



An
Bord
Pleanála

Inspector's Report

ABP-315686-23

Development	Mobile crushing plant and a reduction in size of the Compound area & parking areas as was granted under planning permission 20/485.
Location	Ballymountain, Slieverue, Co Kilkenny.
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	22264
Applicant(s)	Mallwood Ltd
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant(s)	Maloney Consulting Engineers
Observer(s)	None
Date of Site Inspection	16 th of February 2024
Inspector	Angela Brereton

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Appendix 1 – Form 1: EIA Pre-Screening

Appendix 2 – Form 3: Screening Determination

1.0 Site Location and Description

- 1.1. The site (stated area 0.89ha) is located c.4km north of Waterford City at Ballymountain, Slieverue, Co. Kilkenny. It is c.2km north-west of Slieverue village along a local county road and 3km to the north of Ferrybank Co. Waterford. The N25 Waterford City by-pass is c.700m further to the south.
- 1.2. The site is located in the rural area within an existing compound area. There is an existing splayed entrance located on the curve of a bend from the local road to the site. There is a concrete yard in the western part of the site and this contains some heavy machinery. The rest of the yard is not hard surfaced and was muddy on the day of the site visit after recent rain. There were cars, Mallwood trucks and a bus parked on the site. There was also storage of various building materials including concrete blocks, piping and fencing, scrap metal and various items of machinery.
- 1.3. Mallwood Depot offices and Ballymountain building materials supplier are on the opposite side of the road to the north of the site. Further to the northwest are commercial/industrial units. To the west and south are agricultural fields, associated sheds and dwellings. To the east along a minor road is a linear development of one-off dwellings. There are one off houses and agricultural sheds in the vicinity.

2.0 Proposed Development

- 2.1. Permission is sought for a Mobile Crushing Plant and a Reduction in size of the Compound Area and Parking Areas as was granted under planning permission no.20/485 and all ancillary works.

3.0 Planning Authority Decision

3.1. Decision

On the 5th of January 2023, Kilkenny County Council granted permission for the proposed development subject to 8no. conditions. These conditions include regard to development contributions, noise and air quality limits/controls including that a detailed site management plan be put in place, waste management, provision of a

wheel wash facility, monitoring and compliance with guidance documents including the Waste Management Regulations and landscaping.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's Report had regard to the locational context of the site, planning history and policy and to the internal reports and the submissions made. Their assessment included the following:

- The principle of the site being used as Construction & Demolition material storage/compound area and for staff/plant vehicle parking area for Mallwood Ltd is established under permissions P16/517 and P20/485.
- They note that some unauthorised storage of waste is currently occurring in the yard area and refer to comments from the Environment Section and to Planning Enforcement.
- A crusher is currently stored at the site and from the material on site it appears is being used or has been used at the site.
- They note that the Environment Section requests that a final version of the Noise and Dust Assessment and that plans for a wheelwash be submitted. That they also requested F.I on surface water run-off.
- They note that it is stated that the facility will be for a 20 year period and that then the site will be reinstated to agriculture.
- That landscaping details have been submitted and that very little landscaping has been carried out on the site.
- That the Roads Engineer has expressed no objection to the proposed development.

Further Information request

This included the following:

- The Planning Authority and the Environment Section requested that the unauthorised waste being stored onsite, structures and materials and plant be removed and noted that there was no waste facility permit/cert of registration.

- To confirm the position regarding storage of old used vehicles/machinery and if it is intended to dispose of same to licensed facilities/ELV's. That there is no permission to store end of life vehicles.
- To indicate the volumes of different types of waste material to be processed at the proposed facility. That a waste management permit is required for the use of the crusher onsite.
- To provide details of a wheelwash facility within the proposed development site.
- To submit a final version of the Noise and Dust Assessment Report.
- To submit a revised Landscaping Plan that provides further details of planting. Maintenance and management.
- To submit in accordance with Section 177(U)3 of the Planning and Development Act 2000 (as amended) such information to enable the Planning Authority to screen the proposed development for appropriate assessment on whether it is likely to affect the integrity of Natura 2000 sites.

Further information response

W Raymond Walsh, Architect response on behalf of the applicant included the following:

- They confirm that unauthorised waste materials are not currently being stored on site. They enclose 6 copies of waste 'tickets' of materials to licensed waste facility.
- They provide that no unauthorised structures, materials or items of plant are stored or parked on the site at Ballymountain.
- They make reference to Reg.Ref. 20/485 which allows for the construction of 3 storage bays for construction and demolition materials. They have regard to other items stored on site including the crusher.
- They confirm that no old disused vehicles, items of plant or machinery or end of life (ELV's) are now stored on site and there are no proposals for such storage in the future.

- The applicant has carefully considered the materials he is proposing to bring to the site for processing and/or crushing. A table is provided regarding the types of Construction and Demolition Wastes.
- It is not proposed to process and/or crush for re-use soil from contaminated sites or hazardous material, such as bituminous mixtures containing cold tar.
- It is not proposed to process and/or crush for re-use excavated soil from contaminated sites and details are given. This includes a list of EWC Codes not included in the current application.
- Details are given (table supplied) of the total annual tonnage of waste materials i.e max. 24,000 tonnes.
- In addition to that noted on the table submitted as part of the F.I (for 19,000 tonnes), 5,000 tonnes of topsoil will be brought to the site.
- They submit that a wheel wash facility on the site is not warranted and provide reasoning for this.
- They refer to the Report 'Assessment of the Potential Noise and Dust Impacts from the Operation of a Mobile Crusher' for Mallwood Ltd by Malone O'Regan Environmental.
- Also to the Report from Roger Goodwillie & Associates in relation to screening for AA as to whether or not the proposed development is likely to affect the integrity of the Natura 2000 site.
- A Landscape Management Plan (2 year plan) was also submitted.

Planner's Response

The Planner has regard to the F.I including the details and documents submitted and their response included the following:

- They noted the response including that regarding the unauthorised development (no unauthorised waste to be stored on site – waste tickets submitted). That the crusher was being stored but not used.
- Also, that the Environment Section has no objections subject to recommended conditions. This included reference to the final version of the noise and dust assessment submitted.

- A revised landscape and maintenance plan submitted was referred to the Parks section who are satisfied with the response to the F.I request and have no objects subject to conditions.
- An AA Screening Report was prepared to screen for impact on the nearby SAC and concluded that the proposal will not result in any significant impact either directly or indirectly on the conservation objectives or the status of the Natura 2000 sites either alone or in combination with other projects.
- They concluded that the F.I response submitted satisfactorily addresses all the items raised and is considered acceptable. They recommended permission be granted subject to conditions.

3.3. Other Technical Reports

Environment Section

They noted that unauthorised waste was being stored on the site without a permit and they detail a number of unauthorised issues including storage of disused vehicles etc. In summary they advised that these be removed from site and that the relevant EWC Codes be applied and hazardous materials not be stored on the site. They advised the F.I be requested regarding on site operations and storage. That a revised AA Screening Report, to include regard to surface water drainage be submitted. That a final version of a Dust and Noise Assessment and details of a wheelwash be submitted. They had no objections to the F.I submitted and recommended conditions.

Parks Department

They recommended that a condition concerning landscaping be included.

Road Design

They have no objections subject to compliance with the conditions of the parent permission P20/485 and in particular condition no.6.

Prescribed Bodies

No referrals noted.

3.4. Third Party Observations

A submission was made by Maloney Consulting Engineers detailing concerns about the application. This includes regard to planning history, failure to carry out or address AA Screening, failure to carry out EIA Screening. As these are the subsequent Third Party Appellants, their concerns are considered further below in the context of the Grounds of Appeal.

4.0 Planning History

The Planner's Report has regard to the Planning History and this includes the following permissions relevant to this site:

- Reg.Ref. 20/485: Retention and Planning Permission were granted subject to 18no. conditions, for the following:
 1. Planning retention permission for an existing storage bay.
 2. Planning permission was granted for: The erection of 3 new storage bays for construction and demolition materials including soil, stone, concrete, tarmacadam, and topsoil;
 3. For extension to parking area and new parking layout for the entire site to include for storage area for heavy trucks, trailers, JCB's, and machinery;
 4. For compound area for the storage of construction materials, pipes, ducting, conc. Manhole rings, safety barriers and cones etc;
 5. Percolation for surface water and ancillary works.

Conditions included of note included:

No.4 – The proposed development shall not include crushing and screening of construction and demolition materials or any other granular materials on site, permitted activities on site shall be limited to sorting waste streams only.

Reason: In the interests of residential amenity and environmental protection.

