

An
Bord
Pleanála

Planning Appeal Form

AN BORD PLEANÁLA

LDG- 072885-24

ABP- _____

26 JUN 2024

Fee: € 3000 Type: CHA

Time: 12:34 By: Hand

Your details

1. Appellant's details (person making the appeal)

Your full details:

(a) Name

Crayvall Egg Production Ltd

(b) Address

Belview Road, Carstown, Drogheda, Louth, A92
AT28

Agent's details

2. Agent's details (if applicable)

If an agent is acting for you, please **also** provide their details below. If you are not using an agent, please write "Not applicable" below.

(a) Agent's name

Geraldine Fahy, Ger Fahy Planning

(b) Agent's address

Mulhussey, Maynooth, Co. Kildare w23x8x5

Postal address for letters

3. During the appeal we will post information and items to you **or** to your agent. For this appeal, who should we write to? (Please tick ✓ one box only.)

You (the appellant) at the address in Part 1

The agent at the address in Part 2

Details about the proposed development

4. Please provide details about the planning authority decision you wish to appeal. If you want, you can include a copy of the planning authority's decision as the appeal details.

(a) Planning authority

(for example: Ballytown City Council)

Louth County Council

(b) Planning authority register reference number

(for example: 18/0123)

2460189

(c) Location of proposed development

(for example: 1 Main Street, Baile Fearainn, Co Ballytown)

Carrickbaggott, Grangebellew, Co. Louth

Appeal details

5. Please describe the grounds of your appeal (planning reasons and arguments). You can type or write them in the space below or you can attach them separately.

See attached appeal letter.

Decision date 30th May 2024

Appeal due date 26/6/24

Supporting material

6. If you wish you can include supporting materials with your appeal.

Supporting materials include:

- photographs,
- plans,
- surveys,
- drawings,
- digital videos or DVDs,
- technical guidance, or
- other supporting materials.

Acknowledgement from planning authority (third party appeals)

7. If you are making a third party appeal, you **must** include the acknowledgment document that the planning authority gave to you to confirm you made a submission to it.

Fee

8. You **must** make sure that the correct fee is included with your appeal. You can find out the correct fee to include in our Fees and Charges Guide on our website.

Oral hearing request

9. If you wish to request the Board to hold an oral hearing on your appeal, please tick the “yes, I wish to request an oral hearing” box below.

Please note you will have to pay an **additional non-refundable fee** of €50. You can find information on how to make this request on our website or by contacting us.

If you do not wish to request an oral hearing, please tick the “No, I do not wish to request an oral hearing” box.

Yes, I wish to request an oral hearing

No, I do not wish to request an oral hearing

NALA has awarded this document its Plain English Mark
Last updated: April 2019.



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https://www.pleanala.ie/en-IE/Fees/Fees-Appeal#first_party_appeals

An Bord Pleanála

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First party appeals

First party appeals	Fee
<p>A1 You want to appeal the decision of a planning authority on an application you lodged with it.</p> <ul style="list-style-type: none"> The appeal does not include retention; The appeal does not relate to <u>commercial development</u>; and The appeal or application does not include an <u>EIAR</u> or <u>NIS</u>. 	€220
<p>A2 You want to appeal the decision of a planning authority on an application you lodged with it.</p> <ul style="list-style-type: none"> The appeal does not include retention; The appeal does not relate to <u>commercial development</u>; and The appeal or application does include an <u>EIAR</u> or <u>NIS</u>. 	€220
<p>A3 You want to appeal the decision of a planning authority on an application you lodged with it.</p> <ul style="list-style-type: none"> The appeal does not include retention; The appeal does relate to <u>commercial development</u>; and The appeal or application does not include an <u>EIAR</u> or <u>NIS</u>. 	€1,500

1945 30/06/2024

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https://www.pleanala.ie/en-IE/Fees/Fees-Appeal#first_party_appeals

An Bord Pleanála

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- The appeal does **not** relate to commercial development; and
- The appeal or application **does** include an EIAR or NIS.

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<p>A4 You want to appeal the decision of a planning authority on an application you lodged with it.</p> <ul style="list-style-type: none"> The appeal does not include retention; The appeal does relate to <u>commercial development</u>; and The appeal or application does include an <u>EIAR</u> or <u>NIS</u>. 	€3,000
<p>A5 You want to appeal the decision of a planning authority on an application you lodged with it.</p> <ul style="list-style-type: none"> The appeal does include retention; The appeal does not relate to <u>commercial development</u>; and The appeal or application does not include an <u>EIAR</u> or <u>NIS</u>. 	€660

1945 30/06/2024

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First party appeals

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Dublin 1

25/06/2024

Mulhussey, Maynooth
Co. Kildare, W23 X8X5
Ireland

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E gerfahyplanning@gmail.com

Louth County Council Ref: 24/60189

Appeal Ref: Construction of 1 No. Poultry Layer House and 1 No. Manure/General Purpose store, together with all ancillary structures, (to include 3 No. meal storage bin(s) and soiled water tank), and all associated site works (to include upgraded internal farm laneway, site drainage and storm water attenuation) associated with the proposed development, at Carrickbaggott, Grangebellew, Co. Louth. This application relates to a development, which is for the purposes of an activity requiring a Licence under part IV of the Environmental Protection Agency (Licensing) Regulations 1994 to 2013. An Environmental Impact Assessment Report (E.I.A.R.) and Natura Impact Statement (N.I.S.) have been submitted with this planning application.

Site Location: Carrickbaggott, Grangebellew, Co. Louth

Dear Sir/Madam,

We have been instructed by our client Crayvall Egg Production Ltd of registered address Belview Road, Carstown, Drogheda, Louth, A92 AT28, the applicants in this instance, to appeal against the decision of Louth County Council who by order dated 30/5/24 decided to refuse to grant planning permission for the above proposed development for the following reasons:

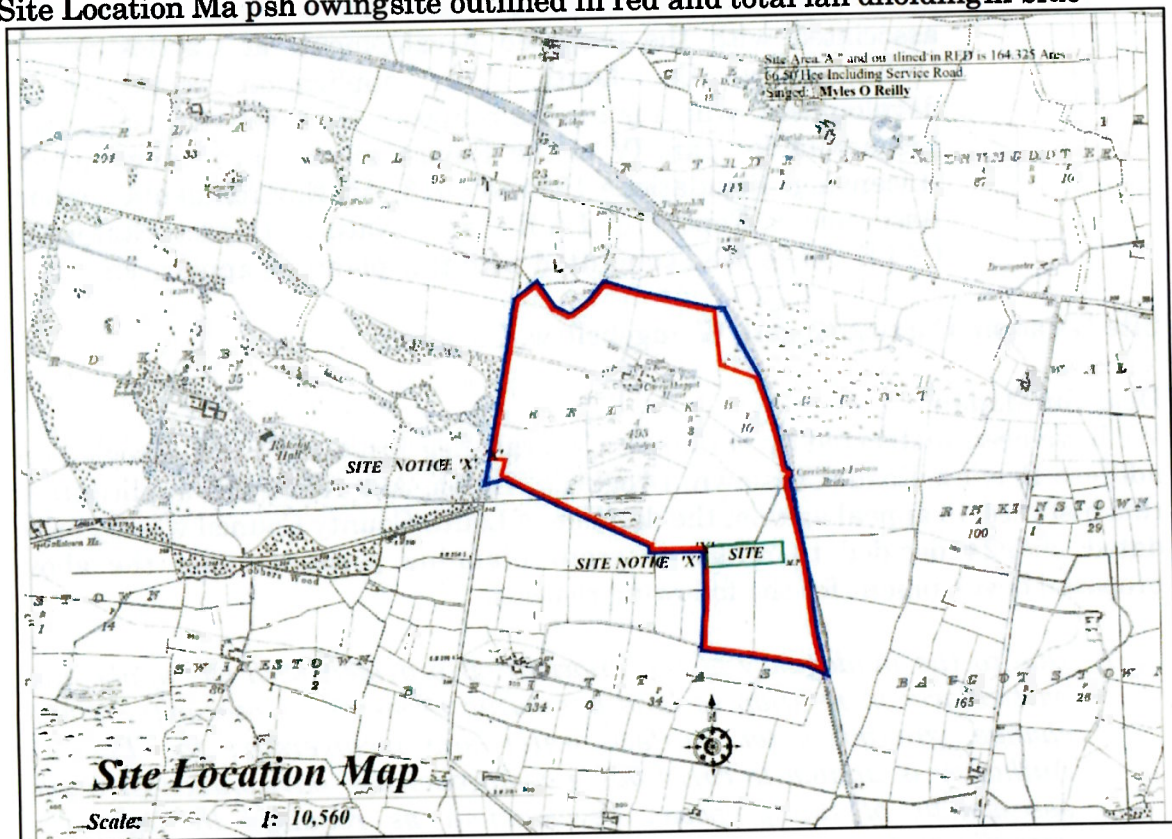
- 1. Due to the inadequacy of the information provided with the application, particularly in relation to land spreading areas and biosecurity, climate change, ground water, surface water and biodiversity, the Planning Authority is unable to carry out a comprehensive environmental impact assessment of the proposed development as required by legislation, accordingly to permit the proposed development would be contrary to the proper planning and sustainable development of the area.*
- 2. On the basis of the information provided with the application, particularly in relation to the land spreading areas, climate change, ground water, surface water and biodiversity, the Planning Authority cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on European site North-West Irish Sea SPA (No. 004236), or any other European site, in*

view of the site's Conservation Objectives. In such circumstances the Planning Authority is precluded from granting permission.

1.0 Site Location/Description

The appeal site is located on an established poultry farm 68.5Ha in the townland of Carrick baggot which is owned and operated by the applicant. The surrounding area is rural in nature with mature hedgerows with agricultural grassland and tillage being the predominant landuse in the surrounding area. The poultry farm is largely screened from the public road due to the undulating nature of the landscape. The access to the appeal site is via a private farm access road off the local road. The site area is 1.71ha on a landholding of 68hectares. The site is 1.2km south of Grangebellew and 4.6km south-east of Dunleer and will be accessed via an existing approved entrance.

Site Location Map showing site outlined in red and total landholding in blue



The entrance to Rokeby Hall, a Protected Structure (RPS No: LHs018-019, LHs018-035, LHs018-036) is located to the west on the opposite side of the road. Rokeby Hall is also designated as "Historic Gardens and Designed Landscape" as provided for in Table 9.5 in Section 9.7 of the Louth County Development Plan 2021-2027, as varied (Garden ID: LH0046, NIAH Buildings ID: 13901426).

2.0 Description of Proposed Development

The proposed development comprises 1 No. poultry house 5,171sqm. (for barn egg production), and 1. No. Poultry Manure Storage Shed (578sq.m, together with all ancillary structures (to include, soiled water tank(s) and 3 no. meal storage bins) and associated site works.

The farm currently operates as a c. 60,0000 bird free range farm previously approved by Louth County Council under planning ref: 19/231 and the EPA under Licence No. P1120-01. The proposed development will provide for an additional c. 64,000 birds on the farm with the proposed development deemed necessary to comply with current supermarket and consumer requirements in relation to egg production systems. The proposed development will result in an increase in overall bird numbers to 124, 000 birds.

The proposed development is in excess of the threshold required for the preparation of an EIAR as per SI 600 of 2001 (Planning and Development Regulations 2002) Schedule 5 Part 1 17a as follows:

“Installations for intensive rearing of poultry or pigs with more than-(85,000 places or broilers, 60,000 places for hens”.

The type of housing is a simple closed building of modular panels on top of a concrete stub wall on an impervious concrete base. The houses are thermally insulated with a computer controlled ventilation system and artificial lighting. Automatic feeding and ventilation systems operate on a 24-hour basis. The solid flooring of the house is bedded with timber shavings over the entire area immediately prior to housing. The principal inputs to the operations are feed, water, veterinary medicines and energy. The main output is eggs, and the main animal by-product is poultry manure (organic fertiliser).

As the farm is already the subject of an EPA licence an application for an EPA licence review will be made following receipt of a grant of planning permission.

3.0 Planning History

19231

Permission to construct 1 no. free range poultry house and 2 no. manure / general purpose stores, together with all ancillary structures, (to include 4 no. meal storage bin(s) and soiled water tank), and all associated site works (to include new site entrance and internal laneway, and the provision of an on-site waste water treatment system and percolation area) associated with the proposed development. This application relates to a development, which is for the purposes of an activity requiring a Licence under part IV of the Environmental Protection Agency (Licensing) Regulations 1994 to 2013. An Environmental Impact Assessment Report (E.I.A.R) will be submitted with this planning application.
Granted with conditions

22480

Permission to install roof mounted solar panels (south west facing roof aspect only) on 1 no. existing free range poultry house, together with all ancillary structures, and all associated site works associated with the proposed development
Granted with conditions

2360288

Crayvall Egg Production Ltd. intend to apply for planning permission to construct 1 No. Poultry Layer House and 1 No. Manure/General Purpose store, together with all ancillary structures, (to include 3 No. meal storage bin(s) and soiled water tank), and all associated site works (to include upgraded internal farm laneway,) associated with the proposed development, at Carrickbaggott, Grangebellew, Co. Louth. This application relates to a development, which is for the purposes of an activity requiring a Licence under part IV of the Environmental Protection Agency (Licensing) Regulations 1994 to 2013. An Environmental Impact Assessment Report (E.I.A.R.) and Natura Impact Statement (N.I.S.) will be submitted with this planning application.
Refused. Pre-planning

4.0 Background

The applicant first established his egg farm in 1978 and since that time have grown the business into a well-managed farm, egg packing centre and marketing company in the well equipped facility at Carstown, Drogheda, Co. Louth. Belview Egg Farm Ltd is an approved Bord Bia Sustainable Egg Assurance Scheme packing centre and farm. It is licenced with the Department of Agriculture, Food and the Marine, BRC accredited, Bord Bia Origin Green approved and was awarded Lidl Ireland Climate Supplier of the Year in 2022.

Bellview Egg Farm Ltd sort, package and market eggs from their own farm and on behalf of a number of farmers including free range, barn and enriched colony egg types. These dedicated farms are all Bord Bia approved and are audited monthly by Belview Farm Ltd's own farm auditors to ensure the highest standards are maintained. This commitment is intended to comply with the requirements of most supermarkets that eggs will not be sourced from cage type production systems after 01/01/2025. In order to ensure a constant supply of eggs to supermarkets the proposed development is essential.

The applicant's investment in improving standards of animal housing and welfare on his farms shows a commitment to enhanced environmental standards and a commitment to ensuring the supply of eggs to the Irish market.

During our site visit we observed the stringent inspection regime for the eggs before they are packed. Each shell is printed with a traceability code to enable the egg to be traced to the farm. The packing centre has an integrated barcode and stock control system to ensure full traceability of every egg.

The proposed development is essential to fulfil the national demand for Irish eggs from retailers and the food industry and to ensure the consistent supply of eggs is

maintained. The decision of the Planning Authority to refuse permission in this instance has put this supply chain in jeopardy and will result in the need to import eggs from the UK by the supermarkets until the supply can be restored.

5.0 Sustainable Farming Practice

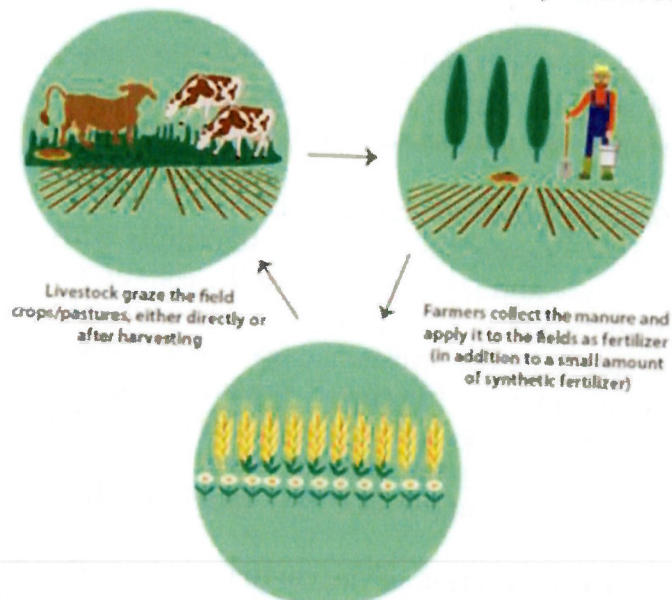
A symbiotic relationship exists between the neighbouring tillage farmers and the applicant's poultry farms. This model of farming is very sustainable and environmentally friendly.

Local tillage farmers need fertiliser to grow their grain. It is widely accepted that the application of organic fertiliser is a more responsible and sustainable form of fertilising the land and is better for soil health and environmental protection. The application of poultry manure/organic fertiliser to these lands is a more sustainable form of fertiliser. This grain is then used to feed the poultry farms and the cycle continues in closed farm system.

All lands in receipt of the organic fertiliser from the applicant's poultry farm are farmed in accordance with the legislation S.I 113 of 2022 under a stringent regime of monitoring and control in respect of the application of animal manure to lands.

- Poultry Manure is to be used as part of a fertiliser substitution programme (to replace imported chemical fertiliser) on customer farmlands to meet crop /grassland agronomic requirements.

How an integrated cropping-livestock system works



This natural fertilizer improves soil health and quality, thereby increasing crop yields while reducing greenhouse gas emissions as less synthetic fertilizer is required

Belview Egg Farm Ltd is Teagasc's only Signpost poultry farmer. The measures undertaken so far include manure management, energy efficiency monitoring and carbon footprint establishment. In 2022 Belview Egg Farm Ltd were the first Free Range egg producing farm in Ireland to establish a carbon footprint for the product of free-range egg laying. They have been able to increase the dry matter content of their poultry manure from 25% in enriched colony to 64% dry matter on the barn units due to the improvements made on site. The site hosts students from Dundalk Institute of Technology studying BSc (Hons) in Agriculture (Sustainable Agriculture/Agri-Food Production). In October 2023 Belview Egg Farm Ltd hosted a Teagasc Signpost event and covered topics on: Carbon Footprinting Free Range Eggs/ Energy & the use of Solar Panels/ Drying Manure & the use of Poultry Litter to grow Irish Grain.

6.0 Quality Control

The applicant's farm is governed by the Bord Bia's Origin Green Programme. This is the only sustainability programme in the world that operates at a national scale, uniting government, the private sector and food producers through Bord Bia.

Belview Egg Farm Ltd and Crayvall Egg Production Ltd are committed environmentally friendly and sustainable food production and that is reflected in their investments to date.

The proposed development would provide for the highest quality building standards, reduced energy output due to improved insulation standards and proposed solar panels on the existing and proposed poultry houses. Improved bio-security measures.

The expansion of egg production on the existing farm provides for greater economies of scale in terms of transportation of eggs, facilitating optimum load sizes for feed delivery and transportation of eggs to the processing plant.

7.0 Need for Proposed Development

The proposed development is necessary to comply with the significant demand for eggs in the country and is responding to the consumer requirements in relation to egg production systems. This proposed development is intended to replace eggs currently produced in the enriched cage systems (both by Belview Egg Farm Ltd and other supply farms). Anecdotal evidence suggests that other farmers in the country are not investing in the changeover due to their age profile. At present all eggs from the existing farm and from the proposed development (once operational) will supply Bellview Egg Farm Ltd.

Previous to the construction of the company's Free Range unit the production site employed 3 members of staff, since building the free range unit the company now employs 11 staff members all from the surrounding area.

The past 3 planning applications have received no objections from neighbouring community. The company supports the community through the creation of employment and supporting local schools and sporting groups.

8.0 Licencing

The farm currently operates under an I.E Licence (Class 6 Intensive Agriculture), as required for all pig and poultry farms over the relevant thresholds. The Licence Ref: P1120-01 is issued and controlled by the EPA. The EPA are the statutory authority under the EPA Act 1992 in terms of the issuing of the licence. The licence will be required to be amended upon receipt of a grant of planning permission.

9.0 Legislative Framework:

The determination of this application must have due regard for the extensive legislation surrounding the development of agricultural structures and also surrounding farm management.

Two relevant European Case Law judgements (Copies attached): Case C-416/02 Commission v Spain and ECLI:EU:C:2013:627 Donal Brady v Environmental Protection Agency. are appended to this appeal which took place prior to the coming into force of the 2005 Good Practice Regulations which have been replaced by SI 113 of 2022. Those cases and the established the legal definition of animal manure as organic fertiliser and not as a waste.

According to Case C-121/03 Commission v. Spain, pig slurry provided by the farmer to local farms for fertiliser was not waste. The pig farmer did not intend to discard it. But there are significant differences between the National Courts and the ECJ definition of waste, the High Court of Ireland had taken a more conservative view of the definition of waste compared to their ECJ counterparts.

In case ECLI:EU:C:2013:627, Donal Brady was the owner of an intensive pig farm in Edgeworthstown, Co. Longford. The farm contained approximately 10,000 pigs and obviously, the disposal of the resultant 30,000m³ of effluent each year was a major cause of concern for the Environmental Protection Agency (EPA). Brady had agreed with neighbouring farms to allow the local farmers to use the pig slurry as a fertiliser on their lands. He received a licence in March 1998 from the EPA which required him to monitor and control the use of pig slurry on these neighbouring farms. In appealing the licence to the Irish High Court, one of his arguments was that the pig slurry should be deemed to be a form of organic fertiliser and not, in fact, waste.

The Court found that the slurry was indeed waste and stated that it is impossible to hold that the pig slurry being produced by the applicant in industrial quantities is not waste within the meaning of Article 1 of Council Directive 75/442/EEC as amended by Council Directive 91/156/EEC. It ruled that the sale or gift to other farmers of this material constitutes the disposal of waste within the meaning of s.

3 of the Environmental Protection Agency Act, 1992 as amended and that it is an emission. The applicant thus requires a licence from the respondent Justice Charleton held that: 1) The fact that special precautions have to be taken when pig slurry is used as a fertiliser. This should mean that the substance requires to be discarded 2) The reuse was not certain or lawful 3) That regulations (for good agricultural practice) are required for it to be reused.

That decision was subsequently appealed to the Supreme Court and the ECJ ECLI:EU:C:2013:627 (copy attached) who made the following ruling:

"In light of all the foregoing, the answer to the first part of Question 1 is that the first subparagraph of Article 1(a) of Directive 75/442 must be interpreted as meaning that slurry produced in an intensive pig farm and stored pending delivery to farmers in order to be used by them as fertiliser on their land constitutes not 'waste' within the meaning of that provision but a by-product when that producer intends to market the slurry on terms economically advantageous to himself in a subsequent process, provided that such reuse is not a mere possibility but a certainty, without any further processing prior to reuse and as part of the continuing process of production. It is for the national courts to determine, taking account of all the relevant circumstances obtaining in the situations before them, whether those various criteria are satisfied".

1. *The first subparagraph of Article 1(a) of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Commission Decision 96/350/EC of 24 May 1996, must be interpreted as meaning that slurry produced in an intensive pig farm and stored pending delivery to farmers in order to be used by them as fertiliser on their land constitutes not 'waste' within the meaning of that provision but a by-product when that producer intends to market the slurry on terms economically advantageous to himself in a subsequent process, provided that such reuse is not a mere possibility but a certainty, without any further processing prior to reuse and as part of the continuing process of production. It is for the national courts to determine, taking account of all the relevant circumstances obtaining in the situations before them, whether those various criteria are satisfied.*

8

The decision of the Planning Authority is contrary to that ECJ judgement.

Those judgements were then superseded by important EU legislation which was transposed into Irish legislation for the purposes of regulating the management and handling of animal manure as an Animal By-Product namely:

1. European Union (Animal By-Products Regulations 2014 [\(SI No 187 of 2014\)](#))
2. S.I. No 113 of 2022, European Union (Good Agricultural Practice for the Protection of Waters) Regulations 2022, (as amended) also known collectively as the "Nitrates Regulations".

European Union (Animal By-Products Regulations 2014 [\(SI No 187 of 2014\)](#)
A copy of the Animal By-Products Regulations 2014 is attached to this appeal.

The Animal By-Products Regulations state:

“Disposal and use of animal by-products — authorisations

3. (1) A person shall not, unless the person is authorised, registered or approved under these Regulations, possess, transport, handle, use or dispose of an animal by-product comprising of—

(a) Category 1 material, except in accordance with Article 12 of the Council Regulation,

(b) Category 2 material, except in accordance with Article 13 of the Council Regulation, or

(c) Category 3 material, except in accordance with Article 14 of the Council Regulation.

(2) A person who contravenes paragraph (1) commits an offence and is liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 3 months, or to both, or

(b) on conviction on indictment, to a fine not exceeding €250,000 or imprisonment for a term not exceeding 12 months, or to both.

Poultry manure is classed as a Category 2 material.

The Animal By-Products Regulations strictly control the Transport of Manure under Article 4(2):

“Transport of manure 4. (1) The Minister may authorise the transport of manure between two points located on the same farm or between farms in accordance with the second paragraph of Article 21(2) of the Council Regulation and Section 4, Chapter I of Annex VIII and point 6(b) of Chapter II of Annex VIII to the Commission Regulation. (2) A person who transports manure in the circumstances referred to in paragraph (1) without authorisation under this Regulation commits an offence and is liable on summary conviction to a class A fine”.

S.I. No 113 of 2022, European Union (Good Agricultural Practice for the Protection of Waters) Regulations 2022, (as amended) also known collectively as the “Nitrates Regulations”.

This is the Fifth Nitrates Regulations to be enacted in Ireland the purpose of which is to “to give effect to Ireland’s Nitrates Action Programme pursuant to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural source”.

A copy of these Regulations is attached to this appeal for convenience.

The definitions in these Regulations are critically important in the determination of this appeal particularly regarding the management of animal manure as an organic fertiliser.

“agriculture” includes the breeding, keeping and sale of livestock (including cattle, horses, pigs, poultry, sheep and any creature kept for the production of food, wool, skins or fur), the making and storage of silage, the cultivation of land, and the growing of crops (including forestry and horticultural crops),

“application to land”, in relation to fertiliser, means the addition of fertiliser to land whether by spreading on the surface of the land, injection into the land, 6 [113] placing below the surface of the land or mixing with the surface layers of the land but does not include the direct deposition of manure to land by animals;

“chemical fertiliser” means any fertiliser that is manufactured by an industrial process;

“livestock manure” means waste products excreted by livestock or a mixture of litter and waste products excreted by livestock, even in processed for mi.

“organic fertiliser” means any fertiliser other than that manufactured by an industrial process and includes livestock manure, dungstead manure, farmyard manure, slurry, soiled water, silage effluent, spent mushroom compost, nonfarm organic substances such as sewage sludge, industrial by-products and sludges and residues from fish farms;

“slurry” includes— (a) excreta produced by livestock while in a building or yard, and (b) a mixture of such excreta with rainwater, washings or other extraneous material or any combination of these, of a consistency that allows it to be pumped or discharged by gravity at any stage in the handling process but does not include soiled water;

“soiled water” has the meaning assigned by sub-article (2),

PART 2 FARMYARD MANAGEMENT

“Minimisation of soiled water .

(1) An occupier of a holding shall take all such steps, as far as is practicable for the purposes of minimising the amount of soiled water produced on the holding.

(2) Without prejudice to the generality of sub-article

(1), an occupier of a holding shall ensure, as far as is practicable, that—

(a) (b) clean water from roofs and unsoiled paved areas and that flowing from higher ground on to the farmyard is diverted away from soiled yard areas and prevented from entering storage facilities for livestock manure and other organic fertilisers, soiled water, and effluents from dungsteads, farmyard manure pits, silage pits or silage clamps and rainwater gutters and

downpipes where required for the purposes of paragraph (a) are maintained in good working condition”.

“Provision and management of storage facilities

7. (1) *Storage facilities for livestock manure and other organic fertilisers, soiled water and effluents from dungsteeds, farmyard manure pits, silage pits or silage clamps shall be maintained free of structural defect and be maintained and managed in such manner as is necessary to prevent run-off or seepage, directly or indirectly, into groundwater or surface water, of such substances”.*

“General obligations as to capacity of storage facilities

8. (1) *The capacity of storage facilities for livestock manure and other organic fertilisers, soiled water and effluents from dungsteeds, farmyard manure pits, silage pits or silage clamps on a holding shall be adequate to provide for the storage of all such substances as are likely to require storage on the holding for such period as may be necessary as to ensure compliance with these Regulations and the avoidance of water pollution.*

(2) *For the purposes of sub-article (1) an occupier shall ensure to have the storage capacity likely to be required during periods of adverse weather conditions when, due to extended periods of wet weather, frozen ground or otherwise, the application to land of livestock manure or soiled water is precluded”.*

“Capacity of storage facilities for poultry manure

11. (1) *Without prejudice to the generality of Article 8, the capacity of facilities for the storage on a holding of livestock manure produced by poultry shall, subject to sub-article (2) and Article 14, equal or exceed the capacity required to store all such livestock manure produced on the holding during a period of 26 weeks.*

11

Article 16 states:

“Duty of occupier in relation to nutrient management 16. (1) An occupier of a holding shall take as far as is practicable all such steps for the purposes of preventing the application to land of fertilisers in excess of crop requirement on the holding”.

