



An
Bord
Pleanála

Inspector's Report

09.JA0041

09.CH3351

Development	Remediation of Kerdiffstown Landfill and associated Compulsory Purchase Order (CPO)
Location	Kerdiffstown, Co. Kildare
Planning Authority	Kildare County Council
Applicant(s)	Kildare County Council.
Type of Application	LA Works under s.175(3) of the Planning and Development Act and CPO under s.216 of the Planning and Development Act.
Date of Site Inspection	24th November, 2017.
Date of Oral Hearing	5th December, 2017
Inspector	Stephen Kay

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1.0 Introduction & Background to the Proposed Development

- 1.1. This report relates to an application by Kildare County Council for the remediation of the Kerdiffstown Landfill at Kerdiffstown, Kill, County Kildare. This report relates to two separate applications submitted by Kildare County Council, the first being an application for approval under s.175 of the Planning and Development Act 2000 (as amended) for the undertaking of works for the remediation of the landfill site and including the development of recreational facilities at the site, An Bord Pleanala Ref. 09.JA0041). The second related application is a compulsory purchase application for the site and some adjoining lands required to facilitate the proposed development and made under s. 216 of the Planning and Development Act 2000 (as amended), (An Bord Pleanala Ref. 09.CH3351).
- 1.2. Both the application for the remediation of the landfill and the CPO application were submitted to the Board by Kildare County Council on 30th August, 2017.
- 1.3. The application for approval for the remediation of the landfill is accompanied by an Environmental Impact Assessment Report (EIAR) comprising five volumes as follows:
- Volume 1 Non technical summary,
 - Volume 2 EIAR Main Report,
 - Volume 3A EIAR Figures
 - Volume 3B EIAR Photomontages
 - Volume 4 EIAR Appendices (4 Parts)
- 1.4. The EIAR contains a Screening for Appropriate Assessment contained at Appendix A11.10. This screening assessment concludes that the proposed development would not be likely to have significant effects on any European site. No NIS was submitted and no Stage 2 appropriate assessment was therefore undertaken by the applicant.
- 1.5. The application for approval is also accompanied by other documents and studies, a number of which are worth highlighting at this initial stage.
- A **Planning Report** dated August, 2017 and prepared by AOS Planning. This report covers, inter alia, the planning history of the site, the background to the

current condition of the site and the planning and development policy. The report also sets out in detail how the proposed development is considered to be consistent with planning policy and how the proposed development relates to the extant permissions on the site and to the existing condition of the site.

- The transfer of the site from the control of the EPA to the current applicant, KCC was undertaken in June, 2015. The terms of this transfer, including an indemnification for the Council in the event of unforeseen issues arising, are set out in a **MOU between Kildare County Council and the Department of Environment Community and Local Government**. A copy of this MoU is provided at Appendix 1 of the Planning Report submitted with the application.
- A **Remediation Options Report (2013) by SKS Enviros** (now Jacobs Engineering) which sets out the possible options for the remediation of the site. A redacted version of this report is provided at Appendix 6 of the Planning Report submitted with the application.

1.6. The documentation which accompanies the application for a CPO includes the following:

- Landfill Remediation Project Order including schedules and deposited map showing areas included within CPO,
- Engineering report prepared by staff of Kildare County Council recommending preparation of CPO for the project.
- Copy of Chief Executives order authorising the preparation of the CPO.
- Copy of newspaper notice and site notice.
- A **Planning Certificate** signed by the Senior Planner and Director of Services of Kildare County Council and which concludes that the proposed Landfill Remediation Project would be in accordance with the proper planning and sustainable development of the area.
- Sample notice issued to those listed on the CPO schedule and copy of registered post list confirming that all parties in the schedule were issued with the notice.

- 1.7. The proposed development relates to an activity for which an Industrial Emissions Activity Licence (IEAL) is required to be obtained from the Environmental Protection Agency (EPA). The requirement to obtain a licence relates to the materials which are required to be imported onto the site in order to undertake the remediation and reprofiling of the site, and the applicant has made an application to the EPA for an IEAL, (EPA Ref. P.1063-01). This application was submitted to the agency on 11th September, 2017 and as at the date of writing of this report no decision had been made by the Agency. The EPA were informed of the application and of the oral hearing by An Bord Pleanála and were consulted by the Board in accordance with the provisions of s.175(10) of the Planning and Development Act, namely cases where there is a requirement for planning permission and a licence is also required from the EPA. In this regard, the Board wrote to the EPA on 3rd November, 2017 seeking the opinions of the Agency and a response to this request was received by the Board on 17th November, 2017. Copies of this correspondence between the Agency and the Board were circulated to all parties in advance of the oral hearing held.
- 1.8. The background to the current application is covered in Chapter 3 of the submitted EIAR and also in Sections 2 and 3 of the Planning Report prepared by AOS Planning (dated August, 2017) which accompanies the application. The site of the proposed development comprises a former sand and gravel quarry which operated from the 1950s until 2010. The site was progressively backfilled with waste material by a variety of operators over the years when it was open and operated as a landfill / recycling facility. The most recent of these operators was Neiphin Trading Limited (connected with Dean Waste and A1 Waste) which operated the site in the period prior to its closure in 2010. In the period prior to the closure of the site the facility consisted of a large recycling operation with material being extracted from within the site for recycling as well as the processing of imported recyclable material. Waste material was deposited into the lined landfill cell that is located on site and waste material was also deposited at other locations on the site.
- 1.9. The circumstances surrounding the period prior to the vacation of the site by the last operator are disputed by the parties to this case and issues arising from this period are the subject of ongoing legal proceedings. What can be established, however, is that on foot of complaints regarding odour and other issues at the site the EPA

secured injunctions limiting activities at the site. Subsequent to these injunctions, the site was vacated by the most recent operator in June, 2010. In January of 2011 a fire broke out within the waste mass on site and this resulted in the involvement of a number of state agencies including Kildare County Council (KCC) and the EPA. In February of 2011 the EPA exercised powers under s.56 of the Waste Management Act to take control of the site in order that measures could be implemented to reduce the environmental impacts arising. The site remained under the control of the EPA until it was transferred to KCC in June 2015. Under the control of the EPA and KCC there have been a number of works undertaken on site to limit the impact of the site on the environment. These works include the removal of waste from parts of the site including from areas of hardstanding, the placing of a cap on the lined cell and the installation of equipment for the collection and flaring of landfill gas from part of the site. Works have also included the demolition of a number of structures which were considered to be dangerous and the installation of measures to secure the site from unauthorised third party access.

2.0 Site Location and Description

- 2.1. The site is located approximately 3 km to the north east of the centre of Naas town and on the northern side of the N7. The site is immediately to the north west of Johnstown Village which is located on the opposite side of the N7 approximately 400 metres from the site at the closest point.
- 2.2. Access to the site is via the L2005 local road which connects junction 8 on the N7 approximately 1km to the east of the site with the village of Sallins approximately 1.5km to the north west. There is a pedestrian access route to Johnstown Village via a pedestrian bridge over the N7 immediately south east of the site. There is currently only one vehicular access point to the site which is situated at the south western side of the site.
- 2.3. The boundaries of the site largely reflect the L2005 to the west and the Morell River to the east. To the west, the site is bounded by the L2005 Sallins Road over its entire length with the exception of a section of c.150 metres where the site adjoins an existing commercial premises. To the south and south east, the site adjoins

agricultural lands that are located between the site and the L2005 and the access roadway into Kerdiffstown House. To the east, the site adjoins lands that form the access route into Kerdiffstown House from the L2005. These lands are located between the site boundary and the Morell River to the east. To the north, the site also adjoins lands that form part of Kerdiffstown House.

2.4. In the submitted application documentation the site has been broken down into a number of distinct sub areas or zones relating to the nature and depth of waste material, and infrastructure in each area. The following is a summary of the sub zones as identified in section 3.4 of the submitted EIAR. This information is also summarised in Table 4.2 of the EIAR:

- **Zone 1** (comprising sub zones 1 and 1A) – This zones incorporates the northern part of the site and covers an estimated area of 100,000 sq. metres (10 ha.). The estimated volume of waste within this area is stated to be 2.023 million cubic metres which comprises generally unprocessed non-hazardous mixed construction and demolition waste (CDW) and municipal solid waste (MSW). The sub designation of Zone 1A at the far north west corner of the area reflects the high component of CDW in that area. Zone 1 is unlined and uncapped such that there is no method of limiting or managing leachate. Odour levels generated by the waste material in this zone are indicated in the application documentation as being high. As part of the remediation works undertaken by the EPA and KCC since control of the site was taken over, a network of gas wells has been installed over part of Zone 1 and the gas extracted via these wells is burnt via a flare.
- **Zone 2** is located in the central part of the site and in the application documentation is sub divided into two sub zones, 2A and 2B. The general characteristic of the zone is a thick layer of concrete slab which covers much of this part of the site reflecting the fact that it was the main location on site for the sorting and processing of recyclable materials. This area is also characterised by vertical concrete structures which were connected with the sorting and storage of waste materials during the recycling process. Waste material comprising primarily CDW is located beneath the concrete slab. The total area of zones 2A and 2B is stated to be 83,000 sq. metres and the volume of waste material estimated to be located within the zone is 660,000

cubic metres. As part of the works undertaken by the EPA and KCC since taking over control of the site significant demolitions of structures has occurred within this zone however a significant extent of concrete storage areas remain in this area.

- **Zone 3** is located to the immediate south of Zone 2 and comprises a lined cell with an engineered liner to the base and sides. When control of the site was taken by KCC and the EPA a temporary cap was placed on the lined cell and measures put in place to extract gas and to pump leachate from the cell. Since taking over the site additional material collected from other parts of the site have also been deposited within the lined cell. Leachate extracted from the cell is currently stored in two tankers located at the south west corner of the cell and is collected and transported by road for treatment and disposal at the Ringsend waste water treatment plant. During the initial site clean up material stockpiled on the site and located on the hard standings / concrete slab areas in Zone 2 was deposited in the lined cell. The stated area of this zone is 24,000 sq. metres and it is estimated to contain c.193,000 cubic metres of waste material.
- **Zone 4** is located at the southern end of the site and comprises large stockpiles of waste material which were deposited on site in the later stages of its operation. This part of the site is also characterised by surface water lagoons and other infrastructure relating to the previous operation of the site. The total area of Zone 4 is stated to be 45,000 sq. metres and the volume of waste material located within the zone is estimated to be approximately 227,000 cubic metres. Wastes in this area are primarily inert construction and demolition material.

2.5. There are a number of sensitive receptors in the general vicinity of the site including residential land uses. These main receptors located within 1km of the site are identified on Figure 3.4 submitted with the EIAR and the subsequent chapters of the EIAR refer to the receptors identified in Figure 3.4. To the north east of the site is located Kerdiffstown House which is a recreational facility operated by the Society of St Vincent de Paul and used for short term holidays and outings. The house is currently not in operation and was not in use over the most recent summer period (2017). The facility at Kerdiffstown House includes a main house which is a

protected structure and a number of outbuildings. Immediately to the west and south west of the site on the L2005 are located a number of individual residential properties with those on the western side of the road not connected to the site. The three dwellings located on the eastern side of the road adjoining the site were directly connected with the site, and are owned by the most recent operator of the facility. From objections received to the proposed CPO and an inspection of the area it is evident that these three residential properties are currently occupied.

- 2.6. Other locations of note in close proximity to the site include caravan and car repair businesses located to the immediate south of the site on the eastern side of the L2005 and a construction company based on lands surrounded on two sides by the site and to the west by the L2005.
- 2.7. Further away from the site, the Palmerstown House estate is located to the east of Kerdiffstown House. This estate comprises a hotel with leisure facilities and a golf course. There is a further golf course located to the north west of the site, Naas Golf Club. The town centre of Naas is located approximately 3 km from the site however predominately commercial premises in the vicinity of the Maudlings interchange (junction 9) are located within c.600 metres of the site.
- 2.8. The overall area of the site is approximately 30 ha.

3.0 Proposed Development

The proposed development comprises the remediation of the site through the re-profiling of the site and the installation of measures to control emissions from the waste material present on the site. The measures proposed include the installation of a comprehensive landfill gas management system and the capping of the existing waste material across the site to limit the infiltration of rainwater and minimise the generation of leachate. The nature and design of this capping system is proposed to vary across the site reflecting the nature of the waste material across the site. The development then proposes the development of a range of amenity features on the re profiled site including walking trails and three multi use playing pitches. As part of the proposed development revisions to the road access to the site including the

widening of part of the L2005, the creation of a new vehicular access and a cycle connection to the site are proposed.

In the application documentation, including the submitted EIAR, the development is broken down into a total of eight phases which are intended to take approximately 4 years to complete. The main elements of the proposed development in each of the eight phases can be summarised as follows:

Phase 1

- Demolition of the existing residential properties located on the eastern side of the L2005. Construction of new site entrance including roundabout at entrance from the L2005 and the realignment of the L2005 Kerdiffstown Road between the roundabout to the south of the site and the new site entrance. Road works to include the provision of a new footpath and cycleway to the new realigned section of L2005.
- The provision of fencing to the site and securing the site.
- The installation of new foul drainage and leachate connection pipelines between the site and Johnstown Pumping station. These connections would run to the south of the site and involve a temporary CPO and wayleave for maintenance across third party lands.
- The construction of a new landfill infrastructure compound located at the south west corner of the site to house the infrastructure for the foul drainage and leachate collection systems as well as the landfill gas flares. This area would be secured such that there would be no public access during the operational phase of the site.
- The existing vertical concrete structures located in Zones 2 and 4 will be demolished with the surface concrete areas retained. The material demolished will be crushed and screened on site at a location in Zone 2B.
- The existing stockpiles of material in Zone 4 will be removed and other areas in zone 4 at the southern end of the site re profiled. Some of this material is to be moved to Zone 1 / 1A where it will be used to re profile the existing waste mass and other material to be deposited in the existing lined cell. .

- The creation of an area in existing Zone 2A where imported material to be used for re profiling and capping can be stockpiled.

Phase 2

- Further re profiling of slopes in Zone 4 at the southern end of the site and the transfer of material to Zone 3 (the lined cell).
- Further gas wells installed in Zone 1A.

Phase 3

- Construction of temporary surface water retention pond in Zone 4.
- Installation of capping system in Zones 1 and 3.
- Installation of new or supplementary gas wells to Zones 1 and 3.
- Placement of low permeability capping material in Zone 4.

Phase 4

- Construction of surface water retention pond in Zone 1A.
- Ongoing re profiling and capping works to Zone 1.
- Ongoing works to install gas wells in Zone 1.

Phase 5

- Decommission and removal of existing flare stack in Zone 1 and commissioning of new stack in the new landfill infrastructure compound.
- Continued re profiling and capping works and installation of gas extraction wells in Zone 1.
- Re profiling of wastes and installation of capping system in Zones 2A and 2B.
- Repair of concrete slab structures in Zones 2B.
- Removal of existing perimeter screening bund in Zone 1.

Phase 6

- Continued installation of gas wells and infrastructure and re profiling of ground and installation of capping system in Zone 1.
- Re profiling and installation of a capping system in Zones 2A and 2B.
- Repair of concrete hard standings in Zone 2A and installation of gas venting measures in same zone.

Phase 7

- Commissioning of surface water soakway in Zone 1A.
- Removal of all stock piled materials from Zones 2A and 2B.
- Commissioning of surface water management ponds in Zone 4.

Phase 8

- Installation of the proposed three multi use sports pitches.
- Construction of building associated with the sports facilities containing changing rooms, toilets and storage areas.
- Construction of children's playground.
- Construction of car parking areas comprising main parking area and overflow car park.
- Construction of informal trails and viewpoint areas.

In terms of **overall heights and ground levels** the submitted Planning Report sets out at section 3.4 what is considered to be the consenting baseline and at 4.2 the landform variations from previously approved remediation plans, namely that approved under Ref. KCC Ref. 03/2355 / ABP Ref. PL09.206726. As set out at section 3.4 of the Planning Report, the height of the landform existing on the site in

2011 at the time that it was taken over by the EPA was such that at a number of locations it was in excess of the maximum heights permitted as per the Land Restoration Project for the site permitted under KCC Ref. 97/871 / ABP Ref. PL.09.105894, amended by KCC Ref. 03/2355 / ABP PL.09.206726. A summary of these permissions is given in section 4.0 below. The most notable location where there was an exceedance of the previously permitted height was in a relatively small (c. 1.28 ha.) section of Zone 1 at the northern end of the site where the height was surveyed as being 113.5 metres OD (Malin) relative to a permitted maximum ground level post remediation of 110.7 metres OD (Malin). The report notes that the options available to the applicants were either compliance with previously permitted reinstatement levels or alternatively, to seek a new approval for works that involved a revised maximum height.

As set out at section 3.4.1 of the Planning Report, works required to reduce the height of the overall waste mass on site so as to comply with the previously permitted Land Restoration Project has been estimated to require the removal of c.18,790 cubic metres of odorous waste material. The requirements of s.56 of the Waste Management Act require that all measures required to prevent or limit environmental pollution should be undertaken and it was therefore determined by the applicants that the most appropriate course of action was the retention of the waste material in situ with the implementation of odour and gas management measures across part of Zone 1.

Section 4.2 and specifically Tables 4.2 and 4.3 of the Planning Report gives a comparison of the landform proposed on foot of the application relative to the contained in the previously approved remediation plan (as per KCC Ref. 03/2355; ABP Ref. PL09.206726). In summary, the previously permitted reinstatement plan, while having a lower overall height than the current proposal at 115.15 metres OD (Malin) pre settlement relative to a permitted maximum of 110.7 metres OD (Malin), was such that the majority of the site would be above the 98.7 metres OD (Malin) level. In contrast, the proposed development only exceeds this level in two locations, these being part of Zone 1 and Zone 3.

4.0 Planning History

The following planning and licencing history is of relevance to the proposed development:

Planning Applications for Residential Development

Kildare County Council Ref. 97/42 - Permission granted by the Planning Authority to develop a residential unit on a site located at the south west end of the current application site and within the area covered by the application boundary. This site was originally developed independently of the landfill operation, however it was subsequently taken into the ownership / control of Neiphin Trading Limited. This dwelling is one of the properties which is the subject of the CPO application under Ref. 09.CH3351.

Kildare County Council Ref. 98/754 – Permission granted by the Planning Authority for modifications to the residential dwelling permitted under Ref. 97/42 (above).

Kildare County Council Ref. 01/133 - Permission granted by the Planning authority for 2 new dwellings and effluent treatment systems on lands located at the south west of the current application site and within the area included by the red line boundary of the current site. The site is to the south east of the dwelling graded under ref. 98/754 and like that site this dwelling was initially in separate ownership and developed independently of the waste facility but was subsequently under the control / ownership of Neiphin Trading Limited. These dwellings are both proposed for acquisition under the CPO application Ref. 09.CH3351.

Planning Applications for Commercial / Waste Disposal Development

Kildare County Council 81/336 – Permission granted by the Planning Authority to change use of existing sand and gravel pit to a controlled tip for the disposal of commercial and trade refuse. This is the first recorded grant of permission for the disposal of waste material at the site.

Kildare County Council Ref. 97/871 / ABP Ref. PL.09.105894: Permission granted by the Planning Authority and decision upheld on appeal for development comprising a number of elements comprising

- The retention and completion of landfilling at the site with material sourced from construction and demolition sites. The landfilling proposed for retention was over a stated area of 5.7 ha.
- The deposition of construction and demolition material over a new extended area of c.8.7 ha. From the extract of the site plan submitted in the Planning Report with the current application this extended area would appear to approximately conform to Zone 1/1A in the current application.
- The retention of a wheel wash and single storey office building (18 sq. metres) and the conversion of the gatekeeper's office to include a tea room and toilet accommodation.
- The installation of a septic tank.
- The construction of a tarmacadam area of c.850 sq. metres.

On foot of the grant of permission issued by the Board permission was granted for an 8 year period. The permission was the first on the site to include specific provision for landscaping and site restoration and is referred to in documentation and in the current planning application as '*the land restoration project*'.

Kildare County Council Ref. 01/1364; ABP Ref. PL.09.1288962 - Permission granted by the Planning Authority and decision upheld on appeal for the modification of the existing permission granted in 1997 (97/871 / ABP Ref. PL.09.105894) to allow for the development of an additional building for waste recycling. Permission was granted to modify the 1997 permission to allow for the erection of a building (c. 25m wide, 50m long and 14.5 m. high) for use for waste recycling with an associated area of hardstanding (c.1,400 sq. m.) on 1.8 Ha site, on a south-eastern portion of the overall site. This grant of permission was the subject of a number of notable conditions / restrictions including the following:

- Condition No.5 restricts the use of the area as a C&D recycling area for a period of 5 years.
- Condition No.7 required the submission of details for the berming of all site boundaries and a landscaping / planting scheme for the site.

- Condition No.9 required that an aftercare management plan including a restoration plan, proposals for environmental monitoring and maintenance would be submitted for written agreement.

Kildare County Council Ref. 01/2315 – Permission granted by the Planning Authority for the modification of the existing permission (97/ 871) to allow for the excavation, storage and processing of waste materials on the site and other ancillary development including the use of mobile recycling plant on the site. The excavation and recovery operations specifically relate to the excavation of a maximum of 220,000 tonnes per annum of C&D waste from within the site. This would then be processed along with 100,000 tonnes per annum of imported C&D waste at a mobile recycling plant. Both of the waste streams – some of the recyclable materials and all of the residual waste would thereafter be used in the implementation of the previously approved ‘*Land Restoration Project*’. Other recyclable materials and top soils would be exported from the site. Condition No.2 attached to the permission restricted the extent of activity to areas A1, A2 and A3 as well as Area C, restricts permission to a period of 10 years and requires that the remediation in accordance with the land restoration project would be completed within that (10 year) timeframe.

Kildare County Council Ref. 03/2355 / ABP PL.09.206726 – Permission granted by the Planning Authority and by the Board on appeal for variation of the existing permission to extend the facility with the development of a further 2.5 ha. to accommodate the construction of an engineered facility for the recovery and disposal of waste and to complete restoration within a 10 year time frame. The extended area the subject of this permission was located to the north of the dwelling houses which are now proposed for compulsory acquisition and demolition. The decision to grant permission issued by An Bord Pleanála, was subject to 7 conditions, the most notable of which are:

Condition No. 2 requires that the conditions of planning Reg. Ref. 01/2315 shall apply to the development except where modified by this permission.

Condition No. 3 requires that prior to commencement of any other phase of development, all landscaping and screening shall be completed to the satisfaction of the planning authority.

Condition No. 5 requires that the use of the dwelling houses on site would be for residential purposes in association with the operation of the waste management facility.

As part of this application modifications were made (and approved), to the final restoration Plan for the site – the “Land Restoration Project”. Therefore, the drawings and documents submitted at that time formed the approved final restoration strategy for the site. Restoration was proposed to be phased, leading to the eventual removal of buildings and the capping of the site with ‘restoration layers’ comprising topsoil and subsoil to a depth of 1m which would be seeded with grasses.

Waste Licences

- EPA Ref. W0047-01 – Waste licence issued by the EPA in 2003 for the operation of the Kerdiffstown landfill facility. Licence was granted to Neiphin Trading Limited.
- EPA Ref. W0047-02 – Revision to the above licence granted by the EPA to Neiphin Trading Limited in 2006.

5.0 Policy Context

5.1. Development Plan

The site is located within the area covered by the ***Kildare County Development Plan, 2017-2023***. The site is located outside of the boundary of the Naas Town Plan. A Village Plan for Johnstown forms part of the County Development Plan (see Volume 2). The application site is outside of the boundary of the village plan, however the plan boundary does extend to the north of the N7 to include the site of the Johnstown Garden Centre located to the south east of the site. The boundary with the Large Growth Town of Naas is located a short distance to the south west of the site. The site of the proposed development is therefore located outside of any

identified settlement and is not on lands that are specifically zoned for any particular purpose.

Section 6.1 of the submitted Planning Report sets out in significant detail the policies and objectives of the County Plan that may be relevant to the proposed development and provides a response as to how the proposed development meets these plan provisions. The following sets out the most significant policies and objectives arising.

There is a specific policy contained in the plan relating to the site and to the proposed development which is the subject of this application. This policy – **Policy WM16** states that *‘the Council will work in conjunction with government departments and Agencies and all other relevant stakeholders to remediate the Kerdiffstown Landfill in a socially, economically and environmentally sustainable manner that will both manage and reduce environmental risk and accommodate an appropriate end-use that is compatible with the established character of the area.’*

Regarding transport, **Policies WC1** and **WC4** seek to promote sustainable means of travel and to ensure that all new roads and cycle routes comply with the national cycle manual.

Regarding Waste Management and waste management infrastructure, section 7.6.6 of the plan contains a number of relevant policies.

Policy WS11 states that it is policy *‘to protect groundwater in the county from risk of pollution and ensure the implementation of the Kildare Groundwater Protection Scheme and other relevant documents and legislation as may be introduced’.*

Policy SW1 states that it is policy *‘to manage, protect and enhance surface water quality to meet the requirements of the EU Water Framework Directive’.*

Chapters 10 and 11 relate to rural, social, community and cultural development.

Policy RLE8 seeks *‘the consideration of other appropriate land uses in the rural countryside apart from rural housing as provided for in Chapter 4. Where an area is not within an identifiable settlement and is not otherwise zoned as part of this plan or any of the town development plans, the use of such land shall be deemed to be primarily agricultural.’*

Objective LEO1 aims ‘to liaise with community and economic stakeholders to promote sustainable development of economic and community services and infrastructure.....’

Objective SN01 aims ‘to develop open spaces throughout the county which will encourage a range of recreational and amenity activities that will cater for both active and passive recreation’.

Policy GI1 of the plan states that it is policy ‘to facilitate and promote the development of green infrastructure which allows for the development of active and passive recreation and the protection and enhancement of heritage and landscape features’.

Policies GI3 and GI4 seek to promote the provision of a network of high quality multi-functional open spaces and parks.

Policy GI17 requires the submission of an Ecological Impact Assessment where considered necessary by the PA and where necessary an appropriate assessment including bat and otter surveys for developments along river, stream and canal banks.

Policy LA2 states that it is policy ‘to protect and enhance the county’s landscape by ensuring that development retains, protects and where necessary enhances the appearance and character of the existing local landscape’.

Chapter 14 of the plan relates to **landscape character and sensitivity**. The site is located in an area (Northern Lowlands Landscape Character Area) that is categorised as Class 1 (low sensitivity).

5.2. Other Policy Documents

The **Eastern – Midlands Regional Waste Management Plan (2015-2021)** includes the administrative area of Kildare. The plan is one of three for the country and the objective of these plans is to set a framework for the prevention and management of wastes for a defined area.

Section 13.3 of the Plan relates to historic sites and legacy issues and states that subject to the availability of funding, local authorities are committed to targeting and

addressing the highest risk sites as soon as possible. **Policy G2** of the Plan states that it will be policy *‘to roll out the plan for remediating historic closed landfills prioritising actions to those sites which are the highest risk to the environment for human health’*.

Policy E11 also relates to closed sites and states that it is policy to *‘support the consideration of alternative future land uses at authorised inactive landfills....subject to amendments to existing approvals being put in place.....’*. Potential alternative uses listed include the *‘development of public and recreational amenities’*.

Section 16.4.4 of the Plan relates to backfilling. **Policy E13** states that it is policy that *‘Future authorisations by the local authorities, the EPA and An Bord Pleanala must take account of the scale and availability of existing back filling capacity’*.

Policy E14 states that local authorities will coordinate authorisations for the future back filling of sites with a preference for larger sites.

5.3. Natural Heritage Designations

There are no Natura 2000 sites located within or in close proximity to the application site. The closest European site to the proposed development is Red Bog SAC which is located c. 7.5 km to the south east of the site and on the opposite side of the N7. Three other sites are located c. 10 km of the site, these being Nallynaferagh Bog SAC / Ballynafagh Lake SAC to the north west of the site, Poulaphouca Reservoir SPA to the south east and Mouds Bog SAC to the west of the site.

The applicant has undertaken a Screening for Appropriate Assessment that is contained as Appendix A11.10 of the submitted EIAR. The location of the sites referred to in the screening assessment is indicated at Figure 11.3 contained in Volume 3 of the submitted EIAR. This screening assessment concludes that having regard to the conservation objectives of the European sites and on the basis of there not being any potential pathway between pollution sources on the site and receptors connected with the European sites, the proposed development would not be likely to have significant effects on the European sites.

