An Bord Pleanála

Inspector's Report ABP-315040-22

Development	Construction of a biogas production plant incorporating: two digestion tanks, a pre-mix tank and digestate tank; a substrate storage area and slurry storage tank with associated pumps; construction of a building containing CHP unit and controls for digestion facility and machinery storage; a concrete underground covered soiled water tank with wheel wash, weighbridge, and biogas flare unit; construction of a water attenuation tank for storm / rain water on site, complete with class 1 oil interceptor / separator, silt traps, tree-lined boundary fence on earthen bank and all associated site works.
Location	'Sandford', Dromkeen West, Causeway, Co. Kerry.
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	22228
Applicant(s)	Sandford Energy Limited

Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	Third Party v. Decision
Appellant(s)	Wym O'Connell Siobhan Fitzgerald
Observer(s)	James & Patricia Ferguson Norrie O'Connell
Date of Site Inspection	21st August, 2023
Inspector	Robert Speer

1.0 Site Location and Description

1.1. The proposed development site is located at a property known as ‘Sandford’ in the rural townland of Dromkeen West, Co. Kerry, approximately 400m northeast of the village of Causeway and 16.5km west of Listowel, where it occupies a position alongside an existing complex of farm buildings and a dwelling house on lands to the north of the R551 Regional Road. The surrounding area is primarily agricultural and is characterised by an undulating rural landscape interspersed with intermittent instances / groupings of one-off rural housing, farmyards and associated outbuildings. The broader topography in the immediate site surrounds rises gently in a north / north-westwards direction on travelling away from the R551 Regional Road.

1.2. The site itself has a stated site area of 2.25 hectares, is irregularly shaped, and forms part of a larger agricultural field along with elements of the adjacent farmyard and the existing site access serving the wider landholding (which is generally set in tillage although there is some pasture to the southwest). It adjoins an existing farmyard and is recessed approximately 150m back from a series of 4 No. single-storey dwelling houses located on contiguous sites alongside the regional road to the south. With the exception of the farmyard, the remainder of the site perimeter is not physically defined at present. Access to the site is obtained through the farmyard via a tree-lined laneway which extends north-westwards from an existing junction arrangement with the public road. Although the accessway is potholed in places, the carriageway is of adequate width to accommodate two-way traffic and larger vehicles such as agricultural machinery.

2.0 Proposed Development

2.1. The proposed development consists of the construction of a biogas production plant which will process feedstock by way of anaerobic digestion to produce biogas that will in turn be fed into a Combined Heat and Power (CHP) engine to produce heat (c. 540kWh) and electricity (c. 500kWh) with surplus electricity (equating to approximately 90% of the electrical output) being directed to the national grid.

2.2. The development is proposed to accept approximately 14,000 tonnes of feedstock per annum as follows:

- 5,000 No. tonnes of grass silage
- 5,000 No. tonnes of maize silage
- 2,000 No. tonnes of sugar beet
- 2,000 No. tonnes of cattle slurry

2.3. All feedstock (i.e. the crops and slurry) is to be sourced from the farms of Maurice Leahy, Timothy Leahy & Kevin Leahy as Directors of the applicant company.

2.4. The process of biogas production by way of anaerobic digestion is set out in the submitted particulars with a detailed description included in the 'Environmental Management System' received in response to a request for further information. The anaerobic digestion process will incorporate a number of elements, including a substrate storage area & slurry storage tank with associated pumps, a pre-mix / pre-treatment tank, 2 No. digestion tanks (encompassing primary and secondary digestors), a digestate storage tank, and a plant building (containing the CHP unit and the controls for the facility as well as machinery storage).

2.5. The first step in the process is that cattle slurry will be pumped from delivery vehicles to the underground feed-in / slurry tank before being passed to the pre-treatment tank. Solid feedstock from the substate storage / reception area will be fed by front loader into the pre-treatment / pre-mix tank via an open feed hopper. This mix of solid and liquid inputs will then pass to the digestion tanks where the anaerobic break down of the feedstock at an optimum temperature in the absence of oxygen will produce biogas (and digestate). The anaerobic digestion vessels are fully sealed with the biogas occupying the void in the double membrane at the top of the digester tanks before being passed by way of a pressurised pipe network to the Combined Heat and Power Plant.

2.6. The raw biogas will be passed through a pre-treatment stage to remove any pollutants likely to harm the CHP unit and will be heated to a temperature in excess of 470^{o}C, effectively deodorising the air at high temperatures and venting emissions through a catalytic converter and the (10m high) exhaust stack. The combustion of the biogas will generate c. 500kWh of electricity and c. 540kWh of heat. It is anticipated that c. 10% of the electricity generated will be used on site to drive the pumps etc. with the remainder fed to the national grid by way of existing electrical equipment and three-phase power lines within the adjacent farmyard. It is expected

that approximately 80% of the heat produced will be used in the AD process with the remaining 20% utilised in the adjacent dwelling house and farm buildings. The CHP plant will be sited within a soundproof container inside the control building which will also house the pumps and pasteurisation unit. No biogas will be stored on site with any gas produced fed into the CHP plant to produce electricity. During maintenance of the CHP plant the digestors will not be fed so no biogas will be produced.

2.7. The digestate material will be passed to pasteurisation tanks housed within the same building as the CHP plant where it will be treated in line with the Animal By-Products Regulations before being transferred to the digestate storage tank to await landspreading. The volume of digestate will be slightly less than 14,000 No. tonnes depending on water content or dry matter content and will be land spread back onto the operator's farmland (c. 450-500 acres) as an organic fertiliser (thereby replacing 72 tonnes of fertiliser used annually on that farmland). The capacity of the digestate storage tank is stated as being sufficient to cover those periods when it is not permitted to spread the material on land. The storage tank will be empty at the start of the closed period.

2.8. Due to the nature of the digestion process the plant will operate 24-hours a day, 365 days a year, with feedstock normally accepted and digestate removed between 07:00 hours and 18:00 hours, Monday – Saturday.

2.9. It is expected that there will be three deliveries of feedstock per day during normal operating conditions which will take place between 07:00 and 09:30 hours each morning. Feedstock will be delivered by tractor and storage tank / trailer from the storage sheds on the adjacent farm (104 acres of the operator's farmland is directly linked to the facility thereby negating any requirement for feedstock from this location to travel along the public road). Throughout the year the following volumes of feedstock will be delivered daily:

- c. 13.7 tonnes of grass silage
- c. 13.7 tonnes of maize silage
- c. 2,000 gallons of cattle slurry

2.10. Sugar beet will be harvested and delivered to the facility as follows:

- c. 2,000 tonnes (80 No. deliveries over a period of 2 No. days per year).

2.11. Digestate will be removed from the 890,000 gallon / c. 4,000 tonne storage tank and spread on surrounding farmland on a regular basis or as requirements dictate. This will require on average 14 No. lorry movements per week in a 4,000-gallon sealed storage tank.

2.12. Access to the facility will be obtained via an existing entrance arrangement onto the R551 Regional Road (within the 50kph speed limit) which already serves an adjacent dwelling house and farm complex (in the ownership of one of the directors of the applicant company). Provision has also been made for new internal access roads, parking areas, and circulation areas on site. A weighbridge is proposed to be installed on the site and a wheel wash is proposed close to the site entrance gate. Landscaping and perimeter site works are proposed, including a planted berm along much of the site boundary.

2.13. A water supply will be available via an existing connection to the public mains, however, storm water runoff will also be collected on site and directed to an underground attenuation tank which will feed into the pre-mix tank. It is anticipated that staff / operators on site will have access to sanitary facilities within the neighbouring dwelling house (owned by a director of the applicant company).

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Following the receipt of a response to a request for further information, on 10th October, 2022 the Planning Authority issued a notification of a decision to grant permission for the proposed development, subject to 26 No. conditions. Several of these conditions are of a standardised format and relate to issues including external finishes, landscaping, good agricultural practice, pollution prevention, environmental monitoring, waste management, and development contributions, however, the following conditions are of note:

Condition No. 10: Prohibits any alteration or reconstruction of the permitted activity which would, or be likely to, result in a material change of use or an increase in the nature or quantity of any emission; the abatement / treatment of any emission; or the implementation of

site management and control measures without the prior written agreement of the Planning Authority.

Condition No. 11: Specifies the types and maximum quantities of materials to be accepted, stored and processed at the facility. A maximum of 14,000 No. tonnes of material is to be processed at the facility per annum with all such material to be sourced solely from those farms identified in the application documentation. No food waste is to be accepted or processed at the facility.

Condition No. 13: Refers to environmental monitoring, with particular reference to noise emissions.

Condition No. 15: States that the emission stack is to be a minimum of 10m high before referring to the procedures to be implemented in the event of any odour nuisance.

Condition No. 21: Requires the preparation of a Nutrient Management Plan in relation to the spreading of digestate within six months of the grant of permission and prior to the removal of any digestate off site.

Condition No. 25: Requires the submission of a maintenance contract / agreement with the landowner adjoining the vehicular entrance to the facility (as regards the maintenance of hedging to ensure sightlines) for the approval of the Planning Authority, prior to the commencement of development.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

An initial report details the site context and the relevant policy considerations before summarising the contents of the various submissions and reports received with respect to the proposed development. It defers consideration of matters pertaining to traffic and surface water disposal to the internal reports prepared by the Area Engineer and the Environment Section. Similarly, with respect to the issue of residential amenity, it notes that the Environment Section did not raise any concerns

relating to noise, dust or odorous emissions. The remainder of the planning assessment primarily focuses on visual impact by referencing the rural site context, its location adjacent to an existing farm complex, the set back from the public road, the screening offered by existing buildings, and the site perimeter landscaping proposals, before concluding that these will serve to mitigate the visual impact to such an extent that the development will not be out of character with the area and will not appear unduly obtrusive. The report subsequently recommends that further information be sought in relation to a number of issues, including archaeological testing, surface water management, design details, landscape / visual impact, the grid connection, screening for appropriate assessment, and the available sightlines.

Following the receipt of a response to a request for additional information, a further report, including an updated screening for appropriate assessment, was prepared which recommended a grant of permission, subject to conditions.

3.2.2. *Other Technical Reports*

County Archaeologist: An initial report stated that there were no features listed in the Record of Monuments & Places proximate to the proposed development (noting that the lands in question had already been disturbed), however, given the scale of the proposal, it was recommended that pre-development archaeological testing be carried out across the site and a report submitted prior to any grant of permission.

Following the receipt of a response to a request for additional information, a further report was prepared which noted that the pre-development testing had not recorded any archaeological features on site. Accordingly, it was recommended that no further archaeological mitigation would be required.

Environment: An initial report recommended that further information be sought in respect of a number of issues including surface water attenuation & management, the servicing of the wheelwash and its collection tank, and the height of the proposed stack.

Following the receipt of a response to a request for additional information, a further report was prepared which recommended a series of conditions to be attached to any decision to grant permission.

Listowel Roads Office: An initial report recommended that further information be sought in respect of the adequacy of the available sightlines at the junction of the site

entrance with the public road. Clarity was also sought as regards the proposed grid connection.

Following the receipt of a response to a request for additional information, a further report was prepared which recommended a series of conditions to be included in any decision to grant permission.

Biodiversity Officer: An initial report stated that the development site comprised an open arable field of low ecological significance and that the nearest ecologically sensitive receptor (the 'Brick' waterbody) was located c. 80m to the east. It was also noted that the Environment Section had recommended that clarity be sought as regards the proposed drainage arrangements. Further concerns were raised as regards the grid connection given the absence of any ecological information pertaining to same and the failure to refer to this aspect of the works in the Appropriate Assessment Screening Report. Accordingly, it was considered that further information should be sought in order to complete screening of the proposed development for the purposes of appropriate assessment. The report subsequently concluded by recommending that further information be sought as regards the proposed grid connection, an updated AA Screening Report (to take account of the grid connection), and the landscaping measures.

Following the receipt of a response to a request for additional information, a further report was prepared which indicated that the Biodiversity Officer was satisfied as regards the details provided. Furthermore, in screening the proposal for the purposes of appropriate assessment, it was concluded that the proposed development, individually or in combination with other plans or projects, would not be likely to have a significant effect on the Lower River Shannon cSAC, in view of the site's conservation objectives, and thus Stage 2 Appropriate Assessment would not be required.

3.3. Prescribed Bodies

Uisce Eireann: No objection, subject to conditions.

3.4. Third Party Observations

3.4.1. A single submission was received from an interested third party and the principal grounds of objection / areas of concern raised therein can be summarised as follows:

- The environmental impact of the proposed development.
- The public health and safety implications of the proposed development.

4.0 Planning History

4.1. On Site:

4.1.1. ABP Ref. No. ABP-314998-22. Was determined on 28th November, 2022 granting Siobhan Fitzgerald leave to appeal under section 37(6) of the Planning and Development Act, 2000, as amended, as regards the proposed construction of a biogas production plant incorporating: two digestion tanks, a pre-mix tank and digestate tank; a substrate storage area and slurry storage tank with associated pumps; construction of a building containing CHP unit and controls for digestion facility and machinery storage; a concrete underground covered soiled water tank with wheel wash, weighbridge, and biogas flare unit; construction of a water attenuation tank for storm / rain water on site, complete with class 1 oil interceptor / separator, silt traps, tree-lined boundary fence on earthen bank and all associated site works.

4.1.2. ABP Ref. No. ABP-315037-22. Was determined on 28th November, 2022 refusing James & Patricia Ferguson leave to appeal under section 37(6) of the Planning and Development Act, 2000, as amended, as regards the proposed construction of a biogas production plant incorporating: two digestion tanks, a pre-mix tank and digestate tank; a substrate storage area and slurry storage tank with associated pumps; construction of a building containing CHP unit and controls for digestion facility and machinery storage; a concrete underground covered soiled water tank with wheel wash, weighbridge, and biogas flare unit; construction of a water attenuation tank for storm / rain water on site, complete with class 1 oil interceptor / separator, silt traps, tree-lined boundary fence on earthen bank and all associated site works.

4.2. On Adjacent Sites:

4.2.1. PA Ref. No. 12588. Was granted on 7th November, 2012 permitting Maurice Leahy permission for a change of use of existing agricultural shed to agricultural store to include the storage of agricultural machinery, organic and inorganic fertilisers such

as granular artificial fertiliser, biosolids and soil conditioners. All at Dromkeen West, Causeway, Co. Kerry.

4.2.2. PA Ref. No. 062083. Was granted on 5th September, 2006 permitting Maurice Leahy permission for the construction of slatted easy feed and extra cubicle livestock housing on lands at Dromkeen West, Causeway, Co. Kerry.

4.2.3. PA Ref. No. 95547. Was granted on 16th June, 1995 permitting James O'Driscoll permission for a slatted beef unit at Dromkeen West, Causeway, Co. Kerry.

4.3. Other Relevant Files:

4.3.1. PA Ref. No. 20/673 / ABP Ref. No. ABP-309122-21. Was refused on appeal on 25th June, 2021 refusing Sandford Energy permission for (1) Two digestion tanks, (2) a storage silo with associated sump tank, (3) Biogas flare, (4) an ESB substation for the completion of an agricultural anaerobic digestion facility, (5) a concrete underground covered soiled water tank, (6) to construct a water attenuation tank or storm / rain water on site, (7) a percolation area for the soiled yard rainwater complete with Class 1 oil interceptor / separator and silt traps, (8) to retain and complete building containing pasteurisation pump room, offices, combined heat and power engine (CHP), (9) retain machinery shed, (10) retain underground concrete tank, (11) retain new entrance onto public road and (12) all ancillary site works at Dromkeen West, Causeway, Tralee, Co. Kerry, as amended by the further public notices received by the planning authority on 19th November, 2020.

- On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement, the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not adversely affect the integrity of the Lower River Shannon Special Area of Conservation (Site Code: 002165) in view of the site's conservation objectives. In such circumstances, the Board is precluded from granting permission.

4.3.2. PA Ref. No. 18762 / ABP Ref. No. ABP-304149-19. Was refused on appeal on 8th June, 2020 refusing Sandford Energy permission for the construction of 2 No. digestion tanks, a storage silo, an ESB substation for the completion of an agricultural anaerobic digestion facility and to retain and complete pasteurisation / pump room / offices, machinery shed, new entrance road onto public road and all

associated ancillary site works at Dromkeen West, Causeway, Co. Kerry, as amended by the further public notices received by An Bord Pleanála on the 17th January, 2020 which included the following: to construct 2 No. digestion tanks, a storage silo, Combined Head and Power Engine (CHP), an ESB substation for the completion of an agricultural anaerobic facility, and to retain and complete pasteurisation / pump room / offices, machinery shed, new entrance road onto public road and all associated site works, as submitted to An Bord Pleanála on 24th October 2019 (which details were submitted to the planning authority on 31st of July 2018).

- The Board considered that the applicant has failed to demonstrate that the proposed development would be served by a satisfactory surface water drainage system. The proposed drainage scheme submitted to An Bord Pleanála by way of further information on the 24th day of October 2019 fails to demonstrate how soiled and clean water would be kept separate and it fails to explain how the measures proposed for the disposal of soiled surface water would be compatible with the operations of the anaerobic digestion facility, especially during periods of heavy rainfall. Furthermore, the proposed development in these circumstances would give rise to the pollution of adjoining land drains with adverse implications for water quality and, potentially, public health. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
- On the basis of the information provided with the application and appeal and in the absence of a Natura impact statement 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 Lower River Shannon Special Area of Conservation (Site Code: 002165), or any other European site, in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting permission.

4.3.3. PA Ref. No. 14276. Application by Sandford Energy Ltd. for permission to erect an agricultural and food waste anaerobic digestion facility comprising biomass, feedstock storage and feed facilities (grass silage, maize, farmyard manure), food waste reception and processing building, including ESB substation, site works and a new entrance onto the public road, all at Dromkeen West, Causeway, Co. Kerry. This application was declared withdrawn.

4.3.4. PA Ref. No. 11539. Was granted on 29th February, 2012 permitting Sandford Energy permission for an agricultural anaerobic digestion facility, silage / feedstock storage, associated buildings, including an ESB substation, and site works including a new entrance onto the public road. All at Dromkeen West, Causeway, Co. Kerry.

5.0 Policy and Context

5.1. National Policy

5.1.1. The Programme for Government - Our Shared Future:

The current programme commits to an average 7% reduction in greenhouse gas (GHG) emissions per annum over the 2021-2030 period (a 51% reduction over the decade) and the achievement of net zero emissions by 2050. It also recognises that farmers are the primary custodians of the rural environment and have a vital role to play in addressing the climate and biodiversity crisis. In this regard, a commitment is given to work with farmers to bring about change on every farm in the country in a practical way, giving them an opportunity to benefit from environmental actions and providing them with options for income generation through alternative land use options. Actions include a commitment to:

- Explore and develop potential opportunities for farmers from anaerobic digestion.

5.1.2. Project Ireland 2040: National Planning Framework, 2018:

The National Planning Framework (NPF) sets out a vision for the future development of the country and includes strategic goals in respect of transitioning to a low carbon and climate resilient society and the sustainable management of waste resources. It contains a number of relevant National Strategic Outcomes (NSOs) and National Policy Objectives (NPOs) which can be summarised as follows:

- *NSO 8: Transition to a Low Carbon and Climate Resilient Society:*

  Recognises that the diversification of energy production systems away from fossil fuels and towards a more renewables focused energy generation system (utilising sources such as wind, wave, solar and biomass) will be necessary. It includes an aim to deliver 40% of electricity needs from

renewable sources by 2020, with further increases through to 2030 and beyond in accordance with EU and national policy.