“Requirements as to manner of application of fertilisers, soiled water etc

18. (1) (a) *Livestock manure, other organic fertilisers, effluents, soiled water and chemical fertilisers shall be applied to land in as accurate and uniform a manner as is practically possible.*

(b) *Low emission slurry spreading equipment must be used for the*

- i. *170 kg nitrogen per hectare from grazing livestock manure or above prior to export of livestock manure from the holding.*
- ii. *150 kg nitrogen per hectare from grazing livestock manure or above prior to export of livestock manure from the holding from 1st January 2023.*

- iii. 130 kg nitrogen per hectare from grazing livestock manure or above prior to export of livestock manure from the holding from 1st January 2024.
- iv. 100 kg nitrogen per hectare from grazing livestock manure or above prior to export of livestock manure from the holding from 1st January 2025.
- v. slurry produced by pigs on any holding from 1st January 2023.

From 1st January 2023, low emission equipment shall be used to apply livestock manure to arable land or the livestock manure shall be incorporated within 24 hours.

(2) Organic and chemical fertilisers or soiled water shall not be applied to land in any of the following circumstances—

- (a) the land is waterlogged;
- (b) the land is flooded or likely to flood;
- (c) the land is snow-covered or frozen;
- (d) heavy rain is forecast within 48 hours, or
- (e) the ground slopes steeply and there is a risk of water pollution having regard to factors such as surface runoff pathways, the presence of land drains, the absence of hedgerows to mitigate surface flow, soil condition and ground cover.

(3) A person shall, for the purposes of sub-article (2)(d), have regard to weather forecasts issued by Met Éireann.

(4) Organic fertilisers or soiled water shall not be applied to land—

- (a) by use of an umbilical system with an upward-facing splashplate,
- (b)
- (c) by use of a tanker with an upward-facing splashplate, by use of a sludge irrigator mounted on a tanker, or
- (d) from a road or passageway adjacent to the land irrespective of whether or not the road or passageway is within or outside the curtilage of the holding”.

Article 23 sets out the requirements in respect of the Keeping of Records:

“23. (1) Records shall be maintained for each holding which shall indicate—

- (a) total area of the holding,
- (b) eligible area of the holding,
- (c) cropping regimes and their individual areas,
- (d) livestock numbers and type,
- (e) an estimation of the annual fertiliser requirement for the holding and a copy of any Nutrient Management Plan prepared in relation to the holding,
- (f) quantities and types of chemical fertilisers moved on to or off the holding, including opening stock, records of purchase and closing stock,
- (g) livestock manure and other organic fertilisers moved on to or off the holding including quantities, type, dates and details of exporters and

importers, as the case may be, in a format specified by the Minister for Agriculture, Food and the Marine,

(h) the results of any soil tests carried out in relation to the holding,

(i) the nature and capacity of facilities on the holding for the storage of livestock manure and other organic fertilisers, soiled water and effluents from dungsteeds, farmyard manure pits, silage pits or silage clamps, including an assessment of compliance with Articles 9 to 14,

(k) the quantities and types of concentrated feedstuff fed to grazing livestock on the holding,

(l) and the location of any abstraction point of water used for human consumption from any surface waters, borehole, spring or well.

(2) Where fertiliser is used on a holding and a certificate of the type mentioned in Article 15 or 20 was issued in relation to that fertiliser in accordance with Article 32, a copy of the certificate shall be retained and be available for inspection on the holding for a period of not less than five years from the expiry of validity of the certificate”.

Article 26 sets out the Offences and related matters in respect of non-compliance with legislation:

“26. (1) A person who contravenes a provision of Parts 2 to 5 and Schedule 5 of these Regulations, excluding Article 17(5), (6), (7), (10) and (11), is guilty of an offence and shall be liable—

(a) on summary conviction to a Class A fine or to imprisonment for a term not exceeding 3 months or both or,

(b) on conviction on indictment to a fine not exceeding €500,000 or to imprisonment for a term not exceeding one year or to both such fine and such imprisonment.

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The responsibility of the Local Authorities is set out below:

“Local authorities

30. (1) A local authority shall carry out, or cause to be carried out, such monitoring of surface waters and groundwater at selected measuring points within its functional area as makes it possible to establish the extent of pollution in the waters from agricultural sources and to determine trends in the occurrence and extent of such pollution.

(2) A local authority shall carry out or cause to be carried out such inspections of farm holdings as is necessary for the purposes of these Regulations and shall aim to co-ordinate its inspection activities with inspections carried out by other public authorities.

(3) For the purposes of sub-article (2) a local authority shall aim to develop co-ordination arrangements with other public authorities with a view to promoting consistency of approach in inspection procedures and administrative efficiencies between public authorities and to avoid any unnecessary duplication of administrative procedures and shall have regard

to any inspection protocol which may be developed by the Minister, following consultation with the Minister for Agriculture, Food and the Marine.

(4) A local authority shall, in the exercise of its functions for the purposes of these Regulations—

(a) consult to such extent as it considers appropriate with the Minister, the Minister for Agriculture, Food and the Marine, the Agency, Irish Water and such other persons as it considers appropriate, and

(b) have full regard to any recommendations made, and comply with any direction given, to the authority by the Agency in accordance with Article 29.

(5) A local authority shall follow any protocol established by the Minister for Agriculture, Food and the Marine and such other persons as it considers appropriate for the purposes of these Regulations where non-compliance has been detected.

(6) A local authority shall maintain a register of all prior investigations carried out by the local authority itself or by Irish Water within its jurisdiction, and distances specified, for the purposes of Article 17”.

Article 31 is also relevant insofar as the sharing of information by the Local Authority, the EPA and DAFM shall not be a breach of Data Protection:

“31. The provision of information by a local authority, the Agency or the Minister for Agriculture, Food and the Marine in accordance with Article 27, 29 or 30 of these Regulations shall not be a breach of the Data Protection Acts, 1988, 2003 and 2018.”

8.0 Planning Policy

This section examines the proposed development in the context of National, Regional and County Development Plan policies and objectives:

8.1 Foodwise 2025

“Agri-food is Ireland’s oldest and largest indigenous industry, deeply embedded in the landscape, history and personality of the country. It encompasses everything from primary agriculture to food and beverage production, from fisheries and fish processing to forestry and forestry outputs. Its strategic importance to the Irish economy, its roots in local communities and its strengthening global reach (the industry provides quality, safe and nutritious food to consumers in at least 175 countries around the world) make it a sector unlike any other. A renewed focus on export growth, combined with a longstanding commitment to excellence, have, in recent years, created a host of new opportunities for established industry players as well as emerging entrepreneurs. With the agri-food sector now recognised as one where ambition and investment are rewarded, Food Wise 2025 sets out the practical ways in which aspirations for growth can be made tangible and the sector supported as it strives for new levels of success in the decade ahead

Agri-food is embedded in local communities across Ireland in ways that no other industry can match. It is the main economic driver in many rural areas and, in terms of direct and indirect employment and wealth creation, its impact across the country is unparalleled. Its standing as Ireland’s largest indigenous industry is more than a question of economic ownership. The agri-food sector uses more domestic inputs than any other sector of the economy and, as farmers, fishermen, forest owners and food businesses supply their goods and services, their actions add to the common good in often underappreciated ways. They are custodians of Ireland’s natural landscapes and its environmental riches, while their support for local community activities underwrite Ireland’s social and cultural wellbeing in countless ways”.

This established poultry farm is an essential supplier of eggs to the retail and commercial sector in Ireland. They supply 2,500,000 eggs per week or 130,000,000 eggs per annum. They currently employ 40 people locally and the indirect employment associated with this farming enterprise should not be understated. Their contribution to providing safe and nutritious food to consumers is reflected in their Bord Bia Egg Quality Assurance Scheme.

This enterprise is a well-established indigenous farming operation which should be supported and facilitated to expand as required in line with environmental standards. A site inspection and inspection of their existing farm and egg processing plant will show their commitment to environmental standards and quality in egg production as well as a strong commitment to animal welfare.

“Sustainability Food Wise 2025 recognises that a significant increase in food production cannot be considered in isolation from its environmental impact, in particular regarding concerns associated with the depletion of natural resources and the potential impact on climate change. To address this, future food production systems must be as focused on managing and sustaining our natural resources as they are on increasing production. Making the right choices now will ensure that Ireland is well positioned to deliver sustainable growth far into the future”.

The applicants' commitment to sustainable farming is reflected in their existing free range egg poultry house which is an excellent model of the circular economy. The hens are kept in a free-range house, which has solar generated electricity, and the birds have access to the outdoors. The animal manure which is collected from the barn is then sold to local customer farmers who need a supply of animal manure to grow their cereals or for their grassland. The cereals which are grown locally are then supplied to the Irish Animal Feed Industry / Local Feed mills, processed and used to feed Irish Poultry (such as the applicant's hens) and other Irish livestock

“Environmental protection and economic competitiveness are equal and complementary: one will not be achieved at the expense of the other”.

The environmental controls associated with the operation of a poultry farm of this scale are considerable and are essential. A site inspection will show the high environmental standards being achieved on this farm and in the existing Bellview egg grading premises. The protection of the environment is ensured through the provisions of the EIAR and the EPA licencing mechanism.

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“Delivering growth

Food Wise 2025 identifies a number of areas that require strategic action if the industry is to capitalise on, deliver and maximise the growth opportunities in the years to 2025. In particular, it highlights the need for:

- *the attraction, retention, and development of talent right along the supply chain, supported by training that will foster the necessary technical and entrepreneurial skill sets;*
- *a greater focus on market development that is consumer-insight driven, to ensure Irish products are targeted at the right markets, and the right segments within those markets. These consumer insights will help the sector understand where its opportunities lie in emerging market opportunities, allowing businesses to focus on exports that deliver the best returns;*
- *productivity improvements that are driven by innovation and the adoption of the latest technologies; and*
- *value addition to sustainably produced primary materials, which will support local employment growth, ensure the viability of local producers and protect the environment and natural resources”*

The applicant has grown this poultry business from scratch in 1978 when he set up a small poultry farm at Bellview. He has invested considerably over the years in enhancing the environmental quality of his farm and in creating a sustainable business which employs 40 local people.

A site inspection of the existing poultry farm on the landholding will clearly show the commitment high environmental standards and animal welfare.

A site visit of his Bellview egg processing plant will show the commitment to staff welfare as well as animal welfare. Significant investment has been made in innovation and technology on site, the installation of high-quality machinery on site to protect staff from heavy lifting or repetitive strain injury. The An Bord Pleanála inspector is invited to inspect existing operations on site and at Bellview egg processing facility.

The proposed development is essential to meet the demand of the local economy for eggs. Our client advises that the decision to refuse permission in this instance has resulted in the loss of a contract with BWG Foods (Spar, Mace, Londis, XL Stores and food service), they are unable to fulfil contractual demands of their main customer and will result in the need for eggs to be imported from the UK and Europe to meet the demand in Ireland. This is the direct opposite of the objectives of Food Wise 2025 and is contrary to the principles of sustainability.

“Food Wise 2025 stresses the need for ongoing improvements at producer and processing levels. At producer level, it should be clear that future profitability and viability will be driven by productivity improvements through the adoption and application of cutting-edge sustainable processes and technologies. Therefore, investment in the development of new technologies that create more sustainable production systems must be a cornerstone of achieving future growth at primary production level. In addition, the requirement for economies of scale at producer level will need to be addressed. This will require measures to support land mobility and consolidation in agriculture, as well as access to additional raw material in the seafood sector”.

The applicant has a proven track record in the delivery of high-quality environmental standards, sustainable processes and technology at his farm and egg processing plant. This proposed development is being sought in response to the significant demand for eggs in Ireland. Foodwise 2025 stresses the need for improvements in the producer sector. The applicant is endeavouring to achieve these improvements and an expansion in the scale of operations is necessary to achieve these improvements. The decision of the Planning Authority in this instance is contrary to National policy as set out in Food Wise 2025.

On the basis of available data, the Committee believes that the following growth projections are achievable by 2025:

- Increasing the value of agri-food exports by 85% to €19 billion.
- Increasing the value added in the agri-food, fisheries and wood products sector by 70% to in excess of €13 billion.
- Increasing the value of Primary Production by 65% to almost €10 billion.
- The creation of an additional 23,000 direct jobs in the agri-food sector all along the supply chain from primary production to high value added product development.

Growth
projections for
2025

The decision of the Planning Authority to refuse permission in this instance is contrary to the above National policy on increasing the value of agri-food sector and the creation of employment. The decision is based on a failure of the Planning Authority to understand and acknowledge the existing legislative mechanisms that are already in place to ensure the regulation of the application of animal manure as an animal by-product / fertiliser / soil conditioner.

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"Eggs sector

*The egg sector accounts for about €49m of agricultural output. There are about 250 egg producers and about 800 people employed in the sector including packing and ancillary activities. **About 85% of eggs consumed are home produced. Egg producers have shown themselves to be efficient and progressive.** Irish eggs enjoy an excellent Salmonella free status and most producers are participants in the Bord Bia Egg Quality Assurance Scheme which requires meeting strenuous standards on quality and traceability.*

Poultry Food Wise 2025 Sectoral Briefs 82 Actions:

Improved animal health, welfare and bio-security awareness and implementation through on-farm investment and training Investment in poultry production facilities particularly energy efficiency to reduce input costs Exploit the opportunities afforded by country of origin labelling Consideration of an 'industry insurance fund' to assist producers and processors in the event of disease outbreak Consideration of development of 'chicken complexes' to allow the industry to operate on a more economic and efficient scale with greater integration and collaboration Explore opportunities for the increased use of quality assured produce in food service Collaboration with processors to build on commercial opportunities and drive returns from fifth quarter To implement the recommendations arising from

whole of the supply chain consultation process to address the issue of Campylobacter at farm, processing and distribution levels Provide funding under the Rural Development Programme to up-grade existing buildings and funding to support the construction of new housing and ensure animal welfare and safety Examine the extension of country of origin labelling to loose products Invest and strengthen the position of the Quality Mark on the domestic market Incorporate sustainability criteria under the Origin Green programme into the Poultry Products Quality Assurance Scheme (PPQAS) Roll out a carbon foot printing assessment and improvement programme for poultry”

The above National Policy shows the strong commitment to ensuring the supply of eggs to the local economy. A site inspection will show that the applicant is very progressive in advancing agri-technologies on the landholding and at the egg processing plant at Bellview.

The significant emphasis on animal health, welfare and bio-security is obvious from a site inspection. The awareness of energy efficiency is also clear on site through the use of solar panels for energy production on site. The applicant is already engaged in a programme of upgrading facilities at Bellview poultry house at Carstown, Drogheda in line with current animal welfare and environmental standards for enriched caged systems to comply with supermarket and consumer requirements.

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8.2 National Planning Framework: Ireland 2040

This section examines the proposed development in the context of the National Planning Framework:

“4.2 / Enhancing our Unique Rural Settings and the Communities who live there

Rural communities and particularly those engaged in farming, operate as custodians of the landscape by undertaking agricultural land management at varying scales. However, the viability of many landholdings is such that half of farm families now depend on off-farm income, much of which is focused on urban settlements. Alternative land uses such as forestry and renewable energy related development are also becoming more prevalent”.

The applicant has a proven track record in terms of good agricultural practices and is a model example of high-quality farming and the provision of essential food for the country. Having regard to the proven record and commitments to sustainable farming practices the applicant should be supported in line with the National Planning Framework.

“National Policy Objective 21

Facilitate the development of the rural economy through supporting a sustainable and economically efficient agricultural and food sector, together with forestry, fishing and aquaculture and diversification into alternative on-

farm and off-farm activities, while at the same time noting the importance of maintaining and protecting the natural landscape and built heritage which are vital to rural tourism”.

The existing farm and egg plant are significant local employers in this rural area and the EIAR shows their contribution towards sustainable and economically efficient agriculture and food sector. Their ability to modernise and respond to customer and increased welfare improvements shows how adaptable they are and how they are committed to being responsible farmers.

“4.1 | Strengthening Ireland’s Rural Fabric

Rural areas, including Gaeltacht regions and Ireland’s inhabited offshore islands, hold much of Ireland’s natural resources, biodiversity, environmental qualities and landscape and contribute in a unique way to Ireland’s culture. Rural areas are also a focus for living and working and for recreational activities. The agrifood and tourism sectors, which are particularly important for rural economies, employ in excess of 363,000 people (18% of the national workforce)”.

Having regard to the location of the proposed development on an existing farm and having regard to the nature of the proposal which seeks to expand this existing farm enterprise it should be supported in line with the above policies of supporting agri-food and rural economies.

“4.5 | Open Countryside

The open countryside is and should continue to be a living and lived in landscape focusing on the requirements of rural economies and rural communities, based on agriculture, forestry, tourism and rural enterprise, while at the same time avoiding ribbon and over-spill development from urban areas and protecting environmental qualities.”

The proposed expansion is essential for a number of reasons: 1. To ensure the consistent supply of eggs to the Ireland and 2. To ensure the continued viability of the egg processing plant and 3. To improve animal welfare conditions on the farm providing for improved space for the animals.

“4.6 | Planning and Investment to Support Job Creation

Ireland’s rural resources are some of our biggest assets and through the development of the agriculture, food, forestry, tourism and renewable energy sectors, the sustainable harnessing of these assets will not only sustain local employment but also contribute to driving the national economy.

Agriculture has traditionally been the most important contributor to rural economies. While it is now providing less direct employment, it remains important as a significant source of income and both direct and indirect employment. However, it must adapt to the challenges posed by modernisation, restructuring, market development and the

increasing importance of environmental issues. The agri-food sector is one of Ireland's most important indigenous manufacturing industries. Much of the economic benefits in the agri-food sector are dispersed throughout the country making it particularly vital to rural areas and the sector is playing a significant role in economic development. The continued development of the agri-food sector is to be supported through the implementation of Food Wise 2025 and initiatives to develop the renewable energy sector and financial services in rural Ireland. In addition, there is significant potential in the areas of strategic energy resources that are agri – based, particularly in the areas of bio-energy, bio-technology, anaerobic digestion and combined heat and power. To avoid competition between various land use options, tailored land management policies may be required to minimise unwarranted competition between land use categories and may prove to be cost effective in dealing with climate change”.

The above policy clearly acknowledges the importance of supporting agriculture as a resource and sustaining local employment. The applicant's business makes a significant contribution to the local economy in terms of employment, in direct employment, rates and supplying national and local retailers as well as supplying eggs to other food industries.

A site inspection of their existing operations will show their commitment to modernisation, restructuring and market development. This application is in direct response to the demand for these types of eggs. It is essential that our indigenous egg industry is sustained and should not be replaced by imports.

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“4.8 | Investment Coordination

At EU level, the Common Agricultural Policy (CAP) has a significant role to play in the development and maintenance of rural Ireland especially in the delivery of public goods such as the protection of water quality, preservation of biodiversity and the achievement of climate change objectives, as well as in the continued community led local development approach to rural development via the LEADER programme

National Policy Objective 24

Working together with the Department of Rural and Community Development and the Department of Agriculture, Food and the Marine, establish a mechanism to co-ordinate structures for funding rural development that can align with Ireland 2040 and other national strategies.

8.2 | Resource Efficiency and Transition to a Low Carbon Economy

Ireland has experienced a relatively high rate of land use change since the early 1990s. Recent population growth has led to an increase in the extent of dispersed residential and commercial development as well as

new infrastructure, which have resulted in pressure on agricultural land, designated nature conservation areas and water quality”.

8.3 Louth County Development Plan Policy 2021-2027:

This section examines the proposed development in the context of the Louth County Development Plan 2021-2027:

Agricultural Enterprises and Buildings Development Management Guidelines – Section 13.13.11.7

As farming practices evolve and continue to modernise, the design, scale and layout of farm buildings and farmyards has changed. Depending on the farming enterprise e.g. beef, dairying, pigs, poultry, organic or tillage, the type of housing, livestock numbers and storage facilities will vary.

- *Different farming types and enterprises will result in the criteria for assessing applications focusing on different issues such as visual impact, traffic, residential amenity and public health. Each application will be assessed on its individual merit and will take account of the ability of the local landscape to absorb the development, the capacity of the local infrastructure including roads, water and waste water infrastructure to accommodate any additional loading and traffic movements, and any possible impacts on the amenities of residents living in the vicinity of the development.*

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Having inspected the site and assessed the proposed development we are satisfied that the proposed structure is well located and sited to avoid any visual impact on the surrounding environment. The height of the proposed structure and the materials used would ensure that it would be absorbed into the local landscape. The separation distance between the proposed building and residential properties is sufficient to ensure that their residential amenity is protected. The existing road network is capable of accommodating the proposed structure and would not give rise to any major increase in traffic movements. There have been no objections by local residents to any of the last three planning applications.

- *To assist in the assessment of planning applications for agricultural buildings and in particular new farm enterprises on an undeveloped landholding, a business plan setting out the requirement for the development will be required. This shall include full details of the land holding, livestock number and herd number (if applicable).*

The total landholding in the ownership of the applicant measures 68 hectares. The farm currently houses 60,000 free range hens and the proposed development intends to house 64,000 barn hens.

- *New buildings shall be designed to maximise efficiency, address any pollution control requirements (e.g. collect soiled water and farm waste*

management), provide additional feed and machinery storage areas, and improve livestock welfare.

The proposed development is designed to the highest agricultural standards and is intended to maximise efficiency. The proposed development is designed to meet current standards in terms of animal welfare. Unlike dairy or intensive piggeries the animal manure is largely dry matter and does not contain high volumes of liquid, it does not need to be agitated and does not need to be collected or stored in underground slatted tanks. The only soiled water associated with the proposed poultry unit is from washing out the facility at the end of each 14 month cycle. The washings are collected via an underground concrete storage tank designed in accordance with Department of Agriculture standards.

- *It is acknowledged that the scale of agricultural buildings are such that they will be visible from surrounding roads and public viewpoints. However, new buildings shall be positioned and designed so they are as unobtrusive as possible.*

The proposed development is ideally positioned so that it will not be visible from the public road and will be well screened from public view due to the topography of the landscape and the mature trees as well as the distance from the road approximately 700metres.

- *When designing a building particular attention shall be given to the sensitivity of the landscape in which it will be located. If the scale and height of the building is particularly large, the reasons for a building of the particular size shall be set out. Wherever possible, new buildings shall be clustered with existing buildings in the yard.*

The clustering of agricultural structures is not appropriate in this instance due to need to provide for sufficient space around the existing free range hen house facility. The proposed development is to be sited to take advantage of the existing farm road and is of a scale appropriate to the rural environment.

The height of the proposed structure is 8.7m and is to be constructed at the 61.00 contour requiring minimal excavation. The orientation of the building is such that it will not be visible from the public road.

- *Finishes to buildings will normally include rendered/block walls and dark coloured panels to the side and roof of buildings such as dark green, red, or grey. Landscaping can assist in the integration of new buildings into the landscape. Any planting shall include native species only.*

The proposed development is to be finished in green modular / precast concrete panels typical of agricultural finishes.

- *Details of how any effluent and run off associated with the development will be collected and stored within the farmyard shall be provided*

Animal manure will be collected and conveyed directly into the manure store from the proposed poultry shed via a conveyor system. The manure storage building has a capacity for 1100m³ (in addition to the 1,100 tonnes already provided under the previously approved development and will have capacity for well in excess of 26 weeks required under SI 113 of 2022.

The protection of surface and groundwaters is ensured through the appropriate separation of clean and soiled waters and the provision of adequate storage facilities.

In line with the requirements of the EPA and SI 113 of 2022 all clean uncontaminated surface water from roof and yard space will be collected via the proposed storm water attenuation system.

All washings water and soiled water is collected and stored in soiled water storage facilities.

The protection of surface water quality in the area is ensured through the EPA licensing system which requires monitoring of storm water run-off from the site on a weekly basis. This continuous monitoring, in addition to the mitigation measures proposed in the EIA will ensure that surface water quality is protected from any potential adverse impacts.

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ENV 2 To pursue the precautionary and the polluter pays principles in relation to permitted development in the County.

The applicant as well as all customer farmers are required by law to comply with SI 113 of 2022, as amended or any subsequent amendment to/derogation from same. This rigorous system of recording and monitoring ensures that there should be no pollution arising from these farming practices and on no adverse impact on water quality arising.

ENV 3 To seek to achieve European and National standards in relation to air, noise and water quality in the County and apply BAT standard (Best Available Techniques)

The proposed development is designed to Best Available Techniques and a site inspection will show that this farm operates to the highest standards. We are satisfied that there are no issues in respect of noise, air and water quality arising from existing operations and the mitigation measures proposed in the EIAR should ensure the proposed development would not have any significant impact on the environment.

ENV 6 To implement the Louth County Council Noise Action Plan 2013-2018 in order to avoid, prevent and reduce the harmful effects, including annoyance, due to environmental noise exposure.

Having regard to the location of the proposed development and having regard to the nature of the proposed development there will be no risk of environmental noise exposure arising from same.

The automatic feeding and ventilation systems within the poultry houses operate on a 24-hour basis to ensure that the animals are kept fed and comfortable.

A detailed Noise impact assessment formed part of the EIAR and has shown that the proposed development would not give rise to any noise impact.

ENV 21 To assess agricultural developments and associated agricultural waste matters within the County in accordance with the European Union (Good Agricultural Practice for Protection of Waters) Regulations 2017 for the purpose of preventing or eliminating the entry of polluting matters to waters.

This has been replaced by the European Union (Good Agricultural Practice for Protection of Waters) Regulations 2022 (SI. 113 of 2022) a copy of which is attached.

The proposed development has been designed to comply fully with the requirements of SI 113 of 2022 including the following requirements:

“(2) Without prejudice to the generality of sub-article (1), an occupier of a holding shall ensure, as far as is practicable, that— (a) clean water from roofs and unsoiled paved areas and that flowing from higher ground on to the farmyard is diverted away from soiled yard areas and prevented from entering storage facilities for livestock manure and other organic fertilisers, soiled water, and effluents from dungsteeds, farmyard manure pits, silage pits or silage clamps and (b) rainwater gutters and downpipes where required for the purposes of paragraph (a) are maintained in good working condition”.

“Collection and holding of certain substances 6. (1) Livestock manure and other organic fertilisers, soiled water and effluents from dungsteeds, farmyard manure pits, silage pits or silage clamps arising or produced in a building or yard on a holding shall, prior to its application to land or other treatment, be collected and held in a manner that prevents the run-off or seepage, directly or indirectly, into groundwaters or surface waters of such substances”.

General obligations as to capacity of storage facilities

“(2) For the purposes of sub-article (1) an occupier shall ensure to have the storage capacity likely to be required during periods of adverse weather conditions when, due to extended periods of wet weather, frozen ground or otherwise, the application to land of livestock manure or soiled water is precluded”

Capacity of storage facilities for poultry manure

11. (1) Without prejudice to the generality of Article 8, the capacity of facilities for the storage on a holding of livestock manure produced by poultry shall, subject to sub-article (2) and Article 14, equal or exceed the capacity required to store all such livestock manure produced on the holding during a period of 26 weeks.

(2) The period specified in Schedule 3 shall, in substitution for that prescribed by sub-article (1), apply in relation to livestock manure produced by poultry on a holding where all the following conditions are met—

- (a) tillage or grassland farming is carried out on the holding,
- (b) the number of poultry places on the holding does not exceed 2,000 places, and
- (c) the holding comprises a sufficient area of land for the application in accordance with these Regulations of all livestock manure produced on the holding.

An examination of the EIA and application documents confirms that the proposed development has sufficient capacity to cater in excess of 26 weeks for the holding of poultry manure.

The duties of the landowner in respect of nutrient management are also set out in SI 113 of 2022 which states inter alia as follows:

“16. (1) An occupier of a holding shall take as far as is practicable all such steps for the purposes of preventing the application to land of fertilisers in excess of crop requirement on the holding.

Contrary to the assertions of the Planning Authority, SI 113 of 2022 requires that the responsibility in respect of the application of fertiliser lies with the purchase farmer and not with the supplier of fertiliser. The legislation clearly sets out the responsibilities in terms of the application of organic fertiliser for the protection of waters and the prevention of water pollution. These legal requirements are outlined in the EIAR and should be considered in the carrying out of an Environmental Impact Assessment. We are satisfied that such provisions enable the carrying out of an Environmental Impact Assessment:

“Distances from a water body and other issues 17.

(1) Chemical fertiliser shall not be applied to land within 2m of any surface waters.

(2) Organic fertiliser or soiled water shall not be applied to land within— (a) 200m of the abstraction point of any surface waters, borehole, spring or well used for the abstraction of water for human consumption in a water scheme supplying 100m³ or more of water per day or serving 500 or more persons,

(b) 100m of the abstraction point (other than an abstraction point specified in paragraph

(a)) of any surface waters, borehole, spring or well used for the abstraction of water for human consumption in a water scheme supplying 10m³ or more of water per day or serving 50 or more persons,

(c) 25m of any borehole, spring or well used for the abstraction of water for human consumption other than a borehole, spring or well specified in paragraph (a) or (b),

(d) 20m of a lake shoreline or a turlough likely to flood, (e) 15m of exposed cavernous or karstified limestone features (such as swallow-holes and collapse

features), (f) subject to sub-article (12), 5m of any surface waters (other than a lake or surface waters specified at paragraph (a) or (b)), or (g) the distance specified in sub-article 2(f) shall be increased to 10m for a period of two weeks preceding and two weeks following the periods specified in Schedule 4”.

“(20) There shall be no direct runoff of soiled water from farm roadways to waters. The occupier of a holding shall comply with any specification for farm roadways specified by the Minister for Agriculture, Food and the Marine pursuant to this requirement.