6.0 Submissions Received

There are no third party submissions recorded on the application file (Ref. 07.PA0041) relating specifically to the application for approval. There are, however, a number of issues raised in submissions on the CPO application that are of relevance to the subject application for approval. In addition, on foot of the circulation by the applicant of details of the application to a number of prescribed bodies, comments on the proposed development were received by the Board from a number of prescribed bodies. The content of these submissions from third parties and prescribed bodies as they relate to the proposed development are summarised below:

6.1. Objections to the CPO

The following is a summary of the main issues raised in the objections to the proposed CPO:

- Concerns that the development will result in the loss of long standing family homes.
- Concerns regarding the impact of the proposed development and CPO in terms of disturbance, inconvenience and expense.
- That no integrated assessment of the impact of the development on the occupants of the properties proposed for demolition has been undertaken and that the proposal is contrary to domestic and European law including Articles 40.3, 43 and 405 of the Constitution.
- That the connections between the occupants and the local community have not been properly considered.
- That there has been no or inadequate consideration of the basis for the proposed acquisition of the property rights of the occupants of the properties proposed for demolition.
- That all relevant matters have not been considered by the acquiring authority prior to making the CPO application and the determination of the extent of lands proposed for acquisition.

6.2. Environmental and Other Objections

6.1.1 The following is a summary of the main issues raised in third party submissions received by the Board as they relate to the application for approval of the remediation project.

- That the proposed development will cause serious disturbance to residents of dwellings in close proximity to the site.
- That the residents of the properties proposed for demolition have become an integral part of the local community and that the effect of loss of these properties on the occupants and at a community level has not been considered in the application documentation.
- That the submitted EIAR is flawed and is not in accordance with the requirements of the amended EIA Directive.
- Inadequate assessment / information on adverse impacts and appropriate mitigation on a range of areas including
 - Archaeology, cultural heritage and architectural heritage during the remediation stage and the operational phase of the development.
 - Protected species and habitats during both the remediation and operational phases of the development.
 - The application lands, neighbouring lands, watercourses and environments arising from works undertaken during the remediation stage of the proposed development.
 - Human health during the remediation phase of the development which may result in odours,
 - Failure to consider the social and / or economic impacts on the population of the proposed development,
- Inadequate assessment / information provided with regard to the range of alternatives considered by the developer.
- Failure to have due regard to the requirements of the 'Water Policy Directive' (Directive 2000/60/EC), the Waste Framework Directive (Directive

2008/98/EC) and the IPPC Directive (Directive 2010/75/EU) and a failure to have due regard to the requirements under the EIA Directive that there be coordinated and joint procedures put in place to meet the requirements of these directives.

- That the proposed development cannot proceed as the site does not comply with the requirements of the Landfill Directive (1999/31/EC) and specifically Articles 7, 8, 9, 13 and 14 and Annexes I, II, and III of this directive.
- That the remediation plan which is available via the Kildare County Council Website, does not include proposals to achieve compliance with the directive. The EPA is therefore precluded from granting the site a waste licence under existing legislation, specifically the Waste Management Act, 1996 and the Waste management Licencing Regulations, 2004 (SI No.395 of 2004). The absence of such a Waste Licence means that the remediation project cannot proceed.
- That no provision for the required budget has been provided for in any of the proposals, and only a limited budget relating to the capping of the site against the requirements of the landfill Directive has been provided for.
- That the requirement that sites such as Kerdiffstown comply with the above legislation has been confirmed by Mr Justice Richard Humphries in a judgement of the High Court in the Whitestown case, 2005 No.89SP.
- Given the illegal nature of the proposals, it would not be appropriate that a State Body such as An Bord Pleanala would act to facilitate such a development.
- That the waste facility which operated on the site was wrongfully and unlawfully closed and driven out of business by the actions of the Environmental Protection Agency. A detailed list of allegedly unlawful actions is submitted as well as supporting documentation and correspondence.
- Contended that the Board should defer making a decision on this application for approval and the associated application for CPO given that there are a number of ongoing criminal and civil proceedings related to the site.

- In view of the allegations regarding the actions of the EPA and the fact that the current chair of An Bord Pleanála was the Director General of the EPA at the relevant time, it is requested that Dr Kelly would recuse herself from consideration of this case.

6.3. Submissions by Prescribed Bodies

The following is a summary of the main issues raised in the submissions received from Prescribed Bodies.

Irish Water (IW)

- That IW has raised concerns previously regarding potential flooding at the site and that to address this issue IW recommends the installation of a foul drainage and leachate pipes with automatic control systems.
- That a site investigation be undertaken prior to any works and that proposed diversions of water services be submitted to IW for agreement.

Inland Fisheries Ireland (IFI)

That the Rathmore Stream and R. Morell are very important salmonid and trout fisheries and tributaries support crayfish and lamprey. Only clean uncontaminated water should be discharged from the site to the local river network.

- Directional drilling under the Morell River shall be in accordance with the mitigation set out in the details sent to IFI in March 2017. A detailed method statement is to be submitted to IFI.
- Essential that foul and surface water receiving infrastructure at all levels has adequate capacity to accept predicted discharges from the site.
- That provision, monitoring and maintenance of leachate infrastructure should be controlled by condition as set out in the Leachate Management Plan.
- BAT should be employed in the protection of ground and surface waters during the remediation phase.

6.3 Correspondence from the Environmental Protection Agency

The proposed development relates to an activity for which an Industrial Emissions Activity Licence (IEAL) is required to be obtained from the Environmental Protection Agency (EPA). The EPA were informed of the application and of the oral hearing by An Bord Pleanála and were consulted by the Board in accordance with the provisions of s.175(10) of the Planning and Development Act, namely cases where there is a requirement for planning permission and a licence is also required from the EPA. In this regard, the Board wrote to the EPA on 3rd November, 2017 under the provisions of s.175(10) of the Planning and Development Act 2000 (as amended) seeking the opinions of the Agency seeking the following:

- General comments on the adequacy of the baseline methodology employed and any assumptions used to inform the proposed assessment of air quality, odour and ground and surface water hydrology contained in the submitted EIAR.
- Any general comments the Agency wish to make regarding the mitigation measures proposed in the submitted EIAR.

A response to this request was received by the Board on 17th November, 2017. The following is a summary of the contents of this response:

- That an IEAL application was received by the Agency on 11th September, 2017 for an activity under Class 11.5 of the Regulations (Landfills receiving more than 10 tonnes of waste per day or with a total capacity exceeding 25,000 tonnes other than landfills of inert waste) and that this application was accompanied by an EIAR which appears to be the same as that submitted with the application for approval of the remediation project. (Note that while the proposed project would not accept waste for disposal in the normal sense, materials to be imported onto the site for the capping and other engineering works proposed may be classed as waste depending on their origin and acceptance of such materials would have to be subject to a licence.
- That the Board will be requested to submit documentation relating to the EIA undertaken.

- That the licence application is currently under assessment by the Agency. The agency cannot issue a determination until a planning decision has been made.
- Where the Agency considers that the proposed activity cannot be adequately regulated under a licence then it cannot grant a licence. Where a licence is granted it will include conditions requiring that appropriate national and EU standards are applied and that BAT will be used.

7.0 Overview of Oral Hearing

A joint oral hearing into the proposed remediation project on the landfill which is the subject of this application for approval and the application for compulsory purchase of lands connected with the project was held on 5th December in Lawlors Hotel, Naas, Co. Kildare.

A full list of written submissions made to the hearing is given at Appendix A to this report. The following is a brief summary of the proceedings of the hearing and the parties who presented to the hearing. A copy of the Order of Proceedings circulated to parties in advance of the hearing is attached at Appendix B.

Proceedings were initially adjourned due to the absence of any representative on behalf of Dean Waste Co. Ltd. Initial information received was that this party would not be represented and the hearing opened on this basis. Subsequent communication with the Board stated that Dean Waste Co. Ltd would be represented later in the hearing and this occurred after lunch.

The hearing opened at 11.37AM with Mr Dermot Flanagan BL representing the applicants (Kildare County Council) introducing a number of briefs of evidence to the hearing. A full list of the written submissions made to the hearing is presented at Appendix A of this report and copies of the submissions received are on the approval file (09.JA0041). The submissions made on behalf of the applicant follow a consistent format with an overview of the relevant topic and how it is addressed in the application followed by a response to the submissions received. The following issues are specifically noted from the submissions made:

Mr Colin Dunsmuir (Document No.1 in Appendix A) presented evidence relating to the engineering need for the development. Responding to the contention of David Turner Solicitors on behalf of Dean Waste and Others that the development cannot proceed as it does not comply with the requirements of the Landfill Directive, it is stated that the capping proposals for the site comply with the recommendation of the Landfill Directive and with the EPA Landfill Manuals Site Design Guidance and that the remediation proposals meet the overall aim of the Directive. Articles and Annexes specifically referenced in the submission are not considered relevant as they relate to the disposal of waste which is not proposed in this instance.

Responding to concerns regarding potential flooding from storm conditions, **Mr Patrick Higgins and Mr Mark Burston** (Hydrology, hydrogeology and soils – Document No.2) stated that the design accords with measures agreed with Irish Water and that both the leachate and foul drainage pipeline are to be fitted with automatic control systems in the event of a failure at the treatment plant.

Compliance with the Water Framework Directive is detailed at section 13.9.6 of the EIAR. The rationale for not constructing a cut off barrier between the site and the River Morell was detailed.

Regarding odours, **Ms. Imelda Shanahan** (Document No.3) set out how odours were to be controlled by implementation of an odour management plan which would incorporate the mitigation measures set out at section 7.5 of the EIAR.

The evidence of **Mr Richard Barker** (Document No.6) sets out the assessment methodology used in the landscape and visual impact assessment and notes specifically the location of the site at a transition between demesne landscapes and a peri urban context to the south west. On maturation of planting for a period of seven years no material visual impact is predicted.

Regarding noise and vibration, **Mr Tom Ryan** (document No.8) set out the assessment methodology used and relevant noise criteria which provided for remediation phase limits of 55dB LAeq for onsite generated noise, 70 dB LAeq for offsite. Operational phase noise would be limited by the conditions of Industrial Activity Emission Licence which would be 55dB LAeq.

Regarding Human Health, **Dr Martin Hogan** (document No.11) set out how the approach followed in the EIAR was one of health based standards whereby human

health was assessed having regard to the assessments undertaken for other relevant environmental factors. Subject to health based standards (noise, air quality etc.) not being exceeded it could therefore be assumed that there will not be deleterious effects on health. Submitted that this approach is consistent with the latest EPA guidance regarding health assessment in EIA.

Mr Flanagan for the applicant then made a number of points to the hearing which included reference to the screening for appropriate assessment and that requirement for a Stage 2 assessment did not arise. Regarding EIA, Mr Flanagan highlighted the outcome of the Kelly case and that the fact that there may be some adverse impacts does not preclude a grant of permission. He also made reference to the An Taisce V UK Secretary of State case and that assessment should be undertaken on a real rather than perceived risk basis with information relating to the specific site and not any other. In this case it is contended that there is a very significant level of information collected that has informed the design of the project and the option for remediation chosen. Mr Flanagan also made a number of points to the hearing regarding the proposed CPO and the relevant tests to be applied. Regarding need, it is stated that this has been addressed in the Planning Report and that there is a specific policy (Policy WM16) in the Kildare County Development Plan. He concluded that the need to remediate the site is compelling and that there is a clear public benefit to the proposed scheme. Also contended that the CPO process is such that the UN Convention on Human Rights has been upheld.

In **cross questioning, Mr Turner** for the objectors Dean Waste Ltd and Others asked a number of questions regarding the potential for environmental pollution if the site is disturbed and the impact of the existing site on the environment. He also questioned whether there should be a liner and made the point that the former owner has told him that there is no hazardous material on the site. In response, representatives of the applicant agreed that there was little environmental impact beyond the site boundary but that the proposed measures would reduce water infiltration into the waste and mean that gas and leachate can be extracted. Works would also result in a usable landform being created.

In **concluding statements, Mr Turner** reiterated that the site is not in compliance with the landfill directive. Stated that owner had invested €200 million plus in developing the site and that nothing on site is hazardous. Stated that actions of the

EPA were unlawful and noted that no details of the stabilisation works undertaken to date have been presented. If the site is to be a park then it needs to be safe and to achieve this the waste material needs to be removed and a liner installed.

Mr Flanagan concluded by noting that no clear contrary evidence presented that removing the material is better environmental option than retaining it. The chosen option is the optimum solution to contain and manage environmental risks and it is requested that approval is granted and that the CPO sought is confirmed.

8.0 Assessment

The following is a summary of the main issues considered of relevance to the assessment of this application for approval and associated consideration of the objections to the compulsory acquisition notices served:

- Legal and Procedural Issues (Including Relationship Between Planning and Licencing Applications)
- Planning Assessment
- CPO Issues

These sections should be read in conjunction with Section 9.0 of this report relating to Environmental Impact Assessment and Section 10.0 relating to Appropriate Assessment.

While environmental issues are referenced in this section, the bulk of the assessment of environmental effects is provided under the heading of EIA (Section 9.0) with cross referencing provided to the relevant section of the EIA.

8.1. Legal and Procedural Issues

Allegations of Unlawful Actions by EPA and Potential Conflict of Interest

- 8.1.1. One of the objections received (that submitted by David M. Turner Solicitors on behalf of Dean Waste Co. Ltd. and others) sets out a number of allegations relating to the period prior to the taking over of the site by the Environmental Protection Agency. Specifically, it is contended that the Agency acted unlawfully and in a manner that forced the previous operator of the site out of business. A number of detailed allegations regarding the actions of the Agency are made and supporting documents in the form of correspondence and affidavits have been submitted. This objection also requests that the chairperson of the Board, Dr. Mary Kelly, would recuse herself from consideration of the case on the grounds that she was the DG of the EPA during the period when control of the site was taken over by the EPA. Reference is also made to the fact that the allegations relating to the vacation of the site by the former operator and the actions of the EPA are the subject of ongoing court proceedings. On this basis, the submission made on behalf of Dean Waste Ltd and others contends that the Board should defer making a decision on the application for approval and the associated CPO application.
- 8.1.2. Firstly, with regard to the request that Dr Kelly excuse herself from consideration of the subject applications, this grounds of objection is included in the assessment to ensure that it is brought to the attention of the Board. The composition of the Board and the process of determination of the case are solely a matter for the Board and its members and it is not appropriate to make further comment on this issue in this assessment.
- 8.1.3. Regarding the other issues relating to ***allegations of unlawful activities by the EPA*** and the request that the Board would defer making a determination on the case I would highlight the following. Firstly, the exact nature of the ongoing legal proceedings referred to by the objectors are not available, however no information relating to these proceedings has been put forward to indicate that it is not appropriate for the Board to proceed with the determination of the applications before it. Specifically there is no injunction or other legal restriction evident that would restrict the determination of the cases by the Board. In addition, the

applications as presented are in my opinion complete and valid and there is no clear basis under which their consideration by the Board should be deferred.

- 8.1.4. Secondly, the issues raised regarding the actions of the EPA are not, in my opinion matters on which the Board can make determinations given its statutory remit. From the information presented they appear to me to be allegations of wrongdoing which might be more appropriately determined by a court of law and not by An Bord Pleanala. In my opinion the matters raised regarding the period prior to the taking control of the site by the EPA and the actions of the agency and its staff are such that they are outside of the Board's jurisdiction in this case which is to determine the planning merits of the application for the approval of the Remediation Project and to confirm or annul the associated CPO. Issues relating to the actions of the EPA and alleged unlawful activity as set out in Grounds 4 of the objection submitted by David M Turner Solicitors are not in my opinion issues that are directly relevant to the current application for the remediation project and the associated CPO. For these reasons, the specific issues relating to the actions of the EPA in the period prior to the taking over the site are not addressed further in this assessment and it is considered appropriate to proceed to the assessment of the applications in front of the Board.

Submissions Regarding Compatibility with Landfill Directive and Precedent Created by Whitestown Case

- 8.1.5. The submission received from David M. Turner Solicitors on behalf of Dean Waste Ltd. and Others contends at Grounds No.1 that the proposed development should not be permitted on the basis that the site does not comply with the requirements of the Landfill Directive (Directive 1999/31/EC) and specifically Arts 7, 8, 9, 13, and 14 as well as Annexes I, II and III of that directive. Grounds No.1 also makes reference to the fact that '*the remediation plan which is available for inspection at the Kildare County Council website*' does not make any provision for achieving compliance with the Directive and that therefore the EPA is therefore precluded from granting a waste licence for the site. It is further contended that in the absence of a waste licence, no remediation works can be undertaken and therefore the proposed CPO has no purpose. It is contended that the requirement that sites such as the Kerdiffstown site comply with the Waste Management Acts and Regulations has been confirmed by a recent High Court judgement in the Whitestown case.

8.1.6. There are a number of aspects of the wording of grounds No.1 that are not in my opinion clear and the submissions of Mr Turner to the oral hearing, despite a request for further expansion, did not result in any further clarity. Specifically, it would appear that the remediation plan referred to is effectively the proposed remediation project the subject of the current application rather than any previously agreed remediation plan for the site though this is not definitively stated. There is reference to a waste licence in Grounds No.1 when what is required and been sought by the applicant from the EPA is an Industrial Emissions Activity Licence. Mr Turner made a number of references during the course of his submissions to the oral hearing to the effect that the site should be lined and that compliance with the Landfill Directive required that the site would be lined. No further detail additional to what is contained in the written objection was however provided at the hearing to support this contention. The Articles specifically referenced in the objection relate to the procedures surrounding an application for a permit (Art. 7), Conditions to be attached to a permit (Art 8), content of permit (Art. 9, closure and aftercare (Art. 13) and existing sites (Art. 14). From a review of the text of these articles, it is not apparent to me how there is a requirement that as a precondition to the undertaking of remediation works that the site would be lined. I note however that there is reference in the Annexes and specifically Annex I to the directive to requirements in respect of water control and leachate management and the protection of soil and water and there is specific reference in 3.1 of Annex I to a bottom liner. I deal with the merits of retention of material in situ rather than removal and installation of a liner elsewhere in this report.

8.1.7. The historical situation in the case of the application site is that the site was permitted to be used as a landfill under permissions that predate the 1999 Land Directive. These permissions are Kildare County Council Ref. 81/336 under which permission was granted by the Planning Authority for the change use of existing sand and gravel pit to a controlled tip for the disposal of commercial and trade refuse and Kildare County Council Ref. 97/871 / ABP Ref. PL.09.105894 under which permission was granted for, inter alia, the retention and completion of landfilling and the deposition of construction and demolition waste on the site. Permission was granted in 2003 (Kildare County Council Ref. 03/2355 / ABP PL.09.206726) for variation of the existing permission to extend the facility with the development of a

further 2.5 ha. to accommodate the construction of an engineered facility for the recovery and disposal of waste. This extension was, however an engineered / lined extension and corresponds with the existing lined cell on the site in Zone 3. The requirements set out in the 1999 Landfill Directive cited by the objectors relate to new landfills and it is not clear to me how proposals for the remediation of the site, such as those included in the current application before the Board, where there is no additional waste material other than capping material being deposited on the site could require the retrofitting of a liner.

8.1.8. I note that in the submission of Mr Colin Dunsmuir to the oral hearing on the subject of Engineering Need, he briefly addressed the issue of compliance with the landfill directive raised in the Turner objection. In this submission, Mr Dunsmuir states that *'the capping proposals detailed in the EIAR comply with the recommendation of the Landfill Directive (1999/31/EC) and the EPA Landfill Manuals Design Guidance.'*

The submission goes on to quote the overall aim of the directive which is *'to prevent or reduce as far as possible negative effects on the environment in particular the pollution of surface water, groundwater, soil and air, and on the global environment, including the greenhouse effect, as well as any resulting risk to human health, from the landfilling of waste, during the whole life cycle of the landfill'*. It is submitted by Mr Dunsmuir that the remediation proposals at the Kerdiffstown site which are the subject of the current application meet this aim. As will be further detailed in the subsequent sections relating to Planning Assessment (8.2) and EIA (9.0) I would be in agreement with this statement.

8.1.9. Finally, as discussed above, the submission of David M. Turner Solicitors makes the case that a licence cannot be granted as it would be contrary to the provisions of the 1999 Landfill Directive and that therefore the remediation plan cannot be undertaken and there is no requirement for the CPO. The granting or otherwise of a licence is, however, a function of the EPA and, in accordance with section 87(1D)(d) of the EPA Act, it is required that the application for approval would be determined in advance of the application for a licence. It is therefore required that the Board would make a determination on this application for approval in advance of the determination of the licence application which it is contended by the objectors would be contrary to the Landfill Directive. It will be a matter for the EPA to further consider this issue as part of its determination of the submitted application for an Industrial Emissions Activity

Licence. In the event that a licence was not received from the EPA, any approval granted by the Board would clearly not be capable of implementation.

8.1.10. At the conclusion of Grounds No.1 of the objection from David M. Turner Solicitors there is reference to High Court case 2005 No.89SP, referred to as the 'Whitestown case'. Whitestown is the location of an unauthorised landfill site in County Wicklow and the parties in this case are Brownfield Restoration Limited and Wicklow County Council with the EPA as a notice party. On examination, it is apparent that the specific judgement referred to in the objection (No.89SP of 2005) is one of a list of several interconnected cases and that this judgement relates to one module of a series of related cases all of which are based around the activities at Whitestown. In the written submission made there is no specific section or paragraph of the No.89SP judgement that is specifically highlighted in support of the point made regarding non compliance with the landfill directive. At the hearing, the inspector asked Mr Turner if he wished to elaborate any further on the specific aspects of the Whitestown case which were considered relevant to the circumstances in the current cases, however he declined to make any additional comment. From a review of the available sources there is a very significant amount of material available in various judgements issued in relation to this case.

8.1.11. The basic circumstances of the Whitestown case are that illegal dumping occurred at the site between 1979 and 2001 when it was under the control of Wicklow County Council. Material deposited at the site comprised non inert and hazardous material in addition to other material. In 2002, on foot of a complaint, the EC issued a letter of complaint with the main concern relating to the proposed sealing of the site rather than remediation. The council sought to pursue third parties who had deposited material at the site (with the consent of the Council) and in 2006 the site was transferred to the ownership of Brownfield Restoration Limited. Brownfield obtained a licence from the EPA later in 2006 which required that all non inert wastes would be removed from the site to an approved recovery / disposal facility. In 2010 the Council made a decision to remediate the site itself and pursued an approach of retaining as much of the material on site as feasible. Judgements issued to date in the case include a determination that the councils remediation of the site was contrary to EU law as no liner was retrofitted to the site (see paragraph 59 of High Court Case Ref. 2008 56 SP). It is this latter issue which it would appear likely to

form the basis of the reference to the case by the objectors in the Kerdiffstown Case. As noted above, however the judgements on the Whitestown case are very extensive and I have attached available copies with this report. It is not however clear to me that I have access to all relevant information relating to these cases and, as highlighted above, no overview of the Whitestown case or highlighting of specific aspects of the case has been presented to the Board.

8.1.12. From my review of the Whitestown case it is also apparent that the circumstances of that case are significantly different to those that arise at Kerdiffstown in that there was no planning permission or licence issued for the initial dumping activity and also, contrary to the circumstances at Kerdiffstown, a significant element of the dumped material was non inert / hazardous waste. Finally, it is evident that the location of the site in the Whitestown case and its relationship to European sites is such that there are likely to be potential significant effects on the conservation objectives of a European site arising. Paragraph 59 of High Court case 56SP of 2008 (Brownfield Restoration Ireland Limited v Wicklow County Council, O'Reilly and Others) does state that a geo membrane or liner is considered to be required and that the development is in violation of EU law in this respect, (see copy of judgement attached with this report). Again however I am not clear that the circumstances of the Whitestown case are directly comparable to that of the current case before the Board, specifically with regard to the fact that the Whitestown site was illegally operated and that the subsequent licencing of the site by the EPA and remediation proposals were after the landfill directive referred to by the objectors came into effect. In view of the absence of a specific legal argument relating to this case, the lack of clarity regarding its applicability to the subject case and the volume of material involved the Board may consider it appropriate that independent legal advice would be sought on this matter.

8.1.13. In conclusion, for the reasons set out at paragraphs 8.1.10 – 8.1.13 above, I do not consider that it is clear that the EPA is precluded from the granting of a licence in this case and more particularly, the Board is required to make a decision on the current application for approval in advance of consideration of the licence application by the EPA. In the event that the EPA determine that it is not appropriate that a licence be granted in this case for the reasons contended by the objectors in this case then it

will not be possible for any approval issued for the remediation project to be implemented.

Issues Relating to Remit of the Board in Case Where IEAL Required

8.1.14. As set out in the earlier sections of this report, the nature of the proposed project is such that there is a requirement that a licence would be obtained from the EPA. The type of licence required is an Industrial Emissions Activity Licence (IEAL) under the Industrial Emissions Directive and the trigger for a licence relates to the activities set out in the Annex to the IE Directive and the First Schedule to the EPA Act. Specifically, under Section 11.5 '*Waste Activities*', there is a requirement for a licence in the case of landfills that receive more than 10 tonnes of waste per day or with a total capacity of greater than 25,000 tonnes. Material to be imported onto the site associated with the remediation phase of the project such as aggregate, sub and top soil may be classed as waste and the volume of material proposed to be imported (c.127,400 cubic metres as per Table 4.11 of the EIAR) is such that the threshold for a licence set out in Section 11.5 would likely be exceeded. The requirement to obtain an IEAL raises a number of issues of relevance to the assessment of the project by the Board which it is considered need to be highlighted in advance of proceeding to the Planning Assessment or EIA of the proposed project. These issues are firstly, the extent to which the IEAL, which is a relatively recent type of licence, is covered by the wording in the Planning and EPA Acts relating to the limitations on the Planning Authority or the Board from attaching conditions which are for the purpose of controlling or limiting emissions from the activity. Secondly, the issue arises as to where the boundary of responsibility lies between the Board and the EPA with regard to consideration of the environmental impacts and emissions from a development. These issues impact on the scope of the assessment to be undertaken under the headings of Planning Assessment and most specifically EIA, and are addressed in detail in the sections below.

Applicability of s.175(10) of Planning and Development Act to an Activity where an IEAL is Required

8.1.15. Firstly, on the issue of the IEAL licence type, the wording of section 175(10)(a) of the Planning and Development Act, 2000 as amended is as follows:

'Where an application under this section (s.175 development on or behalf of a local authority that requires EIA) relates to proposed development which comprises or is for the purposes of an activity for which an integrated pollution control licence or a waste licence is required, the Board shall not, where it decides to approve the proposed development, subject that approval to conditions which are for the purposes of-

- (i) Controlling emissions from the operation of the activity, including the prevention, limitation, elimination, abatement or reduction of those emissions, or*
- (ii) Controlling emissions related to or following the cessation of the activity.'*

It is noted that the wording of s.175(10)(a) does not make specific reference to circumstances where the type of licence required by the activity is an Industrial Emissions Activities Licence. It is also noted that the similar provision contained in the EPA Act as amended (s.99F) makes specific reference to planning permission granted under s.34 of the Act as against s.175. Section 34 relates to an application made to a 'planning authority' and the definition of planning authority in the Planning and Development Acts comprises a council, borough or urban district and does not make reference to An Bord Pleanala. Section 99F of the EPA Act is not therefore in my opinion relevant to the subject application type. The question therefore arises as to whether the provisions of s.175(10) apply to the subject application for approval and if they do not, it would appear that the Board would be required to ensure that all aspects of the impact of the proposed development on the environment are addressed in the EIA undertaken and that, where appropriate, conditions relating to the control of emissions from the operation and cessation of the activity would be attached to any approval issued.

8.1.16. I note that there is a definition of ‘integrated pollution control licence’ cited in section 2 of the Planning and Development Act, 2000 as amended and this is as follows:

‘Integrated pollution control licence means a licence under Part IV of the Environmental Protection Agency Act, 1992’.

I also note that s.82 of the EPA Act 1992, as amended by the Protection of the Environment Act, 2003 makes general provisions in relation to licencing. I further note that s.82A of the EPA Act as amended makes specific reference to Industrial Emissions Directive and to transitional matters for activities licenced under the EPA Act consequent upon the Industrial Emissions Directive (i.e. industrial emissions activity licences).

