

File With \_\_\_\_\_

## SECTION 131 FORM

Appeal NO: ABP-318566-23

Defer Re O/H

Having considered the contents of the submission dated received 05/1/24  
fromApplicant  
via agent: Leahy Timoney  
I recommend that section 131 of the Planning and Development Act, 2000  
be/not be invoked at this stage for the following reason(s): \_\_\_\_\_

E.O.: \_\_\_\_\_

Date: \_\_\_\_\_

## For further consideration by SEO/SAO

Section 131 not to be invoked at this stage. ☐Section 131 to be invoked – allow 2/4 weeks for reply. ☐

S.E.O.: \_\_\_\_\_

Date: \_\_\_\_\_

S.A.O.: \_\_\_\_\_

Date: \_\_\_\_\_

M \_\_\_\_\_

Please prepare BP \_\_\_\_\_ - Section 131 notice enclosing a copy of the attached submission

to: \_\_\_\_\_ Task No: \_\_\_\_\_

Allow 2/3/4weeks – BP \_\_\_\_\_

EO: \_\_\_\_\_

Date: \_\_\_\_\_

AA: \_\_\_\_\_

Date: \_\_\_\_\_

File With \_\_\_\_\_

**CORRESPONDENCE FORM**Appeal No: ABP 318566-13Mr. BashfordPlease treat correspondence received on 08/01/24 as follows:

1. Update database with new agent for Applicant/Appellant \_\_\_\_\_

2. Acknowledge with BP 203. Keep copy of Board's Letter ☐

1. RETURN TO SENDER with BP \_\_\_\_\_

2. Keep Envelope: ☐3. Keep Copy of Board's letter ☐**Amendments/Comments**Applicant response to appeals**4. Attach to file**(a) R/S ☐(d) Screening ☐(b) GIS Processing ☐(e) Inspectorate ☐(c) Processing ☐RETURN TO EO ☐Plans Date Stamped ☐Date Stamped Filled in ☐EO: Dislike KellyAA: Fadimic KhatipovaDate: 12/21/24Date: 16/01/24

**Derek Kelly**

---

**From:** Eoin O'Connor (Fehily Timoney and Company (Dublin)) <eoin.oconnor@ftco.ie>  
**Sent:** Monday 8 January 2024 13:15  
**To:** Appeals2  
**Subject:** Document Issue No. 45 - Case No. ABP-318566-23 1st Party Response to Third Party Appeals  
**Attachments:** P2344 - Oxigen Waste Transfer EIAR and NIS\_ Derryarkin Rochfortbridge - Issue 45.pdf

## **P2344 - Oxigen Waste Transfer EIAR and NIS: Derryarkin Rochfortbridge Issue 45**

Issued by: Eoin O'Connor (Fehily Timoney and Company)  
On: 08 Jan 2024

Dear Sir/Madam,

Please find via download, on behalf of **Oxigen Environmental Unlimited Company** (the Applicant) a **Response to Third Party Appeals** made against Offaly County Council's Notification to Grant Permission for a waste management facility in Derryarkin, Rhode, Co. Offaly.

**An Bord Pleanála Ref. ABP-318566-23**

**Offaly County Council Ref. 22490**

I would be obliged if you could confirm receipt by return email.

Kind Regards,

[Access the documents for this issue](#)

Recipients:

Bernie Guinan (Fehily Timoney and Company (Dublin))  
Brian Moylan (Oxigen Environmental Ltd)  
Eoin O'Connor (Fehily Timoney and Company (Dublin))  
Richard Deeney (Fehily Timoney and Company (Dublin))  
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CONSULTANTS IN ENGINEERING,  
ENVIRONMENTAL SCIENCE &  
PLANNING

# RESPONSE TO PLANNING APPEALS RELATING TO GRANT OF PLANNING PERMISSION FOR PROPOSED DEVELOPMENT AT DERRYARKIN, RHODE, CO. OFFALY

Response to An Bord Pleanála Appeal Case  
No. PL19.318566

Prepared for:

Oxygen Environmental Unlimited Company



Date: January 2024

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<b>AN BORD PLEANÁLA</b>	
LDG. _____	
ABP. _____	
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Time: _____	By: _____
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## Response to An Bord Pleanála Appeal Case No. PL19.318566

### REVISION CONTROL TABLE, CLIENT, KEYWORDS AND ABSTRACT

User is responsible for Checking the Revision Status of This Document

Rev. No.	Description of Changes	Prepared by:	Checked by:	Approved by:	Date:
00	Final	EOC/NSC/RD	RD	BG	08/01/2024

**Client:** Oxigen Environmental Unlimited Company

**Keywords:** Material Recovery Facility, Appeal, planning permission application, Offaly County Council, An Bord Pleanála

**Abstract:** This report is prepared in response to third party appeals lodged to An Bord Pleanála regarding a Planning Application (Planning Ref: 22490) submitted to Offaly County Council and Offaly County Council's Notification of Decision to Grant Permission for the proposed development.

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## PREAMBLE

Fehily Timoney and Company (FT) have been retained by Oxigen Environmental Unlimited Company (the Applicant) to respond to Third Party Appeals lodged to An Bord Pleanála (ABP) against Offaly County Council's (OCC) Notification of Decision to Grant Planning Permission to the Applicant for a proposed development at a site in Derryarkin, Rhode, Co. Offaly.

Two third party appeals have been lodged against the planning decision. These appeals were submitted by the following parties:

- Residents of Rhode and Croghan (Submitted by Claire Smale-Murray) - Referenced as 'Appeal 1' in this document.
- Residents of Rochfortbridge (Submitted by Cathryn Whelehan) - Referenced as 'Appeal 2' in this document.

An overview of the proposed development that these appeals relate to is presented below:

### **Applicant**

Oxigen Environmental Unlimited Company

### **Development Location**

Derryarkin, Rhode, County Offaly

### **Description of the Proposed Development**

The development will consist of the demolition of existing agricultural sheds and structures on-site and the construction and operation of a Materials Recovery Facility for the acceptance and processing of up to 90,000 tonnes per annum of household, commercial and industrial (C&I), and construction and demolition (C&D) waste.

Elements of the proposed development include the following. (1) The demolition of all existing site agricultural sheds and structures on-site (which cover an area of 1,417 m<sup>2</sup>). (2) The construction and operation of a Materials Recovery Facility, comprising: (a) A site entrance, (b) A weighbridge, (c) Trucking set down and parking areas, (d) Staff parking, comprising 24 parking spaces including disabled parking and EV charging, (e) A concrete yard area, (f) A fuel storage area, (g) External waste storage bays, (h) Skip / bin storage areas, (i) A perimeter boundary wall (4 m in height) and perimeter fencing (2.1 m in height), (j) A stormwater drainage and attenuation system, (k) An administration two-storey building (with an overall floor area of c. 396m<sup>2</sup> and c.7.35m in height), (l) A single storey Materials Recovery Facility (with an overall floor area of c. 2,850m<sup>2</sup> to a maximum height of c.13m), (m) A truck loading bay, (n) An on-site wastewater treatment system, associated percolation area and ancillary services, (o) An on-site ESB sub-station and adjoining electrical room (with a combined floor area of 61 m<sup>2</sup> and 2.175 m in height), (p) Solar panels (covering a total area of 737 m<sup>2</sup>) mounted atop the proposed Administration and Materials Recovery Facility buildings. The application is accompanied by an Environmental Impact Assessment Report and Natura Impact Statement.

The proposed development will accept up to 50,000 tonnes of waste per annum and operate under a Waste Facility Permit from Offaly County Council during Phase 1 of operations. The proposed development will accept up to 90,000 tonnes of waste per annum and operate under an Industrial Emissions licence from the Environmental Protection Agency during Phase 2 of operations.



## 1. INTRODUCTION

### 1.1 Background

Oxigen Environmental Unlimited Company (the Applicant) prepared a planning application for the proposed development which was submitted to Offaly County Council (OCC) on the 21st of September 2022. This planning application was accompanied by a variety of supporting documents, including an Environmental Impact Assessment Report (EIAR) and a Natura Impact Statement (NIS). OCC made a decision to grant permission for the proposed development on the 7th of November 2023 and issued a notification in relation to this on the same day.

An Bord Pleanála (ABP) issued a notification to the Applicant on the 1st of December 2023 which enclosed a third party appeal lodged to ABP against OCC's decision to grant planning permission to the Applicant for a proposed development at a site in Derryarkin, Rhode, Co. Offaly (OCC Planning File Reference: 22490). This appeal was made by the residents of Rhode and Croghan (Submitted by Claire Smale-Murray)(Appeal 1).

ABP issued another notification to the Applicant on the 5th of December 2023 which enclosed a second third party appeal lodged against the same decision. This appeal was made by the residents of Rochfortbridge. (Submitted by Cathryn Whelehan)(Appeal 2).

As first party to the appeal, under Section 129 of the the Planning and Development Act 2000 (as amended), the Applicant was invited by ABP to make submissions or observations in writing to ABP within a period of 4 weeks beginning from the date the letters. The response period also takes into account the holiday period over December 2023.

### 1.2 Document Overview

This document presents the Applicants response to the subject appeals. It has been prepare by Fehily Timoney and Company (FT) on behalf of the Applicant. FT have been supported by the following consultants in preparing the responses to the appeals:

- TrafficWise, who prepared the response to all traffic and transport related matters.
- AWN Consulting, who prepare the response to all air, odour and climate related matters.

The document is structured as follows:

- Section 1 provides a background to the third party appeals and this appeal response document; an overview of the proposed development, and an overview of the history of the planning application/decision relating to the subject proposed development.
- Section 2 presents the Applicants response to the third party grounds for appeal.
- Section 3 provides concluding statements regarding the proposed development, the third party appeals and the Applicants response.

A copy of OCC's Notification of Decision to Grant Planning Permission for the proposed development is provided in Appendix 1.



Copies of OCC's Planning Reports in connection with the planning application made for the proposed development are provided in Appendix 2. These Planning Reports informed OCC's decision to grant permission for the proposed development. The Planning Reports referenced several internal reports from various sections of OCC, including an Area Engineers report, a report from the Roads section, and a report from the Environment/Water Services section.

A copy of the Decision Makers Written Statement is provided in Appendix 3.

Copies of correspondence from ABP notifying the Applicant of the third-party appeals with the third party appeal documents attached are provided in Appendix 4

### **1.3 Proposed Development Overview**

An overview of the proposed development is provided below for the purpose of clarifying the location, extent, and character of the proposed development, and need for the proposed Materials Recovery Facility (MRF), in the context of the two third party appeals lodged to ABP.

#### **1.3.1 Development Site Ownership**

The proposed development site is under the ownership of the Applicant, Oxigen Environmental Unlimited Company

#### **1.3.2 Development Site Location and Context**

The proposed development site is located in the townland of Derryarkin, Rhode, Co. Offaly. The development site is 0.8 ha in size. The site is located 4 km south-south-east of Rochfortbridge, Co. Westmeath and 5.5 km north-west of Rhode, Co. Offaly. The site is 3 km south of the M6 motorway and approximately 2.2 km west of the R400.

The nearest sensitive human receptor is a one-off dwelling located ca. 755 metres to the south of the proposed development site. Other one-off dwellings are located ca. 760 metres to the south west, 770 metres to the south and ca. 890 metres to the south west. There are no other sensitive human receptors within 1 km of the proposed development site.

A Site Location Map is presented in Figure 1-1. This map was previously presented as Figure 1-1 of the Environmental Impact Assessment Report (EIAR) submitted with the planning application for the proposed development.







### 1.3.3 Site History and Existing Development On-site

The site was previously developed and used as an agricultural facility and is in a state of disuse. Several derelict agricultural structures are present on-site currently.

### 1.3.4 Description of the Proposed Development

Broadly, the development consists of two sequential components, as follows:

- The demolition of existing agricultural sheds and structures on-site; and,
- The construction and operation of a Materials Recovery Facility.

The development will consist of the demolition of existing agricultural sheds and structures on-site and the construction and operation of a Materials Recovery Facility for the acceptance and processing of up to 90,000 tonnes per annum of household, commercial and industrial (C&I), and construction and demolition (C&D) waste.

Elements of the proposed development include the following. (1) The demolition of all existing site agricultural sheds and structures on-site (which cover an area of 1,417 m<sup>2</sup>). (2) The construction and operation of a Materials Recovery Facility, comprising: (a) A site entrance, (b) A weighbridge, (c) Trucking set down and parking areas, (d) Staff parking, comprising 24 parking spaces including disabled parking and EV charging, (e) A concrete yard area, (f) A fuel storage area, (g) External waste storage bays, (h) Skip / bin storage areas, (i) A perimeter boundary wall (4 m in height) and perimeter fencing (2.1 m in height), (j) A stormwater drainage and attenuation system, (k) An administration two-storey building (with an overall floor area of c. 396m<sup>2</sup> and c.7.35m in height), (l) A single storey Materials Recovery Facility (with an overall floor area of c. 2,850m<sup>2</sup> to a maximum height of c.13m), (m) A truck loading bay, (n) An on-site wastewater treatment system, associated percolation area and ancillary services, (o) An on-site ESB sub-station and adjoining electrical room (with a combined floor area of 61 m<sup>2</sup> and 2.175 m in height), (p) Solar panels (covering a total area of 737 m<sup>2</sup>) mounted atop the proposed Administration and Materials Recovery Facility buildings. The application is accompanied by an Environmental Impact Assessment Report and Natura Impact Statement.

The proposed development will accept up to 50,000 tonnes of waste per annum and operate under a Waste Facility Permit (WFP) from Offaly County Council during Phase 1 of operations. The proposed development will accept up to 90,000 tonnes of waste per annum and operate under an Industrial Emissions (IE) licence from the Environmental Protection Agency during Phase 2 of operations.

### 1.3.5 Environmental Management during the Construction Phase of the Proposed Development

A Construction Environmental Management Plan (CEMP) has been developed in order to manage, prevent and control potential environmental impacts associated with Construction Phase activities. This document was included as Appendix 4.3, Construction Environmental Management Plan, in Volume 3 of this EIAR. This document outlines construction phase activities to be undertaken and environmental control and mitigation measures to be adopted to prevent adverse impacts on the environment due to these construction activities. This Plan also addresses construction phase waste management.