“(2) Organic and chemical fertilisers or soiled water shall not be applied to land in any of the following circumstances— (a) the land is waterlogged; (b) the land is flooded or likely to flood; (c) the land is snow-covered or frozen; (d) heavy rain is forecast within 48 hours, or (e) the ground slopes steeply and there is a risk of water pollution having regard to factors such as surface runoff pathways, the presence of land drains, the absence of hedgerows to mitigate surface flow, soil condition and ground cover. (3) A person shall, for the purposes of sub-article (2)(d), have regard to weather forecasts issued by Met Éireann. (4) Organic fertilisers or soiled water shall not be applied to land— (a) by use of an umbilical system with an upward-facing splashplate, (b) by use of a tanker with an upward-facing splashplate, (c) by use of a sludge irrigator mounted on a tanker, (d) from a road or passageway adjacent to the land irrespective of whether or not the road or passageway is within or outside the curtilage of the holding.”

All of these legal requirements formed part of the EIAR and should enable the carrying out of an Environmental Impact Assessment.

Part 5 of SI 113 of 2022 also sets out the legal requirements in respect of Keeping of Records by the Occupier. This ensures full transparency in terms of the application of organic fertiliser.

“*Keeping of records by occupier 23.*

- (1) Records shall be maintained for each holding which shall indicate—
- (a) total area of the holding, (b) eligible area of the holding,
 - (c) cropping regimes and their individual areas,
 - (d) livestock numbers and type,
 - (e) an estimation of the annual fertiliser requirement for the holding and a copy of any Nutrient Management Plan prepared in relation to the holding,
 - (f) quantities and types of chemical fertilisers moved on to or off the holding, including opening stock, records of purchase and closing stock,
 - (g) livestock manure and other organic fertilisers moved on to or off the holding including quantities, type, dates and details of exporters and importers, as the case may be, in a format specified by the Minister for Agriculture, Food and the Marine,
 - (h) the results of any soil tests carried out in relation to the holding,
 - (i) the nature and capacity of facilities on the holding for the storage of livestock manure and other organic fertilisers, soiled water and effluents from dungsteeds,

farmyard manure pits, silage pits or silage clamps, including an assessment of compliance with Articles 9 to 14,

(j) the quantities and types of concentrated feedstuff fed to grazing live-stock on the holding, and

(k) the location of any abstraction point of water used for human consumption from any surface waters, borehole, spring or well.

(2) Where fertiliser is used on a holding and a certificate of the type mentioned in Article 15 or 20 was issued in relation to that fertiliser in accordance with Article 32, a copy of the certificate shall be retained and be available for inspection on the holding for a period of not less than five years from the expiry of validity of the certificate”

Local authorities

30. (1) A local authority shall carry out, or cause to be carried out, such monitoring of surface waters and groundwater at selected measuring points within its functional area as makes it possible to establish the extent of pollution in the waters from agricultural sources and to determine trends in the occurrence and extent of such pollution. (2) A local authority shall carry out or cause to be carried out such inspections of farm holdings as is necessary for the purposes of these Regulations and shall aim to co-ordinate its inspection activities with inspections carried out by other public authorities. (3) For the purposes of sub-article (2) a local authority shall aim to develop co-ordination arrangements with other public authorities with a view to promoting consistency of approach in inspection procedures and administrative efficiencies between public authorities and to avoid any unnecessary duplication of administrative procedures and shall have regard to any inspection protocol which may be developed by the Minister, following consultation with the Minister for Agriculture, Food and the Marine. (4) A local authority shall, in the exercise of its functions for the purposes of these Regulations— (a) consult to such extent as it considers appropriate with the Minister, the Minister for Agriculture, Food and the Marine, the Agency, Irish Water and such other persons as it considers appropriate, and (b) have full regard to any recommendations made, and comply with any direction given, to the authority by the Agency in accordance with Article 29. (5) A local authority shall follow any protocol established by the Minister for furnishing a report of an inspection or inspections to the Department of Agriculture, Food and the Marine and such other persons as it considers appropriate for the purposes of these Regulations where non-compliance has been detected. (6) A local authority shall maintain a register of all prior investigations carried out by the local authority itself or by Irish Water within its jurisdiction, and distances specified, for the purposes of Article 17”

Having regard to the content of the Planner's report it is submitted that the Planning Authority are in their determination of this application acted contrary to the provisions of SI 113 of 2022 in their assertion that the application of organic fertiliser from this proposed poultry farm was not appropriate.

EE 55 To support rural entrepreneurship and rural enterprise development of an appropriate scale at suitable locations in the County.

This is a rural enterprise which started from small beginnings and now employs 40 people locally. This type of enterprise should be fully supported in this rural area in line with the policy EE 55.

EE 60 To continue to support the agricultural sector and to facilitate the development of environmentally sustainable agricultural activities.

This established poultry farm and egg plant are a high-quality rural enterprise with a proven track record in good environmentally sustainable agricultural practices should be encouraged and supported.

EE 61 To facilitate the diversification of the agricultural sector by supporting alternative farm enterprises subject to the nature and use of any enterprise being compatible with the environment in which it is located.

The proposed development would if permitted ensure a sufficient supply of eggs for the existing Belview Eggs plant.

“Entrances and Sightlines – Development Management Guidelines – Section 13.16.17

Table 13.13 sets out the minimum visibility standards for new entrances onto streets and roads where the speed limit is in excess of 60km/h and the 'Design Manual for Urban Roads and Streets' is not applicable. These are minimum standards and the Authority can request greater standards depending on the characteristic of the road, observed traffic speeds, volume and type of vehicles, etc.

These include the that the minimum visibility standards for new entrances on local roads is 75m x 4.5 metres (0.6-1.05 metres visibility requirement over ground)”

The utilisation of an existing farm entrance avoids the creation of additional entrances and therefore complies with the above requirements.

*“5.4 Louth Local Economic & Community Plan 2016 – 2022 (LECP)
Under the Local Government Act 2014, each Local Authority is obliged to develop a Local Economic & Community Plan (LECP). Economic Goal No 7 Agriculture, food and fisheries, is to establish Louth as a premier producer in the Agri-Farming, Food and Fisheries sector.*

The proposed development which provides for the expansion of an existing high quality poultry facility accords with the above policy of establishing Louth as a “premier producer in the agri-farming, food and fisheries sector”.

8.4 Boyne Valley Food Development Strategy 2024-2028

The following sections from the recently adopted Boyne Valley Strategy are relevant:

Opening Statements

Boyne Valley is a key part of Ireland's Ancient East's strong food offering, with a rich food heritage that is reflected in the scale and quality of indigenous food and drink producers distributed across the region. Fáilte Ireland looks for every opportunity to encourage tourists to explore and stay in the region for longer, increase spend and helping to drive revenue for local businesses, which is why developing the Boyne Valley Food Development Strategy 2024 – 2028 is so important.

"Section 1 – Strategic Context

What the Plan is Addressing

Develop a producer centric approach ensuring the artisan food and drink producer network are central to the Boyne Valley food story.

Maximise the economic opportunity to sustain our artisan food and drink community.

Ensure sustainability is central to the Boyne Valley food story and how food producers work with the local food service and hospitality industry"

Our Commitment to Sustainability

Our food strategy is based on our collective approach to sustainability. Our vision is for the Boyne Valley to be recognised as a leading region for food sustainability and the role of food in contributing to our societal, environmental and economic objectives. To achieve our sustainability goals, this strategy commits us to:

- 1. Reduce our Boyne Valley food miles by encouraging people to buy local and seasonal produce to support our local growers and producers.*
- 2. Contribute to our local economies and ensure sustainable livelihoods for our local growers and producers.*
- 3. Showcase our local produce providing consumers with a direct connection to the farmers and producers responsible for producing quality Boyne Valley food produce.*
- 4. Develop Boyne Valley food experiences that enhance people's relationships with food by connecting them with nature and the regeneration of our agriculture, food systems, and food production".*

Section 2 – Discover Boyne Valley Flavours

"Strategic Objectives

3. Sustainable Food Economy – Linking producers with food service to foster more sustainable local economies

3. Key Areas of Focus – Sustainable Food Economy

Develop our profile for food sustainability by having higher levels of local produce featured on local menus

Create the systems and structures to link our producers with our food service network.

Create the platforms to showcase our producers and their products.

Deliver Discover Boyne Valley Flavours initiatives that will generate demand for our producers' products.

Section 3 - Food in Tourism

Strategic Focus

Place – Communities of Food

Introducing visitors to our food communities across the Boyne Valley

Producers – Boyne Valley Producers

Placing Boyne Valley producers at the heart of the Boyne Valley food in tourism experience

Section 4 - The Centre of Food Culture, Boyne Valley

Vision- A vibrant, creative, sustainable, regenerative and interconnected food culture

Mission- To create a national centre for food and drink culture, originated in the Boyne Valley, to facilitate education, discussion, enterprise and advocacy by connecting people to their food, soil and sea.

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Values

Regeneration- Enhancing people's relationship with food by connecting them with nature and the regeneration of our agriculture, food systems and food production"

"Strategic Pillars

1. Food Culture

Celebrate and develop the food culture, in Ireland based on the relationship society has with food, soil and sea, our food heritage and wider stakeholders. □

Preserve and build on our food heritage and craftsmanship. □

Create a digital library of food heritage, craft and culture. □

Create and provide access to authentic and immersive food experiences, insight and transfer of knowledge working with the best of regional and national quality food producers.

Facilitate learning through connective experiences between consumers and food producers.

4. Enterprise

Grow our authentic Irish food culture which has a positive impact on all our stakeholders.

Increase the demand for sustainably produced local food of quality thereby increasing the economic viability of quality food producers and food businesses, through education.

Foster an entrepreneurial ethos and strengthen the conditions that enables job creation through a stronger food culture.

Strengthen rural development and employment through a stronger food culture.

Maximise our food tourism potential through the further development of and sharing of Irish food culture and heritage”.

9.0 Grounds of Appeal

The decision of the Planning Authority is unreasonable having regard the legislative background in respect of farming and also ignores the various High Court and European Court of Justice Rulings in respect of the application of animal manure.

The decision of the Planning Authority states as follows:

- 1. Due to the inadequacy of the information provided with the application, particularly in relation to land spreading areas and biosecurity, climate change, ground water, surface water and biodiversity, the Planning Authority is unable to carry out a comprehensive environmental impact assessment of the proposed development as required by legislation, accordingly to permit the proposed development would be contrary to the proper planning and sustainable development of the area .*
- 2. On the basis of the information provided with the application, particularly in relation to the land spreading areas, climate change, ground water, surface water and biodiversity, the Planning Authority cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on European site North-West Irish Sea SPA (No. 004236), or any other European site, in view of the site's Conservation Objectives. In such circumstances the Planning Authority is precluded from granting permission.*

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The Grounds of appeal are expanded on hereunder:

- 1. The decision of the Planning Authority is unreasonable having regard to the considerable legal controls already in place in respect of the storage, handling, management and land spreading of animal manure.**
- 2. The decision of the Planning Authority ignores the fact that the application of animal manure on third party farmlands from the existing activity, is an existing approved (by Louth Co. Co. and the E.P.A.) and authorized (by S.I. 113 of 2022) practice and that this practice utilising the existing organic manure, organic manure from other sources and /or chemical fertiliser is appropriate, sustainable, and lawfully carried out in accordance with the Good practice regulations and will take place irrespective of the decision to grant planning permission.**

3. We disagree with the Planner's report statement that "groundwater, surface water and biodiversity have not been adequately considered in relation to the potential impact on designated EU sites".
4. The most recent High Court judgement in is relevant and a copy of that judgement is attached hereto Peter Sweetman Applicant -andThe Environmental Protection Agency, Ireland and The Attorney General Respondents -and Michael Noel O'Connor [2024] IEHC 55 is relevant in the determination of this appeal, particularly having regard to the fact that this application will be the subject of an amendment to the EPA licence.
5. We refer to the High Court and Supreme Court case An Taisce - National Trust For Ireland Appellant -And - An Bord Pleanála, The Minister For Communications, Climate Action And The Environment, Ireland And The Attorney General Respondents -And Kilkenny Cheese Limited (Formerly JHOK Limited)(No.2) which is relevant to the determination of this appeal.
6. We refer to the following decision of An Bord Pleanála Ref: ABP-308942-20 in respect of the development of a Biogas Plant in Galway, which is relevant to this case.

The above Grounds of Appeal are expanded on hereunder:

1. The decision of the Planning Authority is unreasonable having regard to the considerable legal controls already in place in respect of the storage, handling, management and land spreading of animal manure.

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As outlined above there are strict legal controls in place in respect of the storage of animal manure. The legislation and case law defines animal manure as an Animal By-Product and not a waste when it is applied to land as organic fertiliser.

This stringent legislation is considered in the preparation of the EIAR and was sufficient to enable an Environmental Impact Assessment to be carried out.

It must be accepted that planning permission is not required for the application of organic fertiliser by land spreading, the custodians of these lands i.e. the customer farmers are not a party to this application and are not subject to any conditions that may be imposed as a result of same, and in any event the E.P.A. Licence that the current and proposed developments operate/will operate under takes precedence when it comes to the management to organic fertiliser (as for all environmental conditions) . The planning authority are precluded from imposing environmental conditions on an activity that required an E.P.A. Licence. This is governed under separation legislation which is set out above and in the EIAR submitted with the planning application.

It must also be accepted that the application will be the subject of an EPA licence and the application for the licence will include the same EIAR which will be

examined by the EPA as the competent authority respect of the issuing of the licence. The EPA licence will include conditions in respect of the management, handling, transport and land spreading of animal manure. As outlined in the above legislation detailed records must be kept for 5 years in respect of same.

The legal controls in respect of the application of organic fertiliser are the Nitrates Regulations and Animal By-Products Regulations and the application of same is monitored and controlled by the DAFM and Local Authorities. Section 34(13) of the Planning and Development Act applies in this instance.

The application for permission and the EIAR provides for the regulation of the poultry manure/organic fertilisers at the installation and contemplates its future use off-site, this does not mean that it regulates, authorises or assesses the future use. The planning system is required as a matter of proper planning and development to understand the other legal parameters and regulations in respect of the process that does not mean that there is a gap or a lacuna in the EIAR process to warrant a refusal in this instance. Section 34(13) of the Planning and Development Act 2000 as amended applies in this instance and the planning system must accept that there are elements to a development which are beyond the control of the planning system but which are clearly regulated under other regulations .

This has always been the case as EPA licences, the DAFM and DOEHLG regulations Animal By-Products, SI. 113 of 2022 etc.) sit hand in hand with a planning permission in the same way a Fire Cert is a requirement under a different code.

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The planner's report states "*Furthermore it is not clear how frequent the washing of the house will occur or what quantum of soiled water will be*". This is incorrect.

Page 68 of the EIAR states as follows:

"Soiled water from the proposed development where applicable, will be collected in dedicated soiled water collection tanks, located as detailed on the site plan. The houses (existing and proposed) will operate on a dry manure and dry-cleaning system, whereby the houses are blown down and only washed infrequently (not more than once per annum. Estimated soiled water production will be c. 200m³ (increasing from c. 100 m³) / annum. This soiled water will then be applied to the lands in accordance with S.I. 113 of 2022, as amended. Soiled water storage facilities (>100m³ to comply with the 26-week storage requirements of S.I. 113 of 2023 are to be provided on site as per the enclosed drawings. As acknowledged by Louth Co. Co., the European Union (Good Agricultural Practice for the protection of waters) Regulations 2022, SI 113 of 2022, deals with the requirements as to the manner of application of fertilisers, soiled waters etc. The purposes of these regulations is to protect surface and ground waters and same details all necessary measures to prevent pollution and/or to protect water quality. A map is included in Appendix 6 indicating the location of the customer farmlands .

The applicant has an additional c. 2Ha hectares of lands (in excess of that required for the range area for the hens for the existing enterprise and the site area for the proposed development) suitable for the application of soiled water. The organic N stocking rate on these lands is c. 0 kg organic N/Ha. The application of an c. 200 m³ of soiled water to these lands with an estimated Organic N content of c. 1.37 kg organic N/m³ will increase the organic N application rate on these remaining farmlands from the proposed development to c. 137 kg organic N/Ha, well inside the 170 kg organic N/Ha limit. Alternatively, this soiled water can be allocated to the customer farmers as identified in Appendix No. 1”

Page 84 of the EIAR states:

“Soiled water from the proposed development will be collected in a number of dedicated soiled water collection tanks, 4 existing and 1 proposed, total capacity c. 120 m³ or > 26 week storage capacity. This soiled water will then be applied to the lands in accordance with S.I. 113 of 2022 in accordance with the Nitrates Regulations. Normal operations on the site of the proposed development, will not cause any pollution of soil”.

Appendix 1 of the EIAR includes customer farmers’ herd numbers. (in accordance with the provisions of Section 31 of S.I. 113 of 2022

Farm	Crayval Egg Production	Herd No	Dept. Of Ag	Total N	Total P	Area	MPH	Storage (weeks)	Meal (Est.)	Chemical P	Sheep/Horses	Stage 2 Cut	Est.Max allocation 2023
1		F1251356	2023	0	0	344.91	0.0	18	N/A	0			4280
2		F1251208	2023	0	0	318.24	0.0	18	N/A	0			3981
3							#DIV/0!	18	N/A	0			0
4							#DIV/0!	18	N/A	0			0
5							#DIV/0!						0
6							#DIV/0!						0
7							#DIV/0!						0
							#REF!						0
												8241	
Estimated production									Capacity%			168	
	existing	Hens	Manure production			Weeks	Total						
	proposed	60000	0.81 / 1000 birds * 88%	52	2223.936								
		64000	0.81 / 1000 birds * 100%	52	2695.68								
							4919.616						

The Planner’s report states as “Land spreading of manure and soiled water should be included as a refusal reason”. Planning permission is not required for land spreading of manure and soiled water. It is governed under separate legislation. This application for permission does not seek to regulate or authorise the use of poultry manure on third party lands, which is already regulated under separate legislation and under the EPA licence. The decision of the Planning Authority fails to accept that the management of animal manure as an Animal By-Product is already governed under separate legislation.

The Planner’s report states “Whilst this land spreading may be required to comply with SI 113 of 2022 it has not been demonstrated in the EIAR that it does not present a potential risk to water quality”.

This statement shows a complete and utter lack of understanding of the legal requirements of SI 113 of 2022. The term “may” is incorrect as farmers are

required by law to comply with SI 113 of 2022 which is the legal mechanism put in place by the legislature for the protection of waters. Non-compliance with this legislation can result in a conviction and fine. The correct term therefore is the applicant, and any customer farmers “shall” comply with SI 113 of 2022.

The planner’s report suggests that only scant details regarding customer lands have been included in the EIAR. Section 34(13) applies in this instance as planning permission is not required for the spreading of lands and the applicant has no control over third party lands, or third-party farmers that carry out lawful practices that are regulated, controlled and monitored under separate specific applicable legislation. Conditions cannot be imposed on third party lands / persons. The EIAR shows an understanding of this legal situation and is satisfied that the legal requirements of SI 113 of 2022 are in place to ensure the protection of ground and surface waters on third party lands.

2. **The decision of the Planning Authority ignores the fact that the application of animal manure on third party farmlands from the existing activity, is an existing approved (by Louth Co. Co. and the E.P.A.) and authorized (by S.I. 113 of 2022) practice and that this practice utilising the existing organic manure, organic manure from other sources and /or chemical fertiliser is appropriate, sustainable, and lawfully carried out in accordance with the Code of Good Practice Regulations and will take place irrespective of the decision to grant planning permission.**

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The decision of the Planning Authority ignores the fact that the applicant and his farming customers are already carrying out this practice in accordance with the EPA licence and in compliance with the permission granted for the existing facility as well as being in full compliance with the legislation outlined above.

Poultry manure and wash water are not emissions or waste (as those terms are defined by law), it is an Animal By-Product and its management and handling are strictly controlled as outlined above. There is no intention to discard this material and therefore it does not constitute a waste.

The application and EIAR has identified that there are customer farmers who are independent farmers who have a need for this organic fertiliser. In line with the legislation above customer farmers are entitled to utilise this organic fertiliser on their lands and do not require planning permission to do so. They must however, comply with SI 1113 of 2002.

The decision of the Planning Authority ignores the fact that the applicant in his current farming operations and his customer farms are operating in accordance with the legislation and have a proven track record in that regard.

The practice proposed is no different than that currently carried out by the existing facility and the majority of poultry farms country wide.

The applicant and his customer farmers have a proven track record in this area in terms of compliance with the EPA licence and with the legislation. Whilst it is not a requirement in terms of determining this planning application, the applicant's proven track record in terms of environmental protection and commitments to sustainable farm practices should be an important consideration in the determination of this appeal.

3. We disagree with the Planner's report statement that "groundwater, surface water and biodiversity have not been adequately considered in relation to the potential impact on designated EU sites".

An examination of the EIAR will show that careful consideration was given to the impact of the proposed development on groundwater, surface water and biodiversity having regard legislative parameters under which the application of organic fertiliser is controlled.

The EIAR identified that certain customer farmers have a significant need for additional organic fertiliser to achieve optimum crop yields and this proposed development can help address that need. The EIAR recognises that this would be carried out under the statutory control of SI 113 of 2022 and all records would be maintained by the applicant.

Notwithstanding the fact that case law in respect of the Kilkenny Cheese Company (JR 2020/566) and JR 2019/184 are very relevant in this instance the planner's report chose not to consider the legal implications of these judgements and simply chose not to assess the EIAR without any proper justification for this conclusion instead the planner's report chose to adopt the same approach to the previous application stating "*Essentially the same issue arises as in previous application Ref: 23/6028, in that this is not considered to be a satisfactory proposal in relation to the management of poultry manure, and therefore the Planning Authority is not in a position to adequately assess the EIAR*".

We note that in the High Court Case of the Kilkenny Cheese Company the An Bord Pleanála Inspector's point regarding the State's need to work to meet food demand while contributing to climate commitments "*including avoiding the perverse incentive to off-shore agricultural activity to less carbon-efficient production systems and locations*".

It should be noted that the decision of the Planning Authority to refuse permission in this instance has resulted in retailers being forced to source eggs from the UK and Europe in order to meet the demand for eggs in this country. This is unsustainable and has a serious impact in terms of "food miles" and carbon footprint.

The Inspector's comments in paragraph 8.4.2 of the Inspector's report in respect of that case are also relevant in that the effects on "individual farms would be too remote" and at Paragraph 12.3 the Inspector states that it is not practicable to assess the potential indirect effects of milk production on all Natura sites, but it

can be concluded in general terms that the continued implementation of programmes and mitigation measures will mitigate potential indirect effects.

The sections regarding the management of effluent Section 29 and 30 of the High Court Judgement are relevant and applicable in respect of this appeal:

“29. As regards the impact of treated effluent, again assuming that the applicant is entitled to make the point, that does not mean that the applicant is entitled to reconfigure the evidence in the judicial review context. The important point here is that the applicant did not present any contradictory scientific evidence and indeed nobody did. In such circumstances it was open to the board to conclude that the pollutants from the effluent discharged will not affect the European sites, even though the applicant is now saying that the board should have assessed volumes rather than just concentrations. There wasn't anything before the board to make the volumes an issue that warranted express consideration or any material supporting the view that they created scientific doubt. (See generally on this issue Reid v. An Bord Pleanála [2021] IEHC 230 (Unreported, High Court, 12th April, 2021)).

30. Had there been any such evidence before the board, I wouldn't have considered it a sufficient defence to say that this would be a matter for the EPA, as contended by the board and the developer. While s. 99F(1) of the Environmental Protection Agency Act 1992 has the effect that the board can't impose conditions to control emissions, it can still refuse permission on "environmental grounds" under s. 99F(2). So it must, therefore, fully and properly consider the emissions situation”.

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Having regard to this judgement we would submit that the Planning Authority in their decision did not present any contradictory scientific evidence to explain why they could not carry out an Environmental Impact Assessment. They simply chose to ignore the extensive information before them in the EIAR and also to ignore the legislation in place. As the High Court judgement stated it is a matter for the EPA in that regard.

Having regard to the foregoing we would also submit that the project the subject of this planning application is the extent of the “project” for the purposes of the EIA directive and includes developments to which it is functionally related but does not include land spreading of third-party lands which are more remote and are already controlled by separate legislation and the EPA licence.

The decision of the Planning Authority amounts to a failure on the part of the Planning Authority to appreciate and accept the normal practicalities of farming operations and the considerable amount of legislation in place governing its management and application.

4. The recent High Court judgement in is relevant and a copy of that judgement is attached hereto Peter Sweetman Applicant -and The Environmental Protection Agency, Ireland and The Attorney General Respondents -and Michael Noel O'Connor [2024] IEHC 55 is relevant in the determination of this appeal, particularly having regard to the fact that this application will be the subject of an amendment to the EPA licence.

We refer to the recent High Court judgement in is relevant and a copy of that judgement is attached hereto Peter Sweetman Applicant -and The Environmental Protection Agency, Ireland and The Attorney General Respondents -and Michael Noel O'Connor [2024] IEHC 55. Whilst it is noted that the judgement was in respect of an EPA licence and not a planning application, the legal considerations regarding the EIAR are relevant. The same EIAR is submitted in respect of the planning application and the EPA licence. The comments of the EPA are very relevant and the matters arising are in the judgement. It must be noted that in EPA licensable activities the Planning Authority are precluded from attaching environmental conditions, hence the relevance of this High Court Judgement.

The judgement makes it clear that poultry litter and wash water are not "emissions" and are not "waste" (as those terms are defined by law). It would seem that the same approach taken by the plaintiff in that case is being incorrectly taken by the Planning Authority in suggesting that the EIAR has an obligation to assess, authorise and regulate the "consequences of poultry rearing" namely the use of poultry manure and wash water for land spreading as organic fertiliser.

We would concur with the views expressed by the EPA in that case that the decision of the Planning Authority should not extend to the off-site consequences of the intensive poultry rearing farming, namely the land spreading of organic fertiliser and the spreading of wash water on other lands (other than the applicant demonstrating that there are appropriate measures in place to confidently say that all organic fertiliser existing and proposed can be utilised in line with the requirements of S.I. 113 of 2022 – The details included in Appendix 1 and 6 demonstrate that there is sufficient customer farmers to utilise the organic fertiliser in a responsible and lawful way without seeking to impinge on the customer farmers rights. The only development the subject of the application and EIAR is the construction of a poultry house and manure shed for the storing of manure, the activity namely the rearing of poultry for the production of eggs will be the only activity the subject of an EPA licence.

The proposed development like the one the subject of the JR will be operated in accordance with the Department of Agriculture, Food and Marine (DAFM) and the Bord Bia Quality Assurance Scheme,

The proposed development is not located in or near any European sites. Organic fertiliser generated by the proposed development will be sent offsite for sale to purchase farmers who are required by law to apply the organic fertiliser in accordance with the Nitrates Regulations and the European Animal By-Product

Regulations (EC Regulation No. 1069/2009 and Commission Regulation 142/2011), (Animal By-Product Regulations).

The application of organic fertiliser on spread lands of third-party farmers will take place on these lands irrespective of the proposed development as these farmers have a need for this organic fertiliser as an input into their crop growing. It is also appreciated that the applicant has a very strong proven track record in this regard dating back to 1978 and his current operations are fully compliant with the EPA licence and the existing permissions on his landholding.

Having regard to the fact that an application for a licence will be made under the EPA Act 1992 for an intensive poultry house at the installation, the management of animal manure handling will be strictly controlled in accordance with the licence and other relevant legislation. This planning application does not apply for planning permission for land spreading of organic fertiliser which will take place on third party lands irrespective of whether this proposed development is permitted as it is a necessary input into tillage and grass growth. Where it occurs, it must occur in accordance with the Nitrates Regulations and SI 113 of 2022 accordingly there would be no pollution or environmental effects on site. This was completely ignored by the decision of the Planning Authority.

The judgement (Peter Sweetman Applicant and The Environmental Protection Agency, Ireland and The Attorney General Respondents and Michael Noel O'Connor [2024] IEHC 55) confirmed that when land spreading activities which take place within European sites are restricted by legislation which adds a further band of protection for same, for example the 2011 Habitats Regulations, in addition to the Nitrates Regulations, which apply within a European site require written consent from the relevant Minister before performing particular operations on or affecting particular habitats.

In assessing the proposed development, it is important to have regard to the statutory provisions which underpin the decision. The Planning Authority in their determination of this application failed to have regard to the statutory provisions in place.

The decision of the Planning Authority fails to acknowledge or accept that poultry manure and wash water are animal by-products and not a waste or emission and their future use and regulation off-site are governed by the Animal By-Products Regulations and may also be treated as a "organic fertiliser", the use and regulation of which off-site are governed by the "Nitrates Regulations" which implement the Nitrates Directive (91/675/EEC) and are not governed by the Industrial Emissions Directive.

The Industrial Emissions Directive Defines "emission" as meaning the direct or indirect release of substances, vibrations, heat or noise from individual or diffuse sources in the installation into air, water or land. Poultry manure does not constitute an emission to water or air for the purposes of Industrial Emissions

Licensing. Poultry manure constitutes an animal by-product, as set out in Regulation 1069/2009 and can lawfully be dealt with as a secondary product.

We concur with the view of the EPA expressed and the Judgement in Sweetman v EPA and the Attorney General and Michael Noel O'Connor [2024] IEHC 55 that the application relates to the poultry house installation only.

