Inspector's Report ABP-319333-24

Development	Whether the proposed increase in annual intake from 97.000 tonnes to 120,000 tonnes at the Glassco Recycling Facility is or is not development or is or is not exempted development at Unit number 4, Osberstown Industrial Park, Caragh Road, Naas. Co. Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	ED/00780
Owner/Occupier	Glassco Recycling Ltd.
Planning Authority Decision	Is development and is not exempted development
Referrer	Glassco Recycling Ltd.
Type of Case	Section 5(1) Referral
Observer(s)	None
Inspector	Fergal Ó Bric

1.0 **Background and Context**

1.1 This case pertains to a Section 5 referral submitted by Glassco Recycling Ltd where they asked the question whether an increase in recycling output tonnage of glass and aluminium cans from 97,000 tonnes per annum to 120,000 tonnes per annum at Unit 4, Osberstown Industrial Park, Naas, Co. Kildare is exempted development. An Bord Pleanála received notification by means of a High Court Order, dated 21st day of July 2023 setting out that the Section 5 declaration decision issued by the Board on the 21st day of May 2021 had been quashed. On the 20th day of March 2024, the case was remitted to the Board for a new assessment following on from the High Court Order.

1.2 The site is presently being used as a glass and can recycling facility. There are three structures on the site, a main processing building where glass and cans are sorted, a drying glass building where the glass is dried and bagged and a vehicle maintenance building. The site is located west and north-west of other existing industrial units, east of a one-off dwelling and south of the Naas Wastewater treatment plant.

1.3 A notice was issued to the parties under Section 131 of the Planning and Development Act 2000 (as amended) on the 2nd day of April 2024, inviting comments. A response was received from the referrer, Glassco Recycling Ltd on the 18th day of April 2024.

1.4 Subsequently a Section 132 request was issued to the applicants seeking the submission of certain additional information. The response to this request was circulated to Kildare County Council and to the Environmental Protection Agency on the 12th day of February 2025. No responses were received from either party.

2.0 Site Location / Description

The Industrial Park is located approximately 2.5 kilometres north-west of Naas, and 1.5 kilometres north-west of Junction 10 (Naas South) and 1.5 kilometres south-east of junction 9(a) on the M7 Motorway. Access to the site is off the R409, a regional route linking Naas with Caragh.

The Kildare County Development Plan 2017-2023 and the Draft Naas Local Area Plan 2021 were the relevant policy plans in effect at the time of the original assessment by the An Coimisiún Pleanála inspector in April 2021.

The relevant Plans for this assessment are the Naas Local Area Plan (LAP) 2021-2027 which was adopted on the 21st day of October 2021 and the Kildare County Development Plan 2023-2029 adopted on the 9th day of December 2022. The subject lands are zoned for Industry and Warehousing uses within the current LAP 2021-2027.

3.0 The Question

3.1 The question before the Board is:

Whether the increase in annual intake at its recycling facility from 97.000 tonnes per annum (as assessed during the Substitute Consent application pertaining to the site, permitted by An Bord Pleanála, in June 2014), to 120,000 tonnes per annum, at Unit 4, Osberstown Industrial Park, Caragh Road, Naas, Co. Kildare is or is not development or is or is not exempted development.

4.0 Original Assessment

3.1 The original assessment by the Commission Inspector was completed in April 2021. For completeness I have summarised below the various environmental

and traffic data received by the Commission in the 29th day of May 2020 from the applicants' Environmental Experts as part of their planning documentation.

Storm Water:

It is stated within the Environmental Report prepared by Patel Tonra (PT) and received by the Commission on the 29th day of May 2020 that storm water sampling is conducted on a weekly basis from two separate locations, SW1 north of the facility and SW2, west of the facility. In 2016, Glassco Recycling (GR) exceeded their environmental triggers and subsequently installed a wastewater treatment system to improve the quality of the storm water outfall from the facility. SW1 and SW2 became obsolete upon the commissioning of the wastewater treatment facility in August 2016. An alternative combined outfall point for storm water post treatment known as SW1A was commissioned.

One of the parameters measured from the storm water emission point is Biochemical Oxygen Demand (BOD) which has a trigger level of 30mg/l. In the period between January 2015 and January 2016, 45 of the 53 tests exceeded the triggers, giving a compliance rate of 15% for BOD at SW1. In the period between January 2015 and July 2016, 31 of the 74 tests exceeded the triggers, giving a compliance rate of 58% for BOD at SW2. In the period between August 2016 and July 2018, 9 of the 74 tests exceeded the triggers, giving a compliance rate of 88% for BOD at SW1A.

The data submitted demonstrates that BOD compliance prior to August 2016 was poor but that compliance has improved significantly since August 2016 with the installation of the new wastewater treatment plant (WWTP), where storm water is treated prior to outfall at SW1A. It is stated by PT that the exceedances observed since August 2016 are attributable to the wastewater treatment plant not

operating at full capacity and that the WWTP may have required maintenance. No BOD data post July 2018 has been provided by GR.

Suspended Solids:

Another of the parameters measured from the storm water emission point is Suspended Solids (SS) which has a trigger level of 27mg/l. In the period between January 2015 and January 2016, 42 of the 53 tests exceeded the triggers, giving a compliance rate of 21% for SS at SW1. In the period between January 2015 and July 2016, 32 of the 74 tests exceeded the triggers, giving a compliance rate of 57% for SS at SW2. In the period between August 2016 and July 2018, 7 of the 74 tests exceeded the triggers, giving a compliance rate of 91% for SS at SW1A.

The data submitted demonstrates that SS compliance prior to August 2016 was poor but that compliance has improved significantly since August 2016 with the installation of the new wastewater treatment plant (WWTP), where storm water is treated prior to outfall at SW1A. It is stated by PT that the exceedances observed since August 2016 are attributable to the wastewater treatment plant not operating at full capacity or that the WWTP may have required maintenance. No SS data post July 2018 has been provided by GR.

Conductivity:

Another of the parameters measured from the storm water emission point is Conductivity of the water (Cond) which has a trigger level of 552um/cm. In the period between January 2015 and January 2016, 30 of the 53 tests exceeded the triggers, giving a compliance rate of 43% for Conductivity at SW1. In the period between January 2015 and July 2016, 63 of the 74 tests exceeded the triggers, giving a compliance rate of 15% for Conductivity at SW2. In the period between

August 2016 and July 2018, 16 of the 74 tests exceeded the triggers, giving a compliance rate of 78% for Conductivity at SW1A. Conductivity can indicate pollution within a waterbody.

The data submitted demonstrates that Conductivity compliance prior to August 2016 was poor, particularly at monitoring point SW2, but that compliance has improved significantly since August 2016 with the installation of the new wastewater treatment plant (WWTP), where storm water is treated prior to outfall at SW1A. It is stated by PT that the exceedances observed since August 2016 are attributed to the wastewater treatment plant not operating at full capacity or that the WWTP may have required maintenance. No conductivity data post July 2018 has been provided by GR.