### 1.3.6 Design, Operation and Control of the Proposed Materials Recovery Facility

To ensure the highest standards of environmental protection, the proposed MRF has been designed to operate in accordance with the following 'Best Available Technique' environmental protection standards defined for Waste Management Facilities:

- European Commission (2018) BREF on Waste Treatment.
- European Commission (2018) BATC on Waste Treatment.
- EPA (2011) BAT Guidance Note on the Waste Sector.
- Commission Implementing Decision (EU) establishing best available techniques (BAT) conclusions for waste treatment, under Directive 2010/75/EU of the European Parliament and of the Council

Best Available Techniques are defined by the EPA as the '*most effective technique available to a particular industry sector to achieve a high general level of protection of the environment.*'

The proposed MRF will be subject to regulatory control under relevant environmental and waste related legislation. Phase 1 of the operation will be subject to a WFP enforced by OCC Phase 2 of the operation of will be subject to an Industrial Emission Licence enforced by the EPA. The environmental protection related conditions defined in both these consents will be informed by Best Available Techniques for the waste Management Facilities defined in the above standards.

### 1.3.7 Need for the Proposed Development

There is a proven need for the proposed development.

The proposed development will improve waste management capacity nationally in accordance with the tenets of self-sufficiency and proximity as defined in Waste Management Legislation and Policy.

The proposed development will contribute to meeting waste management needs defined by Waste Management Policy and Legislation.

The proposed development will contribute toward meeting municipal waste and C&D waste management capacity needs.

The proposed development will support achieving Waste Management targets defined nationally under the Waste Framework Directive and Landfill Directive, including targets to increase MSW recycling and reduce landfilling of waste.

The proposed development will contribute to meeting MSW pre-treatment capacity needs on a national scale

This has been demonstrated in Chapter 2 of the EIAR submitted with the planning application for the proposed.

### 1.3.8 The Development and Conformance with Policy

The proposed development accords with, and is supported by, all relevant policy, including European and National waste policy; national, regional and local planning policy, and climate policy.

This has been demonstrated in Chapter 5 of the EIAR submitted with the planning application for the proposed.





## 1.4 History of the Planning Application/Decision

A Planning Application for the proposed development was submitted by the Applicant to OCC on the 21st of September 2022. The application was accompanied by an Environmental Impact Assessment Report (EIAR) and a Natura Impact Statement (NIS).

It should be noted several site notices were erected and a newspaper notice was published informing the public of the planning application for the proposed development prior to submitting the application to OCC for their consideration in first instance - in accordance with statutory requirements.

No planning submissions/observations were made in relation to the planning application in first instance.

A Further Information Request (FIR) in connection with the planning application was issued by OCC on the 15th of November 2022. The Applicant provided a response to the FIR on the 11th of July 2023.

OCC determined that the further information received was significant additional information therefore required the proposed development to be readvertised to the public (via a newspaper notice and additional site notices). A newspaper notice was published, and site notices erected on the 1st of August 2023.

Following the provision of evidence of the readvertisement (erected site notice and newspaper advertisement) to OCC, an additional period for observations/submissions to be lodged to OCC began.

Subsequently, OCC issued a letter on the 4th of September 2023 to the Applicant stating that, due to a collapsed bridge and closure of the R-400 rendering it inaccessible to the public, the site notice *'does not adequately inform the public, therefore the site notice does not comply with Article 35(2) of the Planning and Development Regulations 2001 (as amended).'*

To remedy this and to ensure adequate notice was given to the public, OCC requested the Applicant to readvertise the proposed development via a second newspaper notice and additional site notices. OCC requested that the site notices *'shall be located in a conspicuous position so members of the public can view the same site notice'*. This was completed and evidence of such was provided to OCC.

Following the provision of evidence of the second newspaper notices and additional site notices to OCC on 13th of September 2023 an additional period for observations/submissions to be lodged to OCC began.

Following this observation period and considering all information presented to them during the course of the planning application process, OCC issued a Notification of Decision to Grant Permission to the Applicant on the 7th of November 2023. In this notification, under Schedule 1 OCC state.

*'Having regard to the nature, scale and intended use of the proposed development, the policies, objectives and standards of the Offaly County Development Plan 2021-2027, Planning Guidelines, submission received, planning assessments, referral reports and the pattern of development in the area, it is considered that, subject to the conditions in schedule two, that the proposed would not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health and would otherwise accord with the proper planning and sustainable development of the area.'*

A copy of this Notification of Decision is included in Appendix 1 for reference. For reference a copy of OCC's first Planning Report to inform its decision to Request Further Information (dated the 15th of November 2022) and OCC's second Planning Report to inform its decision to Grant Permission for the proposed development (dated 6th of November 2023) are provided in Appendix 2.





A Decision Makers Written Statement on the decision to grant permission for the proposed development was subsequently issued by OCC which stated the Planning Reports contain a *'fair and reasonable assessment of the likely significant effects of the development on the environment.'* This Statement further stated the following:

*'Having due regard to the subject site, the contents of the planning file, including the EIAR, the submissions received, the internal departmental reports and consultations, the county development plan, and the assessment carried out above, I am satisfied that the planning permission be granted for the proposed development as per the recommendation and the planning conditions, as set out in the attached Planner's Report'*

A copy of this Statement is provided is provided in Appendix 3.

### 1.5 Other Consents Required for the Proposed Materials Recovery Facility

As outlined, the operation of the proposed MRF will be conducted in two phases.

The proposed MRF will accept up to 50,000 tonnes of waste per annum and operate under a WFP from OCC during Phase 1 of operations. The facility will accept up to 90,000 tonnes of waste per annum and operate under an IE licence from the Environmental Protection Agency during Phase 2 of operations.

Phase 1 of operations will fall under the scope of the Waste Management Act, 1996, as amended, and the Waste Management (Facility Permit and Registration) Regulations 2007, S.I. No. 821 of 2007, as amended. As such, Phase 1 operations will be regulated by OCC under a WFP.

The WFP will control the following aspects of Phase 1 operations at the facility:

- The type and scale of waste management activity .
- Types and quantities of waste accepted.
- Waste storage and processing activities.
- General operations and management.
- Waste management control documentation requirements.
- Environmental protection requirements
- Emissions and emissions control
- Pest control
- Accident Prevention and Emergency Response processes

The Applicant will submit an application for a WFP to OCC in due course. Phase 1 operations cannot commence in absence of a WFP from OCC. The Application, as permit holder and facility operator will be legally obligated to adhere to all conditions specified within the licence. OCC will be the competent authority to ensure that the permit is fully implemented, and all permit conditions adhered to.

Phase 2 of operations will fall under the scope of the Industrial Emissions (IE) Directive (2010/75/EU), as implemented by the European Union (Industrial Emissions) Regulations (S.I. 138 of 2013), which amends the First Schedule of the 1992 EPA Act. As such, Phase 2 operations will be regulated by the EPA under an IE licence.



The IE licence will control the following aspects of Phase 1 operations at the facility:

- Emission Limit values for emissions to air and storm water;
- Monitoring requirements for emissions;
- Resource use and energy efficiency;
- Waste management control documentation;
- Waste acceptance and records;
- Storage and transfer of substances;
- Changes to operations and the physical fabric of the facility;
- Facility management including the requirement for an environmental management system (EMS);
- Accident prevention and emergency response including fire water retention; and,
- Operational controls.

The Applicant will submit an application for an IE licence to the EPA in due course. Phase 2 operations cannot commence in absence of an IE licence from the EPA. The Applicant, as licence holder and facility operator, will be legally obligated to adhere to all conditions specified within the licence. The EPA will be the competent authority to ensure that the licence is fully implemented, and all licence conditions adhered to.



## 2. RESPONSE TO GROUNDS OF APPEAL

Appeals were submitted to ABP from two third party Appellants, namely Claire Smale-Murray (on behalf of the residents of Rhode and Croghan community) and Cathryn Whelehan (on behalf of the residents of Rochfortbridge), referred to as Appeal 1 and Appeal 2 respectively, in this response document.

All the appeal documentation provided to the Applicant by the ABP was reviewed in preparation of this response report.

The review included the grouping of specific issues raised within the two appeals by topic in order to provide a comprehensive and concise response to the grounds of appeal raised. These comprise the following:

- Principle of the Development
- Site Location and Selection
- Scoping and Consultation
- Traffic and Transportation
- Air Quality and Climate
- Geology and Hydrogeology
- Hydrology and Water Quality
- Biodiversity
- Archaeology
- Recreation and Amenity
- Request for Oral Hearing
- Robustness of the EIAR

The applicants' responses to these topics are provided in Sections 2.2 to 2.12

With regards to all of the environmental concerns raised by the Appellants it is important to state that the operation of the proposed facility will be subject to either a Waste Facility Permit or an Industrial Emissions licence (at different phases of operation) thereby there will be an inherent but robust system for environmental protection, oversight and regulation by both the facility operator and Offaly County Council and the Environmental Protection Agency during the different stages of the facility's operational lifetime. It cannot be assumed that either party responsible for the proposed facility's operation and regulation i.e. the operator and regulatory authority will not fulfil their duties and legal obligations in ensuring that the facility is operated in a safe manner so as not to cause any significant impact on the environment.

### 2.1 Contents of the Appeals

Upon review of the appeals submitted to ABP it is evident that the document entitled '*Planning Objection to Oxigen's Materials Recovery Facility Derryarkin Co Offaly Planning Reference 22490*' submitted to ABP by Appeal 1 is the same report that was previously submitted OCC on the 13th of October 2023 following Offaly OCC's determination that the Applicants response to the RFI was 'significant further information'.



The Applicants concerned that, by submitting the exact same report to ABP as was previously submitted to OCC, the Appellant has not given due consideration to OCC's final evaluation of the planning permission application and the conditions that have been attached in OCC's Grant of Planning Permission for the proposed development.

Regarding Third Party Observations/Submissions the second planning report which informed the decision to grant permission for the proposed development states '*114 submissions/observation have been received in relation to the proposed development which are summarised in Appendix B of this report. Each of these submissions shall be taken into consideration in the assessment of this report*'. It can therefore be concluded that OCC had given all due consideration to the report previously submitted to the planning authority before making their decision to grant permission.

## 2.2 Principle of the Development

ABP will be aware of the importance of establishing the principle of development to achieve planning consent for a development proposal. To grant planning permission for a facility of the scale and nature of the subject proposed development, OCC must be satisfied that the proposed development will be in accordance not only with the Offaly County Development Plan (2021 - 2027), but also support the policies and objectives of the national planning hierarchy, and other relevant policy instruments. In the context of a proposed development where Environmental Impact Assessment (EIA) is required, demonstrating project need/ justification forms part of the acceptance of principle of development. The need for the proposed development and how the proposed development accords with, and is supported by policy, has been robustly demonstrated in Chapters 2 and 5 respectively of the EIAR submitted with the planning application for the proposed development.

### 2.2.1 Nature of the Development

Throughout Appeal 2 it is implied that the proposed development is a landfill and landfilling activities are proposed at the site. The Applicant would note that it is manifestly clear within the planning application that the proposed development is not a landfill. The proposed development is a Materials Recovery Facility. No landfilling activities will be undertaken at the proposed development site.

A summary of the proposed facility and operations has been provided in the preceding Sections 1.3 of this document for clarity. Further detail on the proposed development is provided in Chapter 4 of the Environmental Impact Assessment Report (EIAR) and in the Applicants Request for Further Information Response Report submitted to Offaly County Council.

## 2.3 Site Location and Selection

The selection of the chosen site for the proposed facility is raised in Appeal 1. The issues relate to the reasoning and rationale for selecting the chosen site from a regional perspective i.e. why was the Derryarkin chosen as the site for the proposed facility over other possible locations in the Midlands region.

Appeal 1 implies that the decision to select Derryarkin as the site for the proposed development was '*more rooted in the perceived economic value of the site rather than any business or environmental qualities*'.

The Applicant wishes to assure ABP that, as part of the project planning and design and the preparation of the EIAR a comprehensive and robust site selection and assessment of alternative designs process was undertaken by the Applicant. The site selection process is described in detail in Section 3.3.2, Chapter 3 of the EIAR.



As stated in Section 3.3.2, Chapter 3 of the EIAR the Applicant has engaged in an ongoing process of identifying options for the expansions of existing operations, including the identification and development of new potential waste management facilities, in the Midlands, since 2011.

From 2011 up to the time of preparing the EIAR, engaging with OCC and the development of the planning permission application, the Applicant has examined and considered several potential site locations for the proposed operations and material recovery facility.

In assessing the suitability of potential sites Oxigen considered business, economic, planning and environmental factors when deciding whether or not to proceed with the development at the site. Table 3.1, Chapter 3 of the EIAR provides a brief description of each site considered, the key, relevant factors and characteristics of each site and the ultimate reason for not selecting that site.

The suitability of the applicant's consideration of alternative site locations is reinforced by the following statement made within the first Planners Report (dated 14th November 2022) as follows, *'It is considered that the EIAR has considered several potential site locations for the proposed development prior to selecting the proposed site and is considered acceptable'*.

#### 2.3.1 Consideration of Cumulative Impact

In Section 1.2 of Appeal 1 it is implied that, with respect to the site selection process *'the local and environmental impact has received only minimal consideration and the cumulative impact on locals (both from traffic, noise, air pollution and degradation of the roads to name but a few) have not been remotely considered'*.

The Applicant would argue the suggestion that cumulative impact has not been adequately considered in the assessment of the potential environmental impact is manifestly untrue. Section 1.4, Chapter 1 of the EIAR describes in detail how cumulative impacts were considered within the EIAR with a list of specific, relevant projects provided in Appendix 1.1, Volume 3 of the EIAR. The potential cumulative impacts associated with each environmental topic are discussed and assessed within the relevant section of each chapter of the EIAR.

By virtue of OCC's decision to grant consent for the proposed development it is considered that the EIAR provided a suitably robust assessment of potential cumulative impacts associated with the proposed development and other relevant projects.

The applicant's conclusion on this is reinforced by OCC's statement, within the second Planners Report (dated 6th November 2023) that *'The reasoned conclusion of the competent authority on the significant effects on the environment of the proposal having regard to the Planning Authority's EIA is that having regard to the mitigation measures submitted as part of this application the planning authority considers that the proposal shall have no significant negative effects on the environment'*.

Finally, it is noted

## 2.4 Scoping and Consultation

Appeal 1 implies that there was a *'lack of consultation with local communities'*.

The Applicant wishes to note that extensive consultations have been undertaken with the local Planning Authority, the EPA, and a wide variety of stakeholders, including bodies that have a mission/remit in relation planning, environmental and waste management matters, and who are experts in those matters. Detailed information on Scoping and Consultation undertaken in support of the planning application is provided in Chapter 6 of the EIAR submitted with the application.



Further, the applicant notes that public participation is an inherent part of the planning application process in this instance, as evidenced by the submissions OCC received in relation to this planning application. OCC has had fair and appropriate regard to all submission received when developing the Planning Report which informed the decision to grant permission for the proposed development.