1. The proposed development is not located within a European Site.
2. There are no surface water pathways connecting the installation to European sites.
3. The risk of surface water or groundwater contamination as a result of accidental emissions during washing activities, or from spillage from the wash water tanks, is minimal. The provision of bunding and the protection of surface water and groundwater are sufficient to ensure that accidental emission from the activity will not impact on the qualifying interests of the European sites.
4. The manure generated in the installation is a high dry matter content and remains within the concrete-floored, covered poultry house until removed twice a year and all manure is to be used as organic fertiliser. There is no pathway between the manure and surface water/groundwater while the houses are stocked. The manure is removed twice per from the sheds and loaded onto lorries for transport offsite and the houses are brushed and washed down. Considering the controls that are in place in respect of the management of organic fertiliser on site, we are satisfied beyond reasonable scientific doubt that this method of handling the organic fertiliser (poultry manure) from the activity within the installation boundary will not have a significant effect on any European site.
5. Wash water is used as fertiliser on lands that are not within the application site boundary, in accordance with the Nitrates Regulations. Poultry manure is transported to be used as an organic fertiliser on land in accordance with the Nitrates Regulations.

These comments are applicable to the proposed development the subject of this appeal.

This planning application relates to lands within the installation boundary and does not extend to lands on which organic fertiliser may be used as fertiliser on land beyond the installation boundary. It must be accepted that the use of organic fertiliser will take place on the third-party farmlands irrespective of the decision on this planning application. This is already occurring and approved with at their existing facilities.

The Nitrates Regulations (and the reporting systems arising from same including the Record 3 submissions relating to all transfers of organic fertiliser and the online chemical fertiliser register make it possible for DAFM to know and take account of the additional input of nitrogen and phosphorous not alone from the existing and proposed activity, but also from all other sources used by the customer farmers, with a view to ensuring there is no downstream environmental pollution,

and ensuring that there is an cumulative assessment of all fertiliser sources used by a customer farmer regardless of where they originate. As previously detailed this information can then be shared between DAFM, the E.P.A. and LCC as provided for in Section 31 of S.I. 113 of 2022. We submit that the regulatory systems in place will ensure that cumulative impacts as a result of the use of organic fertiliser on land from this activity will not have a significant effect on European sites. The determination of this planning application should have regard to the legal obligations that are already in place in respect of the regulation of the application of animal manure whilst having regard to the provisions of Section 34(13) of the Planning and Development Act.

The activities which can take place within European sites are restricted by legislation. All persons must obtain the written consent from the relevant Minister before performing particular operations on or affecting, particular habitats where they occur on lands/waters within the Special Area of Conservation. Hence, further controls exist for the spreading of fertilisers within European sites. Therefore the use of poultry manure and wash water as fertiliser in accordance with the Nitrates Regulations will not cause environmental pollution, and therefore the use of the wash water and poultry manure as fertilisers from the activity will not have a significant effect on any European sites.

The decision of the Planning Authority is unfair and unreasonable and fails to accept that the regulatory system already in place will ensure that cumulative impacts as a result of the use of organic fertiliser on land from this activity will not have a significant effect on the environment or any European sites. Furthermore, the Planning Authority decision also fails to acknowledge that further regulatory controls exist for the spreading of fertilisers within European sites. It must be accepted that having regard to the regulatory system in place regarding the management of animal manure that the use of poultry manure and wash water as organic fertiliser, arising from the proposed development, in accordance with the Nitrates regulations would not cause environmental pollution.

Having regard to the judgement of *Sweetman v EPA and the Attorney General and Michael Noel O'Connor* [2024] IEHC 55 we would submit that the Planning Authority in their refusal have failed to correctly define the ambit of their statutory and regulatory powers and the powers of the EPA under the EPA Act 1992 as applying to the intensive farming of poultry within the installation boundary.

The decision of the Planning Authority should not extend to the authorisation of the possible end-use of poultry manure by third party on third party lands outside of the appeal site as same relates to persons / lands not associated with this activity or within the remit of this application, and which relates to activities carried out by third parties that are already legislated for, authorised, recorded, and monitored under S.I 113 of 2022.

Planning permission is not being sought and is not required to regulate the future use off-site of poultry manure or wash water as an animal by-product or as an organic fertiliser. The determination of this application does not regulate the possession, transportation, handling, use or application of poultry manure and wash water which are the subject of separate legislation. Section 34(13) of the Planning and Development Act 2000 (as amended) applies “(13) A person shall not be entitled solely by reason of a permission under this section to carry out any development”.

Waste is defined as any substance or object which the holder discards or intends or is required to discard. The EIAR submitted with this application clearly defined the poultry manure as a by-product and organic fertiliser and not a waste. Provisions are made for the record keeping as part of the EIAR and under the Nitrates Regulations and Animal By-Products Regulations to keep records in respect of the movement of this material as is required by law.

The movement of other waste generated by the proposed development will be controlled strictly under the legislation and EPA licence by way of a condition of that licence. It is submitted that the conditions of the licence will satisfactorily ensure that the proposed development would not give rise to any impact on groundwater or surface water.

The EPA licence will include conditions in respect of the handling of organic fertiliser during loading and unloading as well as the requirement for recording all movements off site in an “organic fertiliser” register on an annual basis including inter alia the customer farmer receiving the organic fertiliser and the submission of completed records of the movement of organic fertiliser from the installation to the Department of Agriculture, Food and the Marine in accordance with SI 113 of 2022 European Union (Good Agricultural Practice For Protection Of Waters) Regulations 2022.

The decision of the Planning Authority fails to acknowledge or appreciate that the EPA licence will include conditions for ensuring the appropriate recording of the movement of organic fertiliser which is regulated by the Nitrates Regulations 2022

The EIAR clearly provides that both the Animal By-Products Regulations and SI 113 of 2022 Code of Good Practice for end-users of Poultry Manure sets out what the legal obligations and good practice requirements are for end-users of poultry manure as organic fertiliser/soil improver.

The decision of the Planning Authority does not accept that persons intending to land spread poultry manure (end-users or purchase farmers) are required by law to comply with the Animal By Products Regulations Regulation (EC) No 1069/2009 (21st October 2009) and Regulation (EU) No 142/2011) and SI 113 of 2022 European Union (Good Agricultural Practice for the Protection of Waters) Regulations when it comes to the use of poultry manure as an organic fertiliser.

It is anticipated that the EPA licence would include conditions that poultry manure will be removed by an authorised person under the Animal By-Products Regulations.

Contrary to the assertions made in the decision of the Planning Authority the removal and subsequent use of the manure and wastewater must be in accordance with the Animal By-Products Regulations, which has been deemed by the legislature as the most appropriate mechanism for the management of this material.

The protection of water quality from pollution of agriculture is not a new phenomenon and since 1991 the Nitrates Directive has sought to protect water quality and promote good farming practices. SI 113 of 2022 is the Fifth Nitrates Action Programme in Ireland.

Since 2005 the Nitrates Regulations have provided a statutory definition for good agricultural practices to protect water including where and how land spreading can occur and be monitored. The decision of the Planning Authority fails to acknowledge or appreciate that there is already a stringent regulatory framework surrounding the application of organic fertiliser.

The Nitrates Regulations 2022 provides for the detailed use – including the spreading on land outside of an installation – of organic fertilisers which includes poultry manure and wash water.

SI 113 of 2022 sets out the requirements in terms of the application of fertilisers and soiled water and includes the separation distances from water bodies. There are also strict regulations regarding the timing of the application of fertiliser including that it shall not be applied to land in the following circumstances:

- “(a) the land is waterlogged;
- (b) the land is flooded or likely to flood;
- (c) the land is snow-covered or frozen
- (d) heavy rain is forecast within 48 hours, or
- (e) the ground slopes steeply and there is a risk of water pollution having regard to factors such as surface runoff pathways, the presence of land drains, the absence of hedgerows to mitigate surface flow, soil condition and ground cover.

All of these strict regulations are ignored in the decision of the Planning Authority.

The decision of the Planning Authority fails to understand or appreciate that the Nitrates Regulations make it possible for the Department of Agriculture, Food and the Marine to know and take account of the additional input of nitrogen and phosphorous from the activity, with a view to ensuring there is no downstream environmental pollution.

Based on the foregoing and having regard to the fact that this is a licensable activity which will obtain a licence from the EPA, it is clear that the regulatory systems already in place will ensure that the cumulative impacts as a result of the use of organic fertiliser on land from the activity will not have a significant effect on the environment or on any European sites and the decision of the Planning Authority is therefore unreasonable. The Department of Agriculture Forestry and Marine record 3 system and online fertiliser register takes account of all fertiliser inputs used by a farmer from all potential sources to ensure that the customer farmers are compliant with SI 113 of 2022.

The applicant intends to sell the animal manure to purchase/customer farmers with a demonstrated agronomic requirement for organic fertiliser particularly in the local tillage producing farms who will in turn supply feed to the Irish Feed Industry to supply farms such as the applicants. The application for permission is for this installation only and the Planning Authority and EPA (under the EPA Act 1992) have no jurisdiction (and as seen in the relevant case law in the case of the E.P.A. under whom this site will have to operate), have no desire to seek to control spread lands outside the application site which are strictly controlled under other legislation outlined above.

5. We refer to the High Court and Supreme Court case **An Taisce - National Trust For Ireland Appellant -And - An Bord Pleanála, The Minister For Communications, Climate Action And The Environment, Ireland And The Attorney General Respondents -And Kilkenny Cheese Limited (Formerly JHOK Limited)(No.2)** which is relevant to the determination of this appeal.

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An Taisce - The National trust for Ireland v An Bord Pleanála & ORS, [2021] IEHC 254, [2021] IEHC 422, [2021] IESCDET 109]

The companies sought planning permission to construct a cheese manufacturing plant in Co. Kilkenny. Kilkenny County Council had granted planning permission for the development on 14 November 2019. An Taisce, appealed the granting of this permission to An Bord Pleanála, who granted planning permission on 30 June 2020. One of the arguments made by An Taisce was that the milk required for the cheese would need to come from 4,500 farms. The indirect effects from these dairy farms may adversely impact Ireland's ability to meet its climate and environmental policy targets.

The Court found that the planning permission was not invalid over An Bord Pleanála's failure to conduct an assessment of the upstream impact of milk production. The Inspector considered there would be an indirect impact from the milk production but that this would be mitigated by production efficiency and Glanbia's sustainability programme. The Inspector also considered these emissions are already accounted for and regulated through the National Climate Action Plan as part of dairy sector emissions.

The Court agreed and held that the effects of milk production are too remote and are sufficiently removed from the development to be assessed in site-specific

terms. Therefore, it is not to be considered part of the development for the purposes of an Environmental Impact Assessment (EIA) or Appropriate Assessment (AA). The CJEU had already given guidance on the key distinction, which is that between “programmatic” measures and the “procedures for grant of an environmental permit” .

“In his judgment in the High Court Humphreys J rejected the appellant’s central argument regarding the off-site environmental impact of the proposed milk production, saying (at para. 46):”

“The basic reason is that effects of raw material production where such production is sufficiently removed from the project as not to be capable of assessment in site-specific terms are not to be considered part of the project for the purposes of the EIA or AA. Such effects need to be considered on a more programmatic basis and hence lie outside the direct purview of grounds from challenging an individual planning decision.”

We would submit that this is relevant to the determination of this appeal insofar as the fact that animal manure is an output from the proposed development in the same way that milk was an input to the Kilkenny Cheese factory. We would submit that the lands on which the customer farmers spread the organic fertiliser purchased from the proposed development are sufficiently removed from the project as not to be capable of assessment in site-specific terms and therefore cannot be considered as part of the project for the purposes of the EIA or AA. Such effects should be considered having regard to the EPA licence and the conditions attached thereto and also to the legislation as outlined above.

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6. We refer to the following decision of An Bord Pleanála Ref: ABP-308942-20 in respect of the development of a Biogas Plant in Galway, which is relevant to this case.

We refer to a decision of An Bord Pleanála Ref: ABP-308942-20 and the Inspector’s report in respect of same. The Inspector’s report at section 7.3.3 stated as follows:

“Accordingly, I do not consider that it is feasible or practical to carry out an assessment of the impacts of feedstock supply within a multiplicity of defined sources. Furthermore, I would contend that none of the feedstock inputs are being produced with the sole intention of supplying the AD process. The silage, slurry and agri-food residues are already being produced and in the event of a ‘do-nothing’ scenario would have to be disposed of by alternative means.

7.3.4. A similar situation occurs with regard to the digestate produced from the anaerobic digestion process. It will be suitable to be used as an organic fertiliser on agricultural lands and, again, I consider that the identification, assessment and control of the land-spreading locations is infeasible in the context of the current application. The EIAR, by highlighting the

environmental improvements associated with the proposed digestate, does not entirely disregard the impacts of land spreading. I would concur that the proposed digestate would replace more potentially contaminating raw materials such as slurry and chemical fertilisers, and that, in a 'do nothing' scenario, the cattle slurry that makes up 25% of the proposed feedstock would likely be disposed of by spreading on land. And while the activity of digestate disposal clearly has the potential for impacts, I am satisfied that the activity does not form part of the current project and that it can be appropriately controlled by the requirement for Nutrient Management Plans and compliance with the European Union (Good Agricultural Practice for the protection of waters) Regulations 2017".

The above extract from the An Bord Pleanála's Inspector's report is relevant in this instance. As the Inspector stated the identification, assessment and control of land-spreading locations is infeasible in the context of this application. We would submit that the EIAR clearly identified the potential environmental impacts associated with land spreading and was satisfied that subject to compliance with the EPA licence and the relevant legislation there would be no negative impact arising from same.

The applicant has demonstrated as part of the EIAR that there is a local demand for this organic fertiliser which will be required to replace chemical fertiliser. This is required in order to meet climate change requirements. The extract below shows that there has been a significant reduction in the amount of chemical fertiliser being applied since 2018 with 31% less chemical fertiliser being applied in 2023 than in 2018.

"The 18% reduction of chemical nitrogen will feed into reducing the sector's greenhouse gas emissions for 2023. Chemical nitrogen use is 31% lower in 2023 than the base year of 2018. This large reduction in chemical nitrogen shows that farmers are being strategic in their use of fertiliser on farm. This reduced nitrogen use is being underpinned by increased use of soil analysis, lime, cattle slurry, clover and multi-species swards on farm."

Table 1: Chemical nitrogen use for the period 2018 to 2023

Year	Chemical nitrogen nutrient (tonnes)	Change on previous year
2018	408,495	+11%
2019	367,364	-10%
2020	379,99	+3%
2021	399,164	+5%
2022	343,193	-14%
2023	280,569	-18%
2025 Target	<330,000	
2030 Target	<300,000	

Source: DAFM Fertiliser Sales Q4 2023

It should also be noted that in a "do nothing" scenario these customer farmers will simply have to source organic fertiliser elsewhere or use the equivalent chemical fertiliser.

10.0 Conclusion

The application of organic fertiliser as fertiliser in accordance with the Nitrates Regulations will not cause environmental pollution and the EIAR proves beyond reasonable scientific doubt that the use of organic fertiliser from the proposed development as a fertiliser would not have a significant effect on the environment or any European Site.

The decision of the Planning Authority completely ignores this fact. The EIA and the EPA licensing system which will apply to this proposed development ensures that the organic fertiliser generated by the proposed development as an Animal By-Product must be managed in accordance with the appropriate National and European Legislation.

Under the EPA licence the licensee is required to calculate/record the quantities of organic fertiliser generated and moved offsite to provide for the appropriate handling of the material and the protection of the environment.

It must be accepted that the planning application and the EPA licence relates to the site of the proposed development and the activity for which the licence will be

issued and does not extend to lands on which organic fertiliser may be used as fertilisers.

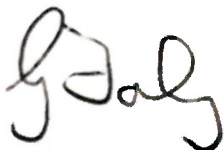
The decisions of the High Courts and An Bord Pleanála in respect of various relevant cases confirm that the land spreading lands are too remote from the application site to form part of the application and site specific EIAR, they are however considered in general terms having regard to the legislative framework surrounding their management.

In a "Do nothing" scenario the application of organic and chemical fertiliser on third party lands will occur irrespective of the proposed development (to meet crop agronomic requirements) as it is a necessary input into the tillage growing process and must be carried out in accordance with the Nitrates Regulations.

The decision of the Planning Authority fails to acknowledge or accept that there will be no adverse significant effects on the environment or environmental pollution caused from land spreading, which is the subject of Nitrates Regulations or from the handling on site of organic fertiliser (poultry manure/wash water) from the proposed development, provided it is carried out in accordance with the EIAR and the IPC licence conditions

The narrative around the use of animal manure has changed considerably over the years in line with the significant progress that has been made in the legislation around its control. The system has a long way since the Commission v Spain and the Brady v EPA case in terms of legislative controls, monitoring etc. There is an acceptance at European level and nationally that animal manure is not a waste and should be treated as such in line with the legislation in place, this is reflected in the An Bord Pleanála decisions, EPA decisions and High Court cases outlined above. The decision of the Planning Authority takes a very narrow view of the proposed development without an appreciation of this wealth of legal case law surrounding this complex issue. We would respectfully request An Bord Pleanála to overturn this decision in this regard and grant planning permission for the proposed development in accordance with the proper planning and development of the area.

Yours sincerely,



Geraldine Fahy BA MRUP MIPI

Attachments:

1. Two cheques the first for €220 which we believe is the correct fee as it relates to a non-commercial development (Agriculture is not commercial under the regulations) and does include an EIAR or NIS. We also include a cheque for €3000 which is the appeal fee for commercial development which includes an EIAR or NIS, should the Board be minded to consider this application as a commercial development.
2. Louth County Council Notification of Decision to Refuse No.2460189
3. Louth County Council Planning Report Ref: 24/60189
4. C-121/03 Commission of the European Communities v Kingdom of Spain
5. ECLI:EU:C:2013:627 Donal Brady v EPA
6. S.I. No. 187 of 2014 European Union (Animal By-Products) Regulations 2014
7. S.I.No. 113 of 2022 European Union (Good Agricultural Practice for Protection of Waters) Regulations 2022
8. The High Court Judicial Review 2020 No.556 JR An Taisce and An Bord Pleanála, The Minister for Communications Climate Action and The Environment, Ireland and The Attorney General and Kilkenny Cheese Limited (Formerly JHOK Limited)
9. The Supreme Court S:AP:IE:2021:000091 An Taisce and An Bord Pleanála, The Minister for Communications Climate Action and The

- Environment, Ireland and The Attorney General and Kilkenny Cheese
Limited (Formerly JHOK Limited)
10. Inspector's Report ABP-306136-19
 11. The High Court Judicial Review No.2019/184JR Peter Sweetman and the
EPA, Ireland and The Attorney General and Michael Noel O'Connor
 12. Inspector's Report ABP-308942-20
 13. IE Consulting Report



LOUTH COUNTY COUNCIL
Town Hall, Crowe Street, Dundalk, County Louth A91 W20C
Tel:042/9335457

PLANNING AND DEVELOPMENT ACT, 2000 (as amended)

NOTIFICATION OF DECISION TO REFUSE

To: Crayvall Egg Production Ltd.
c/o Paraic Fay
The Mews
23 Farnham St
Cavan
H12 T9W2

Date: 30 May 2024

Planning Register Number: 2460189

Date Application Received: 09/04/2024

Validation Received: 09/04/2024

Further Information Received:

Type of Application: PERMISSION

Description of Development: Permission to construct 1 No. Poultry Layer House and 1 No. Manure/General Purpose store, together with all ancillary structures, (to include 3 No. meal storage bin(s) and soiled water tank), and all associated site works (to include upgraded internal farm laneway, site drainage and storm water attenuation) associated with the proposed development. This application relates to a development, which is for the purposes of an activity requiring a Licence under part IV of the Environmental Protection Agency (Licensing) Regulations 1994 to 2013. An Environmental Impact Assessment Report (E.I.A.R.) and Natura Impact Statement (N.I.S.) will be submitted with this planning application


Name of Applicant: Crayvall Egg Production Ltd.

Location of Development: Carrickbaggott
Grangebellew
Co. Louth

Date of Decision: 30 May 2024

In pursuance of the powers conferred upon it by the above mentioned Acts, The Council of the County of Louth, being the Planning Authority for the County of Louth, has decided, for the reason(s) set out in the schedule attached, to **REFUSE PERMISSION** for the development described above.

An appeal against this decision may be made to An Bord Pleanála by any person in accordance with the instructions on the attached sheet within the time limits specified.


Anne D. Callan,
Administrative Officer

LOUTH COUNTY COUNCIL

REFERENCE NO. 24/60189

SCHEDULE

1. Due to the inadequacy of the information provided with the application, particularly in relation to the landspreading areas and biosecurity, climate change, ground water, surface water and biodiversity, the Planning Authority is unable to carry out a comprehensive environmental impact assessment of the proposed development as required by legislation, accordingly to permit the proposed development would be contrary to the proper planning and sustainable development of the area.
2. On the basis of the information provided with the application, particularly in relation to the landspreading areas, climate change, ground water, surface water and biodiversity, the Planning Authority cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on European site North-West Irish Sea SPA (No: 004236), or any other European site, in view of the site's Conservation Objectives. In such circumstances the Planning Authority is precluded from granting permission.

Louth CC, Planning Department - View Only!

**Louth County Council
Planning Report**

Planning Ref: 24/60189

Applicant's Name: Crayvall Egg Production Ltd

Date of site inspection: 25th April 2024

Site Notice: Yes (In Place)

Type of Application: Permission

Description: Construction of 1 No. Poultry Layer House and 1 No. Manure/General Purpose store, together with all ancillary structures, (to include 3 No. meal storage bin(s) and soiled water tank), and all associated site works (to include upgraded internal farm laneway, site drainage and storm water attenuation) associated with the proposed development, at Carrickbaggott, Grangebellew, Co. Louth. This application relates to a development, which is for the purposes of an activity requiring a Licence under part IV of the Environmental Protection Agency (Licensing) Regulations 1994 to 2013.

An Environmental Impact Assessment Report (E.I.A.R.) and Natura Impact Statement (N.I.S.) have been submitted with this planning application.

Site Location: Carrickbaggott, Grangebellew, Co. Louth

Report Date: 23rd May 2024

File Due Date: 3rd June 2024

Part 1 – Overview

1. Introduction

Planning permission is sought to construct the 1 No. Poultry Layer House, 1 No. Manure/General Purpose store, all ancillary structures (to include 3 No.

meal storage bin(s) and soiled water tank) and all associated site works (to include upgraded internal farm laneway site drainage and storm water attenuation associated with the proposed development). This application relates to a development, which is for the purposes of an activity requiring a Licence under part IV of the Environmental Protection Agency (Licensing) Regulations 1994 to 2013. An Environmental Impact Assessment Report (EIAR) and a Natura Impact Statement (NIS) have been submitted with this planning application.

2. Site location and description

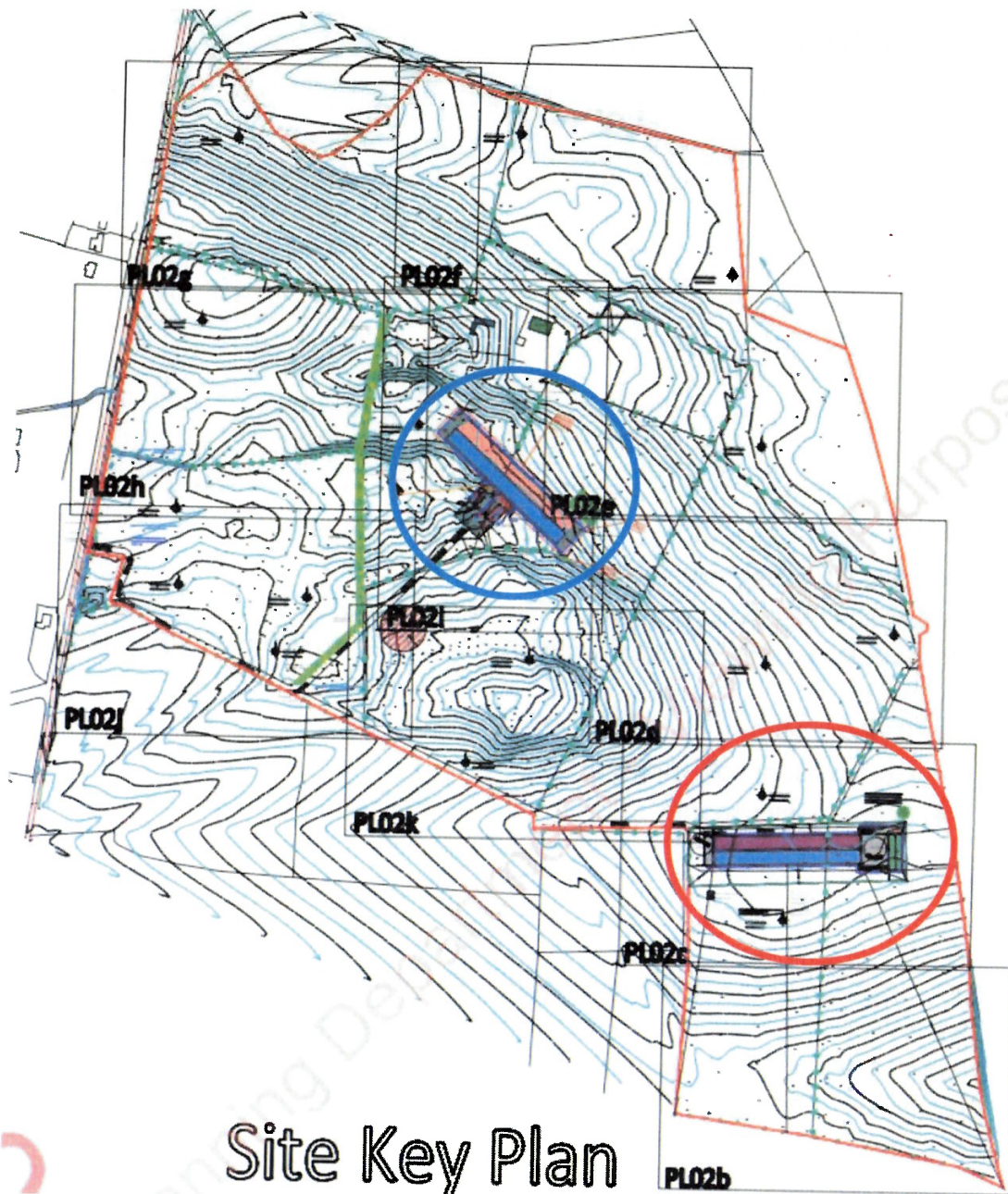
The proposed poultry house (5,171sq. m) and manure/ general purpose store (578sq. m) are to be located at Carrickbaggott, Dunleer at the site of an existing egg production facility approved under Ref: 19/231.

The site is located approximately 1.5km south of Grangebellew in a rural farmland area served by a local L275 local road, which extends southwards from the Regional Route R170 (Dunleer to Clogherhead) at Grangebellew. The local road is wide with a white line and the site is accessed via an existing entrance with stone piers and walls and a gravel laneway.

The site encompasses a very large agricultural area of 68.5 ha that spans all the way from the public road on the western boundary to the railway line to the eastern boundary. The topography of this area is generally flat.



Figure 1: Approximate location.



Site Key Plan

Figure 2: Blue Circle – location of existing unit on landholding
 Red Circle – location of proposed unit

The entrance to Rokeby Hall, a Protected Structure (RPS No: LHs018-019, LHs018-035, LHs018-036) (NIAH No: 13901801 & 13901802, 13901803, 13901809, 13901810) is located well to the west on the opposite side of the road.

Rokeby Hall is also designated as “Historic Gardens and Designed Landscape” as provided for in Table 9.5 in Section 9.7 of the Louth County Development Plan 2021-2027, as varied (Garden ID: LH0046; NIAH Buildings ID:13901426,

3. Site history

Year	Number	Status	Decision	Received Date	Name	Development Address	Description
199	231	Application Finalised	Conditional	29/03/2019	Crayvall Egg Production Ltd.	Carrickbaggott, Grangebellaw, Co. Louth	Permission to construct 1 no. free range poultry house and 2 no. manure general purpose stores, together with all ancillary structures (including 1 no. meal storage bins) and soiled water tank; and all associated site works to include new site entrance and internal driveway and the provision of an on-site wastewater treatment system and associated areas associated with the proposed development. This application relates to a development which is for the purpose of an application for planning licence under part V of the Environmental Protection Agency (Licensing) Regulations 1994 to 2013 An Environmental Impact Assessment Report (E.I.A.R.) will be submitted with this planning application.
22	480	Application Finalised	Conditional	14/06/2022	Crayvall Egg Production Ltd.	Carrickbaggott, Grangebellaw, Co. Louth	Permission to install roof mounted solar panels south west facing roof aspect only on 11 no. existing free range poultry houses; together with ancillary structures, and all associated site works associated with the proposed development.
233	60288	Application Finalised	Refused	17/08/2023	Crayvall Egg Production Ltd.	Carrickbaggott, Grangebellaw, Co. Louth	Crayvall Egg Production Ltd. intend to apply for planning permission to construct 1 No. Poultry Layer House and 1 No. Manure/General Purpose store, together with all ancillary structures, (including 332 no. meal storage bins) and soiled water tank; and all associated site work is to include upgraded internal farm driveway associated with the proposed development to Carrickbaggott, Grangebellaw, Co. Louth. This application relates to a development, which is for the purpose of an application for a Licence under part V of the Environmental Protection Agency (Licensing) Regulations 1994 to 2013 An Environmental Impact Assessment Report (E.I.A.R.) and a Natural Impact Statement (N.I.S.) will be submitted with this planning application.