Mineral Oil:

Another parameter measured from the storm water emission point is Mineral Oil (MO) which has a trigger level of 0.26mg/L. In the period between January 2015 and January 2016, 4 of the 53 tests exceeded the triggers, giving a compliance rate of 92% for MO at SW1. In the period between January 2015 and July 2016, none of the 74 tests exceeded the triggers, giving a compliance rate of 100% for MO at SW2. In the period between August 2016 and July 2018, 4 of the 74 tests exceeded the triggers, giving a compliance rate of 95% for MO at SW1A.
The data submitted demonstrates that MO compliance prior to August 2016 was high and has remained high since August 2016 with the installation of a hydrocarbon interceptor, where mineral oils are intercepted, prior to emission at SW1A. It is stated by PT that the exceedances observed since January 2015 are attributed to the interreceptor on site requiring maintenance. No MO data post July 2018 has been provided by GR.

Dust:

It is stated that dust sampling is conducted on a quarterly basis from three separate locations, D1 at the south-western boundary of the site adjacent to the site entrance, D2 at the northern boundary of the site and D3 at the eastern boundary of the site. A total of 35 samples were taken between January 2015 and October 2018. An emission limit is set at 350mg, sq. m/day as set out within the EPA waste license conditions. The D3 sample was contaminated and not used for the purpose of analysis. In 2015 there was only one exceedance from 11 samples, giving a compliance rate of 91%. Seven exceedances were recorded in 2016 with a compliance rate of 58% and one exceedance at location D1 was recorded as being 15 times over and above the permissible emission limit. In 2017 there were two exceedances, giving a compliance rate of 83%. It is stated by PT that the exceedances in 2016 may be linked to the unusually low levels on rainfall in Q4 of that particular year. They also state that increased dust levels could be caused by dry weather, storage of materials outdoors and the increased vehicular movements at the site.

Noise:

Noise sampling is conducted on an annual basis during the daytime, evening and nighttime from three separate locations within the site and one location off-site in proximity to a neighbouring dwelling. NM1 is located along the western boundary of the site, adjacent to the site entrance and the main processing building, NM2 at the north-western site boundary of the site close to the storage bays and the drying building and NM3 at the north-eastern boundary of the site. Close to the main storage bays and the main processing building on site. NSL 1 is located west of the site boundary approximately 20 metres from a neighbouring dwelling. The NSL 1 monitoring point is required to be compliant with a noise emission value of 55 dB(A) for daytime activities, 50 dB(A) during evening time activities

and 45 dB(A) for nighttime activities as this location is deemed to be noise sensitive. NM1-3 are boundary monitoring points and, therefore, not required to be compliant with the EPA noise emission limit values.

Section 4.3.1 of the PT report sets out that GR have been found to be compliant with the noise monitoring requirements set out within the conditions of their EPA waste license. However, the noise monitoring results for 2017 presented within Table 4.2 set out that there were some noise level exceedances during the evening and night times at all of the noise monitoring points. The exceedances varied between 3 and 12 dB(A).

Summary

It is apparent that there were exceedances within the various environmental parameters in relation to storm water outfall, dust and noise emissions within the site and adjacent to the site boundary. The extent of the exceedances within the various environmental parameters varies from modest exceedances to greater levels of exceedances which GR state relate to weather conditions and absence of maintenance of the wastewater treatment facility and hydrocarbon interceptors. However, the data submitted is considered to be both comprehensive and detailed, However, the date largely relates to the period between the years of 2015 and 2017 With the passage of time it could warrant more up to date survey results so as to confirm the findings presented within the survey results from 2015-2017.

Traffic:

The applicants submitted an updated Traffic Assessment (TA) prepared in November 2019. prepared by Glassco Recycling (GR) Traffic and Transportation

Consultants. The TA has updated a previous TA which had been previously prepared in June 2017.

It is stated that traffic counts relate to traffic associated with the intake of 120,000 tonnes of material and the facility. Traffic counts were conducted at 9 different junctions including at the junction of the Caragh Road (The R445) with the Industrial Park where Glassco Recycling are located. The Consultants set out that at that time there were improvement works being carried out on the M7 Motorway which resulted in traffic taking revised routes to/from the GR site. These works related to the construction of the Sallins by-pass and the development of Junction 9(a) junction onto the M7 Motorway at Osberstown Naas, immediately north-east of the GR site.

A new traffic count was carried out in January 2019. Prior to this the main approach to the GR site was from Junction 10 off the M7 and then using the R445 northbound as far as the Caragh Road roundabout. The 2019 traffic count was a comprehensive one carried out between 7am and 7pm at the junction of the Caragh Road (R445) with the Industrial Park. The peak traffic volumes arose between 8am and 9am and again from 5pm and 6pm. Between 1 and 2 passenger car units (PCU's) per minute were recorded entering and exiting the Business Park. 89 Heavy Goods vehicles (HGV's) exited the Business Park during the 12-hour period and 93% of these turned east towards Naas and the M7 Motorway. 94 HGV.s entered the Business Park during this 12-hour period and 87% of tis traffic came from the east, Nass and the M7 Motorway.

Section 3.2 of the TA sets out that the facility currently processes 127.000 tonnes of glass and aluminium cans per annum and operates twenty-four hours per day from Monday to Friday and from 7am to 11pm on a Saturday. The drying plant

operates between 7am and 7pm from Monday to Saturday. There are three daily employee shifts in operation at the processing facility. They are staggered to create an overlap between the workers, The shifts operate at the following times from 7am to 4pm, 2pm to 11pm and 11pm to 7am. Glass is accepted and dispatched from 7am to 7pm Monday to Saturday. It is stated that no haulage traffic enters or exits the GR site outside of these periods. There are fifteen operators employed on site during the morning shift and ten operators each during the afternoon and night shifts. There are seventeen support administrative staff who work between the hours of 9am and 5pm.

The volume of HGV's entering the GR site was recorded at 1.6 per hour or 19.2 loads per 12-hour day and a similar number recorded exiting the site. Cullet material is collected from the facility, largely by the Encirc Group, based in Fermanagh who transport the material using six axle VI HGV's, each with a twenty-nine tonne payload. Thirty-six trucks arrive at the facility each day and thirty-six trucks depart the facility each day, including those arriving/exiting from Fermanagh. 70 HGVs in total arrive and depart the facility on a daily basis, it was 53 per day based on the 97.000 tonne limit, an increase of approximately 1.6 HGVs per hour in and out of the facility, Staff numbers have remained constant and have not increased with the increase in tonnage at the facility.

Section 4.2 of the TA sets out that with the opening of Junction 9A, on the M7 Motorway at Osberstown, Nass approximately 1.8 kilometres north-east of the appeal site, which opened in April 2021 would disperse traffic entering and exiting the facility further. Traffic approaching from the south or west of Ireland would still use the junction 10 interchange on the M7 Motorway and traffic from the north and east would use junction 9A. The TA sets out that there are no predicted impacts on the road network arising from the modest increase in HGV

movement to and from the facility associated with the increase in glass tonnage accepted at the facility. Based on the data submitted within the updated TA and having regard to the improvements that have occurred in the vicinity of the site, namely the M7 Motorway upgrade including the opening of the junction 9A interchange, I do not consider the increase in HGV traffic generated during the am or pm peak periods is significant. I also consider that the impact on the access junction to the Business Park off the R409 Road roundabout is not statistically significant and would not warrant any specific mitigation measures. The opening of the Junction 9A interchange is anticipated to provide for an improved haul route to/from the Caragh Road roundabout for haul traffic to/from the Glassco facility and to/from the M7 Motorway north of Naas.

