



An
Bord
Pleanála

Interim Inspector's Report

PC 17.PC0221

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

1.0 Introduction

Irish Cement Limited has submitted a pre-application consultation request seeking the Boards determination as to whether or not development involving 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.

One pre-application meeting was held with the Board on 19 July 2016 in relation to this matter and subsequently, additional information from the prospective applicant was received by the Board on 8 September 2016.

An interim report is now prepared with the intention of seeking 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, particularly given the submissions made by the applicant on the issue. Subject to the Board's view it may be necessary to hold a further meeting(s) with the prospective applicant and/or other bodies to consider issues that may have a bearing on the Board's decision (should it be deemed strategic infrastructure).

2.0 Background

The prospective applicant operates a cement plant in Platin in County Meath. The cement works area is laid out across 40 hectares of the overall site. There are three kilns on site where the heating and melting processes take place. Kiln 1 has been de-commissioned; Kiln 2 is presently inactive and Kiln 3 is in full use. The production process was traditionally fuelled by fossil fuels to produce the heat required. More recently petroleum coke has been used, and as of 2016, 50% of fossil fuels have been replaced by alternative fuels (solid recovered fuel/SRF) with a medium-term goal to achieve over 85% fossil fuel replacement. The prospective applicant stated that the SRF is produced to a specification by the waste industry from non-recyclable materials and is transported to the facility in a ready-to-use format and the applicant receives payment to accept it. It was stated that the fuel usage is linked directly to the production of cement and that the employment of co-processing involves no waste residues such as ash.

3.0 Proposed Development

The proposed development would involve increasing the alternative fuel intake to 600,000 tonnes over a long term period. The proposed **alternative fuels** to be employed would consist of the following:

- fine solids (e.g. SRF, chipped timber, shredded plastics);
- coarse solids (e.g. shredded wood, rubber, dry filter cakes);
- free-flowing solids (e.g. secondary liquid fuels (SLF), waste oils, sludge) and
- pumpable fluids (e.g. solvents, distillation residues, etc.)

The proposed development would also involve the use of **alternative raw materials** in the cement production process which would include Alum filter cake and contaminated soil. Approximately 20% of the material accepted would be hazardous by nature, e.g. meat and bone meal and solvents. The development would include the construction/installation of a range of buildings, structures and associated plant to allow for storage and use of the alternative fuels and alternative raw materials. The prospective applicant stated that the buildings being proposed would generally be in the order of 14 to 16 metres in height except the silos which would be in the order of 26 metres.

It was further stated that the tonnage of cement being produced at the facility would not increase as a result of the proposed development.

4.0 Applicant's Case

The prospective applicant has 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. It was submitted that when operating at full capacity, the facility could realise an 85% figure as regards alternative fuel consumption. The prospective applicant also said that alternative raw materials proposed to be employed would be handled as a regular raw material.

In relation to the definition in the relevant class of the Seventh Schedule, the prospective applicant considers the word 'installation' means facility and would refer to a waste facility as that category generally deals with thresholds for Environmental Infrastructure. The prospective applicant formed the view that the wording of the legislation here was not intended to capture facilities such as cement manufacturing.

5.0 Planning History

- **SA803066** - In 2009, Meath County Council (MCC) granted permission to Irish Cement Ltd for development to allow for the substitution of a proportion of the traditional petroleum coke fuel with up to 90,000 tonnes per annum of solid recovered fuels (SRF); 30,000 tonnes per annum of chipped used tyres and 40,000 tonnes per annum of meat and bone meal, within an overall capacity of 120,000 tonnes per annum;
- **SA901901** – In 2010, MCC granted Irish Cement Ltd permission to modify the development permitted under SA803066 to facilitate design changes. The alternative fuel types & volumes remain as permitted;
- **SA120301** - In 2012, MCC granted Irish Cement Ltd permission to alter the above proposal to utilise SRF fuel only, up to a maximum capacity of 120,000 tonnes per annum;
- **LB140961** – In 2014, MCC granted permission to demolish previously permitted decommissioned Kiln 1;
- **LB140962** – In 2014, MCC granted permission for plant and structures for the drying of granulated blast-furnace slag;
- **LB150375** - In 2015, MCC granted permission for the installation of a flue dust portland cement silo at Kiln 3;
- **LB150279** – In 2015, MCC granted permission for the installation of a waste heat recovery facility on Kiln 3 of the cement works;
- **PL17.243795 (Plan Reg Ref: SA/130769)** - In 2015, permission was granted by the Board on appeal for an extension to a limestone quarry in the same ownership, immediately west of the site.