No.5 - The development shall comply with condition terms (particularly those outstanding) under Planning Ref. 16/517 unless otherwise amended by this permission.

Reason: In the interests of proper planning and traffic safety.

- Reg.Ref.16/517 – Permission granted by the Council subject to conditions to construct car parking area and all ancillary works.

Condition no.2 concerned the provision of the single access to the site from the public road.

5.0 Policy Context

5.1. National and Regional Planning Policies

National Planning Framework

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

The Southern Region: Waste Management Plan 2015 – 21, which is due to be replaced by the National Waste Management Plan for a Circular Economy.

5.2. Kilkenny County Development Plan 2021 - 2027

Volume 1 – County Written Statement and Settlement Maps

Chapter 1 provides an Introduction.

Objective 1A refers to Appropriate Assessment

To implement the provisions of Articles 6(3) and 6(4) of the EU Habitats Directive and ensure that any plan or project within the functional area of the Planning Authority is subject to appropriate assessment in accordance with the Guidance Appropriate Assessment of Plans and Projects in Ireland – Guidance for Planning Authorities, 20091 or any subsequent version, and is assessed in accordance with Article 6 of the Habitats Directive in order to avoid adverse impacts on the integrity and conservation objectives of the site.

Chapter 5 refers to Economic Development.

Strategic Aim: *To provide a framework for the implementation of the Council's economic strategy by fostering competitiveness and innovation in all sectors within a high-quality physical environment while having due regard to the protection of the*

environment and heritage, in order to position the county for sustainable economic growth.

Section 5.2 provides the Economic Strategy for City & County.

This includes that: The Ferrybank Belview Local Area Plan provides ample zoned land for large scale industries, including a strategic IDA site of 53 hectares, the Marine Point Business Park and Belview Port. Belview has all the necessary infrastructure for high volume production and is supported by significant water, waste water and gas capabilities.

The site is not located within the boundaries of the Ferrybank Belview LAP 2017. It is located c.1km north of the said plan boundary in a rural area.

Having given due regard to the national waste management policy as outlined in A Resource Opportunity, Waste Management Policy in Ireland, the Southern Region Waste Management Plan 2015-2021 was made.

Reference is also made to the Southern Region Waste Management Plan 2015-2021, *a statutory document, to rethink our approach to managing waste, by viewing our waste streams as valuable material resources, leading to a healthier environment and sustainable commercial opportunities for our economy. The Plan is the framework for the prevention and management of wastes in a safe and sustainable manner, and includes the promotion of resource efficiency and the circular economy as one of its strategic objectives.*

Section 4 of the Waste Management Amendment Act 1996, as amended, provides that the Development Plan in force in an area shall be deemed to include the objectives contained in the relevant waste management plan. Therefore, this plan is deemed to contain the policies and objectives of the Southern Region Waste Management Plan 2015-2021 and its successor.

Chapter 7 refers to Rural Development

The rural development strategy is based on National Planning Objectives 15 to 25 as contained in the National Planning Framework (NPF), which aims to promote rural growth and arrest rural decline whilst sustaining vibrant rural communities. This chapter is also based on other higher level policy documents such as the Regional Spatial and Economic Strategy for the Southern Region (RSES), Foodwise 2025,

Action Plan for Rural Development 2017, the CEDRA report, and Sustainable Rural Housing Guidelines for Planning Authorities.

Section 7.7 supports Diversification of the rural economy from mainstream farming.

It is an objective of the Council to 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 in line the NPF.

This also notes: *Industries that are not directly related to agriculture will however be encouraged to locate to settlements so as to support the creation of economies of scale which will underpin the vitality and vibrancy of these rural settlements.*

Section 7.7.1 provides the Development Management requirements. This notes that a high standard of design and maintenance will be required in all developments in rural areas.

Chapter 9 refers to Heritage, Culture and the Arts.

This includes regard to Biodiversity.

Section 9.2.3 refers to Protected habitats and species designated for nature conservation. (European Sites (Natura 2000). Figure 9.1 shows the locations within the County for Natural Heritage. Table 9.1 refers to Protected Habitats of International and National Importance.

Section 9.2.6 refers to Inland Waters – Rivers, Streams and Groundwater.

Section 9.2.12 refers to Landscape Character Assessment. As shown Figure 9.2 the subject site is within the Lowland Area.

Chapter 10 – Infrastructure & Environment

Section 10.2.7 refers to Surface Water Drainage having regard to water quality.

Section 10.2.8 provides the Development Management Requirements.

Section 10.2.9 refers to Waste Management, noting that in Ireland this is regulated by the Waste Management Act, 1996 as amended.

Section 10.2.9.1 refers to *Waste Management Development Management Requirements*. This includes regard to the inclusion of Environmental Management Plans, Construction and Demolition waste management plans, to be prepared in accordance with the Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects.

Objective 10G – *To implement the Southern Region Waste Management Plan*.

Section 10.2.10 refers to the Control of Major Accident Hazards Directive (Seveso II Directive). Objective 10H refers.

Chapter 12 Movement and Mobility

Section 12.11.4 refers to Regional Roads and Section 12.11.5 refers to Local Roads. Section 12.11.10 provides Regional and Local Roads Objectives.

Section 12.12 and Table 12.3 refers to Car Parking Standards.

5.3. Natural Heritage Designations

The Site is c.3.7kms north of the Lower River Suir SAC.

5.4. EIA Screening

Section 172 of the Planning and Development Act 2000 (as amended) requires environmental impact assessment of classes of development set out in Schedule 5 of the Planning and Development Regulations 2001 (as amended) where the development would equal or exceed the stated threshold or is sub-threshold but likely to have a significant effect on the environment.

As Failure to carry out an EIA Screening Report is one of the grounds of the Third Party Appeal, this issue is discussed further in relation to sub-threshold development in the context of Assessment below.

6.0 The Appeal

6.1. Grounds of Appeal

A Third Party Appeal was submitted by James Maloney of Maloney Consulting Engineers. This included the following:

Planning application issues

- The applicant has failed to address their concerns in the F.I submitted and they believe that the information provided is not sufficient, upon which a grant of permission can be made given the uncertainty that exists.
- There have been 3 other almost identical planning applications for the same development at this site. There is a continuing failure to provide adequate information in order to make a full and thorough assessment of the development.

AA Screening issues

- The applicant is required to submit an Appropriate Assessment Screening Report under the Habitats Directive as amended. They refer the Board to case law in this instance.
- They submit that the AA Screening Report provided contradicts itself and leaves significant scientific doubt as to potential significant effects upon Natura 2000 sites.
- The applicant has failed to consider the new potential impacts of dust, noise, siltation of surface waters, potential contaminants from the industrial crushing of concrete at the site upon European sites.
- They made reference to issues with the Roger Goodwillie AA Screening Report and reference to pathways from the site to European sites.
- They contend that the AA Screening should have used the precautionary principle and moved to a Stage 2 NIS to explore the potential for impact upon European sites as uncertainty exists.
- They submit that the AA Screening conclusions cannot therefore be taken as factual or meaningful in light of the errors and lack of precautionary approach adopted in the AA Screening Report.

Failure to carry out EIA Screening Report

- The development of Concrete Crushing at this site as being proposed must be considered as a sub-threshold development in the context of the EIA Directive. It is proposed to import and process 24,000 tonnes of waste per

annum, whereas the mandatory EIA threshold is 25,000 tonnes. This is a deliberated attempt by the applicant to circumvent the requirements for a mandatory EIA by staying only 1,000 tonnes below the threshold.

- The applicant has failed to provide an EIA Screening Assessment with this planning application for a class of activity that falls within the class of development subject to EIA. They refer to Schedule 7A of the Planning and Development Regulations 2001 (as amended) relative to sub-threshold development.
- They contend that the application is deficient and that the P.A were unable to assess the potential environmental effects of the proposed development upon the environment in light of the requirements of the EIA Directive.
- That the application is deficient in key legal areas which should have been addressed to meet the requirements of the EIA Directive and the Habitats Directive and as such the decision to grant permission is not valid and should be quashed and overturned by the Board.
- They ask the Board to take the matters raised in the appeal into consideration in respect of the proposed development.

6.2. Applicant Response

W. Raymond Walsh, response on behalf of the Applicant to the Third Party Grounds of Appeal includes the following:

Other Similar Applications Submitted and Failure to provide adequate information

- The submission of three planning applications for the development in question is irrelevant and does not constitute grounds for appeal of decision.
- Kilkenny County Council is the competent authority to determine if sufficient information is provided to enable it, as the Planning Authority, to determine the application.