4. Pre-Planning consultations

Pre-planning discussions were held under **PP23/270** on 10th January 2024 (See Appendix 1 for PP notes), and in attendance were the following persons;

- Dermot Herlihy (Applicant)
- Rachel Johnson (Applicant)
- Paraic Fay (Agent)
- Terence Loane (LCC Executive Planner)

5. Policy Context

5.1 National Planning Framework, 2018 (NPF)

The NPF is the Government strategic plan to shape the future growth and development of the country up to 2040. Relevant provisions include: Agriculture - The agri-food sector continues to play an integral part in Ireland's economy and is our largest indigenous industry, contributing 173,400 direct jobs and generating 10.4% of merchandise exports in 2016.

Agriculture has traditionally been the most important contributor to rural economies and it remains important as a significant source of income and both direct and indirect employment. However, it must adapt to the challenges posed by modernisation, restructuring, market development and the increasing importance of environmental issues. Much of the economic benefits in the agri-food sector are dispersed throughout the country making it particularly vital to rural areas and economic development generally. Continued development of the agri-food sector will be supported through the implementation of Food Wise 2025.

Food Wise 2025 has five cross-cutting themes: sustainability, human capital, market development, competitiveness and innovation. Sustainability is key to

the strategy, which states that: *“environmental protection and economic competitiveness are equal and complementary – one cannot be achieved at the expense of the other”*. Food Wise also supports technology and processes that result in a more efficient use of resources.

5.2 Regional Spatial and Economic Strategy for the Eastern and Midland Region (RSES) 2019-2031.

This is a strategic plan and investment framework to shape the future development of our region to 2031 and beyond.

The strategic vision is to create a sustainable and competitive Region that supports the health and wellbeing of our people and places, from urban to rural, with access to quality housing, travel and employment opportunities for all.

In relation to agriculture; it states that agriculture is a key sector in the Region, but one which faces challenges from encroaching urbanisation, Brexit and CAP reform and in meeting climate obligations. There is an opportunity to support more sustainable farming practices in the Region such as local agri-food, biomass, permaculture, agri-forestry and anaerobic digestion to produce renewable energy from farm wastes, and to develop on farm and on farm activities as part of a unique tourism and leisure offer.

5.3. Development Plan

The Louth County Development Plan 2021-2027, as varied, is the operative plan. Relevant provisions in the Plan include:

Agricultural Enterprises and Buildings

Development Management Guidelines – Section 13.13.11.7

As farming practices evolve and continue to modernise, the design, scale and layout of farm buildings and farmyards has changed. Depending on the farming enterprise e.g. beef, dairying, pigs, poultry, organic or tillage, the type of housing, livestock numbers and storage facilities will vary.

- Different farming types and enterprises will result in the criteria for assessing applications focusing on different issues such as visual impact, traffic, residential amenity and public health. Each application will be assessed on its individual merit and will take account of the ability of the local landscape to absorb the development, the capacity of the local infrastructure including roads, water and waste water infrastructure to accommodate any additional loading and traffic movements, and any possible impacts on the amenities of residents living in the vicinity of the development.
- To assist in the assessment of planning applications for agricultural buildings and in particular new farm enterprises on an undeveloped

- landholding, a business plan setting out the requirement for the development will be required. This shall include full details of the land holding, livestock number and herd number (if applicable).
- New buildings shall be designed to maximise efficiency, address any pollution control requirements (e.g. collect soiled water and farm waste management), provide additional feed and machinery storage areas, and improve livestock welfare.
 - It is acknowledged that the scale of agricultural buildings are such that they will be visible from surrounding roads and public viewpoints.
 - However, new buildings shall be positioned and designed so they are as unobtrusive as possible.
 - When designing a building particular attention shall be given to the sensitivity of the landscape in which it will be located. If the scale and height of the building is particularly large, the reasons for a building of the particular size shall be set out. Wherever possible, new buildings shall be clustered with existing buildings in the yard.
 - Finishes to buildings will normally include rendered/block walls and dark coloured panels to the side and roof of buildings such as dark green, red, or grey. Landscaping can assist in the integration of new buildings into the landscape. Any planting shall include native species only.
 - Details of how any effluent and run-off associated with the development will be collected and stored within the farmyard shall be provided

Louth CDP policy objectives and guidance:

ENV 2 To pursue the precautionary and the polluter pays principles in relation to permitted development in the County.

ENV 3 To seek to achieve European and National standards in relation to air, noise and water quality in the County and apply BAT standard (Best Available Techniques)

ENV 6 To implement the Louth County Council Noise Action Plan 2013-2018 in order to avoid, prevent and reduce the harmful effects, including annoyance, due to environmental noise exposure .

ENV 15 To implement the recommendations contained in the River Basin District Management Plans for Ireland 2018-2021 or any subsequent plan. Proposed plans, programmes and projects shall not have an unacceptable impact on the water environment, including surface waters, ground water quality and quantity, river corridors and associated woodlands. Also, to have cognisance of, where relevant, the EU's Common Implementation Strategy

Guidance Document No. 20 and 36 which provide guidance on exemptions to the environmental objectives of the Water Framework Directive.

ENV 21 To assess agricultural developments and associated agricultural waste matters within the County in accordance with the European Union (Good Agricultural Practice for Protection of Waters) Regulations 2017 for the purpose of preventing or eliminating the entry of polluting matters to waters

EE 55 To support rural entrepreneurship and rural enterprise development of an appropriate scale at suitable locations in the County.

EE 60 To continue to support the agricultural sector and to facilitate the development of environmentally sustainable agricultural activities.

EE 61 To facilitate the diversification of the agricultural sector by supporting alternative farm enterprises subject to the nature and use of any enterprise being compatible with the environment in which it is located.

Entrances and Sightlines – Development Management Guidelines – Section 13.16.17

Table 13.13 sets out the minimum visibility standards for new entrances onto streets and roads where the speed limit is in excess of 60km/h and the 'Design Manual for Urban Roads and Streets' is not applicable. These are minimum standards and the Authority can request greater standards depending on the characteristic of the road, observed traffic speeds, volume and type of vehicles, etc.

These include the that the minimum visibility standards for new entrances on local roads is 75m x 4.5 metres (0.6-1.05 metres visibility requirement over ground)

5.4 Louth Local Economic & Community Plan 2016 – 2022 (LECP)

Under the Local Government Act 2014, each Local Authority is obliged to develop a Local Economic & Community Plan (LECP). Economic Goal No 7 Agriculture, food and fisheries, is to establish Louth as a premier producer in the Agri-Farming, Food and Fisheries sector.

5.5 European Union (National Emission Ceilings) Regulations 2018.SI. No. 232/2018

These are regulations to limit emissions of sulphur dioxide (SO₂), nitrogen oxides (NO_x), non-methane volatile organic compounds (NMVOC), ammonia (NH₃), and fine particulate matter (PM_{2.5}) in accordance with the

emission reduction commitments specified for each pollutant in tables A and B of Schedule 2, in accordance with the timeframe specified in those tables. In order to give effect to Directive (EU) 2016/2284 of the European Parliament and of the Council of 14 December 2016 on the reduction of national emissions of certain atmospheric pollutants.

Schedule 2

Table B Emission reduction commitments for ammonia (NH₃) and fine particulate matter (PM_{2.5}). (The reduction commitments have the year 2005 as base year, and for road transport, apply to emissions calculated on the basis of fuels sold). NH₃ reduction compared with 2005 - for any year from 2020 to 2029, 1%; for any year from 2030, 5%. PM_{2.5} compared with 2005 - any year from 2020 to 2029, 18%; for any year from 2030, 41%.

Schedule 3 – content of national air pollution control programmes referred to in regulations 6 and 9

Part 2

A. Measures to control ammonia emissions

1. A national advisory code of good agricultural practice to control ammonia emissions shall be established, taking into account the UNECE Framework Code for Good Agricultural Practice for Reducing Ammonia Emissions of 2014, covering at least the following items:

- a) nitrogen management, taking into account the whole nitrogen cycle
- b) livestock feeding strategies;
- c) low-emission manure spreading techniques;
- d) low-emission manure storage systems;
- e) low-emission animal housing systems;
- f) possibilities for limiting ammonia emissions from the use of mineral fertilisers

3 (c) promoting the replacement of inorganic fertilisers by organic fertilisers.

4 Ammonia emissions from livestock manure may be reduced by using the following approaches:

(a) reducing emissions from slurry and solid manure application to arable land and grassland, by using methods that reduce emissions by at least 30% compared with the reference method described in the Ammonia Guidance Document and on the following conditions:

- (i) only spreading manures and slurries in line with the foreseeable nutrient requirement of the receiving crop or grassland with respect to

- nitrogen and phosphorous, also taking into account the existing nutrient content in the soil and the nutrients from other fertilisers;
- (ii) not spreading manures and slurries when the receiving land is water saturated, flooded, frozen or snow covered;
- (iii) applying slurries spread to grassland using a trailing hose, trailing shoe or through shallow or deep injection;
- (iv) incorporating manures and slurries spread to arable land within the soil within four hours of spreading;

(b) reducing emissions from manure storage outside of animal houses, by using the following approaches:

- (i) for slurry stores constructed after 1 January 2022, using low emission storage systems or techniques which have been shown to reduce ammonia emissions by at least 60% compared with the reference method described in the Ammonia Guidance Document, and for existing slurry stores at least 40%;
- (ii) covering stores for solid manure;
- (iii) ensuring farms have sufficient manure storage capacity to spread manure only during periods that are suitable for crop growth:

(c) reducing emissions from animal housing, by using systems which have been shown to reduce ammonia emissions by at least 20% compared with the reference method described in the Ammonia Guidance Document

(d) reducing emissions from manure, by using low protein feeding strategies which have been shown to reduce ammonia emissions by at least 10% compared with the reference method described in the Ammonia Guidance Document.

5.6 European Union (Good Agricultural Practice for Protection of Waters) Regulations 2022 (SI No 113 of 2022) – (Replaced SI No 605 of 2017)

This deals with requirements as to manner of application of fertilisers, soiled water, the storage of manures (inc. poultry manure), livestock numbers, protection of water bodies, ploughing, etc.

Article 9 (Part 2) of the regulations state in relation to **“Capacity of storage facilities for effluent and soiled water”**:

9. *Without prejudice to the generality of Article 8, the capacity of facilities for the storage on a holding of –*

(a) effluent produced by ensiled forage and other crops shall equal or exceed the capacity specified in Table 5 of Schedule 2,

(b) soiled water shall equal or exceed the capacity required to store all soiled water likely to arise on the holding during a period of 10 days,

(c) soiled water being provided on a holding shall equal or exceed the capacity required to store all soiled water likely to arise on the holding during a period of 15 days, and

(d) From 1st December 2023, a minimum of 3 weeks' storage capacity shall be in place on the holding and from 1st December 2024, a minimum of 4 weeks' storage capacity shall be in place on the holding except for winter/liquid milk producers where this storage must be in place by 1st December 2025

Article 11 (Part 2) of the regulations state in relation to "**Capacity of storage facilities for poultry manure**":

11. (1) Without prejudice to the generality of Article 8, the capacity of facilities for the storage on a holding of livestock manure produced by **poultry** shall, subject to sub-article (2) and Article 14, equal or exceed the capacity required to store all such livestock manure produced on the holding during a period of 26 weeks

(2) The period specified in Schedule 3 shall, in substitution for that prescribed by sub-article (1), apply in relation to livestock manure produced by **poultry** on a holding where all the following conditions are met—

(a) tillage or grassland farming is carried out on the holding,

(b) the number of poultry places on the holding does not exceed 2,000 places, and

(c) the holding comprises a sufficient area of land for the application in accordance with these Regulations of all livestock manure produced on the holding.

5.7 Dead Birds and Poultry Litter:

Legal Obligations and Good Practice Guidelines for Poultry Farmers, Department of Agriculture, Food and the Marine, 2014, include:
Water used for cleaning poultry houses should be captured and disposed of in accordance with environmental and nitrates legislation. Water used for

cleaning poultry houses should not be spread on land used for grazing livestock or on land adjacent to water courses or to grazing animals.

5.8 Commission Implementing Decision (EU) 2017/ 302, 15th February 2017

Establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for the intensive rearing of poultry or pigs, includes:

BAT 2 proper location of the plant/farm and spatial arrangements of the activities in order to:

- reduce transport of animals and materials (including manure),
- ensure adequate distances from sensitive receptors requiring protection,
- take into account prevailing climatic conditions (e.g. wind and precipitation),
- consider the potential future development capacity of the farm,
- prevent the contamination of water.

BAT 10 & 13 – ensure adequate distances between the plant/farm and the sensitive receptors, to prevent / reduce noise and odour emissions.

5.9 Integrated Pollution Control Licensing, Batneec, Guidance Note for the Poultry Production Sector, EPA 1998

A guidance note for poultry rearing installations, where the capacity exceeds 100,000 units (whether within the same complex or within 100 metres of that complex), which includes:

BATNEEC for the siting of poultry units is based on the following hierarchy:

- A mass balance of nutrients within a control area.
- Protection of both surface and groundwater resources in the vicinity of the site and land spreading areas.
- Avoidance of nuisance due to malodours for dwellings in the vicinity of the site.
- Protection of the environment in the event of the de-stocking of the unit due to an emergency, e.g. an outbreak of a Class A disease.

The management of poultry manure should be based on a mass balance of nutrients within a control area, whether the area be a farm, group of farms or a region.

Thus, poultry units should preferably be sited in close proximity to either mushroom compost production areas or suitable land spreading areas such as land used for tillage crop production in which they can operate as 'back to back' enterprises to:

- Facilitate the utilisation of manure for mushroom compost or crop production.

- Avoid a surplus of manure prevailing within a region.
- Reduce manure transportation costs.

In order to protect both surface and groundwater resources in the vicinity of the site and land spreading areas a site investigation is essential and it is generally advisable that it be carried out by a qualified hydrogeologist. The site investigation should provide information on:

- Depth to water table (if shallow).
- Depth to bedrock (if shallow) and details of bedrock outcrops.
- Subsoil and bedrock type and quantitative assessment of permeability.
- Presence or absence of karst features - caves, swallows holes etc. - if bedrock is limestone.

Aquifer classification and groundwater vulnerability in accordance with the provisions of 'Groundwater protection schemes in Ireland: A proposed approach', (Daly, 1995).

- Private wells within 200 metres and all public wells within 1 kilometre of site and 300 metres of the land spreading areas.
- Direction of groundwater flow.
- Baseline information on surface and groundwater quality.
- Location of all watercourses adjacent to the site and land spreading areas.

In addition the investigation should include information on soil types and nutrient status. Poultry units should be sited a distance of preferably not less than 400 metres from the nearest neighbouring dwelling and all operations on site shall be carried out in a manner such that air emissions and/or odours do not result in significant impairment of or significant interference with amenities or the environment beyond the site boundary.

Poultry units should be sited such that in the event of an outbreak of disease requiring de-stocking there is an appropriate site available for the construction of a lined carcass disposal site for the disposal of all carcasses. The carcass disposal site shall be appropriately constructed in order to avoid any detrimental impacts on both surface and groundwater quality in accordance with the provisions contained in 'Class A disease outbreak - a multi-disciplinary approach', (Duggan, O'Laoide and Finn, 1995).

5.10 EPA Licence Application Guidance – Assessment of the Impact of Ammonia and Nitrogen on Natura2000 sites from Intensive Agriculture Installations (2021)

This is a guidance document published by the EPA to assist applicants preparing EPA Licence Applications to assess the predicted impact of their development on air emissions. The guidance provides instructions on the

steps needed to determine the information required to allow for an AA Stage 1 process and where necessary, a Stage 2 AA assessment for Natura 2000 sites.

5.11 Commission Regulation (EEC) No 1274/91 introducing detailed rules for implementing Regulation (EEC) No 1907/90 on certain marketing standards for eggs (15th May 1991) (as amended)

These regulations define in Annex II the "Minimum criteria to be met by poultry enterprises producing eggs as referred to in Article 18 (1) (a), (b), (c) and (d)", in order that their eggs can be labelled and sold as "free range eggs".

(a) Eggs in small packs bearing the words 'Free range eggs' must be produced in poultry enterprises in which:

- hens have continuous daytime access to open-air runs,
- the ground to which hens have access is mainly covered with vegetation,
- the maximum stocking density is not greater than 1,000 hens per hectare of ground available to the hens or one hen per 10 m²,
- the interior of the building must satisfy the conditions specified in (c) or (d).

6. Overview of proposed development

Planning permission is sought to construct the following;

- 1 No. Poultry Layer House
- 1 No. Manure/General Purpose store
- All ancillary structures (to include 3 No. meal storage bin(s) and soiled water tank),
- All associated site works (to include upgraded internal farm laneway site drainage and storm water attenuation) associated with the proposed development).

This application relates to a development, which is for the purposes of an activity requiring a Licence under part IV of the Environmental Protection Agency (Licensing) Regulations 1994 to 2013.

An Environmental Impact Assessment Report (EIAR) and a Natura Impact Statement (NIS) have been submitted with this planning application.

7. Submissions/Observations

No valid submissions were received within the statutory timeframe (i.e. by 13/05/24).

8. Statutory Consultees

An Taisce – Report dated 14/05/23, no objection subject to compliance with environmental requirements.

DHLGH – Report dated 13/05/24, further information requested.

Iarnrod Eireann – Report dated 24/04/24, observations only, no objections.

Arts Council – No response.

Heritage Council – No response.

9. Internal Referrals

Placemaking & Physical Development Section – Report received dated 15/05/24, further information requested.

Environment Compliance Section – Report received on 01/05/24, no objections subject to conditions.

Part 2 Environmental Impact Assessment and Appropriate Assessment

10. EIA Screening and determination

Under section 172 of the Planning and Development Act 2000, as amended, a planning application which comes within a class of development specified under Schedule 2 of Part 5 of the Planning and Development Regulations 2001, as amended, requires that an Environmental Impact Assessment is carried out for the project type proposed. The relevant class of development is under Part 1, Schedule 5, Class 11 item (a) "*Installations for the intensive rearing of poultry or pigs with more than – (a) 85,000 places for broilers, 60,000 places for hens*".

It is proposed to construct 1 no. poultry house with a capacity for 64,000 birds (hens). The existing poultry house granted under Ref: 19/231 holds 60,000 birds (hens). Therefore, the total capacity of the resulting development will be 124,000 birds (hens) and so an Environmental Impact Assessment of the development is required to be carried out.

It is also noted that under Part 2 class 1(e)(i) of Schedule 5 requires an Environmental Impact Assessment to be carried out for "*installations for*

intensive rearing of poultry not included in Part 1 of this Schedule which would have more than 40,000 places for poultry."

The following documentation is included in the EIAR carried out by CLW Environmental Planners Ltd:

- Non-Technical Summary
- Main Text of EIAR
- Technical Appendices (including the Natura Impact Statement – NIS)

I consider that the EIAR identifies, describes and assesses in an appropriate manner, the direct and indirect significant effects of the project on the following environmental factors:

- Population, employment and human health
- Land/ soil, air and climate/ climate change;
- Noise;
- Air quality;
- Material assets, culture heritage, visual aspects, tourism and the landscape.

I am also satisfied that the EIAR equally considers the interactions between the factors referred to above. However, ground water, surface water and biodiversity have not been adequately considered in relation to potential impact on designated EU Sites.

Alternatives (Section 5 of the EIAR)

The EIA Directive requires that an EIAR contain a description of reasonable alternatives studied by the developer, which are relevant to that project, including, as appropriate, an outline of the likely evolution of the current state of the environment without implementation of the project (baseline scenario), as a means of improving the quality of the environmental impact assessment process and of allowing environmental considerations to be integrated at an early stage in the project's design.

Chapter 5 of the EIAR sets out the details of the alternative sites considered, which are as follows:

- Alternative Sites (including at Regional Level)
- Alternative Layout & Design
- Alternative Size
- Alternative Processes
- Alternative Management of by-products

The documents and maps submitted show all lands within the applicants' ownership to demonstrate the possible alternative lands available. I note that the exploration of alternatives includes the location of the development in a

regional context including Cavan and Monaghan, and includes an assessment of the suitability of the site location vis a vis the proximity of the site to the egg packing centre at Carstown (Belview Egg Farm Ltd), tillage lands and grasslands, the current use of organic fertiliser sources and their displacement, reduction transport of animals and materials (including manure), other lands available and better bio-security.

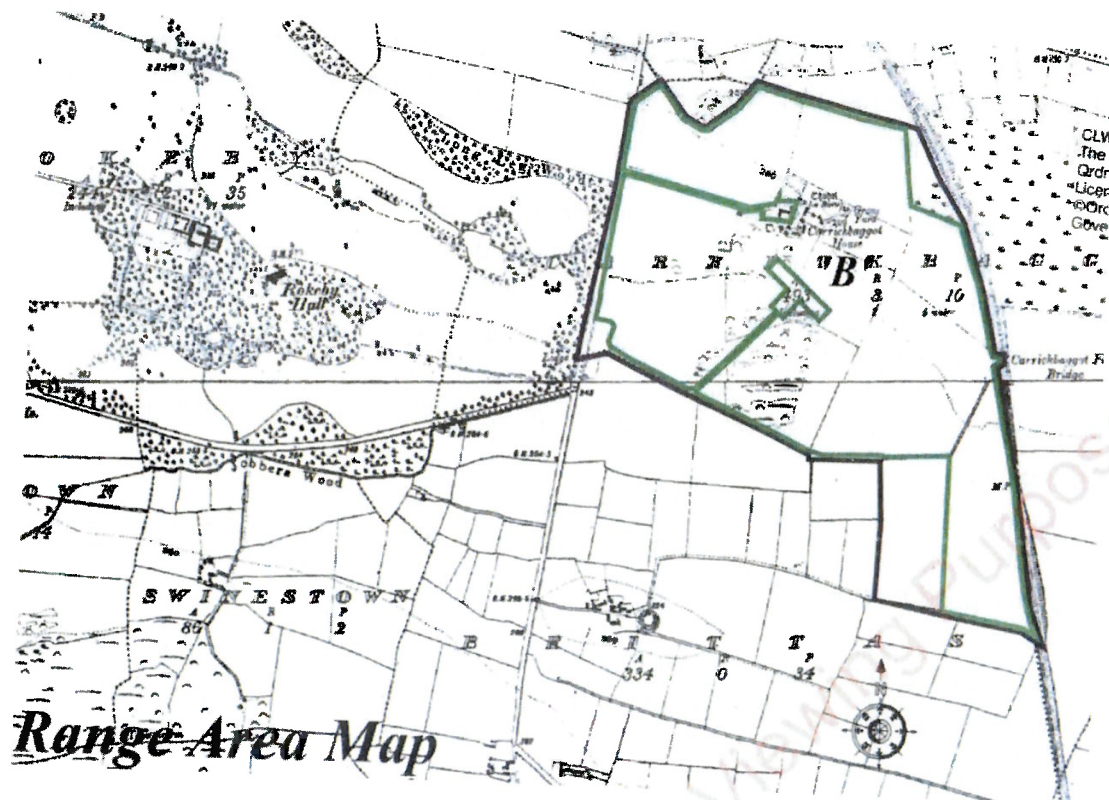
With regard to alternative layout and design the proposed development was researched and reviewed with the aid and guidance of Belview Egg Farm Ltd, commercial poultry house designers, an engineer, and commercial poultry equipment suppliers after the production system had been identified. No other alternative layouts were deemed satisfactory and/or appropriate.

Based on the fact that the development has been designed association with commercial poultry house designers and suppliers along with Belview Egg Farm Ltd, I am satisfied that the house design as proposed is the most appropriate for a poultry farm.

The previous application Ref: 23/60288 was refused partially on the basis of the separation distance of the proposed poultry house from the existing poultry house on the site.

In this regard, the applicant has clarified that *"The proposed development has to be located away from the existing development due to the free range nature of the existing activity. This was discussed with Louth Co. Co. when this free range activity was granted planning permission. As detailed there in this 60,000 bird free range house requires an area of 60 Ha adjacent to the house and available to the birds to satisfy DAFM and Bord Bia requirements, thus it is not possible to locate the proposed development adjacent to (or clustered with) same. While it has not proven possible to cluster the proposed development with the existing poultry house (due to the specific operational characteristics and nature of the existing activities), the applicant sought what he feels is the most visually suitable, and inobtrusive location for this development so as to ensure that it does not have an adverse visual impact"*.

As shown on the *Range Area Map* below, which was received as further information under Ref: 19/231, the existing poultry house on the lands requires 60 hectares (outlined in green) for 60,000 free range birds and is centrally located within the lands, so this regulatory bird stocking issue was understood at that time.



I have confirmed in Commission Regulation (EEC) No 1274/91 (Annex II relating to the "Minimum criteria to be met by poultry enterprises producing eggs as referred to in Article 18 (1) (a), (b), (c) and (d)", and on the Teagasc website that the maximum stocking density for eggs to be classified as "free-range" is not greater than 1,000 hens per hectare (i.e. 60,000 hens require 60 hectares). The hens must also have continuous daytime access to open-air runs and the ground to which hens have access is to be mainly covered with vegetation. The applicant states in the Cover Letter and in the EIAR that unobstructed access to the range area is critical for the existing free range activity. They also state in the EIAR that in terms of efficient siting, the poultry house needs to be roughly in the centre of the 60 hectares, which is the case with Ref: 19/231.

In Section 1.10 of the EIAR the applicant states that "This site of the proposed development is agricultural land, and forms part of an overall area of c. 68 Ha (c. 60 Ha+ of which is dedicated to the current free range enterprise, and as a result of range area required for this existing free range activity, the proposed development is required to be located remote from same and can not be adjacent to the existing house as it would impede free range bird access to and from the existing development.), owned by the applicant at this location".

They also state in the EIAR that in terms of efficient siting, the poultry house needs to be roughly in the centre of the 60 hectares, which is the case with Ref: 19/231.

As stated in Section 3.6 of the EIAR, for the proposed Barn System poultry house, an external range area is not required, hence the much smaller site size requirement.

On the basis of the information provided, including the technical justification for the chosen site having to be positioned away from the existing poultry house, and given that the proposed site is not visible from any public viewpoint, I consider that its location is acceptable.

Consideration was also given to alternative agricultural processes on the site as follows:

- Layer Housing – the production of eggs
- Free range layer/Broiler – this is the main alternative to the conventional poultry production system

The possible alternative agricultural processes are noted. In addition to the above consideration was also given to the alternative management of by-products.

Integrated Pollution Control Licensing, Batneec, Guidance Note for the Poultry Production Sector, EPA 1998 provides that the management of poultry manure should be based on a mass balance of nutrients within a control area, whether the area be it a farm, group of farms or a region. Thus, poultry units should preferably be sited in close proximity to either mushroom compost production areas or suitable land spreading areas such as land used for tillage crop production in which they can operate as 'back to back' enterprises to etc.

However, in this regard, the applicant has clarified that *"Unlike other "litter" based poultry systems, layer manure is not suitable for mushroom composting, therefore proximity to mushroom compost production facilities is not applicable to this development"*.

On balance, I consider that the applicant has adequately considered alternative sites in accordance with Article 94 (item 1 (d)) of the Planning and Development Regulations 2001 (as amended).

Poultry Manure

Section 4 of the EIAR states that *"It is intended that the eggs (Free Range and Barr) produced on this farm would be supplied to Belview Egg Farm Ltd., and that all organic fertiliser would be utilised by, the customer farmers as a source of local organic fertiliser for their crops. Alternatively, and if required organic fertiliser may be utilised by other farmers, in line with the requirements*

of S.I. 113 of 2022, as amended (Appendix 17). This will reduce the requirement for chemical fertiliser on these farms”.

Section 4.1 of the EIAR goes on to state that “The annual estimated production of organic fertiliser/manure from the farm is calculated in Figure 4.1.1. While this is a significant amount of additional fertiliser, it is significantly below that required by the customer farmlands identified for the receipt of this fertiliser. In line with standard terminology for this type of development the farms/farmlands identified for the receipt of organic fertiliser are referred to as customer farm/ farmlands. European Union (national Emission Ceilings) Regulations 2018) S.I. No. 232/2018, measures to control ammonia emissions recommends “promoting the replacement of inorganic fertilisers by organic fertilisers”, in line with the practices proposed for this development.

The customer list contained within Appendix 1, detailing the capacity of the customer farmlands to accommodate poultry manure from the proposed development in accordance with S.I. 113 of 2022, (And in line with policy objective ENV 21 as detailed in the Louth County Development Plan) indicates a requirement of c. 165 % of the proposed manure to be produced on the farm after the completion of the proposed development. While it is intended that all manure from this proposed development will be allocated to the customer farmers lands, additional customer farmers may be supplied if, and when, they arise if deemed appropriate”.

Section 4.4 of the EIAR states that “All potential customer farmlands currently identified for the receipt of manure from this proposed development are tillage lands farmed in accordance with S.I. 113 of 2022. All currently proposed customer farmlands are tillage/arable lands and are located in County Louth, Dublin and Meath and/or adjoining areas.....

.....Please refer to Appendix No. 6 for details pertaining to the general location of the potential customer farmers currently identified. It is anticipated that any other customer farmers that arise in this area, or within a reasonable distance from this existing/ proposed farm can be supplied with organic fertiliser for use in accordance with S.I. 113 of 2022, as amended”.

Section 4.5 of the EIAR states that “Included in Appendix No. 1 is a customer list detailing the current potential customers for organic fertiliser from this farm. This format also details the general location of the farmland areas and the requirement for additional fertiliser, as dictated by S.I. 113 of 2022, as amended. Additional information will be maintained on-site for inspection. This customer list is to be revised and updated as required in accordance with legislation, E.P.A. requirements and for the addition of other potential customers as they arise.