8.1.17. With regard to new applications such as in the subject case rather than transitional situations, s.83(1) of the EPA Act refers to scenarios ‘*where an application is made to the (of) Agency in the prescribed manner for a licence under this Part...*’, namely Part IV of the EPA Act which relates to licencing. With regard to what is the definition of a licence under this Part, I note the fact that Art 6 of the European Union (Industrial Emissions) Regulations, 2013 (SI No.138 of 2013) inserts a new section 3C into the EPA Act which states that ‘*the amendments of this Act effected by the European Union (Industrial Emissions) Regulations, 2013 are made for the purpose of giving effect to the Industrial Emissions Directive*’. A revised definition of ‘*licence*’ and ‘*application for a licence*’ is also inserted into the Act by definitions contained at Part I of the *Environmental Protection Agency (Industrial Emissions)(Licencing) Regulations, 2013*. These define an application for a licence as ‘*an application for a licence under section 83 of the Act of 1992 or by a licence for a review under section 90(1)(b) for a review of a licence or revised licence*’. Licence, means ‘*a licence granted under section 83 of the Act of 1992 to operate all or part of an installation within which one or more industrial emissions directive activities listed in the First Schedule to that Act are carried out*’.

8.1.18. My interpretation of these provisions is that amendments introduced by SI 137 and SI 138 of 2013 are for the purposes of integrating the provisions of the Industrial Emissions Directive and the Industrial Emissions Directive licence into the EPA Act. The revised definition of a licence introduced covers Industrial Emissions Directive

activities and the activity which triggers the licence requirement in the subject case, (Class 11.5 waste at landfills) is one of the activities specifically listed in the First Schedule of the Act. The definition of an application for a licence states that this is an application under section 83 of the Act and therefore under Part IV. It is therefore my opinion that the amendments to the EPA Act introduced by SI 137 and SI138 of 2013 are such that an IEAL is a licence application to the Agency pursuant to Part IV of the EPA Act. It is therefore my opinion that an IEAL would come within the type of licence included under Part IV and referenced in s.175(10)(a) of the Planning and Development Act and that the restrictions on the Board in attaching conditions which seek to control or limit environmental emissions that are set out in s.175(10) are applicable in the circumstances of the subject application.

8.1.19. There remains however some ambiguity with regard to what exactly constitutes the extent of the activity for the purpose of the EPA licence and at what stage or phase in the project the activity commences. This issue is addressed in the sections below.

Interface between the Environmental Impacts Considered by the Board and the EPA

8.1.20. Notwithstanding the above issue relating to s.175, the nature of the proposed project is such that it is not immediately apparent at exactly what phase of the project any limits on emissions set by the EPA under an IEAL would commence. In normal licencing situations where planning permission is required, the scope of the conditions attaching to a licence issued by the EPA relate to the operational and decommissioning phases of a development with the Planning Authority or the Board considering the environmental emissions during the construction phase and attaching appropriate conditions to address these emissions. This is reflected in the wording of s.175(10) of the Planning and Development Act and s.99F of the EPA Act which make reference to the control of emissions from the 'operation' or 'following the cessation' of an activity as being phases of a development where it would not be appropriate that environmental conditions would be attached to any planning permission or approval.

8.1.21. The nature of the proposed Kerdiffstown Remediation Project is, however in my opinion different from a normal project which requires planning permission or approval and which is the subject of a licence. Specifically, in the case of the proposed project the activity which is the subject of the licence is effectively the remediation of the site involving the construction activity associated with that remediation. While at one level it could be argued that the ‘*operation*’ of the activity which is the subject of the licence would be the operation of the amenity park and sports pitches, in reality such an interpretation does not cover the bulk of the project which is the remediation of the site prior to its development for use as an amenity. Such an approach would also mean that the bulk of the works on the site that have the potential to generate environmental emissions would fall outside the scope of assessment by the EPA and any licence issued by that body and is clearly counterintuitive. The correspondence received from the EPA does not provide details on the extent of the works which would be covered by a licence, however I note that the IEAL application information given on the EPA website (Application Ref. P1063-01) includes at Page 15 of the application form an outline of the proposed works which are to be the subject of licence. This states that:

‘...As the licence application is required to facilitate remediation of the site the stages of works are referenced as follows:

- *Operational Phase – this phase comprises the works required to re profile the site including excavation of waste and other materials for deposition on site to achieve the final landform. The works will also include the installation of landfill infrastructure such as capping, landfill gas, leachate and surface water management, A second stage of remediation will comprise the works required to restore the site to the proposed park end use.....’. Stated that this is ‘Referred to as the Remediation Phase throughout the documentation’.*
- *Aftercare Phase – The life cycle stage of the site following the remediation works when the site will be used for public access parkland and recreation.*

This outline of the proposed works indicates that what the applicant considered to be included in the licence application includes all works required for the re profiling of the site as well as subsequent capping, infrastructure installation and development of the site for a park / amenity use.

8.1.22. In view of the above, it is therefore my opinion that the bulk of the remediation works proposed on the site are an integral part of the activity for which a licence is required from the EPA and that therefore these works are the responsibility of the EPA in terms of environmental assessment and control by way of conditions. Specifically, it is my opinion that as the trigger for the licence requirement in this case is the importation of material onto the site for the re profiling and capping of the site that could be classified as waste, then all phases of development subsequent to this process commencing would fall within the remit of the EPA. In terms of the Phasing of the development as set out at section 4.3 of the EIAR, site capping and use of imported material for site re profiling commences in Phase 2 and continues on a phased basis throughout the rest of the project. The stockpiling of imported fill material within the licence application site is also included as part of the works to be undertaken in Phase 1 and would trigger the environmental assessment by the EPA. I note that there is a slight discrepancy in that phase 1 works identified in Figure 4.8 of the EIAR indicates that there would be waste re profiling and filling with engineered fill undertaken in Zone 1A though there is no reference to such works in the written description of Phase 1 works given in section 4.3.1 of the EIAR. Given this phased nature of the re profiling and capping activities it is not in my opinion possible to isolate other construction activities post this stage of construction that are independent of the site re profiling and capping and therefore any conditions attaching to an IEAL issued by the EPA would have to be complied with post this stage of the project (Phase 2 onwards).

8.1.23. At the other end of the project phasing there are works identified in section 4.3 of the EIAR which are in my opinion clearly construction works prior to the commencement of works directly related to the licenced activity or are works that are located wholly or primarily outside of the boundary identified in the IEAL application. These works would therefore, in my opinion be the responsibility of the Board to assess for environmental impacts and to propose appropriate conditions and would comprise the bulk of the items identified in Phase 1 of the phasing plan set out 4.3 of the EIAR. These works include, inter alia the following:

- The demolition of the three existing residential properties (REC10, 11 and 16 identified in the EIAR) two of which are in any event located wholly or primarily outside of the licence application boundary (as indicated on Figure 4.4 of EIAR).
- Construction of new site entrance (outside of licence boundary),
- Realignment of the L2005 Kerdiffstown Road (outside of licence boundary),
- Provision of new footpath and cycleway along L2005 (outside of licence boundary),
- New perimeter fencing,

8.1.24. In addition, there are a number of further works that are identified in Phase 1 of the project which are within the boundary of the licence application and comprise works that could be considered to constitute an integral part of the remediation project but which would potentially be undertaken in advance of the importation of any importation of any fill material onto the site. It is therefore likely that some of such works will be addressed by the EPA in its EIA and be the subject of appropriate environmental conditions. This however is not certain and, in the interests of ensuring that all potential environmental impacts arising from the project are covered in an EIA and that there is no gap in the assessment it is considered appropriate that these works would also be the subject of assessment by the Board and that environmental conditions would be attached where appropriate. The relevant works are as follows:

- Demolition of concrete structures in Zones 2A, 2B and 4,
- Removal of the existing site connection to the Canal Feeder Stream,
- Establishment of a crushing and screening area in Zone 2B for the processing of site generated concrete from demolition activities,
- Construction of new landfill infrastructure compound (which is proposed to be located on ground where there is not currently waste material deposited),
- New foul drainage and leachate connections from the site to the Johnstown pumping station.

There are a number of other works identified in Phase 1 relating to the excavation and processing of waste materials currently on site and the re profiling of existing waste landforms on the site. From my interpretation of the scope of the proposed works to be the subject of licence as set out in the application form for the licence and also having regard to the fact that these works relate to modification of the existing site landform to facilitate the installation of site infrastructure and the final capping and recreational / amenity end use of the site, it is proposed that these works would not be addressed in detail in the environmental assessment undertaken by the Board and that no conditions specifically relating to the control of environmental emissions in these areas would be attached. The specific Phase 1 works set out in 4.3.1 of the EIAR which come under this heading are as follows:

- Removal of stockpiles of materials in Zone 4,
- Re profiling of current over steep slopes in Zone 4 including removal of wastes where identified,
- Processing of materials from Zone 4 where identified as an opportunity for recovery of soils and re use on site,
- Re-profiling of Zone 1 / 1A to accommodate surplus material derived from Zone 4,
- Filling of Zone 3 with wastes from Zone 4.

8.1.25. It is recognised that s.175(10) of the Planning and Development Act states that the Board shall not attach conditions for the control of emissions from the operational phase of a development. As set out above, there is potential for some overlap in the works which are the subject of environmental assessment by the Board and the EPA and therefore there is potential for some overlap in the scope of conditions attaching to any approval issued by the Board and any licence issued by the EPA. Section 99F(9) of the EPA Act as amended makes provision that any conditions attached to a grant of planning permission which relate to emissions to the environment for development which is the subject of a licence by the EPA shall cease to have effect when a licence is issued. This provision however only appears to relate to planning

permissions granted under s.34 of the Act and is not therefore, in my opinion applicable in the case of the subject development for approval under s.175. It is anticipated that where conditions are proposed to control or limit emissions where there may be a potential overlap with any licence issued by the EPA that they would be of a general nature and / or would not impose emission limits that are more onerous than limits or standards set in the EIAR or those normally attached by condition to licences issued by the EPA.

- 8.1.26. As with the issue of the inclusion of the IEAL licence type within the scope of s.175(10), consideration of the stage of the proposed project at which the licensable activity commences and conditions attaching to any EPA licence become applicable, is an issue for determination by the Board and this determination has implications for the scope of the assessment of this application and the consideration and determination of the application by the Board. It is open to the Board, should it consider it appropriate, to request further consultations with the EPA to clarify any 'overlap' arising. In advance of such a determination, it is proposed to proceed with the assessment on the basis that the construction / remediation activity and the construction works to be the subject of assessment by the Board are as set out in the sections above.

Terminology Relating to Project Phases

- 8.1.27. In terms of terminology, the language used in the project description, the EIAR and the licence application are somewhat confusing. The project is described in the application documentation and the EIAR as the '*Kerdiffstown Landfill Remediation Project*', however the EIAR makes reference in the various chapters to '*Remediation Phase*' meaning the remediation works and the '*Operational Phase*' which is the end use of the site as a public amenity park. The IEAL application form uses different terminology and makes reference to '*Operational Phase*' comprising the works required to remediate the site and the '*Aftercare Phase*', which is the life cycle of the site after it is remediated and in use as a public park / amenity. The terminology used in the licence application is, in my opinion, more reflective of the nature of the works proposed where the remediation works incorporates the activity which is the trigger for the licence and should be referred to as the Operational Phase.

8.1.28. For the purposes of clarity, and having regard to the discussion above regarding the phases of the proposed works and division of responsibility between the Board and the EPA, in this assessment it is proposed to use the following terminology to refer to the various stages of the development:

- Construction Phase – the initial enabling phases of development identified in Phase 1 of the proposed works set out in 4.3.1 of the EIAR where, as discussed in the sections above, the Board will have responsibility for the attachment of any associated environmental conditions.
- Operational Phase – the subsequent phases in the remediation of the site which as per the sections above, will be subject to conditions attached to any IEAL issued by the Agency.
- Aftercare Phase – The use of the site post remediation when the site will be used as a public amenity and recreational facility.

It should be noted that although it will be the EPA's responsibility for imposing conditions controlling emissions from the activity at Operational and Aftercare Phases, An Bord Pleanála is still required to consider the likely significant environmental effects of these phases and to undertake an EIA on the entirety of the project. .

8.2. **Planning Assessment**

8.2.1. I have read the planning application documentation submitted including the submitted EIAR and the submissions and observations that have been made to the Board. I have also heard and noted the submissions made to the oral hearing. I have inspected the application site and the surrounding area.

8.2.2. Arising from the above, the following are what I consider to be the key issues arising in the assessment of the planning merits of the proposed landfill remediation project:

- Principle of development,
- Public consultation,
- Alternatives considered
- Consistency with waste management policy

- Impacts on air quality and noise
- Ground and surface water Impacts and flood risk
- Landscape and visual impacts
- Traffic and access
- Archaeological and heritage impacts
- Ecology and biodiversity.
- Other issues

The topics covered in this section overlap with the EIA and appropriate assessment of the project and the planning assessment should therefore be read in conjunction with these sections of the report (9.0 EIA and 10.0 AA). In particular, the sections relating to Air Quality and Noise and Ground and Surface Water Impacts and Flood Risk overlap significantly with the EIA contained in section 9.0 and in this case the bulk of the discussion and assessment relating to these topics is contained in section 9.0 under the heading of EIA with a summary of the main issues arising contained in the relevant part of the Planning Assessment below.

Principle of Development

- 8.2.3. The site of the proposed development is an established commercial site being a former quarry that was subsequently the subject of planning permission for the acceptance of waste material and latterly for the recycling of waste material. The site is located outside of any identified settlement and is not zoned for any specific purpose in the *Kildare County Development Plan, 2017-2023*. Policy RLE8 of the Plan seeks *'the consideration of other appropriate land uses in the rural countryside apart from rural housing as provided for in Chapter 4. Where an area is not within an identifiable settlement and is not otherwise zoned as part of this plan or any of the town development plans, the use of such land shall be deemed to be primarily agricultural.'* The most recent use of the site is however as a landfill / waste recovery facility and this use was permitted by way of planning permission. The proposed works are therefore remediation of an existing permitted site.

- 8.2.4. In addition, there is a specific policy contained in the plan relating to the site and to the proposed development which is the subject of this application. This policy, Policy WM16 states that *'the Council will work in conjunction with government departments and Agencies and all other relevant stakeholders to remediate the Kerdiffstown Landfill in a socially, economically and environmentally sustainable manner that will both manage and reduce environmental risk and accommodate an appropriate end-use that is compatible with the established character of the area.'* In my opinion the remediation works proposed for the site are consistent with the general aims of this policy.
- 8.2.5. In addition, there are a number of policies and objectives contained in the Plan which support the proposed end use of the site as a recreational amenity. These policies and objectives are also of relevance to issues relating to the application for confirmation of the CPO including the consideration of need, the degree to which the proposed development meets that need and compliance with development plan policy, and some overlap with CPO issues addressed at section 8.2 below may therefore arise. Objective SN01 aims *'to develop open spaces throughout the county which will encourage a range of recreational and amenity activities that will cater for both active and passive recreation'*. In addition, Policy GI1 of the plan states that it is policy *'to facilitate and promote the development of green infrastructure which allows for the development of active and passive recreation and the protection and enhancement of heritage and landscape features'* and Policies GI3 and GI4 seek to promote the provision of a network of high quality multi-functional open spaces and parks. It is my opinion that the proposed remediation of the Kerdiffstown site and the development of the proposed active and passive recreational facilities on the site would be consistent with these policies and objectives.
- 8.2.6. In view of the existing developed nature of the site, to the previous planning permissions for the development of the site as a landfill and as a waste recovery facility, to the fact that there is a specific policy contained in the County Development Plan which seeks the remediation of the site and the development of an appropriate end use and to plan policies and objectives which support the high quality multi-functional recreational spaces throughout the county, it is my opinion that the principle of the proposed development is consistent with the provisions of the *Kildare County Development Plan, 2017-2023*.

Public Consultation,

- 8.2.7. Chapter 6 of the submitted EIAR details the public consultation process entered into and breaks this down into consultation entered into with the public and stakeholders with regard to the end use of the site post remediation and secondly consultation undertaken with respect to the EIA process and preparation of the EIAR. The development has a standalone web page, www.kerdiffstowncleanup.ie which details the project, and provides updates to the public. This website did provide information relating to submitted documentation for the planning and licencing applications however this appears to no longer available. A public consultation day was held in April, 2016 and meetings were held with the community liaison group and Kerdiffstown Residents association. Following the public consultation submissions from 39 parties were received. A consultation day relating to the EIA process was held in March 2017. A total of approximately 20 parties are stated to have attended this session.
- 8.2.8. The Aarhus convention and the EIA Directive both place obligations on applicants regarding informing the public of proposed developments and facilitating public participation. In my opinion the combination of the statutory consultation entered into by way of the application process to An Bord Pleanala together with the applicants schedule of consultations as set out above means that details of the proposed development has been widely available and significant opportunity has been made for the input by members of the public. It is also my opinion that the requirements of the Aarhus Convention and the EIA Directive relating to public consultation have been met.

Alternatives Considered

- 8.2.9. The consideration of alternatives is addressed at Chapter 5 of the submitted EIAR. The issue of alternatives is also addressed at section 4.3 of the submitted Planning Report prepared by AOS Planning and in the SKM Enviro 'Kerdiffstown Landfill Remediation Project - Remediation Options Report', 2013 which is included at Appendix 6 of the Planning Report. The issue of alternatives is central to compliance with the EIA Directive and is further considered in section 9.0 of this report relating to EIA. This section should therefore be read and considered in

conjunction with the relevant comment in section 9.0. Project need and alternatives is also discussed in section 8.3 of this report in the context of the CPO application.

8.2.10. The assessment of alternatives provided at Chapter 5 of the EIAR covers alternative locations, layouts, designs and processes. The fundamental alternative to the proposed remediation project comprises the option of excavating the site and the transfer of the waste material to an alternative engineered landfill facility. As set out at Chapter 5, this option has very significant implications in terms of emissions to air and traffic in particular. For air, the process of excavation of the existing material would result in a significant period of time where existing waste material would be exposed with significant adverse consequences for odours in the vicinity of the site. In addition, the excavation of the waste material would mobilise all gas generated within the waste mass and it would not be possible to prevent the release of this gas to the atmosphere. The practical implications of excavating c. 3.1 million cubic metres of waste material would result in an estimated c. 300,000 HGV movements and an estimated 7 million kilometres of travel based on known locations where waste may be accepted. The acceptance of waste is also clearly another significant issue with the availability of landfill capacity suitable to accommodate the excavated material significantly constrained. Finally, following the excavation of the site the profile would return to that of a worked out quarry. Remediation of the site to accommodate a future use would therefore likely require the importation of additional materials. On the basis of the information presented regarding the environmental, traffic and cost implications of a full excavation of the site I agree with the conclusion of the EIAR and Remediation Options Report that this option is not a viable alternative for further consideration.

8.2.11. The details of the assessment of the options for site remediation is provided in the 2013 Site Remediation Options Report (SKM Enviro 2013). This report discounted the complete site excavation and disposal off site option on the basis of the environmental and other factors highlighted above. The assessment examined three scenarios in more detail, these being the minimal reconfiguration and capping of the existing site (Scenario A), the construction of a high quality cap across the whole site complete with groundwater interception and treatment (Scenario B) and finally the option of the development of a lined cell in the south eastern part of the site (Scenario C). These three options are detailed and assessed in section 5 of the

Remediation Options Report and are indicated in Figure 5.1 of section 5.4.2 of the EIAR. The conclusion of this assessment is that Scenario B represents the optimum trade-off between long term ground and surface water and gas control versus short term impacts in terms of noise, odour, traffic impacts and GHG emissions. On the basis of the information presented I consider that the alternative approaches to the remediation of the site provided meets the requirement of Article 5(1) of the 2014 Directive with regard to reasonable alternatives and that the submitted information gives an indication of the main reasons for the remediation option chosen. It is further my opinion, based on the information presented and having regard to the environmental risks associated with the significant excavation and / or re profiling of the site, that the basic remediation alternative proposed in the project is the optimum approach from the perspective of protection of the environment and the amenity of surrounding populations and properties.

8.2.12. Consideration of options for the end use of the site post remediation is covered in section 5.3.2 of the EIAR and the technical constraints which impact on the available options are set out in Table 5.1. The issues considered in this assessment include settlement, requirement for accommodation of infrastructure (gas, leachate etc.) and drainage. The 2013 Remediation Options Report examined three end use options these being a limited intervention, a medium to high density mixed use option and a passive amenity option. The assessment which is summarised at Table 5.2 of the EIAR, concluded that a public open space / recreational end use would provide the best trade-off between the technical difficulties anticipated with a high density development on one hand and making a beneficial use of the site that could be a resource to the wider population on the other. The proposed recreational / amenity use of the site was considered to be the best compromise solution and, on the basis of the information available I would agree with this assessment.

8.2.13. Chapter 5 of the EIAR sets out a number of other alternatives which relate to more detailed design alternatives. These options relate to site access (see Table 5.8 of EIAR), the extent of demolitions on site in terms of concrete infrastructure and adjoining residential properties (Table 5.9 of EIAR) and options for the location of the infrastructure compound. In each case an indication of the reasons for selecting the chosen option as well as a comparison of environmental effects is provided.

Similarly, alternative options for site re profiling, the capping system, gas and leachate management and surface water are presented in Chapter 5.

- 8.2.14. With specific regard to re profiling and site contours, Sections 3 and 4 of the Remediation Options Report summarises the planning history of the site and establishes what is considered to be the consenting baseline for the site, that is the approved site contours post remediation as permitted under Plan Ref. 03/2355; ABP Ref. PL09.206726. The justification for the proposed development to deviate from these permitted contours and to have a slightly higher initial site contour (113.5 m.OD Malin as against the permitted 110.7 m.OD Malin) is set out at Table 5.11 of the EIAR and is detailed in section 4.2 of the Remediation Options Report. Reducing the overall height to meet the existing consenting baseline would require the excavation and removal of c. 19,000 cubic metres of waste material in an area of the site (Zone 1) that has displayed the greatest odour issues in the past. On the basis of the information presented regarding the environmental impact and having regard to the generally lower overall site profile that is proposed relative to the consented baseline as summarised in Tables 4.2 and 4.3 of the Remediation Options Report, I consider that the option proposed for site contours and overall height have been justified on environmental grounds and are acceptable.

Consistency with Waste Policy

- 8.2.15. Current National Waste policy is '*A Resource Opportunity – Waste Management Policy in Ireland, 2012*'. The policy states at section 2.7 that significant further investment will be required by the State to deal with illegal landfill sites. Under the heading of Disposal (Chapter 10), the Policy states that Options in relation to the beneficial use of closed landfill facilities will be considered in light of the outcome of research projects including those undertaken by the EPA. The remediation of the Kerdiffstown site is therefore considered to be generally consistent with national waste policy.
- 8.2.16. At a regional level, the *Eastern-Midlands Region Waste Management Plan, 2015-2021* has eight objectives, one of which is to '*apply the relevant environmental and planning legislation to waste activities to protect and reduce impacts on the environment, in particular Natura 2000 sites and human health from the adverse*

impact of waste generated. The proposed remediation of the Kerdiffstown site is, in my opinion consistent with this strategic objective. The plan also makes reference to closed landfill sites, and acknowledges that the risks to environmental receptors from historic landfills needs to be addressed. **Policy G2** of the Plan states that it will be policy *'to roll out the plan for remediating historic closed landfills prioritising actions to those sites which are the highest risk to the environment for human health'*. **Policy E11** also relates to closed sites and states that it is policy to *'support the consideration of alternative future land uses at authorised inactive landfills....subject to amendments to existing approvals being put in place.....'*. Potential alternative uses listed include the *'development of public and recreational amenities'*. The proposed development would in my opinion be consistent with these provisions of the regional plan being a site which has a significant risk to the environment and human health and which is a potential site for redevelopment to accommodate an alternative land use.

- 8.2.17. At a local level, section 7.6.6 of the *Kildare County Development Plan, 2017-2023* contains a number of relevant policies including the support for the implementation of the Eastern – Midlands Regional Waste Management Plan (**Policy WM3**) and, as referenced previously in this assessment, Policy WM16 which states that it is council policy to work with government departments, agencies and other relevant stakeholders to remediate the Kerdiffstown landfill, (**Policy WM16**).

Impacts on Air Quality and Noise

- 8.2.18. In assessing the impact of the proposed development on noise and air quality regard has to be had to the fact that the nature of the proposed project is such that an Industrial Emissions Activity Licence (IEAL) will be required from the EPA. The terms of any licence issued will place limits on environmental emissions during the operational phase of the development including parameters for air quality and noise and, under the provisions of section 175(10) of the *Planning and Development Act 2000* (as amended), a planning authority or the Board shall not attach conditions which controlling emissions from the operation of the activity. The scope of what is considered to be the operational phase of the activity for the purpose of the licence

application and the works that are remaining to be the subject of assessment by the Board are set out at sections 8.1.20-8.1.26 of this report above.

- 8.2.19. Considerations of air quality and noise impacts are discussed in detail under the headings of Population and Human Health and Air and Climate contained in Section 9.0 of this report under the heading of EIA. The following sections provide a brief overview of the air quality and noise impacts arising from the proposed project.
- 8.2.20. The initial construction and operational phases of the development and the construction activity proposed in these phases has the potential to generate significant impacts in terms of noise, dust and odours. The available information indicates that there was a significant **odour** issue at the site prior to the vacation of the site by the last operator but that actions undertaken since by Kildare County Council and the EPA such as the capping of the lined cell and the provision of gas collection over part of the site, have resulted in a significantly improved odour situation. The disturbance of the waste mass required to re profile the site has the potential to disturb the waste and generate odours. Mitigation in the form of an odour management plan is proposed and the EIAR details work practices to minimise odour risk in the form of limits on the area opened at any one time and other work practices to minimise odour risk. Subject to the implementation of these mitigation measures it is not considered that odour emissions during construction works would be such as to have a significant adverse impact on sensitive receptors in the vicinity. At the aftercare phase, the proposed gas collection and flaring system should ensure that odours are not a significant issue. Regarding the flaring of gas, the modelling undertaken and provided in the EIAR indicates that neither the existing or proposed flares would result in air quality standards being exceeded.
- 8.2.21. **Dust** emissions from the construction activity are potentially significant, particularly during phases where existing concrete structures on site are being demolished and crushed. Dust is also a potential impact during the re profiling of the site and the disturbance of the waste mass. Mitigation in the form of a dust management plan and on site construction practices are set out in the EIAR and subject to these mitigation measures being implemented I am satisfied that dust emissions from the site would not exceed the standard 350 µg/ sq. m. limit. It is proposed that in the event of a grant of approval that a condition specifying compliance with this limit would be attached to cover the initial construction phase of the project. Any IEAL

issued by the EPA is likely to include a condition regarding dust emissions generated during subsequent phases of the project.

8.2.22. **Noise** is a potentially significant issue during the construction activities proposed and to a lesser extent during the aftercare phase of the project. Off site works including the works to the L2005 and the construction of the foul drainage and leachate connections to the site are other significant potential sources of noise as is traffic at the construction states and the aftercare phase of the project. Chapter 8 of the EIAR sets out the noise criteria against which the proposed project is assessed and the methodology used in the noise assessment. Noise mitigation measures, including the use of noise barriers are also detailed in the EIAR. These noise criteria and mitigation measures are considered to be acceptable and appropriate to the project. The results of the noise assessment indicate that the relevant noise criteria can be met during the construction activities and during the aftercare phase and it is not considered that there would be significant adverse impacts on amenity due to noise. As with dust emissions, it is proposed that in the event of a grant of approval that a condition specifying compliance with the noise limits specified in Chapter 8 of the EIAR would be attached to cover the initial construction phase of the project. Any IEAL issued by the EPA is likely to include a condition regarding noise emissions generated during subsequent phases of the project.

Ground and Surface Water Impacts and Flood Risk

8.2.23. In assessing the impact of the proposed development on ground and surface water regard has to be had to the fact that the nature of the proposed development is such that an ***Industrial Emissions Activity Licence (IEAL)*** will be required from the EPA. The terms of any licence issued will place limits on environmental emissions during the operational phase of the development including parameters for ground and surface water quality and, under the provisions of s.175(10) of the Planning and Development Act, a planning authority or the Board shall not attach conditions which would restrict or limit environmental emissions during the operational phase. The scope of what is considered to be the operational phase of the development for the purpose of the licence application and the works that are remaining to be the subject of assessment by the Board are set out at sections 8.1.20-8.1.26 of this report

above, and the assessment of the proposed development under the heading of ground and surface water has to be undertaken having regard to these parameters.