- *NSO 9: Sustainable Management of Water and other Environmental Resources:*

  States that waste treatment planning will require biological treatment and an increased uptake in anaerobic digestion along with waste to energy facilities.

- *NPO 21*: Enhance the competitiveness of rural areas by supporting innovation in rural economic development and enterprise through the diversification of the rural economy into new sectors and services, including ICT-based industries and those addressing climate change and sustainability.

- *NPO 23:* Facilitate the development of the rural economy through supporting a sustainable and economically efficient agricultural and food sector, together with forestry, fishing and aquaculture, energy and extractive industries, the bio-economy and diversification into alternative on-farm and off-farm activities, while at the same time noting the importance of maintaining and protecting the natural landscape and built heritage which are vital to rural tourism.

- *NPO 53:* Support the circular and bio economy including in particular through greater efficiency in land management, greater use of renewable resources and by reducing the rate of land use change from urban sprawl and new development.

- *NPO 55:* Promote renewable energy use and generation at appropriate locations within the built and natural environment to meet national objectives towards achieving a low carbon economy by 2050.

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

5.1.3. Climate Action Plan, 2023 – Changing Ireland for the Better:

This plan is the second annual update to Ireland's Climate Action Plan, 2019 and is the first such plan to be prepared under the Climate Action and Low Carbon Development (Amendment) Act, 2021 and since the introduction of economy-wide

carbon budgets and sectoral emissions ceilings in 2022. It implements the carbon budgets and sectoral emissions ceilings and sets out a roadmap for taking decisive action to halve Ireland's emissions by 2030 and reach net zero no later than 2050, as committed to in the Programme for Government. The Plan lists the actions needed to deliver on climate targets and sets emission ceilings reductions for each sector of the economy. These include an increased reliance on renewable energy sources, the support of micro-generation, and the delivery of a National Biomethane Strategy. The following actions are of particular relevance to the proposed development:

- AG/23/10: Mobilise recommendations of the Food Vision sectoral groupings and support land use diversification options for livestock farmers, such as anaerobic digestion, forestry and tillage, to incentivise voluntary livestock reductions.
- AG/23/13: Deliver a National Biomethane Strategy within 6 months.
- AG/23/14: Seek financial opportunities for capital support for the development of a biomethane industry in Ireland.
- AG/23/15: Identify and address the research and knowledge gaps around the supply of feedstocks, the role of digestate and the sequestration potential regarding biomethane production.

5.1.4. Waste Action Plan for a Circular Economy – National Waste Policy, 2020-2025:

This Plan shifts the focus away from waste disposal and seeks to address how resources can be preserved by creating a circular economy. It goes beyond the management of waste and addresses how resources can be looked at more broadly, capturing and maximising the value of materials that may in the past have been discarded. A key objective of the Plan is therefore to shift the focus away back up the product life cycle, to remove or design out harmful waste, to extend the life of products and goods, and to prevent waste arising in the first place – consistent with the concept of a zero-waste future. The plan identifies opportunities for the application of circular economy principles across a range of areas where improvements in the regulatory regime can divert material from waste to beneficial reuse. It also gives full effect to many of the commitments in the Programme for Government.

5.1.5. EU Water Framework Directive 2000/60/EC:

The EU Water Framework Directive aims to improve water quality and applies to all water bodies. The Directive runs in six-year cycles with its third cycle running from 2022 to 2027. It commits Member States to preventing deterioration and achieving water quality of at least 'good status' in rivers, lakes, groundwater, estuaries and coastal waters, by 2027 at the latest. The Directive has been given effect by the Surface Water and Groundwater Regulations.

5.2. Regional Policy:

5.2.1. Regional Economic and Spatial Strategy for the Southern Region, 2020-2032:

The RSES provides a long-term, strategic development framework for the future physical, economic and social development of the Southern Region and includes Metropolitan Area Strategic Plans (MASPs) to guide the future development of the Region's three main cities and metropolitan areas – Cork, Limerick-Shannon and Waterford. The strategy updates the South East Regional Authority Regional Planning Guidelines, 2010-2022 and supports the transition towards a low carbon economy and climate resilient society across all sectors. It also supports the implementation of the Regional Waste Management Plan for the Southern Region, 2015-2021. Relevant Policy Objectives include:

- *RPO 87: Low Carbon Energy Future:*

  The RSES is committed to the implementation of the Government's policy under Ireland's Transition to a Low Carbon Energy Future 2015-30 and Climate Action Plan 2019. It is an objective to promote change across business, public and residential sectors to achieve reduced GHG emissions in accordance with current and future national targets, improve energy efficiency and increase the use of renewable energy sources across the key sectors of electricity supply, heating, transport and agriculture.

- *RPO 95: Sustainable Renewable Energy Generation:*

  It is an objective to support implementation of the National Renewable Energy Action Plan (NREAP), and the Offshore Renewable Energy Plan and the implementation of mitigation measures outlined in their respective SEA and

AA and leverage the Region as a leader and innovator in sustainable renewable energy generation.

- *RPO 107: Regional Waste Management Plan for the Southern Region, 2015-2021:*

  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.

- *RPO 109: Bio-Energy Implementation Plan:*

  a) It is an objective to support the preparation of a Bio-energy Implementation Plan for the Southern Region in conjunction with the Local Authorities and the Regional Waste Management office;

  b) Proposals for Bio-energy development and infrastructure will need to be subject to robust site and/or route selection that includes consideration of likely significant effects on European Sites and subject to the outcome of the required appraisal, planning and environmental assessment processes.

- *RPO 219: New Energy Infrastructure:*

  It is an objective to support the sustainable reinforcement and provision of new energy infrastructure by infrastructure providers (subject to appropriate environmental assessment and the planning process) to ensure the energy needs of future population and economic expansion within designated growth areas and across the Region can be delivered in a sustainable and timely manner and that capacity is available at local and regional scale to meet future needs.

- *RPO 221: Renewable Energy Generation and Transmission Network:*

  a) Local Authority City and County Development Plans shall support the sustainable development of renewable energy generation and demand centres such as data centres which can be serviced with a renewable energy source (subject to appropriate environmental assessment and the planning process) to spatially suitable locations to ensure efficient use of the existing transmission network;

b) The RSES supports strengthened and sustainable local/community renewable energy networks, micro renewable generation, climate smart countryside projects and connections from such initiatives to the grid. The potential for sustainable local/community energy projects and micro generation to both mitigate climate change and to reduce fuel poverty is also supported;

c) The RSES supports the Southern Region as a Carbon Neutral Energy Region.

5.2.2. Southern Region Waste Management Plan, 2015-2021:

This Plan set out a framework for the prevention and management of wastes in a safe and sustainable manner and includes the strategic vision to rethink the approach to managing waste by viewing waste streams as valuable material resources. It places a stronger emphasis on waste prevention and material reuse activities while also focusing on enhancing the collection of quality materials from discarded waste to build on the positive progress made in recycling. It further strives to improve the recovery and generation of energy by maximising the resource value of the materials and energy embodied in residual wastes while seeking to reduce the role of landfilling in favour of higher value recovery options. Key measures within the Plan include provisions which seek to grow the biological treatment sector, in particular composting and anaerobic digestion, by supporting the development of new facilities.

5.3. Development Plan

5.3.1. Kerry County Development Plan, 2022-2028:

Vol. 1:

Chapter 2: Climate Change & Achieving a Sustainable Future:

Section 2.6.1: *Sustainable Land Use and Resource Efficiency:*

The bioeconomy involves the production of renewable biological resources and their conversion into food, feed, bio-based products, and bioenergy. It includes agriculture, forestry, fisheries, food, pulp, and paper production, as well as parts of chemical, biotechnological and energy industries. Its sectors have a strong

innovation potential to support Ireland's transition to a more integrated sustainable, low carbon economy.

Section 2.6.2.2: *Energy Policy and Planning:*

Kerry County Council recognises that the transition to a low carbon economy is an integral part of Ireland's climate change strategy and that renewable energies form a core component of reducing our reliance on fossil fuels. In particular, decarbonisation of the heating and transport sectors are challenges of significance to this plan.

The main sources of renewable energy are the sun (solar energy), wind, moving water (hydropower, wave, and tidal energy), heat below the surface of the earth, (geothermal energy) and biomass (wood, waste, energy crops, and biogas).

KCDP 2-2: Facilitate and support national climate change objectives contained in the Climate Action Plan 2021 and the actions contained in the KCC Climate Change Adaptation Strategy 2019-2024 and successor strategies, and to consider a variation of this development plan, if necessary, to align with the approach recommended in the guidelines: Development Plans, Guidelines for Planning Authorities.

KCDP 2-9: Promote the development of a more sustainable agri-sector, having regard to the measures and environmental objectives of the forthcoming 'Common Agricultural Policy Strategy for Ireland, Ag Climatise 2020 – the National Climate & Air roadmap for the agriculture sector'.

Chapter 9: Economic Development:

Section 9.3: *Sustainable Economic Development and Climate Action*

Section 9.7.6: *Agriculture, Agri-Food and Agri-Tech*

Chapter 11: Environment:

Section 11.2: *Biodiversity:*

KCDP 11-1: Ensure that the requirements of relevant EU and national legislation, are complied with by the Council in undertaking its

functions, including the requirements of the EU Birds and Habitats Directives.

KCDP 11-2: Maintain the nature conservation value and integrity of Special Areas of Conservation, Special Protection Areas, Natural Heritage Areas (NHAs) and proposed Natural Heritage Areas (pNHAs). This shall include any other sites that may be designated at national level during the lifetime of the plan in co-operation with relevant state agencies.

Section 11.3: *Air, Noise and Light Pollution*

Section 11.6: *Landscape:*

KCDP 11-76: Have regard to any future National Landscape Character Assessment, Regional Landscape Assessments and Landscape Character Map, and the publication of Section 28 Guidelines on Landscape Character Assessment.

KCDP 11-77: Protect the landscapes of the County as a major economic asset and an invaluable amenity which contributes to the quality of people's lives.

KCDP 11-78: Protect the landscapes of the County by ensuring that any new developments do not detrimentally impact on the character, integrity, distinctiveness or scenic value of their area. Any development which could unduly impact upon such landscapes will not be permitted.

Section 11.6.3.2: *Rural General:*

Rural landscapes within this designation generally have a higher capacity to absorb development than visually sensitive landscapes. Notwithstanding the higher capacity of these areas to absorb development, it is important that proposals are designated to integrate into their surroundings in order to minimise the effect on the landscape and to maximise the potential for development.

Proposed developments should, in their designs, take account of the topography, vegetation, existing boundaries and features of the area. Permission will not be granted for development which cannot be integrated into its surroundings.

Chapter 12: Energy:

KCDP 12-1: Support and facilitate the sustainable provision of a reliable energy supply in the County, with emphasis on increasing energy supplies derived from renewable resources whilst seeking to protect and maintain biodiversity, archaeological and built heritage, the landscape and residential amenity and integration of spatial planning and energy planning in the county.

Section 12.5: *Renewable Energy:*

KCDP 12-14: Maximise the development of all renewable energies at appropriate locations in a manner consistent with the proper planning and sustainable development of the County.

KCDP 12-16: Facilitate and promote sustainable alternative forms of renewable energy including hydro, bio, solar, geothermal and off-shore wind energy.

KCDP 12-17: During the lifetime of the Plan, Kerry County Council seeks to prepare a Renewable Energy Strategy for the County inclusive of targets across renewable energy sources, including the potential for offshore renewables, bioenergy, solar etc.

Section 12.5.1: *National Targets and Responding to Climate Change:*

Bioenergy (10MW):

In terms of bioenergy, suitable agricultural lands that could contribute to same are located in all parts of the County, whether it be sources associated with lands or animals. It is estimated that up to 10MW of electricity, with additional potential for heat generation, could be generated from bioenergy.

Section 12.5.4: *Renewable Energy Policy:*

Section 12.5.4.4: *Bioenergy & District Heating:*

Kerry, as in Ireland as a whole, has a significant bioenergy potential in the form of agricultural land, forestry, recycled waste from municipal and domestic treatment plants, agriculture and industrial sources. All of these sources can be used to

generate electricity, refined into fuel for the transport sector, provide heating/cooling for the building sector or as a source for biochemical raw materials for Irish industry.

Section 12.5.4.4.1: *Location and Impacts:*

The generation of fuel from biomass, including anaerobic digestion, on a commercial scale is an industrial process potentially involving large structures and grid connections. Such plants should be located in brownfield sites, adjacent to industrial areas or co-located with other wood processing industries. Proposals for bioenergy plants will be considered on lands which are reserved for industrial uses. To minimise traffic impacts, locations should be close to the point of demand and be served by public roads with sufficient capacity to absorb increased traffic flows and adjacent to transport corridors.

Traffic considerations arise as biomass fuel must be delivered from the point at which it is produced to the plant itself. There is a need to ensure that the distances involved are not so great that carbon dioxide emissions from transportation significantly reduce any carbon benefit derived from the use of biomass. Issues related to the generation of traffic and the protection of the carrying capacity of roads will be a material consideration in the assessment of an application.

Noise (engines, boilers, handling equipment and traffic) may in some cases be sufficiently loud to affect the amenity of adjacent users, particularly in residential areas. Biomass plants may also have an adverse impact on visual amenity. Bioenergy installations will not be permitted in areas which may affect residential or visual amenity.

Some types of biomass installations have the potential to generate odours and emissions to air. Proposals will be required to demonstrate that these factors have been considered and the scheme will not generate emissions and odours. Applicants are advised to consult with the Council's Environment Department to identify and develop mitigation measures where they are deemed to be necessary.

KCDP 12-31: Facilitate the sustainable development of bioenergy plants including anaerobic digestors, in compliance with the development management standards on appropriately zoned lands. Bioenergy installations shall not be permitted in areas where such developments may affect residential or visual

amenity. They should be developed close to the point of demand and be served by public roads with sufficient capacity to absorb increased traffic flows and adjacent to transport corridors.

KCDP 12-32: Consider in rural areas proposals for suitably scaled developments for bioenergy plants including anaerobic digestors, close to the source material and where roads have capacity to absorb increased traffic flows. Such plants should, where possible, be located in proximity to existing agricultural buildings. Bioenergy installations shall not be permitted in areas where such developments may affect residential or visual amenity.

KCDP 12-33: Prohibit bioenergy developments in Natura 2000 sites or within designated and proposed Natural Heritage Areas or, ex situ of these ecologically sensitive areas where proposals will adversely affect: the integrity of Natura 2000 sites; impact on the ecological integrity of NHA / pNHAs; the habitats of protected species (without appropriate licence) as designated under National and European legislation.

Section 12.5.5: *Community Consultation, Community Benefit & Microgeneration / Community Projects:*

KCDP 12-37: Support the principles of a Just Transition as the community moves towards a climate neutral society and economy.

KCDP 12-38: Support the transition towards low carbon economy and circular economy through mechanisms such as the Climate Action Competitive Fund and/or Just Transition Funding.

KCDP 12-39: Ensure that community benefits are derived from all renewable energy development in the county including those subject to repowering or extension applications.

KCDP 12-41: Support strengthened and sustainable local/community renewable energy networks, micro renewable generation,

climate smart countryside projects and connections from such initiatives to the grid.

Chapter 13: Water & Waste Management:

KCDP 13-40: Support the preparation of a Bio-energy Implementation Plan for the Southern Region in conjunction with the Local Authorities and the Regional Waste Management Office.

Appendices: Appendix 7: Landscape Review: 4. Kerry Head and Ballyduff

Vol. 6:

Development Management Standards & Guidelines:

Section 1.3: *General Standards applicable to all Development Types*

Section 1.15: *Renewable Energy Proposals*

5.3.2. Listowel Municipal District Local Area Plan, 2020-2026:

Section 2.1: *Strategic Vision and Development Strategy:*

Section 2.1.3: *Strategic Issues:*

- The promotion of the sustainable development of the area's agricultural communities and other traditional rural based economic activity while simultaneously fostering sustainable economic diversification and development in rural areas.
- The promotion and use of alternative energy uses including the natural gas network within the area for domestic and commercial developments.

Section 3.9: *Causeway*

5.4. Natural Heritage Designations

5.4.1. The following natural heritage designations are located in the general vicinity of the proposed development site:

- The Kerry Head Special Protection Area (Site Code: 004189), approximately 4.1km northwest of the site.
- The Lower River Shannon Special Area of Conservation (Site Code: 002165), approximately 4.3km northwest and 6km east of the site.

- The Cashen River Estuary Proposed Natural Heritage Area (Site Code: 001340), approximately 7.7km east-northeast of the site.
- The Tralee Bay Complex Special Protection Area (Site Code: 004188), approximately 7.4km southwest of the site.
- The Akeragh, Banna and Barrow Harbour Proposed Natural Heritage Area (Site Code: 000332), approximately 7.4km southwest of the site.
- The Akeragh, Banna and Barrow Harbour Special Area of Conservation (Site Code: 000332), approximately 7.4km southwest of the site.
- The Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area (Site Code: 004161), approximately 11.9km southeast of the site.
- The Magharee Islands Special Area of Conservation (Site Code: 002261), approximately 13.2km southwest of the site.
- The Magharee Island Special Protection Area (Site Code: 004125), approximately 14.8km southwest of the site.
- The Illaunnabarnagh Island Proposed Natural Heritage Area (Site Code: 001359), approximately 14.8km southwest of the site.

5.5. EIA Screening

5.5.1. The proposed development involves the processing of the following quantities of materials per annum:

- 5,000 No. tonnes of grass silage
- 5,000 No. tonnes of maize silage
- 2,000 No. tonnes of sugar beet
- 2,000 No. tonnes of cattle slurry

5.5.2. In this regard, the Board is advised that under Article 2(1)(f) of the Waste Framework Directive 2008/98/EC, exclusions from the scope of the Directive include *"straw and other natural non-hazardous agricultural . . . material used in farming . . .or for the production of energy from such biomass through processes or methods which do not harm the environment or endanger human health".* In effect, any such material does

not constitute “waste” as per the Directive. However, Article 2(2)(b) of the Directive clarifies that “*animal by-products . . . which are destined for use in a biogas or composting plant”* do fall within the scope of the Directive. Such products would include cattle slurry.

5.5.3. By reference to Class 11(a) of Part 2 of Schedule 5 of the Planning and Development Regulations, 2001, as amended, installations for the disposal of waste with an annual intake greater than 25,000 tonnes necessitate mandatory Environmental Impact Assessment EIA). In the subject instance, while the annual intake for the proposed development amounts to 14,000 tonnes, only the 2,000 tonnes of cattle slurry can be categorised as “waste” as per Article 2(1)(f) of the Waste Framework Directive.

5.5.4. Given that the current proposal is sub-threshold for the purposes of EIA, it is necessary to carry out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations as follows:

1. *<u>Nature of the Development:</u>*

   Is the nature of the proposed development exceptional in the context of the existing environment?