The nature of the downstream activity, (i.e. the application of organic fertiliser by customer farmers to their lands in accordance with S.I. 113 of 2022, and where the customer farmer is the responsible person under the aforementioned legislation), and the relationship between the customer farmers and the applicant (in that customer farmers may change from one year/season to another) is that this activity is sufficiently removed from the project as not to be capable of assessment in site-specific terms. Such activities need to be considered on a more programmatic basis and not on a site specific basis. The assessment of the proposed development has detailed that all organic fertiliser can be used by the customer farmers in accordance with Applicable legislation, i.e. S.I. 113 of 2022”.

2023 Estimated Customer Fertiliser Plan For Internal Farm and Contractor Use only. Distribution of this report to any person/body strictly prohibited. THIS IS NOT A RECORD 3 / SLURRY REGISTER

Farm	Craywall Egg Production	Herd No	Dept. O/Kg	Total N	Total P	Area	NPH	Storage (weeks)	Meal (Est.)	Chemical P	Sheep, Hens	Silage 2 Cut	Est. Max allocation 2023
1			2023	0	0	344.91	0.0	18	N/A	0			4280
2			2023	0	0	3192.4	0.0	18	N/A	0			356
3							#DIV/0!	18	N/A	0			0
4							#DIV/0!			0			0
5							#DIV/0!			0			0
6							#DIV/0!			0			0
7							#DIV/0!			0			0
							#REF!						824
Capacity%												168	
Estimated production				existing	60000	0.81 / '000 birds * 88%	52	2223.936					
				proposed	64000	0.81 / '000 birds * 100%	52	2695.68					
								4919.616					

Customer List taken from Appendix 1 of EIAR

Figure 4.1.1 Proposed Organic Fertiliser/Manure Production

Proposed Annual Manure Production.				
Animal Type Proposed	Number	Manure Production M3/'000 birds /week	Weeks	Total m3
Free Range (existing)	60,000	0.7128 * (0.81*88%)	52	2,223.94**
Barn (proposed)	64,000	0.81	52	2,695.68
				4,919.62

Table 4.1.1 taken from EIAR (Page 73)

Therefore, under this application the applicant is proposing to land spread all poultry manure from the proposed development on local agricultural lands, including new customers' lands, as an alternative to imported artificial fertiliser, which is already the case with the existing poultry house on the site. No additional poultry manure will be spread on the existing 60 ha of free range lands associated with the existing poultry house.

The applicant has further indicated in the EIAR (Page 79) that "At present this proposed development can only supply;

- c. 66% of the customer farmer fertiliser requirements of the calculated phosphorous requirements, and,
 - significantly less of the Nitrogen requirements, (The organic N available from the proposed development equates to c. 100 Kg Organic N/Ha, well below the 170 kg Organic N/Ha limit).
- of the identified customer farmlands when this proposed farm is at full operational capacity. A significant amount of additional organic/chemical fertilisers will still have to be applied to these lands to achieve optimum crop yields. The applicant is entitled to supply organic fertiliser to his potential customer farmers who want it and are not prohibited from using it. The use of animal manure to fertilise farmland is subject to statutory control under S.I. 113 of 2022, as amended, and all records as required by same will be maintained by the applicant".

As per Table 4.1.1 above, the applicant indicates that a total of c.4,919m³ of manure will result from the combined existing and proposed poultry houses. However, the above Customer List (Appendix 1 of EIAR) has no details of the actual customer farmlands or herd numbers or the location where the manure is to be taken for land spreading, and again only very scant details of customer farmlands have been included in Appendix 6 of the EIAR (which don't appear to tally with the customer farmlands list) so there is again insufficient information for the Planning Authority to make an assessment of the potential impact of the proposed development.

I have considered the manure and soiled water land spreading issues referred to in the cover letter in regard to the judicial review case JR 2020/566 (not JR 556/2020 as referred to in Cover Letter) (An Taisce v An Bord Pleanála & Ors) (i.e. Kilkenny Cheese Company), but I do not concur with the applicants' assertions.

I have also considered the matters contained in JR 2019/184 (Sweetman v the EPA & Ors), which relates to the issuing of an Industrial Emissions Licence by the EPA.

Essentially, the same issue arises as in previous application Ref: 23/60288, in that this is not considered to be a satisfactory proposal in relation to the management of the poultry manure, and therefore the Planning Authority is not in a position to adequately assess the EIAR.

Soiled Water

European Union Good Agricultural Practice for Protection of Waters Regulations 2022 (S.I 113 of 2022) sets out the requirements for the spreading of soiled waters on land. With regard to soiled water produced from the proposed poultry farm it is proposed that this will be directed to storage facilities as per Sections 1.8 and 4.7 of the EIAR. The EIAR also indicates (on page 164) that there will be no external movement of stock between houses thus preventing the generation of soiled water outside the houses and that the only soiled water will be from the washing of the house and the concrete apron and that appropriate measures for collection and management of soiled water have been demonstrated.

Section 1.15 of the EIAR states that "All soiled water generated on-site will be collected in the proposed soiled water collection tanks, pending its application to the landholding adjoining/ adjacent to the site. While waste generated on the site would be accumulated and stored temporarily on the site, there will be no disposal or recovery of any waste undertaken on the site. Soiled water will be applied to remaining lands adjacent to the proposed development".

Furthermore it is not clear how frequent the washing of the house will occur or what the quantum of soiled water will be.

Essentially, the same issue arises as in previous application Ref: 23/60288, in that this is not considered to be a satisfactory proposal in relation to the management of the soiled water, and therefore the Planning Authority is not in a position to adequately assess the EIAR.

Land spreading of manure and soiled water should be included as a **refusal** reason.

Likely significant effects

The likely significant direct and indirect effects of the proposed development are considered under the headings below which follow the order of the factors set out in Article 3 of the EIA Directive 2014/52/EU:

- Population and human health
- Biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC;
- Land, soil, water, air and climate;
- Material assets, cultural heritage and the landscape; and
- The interaction between those factors.

Land & Soil

Sections 6.1 and 7.1 of the EIAR refers to Soils. It includes details of the Landscape Character Area in which the site is located (Muirhevna Plain) and the bedrock geology of the site, which is referred to as Clogherhead Formation, which consists of "thickly bedded calcareous greywacke".

The application site is located on relatively flat lands. The surrounding lands are slightly undulating rising slightly from east to west. The land is currently used for agricultural purposes which in the main would appear to be pasture land used for grazing purposes. This proposal will have a significant effect on the area where the building is to be constructed, but consideration is given to the fact that a poultry farm is a form of agriculture that is generally compatible with the open countryside.

Soils and potentially bedrock will be excavated during construction which is a direct permanent impact, but is not considered to be a significant adverse impact, as the removal will have a negligible influence on the overall landform morphology of the surrounding area.

Groundwater

Sections 6.2 and 7.2 of the EIAR deal with groundwater. The aquifer classification of the site is referred to as a 'Poor Aquifer Bedrock'. The aquifer vulnerability for the area is classed as 'Moderate'.

The EIAR states that in order to ensure the proposed poultry farm does not impact on the groundwater the following measures will be implemented during the construction and operation of the facility:

- The proposed buildings will be constructed to Dept of Agriculture, Food and Rural Development Standards for the construction of farm buildings
- There is no external movement of stock between houses. The only soiled water will arise from the washing of houses and cleaning down of the concrete apron at the start/end of each batch.
- Manure will be stored in the house on a solid concrete floor and removed off site at the end of each batch.
- The fact that the manure will be a dry product will eliminate any of the potential concerns that may arise with the storage of liquid manure.
- Dedicated soiled water tanks will be provided at the proposed houses which will collect any soiled water associated with the washing of same. All soiled water will be applied to the applicant's family landholding and customer farmlands in accordance with S.I. 605 of 2017, as amended.

The proposed poultry houses will be constructed on an impermeable concrete base which will limit the potential risk for the infiltration or accidental spillage of soiled water from the buildings into the ground. I am therefore satisfied that there would be minimal infiltration of soiled water from the proposed poultry houses.

With regard to soiled water produced from the proposed poultry farm this will be directed to storage facilities as per Sections 1.8 and 4.7 of the EIAR. The EIAR also indicates (on page 164) that there will be no external movement of the stock between houses thus preventing the generation of soiled water outside the houses and that the only soiled water will be from the washing of houses and the concrete apron and that appropriate measures for collection and management of soiled water have been demonstrated. It is proposed that soiled water from the poultry houses be spread on the applicant's adjoining/ adjacent lands as per Section 1.15 of the EIAR.

Whilst this land spreading may be required to comply with S.I. 113 of 2022 is has not been demonstrated in the EIAR that it does not present a potential risk to water quality.

I note that *Legal Obligations and Good Practice Guidelines for Poultry Farmers, Department of Agriculture, Food and the Marine, 2014*, provides that water used for cleaning poultry houses should be captured and disposed of in accordance with environmental and nitrates legislation. Water used for cleaning poultry houses should not be spread on land used for grazing livestock or on land adjacent to water courses or to grazing animals.

With regards to the spreading of poultry manure, the EIAR indicates that the applicant is proposing to land spread all poultry manure from the proposed development on agricultural lands, including new customers' lands, as an alternative to imported artificial fertiliser in compliance with S.I. 113 of 2022. The applicant has indicated in the EIAR that any alternative destination for poultry manure that may be considered will have to be agreed with the Environmental Protection Agency as part of any EPA Licence granted for the development.

The referral report from the Environment Section has no objections, subject to conditions.

However, again only very scant details of customer lands have been included in Appendices 1 and 6 of the EIAR, and in any case this is not considered to be a satisfactory proposal in relation to the disposal of the poultry manure or soiled water.

Therefore the Planning Authority is not in a position to adequately assess the EIAR. Land spreading of manure and soiled water should be included as a **refusal** reason.

Surface Water

Sections 6.3 and 7.3 of the EIAR relate to surface water. The application site lies within the Newry Fane Glyde and Dee Hydrometric Area and Catchment, the Burren Sub-Catchment, and the Slieveboy Sub-Basin. There are open drains within the landholding, clean surface water from the farm will be directed to the ground.

The EIAR indicates that all surface water from the proposed poultry farm will discharge through storm water discharge points. The EIAR states that all roof water and uncontaminated storm water will discharge to the storm water drainage system to surface water and/ or to ground. The discharge point(s) will be visually inspected on a weekly basis for any signs of contamination (visual or odour) in line with the anticipated requirements of the EPA Licence to be applied for.

The Report further indicates that the poultry farm has been designed so as to minimise the amount of soiled water generated. Dedicated soiled water storage tanks will be constructed ensuring all soiled water is collected and there is no possibility of contaminated storm water entering the clean storm water discharge system.

All potentially polluting liquids (e.g. fuels, disinfectants, and chemicals) will be stored in an appropriately bunded area in accordance with EPA requirements. As previously indicated, soiled water will be applied on the applicants' lands in accordance with the requirements of S.I. 113 of 2022.

The Placemaking & Physical Development Section report dated 15/05/24 requests further information in regard to surface water and SUDS, culverting of water channels (OPW Section 50) and flood risk assessment. This will not be requested given the recommendation to refuse.

I note that Sections 6.3.1, 6.10 & 7.3 of the EIAR state that clean surface water is to be directed to drains within the site, that then flows towards the Morganstown Stream, 300m from the site.

Therefore the Planning Authority is not satisfied that the disposal of storm water/ surface water from the development would not impact negatively on the quality of surface water and so this should be included as a **refusal reason**.

Air/ Odour

Section 6.4 (Air) of the EIAR indicates that best available practices will be used in the operation of the proposed poultry farm. The buildings will be well maintained, properly ventilated, and will utilise modern manure management systems in order to minimise any potential adverse odour impacts on the surrounding area and in particular, the 11 residential properties identified as per Table 14. It is acknowledged that odour emissions may occur when poultry manure is removed from the site. However, the ventilation system for the development will also emit odours and when manure is spread.

In Section 7.4 of the EIAR it is indicated that the applicant will recommend to all farmers that organic fertilizer/ soiled water from the poultry farm should not be applied to lands adjacent to neighbouring dwellings or potential odour sensitive locations. A setback of 100 metres from individual dwellings and/or 200 metres from odour sensitive areas or groups of dwellings will be recommended. The nearest residential property is identified as being c.640 metres east of the application site in the EIA.

As part of the preparation of the EIAR ammonia, odour, and particulate matter impact assessments were carried out. This assessment is set out in Appendix 18 of the EIAR and concludes that the typical operation of the facility will not result in the thresholds/limits for odours, ammonia, nitrogen, or particulate matter being exceeded, but rather the impacts of each pollutant will be within these thresholds.

A site specific **Air Impact Assessment** has been carried out, and the issue of odour has now been comprehensively detailed and considered in that report and in Section 6.4.1 (Odour) in the EIAR, which also provides baseline data. Section 6.4.1 has considered odours that will arise from the spreading of manure and soiled water to land within the applicant's landholding and on other customer farmlands where other potential odour sensitive areas or dwellings have not been identified.

This section of the EIAR states that *"the application of organic fertilizer/soiled water in accordance with S.I. 113 of 2022, as amended, will ensure that excessive application, which could lead to extra odour due to surface soil saturation, will be avoided"*.

I am now satisfied, based on the information submitted, that the odours from the proposed poultry farm will not have an unacceptable impact from the nearest residential receptors in the area of the site, so this matter has been satisfactorily addressed.

A site specific **Air Impact Assessment** has been carried out, and the issue of dust has now been comprehensively detailed and considered in that report and in Section 6.4.3 (Particulate Matter – Dust) in the EIAR, which also provides baseline data.

I concur with the particulate matter (dust) details and information submitted, so I am satisfied that this issue has been addressed.

Climate

The sections on Climate are set out in sections 6.5 and 7.5 of the EIAR. This highlights that methane emissions from larger livestock such as cattle and sheep is much higher than that for poultry and pigs. It is also highlighted that studies have indicated that the carbon footprint for poultry is much lower than that for sheep and beef production.

As part of the preparation of the EIAR ammonia, odour, and particulate matter impact assessments were carried out. An **Air Quality Impact Assessment** was also carried out. The EIAR states that the use of soiled water on the applicants' agricultural lands will replace the need for the application of chemical fertiliser on these lands.

Consideration has now been given to air emissions arising from the proposed land spreading and particulate matter (dust) and these are included in the air quality assessment.

I consider that the information provided with the application, including information in relation to air emissions and the application to lands of the manure and soiled water arising and the associated biosecurity impacts is now sufficient to carry out an adequate assessment of the impact of the development on climate.

Based on the information submitted it is now considered that the applicant has satisfactorily addressed climate issues and demonstrated that the proposed poultry house would not have significant adverse impacts on climate.

Visual Aspects & Landscape

Sections 6.6 and 7.6 of the EIAR deal with visual amenity of the area. The greenfield site is in a rural area (Rural Policy Zone 2 in the Louth CDP 2021-2027, as varied) of farmland close to the existing poultry house. The site is located on the Muirhevna Plain, close to the uplands of Collon and Monasterboice. The site is located on relatively flat lands and the surrounding lands are undulating rising slightly from east to west.

The site is not located near any EU sites, such as SAC's, SPA's or NHA's or close to or disrupting any Protected Views/ Prospects, Areas of Outstanding Natural Beauty, Areas of High Scenic Quality or Scenic Routes as designated in the Louth CDP.

Noise

Once operational, the potential noise associated with the development is expected to be as follows:

- Poultry House Livestock
- Housing
- Feed Production & Handling
- Manure Management

Poultry House Livestock

Although the proposed building will have the capacity to house 64,000 birds, noise emissions from chickens are typically very low and will be well below the threshold from the noise sensitive locations. The building is to be well insulated, preventing any significant noise from escaping.

Feed Delivery Trucks

It is anticipated that the Feed Trucks will make deliveries every week during normal working hours and each delivery will last for about 1 hour. The predicted noise levels will be less than the daytime ambient noise criteria and will have an imperceptible impact on adjacent noise sensitive locations.

Poultry House Ventilation Fans

The poultry houses will have ventilation fans installed on each building. The predicted noise emission levels from these fans will not exceed 43dB(A). This would be below the relevant thresholds for daytime and night time periods.

Emergency Generator

The emergency generator will be for emergency use only, possibly for about 2 hours per week. It is recommended a low noise generator is utilised in order to minimise any potential nuisance to any surrounding noise sensitive locations.

Sections 6.7 and 7.7 of the EIAR deal with noise. Table 7.7 of the EIAR identifies that the nearest noise sensitive location is c.640 metres from the application site. Construction noise has been assessed and will fall within the maximum criteria for construction activities. The site is very well separated from residential properties in the vicinity.

I note that a site specific **Noise Impact Assessment** has now been carried out, and this has now been comprehensively detailed and considered in

Section 6.7 (Noise Levels) in the EIAR, which states that *“The nearest noise sensitive receptors to the proposed new poultry farm house (and the only ones visible from its location) are a number of detached residential dwellings located at a distance of 600m to the west / southwest”*. I concur with the noise details and information submitted, so I am satisfied that this issue has been addressed.

Traffic

Sections 6.8 and 7.8 of the EIAR deal with traffic. The proposed poultry farm will be accessed off a local road L275, which extends southwards from the Regional Route R170 (Dunleer to Clogherhead) at Grangebellew. The local road is wide with a white line and the site is accessed via an existing laneway.

At present this is a relatively busy road serving residential properties and agricultural lands and buildings. The average traffic flow anticipated with the proposed poultry farm includes:

- c. 1.5 load of organic fertiliser/ poultry manure per week on average per annum
- c. 1.5 feed deliveries per week
- 5 egg collections per week
- c. 2 staff daily
- Stock transport (8 loads in and 8 loads out) (every 14-15 months)
- Additional traffic due to veterinary inspections, farm maintenance, and waste collection.

Whilst the traffic movement associated with the proposed poultry house will be concentrated in the stocking, destocking, and cleaning periods, I do not consider that the average or peak level of traffic generation would result in any unacceptable direct or indirect impacts with regard to traffic.

Construction traffic will be temporary over a 12 month period only, involving c.3-4 loads/ day, with additional 2-4 journeys by workers to and from the site. I have no concerns with the overall access and traffic matters at this site.

Biodiversity

The application site is not located within any designated European Site. However, there are 10 sites within 15 kilometres, the closest of which is the recently designated North-West Irish Sea SPA, which is c.4.2 kilometres north of the application site.

I am satisfied that the application site does not provide ex-situ habitats that support populations of species in the SPAs and SACs which are the subject of the conservation objectives of these sites, as is evident from the information

submitted with the NIS and the EIAR, which are consistent with my observations at the time of inspection

Sections 6.9, 6.10, 7.9, and 7.10 of the EIAR deal with biodiversity. The subject lands are currently in agricultural use. The surrounding lands are also primarily agricultural with dispersed one-off housing also a feature.

A section of the existing field-boundary hedgerow that runs from north to south through the site of the poultry house would need to be removed to construct the large building and site development works. No additional hedgerow or trees need be removed to facilitate the achievement of sight lines at the entrance from the public road, as this was already a requirement of the permission granted and implemented under Ref: 19/231. The EIAR indicated that there will be no significant impact on flora and fauna as a result of the development. I note that the NIS contains mitigation measures in relation to the retention of trees, hedges, vegetation habitats, lighting, etc at the site. Any removal of hedgerow vegetation should be done outside of the bird nesting season.

With regards to soiled water and poultry manure I note that section 7.10 (Biodiversity – Special Policy Areas) of the EIAR indicates that all organic fertiliser/ poultry manure is to be allocated to lands in accordance with S.I. 113 of 2022.

As already stated above in the “Groundwater” section, water used for cleaning poultry houses should not be spread on land used for grazing livestock or on land adjacent to water courses or to grazing animals.

With regards to the spreading of poultry manure, the EIAR indicates that the applicant is proposing to land spread all poultry manure from the proposed development on agricultural lands, including new customer farmlands, as an alternative to imported artificial fertiliser in compliance with S.I. 113 of 2022. The applicant has indicated in the EIAR that any alternative destination for poultry manure that may be considered will have to be agreed with the Environmental Protection Agency as part of any EPA Licence granted for the development.

However, only scant details of customer farmlands have been included in Appendices 1 & 6 of the EIAR, and in any case this is not considered to be a satisfactory proposal in relation to the disposal of any soiled water, and therefore the Planning Authority is not in a position to adequately assess the EIAR.

With regards to the application of soiled waters to the farmland I am not satisfied that the applicant has demonstrated that this is in accordance with the requirements of S.I. 113 of 2022 and would not contribute to any significant adverse effects on the environment or designated sites, so this should be included in the reasons for refusal.

I note that the previous application Ref: 19/231 was referred to LCC Heritage Officer, who referenced wetlands (Carrickbaggott) fed by the Morganstown Stream, which are to the west of the existing poultry house, which is to the north-west of this proposed house, but this is not clear from the documentation submitted.

The referral report from An Taisce also refers to the same wetlands. The EIAR makes no reference to any potential wetland habitats that may be impacted by the proposed development, so this should be included in the reasons for refusal.

Cultural heritage is considered under section 6.10 and 7.10 of the EIAR. There are two Zones of Notification within the site boundary well to the north and north east of the proposed poultry house, but none of these are encroached upon by any part of the development works. However, given the size and scale of the proposal, and the potential for archaeological finds, I consider that archaeological monitoring would be required in this case.

The site will not impact on Rokeby Hall, a Protected Structure & Historic Gardens and Designed Landscape, which is located well to the west on the opposite side of the road and is not visually linked to the development site.

Population, Employment & Human Health

Population and Human Health is set out in sections 6.11 and 7.11 of the EIAR. There is some information included with regard to the residential population figures and demographics in the area and I note that Sections 6.4 and 7.4 relating to 'Air' and Section 6.12 relating to 'Material Assets' also include details relating to specific residential properties in the area that have been considered in the EIAR.

No adverse impacts on the population were identified in the EIAR. The potential significant impacts on the population of the area from the proposed facility are as follows:

- Odour generated during the operation of the poultry farm. I am now satisfied that this issue has been addressed by the site specific **Air Impact Assessment** and Section 6.4.1 (Odour) in the EIAR.
- Noise during construction phase and operation. (It is acknowledged the noise generated during construction will be temporary). I am now

satisfied that this issue has been addressed by the site specific **Noise Impact Assessment** and Section 6.7 (Noise Levels) in the EIAR.

Whilst a poultry farm is a form of intensive agriculture, it is nonetheless an operation that would be generally compatible with the rural area.

Material Assets

Sections 6.12 and 7.12 of the EIAR deal with Material Assets. This proposal relates to agricultural lands and nearby residential properties. The nearest dwelling will be c.640 metres from the proposed poultry house.

The impacts on this and other residential properties have been assessed under the headings Air and Noise above.

Tourism

Sections 6.13 and 7.13 of the EIAR deal with Tourism. Taking account of the location of the subject lands and the siting and design of the proposed buildings it is not considered that the proposed development would be likely to have a significant effect on tourism.

With regard to the application of manure and soiled waters on agricultural lands and the potential effects on tourism, I am satisfied that there this has now been satisfactorily addressed in the EIAR and that there will be no adverse impact on tourism in the general area.

Potential Cumulative Effects

Sections 6.14 and 7.14 of the EIAR deal with the Potential/Cumulative Effects. The EIAR concludes that the proposed development will have a "positive effect on the population of the area" and will not have a significant cumulative effect on the environment at national, county or local level.

It also concludes that there is no potential for any transboundary impacts given its location well away from any international boundaries.

Interaction of Effects

Chapter 8 of the EIAR addresses the interactions between the various environmental factors of the proposed development. The significant impacts of the proposed development and the proposed mitigation measures have been detailed in the relevant chapters of this report, and in practice many impacts have slight interactions with others. The EIAR concludes that most inter-relationships have a *neutral impact* when the mitigation measures are incorporated into the operation of the proposed development.

However, having reviewed each chapter and possible interactions, and given the overall deficiencies in the EIAR, I am not satisfied that inter-relationships will be broadly neutral and will not have a significant impact on the amenities of the area.

Environmental Management Programme

Chapter 9 of the EIAR sets out an **Environmental Management Programme** for the proposed poultry farm. This will include a comprehensive monitoring programme governed by the requirements of the EPA Licence and environmental legislation.

Section 9.2 states that an organic fertiliser/poultry manure management programme will be implemented as follows:

- The allocation of poultry manure to customer farmers for use as organic fertiliser with the requirements of S.I. 113 of 2022.
- Proper separation of all clean water on site and the collection of all soiled water in the soiled water storage tanks. Soiled water will be used as an organic fertiliser in accordance with the requirements of S.I. 113 of 2022. This is not considered to be appropriate as already detailed above.
- Continuous recording of all organic fertiliser/poultry manure/soiled water transfers off the farm as per the record 3 form (for compliance with S.I. 113 of 2022, or commercial documents (for compliance with animal by-products regulations) developed by the Dept of Agriculture, Food, and Marine, and the submission of all records to the Dept of Agriculture, Food, and Marine as required.

A schedule for the monitoring and maintenance of all structures and systems has also been set out. The proposed Environmental Management Programme is considered to be broadly reasonable.

I note that the applicant has now clarified that "*organic fertiliser/poultry manure/soiled water transfers off the farm as per record 3*", as stated in Chapter 9 of the EIAR, means the "*official form (Record 3) as prescribed under S.I. 113 of 2022 (as amended) (now replaced with an on-line return) detailing the movement and recording the transfer of organic fertiliser from one herd number to (exporter) to another (importer). This is recorded directly on the DAFM Agfood online movement system*". Therefore, I am satisfied that this has been clarified by the applicant.

Reasoned conclusions on significant effect

Having regard to the examination of the environmental information contained above and in particular to the EIAR and the submissions from the prescribed bodies and observers in the course of the application, it is considered that the

main significant direct and indirect effects of the proposed development on the environment are as follows:

Surface water and ground water – Whilst the proposed poultry houses will be constructed on an impermeable concrete base which will limit the potential for infiltration of soiled waters into the ground, further clarity and information is required in relation to surface water proposals, watercourses, drains, wells, ditches, the type of birds to be housed, effluent storage, quantum of soil water produced, overall stocking rate on the premises, calculations, etc.

In accordance with Article 94 and Schedule 6 of the Planning and Development Regulations 2001 it is considered that the EIAR is deficient in terms of the information and proposals provided therein. The Planning Authority is precluded from granting planning permission and therefore the proposed development should be **refused**.

11. Appropriate Assessment (AA)

In accordance with obligations under the Habitats Directives and implementing legislation, to take into consideration the possible effects a project may have, either on its own or in combination with other plans and projects, on a Natura 2000 site; there is a requirement to consider the possible nature conservation implications of the proposed development on the Natura 2000 network, before making a decision on the proposed development. The process is known as appropriate assessment. In this regard a guidance document '*Appropriate Assessment of Plans and Projects in Ireland*' was published by the DoEH&LG on the 10 December 2009.

Natura Impact Statement (NIS)

This application is accompanied by a Stage 2 NIS, prepared by Whitehill Environmental, in which 10 EU Natura 2000 Sites were identified within 15km of the application site as follows:

North-West Irish Sea SPA, Stabannan-Braganstown SPA, River Boyne and Blackwater SAC, River Boyne and Blackwater SPA, Dundalk Bay SAC, Dundalk Bay SPA, Boyne Estuary SPA, Boyne Coast and Estuary SAC, Clogherhead SAC, River Nanny Estuary and Shore SPA

The application site is not located within or adjacent to any designated site, with the nearest site being North-West Irish Sea SPA, which is c. 4.2km to the east. The site is currently in use as grassland/ tillage and there are no records of any recorded plant or mammals species on this site.

The potential impact of the proposed poultry farm on each of the Natura 2000 sites is identified in the NIS and summarised as follows:

North-West Irish Sea SPA

- Potential hydrological connectivity via the Morganstown Stream. Impacts on vegetation arising from atmospheric emissions from the site

Clogherhead SAC

- Impacts on vegetation arising from atmospheric emissions from the site.

Boyne Coast and Estuary SAC

- Impacts on vegetation arising from atmospheric emissions from the site.

Dundalk Bay SAC and SPA

- Impacts on vegetation arising from atmospheric emissions from the site.

Boyne Estuary SPA

- Ammonia Impact Assessment has concluded that there will no significant effects upon Natura 2000 sites beyond 7.5km from the application site.

River Boyne and Blackwater SAC

- Ammonia Impact Assessment has concluded that there will no significant effects upon Natura 2000 sites beyond 7.5km from the application site.

River Boyne and Blackwater SPA

- Ammonia Impact Assessment has concluded that there will no significant effects upon Natura 2000 sites beyond 7.5km from the application site.

Stabannon-Braganstown SPA

- Ammonia Impact Assessment has concluded that there will no significant effects upon Natura 2000 sites beyond 7.5km from the application site.

River Nanny Estuary and Shore SPA

- Ammonia Impact Assessment has concluded that there will no significant effects upon Natura 2000 sites beyond 7.5km from the application site.