- 8.2.24. Considerations of ground and surface water impacts and flood risk are discussed in detail under the headings of Land Soil and Water and Population and Human Health contained in Section 9.0 of this report under the heading of EIA. The following sections provide a brief overview of the ground and surface water impacts and flood risk arising from the proposed project.
- 8.2.25. On commencement of construction it is proposed that the existing surface water connection to the Canal Feeder Stream would be disconnected and that the new outfall to the Morrell River would not be commissioned until a late stage of the project. The management of surface waters on site and the avoidance of contamination of surface water from contact with waste material would therefore be a significant issue. Construction mitigation to be detailed in a Construction and Environmental Management Plan are proposed. This CEMP is proposed to include a number of sub plans relating, inter alia, to groundwater management and spill containment. A detailed surface water management system is proposed as part of the project and details of the on site attenuation of surface water is provided in the EIAR. An erosion and sediment control plan is also proposed to be prepared so as to avoid the pollution of the Morrell River and other watercourses during the construction works. Specific methodologies for the crossing of the Morrell River by the foul drainage and leachate pipelines and for the new surface water outfall to the Morrell River. On completion of the project there would likely be the potential for positive impacts on surface water quality with a designed surface water system that separates surface water from waste material. Subject to the preparation of the CEMP and sub plans as proposed in the EIAR it is not anticipated that the proposed project would have a significant negative impact on surface water quality.
- 8.2.26. Groundwater is potentially at risk during the construction phase of the project where re profiling of waste material is proposed. There is a risk that perched leachate or contaminated wastes could be encountered. Proposals to mitigate the risks arising are proposed in the EIAR. On completion of the project, the operational phase should have a potentially significant beneficial impact for groundwater quality as the capping of the site will reduce water infiltration into the waste mass and reduce the volume of leachate generated.

8.2.27. Policy WS11 of the Kildare County Development Plan 2017-2023 states that it is policy 'to protect groundwater in the county from risk of pollution and ensure the implementation of the Kildare Groundwater Protection Scheme and other relevant documents and legislation as may be introduced'. Policy SW1 states that it is policy 'to manage, protect and enhance surface water quality to meet the requirements of the EU Water Framework Directive'. On balance, while the proposed development introduces some risks with regard to the operational phase construction activities, it is my opinion that having regard to all the information presented the overall impact on ground and surface water will be positive, that the risk of groundwater pollution in the future would be significantly reduced and surface water quality protected. It is therefore my opinion that the proposed project would be consistent with policies SW1 and WS11 of the Development Plan.

8.2.28. With regard to ***flooding and flood risk***, the application is accompanied by a Flood Risk Assessment which is provided at Appendix A13.1 of the EIAR. It is also noted that the proposed Morell River Flood Management Scheme is currently with the Board (Ref. 09.JA0042). This project has been designed to alleviate flooding to properties for up to 1% annual exceedance probability (AEP). The proposed works primarily relate to the use of retaining walls and embankments to hold the flood waters within the river channel as well as specific localised measures including the use of hard defences to protect properties at risk of flooding during a 1% AEP flood event. The submitted flood risk assessment was undertaken using the existing CFRAM fluvial flood risk data for the area. The conclusions of the flood risk assessment are that the impact on fluvial flood risk to the Morell River as a result of the proposed development is projected to be negligible and that flood risk will not be increased as a result of the proposed development. I have examined the flood risk assessment as contained at Appendix A13.1 of the EIAR and consider that the methodology employed is robust and that the results indicated are acceptable.

Landscape and Visual Impacts

8.2.29. Landscape and visual impact of the proposed development is addressed at Chapter 9 of the EIAR and photomontages of the proposed development are contained at Volume 3A of the EIAR. The assessment undertaken in these viewpoints indicates

the current view of the site, the view post earthworks and seeding of the site, view 1 year after the establishment of mitigation planting and the view 7 years after the establishment of mitigation planting.

- 8.2.30. The landscape assessment identifies the location of the site as being a transitional one between the demesne landscapes to the east and north east of the site including Kerdiffstown House and Palmerstown demesne and the landscape to the south and west which is characterised by the N7/M7 road, and the settlements of Johnstown and Naas. The submitted landscape assessment describes these lands as being peri urban in character. The sensitivity of the landscape to change is identified in the submitted assessment as medium in the case of the area to the east and north east and low in the area to the west and south. From an inspection of the environs of the site I would agree with this characterisation. The site is located within the Northern Lowlands landscape character area and is assigned a low sensitivity rating and described as 'robust' and 'tolerant to change' in the plan. Industrial projects, sand and gravel / rock extraction and windfarm developments are all identified as having a high compatibility with the Northern Lowlands LCA (Table 14.3 of *Kildare County Development Plan, 2017-2023*). The site is not located in close proximity to any designated scenic routes and the overall visual envelope of the existing development / landform on the site is relatively limited. The site is not currently visible from the N7 national primary route.
- 8.2.31. A significant issue in the assessment of the potential impact of the proposed project on landscape character and visual impact is the fact that it is already developed and that the overall landform of the site is not proposed to dramatically change with the proposed project in place. A comparison of the existing, previously permitted and proposed landforms is given in section 4.2 and 4.3 of the submitted Planning Report and has been discussed previously in this assessment. In summary, while the highest points of the site within Zone 1 will increase slightly from the existing, the degree of change proposed is minimal in the context of the overall visual impact.
- 8.2.32. The principal impacts on landscape and visual impact will arise as a result of the remediation / construction phase of the proposed project where activities for the re profiling of the site, the installation of landfill infrastructure and the capping of the site will all be visually prominent elements in near range views of the site. Beyond the boundaries of the site the landscape impact of the remediation phase works is

considered to be low and the visual impact at worst medium. I would agree with this assessment. The visual impact would be limited to properties in close proximity to the site on Kerdiffstown Road and to Kerdiffstown House and the adjoining golf course lands within Palmerstown House. The construction works associated with the road widening on the L2005 will have a moderate negative visual impact in this local area and properties along the southern side of the L2005 will have revised front boundaries to the L2005 and shortened front gardens. While the remediation phase works would be spread over a period of 4 years, the main impacts would be at the initial phases of the remediation and the overall remediation phase visual and landscape impacts are not therefore in my opinion significantly negative.

8.2.33. During the operational phase of the project there is potential for the project to have a moderate positive impact relative to the existing condition of the site. Mitigation planting of the site boundaries are proposed and, once mature, this planting will result in there not being any adverse visual or landscape impacts. This mitigation landscaping and planting includes new stone walling and fencing to properties on the L2005 and the addition of semi mature planting. I note that details of the exact planting and landscaping proposals are not presented in the EIAR or supporting documentation submitted and that the EIAR and Landscape Mitigation No.LV1 indicate that the detailed landscaping and planting proposals for the project will be the subject of confirmation during the detailed design stage. It is therefore recommended that in the event of a grant of permission that the preparation and submission of detailed landscape and planting proposals and proposals for ongoing maintenance would be submitted prior to the commencement of development and that the information would be made available for public inspection.

8.2.34. Overall, the impact of the proposed project in terms of impact on landscape and visual amenity is in my opinion acceptable.

Traffic and Access

8.2.35. Traffic and transportation issues are addressed at Chapter 14 of the EIAR and a traffic and transportation assessment is provided at Appendix A14.1 of the EIAR. At the oral hearing, the subject of traffic and transportation was addressed in a brief of evidence provided by Joseph Campbell of Jacobs Consulting Engineers.

- 8.2.36. An assessment of the suitability of the existing access arrangements to the site including location and the requirements for access road was undertaken by the applicant. This indicated that the existing access point was not optimal from the perspective of maximising visibility and the access point is therefore proposed to be relocated further to the south on the L2005 with a roundabout provided at the entrance. The L2005 is proposed to be realigned over a short distance at the location of the new entrance. The revised design for the site access has been the subject of a Stage 1 road safety audit. On the L2005, the section between the proposed new site entrance and the existing roundabout to the south is proposed to be redeveloped to provide for a new footpath and cycleway. This link would connect with the existing footbridge over the N7 and access to Johnstown Village. The proposed revised road layout is in my opinion acceptable and is designed in accordance with the relevant road and cycle standards.
- 8.2.37. The predicted impact of the proposed development on traffic volumes is set out in Chapter 14 of the EIAR with the baseline conditions described at 14.3. Baseline information comprises a mixture of existing TII data for the national road network and the junction (J8) with the N7 and local traffic surveys undertaken as part of the preparation of the EIAR. The level of information collected and presented with the EIAR is in my opinion appropriate. The predicted impacts as discussed at section 14.4 of the EIAR that the worst case construction / remediation phase impacts are on the L2005 (Kerdiffstown Road) to the north and south of the site entrance and would be such that there would be a c.10 percent increase in total traffic. The worst case construction traffic increases would be 180 two way vehicle movements per day. In terms of HGV traffic the predicted impacts are more significant in percentage terms given the existing very low percentage of HGV traffic on the L2005.
- 8.2.38. At the operational phase of the project, the assessment of operational phase traffic impacts is detailed at 14.4.2 of the EIAR. This section assesses the potential impact using data derived from the TRICS database with a country park as a reference use. This is considered to be appropriate to the proposed use. The assessment proceeds to predict the impact on the road network on the basis of a figure of 151 two way weekday trips and concludes that the additional traffic, which is a maximum of 16 percent for the L2005 south of the proposed access, is insignificant. I would agree that this is the case for an assessment of the impact of an increase of 151 two way

trips however it is likely given the recreational / amenity use of the site proposed that the weekend trip rates would be significantly higher than that for a weekday. No specific analysis of this is however presented in the EIAR.

- 8.2.39. The existing carrying capacity of the L2005 is estimated at c.5,000 movements per day and the construction / remediation phase of the proposed project would therefore be such that there would remain very significant surplus capacity. Similarly, during the operational phase of the project, the predicted traffic generated by the project (151 weekday two way traffic movements) is easily capable of being accommodated. On the basis of the surplus capacity evident from the surveys of the local road network and the junction (J8) on the N7, and having regard to the size of the proposed facility and the maximum on site parking of c. 200 spaces, I consider it likely that weekend operational phase traffic would also be capable of being accommodated by the existing and proposed revised road network.
- 8.2.40. Construction phase traffic is proposed to be only allowed access the site via junction 8 on the N7 (see Mitigation No.TT1 in Table 19.10) and construction phase traffic would not access the site via Sallins. Notwithstanding this, and the fact that Mitigation TT1 commits to the preparation of a Construction Traffic Management Plan, I consider it appropriate that such a plan would be provided by the local authority and that it would be made available for the inspection of the public.
- 8.2.41. In terms of **parking**, the operational phase parking requirements as per the development plan are 15 no. spaces per playing pitch giving a requirement of 45 no. spaces. There is no specific standard for park / playground / general amenity uses. The proposed project has capacity for 200 parking spaces with 100 spaces proposed for the main car park near the sports facilities and 100 in the overspill car park area near the site entrance. Given the training use of the pitches and the relatively frequent turnover of the pitches I would agree with the comment provided at 3.3.2 of Appendix A14.1 that more than the minimum number of spaces are required to serve the playing pitches. Overall, it is my opinion that the car and cycle parking provision proposed is adequate to serve the proposed project.

Archaeological, Architectural and Heritage Impacts

- 8.2.42. The assessment of archaeological, architectural and heritage impacts was informed by a review of all available written records as well as aerial photographs and a field

inspection of the site. A geophysical survey of a field located at the western side of the site was also undertaken due to the presence of a recorded mound site KD019-018 in this location. The results of this geophysical survey are presented at Appendix A10.2 of the EIAR. Chapter 10 of the EIAR addresses archaeology, architectural and cultural heritage issues and impacts.

- 8.2.43. A total of six recorded monuments are noted in the vicinity of the proposed project. Of these one, the mound site is located within the site boundary. The location of the recorded monuments are indicated in Figure 10.1 of Volume 3 of the EIAR. The available information indicates that the mound site (Ref. KD019-018) has been disturbed by quarrying activity and a geophysical survey did not indicate the presence of any feature in the area recorded. It may therefore be that the location is not accurate. It is proposed that a programme of archaeological testing would be undertaken in this area under licence and that any features encountered will be preserved by record. The location of this monument is in an area where the third sports pitch is proposed to be located.
- 8.2.44. While the other monument sites are all outside the site boundary, there is potential that the realignment works proposed for the driveway to Kerdiffstown House and the insertion of drainage swales in this area may impact on KD019-006001-4 which is the ruined church at the boundary between the Kerdiffstown House lands and the project site. Similarly, there is potential for the new surface water outfall to impact on archaeological features in this general area of the ruined church. It is proposed that archaeological testing would be undertaken in this area (the church and the proposed outfall location) and any features encountered would be preserved by record following consultation with the department. The foul sewer / leachate pipeline route to the south of the site also has the potential to reveal archaeological material and monitoring of the stripping of topsoil in this area is proposed. The proposals for testing at these location and at Tunney's Field (Ref. KD019-018) are considered to be acceptable.
- 8.2.45. There are no structures of architectural significance on or in close proximity to the project site. The closest protected structures are Kerdiffstown House and the entrance gate to Kerdiffstown House from the L2005. Having regard to the nature and extent of the proposed project I do not consider that the project would adversely impact on the character or setting of these protected structures. The driveway to

Kerdiffstown House would be realigned over a short section with a deviation of c. 15 – 20 metres from the existing alignment proposed. The same basic route will remain and I do not consider that this would adversely impact on the character or setting of the structure.

Ecology and Biodiversity.

- 8.2.46. Ecology and biodiversity impacts arising from the proposed project are addressed at Chapter 11 of the EIAR. Biodiversity is addressed in detail at section 9.3.1 of this report below under the heading of EIA and issues relating to appropriate assessment are considered in detail at section 10.0. As set out in section 10.0, it is my opinion that the proposed development is not likely to have significant effects on any European site, in light of the conservation objectives of the site. The following sections provide an overview of the main issues relating to ecology and biodiversity that arise in the proposed project.
- 8.2.47. The site currently supports a range of habitats. Scrub and grasslands are dominant and there are significant extents of trees and hedgerows along the site boundaries. Other habitat classes identified on the site comprise recolonizing bare ground, buildings and artificial waterbodies.
- 8.2.48. There are a number of potential impacts to biodiversity associated with the initial construction and operational phases of the project. These include habitat loss, severance, disturbance, mortality and potential contamination. The assessment of impacts was assisted by a comprehensive range of ecological surveys undertaken between September 2015 and September 2016. The scope of these surveys is noted and is considered to be appropriate.
- 8.2.49. The surveys undertaken identified a number of potential bat roost sites. Of particular note is the presence of a confirmed bat roost in a tree located close to the northern end of the site (Point B in Figure 11.2). This confirmed roost is to be protected during construction and additional bat boxes are to be provided. The majority of the tree line in this north eastern part of the site where the boundary with Kerdiffstown House is located are proposed to be retained and foraging woodland within the Kerdiffstown House lands would also remain available. This is considered to be satisfactory and there is not predicted to be a significant negative impact on recorded bat populations in this location. Mitigation measures for the protection of the known

roost as well as other potential roosts including in the houses proposed for demolition are set out in the EIAR.

- 8.2.50. The proposed development would have potential impacts on the water quality of the River Morell and as discussed previously in this assessment a construction plan to ensure the control of sediment will be prepared. Sedimentation has the potential to impact on the role of the River Morell as an important salmonid river. Mitigation in the form of protection of lamprey and fish species during construction works and measures for the protection of water quality and the avoidance of sedimentation are set out in the EIAR. These are considered to be appropriate and acceptable.
- 8.2.51. The results of a **breeding bird** survey undertaken are presented at Figure 11.5 of Volume 3 of the EIAR. A total of three red listed bird species were recorded and all three of these species (yellowhammer, grey wagtail and meadow pipet) would be adversely impacted by the loss of nesting habitat. Against this, there is a significant amount of alternative habitat present in the area for these species and additional suitable habitat will be provided on the site as part of the project. The overall impact of the proposed project on breeding birds is not therefore considered to be significant.
- 8.2.52. With regard to **mammals**, the main potential impact identified relates to badgers. The mammal survey identifies badger activity as mainly around the site periphery in the woodland and grassland areas. The survey identified two badger setts on the site and the proposed development will result in the loss of some scrub and other lands that are suitable badger foraging habitat. At the operational phase, the proposed development will also impact on badgers as mammal fencing will be required to ensure that badgers do not access to site and dig into the liner installed on top of the waste mass. Proposals for the retention of the main sett and the closure of the subsidiary sett are set out in the EIAR and are considered to be acceptable.
- 8.2.53. There is no record of **invasive species** including Japanese knotweed on the site however it is recorded as being present within Kerdiffstown House. Mitigation measures for the control of invasive species are proposed including the preparation of an invasive species management plan as part of the CEMP.

8.2.54. The operational phase of the development presents opportunities for the creation of new habitats and the addition of features such as the drainage ponds and wetland area and the planting of additional boundary screen planting will result in the creation of new habitats and the attraction of new species to the site. The overall project with the aim of improving the environment and reducing potential polluting emissions in the future will also have a clear benefit for ecology, particularly water based ecology. Overall therefore while both the construction and operational phases of the development will have definite adverse impacts on some species and potential adverse impacts on others, it is my opinion that the overall impact on ecology post remediation will be clearly positive.

8.3. **CPO Issues**

The following sections set out the general issues relating to the proposed CPO under the headings of public interest served / community need, suitability and extent of the acquisition sought and compliance with the development plan and the proper planning and sustainable development of the area. The issues of alternatives, right of way and severance are also addressed.

A limited number of objections to the proposed CPO were received by the Board and during the course of the hearing written confirmation that the objections submitted by Corr Property Consultants on behalf of Ann and Mike Brown (Refs. 108a.201 and 108b.201), Helen and Mike Brown (Ref. 109a.201) and Margaret McLoughlin (Refs. 111a.201, 111b.201 and 111c.301) were withdrawn. A letter addressed to An Bord Pleanála confirming the withdrawal of these objections was submitted at the oral hearing and is on file.

The remaining objections to the CPO are therefore as follows:

- ***Andrius Lekavicius and Kristina Sipoviciute*** (CPO Ref. 105b.201) care of Hennessy and Pirozzi Solicitors.

- **Ingrida Meskauskiene and Egidijus Meskauskis** (CPO Ref. 105e.201) care of Hennessy and Pirozzi Solicitors.
- **Dean Waste Company Ltd., Jenzoph Ltd. and Mr Tony Dean** (CPO Refs. 101a.201, 102a.201, 103a.201, 103b.201, 104a.201, 105a.201, 105b.201, 105c.201, 105d.201, 105e.201, 105f.201 and 106a.201 care of David M. Turner Solicitors.

The majority of the issues raised in the objection received from David M. Turner Solicitors on behalf of Dean Waste Company and Others are not directly related to the CPO application and instead raise issues regarding the appropriateness of determining the applications in light of ongoing legal issues, alleged unlawful actions by the EPA that led to the closure of the site and the compatibility of the proposal with the Landfill Directive. These issues have been addressed at Section 8.1 of this report. Issues relating to financial loss and compensation raised in the submission from Turner Solicitors are directly related to the CPO and are addressed in this section below.

8.3.1. Need for CPO

8.3.1.1 The issue of the need for the development is specifically addressed at Chapter 3 of the submitted EIAR and is also referenced in the Planning Report which accompanies the application. An assessment of need for the proposed development and the options available to address that need is also given in the report prepared by SKM '*Kerdiffstown Landfill Remediation Project – Remediation Options Report*', (2013) which is contained at Appendix 6 of the Planning Report.

8.3.1.2 The site of the proposed development comprises a former sand and gravel quarry which operated from the 1950s. On cessation of quarrying, the site was progressively backfilled with waste material by a variety of operators over the years which it was open with the most recent of these being Neiphin Trading Limited (connected with Dean Waste and A1 Waste) which operated the site in the period

prior to its closure in 2010. In the period prior to the closure of the site the facility consisted of a large recycling operation with material being extracted from within the site for recycling as well as the processing of imported recyclable material. Waste material was deposited into the lined landfill cell that is located on site and waste material was also deposited at other locations on the site. The circumstances surrounding the period prior to the vacation of the site by the last operator are disputed by the parties to this case, and issues arising from this period are the subject of ongoing legal proceedings. What can be established, however, is that on foot of complaints regarding odour and other issues at the site, the EPA secured injunctions limiting activities at the site. Subsequent to these injunctions, the site was vacated by the most recent operator in June, 2010. In January of 2011 a fire broke out within the waste mass on site and this resulted in the involvement of a number of state agencies including Kildare County Council (KCC) and the EPA. In February of 2011 the EPA exercised powers under s.56 of the Waste Management Act to take control of the site in order that measures could be implemented to reduce the environmental impacts arising. The site remained under the control of the EPA until it was transferred to KCC in June 2015. Under the control of the EPA and KCC there have been a number of works undertaken on site to limit the impact of the site on the environment. These works include the removal of waste from parts of the site including from areas of hardstanding, the placing of a cap on the lined cell and the installation of equipment for the collection and flaring of landfill gas from part of the site. Works undertaken also include the demolition of a number of structures which were considered to be dangerous and the installation of measures to secure the site from unauthorised third party access.

8.3.1.3 A significant amount of ground investigations have been undertaken on the site to record the profile, depth and composition of the waste mass, the proximity of the waste to the water table and landfill gas and leachate generation. On the basis of these investigations the site has been sub divided into 6 discrete zones (1A, 1, 2A, 2B, 3 and 4) and a summary of the main characteristics of these zones is given at Table 3.1 of the submitted EIAR and at section 2.4 of this report above.

8.3.1.4 The case made by the local authority in support of the acquisition as set out at Chapter 3 of the EIAR, is that while some interim remediation works have been undertaken at the site, these are short term measures designed to mitigate the worst

potential impacts arising. When the EPA took control of the site in 2010 they undertook significant works to stabilise the site including the removal of significant volumes of waste material that had been deposited in an unstable condition at locations around the site including on and within the concrete structures in Zones 2A and 2B. The bulk of this material was placed into the lined cell located in Zone 3. Measures for the pumping of leachate from the lined cell were introduced and a network of gas extraction wells and gas flare were installed in parts of Zone 1. It is submitted by the local authority that the works undertaken to date are not adequate to ensure the long term protection of the environment in the vicinity of the site. Specifically it is submitted that the wastes in Zones 1 and 3 (the lined cell) present the highest environmental risk given their composition and location relative to the water table.

8.3.1.5 Objectors to the CPO, notably Mr Turner on behalf of Dean Waste and others, have questioned the need for the proposed development on environmental grounds. Specifically, during the course of the oral hearing Mr Turner contended that the existing condition of the site is relatively stable in terms of emissions and that there is not therefore a clear basis under which the compulsory acquisition of the site and the implementation of the proposed remediation project is justified. On the basis of the information presented in the submitted EIAR and the responses of the applicant at the oral hearing there is, in my opinion, some basis to the issues raised by Mr Turner.

8.3.1.6 As set out at 7.3.3 of the EIAR, the works undertaken to date are such that odour issues that were a significant feature of the site prior to the implementation of initial remediation works have now been largely eliminated with 20 complaints recorded between 2011 and 2016 (EIAR pg.143). Use of the existing flare and gas extraction system would appear to be having a significant positive effect on odours and, as indicated in Figures 7.3 – 7.13 of Volume 3 of the EIAR, the impact of the existing 250 cubic metre flare in terms of air quality is limited with the relevant air quality standard / odour threshold not exceeded either on or off site. Similarly, with regard to groundwater quality and the existing impact of the site on ground and surface water quality beyond the site boundaries, the available information regarding groundwater as presented at Chapter 12 of the EIAR is that the site is having a very limited impact beyond the site boundary and specifically on the Morell River. Figures

12.15 to 12.22 of Volume 3 of the EIAR show the results of the analysis and indicate that there is no contaminant plume being emitted from the site. While there is some evidence of pollution in the monitoring wells located along the north east boundary of the site and immediately to the north, the wells closest to the Morell River do not show elevated concentrations of key pollutants.

8.3.1.7 The need justification undertaken by the local authority and set out in Chapter 3 of the EIAR characterise the environmental risk under the heading of waste type, groundwater contamination risk, landfill gas and odour potential. A number of additional risk factors are discussed in Chapter 3 and the following sections set out what I consider to be the environmental need for and the public interest served by the proposed acquisition under the headings used in Chapter 3 of the EIAR.

Waste Type

The composition of waste material varies across the site with varying quantities of municipal solid waste (MSW) and construction and demolition waste (C&D). The evidence available from the EIAR (see sections 12.3.5 and Figures 12.4 and 12.5) is that there is no hazardous material present on the site. The wastes in Zone 1 are, however, the thickest deposits on site with depths of up to 36 metres and have recorded the most issues in the past in terms of odours and gas emissions. In the case of zones 2A and 2B, very limited amounts of mixed municipal waste have been encountered and in the case of Zone 4 the waste material comprises C&D waste material. While the available information indicates that material deposited on the site is not hazardous in nature, and this assumption was supported by statements of Mr Turner to the oral hearing, it is not possible to be definitive with regard to the exact composition of the significant amount of material on site. Given the period over which material was deposited at the site and the depth and volume it is possible that there may be some hazardous material present. Using the precautionary principle, it is therefore my opinion that the acquisition proposed for the purposes of the project which would reduce the amount of future emissions to the environment from the site can be justified on the basis of avoiding pollution impacts arising from unforeseen materials within the site.

Ground and Surface Water Contamination Risk

In terms of groundwater contamination potential, the main area of concern again relates to Zone 1 where there is a significant depth of waste material below the water table and where there is a significant percentage of MSW present, and Zones 2A and 2B where the waste material also extends below the water table. Figure 12.15 of Volume 3 of the EIAR indicates the areas of saturated waste on site. Both Zones 3 and 4 are not a significant groundwater contamination risk given the fact that Zone 3 comprises the lined cell and Zone 4 inert C&D waste. As set out above, the available information from monitoring of ground and surface water is that there is no identifiable impact on water quality in the Morell River. I note, however, that there remains a potential pathway for the migration of leachate from the site into the underlying aquifer systems. Geophysical surveys undertaken (see Appendix 10.4 of the EIAR) indicates that a plume of groundwater contamination exists immediately adjacent to the eastern site boundary. It is not clear that this plume will not migrate further and that contamination of the River Morell would not therefore occur. Leachate generation from the site is predicted to rise in the period from 2016 onwards when existing absorptive capacity for leachate within the waste mass is exhausted and it is likely therefore that leachate discharge from the site will increase over time (see section 3 of the *Remedial Options Report*, SKM Enviros, (2013) contained at Appendix 6 of the Planning Report).

In addition, without the proposed development, the system for the collection and storage of leachate on site would not be improved. Currently, leachate is pumped to two holding tankers located close to the south west corner of the lined cell and is collected for treatment off site. Up to four tanker loads of leachate per day are stated to be currently generated (3.7.2 of EIAR). The proposed construction of a piped connection for leachate transfer to the Johnstown pumping station would eliminate the need for the risky collection and transport of this volume of leachate.

Similarly in the case of surface water, the existing surface water sampling from the Morell River and the Canal feeder stream shows that water quality remains good and there is no discernible impact evident on water quality of the Morell River. The existing layout of the site is however such that surface water runoff is in contact with waste material and is flowing over a ground profile that is not designed to ensure optimum runoff. While surface water quality does not show indications of significant

impacts due to the existing condition of the site, such impacts cannot be discounted in the future. The proposed capping of the site would result in surface water being kept completely separate from waste material with resulting reduction in potential for surface water contamination in the future.

As highlighted by the local authority in 3.5.2 of the EIAR, the *EC Environmental Objectives (Groundwater) Regulations 2010* places an obligation on public authorities to take all reasonable steps to prevent the input of hazardous substances and limit the input of non hazardous substances to groundwater. In my opinion, notwithstanding the fact that there is very limited evidence of a current impact on groundwater, that the nature of the proposed development is such that there is a clear future risk of groundwater contamination occurring. In order to comply with the Groundwater Regulations there is therefore in my opinion a clear need and public interest served for the site to be capped to limit water infiltration and the generation and migration potential of leachate. The re profiling and capping of the site and the installation of a surface water drainage system would also in my opinion have a significant positive impact in reducing the potential for future adverse impacts on surface water quality. Given the existing contours of the site and the lack of comprehensive management of surface water and the risk of surface water pollution that arises as a result of this existing layout, it is my opinion that there is a clear need for the acquisition to enable the proposed development.