I consider that the updated TA submitted is comprehensive and that there would not be a necessity to provide updated traffic data given that the number of employees and HGV traffic entering and exiting the GR facility has remained constant since the updated TA was conducted in November 2019. I would concur with the view that if anything, the traffic situation would have improved with the dispersal of traffic entering and exiting the site since the opening of the Junction 9A interchange on the M7 Motorway in April 2021. Therefore, I do not consider it necessary for GR to provide an updated Traffic Impact Assessment report in this instance.

5.0 Further Information Request

5.1 The Commission sought further information from the applicants in accordance with Section 132 of the Planning and Development Act 2000 (as amended) on the 6th day of November 2024 in relation to the following:

To submit a copy of the most recent data in relation to Storm Water quality, dust, and noise quality emissions from the Osberstown recycling facility site. These details should pertain to the period post 2017 and include data from 2018 to the most recently available data conducted as part of its environmental monitoring assessment obligations. A commentary and analysis on the data shall also be submitted by the referrers.

6.0 Further information Response

6.1 A response to the Section 132 request was received from the applicants on the 31st day of January 2025. The response comprised a planning cover letter prepared by their Planning Consultants. The cover letter provides a context to the Section 5 referral case in terms of its remittal from the High Court, a statement of the specific question being asked by them of the Commission, a synopsis of what parameters their Environmental Consultants assessed and the potential for a correlation between the increase in annual tonnage at the facility and the various environmental parameters. The Planning Report references various legal precedents and the concepts of ‘intensification of use’, ‘character of use’ and Environmental Impact Assessment thresholds. The applicants commissioned Environmental Consultants AWN to review the environmental monitoring data gathered in respect of emissions associated with the glass recycling facility from

2012 to 2023/2024. The Environmental Consultants have also provided an analysis of the date gathered.

6.2 Presented below is a review of the various environmental data and analysis received from the applicants' experts as part of the Section 131 further information response:

Storm Water:

It is stated within the AWN Environmental Consultants Report (AWN Report) that Glassco operates a comprehensive stormwater treatment plant including a dedicated filtration unit which removes any suspended solids which may be present arising from on-site processes. The stormwater on site is collected within a lagoon. All rainwater falling on site, including roofs, yards and roadways, is gathered on site and directed to the stormwater collection system for treatment. The applicants state that this ensures that no stormwater leaves the site untreated.

It is stated that storm water sampling is conducted on a weekly basis from two separate locations, SW1 north of the facility and SW2, west of the facility. In 2016, Glassco Recycling (GR) were exceeding their environmental triggers for Suspended Solids (SS) and Biochemical Oxygen Demand (BOD) and subsequently installed a wastewater treatment system to improve the quality of the storm water outfall from the facility. SW1 and SW2 became obsolete upon the commissioning of the wastewater treatment facility in August 2016. An alternative combined outfall point for storm water post treatment known as SW1A was commissioned.

Table 4.1 presents the data from 2012 to 2023 in terms of the total intake of glass(tonnage) and also the annual averages for both BOD and SS.
Table 4.1 demonstrates that there has been a decrease in SS and BOD concentrations over this period of time. Since 2016 the annual tonnage intake at the Glassco facility has increased from 126,205 tonnes to 132,211 tonnes. Over the same period the annual averages for BOD have decreased from 43.5 to 7.8 and the annual averages for SS has deceased from 38.9 to 9.2 over the same period. No annual average date for BOD or SS was available at the time of writing the report (January 2025), however from sample taken by the Environmental Protection Agency (EPA) noted that BOD was recorded at 12mg/l and SS at 9 mg/l which is consistent with the trends from the earlier date from 2012-2023. This demonstrates good stormwater quality notwithstanding the increase in tonnage intake at the glass recycling facility.

The applicants conclude that the increase in glass tonnage received at the facility has had no significant impact in terms of stormwater quality.

Dust:

A review of the annual dust monitoring undertaken at the Glassco glass recycling facility between 2012 and 2024 was undertaken. The results of the dust deposition have been reviewed against the emission limits set out under its waste licence issued by the Environmental Protection Agency (EPA) under reference number W0279-02 and national standards.

From a public health perspective, the EU air quality standards have set ambient air quality limit values for PM (10), less than 10 microns and PM (2.5) less than 2.5 microns. There are no statutory guidelines regarding the maximum dust deposition levels in Ireland.

An emission limit of 350mg, sq. m/day as set out within the EPA waste license conditions for the Glassco facility. A key factor in assessing temporal and spatial variations in air quality are the prevailing meteorological conditions. Depending on wind speed and direction, individual receptors may experience significant variations in pollutant levels. The most significant meteorological elements affecting dust deposition are stated to be rainfall and wind speed. High levels of moisture retained in the soil or as rainfall assist in suppressing the generation of dust due to the cohesive nature of water between dust particles. Rain also assists in removing dust particles from the atmosphere through washout. Wind can lift dust particles up into the air and transport then downwind as well as drying out the surface. Dust deposition is at its worst typically during dry conditions with strong winds.

The potential for dust dispersion and deposition depends on local meteorological factors such as rainfall, wind speed and wind direction. The nearest weather station to the subject site is at Casement aerodrome, located sone twenty-three kilometres north-east of the site. From the date collate between 2020-2024 the predominant wind direction is westerly to south-westerly. Dust generation is considered negligible on days where rainfall is greater than 0.2 mm. Data collated between 1991 and 2020, in Ireland, on average 194 (53%) of days per annum have rainfall amounts of 0.2mm or greater. Therefore, 53% of the time dust generation will be reduced due to natural meteorological conditions.

As part of the implementation of the Framework Directive on air quality (1996/62/EC) as amended, for air quality zones have been defined throughout Ireland for air quality assessment and management purposes. Dublin is identified as Zone A, Cork as Zone B, 23 large towns with a population of in excess of 15.000 persons as Zone C and Zone D are the smaller towns and villages and

the rural parts of the Country. In terms of air quality assessment and measurement, the Glassco facility is located within Zone C, on the border with Zone D.

PM (10) and PM (2.5) monitoring has been conducted by the EPA in Naas since 2021. The monitoring location is approximately three kilometres southeast of the Glassco facility, in the centre of Naas town. Since 2021, the EPA have recorded PM (10) concentrations are recorded in the range of 10-11 g/metre cubed, well below the limit value of 40 g/meters cubed and for PM (2.5) in the range of 7-8 g/metres cubed well below the limit value of 25 g/metres cubed.

High sensitivity receptors include residential properties where people are likely to spend the majority of their time. Commercial properties and places of work are classified as being ‘medium sensitivity’ and ‘low sensitivity’ receptors are places where people are present for short periods of time or do not expect high levels of amenity. In terms of receptor sensitivity, there are a number of ‘high sensitivity’ properties (residential dwellings) in proximity (to the north) of the Glassco facility and also a single residential dwelling to the west of the facility. There are no residential properties with a 20-metre distance of the site boundary and two residential properties within 20-50 metres of the site boundary. There are two further residential properties within a 50-250 distance of the site boundary. There are also a number of adjacent industrial and commercial premises located south and south-east of the Glassco facility and within the Osbertsown Business Park and the Osberstown Wastewater Treatment Plant located adjacent to (north of) the Glassco facility.