6.0 Industrial Emissions Licence Review

Platin Cement works and its associated limestone quarry are currently regulated under an IE licence (IE No. P0030-04). A licence review application under Section 87 (1D)(a) of the EPA Act 1992, as amended, IE No. P0030-05 is currently with the EPA for consideration.

7.0 Strategic Infrastructure - Legislative Provisions

Under Section 37A(1) of the Act, 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.

Part three of the Seventh Schedule, **Environmental Infrastructure**, sets out development categories as follows:

3. Development comprising or for the purposes of any of the following:

—A waste disposal installation for—

- (a) the incineration, or
 - (b) the chemical treatment (.....), or
 - (c) the landfill,
- of **hazardous** waste

—A waste disposal installation for—

- (a) the incineration, or
 - (b) the chemical treatment (.....),
- of **non-hazardous** waste with a capacity for an annual intake greater than 100,000 tonnes.

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

It is the third of these categories which is relevant to this seventh schedule assessment.

In addition, Section 37 of the Act, 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 following criteria set out under section 37A(2)(a), (b) and (c), namely:

- (a) the development would be of strategic economic or social importance to the State or the region in which it would be situate;
- (b) the development would contribute substantially to the fulfilment of any of the objectives in the National Spatial Strategy or in any regional spatial and economic strategy in force in respect of the area or areas in which it would be situate;
- (c) the development would have a significant effect on the area of more than one planning authority.

8.0 PLANNING POLICY

National

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.

National Hazardous Waste Management Plan 2014-2020 (EPA 2014)

- This plan sets out priorities to manage and reduce hazardous waste including objectives to aim for increased self-sufficiency in the management of waste.

National Spatial Strategy for Ireland, 2002-2020 (NSS)

- The NSS promotes the balanced regional development and sustainable practices. The cement works at Platin 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’.

Regional

Eastern 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. These facilities typically operate on a national market basis accepting waste from all parts of Ireland. The development of future thermal recovery facilities will be viewed as national facilities rather than being defined by regional markets alone.
- **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 to ensure there is adequate and competitive treatment in the market and the States self-sufficiency requirements for the recovery of waste are met.’

- **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. The relevant environmental protection criteria for the planning and development of such activities need to be applied.

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, from environmental, business and public health needs, that waste management remains a priority for local authorities and waste management regions in continuing to invest in promoting and facilitating reuse and recycling by residential and commercial sources and that high standard options for treatment and final disposal of waste are available within the Greater Dublin Area.’

Local

The 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**.

9.0 ASSESSMENT

The Board's interim views are sought on whether or not the development which is the subject of the pre-application consultation falls within the seventh schedule. The first two categories of section 3 (Environment Infrastructure) can be discounted as they relate to waste disposal installations. The third category would appear to have relevance being '*An installation for the disposal, treatment or recovery of waste with a capacity for an annual intake greater than 100,000 tonnes*'. The omission of reference to 'waste' could be read to allow other categories of development which can dispose, treat or recover waste to be included under Part three of the Seventh Schedule, **Environmental Infrastructure**.

The prospective applicant has made a case that the proposed development does not fall within this category as they contend that if the development were carried out, it would remain a cement production plant with capacity to be fuelled by recovered waste material 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 of the development or the purpose of the cement plant.

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

- a. Whether or not the acceptance of the alternative fuels and alternative raw materials involve the disposal, treatment or recovery of waste AND
- b. Whether or not the cement production plant is 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.

Consideration of a.

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 which are listed under.

'waste'

means any substance or object which the holder discards or intends or is required to discard.

'hazardous waste'

waste which displays one or more of the properties listed in the Second Schedule;

'disposal'

(a) means any operation which is not recovery even where the operation has as a secondary consequence the reclamation of substances or energy, and

(b) without prejudice to the generality of paragraph (a), includes the disposal operations listed in the Third Schedule, and 'waste disposal activity' shall be construed accordingly;

'recovery'

(a) means any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy, and

(b) without prejudice to the generality of paragraph (a), includes the recovery operations listed in the Fourth Schedule, and 'waste recovery activity' shall be construed accordingly;

'treatment': *means recovery or disposal operations, including preparation prior to recovery or disposal;*

The EPA Act 1992, as amended, provides a definition of **'waste co-incineration'** which means

'any stationary or mobile technical unit whose main purpose is the generation of energy or production of material products and which uses waste as a regular or additional fuel or in which waste is thermally treated for the purpose of disposal through the incineration by oxidation of waste as well as other thermal treatment processes, such as pyrolysis, gasification or plasma process, if the substances resulting from the treatment are subsequently incinerated'.