Landfill Gas Generation and Odour Potential

The result of the samples taken indicate that Zones 1 and 3 contain material with a sufficient organic content that landfill gas will remain a significant issue and such that active gas extraction is warranted. While existing odour issues at the site have been significantly improved through the implementation of gas extraction measures, and gas generation is predicted to fall over time (see section 3 of the Remedial Options Report SKM Enviros, (2013) contained at Appendix 6 of the Planning Report), there remains a risk of landfill gas generating an odour issue. In addition, without the cap proposed as part of the currently proposed project, the collection of gas is very inefficient and there is nothing to prevent significant amounts of gas being emitted to

the atmosphere. The extent of gas collection infrastructure within zone 1 is currently less than 10 percent of the site area.

8.3.1.8 In conclusion, while the existing situation at the site with regard to ground and surface water, landfill gas and odours appears to be that the remediation works undertaken to date are operating such that significant negative impacts on the environment are not apparent, on the basis of the available information there are in my opinion significant risks that this will not remain the case. Specifically, leachate generation is likely to increase and the adjoining ground and surface water systems, particularly the Morell River remain at significant risk of contamination. Kildare County Council have obligations under the ground and surface water regulations to control the discharge of substances to the environment. Odours, while not currently a very significant problem on site have the potential to remain a risk for a significant period into the future and the capacity of the existing site infrastructure to address the emission of landfill gas is limited. Finally, existing gas emissions are such that they are being released in an uncontrolled manner to the atmosphere.

8.3.1.9 With regard to **alternatives**, this issue is addressed in the general planning assessment at section 8.2.9 and also at section 9.2 under the heading of EIA. The submitted EIAR is comprehensive in terms of alternative layouts and extent of site remediation as well as the proposed end use of the site. With specific regard to the option of excavation of the waste material on site and the installation of a liner, as set out at 8.2 above I do not consider that this approach is appropriate on environmental grounds having regard to the volume of material to be excavated and the environmental implications arising from the excavation, transport and subsequent disposal of this material. The Remediation Options Report prepared by SKM Enviros sets out in detail the various remediation options available and as discussed in the paragraphs above, I agree with the conclusion of this report that the remediation of the site is required and that the option of excavations of the waste material from the site would generate significantly more adverse environmental issues than benefits. In any event, the option of excavation of existing waste material from the site, the so called dig and dump option, would still require the compulsory purchase of the lands in order that the remediation could be completed. The only alternative which would not require CPO would be the do nothing scenario and as set out in the paragraphs above, this option is not considered to be appropriate on environmental grounds.

The option of acquiring the lands by agreement can also, in my opinion be dismissed in this case as evidenced by the objection to the CPO submitted by the main land owner and also the fact that the activity at the site remains the subject of ongoing legal actions.

8.3.1.10 On the basis of the information presented in the EIAR and associated documentation, I consider that the applicant has demonstrated that there is a need on environmental grounds for the remediation of the site to limit the potential for environmental pollution and that there is therefore a need for the acquisition of the site including other lands used as dwellings to facilitate the proposed development. For the reasons set out above I consider that the applicant has demonstrated that the retention of waste material on site is the most appropriate option in environmental grounds. It is therefore my opinion that the compulsory purchase of the lands as set out in the Compulsory Purchase Kerdiffstown Landfill Remediation Project Order, 2017 is justified and serves a public interest namely the protection of the environment and the minimisation of environmental risk.

8.3.2. Suitability of the Lands for the Purposes Being Acquired

8.3.2.1 In addition to the need for the acquisition on environmental grounds and the suitability of the lands to accommodate the remediation option proposed, the lands are considered to be suitable for the proposed end use, namely as a public park and active recreational area. The re profiled site would provide a suitable environment for the development of multi-use playing pitches and walking trails. The proposed end uses have been the subject of public consultation as set out at Chapter 6 of the EIAR and the proposed uses are consistent with the feedback received from the public consultation exercise undertaken and as detailed in section 6.4.2 of the EIAR.

8.3.3 Extent of Development / CPO Proposed

8.3.3.1 The extent of the permanent or temporary land takes as set out in the submitted CPO has not been the subject of any specific objection. The extent of the permanent CPO covers the entirety of the landfill site and additional lands outside of

the site are restricted to a section of the public road (L2005) Ref. 110a.201, the frontage of properties at the southern end of the L2005 and a section of land at the north east end of the site within the grounds of Kerdiffstown House. The section within Kerdiffstown House is required for the stabilisation of the waste profile in this location. From an examination of the drawings of the proposed development and inspection of the site I am satisfied that the extent of permanent acquisition in this location is required to facilitate the proposed development.

8.3.3.2 On the R2005, the land take proposed between the site entrance and the roundabout at the southern end of the site is required to facilitate the widening of the local road to meet road design standards and for the accommodation of a cycle way and footpath. From an inspection of the site and the proposed new road layout I am satisfied that the land take proposed in this location is required to facilitate a development that complies with the relevant road and cycle design standards.

8.3.4 Compliance with the Development Plan / Proper Planning and Sustainable Development of the Area.

8.3.4.1 Section 8.2 of this report has set out how the proposed development is in my opinion consistent with the land use provisions of the *Kildare County Development Plan 2017-2023* within which area the site is located. The site is an existing developed facility and the remediation works proposed therefore comprise the remediation of an existing permitted site. The development is also in my opinion consistent with the provisions of **Policy WM16** which states that *'the Council will work in conjunction with government departments and Agencies and all other relevant stakeholders to remediate the Kerdiffstown Landfill in a socially, economically and environmentally sustainable manner that will both manage and reduce environmental risk and accommodate an appropriate end-use that is compatible with the established character of the area.'*

8.3.4.2 In addition, as set out in section 8.2, there are a number of policies and objectives contained in the Plan which support the proposed end use of the site as a recreational amenity. **Objective SN01** aims *'to develop open spaces throughout the*

county which will encourage a range of recreational and amenity activities that will cater for both active and passive recreation'. In addition, **Policies GI1, GI3 and GI4** seek to promote the provision of green infrastructure, active recreational facilities and a network of high quality multi-functional open spaces and parks. It is my opinion that the proposed remediation of the Kerdiffstown site and the development of the proposed active and passive recreational facilities on the site would be consistent with these policies and objectives.

8.3.4.3 **Policies WS9, WS10 and WS11** seek the management, protection and improvement of ground and surface waters and the aims and implementation of the proposed development would, in my opinion be consistent with these policies. In terms of waste management, in addition to the specific provisions of Policy WM16 regarding the regeneration of the Kerdiffstown site, **Policy WM3** seeks to support the implementation of the *Eastern – Midlands Regional Waste Management Plan 2015-2021*.

8.3.4.4 As set out at section 8.2.16 above, the proposed project would in my opinion be consistent with the provisions of the ***Eastern-Midlands Region Waste Management Plan, 2015-2021***, including **Policies G2 and E11** which specifically relate to the remediation and alternative uses of closed landfill sites. The proposed development would in my opinion be consistent with the overall provisions of the regional plan being a site which has a significant risk to the environment and human health and which is a potential site for redevelopment to accommodate an alternative land use.

8.3.4.5 In addition to compliance with development plan policy, there is in my opinion also an amenity / alternative land use justification for the proposed use that is consistent with the proper planning and sustainable development of the area. The site is currently in a condition such that it does not have any beneficial use to the public and indeed is such that it imposes significant obligations on the Council in terms of site security, management and maintenance. The proposed development would incorporate a range of amenities that would benefit the wider community including

walking trails as well as sports facilities all of which are consistent with the proper planning and sustainable development of the area.

8.3.4.6 In conclusion, by virtue of its compatibility with regional waste policy and local policies and objectives relating to environmental pollution, amenity as well as the overall beneficial land use proposed it is my opinion that the proposed remediation project is consistent with the proper planning and sustainable development of the area and would serve a significant public interest and represent a significant community gain.

8.3.5 Extinguishment of Right of Way / Severance / Wayleaves

- 8.3.5.1 The proposed development involves the extinguishment of a right of way between lines A1 and A2 shown on the deposited map (Drg. KLRO/3300/01). The proposed extinguishment of these rights of way arise from the proposed new access arrangements to the site and the associated realignment of the L2005 (Kerdiffstown Road) in the vicinity of the entrance. Public right of way along the realigned L2005 will be maintained and no access points onto the L2005 will be lost. The extinguishment of this right of way is therefore considered to be acceptable.
- 8.3.5.2 There are a number of temporary acquisitions included in Part III of the CPO. These include lands along the L2005 to facilitate construction of the new access route and along the access driveway within the grounds of Kerdiffstown House. The location and extent of the temporary acquisitions are considered to be acceptable.
- 8.3.5.3 Two permanent wayleaves are proposed as part of the CPO. The first is located on the southern end of the site between points WL1 and WL2 and is required to facilitate maintenance of the leachate and foul drainage connection from the infrastructure compound in the proposed development to the Johnstown pumping station. The second wayleave is required to service the proposed new surface water connection to the Morell River. In both cases these wayleaves are considered to be necessary to facilitate the operation of any permitted development.

8.3.6 Specific Grounds of Objection to CPO

- 8.3.6.1 The specific objections received relating to the CPO have been submitted by Hennessey and Perrozzi Solicitors on behalf of the occupants of two of the three houses which are proposed for compulsory acquisition as part of the development. The CPO references for these properties are 105e.201 which is a house located at Tunney's Field at the northern end of the site, and Ref. 105b.201 located at the southern end of the site. On the CPO schedule, both of these properties are listed as being in the ownership of Dean Waste Co. Ltd. and it would appear that the occupants of these properties were involved in the commercial activity undertaken at the site.
- 8.3.5.2 The grounds of objection raised against the CPO of these properties identify issues of disturbance, the loss of family homes, lack of assessment of the impact on the occupants and inadequate basis for the acquisition. In response to these issues I note the comments made by Mr Flanagan at the oral hearing where he stated that where the CPO process is followed and there is a right to compensation and there is no undue delay in the process then the principles set out in the Convention on Human Rights are fully met. I would agree that this is the case in the circumstances of the current case. While it would appear that the objectors in this case are tenants in the properties rather than the owners, disturbance and the loss of the property would be met in the CPO arbitration process. In the event of confirmation of the CPO tenants would have rights in terms of a notification period for vacation of the properties.
- 8.3.5.3 The specific sites where the objector's properties are located are proposed to accommodate the landfill infrastructure compound in the case of CPO Ref. 105b.201, and an 80m by 45 m multi use sports area and a reed bed and grassland area in the case of CPO Ref. 105e.201. The justification for the CPO of the house to accommodate the infrastructure compound is that this facility needs to be located on lands that have not been the subject of waste deposition and in my opinion this is a reasonable basis for inclusion of this site within the lands proposed to be permanently acquired. The applicant has set out at Chapter 6 of the EIAR how the

proposed end use of the site was the subject of public consultation and how the end uses were decided upon. Section 6.2.4 of the EIAR sets out the results of the public consultations undertaken and indicates that 39 submissions were received. The outcome of these consultations included comment that there was a need for additional playing pitches. This was also stated during the course of the oral hearing where the proposal for the inclusion of a third multi sports pitch was on the back of submissions from Kildare Sports Partnership. At the hearing the inspector requested further details of the consultation undertaken by the sports partnership that informed the decision to amend the design to incorporate a third pitch in the general location of CPO Ref. 105e.201, however no further information on the process undertaken was available. Notwithstanding this, the applicants have clearly undertaken a public consultation process to inform the project design and it is clearly indicated in the EIAR that the accommodation of additional playing pitch facilities was considered desirable. The site chosen is also convenient relative to the other playing and changing facilities proposed and is on a relatively level part of the site. Finally, I note the fact that the properties in question are directly connected to the waste activity previously undertaken at the site as they were in the ownership of the operator of the waste facility and accommodated employees of the waste facility. Having regard to the above, it is my opinion that the need for the acquisition of these properties has been adequately demonstrated and that the application for their compulsory purchase should be confirmed.

8.3.5.4 Regarding the lack of an adequate basis for the acquisition, as set out at sections 8.3.1 and 8.3.2 of this report above, I am satisfied that a need for the proposed development on environmental grounds has been adequately demonstrated and also that the proposed development is consistent with the proper planning and sustainable development of the area. The loss of the existing habitable dwellings as proposed also has to be set against the merits of the project in terms of the creation of an amenity for the local area as well as the wider north Kildare area. The project will result in the creation of three multi use sports pitches as well as recreational and amenity trails which will be of significant benefit to the local area. Overall, it is my

opinion that the merits of the project in terms of its positive environmental impact and positive contribution to recreational amenity are such as to outweigh the permanent loss of the three residential properties proposed for compulsory acquisition.

8.3.5.5 The written objection made on behalf of Dean Waste Co. Ltd and others and submissions made to the oral hearing by Mr Turner on behalf of Dean Waste Co. Ltd. reference the fact that Dean Waste Ltd had invested in excess of 200 million euro in the development of the site and that this investment would be lost on confirmation of the CPO. Compensation for this loss and the loss of the business is sought. In my opinion, the loss of the business and the infrastructure on the site has already occurred with the prosecution of the former operators by the EPA and the subsequent closure of the site. What is for determination at this stage and as part of the CPO process is whether the CPO application should be confirmed or not. In the event that compulsory acquisition is confirmed, the amount of compensation will be a matter for the property arbitrator and it is at that stage that the level of compensation payable would be assessed with compensation being related to the value of the lands to be acquired. Claims regarding financial loss connected to the closure of the business and vacation of the site would appear to me to be matters that are more appropriate to any legal proceedings relating to the period surrounding the site closure.

8.3.6 Conclusion on CPO

8.3.6.1 In conclusion, on the basis of the information presented in the application documentation and during the course of the oral hearing and observed at the time of inspection of the site, I am satisfied that there is a need for the proposed acquisition to facilitate the proposed development on environmental grounds and that the proposed remediation of the site and its development for recreational and amenity use is consistent with the provisions of the Kildare County Development Plan and with the proper planning and sustainable development of the area. I am therefore satisfied that there is a clear public interest served and community need met by the proposed acquisition. It is therefore my recommendation that the compulsory

purchase order sought by Kildare County Council for the purposes of facilitating the Kerdiffstown Landfill Remediation Project should be confirmed by the Board without modification.

9.0 Environmental Impact Assessment

9.1. Introduction

- 9.1.1. This section sets out an environmental impact assessment (EIA) of the proposed project. A significant number of the environmental issues relevant to this EIA have already been addressed in the Planning Assessment at section 8.2 of this report above. This EIA section of the report should therefore, where appropriate, be read in conjunction with the relevant parts of the Planning Assessment.
- 9.1.2. Regard should also be had to the fact that the proposed remediation project comprises an activity for which an Industrial Emissions Activity Licence (IEAL) is required to be obtained from the EPA. Any licence issued by the EPA relating to the project will include conditions which restrict or limit environmental emissions from the site and under section 175(10)(a) of the Planning and Development Act, 2000 as amended, a Planning Authority or the Board shall not attach conditions relating to the control of emissions to any grant of permission issued in respect of a licensable activity. This restriction only however relates to the operational phase of an activity and the construction aspects of a licensable activity may be regulated by a Planning Authority or the Board by way of condition. This issue has been highlighted at section 8.1 of this assessment above and the initial construction phase aspects of the remediation project in respect of which it is considered appropriate that the Board may attach environmental conditions shall be as set out at paragraphs 8.1.20-8.1.26.
- 9.1.3. The application for approval was accompanied by an Environmental Impact Assessment Report (EIAR) on the basis that it was considered by the applicant (Kildare County Council) to come within Class 11(b) of Part 2 of the Fifth Schedule of the Planning and Development Regulations, that being 'installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of this Schedule'. No formal scoping procedure with the Board was entered into prior to the transposition date for the Directive. The application was received by the Board

on 30th August, 2017 and therefore, having regard to the provisions of Circular Letter PL1/2017, the subject application falls within the scope of the amending 2014 EIA Directive (Directive 2014/52/EU) on the basis that the application for approval of the Landfill Remediation Project was lodged (and the associated CPO served) after the last date for transposition in May, 2017.

- 9.1.4. The layout of the submitted EIAR follows a grouped format and the impact of the proposed development was addressed under all relevant headings with respect to the environmental factors as listed in Article 3(1) of the 2014 EIA Directive. The EIAR clearly sets out a case regarding the background to and need for the project (Chapter 3) and this is augmented by the Remediation Options Report prepared by SKM Enviros and submitted at Appendix 6 of the Planning Report prepared by AOS Planning. The EIAR also provides a significant level of detail with regard to the consideration of alternatives. This information is presented at Chapter 5 of the EIAR and includes discussion on alternative locations, alternative layouts, alternative designs and alternative processes. Reference is made in this section to the 2013 SKM Enviros Remediation Options Report. An overview of the main interactions is provided at Chapter 20 of the EIAR and a Table of Authors is presented at the start of the document which lists the chapters / environmental factors and identifies the relevant authors and the company they represent. The competencies of the experts who prepared the EIAR and presented briefs of evidence to the oral hearing are considered to be reasonable and consistent with and appropriate to the requirements of the EIAR and amending directive.
- 9.1.5. Details of the public consultation procedure entered into by the applicant as part of the preparation of the project are set out at Chapter 6 of the EIAR and at 8.2.7 and 8.2.8 of this report above. I note that the timelines for the receipt of submissions from the public exceed the minimum 30 day period specified in the Directive. Specifically, in the case of the application for confirmation of compulsory purchase, the period for submissions was 6 weeks. In the case of the application for approval under s.175 which was accompanied by the EIAR, the period for the receipt of submissions from the public extended from 25th August to 19th October, a period of 8 weeks. Prescribed bodies were given a period of 7 weeks to make submissions.
- 9.1.6. The vulnerability of the project to natural disasters as required at Article 5(1)(f) of the 2014 EIA Directive is addressed in section 4.8 and Table 4.14 of the submitted

EIAR. Table 4.14 assesses the vulnerability of the proposed project to a range of scenarios with an assessment of likelihood and significance for each scenario. In each case risks are assessed for both an uncontrolled scenario and a residual or post mitigation (design and otherwise) risk. The post mitigation risk is classified as low for all scenarios with the exception of fire, slope failure and gas explosion / lateral migration off site where the risks are assessed as medium. In the circumstances of the current proposal it is considered that the vulnerability level of the project to major accidents and / or disasters is acceptable.

- 9.1.7. In view of the above, the content and scope of the EIAR is considered to be acceptable and in compliance with the requirement of Articles 94 (content of EIS) and 111 (adequacy of EIS content) of the Planning and Development Regulations, 2001 (as amended) and the provisions of the new amending directive.
- 9.1.8. I have examined the information submitted by the applicant including the submitted EIAR as well as the written submissions made to the Board and noted the submissions made to the oral hearing.

9.2. Consideration of Alternatives

- 9.2.1. Alternatives are addressed at Chapter 5 of the submitted EIAR and the information presented at Chapter 5 is augmented by the information contained at section 4.3 of the submitted Planning Report prepared by AOS Planning and in the SKM Enviro 'Kerdiffstown Landfill Remediation Project - Remediation Options Report', 2013 which is included at Appendix 6 of the Planning Report. The issue of alternatives is addressed in the Planning Assessment at sections 8.2.9 – 8.2.14 of this report above and reference should be made to these sections in the discussion of alternatives.
- 9.2.2. The assessment of alternatives provided at Chapter 5 of the EIAR covers alternative locations, layouts, designs and processes. The do nothing option is examined and, as discussed in section 8.3 relating to need for the project, I am satisfied that a clear need exists for environmental reasons. The alternative of the excavation of the waste material from the site is also addressed in the EIAR and as set out at section 8.2 above, I agree with the analysis presented by the applicants that the environmental implications and risks of the excavation of the site and the

implications for the transportation and alternative siting of the waste excavated are such that this option is not appropriate.

- 9.2.3. The consideration of alternatives presented in the EIAR also covers site contours, the options for gas and leachate management, site drainage, extent of demolitions, capping options and the end use of the site. In all instances the information presented gives an environmental basis for the alternative selected.
- 9.2.4. In my opinion the information presented in the EIAR with regard to alternatives is comprehensive, provides a justification in environmental terms for the alternatives chosen and is in accordance with the requirements of the 2014 EIA Directive.

9.3. **Environmental Factors**

The sections below addresses each of the environmental factors and identifies, describes and assesses the significant effects of the proposed development on each factor of the environment. The factors are largely grouped as identified in Article 3 of the 2014 Directive. The headings used are as follows:

- Biodiversity
- Land Soil and Water
- Air and Climate
- Material Assets, Cultural Heritage and the Landscape
- Population and Human Health

In each case, where relevant to the project, the effects on the above environmental factors include consideration of the vulnerability of the project to risks of major accidents and / or disasters as required under Article 3(2) of the 2014 amending EIA Directive.

9.3.1. **Biodiversity**

- 9.3.1.1 The impact of the proposed development on European sites is specifically addressed in Section 10.0 of this assessment below (Appropriate Assessment). An appropriate assessment screening report is submitted at Appendix A11.10 of the EIAR. Issues

relating to appropriate assessment are considered in more detail in section 10.0 of this report below. In summary, there are a limited number of designated sites located within a potential zone of influence of the project site with the closest being c. 7.5 km from the site. There are potential impacts in terms of ground and surface water pollution, changes to the water regime and potential for impacts on bird foraging and feeding habitat. A review of the available information including specifically that presented at Chapters 12 and 13 of the EIAR relating to soils, geology, ground and surface water indicates that there are no potential pathways that connect the source of the project site with receptors that could impact negatively on the conservation objectives identified for the designated sites. It is therefore my opinion that the proposed development is not likely to have significant effects on any European site, in light of the conservation objectives of the site.

9.3.1.2 The site currently supports a range of habitats. Scrub and grasslands are dominant and there are significant extents of trees and hedgerows along the site boundaries. Other habitats classes identified on the site comprise recolonizing bare ground, buildings and artificial waterbodies. The scrub and grassland habitats are predominant in the northern part of the site while the area to the south is characterised by the concrete structures and by the significant extent of the engineered landfill cell which is covered.

9.3.1.3 A significant number of surveys have been undertaken on and adjoining the site and the results of these surveys are presented in Chapter 11 of the EIAR, (11.2.6). There are a number of potential impacts to biodiversity associated with the remediation phase of the project. These include habitat loss, severance, disturbance, mortality and potential contamination. The assessment of impacts was assisted by a comprehensive range of ecological surveys undertaken between September 2015 and September 2016. The results of these surveys are presented in Chapter 11 of the EIAR and are detailed in the appendices to the EIAR. Surveys undertaken included

- A habitat survey,
- Daytime assessment of bat roost potential
- Bat roost surveys of trees and buildings,
- Bat activity surveys (see A11.6 of EIAR),

- Breeding bird surveys,
- Mammal surveys,
- Amphibian surveys and associated water quality surveys.

A full description of the surveys undertaken and the relevant dates is given in section 11.2.6 of the EIAR and summarised at Table 11.3. The scope of these surveys is noted and is considered to be appropriate.

9.3.1.4 Of most significance, the surveys undertaken show the presence of a confirmed **bat roost** located in a tree at the northern end of the site along the site boundary. (Point B in Figure 11.2). This confirmed roost is to be protected during construction and additional bat boxes are to be provided. The majority of the tree line in this north eastern part of the site where the boundary with Kerdiffstown House is located are proposed to be retained and foraging woodland within the Kerdiffstown House lands would also remain available. This is considered to be satisfactory and there is not predicted to be a significant negative impact on recorded bat populations in this location. Mitigation measures for the protection of the known roost are set out at Mitigation No.B17 and includes a commitment to prevent light spillage into this area. The CEMP also commits to the preparation of a Site Biodiversity Management Plan (Mitigation No.B1) which is to include measures for the protection of the existing Leislars bat maternity roost. Comprehensive bat mitigation measures are set out in the EIAR section 11.5.1; Mitigation No.B9 in Table 19.7 Biodiversity Mitigation Measures). The design and layout of the project has been undertaken to minimise the potential impact on bats and to prevent light spillage into sensitive areas. Specifically the proposed floodlit multi sports pitches are to be located in the southern end western part of the site away from known roost locations. All lighting, both in the pitch areas and elsewhere on the site, will be sensitive to the impact on bats and other ecology. Existing boundary vegetation which has potential for use as foraging routes for bats will be protected during construction and temporary fencing to protect the roost protection areas are proposed to be used. The three residential properties which are proposed for demolition (Receptors REC10, REC11 and REC16 as per the EIAR) have not been the subject of survey for bats as access was not available and these properties are proposed to be the subject of further survey

work by a qualified expert prior to demolition. Subject to the mitigation measures set out in the EIAR, I consider that the proposed development would not have a significant adverse impact on bats.

9.3.1.4 In terms of **mammals**, the main potential impacts relate to badger. Pre construction surveys will be undertaken prior to the commencement of development to determine if there are additional setts present. From current surveys, two setts have been identified on the site and it is proposed that the main sett is proposed to be retained on site and protected during the construction activity. The subsidiary sett identified on site is proposed to be removed in accordance with the mitigation and methodology as set out at Item B6 of the Biodiversity Mitigation Measures contained in Table 19.7 of the EIAR. These measures are considered to be acceptable and, subject to compliance with the proposed mitigation measures, there are not considered likely to be any significant residual impacts on existing mammals on the site. At the operational phase it will be necessary to erect mammal fencing as there is a risk that badgers would disturb the cap placed over the waste material. The future accessibility of the site for mammals including badgers will therefore be restricted with a resulting adverse impact on the availability of habitat. Significant alternative habitat does however exist in the general vicinity of the project site and the overall impact of the fencing of the site post remediation is therefore considered to be slight adverse.

9.3.1.5 The surveys undertaken indicate that the site is of some local importance **to breeding birds**. Three red list bird species were recorded and all three of these species (yellowhammer, grey wagtail and meadow pipet) would be adversely impacted by the loss of nesting habitat. Against this, there is a significant amount of alternative habitat present in the area for these species and mitigation measures in terms of the season during which site clearance works will be undertaken are proposed. None of these species are qualifying interests of SPA sites located within 15km of the application site. Additional suitable habitat would also be created on site with the proposed project. The overall impact of the project on breeding birds is not therefore considered to be significant.

9.3.1.6 Grassland habitat suitable for **amphibians and reptiles** are located on the site and there are potential impacts from the removal of grassland habitat, refuges and existing waterbodies on the site. It is proposed that clearance of these areas would

be undertaken by the progressive reduction in grass height and the clearance of potential refuges during the winter months. Artificial habitat will be created if required. The clearance of existing waterbodies will only be undertaken after these areas have been checked. It is noted that there is alternative habitat available in close proximity to the site including ponds and waterbodies within Kerdiffstown House and on the Palmerstown golf course. In addition, post remediation, new water habitats will be created that would be of positive impact for amphibians and reptiles. Overall the post mitigation impact of the proposed project on these species is not considered to be significant.

9.3.1.7 The proposed development would have potential impacts on the **water quality** of the River Morell and as discussed previously in this assessment a construction plan to ensure the control of sediment during construction activities, including during the construction of the proposed surface water outfall and the laying of pipes under the Morell River, will be prepared. Sediment control and water quality will likely be addressed in conditions attaching to any IEAL granted by the EPA for the activity. Sedimentation has the potential to impact on the role of the River Morell as an important salmonid river and it is noted that white clawed crayfish are recorded as being present in the vicinity of the site proposed for the construction of the new surface water outfall to the Morell River. The mitigation proposed for the presence of this species is that a pre construction survey would be undertaken and in the event of crayfish being present, the capture and release of any individuals observed at the time of works. This will be undertaken subject to licence from the NPWS and between July and September and is considered to be acceptable and such that there would not be a significant impact on this species. To protect **salmon and lamprey** in the Morell River and tributaries works will be undertaken in accordance with the requirements of IFI as set out in *Guidelines for the Protection of Fisheries During Construction Works in and Adjacent to Waters*, (IFI, 2016). A commitment to undertake works in accordance with this guidance is given in Mitigation No.B13 in the Schedule of Environmental Commitments. In stream works are only to be undertaken between July and September inclusive. Subject to implementation of the proposed mitigation measures, I am satisfied that there would not be significant adverse impacts on water based species including salmon, lamprey and white clawed crayfish arising as a result of the proposed project.