The Applicant also notes that the Appeal 1 suggests that both the locations and the period in which site notices (of Significant Further Information) were erected, informing the public of the proposed development were inadequate, stating *'Site notices were only placed at the proposed site after the R400 was closed to all traffic a very underhanded approach'*.

OCC acknowledged this in the second planners report (dated 6th November 2023). *'A copy of the significant Further Information newspaper and site notice was received by the Planning Authority on the 2nd August 2023. Subsequently, due to the R-400 being closed due to a collapsed bridge, it was considered by the Planning Authority that the site notices were not located in a conspicuous position that can be accessed by the public. The Applicant was therefore requested to resubmit both the newspaper and site notices.'*

The Applicant satisfied this request from OCC, with the planners report subsequently stating *'That second copy of the significant Further Information newspaper and site notice was received by the Planning Authority on the 13th September 2023'*.

Site notices informing the public of significant further information being submitted in connection with the planning application were erected at accessible locations along the traffic diversion route and the newspaper notice was readvertised. The period for public submissions/observations was also extended to give the public adequate notice and opportunity to submit observations to OCC.

Separately, it is important to note several site notices were erected and a newspaper notice was published informing the public of the planning application for the proposed development prior to submitting the application to OCC for their consideration in first instance - in accordance with statutory requirements.

Ultimately, OCC determined that the Application met public notification requirements.

Contrary to the assertion in Appeal 1, comprehensive notice of the proposed development was in fact made, and a significant window of time overall was allowed for public awareness of the planning application, and subsequent participation in the planning process.

The adequacy of the Applicant's notice to the general public and the level of public awareness raised is evident by the 114 submissions/observations that were subsequently received by OCC following the submission/observation period.

## 2.5 Traffic and Transportation

TrafficWise have reviewed the Planning Appeal documents for elements associated with Chapter 13 of the EIAR - Traffic and Transportation, and prepared a response to each element.

### 2.5.1 Preamble in relation to the Response to Traffic and Transport Matters

The matters raised in paragraphs 1, 2, and 3 of the Appeal 2 submission are also raised in the Appeal 1 submission. This element of the Applicant's response engages directly with the latter and in so doing is considered to respond to the matters raised in the former.





This element of the response to the third-party appeals chiefly addresses Section 2 of the Appeal 1 submission entitled 'Roads, Traffic and Transport Impacts' and has been prepared in conjunction with the Applicant's parent submission by Fehily Timoney & Company and is an integral part of the response to planning appeals.

For ease of reference this response generally follows the order of the Appeal 1 submission.

### 2.5.2 General<sup>1</sup>

A significant proportion of HGV traffic generated during construction projects arises from the import of aggregates and concrete. EIAR 13.6.2.3 'Construction Stage Traffic Impact' sets out clearly that all concrete and stone input materials will be sourced locally from the adjoining Kilmurray Quarry and so those construction related intensive activities will generate no HGV traffic to the public road network. Other HGV generated during the construction period will use Regional Road R400, and save for deliveries from local businesses, this traffic will use the M6 Motorway Junction 3 and the 4 km section to the southeast.

The volume of HGV traffic forecast during the construction phase is a fraction of that forecast to be generated in the operational phase. EIAR Section 13.6.2 'Development Traffic Impact' sets out the forecast traffic characteristics of the proposed development and includes details of traffic effects on the receiving road network during the operational stage of the development.

The EIAR traffic assessment follows the industry standard methodology set out in Transport Infrastructure Ireland (TII) publication TII-PE-PDV-02045 'Traffic and Transport Assessment Guidelines' (2014). The forecast increase in total traffic flows on the immediate receiving environment of Regional Road R400 is generally 2% save for the 4 km section between the private access road serving the site and M6 Junction 3 which is shown as likely to experience a daily increase in traffic flow in the order of 6%. The typical threshold value is 10%.

The forecast volume of operational traffic generation is not such as to be of concern with respect to capacity and this is confirmed by detailed modelling analyses. HGV traffic generation during the construction phase is set out in EIAR Section 13.6.2.3 and will be a fraction of that during the operational phase so it follows that the impact arising during construction will not be significant.

In the plans and particulars submitted, the Applicant has committed<sup>2</sup> to coordinating construction activities so that they are not concurrent with days when there is programmed intensive construction activities arising from the development of the Yellow River Wind Farm. Condition No. 12 requires the implementation of the submitted Construction Environmental Management Plan (CEMP) which in turn requires the preparation of a Construction Traffic Management Plan (CTMP) following appointment of the Contractor for the construction works.

The need to agree the CTMP with the Planning Authority is not expressly included in the schedule of conditions and we respectfully invite ABP to include same should it determine such is required.

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<sup>1</sup> Response to Appeal 1 submission, opening paragraph under 'Roads, Traffic and transport impacts'

<sup>2</sup> EIAR Section 13.6.2.3 para. 5



### 2.5.3 Negative Impact of Quality of R400<sup>3</sup>

#### 2.5.3.1 *Road Condition*

EIAR Section 13.5.3.5 states the following:

*"R400 is constructed over bog and in places the condition and structure of the road is considered poor. Offaly County Council Planning File Ref. PL2/21/291 provides as part of a Response to A Request for Further Information dated 10-May-2021 a comprehensive Road Condition Survey for the R400 between R402 and the M6 Motorway Junction 3 which was undertaken by PMS Ltd. The survey includes a Structural Evaluation and Pavement Investigation together with Road Surface Profile Survey. The PMS reports are dated September 2021."*

It is noted that the application under Planning File Ref. PL2/21/291 was for the development of Edenderry Power Station. Condition No. 9 of the schedule appended that grant of permission requires further road condition surveys and works to the associated haul routes which include R400.

In contrast to the Pavement Surface Condition Index (PSCI) upon which the appeal relies, EIAR Chapter 13, Section 13.5.3.5 sets out that OCC, the Roads Authority, has significant up to date and appropriately detailed road condition surveys for R400 from which to inform a structural pavement strengthening program.

In brief, the survey data already with OCC and submitted under Planning File Reg. Ref. PL2/21/291 includes Falling Weight Deflectometer (FWD) testing, Roughness Index (IRI), Rut Depth and Longitudinal Profile Variance.

PMS, the company that carried out the road condition survey work is accredited by the Irish National Accreditation Board (INAB) for pavement structural evaluation using Falling Weight Deflectometer (FWD) in accordance with Transport Infrastructure Ireland (TII) Publication CC-GSW-04008.

The FWD survey includes Regional Road R400 between M6 Junction 3 and R402 (14.8 km). Over the same section PMS carried out measurements of International Roughness Index (IRI), Mean Profile Depth (MPD) and Rut Depth using Road Surface Profiler. The PMS report includes a 'Schedule of Required Works' which is based upon a detailed 'Structural Evaluation and Pavement Investigation'.

The structural evaluation of the existing R400 pavement construction was completed with a Falling Weight Deflectometer (FWD) survey together with pavement coring as is standard good practice in road maintenance. The structural evaluation survey was carried out in accordance with Transport Infrastructure Ireland (TII) Publications CC-GSW-04008 'Guidelines for the use of the Falling Weight Deflectometer in Ireland (2000)' and AM-PAV-06050 'Pavement Assessment, Repair and Renewal Principles'. As part of the structural evaluation, pavement coring was carried out to determine pavement layer thickness and material types.

Based upon the FWD results a 'back-calculation' process was used to estimate pavement layer moduli. Proprietary computer software employing linear elastic multi-layered analysis was used to model the pavement structure.

These calculated values assist in the characterisation of the existing pavement and in estimating its current bearing capacity used as the basis for pavement overlay or inlay design. In the overlay design the pavement performance models used are those of the TRL LR 1132 'The Structural Design of Bituminous Roads' models for overlay fatigue and subgrade deformation, as per the guidance provided in TII Publication AM-PAV-06050.

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<sup>3</sup> Response to Appeal 1 submission starting at §7 'Negative impact of quality of R400'





The road condition survey report submitted to OCC under Planning File Reg. Ref. PL2/21/291 provides a detailed structural pavement strengthening program which is set out in terms of overlay and inlay requirements.

In addition to the above, EIAR Section 13.5.3.5 also notes that the permission granted by ABP dated 03 July 2014 under Case Ref. 19.PA0032 for the construction of the Yellow River Wind Farm includes at Condition No. 8 the requirement for a similar detailed road condition surveys of the R400 and these are required to be carried out both before and after construction of the wind farm development.

Since construction has commenced on the Yellow River Wind Farm project, it is reasonable to expect that OCC will have been provided with a Response to Third Party Appeal ABP Case Number: ABP-318566-23 Offaly County Council, Planning Reg. Ref. 22/490 18th December 2023 further detailed road condition survey and corresponding structural pavement strengthening program for the R400.

The purpose of the above references in EIAR Chapter 13 has been to highlight the comprehensive contemporary information available to the Roads Authority with respect to the proper assessment of the width, condition and pavement strength of the receiving R400 in the context of the proposed development.

Condition No. 23 of the schedule attached OCC's Notification of Decision to Grant Permission dated 07 November 2023 requires the applicant to pay a special financial contribution to the Planning Authority under the provisions of Section 48(2)(c) of the Planning and Development Act 2000 as amended. For the avoidance of doubt the condition and reason are transcribed hereunder:

*"The developer shall pay to the Planning Authority a financial contribution as a special contribution under Section 48(2)(c) of the Planning and Development Act 2000, as amended, in respect of the impact the development will have on the R400. The amount of the contribution shall be €25,000 per annum. The contribution shall be paid annually within three months from the date of this grant of planning permission or in such payments as the Planning Authority may facilitate."*

*"Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the Planning Authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development."*

It is understood that the special contribution payment is in respect of road strengthening works to R400. Typically, the need to undertake such works is derived from appropriate carriageway assessment and usually a scientifically based standard measurement of such by Falling Weight Deflectometer testing and core sampling of the carriageway.

As set out above there is evidence of such road condition survey and assessment being provided to OCC and it is reasonable to expect that the contribution is toward the cost of scheduled strengthening works which would ordinarily provide a means by which any such works, the need for the works, the lifespan of the works and the benefit to the proposed development might be objectively assessed.

The appeal includes information in graphs entitled 'Figure 7: R400 performance from 2021 survey' at §12 which are purported to relate to the above PMS technical assessment of the structure of Regional Road R400. The information submitted is indecipherable and taken in isolation in the absence of any technical qualification of the data, it is considered meaningless.

Finally, it is important to note that OCC's Executive Engineer - in the internal report from OCC's Roads section - agreed with the conclusions of conclusions of the documentation and specifically concluded that the documentation submitted with the planning application is 'satisfactory' subject to the addition of several recommended planning conditions.



### 2.5.3.2 Restrictive Policy

Offaly County Development Plan (2021 – 2027) Table 8.4 and corresponding Figure 8.10 identify R400 from Rhode to the county boundary with Westmeath as a 'Restricted Regional Route'. The Development Plan highlights this regional route as being of strategic importance to the county and region and outlines that in the case of these regional routes, especially those that carry higher volumes of traffic, the Council adopts a restrictive policy in relation to new development.

Table 8.4 identifies R400 as a Restricted Regional Route reasoned on the grounds of 'Carrying Capacity'.

Whilst it is appreciated that the Council adopts a restrictive policy it is understood that the underlying principle of such policy is one of limiting development and is not one of preventing any development.

It is reasonable to assume that each proposed development is considered on its own merits in the context of road network capacity.

It is the junctions within a network that influence capacity. EIAR Chapter 13, Section 13.6.2 'Development Traffic Impact' provides detailed assessments of road network capacity using industry standard traffic modelling methods as set out in TII publication TII-PE-PDV-02045 'Traffic and Transport Assessment Guidelines' (2014) as required under Offaly County Development Plan (2021-2027), DMS-105 'Traffic and Transport Assessments a Road Safety Audits'.

EIAR Chapter 13, Section 3.6.2 assess the effects of the proposed development on travel demand and the capacity of surrounding transport links in accordance with the threshold values and sub-threshold criteria set out in TII-PE-PDV-02045 Table 2.1, Table 2.2 and Table 2.3 and provides detailed computer modelling assessments of the road network which confirm that the overall increases in junction delay between the 'do-nothing' and 'do-something' Response to Third Party Appeal ABP Case Number: ABP-318566-23 Offaly County Council, Planning Reg. Ref. 22/490 18th December 2023 scenarios is not significant, and that the junction of the site access road with R400 and M6 Motorway Junction 3 are both shown to operate at a Level of Service (LOS) A for all the standard opening year and future year scenarios.

The results of the analyses confirm that the impact of the proposed development on network capacity and operation is not significant.

The proposed development includes for the improvement of the existing site access road junction with R400. In accordance with Offaly County Development Plan (2021-2027), DMS-105 a Stage 1 Road Safety Audit (RSA) was undertaken for the proposed improvement works. The RSA was carried out by a team independent of the design team in accordance with the TII Road Safety Audit Guidelines TII GE-STY-01027.

### 2.5.3.3 Permitted Developments

EIAR Chapter 13 at §34 states the following:

"In view of the current grants of permission locally it is reasonable to conclude that the Planning Authority has, through suitably rigorous and objective assessment of the traffic arising from the permitted quarry development, ancillary manufacturing site, farm and wind farm already considered the traffic effects arising from the current permitted development and has determined that the existing receiving roads are suitable to accommodate the current volume of traffic arising."

The appeal categorises the EIAR statement as an "assumption", which is to suggest that the Applicant simply believes the statement to be true without proof. This is not the case.



A review of the planning files for the various local developments that have the potential to give rise to HGV traffic confirms that the Roads Design Section of OCC and the Area Engineer had no objection to those developments for which planning permission was granted. These developments include the continued operation of Kilmurray Quarry under Planning File Reg. Ref. 21/247 for a 23 year permission for extension to an existing sand and gravel pit, and also includes the construction of Yellow River Wind Farm determined under ABP Case No. 19.PA0032. It is a matter of fact not assumption that the relevant planning authority and roads authority were satisfied in these cases that the road network is suitable subject to Response to Third Party Appeal ABP Case Number: ABP-318566-23 Offaly County Council, Planning Reg. Ref. 22/490 18th December 2023 conditions of planning.

It is noted that the proposed development neighbours the Kilmurray Quarry site and uses the same access road and junction form R400. The conditions attached the Offaly County Council Notification of Decision to Grant Permission dated 7 November 2023 to grant planning permission for the proposed development includes for similar provisions in respect of the receiving road.

#### 2.5.4 Increased traffic resulting from this Development <sup>4</sup>

##### 2.5.4.1 *Traffic Survey Data* <sup>5</sup>

The planning application was received by Offaly County Council in September 2022. The traffic survey data used in the preparation of EIAR Chapter 13 was collected in September 2021 and November 2021.