It is stated that dust sampling is conducted on a quarterly basis from three separate locations, D1 at the south-western boundary of the site adjacent to the

site entrance, D2 at the northern boundary of the site and D3 at the eastern boundary of the site. An emission limit is set at 350mg, sq. m/day as set out within the EPA waste license conditions (WO279-02).

Table 2.2 outlines the sets out the dust monitoring results for the years between 2012 and 2024 at the three dust monitoring points located on the perimeter of the site. The intake of glass at the facility has increased from 96,496 tonnes in 2012 to 132,500 tonnes in 2024. The applicants state that there is no direct correlation between the tonnage of glass intake at the facility and the levels of dust recorded at the dust monitoring points. AWN state that this is due to 'the influence of dust management on site and other factors, metrological and background dust'. In 2016, the dust levels recorded at monitoring points D1 and D3 exceeded the 350mg, sq. m/day limit values. However, the tonnage of glass intake in 2016 was lower than subsequent years, yet dust levels were recorded as being well within acceptable norms. The applicants set out that the high level of dust recorded at D1 in 2016 was 'as a consequence of contamination from a boundary hedge which resulted in foliage, insects and organic matter contaminating the samples'. Due to repeated contamination, D1 was relocated in 2018 following agreement with the EPA. Since 2016, no exceedances within the recorded dust samples have occurred.

The applicants acknowledge that 'there may be shorter term exceedances within individual reporting periods, the standard considers the average daily deposition over the full year of monitoring'. Dust deposition levels at nearby sensitive receptors, including nearby residential properties, are predicted to be lower than those monitored at the boundary due to fall-out of the dust with increased distance from the site boundary'.

The applicants use two mechanisms to mitigate the potential impact of dust within the site as follows: (a) dust occurrence avoidance-minimising the possibility of dust occurring and (b) dust suppression measures-additional measures to minimize dust nuisance. The dust occurrence avoidance measures include:

- Chutes for depositing fine materials from indoor locations to outdoor bays.
- Interconnecting hoods between static chutes and receptacles.
- Fully enclosed tipping skips are used for the movement of fine material.
- Toolbox talks to staff in relation to the requirements that all pedestrian doors are kept closed except when in use.
- Maintenance of integrity of building fabric/cladding.

Dust suppression measures are said to include:

- Use of a fogging/misting system on drying plant roller doors.
- Sweeping of access road to Glassco facility.
- Use of water cans providing 170 degree yard coverage in both westerly and easterly directions and use of a mobile bowser with a higher capacity pump output for areas not reached by the water canons.
- Fine grind glass and other material are stored internally prior to dispatch within fully enclosed tied flexible intermediate bulk containers.
- The primary source of water used for dust suppression is the on-site surface water attenuation pond.
- A maximum on site speed limit of 10km//h.

Site management mitigation includes the following:

- The General Manager and Operations Manager are responsible for dust management.

- ISO 9001 controlled weekly checklist is inspected weekly by the relevant appointed staff and is made available to the relevant authorities for inspection.
- The site Dust Management Plan is to be reviewed annually or in the event of a material change in activities or processes on site.

AWN conclude that 'dust management on the site ensures that dust deposition is below the EPA Waste Licence limit of 350mg, sq. m/day from the period 2018-2024 at all three of the dust monitoring locations. The increased tonnage does not corelate with a rise in dust deposition, due to the effective dust management at the facility once the dust minimisation measures continue to be implemented, fugitive emissions of dust from the site will be insignificant and pose no nuisance to nearby receptors.

Noise

The site is located in a predominantly industrial area with one residential property located approximately twenty metres north-west of the site boundary and other residential properties located further west along the Osberstown Road (L2006). The M7 Motorway is located approximately 250 metres east of the Glassoco facility and the R409 (Caragh Road) is located approximately 400 metres south of the site. There are a number of commercial and industrial premises located within the wider Osberstown Business Park and include car sales business, and a construction waste processing/recycling facility and the Osberstown WWTP. The appeal site comprises a number of waste and glass processing buildings and storage areas. The majority of the processes are housed within the main plant building, including the drying plant area.

AWN observed that the dominant source of noise within the facility to be the mobile plant loading shovels, loading vehicles and emptying glass from delivery vehicles into the storage bays. Noise from within the process buildings was audible at low level during lulls in mobile vehicle activities. Noise from plant within the process and drying areas was not noted as major on-site sources of noise by the Consultants.

To the north-west of the site, adjacent to the closest residential dwelling to the Glassco site, the main activities from the facility were noted to be from glass loading and unloading activities from deliveries and on-site loaders. Plant machinery noise from within the facility was 'not noted as a noise source'. The site entrance to the Glassco facility is located along the southern boundary, and hence vehicles entering/existing the Glassco site do not drive past this residential property. Adjacent commercial facilities within the Osberstown Business Park were noted as contributors to the noise environment in addition to background noise from the Business Park in general. The dominant source of background noise was noted to be from traffic travelling along the M7 Motorway.

Condition numbers 4 and 6 of the EPA Waste Licence outline the facility's noise monitoring requirements. Specifically condition 4.4 states that the noise emission limits apply to the noise sensitive location (NSL1) that being the residential property located approximately twenty metres north-west of the subject site boundary. The monitoring point at NSL 1 is required to be compliant with noise emission values of 55dB(A) for daytime activities, 50 dB(A) during evening time activities and 45 dB(A) for nighttime activities. NSL 1 as this location is deemed to be noise sensitive. NM1-3 are boundary monitoring points and, therefore, not required to be compliant with the EPA noise emission limit values.

Noise sampling is conducted on an annual basis during the daytime, evening and nighttime from three separate locations within the site and one location off-site in proximity to a neighbouring dwelling. NM1 is located along the western boundary of the site, adjacent to the site entrance and the main processing building, NM2 at the north-western site boundary of the site close to the storage bays and the drying building and NM3 at the north-eastern boundary of the site. Close to the main storage bays and the main processing building on site. NSL 1 is located west of the site boundary approximately 20 metres from a neighbouring dwelling.

As condition 4.4 of the Waste Licence, the noise emission limits apply to the noise sensitive location (NSL-1), being the nearest neighbouring dwelling. Noise surveys are undertaken during daytime, evening time and night-time periods to compare against the relevant noise emission limits, as set out within the Waste Licence condition (4.4).

Daytime Noise

Noise survey results from the daytime period for the years 2012-2024 as set out within Table 3.2 states the average noise results for each of these years. There were two years when the measured ambient noise levels exceeded the 55dB(A) threshold for daytime activities. In 2012, where the dominant noise sources were noted as being from a considerable number of truck movements associated with an adjacent industrial facility and traffic noise associated with the M7 Motorway east of the site and the R409 regional route south of the site. Also in 2023, the measured ambient noise levels exceeded the 55dB(A) threshold for daytime activities where the dominant noise sources were noted as being from an adjacent construction waste processing/recycling facility and from a car valeting facility.