9.3.1.8 There is no record of **invasive species** including Japanese knotweed on the site, however this plant is recorded as being present within the adjoining lands of Kerdiffstown House. Mitigation measures for the control of invasive species are proposed as set out at 11.5.1 of the EIAR and Mitigation No.B3 in Table 19.7 (Biodiversity Mitigation Measures) of the EIAR. An Invasive Species Management Plan is also proposed to be prepared. Having regard to the existing locations of invasive species relative to the area of proposed works, and to the proposed mitigation measures it is my opinion that the post mitigation impacts of the proposed project in terms of invasive species are unlikely to be significant.

9.3.1.9 As referenced previously at 9.2.2.6 above, the operational phase of the development presents opportunities for the **creation of new habitats** and the addition of features such as the drainage ponds and wetland area. In addition, the planting of new boundary screen planting will result in the creation of new habitats and the attraction of new species to the site. The overall project with the aim of improving the environment and reducing potential polluting emissions in the future will also have a clear benefit for ecology, particularly water based ecology. Overall therefore, while both the construction and operational phases of the development will have definite slight adverse impacts on some species such as badger and potential adverse impacts on others, it is my opinion that the overall impact on ecology post remediation and subject to the proposed mitigation measures contained at Table 19.7 of the EIAR will clearly be positive.

9.3.1.10 I have considered all of the written and oral submissions made in relation to biodiversity, in addition to those specifically identified in this section of the report. Having regard to the above, I am satisfied that impacts that are predicted to arise in relation to **biodiversity** would be avoided managed and mitigated by the measures which form part of the proposed scheme, the proposed mitigation measures and through suitable conditions. I am therefore satisfied that the proposed development would not have any unacceptable direct, indirect or cumulative impacts in terms of biodiversity.

9.3.2. Land, Soil and Water

9.3.2.1 The assessment of ground and surface water impacts arising from the proposed project has been guided by a very significant level of site investigations undertaken over a number of years since the site came under the control of the EPA in 2010. Over the period since 2010 a total of 170 boreholes have been drilled on and adjacent to the site and groundwater monitoring has been undertaken on an ongoing basis since 2011. Surface water monitoring has also been undertaken to examine the effects of groundwater migration on local water courses and surface water monitoring of the Morell River has been undertaken to establish a baseline and variations in Q rating, (see Appendix A13.3 of the EIAR for full results of the assessment of the Morell River for Q rating and also section 13.4.4 of EIAR). Ground and surface water monitoring results of monitoring for Q4 2016 and Q1 2017 are presented in Appendices A12.2 and A12.1 respectively of the EIAR. Chapter 12 of the EIAR addresses the issue of Soils, Geology, Contaminated Land and Groundwater and Chapter 13 Water and Hydrology.

Initial Construction Phase

9.3.2.2 As part of the Phase 1 **initial construction phase** works, it is proposed that the existing surface water connection to the Canal Feeder Stream would be removed. It is not proposed that surface water from the site would be discharged via the proposed new outfall to the Morrell River until the later stages of the development. There is therefore potential for surface water control to be an issue during the initial construction phase during which the Board has responsibility for setting environmental conditions. There is also the potential that the on-site demolition, crushing and screening activities proposed in the initial construction phase could result in the release of sediment to surface waters such that would require sediment control measures to be in place. In addition, the construction of the new foul and leachate pipeline connections to the Johnstown pumping station require connections to be under the Morell River and there is therefore the potential for the disturbance of the river at this location and the mobilisation of sediments and contaminants. Concerns relating to potential impacts in this area were expressed by Inland Fisheries Ireland and in the event of a grant of permission it is therefore recommended prior to the commencement of works that Inland Fisheries Ireland

would be consulted prior to the preparation of a method statement setting out details of the crossing under the Morell River.

- 9.3.2.3 The general concerns regarding the impact of the initial construction activities on the control of water within the site and discharges from the site are addressed by the applicant in the form of a proposed Construction and Environmental Management Plan, details of the scope of which are set out at GR1 in Table 19.1 of the EIAR (Schedule of Environmental Commitments). This CEMP is also proposed to incorporate a number of sub plans that would address specific risks that are applicable to this initial construction phase of the development. In particular, a Containment Spill Emergency Plan is proposed as well as a Groundwater Management Plan. In addition, an Erosion and Sedimentation Control Plan is to be prepared for the proposed works which would set out measures for the minimisation of sediment discharge to the Morell River and other watercourses in the vicinity of the site during the initial construction phase activities. These measures are set out at 13.6.1 of the EIAR and the mitigation measures set out in Table 19.9 of the EIAR, most notably Mitigation No.H4 which references the provision of exclusion zones, sediment control features such as silt fences and the control and management of earthworks and stockpiles of materials.
- 9.3.2.4 In addition to the impact of the works for the foul drainage and leachate pipeline crossings, there is also in my opinion potential for surface water impacts and sedimentation to arise from the construction of the proposed new surface water outfall to the Morrell River. These works are however proposed for a later phase of the construction works and are such that they would form part of the operation phase construction activity, the environmental impacts of which would be considered by the EPA and controlled by way of conditions attaching to any IEAL issued.
- 9.3.2.5 The initial construction phase works which are considered to fall within the remit of the Board as well as the off site works proposed in the form of the road construction and the directional drilling are likely to have limited potential impacts on ground and surface water relative to the waste movement, re profiling and capping works assessed below. There surface water impacts arising from the requirement to drill

under the Morrell River to accommodate the foul and leachate pipelines and also a potential for issues related to the control of surface waters on site and surface water runoff from the initial on site construction works post the decommissioning of the surface water connection to the Canal Feeder Stream can however in my opinion be adequately mitigated by the preparation of a Construction and Environment Management Plan and an Erosion and Sediment Control Plan as detailed in the EIAR. In the event of approval of the project, it is recommended that prior to the commencement of development a CEMP and an erosion and sediment control plan to cover the initial phase of development including the proposed off site works should be prepared and that this plan would be made available for inspection by the public. These plans should include specific proposals for the crossing of the Morrell River by the proposed foul drainage and leachate pipelines. Subject to the submission of a CEMP and an Erosion and Sediment Control Plan as set out above and implementation of the mitigation measures as set out in the EIAR significant impacts on water quality (surface or ground) are considered unlikely.

9.3.2.6 In conclusion, while there are some risks to ground and surface water quality arising from the initial Construction Phase works proposed which are within the remit of the Board including the foul drainage and leachate pipeline crossings of the Morrell River, it is my opinion that these impacts can be adequately mitigated by good on site construction practices and through the mitigation measures set out in the EIAR, notably Tables 19.9, 19.10 and 19.11.

Operational Phase

9.3.2.7 During the main works to remediate the site which comprise the Operational Phase for the purposes of the licensable activity, a number of potential impacts on land, soil and water arise. These are primarily associated with the unavoidable disturbance of the waste mass required to re profile the site to facilitate surface water drainage and also the proposed end use of the site for recreational and amenity purposes. These impacts include the potential exposure of waste materials to infiltration with resulting potential for changes in contamination in the bedrock aquifer and the potential that the disturbance of the waste mass could result in perched leachate being

encountered. If perched leachate was encountered it could be mobilised into the groundwater.

- 9.3.2.8 Works at this phase of the development are such that they would be the subject of licence by the EPA and the emissions to the environment would be controlled by conditions attaching to any such licence. The Board is therefore precluded from attaching conditions relating to this phase of the development though there remains an onus on the Board to undertake an EIA and can, if it deems it appropriate, decide to refuse permission on the basis of the project being unacceptable on environmental grounds.
- 9.3.2.9 Measures to control the risks to surface and ground water during the remediation works are set out at Section 12.5 and Table 19.9 of the EIAR. Groundwater monitoring during the remediation works are also proposed to ensure that potential negative impacts do not arise. Groundwater monitoring will likely be included as a condition attached to any IEAL issued by the EPA and subject to the implementation of the measures set out in the EIAR it is not considered that there are likely significant adverse effects on groundwater arising such as would justify approval for the project being withheld by the Board.
- 9.3.2.10 The site remediation phase will also see the development of a new surface water drainage system on the site including a new outfall to the Morell River to the east of the site. This new outfall has the potential to impact negatively on the river through sedimentation during the construction phase. As noted above, the submission received from Inland Fisheries Ireland (IFI) notes the potential adverse impacts from pollution of the Morell River by construction or surface water discharges given that the river is an important spawning habitat for Atlantic salmon. The EIAR (Chapter 13 and Table 19.1 of the Schedule of Environmental Commitments) states that an Erosion and Sedimentation Control Plan will be prepared to agree measures to ensure that sediment is not released to the river. Additional details for the control of surface waters are set out in Table 19.9 of the Schedule of Environmental Commitments and provide for the use of lined surface water ponds to manage surface waters during the construction phase (mitigation H3). Details of these ponds is provided at 13.6.1 of the EIAR. Mitigation measures in the form of an erosion and sediment control plan are proposed in the EIAR and construction phase mitigations in the form of good construction practice are detailed

in Table 19.9 (Water – Hydrology Mitigation Measures and Table 19.9). Subject to compliance with these mitigation measures I do not consider it likely that significant adverse impacts on ground or surface waters would arise. These aspects of the proposed project would also be the subject of assessment by the EPA and emissions to ground and surface waters and relevant quality standards to be met will be included in any licence issued by the EPA.

9.3.2.11 The movement of waste on the site as part of the construction activity and the re profiling of the site results in a risk of water contamination from the exposure of wastes, excavations encountering perched leachate or the presence of unexpected waste materials. The EIAR notes the dangers of perched leachate being encountered in excavations and while on the basis of investigations undertaken it is not anticipated that this will be a significant issue, the EIAR sets out procedures for the management of leachate and actions in the event of unexpected leachate or waste material is encountered (mitigation Nos. WM3, W7). As noted above, the phase of development where re profiling and movement of waste and the importation of fill materials commences will be the subject of environmental assessment by the EPA as part of the licence application process and any works will have to comply with the emission limits set out in any licence issued. On the basis of the information presented in the EIAR, subject to the proposed mitigation measures it is not considered likely that significant adverse impacts on ground and surface water would arise as a result of leachate mobilisation and there is in my opinion no basis for the Board to withhold approval for the project on the basis of leachate release from the waste mass.

9.3.2.12 With regard to the risk that hazardous or other unexpected material could be encountered during the excavation of waste material at the site, this risk is addressed in Table 14.4 of the EIAR relating to the vulnerability of the project to major accidents. It is proposed that in such an event that any such waste material would be removed for disposal off site.

9.3.2.13 On the basis of the information presented in the EIAR and subject to the mitigation measures proposed in the EIAR and as detailed in the Schedule of Environmental Commitments, I do consider that the proposed operational phase of the remediation project (namely the construction activity which would be subject to licence by the EPA) would likely have a significant adverse effects on the environment under the

headings of land, soil or water. It is therefore not considered that there is a basis for approval to be withheld by the Board on the basis of the impact of this phase of the project on these environmental factors.

Aftercare Phase

- 9.3.2.14 At the **aftercare phase**, the development will result in a number of measures that will have an overall beneficial impact on ground and surface water quality and also on the potential for landfill gas migration. Firstly the addition of a low permeability cap across the whole site will reduce the infiltration of water into the waste mass very significantly with resulting reduction in the generation of leachate that can migrate to groundwater. The concentration of leachate produced and potentially moving to groundwater will be increased given the reduced dilution however the overall effect in terms of risk to groundwater will be reduced on foot of the capping of the site. The addition of the cap will also result in the local water table being lowered due to the reduced infiltration of water. This would have a beneficial impact as the amount of the waste mass that is below the water table would be reduced or potentially eliminated. Figure 12.15 of Volume 3 of the EIAR indicates the likely and potential areas of saturated waste that exist on the site at present.
- 9.3.2.15 During the aftercare phase it is not anticipated that the project would have any adverse impacts on water quality. On the contrary, the capping of the site and the development of a new drainage system that separates surface water from waste material prior to discharge from the site or infiltration to ground would likely result in an improvement in water quality and a significant reduction in the risk of surface and ground water pollution.
- 9.3.2.16 There is a potential risk of pollution in the event that the discharges of leachate and foul drainage from the site is obstructed due, for example, to a failure at the Johnstown pumping station or capacity issues in the network or Osberstown waste water treatment plan. This scenario is addressed in the section of the EIAR relating to the vulnerability of the project to major accidents or disasters and the project has been designed such that some on site leachate holding capacity is provided for in the infrastructural compound. The extent of this storage is such that it

would facilitate alternative arrangements for the collection of leachate by tanker. These arrangements are noted and considered to be acceptable.

9.3.2.17 The monitoring and exact details of the mitigation measures relating to ground and surface water to cover the main operational phase works and aftercare phase of the project will be the subject of agreement as part of any IEAL that is issued by the EPA and, on the basis of the information presented I do not consider that there is a clear basis for refusal of permission for the proposed development on the basis of adverse impacts on ground and surface waters during the aftercare phase of the project.

9.3.2.18 With regard to **flooding and flood risk**, issues relating to the control and management of surface waters during the construction / operational phases of the project have been addressed in the sections above. On completion of the project and the end use of the site as a recreational / leisure facility, the site would have a certain vulnerability to flood risk arising from the creation of an impermeable capping system across the site and the addition of new uses on the site. To address this potential risk, the application is accompanied by a Flood Risk Assessment which is provided at Appendix A13.1 of the EIAR. Connected to flood risk at the site, particularly in the aftercare phase of the development it should be noted that the proposed Morell River Flood Management Scheme (Ref. 09.JA0042) is currently with the Board for determination. This scheme has been designed to alleviate flooding to properties for up to 1% annual exceedance probability (AEP). The proposed works primarily relate to the use of retaining walls and embankments to hold the flood waters within the river channel as well as specific localised measures including the use of hard defences to protect properties at risk of flooding during a 1% AEP flood event. The submitted flood risk assessment was undertaken using the existing CFRAM fluvial flood risk data for the area. The conclusions of the flood risk assessment are that the impact on fluvial flood risk to the Morell River as a result of the proposed development is projected to be negligible and that flood risk will not be increased as a result of the proposed development. I have examined the flood risk assessment as contained at Appendix A13.1 of the EIAR and consider that the methodology employed is robust and that the results indicated are acceptable.

9.3.2.19 I have considered all of the written and oral submissions made in relation to land, soil and water, in addition to those specifically identified in this section of the

report. I am satisfied that these would be avoided, managed and mitigated by the measures which form part of the proposed project, the proposed mitigation measures and through suitable conditions. I am therefore satisfied that the proposed project would not have any unacceptable direct or indirect impacts in terms of land, soil and water.

9.3.3. Air and Climate

9.3.3.1 The proposed project has the potential to result in a number of environmental impacts under the heading of Air and Climate. At the construction / operation phase of the project, the nature of the works are such that there is the potential for odour issues to arise and for the generation of significant impacts in terms of noise and dust. Once complete and in the aftercare phase with the site in use as a recreational amenity, the project has less significant potential for air and climate related impacts with the main issues relating to noise and odour.

9.3.3.2 The information presented with the application indicates that there was a significant issue regarding odours at the site in the period prior to the vacation of the site by the previous operator in 2010 and that the focus of this issue was the area identified as Zone 1 in the current application. The odour problems were closely connected with the escape of landfill gas from within the waste mass in zone 1, and the remediation works undertaken to date on the site included the installation of an active gas extraction system and gas flare which covers approximately 10 percent of the area of Zone 1. The available information is that this gas management system has resulted in a significant improvement in odour emissions from the site with the number of complaints significantly reduced from the pre 2011 period. Notwithstanding these works however, given the size and nature of the waste mass, the uncovered nature of the site and the fact that the gas flaring system only covers part of the waste mass there remains the potential for odour issues to arise. Modelling of gas generation on the site has been undertaken to inform the EIAR and the proposed project and this modelling was undertaken using GasSIM.

9.3.3.2 The existing baseline scenario for odours is set out at Table 7.14 on pg.144 of the EIAR. This indicates that no odorous compounds were encountered at any of the four monitoring locations included in the October 2016 survey undertaken. Detailed results of this survey are provided at Appendix A7.5 of the EIAR. PM¹⁰ monitoring was undertaken in September 2016 and indicates that air quality for PM¹⁰ are generally significantly below the air quality standard of 50ug/m³. Similarly, surveys for NO₂, SO₂ and H₂S show levels below normally acceptable limits. Emissions from the existing flare on the site has been predicted to be generally significantly below the relevant air quality standard for PM₁₀, PM_{2.5}, SO₂, NO₂, NO_x and H₂S. Figures 7.3 – 7.13 of Volume 3 of submitted EIAR and Tables 7.21 – 7.27 of the main volume of the EIAR show the results of the predicted remediation phase ground level emissions from the existing flare. It is noted that the outputs of the modelling of the emissions from the existing flare are conservative in that they assume that the flare would be running continuously and at full emissions at all times and the existing flare would remain on site during the remediation phase of the development. Details of the methodology used in the air dispersion projections are given at Appendix A7.9 of the EIAR and, in my opinion, there are no elements of the assumptions used in the model which are clearly of concern. The predicted impact of the existing flare during the initial construction and operational phase is therefore considered to be acceptable. Overall therefore the baseline information indicates that, in its existing format, the noise and air emissions from the site are not significant.

9.3.3.3 Chapter 7 of the EIAR deals with air quality, odour and climate. The monitoring of odours and gas emissions connected with the operational and aftercare phases of the remediation project are likely to be included within the scope of any IEAL issued by the EPA. The impacts on air and climate arising from the initial site construction phase including demolition of the existing dwellings and the existing concrete structures on site as well as other works in advance of site excavation or re profiling would however be such that their control by way of condition would be the responsibility of the Board.

Initial Construction Phase

9.3.3.4 The main potential adverse impacts with regard to air and climate during the initial construction phase of the remediation project are noise related to the construction activity on and off site, odours from the gas flare and any potential disturbance of waste material and dust from the construction activity.

9.3.3.5 Firstly, with regard to **odours**, the initial construction phases which it is within the remit of the Board to control emissions should not be such that significant odour issues are likely to arise. The nature of the works in this phase comprise off site construction related to the L2005 and the service connections to the site which are not located in areas such that existing waste material would be disturbed. As detailed in 9.3.3.2 above, the modelling of the impact of the existing gas flare on the site indicates that existing limit values are not being exceeded. During the initial construction phases, the gas flaring system would not be expanded beyond its existing extent and gas emissions would not be likely to be different from the existing modelled situation. It is not therefore considered likely that any significant odour issues would be generated by the initial construction works which it is specifically within the responsibility of the Board to limit and control and it is not considered necessary that any conditions relating to odour emissions from the site should be attached to any approval issued.

9.3.3.6 With regard to **noise**, details of the assessment undertaken is contained at Chapter 8 of the EIAR. Section 8.2.2 of the EIAR sets out the methodology used in the assessment and the relevant assessment criteria are detailed at section 8.2.3. A limit of 55dB LAeq for onsite remediation phase works was used and 70 dB LAeq for offsite construction activities connected with road upgrade works and drainage connections is cited in accordance with NRA noise limit standards. The methodology and noise limit criteria as contained in the EIAR are considered to be appropriate. Noise impact was calculated for each of the eight phases of the proposed development, and predicted noise levels for each of the noise sensitive locations calculated. The results relating to Phase 1 construction activities which are

of primary concern for this part of the assessment and which cover the construction activities the control of which are the responsibility of the Board are broken down for on site and off site construction. Table 8.1 indicates that without mitigation on site phase 1 construction activity would exceed the noise criteria at 3 of the 6 no. NSLs modelled. With mitigation this is changed such that all 6 no. NSLs meet the criteria. Tables 8.16 – 8.18 of the EIAR set out the predicted noise impacts arising from off site Phase 1 construction activity comprising the road realignment, and directional drilling works. The calculated noise levels at 20-22 metres from the source are all well inside the 70 dBA noise criteria specified. The results of noise modelling are illustrated graphically at Figures 8.4 – 8.11 of Volume 3 of the EIAR. No cumulative on and off site phase one assessment is provided however given the level by which the predicted noise is below the 70dBA limit I do not consider that the cumulative impact would exceed the criteria. Construction traffic noise is included and accounted for in the noise assessment undertaken and Table 8.14 details the number of HGV movements to and from the site in each phase of the project that have been incorporated into the noise assessment. An assessment of traffic noise along the haul route is also included in the EIAR and detailed at Table 8.19. This indicates that the 70 dBLAeq criteria derived from the NRA standard would be met along the L2005 between the site and the junction with the N7. Predicted cumulative noise along the route is predicted to be 57-59 dBLAeq and is considered to be acceptable and such that significant adverse impacts on properties along the route would not arise.

9.3.3.7 The predicted noise levels are subject to the implementation of a number of noise mitigation measures, principally relating to the construction phase. These mitigation measures are set out at Table 19.4 of the EIAR and include the use of construction screens at locations as set out at 8.4.1 of the EIAR and Figure 8.2 of Volume 3 of the EIAR. Best practice noise control measures in construction are proposed and the EIAR states that a detailed Noise and Vibration Management Plan will be required to be submitted for agreement, (Mitigation No.N1 in Table 19.4 of EIAR).

9.3.3.8 Overall it is my opinion that subject to the mitigation measures set out in the EIAR the initial construction phase of the project would not be such as to have a significant adverse impact on the environment or local amenity by virtue of excessive noise. In the event that the project is approved by the Board it is recommended that this be subject to a condition requiring the preparation of a Noise and Vibration Management Plan which would include details of the noise monitoring locations and measures to ensure that the noise emissions from these Phase 1 construction activities meet the noise criteria set out at Section 8.2.3 of the EIAR.

9.3.3.9 During initial construction phase of the project, there is the potential for the release of **dust** arising from the road construction activities, in particular from the demolition of existing properties and from the demolition of existing concrete structures on site and the establishment of a crushing and screening area on site. With regard to sensitive receptors, it is noted that the residential properties on Kerdiffstown Road are located such that they would be upwind with the prevailing wind from the dust source. Kerdiffstown House to the north east of the site would however be downwind from the site with the prevailing wind direction and located within c.200 metres of the site boundary. The Schedule of Environmental Commitments contained in Chapter 19 of the EIAR commits to the preparation of a Dust Management Plan. In addition to the preparation of a detailed Dust Management Plan a number of specific dust mitigation measures are set out in Table 19.3 of Volume 1 of the EIAR and taken in conjunction with detailed measures to be developed as part of the Dust Management Plan it is considered that it will be feasible that dust emissions from the site can be controlled to acceptable levels.

9.3.3.10 Dust monitoring at the site is detailed in the Monitoring and Control Management Plan set out at Appendix A4.10 of the EIAR. Section 1.8.2 of this Plan states that there are currently 9 dust sampling locations in and around the site and it is stated that a dust monitoring programme will be implemented at the site boundaries for the duration of the remediation phase of the development. In the event of a grant of permission it is considered appropriate that works would comply with the construction phase mitigation measures set out at section 7.5.1 and Table

19.3 of the EIAR and that a dust management plan would be prepared by or on behalf of the local authority and that this plan would be made available on the public file. As part of the dust management plan it is recommended that details for the monitoring of dust emissions during the construction phase would be submitted. The information presented in the EIAR does not specify a limit that shall not be exceeded at the site boundary during the construction phase. On the basis of the information presented, I consider that the normal dust deposition limits of 350 milligrams per square metre per day such as would likely be included in any IEAL issued by the EPA to cover the operational phase would be appropriate to the initial construction phase of the project in this case.

Operational Phase

9.3.3.11 During the operational phase of the remediation project incorporating the main construction activity including site re profiling and contouring works there is the potential to generate a number of environmental impacts including odours, noise and dust emissions and the release of landfill gas. At this phase of development the environmental emissions would be assessed by the EPA and such emissions would be the subject of control and limitation by conditions attaching to any IEAL issued. Notwithstanding this, the following provides an overview of the main environmental issues arising at this operational phase of the remediation project and at the aftercare phase.

9.3.3.12 The impact of the existing **landfill gas flare** has been the subject of monitoring and modelling of the emissions have been predicted to be generally significantly below the relevant air quality standard for PM10, PM2.5, SO2, NO2, NOx and H2S. Figures 7.3 – 7.13 of Volume 3 of submitted EIAR and Tables 7.21 – 7.27 of the main volume of the EIAR show the results of the predicted remediation phase ground level emissions from the existing flare. On the basis of the modelling exercise undertaken I do not consider that the emissions to air from the landfill gas flare during the operational phase of the remediation project would have a significant adverse impact on air quality. From Phase 5 onwards the flaring of gas is proposed

to be via the new 600m³ flare to be located within the infrastructure compound. Modelling of the emissions from this new flare are contained in the EIAR and the modelling of the dispersal indicates that the emissions would be within normally exceeded limit values for PM₁₀, PM_{2.5}, SO₂, NO₂, NO_x and H₂S. Figures 7.14-7.24 of Volume 3 of the EIAR indicate the predicted emissions relative to the relevant standards in the form of isopleths. On the basis of the modelling information presented, the methodology of which is in my opinion appropriate, I do not consider that the operational phase of the proposed project would give rise to adverse air quality impacts arising from the existing or proposed flare stack.

9.3.3.13 The proposed works could also have the potential effect of altering landfill gas migration through the site with potential impacts for offsite receptors. A comprehensive range of mitigation measures to address these risks are set out in the EIAR and include work methods to ensure the minimisation of waste exposure and capping on a temporary basis as works progress (mitigation Nos. H5, W5).

9.3.3.14 At the operational phase of the remediation project incorporating the main construction activity, the disturbance of the waste mass required for the re profiling of the site needed to accommodate the proposed relocation of wastes on the site, and the accommodation of the proposed amenity / recreational end uses, have the potential to generate **odours**.

9.3.3.15 Mitigation of this potential impact is proposed to be via a Landfill Gas Management Plan which is contained at Appendix A4.5 of the EIAR and an Odour Management Plan, a draft of which is included at Appendix A7.7 of the EIAR. Section 1.6 of the Monitoring and Control Management Plan submitted as Appendix A4.10 of the EIAR sets out the proposals for the monitoring of odours during the remediation of the site. Section 1.6.1 states that odour monitoring locations will be identified following a review of the Construction Management Plan to be undertaken by the contractor for the project. It is stated that odour monitoring will be undertaken at least twice daily. Mitigation measures to address the potential for odours from the site are proposed firstly in the form of the preparation of an Odour Management Plan which is to be developed as part of the CEMP (Mitigation No.GR1 at Table 19.1 of

the Schedule of Environmental Commitments) and specific mitigation measures set out at Mitigation Nos. A8, A9, A12, A13 and A14. These specific mitigation measures include the recording of meteorological conditions, logging complaints, identifying issues and good site practice in terms of minimisation of exposed waste material and procedures for the temporary coverage of exposed areas.

9.3.3.16 The measures set out in the Odour Management Plan include measures for monitoring of gas movement and for the implementation of additional and temporary gas management measures during the remediation phase where the need arises. Table 19.3 of the EIAR (Air Quality, Odour and Climate Mitigation Measures) include measures for monitoring of gas movement and for the implementation of additional and temporary gas management measures during the remediation phase where the need arises. Temporary cover of areas being worked on will be undertaken and the surface area of waste exposed will be minimised. Waste exposure and movement would not be undertaken during warm or sunny weather and in the event of excessive odours then the covering of the exposed area would be undertaken until additional control measures are identified and implemented. Subject to these mitigation measures being implemented via a requirement for the preparation of management plans for odour and landfill gas and compliance with any conditions attached to an IEAL issued by the EPA I do not consider it likely that significant negative odour impacts will arise during the operational phase of the remediation project. It is not therefore considered that the potential odour impacts arising from the proposed project would be such as to justify refusal of permission by the Board.

9.3.3.17 The operational phase of the remediation project also has the potential to generate significant dust emissions to the air. The removal of the existing screening bund located in Zone 1, proposed to be completed in Phase 5 of the construction works, is specifically identified as a source of potential significant dust generation. The predicted particle size of dust generated by works to the existing waste mass will be relatively large (10-75 µm particle size) and it is anticipated that the main impact arising would be dust deposition within 100 metres of the site. There are a limited number of environmental receptors located within the 100 metre radius of the

working areas on site and it is also notable that given the prevailing wind direction the main residential properties on Kerdiffstown Road are upwind of the dust source. A Dust Management Plan is proposed to be prepared and will form part of the Construction and Environmental Management Plan (CEMP) to be prepared for agreement and this plan will incorporate the mitigation measures set out at section 7.5 of the EIAR. These dust management and mitigation measures are generally standard in nature and in my opinion their implementation will act to ensure that the impacts arising from dust would be temporary and would be slight in scale.