At the date of receipt of the application the traffic survey data was aged less than one year.

As advised in TII-PE-PDV-02045 'Traffic and Transport Assessment Guidelines' (2014), the traffic assessments in the EIAR included manual vehicle classified counts and weeklong automatic traffic counter classified counts. As a matter of good practice, the survey data was validated against permanent TII traffic monitoring units on the M6 Motorway where Junction 3 was included within the scope of the surveys and the EIAR traffic assessments.

In the context of preparing the EIAR the traffic data collection and traffic survey data is representative and accurately captured the baseline. The claim in the appeal that traffic survey data is obsolete is entirely baseless and without merit.

The Appellant, without technical reference, elects to suggest that the traffic data, aged between 10 and 12 months, is obsolete, but fails to qualify or support this assertion. In light of such, it is poignant that the appeal seeks to rely upon summary Pavement Surface Condition Index (PSCI) ratings from 2018 aged approximately 5 years.

##### 2.5.4.2 *Traffic Generation* <sup>6</sup>

As set out in EIAR Chapter 13 §24

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<sup>4</sup> Response to Appeal 1 submission starting at §15 'Increased traffic resulting from this development'

<sup>5</sup> Response to Appeal 1 submission 'Increased traffic resulting from this development', paragraph 1

<sup>6</sup> Response to Appeal 1 submission generally starting at §16 and top §17



*"The average traffic generation arising from the acceptance of waste is estimated to be approximately 53 vehicles per day comprising 15 no. refuse collection vehicles, 24 no. skip lorries and 5 no. curtain sided vehicles. The volume of traffic and imported payloads will vary daily depending upon the refuse collection route and depending upon the composition of waste collected. The export of waste is more predictable and full loads generally leave the site."*

The design of roads and the design of roads maintenance works are directly referenced to Annual Average Daily Traffic (AADT) flows and not the maxima or minima. The average HGV traffic generation of the site is 53 no. vehicle trips per day and this is the key figure with respect to considerations of road design including road maintenance.

As set out in EIAR 13.6 §23 the calculation of daily traffic generation is based upon 276 no. working days per year which is set out in the EIAR as based upon there being no working on bank holidays, no working on Sundays and equivalent of a half day on Saturdays.

Cumulative annual traffic generation is not a relevant roads design or roads maintenance factor nonetheless it is a figure the appeal aims to calculate.

Based upon the average the trip generation of 53 no. per day the equivalent annual trip generation is 14,628 trips per annum.

The values presented in the appeal calculation at the top of §16 are based upon the maximum daily HGV traffic generation rate set out in EIAR Chapter 13 and this value has been multiplied in the appeal by 360 days. This explains why the figure is disingenuously inflated to practically twice the average. The purpose of the calculation in the appeal appears to be only to manufacture the largest number from those provided in the EIAR. It is clear that the rational underpinning the calculations in the appeal is fundamentally incorrect.

EIAR Table 13-7 summarises the total volume of HGV traffic generation arising from the receipt of 90,000t of materials per annum. The volume of traffic generated by the import of materials are clearly set out under the categories Municipal Solid Waste, Construction and Demolition Waste and Dry Mixed Recyclables. The vehicles generated by the export of the materials processed at the facility are set out separately as 'exports'. The characteristics of the vehicles visiting the site are set out in the 3 no. paragraphs preceding EIAR Table 13-7. EIAR Figure 13-1, Figure 13-2 and Figure 13-3 provide distribution and assignment forecasts for each of the distinct waste streams. It is standard practice in Transportation Planning to use the 'Comparison Method' to forecast development traffic generation. The EIAR traffic distribution and traffic generation forecasts are based upon the Applicant's current business and the volumes of materials and carrying capacity of the various HGV are based upon detailed review of weighbridge data at sites handling the same waste types.

The Appellants claim that the forecasts are "conservative" are unfounded and the reference to "handling targets" is not fully explained, is baseless and unsupported.

The EIAR assessments are based upon daily traffic flows, it follows that the less the number of days of operation assumed, the greater the concentration of development traffic and thus the resulting daily flow will be greater and thus more robust. The Appellant calculation<sup>7</sup> uses 360 days of operation. Were the EIAR traffic assessment level of annual HGV traffic generation of 14,628, derived in 2.3.2.5 above, spread out over 360 days this would result in the daily average traffic generation reducing from the EIAR value of 53 no. trips per day to 40 no. trips per day.



In addition, all HGV traffic generated by the development is assumed to be entirely new to the receiving road network. There are certainly waste arisings in Rhode and Rochfortbridge etc. and these wastes are collected from both commercial and domestic properties. That waste is already being transported on the road network and may already be using the R400. This traffic might reasonably be diverted to the proposed development to shorten a current trip to an alternative existing similar facility. Such traffic on the network is termed 'Pass-by' and 'Diverted' traffic. Pass-by traffic refers to those who would visit the proposed development but would have been passing right by it on their way somewhere else. Diverted traffic refers to traffic which makes a very short diversion to visit the proposed site. To avoid double counting, Traffic Assessments typically make an allowance for these existing trips already on the receiving road network.

Contrary to the Appellant claim, the traffic assessments in the EIAR assume a conservative number of days of operation and make no allowance for existing traffic or double counting and so can be considered robust.

The Appellant reference to biofuels<sup>7</sup> is perhaps a reference to an alternative type of plant or technology. There is no processing or production of bio-fuels proposed at the subject development and none result from the processes and activities proposed. So, it is reasonable that the *"estimations by Oxigen also do not factor the additional HGV traffic necessary to transport the pre-processed biofuels offsite to a biofuel processing plant."*

The EIAR at Section 13.6 'Potential Effects' clearly sets out the traffic generation associated with the import of materials together with the export of processed materials and provides a summary of same at Table 13-7. The appeal is in error to suggest that exported processed municipal solid waste not being accounted for in the traffic assessments.

#### 2.5.4.3 Road Safety Authority Data Assessment

EIAR 13.5.6 'Road Collision Data Analysis' includes at Figure 13-9 a plot of the recorded collisions over an 11-year period for which data is available. EIAR Figure 13-9 clearly shows Road Safety Authority data plotted over the entire length of the R400 from the southern junction with Regional Road R402 north through Rochfortbridge.

The appeal is entirely inaccurate in suggesting that the review of RSA data is confined to a 4km section of the R400 and "blatantly ignoring" the stretch of the R400 on the Rhode side of the development site. EIAR Figure 13-9 includes the R400 both sides of Rhode, and Rhode is clearly highlighted therein.

#### 2.5.5 Traffic Calming Measures in Rhode<sup>8</sup>

Road Authorities are responsible for the maintenance and construction of public roads under the Roads Act 1993. In addition, under Section 38 of the Road Traffic Act, 1994, a Road Authority may, in the interest of the safety and convenience of road users, provide traffic calming measures.

In March 2022 'Offaly Live' reported that a huge number of residents in Rhode wanted traffic calming measures. The article stated that:

*"A huge proportion of residents living in Rhode, Co Offaly, have signed a petition calling for additional traffic calming measures in the village. Edenderry municipal district councillor Robert McDermott congratulated the great work done by Rhode Residents recently when they collected over 200 signatures for traffic calming measures to be implemented in the village."*

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<sup>7</sup> Appeal 1 submission §16 middle paragraph on page

<sup>8</sup> Section 2.3 of the Appeal 1 document.





We understand that plans were advertised in the local papers and people were invited to make submissions. Newspaper notices issued in early February 2023 and people had until March 2023 to make any observations. The time of the placing of notices is significantly after the planning application was received by Offaly County Council in September 2022. It follows that the traffic calming scheme could not have been considered by the applicant.

It is understood that the proposed traffic calming works were discussed and passed at the April 2023 Edenderry Municipal District meeting and construction work began in July 2023.

Despite the initial support by residents for additional traffic calming measures it is understood that whilst under construction there was local opposition to the traffic calming and traffic management measures in Rhode village.

Following a protest by local residents in the village in October 2023 it is our understanding that OCC made some amendments to the works in Rhode and have committed to commissioning an independent Road Safety Audit to assess the operation of the scheme.

#### 2.5.6 Conclusion

We respectfully invite the Board to agree that the current proposal is consistent with regional and development plan policy and succeeds in providing access and servicing from the receiving roads infrastructure, and that it will not result in significant traffic congestion, traffic hazard or endangerment of public safety and accords with proper planning and sustainable development.

We would respectfully invite ABP to confirm the planning authority decision to grant permission for the proposed development for the reasons adduced above and determined from the planning file documentation.

## 2.6 Air Quality and Climate

AWN Consulting have reviewed the Planning Appeal documents for elements associated with Chapter 11 of the EIAR - Air Quality and Climate and prepared a response to each element.

### 2.6.1 Air Quality and Traffic Impacts

The impact of traffic data has been considered in Section 11.2.3.2 and 11.2.3.3 for the construction and operational phase, which scopes out the potential for impacts. This can be done by comparing the projected traffic numbers with the scoping criteria provided for in guidance documents.

Updated Guidance from TII in relation to Air Quality Assessment entitled 'Air Quality Assessment of Specified Infrastructure Projects' – PE-ENV-01106 (Published December 2022) is now available. This guidance states that road links meeting one or more of the following criteria can be defined as being 'affected' by a proposed development and should be included in the local air quality assessment. While the guidance is specific to infrastructure projects the approach can be applied to any development that causes a change in traffic.

- Annual average daily traffic (AADT) changes by 1,000 or more;
- Heavy duty vehicle (HDV) AADT changes by 200 or more;
- Daily average speed change by 10 kph or more;
- Peak hour speed change by 20 kph or more;
- A change in road alignment by 5m or greater



The scoping criteria provided in the updated TII guidance also indicates no potential for impact and therefore traffic impacts on air quality during the construction and operational phase remain scoped out. Therefore, the impact on local air quality is considered to be neutral in accordance with significance criteria set out in Air Quality Assessment of Specified Infrastructure Projects – PE-ENV-01106 (Published December 2022). There are no other significant sources of air quality emissions that have the potential to effect sensitive receptors. It should be noted that air quality limit values are taken into account with this significance criteria and the limit values are set for the protection of sensitive populations health.

#### 2.6.2 Construction Dust

The Institute of Air Quality Management Guidance on the Assessment of Dust from Demolition and Construction (IAQM, 2016) provides guidance on how to assess construction dust and the area of potential impact. This area of impact considers all wind directions when assessing potential impacts and also considers potential impacts on human health.

The appeal discusses the Yellow River which is approximately 800m from the site boundary. This is outside the boundary of the area of potential dust impact defined under the Institute of Air Quality Management's 'Guidance on the Assessment of Dust from Demolition and Construction' (IAQM, 2016). This guidance is recommended for use by the TII document 'Air Quality Assessment of Specified Infrastructure Projects' – PE-ENV-01106 (Published December 2022).

As noted in the Section 11.2.31 of the EIAR, there are no sensitive receptors within the study area with respect to dust impacts. In any case, a dust minimisation plan will be formulated for the construction phase of the project, as construction activities are likely to generate some dust emissions. A detailed dust minimisation plan associated with a low-level risk of dust impacts is outlined in Appendix 11.3 (Volume 3 of the EIAR). This plan draws on best practice mitigation measures from Ireland, the UK and the USA in order to ensure the highest level of mitigation possible.

#### 2.6.3 Operational Dust

During the operational phase an Operational Site Management Plan, which includes an Operational Dust Management Plan, will be developed to ensure that there are no impacts due to dust. All waste will be stored indoors or within a closed bay outdoors, with waste processing and storage areas subject to washdown on a daily basis during operations. Regular cleaning of outdoor surfaces will occur and no exterior stockpiles are proposed. The EIAR also notes that on dry and/or windy days, or in the case of waste presenting on-site which is particularly light and dispersive) this waste will be lightly wetted to prevent dust generation. Detail regarding these arrangements were provided in Section 11.5.2.2 of the EIAR submitted with the planning application for the proposed development.

In order to ensure that dust mitigation is working, dust deposition monitoring will be undertaken on-site quarterly in accordance with the terms of the WFP and subsequent IE Licence in order to demonstrate that dust does not impact upon any off-site receptors. Detail on dust monitoring was provided in Section 11.5.2.2 of the EIAR submitted with the planning application for the proposed development.

The appeal also notes the potential for asbestos dust, asbestos will not be treated on the site as this is considered a hazardous waste and therefore will not be accepted at the proposed site.



Finally, it is important to note the context in which the site exists. The site is located in an area characterized by existing commercial and industrial activity, including a quarry site, which is a potential source of dust impacts. Such activities are adequately controlled by way of environmental mitigation. This quarry site has been subject to several grants of planning permission. The subject proposed MRF will generate far less dust emissions than such a quarry site (in a theoretical 'unmitigated' scenario i.e. assuming the absence of appropriate environmental mitigation during operations). In any case, a robust set of dust related mitigation measures have been defined for the MRF also.

#### 2.6.4 Carbon Emissions

Section 3.3 of the Appeal 1 notes that a calculation has been completed incorrectly. The author of Chapter 11 of the EIAR and notes there is a calculation typo in Section 11.4.3.3 of the EIAR which results in a miscalculation of the emissions of CO<sub>2</sub> from the operational demand for 65,520 litres of diesel annually.

The author also notes a slight discrepancy between the data source from the Appellant and the EIAR. The 2019 Report on Diesel and Alternative-Fuel Bus trials (DTTS 2019) 1 MJ of diesel = 0.02780 litres, this differs slightly from the SEAI figure (which the Appellant refers to) of 1 MJ of diesel = 0.027315 litres, or 1 litre of diesel = 36.61 MJ.

When the typo is resolved, emissions are calculated to be:

- 173 Tonnes CO<sub>2</sub> annually using the 2019 Report on Diesel and Alternative-Fuel Bus trials figure; or
- 175 Tonnes CO<sub>2</sub> annually using the SEAI figure.

This will reduce as additional biofuels are added to diesel and improvements are made in technology that allow for the movement away from reliance on fossil fuel.

This correction does not result in a material change to the conclusions of the assessment undertaken in Chapter 11 of the EIAR.

The Transport Infrastructure Ireland (TII) guidance document entitled PE-ENV-01104 Climate Guidance for National Roads, Light Rail and Rural Cycleways (Offline & Greenways) – Overarching Technical Document (TII 2022b) outlines a recommended approach for determining the significance of both the construction and operational phases of a development. This document was published in December 2022, after the EIAR but provides updated guidance on climate EIA for proposed projects in Ireland. The approach is based on comparing the 'Do Something' scenario and the net project GHG emissions (i.e. Do Something – Do Minimum) to the relevant national carbon budgets. The industry carbon budget for 2030 is 4 MtCO<sub>2</sub>e. Both of the above emissions (173 or 175 Tonnes CO<sub>2</sub> annually) from diesel emissions are 0.0043% of the industry carbon budget.