AA Screening issues raised

- They refer to and quote sections from the cover letter (dated 08/03/2022) from Cuthbert Environmental. This notes that they prepared a Stage 1

Screening Statement for AA under the Habitats Directive in April 2020 as part of the application for permission (i.e. Ref. 20/485). They were satisfied that any revisions to the current application are of a minor nature and not sufficiently substantive to warrant a revision of the Stage 1 Screening Statement for AA submitted.

- They have regard to the Council's F.I request – item no 8. They provide that in order to respond to this item relative to AA Screening, they engaged the services of Roger Goodwillie (they provide a list of his credentials relative to Ecology and Environmental Management).
- They refer to the issues raised by the Third Party. They provide a response as regards to Dust or Noise; Siltation of Surface Waters; Potential Contaminants from Industrial Crushing of Concrete; Linkage or Pathway to European Sites. This is discussed further in the Assessment Section relative to AA Screening Section of this Report below.

Failure to carry out EIA Screening Report

- Cuthbert Environmental prepared a revised EIA Screening in May 2021, as part of the application for permission for the proposed development. This has been reviewed and they refer to the EIA Screening Report submitted with this application dated 7th of March 2022.
- They note that Section 2.4 of the submitted EIA Screening (Ref. 21/687) described the location of the processing area (southeast) in error, that it was always intended that the processing area would be established in the southwest corner of the Depot.
- The EIA Screening, has been revised in this regard i.e. Rev 03 EIA Screening, prepared by Cuthbert Environmental (dated 07/03/22) which was issued with the current application (Ref. 22/264).

Conclusion

- They submit that all of the information required by the Planning Authority has been provided. That the Applicant fully responded to the Council's request for F.I. and has provided all of the information sought by the planning authority.

That the proposed development is consistent with the proper planning and sustainable development of the area.

6.3. **Planning Authority Response**

Their response to the appeal provides that the Planning Authority has no further comment to make.

6.4. **Observations**

None noted on file.

7.0 **Assessment**

7.1. **Principle of Development and Planning Policy**

- 7.1.1. The Kilkenny County Development Plan 2021-2027 is the pertinent plan. This includes support for sustainable rural enterprise and diversification. Regard is also had to Section 10.2.9 of Volume 1 of the said Plan which refers to Waste Management. This includes reference to *Waste Management Development Management Requirements*. This notes that it is the Council's policy to have regard to the waste produced by proposed developments including the nature and amount of waste produced and the proposed method of disposal. Reference is had to the need for an Environmental Management Plan and Construction and Demolition Waste Management Plan. *These plans should seek to focus on waste minimisation in general and optimise waste prevention, re-use and recycling opportunities, and shall provide for the segregation of all construction wastes into recyclable, biodegradable and residual wastes.* Objective 10G seeks to implement the Southern Region Waste Management Plan.
- 7.1.2. While the proposed development is located in the unzoned, rural area and is not an agriculturally related nor a specific rurally based activity, there is nevertheless an established and permitted compound/storage use on the subject site. Therefore, while diversification and rural enterprise are not of note, in that the context of the proposed development, is related more to the permissions already granted on this

site. The sustainability of the proposed development and potential for environmental impacts need to be ascertained.

- 7.1.3. Regard has been had to the previous permissions Reg.Refs. 20/485 and 16/517 as noted in the Planning History Section above (copies are included in the History Appendix). I would note that, in this case, the principle of development to include the existing access and the compound area and for the provision of 3no. storage bays for construction and demolition waste has been established by the previous permissions on this site. However, Condition no.4 of Reg.Ref. 20/485 specifically excluded crushing and screening of construction and demolition materials on this site. The current proposal is to diversify operations i.e. to provide for the use of a mobile crushing plant, in addition to the uses already permitted on the site and also to reduce the size of the compound and parking areas. It is noted that the Council, requested F.I and granted permission for the proposed development subject to conditions.
- 7.1.4. Therefore, regard is had to the nature and operations of the proposed development and to the documentation submitted with the application and in response to the Council's Further Information request and to the issues raised in the Third Party Grounds of Appeal and First Party response in this Assessment below. Issues raised relative to EIA and AA Screening are also considered.

7.2. Project Description and Operations

- 7.2.1. This proposal is for a mobile crushing plant, reduction in size of the compound area and parking area as granted under planning permission Reg. Ref. 20/485. The project involves the extension of a yard to include for management of concrete, soil, tarmac and topsoil. It is proposed to have four stockpiles of material maintained on site – soil/subsoil, crushed concrete, tarmacadam and topsoil. All materials are to be stored within the boundaries of the subject site.
- 7.2.2. The Site Layout Plan shows proximate to the western site boundary, the existing storage bay, storage bay for subsoil, storage bay for topsoil and storage bay for crushed concrete. These storage bays are to be 2.1m high on a concrete slab and are not proposed to be covered. The Rubble Master RM70 Mobile Crusher is to be located adjacent to the southwestern corner and seen within the context of the site

compound area. This is adjacent to the agricultural sheds on adjoining land outside the site to the southwest.

- 7.2.3. The information submitted with the application for the proposed waste recovery site, provides that construction and demolition wastes (including excavated soil from uncontaminated sites) are to be processed at the proposed development. This includes that the following waste materials are to be processed: concrete, bricks, soil (including excavated soil from contaminated sites), stones and dredging spoil, soil and stones (from construction and demolition, non-hazardous), mixed construction and demolition waste. The details submitted provide that the total annual tonnage of C&D waste to be processed at the proposed development (i.e waste associated with this application and waste associated with planning permission Reg.Ref. P20/485) will be a maximum of 24,000 tonnes. The current application represents a significant intensification of commercial waste management uses on the site.
- 7.2.4. The Council's F.I requested that a definitive and detailed list of material to be processed and /or crushed for re-use at the proposed facility be provided. Contaminated and hazardous waste material not being permitted without relevant planning consent and permitting under the Waste Management Act (as amended). That a Waste Management permit is required for the use of the crusher onsite.
- 7.2.5. Details submitted at F.I stage in the 'Assessment of the Potential Noise and Dust Impacts from the Operation of a Mobile Crusher', note that the applicant is seeking to install a mobile crusher to process materials such as reinforced concrete and Construction and Demolition Waste (C&D) materials in the southwestern corner of the site. Such includes concrete, bricks, soil and stones (non-hazardous) and mixed C&D waste. EWC Codes are included. That the total annual tonnage of waste materials to be managed at the proposed facility (i.e waste associated with this application and waste associated with planning permission Ref. P20/485) will be a maximum of 24,000 tonnes. That some of this will comprise waste material to be processed on the Site. The Table submitted with the F.I response, sets out an annual amount of 19,000 tonnes of waste and that in addition to this an indicative amount of topsoil, approx. 5,000 tonnes per annum will be brought to the site. That this material will not undergo any processing but will be stored on the site pending beneficial re-use or restoration purposes.

- 7.2.6. Details relative to the project description in the EIA Screening note that is not proposed to process and/or crush for re-use soil from contaminated sites or hazardous material, such as bituminous mixtures containing cold tar. Only inert, non-hazardous material will be crushed and it is not proposed to process bitumen-bound material such as bitumen macadam, asphalt, stone mastic asphalt (SMA), etc.
- 7.2.7. It is noted that the mitigation measures in the EIA Screening Report relative to the operational phase provide that the quantity of material to be crushed annually on site will be confined to a maximum of 10,000 tonnes per annum. That the RM70 mobile crusher has the capacity to crush up to 500 tonnes of material per day. As a result the crushing activity will be constrained to approx. 20 days equivalent in any calendar year.
- 7.2.8. The Council's Environment Section notes that a permit is required for the use of a crusher on this site or indeed any other site within the functional area of the Council. Condition no. 4 of the Council's permission refers to the need for a valid Waste Facility Permit and/or Cert of Registration. This also provides that the applicant shall not import or store hazardous waste on site or any material contaminated with invasive species. Section 4(b) of that permission provides that: *The volume of waste material to be imported and permitted at the site shall not exceed 25,000 tonnes per annum.* If the Board decides to permit, I would recommend the inclusion of such a condition regarding waste management but that as the proposal is sub-threshold that: *shall not exceed 24,000 tonnes*, be inserted.
- 7.2.9. Details submitted with the application provide that this facility, the subject of the proposed and existing planning permissions, will be for at least a 20 year period. That when the facility ceases to operate that all fixed and mobile machinery together with all materials will be removed from site and all hard surfaces will be removed and replaced with 225mm topsoil and the land returned to agriculture.
- 7.2.10. There is an existing wall/fence around the road frontage (northern) part of the site, and this area is to be extended should the Board decide to permit. Landscaping details including a Landscape Maintenance/ Management Plan (2 year plan) and drawing showing boundary landscaping and grassed areas within the site, have been submitted. As there is limited landscaping (provided by existing hedgerows) on site at present, and taking into account the rural location and the need for screening

along the site boundaries, if the Board decides to permit, I would recommend, the inclusion of a landscape and boundary treatment condition.