9.3.3.18 Dust impacts arising from operational phase activities would be the subject of control by way of conditions attached to an IEAL issued by the EPA. On the basis of the information and mitigation measures presented in the EIAR, I do not consider that there is a clear basis for refusal of approval for the project by the Board on the basis of dust emissions during the operational phase of the project.

9.3.3.19 **Noise** is addressed in Chapter 8 of the submitted EIAR. The operational phase of the remediation project has significant potential impacts in terms of **noise** arising from the re profiling works proposed and the installation of infrastructure. These works are however such that they would come within the scope of the assessment to be undertaken by the EPA and would be covered by the conditions attaching to any IEAL issued by the EPA. In the case of the operational phase of development, the relevant noise emission limits are 55dB LAeq day, 50 dB LAeq evening and 45 dB LAeq night. The predicted noise emissions from the on site works in Phases 2-8 as set out in section 8.4 of the EIAR and as summarised at Table 8.15 and indicated in Figures 8.5 – 8.10 indicate that the noise levels generated would not exceed the noise criteria specified in the EIAR. I consider that the EIAR has demonstrated that compliance with the proposed noise criteria is likely to be achievable and consider that these criteria are appropriate to the circumstances of the proposed project. I do not therefore consider that operational phase noise emissions from the site are likely to be excessive and such as to have a significant adverse impact on the environment or on the amenity of occupants of noise sensitive locations identified in the vicinity of the site and do not consider that

there is a basis for the Board to refuse permission on the grounds of adverse operational phase noise impacts.

Aftercare Phase

9.3.3.20 During the aftercare phase, the potential impacts on air and climate are limited and largely positive in nature. The capping of the site and installation of infrastructure for the management of gas and leachate will result in gas emissions from the site being significantly reduced relative to the existing largely uncapped nature of the site with benefits for climate and atmospheric emissions. There are however some potential negative impacts on the above environmental factors relating to emissions to air from the flaring of onsite gasses. Noise emissions from traffic attracted to the site and from activity on the site, notable the sports pitches are also potentially negative impacts.

9.3.3.21 The emissions to air from the proposed new **gas flares** was the subject of modelling as detailed at Appendix A7.9 and section 7.4.3 of the EIAR. As with the modelling of the existing flare a conservative assumption that the flare would run continuously and at maximum level was used. The predicted increases in background level concentrations of PM10, PM2.5, CO, SO2, NO2, NOx and H2S are presented at Tables 7.32 – 7.38 of the EIAR. In all cases the predicted impacts in terms of increase above background concentrations are limited and such that the relevant air quality standard would not be exceeded and that significant adverse impacts on the environment are unlikely. Air quality impacts from the operation of the landfill flare during the aftercare phase would be the subject of control by conditions attaching to any IEAL issued by the EPA and on the basis of the information presented I do not consider that it is the basis for approval of the project to be refused by the Board.

9.3.3.22 The addition of the landfill gas control measures will have clear beneficial impacts on the surrounding area in terms of reducing the potential for **gas migration** to other receptors on and off site. The gas control measures in combination with the proposed cap will also have a significant positive environmental impacts in terms of

the reduction in gas emissions to the atmosphere which are currently largely uncontrolled on the site.

9.3.3.24 With regard to noise, as stated previously in this assessment, the methodology and noise limit criteria as contained in Chapter 8 of the EIAR are considered to be appropriate. **Noise** levels during the aftercare phase of the project when it is in use as a public amenity are not predicted to be significant and are projected to meet the 55-50-45 dBA LAeq day-evening –night limits that are likely to be included in any IEAL issued by the EPA. Traffic noise is similarly not predicted to be significant having regard to the anticipated additional traffic volumes in the vicinity of the site and the composition of this traffic.

9.3.3.25 As with the operational phase, emissions to the environment in the aftercare phase would be subject to any conditions attached to an IEAL issued by the EPA. Such a licence would likely include specific limits for noise and air quality. Overall, I do not consider that the aftercare phase of the proposed project is likely to have significant adverse impacts in terms of air or climate and that impacts under these headings would not be such as to have a significant impact on amenity.

9.3.3.26 I have considered all of the written and oral submissions made in relation to air and climate, in addition to those specifically identified in this section of the report. Having regard to the above, I am satisfied that impacts that are predicted to arise in relation to air and climate would be avoided managed and mitigated by the measures which form part of the proposed scheme, the proposed mitigation measures and through suitable conditions. I am therefore satisfied that the proposed development would not have any unacceptable direct, indirect or cumulative impacts in terms of air and climate.

9.3.4. **Material Assets, Cultural Heritage and the Landscape**

9.3.4.1 The main potential significant environmental effects arising during the initial **construction and operational phases** of the remediation project under the headings of material assets, cultural heritage and landscape are adverse impacts on the landscape character of the area and on visual amenity from locations in close

proximity to the site, the disturbance of ground such as would impact on archaeological material, negative impacts on the setting and character of surrounding properties and estates including Kerdiffstown House and the Palmerstown Estate and the demolition of three existing residential properties and potential for disruption and / or damage to existing utilities and services. During the **aftercare phase**, the potential environmental effects on these factors comprise impacts on the landscape character and local views and alterations to the setting of buildings, structures and established demesne and other significant landscapes.

9.3.4.2 The impact of the proposed development on the **landscape and its visual impact** is discussed at 8.2 of the Planning Assessment above and at Chapter 9 and Volume 3A of the EIAR. The site of the proposed development is located in an area identified in the landscape character assessment as being of low sensitivity and there are no designated scenic routes of views located in close proximity to the site. The site is not visible from the N7 and the main visual impacts would be from local residential properties and along the L2005 as well as from the adjoining lands at Kerdiffstown House and Palmerstown Demesne. The visual impact of the project has also to be set against the existing developed nature of the site and its current condition. During the initial construction and operational phases, the installation of landfill infrastructure and the capping of the site will all be visually prominent elements in near range views of the site. Beyond the boundaries of the site the EIAR states that the landscape impact of the remediation phase works is low and the visual impact at worst medium. I would agree with this assessment.

9.3.4.3 During the **aftercare phase** of the project, planting of the site boundaries are proposed and, once mature, this planting will result in there not being any adverse visual or landscape impacts. This mitigation landscaping and planting includes new stone walling and fencing to properties on the L2005 and the addition of semi mature planting. As noted in the Planning Assessment, in the event of a grant of approval additional detail on the landscaping and planting proposals are required and it is accepted that this information is appropriate to detailed design stage. The landscape and visual impacts of the proposed project at operational phase are in my opinion moderate and positive.

9.3.4.4 The assessment of **archaeology** contained at Chapter 10 of the EIAR is based on a desk based and walkover examination of the site as well as a geophysical survey of

the triangular shaped field located at the western side of the site (Tunney's Field). A total of six recorded monuments are noted in the vicinity of the proposed project. Of these one, the mound site is located within the site boundary, however the available information indicates that the mound site (Ref. KD019-018) has been disturbed by quarrying activity and a geophysical survey did not indicate the presence of any feature in the area recorded. All other monument sites are located outside the site boundary and are not likely to be impacted by the proposed development. There is however potential that the realignment works proposed for the driveway to Kerdiffstown House and the insertion of drainage swales in this area may impact on KD019-006001-4 which is the ruined church at the boundary between the Kerdiffstown House lands. The proposals for archaeological monitoring and testing at Tunney's Field (Ref. KD019-018), the church site and environs and in the area proposed for the foul and leachate pipe connections are considered to be appropriate and subject to these mitigation measures I do not consider it likely that the proposed development would have a significant adverse impact on archaeology.

9.3.4.5 There are no **structures of architectural significance** on or in close proximity to the project site. The closest protected structures are Kerdiffstown House and the entrance gate to Kerdiffstown House from the L2005. Having regard to the nature and extent of the proposed project I do not consider that the project would adversely impact on the character or setting of these protected structures.

9.3.4.6 The proposed development would have potential adverse impacts on **utilities** in the vicinity of the site, in particular during the undertaking of the works along the L2005 and the connection of the site to the Johnstown pumping station. Subject to good construction practice however I consider that these risks can be minimised and that there would not be a significant residual risk to existing utilities or infrastructure.

9.3.4.7 During the remediation phase **raw materials** will be consumed in the capping and other works proposed for the site. Raw materials for the capping will require importation onto the site and it is this importation of materials that generates the requirement for an IEAL from the EPA. Set against these construction / remediation phase resource and energy requirements, the aftercare phase will result in significantly reduced greenhouse gas emissions from the site. The proposed development would therefore, on balance, have a positive impact on material assets.

9.3.4.8 The potential impact of the development on **roads and transportation** infrastructure is considered at Chapter 14 of the EIAR. Construction and operational phase traffic impacts arising are not particularly significant relative to the carrying capacity of the existing road network. A new site access and roundabout is proposed and the L2005 is proposed to be upgraded between the new entrance and the existing roundabout to the south. At the construction and operational phases of the remediation, the EIAR proposes that a construction traffic management plan would be drafted and this would restrict the construction traffic access routes to and from the site. Given controls on traffic access and having regard to the nature of the development, traffic generation during the construction / operational phases of the remediation project and the aftercare phase, and the existing good condition of the local road network which is proposed to be retained, I do not consider that the residual impacts on the road network would be significantly negative.

9.3.4.9 I have considered all of the written and oral submissions made in relation to population and material assets, cultural heritage and the landscape in addition to those specifically identified in this section of the report. I am satisfied that the potential impacts on material assets, cultural heritage and the landscape would be avoided managed and mitigated by the measures which form part of the proposed scheme, the proposed mitigation measures and through suitable conditions. I am therefore satisfied that the proposed development would not have any unacceptable direct, indirect or cumulative impacts in terms of material assets, cultural heritage or the landscape.

9.3.5. **Population and Human Health**

9.3.5.1 The approach taken in the EIAR to the Population and Human Health environmental factor is one of health based standards. As set out by Dr Martin Hogan in his brief of evidence to the oral hearing, other chapters in the EIAR project likely emissions arising from the proposed project during both the construction / remediation and the operational phases. Detailed survey methods and modelling techniques are used in these assessments. Examples include Air Quality and Odour and Climate (Chapter 7) and Noise and Vibration (Chapter 8). In using health based standards for the area of population and human health, the EIAR is taking the approach advocated by the

EPA Draft Guidelines on Information to be Contained in EIS (August, 2017). In my opinion this approach is consistent with the requirements of the 2014 Directive and I note that the approach brings consideration of human health into line with the provisions of the SEA Directive.

- 9.3.5.2 The approach in this assessment is to consider the likely significant direct and indirect effects on population and human health at this point so as to facilitate the use of the assessment under other environmental factors in the consideration of the impact on population and human health. It should also be noted that the nature of the environmental factors that input into the assessment of population and human health are such that they relate to emissions to the environment the assessment and control of which during the operational and aftercare phases of the project are largely the responsibility of the EPA and which will be limited and controlled by conditions attaching to any IEAL that is granted for the proposed activity.
- 9.3.5.3 Chapter 16 of the submitted EIAR specifically addresses population and human health. The assessment contained at Chapter 16 identifies what are considered to be the main receptors located within the study area and the sensitivity of these receptors to the project was provided. This information is summarised at Table 16.2 of the EIAR.
- 9.3.5.4 Positive impacts on human health can be seen to be at the centre of the aims of the project. The project seeks to reduce the potential for environmental pollution arising from the existing waste site, for example emissions to air including odours, and water quality. The development would result in an improved level of visual amenity and appearance of the site and the operational phase of the development would result in the creation of a recreational resource for the area that would have potentially significant beneficial impacts for population and human health. Negative effects potentially arise in the areas of construction and operational phase impacts with the exposure of waste material generating odours and potentially releasing dust. There is potential for the contamination of ground and water sources during these phases which would potentially impact on water supplies and human health. Traffic would be increased, particularly in the short term during the remediation phase and the construction activities on site have the potential to generate noise emissions that would be harmful to public health. There is also the possibility of the site becoming more vulnerable to risks of major accidents or disasters.

- 9.3.5.5 As set out in 9.3.2 above, subject to mitigation measures including construction practices, the proposed project is not predicted to have likely significant adverse impacts on **ground or surface waters**. Impacts on human health in terms of contaminated **water supply** are not therefore considered to be likely. On the contrary, the proposed project is anticipated to have positive impacts on ground and surface water quality arising from the capping of the site reducing infiltration to groundwater and the re profiling of the site and installation of a new surface water system.
- 9.3.5.6 With regard to emissions to the air, as set out at 9.3.3 above, the proposed project would not result in **gas flaring** from the site during wither the construction / operational phases or the aftercare phase that would exceed recognised limit values. No adverse impacts on human health are therefore anticipated. **Gas** emissions from the site are predicted to be significantly reduced with the capping of the site and expansion of the gas management system and this is anticipated to have beneficial impacts in terms of greenhouse gas emissions and also to significantly reduce the potential for outbreaks of adverse odours. Both of these factors are considered to be beneficial to human health.
- 9.3.5.7 The potential impacts of **dust** emissions during the construction and operational phases are described and discussed at 9.3.3 above. As concluded in these sections, subject to good on site practice and mitigation measures as set out in the EIAR the proposed project is not anticipated to have significant adverse impacts in terms of dust generation. Long term, in the aftercare phase, the project would reduce the potential for dust emissions from the site. The project is not therefore considered likely to have adverse impacts on human health arising from dust emissions and, during the aftercare phase, impacts under this heading are considered likely to be significantly positive.
- 9.3.5.8 With regard to noise emissions, as described and discussed at section 9.3.3 above, the likely noise impacts of the project are not considered to be such that the proposed and accepted noise criteria would be exceeded. The achievement of these criteria requires mitigation including the use of noise barriers however noise impacts are proposed to be the subject of condition to address initial construction phase noise and operational and aftercare phase noise would be the subject of limits set out in any IEAL issued by the EPA for the project. Overall therefore, subject to

mitigation measures I do not consider that the proposed project would have a significant impact on human health due to noise emissions.

- 9.3.5.9 The proposed project will not act to have any significant impacts in terms of **severance** that might impact on human health or population. Construction worker numbers on site would be significant, however the location of and accessibility to the site is not such that the construction or operational phases would result in cultural or other issues that would impact on populations.
- 9.3.5.10 I have considered all of the written and oral submissions made in relation to population and human health, in addition to those specifically identified in this section of the report. I am satisfied that impacts that are predicted to arise in relation to population and human health would be avoided managed and mitigated by the measures which form part of the proposed scheme, the proposed mitigation measures and through suitable conditions. I am therefore satisfied that the proposed development would not have any unacceptable direct, indirect or cumulative impacts in terms of population and human health.

9.3.6. Interactions Between Environmental Factors

- 9.3.6.1 I have considered the interactions between factors and whether these might as a whole affect the environment, even though the effects may be acceptable when considered on an individual basis. I have noted and had regard to the assessment of interactions contained at Chapter 18 of the submitted EIAR.
- 9.3.6.2 In my assessment of each of the environmental factors at 9.3.1 – 9.3.4 above I have considered the likelihood of significant effects arising as a consequence of interrelationships between factors. The most significant of these interactions are summarised below:
- The impact on air quality, odour and climate arising from the storage, excavation and relocation of waste material on the site, and the resulting potential impacts on surrounding populations and on human health. As set out in the sections above, mitigation of these impacts are proposed in the form of a construction management plan that would include specific proposals for the control of odours. Subject to these mitigation measures being

implemented I do not consider that this interrelationship would likely give rise to a significant effect on the environment.

- The impact of the project in terms of noise and vibration and the potential for this noise and vibration to impact on ecology and biodiversity and on surrounding populations and human health. The EIAR has modelled the potential impact of the construction and operational phases on the development in terms of noise and vibration emissions. Subject to mitigation, the proposed project is shown to be able to meet the noise and vibration criteria listed in the EIAR and for which justification has been provided. Subject to mitigation, I do not therefore consider that these interrelationships would give rise to significant effects on the environment.
- The impact of the project in terms of landscape and visual is related to the proposed re profiling and movement of waste on the site and the construction activities required to implement the proposed project. Construction works relating to the remediation of the site will have a slight to moderate adverse visual impact and a low impact on landscape. These impacts are however temporary and on maturation of the site post remediation it is anticipated that the project will have a positive impact on visual amenity and landscape character.
- The impact of the project in terms of ecology and biodiversity is related to leachate generation, surface and ground water and the proposed change of use of the site. The reduction in leachate generation with the capping of the site and the presence of an engineered surface water management system at aftercare stage will result in likely significant overall beneficial impacts on ecology arising from the protection of, and potential improvement in, water quality. Some negative impacts in terms of the change to the habitat and restriction for access by certain species such as badger will arise during the aftercare phase.
- The impact of the project in terms of traffic and transport is connected with an increase in traffic levels and associated potential impacts on population and human health both through traffic congestion and delays and also the generation of noise and air pollution. The EIAR has assessed the impact of

the construction / operational phase of the remediation as well as the aftercare phase of the project on the existing road network, and this assessment indicates that there is adequate capacity to accommodate the predicted traffic volumes. The predicted traffic volumes have also been assessed as such that they would not have a perceptible impact on populations adjoining the route due to the relatively low level of increases relative to existing.

9.3.6.3 In conclusion, I am satisfied that such affects can be avoided, managed and mitigated by the measures which form part of the proposed development, mitigation measures, and suitable conditions. In my opinion, there is therefore nothing to prevent the granting of permission on the grounds of cumulative effects.

9.3.7. Reasoned Conclusion on Significant Effects

9.3.7.1 Having regard to the examination of environmental information contained above, and in particular to the EIAR and the supplementary information provided by the applicant, and the submissions of the prescribed bodies, and objectors in the course of the applicant, including submissions made to the oral hearing, it is considered that the main significant direct and indirect impacts of the proposed development on the environment are as follows. Where appropriate, the relevant mitigation measure as referenced in the Schedule of Environmental Commitments section of the EIAR (Table 19 in Chapter 19) is cited.

- ***Air pollution and noise during the construction / remediation phase*** such as would impact negatively on sensitive receptors and populations in the vicinity of the site. These impacts are avoided by the indicated operation of the existing landfill gas flare such that relevant emission limit values are met and the limited number of sensitive receptors in close proximity to the site as well as by the agreement of measures within a Construction and Environment Management Plan (CEMP) to include specific provisions relating to dust (Dust Management Plan - Mitigation Nos.A1-A7), odours (Odour Management Plan - Mitigation Nos.A8, A9, A10, A11, A12, A13, A14 and A16), Landfill Gas Management Plan and landfill gas management measures (Mitigation Nos.

GW1-GW5) and noise (Noise and Vibration Management Plan. Mitigation Nos. N1 – N10 inclusive).

- The ***risk of pollution of ground and surface waters during the construction / remediation phase*** through a lack of control of surface water during construction, the mobilisation of sediments and other materials during construction and the necessity to undertake construction activities in and under existing watercourses in the vicinity of the site. The construction of the proposed project could also potentially impact negatively on ground and surface waters through the unexpected encountering of perched leachate or unexpected waste types. These impacts would be mitigated by the agreement of measures within a Construction and Environment Management Plan (CEMP) to include specific provisions relating to groundwater (Groundwater Management Plan. Mitigation No.GR1), surface water (Existing Surface Water Management Plan – Appendix A4.6 and Mitigation Nos. H1-H3 and H5-H12), erosion (Erosion and Sediment Control Plan. Mitigation No.H4), waste (Waste and Materials Management Plan - Mitigation Nos. GR1 and W1-W8) and leachate (Existing Leachate Management Plan – Appendix A4.4. Mitigation No.W8).
- ***Biodiversity impacts*** arising from the changes to the vegetation on the site, potential loss of bat roosts and connections to foraging habitat, the necessity that the site be protected by mammal fencing and loss of a subsidiary badger sett and general disturbance during the construction phase. These impacts would be mitigated by the implementation of a Site Biodiversity Management Plan (Mitigation No.B1) under the CEMP, mitigation to protect badgers during construction including further surveys (Mitigation B4) and measures to close the existing subsidiary badger sett (Mitigation No. B6) and minimise impacts on the main sett through protection measures (Mitigation No. B7). Measures to protect bat roosts are proposed (Mitigation Nos. B9 and B17).
- The proposed project gives rise to an increase in ***vehicle movements and resulting traffic impacts*** during both the construction / operational phases of

the remediation project and the aftercare phase of the project. Significant impacts on the road network can be avoided by the proposed works to the L2005 including new site access and mitigated by the development and agreement of a Construction Traffic Management Plan, (Mitigation No.TT1), a mobility management plan (Mitigation No.TT3) and pre and post construction road condition surveys (Mitigation No.TT2).

- The proposed project would have **potentially significant positive environmental impact** in terms of the reduction of surface water infiltration into the existing waste mass thereby reducing the potential for adverse impacts on groundwater and likely resulting in an improvement in groundwater quality. The potential for the contaminant plume from the site identified in site investigations to migrate to the Morrell River is considered likely to be reduced. The proposed project would also have likely significant positive environmental impact in terms of surface waters arising from the design of the proposed new surface water drainage system that separates surface waters from the existing waste mass prior to discharge from the site. Finally, the proposed project would also have a potentially significant positive environmental impact in terms of the release of landfill gasses from the site with gas being captured and flared rather than escaping to the atmosphere.

In **conclusion**, having regard to the above identified significant effects, I am satisfied that subject to mitigation measures proposed the proposed project would not have any unacceptable direct or indirect impacts on the environment.

10.0 Appropriate Assessment

10.1. Introduction

- 10.1.1. The application for approval is accompanied by a Screening for Appropriate Assessment which is included as Appendix 11.10 of the EIAR. The location of the relevant Natura 2000 sites is indicated in Figure 11.3 of Volume 3A (Figures) of the submitted EIAR. This screening assessment concludes that having regard to the conservation objectives of the European sites and on the basis of there not being any potential pathway between pollution sources on the site and receptors

connected with the European sites, the proposed development would not be likely to have significant effects on the European sites.

10.2. Potential Impacts, Sources and Pathways

10.2.1. From a review of the nature of the proposed development and the location of the subject site relative to European sites, the following is a summary of the main potential impacts on European sites that may arise as a result of the proposed development:

- Changes to surface water quality and discharge arising from works to the existing waste mass and alteration of surface water regime resulting in potential direct effects in terms of the loss or degradation of habitats and potential indirect effects in terms of effects on species which use European sites.
- Changes in groundwater quality as a result of the mobilisation of contaminants as part of the works to re profile the waste mass and install monitoring infrastructure.
- Impacts on surface water quality arising from construction impacts including specifically the importation of capping material to the site and the placement of this material on the existing waste mass. There is potential for impact on adjoining surface water including specifically the Morell River.
- Potential impact on bird species arising from construction impacts and potential loss of habitats.
- The potential for in combination effects with other permitted or proposed plans or projects.

10.2.2. The site has been the subject of significant survey work as set out in Chapter 11 of the EIAR (Biodiversity). Other chapters of note in the EIAR relating to the AA Screening process comprise Chapter 12 (Soils, geology, Contaminated Land and Groundwater) and Chapter 13 (Hydrology). Section 4.1.1 of the submitted Screening Assessment summarises the species and habitat surveys and monitoring of the site undertaken as part of the preparation of the application and the EIAR. The level of

information provided is very comprehensive, specifically with regard to ground and surface water monitoring.

AA Screening

10.3. European Sites Potentially Impacted by the Proposed Development

10.3.1. There are no Natura 2000 sites located within or in close proximity to the application site. The closest European site to the proposed development site is Red Bog SAC which is located c. 7.5 km to the south east of the site and on the opposite side of the N7. Three other sites are located c. 10 km of the site, these being Ballynafagh Bog SAC / Ballynafagh Lake SAC to the North West of the site, Poulaphouca Reservoir SPA to the south east and Mouds Bog SAC to the west of the site. Having regard to the nature of the existing site and the proposed development the following sites are considered to be located such that they could potentially be affected by the proposed development:

- Red Bog SAC (site code 000397)
- Ballynafagh Bog SAC (site code 000391)
- Ballynafagh Lake SAC (site code 001387)
- Poulaphouca Reservoir SPA (site code 004063)
- Mouds Bog SAC (site code 002331)

10.3.2. The following is an overview of the conservation objectives for these identified European sites and an assessment of the likely significant effects of the proposed project on these conservation objectives using the source pathway receptor model.

10.3.3. Details of the proposed development were submitted by the applicant to the Department of Arts Heritage Regional Rural and Gaeltacht Affairs and no response was received within the time period specified. Details of the oral hearing were also sent to the Department however no representative attended. Section 7 of the screening for appropriate assessment submitted by the applicant indicates that a scoping report was sent to the Development Applications Unit for comment in advance of the submission of the application but that no formal response was received.

10.3.4. Red Bog SAC (site code 000397)

The Red Bog SAC site is located c.7.5km to the south east of the application site at the closest point.

The qualifying interests (QI) for this site are as follows:

- Active raised bogs.
- Degraded raised bogs still capable of natural regeneration.
- Depressions on peat substrates of the Rhynchosporion.

The conservation objectives for the site are site specific dating from November 2015 and for active raised bogs is '*to restore the favourable conservation condition of Active raised bogs in Red Bog SAC*'. No specific conservation objectives for Degraded raised bogs or depressions in peat substrate as they are dependent on the regeneration of the bog and peat forming capacity.

It is noted that the submitted screening assessment lists a single QI for the site, transition mires and quaking bogs and that no conservation objectives for this QI are referenced.

The proposed development could have a potential impact on the bog complex through changes in the ground and surface water regime in the area, particularly groundwater. The proposed development would also potentially mobilise contaminants which could reach the Red Bog SAC site.

An examination of the investigations undertaken with regard to groundwater and the assessment of groundwater movement in the vicinity of the application site and surrounding areas indicates however that the direction of groundwater movement is in a generally north easterly direction. The groundwater conditions in the vicinity of the site are discussed in detail in section 12.3 of the EIAR and the information provided in the form of borehole logs supports the conclusion that the direction of groundwater flow is towards the north east and therefore away from the Red Bog SAC site. In addition, while the available information does indicate some hydraulic connection between the Morell River and the groundwater, the direction of flow of the Morell River is however to the north east and there is no surface water connection

via the Morell River or other watercourse that could provide a pathway between the application site and the Red Bog SAC site.

In view of the above, the proposed development is not likely to have significant effects on the Red Bog SAC European site in light of the conservation objectives of the site.

10.3.5. **Ballynafagh Bog SAC (site code 000391)**

The Ballynafagh Bog SAC is located c.10km to the north west of the application site at the closest point.

The qualifying interests for this site are as follows:

- Active Raised bogs,
- Degraded raised bogs still capable of natural regeneration
- Depressions on peat substrates of the Rhynchosporion

The conservation objectives for the site are site specific dating from November 2015 and for active raised bogs is '*to restore the favourable conservation condition of Active raised bogs in Ballynafagh Bog SAC*'. No specific conservation objectives for Degraded raised bogs or depressions in peat substrate are specified as they are dependent on the regeneration of the bog and peat forming capacity.

The proposed development could have a potential impact on the bog complex through changes in the ground and surface water regime in the area, particularly groundwater. The proposed development would also potentially mobilise contaminants which could reach the SAC site.

An examination of the investigations undertaken with regard to groundwater and the assessment of groundwater movement in the vicinity of the application site and surrounding areas indicates however that the direction of groundwater movement is in a generally north easterly direction. The groundwater conditions in the vicinity of the site are discussed in detail in section 12.3 of the EIAR and the information provided in the form of borehole logs supports the conclusion that the direction of groundwater flow is towards the north east and therefore away from the Ballynafagh Bog SAC site. In addition, while the available information does indicate some

hydraulic connection between the Morell River and the groundwater, the direction of flow of the Morell River is, however to the north east and there is no surface water connection via the Morell River or other watercourse that could provide a pathway between the application site and the Ballynafagh Bog SAC site.

In view of the above, the proposed development is not likely to have significant effects on the Ballynafagh Bog SAC European site in light of the conservation objectives of the site.

10.3.6. **Ballynafagh Lake SAC (site code 001387)**

The Ballynafagh Lake SAC site is located close to the north west of the Ballynafagh Bog site. The site is therefore c. 11km from the application site and is located approximately 2km to the north west of the village of Prosperous. The lake is a shallow alkaline lake that supports a range of vegetation. It has a connection via the Blackwood feeder into the Grand Canal.

The qualifying interests for the site are as follows:

- Alkaline fens (priority habitat)
- Desmoulins Whorl snail,
- Marsh Fritillary

The conservation objectives for the site are generic and date from August, 2016.