However the significance is determined using the criteria derived from Table 6.7 of PE-ENV-01104 (TII 2022b)) along with consideration of the following two factors:

- The extent to which the trajectory of GHG emissions from the project aligns with Ireland's GHG trajectory to net zero by 2050; and
- The level of mitigation taking place.





The proposed project aims to divert waste from landfill by providing a facility to sort and recover C&D and MDR prior to onwards recycling or recovery. This is in line with the key policy for waste set out in the Climate Action Plan which promotes the segregation of waste, diverting it from landfill, in order to achieve net zero by 2050. The potential for mitigation of carbon emissions due to the diversion from landfill is discussed in Section 11.5.2.4 of the EIAR. It is noted that the proposed development has the potential to offset 40,752 tonnes of carbon emissions annually. The proposed development significantly supports the reduction of waste sector emissions as targeted in several Local Authority Climate Action Plans currently being developed for Midland local authorities (e.g., Offaly, Laois, Westmeath) under Section 16 of the Climate Action and Low Carbon Development (as amended).

Mitigation will be put in place to ensure that diesel usage is minimised. This includes vehicle and machinery specific mitigation measures can be implemented by ensuring that all vehicles are regularly maintained and upgraded where possible to the best available technology in order to ensure emissions are minimised. In addition, there will be no idling of vehicles/machinery on site.

In summary, the conclusion in that chapter that the proposed development will not have any significant impact on the air quality or climate environment remains valid.

The proposed development has the potential to have a residual benefit with respect to climate by diverting waste from landfill and therefore reducing the wastes embodied carbon.

#### 2.6.5 Odour Emissions<sup>9</sup>

An odour management plan will be developed for the proposed development and kept regularly updated. This plan includes management strategies for the prevention of emissions and a strict preventative maintenance and management program for ensuring that all odour mitigation techniques remain operational at optimal capacity throughout all operational scenarios.

Odour modelling based on the USEPA approved AERMOD model has found that the worst-case scenario for the 98th%ile of 1-hour concentrations occurs in 2017 where the maximum off-site concentration is less than 1% of the guideline value at the worst-case receptor.

Based on these results (contained in Section of 11.4.3 of the EIAR), no nearby receptors are predicted to experience odour nuisance issues as a result of the proposed development.

Finally, it is important to note the context in which the site exists. The site is located in an area characterized by existing commercial and industrial activity, including an industrial piggery site situated only metres north of the subject site (Skeagh Farms, licensed by the EPA under IE licence Reference: P0938), which is a potential source of odour impacts. Piggery activities are adequately controlled by way of environmental mitigation under licence from the EPA. The subject proposed MRF will generate far less odour emissions than such a piggery site (in a theoretical 'unmitigated' scenario i.e. assuming the absence of appropriate environmental mitigation during operations). In any case, a robust set of odour related mitigation measures have been defined for the MRF also.

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<sup>9</sup> Section 3.4 of Appeal 1.



## 2.7 Geology and Hydrogeology

### 2.7.1 General Commentary in relation to Geological and Hydrogeological Matters

The Applicant notes appeal commentary relating to geological and hydrogeological related matters and notes the proposed development will not give to any source of environmental effect on geological or hydrogeological receptors, with the adoption of proposed environmental mitigation measures. This has been robustly demonstrated in the documentation submitted with the application.

Chapter 9 of the EIAR provides a detailed and comprehensive assessment of the potential impacts of the proposed development on the receiving geological and hydrogeological environment. Table 9-11 and Table 9-12 of Chapter 9 summarises the conclusions regarding the potential impacts on the geological and hydrogeological environment, without any mitigation measures applied.

At the construction phase it was determined that for all three of the key elements of the proposed facility's construction i.e. Demolition and Site Clearance, Construction of the Materials Recovery Facility and Rerouting of ESB Line the magnitude and significance of the potential impacts on geology and hydrogeological attributes were classified as being **Small Adverse** and **Slight**, respectively.

The primary, operational phase sources for potential impacts on the geological and hydrogeological environments are Facility Traffic and refuelling and Accidents. It was concluded that magnitude and significance of the potential impacts on geology and hydrogeological attributes during the operational phase are **Negligible** and **Imperceptible**.

Proposed mitigation measures are discussed in detail in Section 9.5 of Chapter 9 of the EIAR.

Firstly, protection of the geological and hydrogeological environment was an inherent aspect of the proposed facility's design (see Section 9.5.1 of the Chapter 9).

Specific measures to be applied during the construction phase are detailed further in the Construction Environmental Management Plan (CEMP) provided as Appendix 4.3 of the EIAR submitted to OCC. Environmental protection during the construction phase will be further enhanced through the implementation of a site Environmental Management System (EMS) by the appointed contractor. The aim of this system will be to meet the specified contractual, regulatory and statutory requirements including the requirements identified as part of the environmental impact assessment process.

Regarding the operational phase of the proposed development, as stated in Section 9.5.3 of the EIAR '*It is not envisaged that the operation of the proposed facility will result in significant impacts on the soils, geology and hydrogeology within the study area, as there will be no further disturbance of overburden post construction.*' '*The main potential residual impact during the operation phase will be the risk to the soils, bedrock and aquifer from contamination from fuel or oil spills or loss of containment of polluting material such foul water, wash water or wastewater. The proposed development will be designed, constructed and operated in accordance with best practice to prevent such spills / loss of containment.*'

With the exception of the proposed on-site treatment of domestic wastewater from via septic system, there is no proposed direct discharge to groundwater proposed. Percolation testing and a Site Suitability Assessment has been undertaken to demonstrate that the ground present in the proposed percolation area is suitable for safely filtering and moving treated effluent from the proposed wastewater treatment system, and to confirm that the system is acceptable having regard to ground conditions. The results of this testing, the Site Suitability Assessment Report and detail on the design of the proposed on-site wastewater treatment system can be found in Appendix 4.2, Site Suitability Assessment, in Volume 3 of this EIAR.



In OCC's evaluation of the EIAR and proposed development, the first Planners Report includes the following comments regarding the potential impact on Soils, Geology and Hydrogeology. Regarding Residual Impacts it is stated, *'The residual significance of the effects of the proposed development on soil and geology is expected to be low, taking account of the effective implementation of the mitigation measures'*.

The Planning Authority's final comments regarding Soils, Geology and Hydrogeology impact assessments states, *'It is considered that the proposed development is not likely to have significant effects on the Soils, Geology and Hydrogeology. The EIAR was referred to the Environment/Water Services Section for comment, who subsequently have made no comments in relation to the Soils, Geology and Hydrogeology chapter'*.

Ultimately, it is concluded that the EIAR provided to OCC included a robust and comprehensive assessment of the potential impacts on the relevant geological and hydrogeological receptors. Where potential effects were identified appropriate mitigation measures were identified and will be implemented. The proposed development will not have any significant, adverse effects on the geological and hydrogeological environment.

Separately, Appeal 1 states *'We also believe that the greenlighting of Oxigen's proposed facility will be in direct contradiction to our commitment on an EU level to return our damaged peatlands to their original states through rewetting and rewilding and therefore maintain that this applicants proposal must be denied'*.

This assertion is not reasonable and entirely without merit. As consistently and continuously demonstrated, the proposed development will not have any significant effect on surrounding geology, hydrogeology or hydrology. Further, it is noted the development is taking place at a brownfield site which has been developed and utilized, and not on a greenfield site comprising peatland.

Finally, again, it is important to note the context in which the site exists. The site is located in an area characterized by existing commercial and industrial activity, including a quarry site, which is a potential source of geology and hydrogeology impacts. Activities at this site are adequately controlled by way of environmental mitigation. This quarry site has been subject to several grants of planning permission. The subject proposed MRF poses far less risk to geological and hydrogeological receptors than such a quarry site (in a theoretical 'unmitigated' scenario i.e. assuming the absence of appropriate environmental mitigation) In any case, a robust set of mitigation measures have been defined for the MRF which will prevent the proposed development impacting on geological or hydrogeological receptors.

#### 2.7.2 Presence of a Groundwater Well

Appeal 1 argues the presence of a groundwater well on-site creates additional risk to the underlying groundwater. This assertion makes no sense and is entirely without merit.

There are in fact several groundwater wells in existence on-site (site investigation was undertaken to characterize the baseline geological and hydrogeological environment, as is good practice when evaluating the baseline environment in an EIAR). All wells on-site have been suitably sealed and capped by a competent and reputable site investigation company (IGSL Ltd). Wells being retained (for the purpose of groundwater monitoring during the operational lifetime of the facility as required by an IE licence, for example), will remain sealed and capped and will be well removed from any areas where polluting material may be generated (e.g., external waste storage bays). Further, the hard paving on-site and drainage arrangements will ensure all potentially polluting material generated on-site (e.g. water coming into contact with waste material) will be diverted away from well locations and collected in a suitable retention tank on-site.



### 2.7.3 Risk to East Offaly Water Supply

Appeal 1 asserts the proposed development will have an effect on water supplies in the region. Again, this assertion is entirely without merit (to the extent that only a summary response is required). As clearly demonstrated in planning application documents, the proposed development will not result in the discharge of polluting material to the groundwater or water environment. As mentioned, the facility has been designed and will operate in accordance with aforementioned 'Best Available technique' guidelines. Comprehensive environmental mitigation will also be adopted to control emissions on-site. In any case, the receptor discussed by the Appellant is far removed from the zone of influence of the proposed development.

## 2.8 Hydrology and Water Quality

Appeal 1 raises concerns regarding the proposed developments potential impacts on hydrology and water quality under the following areas/headings.

1. Proximity to the watercourses
2. Potential pollution during in-channel works
3. Surface water and run-off management
4. Increased Flood Risk
5. Wastewater management
6. Presence of groundwater well
7. Risk to East Offaly Water Supply

Appeal 2 also states that the 'landfill' could negatively influence local rivers, lakes and water courses.

Chapter 4, Chapter 9 and Chapter 10 of the EIAR and the RFI Response Report submitted later in the planning process provide comprehensive and detailed information on what is being proposed in terms of water quality (surface water and groundwater) protection, management, emissions control, the potential impacts on hydrology and water quality and mitigation measures.

Of particular importance with respect to features of the proposed development, water quality protection and emissions control is the inclusion of:

- Stormwater drainage and attenuation system
- Domestic wastewater drainage system
- Foul water and wash water drainage and collection system
- On-site wastewater treatment system

### 2.8.1 Drainage and Water Control

The hydrological and water quality impact as discussed in Chapter 10 of the EIAR comprised a comprehensive desktop study and site investigation to determine the relevant sensitive hydrological receptors.

The identification of the potential hydrological connection between the site and watercourses was a fundamental aspect of the assessment. The presence of a drainage channel immediately opposite and in close proximity to the southern boundary of the proposed development area was a key consideration in determining the potential risks, designing the facility and identifying appropriate mitigation measures. The Yellow River and River Boyne were also identified as relevant receptors and were considered in the assessment.



Table 10-9 in Chapter 10 of the EIAR summaries the potential impacts on hydrological features during the construction phase and operational phase of the proposed development. It identifies the adjacent drainage channel, Yellow River and Boyne River as being highly sensitive receptors. Without mitigation measures it classifies the potential impact magnitude and significance as being **Minor to Moderate** and **Slight/Moderate to Significant**, respectively. This classification highlights that the hydrological assessment gave all due consideration to the sensitivity of the hydrological receptors and the importance of their protection.

Section 10.5 of Chapter 10 details the robust mitigation measures proposed to ensure protection of the hydrological environment.

Table 10-12 of Chapter 10 of the EIAR summarises the residual impacts (with mitigation) for sensitive hydrological receptors. All construction phase and operational phase impacts were ultimately classified as having **Negligible** magnitude and **Imperceptible** significance with respect to the sensitive hydrological receptors i.e. the local drainage channel, Yellow River and River Boyne.

In addition to the features and mitigation measures already proposed as part of the facility design and operational Offaly County Council have also included a number of planning conditions specifically to ensure sufficient emissions control, containment and environmental protection (See Condition 13, Condition 19, Condition 20, and Condition 21) of the Notification to Grant Permission issued by Offaly County Council.

It is stated within Offaly County Council planners report that '*Subject to the mitigation measures indicated in the EIAR the proposed development should have little or no impacts on hydrology and surface water quality*'.

It is noted the drainage management system for the proposed development has been consistently misunderstood and/or misrepresented by objectors to the proposed development. The Applicant wishes to make it clear that the drainage system for the proposed MRF has been designed to ensure no polluting material will exit the site into the receiving water environment. A very clear description of drainage management arrangements on-site has been provided in Chapter 4 of the EIAR for the proposed development. Further clarifying detail on drainage arrangements has been provided in the Applicant's RFI Response Report. Only uncontaminated stormwater will be discharged from the site to the receiving water environment. Domestic-type wastewater will be treated at a suitably on-site wastewater treatment system. All waters coming into contact with waste material will be collected by a dedicated Foul Water and Washwater Drainage System, as previously described, before being dispatched to an appropriate wastewater treatment facility off-site, as is standard and good practice at waste management facilities removed from sewer mains. A variety of additional environmental mitigation will be in place to prevent the accidental discharge of polluting material off-site (these have been comprehensively defined in Section 10.5 of Chapter 10 of the EIAR for the proposed development. Finally, it is noted the facility will operate in accordance with the aforementioned 'Best Available Technique' guidelines for environmental protection, suitably controlling minimizing the risk of accidental discharges from the site.

### 2.8.2 Flood Risk

The proposed development is not located in a flood risk zone. The proposed development was designed at the outset to ensure it does not create any no flood risk. Further, additional drainage design detail was provided during the planning application process to verify this. This is evident in the documentation submitted with the planning application. A Surface Water Drainage Calculation Report was provided in Appendix 1 of the Applicant's RFI Response Report. Results of the surface water design calculations show the following:

- That the proposed Attenuation Tank for the size is capable of retaining runoff from a 100 year Storm Event plus 20% Climate change allowance volume.
- The surface water discharge rate will match the Greenfield Runoff rate for the site.





## 2.9 Biodiversity

### 2.9.1 Avian Species

#### 2.9.1.1 *Whooper Swans*

Appeal 1 raises concern over the adequacy of bird surveys conducted as part of the biodiversity impact assessment the questions the results.

Firstly, it is suggested that the assessment for whooper swans was conducted in a manner that was *'exceptionally biased and deliberately misdirecting, serving as a significant limitation of the data presented in the proposal'*. This statement is apparently made on the basis that the bird surveys were conducted on the 17th June 2021, an inappropriate time to determine the presence of whoopers swans, as *'the southerly migration of Whooper swans from Iceland to Ireland only begins in mid-October to November, with the return migration to their Icelandic breeding sites taking place between March and April'*.

