



An  
Bord  
Pleanála

## Inspectors Final Report 17.PC0221

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**PL17.PC0221**

<b>Issue:</b>	SID Pre-application – whether project is or is not strategic infrastructure development. (seventh schedule)
<b>Proposed Development:</b>	Proposed development to allow further replacement of fossil fuels with alternative fuels and use of alternative raw material at existing cement works.
<b>Location:</b>	Platin, Duleek, Co. Meath.
<b>Applicants:</b>	Irish Cement Limited
<b>Planning Authority:</b>	Meath County Council
<b>Date of Site Inspection:</b>	10 <sup>th</sup> January 2017
<b>Inspector:</b>	Patricia Calleary

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## 1.0 Introduction

- 1.1. Irish Cement Limited submitted a pre-application consultation request to An Bord Pleanála seeking a determination as to whether or not development to allow for the further replacement of fossil fuels with alternative fuels and the use of alternative raw material at their existing cement manufacturing plant at Platin, Duleek, Co. Meath would constitute strategic infrastructure within the meaning of The Planning and Development Act 2000, as amended.
- 1.2. Four pre-application meetings were held between the prospective applicant and the Board on 21<sup>st</sup> December 2016, 9<sup>th</sup> February 2017, 14<sup>th</sup> February 2017 and 21<sup>st</sup> March 2017. Separately, the Board met with Meath County Council on the 9<sup>th</sup> February 2017 and with the Eastern-Midlands Regional Waste Office on the 14<sup>th</sup> February 2017 in relation to the proposal. A site visit was conducted by the reporting inspector on the 10<sup>th</sup> January 2017.

## 2.0 Background

- 2.1. On 26<sup>th</sup> November 2015, the prospective applicant applied to Meath County Council for planning permission under planning reference number LB151288 for the proposed development. Meath County Council issued correspondence to the prospective applicant on 31<sup>st</sup> May 2016 indicating that the development may come within the criteria as set out in the seventh schedule of the Planning and Development Act 2000, as amended. Meath County Council therefore did not determine the application.

## 3.0 Proposed Development

- 3.1. As put forward by the prospective applicant, the proposal would involve development of buildings, structures and plant to facilitate the increasing of alternative fuel and alternative raw materials intake up to 600,000 tonnes over a long term period. Examples of the proposed alternative fuels and alternative raw materials to be employed are detailed in the interim report previously submitted to the Board.
- 3.2. It was stated that the tonnage of cement produced at the overall facility would not increase as a result of the proposed development.

3.3. Dwg No. 9721 on file as submitted by the prospective applicant presents the application boundary in red, representing a portion of the overall site. The proposed physical development entities are represented on the drawing as a blue hatch. The prospective applicant forwarded a photograph of a scaled model with the proposed structures and facilities represented as a dark green colour. A copy of this photograph is on the Board's file.

#### **4.0 Prospective Applicants case**

- 4.1. The prospective applicant submitted that in their view, the proposed development would not constitute a waste disposal facility, nor would it be an installation for the disposal, treatment or recovery of waste and would not therefore fall under Section 3 (Environmental Infrastructure) of the Seventh Schedule of the Planning and Development Act 2000, as amended. It emphasised that the proposed development would instead facilitate multi-fuel use and allow flexibility into the future, and that the current core operation on site, namely, the manufacture of cement, would not in any way alter as a result. The prospective applicant also stated that the alternative raw materials proposed to be employed would be handled as a regular raw material.
- 4.2. In relation to the definition in the relevant class of the Seventh Schedule, the prospective applicant formed the view that the wording of the legislation was not intended to capture facilities such as cement manufacturing plants.

#### **5.0 Board's provisional determination**

- 5.1. Following the first consultation meeting held with the prospective applicant, an interim report was prepared by the reporting inspector based on the initial information gathered. The report was forwarded to the Board in order to seek the Board's preliminary view on whether or not the proposed development would meet the definitions of strategic infrastructure set out in the seventh schedule. The Board issued an interim direction on 27<sup>th</sup> October 2016 setting out that it had provisionally determined that the proposed development would comprise Strategic Infrastructure Development. The Board's provisional determination was communicated to the prospective applicant at the second consultation meeting and the pre-application consultations continued.

## 6.0 Planning History

- 6.1. The planning history was detailed on the interim report dated 18th October 2016.
- 6.2. The Board will also be aware of an ongoing pre-application consultation for a similar development proposal under File reference number: **02.PC0241**.
- 6.3. Under Plan Reg Ref 16/346, Limerick County Council issued a planning **decision** to **grant permission** to Irish Cement Limited for development to allow for the replacement of fossil fuels through the introduction of lower carbon alternative fuels and to allow for the use of alternative raw materials in their Limerick Cement Factory at Castlemungret, Co.Limerick. This decision is currently under appeal (**PL91.248285**).