The main sources of noise from on-site activities within the Glassco site were stated as being faint noise from the on-site processing plant, mobile plant loading glass to storage areas and vehicles entering and existing the Glassco facility.

The noise survey results note that there has been a steady increase in annual intake of material from 2012 to 2024, where the glass tonnage intake increased from 96,496 tonnes to 132,500 tonnes. The applicants state that there ‘is no noted significant variation of on-site activities noted to be audible from the Glassco facility within the noise survey reports between 2012-2024. The survey results during the daytime periods are typically below the 55dB(A at NSL1, (the nearest noise sensitive receptor) and fluctuate above and below the value depending on the contribution from external sources noted.

Evening time noise

Noise survey results from the evening time period for the years 2012-2024 as set out within Table 3.3 states the average noise results for each of these years. There were three years when the measured ambient noise levels exceeded the 50dB(A) threshold for daytime activities. In 2012, 2017 and 2024 the average measured night-time ambient noise level ranged between 53 and 57dB(A), where the dominant noise sources were noted as being from a considerable number of truck movements associated with an adjacent industrial facility and traffic noise associated with the M7 Motorway and the R409. In 2017, the dominant source of noise was noted as being from the M7 Motorway and birdsong. The background noise level measured during this period was measured at 37dB(A), representing the low contribution of background sources from the Glassco facility and distant traffic. Also in 2024, the measured ambient noise levels exceeded the 50dB(A) threshold for evening time activities where the dominant noise sources were noted as being from the M7 Motorway and birdsong.

The measured background noise level during this period was measured at 50dB(A), representing the low contribution of background sources from the Glassco facility and distant traffic. The applicants state that 'there is no noted significant variation of on-site activities noted to be audible from the Glassco facility within the noise survey reports between 2012 and 2024. The increased tonnage intake between 2012 and 2024 does not show any noted trend of increased noise levels from the Glassco facility operations. The survey results during evening periods are below 50dB(A) at NSL1 for nine of the twelve years of survey results and fluctuate below this value depending largely on the contribution from external sources noted'.

Nighttime noise

Noise survey results from the nighttime period for the years 2012-2024 as set out within Table 3.4, states the average noise results for each of these years. There were six years when the measured ambient noise levels exceeded the 45dB(A) threshold for night-time activities. In 2012, 2013, 2017, 2019, 2023 and 2024 the average measured night-time ambient noise level ranged between 46 and 57 dB(A). The dominant noise sources were noted as being from the traffic noise associated with the M7 Motorway. In 2017, the dominant source of noise was noted as being from a parked HGV with its engine running associated with adjacent commercial premises. The background noise level measured during this period was measured at 40dB(A), representing the low contribution of background sources from the Glassco facility. Also in 2024, the measured background noise level during this period was 47dB(A) threshold for evening time activities where the dominant noise source was noted as being from the M7 Motorway.

The applicants state that ‘there is no noted significant variation of on-site activities noted to be audible from the Glassco facility within the noise survey reports between 2012 and 2024. The increased tonnage intake between 2012 and 2024 does not show any noted trend of increased noise levels from the Glassco facility operations. The survey results during evening periods are below 45dB(A) at NSL1 for six of the twelve years of survey results and fluctuate below this value depending largely on the contribution from external sources noted’.

The main sources of noise from on-site activities within the Glassco site were noted as being faint noise from the on-site processing plant, when audible above lulls in traffic noise from the M7 Motorway.

Conclusion

The noise survey results note that there has been a steady increase in annual intake of material from 2012 to 2024, where the glass tonnage intake increased from 96,496 tonnes to 132,500 tonnes. The applicants state that there ‘is no noted significant variation of on-site activities noted to be audible from the Glassco facility within the noise survey reports between 2012-2024. The survey results during the daytime periods are typically below the 55dB(A at NSL1, (the nearest noise sensitive receptor) and fluctuate above and below the value depending on the contribution from external sources noted’.

7.0 **Commentary on Further information Response**

On the basis of the data received from the applicants, it is evident that there were exceedances within the various environmental parameters in relation to storm water outfall, dust and noise emissions within the site and adjacent to the site

boundary. The extent of the exceedances within the various environmental parameters varies from modest exceedances to greater levels of exceedances which Glassco Recycling (GR) state relate to weather conditions and absence of maintenance of the wastewater treatment facility and hydrocarbon interceptors. However, the data submitted is considered to be both comprehensive and detailed and with the submission of the further information relates to data that has been recovered from the environmental monitoring stations that has been recorded within the site between 2012 and 2024 and is, therefore, considered to be extensive and comprehensive.in terms of providing a balanced and robust assessment.

The environmental data presented by the Environmental Consultants on behalf of the applicants demonstrates that while annual tonnages on site have increased during this period, the associated environmental impacts have reduced over the same period for the surface water, noise and dust parameters measured on site. I also note that these environmental results are also being submitted to the Environmental Protection Agency (EPA) under Waste Licence (WO279-02).and I am not aware that the EPA has taken any enforcement action against the applicants in relation to non-compliance with its environmental obligations. Therefore, a numerical increase in annual glass and aluminum intake tonnages at the recycling facility does not necessarily correlate with an increase in noise, dust or other environmental outputs from the facility.

The question referred by the applicants to Kildare County Council and to An Coimisiún Pleanála is as follows:

Whether the increase in annual intake at its recycling facility from 97.000 tonnes per annum (as assessed during the Substitute Consent application pertaining to

the site, permitted by An Bord Pleanála, in June 2014), to 120,000 tonnes per annum, at Unit 4, Osberstown Industrial Park, Caragh Road, Naas, Co. Kildare is or is not development or is or is not exempted development.

Legal precedents have established that for an ‘intensification of use’ to occur there must be a change of use which is ‘material in planning terms’.

In the case of Galway County Council v Lacknagh Rock, Judge Barron set out that the onus is on the Planning Authority (decision maker) to prove that the intensification of activity amounted to a change of use which was material. I note that the referrer has submitted detailed and robust environmental and traffic assessments, in the form of Environmental Monitoring data results and a Traffic Impact Assessment (TIA). Both assessments conclude that no significant new or material impact arises from the 23,000-tonne intake increase. The applicants contend that no material change of use is considered to arise in this instance, and as no development is proposed in terms of additional buildings or processes, such that would require the benefit of planning permission.

The referrer states that no change to the character of the existing recycling use would occur as a result of the increased tonnage intake and that the main use will remain as recycling. I consider it reasonable for the referrers to intensify and increase operation on site without necessarily resulting in a material change of use.

The most relevant and recent case law pertaining to this referral case was issued in June 2022 is the case of Stanley v An Bord Pleanála issued by Justice Phelan in June 2022. The Court took the view that the proper application of the test to determine whether a change of use is material necessarily requires an identification in the decision-making process of the following:

(i) the actual change of use;

(ii) what effects, impacts or consequences in planning terms arise from the said change of use;

(iii) The scale of those impacts and if they give rise to concerns.

8.0 **Test of Materiality in planning terms**

As part of this assessment, I will consider what is the nature of any change of use that may have occurred on site, how it gives rise to impact(s) and what that impact(s) are. When these matters have been duly assessed and considered, it should be apparent if the increased intake in annual intake has or has not resulted in a material change of use by reason of intensification.