It is factually incorrect of the Appellant to suggest that the assessment of whooper swans was conducted at an inappropriate time, on the 17th June 2021. While other ecological surveys were conducted at the site on the 17th June 2021, including other avian species, it can be confirmed that specific surveys for whooper swans were conducted an over an appropriate time period between November 2020 and April 2021.

This is clearly detailed in Section 8.2.5.4.1 of Chapter 8 of the EIAR as follows:

*'A species-specific survey to identify the presence of Whooper Swans within the proposed development and surrounding environs was undertaken between November 2020 and April 2021. Surveys were carried out by a combination of a vantage point watches at both the known roost site and known feeding site identified by Biosphere Environmental Services in March 2014 (Refer to Appendix 8.1 Yellow River Wind Farm Whooper Swan Survey, Winter 2013-2014 in Volume 3 of this EIAR). Frequency of survey was monthly with a total of 6 visits, with emphasis placed on early morning visits (minimum 1-hour surveys) to determine movement of birds from the known roost site (bog pools c. 500m east of the proposed development) to the known day time feeding areas (agricultural fields c. 650m southeast of the proposed development) and unknown feeding areas. The objective of the survey was to determine the locations of feeding and roost sites and the numbers of swans present.'*

Additionally, as evident above and throughout relevant sections of Chapter 8 of the EIAR, the assessment of the potential impact on whooper swans has also taken into account (where appropriate and relevant) findings from other previous, external studies. The results of the survey are clearly outlined in Appendix 8.5 of the EIAR and the results include confirmation of the presence of whooper swans within the study/survey area on three of the six survey dates.

Overall, it can be concluded that a robust and comprehensive assessment of the presence of whooper swans was conducted and that results allowed for a well informed and accurate assessment of the potential impact of the proposed development on whooper swans.

### 2.9.2 Aquatic Species

Appeal 1 highlights the hydrological link between the site and the River Boyne and River Blackwater SAC and SPA via the Yellow River and Mongagh River and that this link *'endows added importance and weight to environmental impact assessments and biodiversity studies in the region'*. Therefore, it is critically important that such studies are of a robust design and there is no leeway for doubt'.



Appeal 1 then suggests that the EIAR provided to OCC *'falls short'* of this requirement. Appeal 1 refers to a number of protected and important species including lamprey, white-clawed crayfish and salmon as being at risk from the proposed development, stating *'we believe the impact of the development on aquatic species and the wider impact of potential pollution incidences on this region needs to be considered'*.

It can be confirmed that the relevant aquatic species were identified and were considered as part of the biodiversity impact assessment. Table 8-16 of Chapter 8 of the EIAR identifies Atlantic Salmon, River Lamprey and Freshwater white-clawed crayfish as specific species to be considered in the assessment. Table 8-16 acknowledges the national and international importance of these species and potential indirect effects and rationale for considering them in the assessment i.e. their likely presence in connecting watercourses and hydrological pathways with the site. Table 8-16 classifies these species as being key ecological receptors.

Section 8.4.2.3.4 of Chapter 8 of the EIAR discusses potential direct impacts on freshwater, white-clawed crayfish. It states that *'Direct impacts to potential populations of the species within the drainage ditch will not occur'*<sup>10</sup>. It is noted that the closest record for freshwater, white-clawed crayfish is 1 km (c. 1.2 km in-stream) east of the proposed development site, near the confluence point between the drainage ditch and the Yellow River. The ecological site survey conducted by FT determined that *'due to the slow flowing depositing nature of the drainage ditch and the extremely murky water observed during the survey, it is unlikely the species will be present within the drainage network.'*

Section 8.4.2.3.5 of Chapter 8 of the EIAR provides a thorough assessment of the potential impacts on aquatic ecology that could arise at the construction phase. It specifically and separately assesses the potential impacts arising from the key elements of the sites development under the following headings:

1. Potential impacts during Advance Works, the Re-routing of Existing ESB Lines traversing the site, and Demolition.
2. Potential impacts during the construction of the materials recovery facility, the development of an on-site wastewater treatment system and associated percolation area, and the development of an on-site ESB sub-station and Site Clearance
3. Potential impacts associated with surface water discharge outfall construction.
4. Potential impacts associated with R400 junction upgrade works.

Regarding potential operational phase impacts on aquatic ecology Section 8.4.3 outlines the potential sources for surface water impacts. Section 8.4.3 concludes that, **without mitigation** 'Potential operational phase impacts on aquatic ecology are considered Negative, Reversible, Short-term, Significant impact in the local context, in the absence of mitigation'.

It is clearly stated however that *'during the operation phase the potential operational stage impacts at the proposed development will be controlled and monitored under the requirements of the WFP and IE licence.'*

Operating under a WFP and/or IE licence adds a significant level of oversight and regulation ensuring a satisfactory level of environmental protection.

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<sup>10</sup> Referring to the drainage ditch directly south, opposite the proposed development site.



Section 8.5. of Chapter 8 of the EIAR details the proposed mitigation measures which will be implemented. With respect to aquatic ecology section 8.5.1.4 states *'Construction phase mitigation measures to protect the receiving surface water environment and therefore aquatic ecology present in receiving surface water bodies are comprehensively defined in Chapter 10 – Hydrology and Surface Water, of Volume 2 of this EIAR and the CEMP for the proposed development.* These measures will serve to prevent the discharge of silt, hydrocarbons, nutrients and cement-based substances to receiving waters, thereby ensuring the protection of aquatic ecology. These measures will ensure effective protection of aquatic ecological interests downstream of the proposed development, particularly the habitats supporting sensitive aquatic species present in the River Boyne and River Blackwater SAC (002299).'

With the proposed mitigation measures the residual impact on aquatic ecology during the construction phase was determined to be **Not Significant in the local context.**

Regarding operational phase impact mitigation Section 8.5.2.2 of Chapter 8 of the EIAR states, *'Due to the surface water drainage design, including the stormwater drainage and attenuation system, foul water and washwater drainage and collection system and on-site wastewater treatment system (refer to Chapter 4 in Volume 2 of this EIAR), along with the proposed additional operational phase mitigation measures detailed in Chapter 10 Hydrology and Surface Water, Volume 2 of this EIAR, to prevent surface water leaving the site, the potential impacts to aquatic ecology resulting from the operation of the proposed development are considered imperceptible in the local context.'*

Ultimate the biodiversity impact assessment (including aquatic ecology) concluded that *'The baseline biodiversity of the proposed development site has been identified, assessed and evaluated, and an evaluation made of potential significant impacts conducted for the construction, operational and decommissioning phases of the proposed development. Mitigation measures have been developed which avoid and minimise impacts on biodiversity. Following the full implementation of these measures, the residual impacts on biodiversity vary from Imperceptible to Not Significant.'*<sup>11</sup>

### 2.9.3 Bat Assessment

In their submission Appeal 1 questions the adequacy of the bat survey conducted, and the results obtained.

The Applicant refute the suggestion that the bat assessment conducted was inadequate.

The methodology employed to conduct the assessment of the potential impacts on bats is described in detail Section 8.2.5.3 of Chapter 8 of the EIAR.

In summary, the bat assessment comprised a desk study and a site bat survey comprising a preliminary roost assessment and the visual inspection of trees and structures located within the redline/planning boundary of the proposed development and within a 50 m radius (where accessible) for evidence of roosting and identification of Potential Roost Features (PRF). The survey was conducted on the 17th June 2021.

The bat survey was undertaken in accordance with established best practice guidance.

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<sup>11</sup> Refer to Section 8.7 of Chapter 8 of the EIAR and Section 2.4 of the Response to Request for Further Information report.





The desktop study element of the bat assessment included the evaluation of data available from the BCI<sup>12</sup>, NBDC<sup>13</sup> and NPWS<sup>14</sup> to determine what, if any, species of bat have previously been recorded at the site and the surrounding environs. Of the four species recorded, the conservation status of all four species is classified as 'Least Concern'.

There are no records of bat species within 2 km of the proposed development.

The bat landscape suitability was also calculated using the index and scoring system provided through on-line mapping available on the NBDC website. The degree of favourability ranges from 0 – 100, with 0 being least favourable and 100 most favourable for bats. When the proposed development was assessed for 'all bat species' a result of 19.11 was produced (NBDC, 2022). This figure conveys that the area encompassing the proposed development is not suitable for bat species.

The bat survey conducted in June 2021 concluded that:

- The structures within the proposed development did not comprise suitable roosting features for bats.
- No evidence of bat presence was found / observed during the survey.
- all structures within the proposed development were assessed as being of negligible suitability for roosting bats.
- The small treeline of cypress and elder within the western section of the site are of sufficient size and age to contain PRFs but no features were seen from the ground during the survey.
- Further trees within 50m of the proposed development are immature and categorised as being of negligible suitability for roosting bats as they contained no potential roosting features.
- No bat evidence or sightings were recorded during the survey undertaken on 17th June 2021.

Overall, the proposed development site was assessed as being of **Site Ecological Value** only, for bats.

## 2.10 Archaeology

Appeal 1 asserts the proposed development has the potential impact to unknown archaeological assets. In short, this will not be the case having regard to the EIAR undertaken and the following proposed construction phase mitigation measure defined in Section 14.5.1 of Chapter 14 of the EIAR which will be adopted:

- It is proposed that archaeological monitoring of all groundworks at development site be carried out. Monitoring will be carried out under licence to the Department of Housing, Local Government and Heritage and the National Museum of Ireland. Provision will be made for the full excavation and recording of any archaeological features or deposits that may be exposed during monitoring.

Such a mitigation measure and such archaeological monitoring during construction is standard in any significant development which involves groundworks.

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<sup>12</sup> Bat Conservation International

<sup>13</sup> National Biodiversity Data Centre

<sup>14</sup> National Parks and Wildlife Services



## 2.11 Recreation and Amenity

Regarding the potential effects of the proposed development on cultural heritage Appeal 1 refers to a proposal submitted to OCC regarding a proposed Lough na Shade Amenity Area and Croghan Greenway Extension. The proposal *'would see the Grand Canal Greenway extended along the Bord na Mona rail line from Mount Lucas to Croghan Hill'*.

Appeal 1 insinuates that the *'viability of the Greenway extension and rewetting of the midlands boglands would be seriously impeded by the granting of permission to Oxigens Waste Management facility. We are of the firm belief that Oxigen's planned development will lead to the abandonment of this much supported public amenity's development as it will effectively destroy the old walkway routes and will become a visible, noisy, intrusive light on the landscape.'*

This assertion is not reasonable and entirely without merit, having regard to all documentation and assessment associated with the planning application which informed OCC's decision to grant planning permission for the proposed development. The Lough na Shade Amenity Area and Croghan Greenway Extension is far outside the zone of influence of the proposed development.

Chapter 7 of the EIAR includes an assessment of the potential impacts of the proposed development on public amenities (see Section 7.4.5). The assessment acknowledges the importance of amenities and tourism to the national economy and also identifies important local and regional amenities and important recreational amenities and features as discussed in the Offaly County Development Plan (2021 - 2027).

Section 7.4.5 notes that *'there no high amenity areas or areas that are particularly sensitive from a tourism or recreational perspective are present within the vicinity of either development site, with the predominant land uses within the study area consisting of either peatland, forestry or agricultural farmland, with occasional one-off housing.'*

*'There are no open amenity spaces such as parks or sports grounds situated within the vicinity of either development site. The nearest open spaces for amenity are GAA pitches and parkland areas situated in the village of Rochfortbridge 4km to the north of the development site and Rhode 5.5 km to the south east of the development site.'*

In terms of the potential impacts on Recreation, Amenity and Tourism Section 7.5.3 concludes that *'There are no areas of high amenity or sensitive or valuable recreation or tourism areas within the study area of the development site. As such, construction phase activities will have an imperceptible impact on recreation, amenity and tourism in the receiving environment.'*

A robust assessment of the potential impacts of the proposed development on cultural heritage including archaeology and, on the landscape, and visual environment was also included in Chapter 14 and Chapter 15 of the EIAR respectively. This assessment further demonstrates the proposed development will have no interacting impact on recreation and amenity assets.

Regarding the potential impacts of the proposed development on landscape and visual environment a comprehensive assessment of 6 no. different viewpoints surrounding the proposed development site was conducted including a viewpoint (VP1) located on the peak of Croghan Hill, located 3.6 km from the proposed development site.

In conducting the landscape and visual assessment it was determined that there were no sensitive, public viewpoints within 1.5 km of the site *'owing to how removed and insulated the site is from public receptors and/or private residences'*.



Overall, the assessment of visual impact concluded that *'there was a low significance of visual impact arising from the six viewpoints; that of an 'imperceptible' impact upon the inherent visual amenity of the scene, in all six instances.'* (see EIAR Chapter 15, Section 15.6.2).

The conclusions drawn within the EIAR are supported by OCC's evaluation of the EIAR and of the proposed development. Regarding mitigation measures, the first Planners Report reiterates the EIAR's conclusion that, *'Due to the distinctively low level of likely visual impacts arising from this proposal, there are no mitigation measures proposed. In addition, the nearest private receptors are more than 750m distance across relatively level topography, the nearest public receptor (the R400) is more than 1.5km. In this regard, the mitigation measures are 'embedded' into the siting design and location of the proposed development, so as to not need any additional mitigation measures'.*

It is also noted within the first Planners Report that *'the Environment/Water Services section of Offaly County Council raised no concerns with the proposal from a visual impact point of view'.*

The Planners concluding comments state, *'Having regard to the flat topography of the area and low sensitivity of the landscape the proposed development is unlikely to have significant effects on the landscape'.*

Further, it is noted that OCC requested further detail on proposed cladding on the roof and external walls of proposed structures. In response, the Applicant provided product specification details to OCC. OCC were subsequently satisfied with the proposed external finishing and additional detail.

## 2.12 Request for Oral Hearing

Both Appellants have requested an Oral hearing in connection with OCC's decision to grant planning permission for the proposed development. Generally, Oral Hearings are held in particularly complex cases or where significant local or national issues are involved. The Applicant contends and Oral hearing is not warranted in this case as there is no merit or substance in the arguments submitted by the Appellants. The EIAR produced for the planning application and all additional information provided by the Applicant clearly and robustly demonstrate the proposed development accords with proper planning and sustainable development of the area and will not have any significant impact on the receiving environment.