- 7.2.11. This Assessment deals with the merits of the subject application. There is reference on file to unauthorised use and storage of waste etc on the site. It must be noted that the issue of unauthorised development is not within the remit of the Board, rather within the remit of Enforcement by the Council.

7.3. Access, Compound and Parking Area

- 7.3.1. There is an existing access to the site from the local road which has previously been granted permission. The site is a partly paved yard area beside the public road and slopes slightly to the northwest. Modifications to the layout proposed in this application are internal to the site and do not alter the works as they affect the public road as conditioned under P20/485. Car and plant parking and separate lorry parking areas are shown on the layout. The Planner's Report notes that the lorry parking area is to be reduced in the current application to that indicated in P20/485. This also notes that the Roads Engineer has expressed no objection to the proposed development. They note that the matters the subject of the proposed permission are internal to the proposed site and no modifications to the existing roadside boundaries are proposed. They have no objection to the proposed development subject to compliance with the conditions of the parent permission P20/485 and in particular condition 6 (Roads Maintenance Programme for the construction and operational phase of the development).
- 7.3.2. I have had regard to the application form for P16/517 and note that the site area was then given as 0.225ha. The application form for P20/485 corresponds with the current application in that it refers to a greater site area of 0.89ha. The Site Layout Plan submitted in the current application shows that the site area is to be extended within the redline boundary to the south (now grassland area) to include the area for the mobile crusher, a grassed area at the rear and the storage compound. It also includes an additional internal road to the rear of the lorry parking area to connect to the mobile crusher and the storage compound area. The latter forms a southern westerly extension to the site as the area to the rear of the lorry parking area from that previously granted under Reg.Ref. 20/485.

- 7.3.3. I noted that there are currently cars and commercial vehicles, plant and machinery parked on the site. There is also a storage compound with hardcore surface at the southeastern corner of the site. It is provided that this compound, (which is currently in use for storage of construction vehicles), will be used to store construction materials (i.e. concrete manhole rings and covers, P.V.C., manhole covers, concrete and P.V.C. pipes, road signs and cones, shuttering etc).
- 7.3.4. The Site Layout Plan submitted with the current application shows that 283sq.m is to be provided for staff carparking Mallwood's commercial premises is on the opposite side of the road), 147sq.m for plant parking, 508sq.m for lorry parking and that the compound storage area is to be 938sq.m. It is noted that at present only a section of the yard area is hard surfaced and it is recommended that if the Board decides to permit that it be conditioned that the yard be surfaced and the parking areas be marked out.
- 7.3.5. While the First Party do not consider that a wheelwash is warranted, this is recommended by the Environment Section and is included in Condition no.5 of the Council's permission. In view of the nature of the operations on site, I would recommend the inclusion of such a condition should the Board decide to permit.
- 7.3.6. I note that the Planner's Report provides that the Council's Road Design Section has no objections to the proposal. The 'Assessment of the Potential Noise and Dust Impacts from the Operation of a Mobile Crusher' Report, in Table 4-3 refers to On Site Transportation and this includes regard to the proposed operations of the Mobile Crusher on site. This notes that: *HGV movements will be based on the needs of the Site for delivery of material for crushing and movement of processed material off-site.* It also provides that: *Offsite transportation of the materials would be <25 HGVs per day.* If the Board decides to permit, I would recommend that it be conditioned that a Traffic Management Plan relative to the construction and operational phases of the proposed development be submitted for the written agreement of the Council.

7.4. Drainage issues

- 7.4.1. There is a ditch and drain along the northwest boundary which is separated from the yard drainage by a bank and discharges at the side of the public road. The Site Layout Plan shows that it is proposed to locate a soakpit in accordance with BRE

soakway design in an area to be grassed in the northwest corner of the site. The location of the interceptor chamber and silt drains is shown proximate and to the south of the soakpit. It is proposed surface water run-off will discharge to a percolation area via an interceptor and silt trap and will be managed within the site.

- 7.4.2. As shown, there is to be a surface water collection system on the site that will discharge surface water run-off to percolation on site via an interceptor and silt trap. Therefore, it is provided that all surface waters will be managed on site. This will be an improvement on the existing situation. If the Board decides to permit it is recommended that an appropriate surface water drainage condition be included.

7.5. Noise and Dust Impacts

- 7.5.1. A Draft Report on the 'Assessment of the Potential Noise and Dust Impacts from the Operation of a Mobile Crusher' was submitted with the application. The Council Environment Section's recommended that in the interests of clarity a final version of this report be submitted. In response to the Planning Authority F.I request a final version of this Report by Malone O'Regan Environmental (dated March 2022) was submitted. The purpose of this report is to determine if a likely significant impact will occur from the authorisation of the proposed development for a Mobile Crusher and associated works on the subject site. A project description is given and regard is had to the receiving environment and to issues of the impact on the environment and the residential amenities of the area relative to Noise and Dust. These are discussed in summary below.

Noise

- 7.5.2. Section 3 of the Report provides an assessment relative to Noise. Figure 3-1 notes the Noise Sensitive Locations in the vicinity of the site. Figure 3-2 shows Noise Monitoring and Spot Measurement Locations, the results of which are shown in Tables 3-5 and 3-6. It is submitted that there are no night-time operations proposed at the site. Details are given of baseline monitoring and of the sources of noise from the proposed works. This includes JCB movement, HGV movement and reversing alarms on the site. The assessment has utilised a typical noise nuisance limit at NSLs during the daytime as Leq,30 minutes 55d B (08.00 – 20.00) Monday to Saturday. It is stated that the calculated sound power forms part of the Noise Impact

Assessment. Section 3.7 deals with Operational Phase Noise Emission Sources. To assess noise from the Mobile Crusher, noise measurements were taken from varying distances and a sound power derived from onsite measurements, Pathways relative to noise emissions both within and in the vicinity of the site are discussed in Section 3.7. Note is had of the predicted Operational Noise Impact Assessment. Table 3-9 refers. Onsite vehicle movements, engine noise currently onsite and incorporated within the sound pressure levels recorded.

7.5.3. They note that the Kilkenny Noise Action Plan states, where existing guidance does not cover the situation under consideration the guidance outlined by BS4142 should be considered. Details are given of this guidance and methodology and results are given for the closest NSLs in Table 3-11. Table 3-12 provides results based on the IEMA Guidelines – Noise Impact Scale, where it is concluded that the proposed Mobile Crusher is determined to have a Negligible to Minor long-term impact. The predicted operational stage noise levels at NSLs demonstrates the typical noise nuisance limit of 55dB will not be exceeded at any of the identified NSL's in the vicinity of the site due to the proposed Mobile Crusher emissions.

7.5.4. Details are given of proposed operational phase mitigation measures (Section 3.7.4 relates) and notes the limitations on the hours of operation and operational procedures to mitigate noise. The predicted operational stage noise levels at NSLs (Table 3-11 refers) demonstrates the typical noise nuisance limit of Leq,30 minutes 55dB (08.00 – 20.00) will not be exceeded at any of the identified NSLs (closest is 100m from the site) in the vicinity of the proposed Mobile Crusher. Beyond there NSLs, noise levels will reduce with increasing distance. They provide that nonetheless, operational procedures to mitigate noise will further reduce noise levels audible at NSLs associated with the proposed Mobile Crusher.

Dust

7.5.5. Section 4 of the Report relates to Dust Sensitive Receptors (Table 4.1 and Figure 4.1 refers to dwellings in the vicinity). The closest being c.100m to the north of the site. Note is had of the significant effect of meteorological conditions. A risk assessment to determine dis-amenity dust potential associated with the proposed development was carried out using the Source – Pathway - Receptor concept. Table 4-3 provides a Classification of Residual Source Emissions. This relates to the

activities of concrete crushing, material handling, stockpiling/exposed surfaces, and onsite and offsite transportation. This Report provides that all activities associated with the concrete crushing process and stockpiling of C&D material will be relatively small and contained within the location of the crusher previously identified. That the magnitude of the Residual Source Emissions was determined based on the scale of the anticipated operations was considered to be low (IAQM Guidance is referred to). That this was primarily due to the following design/operational characteristics:

- Minimal amount (<10,000 tonnes) of material to be crushed per annum;
- Stockpiles to be enclosed with dedicated storage bays;
- Internal access roads to be constructed and maintained in good condition to fugitive minimise dust emissions; and
- Number of plant required for onsite transportation/handling will be limited.