8.1 Having regard to the question before the Board, I propose to undertake my assessment by considering the following:

1. Whether the increase in annual intake of glass and aluminium cans from 97,000 tonnes to 120,000 tonnes at the Glassco Recycling Facility Is or is not development, or is or is not exempted development, within the meaning of the Planning and Development Act 2000, (as amended).

8.2 Does the increase in intake of recyclable glass and aluminium at an existing recycling facility constitute works?

Section 2(1) **-** In this Act, “works” are defied as “Any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal…...any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure”.

The referrer has clearly stated and demonstrated that no works were carried out in order to affect the increase in tonnage, and that no material planning, environmental or traffic impacts will arise from the increase in tonnage intake.

8.3 Would the proposed increase in tonnage intake represent an intensification of use, such that a material change in the use of the site arises, resulting in development and the subsequent requirement for planning permission?

Glassco Recycling (GR) was issued a Waste License by the Environmental Protection Agency (EPA), reference number W0279-02, in February 2016 for the operation of the glass and can recycling facility. The license requires GR to undertake environmental monitoring for a number of parameters including storm water, dust, noise and air. The facility is licensed to accept 150,000 tonnes of bottles, jars, aluminium and steel cans per annum. Under the terms of the license, the licensee must manage and operate the facility to ensure that activities do not cause environmental pollution. The licensee is required to carry out environmental monitoring and submit results of the monitoring to the Agency.

I am satisfied based on the information submitted that no change to the primary activities on site have occurred, in that the activities on site remain as the recycling of bottles, jars, aluminium and steel cans as originally permitted on site

by Kildare County Council and as permitted for retention by the An Coimisiún Pleanala under reference number in 2014. SU09.SU0015.

However, it is clear that the applicants have increased the annual tonnage of recyclable material accepted at the facility from 96,496 tonnes in 2012 to 132,500 tonnes in 2024. Therefore, one needs to consider whether the increase in tonnage intake at the facility has had an impact in terms of emission from the facility. These impacts were all addressed by the applicants as part of their Section 132 Response to the Commission. The applicants monitor levels of Suspended Solids (SS) and Biochemical Oxygen Demand (BOD) on site. The monitoring results demonstrate that notwithstanding a continual increase in annual tonnage intake every year at the Glassco facility from 2012 to 2023, that the levels of BOD and SS observed within the storm water outfall location have been continually decreasing over the same period. There is no evidence to conclude that the increase in the annual tonnage intake at the Glassco facility has resulted in a material change in emissions from the facility.

In relation to dust emissions from the Glassco facility the applicants are required to measure dust deposition levels in accordance with their Waste Licence issued by the Environmental Protection Agency under Licence number W0279-02. Based on the information submitted it is evident that the applicants have maintained dust deposition levels emanating from the facility below the 350 mg/square metre per day. Notwithstanding the applicants have increased the annal tonnage of recyclable material accepted at the facility the dust emission levels have been maintained within acceptable norms.

In respect of noise emanating from the recycling facility, based on the information submitted, it is apparent that the applicants have maintained noise levels

emanating from the facility below the various daytime, evening time and nighttime thresholds. Inspite of the annual tonnage intake at the facility increasing year on year since 2012, there has been no increase in noise levels emanating from activities on site, above the relevant noise thresholds. Other external factors including adjacent commercial businesses and traffic from the nearby M7 Motorway have contributed to certain nose exceedances, which is acknowledged.

8.4 In terms of traffic, the applicants submitted a Traffic Assessment (TA) as part of the original information submitted in May 2020 to the PA and subsequently to An Coimisiún Pleanála. A 127,000-tonne figure was used to ground the TIA. This figure was used to demonstrate that the recycling facility operating at 127,000 tonnes per annum is deemed to have no material traffic impacts, in terms of operation or capacity within the adjacent road network. Based on the information submitted, I am satisfied that the applicants have demonstrated that the adjacent road infrastructure ha adequate capacity to cater for the additional traffic, particularly the additional daily HGV movements associated with the recycling facility based on the improvements that have occurred in the vicinity of the site, namely the M7 Motorway upgrade including the opening of the junction 9A interchange, Based on the comprehensive traffic data submitted, I do not consider the increase in HGV traffic generated during the am or pm peak periods is significant. I also consider that the impact on the access junction to the Business Park off the R409 Road roundabout is not statistically significant and would not warrant any specific mitigation measures. The opening of the Junction 9A interchange has provided for an alternative haul route to/from the Caragh Road roundabout for haul traffic to/from the Glassco facility

and to/from the M7 Motorway north of Naas, which would serve traffic from the north and east.

8.5 Materiality is not assessed simply by way of numerical calculation in isolation but relates to whether or not the change gives rise to material planning impacts. Therefore, one cannot assume that the increase in glass tonnage intake is, of itself, material, simply due to the increased numerical volume. It must be determined by the Commision that that there is an actual material impact arising based on the environmental data submitted by the applicants.

8.6 I consider that the applicants have demonstrated through the submission of the environmental and traffic data that the impacts that have arisen from the increase in annal tonnage intake at the Glassco facility are not material in planning terms and demonstrate categorically that no significant new or material impacts arise from the increase in annual tonnage intake at the Glassco facility. Therefore, I am satisfied that no material change of use arises and no development has taken place on site such that planning permission would be required.

EIA Screening

8.7 Some of the data included within the accompanying reports indicate that the 120,000-tonne annual intake was exceeded by between 4,848 tonnes (2015) and 12,500 tonnes (2024). The Planning Authority posed the question as to whether the increase in annual tonnage intake to the facility triggers a mandatory EIA, and if so, the increase in tonnage intake would not be exempted development and, therefore, would require the submission of a planning application or a substitute consent application.

The Planning Authority stated that the appropriate threshold for this type of development is governed by Class 11(b), Part 2, Schedule 5 of the Planning and Development Regulations (the Regulations) 2001 (as amended) which states "That installations for the disposal of waste with an annual intake of greater than 25,000 tonnes, not included in Part 1 of Schedule 2, of the Regulations.

The Planning Authority concluded that a mandatory EIA is triggered by the increase in tonnage intake on two grounds. The first ground, raised by the Planning Authority is that having regard to the reports submitted with the referral, that the 23,000-tonne figure, exceeds the appropriate threshold of 25,000 tonnes by more than 50%, is set out within Article 13(a) (ii), Schedule 5, Part 2 of the Regulations. The second ground under which the Planning Authority based its conclusion is that the 23,000-tonne figure, by which it is proposed to increase the intake by, set out by within this referral, is a hypothetical one. The Planning Authority specifically referred to Page 7, Section 3.2 of the TIA, where an annual tonnage intake figure of 127,000 tonnes for the year 2018, is set out. This 2018 intake figure represents an increase of 30.9% over the annual permitted intake of 97,000 tonnes, as conditioned by An Bord Pleanála, in 2014, and above the 25% increase provided for within Schedule 5, Part 2, Article 13 (a) (ii) of the Regulations. Accordingly, The PA considered that a mandatory EIA would be required in compliance with Schedule 5, Part 2, Article 13(a) of the Regulations.