## 2.13 Robustness of the EIAR

The Appellants submit that there were *'weaknesses'* in the EIAR produced for the proposed development. The Applicant contends that the EIAR produced for the planning application and all supporting and additional documentation were highly robust, extensive and ultimately accurate in nature. All assessments contained in the EIAR were completed by highly experienced, competent experts in accordance with statutory requirements. The conclusion that the proposed development will not have a likely significant effect on the environment is correct and well supported by the assessment carried out.

The Applicant notes that Condition 17 attached to OCC's Notification of Decision to Grant Permission for the proposed development prescribes site operating hours as follows:

- 08:00 - 18:00 Monday to Friday
- 08:00 -13:00 Saturdays
- No operation on Sunday



The EIAR produced for the proposed evaluated the potential effects of the proposed development assuming the following operational hours (as defined in Section 4.3.4.3.1):

- The hours of operation of the facility (i.e. waste processing and consignment from the facility) will be 07:00 – 22:00 Monday to Saturday.
- Given the spatial extent and spread of waste collection areas in the region, waste acceptance times at the facility will be spread across a long day and will take place very early in the morning. The hours of waste acceptance are therefore 05:00 to 00:00 Monday to Saturday.

Environmental effects, including noise, traffic related effects were robustly evaluated and deemed to be not significant in the EIAR in the scenario that the facility would operate during the operational hours defined in the EIAR above.

The operating, acceptance and access hours proposed in the planning application are in line with operational timeframes for similar facilities in the region.

These operating hours, in particular the hours of waste acceptance, are needed by the Applicant to facilitate their hours of waste collection as allowed under their Waste Collection Permit and the Waste Management (Collection Permit) Regulations (as amended). They are required to ensure satisfactory and competitive delivery of waste collection services in the region, which would bring about a significant common good in the region.

Considering the above, the Applicant respectfully invites ABP to amend the operating hours defined under Condition 17 to those that were defined and assessed under the EIAR produced for the proposed development.

Further to this, it is noted that waste management activity consents, such as WFPs or IE licences, are more suitable vehicles for prescribing waste management facility operational hours - having regard to the content and operational detail provided in applications for these consents (as required under Waste Management/Industrial Emission related legislation) and the range of environmental management and protection conditions that can included in such consents.



### 3. CONCLUSION

On the 7th of November 2023, OCC granted permission to the Applicant for the proposed development. The Notification of Decision to Grant Permission followed a detailed and considered planning process.

The planning application which was initially lodged with Offaly County Council on the 21st of September 2022 was accompanied by planning drawings and supported by an EIAR and NIS.

The planning process (which preceded the Notification of Decision to Grant Permission) included two pre-planning consultations with Offaly County Council (on the 20th of November 2020 and 18th of February 2022 respectively) and the consideration of submissions from relevant statutory consultees, non-governmental organisations (NGOs) and key stakeholders.

Two Appellants have appealed the decision to ABP. The Applicant has prepared an Appeal Response to refute the grounds of the appeals and to demonstrate there is no reason for ABP to overturn the decision of OCC to grant permission for the proposed development.

After a *'fair and reasonable'* assessment, OCC concluded that the proposed development fully accords with the proper planning and sustainable development of the area. The proposed development is directly aligned to local, regional, national and European waste, circular economy and climate policy. The Notification of Decision to Grant Permission for the proposed development was informed by the contents of the planning file, including the original planning application, EIAR and NIS; the Applicant's RFI Response Report, submissions received, OCC internal departmental reports and consultations received, OCC's Planning Reports for the application, and all relevant policy, including development policy defined in the Offaly County Council Development Plan 2021 - 2027.

The Applicant agrees with OCC's decision to grant permission for the proposed development and believes the grounds of appeal in both subject third party appeals are entirely without merit.



CONSULTANTS IN ENGINEERING,  
ENVIRONMENTAL SCIENCE  
& PLANNING

## APPENDIX 1

Notification of Decision to  
Grant Permission





**Comhairle Chontae Uíbh Fhailí**  
**Offaly County Council**

Áras an Chontae, Bóthar Charleville,  
An Tulach Mhór, Contae Uíbh Fhailí, R35 F893

Áras an Chontae, Charleville Road,  
Tullamore, Co. Offaly, R35 F893

T. 057 934 6800 | F. 057 934 6868  
E. customerservices@offalycoco.ie

offaly.ie

**PLANNING AND DEVELOPMENT ACT 2000, AS AMENDED**  
**PLANNING AND DEVELOPMENT REGULATIONS 2001, AS AMENDED**  
**NOTIFICATION OF DECISION TO GRANT**

**TO:** OXIGEN ENVIRONMENTAL UNLIMITED COMPANY,  
C/O FEHILY TIMONEY AND COMPANY,  
J5 PLAZA, NORTH PARK BUSINESS PARK,  
NORTH ROAD,  
DUBLIN 11,  
D11 PXT0

**Planning Register Number:** 22/490  
**Application Receipt Date:** 21/09/2022  
**Further Information Received Date:** 11/07/2023

Notice is hereby given that in pursuance of the powers conferred upon them by the above-mentioned Acts, Offaly County Council has by order dated 11/07/23 decided to **GRANT PERMISSION** to the above named for development of land, in accordance with the documents lodged, namely:-

THE DEVELOPMENT WILL CONSIST OF THE DEMOLITION OF EXISTING AGRICULTURAL SHEDS AND STRUCTURES ON-SITE AND THE CONSTRUCTION AND OPERATION OF A MATERIALS RECOVERY FACILITY FOR THE ACCEPTANCE AND PROCESSING OF UP TO 90,000 TONNES PER ANNUM OF HOUSEHOLD, COMMERCIAL AND INDUSTRIAL (C&I), AND CONSTRUCTION AND DEMOLITION (C&D) WASTE. ELEMENTS OF THE PROPOSED DEVELOPMENT INCLUDE THE FOLLOWING. (1) THE DEMOLITION OF ALL EXISTING SITE AGRICULTURAL SHEDS AND STRUCTURES ON-SITE (WHICH COVER AN AREA OF 1,417 M<sup>2</sup>). (2) THE CONSTRUCTION AND OPERATION OF A MATERIALS RECOVERY FACILITY, COMPRISING: (A) A SITE ENTRANCE, (B) A WEIGHBRIDGE, (C) TRUCKING SET DOWN AND PARKING AREAS, (D) STAFF PARKING, COMPRISING 24 PARKING SPACES INCLUDING DISABLED PARKING AND EV CHARGING, (E) A CONCRETE YARD AREA, (F) A FUEL STORAGE AREA, (G) EXTERNAL WASTE STORAGE BAYS, (H) SKIP / BIN STORAGE AREAS, (I) A PERIMETER BOUNDARY WALL (4 M IN HEIGHT) AND PERIMETER FENCING (2.1 M IN HEIGHT), (J) A STORMWATER DRAINAGE AND ATTENUATION SYSTEM, (K) AN ADMINISTRATION TWO-STORY BUILDING (WITH AN OVERALL FLOOR AREA OF C. 396M<sup>2</sup> AND C.7.35M IN HEIGHT), (L) A SINGLE STOREY MATERIALS RECOVERY FACILITY (WITH AN OVERALL FLOOR AREA OF C. 2,850M<sup>2</sup> TO A MAXIMUM HEIGHT OF C.13M), (M) A TRUCK LOADING BAY, (N) AN ON-SITE WASTEWATER TREATMENT SYSTEM, ASSOCIATED PERCOLATION AREA AND ANCILLARY SERVICES, (O) AN ON-SITE ESB SUB-STATION AND ADJOINING ELECTRICAL ROOM (WITH A COMBINED FLOOR AREA OF 61 M<sup>2</sup> AND 2.175 M IN HEIGHT), (P) SOLAR PANELS (COVERING A TOTAL AREA OF 737 M<sup>2</sup>) MOUNTED ATOP THE PROPOSED ADMINISTRATION AND MATERIALS RECOVERY FACILITY BUILDINGS. THE APPLICATION IS ACCOMPANIED BY AN ENVIRONMENTAL IMPACT ASSESSMENT REPORT (EIAR) AND NATURAL IMPACT STATEMENT (NIS). THE PROPOSED DEVELOPMENT WILL ACCEPT UP TO 50,000 TONNES OF WASTE PER ANNUM AND OPERATE UNDER A WASTE FACILITY PERMIT FROM OFFALY COUNTY COUNCIL DURING PHASE 1 OF OPERATIONS. THE PROPOSED DEVELOPMENT WILL ACCEPT UP TO 90,000 TONNES OF WASTE PER ANNUM AND OPERATE UNDER AN INDUSTRIAL EMISSIONS LICENCE FROM THE ENVIRONMENTAL PROTECTION AGENCY DURING PHASE 2 OF OPERATIONS AT DERRYARKIN RHOIDE CO. OFFALY.

Subject to the 23 conditions set out in the attached schedule.

In deciding the planning application, the Planning Authority had regard to submissions or observations received in accordance with the Regulations.

Signed on behalf of said Co. Council

**DATE:**

7/10/2023

**Administrative Officer**

Provided there is no appeal against this **DECISION**, a grant of planning permission will issue at the end of four weeks.

THIS NOTICE IS NOT A GRANT OF PERMISSION AND WORK SHOULD NOT COMMENCE UNTIL PLANNING PERMISSION IS ISSUED.

**NOTE:**

Any appeal made to An Bord Pleanála, 64 Marlborough Street, Dublin 1 must be in accordance with Section 127 of the Planning and Development Act 2000, as amended. The appeal must be received by the Board within the statutory appeal period – Four weeks beginning on the date of decision (N.B. Not the date on which decision is sent or received).

In accordance with Section 130 of the Planning and Development Act 2000, as amended any person other than a party to an appeal may make submissions or observations in writing to the Board in relation to an appeal. The fees are set out in the attached schedule entitled "Fees Payable to the Board".



Ceantar Bardasach Thulach Mhór  
Municipal District of Tullamore  
T. 057 935 2470

Ceantar Bardasach Bhiorra  
Municipal District of Birr  
T. 057 912 4900

Ceantar Bardasach Eadan Dolre  
Municipal District of Edenderry  
T. 046 973 1256

**File Reference:** 22/490

Application for permission for the development will consist of the demolition of existing agricultural sheds and structures on-site and the construction and operation of a materials recovery facility for the acceptance and processing of up to 90,000 tonnes per annum of household, commercial and industrial (C&I), and construction and demolition (C&D) waste. Elements of the proposed development include the following. (1) The demolition of all existing site agricultural sheds and structures on-site (which cover an area of 1,417 m<sup>2</sup>). (2) The construction and operation of a materials recovery facility, comprising: (a) A site entrance, (b) a weighbridge, (c) Trucking set down and parking areas, (d) staff parking, comprising 24 parking spaces including disabled parking and ev charging, (e) A concrete yard area, (f) a fuel storage area, (g) External waste storage bays, (h) Skip / bin storage areas, (i) A perimeter boundary wall (4 m in height) and perimeter fencing (2.1 m in height), (j) A stormwater drainage and attenuation system, (k) an administration two-storey building (with an overall floor area of c. 396m<sup>2</sup> and c.7.35m in height), (l) A single storey materials recovery facility (with an overall floor area of c. 2,850m<sup>2</sup> to a maximum height of c.13m), (m) a truck loading bay, (n) An on-site wastewater treatment system, associated percolation area and ancillary services, (o) an on-site ESB sub-station and adjoining electrical room (with a combined floor area of 61 m<sup>2</sup> and 2.175 m in height), (p) solar panels (covering a total area of 737 m<sup>2</sup>) mounted atop the proposed administration and materials recovery facility buildings. the application is accompanied by an environmental impact assessment report (EIAR) and Natura Impact Statement (NIS). The proposed development will accept up to 50,000 tonnes of waste per annum and operate under a waste facility permit from Offaly County Council during phase 1 of operations. The proposed development will accept up to 90,000 tonnes of waste per annum and operate under an industrial emissions licence from the environmental protection agency during phase 2 of operations at Derryarkin , Rhode, Co. Offaly - Oxigen Environmental Unlimited Company

**FIRST SCHEDULE**

Having regard to the nature, scale and intended use of the proposed development, the policies, objectives and standards of the Offaly County Development Plan 2021-2027, Planning Guidelines, submissions received, planning assessments, referral reports and the pattern of development in the area, it is considered that, subject to the conditions in schedule two, that the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health and would otherwise accord with the proper planning and sustainable development of the area.

**SECOND SCHEDULE**

1. The development shall be carried out in accordance with the plans and particulars submitted to the Planning Authority on the 21<sup>st</sup> September 2022 and amended by further information received on the 11<sup>th</sup> July 2023, except where conditions hereunder specify otherwise.

**Reason:** In the interests of proper planning and sustainable development of the area.

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**File Reference:** 22/490

2. All environmental mitigation measures set out in the Environmental Impact Assessment Report and Natural Impact Statement submitted to the Planning Authority on the 21<sup>st</sup> September 2022 and amended by further information received on the 11<sup>th</sup> July 2023, shall be implemented in full, except as may otherwise be required in order to comply with the following conditions.

**Reason:** In the interests of protection of the environment.

3.
  - (a) Waste to be accepted at the facility for disposal, recovery and treatment shall not exceed 90,000 tonnes per annum of household, commercial and industrial and construction and demolition waste. No hazardous waste shall be accepted or processed at the facility.
  - (b) The Developer shall apply and obtain a Waste Facility Permit under the Waste Management Regulations 2007, as amended from the Environment Section of Offaly County Council prior to waste activities commencing on site for operations under Phase 1 only.

The list of waste codes for Phase 1 as submitted with the planning application and Phase 2 as outlined in Appendix 2 of the 'Response to Further Information Request' is permitted at the site.

**Reason:** In the interest of the proper planning and development of the area.

4.
  - (a) The finished floor level of the proposed development shall be as specified on site layout received on 21<sup>st</sup> September 2022 and shall not be modified in any way without the prior written consent of the Planning Authority.
  - (b) The external finishes of the development shall be as indicated on the drawings received on 21<sup>st</sup> September 2022 and amended by further information received on the 11<sup>th</sup> July 2023

**Reason:** In the interest of the proper planning and development of the area.

5. The site shall be landscaped as follows:
  - (a) In accordance with the Landscaping & Fencing Plan submitted to the Planning Authority on the 11<sup>th</sup> July 2023.
  - (b) All existing planting (hedgerow and trees) on and bounding the site shall be retained and maintained, except where altered or amended by conditions in this permission.
  - (c) Any unplanted boundaries of the site, shall be planted each with a continuous deciduous hedge of native species, interspersed with broad-leaved deciduous trees, at 4 metre centres. This planting shall be carried out and completed within the first planting season following commencement of operations.

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- (d) This landscaping shall be implemented not later than the first planting season after commencement of the development. Any planting that is diseased or fails within 2 years of planting shall be replaced.