7.5.6. It is estimated that the magnitude of dust effect may have a slight adverse effect on SR01 without appropriate mitigation measures in place. Section 4.2 details the proposed dust mitigation measures from general site management and maintenance to those more specific to the operational phase of the proposed development (e.g. HGV movements).

7.5.7. It is provided that a Dust Management Plan will be prepared for the site and agreed upon by the Local Authority. This will be implemented during the operational phase of the proposed development. The mitigation measures can be divided into Design Measures, Materials Handling, Vehicle Movements and Waste Management. Details of such measures are provided in Table 4-7. That it is considered that if the mitigation measures that are outlined above are implemented, the risk of dust impact on sensitive receptors (i.e. at SR01) will be reduced from low to negligible. That furthermore, the risk of discharge of dirt/debris/dust to the public road will also be negligible.

Executive Summary of the Report

7.5.8. The Executive Summary notes that the Mobile Crusher will operate during the daytime only. Baseline acoustic monitoring of the receiving environment was undertaken. Spot measurement of the Mobile Crusher in operation were also

undertaken. The operational phase sound pressure levels from the Mobile crusher are predicted to range from 39dBA to 47dBA at the Noise Sensitive Locations and that this will be well below the typical noise nuisance limit of 55d B Leq,30 minutes, at any of the identified Noise Sensitive Locations. In addition, using the best practice guidelines, the operation of the Mobile Crusher is shown to have a Negligible to Minor Long-term noise impact. Nonetheless, operational noise mitigation measures are proposed.

7.5.9. A risk assessment to determine dis-amenity dust potential associated with the Proposed Development was carried out using the Source-Pathway Receptor approach. Applying best practice guidelines, the magnitude of residual emissions associated with the operation of the Mobile Crusher was deemed to be low. Specifically, the risk of impacts at five of six of the Sensitive Receptors was deemed to be Negligible. Receptor SR 01 was identified as being 'Low-Risk'. This is the Applicants own property.

7.5.10. The summary provides that notwithstanding, dust mitigation measures are proposed. These measures will reduce the risk of the dust impact shown at SR 01 from Low to Negligible. Furthermore, that the risk of discharge of dust/debris to the public road will also be Negligible.

7.5.11. It is noted that the Council's Condition no.3 refers to Noise limitations and dust emissions relative Air Quality and it is recommended that if the Board decides to permit that such a condition be included.

7.6. Environmental Impact Assessment Screening

7.6.1. Schedule 5 of the Planning and Development Regulations, 2001 (as amended), sets out Annex I and Annex II projects which mandatorily require an EIAR. Part 1, Schedule 5 outlines classes of development that require EIAR and Part 2, Schedule 5 outlines classes of developments that require EIAR but are subject to thresholds. The proposed development falls below the threshold levels in Schedule 5 of the Regulations in relation to EIA.

7.6.2. The application was not accompanied by an EIAR. However, an EIA Screening Report was submitted. The application is for an activity to which Class 11(b) of Part 2

of Schedule 5 of the Planning and Development Regulations 2001, as amended, applies i.e:

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

7.6.3. The proposed importation of up to 24,000 tonnes of waste per annum falls below the threshold of 25,000 tonnes annual deposit rate specified in the class. Where a development is within a class but does not exceed the threshold therein the application should be screened for EIA by reference to the criteria set out in Schedule 7 of the Planning and Development Regulations 2001 as amended and having regard to the EIS Guidance for Consent Authorities regarding Sub -Threshold Development (EPA 2003). There are three criteria which must be considered when screening for sub-threshold EIA. These are;

- (a) the characteristics of the proposed development,
- (b) the location/the environmental sensitivity of the area where the development is located, and
- (c) the characteristics of potential impacts.

The characterises of the proposed development are identified in the Regulations and the more applicable in this case is the size of the proposed development (24,000 tonnes), the use of natural resources, production of waste, potential for pollution arising from the proposed development.

7.6.4. Schedule 7A provides the information to be submitted by the applicant to inform the Board in deciding whether an EIAR is required i.e: for the purposes of screening sub-threshold development for EIA. In summary it comprises the following:

- a) A description of the proposed development
- b) A description of the aspects of the environment likely to be significantly affected by the proposed development.
- c) A description of any likely significant effects of the proposed development on the environment.

Regard to EIA Screening Report

7.6.5. An EIA Screening Report dated March 2022 was submitted with the application by Cuthbert Environmental. The findings of the EIAR Screening assessment for the proposed waste recovery site (Section 2 provides a Project Description) are presented in this report, which relates to the sub-threshold development. This includes that when screening a project for its potential to result in significant effects to the environment regard must be given to the criteria specified in Schedule 7A of the Planning and Development Regulations 2001. The Screening Report includes the following:

Characteristics of the Proposed Development

7.6.6. Table 4.1 of the Screening Report provides a description of the Characteristics of the proposed development. In summary this notes that having regard to the size of the proposed development, no significant effects on the environment are predicted to occur. It is noted that construction related activities will be restricted to the footprint of the subject site. They provide that no significant effects to biodiversity will arise as a result of the construction or operation of the project.

7.6.7. That a soil recovery site within the area will reduce travel distances for vehicles carrying soil and therefore, reduce the consumption of hydrocarbons. Topsoil, concrete, soil and stone will be recovered at this site. The waste management hierarchy will be implemented on site, which prioritises the prevention and minimisation of waste generation. Noise and dust present the greatest risk of pollution. However, they submit that the mitigation measures proposed will eliminate or, at a minimum, reduce to an insignificant risk the potential for nuisance. That measures are to be implemented to ensure that the project does not result in pollution to water or air or nuisance generated by noise, dust or vibration emissions. Regard is had to the 'Assessment of the Potential Noise and Dust Impacts from the Operation of a Mobile Crusher, submitted in response to the Council's F.I request.

7.6.8. Provided that all associated building and environmental regulations are adhered to, it is not predicted that the project will not have the potential to result in a major accident. That the proposal will not represent a significant risk to human health, particularly as the proposed material is inert.

7.6.9. They submit that a review of other plans and projects in the wider surrounding area has been completed in the AA Screening (submitted separately), and they provide

has found that given the design approach to surface water management on site, the project will not have the potential to combine with other plans or projects to result in cumulative adverse effects to the environment.

Location of the Proposed Development

- 7.6.10. Table 4.2 notes that the existing land use within the project site is a commercial yard/field. That the intention of the project is to extend the yard area and allow for the management of soil and stone, concrete and tarmacadam. That the proposed development will not have a significant effect on the relative abundance, availability, quality and regenerative capacity of natural resources.
- 7.6.11. The proposal is within a low-density populated area. Changes to the Landscape are considered to be minimal and to not represent a negative impact. They provide that there are no archaeological or cultural heritage features in the vicinity.

Characteristics of the Potential Impacts

- 7.6.12. The 2014 EIA Directive requires that an assessment of the likely significant effects of a project on the environment must be considered and they refer to the criteria set out in Tables 4.1 and 4.2 of their Assessment. The EIA Screening Report in Table 4.3 findings provides a summary relative an assessment of potential impacts on environmental parameters set out in Article 3(1) of the Directive and includes the following:

Human Beings

They provide that with the implementation of mitigation measures including relative to noise and dust control there will be no potential for the project to result in significant adverse effects to human beings.

Bio-diversity

That assuming noise and dust reduction measures and surface water containment measures are fulfilled, no further ecological action is necessary.

Lands, Soil and Geology

With the implementation of best practice measures and the approach to the project outlined in Section 2 the potential impacts to soils and geology will not represent a significant adverse environmental effect.

Water

The project has included a range of measures to manage and control surface water generated during the project. These measures include the collection of surface water prior to discharging to ground via a silt trap and interceptor. The implementation of these measures will eliminate or reduce to an insignificant risk the potential for the project to result in the release of polluted surface water to the receiving aquatic environment. That the hydrological link between the proposed site and any other downstream conservation areas is therefore broken. No impacts on any national sites of environmental significance are foreseen.

Air Quality and Climate

They note that the air quality in the area is classed as good. That potential will exist for localised temporary impacts associated with dust generated from the construction plant and machinery. That emissions will be minimised through the implementation of best practice mitigation measures outlined in Section 2 of the Report.