## 7.0 Consultation

- 7.1. The following provides a summary of the consultation held and outlines the principal matters discussed.
- 7.2. **Consultation with Local Authority** - The Local Authority (Meath County Council) stated their concerns regarding traffic movements and that it required information on locations where the recovered waste would be transported from. They outlined the main issues which were raised in third party submissions in the application which it had received. These included concerns around traffic impacts, impacts on human health and impacts on national heritage sites such as Newgrange. In addition, the Local Authority commented that it would be useful if the production process could be explained clearly in any formal planning application.
- 7.3. **Consultation with Eastern-Midlands regional waste office** - The regional waste office referred to the relevant policy statements contained within the Eastern-Midlands Regional Waste Management Plan 2015 – 2021, these being **E15A** in respect of the municipal solid waste element and **E16** in respect of the hazardous waste types. The office informed the Board that to date no application had been approved for the additional capacity requirement outlined under those policies (National requirement 300,000 tonnes of additional thermal recovery capacity under Policy E15A and 50,000 tonnes under Policy E16). It further stated that a breakdown of various waste types as envisaged by the applicant would be helpful in a planning application. It was accepted

that plans would be driven by market conditions and would be difficult to precisely predict.

**7.4. Consultation with the prospective applicant** –The Board’s provisional determination was communicated to the prospective applicant at the second consultation meeting. The planning issues which were particularly pertinent to any future planning application were discussed. The Board’s representatives advised that the site notice should include a clear description of the nature of the development including reference to and breakdown of waste categories as appropriate. Volumes of non-hazardous and hazardous waste types envisaged and the phasing of intake should be included in the application. Traffic matters including attention to the proposed haul routes to and from the facility should also be detailed. Impacts on air quality and water quality should be comprehensively addressed. The Board informed the prospective applicant that the decision of whether or not to hold an oral hearing is at the discretion of the Board. The Board also communicated the outcome of the consultations with the Local Authority and the Eastern-Midlands regional waste office. It was noted that the application would be accompanied by an EIS. The prospective applicant advised that the application previously submitted to Meath County Council included a Stage 1 Appropriate Assessment and it concluded that a Stage 2 Assessment was not required. The prospective applicant informed the Board that the EPA is supportive of the planned approach to take a long term view of its likely requirements for the use of alternative fuels as this would avoid the necessity for repeat licence applications.

## **8.0 Industrial Emissions Licence Review**

- 8.1. Platin Cement works and its associated limestone quarry are currently regulated under an Industrial Emissions licence (IE No. P0030-04).
- 8.2. On 18<sup>th</sup> January 2017, the EPA initiated a review of the licence to bring it into compliance with the legal requirements of the European Commission Implementing Decision on Best Available Technologies (BAT) conclusions for the production of cement, lime and magnesium oxide (Commissions Implementing Decision 2013/163/EU). The licence number for this BAT review is P0030-05.

8.3. The licence was already under review at the request of the prospective applicant. That licence is currently active and was originally assigned a licence register number P0030-05 which has since been re-numbered to P0030-06 to take account of the more recent EPA initiated licence review.

## 9.0 Strategic Infrastructure

9.1. Under Section 37A(1) of the Planning and Development 2000 Act, as amended, an application for permission for any development specified in the Seventh Schedule shall, subject to Section 37A(2), be made to the Board under section 37E and not to a planning authority. The seventh schedule sets out Infrastructure developments for the purposes of sections 37A and 37B, including Environmental Infrastructure under Part three.

9.2. In addition, Section 37 of the Planning and Development Act 2000, as amended, requires that development falling under the Seventh Schedule of the Act, in order to constitute strategic infrastructure would meet one or more of the criteria set out under section 37A(2)(a), (b) and (c).

## 10.0 Policy and Legislative context

### 10.1. Introduction

10.1.1. The following provides extracts of relevant EU, national, regional and local policy statements as they apply to the proposed development as well as reference to EU directives and legislation. A number of these considered relevant are set out below.

### 10.2. European Policy and Legislation

10.2.1. **EU Waste Framework Directive 2008/98/EC** provides definitions for treatment, recovery and disposal. Annex II of the directive provides a non-exhaustive list of 'recovery operations' including 'R1 - Use principally as a fuel or other means to generate energy' and other materials recovery.

10.2.2. **Industrial Emissions Directive 2010/75/EU** is the main EU instrument regulating pollutant emissions from industrial installations.