The Planning Authority concluded that the increase in tonnage intake at the Glassco recycling facility is development of a type which would require the preparation of a mandatory EIAR and, therefore, would require the submission of a planning application or an application for Substitute Consent. Article 9(1) (c) of the Regulations removes exempted development provisions if it is development

to which Part 10 of the Act applies i.e., requirement for Environmental Impact Assessment. Accordingly, the PA deemed that the development cannot be considered to be exempted development having regard to the provisions as set out within Article 9. (1) (c) of the Planning and Development Regulations 2001.

8.9 The Planning Authority did not apply the provisions of the Regulations correctly in respect of Schedule 5, Part 2, Article 13 (a) which provides for "Any change or extension of development already authorised, and executed or in the process of being executed (not being a change or extension referred to in Part 1) which would-

(i) Result in the development being of a class listed in Part 1 or paragraphs 1 to 12 of Part 2 of this schedule and

(ii) Results in an increase in size greater than-

- 25 per cent, or
- An amount equal to 50 per cent of the appropriate threshold,

whichever is the greater.

8.10 I consider that The Planning Authority have misinterpreted the application of Article 13 (a) of the Regulations and the thresholds regarding the preparation of mandatory EIAR, as set out in Schedule 5, Part 2 of the Regulations. Schedule 5, Part 2, Article 11(b) relates to Other Projects (b) "installations for the disposal of waste with an annual intake greater than 25,000 tonnes, not included in Part 1 of this schedule". It is accepted that the development comprises a class listed in this schedule. In this instance, annual intake was permitted at 97,000 tonnes following the Substitute Consent process. An increase in size of 25% of the 97.000 tonne figure would amount to 24,250 tonnes. An amount equal to 50% of the appropriate threshold, equates to 12,500 tonnes. The greater of these amounts is the 24,250-tonne figure. The proposed 23,000 tonne increase (to 120,000 as per the question

posed to the Planning Authority and to the Commission) as opposed to current annual intake at the Glassco facility (stated to have been 132,500 tonnes in 2024) is clearly below the greater amount provided under Article 13 (a) (ii). Thus, I would not agree with the use of 50% of the appropriate threshold provision, given this figure is the lesser amount, not the greater as provided for under Article 13 (a) (ii).

8.11 Therefore, the increase in annual tonnage intake at the recycling facility is below any potential mandatory EIA threshold. The assessments carried out in relation to air, noise and traffic conclude that the proposed level of additional tonnage does not give rise to material planning, environmental or traffic impacts. On the basis of the information presented, I am satisfied that no significant effects have arisen on foot of the increase in tonnage intake from 97,000 tonnes per annum to 120,000 tonnes per annum, and therefore, the development constitutes exempted development.

8.12 It is evident that the Planning Authority understood the question asked, as it specifically references 23,000 tonnes in its conclusion within their planning report and within the face of the decision issued by it. The referrer submits that the Planning Authority is precluded from grounding its assessment of the Section 5 referral by materially altering or re-interpreting the question being put to it. The referrers contend that this is outside the remit of the Section 5 process and relies on other annual tonnage figures referenced within documentation accompanying the referral, set out as part of the of context and would not be considered an appropriate ground to determine that an EIAR is a mandatory requirement in this instance.

8.13 I note the restrictions on exemptions as identified in Part 2, Article 9 of the Regulations 2001. However, it is apparent that none of the restrictions apply to an increase in annual intake, including that cited by the Planning Authority under Article 9(1) (c), regarding the mandatory requirement for the submission of an

EIAR. I am satisfied, based on the specific question posed by the applicants to the PA and ACP, that the increase in tonnage intake at the Glassco recycling facility is below all mandatory EIAR thresholds and can, therefore, be considered as exempted development and, therefore, would not constitute a material change in use in planning terms.

8.14 The 97,000-tonne figure represented the annual intake at the time of the Substitute Consent (SC) application in 2014 (Board reference SU09.SU0015) and formed the basis of assessment for the Remedial Environmental Impact Statement prepared in respect of the SC application. The Board in that instance did not include any conditions that require the annual intake to be capped or restricted to 97,000 tonnes. There was no aspect of that decision that precludes an increase in tonnage intake or mandates that planning permission must be sought for any increase over the 97,000-tonne intake. For planning permission to be required, an intensification of use would need to occur to such an extent that material planning impacts are apparent. The referrers have enclosed comprehensive and robust environmental and traffic data as part of the planning documentation submitted, which confirms that there are no material planning or environmental impacts arising as a result of the increase in tonnage, particularly in respect of air, noise, or traffic levels.

Appropriate Assessment

8.15 I have considered the development in light of the requirements S177U of the Planning and Development Act 2000 as amended. The subject site is located approximately thirteen kilometres north-west of the Poulaphouca Reservoir Special Protection Area (site code site code 004063) and approximately thirty three kilometres south west of the South Dublin Bay and Tolka Estuary Special Protection Area (site code 004024) and South Dublin Bay Special Area of Conservation (site code 000210) and approximately thirty four kilometres south-

west of the North Bull Island Special Protection Area (site code 004006) and the North Dublin Bay Special Area of Conservation (000206). The development relates to an increase in glass and aluminum tonnage accepted at the Glassco recycling facility as set out in Section 3 of this report above. The applicant submitted an Appropriate Assessment (AA) Screening Report as part of their planning documentation. The PA also conducted an AA screening exercise.

8.16 The applicants' AA screening report, submitted as part of their planning documentation sets out that the subject site 'is not located within any European site nor is there a direct hydrological connection to any European site'. The nearest watercourse to the subject site is the River Liffey, located approximately one hundred and thirty metres north of the appeal site, on the opposite side of a local county road, although there is no apparent direct hydrological connection to the Liffey from the subject site.

8.17 Five European sites were identified within a 35 kilometre radius of the appeal site. I consider that the European sites can be screened out due to the absence of direct hydrological or ecological pathways from the appeal site to these European sites and the separation distance to these particular European sites. Surface water from the appeal site ultimately discharges to the Liffey following on site treatment as set out within the environmental data submitted, most recently in January 2025. Wastewater from the subject site discharges to the Osberstown Wastewater treatment Plant and is ultimately treated in the Ringsend Wastewater Treatment Plant, the outfall from which is licensed by the EPA. Based on the information submitted, I am satisfied that the increase in annual tonnage of glass and aluminum accepted at the facility would not increase the level of wastewater discharge from the subject site. I also note that the Water quality in Dublin Bay is classified as being of 'good status'.

8.18 I am satisfied that once the facility operates in accordance with its waste licence conditions as set out by the Environmental Protection Agency (EPA) under licence number (WO279-02) and that dust and noise emissions are maintained in accordance with best practice standards and given that the site is connected to the public piped water services that no adverse impacts on water quality, or the qualifying interests of any European site would arise.