Noise and Vibration

Noise and vibration during the construction phase will be minimised through best practice and the implementation of the mitigation measures outlined in Section 2. During operational phase noise and vibration are considered unlikely to be significantly increased as a result of the project, in particular given the separation distances to sensitive receptors as outlined in Section 2.

Archaeological and Cultural Heritage

No finds or features of an archaeological nature are identified within the proposed site on the ASI Sites and Monuments Record mapping tool. There are no features of cultural heritage in the immediate vicinity of the project site and none will be affected by the proposal.

Landscape

The existing landscape in the broad locality is dominated by agricultural grassland. Changes to the landscape are considered to be minimal and do not represent a negative impact.

Interrelationship between the above parameters

Table 4.3 provides that this has been considered. That the nature of the proposal along with the measures outlined in Section 2, leads to the conclusion that no significant impacts will arise from any of the relevant parameters, alone or in combination with each other.

Assessment of potential impacts to these criteria

7.6.13. The results, as presented in Table 4.3, are then used to inform answers to the screening questions (a) to (h) listed in Table 4.4. *Characteristics of the potential impacts*. In summary, this provides that minor and localised impacts are identified, noting that the project is representative of a small-scale development. That the provision of the works will not result in significant, permanent negative effects to environmental parameters as set out in Table 4.3. That it has been concluded that provided all best practice and mitigation measures, as outlined in Section 2 are implemented, the project will not have the potential to result in significant environmental effects. No long-term or permanent significant negative impacts are predicted to arise as a result of the construction phase or during the operation phase.

7.6.14. That as outlined in Table 4.1 (Characteristics of the Proposed Development) the potential for cumulative effects to occur with other existing plans and projects has been assessed and it has been found that the project will not have the potential to combine with other plans or projects to result in significant adverse effects. That measures are detailed in Section 2 that are derived from best practice guidelines. In addition, that a range of design measures have been incorporated into the project to ensure that the potential for the project to result in adverse environmental effects is minimised.

Conclusion Rationale

7.6.15. The EIA Screening concluded that no significant effects are likely to arise with the potential impacts on environmental parameters. The Rationale provides that as outlined in Table 4.3 the proposed development will not have the potential to result in

significant adverse effects to biodiversity, soils and geology, water, landscape and archaeological and cultural heritage. That there will be potential for some impacts on biodiversity, soils and geology, landscape and human beings as a result of noise and air emissions during the proposed development. However, these impacts in combination with the measures outlined in Section 2 have been assessed as having no potential to result in significant adverse environmental effects. As such no significant residual impacts to environmental parameters, as outlined in Table 4.3, are predicted to arise as a result of the proposed development. They conclude that no significant effects are likely to arise associated with the characteristics of the potential impacts.

Screening Determination

7.6.16. Reference is had to Article 4(5) of the EIA Directive, and the proposed development has been assessed as a sub-threshold EIA development. This EIA Screening Assessment has determined that the characteristics of the proposed development are considered not significant due to the nature, size, scale and location of the development, and the characteristics and sensitivities of the receiving environment and design and mitigation measures that are to be implemented as part of the proposed development.

7.6.17. The design and mitigation measures that are to be implemented to avoid significant environmental effects arising as a result of the construction phase and the operation phase of the project are provided and are summarised as follows:

Mitigation Measures during Construction

- Habitat disturbance during construction work is to be confined strictly to within the direct land-take of the proposed area.
- Construction machinery is to be restricted to site roads and assigned access routes to the construction area.
- Standard dust suppression measures are to be implemented during periods of dry weather. This will avoid any impacts arising from the spread of dust particles during the construction phase.

- Noise and vibration limits will be prescribed and adhered to throughout the construction phase of the project. The limits will be based on best practice construction phase approach to managing noise emissions.
- All site access roads will be kept even to mitigate the potential for noise and vibration from lorries.
- Plant with low inherent potential for generating noise and/or vibration will be selected for construction.
- There will be a surface water collection system on site that will discharge surface water run-off to percolation on site via an interceptor and silt trap. Therefore, all surface waters will be managed within the site.

Mitigation Measures during Operational Phase

- The crushing area on the site is to be in the Southwestern corner of the site in order to maximise the distances from the sensitive receptors to the East and South East of the site.
- That the quantity of material to be crushed annually on site is to be confined to 10,000 tonnes. The RM70 Mobile crusher has the capacity to process approx. 500 tonnes per day. This means that crushing operations will be confined to approx. 20 days equivalent calendar year.
- Waste acceptance procedures are to be put in place in order to ensure that only inert, non-hazardous material will be processed by the crusher on site.
- Crushing activities will be confined to the hours of 08.00 to 18.00 Monday to Friday and 08.00 on Saturday. Crushing will not take place on Sundays or Bank holidays.
- In order to reduce dust nuisance, dust suppression can be achieved by means of a water spray unit (i.e. a proprietary water bar attachment/dust suppression unit) in the crusher outlet and at the conveyor belts.
- In dry conditions, the two stockpiles on site (i.e. the stockpile of materials to be processed and the stockpile of the re-processed materials) will be sprayed manually with water hoses In order to keep dust levels down as required.

- During the proposed hours of operation, noise emissions from crushing operations will not exceed the following noise emission limit value (ELV) at the nearest noise sensitive receptor during the following operational hours:

Monday to Friday 08.00 – 18.00

Saturdays 08.00 – 14.00

Emissions Limit Value (ELV) LAeq (30min) = 55dBA

Regard to issues arising

7.6.18. The Third Party's concerns have been noted in the Grounds of Appeal Section. They submit that there has been a failure to carry out an EIA Screening Report. As has been assessed above having regard to the documentation submitted, I would not consider this to be the case. They are concerned that this is a deliberate attempt by the applicant to circumvent the requirement for mandatory EIA by staying only 1,000 tonnes below the threshold. Nevertheless, I would note, it is below the 25,000 tonnes and an EIA is not mandatory and regard has been had to the issue of a sub threshold EIA Screening Report that has been submitted with the application.

Regard has also been had to the First Party response to the appeal.

7.6.19. The Appellant refers to Schedule 7A of the Planning and Development Regulations 2001 (as amended). While the emphasis in the EIA Screening Report has been on Schedule 7, I would consider that the criteria described in Schedule 7A i.e.

Information to be provided by the Applicant or Developer for the Purposes of Screening Sub-Threshold Development for Environmental Impact Assessment, has been assessed in the context of Sections relative to *Sub-Threshold Development* and the accompanying tables of the EIA Screening Report submitted.

7.6.20. It is noted that the Council's Environment Section provided that having reviewed the legislation and the submitted EIA Screening that it is their view that an EIAR would not be required for this below threshold project. The Planner's Report reiterated this and considered that the potential impacts are not considered significant with the implementation of the mitigation measures proposed at construction and operational phases. They referred to the EIA Screening Report and Determination submitted and considered that an EIAR is not required for this project.

Conclusion

- 7.6.21. The EIA Screening Determination provides that with the implementation of the mitigation measures that the overall conclusion of this screening exercise is that a full EIA Report is not required for this project.
- 7.6.22. Having regard to the information submitted and the mitigation measures proposed and the conclusion of the EIA Screening Report and Determination, I would conclude that the proposed development is sub threshold and that in view of the information submitted it is not likely to have significant effects on the environment and that the submission of an EIAR and the carrying out of an EIA is therefore, not necessary.

8.0 Appropriate Assessment

8.1. Stage 1 - Screening

Compliance with Article 6(3) of the Habitats Directive

- 8.1.1. The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U of the Planning and Development Act 2000 (as amended) are considered fully in this section.
- 8.1.2. In accordance with the obligations under the Habitats Directives and implementing legislation, to take into consideration the possible effects a project may have, either on its own or in combination with other plans and projects, on a European site; there is a requirement on the Board, as the competent authority, to consider the possible nature conservation implications of the proposed development on the Natura 2000 network, before making a decision, by carrying out appropriate assessment. The first stage of assessment is 'screening'.
- 8.1.1. The methodology for screening for Appropriate Assessment as set out in EU Guidance and the Department of Environment, Heritage and Local Government is:
- 1) Description of the plan or project and local site or plan area characteristics.
 - 2) Identification of relevant European sites and compilation of information on their qualifying interests and conservation objectives.
 - 3) Assessment of likely significant effects-direct, indirect, and cumulative, undertaken on the basis of available information.
 - 4) Screening Statement with conclusions.