   The proposed development involves the production of biogas through the processing of agricultural inputs by way of anaerobic digestion with the resulting end products including the generation of heat and electricity as well as digestate for use as an organic farm fertiliser. While aspects of the proposal could be considered industrial in nature, it is situated in a rural area alongside an existing complex of farm buildings and would have the appearance of an agricultural development on the periphery of the village of Causeway.

   Will the development result in the production of any significant waste, emissions or pollutants?

   The proposal involves the construction of an agricultural anaerobic digestion facility which will process feedstock, including cattle slurry, derived from agricultural activities. Digestate from the facility is to be spread as a fertiliser

on the farmlands of the named directors of the applicant company, which are located in the surrounding area and beyond. Impacts from the facility would affect noise, odour, and air quality within the surrounding area, however, reports addressing these issues have accompanied the application which conclude that the impacts are capable of being satisfactorily mitigated.

2. *Size of the Development:*

Is the size of the proposed development exceptional in the context of the existing environment?

The proposed development site extends to a site area of 2.25 hectares and forms part of a much larger holding encompassing surrounding farmland. The size and extent of the development itself is not exceptional given its location in a rural area alongside an existing complex of farm buildings which is characterised by larger structures. The overall size, height and appearance of the construction will be broadly comparable to that of similar agricultural buildings such as slatted sheds, hay barns, grain silos, and machinery storage sheds etc.

Are there significant cumulative considerations having regard to other existing and/or permitted projects?

The proposed development adjoins an existing well-established farm complex. There is no real likelihood of significant cumulative effects with these farm buildings.

3. *Location of the Development:*

Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location?

There are no ecologically sensitive locations in the vicinity of the site. The closest European Sites are the Kerry Head Special Protection Area (Site Code: 004189), approximately 4.1km to the northwest, and the Lower River Shannon Special Area of Conservation (Site Code: 002165), approximately 4.3km northwest and 6km east of the site. There may be a source / pathway / receptor route between the development site and a watercourse that

discharges to the Lower River Shannon Special Area of Conservation (which is considered further elsewhere in this report).

Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?

The site is not within an area of any known archaeological interest while the results of pre-development archaeological test trenching (submitted by way of additional information) did not record any features of archaeological significance.

5.5.5. Accordingly, having regard to the nature, size and location of the proposed development, and to the criteria set out in Schedule 7 of the Regulations, I have concluded at preliminary examination that there is no real likelihood of significant effects on the environment arising from the proposed development. Environmental Impact Assessment, therefore, is not required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. Wym O'Connell:

- Permission has previously been refused on two separate occasions for the retention and completion of an anaerobic digestion facility elsewhere on the applicant's farm holding (please refer to ABP Ref. Nos. ABP-304149-19 & ABP-309122-21). In this regard, it is submitted that the subject application is an attempt to circumvent the requirements of Section 34(12) of the Planning and Development Act, 2000, as amended (and Article 6(3) of Directive 92/43/EEC), by relocating the proposed development to a different location on the same farm. In effect, the proposal represents a continuation of the development already refused permission for retention under ABP Ref. Nos. ABP-304149-19 & ABP-309122-21.

  No such circumvention should be permitted, particularly as the unauthorised development previously refused permission remains in situ and in active use with ongoing environmental impacts in contravention of Article 6(3) of Directive 92/43/EEC.

- The impact of the subject proposal cannot be assessed without due consideration being given to the ongoing impact of the existing unauthorised development undertaken by the applicant elsewhere on the same farm. The Board should exercise the precautionary principle in this regard.
- The Planning Authority has yet to take enforcement action in relation to the unauthorised development already refused permission on the lands.
- In screening the proposed development for the purposes of Appropriate Assessment and subsequently determining that a Natura Impact Statement was not necessary, the Planning Authority has sought to rely on the additional details provided in response to the request for further information with respect to the surface water drainage arrangements. It is contended that the details provided (i.e. the attenuation area, petrol interceptors and silt traps) constitute measures intended to avoid or reduce the harmful effects of the project on a European Site (i.e. the Lower River Shannon SAC) and that it is not appropriate to take account of such measures in screening development for the purposes of appropriate assessment. More specifically, if there is a source-pathway-receptor connection between the proposed development and the qualifying interests of a European Site, and potential harmful effects have been identified, measures to avoid or reduce those effects must be excluded from the screening analysis (please refer to *People Over Wind and Sweetman v. Coillte Teoranta Case C-323/17*).

  On the basis of the foregoing, it is submitted that the proposed development necessitates the preparation of a Natura Impact Statement and that the Board should exercise the precautionary principle in this regard.
- The existing 'Farm Shed' referenced in the plans and particulars is used as a Biosolids Store for the intake and storage of 4,000 No. tonnes per annum of EWC Code 190805 Urban Waste Water Treatment Sludge for spreading on the applicant's farmland (please refer to PA Ref. No. 12/588). However, there is a history of regulatory breaches and subsequent enforcement action in respect of these waste activities.

  The impacts of the proposed development must be considered cumulatively with those of the existing Biosolids Storage facility. Notably, the biosolids

store was not considered in the Appropriate Assessment screening exercise undertaken by either the applicant or the Planning Authority.

- There is the potential for future conflicts, misadventure and significant adverse impacts arising from the location of the 'Feedstock Reception Area / Substrate Storage Area' serving the anaerobic digestion facility adjacent to the existing Biosolids Store.
- The proposed development requires a Waste Licence under the Environmental Protection Agency Act, 1992 and the Waste Management Act, 1997, as amended, on the basis that the facility will have the capacity to store in excess of 6,000m^3 of bio-waste (cattle slurry destined for use in a biogas plant under Article 2(2)(b) of the Waste Framework Directive 2008/98/EC) and compost / digestate at any one time. In this regard, the Board is referred to EPA guidance with respect to the circumstances when a Waste Licence is required.
- The applicant has not submitted an Article 11 request to the Environmental Protection Agency in respect of the proposed development.
- Cognisance should be taken of the waste storage capacity of the existing biosolids store in the assessment of the application.
- Biogas produced at the facility will be primarily composed of methane, a Category 1 flammable gas. Schedule 1 (Categories of dangerous substances) of the Control of Major Accident Hazards Involving Dangerous Substances (COMAH) Regulations, 2015 (S.I. 2019 of 2015) implementing the Seveso III Directive (2012/18/EU) sets the 'lower tier threshold' for flammable gases at 10 No. tonnes. It should also be noted that biogas typically includes oxygen and hydrogen sulphide as constituents, both of which are included in Schedule 2 (Named dangerous substances) of the COMAH Regulations, 2015.

  Note 3 to Schedule 1 of the COMAH Regulations, 2015 states the following:

  'The qualifying quantities set out above relate to each establishment.

  The quantities to be considered for the application of the relevant Regulations of these Regulations are the maximum quantities which are present or are

likely to be present at any one time. Dangerous substances present at an establishment only in quantities equal to or less than 2% of the relevant qualifying quantity shall be ignored for the purposes of calculating the total quantity present if their location within an establishment is such that it cannot act as an initiator of a major accident elsewhere at that establishment'.

- The proposed development is likely to have the volumetric capacity to store quantities of gas in excess of the 10 No. tonne threshold specified in Schedule 1 of S.I. 2019 of 2015.
- Inadequate information has been provided as regards the maximum gas storage capacity proposed, the volume of gas to be produced, or the proposed gas storage pressure.
- The proportion of biogas composed of substances for the purposes of the Seveso III Directive as implemented by the 2015 Regulations has not been identified.
- The applicant has not addressed the considerable variation in biogas generation and methane concentrations inherent to the anaerobic digestion process.

- It has not been demonstrated that the maximum quantity of biogas present on site at any one time could never exceed 10 No. tonnes. By extension, the potential for a SEVESO risk cannot be excluded and, therefore, the proposed development must be considered a 'lower tier establishment' for the purposes of the COMAH Regulations, 2015. In this regard, the Board is referred to the legal precedent established by *Halpin v. An Bord Pleanala & Ors [2019] IEHC 352.*
- The proposed development falls within a prescribed class of development for the purposes of environmental impact assessment by reference to Class 11(b): *'Installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of this Schedule'* of Part 2 of Schedule 5 of the Planning and Development Regulations, 2001, as amended (the 2,000 tonnes of cattle slurry proposed as feedstock comprises a waste as per Article 2(2)(b) of the Waste Framework Directive 2008/98/EC).

Although subthreshold, given the complexity and hazards associated with the proposed facility, the likelihood of significant effects cannot be ruled out on the basis of a preliminary examination. The proposal should have warranted a determination by the Planning Authority with reference to the criteria set out in Schedule 7 of the Planning and Development Regulations, 2001, as amended, as to whether the proposed development would be likely to have significant effects on the environment and thus warrant the preparation of an Environmental Impact Assessment Report.

- Given the requirement for a Waste Licence, the EPA may have observations in terms of determining whether an EIAR is required.
- The surface water drainage system proposed is inappropriate and inadequate to mitigate against the pollution risk posed by the development to the receiving environment and the tributary of the Lower River Shannon SAC to the east. It effectively amounts to a rainwater attenuation system designed on a soakaway principle as would be used for a site with limited contamination risk e.g. a surface car park. Cognisance has not been taken of the significant surface water contamination risks proposed by the normal day-to-day operation of the proposed facility, including the storage & loading of feedstock and the removal of digestate. Similarly, no consideration has been given to the large volumes of liquid material to be contained within the digestion tanks and the digestate storage tank and the pollution risks posed by same in the event of spillages or tank failure, particularly if such an occurrence were to coincide with a significant rainfall or flood event. Neither has cognisance been given to the safe containment and treatment of effluents and condensate by-products generated by the anaerobic digestion process.
- A system capable of treating the full spectrum of contaminants present at the facility, and which can function effectively during very high volume scenarios, has not been included as part of the surface water drainage strategy.
- The application has not been accompanied by a hydrological assessment prepared by a suitable professional while the full extent of existing and proposed land drains in the vicinity has not been identified. Accordingly, there would not appear to be sufficient information available to fully assess the

hydrological impacts of the proposed development in order to establish that no reasonable scientific doubt remains as to the absence of any adverse effects on the integrity of existing and proposed land drainage in the area as well as the integrity of groundwater and the Lower River Shannon SAC (to which an adjacent watercourse forms a hydrological link).

- The submitted drawings do not contain sufficient information to allow for a full assessment of the feasibility or efficacy of the surface water drainage system.
- Given that the process vessels are to be surrounded by permeable hardcore while the perimeter banking is also to be of a permeable earthen construction, it has not been demonstrated how contaminated water collected within these areas is to be prevented from infiltrating to ground thereby resulting in contamination of groundwater and potentially a tributary of the Lower River Shannon SAC.
- Silt taps are ineffective as regards the capture and treatment of dissolved nutrients and other process effluents etc. typically present at a facility of the type proposed.
- The use of a bypass separator would appear to be inappropriate in the context of the proposed development given the high risk posed by large spillages and heavy rainfall. During critical high flow events the separator function will be bypassed and contaminated waters will be discharged directly to the stone filled ‘soakaway’ and allowed to percolate to ground thereby contaminating groundwater and posing a risk to the Lower River Shannon SAC (given the hydrological link offered by a nearby watercourse).
- The treatment measures proposed would not appear to address the full range of potential contaminants generated at the facility nor are they suitable to manage the potential risk posed by large flow volumes of contaminated liquids during flood / high rainfall events or spillage / tank failure scenarios.
- In the event of a flood / high rainfall scenario or a spillage / tank failure, there is no impediment to high volumes of contaminated material from entering the drainage system intended to treat surface waters. The silt traps will be overrun while the bypass separator will operate in ‘bypass’ mode allowing

untreated contaminants to flow to the soakaway before infiltrating to ground and posing a pollution risk.

- The surface water strategy retains a dependence on the anaerobic digestion process as a means by which to treat and dispose of soiled water and process effluents. Such a scenario does not appear credible when account is taken of the extent of the drained area and the annual rainfall at the site. It is unclear whether the anaerobic digestion process can be sustained when significant volumes of water (such as during heavy rainfall or flood events) are introduced to the system in the manner proposed.
- The process equipment (e.g. gas purification, pasteurisation system, heat exchanger etc.) will produce potentially harmful effluents and condensates. No information has been provided as to how these liquid wastes will be treated and disposed of.
- In the event of a tank failure or spillage, there would appear to be an unobstructed route for process liquids to flow from the site onto the R551 Regional Road.
- The planning application has not been accompanied by a project-specific public safety proposal. The risks to public safety associated with the construction, operation and decommissioning of the proposal have not been identified nor have any specific mitigation measures or procedural controls been proposed in response to those risks. In this regard, specific reference is made to the risks posed to nearby residences in the event of an explosion / flash fire or a tank failure / spillage.
- The Sustainable Energy Authority of Ireland's *'Methodology for Local Authority Renewable Energy Strategies, 2013'* states that the proximity of bioenergy facilities to dwellings and other sensitive locations should be assessed from a public safety perspective. Particular concerns arise as regards the risk of explosion, the risk to human health posed by infection, allergen or toxicity, and the risk of poisoning.
- The most significant risk to public safety posed by an anaerobic digestor / biogas facility is the hazard associated with flash fire scenarios. In order to quantify any such risk it is necessary to determine the 'flash fire envelope' and

the specific level of thermal radiation involved. No such assessment has been provided with the application.

- The applicant does not appear to have engaged the services of a fire consultant in the design of the proposed development.
- A decommissioning plan for the facility has not been provided.

6.1.2. Siobhan Fitzgerald:

- Condition No. 25 as imposed by the Planning Authority requires the submission of a maintenance contract / agreement with the owner of adjacent land to ensure that hedging alongside the site entrance is maintained in such a manner as to provide for adequate sightlines. The appellant is the owner of the neighbouring property and has no affiliation with the proposed development. Moreover, she has no intention of entering into any such agreement as this would result in a significant devaluation of her property.
- Contrary to the site location plan, the site notice was erected on the opposite wall of the existing entrance (not on the boundary alongside the appellant's property).
- While the appellant previously pruned back her existing hedging, this was undertaken as general garden maintenance for the purposes of allowing more light to enter her property.
- The planning application has not been accompanied by any form of public safety proposal. There has been no identification of the risks posed by the development to public safety nor have any procedural controls been proposed in response to said risks. In this respect, particular concerns arise as regards the risk of explosion / fire and spillages / failures given the proximity of nearby housing.
- The increased traffic movements (such as HGVs and tractors) and the associated noise levels will substantially detract from the residential amenity and enjoyment of the appellant's property.
- It is unclear why the applicant has predicted noise levels at a distance of 150m from the proposed development when the nearest noise sensitive

receptors / residential properties are c. 90m away. The noise levels provided with the application do not appear to be accurately represented.

- There are concerns as regards the odorous emissions from material being transported to or from the site as well as from the facility itself.
- There are specific times of the year when slurry can be spread thereby minimising odours to those exact dates. Given that slurry will be transported daily as part of the proposed development it is not accepted that parallels may be drawn between odorous emissions arising from its operation and those associated with other agricultural activities carried out in the local area.
- The suggestion that local people should become accustomed to odours from the proposed development is not accepted and is contrary to the guidance issued by the Health Service Executive and the Environmental Protection Agency.
- It is unclear who will be responsible for adherence to Condition No. 18 of the grant of permission.

6.2. **Applicant Response**

6.2.1. *Response to the Third-Party Appeal of Wym O'Connell:*

- The contention that the proposed development is connected to the applications previously refused permission under ABP Ref. Nos. ABP-304149-19 & ABP-309122-21 is rejected. The submitted proposal concerns a different site on lands subject to a separate and unrelated lease agreement. The applicant is entitled as a matter of law to lodge the subject application with the expectation that it be processed in the normal way.
- Notwithstanding that the proposed development will avail of the same type of processing equipment, feedstock inputs, and spreadlands, it does not fall within the provisions of Section 34(12) of the Planning and Development Act, 2000, as amended.
- With respect to the screening exercise undertaken by the Planning Authority for the purposes of appropriate assessment, the initial screening determination by the case planner stated that significant effects could not be

excluded ‘at this stage’ before concluding that further information would be required to complete the screening process. In accordance with Section 177U of the Act, the Planning Authority was entitled to request additional information to complete the screening process.

- There is no basis to conclude that the details provided by way of further information as regards the attenuation area and silt traps constitute (mitigation) measures intended to avoid or reduce the effect of the proposed development on a European site.
- It is not accepted that there is any source-pathway-receptor connection between the proposed development and the qualifying interests of a European site. This is clearly stated in the Screening Determination Statement which refers to *‘a lack of a direct or indirect SPR connectivity between the proposed development and the QIs of the Lower River Shannon SAC’.*
- It is accepted that ‘mitigation measures’ cannot be taken into account in screening for the purposes of Appropriate Assessment. If there is a source-pathway-receptor connection between the proposed development and the Qualifying Interests of a European site, and potential adverse effects have been identified, any measures to avoid or reduce those effects must be excluded from the screening analysis. Given that there is no source-pathway-receptor connectivity in this instance, there can be no reliance on mitigation measures.
- The screening exercise carried out by the Planning Authority specifically states that no account was taken of mitigation measures.
- The groundwater management system set out in the submitted particulars is not intended to avoid or reduce the adverse impact of the proposal on any European site and has been included entirely without reference to the presence or otherwise of a European site within the zone of influence. This is supported in part by Condition Nos. 16 & 17 of the grant of permission which refer to groundwater management at the site and were imposed in order ‘*To safeguard public health and to prevent pollution’.*

- The ‘Existing Biosolids Store’ referenced by the appellant is not located within the development site and does not form part of the submitted proposal.
- The proposed development comprises a Type II plant according to the Department of Agriculture. There will be no importation of slurry from other farms and, therefore, there is no requirement for authorisation under the relevant waste management or animal by-products legislation. Moreover, the Local Authority has decided that a Waste Facility Permit is not required for the application site.
- In referring to the Gas Storage Directive 2012/18/EU and the COMAH Regulations, 2015 before asserting that the applicant has not demonstrated that the maximum quantity of biogas present on site at any one time could never exceed 10 No. tonnes, the appellant refers to the ruling of the High Court in the case of *Halpin v. An Bord Pleanala & Ors. [2019] IEHC 352* wherein Simons J. stated the following:

  ‘I am satisfied that – on the very unusual facts of the present case – the conclusions which An Bord Pleanala reached in relation to the Seveso III Directive were unreasonable in the sense that there was no material before the Board capable of justifying its conclusions’.

  In the *Halpin* case it had been submitted that there was a theoretical possibility that if the entire capacity of the digestion tanks (including the adjustable membranes) were to be used for the storage of biogas (to the exclusion of any feedstock) then this could exceed the 10-tonne threshold.

  With respect to the subject proposal, precise technical details have been supplied of the volumetric capacity for gas storage (2,046m^3) and the digestion tanks (4,589m^3). It is generally accepted that biogas has a density of 1.15-1.25 kg/m^3 (i.e. 1,000m^3 of biogas taken at its highest density would weigh 1.25 tonnes). Therefore, based on a maximum total gas storage of 2,046m^3, the maximum gas storage at any one time on site would be 2.56 tonnes. If the capacity of the digestion tanks (including the adjustable membranes) were to be used for the storage of biogas, then the maximum weight of stored biogas on site would be 5.74 tonnes. Accordingly, it can be reasonably concluded that the weight of biogas at any one time on site could

never exceed 10 tonnes and thus the proposal is not subject to the COMAH Regulations, 2015.