**Reason:** In the interests of visual amenity and integrating the development into the landscape.

- 6. Upgrade works to junction with R400 to be carried out in advance of commencement of construction works from the proposed development in accordance with TII document DN-GEO-03060, June 2017. Junction upgrade works to include the provision of 20 metres of resurfacing on the L10091 from R400 road junction so as to satisfy requirements of RSM Stage 2 Road Safety Audit (RSA), December 2021. The inclusion of same is an addition to the proposed pavement upgrades as indicated on Tobin Consulting Engineers Drawing 10884-2004, Revision A, November 2021. Full road pavement reconstruction to be in accordance with the 'Guidelines for the Rehabilitation of Roads over Peat'—"Green Book" including the use of an appropriate composite geogrid. Specific pavement design to be submitted to the Planning Authority for written agreement prior to commencement of development.

**Reason:** In the interest of traffic safety and orderly development.

- 7. Within 6 months of operation of development, the Developer shall submit to the Planning Authority for written agreement a detailed Stage 3 and Stage 4 RSA, which shall be carried out by an independent approved and certified auditor for the proposed development on junctions modified as part of this proposal in accordance with TII document GE-STY-01024, December 2017, after construction and 4 months' post road opening with live traffic during operation of the proposed development. The RSA recommendations shall be incorporated into the final completed works. These amendments shall be submitted for the Planning Authority's written agreement.

**Reason:** In the interest of traffic safety and orderly development.

- 8.
  - (a) Lines of sight at site entrance shall be constructed and maintained strictly in accordance with the requirements of Table 1.3: Design Speed Related Parameters of TII Rural Link Road Design DN-GEO-03031, April 2017.
  - (b) No surface water to discharge onto public road.
  - (c) Vehicular access to the site shall be restricted to one location only.
  - (d) Any damage to the public road consequential to the development work will be made good to the satisfaction of the Area Engineer.
  - (e) Prior to commencement of development, the Developer shall submit to the Planning Authority for written agreement details of final road markings.

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**File Reference:** 22/490

- (f) Prior to commencement of development, the Developer shall submit to the Planning Authority for written agreement details of signage. All signage to comply with most recent Traffic Signs Manual and other relevant standards.
- (g) All road networks in the vicinity of the facility (including the R400 Regional Road) shall be kept free from any mud or debris caused by activities at the facility. Any such debris or deposited materials shall be removed without delay.
- (h) Surface water drainage measures (gullies, etc.) shall be installed at the revised junction / junction upgrade. Design to be submitted and agreed with the Planning Authority prior to commencement of development.
- (i) Traffic management plans to be submitted for each stage of the works to Edenderry Municipal District Office, in accordance with the requirements of most recent Traffic Signs Manual.
- (j) Prior to commencement of development, the Developer shall submit to the Planning Authority for written agreement, revised site layout indicating a minimum of 10% car-parking spaces with EV Charging points. All other parking spaces shall be ducted for electrical charging.

**Reason:** In the interest of Traffic Safety and orderly development.

- 9. Prior to commencement of development, the Developer shall submit to the Planning Authority for written agreement proposals for street lighting at the proposed development entrance as recommended within RSM Stage 2 RSA, December 2021, Observation 2.4.1 to be designed in accordance with LED specification. LED street lighting design to be submitted by competent designer.

**Reason:** In the interests of a properly planned, serviced development and in the interest of public safety.

- 10. The development shall be carried out in accordance with relevant requirements of the appropriate utility provider with regard to carrying out building works in proximity to overhead powerlines.

**Reason:** In the interest of safety and orderly development.

- 11. All monitoring proposal detailed in the submitted documentation, including the Environmental Impact Assessment Report (EIAR) shall be implemented in full. The Developer shall monitor and record groundwater levels, surface water, noise, odour and dust deposition levels at monitoring and recording stations. The intervals and location of which shall be submitted to and agreed in writing with Offaly County Council prior to commencement of development.

**Reason:** In the interests of clarity and the proper planning and sustainable development of the area.

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**File Reference:** 22/490

12. The mitigation measures proposed in Construction Environment Management Plan (CEMP) for managing the collection and disposal of construction waste, surface water run-off from the site, on-site road construction, and environmental management measures during construction including working hours, noise control, dust and vibration control and monitoring of such measures shall be implemented in full. A record of all proposed checks that the construction works are being undertaken in accordance with the CEMP shall be kept at the construction site office for inspection by the planning authority. The agreed CEMP shall be implemented in full in the carrying out the development.

**Reason:** In the interests of public safety and residential amenity.

13. The Developer shall ensure that the development is served by adequate water supply and/or wastewater facilities and shall enter into an Agreement with Irish Water to provide for a service agreement to provide the public water supply and collection of all foul water generated on site within first month of this grant of permission. In the event of an accidental spillage of wastewater, organic fertiliser, fuel, machine oil or any other substance which may threaten the quality of any watercourse or groundwater body either at construction or operational phase, Offaly County Council, and Inland Fisheries Ireland, shall be notified in writing. A copy of the clean-up plan shall be submitted to the planning authority.

**Reason:** In the interests of clarity and the proper planning and sustainable development of the area.

14. Prior to the commencement of development, the Developer, shall prepare a Resource Waste Management Plan (RWMP) as set out in the EPA's Best Practice Guidelines for the Preparation of Resource and Waste Management Plans for Construction and Demolition Projects (2021) including demonstration of proposals to adhere to best practice and protocols. The RWMP shall include specific proposals as to how the RWMP will be measured and monitored for effectiveness. The RWMP must be submitted to the Planning Authority for written agreement prior to the commencement of development. All records (including for waste and all resources) pursuant to the agreed RWMP shall be made available for inspection at the site office at all times.

**Reason:** In the interest of the proper planning and sustainable development of the area

15. All hauler's importing or removing waste from the facility shall hold a valid waste collection permit in accordance with the Waste Management Regulations 2007, as amended. Only waste activities authorised under a Waste Facility Permit issued by Offaly County Council under the Waste Management (Facility Permit and Registration) Regulations 2007, as amended, can be carried out at the site location as outlined in the planning application for 'Phase 1'.

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**File Reference:** 22/490

**Reason:** In the interest of the proper planning and development of the area.

16.

- (a) All loose litter accumulated within the facility and its environs shall be removed and appropriately disposed of daily.
- (b) Emergency Spill Management Plan shall be implemented in the event of accidental leaks or spills and spill kit shall be made available to all site staff.
- (c) All overground oil and chemical storage tank(s) shall be adequately bunded to protect against spillage. Bunding shall be impermeable and capable of retaining a volume equal or greater than 100% of the capacity of the largest tank within the bunded area or 25% of the total volume of substance which could be stored within the bunded area, whichever is greater. Filling and offtake points shall be located within the bunded areas.
- (d) All bunding arrangements for the storage of fuel, oil, or other types of chemical substances to be stored within the development shall conform to the EPA Guidance Document 'Storage & Transfer of Materials for Scheduled Activities'

**Reason:** In the interest of the proper planning and development of the area.

17.

- (a) Site development and construction works shall be carried out between the hours of 07:00 hrs – 18:00 hrs Mondays to Fridays inclusive, between 8:00 hrs- 13:30 Hrs on Saturdays and not at all on Sundays and public holidays. Deviation from these times shall only be allowed in exceptional circumstances where prior written agreement has been received from the planning authority. The Developer shall take reasonable measures to mitigate any environmental nuisance (noise and dust) which may arise during construction.
- (b) The hours of operation shall be 08:00 hrs -18:00hrs Monday to Friday (excluding bank holidays) and 08:00-13:00 hr on Saturdays. There shall be no operations on Site on Sundays.

**Reason:** In the interest of the proper planning and development of the area.

18.

- (a) Total dust deposition at the site boundaries shall not exceed 350 mg/m<sup>2</sup>/day averaged over a thirty day period.
- (b) In dry weather conditions dust abatement measures during construction stage shall be applied to all loads leaving the site, dampening the load, covering the load or other appropriate measures. Water spraying of roads, shall be carried out as necessary.
- (c) Noise emissions at the nearest noise sensitive location (such as dwellings, schools, places of worship or areas of high amenity) shall not exceed the following:

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L <sub>Aeq</sub> (60 minutes)	55dB(A)	8am to 8pm
L <sub>Aeq</sub> (15 minutes)	45dB(A)	8pm to 8am

- (d) There shall be no clearly audible tonal or impulsive components to the noise emissions from the development at any noise sensitive location.

**Reason:** In the interest of public health and orderly development.

19. Soiled Water

- (a) Prior to waste activities commencing on site, the Developer shall replace the existing agricultural tank on site with a new reinforced concrete holding tank, minimum capacity 78m<sup>3</sup>. The Reinforced concrete tanks to be designed by qualified Structural Engineer, to meet equivalent standard to Uisce Eireann Stormwater tanks. Tanks to be tested to BS 8007 and signed off by certifying engineer.
- (b) Works generating soiled water/leachate are only permitted in areas served by proposed foul-water collection system outlined on Drawing ref. P2344-0500-0002 submitted to the Planning Authority on the 11<sup>th</sup> July 2023.
- (c) All soiled water generated by works at the proposed development shall be conveyed through to the proposed holding tank. No effluent shall discharge or be allowed to discharge to any stream, river or watercourse, or to the public road.

**Reason:** In the interest of public health and orderly development.

20.

- (a) The Wastewater Treatment System (WTS) hereby permitted shall be installed in accordance with the recommendations included within the site characterisation report submitted to the Planning Authority on 11<sup>th</sup> July 2023.
- (b) Within three months of the first occupation, the developer shall submit a report to the Planning Authority from a suitably qualified person (with professional indemnity insurance) certifying that the wastewater treatment system and associated works is constructed and operating in accordance with the standards set out in the Environmental Protection Agency document referred to above.
- (c) The WTS shall be installed in accordance with the manufacturers guidelines and the details provided.
- (d) The work shall be supervised and certified by a suitably qualified and professionally indemnified Engineer. A completion certificate shall be submitted to the Planning Authority upon installation and commissioning of the wastewater treatment system and the percolation area. Photographic evidence of each stage of the works shall be included in the completion certificate submission.
- (e) The Developer shall submit a signed copy of the agreement for the maintenance of the WTS prior to commencement of the works on-site. At all times the maintenance of the WTS shall be covered by contract.

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**File Reference:** 22/490

**Reason:** In the interest of public health and orderly development.

21. Surface water management

- (a) Clean surface water and run-off from roofs and clean paved areas only shall be collected and directed to (a soakpit or the nearest field drain located within the boundaries of the site) and shall not be allowed to flow onto any roadway or discharge to soiled water/effluent storage areas.
- (b) The Developer shall ensure only clean uncontaminated surface water shall be discharged to the surface water system. No foul sewage, grease or fats, harmful chemicals and non-biodegradables shall be discharged to the surface water sewerage system.
- (c) Prior to waste activities commencing on site, the Developer shall replace the existing agricultural tank on site with a new reinforced concrete holding tank, minimum capacity 440m<sup>3</sup>. A minimum of 4 No. access/inspection points are to be incorporated uniformly along the length of this tank (Surespan or equivalent) to enable inspection, sampling and routine servicing. Testing shall be carried out on a schedule to be agreed with Offaly County Council Environment Section. No run-off that breaches relevant standards for discharge to watercourses is permitted. Where attenuated surface water run-off is found to exceed standards, the operator/developer will be required to close the shut-off valve, and tanker the water for third party treatment by Uisce Eireann or similar.
- (d) Prior to commencement of development the headwall/outfall design (at discharge point) shall be agreed with Inland Fisheries Ireland to mitigate potential impact on local fisheries habitat. Prior to commencement of Development, the Developer shall submit the agreed drawings to the Planning Authority indicating the detailed design of the footprint at the discharge point or wing walls containing pipes. Exact location of proposed outfall to be agreed with Inland Fisheries Ireland so as to minimise impacts on spawning reeds or salmonoid habitat.
- (e) The written consent of Inland Fisheries Ireland shall be obtained in advance of works commencing so as to agree construction methodology and mitigation measures for the construction of headwall / wingwalls / scour mat. Timing of in-stream works to be carried out during the period July – September, as per Guidelines on Protection of Fisheries During Construction Works in and Adjacent to Waters. Developer to provide 7 days notification to Inland Fisheries Ireland prior to commencement of works within the watercourse.
- (f) The Developer shall take care to protect all sewers that may be affected by demolition works, in particular no debris should be allowed to enter the drainage system. Where possible the Developer must disconnect and cap all drainage links from the private site in order to prevent any demolition debris entering the public network.
- (g) There shall be no discharge of trade effluent to waters (including groundwater) or sewers except where a licence is granted by Offaly County Council as required by the Local Government (Water Pollution) Acts, 1977 and 1990.

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**File Reference: 22/490**

- (h) The development shall incorporate Sustainable Drainage Systems in the management of surface water, with a minimum requirement of a 2 component SuDS management train approach.
- (i) All surface water discharge from this development must be attenuated to greenfield run off rates. With attenuation provided for 1 in 100-year storm event plus factor of 20% for climate change.
- (j) An appropriate petrol interceptor shall be installed on the internal drain prior to discharge to surface water system.
- (k) All private drainage such as, downpipes, gullies, manholes, armstrong junctions, etc. are to be located within the final site boundary. Private drains should not pass through property they do not serve, unless approved and agreed in writing with the owner of the land in which these drains pass through.

**Reason:** In the interests of environmental protection.

22. Prior to commencement of development, a contribution shall be payable to Offaly County Council, in accordance with the Council's Development Contribution Scheme, in respect of public infrastructure and facilities benefiting development in County Offaly, that is provided or that is intended will be provided by, or on behalf of, the Council.

The amount of the development contribution is set out below and is subject to annual revision with reference to the Wholesale Price Index (Building and Construction), and interest for late payment, in accordance with the terms of the Council's Development Contribution Scheme:-

Category	Amount of Contribution
Industrial/Commercial development	€15.00 per m <sup>2</sup>
Total	€15.00 X 4,328m <sup>2</sup> =€64,920

**Reason:** It is considered reasonable that the developer should contribute towards the expenditure incurred or proposed to be incurred by Offaly County Council in respect of the provision/improvement of public services/infrastructure benefiting development in the area of the Planning Authority. Ancillary

23. The developer shall pay to the Planning Authority a financial contribution as a special contribution under Section 48(2)(c) of the Planning and Development Act 2000, as amended, in respect of the impact the development will have on the R400. The amount of the contribution shall be **€25,000** per annum. The contribution shall be paid annually within three months from the date of this grant of planning permission or in such payments as the Planning Authority may facilitate.

**Reason:** It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the Planning Authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

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