The potential impacts were considered in more detail in the NIS and can be summarised as follows:

Deterioration of water quality during site preparation and construction and post construction and operation

The construction phase of the proposed development would include excavation works and the pouring of concrete. If appropriate mitigation measures are not taken there is the possibility that water quality in the Morganstown Stream which appears to be to the west of the existing poultry house, to the north-west of this proposed house (the location of which has not been made clear in the application documentation and information) and downstream ecological receptors in the North-West Irish Sea SPA may be negatively impacted; including by the pollution of watercourses with silt, oil, cement, hydraulic fluid, etc. The substances could have a toxic effect on the ecology of the water in general, directly affecting certain species and their food supplies. Any reduction in water quality could lead to general impacts and effects upon this SPA and its protected bird species. The potential risk of direct and indirect impacts arising from the site preparation and construction requires appropriate mitigation.

The potential impact arising from the production and management of poultry litter on site has been considered. The NIS states that the litter generated has high dry matter content and it will remain within the concrete-floored covered houses, until all birds are removed at the end of each batch, therefore there is no pathway between the litter and surface water/groundwater while the houses are stocked. The NIS also states that when the houses are destocked, the litter will be removed and loaded into lorries for removal off site for composting or use as fertiliser on land. Following this the houses will be brushed and washed down.

Based on the above information, I consider that in the operational phase the proposed development has the potential to affect the water quality of the European site North-West Irish Sea SPA via the Morganstown Stream, as well as other drainage ditches in the vicinity.

However, the applicant has now submitted a revised proposal, including a **Sub-Soil and Hydrogeological Assessment** and a **Surface Water Management Assessment**, which addresses surface water attenuation, soiled drainage and soiled water retention.

The applicant has also now provided clarity on the use of the existing and proposed sheds, as being for "Free Range and Barn Systems" of egg production with 60,000 existing free range and 64,000 proposed Barn System (i.e. in new shed proposed), giving a total of 124,000 hens.

I note that the **Environment Section** report dated 01/05/24 has no objections subject to conditions, so I am now satisfied that the previous issues in relation to watercourses, drains, wells, ditches, the use of the shed, effluent storage, overall stocking rate on the premises, calculations have been addressed in this current application.

Atmospheric Emissions

Significant atmospheric emissions arising from agricultural developments can have negative impacts on designated sites and their sensitive vegetation communities. Some vegetation communities are more sensitive to ammonia and nitrogen than others. The proposed development will lead to atmospheric emissions, mainly in the form of ammonia and nitrogen. AERMOD Dispersion Modelling was carried out by Irwin Carr Consulting to determine the potential impacts of ammonia and nitrogen emissions on the Natura sites.

Ammonia – Table 4 sets out for each designated site: the background concentration of NH₃, the process contribution, the total concentration, the critical load, and the % of the CL (critical level) range (represented by the process contribution). It states that the modelling is based on worst case scenario.

Nitrogen – Table 5 sets out, for each designated site: the background concentration of N, the process contribution, the total concentration, the critical load, and the % of the CL range represented by the process contribution. It states that the modelling is based on worst case scenario.

The modelling concludes that the “typical operation of the site will result in lower predicted ammonia and nitrogen impacts at the closest sensitive receptors than the worst case results presented in Ammonia Impact Assessment report. The report concluded that the predicted results of the ammonia and nitrogen modelling process showed that the limits for the protection of vegetation are not exceeded at the designated habitats within the vicinity of the poultry farm. Thus, any areas of ecological interest will not be adversely affected from the ammonia or nitrogen emissions arising from the operation of the farm”.

Spreading of manure and soiled water

The NIS states that the wash water from the cleaning of the poultry houses will be stored on site and spread on the applicants' lands and lands of other unidentified customer farmlands in the area immediately adjoining the site and in the nearby surrounding area. Likewise manure is to be spread on unidentified lands.

This is not considered to be a satisfactory proposal in relation to the disposal of the soiled water and manure, and therefore the Planning Authority is not in a position to adequately assess the NIS or to rule out that such practices will not impact on the Natura Network, and so the development is to be refused for that reason.

Cumulative impacts

The NIS states that there are no other sites identified with the potential to contribute a significant amount of ammonia impact in the area, apart from the existing poultry house operated by the applicant. The NIS also states that the construction and operation of the proposed development, including the land spreading of poultry manure and soiled water from the facility, will have no cumulative impacts when considered in-combination with other agricultural activities.

However, I do not concur with this assertion for the reasons already stated above relating to unacceptability of manure and soiled water land spreading.

Mitigation Measures

Mitigation measures have been proposed in the NIS as follows:

Construction

- Prior to the commencement of any site works, the applicant and the contactors must be made aware of the overall sensitivity of this site. They must be made familiar with the overall content of this NIS and they must be made aware of the mitigation measures contained in this NIS. A statement signed by personnel on site to say that they will adhere to the mitigation measures as outlined in this NIS must be presented to the Local Authority prior to the commencement of any works.
- Site preparation and construction should be confined to the development site only and should adhere to all the mitigation measures outlined in this NIS.
- The work areas must be kept to the minimum area required to carry out the proposed works and the area should be clearly marked out and cordoned off in advance of work commencement.
- The construction and operation of the proposed development must comply with the European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2022 (S.I. 113 of 2022).
- It is vital that there is no deterioration in water quality in the drains that surround the site that are upstream of the Morganstown Stream. Therefore, strict controls of erosion, sediment generation and other pollutants associated with the construction process should be implemented to reduce and intercept sediment release where necessary. It is strongly

recommended that prior to the commencement of works, that a robust geotextile membrane silt fence is installed around the main construction works area in the site to prevent run off mobilising to the north.

- All silt fences should be sturdy and constructed of a suitable geotextile membrane to ensure that water can pass through, but that silt will be retained. An interceptor trench will be required in front of this silt fence. The silt fence must be capable of preventing particles of 425mm from passing through.
- There must be no discharges of contaminated waters to ground or surface waters from this development, either during the construction or operation of the development. The control and management of hydrocarbons on site will be vital to prevent deteriorations in surface and groundwater quality locally.
- Best practice concrete / aggregate management measures must also be employed on site.
- The applicant must follow the guidelines set out in the Department of Agriculture's Explanatory Handbook for Good Agricultural Practice Regulations.
- The proposed storage tanks must adhere to the Department of Agriculture's Farm Building and Structures Specifications. Before use, they should undergo an integrity test that is performed by a suitably qualified person. They should be inspected regularly for deficiencies.
- All construction waste must be removed from site by a registered contractor to a registered site. Evidence of the movement and safe disposal of the construction waste will be retained and presented to Local Authority upon request. The applicants and construction contractors will be responsible for the safe removal of any construction waste generated on site. There must be no disposal of construction waste or spoil in areas outside of the application site.

Site Operation

- During operation, only clean surface water should be discharged to on site soakaways or local drains. All soiled water run-off should be directed to suitably designed storage tanks.
- The mature hedgerow and woodland within the site should be retained in so far as possible. Any removal of hedgerow vegetation should be done outside of the bird nesting season.
- Inappropriate lighting could result in the fragmentation of the habitats of otters, bats and other nocturnal mammals. Therefore, it is recommended that night time lighting is kept to a low level, which results in minimal spill.
- In so far as possible, landscaping should be sympathetic to the natural landscapes that surround the site. The future landscaping of the site should adhere to the specified recommendations.

Land spreading

The AA states that in order to avoid any reductions in water quality within the catchment as a whole, all organic fertiliser must be used in accordance with S.I. 113 of 2022. However, given the lack of detailed information relating to proposed customer farmlands the issue of land spreading of manure and soiled water is not considered acceptable as already detailed above.

Reduction of Emissions to Atmosphere

Any other technologies to further reduce the emissions from the poultry installation should be considered where possible.

NIS Conclusion

The NIS concludes that following mitigation the proposed development does not have the potential to significantly affect the conservation objectives or qualifying interests of the Natura 2000 sites and the integrity of the sites will not be adversely impacted.

AA Screening Assessment

Using the precautionary principle and a precautionary assessment of the source-pathway-receptor model, I consider that given the hydrological links between the application site and North-West Irish Sea SPA and the proposal to spread soiled waters and manure on unidentified customer lands there is potential to give rise to significant effects on the qualifying interests of the European sites in view of their conservation objectives.

Assessment of NIS

The application site is not located within or adjacent to any Natura 2000 sites. There will be no reduction in habitat or loss or disturbance of a designated site as a result of the development. However there are 10 Natura 2000 within 15km of the application site.

In relation to atmospheric emissions I am satisfied that based on the models and information submitted, the concentrations of ammonia and nitrogen arising from the proposed development will not exceed the guideline levels and will not have an impact on the conservation objectives of the Natura 2000 sites.

However, there is a potential hydrological link between the subject site and North-West Irish Sea SPA via the Morganstown Stream. Taking account of the source-pathway-receptor model I would consider that further hydrological links could potentially occur through land spreading of manure and soiled water.

In conclusion, in the absence of sufficient information to deal with the above-mentioned environmental issues at the site, I am not satisfied that the proposed development individually or in combination with other plans or projects would

not adversely affect the integrity of the European Site North-West Irish Sea SPA in view of the sites Conservation Objectives.

Therefore, given the deficiencies in the NIS submitted, the Planning Authority is precluded from granting planning permission and therefore the proposed development should be **refused**.

Part 3 – Planning Assessment

12. Principle of Development

The site is located in the open countryside and is currently in use as grassland/tillage and there is another large poultry house constructed nearby under Ref: 19/231. The surrounding land uses are primarily agricultural. It is also acknowledged that there are some one-off residential properties in the surrounding area.

Whilst the proposed development represents an intensive form of agriculture, it nonetheless represents a form of development that would be associated with the open countryside. It is noted that policy objectives EE 60 and EE 61 support sustainable agricultural activities and the diversification of the agriculture sector, subject to any development being compatible with the environment in which it is located.

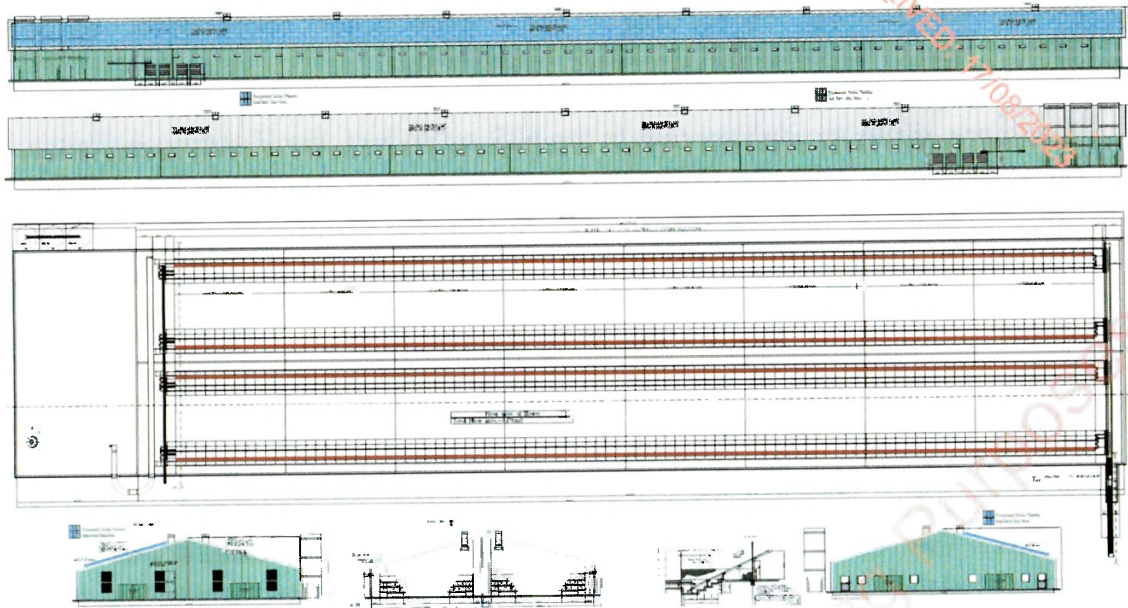
I would consider the proposed development, whilst significant in scale and a large scale enterprise, to be open for consideration in this rural location, subject to complying with all other relevant planning and environmental considerations.

13. Layout, Design and Height

The application relates to the proposed construction of 1 poultry layer house and 1 manure/ general purpose store, together with all ancillary structures (to include 3 meal storage bin(s) and soiled water tank), and all associated site works, to include upgraded internal farm laneway.

The external building finishes to the poultry house is shown as PVC coated ventilation metal sheeting on a steel sub-frame, which is a standard agricultural cladding and is considered acceptable. All ancillary structures, (to include 3 no. meal storage bin(s) and soiled water tank) are considered acceptable at this location.

Like the existing poultry house on the farm, solar panels are proposed on the roof, which would be acceptable.



Proposed Poultry House

The proposed buildings will be set back from the public road to the west by approximately 700 metres. The finished floor level of the building will be 60.50 which is much lower than the level of approximately 67.00 at the entrance onto the public road. It should be noted that land rises from the public road to around 70.84 metres then falls towards the application site. The poultry house would be constructed along the 61.00 contours of the site and therefore would require minimal excavation along its entire length.

Whilst the proposed building will be located in an open area of agricultural land and the footprint of the building will cover a large area it will be of a relatively low height (8.76 metres). Taking this into account I would consider the design of the buildings to be generally acceptable.

Commission Implementing Decision (EU) 2017/ 302, 15th February 2017 Establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for the intensive rearing of poultry or pigs, includes that such proposals consider the "potential future development capacity of the farm". Section 13.13.11.7 of the Louth CDP also contains reference to this in relation to providing a business plan in support of the development. The applicant states in the Cover Letter that the EIAR is essentially the business plan. I am satisfied that the EIAR sets out the justification and need for the poultry house in the proposed location away from the existing poultry house, so I concur with the applicant in that regard.

As per Section 13.13.11.7 in the Louth CDP, the proposed new poultry house building should be sited, if possible, in a clustered setting much closer to the

existing poultry house granted under Ref: 19/231 so that they minimise the impact on the landscape and can share site services more readily.

The previous application Ref: 23/60288 was refused partly on the basis of the separation distance of the proposed poultry house from the existing poultry house on the site.

However, in this regard, the applicant has clarified that *“The proposed development has to be located away from the existing development due to the free range nature of the existing activity.....As detailed there in this 60,000 bird free range house requires an area of 60 Ha adjacent to the house and available to the birds to satisfy DAFM and Bord Bia requirements, thus it is not possible to locate the proposed development adjacent to (or clustered with) same”*.

The existing poultry house on the lands, which was granted under Ref: 19/231 is also very clear in stating that 60,000 birds require 60 hectares of free range lands, so this issue was understood at that time.

I have confirmed in **Commission Regulation (EEC) No 1274/91** (Annex II relating to the *“Minimum criteria to be met by poultry enterprises producing eggs as referred to in Article 18 (1) (a), (b), (c) and (d)”*, and on the Teagasc website that the maximum stocking density for eggs to be classified as *“free-range”* is not greater than 1,000 hens per hectare (i.e. 60,000 hens require 60 hectares). The hens must also have continuous daytime access to open-air runs and the ground to which hens have access is to be mainly covered with vegetation. The applicant states in the Cover Letter and in the EIAR that unobstructed access to the range area is critical for the existing free range activity. They also state in the EIAR that in terms of efficient siting, the poultry house needs to be roughly in the centre of the 60 hectares, which is the case with Ref: 19/231.

In Section 1.10 of the EIAR the applicant states that *“This site of the proposed development is agricultural land, and forms part of an overall area of c. 68 Ha (c. 60 Ha+ of which is dedicated to the current free range enterprise, and as a result of range area required for this existing free range activity, the proposed development is required to be located remote from same and cannot be adjacent to the existing house as it would impede free range bird access to and from the existing development.), owned by the applicant at this location.....* For essential operational reasons, applicable to the nature of the existing free range house, the proposed development cannot be located close to, or grouped with the existing free range poultry house, (as it would impede the access of the birds to/from the existing development to the

required range area) and therefore has to be located remote from the existing development”.

As stated in Section 3.6 of the EIAR, for the proposed Barn System poultry house, an external range area is not required, hence the much smaller site size requirement.

On the basis of the information provided, including the technical justification for the chosen site having to be positioned away from the existing poultry house, and given that the proposed site is not visible from any public viewpoint, I consider that its location is justified and acceptable.

14. **Residential Amenity**

There are residential properties in the surrounding area, with the closest property being approximately 642 metres from the location of the proposed poultry house and associated developments. Matters which include noise, dust, traffic and odours etc have been comprehensively considered in the assessment of the EIAR set out above. No submissions have been received from nearby residents.

Whilst it is acknowledged there will be odours from the spreading of manure generated from the development and from the ventilation system, and that this will occur at particular times, for example when the houses are being cleaned out, the operation of the poultry farm will utilise best available techniques and keep within the recommended guidance parameters. I also note that as part of any EPA License granted for the facility the applicant will be required to carry out monitoring for various aspects of the licence. This will enable the monitoring of odours to be reviewed on an ongoing basis.

I note that a site specific **Noise Impact Assessment** has now been carried out, and this has now been comprehensively detailed and considered in Section 6.7 (Noise Levels) in the EIAR, which states that “*The nearest noise sensitive receptors to the proposed new poultry farm house (and the only ones visible from its location) are a number of detached residential dwellings located at a distance of 600m to the west / southwest*”. I concur with the noise details and information submitted, so I am satisfied that this issue has been addressed.

I note that a site specific **Air Impact Assessment** has been carried out, and the issue of dust at the site has now been comprehensively detailed and considered in that report and in Section 6.4.3 (Particulate Matter – Dust) in the EIAR, which also provides baseline data.

I concur with the particulate matter (dust) details and information submitted, so I am satisfied that this issue has been addressed.

15. **Traffic and Transportation Considerations**

The site is accessed from the L275 local road, which extends southwards from the Regional Route R170 (Dunleer to Clogherhead) at Grangebellew. The local road is wide with a white line and the site is accessed via an existing laneway.

At present this is a relatively busy road serving residential properties and agricultural lands and buildings. The average traffic flow anticipated with the proposed poultry farm includes:

- c. 1.5 load of organic fertiliser/ poultry manure per week on average per annum
- c. 1.5 feed deliveries per week
- 5 egg collections per week
- c. 2 staff daily
- Stock transport (8 loads in and 8 loads out) (every 14-15 months)
- Additional traffic due to veterinary inspections, farm maintenance, and waste collection.

Whilst the traffic movement associated with the proposed poultry farm will be concentrated in the stocking, destocking, and cleaning periods, I do not consider that the average or peak level of traffic generation would result in any unacceptable direct or indirect impacts with regard to traffic.

In relation to parking and turning within the proposed poultry farm there is a proposed large parking and turning area for service vehicles (including HGVs) to manoeuvre.

A report from the Placemaking & Physical Development Section received dated 15/05/24 has raised no issues in relation to access or traffic.

16. **Environmental Considerations**

Surface Water

The EIAR states that all surface water from the proposed poultry farm will discharge through the existing/ proposed storm water discharge points to ground/ surface water, but no details of the type of clean or soiled surface water, pipes or calculations have been submitted to demonstrate compliance with SUDS requirements.

All roof water and uncontaminated storm water will discharge to the storm water drainage system to surface water and/ or to ground. The discharge

point(s) will be visually inspected on a weekly basis for any signs of contamination (visual or odour) in line with the anticipated requirements of the EPA Licence to be applied for.

The applicant states that the proposed poultry farm has been designed so as to minimise the amount of soiled water generated. Dedicated soiled water storage tanks will be constructed ensuring all soiled water is collected and there is no possibility of contaminated storm water entering the clean storm water discharge system.

The report from Placemaking & Physical Development Section dated 15/05/24 has requested further information in relation to the proposed surface water arrangements at the site. They have also requested further information in relation to the submission of a **Flood Risk Assessment**. This will not be requested given the recommendation to refuse.

Soiled Water

With regard to soiled water produced from the proposed poultry farm this will be directed to storage facilities as per Section 4.7 of the EIAR. The EIAR indicates (on page 164) that there will be no external movement of stock between houses thus preventing the generation of soiled water outside the houses and that the only soiled water will be from the washing of houses and the concrete apron and that appropriate measures for collection and management of soiled water have been demonstrated.

I note that European Communities Good Agricultural Practice for Protection of Waters Regulations, 2022 (S.I. 113 of 2022) sets out the requirements for the spreading of soiled waters on land. In section 6.9 of the EIAR it is indicated that in accordance with these regulations, this soiled water will only be applied to lands where a crop response (i.e. tillage or maize) is anticipated. In addition the applicant has indicated in Section 7.4 (Air) of the EIAR that there will be a recommended setback distance of 100 metres (individual dwellings) and 200 metres (groups of dwellings) with regard to the application of soiled waters.

This land spreading is not considered to be a satisfactory proposal in relation to the management of the soiled water, and therefore the Planning Authority is not in a position to adequately assess the EIAR, so this should be included as a **refusal** reason.

Poultry Manure

With regards to the spreading of poultry manure, the EIAR indicates that the applicant is proposing to land spread all poultry manure from the proposed development on agricultural lands, including new customers' lands, as an alternative to imported artificial fertiliser in compliance with S.I. 113 of 2022.

The applicant has indicated in the EIAR that any alternative destination for poultry manure that may be considered will have to be agreed with the Environmental Protection Agency as part of any EPA Licence granted for the development.

However, again only very scant details of customer lands have been included in Appendices 1 and 6 of the EIAR, and in any case this is not considered to be a satisfactory proposal in relation to the management of the poultry manure, and therefore the Planning Authority is not in a position to adequately assess the EIAR, so this should be included as a **refusal** reason.

Water Supply

Water supply for the development is to be sourced from a Ballymakenny/Sandpit Group Water Scheme, and a letter of consent has been submitted.

17. **Development Contributions**

As set out by Category 3 (d) (Agricultural Development) in Table 2 of Section 8 of the **Development Contributions Scheme 2023**. This equates to €10 per m².

The proposed development would have a gross floorspace of 5,749m².

$$€5,749\text{m}^2 \times €10 = €57,490$$

Total contributions due – €57,490

Part 4 Conclusion and Recommendation

18. **Conclusion**

In conclusion, the proposed poultry layer house and associated development would represent an intensive form of agriculture in a rural area. However, taking account of the nature of the development and the policy objectives supporting agricultural activities in the Louth County Development Plan 2021-2027, as varied, in addition to the Development Management criteria for Agricultural Enterprises as set out in Section 13.13.11.7 of the CDP, in principle such development is open for consideration in this rural location.

However, given the lack of information in relation to landspreading areas, climate change, ground water, surface water and biodiversity in the EIAR & NIS submitted with the application, I am not satisfied that based on the information submitted, that the proposed development would not have a significant adverse impact on the amenities of the residents living in the

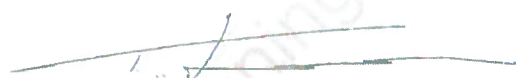
surrounding area, particularly due to the land spreading of manure and soiled water.

19. **Recommendation**

In accordance with the foregoing I recommend that permission should be refused, for the following reasons and considerations.

20. **Reasons and Considerations**

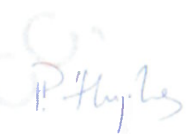
1. Due to the inadequacy of the information provided with the application, particularly in relation to the landspreading areas and biosecurity, climate change, ground water, surface water and biodiversity, the Planning Authority is unable to carry out a comprehensive environmental impact assessment of the proposed development as required by legislation, accordingly to permit the proposed development would be contrary to the proper planning and sustainable development of the area.
2. On the basis of the information provided with the application, particularly in relation to the landspreading areas, climate change, ground water, surface water and biodiversity, the Planning Authority cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on European site North-West Irish Sea SPA (No: 004236), or any other European site, in view of the site's Conservation Objectives. In such circumstances the Planning Authority is precluded from granting permission.



Terence Loane
Executive Planner
Date: 23/05/2024



Thomas McEvoy
Director of Services
Date: 30th May 2024



Patricia Hughes
Senior Executive Planner
Date: 23/05/2024

Appendix 1 (Pre-planning Notes)

PRE-PLANNING CONSULTATION NOTES

PLANNER'S NOTES:

Preplanning Reference: PP23/270

Applicant: Crayvall Egg Production Ltd

Proposal: As per 23/60288 – Construction of 1 No. Poultry Layer House and 1 No. Manure/General Purpose store, together with all ancillary structures, (to include 3 No. meal storage bin(s) and soiled water tank), and all associated site works (to include upgraded internal farm laneway,) associated with the proposed development, at Carrickbaggott, Grangebellew, Co. Louth. This application relates to a development, which is for the purposes of an activity requiring a Licence under part IV of the Environmental Protection Agency (Licensing) Regulations 1994 to 2013. An Environmental Impact Assessment Report (E.I.A.R.) and Natura Impact Statement (N.I.S.) have been submitted with this planning application

Site Location: Carrickbaggott, Grangebellew, Co. Louth

Pre-planning Meeting: 10am on 10th January 2024 (Town Hall).

In attendance:

Dermot Herlihy (Crayvall Eggs)

Rachel Johnson (Crayvall Eggs)

Paraic Fay (Agricultural Consultant with CLW Environmental Planners)

Representing Louth County Council:

Terence Loane (Executive Planner)

Planning Authority advised as follows:

National & Regional Policy Documents which may be relevant to this proposal include:

- Project Ireland 2040 National Planning Framework (May 2018);
- National Development Plan 2021 – 2030;
- EMRA Regional Spatial & Economic Strategy (RSES) (June 2019);
- The Planning System and Flood Risk Management (2009);
- Guidelines for Planning Authorities and An Bord Pleanála on carrying out Environmental Impact Assessment (August 2018);
- Development Management Guidelines (2007)

Louth County Development Plan 2021-2027, as varied, applies to this site

The relevant Louth County Development Plan 2021-2027, as varied, policy objectives, guidance, development management standards, environmental policies, etc for this site are already contained in the planners' report for Ref: 23/60288 (Refused by LCC), so there is no need to list them again here.

Many of these issues have also been referred to in the email from Padraic Fay dated 29th November 2023.

Planning Consideration

The sites located approximately 1.5km south of Grangebellwin in a rural farmland area served by a local L275 local road, which extends southwards from the Regional Route R170 (Dunleer to Cloghhead) at Grangebellwin.

The applicant submitted an email from Padraic Fay dated 29th November 2023 which has been considered, and to which I spoke about with Patricia Hughes (SEP) prior to the pre-planning meeting taking place.

Essentially, this proposal is for the same development as refused before, but with revised details and information to be provided for consideration.

The applicant is fully aware of the previous refusal reasons, but is not in agreement with them, particularly from an environmental perspective in terms of landspreading, the clustering of the development with the existing sheds, alternative sites, landspreading of manure, etc. Mr Fay stated that free range poultry production requires the provision of large external free range areas for the hens to roam free, so it cannot be clustered with other existing buildings for this reason. This open range area is a requirement of DAFM.

They also stated that it is not practical to have an alternative site at a regional location too distant from the main Belview Eggs premises at Carstown and there is already a poultry house close to this site and on the same laneway.

However, they feel that the main issues can be adequately addressed in a new proposal that complies with all relevant planning and environmental requirements for such agricultural developments and should be acceptable in the rural area.

Conclusion

At the meeting I advised Padraic Fay (Agricultural Consultant with CLW Environmental Planners) to consider in detail the previous refusal reasons and address all issues, and set out clearly in a Planning Statement all new/updated information as to how this will be achieved, particularly in relation to environmental matters, landspreading of manure, reasons for not clustering development, etc.

Terence Loane (Executive Planner).

NOTE: ADVICE GIVEN IS PRE-PLANNING ADVICE BASED ON INFORMATION AVAILABLE AT THE TIME & DOES NOT PREJUDICE ANY SUBSEQUENT PLANNING APPLICATION AND/OR BIND THE PLANNING AUTHORITY AND/OR PRESCRIBED BODIES IN ASSESSMENT OF ANY APPLICATION RECEIVED ON FOOT OF PRE-PLANNING CONSULTATION.

Case C-121/03

Commission of the European Communities

v

Kingdom of Spain

(Failure of a Member State to fulfil obligations — Directives 75/442/EEC and 91/156/EEC — Meaning of 'waste' — Directives 85/337/EEC and 97/11/EC — Assessment of the effects of certain public and private projects on the environment — Directive 80/68/EEC — Protection of groundwater against pollution caused by certain dangerous substances — Directive 80/778/EEC — Quality of water intended for human consumption)

Opinion of Advocate General Stix-Hackl delivered on 26 May 2005 I - 7573
Judgment of the Court (Third Chamber), 8 September 2005 I - 7593

Summary of the Judgment

1. *Environment — Waste — Directive 75/442 — Meaning — Substance which is discarded — Livestock effluent — Excluded — Conditions — Carcasses of animals being reared which die on the farm — Included*

(Council Directive 75/442, as amended by Directive 91/156, Art. 1(a))

2. *Environment — Waste — Directive 75/442 — 'Other legislation' for the purposes of Article 2(1)(b) — Community or national legislation — Conditions*
(Council Directive 75/442, as amended by Directive 91/156, Art. 2(1)(b))
3. *Environment — Assessment of the effects of certain projects on the environment — Directive 85/337 — Projects of the classes listed in Annex II to be made subject to assessment — Member States' discretion — Scope and limits*
(Council Directive 85/337, as amended by Directive 97/11, Arts 2(1), 4(2), and Annex II)
4. *Environment — Protection of waters against pollution caused by nitrates from agricultural sources — Directive 91/676 — Scope — Livestock effluent — Included — Use of livestock effluent as agricultural fertiliser — Excluded from the system of protection of groundwater established by Directive 80/68*
(Council Directives 80/68, Art. 5, and 91/676)

1. The scope of the term 'waste', for the purposes of Directive 75/442 on waste, as amended by Directive 91/156, turns on the meaning of the term 'discard' in the first subparagraph of Article 1(a) of that directive.

regulate the disposal or recovery of waste, do not apply to goods, materials or raw materials which have an economic value as products regardless of any form of processing and which, as such, are subject to the legislation applicable to those products, provided that their reuse is not a mere possibility but a certainty, without any further processing prior to reuse, and as part of the continuing process of production.