The prospective applicant initially stated that the waste would be processed elsewhere (by the waste industry) and would arrive to the cement plant as a fuel product in a ready-to-use format. The subsequent legal opinion (Point 27) received by the Board on 8 September 2016 infers that waste would be processed into fuel at the cement plant, albeit as an effect of the process at the plant rather than its purpose.

The meaning given to 'disposal' and 'recovery' were clarified in the findings of the ECJ case C-486/04, 'Commission v Italy' where the term 'disposal' was interpreted to include 'recovery' for the purposes of the EIA Directive.

It is of relevance to note that an IE licence review application, IE No. P0030-05, has been submitted to the EPA and is currently under consideration. The details are available on the EPA website and are of assistance in gaining an understanding of the nature of the stated alternative fuels and alternative raw materials.

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 are set out under Table 1 below.

Table 1 - Classes of activities as per the first schedule of the EPA Act, 1992, as amended.

Class	Description
10.2	Production of cement clinker in rotary kilns with a production capacity exceeding 500 tonnes per day or in other kilns with a production capacity exceeding 50 tonnes per day.
11.1	The recovery or disposal of waste in a facility, within the meaning of the Act of 1996, which facility is connected or associated with another activity specified in this Schedule in respect of which a licence or revised licence under Part IV is in force or in respect of which a licence under the said Part is or will be required.
11.3	Disposal or recovery of waste in waste incineration plants or in waste co-incineration plants - (a) for non-hazardous waste with a capacity exceeding 3 tonnes per hour, (b) for hazardous waste with a capacity exceeding 10 tonnes per day.
11.6	Temporary storage of hazardous waste , (other than waste referred to in paragraph 11.5) pending any of the activities referred to in paragraph 11.2, 11.3, 11.5 or 11.7 with a total capacity exceeding 50 tonnes, other than temporary storage, pending collection, on the site where the waste is generated.

In addition, the categories of industrial activity referred to in Annex I of the Industrial Emissions Directive (2010/75/EU) which are to be carried out at the installation as set out under Table 2 below.

Table 2 categories of industrial activity (Annex I) of IED

Categories	Description
3.1	Production of cement, lime and magnesium oxide: (a) production of cement clinker in rotary kilns with a production capacity exceeding 500 tonnes per day or in other kilns with a production capacity exceeding 50 tonnes per day
5.2	Disposal or recovery of waste in waste incineration plants or in waste co-incineration plants; (a) for non-hazardous waste with a capacity exceeding 3 tonnes per hour; (b) for hazardous waste with a capacity exceeding 10 tonnes per day.
5.5	Temporary storage of hazardous waste not covered under point 5.4 pending any of the activities listed in points 5.1, 5.2, 5.4 and 5.6 with a total capacity exceeding 50 tonnes, excluding temporary storage, pending collection, on the site where the waste is generated.

It is also stated on the licence application form that **Chapter IV special provisions apply for waste incineration and waste co-incineration plants.**

Having regard to the above including the relevant definitions, I am satisfied that the 'alternative fuels' would constitute waste and hazardous waste and would be recovered or disposed during the cement production process through co-incineration (to produce energy) and through the use of waste as raw materials. I am satisfied that, in accordance with Section 16.4.5 of the Eastern Regional Waste Management Plan, the activity would constitute co-incineration which would sit on the 'other recovery' tier of the waste hierarchy.

Consideration of b.

Following on from a. above, the question then presents as to 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.*

The prospective applicant considers it would not, having regard to the purpose of the plant for cement production.

There is no definition within the Planning Act 2000, as amended, for 'installation'. Neither is there one within the Waste Management Act 1996, as amended. Directive 2010/75/EU (on industrial emissions – integrated pollution prevention and control) does provide a definition for 'installation' as follows.

- **'installation'** means a stationary technical unit within which one or more activities listed in Annex I or in Part 1 of Annex VII are carried out, and any other directly associated activities on the same site which have a technical connection with the activities listed in those Annexes and which could have an effect on emissions and pollution;

The proposed development clearly falls within this definition as the plant is a stationary technical unit, within which activities listed in Annex I are to be carried out (including the disposal or recovery of waste in waste incineration / co-incineration plants) and the temporary storage of hazardous waste.

Under the EPA Act 1992, as amended, installation is similarly defined as:

- **'installation'** means a stationary technical unit or plant where the activity concerned referred to in the First Schedule is or will be carried on, and shall be deemed to include any directly associated activity, whether licensable under this Part or not, which has a technical connection with the first-mentioned activity and is carried out on the site of that activity;

The proposed development also clearly falls within this (similar) definition as the plant is a stationary technical unit where activities listed in the first Schedule of the EPA Act 1992, as amended, including recovery or disposal of waste in waste co-incineration plants and the temporary storage of hazardous waste, noting the capacity thresholds.