- A comprehensive Health and Safey Statement (including a construction management plan) will be put in place prior to the commencement of development. An experienced project supervisor will be appointed with responsibility for a Safety Management Plan for the site and the management of health and safety during operation of the plant.
- The applicant has entered into a contract as regards the environmental monitoring of the plant thereby fulfilling the conditions attached to the grant of permission.
- The facility will be constructed, commissioned and managed (for the first year) by a company well experienced in such projects.

6.2.2. Response to the Third-Party Appeal of Siobhan Fitzgerald:

- The appellant was granted leave to appeal under Section 37(6) of the Planning and Development Act, 2000, as amended, on the basis that the development, in respect of which a decision to grant permission has been made, will differ materially from the development as submitted by reason of the imposition of Condition No. 25 and that said condition will materially affect the appellant's enjoyment of land adjoining the land in respect of which it has been decided to grant permission or reduce the value of the land. The appellant has now sought to appeal the decision of the Planning Authority 'in full', however, only one of the proffered grounds for appeal relates to Condition No. 25 as imposed by the Planning Authority. In this respect, it is submitted that the appellant by virtue of the leave for appeal granted under Section 37(6) of the Act is not entitled to make an appeal in full against the decision to grant permission.

  The entitlement to make a full appeal is restricted to persons set out in Section 37(1) of the Act:

  > *'37(1)(a): An applicant for permission and any person who made submissions or observations in writing in relation to the planning application to the planning authority in accordance with the permission*

regulations and on payment of the appropriate fee, may, at any time before the expiration of the appropriate period, appeal to the Board against a decision of a planning authority under section 34'.

The appellant made no such observations or submissions to the Planning Authority.

The provisions of Section 37(6) are specific exceptions to the general rule set out in Section 37(1)(a). The judgement of the High Court in its determination of *2019/40 JR* (Para. 74) states the following:

'Where there is more than one, or there are several, possibilities in respect of the legislative policy or intention underpinning a provision, or exceptions, it is not the task of the court to look beyond the wording of the relevant statutory provisions. This reinforces my view that s.37(6) should be given a literal interpretation, and should not be broadly construed in a manner that might undermine the policy or legislative intent behind either s.37(6) of s.37(1)(1), whatever that may be'.

Therefore, by virtue of the leave to appeal granted under Section 37(6), this third-party appeal is strictly confined to the implications of Condition No. 25 and thus the Board should not consider any part of the appeal other than those matters directly related to Condition No. 25 (as to do so would undermine the policy or legislative intent behind either s.37(6) or s.37(1)(a) of the Act).

- It is acknowledged that the appellant has indicated that she has no intention of entering into a maintenance agreement with respect to the hedging to the east of the site entrance. Notwithstanding, the applicant endeavours to reach the necessary agreement as required by Condition No. 25. In the event that agreement is not achieved (or as an alternative arrangement to meet the purpose of Condition No. 25), it is proposed to enter an agreement with the landowner to the west (being a Director of Sandford Energy Ltd.) to make minor modifications to the site entrance. In this regard, the Board is requested to consider the accompanying report prepared by O'Dwyer Horgan, Consulting Engineers, which details design modifications to the site entrance that will avoid any requirement for maintenance contracts.

- A comprehensive Health and Safey Statement (including a construction management plan) will be put in place prior to the commencement of development. An experienced project supervisor will be appointed with responsibility for a Safety Management Plan for the site and the management of health and safety during operation of the plant.
- The applicant has entered into a contract as regards the environmental monitoring of the plant thereby fulfilling the conditions attached to the grant of permission.
- The facility will be constructed, commissioned and managed (for the first year) by a company well experienced in such projects.
- In relation to noise levels, it should be noted that Axis Environmental Services were commissioned to carry out a Noise Impact Assessment (NIA) for the proposed development.
- With regard to the contention that 'Sensitive Residential Dwelling 1' is located further away from the proposed biogas plant than the appellant's dwelling, given that these properties are equidistant from the proposed development, it is submitted that the conclusions of the Noise Impact Assessment with respect to 'Sensitive Residential Dwelling 1' are directly applicable to the appellant's dwelling.
- The Board is referred to Page No. 90 of the Consolidated Application Documentation wherein Axis Consultants concluded as follows:

  'Vehicular traffic on public roads and front loader operations is considered to be a daytime activity. Each one of these potential sources of noise is considered in turn . . . The cumulative noise levels during the daytime, at the residential boundary would be 41dB which is lower than the existing noise levels measured at 52dB. The noise levels generated from this facility at this property will not be considered a nuisance and would comply with the general limit values for the noise at the external façade of the property'.
- In reference to the appellants' concerns regarding noise emanating from the access road, the Board is referred to Page No. 92 of the Consolidated Application Documentation wherein Axis Consultants stated:

'Noise from vehicle movements to and from the site is also considered to be not significant. The access road is an existing roadway. Based on traffic projections, it is predicted that vehicle movements will increase by two deliveries per day (during the daytime only). Given the distance to the receptors, the existing noise and the vehicles already using the roadway, this increase is considered to be negligible'.

- On Page No. 92 of the Consolidated Application Documentation, Axis Consultants have concluded:

  'Based on the findings of the assessment it is considered that noise impact from the operation of the proposed plant is negligible given the equipment noise levels, mitigation offered and the distance to the nearest noise sensitive premises and, as a result, represents 'the no observed adverse effect' level. Therefore, no further specific mitigation measures are required for the development other than the CHP is to be housed as planned, and a screen should be placed around the boundary of the installation'.

- For the purposes of clarity, there have been no written complaints received as regards any nuisance related to the operation of the adjacent farmyard which houses in excess of 100 No. head of cattle in a slatted unit. There have been cattle and cows on this farmyard continuously for generations. Therefore, the suggestion that there is no on-site production of slurry from the farmyard is unfounded.

- The proposed development will use slurry from the adjacent farmyard and other farmyards owned by the Directors of Sandford Energy Ltd. The facility will also use silage and maize grown on the farm as feedstock for the anaerobic digestor. There will be 1 No. tractor movement to & from the site each day.

- The movement of cattle slurry and digestate will be by way of vacuum tanker. Slurry will be stored in sealed underground tanks and fed directly to the anaerobic digestion vessels. The digestate will be spread on lands owned by the directors of the applicant company thereby replacing imported chemical fertiliser. The arrangements for the transportation and handling of feedstock and digestate will ensure the minimisation of odours.

- The long-term modelling undertaken by Axis Consultants has established that odours at the closest residential properties will be well below the benchmark for an offensive process and below the point at which the odour would be classed as a negligible change.
- Odorous emissions from the proposed development will be made up of odours from the storage of silage and maize which are already present as part of the normal operation of the farm (and other farms in the area).
- The applicant is confident that it can comply with all the requirements of Condition No. 18 as imposed by the Planning Authority.
- References to ABP Ref. Nos. ABP-304149-19 & ABP-309122-21 are not matters that can be considered in the context of the subject appeal.

6.3. Planning Authority Response

- The proposal comprises a small-scale renewable energy development which is acceptable at the location proposed and compatible with the established agricultural use on site.
- The siting of the proposed development adjacent to an existing farm complex significantly reduces its visual impact.
- The anaerobic digester will process waste from the applicant's landholding while the digestate will be spread on the same landholding. The electricity generated will connect to the national grid.
- The reduction in the spreading of chemical fertilisers consequent on the proposed development will have environmental benefits.
- Heat generated by the development will be used in the proposed process.
- Environmental Impact Assessment is not required as the annual intake of waste at 14,000 tonnes does not exceed the 25,000-tonne threshold specified in the Planning and Development Regulations, 2001, as amended.
- The response to the request for further information addresses all the issues raised by the Planning Authority.

- Based on the landscape visual assessment, including the photomontages; the proposed landscaping scheme; the existing natural screening of the site; and the proximity of the works to an existing cluster of farm buildings; it is considered that the proposed development is in the interests of proper planning and sustainable development.

6.4. Observations

6.4.1. James & Patricia Ferguson:

- The plans and particulars do not accurately depict the boundary of the observers' property which has the effect of reducing the distance and exposure to the proposed development. The applicant cannot reasonably be unaware of the legal boundary and thus doubt must be cast on the efficacy of the planning application.
- Overspill from the proposed lighting arrangements will have a detrimental impact on the residential amenity and value of the observers' property.
- Given that the planned screening will take years to mature, the proposed development will detract from the visual amenity and views available from the observers' dwelling house resulting in a devaluation of property.
- There are concerns that the proposed development will pollute nearby waters / watercourses.
- Runoff from the development site will flow towards the observers' property (the lands close to their house flood every winter). The prospect of polluted runoff or suspended solids (silt, sediment etc.) from the proposed development running onto the observers' land is objectionable and will detract from the amenity and value of their property.
- The observers' dwelling house is only 30m from the proposed plant and concerns arise as regards the potential impact arising in the event of a spillage or leak.
- Any unauthorised change in either the amount or nature of waste accepted at the facility would adversely impact on the amenity and value of the observers' property.

- The increased traffic volumes (and the associated increase in noise and odorous emissions) consequent on the proposed development will have an intolerable impact on the amenity of the observers' property.
- The narrow road at the site entrance is not suitable for the turning of HGVs and could give rise to a traffic accident.
- Access to and from the observers' house will be made more difficult consequent on the proposed development and could result in an accident.
- The proximity of the proposed development to the observers' dwelling house makes it impossible to ensure the safeguarding of public health and the prevention of pollution.
- The proposed development is in the wrong location (in reference to the proximity of the village) given that the probability of pollution by reason of lighting, odours and water contamination is clear.
- The Department of Public Health should assess the impacts of the proposed development given its siting relative to the village of Causeway and the potential for water pollution.
- The prospect of airborne infection from animal waste products is a threat to well-being and public health.
- Both the visual impact and air pollution / emissions from the proposed stack will adversely impact on the amenity and value of the observers' property.
- No independent inspection regime is proposed as regards adherence to the conditions imposed and, therefore, the authorities are agreeing to self-regulation.
- There are doubts as to the reliability of the applicant to maintain an accurate record of complaints or to comply with the requirements of Condition No. 20 as imposed by the Planning Authority. The relevant authorities should undertake unannounced inspections in order to safeguard public health & safety and to prevent pollution.

- Clarity is required as regards any hazardous waste / material that may be generated on site and the Department of Health should assess the public health impact of any such items.
- The owner of the property adjoining the site entrance has not consented to the maintenance agreement sought by Condition No. 25 of the grant of permission. The lack of adequate sightlines poses a safety risk to road users, including the observers.
- The Road Safety Authority should investigate the potentially hazardous nature of the entrance arrangements in advance of any decision on the application.

6.4.2. Norrie O'Connell:

- With respect to the assertion by a third-party appellant that the subject proposal amounts to a continuation of the development already refused permission for retention under ABP Ref. Nos. ABP-304149-19 & ABP-309122-21 in an attempt to circumvent the requirements of Section 34(12) of the Planning and Development Act, 2000, as amended, by relocating the development to a different location on the same farm, this would appear to be confirmed by the applicant's response to the request for further information wherein it is stated that the development of an anaerobic digester was moved to a different site on the landholding following discussions with the Planning Authority.
- Despite the applicant having had discussions with the Planning Authority which ultimately lead to the relocation of the development to a different location on the same farm, there is no record of these pre-planning consultations. This represents a breach of Section 247(5) of the Planning and Development Act, 2000, as amended, and the lack of transparency as regards any advice offered by the Planning Authority could be construed as contrary to natural justice.
- The application has not been accompanied by a hydrological assessment and, therefore, does not appear to contain sufficient information to objectively assess the hydrological impact of the proposed development to the extent that no reasonable scientific doubt remains as to the absence of adverse effects

on ground and surface waters in the vicinity of the site and, by extension, the Lower River Shannon SAC.

- The Board's attention is drawn to an historic watercourse that previously flowed to the immediate south of the development site. This can be clearly identified on Drg. No. Ph-2 '*Site Location Map'* as submitted with the initial application. Reference to the OS Historic 6-inch and 25-inch series maps indicates that this watercourse formed a direct hydrological link to the Lower River SAC following a route via Causeway Village. Local knowledge suggests that remnants of this watercourse may continue to be present in subterranean form. The planning application makes no reference to this historic watercourse nor has any assessment been made with respect to its continued existence. Neither has reference been made to the historic watercourse in the AA Screening Report or the 'Environmental Management Systems' report.

6.5. Further Responses

6.5.1. Response of Siobhan Fitzgerald to the Circulation of the Applicant's Submission:

- It is reiterated that neither Sandford Energy Ltd. nor its directors own the land over which it is proposed to make changes to the existing access arrangement. No consent will be given for any changes within the appellant's property (please refer to Folio Map KY19509).
- The changes proposed to the existing access arrangement (which will move the entrance into a bend on the roadway) should be the subject of a planning application with assessments for road safety etc.
- A comprehensive Health & Safety Statement should have been included as part of the proposed development.
- No mention has been made of a professionally trained team to manage risks during construction or to the appointment of a Health & Safety Officer on site.
- Cognisance should be taken of the guidance published by the SEAI as regards the noise, odour and environmental impacts of anaerobic digestors.
- The elevated noise levels from traffic will not just arise on site but will also occur at the entrance and along the surrounding road network.

- There are concerns as regards the increased traffic volumes consequent on the proposed development and the capacity of the local road network to accommodate same.
- Conflicting information has been provided as regards the volume of traffic generated by the development.
- Aside from having another farmer's cattle in an adjacent shed over the winter of 2022, it is not accepted that in excess of 100 No. of the applicant's directors' cattle are being housed in a slatted unit. It is also queried whether any slurry generated by another party's cattle housed in the farmyard could be held to be the applicant's own waste.
- Conditional approval has been granted on the basis that the applicant will be utilising its own slurry, however, in its most recent submission reference is made to slurry being imported from other farmyard owners.
- The Board's attention is drawn to the policy provisions set out in the Kerry County Development Plan, 2015-2021 as regards bioenergy, with particular reference to Objectives B3, B4 & B7.
- Clarity is required as regards the contractual agreements reached by the applicant in terms of future monitoring.
- It is not accepted that ABP Ref. Nos. ABP-304149-19 & ABP-309122-21 are unrelated to the assessment of the subject application.

6.5.2. *Response of Wym O'Connell to the Circulation of the Applicant's Submission:*

- It would appear that the revised entrance arrangement detailed in the applicant's submission continues to rely on a portion of land outside of its ownership in order to achieve the required sightlines. In this regard, the applicant has not satisfied the obligations of Article 22(2)(g)(i) of the Planning and Development Regulations, 2001, as amended, or fulfilled the requirements of Section 34(1)(b) of the Planning and Development Act, 2000, as amended.
- The applicant has not furnished evidence of having completed a First Stage Application to the Department of Agriculture, Food and the Marine to evaluate compliance of the proposed development with the European Communities

(Animal By-Products) Regulations, 2014 and the provisions of Regulation (EC) No. 1069/2009 and Regulation (EU) No. 142/2011 with respect to the acceptance or transformation of animal by-products in a biogas plant.

- In reference to the claim that in excess of 100 No. head of cattle were held on site, no confirmation has been provided that these animals were in the applicant's ownership or held under its own herd number.
- The odour dispersion modelling has been limited to periods during the optimum operation of the proposed digestion facility, however, there will be times when the pressure release valves are open and untreated biogas is released to the atmosphere. No odour dispersion modelling or analysis has been conducted of the impact of odorous emissions when they are likely to be at their highest (or the frequency of such incidences). Accordingly, insufficient information has been provided to permit a robust and objective assessment of the likely odour impact of the proposed development.
- The requirement of Condition No. 16 as imposed by the Planning Authority that all liquids (other than waters) be retained in bunded enclosures *'to safeguard public health and to prevent pollution'* has far reaching consequences given the large volumes of liquid to be stored on site. The provision of bunded areas capable of accommodating 110% storage as per Condition No. 16 will be to materially alter the development proposed, with particular reference to the footprint of impermeable surfaces and the future management of surface waters.
- The implications arising from the imposition of Condition No. 16 have not been considered in the screening exercise for Appropriate Assessment as conducted by the applicant.
- The application represents an attempt to circumvent the requirements of Section 34(12) of the Planning and Development Act, 2000, as amended (and Article 6(3) of Directive 92/43/EEC) by relocating the proposed development to a different location on the same farmholding (whereupon permission has previously been refused on two separate occasions for the retention and completion of an anaerobic digestion facility under ABP Ref. Nos. ABP-304149-19 & ABP-309122-21).

- It is not accepted that the partially complete and unauthorised anaerobic digestion / biogas production facility constructed elsewhere on the same farm should not be considered in the context of the subject appeal.

6.5.3. *Response of James & Patricia Ferguson to the Circulation of the Applicant's Submission:*

- The Department of Public Health should be requested to undertake a risk assessment of the proposed development given its siting relative to the village of Causeway.
- The Road Safety Authority should commission an independent report on the potential traffic safety impacts resulting from the volume of HGVs passing through the village to / from the proposed development.
- The Inland Waterways Association of Ireland should be consulted as regards the risk to waterways posed by the development.
- Pending the outcome of an anticipated judicial review of a decision to grant permission for a similar development in Gort, Co. Galway, no decision should be taken on the subject appeal.
- The applicant's response to the grounds of appeal cannot be considered unbiased or independent.
- The information provided in the original planning application as regards the assurance that an agreement could be reached with the adjoining landowner in order to provide for road safety was misleading given that said party has indicated that they had no intention of entering into any such agreement.
- The modifications proposed to the existing access arrangement should be the subject of a separate planning application in the interests of natural justice.
- The report of the consulting engineer is silent on the adequacy of the sightlines for an HGV turning left from the site given the lack of any maintenance agreement.
- The proposed development should not be located close to residential properties for reasons of public safety. Accidents and deaths have been

recorded at other such facilities e.g. the Wessex Waste Water Treatment Plant in Avonmouth.

7.0 Assessment

7.1. From my reading of the file, inspection of the site, and assessment of the relevant policy provisions, I conclude that the key issues raised by the appeal are:

- Procedural issues
- The principle of the proposed development
- The location & siting of the proposed development
- Overall design & visual impact
- Surface water management
- Impact on residential amenity
- Health & safety
- Traffic considerations
- Other issues
- Appropriate assessment

These are assessed as follows:

7.2. Procedural Issues:

7.2.1. The Third-Party Appeal of Ms. Siobhan Fitzgerald:

The applicant has sought to challenge the admissibility of several of the grounds of appeal contained in Ms. Fitzgerald's submission on the basis that she was only afforded the opportunity to lodge her appeal having been successfully granted leave to appeal under Section 37(6) of the Planning and Development Act, 2000, as amended (please refer to ABP Ref. No. ABP-314998-22), because the Board was satisfied that:

i) The development, in respect of which a decision to grant permission has been made, will differ materially from the development as set out in the

application for permission by reason of condition number 25 imposed by the planning authority to which the grant is subject, and

ii) The imposition of condition number 25 will materially affect the applicant's enjoyment of the land adjoining the land in respect of which it has been decided to grant permission or reduce the value of the land.