Project Description

- 8.1.2. The proposed development is for a mobile crushing plant and a reduction in size of the compound area and parking areas to that granted under planning permission no. 20/485 and all ancillary works. It is of note that Section 2 of the EIA Screening Report submitted provides a Project Description. In response to the issues raised by the Council's Environment Section and to the Planning Authority's F.I request an Appropriate Assessment Screening Report prepared by Roger Goodwillie & Associates (November 2022) was submitted. The applicant was advised to provide information to include the additional element of this application of the crushing of material on site and having regard to the definite list of waste material to be provided. This notes that should mitigation measures be required, they were advised that an NIS shall be required to be submitted with the application.
- 8.1.3. The applicant was also advised that the revised report should include but not be limited to surface water run-off and discharges to groundwater. It was noted that there is currently no defined surface water drainage system or interceptor drains having regard to the previously granted application Ref. P20-485 and the drainage provisions provided therein.
- 8.1.4. The site is within the catchment of the Gaulsmill Stream which joins the Black Water just below the Dublin railway line at Granny Bridge. The stream is tidal in its lower course. The NW boundary of the site is a ditch and drain which is separated from the yard drainage by a bank and discharges at the side of the public road.
- 8.1.5. The AA Screening Report submitted notes that the project is for the use of a Mobile Crusher in one of the bays on site that will deal with stone, concrete, brick, tiles and soil (i.e. EWC classification E17.01, 17.05, 17.09) but not tarmacadam. That no contaminated waste will be accepted on site.
- 8.1.6. A new drainage scheme is proposed to handle possible spillages including a cut-off drain at the entrance of the site and a soakpit in the NW end to accommodate flows from the year. This will have both a silt and oil separator. It will replace the current grating and tank.
- 8.1.7. The purpose of this AA Screening Report is to examine the development for possible impacts on the integrity of the Natura 2000 network, in particular, on the most proximate site – the Lower River Suir SAC (Site Code: 002137). Taking account of

the characteristics of the proposed development in terms of its location and the scale of works, the following issues are considered for examination in terms of implications for likely significant effects on European sites:

- * Construction related -uncontrolled surface water/silt/ construction related pollution
- * Habitat loss/ fragmentation
- * Habitat disturbance /species disturbance (construction and or operational).

8.1.8. In relation to the matter of habitat loss or alteration the proposed development site is not located adjacent to the Lower River Suir SAC and there will be no direct loss or alteration of the habitat. Regarding the issue of habitat/species fragmentation the proposed development would not result in any direct habitat loss or fragmentation.

European Sites

8.1.9. In this case there are four Natura sites within 15km which are shown on the Table 1 below:

Name of Site	Site Code	Distance km
Lower River Suir SAC	2137	3.7
River Barrow & River Nore SAC	2162	5.8
Tramore & Blackstrand SAC	0671	14.2
Tramore Back Strand SPA	4027	14.2

8.1.10. The Screening Report provides that the site is located in the catchment of the River Suir through the Black Water river so there is a possible linkage or pathway for impact. Thus, the Lower River Suir SAC is screened in for the purposes of the AA Screening.

8.1.11. The River Barrow site is to the East and the Tramore sites to the South are situated in their own catchments and are thus isolated from potential effects. Thus, these 3no. aforementioned sites are screened out.

8.1.12. The Qualifying Interests and General Conservation Objectives of the Lower River Suir SAC are as shown on Table 2 below:

European Site (code) and distance from proposed development	List of Qualifying Interest/Special Conservation Interest	General Conservation Objectives	Connections (source, pathway, receptor)	Considered in further screening Y/N
<p>Lower River Suir SAC</p> <p>002137</p> <p>3.7kms</p>	<p>Atlantic salt meadows (Glaucopuccinellietalia maritima) [1330]</p> <p>Water courses of plain to montane levels with the Ranunculion fluitantis and Callitricho-Batrachion vegetation [3260]</p> <p>Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels [6430]</p> <p>Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0]</p> <p>Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) [91E0]</p> <p>Taxus baccata woods of the British Isles [91J0]</p> <p>Margaritifera margaritifera (Freshwater Pearl Mussel) [1029]</p> <p>Austropotamobius pallipes (White-clawed Crayfish) [1092]</p> <p>Petromyzon marinus (Sea Lamprey) [1095]</p>	<p>To maintain or restore the favourable conservation condition of the Annex I habitats(s) and/or the Annex II species for which the SAC has been selected.</p>	<p>There is source – pathway – connectivity between the proposed development site and the Lower Suir SAC</p> <p>This is c. 3.7kms from the site but is hydrologically connected.</p>	<p>Yes</p>

	<p>Lampetra planeri (Brook Lamprey) [1096]</p> <p>Lampetra fluviatilis (River Lamprey) [1099]</p> <p>Alosa fallax fallax (Twaite Shad) [1103]</p> <p>Salmo salar (Salmon) [1106]</p> <p>Lutra lutra (Otter) [1355]</p>			
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Assessment of likely Effects (Direct/Indirect)

- 8.1.13. The AA Screening Report provides that the development site is well separated from the Lower River Suir SAC as it is situated about 800m from the nearest tributary of the Black Water and then by a channel length of 3.5km of that river, which is partly tidal. That any solids originating in the Ballymountain stream would be settled out in this slow moving tidal water and add to the sediment that is already an integral part of both this environment and of all estuarine reaches of rivers.
- 8.1.14. The Report notes that a loss of oil would potentially be more damaging as an oil film disrupts normal interchange of oxygen between the water and sit, as well as being toxic to some organisms.
- 8.1.15. It is provided that the crushing project could increase the amount of material loss to the river but it has been designed to incorporate a new drainage system that will prevent flow onto the road and absorb all run-off from the yard in a soak-pit of appropriate size. That this is coupled with an oil and grit separator and therefore will deal with clean water only. They provide that the underlying substrate is suitable for soakage and the water will enter the groundwater and make its way down the Black Water catchment.
- 8.1.16. It is submitted that as detailed, there is no way for these potential impacts to result in effects that would be detrimental to the local SAC. That the drainage proposals are

an integral part of the project and are not additional mitigation. That they should obviously be carried out before any crushing is carried out.

Conclusion – Stage I AA

8.1.17. The AA Screening Report concludes that there is no likelihood that this development will have significant impacts on the integrity and functioning of the Natura 2000 site network, in particular on the Lower River Suir SAC and its conservation objectives. That this is a finding of no significant effects and confirms a previous opinion by Cuthbert Environment regarding Ref. PI.20/485. That this being the case there is no possibility of cumulative effects and the furthermore detailed stages of AA are not required.

Regard to issues raised

- 8.1.18. The Third Party have regard to the AA Screening Report submitted and note, that the applicant has stated that there is a possible linkage or pathway for impacts upon European sites. They submit that this is not explored in the AA Screening Report but put aside with the addition of mitigation measures which are argued are not mitigation measures.
- 8.1.19. They contend that the AA Screening should have used the precautionary principle and moved to a Stage 2 NIS to explore the potential for impacts upon European Sites as uncertainty exists. That failure to do so is negligent of the Planning Authority and that the decision to grant permission is contrary to the Habitats Directive as implemented in Ireland. They note that screening should be undertaken without the inclusion of mitigation, unless potential impacts clearly can be avoided through the modification or redesign of the project, in which case the screening process is repeated on the altered plan.
- 8.1.20. They also submit that the applicant in their AA Screening report has failed to address cumulative impacts of other plans or projects in the vicinity of the site which could cumulatively have a negative impact upon the conservation objectives of European sites. They conclude that the AA Screening conclusions cannot be taken as factual or meaningful in light of the errors and lack of precautionary approach adopted in the AA Screening Report. That this being the case there is no possibility of cumulative effects and the furthermore detailed, stages of AA are not required.

Regard to First Party response

8.1.21. The First Party note the issues raised by the Appellant and that the AA Screening Report by Mr Goodwillie Ecology and Environmental was submitted in response to the Council's F.I request. Their response includes the following:

- They provide that the screening analysis did include the possibility of dust or noise affecting the SAC but since this is 3km away, it was determined that there was no way that noise or dust would impact on the site.
- They submit that the drainage proposals will not lead to escape of material from the crushing plant that could cause significant siltation of the Suir Estuary.
- They refer to the issue raised regarding potential contaminants from the Industrial Crushing of Concrete. They provide that it does not contain contaminants unless there has been a spill of oil or chemicals onto it after placement. That such material will not be accepted by the Applicant onto the Depot since it will have no re-use potential. The mineral constituents of concrete in the ground state remain in the particle or are absorbed onto the abundant silicate compounds. That in the unlikely event of contaminants being present, these will be treated by the oil and grit separator, prior to the treated run-off being discharged to the ground via the soakpit proposed. That accordingly there will be no discharge of contaminants to any stream.
- They refer to the issue of Linkage or Pathway to European Sites and the Appellants stated need to move to a Stage 2 NIS. They note that the drain in question is to be separated from the Applicant's yard by a raised berm which will prevent surface water from the yard getting into it. They note that the only route for water leaving the yard is through the soak-pit and subsequently to groundwater. That the substrate will provide for effective filtration before any water reaches the Gaulsmill Stream.
- They submit that the new soak-pit with oil/grit separation will provide all the treatment required to prevent impacts on the Gaulsmill Stream/Black Water River and consequently on the Lower River Suir SAC.