I consider it is reasonable to draw on the aforementioned definitions of 'installation' in the absence of a specific definition in either the Planning and Development Act, 2000, as amended or the Waste Management Act, 1996, as amended.

I have considered the argument put forward by the prospective applicant that the cement plant would serve the production of cement, fuelled by waste derived/alternative fuel rather than being specifically for the purpose of the disposal, treatment or recovery of waste. While this may be so, I am equally satisfied that by virtue of the use of non-hazardous and hazardous waste streams to generate fuel and use as raw materials, it would also be an installation for the disposal or recovery of waste by co-incineration and use of waste in the raw materials. There is no reference in the legislation, that the meaning of 'installation for' would not apply where the purpose and use for waste recovery or disposal would be ancillary to the main purpose of cement production. By omitting reference to 'waste' in this category, it appears that the legislation allows for consideration of such as strategic infrastructure even where it is not the primary purpose of the planning unit.

Finally, it is worth noting that 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. This is not in dispute.

Consideration of S37A(2)

With regard to the provisions of 37A(2) of the Planning and Development Act 2000, as amended, I have considered the three criteria below. The meeting held with the prospective applicant did not move to the consideration of this section of the Planning Act so I suggest the views below are preliminary at this point.

Section 37A(2)(a) - Development would be of strategic economic or social importance to the State or the region in which it is situate.

For the purposes of waste management planning Ireland is divided into three regions. Waste management plans for the regions were published in May 2015. Each of the plans identified a need for the development **of up to 300,000 tonnes per annum** of additional thermal recovery capacity nationally for the treatment of **non-hazardous waste**. The plans also support the development **of up to 50,000 tonnes of additional thermal recovery capacity** for the treatment of **hazardous waste nationally**. These figures are not specific to any of the regions and are identified as the needs at a national level. An annual intake of **600,000 tonnes** of waste is proposed to be accepted at the Platin cement facility with a breakdown of c.80% non-hazardous and 20% hazardous waste streams. Both volumes are substantial and the facility would become an important player in the disposal of non-hazardous and hazardous waste for the State. The proposal complies with many of the policy statements contained in the current Eastern Midlands Regional Waste Management Plan including policy which encourages increased self-sufficiency of management of waste and hazardous waste including the potential for co-incineration in cement kilns where the principal use of the waste is as a fuel to generate energy.

It is therefore submitted 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, the development could undoubtedly be considered of strategic economic / social importance to both the state and the region.

Section 37A(2)(b) - Contribution to the achievement of the objectives of the National Spatial Strategy or any regional spatial and economic strategy in force in respect of the area or areas in which it would be situate.

Under Section 3.7, the NSS recognises references economic infrastructure including waste, recognising 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'. The Regional Planning Guidelines- for the Greater Dublin area 2010-2022 is a strategic policy document designed to steer the future growth of the region. Chapter 6 sets out the key physical infrastructural needs for the region including waste management Specifically section 6.7 of the RPGs considers that waste management policy needs to develop greater choice of waste treatment solutions and that high standard options and final disposal should be available in the GDA. The proposed facility would offer greater choice at a significant scale to deal with waste integrated with the cement production process. I consider that the development is of strategic importance by reference to the requirements of condition (b) of section 37A(2).

Section 37A(2)(c) - the development would have a significant effect on the area of more than one local authority.

With regard to the third test set out under S37A(2)(c), the development would be physically located in the administrative boundary of one local authority, Meath County Council. It is noted however, that the proposal would accept waste from a number of local authorities in the region and nationally. In this regard it can reasonably be argued that the proposal would have a significant effect on the waste streams in more than one local authority, thereby meeting the provision of (c) above.

10.0 INTERIM CONCLUSIONS AND RECOMMENDATION

Arising out of my assessment above, the Board is requested to consider whether the prospective applicant should be advised of its initial opinion that the proposed development falls within the provisions of Part 3 of the Seventh Schedule of the Planning & Development Act 2000 (as amended) under Environmental Infrastructure. The Board is also requested to consider whether the proposed development would satisfy the conditions set down under section 37(A)(2) (a), (b) and (c) of the Planning & Development Act 2000, as amended, and accordingly would constitute strategic infrastructure within the meaning of the Act. Should the Board be minded to accept this recommendation that the proposed development would constitute strategic development within the meaning of the Planning and Development Act, 2000, as amended, the prospective applicant would be invited to a further meeting(s) and advised of such. At that meeting, further matters in relation to issues which may have a bearing on the Board's decision might be discussed.

Patricia Calleary
Senior Planning Inspector
18 October 2016