7.2.2. More specifically, it has been submitted that any consideration of this third-party appeal should be confined solely to those issues which resulted in Ms. Fitzgerald being granted leave to appeal in the first instance i.e. the inclusion of Condition No. 25 in the notification of the decision to grant permission and its implications for her property.

7.2.3. Having reviewed the relevant legislative provisions, it is my opinion that upon being granted leave to appeal under Section 37(6) of the Act there is no limitation on what may form part of any normal planning appeal subsequently lodged by that third party. Such an interpretation would seem reasonable given the absence of any specific provision which would confine the grounds of any such appeal to those matters previously considered in the application for leave to appeal. Indeed, Section 37(6)(d) grants an applicant leave to appeal against the decision of the planning authority under subsection (1) and thus the process for considering the planning appeal reverts to Section 37(1) with no repercussions arising from the original application for leave to appeal. It then follows under Section 37(1)(b) that where an appeal is brought against a decision of a planning authority and is not withdrawn, the Board is obliged to determine the application as if it had been made to it in the first instance (with no consequences arising from Section 37(6)(d)). This lends credence to the position that upon being granted leave to appeal, an appellant is not restricted as regards the contents of any planning appeal subsequently lodged under Section 37 of the Act. Therefore, I am satisfied that Ms. Fitzgerald's appeal can be considered in its entirety (while noting that several of the issues raised therein are, in any event, contained in the appeal of Mr. O'Connell or other observations on file).

7.2.4. The Nature of the Proposed Development by reference to Section 34(12) of the Planning and Development Act, 2000, as amended:

It has been asserted in the grounds of appeal that the subject proposal amounts to an attempt to circumvent the provisions of Section 34(12) of the Planning and

Development Act, 2000, as amended (along with Article 6(3) of the Habitats Directive 92/43/EEC), on the basis that it represents a continuation of the development previously refused permission for retention & completion under ABP Ref. Nos. ABP-304149-19 & ABP-309122-21 elsewhere on the same landholding. In this regard, it has been submitted that no such circumvention should be permitted as the unauthorised development remains *in situ* with ongoing environmental impacts in contravention of Article 6(3) of Directive 92/43/EEC.

7.2.5. For the purposes of clarity, I would advise the Board that while ABP Ref. Nos. ABP-304149-19 & ABP-309122-21 both included elements of retention & completion as well as proposed construction, the overall development then proposed was broadly comparable to the subject proposal in that it consisted of the construction of an anaerobic digestion facility for the production of biogas utilising the same methodologies and inputs etc. However, the fundamental difference between the developments refused permission under ABP Ref. Nos. ABP-304149-19 & ABP-309122-21 and the subject proposal is that they were located on different parts of the wider landholding. The proposal presently under consideration is entirely 'new build' and does not involve any aspect of retention.

7.2.6. At this point, I would refer the Board to Section 34(12) of the Act which states the following:

> *'A planning authority shall refuse to consider an application to retain unauthorised development of land where the authority decides that if an application for permission had been made in respect of the development concerned before it was commenced the application would have required that one or more than one of the following was carried out -*
>
> *a) an environmental impact assessment,*
>
> *b) a determination as to whether an environmental impact assessment is required, or*
>
> *c) an appropriate assessment'.*

7.2.7. Although there are similarities between the proposed development and those assessed under ABP Ref. Nos. ABP-304149-19 & ABP-309122-21, I would concur with the applicant that the provisions of Section 34(12) of the Act are not pertinent to

the assessment of the subject proposal. The development under consideration is entirely new build and does not involve any element relating to the retention of the 'unauthorised development of land'. It is effectively a distinct and standalone entity unrelated to any comparable development previously refused permission elsewhere on the landholding. Accordingly, the subject application can be assessed as normal and does not fall foul of Section 34(12) of the Planning and Development Act, 2000, as amended.

7.2.8. *Previous Instances of Unauthorised Development:*

With respect to the appellant's concerns as regards the continued presence of unauthorised development previously undertaken elsewhere on the landholding (in reference to those works refused permission under ABP Ref. Nos. ABP-304149-19 & ABP-309122-21), it should be noted that the Board has no function in respect of issues pertaining to enforcement and that the pursuit of such matters is generally the responsibility of the Planning Authority.

7.2.9. *The Potential for Future Non-Compliance:*

While I would acknowledge the concerns raised in the grounds of appeal as regards the possibility of non-compliance with the terms and conditions of any grant of permission issued in respect of the proposed development, in my opinion, it would be inappropriate for the Board to speculate on such matters and I would reiterate that issues relating to unauthorised development, including any breach of condition, should be referred to the Planning Authority in the first instance.

7.2.10. *Pre-Planning Consultations:*

With respect to the assertion that no record of the applicant's pre-planning consultations with the Planning Authority has been provided with the application in breach of Section 247(5) of the Planning and Development Act, 2000, as amended, I would advise the Board that if any such pre-planning discussions were not conducted pursuant to the provisions of Section 247 then there would be no obligation to provide a record of same.

7.3. **The Principle of the Proposed Development:**

7.3.1. The proposed development consists of the construction of a biogas production plant which will process agricultural feedstock by way of anaerobic digestion to produce

biogas that will in turn be fed to a Combined Heat and Power (CHP) plant to produce heat and electricity for use on site with surplus electricity (equating to approximately 90% of the electrical output) being diverted to the national grid. The development therefore has a role to play in achieving Ireland's international, European and national commitments as regards the provision of energy from renewable sources and a reduction in greenhouse gas emissions. It is of further note that the biological treatment of waste, including agricultural slurries and manure, through anaerobic digestion has also been recognised as playing an increasingly important role in achieving national targets as regards sustainable waste management practices and groundwater protection etc.

7.3.2. There are a number of national and regional level policy objectives that are in my opinion consistent with the nature of the development proposed. For example, both the Programme for Government and the Climate Action Plan, 2023 commit to a significant reduction in greenhouse gas emissions over the period to 2030 and the achievement of net zero emissions by 2050, and the form of development proposed with the use of agricultural feedstock to produce renewable biogas that can generate electricity is such that it would assist in reducing overall greenhouse gas emissions. More specifically, the Programme for Government recognises the role to be played by farmers in addressing the climate and biodiversity crisis and includes an express commitment to explore and develop potential opportunities for farmers from anaerobic digestion. The production of bioenergy from agriculture is also referenced in the Climate Action Plan 2023 with the measures identified to achieve the targeted emissions reductions within the agricultural sector including the adoption of a National Biomethane Strategy and the support of livestock farmers in the transition to alternative land uses through the provision of diversification options such as the expansion of the indigenous biomethane sector by way of anaerobic digestion (reaching up 1 TWh of Biomethane by 2025 and 5.7TWh by 2025 i.e. a tripling of the Government's ambitions set out in the Climate Action Plan, 2021). The CAP 2023 also aims to significantly reduce the use of chemical nitrogen as a fertiliser which is of relevance in the context of the subject proposal given that the digestate produced will be spread as an organic fertiliser on the applicant's farmlands in place of 72 No. tonnes of fertiliser.

7.3.3. Further support is lent to the proposed development by reference to the principles underpinning the '*Waste Action Plan for a Circular Economy – National Waste Policy, 2020-2025'* which aims to shift the focus away from waste disposal and to address how resources can be preserved by creating a circular economy. The plan identifies opportunities for the application of circular economy principles across a range of areas where improvements in the regulatory regime can divert material from waste to beneficial reuse. In this regard, it is of note that the plan acknowledges the anaerobic digestion potential of the food waste resource in terms of energy generation and the production of bio-fertiliser. In my opinion, the application of these circular economy principles can also be applied to the proposed development.

7.3.4. The generation of energy from the biological treatment of waste is also supported by the National Planning Framework which includes several strategic goals in respect of transitioning to a low carbon and climate resilient society and the sustainable management of waste resources. The NPF recognises that it will be necessary to diversify energy production systems away from fossil fuels and towards more renewables focused energy generation systems (utilising sources such as biomass). It further states that waste treatment will require biological treatment and an increased uptake in anaerobic digestion. Effect is given to these strategic outcomes by a variety of National Policy Objectives such as NPO 56 which promotes the sustainable management of waste and investment in different types of waste treatment with prioritisation to be given to waste prevention, reuse, recycling and recovery. In this respect, it is of particular relevance to note that the NPF states that effective waste management will require, inter alia, '*biological treatment and increased uptake in anaerobic digestion with safe outlets for bio stabilised residual waste'*.

7.3.5. Given the acknowledged requirement for and benefits of anaerobic digestion in national and Government policy, I am satisfied that the proposed development is both acceptable in principle and compatible with national energy and waste policy. Moreover, it is my opinion that the development proposed is consistent with the achievement of national targets for greenhouse gas emission reductions given the production of heat and electricity from the anaerobic digestion process and the benefits accruing from the use of digestate as fertiliser in place of the spreading of slurry or the use of artificial fertilisers.

7.4. The Location & Siting of the Proposed Development:

7.4.1. The proposed development is intended to process agricultural feedstock sourced solely from the farms of Maurice Leahy, Timothy Leahy & Kevin Leahy as Directors of the applicant company. No other feedstock is be imported to the site. Feedstock will be delivered to the facility from the operator's wider landholding, which extends to c. 450-500 No. acres over multiple locations in the surrounding area (although 104 No. acres of this farmland is directly linked to the development site thereby negating any requirement for travel along the public road), while the final digestate will be spread on the same lands as an organic fertiliser in lieu of the spreading of slurry or the use of artificial fertilisers. The proposed plant will be situated adjacent to an existing farm complex under the applicant's control and in this regard the proposed development can be categorised as encompassing on-farm anaerobic digestion.

7.4.2. Section 9.7.3: '*Rural Economy'* of the Kerry County Development Plan, 2022-2028 recognises that rural economic activity has significant potential for expansion, due to advances in technology, digital connectivity and the potential for economic diversification. It is further stated that rural areas have a vital contribution to make to the achievement of balanced, sustainable economic development, including supporting a just transition to a climate neutral economy, which will involve utilising and developing the economic resources of rural areas, particularly in agriculture and renewable energy, while ensuring that development does not affect the unique rural character of the county. The transition to a low carbon energy future will require a wide range of responses across the agri-food sectors and in the wider agricultural rural communities. In this regard, the Development Plan is supportive of developments and initiatives aimed at increasing agricultural and resource efficiency, biodiversity, water quality, and climate adaptation and resilience outcomes.

7.4.3. With respect to renewable energy, it is an objective of the Plan to maximise the development of such technologies at appropriate locations in a manner consistent with the proper planning and sustainable development of the County and to facilitate and promote sustainable alternative forms of renewable energy, including bioenergy. In terms of bioenergy, it is stated that there are suitable agricultural lands that could contribute to same throughout the county, whether it be sources associated with lands or animals, with an estimation that up to 10MW of electricity, with additional potential for heat generation, could be generated accordingly.

7.4.4. Section 12.5.4.4.1 of the Development Plan provides some locational guidance as regards the siting of bioenergy developments, including anaerobic digestion. It states that the generation of fuel from biomass on a commercial scale is an industrial process which should be located on brownfield sites, adjacent to industrial areas or co-located with other wood processing industries. It further states that proposals for bioenergy plants are to be considered on lands reserved for industrial uses and that locations should be close to the point of demand and be served by public roads with sufficient capacity to absorb increased traffic flows and adjacent to transport corridors. In this regard, Objective KCDP 12-31 of the Plan aims to facilitate the sustainable development of bioenergy plants, including anaerobic digestors, on appropriately zoned lands.

7.4.5. Given that the subject proposal involves on-farm anaerobic digestion on unzoned rural lands, it would not satisfy the locational requirements set out in Section 12.5.4.4.1 of the Plan, however, I would draw the Board's attention to Objective KCDP 12-32 which does allow for consideration to be given suitably scaled bioenergy developments, including anaerobic digestors, in rural areas provided they are sited close to the source material and the surrounding road network has the capacity to absorb increased traffic flows. Moreover, any such plants are to be located proximate to existing agricultural buildings. The only remaining caveat is that development such as that proposed will not be permitted should it have a detrimental impact on residential or visual amenity.

7.4.6. Further useful guidance on the siting of anaerobic digesters is contained in Section 4.1 of the '*Anaerobic Digestion for On-farm Uses - Implementation Guide'* published by the Sustainable Energy Authority of Ireland in June, 2020 with locational considerations including the availability of the required feedstock within a reasonable distance; the availability of a connection to the national grid with sufficient capacity to export electrical power; the availability of land locally with the capacity to accept the expected volume and quality of digestate; the adequacy of roads and services to accommodate the construction and operation of the facility; and whether the facility would fit comfortably with local and regional development plans – for example, reducing the environmental impact of farming, enhancing local employment or energy requirements. Cognisance is also to be taken of local environmental conditions such as the proximity of environmentally sensitive areas that need

protection, the susceptibility of the lands to flooding, and whether any neighbouring properties could be adversely affected by noise, vehicle movements, vermin, dust, odours and other nuisances from the facility.

7.4.7. Having considered the foregoing, it is my opinion that the location selected for the proposed development appears reasonable and accords in general with the siting criteria referenced in the Development Plan and other relevant guidance as regards on-farm anaerobic digestion. In this respect, particular regard has been had to the sourcing of feedstock from the farms of Maurice Leahy, Timothy Leahy & Kevin Leahy as Directors of the applicant company and the spreading of the digestate on the same lands. In addition, the plant will be situated adjacent to an existing farm complex where it can avail of existing services while a grid connection is also available locally. With respect to the potential impact of the proposal on visual and residential amenity, such matters are assessed elsewhere in this report.

7.5. Overall Design & Visual Impact:

7.5.1. In terms of assessing the visual impact of the proposed development, it is of relevance in the first instance to note that the subject site is located within the *'Kerry Head and Ballyduff'* Landscape Character Area as detailed on Map 7.20: *'Landscape Character Areas'* of the '*Landscape Review'* included at Appendix 7 of the Kerry County Development Plan, 2022-2028. Parts of this LCA have been allocated a '*High'* sensitivity rating given the nature of the landscapes involved (as well as other assessment criteria), however, the subject site is located in an area of '*Medium / High'* sensitivity.

7.5.2. The county landscape strategy as set out in Chapter 11 of the Development Plan (while having been informed by the '*Landscape Review*') has adopted a much broader approach to the designation of landscapes as follows:

- Visually Sensitive Areas
- Rural General

7.5.3. The proposed development site is located within the '*Rural General'* landscape designation which is generally considered to have a higher capacity to absorb development than visually sensitive landscapes. However, notwithstanding the higher capacity of such areas to absorb development, it is important that proposals are designed to integrate into their surroundings in order to minimise the effect on

the landscape and to maximise the potential for development. In particular, any proposed development should take account of the topography, vegetation, existing boundaries and features of the area so as to integrate into its surroundings.

7.5.4. In addition to the foregoing, it should be noted that the proposed development will not be visible from any views or prospects identified for preservation in the Development Plan.

7.5.5. In a local context, the subject site is located in a typically rural area where the surrounding countryside is characterised by a broadly open landscape dominated by agriculturally improved or semi-improved pasture enclosed within dry stone walls and / or raised stone hedgebanks with intermittent instances / groupings of one-off rural housing, farmyards and associated outbuildings. The prevailing topography in the immediate site surrounds rises gently in a north / north-westwards direction on travelling away from the R551 Regional Road with the proposed development occupying a slightly elevated position alongside an existing complex of farm buildings set back approximately 185m from the public road. Although the proposed development will be surrounded by open tillage, it will be screened in part by the existing farm buildings to the west, the mature tree planting alongside the accessway to the site, and a series of roadside housing to the south. Further screening is to be provided by way of a planted berm along the perimeter boundary of the site (save for that area bounded by the farmyard).

7.5.6. In its initial assessment of the proposed development, the Planning Authority references the site context, the location adjacent to an existing farm complex, the set back from the public road, the screening offered by existing buildings, and the perimeter landscaping proposed, before concluding that these factors will all serve to mitigate the visual impact to such an extent that the proposal will not be out of character with the area and will not appear unduly obtrusive. However, notwithstanding the foregoing conclusion, it was subsequently recommended that the applicant be required by way of a request for further information to submit a 'Landscape Visual Impact Assessment Report' to include an examination of the proposal from a selection of viewshed reference points along with the preparation of photomontages.

7.5.7. At this point, I would refer the Board to the *'Landscape Visual Impact Assessment Report'* (LVIAR) submitted in response to the request for further information which includes a general description of the prevailing landscape character and its sensitivity before undertaking a more in-depth assessment of the overall visibility of the proposal from various representative viewpoints. Figure 5: *'Site Location Reference Points'* of the LVIAR details the locations of a series of viewpoints selected for analysis which focus on the views available from the R551 Regional Road as well as the local road that extends northwards from the centre of Causeway village. The LVIAR subsequently considers the visibility of the proposed development from these viewpoints in the context of their wider sensitivity from a visual perspective. By way of summation, the analysis notes that while the proposed development will be visible from vantage points along the surrounding road network and will also break the skyline to some degree from certain viewpoints, the overall visual impact will be low, with the exception of Viewpoints 02, 05 & 06 from which the impact is considered to be of 'Medium' significance. In support of these conclusions, the assessment includes a series of photomontages that aim to depict the proposed development from the various viewpoints identified.

7.5.8. Having reviewed the available information, and following a site inspection, I would agree with the assessment of the Planning Authority that the proposed development can be accommodated at the subject site without undue visual impact. Although the development involves the construction of structures of a considerable size and height, these will be located at some distance from the public road and will appear as an extension of the existing complex of farm buildings. Furthermore, views of the proposed development from the surrounding road network will be limited to certain stretches of roadway and will be both intermittent and incidental given the levels of screening offered by intermediate features such as buildings & vegetation etc., and as passing traffic will not be travelling directly towards the site. I am also cognisant that while the proposed structures will break the skyline when viewed from certain vantage points, the visual impact will be limited in the context of the wider landscape given the size, scale and design of the structures (particularly when compared to other large agricultural buildings), the distances involved, the multiplicity of other objects in the wider panorama (including adjacent farm buildings), and the mitigation offered by background & foreground features as well as weather and lighting

conditions etc. The visual impact will also be mitigated in part by the proposal to erect an earthen embankment along much of the site perimeter which is to be planted with Common Hawthorn on top with native trees and shrubs (Ash, Oak, Birch, Scots Pine & Rowan) to both sides.

7.5.9. While I would accept that there may be some concerns that the proposed development will appear more dominant in views over the wider area available from nearby properties / dwelling houses (e.g. Viewpoints 5 & 6), it is of the utmost relevance to note that any such views are not of public interest nor are they expressly identified as views worthy of preservation in the relevant Development Plan. They are essentially views enjoyed by a private individual from private property. A private individual does not have a right to a view and whilst a particular view from a property is desirable, it is not definitive nor is it a legal entitlement and, therefore, I am of the opinion that the proposed development would not seriously injure the amenities of property in the vicinity simply by interfering with their views of the surrounding area.