Conclusion

- 8.1.22. Regard has been had to the AA Screening Report submitted in response to the Council's F.I request. The Planner's Report noted that a Screening exercise was completed, which showed that no significant impact is likely have regard to the distance of the subject site from any Natura 2000 site.
- 8.1.23. I would note that the AA Screening Report screened in only the Lower River Suir SAC (site code 2137), which is in excess of 3kms from the site. The Appellant's concerns have been noted and I consider that they have been addressed in the First Party response to the Appeal and in the documentation submitted, including the AA Screening Report. I would consider that in view of the details submitted that it has been demonstrated that the proposed drainage, dust and noise measures are an integral part of the scheme. That no measures are intended to avoid to reduce any harmful effects of the project on a European Site have been relied upon in this screening exercise.
- 8.1.24. I would consider that significant effects from the proposed development on the qualifying features and conservation objectives for the Lower River Suir SAC can be excluded and that an AA (and submission of an NIS) is therefore not required.

Finding of no likely significant effect

- 8.1.25. 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 European Site No. 2137, or any other European site, in view of the site's Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is not therefore required.

9.0 Recommendation

- 9.1. I recommend that permission be granted for the proposed development based on the reasons and considerations hereunder and subject to the conditions set out below.

10.0 Reasons and Considerations

Having regard to the nature and scale of the proposal, to the planning history of the site and the pattern of development in the area, the policies and objectives of the Kilkenny City and County Development Plan 2021-2027, Volume1 and in particular those relevant to Waste Management and to the Southern Region Waste Management Plan 2015-2021, and to the proximity of the site to the national, regional and local road network, it is considered that, subject to compliance with the conditions set out below, the proposed development would constitute a sustainable development and would subject to mitigation measures proposed in the Environmental Impact Screening Report and with the planning conditions outlined, align with national and regional waste management policy, enabling increased rates of resource recovery. It is further considered that the development would not seriously injure the amenities of the area or the amenity of the local environment, would not be prejudicial to public health and would not result in adverse significant environmental impacts and would be acceptable in respect of transport and road safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application and as amended by further plans and particulars submitted on the 1st of December 2022 and by the further plans and particulars received by An Bord Pleánala on the 23rd of February 2023, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interests of clarity.</p>
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2.	<p>The development shall comply with the conditions under Planning Register Reference P.20/485 unless otherwise amended by the conditions of this permission.</p> <p>Reason: In the interests of clarity.</p>
3.	<p>The mitigation and monitoring measures outlined in the plans and particulars including the Environmental Impact Assessment Screening Report (March 2022) and the Assessment of the Potential Noise and Dust Impacts from the Operation of a Mobile Crusher (March 2022) shall be implemented in full, or as maybe required in order to comply with the following conditions.</p> <p>Reason: To ensure the protection of the environment.</p>
4.	<ul style="list-style-type: none"> a) The use of the site and operations (including hours of operation) of the mobile crusher shall be restricted to that proposed in the documentation submitted. b) The volume of waste material to be imported and permitted at the site shall not exceed 24,000 tonnes per annum. c) There shall be no unloading, deposit, handling, storage or sorting waste materials outside of the designated areas of the proposed facility. d) The applicant is not permitted to import or store hazardous waste on site within the facility. e) The applicant is not permitted to store, recycle or crush tarmacadam at the site. <p>Reason: In the interest of amenities, public health and safety.</p>
5.	<p>Prior to the commencement of development, the applicant shall obtain as necessary a waste facility permit and shall comply with any conditions attached therein.</p> <p>Reason: To comply with all statutory requirements.</p>

6.	<p>A management plan for the control of alien invasive species, including a monitoring programme, shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.</p> <p>Reason: In the interest of visual amenity and to prevent the spread of alien plant species.</p>
7.	<p>a) Final details of all proposed landscaping and site boundary treatments shall be agreed in writing with the planning authority prior to the commencement of development.</p> <p>b) The schedule of landscape maintenance shall cover a period of at least three years and shall include details of the arrangements for its implementation.</p> <p>Reason: In the interest of visual and residential amenities.</p>
8.	<p>Details of the materials, colours and textures of all the external finishes, signage and external hard surfaces shall be submitted to, and agreed in writing with the planning authority prior to the commencement of development.</p> <p>Reason: In the interest of visual amenity and to ensure an appropriate standard of development.</p>
9.	<p>a) Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>b) All surface water generated within the site boundaries shall be collected and disposed of within the curtilage of the site.</p> <p>Reason: In the interest of public health and to prevent pollution.</p>
10.	<p>a) Prior to the commencement of the development the applicant shall submit a Traffic Management Plan for construction and operational phases of the development, for the written agreement of the planning authority.</p>

	<p>b) Details of a wheelwash facility on the site shall be submitted.</p> <p>c) The internal road and vehicular circulation network serving the proposed development, including turning bays and parking areas shall be in accordance with the detailed construction standards of the planning authority for such works.</p> <p>Reason: In the interests of traffic safety and environmental protection.</p>
11.	<p>a) During the operational phase of the proposed development, the noise level arising from the development during the proposed hours of operation, as measured at the nearest noise sensitive location shall not exceed: -</p> <p>(i) An Leq,1h value of 55 dB(A) during the period 0800 hours to 1800 hours.</p> <p>(ii) An Leq,15 min value of 45 dB(A) at any other time.</p> <p>b) No pure tones or impulsive characteristics shall be audible at any noise sensitive location in the vicinity of the development.</p> <p>c) At no time shall the noise generated on site result in an increase in noise level of more than 10 dB(A) above background levels at the boundary of the site.</p> <p>d) All sound measurement shall be carried out in accordance with ISO Recommendation 1996:2007: Acoustics - Description and Measurement of Environmental Noise.</p> <p>e) Noise monitoring shall be recorded and carried out at noise sensitive locations in accordance with details agreed in writing with the planning authority. Should the results of this monitoring show material exceedances of the limits set out in this condition, the developer shall provide such further mitigation as the planning authority may require, in writing.</p> <p>Reason: To protect the residential amenities of property in the vicinity of the site.</p>

12.	<p>Prior to the commencement of development a Dust Management Plan for the construction and operational phases of the development shall be prepared and submitted for the written agreement of the planning authority.</p> <p>Reason: To protect the residential amenities of property in the vicinity of the site.</p>
13.	<p>The construction of the development shall be managed in accordance with a site-specific detailed Construction Environment Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of the intended construction practice for the proposed development, including measures for the protection of existing residential development, hours of working, traffic management during the construction phase, noise and dust management measures and off-site disposal of construction/demolition waste.</p> <p>Reason: In the interests of public safety and residential amenity.</p>
14.	<p>Construction and demolition waste shall be managed in accordance with a final construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.</p> <p>Reason: In the interest of sustainable waste management.</p>
15.	<p>Site development and building works shall be carried only out between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 hours to 1400 hours on Saturdays and not at all on Sundays and public holidays.</p>

	<p>Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
16.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>

Professional Declaration

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.

Angela Brereton
Planning Inspector

29th of February 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

	ABP-315686-23		
Proposed Development Summary	Mobile Crushing Plant & a Reduction in Size of the Compound Area & Parking Areas as was granted under planning permission No.20/485 & all ancillary works.		
Development Address	Ballymountain, Slieverue, Co. Kilkenny		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	Yes
		No	No further action required
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes		Class 11(b), Schedule 5 Part 2	EIA Mandatory EIAR required
No	No	Below Threshold	Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
			Conclusion
No		N/A	No EIAR or Preliminary Examination required
Yes	Yes	Class/Threshold 11(b)	Proceed to Q.4

4. Has Schedule 7A information been submitted?

No		Preliminary Examination required
Yes	Yes	Screening Determination required

Inspector: _____ **Date:** _____