10.2.3. **The Circular Economy** - The EU proposed framework for the delivery of a circular economy was published in December 2015. The circular economy requires action at all stages of the life cycle of products from the extraction of raw materials, through design, production, distribution and consumption of goods, repair, remanufacturing and re-use schemes and includes waste management and recycling.

### 10.3. **National Waste Management Policy**

#### 10.3.1. **A Resource Opportunity – Waste Management Policy in Ireland (DECLG, 2012)**

- Encourages a move away from dependence on landfill for treatment of municipal waste, by putting in place the most appropriate technologies and approaches to reduce waste and maximise resources which can be recovered.
- Given our dependency on imported fossil fuels and the challenges which this presents for a sustainable energy policy, it is important to harness the potential of waste to contribute in a significant manner to displacing the use of finite fossil fuel resources. Waste can be used in a number of ways and through a number of technologies to produce energy, including through anaerobic digestion, thermal treatment and through the use of solid recovered fuel in facilities such as cement kilns.

#### 10.3.2. **National Hazardous Waste Management Plan 2014-2020 (EPA 2014)**

- This plan sets out priorities to manage and reduce hazardous waste including objectives for increased self-sufficiency in the management of waste.
- Subject to the waste hierarchy, supports for the option of co-incineration of certain waste types and energy recovery in cement kilns in the interest of promoting self-sufficiency and maximising fossil fuel substitution.

### 10.4. **National Planning Policy**

#### 10.4.1. **National Spatial Strategy for Ireland, 2002-2020 (NSS)**

- The NSS promotes balanced regional development and sustainable practices. The Platin cement works falls within the Dublin and Mid East Region.



- Section 3.7 states that ‘efficient, effective and cost competitive waste management facilities are essential if industrial and enterprise activity is to thrive and develop in a balanced way across Ireland’.

#### 10.4.2. **National Planning Framework (NPF)**

- A new National Planning Framework is currently being developed to succeed the National Spatial Strategy. It will provide a framework for national planning, pulling together relevant Government policies and investment on national and regional development. The framework is currently at pre-draft stage.

### 10.5. **National Climate Change Policy**

10.5.1. Challenges to reduce greenhouse gas emissions in line with EU commitments are set out in a host of policy documents and legislation, including the **National Policy Position on Climate Action and Low Carbon Development, (April 2014)** and in the **Climate Action and Low Carbon Development Act 2015**, the latter which provides the statutory authority for adoption and implementation of plans to enable Ireland to move to a low carbon economy by 2050. New arrangements around climate change include the first **National Mitigation Plan (expected in June 2017)**, which will specify the policy measures needed to manage greenhouse gas emissions to meet national and international targets. Ireland’s first statutory **National Climate Change Adaptation Framework (NAF)** is currently in preparation and when complete will set out the policy to be pursued in relation to climate change adaptation.

### 10.6. **National Energy Policy**

10.6.1. **Ireland’s Transition to a low Carbon Energy Future 2015-2030.** This White paper is an energy policy update. It sets out a framework for Irish Energy policy up to 2030. By 2050, Ireland is required to have a low energy system with a reduction of greenhouse gas emissions by 80-95%. Ireland's third **National Energy Efficiency Action Plan 2014 (NEEAP 3)** reaffirmed Ireland's commitment to delivering a 20% reduction in energy demand across the whole of the economy by 2020. Under **Directive 2009/28/EC** Ireland has adopted a **National Renewable Energy Action Plan or NREAP** and submitted this to the EU Commission. The NREAP sets out the Irish Government’s strategic approach to delivery of our 16% renewable energy target.

## 10.7. Regional Planning and Waste Management Policy

### 10.7.1. Eastern-Midlands Regional Waste Management Plan 2015 – 2021

- **Section 16.4.5** - Thermal recovery activities (such as incineration/waste to energy, co-incineration/cement kilns, pyrolysis and gasification), where the principal use of the waste is as a fuel to generate energy, sit on the other recovery tier of the waste hierarchy.
- **Policy A4** - Aim to improve regional and national self-sufficiency of waste management infrastructure for the re-processing and recovery of particular waste streams, such as mixed municipal waste, in accordance with the proximity principle.
- **Policy E15A** - The waste plan supports the development of up to 300,000 tonnes of additional thermal recovery capacity for the treatment of non-hazardous waste nationally.
- **Policy 16** - The waste plan supports the development of up to 50,000 tonnes of additional thermal recovery capacity for the treatment of hazardous waste nationally.
- **Policy E19** -The waste plan supports the development of indigenous reprocessing and recycling capacity for the treatment of non-hazardous and hazardous wastes where technically and economically and environmentally practicable.