7.5.10. On balance, it is my opinion that although the application site is located in an area of 'Medium / High' sensitivity as per the 'Landscape Review', the Development Plan has applied the lower order '*Rural General'* landscape designation in this instance with such areas generally considered to have a higher capacity to absorb development without detriment to visual amenity. Therefore, in light of the foregoing, and the analysis set out in the preceding paragraphs, I am satisfied that the visual intrusion posed by the development is within tolerable limits and not of such significance as to detract from the amenity of the immediate site surrounds or the wider landscape character.

7.6. **Surface Water Management:**

7.6.1. The surface water management arrangements for the proposed development are set out in greater detail within the revised plans and particulars received by the Planning Authority on 13th September, 2022 in response to the request for further information. In effect, it is proposed to segregate runoff from within different parts of the development so as to provide for the separate treatment and disposal of soiled and uncontaminated waters as follows:

- All soiled waters generated from within the soiled apron area (which includes the feed-in area to the pre-mix tank and the washdown area for vehicles) as well as runoff from the reception & substrate storage areas will be channelled to the covered underground feed-in / slurry tank from where it will be pumped to the pre-mix tank and processed within the anaerobic digestion plant. These operational areas will be provided with an impervious surface / concrete base and a self-contained drainage system for contaminated runoff. Bunding or high kerbing will also prevent any spillages from entering the storage systems or escaping off site. There will be no discharge of process waste waters to the receiving environment as the system will operate as a closed process with any waste effluents generated recycled to the underground feed-in tank.
- All runoff from the concrete apron alongside the CHP / machinery shed and the weighbridge may be at risk of contamination from silts, oils, fuels and / or other hydrocarbons and, therefore, it will be passed through a silt trap and a Class 1 bypass oil interceptor (I.S. EN0858-2:2003) prior to being discharged to ground via infiltration by way of an on-site soakaway. Uncontaminated runoff from the roof area of the CHP / machinery shed will also be disposed of in this manner. Given that this area will be isolated from the soiled water apron, the runoff will not be contaminated by process waters and has no need for additional treatment beyond that provided by the silt trap and interceptor.

  The soakaway will measure 10m x 10m and will be 2m in depth. It will be stone-filled and is stated as having the capacity to accommodate 100m^3 of water which is expected to be more than adequate given the area to be drained.
- The area between the pre-mix tank, the digesters and the digestate storage tank will be surfaced in hardcore with rainwater / surface water runoff allowed to percolate to ground. A series of gullies with an associated drainage network will direct any excess water to the soakaway (with these clean waters bypassing the silt trap and interceptor). Given the closed nature of the system process, contaminated waters would not be expected to arise in this area.
- Conflicting details have been provided as regards the disposal of wastewater from the proposed wheelwash. While the site layout plan shows this

wastewater being drained to the soakaway via the silt trap and oil interceptor, other particulars refer to it being collected for landspreading or being recycled back for processing in the facility. This matter could be clarified by way of condition in the event of a grant of permission.

- Consideration is also to be given to the collection and storage of uncontaminated rainwater from roofed areas (e.g. the CHP plant / control building) as part of the detailed design.
- The earthen embankment to be erected along much of the site perimeter will also function as a barrier to any runoff escaping from the development site.

7.6.2. From a review of the available information, it is apparent that the surface water management system as proposed has been developed to address some of the concerns previously raised in the determination of ABP Ref. Nos. ABP-304149-19 & ABP-309122-21. For example, greater clarity has been provided as regards the extent of those areas generating contaminated runoff and the means by which any such waters will be treated and / or disposed of. Perhaps the most notable difference from earlier proposals is that no runoff from the development site will be discharged directly to any drainage ditch or watercourse. Instead, all runoff will be treated as necessary within the confines of the site before being discharged to ground by way of a suitably designed soakaway or (in the case of soiled waters) it will be recycled back to the feed-in tank for use in the anaerobic digestion process. The effect of such an arrangement will not only ensure the separation of clean runoff from contaminated waters, but it will also significantly reduce the likelihood of any downstream pollution attributable to the normal operation of the facility.

7.6.3. It is of further note that the proposed development will operate as a closed loop system with any waste effluents generated recycled to the underground feed-in tank and no discharge of process waters to the receiving environment. This is of particular relevance in reference to the concerns raised as regards the possibility of spillages / leakages from the actual process equipment. The anaerobic digestion process will take place within a fully sealed system as is necessary for the production and collection of biogas and thus the potential for the leakage of any process waters does not arise. The system will only be ‘open’ during the loading of solid feedstock (maize and grass silage & sugar beet) which will be conducted from within the soiled

water apron with any contaminated runoff arising being collected and drained to the underground feed-in / slurry tank. All other materials will be pumped throughout the facility by way of a sealed system.

7.6.4. On balance, I am amenable to the surface water drainage arrangements as proposed, although there are some deficiencies in the information submitted as have been identified in the grounds of appeal. In this regard, it is regrettable that detailed design calculations and specifications for the construction of the on-site soakaway have not been provided. Similarly, further clarity would be preferable on the capacity of the underground feed-in / slurry tank to accept the increased volumes of soiled water runoff arising during periods of heavy or prolonged rainfall. However, given the limited areas of hardstanding involved and the overall size of the development site, it is my opinion that the detailed design of the surface water drainage system can be satisfactorily addressed by way of condition in the event of a grant of permission and that any additional capacity requirements can be accommodated within the confines of the application site.

7.6.5. With regard to the suggestion that any 'excessive' inflow of runoff to the underground feed-in / slurry could potentially compromise the viability of the anaerobic digestion process due to the increased 'wet' content of the feedstock, it is unclear from the information submitted whether such a scenario would give rise to cause for concern. It is likely that the system will continue to operate successfully notwithstanding any intermittent dilution of the slurry feedstock given the operational and / or monitoring protocols that will be put in place. Furthermore, any additional soiled water runoff consequent on rainfall within that area will likely have been factored into the design of the underground tank similar to normal agricultural works / farmyard construction. It is also possible that should the contents of the slurry become excessively diluted or exceed the capacity of the tank that any further slurry importations to the site would be paused or any excess subjected to landspreading in line with normal agricultural practice. In my opinion, matters pertaining to the design capacity of the underground tank can be addressed by way of condition as part of a detailed surface water management system for the approval of the Planning Authority.

7.7. Impact on Residential Amenity:

7.7.1. In assessing the potential impact of the proposed development on the residential amenity of nearby properties, it should be noted at the outset that the development in question is intended to function as part of a wider agricultural enterprise and that the subject site is located adjacent to an existing farmyard in a rural area where the predominant land use is agriculture. In this regard, I am of the opinion that agriculturally-related developments such as that proposed (along with the associated noise, smells, lighting and traffic etc.) are an inherent part of rural life and should generally be accommodated within such areas.

7.7.2. Noise:

In support of the proposal, the application has been accompanied by an '*Environmental Noise Impact Report'* prepared by AXIS Environmental Services which details that baseline noise monitoring was conducted at a series of locations in the surrounding area with a view to establishing the potential noise impact of the proposed development on the local community and to assess if the plant would be able to comply with any noise limits that may be applied in the event of a grant of permission. Noise prediction calculations were subsequently compiled for the various noise sources associated with the operation of the proposed development in general accordance with *ISO 9613: Acoustics – Attenuation of Sound Outdoors, Part 2: General method of calculation, 1996* and an analysis undertaken of the resultant noise levels expected to be experienced at representative noise sensitive locations with an allowance made for attenuation.

7.7.3. By way of summation, it has been submitted that the cumulative daytime noise level with the development in place at the residential boundary of Noise Sensitive Receptor 1 / Sensitive Residential Dwelling 1 (as the location representative of those residential properties closest to the development site) is predicted to be 41dB which would be lower than the existing baseline noise level of 52dB(A). In effect, the case has been put forward that the noise levels generated by the proposed development at this location could not be held to give rise to a nuisance and would comply with the general limit values for noise at the external façade of a property. This conclusion derives from an extrapolation of the noise levels attributable to various components of the proposed activity (e.g. the operation of the CHP plant, mixers, blowers, the

front loader and delivery vehicles) at distances of 10m and 150m from the noise sources with account also being made for the attenuation afforded by the housing of the CHP plant in an enclosed building and other unspecified *'screening . . . [to] be provided'*. Similar conclusions have been reached with respect to Sensitive Residences 2, 3 & 4 as well as the village of Causeway where lesser 'Resultant Noise Levels' have been predicted (also below existing baseline levels) at greater distances from the proposed development site.

7.7.4. From a review of the available information, I am satisfied that the Noise Sensitive Receptors identified in Figure 1 of the '*Environmental Noise Impact Report'* can be held to be broadly representative of the locations of nearby housing in the surrounding area. In this regard, it would appear that the 150m distance used in the noise prediction modelling equates to the approximate separation distance between the centrepoint of the proposed facility and the rear elevation of the housing to the south (as opposed to the separation distance between the respective site boundaries). However, it is regrettable that the assessment does not provide a greater degree of detail or depth of analysis in support of its conclusions. For example, I would draw the Board's attention in particular to the absence of any survey information in support of the baseline noise monitoring (e.g. dates, times, prevailing weather conditions, noise sources etc.) or any details of the Sound Power Levels used to calculate the predicted noise levels from various types of plant intended for use at the facility.

7.7.5. Notwithstanding the deficiencies in the noise impact assessment as submitted, given the nature, scale and design of the proposed development, the site context and receiving environment (including its location alongside an operational farmyard with its associated noise levels), the separation distances from noise sensitive receptors, the attenuation provided by certain mitigatory actions (e.g. the housing of the CHP plant within an enclosed building), and the commitments given in the submitted particulars to undertake annual noise monitoring surveys to ensure compliance with any noise emission limits and to implement an improvement programme, when required, to reduce noise levels where possible, it is my opinion that the noise impact of proposed development will not be of such significance as to have a detrimental impact on the residential amenity of nearby properties, subject to conditions.

7.7.6. *Odours*:

The '*Odour Dispersion Model Report'* submitted with the application has limited its assessment of the odorous impact of the proposed development to those odours arising from the feedstock (maize & silage) holding area and the hopper serving the pre-mix tank on the basis that other potential odour sources will be contained within gastight sealed systems with low to negligible potential for emissions. In my opinion, such an approach is reasonable given the specifics of the site context and the nature of the development proposed.

7.7.7. While I would acknowledge the potential for odours to arise from animal manure / slurry, digestate and exhaust emissions, at the outset, it should be noted that the subject site adjoins an existing farmyard and is set within a larger farm holding where smells / odours emanating from activities such as landspreading or the storage (and agitation) of slurry would not be unexpected. In this regard, I would suggest that any odours arising from the operation of the proposed development must be taken in context.

7.7.8. With respect to the importation and storage of raw animal slurry, this will be delivered to the facility from off-site locations by way of vacuum tanker before being pumped to the underground sealed storage tank. This process will entail the slurry tanker connecting to the tank inlet pipe before a valve is opened to allow its contents to fill into the storage tank. On completion, the tank valve will be shut off with the result that any odorous emissions should be negligible. The slurry will then be fed directly to the pre-mix tank via an underground pipe via a closed-loop system. Therefore, given that the transportation of slurry will be by way of vacuum tanker while its storage and processing on site will be as part of a closed system, I would not envisage any significant odour impacts arising from these elements of the proposed development.

7.7.9. Solid feedstock (in the form of maize & grass silage and sugarbeet) will be delivered and stored on site in a manner similar to that of other farmyards. It will be placed on concrete pads comparable to conventional silage pits and stored under the cover of plastic to prevent moisture ingress, material degradation and odour emissions. Access to the material will be via the open face to the material store (with the plastic covering rolled back as required) with the solid feedstock being fed into the digester

by front loader via an open feed hopper. It is envisaged that it will take approximately 1-hour per day for the hopper to be filled with enough material to ensure effective anaerobic digestion during which time the hopper will be uncovered. Upon completion of the loading operations, the cover lid fitted to the hopper will be closed to minimise odour emissions.

7.7.10. Once the feedstock has been passed into the airtight anaerobic digestion system there will be no emissions to air without the biogas first passing through the Combined Heat and Power plant. The heating of the gas to a temperature in excess of 470^{o}C within the CHP plant will effectively deodorise the final air emissions prior to discharge via the CHP exhaust stack. Therefore, no further assessment of these emissions is warranted as the CHP unit is not considered a source of malodour. It should also be noted that the gas flaring installation attached to the system will also ensure effective deodorisation of the gas at high temperature (when the need arises).

7.7.11. The final digestate will be stored in a sealed containment tank which will be emptied by vacuum tanker and removed from site for subsequent landspreading. In this regard, I note that technical reports have indicated a significant reduction in odorous emissions from digestate when compared to animal slurries (up to c. 80%). Accordingly, the digestate will not give rise to any significant odour emissions when stored on site while its landspreading would probably be considered preferable to animal slurry in terms of overall odour impact.

7.7.12. The odour dispersion modelling submitted with the application states that there is currently no general statutory odour standard in Ireland relating to industrial installations before referencing the following standards for intensive agriculture as per guidance issued by the Environmental Protection Agency:

- Target value for new pig-production units of 1.5 OU_E/m^3 as a 98th%ile of one hour averaging periods.
- Limit value for new pig-production units of 3.0 OU_E/m^3 as a 98th%ile of one hour averaging periods.
- Limit value for existing pig-production units of 6.0 OU_E/m^3 as a 98th%ile of one hour averaging periods.

7.7.13. It subsequently refers to further guidance from the UK which recommends that odour standards should vary from 1.5 – 6.0 OU_E/m^3 as a 98^{th}%ile of one hour averaging periods at the worst-case sensitive receptor based on the offensiveness of the odours and with adjustments for local factors such as population density,

7.7.14. Having established the parameters by which the odour impact of the development should be assessed, the 'Odour Dispersion Model Report' estimates the likely odour emission rates emanating from the identified emission sources (the feedstock storage area / slab and the feed-in hopper) before employing odour dispersion modelling (utilising AERMOD software) for a number of receptors representative of the nearest residential properties (while taking account of the relevant digital terrain and meteorological data). The results of the long-term modelling assessment show that odour at the closest residential properties will be well below the odour benchmark of 3.0 OU_E/m^3 for an offensive process and below the point where the odour would be classed a negligible change. The report also emphasises that the odour assessed emanates from the storage of silage and maize which is already present as part of the normal agricultural activities in the surrounding area.

7.7.15. On the basis of the foregoing, it has been established that the odour impact emanating from the sources identified (while assuming worst case meteorological conditions for the dispersion of odour to atmosphere based on 3 years of data) will not exceed the EPA's guideline of 3.0 OU_E/m^2. Accordingly, on balance, I am satisfied that the processing to be carried out on site is unlikely to give rise to significant odorous impacts that would detract from the residential amenity of property in the vicinity of the site or the wider area.

7.7.16. Air Quality:

With respect to the potential impact of the proposed development on air quality, I would refer the Board to the 'Air Dispersion Model Report' received with the initial application which identifies the source of air pollution as combustion emissions from the proposed CHP plant and includes an air dispersion modelling exercise (using AERMOD software) to predict the impact of those emissions on ambient air quality in the surrounding environment.

7.7.17. The report states that the primary air pollutants from the facility which could impact on ambient air quality are the flue gases from the CHP plant in the form of carbon

monoxide and nitrogen dioxide. It proceeds to establish the existing baseline air quality parameters at the site by reference to data published under the national ambient air quality monitoring programme, including the site location within 'Zone D' as defined by the EPA under the Air Quality Standards Regulations, 2011, as amended, and notes the emission rates for the source (i.e. the CHP plant) by reference to the manufacturer's specifications. Dispersion modelling was then undertaken for the identified flue gases in respect of a number of receptors considered representative of the nearest residential properties. The modelled ground level concentrations were subsequently compared against the limits applied by the EU Directive (2008/50/EC) for the specific pollutant compounds. On the basis of a 'worst-case scenario', which assumes that the emission point will be operating at the maximum proposed concentrations (24-hours a day, 365 days a year) as well as worst-case meteorological conditions for the dispersal of emissions to atmosphere, the predicted carbon monoxide and nitrogen dioxide emissions have been found to comply with the limits of 2008/50/EU.

7.7.18. In the absence of any evidence to the contrary, given that the information submitted in support of the application indicates that the emissions arising from the CHP plant will be within acceptable limits, it would appear there is no basis on which to conclude that the proposed development would detrimentally impact on the residential amenity of nearby properties by reason of a reduction in air quality.

7.8. **Health & Safety:**

7.8.1. Concerns have been raised as regards the health and safety implications of the proposed development given the nature of the activities involved and the siting of the facility relative to nearby housing, with a particular focus on the risk of explosion and whether the proposal amounts to an '*establishment'* for the purposes of the Major Accidents / Seveso III Directive (2012/18/EU) as implemented by the Chemicals Act (Control of Major Accident Hazards involving Dangerous Substances) Regulations, 2015. For clarity, a Major Accident Hazard Site (SEVESO) is a site where the occupier has notified the Health and Safety Authority that it meets a specified threshold for quantities of hazardous substances as outlined in the COMAH Regulations. Furthermore, additional requirements must be complied with by the local planning authority and the Board where a planning application relates to a

proposed development which represents an “establishment” for the purposes of the COMAH Regulations, 2015.

7.8.2. By way of summation, the case has been forward in the grounds of appeal that the biogas to be produced at the proposed facility will include flammable gases such as methane, oxygen and hydrogen sulphide, all of which are qualifying substances for the purposes of the Seveso III Directive and the COMAH Regulations. Moreover, it has been asserted that the applicant has failed to demonstrate that the maximum quantity of such gases on site at any one time will not exceed the threshold of 10 No. tonnes set out in Part 1: ‘*Categorises of Dangerous Substances’* of Schedule 1 with the result that the proposed development must be considered to constitute a *’lower tier’* establishment for the purposes of the COMAH Regulations. In support of the foregoing, reference is made to the judgment of the High Court in *Halpin v. An Bord Pleanala & Ors. [2019] IEHC 352* (which concerned a proposal to develop an anaerobic digestion facility in Co. Meath) wherein it was held that the conclusions of the Board in relation to the Seveso III Directive in that instance were unreasonable in the sense that there was no material before the Board capable of justifying its conclusions that there was no likelihood of the 10-tonne limit for biogas being exceeded.

7.8.3. Within the plans and particulars submitted with the initial planning application, correspondence was supplied from ‘Weltec Biopower’ (as the intended supplier / manufacturer of the proposed anaerobic digestion / biogas production facility) which has sought to clarify the maximum gas storage volume at the proposed facility while emphasising that the aim of the biogas plant is to continually produce and use the biogas in the CHP engine and not to store it. This submission proceeds to detail that the maximum gas storage volume in the double membrane gas roofs of the digesters (based on the system yields) will be 2,046m^3 of biogas and that the capacity of these roofs is to provide operational flexibility – not storage. It outlines how biogas has a density of 1.15kg/m^3 at atmospheric temperature and pressure before calculating that the maximum gas volume storage of 2,046m^3 would equate to 2,353kg of biogas if both the double membrane gas roofs were full (which would not be the case in normal operations) while the mass would be less at 40^{o}C rather than ambient temperature. On the basis of these calculations, it is apparent that the maximum gas volume storage of the proposed development would be considerably less than the

threshold of 10 No. tonnes for a 'lower tier' establishment as set out in the COMAH Regulations.