The stated objective is '*to maintain or restore to favourable conservation condition of the Annex I habitat(s) and / or the Annex II species for which the SAC has been selected*'.

The proposed development could have a potential impact on Ballynafagh Lake by virtue of changes in the ground and surface water regime in the area, particularly groundwater. The proposed development would also potentially mobilise contaminants which could reach the SAC site.

An examination of the investigations undertaken with regard to groundwater and the assessment of groundwater movement in the vicinity of the application site and surrounding areas indicates however that the direction of groundwater movement is in a generally north easterly direction. The groundwater conditions in the vicinity of

the site are discussed in detail in section 12.3 of the EIAR and the information provided in the form of borehole logs supports the conclusion that the direction of groundwater flow is towards the north east and therefore away from the Ballynafagh Lake SAC site. In addition, while the available information does indicate some hydraulic connection between the Morell River and the groundwater, the direction of flow of the Morell River is, however to the north east and there is no surface water connection via the Morell River or other watercourse that could provide a pathway between the application site and the Ballynafagh Lake SAC site.

In view of the above, the proposed development is not likely to have significant effects on the Ballynafagh Lake SAC European site in light of the conservation objectives of the site.

10.3.7. Poulaphouca Reservoir SPA (site code 004063)

The qualifying interests for this site are as follows:

- Greylag goose,
- Lesser black backed gull,

The conservation objectives for the site are generic and date from August, 2016.

The stated conservation objective is *'to maintain or restore to the favourable conservation condition of the bird species listed as special conservation interests for the SPA'*.

The reservoir site is located c.9 km to the south east of the site at the closest point. The site covers an area of c. 20 sq. Km and the reservoir is fed by the River Liffey at the northern end and the Kings River at the southern end of the reservoir. The site provides a main roost for the Greylag Goose species and the site synopsis indicates that the main feeding area for these birds is on grasslands located adjoining the reservoir. The goose population is stated to be of national importance. The site also attracts roosting gulls in the winter season.

The potential impact of the proposed development on the SPA site would arise through disturbance arising from construction activity in the event that there were birds foraging in the vicinity of the application site, from any direct loss of foraging habitat or from the potential for there to be a hydrological connection between the

application site and the SPA site such that there would be a potential for the contamination of the waters of the reservoir.

For the same reasons as with the Red Bog and Ballynafagh Bog sites it is not considered that there is any likelihood of contamination of the reservoir as there is no ground or surface water pathway that could potentially link the application site and the SPA site. With regard to the potential impact on foraging habitat, a survey of the existing habitat on site undertaken and presented in section 11.3 of the submitted EIAR and indicate that there is no suitable habitat for foraging of the species listed as qualifying interests for the Poulaphouca Reservoir site. Desktop and field surveys undertaken did not indicate any populations of QI within the zone of influence of the application site and the available information indicates that the site is located outside of the normal extent of foraging for the greylag goose and particularly for the Black-backed gull which is generally within c. 1km of identified roosts.

In view of the above, the proposed development is not likely to have significant effects on the Poulaphouca Reservoir SPA site in light of the conservation objectives of the site.

10.3.8. **Mouds Bog SAC (site code 002331)**

The qualifying interests for this site are as follows:

- Active Raised bogs,
- Degraded raised bogs still capable of natural regeneration,
- Depressions on peat substrates of the Rhynchosporion,

The conservation objectives for the site are site specific and date from November, 2015. The site is located approximately 10km from the application site.

The conservation objectives for the site and for active raised bogs QI is '*to restore the favourable conservation condition of Active raised bogs in Mouds Bog SAC*'. No specific conservation objectives for Degraded raised bogs or depressions in peat substrate as they are dependent on the regeneration of the bog and peat forming capacity.

An examination of the investigations undertaken with regard to groundwater and the assessment of groundwater movement in the vicinity of the application site and surrounding areas indicates however that the direction of groundwater movement is in a generally north easterly direction. The groundwater conditions in the vicinity of the site are discussed in detail in section 12.3 of the EIAR and the information provided in the form of borehole logs supports the conclusion that the direction of groundwater flow is towards the north east and therefore away from the Mouds Bog SAC site. In addition, while the available information does indicate some hydraulic connection between the Morell River and the groundwater, the direction of flow of the Morell River is, however to the north east and there is no surface water connection via the Morell River or other watercourse that could provide a pathway between the application site and the Mouds Bog SAC site.

In view of the above, the proposed development is not likely to have significant effects on the Mouds Bog SAC European site in light of the conservation objectives of the site.

10.3.9. With regard to in combination effects, the most significant other completed or permitted plans or projects that are considered to have a potential effects are as follows:

- The permitted excavation of inert material at Kerdiffstown Quarry to the north west of the site.
- The permitted M7 Naas / Newbridge bypass and M7 Osberstown Interchange and R407 Sallins Bypass.
- Upper permitted Liffey Valley Sewerage Scheme and Upgrade of Osberstown Waste Water Treatment Plant.
- The proposed River Morrell Flood Relief Defence Project, (currently with An Bord Pleanala for determination – ABP Ref. 09.JA0042River).

10.3.10. Each of the above projects have been the subject of screening for appropriate assessment and where required Stage 2 appropriate assessment. None of the projects are identified as having an adverse effect on the integrity of any identified European site. Having regard to this and to the absence of any clear pathway

between the proposed development and the European sites identified at 10.3.1 of this screening assessment, I do not consider it likely that the proposed development will have any likely significant effect on the identified European sites in light of the conservation objectives of the sites.

AA Screening Conclusion

10.3.11. In conclusion, having regard to the nature and scale of the proposed development, to the separation of the application site from European sites, to the nature of the qualifying interests and conservation objectives of the European sites and to the available information as presented in the EIAR regarding ground and surface water pathways between the application site and the European sites and other information available, it is my opinion that the proposed development alone or in combination with other permitted plans and projects, is not likely to have significant effects on any European site having regard to the conservation objectives of the relevant sites.

11.0 Recommendation

I recommend as follows:

Schedule I - The Compulsory Purchase Order

It is considered that the land take is reasonable and proportional to the stated purpose to remediate the existing Kerdiffstown Landfill site. The Board is satisfied that the process and procedures undertaken by Kildare County Council have been fair and reasonable and it has demonstrated the need for the lands on environmental grounds and that all the lands being acquired are both necessary and suitable. The Board considers that the proposed acquisition of the lands would be in the public interest and the common good and would be consistent with the policies and objectives of the *Kildare County Development Plan, 2017-2023*.

DECISION

CONFIRM without modification the compulsory purchase order for the reasons and considerations set out below.

REASONS AND CONSIDERATIONS

Having considered the objections made to the compulsory purchase order, the report of the person who conducted the oral hearing into the objections, the purpose of the compulsory purchase order and also having regard to:

- (a) the need to ensure the future minimization of emissions to the environment arising from the site,
- (b) The risk of future environmental pollution given the volume of waste material stored on the site, the unlined nature of the site and the proximity of the site to sensitive environmental receptors including the Morell River,
- (c) The obligations on Kildare County Council under the EC Environmental Objectives (Groundwater) Regulations 2010 as the body with responsibility for the site to prevent the input of hazardous substances and limit the input of non hazardous substances to groundwater.
- (d) the community need, public interest served and overall benefits, including benefits in terms of additional recreational and sports facilities for the residents of Johnstown, Naas and the wider Kildare area arising from the acquired lands, and
- (e) the provisions of the *Kildare County Development Plan, 2017-2023* and the policies and objectives stated therein, which specifically identify the desirability of remediating the Kerdiffstown landfill site and the development of an appropriate end use for the site (Policy WM16),
- (f) the proportionate design response to the identified need,

it is considered that the acquisition by the local authority of the lands in question, and the extinguishment rights of way and compulsory acquisition of wayleave rights as set out in the compulsory purchase order and on the deposited maps, are necessary for the purpose stated, and that the objections cannot be sustained having regard to the said necessity.

Schedule 2 - The Proposed Landfill Remediation Project

Recommendation

Grant approval under section 175(3) of the Planning and Development Act, 2000, as amended, for the proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.

Reasons and Considerations

Having regard to the following:

- (a) The relevant provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment,
- (b) Section 175 of the Planning and Development Act 2000 (as amended) which sets out the provisions in relation to local authority projects which are subject to Environmental Impact Assessment (EIA),
- (c) The fact that the proposed project requires an Industrial Activities Emission Licence from the Environmental Protection Agency and that environmental emissions will be controlled by way of conditions attached to such a licence,
- (d) The policies and objectives set out in the Kildare County Development Plan, 2017-2023 including Policy WM16 which states that *'the Council will work in conjunction with government departments and Agencies and all other relevant stakeholders to remediate the Kerdiffstown Landfill in a socially, economically and environmentally sustainable manner that will both manage and reduce*

environmental risk and accommodate an appropriate end-use that is compatible with the established character of the area.'

- (e) The current un remediated nature of the site, the limited environmental control measures implemented on site and the resulting risk of future environmental pollution,
- (f) The likely beneficial environmental impacts of the proposed project in terms of ensuring ground and surface water quality in the vicinity of the site by virtue of the reduction in leachate generation from the site arising from the capping of the site and the development of an engineered surface water system that facilitates the separation of surface waters from waste materials.
- (g) The beneficial impacts of the proposed project on human health and population by virtue of the provision of a new recreational and leisure amenity for the use of the population of the Johnstown, Naas and wider Kildare area.
- (h) The documentation and submissions of the local authority including the submitted Environmental Impact Assessment Report (EIAR) and associated documentation submitted with the application and the range of mitigation and monitoring measures proposed.
- (i) The submissions and observations made to An Bord Pleanála in connection with the proposed development,
- (j) The likely consequences for the environment and the proper planning and sustainable development of the area in which it is proposed to carry out the proposed development and the likely significant effects of the proposed development on European sites, and
- (k) The report and recommendation of the inspector.

It is considered that subject to compliance with the conditions set out below, the proposed Kerdiffstown Landfill Remediation Project would accord with European, national, regional and local planning policy and objectives in relation to landfill remediation and environmental protection. If undertaken, the project would address the significant environmental issues generated by the current condition of the site and, on completion, the project would minimise the potential risks to the environment

while providing a valuable recreational amenity for the local and wider catchment. The proposed project is therefore considered to be in the interests of the common good and in accordance with the proper planning and sustainable development of the area.

Appropriate Assessment

The Board agreed with the screening assessment and conclusion contained in the Inspector's report that the Red Bog Special Area of Conservation (site code 000397); the Ballynafagh Bog Special Area of Conservation (site code 000391); the Ballynafagh Lake Special Area of Conservation (site code 001387); the Poulaphouca Reservoir Special Protection Area (site code 004063) and Mouds Bog Special Area of Conservation (site code 002331) are the European sites for which there is a likelihood of significant effects.

The Board considered the submitted Screening Report for Appropriate Assessment and all other relevant submissions and carried out an appropriate assessment screening exercise in relation to the potential effects of the proposed development on the above referenced European sites in the vicinity of the application site. The Board noted that the proposed development is not directly connected with or necessary for the management of a European site and considered the nature scale and location of the proposed development, as well as the report of the inspector. In completing the screening assessment, the Board adopted the report of the inspector and concluded that the proposed development, by itself, or in combination with other plans or projects in the vicinity, would not be likely to have a significant effect on any European site in view of the sites conservation objectives and that a Stage 2 appropriate assessment is not therefore required.

Environmental Impact Assessment

The Board completed an environmental impact assessment of the proposed development taking account of:

- (a) The nature, scale, location and extent of the proposed development on a site that is subject to significant risk of environmental pollution,

- (b) The Environmental Impact Assessment Report (EIAR) and associated documentation submitted in support of the application,
- (c) The submissions received from the local authority, prescribed bodies and observers, and
- (d) The Inspector's report.

The Board considered that the environmental impact assessment report, supported by the documentation submitted by the applicant, adequately considers alternatives to the proposed development and identifies and describes adequately the direct, indirect, secondary and cumulative effects of the proposed on the environment.

The Board agreed with the examination, set out in the Inspector's report, of the information contained in the environmental impact assessment report and associated documentation submitted by the developer and submissions made in the course of the planning application.

The Board considered that the main significant direct and indirect effects of the proposed development on the environment are, and will be mitigated, as follows:

- ***Air pollution and noise during the construction / remediation phase*** such as would impact negatively on sensitive receptors and populations in the vicinity of the site. These impacts are avoided by the indicated operation of the existing landfill gas flare and by the agreement of measures within a Construction and Environment Management Plan (CEMP) to include specific provisions relating to the control of dust, odours, noise and landfill gas management measures.
- The ***risk of pollution of ground and surface waters during the construction / remediation phase*** through a lack of control of surface water during construction, the mobilisation of sediments and other materials during construction and the necessity to undertake construction activities in and under existing watercourses in the vicinity of the site. The construction of the proposed project could also potentially impact negatively on ground and surface waters through the unexpected encountering of perched leachate or unexpected waste types. These impacts would be mitigated by the

agreement of measures within a Construction and Environment Management Plan (CEMP) to include specific provisions relating to groundwater (Groundwater Management Plan), surface water (Existing Surface Water Management Plan), erosion (Erosion and Sediment Control Plan) as well as mitigation for the management of leachate.

- **Biodiversity impacts** arising from the changes to the vegetation on the site, potential loss of bat roosts and connections to foraging habitat, the necessity that the site be protected by mammal fencing and loss of a subsidiary badger sett and general disturbance during the construction phase. These impacts would be mitigated by the implementation of a Site Biodiversity Management Plan under the CEMP and specific mitigation to protect badger and bats during the construction / remediation phase.
- The proposed project gives rise to an increase in **vehicle movements and resulting traffic impacts** during both the construction / remediation phase and the operational phase of the project. These impacts would be mitigated by the new layout of the L2005 including new site access, the preparation of a Construction Traffic Management Plan, a mobility management plan and pre and post construction road condition surveys.

The Board also considered that environmental benefits would arise from the proposed project, particularly during the aftercare phase of the project when the site is in operation as a public amenity. Surface water infiltration into the existing waste mass would be reduced thereby reducing the potential for adverse impacts on groundwater and likely resulting in an improvement in groundwater quality and reduced risk of the contaminant plume from the site identified in site investigations migrating to the Morrell River. On completion, the proposed new surface water drainage system would separate surface waters from the existing waste mass prior to discharge from the site and reduced risk of surface water contamination from the existing material on site. The proposed project would also have a potentially significant positive environmental impact in terms of the release of landfill gasses from the site with gas being captured and flared rather than escaping to the atmosphere.

The Board completed an environmental impact assessment in relation to the proposed development and concluded that subject to the implementation of the mitigation measures proposed as they pertain to the development as set out in Chapter 19 of the EIAR which provides a Schedule of Environmental Commitments and subject to compliance with the conditions set out herein, the effects of the development on the environment, by itself and in combination with other plans and projects in the vicinity would be acceptable. In doing so the Board adopted the report and conclusions of the inspector.

Conclusions on Proper Planning and Sustainable Development

It is considered that subject to compliance with the conditions set out below:

- (a) The proposed development is consistent with regional, national and local waste management and planning policy, notably the national waste management policy set out in *A Resource Opportunity – Waste Management Policy in Ireland, 2012* and regional level, the *Eastern-Midlands Region Waste Management Plan, 2015-2021* which support the principle of the remediation of sites that are a risk to the environment and the consideration of alternative future land uses at inactive sites.
- (b) The proposed development is consistent with the provisions of the *Kildare County Development Plan, 2017-2023* as it relates to the site, notably Policy WM16 which states that it is council policy to work with government departments, agencies and other relevant stakeholders to remediate the Kerdiffstown landfill.
- (c) The proposed development would address the current environmental risks posed by the site and would have likely beneficial environmental impacts in terms of ensuring future ground and surface water quality in the vicinity of the site by virtue of the reduction in leachate generation from the site and the development of an engineered surface water system that facilitates the separation of surface waters from waste materials.
- (d) The proposed development would result in an end use in the form of the public park and active leisure facilities that would be of overall benefit to the Johnstown, Naas and wider Kildare areas.

- (e) The proposed development would not result in any unacceptable adverse impacts in terms of landscape and visual impacts, traffic generation or air quality including noise during either the construction activities on site or the aftercare phase.

The Board concluded that the proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

12.0 Conditions

1. The proposed development shall be carried out and completed in accordance with the plans and particulars, including the Environmental Impact Assessment Report (EIAR), and other associated documentation, lodged with An Bord Pleanála on the 30th day of August 2017, except as may otherwise be required in order to comply with the conditions set out below. Where such conditions require details to be prepared the Local Authority, these details shall be placed on file prior to the commencement of development and retained as part of the public record.

Reason: In the interest of clarity and the proper planning and sustainable development of the area and to ensure the protection of the environment.

2. The mitigation and monitoring measures outlined in the plans and particulars relating to the development, including those set out at Tables 19.1-19.13 of Chapter 19 of Volume 2 of the Environmental Impact Assessment Report submitted with this application, shall be implemented in full except as may otherwise be covered in any Industrial Emissions Activity Licence (IEAL) issued by the EPA in respect of the proposed project or as may be required in order to comply with the following conditions.

Prior to commencement of the development, details of a time schedule for implementation of the mitigation measures and associated monitoring shall be prepared by Kildare County Council and where mitigation measures and

monitoring are required to be prepared, these details shall be placed on file and retained as part of the public record.

Reason: In the interest of clarity and to mitigate the environmental effects of the project.

3. Prior to the commencement of development Kildare County Council or any agent acting on its behalf shall prepare a Construction and Environmental Management Plan (CEMP) including demonstration of proposals to adhere to best practice and protocols. The CEMP shall include specific proposals as to how the CEMP will be measured and monitored for effectiveness.

Reason: In the interest of protecting the environment, protection of European sites and in the interest of public health.

4. Prior to the commencement of development, Kildare County Council or any agent acting on its behalf shall prepare a Noise and Vibration Management Plan to cover Phase 1 (as per paragraph 4.3.1 of Volume 2 of the EIAR) on site construction activity related to demolition of existing structures, construction of proposed landfill infrastructure compound as well as all proposed off site construction activities including roads and foul drainage and leachate pipeline connections. The submitted plan shall include details of noise monitoring locations and noise emissions arising from these construction activities shall meet noise criteria set out at section 8.2.3 of Volume 2 of the EIAR.

Reason: To protect the amenities of property in the vicinity.

5. Prior to the commencement of development, Kildare County Council or any agent acting on its behalf shall prepare a Dust Management Plan to cover Phase 1 (as per paragraph 4.3.1 of Volume 2 of the EIAR) on site construction activity related to demolition of existing structures, construction of proposed landfill infrastructure compound as well as all proposed off site construction activities including roads and foul drainage and leachate pipeline connections.

The submitted plan shall include details of dust monitoring locations and dust emissions arising from these construction activities shall not exceed 350 milligrams per square metre per day averaged over a continuous period of 30 days (Bergerhoff Gauge).

Reason: To control dust emissions arising from the development and in the interest of the amenity of the area.

6. Prior to the commencement of development, Kildare County Council or any agent acting on its behalf shall prepare an Erosion and Sediment Control Plan to cover Phase 1 (as per paragraph 4.3.1 of Volume 2 of the EIAR) on site construction activity related to demolition of existing structures, construction of proposed landfill infrastructure compound as well as all proposed off site construction activities including roads and foul drainage and leachate pipeline connections. The submitted plan shall include details of measures to protect fisheries and water quality of the Morrell River arising from the crossing of the river by the foul and leachate pipelines, and full regard shall be had to the IFI's published updated guidelines for construction works near waterways (Guidelines on Protection of Fisheries during Construction Works in and Adjacent to Waters, 2016).

A programme of water quality monitoring to cover the period of works covered by this condition shall be prepared in consultation with the Contractor, the Local Authority and relevant statutory agencies and the programme shall be implemented thereafter.

Reason: In the interest of protection of receiving water quality, fisheries and aquatic habitats.

7. Site development and building works shall be carried only out between the hours of 07.00 to 19.00 Mondays to Fridays inclusive, between 08.00 to 14.00 on Saturdays and not at all on Sundays and public holidays. Deviation from

these times will only be allowed in exceptional circumstances where prior written approval has been received by the contractor from the local authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

8. The operational hours of the floodlighting to the sports pitches shall not extend beyond 22.00 hours with automatic cut-off of floodlighting at that time.

Reason: To protect the residential amenity of properties in the vicinity.

9. Prior to the commencement of development, Kildare County Council or any agent acting on its behalf shall prepared a Construction Traffic Management Plan. The scope of this Construction Traffic Management Plan shall include, at a minimum, the details and actions set out in Mitigation No.TT1 contained in Table 19.10 of the EIAR.

Reason: To ensure appropriate engagement with the public and the appropriate management of construction / remediation phase traffic.

10. A suitably qualified ecologist shall be retained by the applicant to oversee the construction of the proposed project and implementation of mitigation measures relating to ecology as set out at Table 19.7 of the EIAR, including the proposed Site Biodiversity Management Plan. Upon completion of works, an ecological report of the site works shall be prepared by the appointed ecologist and submitted to the Local Authority to be kept on file as part of the record.

Reason: In the interest of nature conservation and protection of terrestrial and aquatic biodiversity.

11. Prior to the commencement of development, the local authority or any agent acting on its behalf shall prepare detailed landscaping and planting proposals along with proposed timing for their implementation and proposals for ongoing landscape maintenance of the site.

Reason: In the interest of protecting the landscape and biodiversity.

Stephen Kay
Planning Inspector

April, 2018

Appendix A - List of Written Submissions Made At Oral Hearing Held on 5th December, 2017

Submissions made on behalf of Kildare County Council:

Colin Dunsmuir	Engineering Need
Patrick Higgins / Mark Burston	Hydrology, Hydrogeology and Soils
Imelda Shanahan	Air Quality, Odour and Climate
Joseph Campbell	Traffic and Transport
Faith Bailey	Archaeology, Cultural Heritage and Architectural Heritage
Richard Barker	Landscape and Visual
Denise Meade	Biodiversity
Tom Ryan	Noise and Vibration
Lara Gough	Land Use Planning Policy
Rachel Kelly / Denise Meade	Environmental Indicators and Residual Impacts
Dr Martin Hogan	Human Health

Appendix B – Copy of Order of Agenda for Oral Hearing as Circulated to Parties in Advance of Hearing.



Pleanála

Oral Hearing Agenda

09.CH3351

09.JA0041.

Date	Tuesday, 5 th December, 2017
Start Time	11.00 AM
Location	Lawlors Hotel, Poplar Square, Naas, Co. Kildare

The purpose of the oral hearing is to provide an opportunity for all parties, who wish to do so, to make further submissions beyond their written objections, and to allow the inspector to seek clarification on any relevant issues arising and objections made. Participants will also have the opportunity to ask questions or seek clarification on submissions made at the hearing at the discretion of the inspector.

The following should be noted:

- The hearing relates to the application by Kildare County Council for the remediation of the Kerdiffstown Landfill site and the associated application for a compulsory purchase order. The hearing is therefore a joint hearing, and submissions relating to both applications will be taken.
- There is no obligation on any party to make a submission to the oral hearing or to ask questions of the other parties. All written submissions already received will be considered by the inspector and the Board. For this reason, submissions previously made in writing should not be reiterated at the oral hearing.

- You are reminded that the Board has no role or jurisdiction in the determination or the assessment of compensation and that any submission made to this hearing should bear this in mind as no discussion regarding compensation will be facilitated.
- If you intend to provide written copies of your submission these can only be accepted if there are copies available for all the parties at the hearing. Two copies of any written documentation should also be submitted for the Board file.
- The Board may direct the payment of a contribution towards the costs to any person appearing at an oral hearing, which have been incurred by that person, as a consequence of appearing at the hearing. Any payment will be at the Board's discretion. Any application for costs should be made in writing to the Board within three weeks of the date of the conclusion of the hearing.
- The agenda and order of appearance for the oral hearing is set out below, along with a timetable. Parties should please note that this timetable is indicative only, and may vary as a result of responses received to this correspondence, attendance at and / or submissions made during the course of the oral hearing.
- It is envisaged that the oral hearing will take 3 days to complete (closing on Thursday 7th December) however, if necessary, provision has been made to continue the hearing on Friday 8th December.
- On completion of the oral hearing, the inspector will prepare a report and recommendation on the cases for the Board. The decision to grant or refuse permission for the proposed landfill remediation project and to confirm or annul the CPO will be made by the Board.

PLEASE NOTE THE FOLLOWING WHERE APPLICABLE:

1. NOTE TO APPLICANT

You are requested to respond to the Board by 5.30pm on Tuesday 28th November in writing or by e mail to k.somers@pleanala.ie indicating:

1. The witnesses you intend to present submissions to the hearing.

Other than presenting a summary of the proposed development and response to objections as provided for in the following Agenda, you are requested not to repeat submissions already received by the Board.

2. NOTE TO PRESCRIBED BODIES

You are requested to respond to the Board by 5.30pm on Tuesday 28th November in writing or by e mail to k.somers@pleanala.ie indicating:

1. If you intend making a submission at the hearing and, if so, who will be making submissions and how long these submissions might take.

3. NOTE TO OBJECTORS

You are requested to respond to the Board by 5.30pm on Tuesday 28th November in writing or by e mail to k.somers@pleanala.ie indicating:

1. If you intend making a submission at the hearing and how long the submission might take;
2. If you propose to have a specialist or other person make a submission on your behalf and if this is the case the name of the person(s);

The Board notes the content of objector's submissions which refer to certain legal issues, actions and allegations regarding the period leading up to and following the taking over of the site by the EPA. Whilst the inspector will at their discretion hear relevant submissions in relation to the planning history of the site, elements of the written submissions relate to matters considered outside of the Board's jurisdiction in this case which is to determine the planning merits of the for approval for the Kerdiffstown Landfill Remediation Project and to confirm or annul the associated CPO. Issues unrelated to these matters to be determined by the Board should not be raised at the oral hearing as they are outside of the scope of the proceedings.

AGENDA

Day and Date: 11 AM – Tuesday 5 th December, 2017	
Time	Topic
AM	<ul style="list-style-type: none"> • Opening of oral hearing by Inspector
	<ul style="list-style-type: none"> • Applicant: Summary of proposed development (maximum 30 minutes).
	<ul style="list-style-type: none"> • Applicant: Response to issues raised in observations.
13:00 – 14:00	Break
PM	<ul style="list-style-type: none"> • Applicant (continued)
	<ul style="list-style-type: none"> • Questioning of Applicant by other parties.
Day and Date: 10 AM – Wednesday 6 th December, 2017	
Time	Topic
AM	<ul style="list-style-type: none"> • Questioning of Applicant by other parties (continued).
	<ul style="list-style-type: none"> • Prescribed Bodies Submissions (if relevant)
	<ul style="list-style-type: none"> • Questioning of Prescribed Bodies by other parties (if relevant)
13:00 – 14:00	Break
PM	<ul style="list-style-type: none"> • Objectors submissions <p>(Objectors are requested to make clear whether their objection relates to the application for approval, the CPO or both)</p>
Day and Date: 10 AM – Thursday 7 th December, 2017	
Time	Topic
AM	<ul style="list-style-type: none"> • Objectors submissions (continued).
	<ul style="list-style-type: none"> • Questioning of Objectors by other parties.
13:00 – 14:00	Break

Day and Date: 10 AM – Thursday 7 th December, 2017	
Time	Topic
PM	<ul style="list-style-type: none"> • Questioning of Objectors by other parties (continued)
	<ul style="list-style-type: none"> • Closing comments (maximum 10 minutes each) to be heard in the following order: <ul style="list-style-type: none"> • Objectors • Prescribed Bodies (if any) • Applicant • Closing of oral hearing by Inspector

Appendix: Order of Appearance for Prescribed Bodies and Objectors

Objectors

1. Dean Waste Co. Ltd. (c/o David M. Turner Solicitors)
2. Jenzsoph Ltd. (c/o David M. Turner Solicitors)
3. Mr Tony Dean (c/o David M. Turner Solicitors)
4. Egidijus Meskauskis (c/o Hennessy and Perrozzi Solicitors)
5. Ingrida Meskauskiene (c/o Hennessy and Perrozzi Solicitors)
6. Kristina Sipoviciute (c/o Hennessy and Perrozzi Solicitors)
7. Andrius Lekavicius (c/o Hennessy and Perrozzi Solicitors)
8. Any other Objectors

Prescribed Bodies

1. Irish Water
2. Inland Fisheries Ireland
3. Any other Prescribed Bodies