### 10.7.2. Regional Planning Guidelines for the Greater Dublin Area 2010-2022

- **Section 6.7** of the RPGs considers Waste Management and state that waste management policy needs to develop a greater range of choice in terms of waste treatment solutions, including commercial energy recovery options.
- **Strategic Policy PIP5** of the RPGs seeks to ensure that waste management remains a priority for local authorities and waste management regions.
- **PIR 39** states 'The reuse of waste should be encouraged and reinforced through encouragement of business clustering across the GDA. Opportunities to facilitate source reduction, the reuse of wastes, by-products and associated energy throughout the GDA should be examined as part of economic policies'.

### 10.7.3. Regional Economic Spatial Strategies

- The new Regional Economic and Spatial Strategies by the three new Regional Assemblies and the associated enhancement of the economic development focus of local authorities as provided for under the Local Government Reform Act 2014 will be prepared in the context of the National Planning Framework. When prepared, they will replace regional planning guidelines. Meath will be in the Eastern and Midland Regional Assembly.

### 10.8. Local Planning Policy

#### 10.8.1. Meath County Development Plan 2013-2019

- In terms of Energy and Communications, the Plan at **Section 8.1.9 Energy from Waste** notes that the 'two cement plants (i.e. Platin and Kinnegad) in the County have the ability to use waste streams in their manufacturing processes'.
- The plan supports initiatives for limiting greenhouses gases through Policies such as **EC POL 2** and **EC POL 4**.
- The Plan also supports the production of energy from renewable sources, including waste under **EC POL 3**.

### 11.0 Assessment

#### 11.1. Introduction

11.1.1. The main question to be assessed in this case is whether or not the development which is the subject of the pre-application consultation falls within the following category as set out in the seventh schedule:

- *An installation for the disposal, treatment or recovery of waste with a capacity for an annual intake greater than 100,000 tonnes*

11.1.2. The prospective applicant has made a strong case that in their view, the proposed development would not fall within this category as they contend that if the development is carried out, the plant would remain a cement production plant with capacity to be fuelled by alternative waste derived fuels, rather than a plant or installation for the disposal, treatment or recovery of waste. Essentially, it is

submitted that a change of fuel type would not alter the nature or purpose of the cement plant. Similar arguments are made in relation to the use of the alternative raw materials from recovered waste, proposed to be used in the production process.

11.1.3. In my assessment of this pre-application consultation case, I consider the two key considerations are as follows:

- a. Whether or not the intake of the alternative fuels and alternative raw materials would involve the disposal, treatment or recovery of waste AND
- b. Whether or not the proposed development could be considered an installation for the disposal, treatment or recovery of waste with a capacity for an annual intake greater than 100,000 tonnes, notwithstanding its primary purpose for the production of cement within the meaning of S.37A(1) of the PDA 2000 Act, as amended.

## 11.2. Consideration of a.

11.2.1. There are no definitions around waste in the Planning and Development Act 2000, as amended. Section 4 of the Waste Management Act 1996, as amended, however, provides definitions of **waste, hazardous waste, disposal, recovery and treatment**. The EPA Act 1992, as amended, provides a definition of **'waste co-incineration'**. These are set out in my previous interim report.

11.2.2. It is of relevance to note that an IE licence review application, IE P0030-05 which has since been re-numbered to P0030-06 has been submitted to the EPA and is currently under consideration. Within that application, the classes of activities to which the activity relates include Class 10.2, 11.1, 11.3 and 11.6 of the first schedule of the EPA Act, 1992, as amended and categories 3.1, 5.2 and 5.5 as referred to in Annex I of the Industrial Emissions Directive (2010/75/EU). These classes / categories are outlined in my earlier interim report. It is stated on the licence application form that Chapter IV special provisions apply for waste incineration and waste co-incineration plants. It is also stated in correspondence to the EPA that it is proposed to co-incinerate waste in Kiln No.2 at the cement plant.

11.2.3. Having regard to the above including the relevant definitions, I am satisfied that the intake and use of alternative fuels in the cement kiln would constitute a thermal

recovery activity. In accordance with Section 16.4.5 of Eastern-Midlands Regional Waste Management Plan 2015 – 2021, the activity would constitute co-incineration in a cement kiln which would sit on the ‘other recovery’ tier of the waste hierarchy. The fuel ash would be fully utilised as part of the cement manufacturing process and there would be no residue as a result.

11.2.4. I am also satisfied that the intake and use of the alternative raw materials in the place of natural mineral resources would constitute a waste recovery activity in the production of cement.