7.8.4. In response to the grounds of appeal, the applicant has sought to elaborate further on the issue of gas storage on site and further notes that the *Halpin* case concerned a theoretical possibility that if the entire capacity of the digestion tanks (including the adjustable membranes) were to be used for the storage of biogas (to the exclusion of any feedstock) then this could exceed the 10-tonne threshold. With respect to the subject proposal, it has been submitted that if the total volumetric capacity of the digestion tanks (including the adjustable membranes) at 4,589m^3 were to be used for the storage of biogas (at maximum density of 1.15-1.25 kg/m^3) then the maximum weight of stored biogas on site at any one time would be 5.74 tonnes. Therefore, it has been asserted that it can be reasonably concluded that the weight of biogas at any one time on site could never exceed 10 tonnes and thus the proposal is not subject to the COMAH Regulations, 2015.

7.8.5. In support of the foregoing, I would refer the Board to the manufacturer's technical specifications (titled '*Technical Yield Estimation*') for the 2 No. digesters provided with the application documentation. These detail that Digester Type 1 (3,178m^3) and Digester Type 2 (2,127m^3) will provide for a total digesting volume of 4,589m^3 with a gas storage volume (including the residue tanks) of 2,046m^3. This would tally with the figures outlined by the applicant. The total digesting volume of 4,589m^3 would seem to be a cumulative figure for both digesters and appears to include the gas storage volume (2,046m^3), however, even if both these volumes were combined to 6,635m^3, the equivalent weight of stored biogas would be c. 8.3 tonnes i.e. less than the 10-tonne threshold.

7.8.6. Given that the foregoing details would seem to support the proposition that the theoretical maximum weight of stored biogas on site at any one time would be 5.74 tonnes, and noting that this calculation is based on the conservative application of a maximum biogas density of 1.15-1.25 kg/m^3, in my opinion, it is reasonable to determine in this instance (having regard to the *Halpin* case) that the proposed facility will be sub-threshold and thus does not constitute a 'lower tier' establishment for the purposes of the COMAH Regulations.

7.8.7. By way of further comment, it is my understanding that the potential for the totality of internal volume of the digester vessels being used for the storage of biogas is very unlikely (if not unachievable) given that such a scenario would require the absence of any input (fuel) materials from within the digesters. The presence of a fuel within the digesters is necessary to produce the biogas and thus in the absence of any such fuel there will be no anaerobic digestion occurring within the vessel to fill it with biogas. Therefore, any scenario that would envisage the digesters being used solely for gas storage would seem to require the importation / inputting of biogas from an outside source in contravention of the terms of the permission sought.

7.8.8. With respect to the remainder of the health and safety concerns raised by the appellants (e.g. the risk of explosion, fire safety, and infection control etc.), I am inclined to suggest that these issues are broadly governed by separate legislative and / or regulatory codes, including fire services requirements and the Safety and Welfare at Work Act, 2005. Further guidance on these matters is contained in Section 3: '*Health and Safety'* of the '*Anaerobic Digestion for On-farm Uses - Operations and Maintenance Guide'* published by the Sustainable Energy Authority of Ireland which acknowledges that health and safety must be prioritised in all aspects of the design, construction and operation of anaerobic digestion facilities. For example, it references the risks posed by explosive atmospheres given the highly flammable nature of methane (the constituent part of biogas) and states that the Safety, Health and Welfare at Work (General Application) Regulations 2007, Part 8: Explosive Atmospheres at Places of Work, puts duties on operators to protect people from risks arising from explosive atmospheres from any source, including flammable gases or dusts. With respect to infection control procedures, the guidance notes that organic waste such as manures and slurries can contain microbial pathogens and, therefore, personnel should be made aware of the risks when handling these materials and maintain high levels of hygiene after working around the waste. Maintaining cleanliness around the facility and mobile plant will also help to avoid contamination.

7.8.9. At this point, I would advise the Board that the application has been accompanied by a 'Public Safety Assessment Proposal' prepared by QFT / Nviroserv which acknowledges that an anaerobic digestion plant presents health and safety risks during both the construction and operational phases and that the identification and

quantifying of the hazards and risks posed to stakeholders, including the general public, is central to complying with legislation governing health & safety. Regrettably, this document is somewhat generic and not specific to the development proposed. Moreover, it is not in itself a 'Safety Assessment' but rather a proposal to prepare such an assessment. However, some clarity on operational protocols, training, and staff roles & responsibilities etc. relevant to health and safety is contained elsewhere in the application, including the 'Environmental Management System' submitted by way of further information, and while the absence of a completed 'Public Safety Assessment' is regrettable, the preparation and implementation of such a document can be addressed by way of condition in the event of a grant of permission.

7.8.10. In relation to the risk posed to downgradient properties in the event of the catastrophic failure of a digester / storage tank etc. or a spillage of material that would overwhelm the confines of the development site, in my opinion, the likelihood of any such event is remote and would not warrant a refusal of permission. Moreover, any such risk will be mitigated in large part through adherence to normal construction, operational and health & safety protocols. For example, the tanks will be water-tested to industry standard and certified as such while the regular maintenance and inspection of equipment at the facility will form part of its Environmental Management System with on-site operations (such as gas pressures and temperature etc.) the subject of automated monitoring by way of a SCADA system. Emergency response procedures will also be incorporated into the EMS. Account should also be taken of the wider design of the proposal given that the surface water drainage arrangements are such that any runoff / flow from the facility will be directed towards the proposed soakaway and away from downgradient properties. The earthen embankment proposed around the perimeter of the development will also serve as a barrier enclosing any spillages on site. Consideration should be given to the nature of any spillages and whether the dry / solid matter content and / or the viscosity of the material concerned would mitigate against its downward flow. The likelihood of infiltration to ground and the notable separation distance between the facility and those properties to the south would also reduce any risk posed to nearby residences.

7.8.11. Therefore, on the basis of the available information, including the need for adherence to industry standards and health and safety protocols, I am satisfied that the proposed development does not pose an undue risk to public safety.

7.9. Traffic Considerations:

7.9.1. Traffic Volumes

The proposed development will be reliant on the importation of feedstock for the anaerobic digestion & biogas production facility followed by the removal of digestate for landspreading elsewhere and will therefore give rise to increased traffic movements to and from the application site.

7.9.2. The Environmental Management System received by the Planning Authority on 13th September, 2022 by way of further information includes a brief analysis of the traffic and transport impact of the proposed development. This document states that the facility will require 3 No. deliveries of feedstock per day during normal operating conditions which will be delivered by tractor and trailer / storage from the wider landholding between 07:00 and 08:30 hours each morning. Throughout the year it is anticipated that the following feedstock will be delivered to the facility each day:

- c. 13.7 tonnes of grass silage
- c. 13.7 tonnes of maize silage
- c. 2,000 gallons of cattle slurry

7.9.3. This would equate to 6 No. delivery vehicle movements to & from the site daily.

(The applicant has also sought to emphasise that 104 No. acres of the contributing farmland will be directly linked to the proposed facility thereby negating any requirement for feedstock generated from within those lands to be transported over the public road network).

7.9.4. During the harvest season, c. 2,000 tonnes of sugarbeet will be delivered to the facility over 2 No. days at a rate of 40 No. deliveries per day i.e. 80 No. deliveries in total. While this will result in a considerable concentration of traffic movements over a two-day period (presumably in addition to the facility's normal operational demands), periods of more intensive activity are not uncommon as part of normal farming practice given the seasonal and weather-dependent demands associated with harvesting or silage cutting etc.

7.9.5. In relation to the removal of digestate from the facility for spreading on surrounding farmland, it has been estimated this will require on average 14 No. lorry movements (using 4,000 gallon sealed tanks) per week. On the basis of the applicant's own figures, it can be extrapolated that the 12,000 tonnes of digestate generated annually will equate to 2,670,000 gallons and, therefore, the removal of 56,000 gallons per week from the site (by way of 14 No. movements of 4,000 gallons) would be sufficient for operational reasons (with additional headroom available). While the 14 No. lorry loads of digestate would equate to a total of 28 No. movements to & from the site each week (i.e. c. 4 - 5 No. movements per day on the assumption of a six day working week as per the operational hours submitted), it is possible that upon the delivery of raw feedstock to the site, the same tankers may export digestate off site thereby resulting in a slight reduction in the potential overall traffic movements to / from the site.

7.9.6. Therefore, on the basis of the aforementioned figures, it can be estimated that feedstock deliveries and digestate removal during normal working operations have the potential to generate approximately 10-11 No. vehicular movements (tractor and trailer etc.) to / from the site per day. In addition, further traffic movements will be generated by the staffing of the facility and any maintenance / management requirements, although one of the directors of applicant company will be resident on adjacent lands. Peak traffic volumes will arise during the harvesting of sugar beet when it is anticipated that c. 80 No. additional deliveries will be received by the site over a two-day period. However, cognisance should also be taken of any traffic movements to / from the site (such as those associated with the existing farmyard) that may be offset by the proposed development.

7.9.7. On balance, it is my opinion that the surrounding road network, including the R551 Regional Road, has sufficient capacity to accommodate the additional traffic consequent on the proposed development without detriment to public safety or other road users. In this regard, it is of also relevance to note that the Listowel Roads Office (in advising the Planning Authority) has not objected to the proposal in principle. Furthermore, given the established use of the existing access arrangement serving the adjacent farmyard and the wider landholding, I am satisfied that the comparatively low volumes of additional traffic attributable to the normal operation of the proposed development will not result in any significant diminution in the

residential amenity enjoyed by nearby properties. While I would acknowledge that there will be periods of more intensive activity at the site (in reference to the delivery of sugarbeet), the impacts arising will be seasonal, short-lived and confined to a limited period of time, similar to other common agricultural practices such as silage cutting / making and harvesting activities etc. Accordingly, given the context of the development site, the nature of the development proposed and its relationship with the applicant's farming activities, and noting the reasonable expectation that farm related practices are an inherent part of rural life, it is my view that the traffic impact of the proposed development (including the associated noise and disturbance) will not be of such magnitude as to warrant a refusal of permission.

7.9.8. *The Proposed Access Arrangements:*

The proposed development will be accessed via the existing entrance arrangement from the R551 Regional Road (within the 50kph speed limit) which serves the adjacent dwelling house and farm complex (as well as the wider landholding). However, concerns have been raised as regards the adequacy of the sightlines available from this access onto the public road, with particular reference to the sight distance to the east on exiting the site. In this respect, I would refer the Board in the first instance to the initial report prepared by the Listowel Roads Office which noted that the available sightlines were deficient before recommending that further information be sought in respect of the sight distances achievable having regard to the Design Manual for Urban Roads and Streets and the design speed of the road. That report also stated that should any works be proposed outside of the application site, a letter of consent from the affected third party should accompany the response to the request of further information. These recommendations were subsequently incorporated into the request for further information issued by the Planning Authority.

7.9.9. In response to the request for further information, the applicant submitted an amended site layout plan (Drg. No. Ph-003 Rev. P01) in order to demonstrate that adequate sightlines were achievable from the existing entrance arrangement in accordance with the requirements of the Design Manual for Urban Roads and Streets. In support of this assertion, it was further clarified that while the sightlines to the east had previously been obstructed by trees and shrubs within the confines of a neighbouring property, the overgrown vegetation in question had since been pruned

back substantially to provide for a clear and unobstructed sightline to the east along the R551 roadway.

7.9.10. In its assessment of this additional information, the Roads Office would appear to have been satisfied that its concerns had been addressed, however, it is notable that its recommendation to grant permission was conditional and included a requirement that the consent of a third-party landowner be provided as regards the ongoing maintenance of hedging within the confines of a neighbouring property. The submission of such a maintenance contract / agreement for the approval of the Planning Authority, prior to the commencement of development, was subsequently included as Condition No. 25 of the notification of the decision to grant permission in the interest of traffic safety.

7.9.11. At this point, I would draw the Board's attention to the third-party appeal of Ms. Siobhan Fitzgerald as the owner of the neighbouring property impacted by Condition No. 25 and, more specifically, her assertion that she has no affiliation with the proposed development and has no intention of entering into the maintenance agreement sought as it would devalue her property.

7.9.12. By way of response (as received by the Board on 11th January, 2023), the applicant has acknowledged that Ms. Fitzgerald is unwilling to enter into the agreement sought by Condition No. 25 although it has affirmed its commitment to reaching said agreement. In the event that agreement is not achieved, the applicant proposes to enter into an alternative arrangement with the landowner to the west (being a Director of Sandford Energy Ltd.) in order to make minor modifications to the existing entrance junction alignment as set out in the accompanying report prepared by O'Dwyer Horgan, Consulting Engineers, so as to ensure the long-term adequacy of the available sightlines. These modifications will involve the repositioning of the line of approach of the site access road to the Regional Road further west (away from the appellant's property) and will necessitate the removal of a c. 9.7m long section of the existing roadside boundary wall. This will have the effect of shifting the horizontal alignment of the access road further west resulting in an enlarged verge to the east of the site access. A design speed of 60kph was adopted for the purposes of assessing the sightlines required from the revised entrance arrangement given the location of the site entrance along a section of roadway subject to a speed limit of 50kph and the presence of a continuous white centreline along both approaches to

its junction with the public road. This would necessitate a stopping sight distance of 59m (when measured from a setback of 2.4m from the near edge of the carriageway) as per the Design Manual for Urban Roads and Streets. In this regard, it has been submitted that the alternative entrance design proposed in response to the grounds of appeal can achieve the required sightlines thereby eliminating any dependency on the maintenance of hedging within the appellant's neighbouring property.

7.9.13. From a review of the available information, and having conducted a site inspection, it is my opinion that the sightlines presently available from the existing site access onto the public road are deficient to the east as a result of the obstruction caused by the boundary wall and planting within the appellant's neighbouring property.

7.9.14. Although the case could be made that this is a long-established arrangement and that the proposed development would not result in any significant increase in the overall volume of traffic using the existing entrance, I am not satisfied that sufficient information has been submitted to sustain such an argument. For example, no details have been provided of the existing levels of traffic visiting the site and thus it is not possible to draw a comparison with that likely to be generated by the proposed development. By extension, it is not possible to determine the increased risk of traffic accident attributable to the substandard sight distance. In any event, and notwithstanding the foregoing, the case remains that the sightlines to the east of the existing entrance arrangement are deficient.

7.9.15. With respect to the inclusion of Condition No. 25, it is apparent that this was imposed on the recommendation of the Roads Authority which sought the consent of a third-party landowner in relation to the ongoing maintenance of hedging within the confines of a neighbouring property. Given the concerns originally raised by that Authority as regards the inadequacy of the sightlines at the existing entrance arrangement, it is apparent that its subsequent recommendation to grant permission was conditional on the receipt of aforementioned third-party consent '*in the interest of traffic safety'*. It could therefore be reasonably surmised that in the absence of any such consent, a recommendation to grant permission would not have been forthcoming. By extension, the notification of the decision to grant permission would seem to be reliant on the imposition of Condition No. 25.

7.9.16. Certain basic criteria have often been suggested as a guide to deciding whether to impose a condition and in this regard I would refer the Board to Section 7.3 of the '*Development Management, Guidelines for Planning Authorities'* issued by the Department of the Environment, Heritage and Local Government in 2007 wherein it is stated that planning conditions must be enforceable and should not be imposed if they cannot be made effective. This is of particular relevance in the context of the subject proposal given its reliance on works outside of the application site in the ownership of a third party who has not consented to same. Indeed, Section 7.3.3 of the Guidelines specifically states the following:

> *'It is doubtful that a condition requiring the maintenance of sightlines by the removal or trimming of hedges or trees on a neighbour's property is within the applicant's power to fulfil: even where the neighbour has given consent that consent may subsequently be withdrawn. The Law Society has advised that such conditions may create difficulty as to title and have advised that in such cases the applicant be required to obtain an easement over the neighbour's property thus obtaining the legal right to maintain the sightline'.*

7.9.17. Therefore, on the basis of the foregoing, it is clear that Condition No. 25 is unenforceable. Moreover, the affected third party has clearly indicated that she has no intention of entering into any agreement with the applicant as regards the future maintenance of hedging within the confines of her property. Accordingly, no reliance can be placed on Condition No. 25 in terms of improving the sightlines achievable from the site access and the conditional grant of permission must fail.

7.9.18. In relation to the alternative proposals put forward by the applicant in response to the grounds of appeal, which will involve the repositioning of the existing access arrangement further west and the carrying out of works on lands outside of the site development boundary (though within the ownership of a director of the applicant company), it is my opinion that these cannot form part of the application under consideration as they are located beyond the red line defining the extent of the proposed development site and are not reflected in the submitted public notices. While it would be open to the Board to seek further information as regards the foregoing proposals (including revised drawings and new public notices), in the absence of same, it is necessary to assess the application as lodged. Accordingly,

as a result of the traffic generation consequent on the proposed development and the inadequacy of the sightlines to the east on exiting the site access (noting the inability to enforce Condition No. 25 as imposed by the Planning Authority), I would recommend that permission be refused on the basis that the proposed development as submitted would endanger public safety by reason of traffic hazard.

7.10. **Other Issues:**

7.10.1. The Inaccurate Depiction of the Location of the Site Notice:

The appeal of Ms. Fitzgerald has asserted that the location of the site notice as shown on the submitted plans (i.e. on the boundary alongside her property) is incorrect given that the notice was actually erected on the opposite side of the entranceway.

7.10.2. In my opinion, a determination as to the correct identification of the location of the site notice on the submitted particulars is a procedural matter, the responsibility for which lies with the Planning Authority during its validation (or not) of a planning application. In this instance, the Planning Authority took the view that the submitted documentation satisfied the minimum regulatory requirements. The Board is not empowered to correct any procedural irregularity which may have arisen during the Planning Authority's initial validation of the subject application. In any event, it would appear that the discrepancy seemingly identified by the appellant did not prejudice their ability to lodge the subject appeal.

7.10.3. Waste Management Considerations:

I refer the Board to my earlier comments that under Article 2(1)(f) of the Waste Framework Directive 2008/98/EC, exclusions from the scope of the Directive include *"straw and other natural non-hazardous agricultural . . . material used in farming . . .or for the production of energy from such biomass through processes or methods which do not harm the environment or endanger human health".* In effect, any such material does not constitute "waste" as per the Directive. However, Article 2(2)(b) of the Directive clarifies that *"animal by-products . . . which are destined for use in a biogas or composting plant"* do fall within the scope of the Directive. Such products would include cattle slurry.

7.10.4. In accordance with the Waste Management (Facility Permit and Registration) Regulations, 2007, as amended, a facility that accepts up to 10,000 tonnes per

annum of biowaste (and does not exceed 6,000m^3 of biowaste or digestate in storage at any time) requires a Waste Facility Permit issued by the relevant local authority. The proposed development will have an annual intake of 2,000 tonnes of waste (slurry) and will be capable of storing up to 4,000 tonnes of digestate at any one time. While the applicant has submitted that the Local Authority has determined that a waste facility permit will not be required for the proposed development, no further details have been provided to support this assertion. I would suggest that the conversion of the stated weights to volume will be dependent factors such as water and dry matter content and, therefore, the Board may wish to seek further clarity on this matter.

