspector

1st March 2023.