### 11.3. Consideration of b.

11.3.1. Following on from consideration of a. above, the question that follows is whether or not the proposed development would comprise of an ‘**installation for the disposal, treatment or recovery of waste capacity for an annual intake greater than 100,000 tonnes**’ under the heading of Environmental Infrastructure.

11.3.2. I have considered the applicant’s case that the cement plant would continue to function to produce cement and I accept this case. However, I am equally satisfied by virtue of the nature of the proposed development as described, including buildings, structures and plant proposed within the cement plant to facilitate the intake and use of waste as a fuel and in raw materials, that the proposed development would also be an installation for the ‘disposal, treatment or recovery of waste’ within the meaning of Part three of the seventh schedule, Environmental Infrastructure. It would involve co-incineration of waste in the cement kiln and the recovery of waste for use as raw materials. There is no requirement in the applicable legislation, that the meaning of ‘installation for’ should be confined to mean ‘solely for’ such that it would fit the category of ‘**installation for the disposal, treatment or recovery of waste**’ or that Part three of the seventh schedule would not apply where the installation is not a waste installation. By omitting reference to ‘waste’ in the third category of Part 3 of the seventh schedule, it appears that the legislation allows for consideration of other ‘installations’ as strategic infrastructure even where the disposal, treatment or recovery of waste would not be the primary purpose of the installation.

11.3.3. In relation to the waste threshold proposed, the applicants have stated that the annual intake would be up to 600,000 tonnes which is in excess of the threshold of 100,000 required for falling within the seventh schedule for this class of infrastructure.

#### **11.4. Consideration of S37A(2) of the Planning and Development Act 2000.**

11.4.1. As previously outlined in the interim report to the Board, it is considered that based on the volumes and types of waste proposed to be recovered at the Platin facility, including acceptance of hazardous and non-hazardous waste categories, the development is considered to be of strategic economic / social importance to both the state and the region.

11.4.2. As previously outlined in the interim report, it is also considered that the proposed facility would contribute to the achievement of the objectives of the National Spatial Strategy and the Regional Planning Guidelines for the Greater Dublin area 2010-2022. It would provide thermal treatment recovery in adherence with the Eastern-Midlands Regional Waste Management Plan 2015 – 2021.

11.4.3. The development would be physically located in the administrative boundary of one local authority, Meath County Council but would accept waste from a number of local authorities in the region and nationally.

11.4.4. Having regard to the above, I am satisfied that the proposed development would satisfy Section 37A(2)(a), (b) and (c) of the Planning and Development Act 2000, as amended.

## **12.0 Conclusion and Recommendation**

Having regard to the nature and scale of the proposed development, with a capacity to accept and handle an annual intake of up to 600,000 tonnes of non-hazardous and hazardous waste streams per annum for the further replacement of fossil fuels and the use as raw materials at its existing cement manufacturing plant at Platin, Duleek, Co. Meath, it is considered that the proposed development fits within the category of 'an installation' for the 'the disposal, treatment or recovery of waste with a capacity for an annual intake greater than 100,000 tonnes' and therefore constitutes development that falls within the definition of Environmental Infrastructure in the Seventh Schedule

of the Planning & Development Act 2000, as amended. It is considered that the development would be of strategic importance to the State and the region within which is would be situate, would contribute substantially to the fulfilment of objectives of the Regional Planning Guidelines for the Greater Dublin Area 2010-2022, the Waste Management Plans of the Eastern-Midlands Region Plan 2015 – 2021 and would have a significant effect on the area of more than one Planning Authority. Therefore, it is considered that the proposed development would fall within Sections 37A (2) (a), (b) and (c) of the Planning and Development Act 2000, as amended.

An application for permission for the proposed development should therefore be made directly to An Bord Pleanála under Section 37E of the Planning and Development Act 2000, as amended.

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Patricia Calleary  
Senior Planning Inspector  
25<sup>th</sup> April 2017

## **Appendix:**

The following is a schedule of prescribed bodies considered relevant in this instance for the purposes of section 37E(3)(c) of the Principal Act.

Minister for Housing, Planning, Community and Local Government

Minister for Communications, Climate Action and the Environment

Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs

Minister for Department of Transport, Tourism and Sport

Eastern Midlands Regional Waste Office

Eastern and Midlands Regional Assembly

Meath County Council

Louth County Council

Inland Fisheries Ireland

An Taisce

Irish Water

Fáilte Ireland

Iarnód Éireann

An Chomhairle Ealaíon

Irish Aviation Authority

Health Service Executive

Health & Safety Authority

Heritage Council

Environmental Protection Agency

Transport Infrastructure Ireland