7.10.5. With respect to the Animal By-Products Regulations, if an anaerobic digestion facility accepts and processes inputs that are classified as animal by-products, there is a requirement under the Animal By-Product Regulation (1069/2009) to ensure that the facility processes such inputs adequately, to mitigate the risk pathogens and disease being transmitted through the digestate. The necessary certification (if required) is obtained from the Department of Agriculture, Food and the Marine. Different certification requirements are needed depending on the type of facility and its inputs. In this regard, it is my understanding that although manures are classified as Category 2 animal by-products, the regulation requirements may be less strict if the anaerobic digestion facility only processes manures, waste crops and energy crops that are produced on the host farm, and the digestate is used only on that farm. It is on this basis that the applicant has submitted that the proposed development comprises a Type 2 plant as per the Department of Agriculture and does not require any authorisation under waste management or animal by-products legislation. While this seems a reasonable proposition, cognisance should be taken of the fact that inputs to the proposed facility will arise from 3 No. landowners who will jointly trade / operate as Sandford Energy Ltd.

7.10.6. *Adjacent Waste Storage Activities:*

Concerns have been raised as regards the potential cumulative impact of the proposed development when taken in conjunction with the potential storage of up to 4,000 tonnes of biosolids (EWC Code 190805: Urban Waste Water Treatment Sludge) within the adjacent farmyard for spreading on the surrounding lands retained by Mr. Maurice Leahy as one of the directors of the applicant company. In this

regard, I would refer the Board to the grant of permission issued in respect of PA Ref. No. 12588 which authorised the change of use of an existing agricultural shed within the farmyard to an agricultural store that would include for the storage of agricultural machinery, organic and inorganic fertilisers such as granular artificial fertiliser, biosolids and soil conditioners. Within the plans and particulars approved as part of that proposal, it was indicated that Clearpower Bioenergy Solutions had been selected by Kerry County Council to cater for the sludge management needs of the Tralee Wastewater Treatment Plant and that Mr. Leahy had drawn up plans to replenish the organic matter content in the soil of his tillage farm that included the recovery of biosolid fertilisers. It was also stated that Clearpower Bioenergy Solutions intended to apply for a Certificate of Registration for Mr. Leahy's shed to be used for the storage of biosolids in line with regulatory requirements (SI 32 of 2010).

7.10.7. Although the appellant has alleged a history of regulatory breaches and enforcement action in respect of the approved biosolids storage activities, no further details have been provided in this regard. Regrettably, the response of the applicant simply states that the structure identified by the appellant as an 'Existing Biosolids Store' is not located within the proposed development site and does not form part of the proposal presently under consideration. Similarly, none of the reports of the case planner or the Environment Section of the Local Authority raise any concerns as regards any ongoing use of the applicant's landholding for waste storage activities.

7.10.8. It is unclear from the available information whether the biosolids storage facility approved under PA Ref. No. 12588 was ever implemented or if it remains in operation. Moreover, having reviewed the '*Waste Facility Permit and the Certificate of Registration Database'* held by the National Waste Collection Permit Office, there would appear to be no Waste Facility Permit or Certificate of Registration either in place or pending as regards the operation of a biosolids storage facility at this location. Similarly, there is no record of any IE / IPC licence having been issued by the Environmental Protection Agency in respect of any such activity on site.

7.10.9. On the basis of the foregoing, I am not in a position to comment further on the veracity of the appellant's concerns as regards the operation and / or impact of any existing biosolids storage facility within the confines of the adjacent farmyard.

However, I note that any such development is beyond the confines of the subject site and would appear to have (had) the benefit of planning permission.

7.11. Appropriate Assessment:

7.11.1. 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.

7.11.2. Background on the Application:

The applicant has submitted a screening exercise for Appropriate Assessment with the planning application (please refer to the '*Appropriate Assessment Screening Report for works at Dromkeen West, Causeway, Co. Kerry'* dated November, 2021 and prepared by Kerry Ecological Services).

7.11.3. This Stage 1 AA screening exercise provides a description of the proposed development and identifies those European Sites considered to be within the zone of influence of the development:

- The Lower River Shannon Special Area of Conservation, c. 6-8km north and east of the site.
- The Kerry Head Special Protection Area, c. 6km north of the site.
- The Akeragh, Banna and Barrow Harbour Special Area of Conservation, c. 10km southwest of the site.
- The Tralee Bay Complex Special Protection Area, c. 10km southwest of the site.

7.11.4. It states that owing to the limited nature of the proposed development; the separation distances from the identified Natura 2000 sites (including the coastal portions of the Lower River Shannon SAC) and the presence of intervening features such as roads, fields and dwelling houses; and the lack of any hydrological link, that these sites can be screened out with respect to any detrimental impact. The screening subsequently focuses on the presence of a tributary stream of the River Brick to the east of the proposed works that flows south-eastwards into the Crompaun River before entering the River Brick (which forms part of the Lower River Shannon SAC). It considers the

potential for indirect impacts arising from contaminated surface water runoff as well as other pollution sources and determines that no such impacts will arise due to a number of factors, including the lack of a hydrological connection between the proposed development site and the Lower River Shannon SAC.

7.11.5. It concludes upon examination, analysis and evaluation of the relevant information that no impacts are expected on any Natura 2000 site hosting designated habitats and species, including the Lower River Shannon SAC. Accordingly, the proposed development will not impact on the Conservation Objectives of any Natura 2000 site. The overall conclusion contained within Appendix 1 of the screening assessment further states that the proposed development will have no significant impact on the flora, fauna, conservation interests or the integrity of the Lower River Shannon SAC or any other Natura 2000 site.

7.11.6. Having reviewed the documents & submissions provided, including the additional particulars provided in response to the request for further information issued by the Planning Authority, I am satisfied that there is adequate information to allow 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.

7.11.7. Screening for Appropriate Assessment - 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).

7.11.8. 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.

7.11.9. Brief Description of the Development:

The applicant provides a description of the proposed development in Section 1.2 of the AA report. In summary, the proposed development consists of the construction of a biogas production plant which will process agriculturally-derived feedstock by way of anaerobic digestion to produce biogas that will in turn be fed into a Combined Heat and Power (CHP) plant to produce heat and electricity with surplus electricity

(equating to approximately 90% of the electrical output) being directed to the national grid. The initial application was accompanied by various supporting information including air and odour dispersion modelling reports, an Environmental Noise Impact Report and a waste management plan. Further particulars were submitted by way of additional information which included an archaeological impact assessment, a Landscape Visual Impact Assessment Report, and an Environmental Management System. The surface water drainage arrangements are set out in greater detail in the plans and particulars received by the Planning Authority on 13th September, 2022 in response to a request for further information (it is proposed to segregate runoff from within different parts of the development so as to provide for the separate treatment and disposal of soiled and uncontaminated waters on site).

7.11.10. The development site is described in Section 4 of the applicant's AA screening report with a field study having confirmed that it is composed solely of tillage land (arable crops (BC1) habitat) bounded by an existing farmyard, agricultural track and further tillage land. No watercourses or drainage channels are recorded on or near the site with the closest watercourse situated <100m (c. 80-90m) east of the site (which flows south-eastwards into the Crompaun River and onwards to the River Brick).

7.11.11. Taking account of the characteristics of the proposed development in terms of its location and the scale of works, the following issues are considered within the AA screening report for examination in terms of implications for likely significant effects on European sites:

- Habitat loss
- Alteration of habitats
- Habitat or species fragmentation
- Potential impairment of water quality
- Disturbance and / or displacement of protected species
- Cumulative impacts

7.11.12. Submissions and Observations:

All submissions and observations received from interested parties are set out in Section 3.0 of this report while Section 6.0 details the grounds of appeal and the

third-party observations along with the responses to same received from the applicant and the Planning Authority.

7.11.13. European Sites:

The development site is not located in or immediately adjacent to a European site. The closest European sites are the Kerry Head Special Protection Area (Site Code: 004189) c. 4km to the northwest and the Lower River Shannon Special Area of Conservation (Site Code: 002165) approximately 4.5km & 6km to the northwest and east respectively. A summary of European Sites that occur within a possible 15km zone of influence of the proposed development is presented in the table below.

7.11.14. Where a possible connection between the development and a European site has been identified, these sites are examined in more detail.

European Site	**Qualifying Interest / Special Conservation Interest**	**Distance from the proposed development**	**Connections (source-pathway-receptor)**	**Considered Further in Screening**
Kerry Head Special Protection Area (Site Code: 004189)	Fulmar (Fulmarus glacialis) [A009] Chough (Pyrrhocorax pyrrhocorax) [A346]	c. 4km northwest of the site.	None.	No
Lower River Shannon Special Area of Conservation (Site Code: 002165)	Sandbanks which are slightly covered by sea water all the time [1110] Estuaries [1130] Mudflats and sandflats not covered by seawater at low tide [1140] Coastal lagoons [1150] Large shallow inlets and bays [1160]	c. 4.5km & 6km northwest and east of the site respectively	Hydrological - surface runoff / discharge	Yes

	Reefs [1170] Perennial vegetation of stony banks [1220] Vegetated sea cliffs of the Atlantic and Baltic coasts [1230] Salicornia and other annuals colonising mud and sand [1310] Atlantic salt meadows (Glauco-Puccinellietalia maritimae) [1330] Mediterranean salt meadows (Juncetalia maritimi) [1410] Water courses of plain to montane levels with the Ranunculion fluitantis and Callitricho-Batrachion vegetation [3260] Molinia meadows on calcareous, peaty or clayey-silt-laden soils (Molinion caeruleae) [6410] Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) [91E0] Margaritifera margaritifera			

	(Freshwater Pearl Mussel) [1029] Petromyzon marinus (Sea Lamprey) [1095] Lampetra planeri (Brook Lamprey) [1096] Lampetra fluviatilis (River Lamprey) [1099] Salmo salar (Salmon) [1106] Tursiops truncatus (Common Bottlenose Dolphin) [1349] Lutra lutra (Otter) [1355]			
Tralee Bay Complex Special Protection Area (Site Code: 004188)	Whooper Swan (Cygnus cygnus) [A038] Light-bellied Brent Goose (Branta bernicla hrota) [A046] Shelduck (Tadorna tadorna) [A048] Wigeon (Anas penelope) [A050] Teal (Anas crecca) [A052] Mallard (Anas platyrhynchos) [A053]	c. 7.4km southwest of the site.	None.	No

	Pintail (Anas acuta) [A054] Scaup (Aythya marila) [A062] Oystercatcher (Haematopus ostralegus) [A130] Ringed Plover (Charadrius hiaticula) [A137] Golden Plover (Pluvialis apricaria) [A140] Grey Plover (Pluvialis squatarola) [A141] Lapwing (Vanellus vanellus) [A142] Sanderling (Calidris alba) [A144] Dunlin (Calidris alpina) [A149] Black-tailed Godwit (Limosa limosa) [A156] Bar-tailed Godwit (Limosa lapponica) [A157] Curlew (Numenius arquata) [A160] Redshank (Tringa totanus) [A162]			

	Turnstone (Arenaria interpres) [A169] Black-headed Gull (Chroicocephalus ridibundus) [A179] Common Gull (Larus canus) [A182] Wetland and Waterbirds [A999]			
Akeragh, Banna and Barrow Harbour Special Area of Conservation (Site Code: 000332)	Annual vegetation of drift lines [1210] Salicornia and other annuals colonising mud and sand [1310] Atlantic salt meadows (Glauco-Puccinellietalia maritimae) [1330] Mediterranean salt meadows (Juncetalia maritimi) [1410] Embryonic shifting dunes [2110] Shifting dunes along the shoreline with Ammophila arenaria (white dunes) [2120] Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130] Humid dune slacks [2190]	c. 7.4km southwest of the site.	None.	No

	European dry heaths [4030]			
Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area (Site Code: 004161)	Hen Harrier (Circus cyaneus) [A082]	c. 12km southeast of the site.	None.	No
Magharee Islands Special Area of Conservation (Site Code: 002261)	Reefs [1170]	c. 13.2km southwest of the site.	None.	No
Magharee Islands Special Protection Area (Site Code: 004125)	Storm Petrel (Hydrobates pelagicus) [A014] Shag (Phalacrocorax aristotelis) [A018] Barnacle Goose (Branta leucopsis) [A045] Common Gull (Larus canus) [A182] Common Tern (Sterna hirundo) [A193] Arctic Tern (Sterna paradisaea) [A194] Little Tern (Sterna albifrons) [A195]	c. 14.7km southwest of the site.	None.	No

7.11.15. Conservation objectives have been included for the SACs and the SPAs to maintain or restore the various qualifying interests by reference to a list of specified attributes and targets.

7.11.16. Identification of Likely Effects:

7.11.17. **Habitat loss / alteration / fragmentation:** Given the separation distances involved, it is not considered that there is any pathway for the direct loss, alteration or fragmentation of habitats listed as qualifying interests within the Natura 2000 sites.

7.11.18. **Habitat or species disturbance / displacement:** Given the separation distances involved, it is not considered that there is any pathway for the direct disturbance or displacement of habitats or species listed as qualifying interests within the Natura 2000 sites.

7.11.19. **Deterioration of water quality - construction related pollution:** The construction phase of the proposed development will involve earthworks and the disturbance of soil etc. which gives rise to the possibility of indirect negative impacts on downstream water quality through the accidental release of suspended solids / sediment etc. or the discharge of hydrocarbons and / or other pollutants by way of contaminated surface water runoff. In this regard, drains or watercourses could act as a hydrological conduit for contaminated surface waters between the development site and the Lower River Shannon Special Area of Conservation (Site Code: 002165) with any associated deterioration in water quality having a potentially negative impact on downstream aquatic habitats and species (e.g. Otter, Salmon and Lamprey) identified as qualifying interests / special conservation interests within the SAC (such as through changes in water chemistry or the loss of spawning grounds).

7.11.20. The closest watercourse lies c. 100m east of the development site and serves as a tributary stream of the Crompaun River that in turn flows into the River Brick which forms part of the Lower River Shannon SAC (approximately 7.2km downstream), however, it is not considered that there is any hydrological pathway for downstream effects / water quality impacts within the SAC due to the following factors:

- The lack of any hydrological connection between the site and the SAC given the absence of any watercourses either on or near the proposed works.

- The physical separation distance of c. 100m between the proposed works area and the nearest tributary stream of the Crompaun River in addition to the nature of the intervening tillage lands which comprise arable crop with good soil drainage properties and a gentle slope serving as a buffer to any runoff.
- The hydrological separation distance of c. 7.2km between the tributary stream of the Crompaun River and the River Brick which forms part of the Lower River Shannon SAC (noting the reference in the applicant's screening exercise to a separation in the order of 10+km). In this respect, it has been submitted that any localised runoff from such a removed distance on the SAC would be insignificant.
- The slow to medium flowing nature within the tributary stream and its broader characteristics, including its colonisation by dense aquatic vegetation, which will serve to buffer / filter any downstream impact on sediment runoff.
- The limited nature and duration of the construction works.
- The application of normal good construction / building practice.

7.11.21. Deterioration of water quality - operational phase:

The surface water management arrangements for the proposed development are detailed in the plans and particulars received by the Planning Authority on 13th September, 2022 in response to the request for further information and have been assessed in Section 7.6 of this report. In effect, it is proposed to segregate runoff from within different parts of the development so as to provide for the separate treatment and disposal of soiled and uncontaminated waters on site.

7.11.22. By way of summation, soiled waters from operational areas such as the soiled apron and the substrate storage areas (as well as the wheelwash) will be drained to the underground feed-in / slurry tank for subsequent processing within the anaerobic digestion plant. There will be no discharge of process waste waters to the receiving environment as the system will operate as a closed process with any waste effluents generated recycled to the underground feed-in tank. Surface water runoff from the concrete apron alongside the CHP / machinery shed and the weighbridge will be passed through a silt trap and a Class 1 bypass oil interceptor prior to discharge to ground by way of an on-site soakaway. Clean uncontaminated runoff from the area between the pre-mix tank, the digesters and the digestate storage tank will be

allowed to percolate to ground with any excess waters directed to the soakaway. Given the closed nature of the system process, contaminated waters would not be expected to arise in this area.

7.11.23. The discharge of contaminated surface water runoff could potentially have an indirect negative impact on downstream water quality with drains or watercourses acting as a hydrological conduit for contaminated waters between the development site and the Lower River Shannon Special Area of Conservation (Site Code: 002165). Any associated deterioration in water quality could potentially have a negative impact on downstream aquatic habitats and species identified as qualifying interests / special conservation interests within the SAC.

7.11.24. The closest watercourse is a tributary (c. 100m east) of the Crompaun River that in turn flows into the River Brick which forms part of the Lower River Shannon SAC (approximately 7.2km downstream), however, it is not considered that there is any hydrological pathway for downstream effects / water quality impacts within the SAC due to the following factors:

- The closed looped operational nature of the process system.
- The treatment and disposal of surface water runoff on site and the absence of any direct discharge to receiving waters.
- The lack of any hydrological connection between the site and the SAC given the absence of any watercourses either on or near the proposed works.
- The physical separation distance of c. 100m between the proposed development and the nearest tributary stream of the Crompaun River in addition to the nature of the intervening tillage lands which comprise arable crop with good soil drainage properties and a gentle slope serving as a buffer to any runoff.
- The hydrological separation distance of c. 7.2km between the tributary stream of the Crompaun River and the River Brick which forms part of the Lower River Shannon SAC (noting the reference in the applicant's screening exercise to a separation in the order of 10+km). In this respect, it has been submitted that any localised runoff from such a removed distance on the SAC would be insignificant.

- The slow to medium flowing nature within the tributary stream and its broader characteristics, including its colonisation by dense aquatic vegetation, which will serve to buffer / filter any downstream impact.

7.11.25. At this point, and for the purposes of clarity, I would advise the Board that Section 177U(3) of the Planning and Development Act, 2000, as amended, provides for a competent authority to request such information from the applicant as it may consider necessary to enable it to carry out screening for appropriate assessment of a proposed development. In this respect, I am satisfied that it is appropriate to consider the details submitted in response to the Planning Authority's request for furtehr information as part of this screening of the proposed development.

7.11.26. Potential for In-Combination Effects / Cumulative Impacts:

On examination of the available information, it is considered that there are no means for the proposed development to act in-combination with any plans or projects that would cause any likely significant effects on any European Sites.

7.11.27. 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.

7.11.28. Screening Determination:

The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act, 2000, as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually or in combination with other plans or projects would not be likely to give rise to significant effects on any European site, in view of their Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is not therefore required. This determination is based on the following:

- The nature, scale and design of the proposed development,
- The nature of the receiving environment,
- The separation distance of the proposed development from the European Sites and the demonstrated lack of any ecological connections, and

- The lack of direct connections with regard to the source-pathway-receptor model.

8.0 Recommendation

8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be overturned in this instance and that permission for the proposed development be refused for the reasons and considerations set out below:

9.0 Reasons and Considerations

1. On the basis of the available information, it is considered that the proposed development would endanger public safety by reason of traffic hazard because of the additional traffic turning movements the development would generate on a road at a point where sightlines are restricted in an easterly direction. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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.

Robert Speer
Planning Inspector

14th October, 2023