8.19 I am satisfied that no construction works have arisen to provide for the additional tonnage intake at the recycling facility. I acknowledge that the appeal site is indirectly connected to the River Liffey, which in itself has no specific European designation. Based on the environmental data submitted, surface water on site is treated prior to discharge from the site and wastewater discharges from the appeal site are to the Osberstown Wastewater treatment Plant prior to outfall into the Liffey. The outfall from the Osberstown Wastewater Treatment Plant is also licensed by the EPA. The Liffey ultimately discharges into Dublin Bay in excess of thirty kilometres northeast of the appeal site. I consider that even in the unlikely event that the on-site environmental control measures should fail, this indirect hydrological link represents a weak ecological connection, given the separation distance to Dublin Bay. As such any pollutants from the site that should enter surface water and/or groundwater via spillages onto the overlying soils, or via spillages into the surrounding drains, will be subject to dilution and dispersion within the ground/surface water bodies, rendering any significant impacts on water quality within European sites unlikely. This conclusion is supported within the Planning Authority's AA screening Report, which set out the following 'Having regard to the distance from the nearest Natura 2000 site, with no direct hydrological connection, it is considered there would not be potential for significant effects on the Natura 2000 network'.

8.20 Having considered the nature, scale, and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site. The reason for this conclusion is as follows:

- The modest scale of the development, which relates to an increase in annual tonnage of aluminium cans and glass at the permitted recycling facility,
- The separation distance from the nearest European sites and the lack of direct hydrological or ecological connectivity to any Natura 2000 site.
- The AA screening exercise conducted by the Planning Authority which concluded that either alone or in combination with other plans or projects, there would be no likely significant effects on any European sites.

8.21 I conclude, that on the basis of objective information, that the proposed development would not have a significant effect on any European site either alone or in combination with other plans or projects. Likely significant effects are excluded and, therefore, Appropriate Assessment (Stage 2) under Section 177V of the Planning and Development Act 2000 (as amended) is not required.

Conclusion

8.22 Based on the information submitted and having regard to the legal precedents referenced above, I consider that the applicants have demonstrated that the increase in annual tonnage intake at the Glassco recycling facility does not constitute development, as defined in the Planning and Development Act 2000 (as amended). This is based on the fact that no works will be carried out in order to affect the increase in tonnage. The applicants have submitted comprehensive and robust environmental and traffic data arising from monitoring and analysis over the

period between 2012 and 2023/2024 which also demonstrates that a material intensification of use in planning terms has not arisen as a result of the increase in annual tonnage intake at the facility, that would result in development and the requirement for planning permission.

8.23 The applicants reference case law (Galway County Council v Lacknagh rock), where Judge Baron ruled that the onus is on the Planning Authority to prove that the intensification of activity amounted to a change of use which was material. I am satisfied based on the comprehensive detailed and robust environmental and traffic assessments which support the conclusion of the applicants that no significant new or material impacts arise. On the basis of the information received, I consider that no material change of use arises, and no development is taking place such that planning permission is required.

8.24 I am also satisfied that no material change to the character of the existing use will occur as a result of the increased tonnage, which remains as recycling. I consider that it is entirely possible for an existing business to intensify and increase its operation without necessarily resulting in a material change of use, and that Glassco Recycling is one such example. The referrers state that none of the restrictions on exemptions as identified in Part 2, Article 9 of the Regulations 2001 apply to the increase in annual intake, including that cited by the Planning Authority under Article 9(1) (c), regarding the mandatory requirement for the submission of an EIAR. The increase in tonnage intake at the facility as set out within the referrers' question to the PA and ACP (. i.e. from 97,000 to 120,000 tonnes) is below all mandatory EIAR thresholds and can, therefore, be considered as exempted development.

8.25 Based on the original information submitted by the applicants in addition to the data submitted as part of the further information response, I acknowledge that there were exceedances within the various environmental parameters in relation to storm

water outfall, dust and noise emissions within the site and adjacent to the site boundary. The extent of the exceedances within the various environmental parameters varies from modest exceedances to greater levels of exceedances which GR state was due to irregular weather conditions and absence of maintenance of the wastewater treatment facility and hydrocarbon interceptors. However, I am satisfied that the data submitted is both comprehensive and detailed and with the submission of the further information relates to data that has been recovered from the environmental monitoring stations that has been recorded data within the site between 2012 and 2024 and is, therefore, considered to be extensive and comprehensive in terms of providing a balanced and robust assessment.

8.26 I consider that the applicants have demonstrated through the submission of the comprehensive environmental and traffic data covering the period 2012 to 2023/2024 that the impacts that have arisen from the increase in annal tonnage intake at the Glassco facility are not material in planning terms and demonstrate that no significant new or material impacts arise from the increase in annual tonnage intake at the Glassco facility. Therefore, I am satisfied that no material change of use arises and no development has taken place on site such that planning permission would be required.

9.0 Conclusion and Recommendation

The proposals to increase the annual tonnage intake at the recycling facility is not development and is exempted development under Schedule 5, Part 2, Article 13(a)(ii) of the Planning and Development Regulations 2001, (as amended). The question, as posed is sub-threshold in terms of the requirement to submit a mandatory EIAR and therefore, there would not be a requirement to submit a planning application or substitute consent application in this instance. Therefore, the 23,000 annual tonnage increase intake as set out specifically within the

applicants' question to the Planning Authority and An Comision Pleanala is not development and is exempted development.

WHEREAS the following question has arisen as to whether:

The increase in annual intake at its recycling facility from 97.000 tonnes per annum (as assessed during the Substitute Consent application pertaining to the site, permitted by An Comision Pleanála, in June 2014), to 120,000 tonnes per annum, at Unit 4, Osberstown Industrial Park, Caragh Road, Naas, Co. Kildare is or is not development or is or is not exempted development.

AND WHEREAS Kildare County Council issued a declaration on the said question to the referrer on 10th day of March 2020, stating that the development triggers two separate thresholds for the submission of a mandatory Environmental Impact Assessment Report as set out within the Planning & Development Regulations.

AND WHEREAS An Comision Pleanála, in considering this referral, had regard particularly to -

(a) Section 2 (1) of the Planning and Development Act, 2000, as amended,

(b) Section 3 (1) of the Planning and Development Act, 2000, as amended,

(c) Article 6(1) & Article 9(1)(c) of the Planning and Development Regulation's 2001, as amended,

(d) Schedule 5, Part 2, Article 13(a) (ii) of the Planning and Development Regulation's 2001, as amended,

AND WHEREAS An Comision Pleanála has concluded that –

- The increase in the annual tonnage in question is not development for the purposes of Section 3 of the Planning and Development Act 2000, as amended.
- As the increase in tonnage accepted at the facility from 97,000 tonnes to 120,000 tonnes as set out in the question posed by the referrer, does not result in any effect of significance on the surrounding area
- The development comprises exempted development under Schedule 5, Part 2, Article 13(a) (ii) of the Planning and Development Regulations 2001, as amended.
- The development would be exempted development having regard to Article 9(1)(c) as it would be of a type that would be sub-threshold and not trigger the requirement to submit a mandatory Environmental Impact Assessment Report

NOW THEREFORE An Comision Pleanála, in exercise of the powers conferred on it by section 5 (1) of the 2000 Act, hereby decides that:

(a) the increase in annual intake at the recycling facility from 97,000 tonnes per annum to 120,000 tonnes per annum is not development: and

(b) the increase in annual intake at the recycling facility from 97,000 tonnes per annum to 120,000 tonnes per annum is exempted development

at Unit number 4, Osberstown Business Park, Caragh Road, Naas, Co. Kildare

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

_____

Fergal Ó Bric

Planning Inspectorate