In that regard, in certain situations, goods, materials or raw materials resulting from an extraction or manufacturing process, the primary aim of which is not the production of that item, may be regarded not as a residue but as a by-product which the undertaking does not seek to 'discard', within the meaning of that provision, but intends to exploit or market on terms which are advantageous to it, in a subsequent process, without any further processing prior to reuse. In such a case, the provisions of that directive, which are intended to

Therefore, livestock effluent may, on the same terms, fall outside classification as waste, if it is used as soil fertiliser as part of a lawful practice of spreading on clearly identified parcels and if its storage is limited to the needs of those spreading operations. The fact that such

effluent is not used on land forming part of the same agricultural holding as that which generated it, but to meet the needs of other economic operators, is, in that regard, irrelevant.

nity or national, relates to the management of that waste as such and that it results in a level of protection of the environment at least equivalent to that aimed at by that directive.

(see para. 69)

On the other hand, carcasses of animals being reared, where those animals died on the farm and were not slaughtered for human consumption, may in no case be used in conditions which would enable them not to be defined as waste within the meaning of that directive. The holder of those carcasses is certainly obliged to discard them, with the result that that matter must be regarded as waste.

(see paras 57-58, 60-62, 64)

2. The term 'other legislation', in Article 2 (1)(b) of Directive 75/442 on waste, as amended by Directive 91/156, can refer to both Community legislation and national legislation covering a category of waste mentioned in that provision, provided that such legislation, Commu-

3. Article 4(2) of Directive 85/337 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 97/11, provides that the Member States are to determine through a case-by-case examination or thresholds or criteria which they set whether the projects listed in Annex II to that directive should be made subject to an impact assessment. That provision has, in essence, the same scope as that of Article 4(2) of Directive 85/337, in its original version. It does not alter the general rule, set out in Article 2(1) of that directive, that projects likely to have significant effects on the environment, by virtue, inter alia, of their nature, size or location, are to be made subject to an assessment of their effects on the environment.

(see paras 91-92)

4. The system of protection of waters from pollution by livestock effluent is not based, at Community level, on Directive 80/68 on the protection of groundwater against pollution caused by certain dangerous substances but on Directive 91/676 concerning the protection of waters against pollution caused by nitrate from agricultural sources. The latter's specific purpose is to counter water pollution resulting from the spreading or discharge of livestock effluent and from the excessive use of fertilisers. The scheme of protection for which it provides involves precise management measures which the Member States must impose on farmers and

which take into account the more or less vulnerable nature of the environment receiving the effluent. If Article 5 of Directive 80/68 were interpreted as meaning that the Member States must subject to prior investigation, involving, in particular, a hydrogeological survey, any use of livestock effluent as agricultural fertiliser, the scheme of protection established by Directive 80/68 would be substituted in part for that specifically instituted by Directive 91/676.

(see paras 101-102)



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Language of document : English ▼ ECLI:EU:C:2013:627

JUDGMENT OF THE COURT (Fourth Chamber)
3 October 2013 (*)

(Environment – Directive 75/442/EEC – Slurry produced in a piggery and stored there pending its transfer to farmers who use it as fertiliser on their land – Classification as ‘waste’ or ‘by-product’ – Conditions – Burden of proof – Directive 91/676/EEC – Failure to transpose – Personal liability of the producer as to compliance by those farmers with European Union law concerning the management of waste and fertilisers)

In Case C-113/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Supreme Court (Ireland), made by decision of 23 February 2012, received at the Court on 1 March 2012, in the proceedings

Donal Brady

v

Environmental Protection Agency,

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, President of the Chamber, J. Malenovský, U. Lõhmus, M. Safjan and A. Prechal (Rapporteur), Judges,

Advocate General: P. Cruz Villalón,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 27 February 2013,

after considering the observations submitted on behalf of:

Mr Brady, by A. Collins SC and D. Gearty, Solicitor,

the Environmental Protection Agency, by A. Doyle, Solicitor, N. Butler SC and S. Murray BL,

the French Government, by G. de Bergues and S. Menez, acting as Agents,

the European Commission, by K. Mifsud-Bonnici, D. Düsterhaus and A. Alcover San Pedro, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 16 May 2013,

gives the following

Judgment

This request for a preliminary ruling concerns the interpretation of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Commission Decision 96/350/EC of 24 May 1996 (OJ 1996 L 135, p. 32) (‘Directive 75/442’).

The request has been made in proceedings between Mr Brady and the Environmental Protection Agency (‘the EPA’) concerning certain conditions attached to a licence to increase the size of a piggery issued by that authority to Mr Brady.

Legal context

European Union law

Directive 75/442

Directive 75/442 was repealed and replaced by Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste (OJ 2006 L 114, p. 9), which was itself subsequently repealed and replaced by Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ 2008 L 312, p. 3). However, in view of the date on which the licence at issue in the dispute in the main proceedings was issued, that dispute remains governed by Directive 75/442.

The first subparagraph of Article 1(a) of Directive 75/442 stated:

‘For the purposes of this Directive:

“waste” shall mean any substance or object in the categories set out in Annex I which the holder discards or intends or is required to discard.’

The second subparagraph of Article 1(a) of Directive 75/442 entrusted the Commission of the European Communities with the task of drawing up ‘a list of wastes belonging to the categories listed in Annex I’. In Decision 94/3/EC of 20 December 1993 (OJ 1994 L 5, p. 15), the Commission drew up such a list (‘the European Waste Catalogue’), which includes, among ‘waste resulting from agricultural ... primary production’, ‘animal faeces, urine and manure (including spoiled straw), effluent, collected separately and treated off-site’.

Article 1(b) and (c) of Directive 75/442 contained the following definitions:

“producer” shall mean anyone whose activities produce waste ...

“holder” shall mean the producer of the waste or the natural or legal person who is in possession of it’.

Article 2(1)(b)(iii) of Directive 75/442 stated:

‘The following shall be excluded from the scope of this Directive:

...

where they are already covered by other legislation:

...

imal carcasses and the following agricultural waste: faecal matter and other natural, non-dangerous substances used in farming'.

Article 4 of Directive 75/442 provided:

'Member States shall take the necessary measures to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment, and in particular:

- without risk to water, air, soil and plants and animals,
- without causing a nuisance through noise or odours,
- without adversely affecting the countryside or places of special interest.

Member States shall also take the necessary measures to prohibit the abandonment, dumping or uncontrolled disposal of waste.'

Article 8 of Directive 75/442 provided:

'Member States shall take the necessary measures to ensure that any holder of waste: has it handled by a private or public waste collector or by an undertaking which carries out the operations listed in Annex II A or B, or

recovers or disposes of it himself in accordance with the provisions of this Directive.'

Article 10 of Directive 75/442 stated that any establishment or undertaking which carried out waste recovery operations listed in Annex II B had to obtain a permit from the competent authority.

The operations listed in Annex II B included, numbered R 10, '[I]and treatment resulting in benefit to agriculture or ecological improvement'.

Article 11(1) and (2) of Directive 75/442 stated:

'1. ... the following may be exempted from the permit requirement imposed in ... Article 10:

... establishments or undertakings that carry out waste recovery.

Exemption may apply only:

if the competent authorities have adopted general rules for each type of activity laying down the types and quantities of waste and the conditions under which the activity in question may be exempted from the permit requirements,

and

if the types or quantities of waste and methods of ... recovery are such that the conditions imposed in Article 4 are complied with.

2. The establishments or undertakings referred to in paragraph 1 shall be registered with the competent authorities.'

Directive 91/676/EEC

The sixth recital in the preamble to Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ 1991 L 375, p. 1) states:

'...it is ... necessary, in order to protect human health and living resources and aquatic ecosystems and to safeguard other legitimate uses of water, to reduce water pollution caused or induced by nitrates from agricultural sources and to prevent further such pollution; ... for this purpose it is important to take measures concerning the storage and the application on land of all nitrogen compounds and concerning certain land management practices'.

As set out in Article 3(1) and (2) of Directive 91/676:

'1. Waters affected by pollution and waters which could be affected by pollution if action pursuant [to] Article 5 is not taken shall be identified by the Member States in accordance with the criteria set out in Annex I.

2. Member States shall ... designate as vulnerable zones all known areas of land in their territories which drain into the waters identified according to paragraph 1 and which contribute to pollution. ...'

Article 4(1)(a) of Directive 91/676 sets out, with the aim of providing a general level of protection against pollution for all waters, that Member States are to establish a code or codes of good agricultural practice, to be implemented by farmers on a voluntary basis, which should contain provisions covering at least the items mentioned in Annex II A to the directive. The items set out in Annex II A relate in particular to periods when the land application of fertiliser is inappropriate, land application in the light of the nature and the state of the ground, the conditions for land application in the light of proximity to watercourses, the capacity and construction of storage vessels for livestock manure, and procedures for land application.

Under Article 5(1) and (4) of Directive 91/676, the Member States are obliged to establish action programmes in respect of designated vulnerable zones, which have to contain the measures referred to in Annex III and the measures prescribed in the code(s) of good agricultural practice except those which have been superseded by the measures in Annex III. The measures referred to in Annex III must, as is clear from that annex, include rules relating, in particular, to periods when the land application of certain types of fertiliser is prohibited, the capacity of storage vessels for livestock manure, limitation of the land application of fertilisers so as to ensure a balanced presence of nitrogen in the soil, and maximum quantities of manure that can be applied to the land on the basis of the manure's nitrogen content.

Irish law

The Waste Management Act, 1996 ('the 1996 Act'), was adopted for the purpose of transposing Directive 75/442 into national law. Section 4(1) of the 1996 Act provides:

'In this Act, "waste" means any substance or object belonging to a category of waste specified in the First Schedule or for the time being included in the European Waste Catalogue which the holder discards or intends or is required to discard, and anything which is discarded or otherwise dealt with as if it were waste shall be presumed to be waste until the contrary is proved.'

Section 51(2)(a) of the 1996 Act states:

'Subject to paragraph (b), a waste licence ... shall not be required for the recovery of-

...
ecal matter of animal or poultry origin in the form of manure or slurry ...'

Section 52 of the Environmental Protection Agency Act, 1992 ('the 1992 Act'), states:

'(1) The functions of the [EPA] shall ... include—

the licensing, regulation and control of activities for the purposes of environmental protection,

...
(2) In carrying out its functions, the [EPA] shall—

...
have regard to the need for a high standard of environmental protection and the need to promote sustainable and environmentally sound development, processes or operations,

...
The referring court explains that, although the 1992 Act established a licensing scheme which has certain similarities with that envisaged by Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (OJ 1996 L 257, p. 26), that directive was not transposed into Irish law until 2003, and therefore the licence at issue in the main proceedings was not granted pursuant to measures of national law adopted to implement that directive.

The referring court also points out that, on the date on which that licence was granted, Directive 96/676 had not yet been transposed into Irish law and no other domestic legislation controlled the use of animal fertiliser on agricultural land.

The dispute in the main proceedings and the questions referred for a preliminary ruling

Mr Brady operates an intensive pig farm having about 2 000 sows.

On 9 March 1998, Mr Brady applied for a licence to extend his farm, stating in the application that he had constructed tanks on his land of a capacity to store the equivalent of the farm's annual output of slurry and that he had entered into agreements with various farmers under which they undertook to purchase slurry for use as fertiliser on their land.

The licence that the EPA granted to Mr Brady, by decision of 22 October 1999, provides, in particular, that he is required to ensure that the farmers to whom he supplies slurry use it in strict accordance with the conditions set out in the licence.

In support of the action which he brought before the High Court against that decision, Mr Brady submitted, first, that the slurry at issue in the main proceedings is not 'waste' within the meaning of Directive 75/442 and the 1996 Act, but a by-product of his farm which he sells as fertiliser, so that the EPA did not have, on the basis of the 1992 Act, the power to regulate the disposal or the recovery of that slurry in the manner laid down in the contested licence.

Second, in Mr Brady's submission the EPA is not justified in imposing upon him, the obligation – enforceable by criminal sanction and impossible to satisfy – of controlling how the slurry he sells to other farmers is used by them, in particular as the European Union has enacted specific legislation intended to apply to the spreading of livestock effluent as fertiliser, namely Directive 91/676.

In this connection, the referring court states that Mr Brady contended in support of his action that the effect of the waste management conditions in the contested licence is to impose upon him, inter alia, the following obligations:

'...
to ensure that the purchaser of the fertiliser does not spread it on lands that are not in the purchaser's possession, ownership or control;

to ensure that none of [Mr Brady's] fertiliser is provided to lands that receive waste for landspreading from any other off-farm source which is not included in the Nutrient Management Plan, other than by agreement with the [EPA];

to agree in advance a Nutrient Management Plan in respect of lands not owned by [Mr Brady] and farmed by persons not under his control;

to monitor the use of the fertiliser by persons who purchase it for use on their lands and to direct the manner in which it is to be used;

to monitor surface waters that bisect areas on which the fertiliser is applied, i.e. at locations not under [Mr Brady's] control;

to monitor wells located on lands on which the fertiliser is spread, i.e. on lands not under [Mr Brady's] control;

to maintain at all times a register of use of the fertiliser for inspection by the EPA and for the ... purpose of submitting monthly reports to the EPA. The register must consist of fertiliser spreading: the name of the person who carries it out: weather and ground conditions at the time, and the weather forecast for the following 24 hours: the nutrient requirements for individual plots: and the volume of fertiliser applied to those plots.'

Following the dismissal of his action by the High Court, Mr Brady appealed to the Supreme Court. He relies in support of his appeal upon two grounds, alleging, first, that the High Court erred in law in classifying the slurry produced on his farm as waste and, second, that if that slurry should indeed be classified as waste, the EPA is not justified in imposing, as part of the licence which it has granted to him, conditions requiring him to control spreading activities carried out by third parties on land owned by them and to be liable for those activities.

The Supreme Court considers that, although the judgments in Case C-416/02 *Commission v Spain* [2005] ECR I-7487; Case C-121/03 *Commission v Spain* [2005] ECR I-7569; Case C-194/05 *Commission v Italy* [2007] ECR I-11661; Case C-195/05 *Commission v Italy* [2007] ECR I-11699; and Case C-263/05 *Commission v Italy* [2007] ECR I-11745 contain various useful pointers in this regard, uncertainty remains as to whether the slurry at issue in the main proceedings must be classified as waste.

Observing that it follows in particular from that case-law that slurry remains waste if it is required to remain in long-term storage giving rise to a risk of pollution of the type intended to be prevented by the requirements of

European Union law, the referring court raises in particular the question of the criteria for determining whether such a situation arises in the dispute before it.

It observes in this regard, first, that, bearing in mind that the sale of fertiliser is a seasonal undertaking, it is inevitable that the substantial volume of slurry generated by the activities of the appellant in the main proceedings will give rise to long-term storage, which should not, however, normally exceed the period of 12 months between two spreading seasons. It points out, second, that it has no material before it indicating whether the mere existence of this type of long-term storage in tanks authorised for that purpose does, or is likely to, lead to pollution.

Furthermore, on the assumption that the slurry at issue in the main proceedings is to be regarded as waste, the question then arises whether European Union law permits the EPA to attach to an operating licence conditions the effect of which is to continue to impose on Mr Brady obligations as to the eventual subsequent use of his slurry by other farmers or whether liability for such use must rest with those farmers.

It was in those circumstances that the Supreme Court decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'In the absence of a definitive interpretation of the meaning of "waste" for the purposes of Union law, is a Member State permitted by national law to impose upon a producer of pig slurry the obligation to establish that it is not waste, or is waste to be determined by reference to objective criteria of the type referred to in the case-law of the Court of Justice of the European Union:

If waste is to be determined by reference to objective criteria of the type referred to in the case-law of the Court of Justice of the European Union, what level of certainty of reuse of pig slurry is required, ... which a licensee collects and stores or may store for upwards of 12 months, pending its transfer to users?

If pig slurry is waste, or is determined to be waste in accordance with the application of the appropriate criteria, is it lawful for a Member State to impose upon its producer – who does not use it on his own lands, but disposes of it to third party landowners for use as fertilisers on those third parties' lands – personal liability for compliance by those users with Union legislation concerning the control of waste and/or fertilisers, in order to ensure that the third parties' use of that pig slurry by land spreading will not give rise to a risk of significant environmental pollution?

Is the aforesaid pig slurry excluded from the scope of the definition of "waste" by virtue of Article 2(1)(b)(iii) of Directive [75/442], by reason of its being "already covered by other legislation", and in particular by [Directive 91/676], in circumstances where, at the time the licence was granted, Ireland had not transposed [Directive 91/676], no other domestic legislation controlled the application of pig slurry to land as fertiliser, and [Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption (OJ 2002 L 273, p. 1)] had not then been adopted?'

Consideration of the questions referred

Question 1

By its introductory question and Question 1, which it is appropriate to deal with together, the referring court seeks, in essence, to ascertain, first, under what conditions slurry produced in an intensive pig farm and stored pending its transfer to farmers in order to be used by them as fertiliser on their land may be classified as a by-product and consequently cease to be regarded as 'waste' within the meaning of Directive 75/442 and, in particular, what level of certainty is required as regards the reuse of the slurry envisaged. Second, the referring court wishes to ascertain to what extent the burden of proving that those conditions are satisfied can rest on the producer of that slurry.

The first part of Question 1

As regards the circumstances in which pig slurry stored by a producer pending its transfer to farmers in order to be used by them as fertiliser on their land must be classified as a by-product rather than as 'waste' within the meaning of Directive 75/442, it should be recalled that the first subparagraph of Article 1(a) of that directive defines waste as 'any substance or object in the categories set out in Annex I which the holder discards or intends ... to discard'.

Both Annex I to Directive 75/442 and the list of wastes that is included in the European Waste Catalogue adopted on the basis of the second subparagraph of Article 1(a) of that directive are intended only as guidance (see, in particular, the judgment of 29 October 2009 in Case C-188/08 *Commission v Ireland*, paragraph 33 and the case-law cited).

Therefore, the fact that the European Waste Catalogue refers to 'animal faeces, urine and manure (including spoiled straw), effluent, collected separately and treated off-site' is not decisive for the purpose of assessing the concept of waste. That general mention of livestock effluent does not take into account the conditions in which the effluent is used and which are decisive for the purposes of such an assessment (see, to this effect, Case C-121/03 *Commission v Spain*, paragraph 66).

According to settled-case-law, classification as 'waste', within the meaning of Directive 75/442, is to be inferred primarily from the holder's actions and the meaning of the term 'discard', referred to in the first subparagraph of Article 1(a) of the directive (see, inter alia, Case C-194/05 *Commission v Italy*, paragraph 32, and Case C-188/07 *Commune de Mesquer* [2008] ECR I-4501, paragraph 53).

The term 'discard' must be interpreted in the light not only of the essential objective of Directive 75/442, which, according to the third recital in the preamble thereto, is 'the protection of human health and the environment against harmful effects caused by the collection, transport, treatment, storage and tipping of waste', but also of Article 174(2) EC. That provision states that 'Community policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Community. It shall be based on the precautionary principle and on the principles that preventive action should be taken ...'. It follows that the term 'discard' and, accordingly, the concept of 'waste' within the meaning of that directive cannot be interpreted

restrictively (see, inter alia, Case C-194/05 *Commission v Italy*, paragraph 33 and the case-law cited, and *Commune de Mesquer*, paragraphs 38 and 39).

The Court has held in particular that among the circumstances that may constitute evidence that the holder has discarded a substance or object or intends or is required to discard it, within the meaning of Article 1(a) of Directive 75/442, is the fact that a substance is a production or consumption residue, that is to say, a product which was not itself sought (see, inter alia, Case C-194/05 *Commission v Italy*, paragraph 34 and the case-law cited, and *Commune de Mesquer*, paragraph 41).

Such evidence may likewise be constituted by the fact that the substance in question is a production residue for which special precautions must be taken if it is used owing to the environmentally hazardous nature of its composition (see Joined Cases C-418/97 and C-419/97 *ARCO Chemie Nederland and Others* [2000] ECR I-4475, paragraph 87, and Case C-9/00 *Palin Granit and Vehmassalon kansanterveystyön kuntayhtymän hallitus* [2002] ECR I-3533, paragraph 43).

It is also clear from the case-law that neither the method of treatment reserved for a substance nor the use to which that substance is put determines conclusively whether or not the substance is to be classified as waste and that the concept of waste does not exclude substances and objects which are capable of economic reuse. The system of supervision and control established by Directive 75/442 is intended to cover all objects and substances discarded by their owners, even if they have a commercial value and are collected on a commercial basis for recycling, reclamation or reuse (Case C-194/05 *Commission v Italy*, paragraphs 36 and 37, and *Commune de Mesquer*, paragraph 40).

In light of the guidance provided by the case-law as set out above, it must be held that effluent generated by an intensive pig farm, which is not the product primarily sought by the farmer and any recovery of which by spreading as fertiliser must, as is apparent in particular from the sixth recital in the preamble to Directive 91/676 and the mechanism established by that directive, involve the taking of special precautions owing to the potentially hazardous nature of its composition from an environmental point of view, is, in principle, waste (see, by analogy, Case C-194/05 *Commission v Italy*, paragraph 35 and the case-law cited, and *Commune de Mesquer*, paragraph 41).

However, it is also clear from the case-law of the Court that, in certain situations, goods, materials or raw materials resulting from an extraction or manufacturing process the primary aim of which is not their production may be regarded not as a residue, but as by-products, which their holder does not seek to 'discard', within the meaning of the first subparagraph of Article 1(a) of Directive 75/442, but which he intends to exploit or market on terms advantageous to himself in a subsequent process – including, as the case may be, in order to meet the needs of economic operators other than the producer of those substances – provided that such reuse is not a mere possibility but a certainty, without any further processing prior to reuse and as part of the continuing process of production (see, inter alia, Case C-121/03 *Commission v Spain*, paragraph 58; Case C-194/05 *Commission v Italy*, paragraph 38; and *Commune de Mesquer*, paragraph 42).

As regards, more specifically, livestock effluent such as that at issue here, the Court has already held that it may fall outside classification as waste if it is used as soil fertiliser as part of a lawful practice of spreading on clearly identified parcels and if its storage is limited to the needs of those spreading operations (Case C-121/03 *Commission v Spain*, paragraph 60).

The Court has also stated that it is not appropriate to limit that analysis to livestock effluent used as fertiliser on land forming part of the same agricultural holding as that which generated the effluent. It is possible for a substance not to be regarded as 'waste' within the meaning of Directive 75/442 if it is certain to be used to meet the needs of economic operators other than the operator which produced it (Case C-121/03 *Commission v Spain*, paragraph 61).

It is for the national courts, taking account of the guidance provided by the Court's case-law and of all the circumstances of the situation on which they have to give judgment, to determine whether a by-product actually exists, while ensuring in this regard that classification as a by-product is limited to the situations that fulfil the conditions recalled in paragraph 44 of the present judgment.

So far as concerns determining that the reuse of the slurry stored pending spreading is sufficiently certain, it is to be pointed out first of all that, as follows from the case-law recalled in paragraphs 45 and 46 of the present judgment, the mere fact that such reuse will not, as a matter of fact, become absolutely certain until the spreading operations envisaged have in fact taken place through action by the third-party purchasers concerned does not preclude classification as a by-product.

What subsequently happens to an object or a substance is not in itself determinative of its nature as waste, which, in accordance with Article 1(a) of Directive 75/442, is established on the basis of whether the holder of that object or substance discards it or intends or is required to discard it (Case C-194/05 *Commission v Italy*, paragraphs 49 and 50 and the case-law cited).

It should indeed be pointed out in this regard that, if the referring court were to come to the conclusion that the reuse of the slurry envisaged by Mr Brady is, in this instance, sufficiently certain for the slurry to be considered, while stored by him and until it is actually delivered to the relevant third parties, a by-product which the person concerned seeks not to 'discard' within the meaning of the first subparagraph of Article 1(a) of Directive 75/442 but to exploit or market, that would not at all affect the fact that that slurry may, in some circumstances, become waste after its delivery, in particular if it were to become apparent that it is ultimately discharged by those third parties into the environment in an uncontrolled manner, in conditions which enable it to be regarded as waste (see, to this effect, Case C-416/02 *Commission v Spain*, paragraph 96).

In such a case, account should be taken of the fact that, according to the Court's case-law, the person who is in fact in possession of products immediately before they become waste must be regarded as having 'produced' that waste within the meaning of Article 1(b) of Directive 75/442 and thus be categorised as its 'holder' within the meaning of Article 1(c) of that directive (see, in particular, *Commune de Mesquer*, paragraph 74).

For the purpose of determining whether the reuse of the slurry through spreading by other farmers, as envisaged by the appellant in the main proceedings, is sufficiently certain to justify its storage for a period other than that necessary for its collection with a view to disposal, it is incumbent, on the other hand, on the referring court, as is apparent from the case-law recalled in paragraph 45 of the present judgment, to satisfy itself, in particular, that the plots of land of those farmers on which that reuse is to take place are, from the outset, clearly identified. Such identification is capable of showing that the quantities of slurry to be delivered are in principle actually intended to be used for the purpose of fertilising the plots of land of the farmers concerned.

Therefore, if the producer of the slurry wishes to store it for a longer period than that necessary for its collection with a view to disposal, he must have firm commitments from operators to take delivery of the slurry for the purpose of using it as fertiliser on duly identified plots of land.

As to the condition, also recalled in paragraph 45 of the present judgment, that the storage of the livestock effluent must be limited to the needs of the spreading operations, it should be noted that this condition is explained, in particular, by the fact that storage operations with a view to reuse of a substance may, in light of their duration, constitute a burden for the holder and be potentially the cause of precisely the environmental pollution which Directive 75/442 seeks to limit (see, to this effect, Case C-194/05 *Commission v Italy*, paragraph 40).

In this connection, it is incumbent, in particular, upon the national courts to satisfy themselves that the storage facilities which the producer of the slurry uses are designed so as to prevent any run-off of that substance or seepage into the soil, and that they provide sufficient capacity to store the slurry produced pending its actual handing over to the farmers concerned.

It is also important that the actual storage of the slurry be strictly limited to the needs of the spreading operations envisaged, which means, first, that the quantities stored must be limited in such a way that they are, in their entirety, indeed intended to be so reused (see, to this effect, *Palin Granit and Vehmassalon kansanterveystyön kuntayhtymän hallitus*, paragraph 40) and, second, that the period of storage must be limited in the light of the requirements resulting in this regard from the seasonal nature of the spreading operations, that is to say, it must not exceed what is required in order for the producer to be able to meet his existing contractual commitments to deliver slurry for spreading purposes during the spreading season in progress and the coming one.

Furthermore, it is likewise for the national courts to determine, having regard to all the relevant circumstances, that the reuse of the slurry by the third parties concerned, as programmed by the producer, is such as to confer upon him an advantage over and above merely being able to discard that product, since such a circumstance, when established, indeed increases the likelihood of actual reuse (see, to this effect, Case C-194/05 *Commission v Italy*, paragraph 52, and *Palin Granit and Vehmassalon kansanterveystyön kuntayhtymän hallitus*, paragraph 37).

As is apparent from the case-law recalled in paragraph 44 of the present judgment, the slurry at issue in the main proceedings can in fact be considered to have economically the value of a product only if the view can be taken that that slurry is indeed intended to be actually exploited or marketed on terms economically advantageous to its holder.

The relevant circumstances liable to require being taken into account by the national courts for the purpose of determining whether the aforesaid requirements are met include the circumstance that the substances concerned are the subject of actual commercial transactions and meet the buyers' specifications (see, to this effect, *Commune de Mesquer*, paragraph 47). Thus, it may be pertinent, in this connection, to examine the conditions, in particular the financial conditions, under which the transactions between the producer and the purchasers of the slurry take place. The same applies to the burdens, in particular those linked to storage of the substances concerned, which are brought about for the holder by the reuse of those substances, since such burdens must not prove excessive for him (see, to this effect, *Commune de Mesquer*, paragraph 59).

In light of all the foregoing, the answer to the first part of Question 1 is that the first subparagraph of Article 1(a) of Directive 75/442 must be interpreted as meaning that slurry produced in an intensive pig farm and stored pending delivery to farmers in order to be used by them as fertiliser on their land constitutes not 'waste' within the meaning of that provision but a by-product when that producer intends to market the slurry on terms economically advantageous to himself in a subsequent process, provided that such reuse is not a mere possibility but a certainty, without any further processing prior to reuse and as part of the continuing process of production. It is for the national courts to determine, taking account of all the relevant circumstances obtaining in the situations before them, whether those various criteria are satisfied.

The second part of Question 1

So far as concerns determination of the person upon whom rests the burden of proof as to fulfilment of the criteria entailing, in accordance with the Court's case-law recalled in paragraph 44 of the present judgment, a finding that a substance must be classified as a by-product and not as 'waste' within the meaning of Directive 75/442, it must be pointed out that the directive does not contain specific provisions relating to this question. Accordingly, the national court is to apply in this regard the provisions of its own legal system provided that, in so doing, the effectiveness of European Union law and in particular of Directive 75/442 is not undermined and compliance with the obligations flowing from European Union law is ensured (see, to this effect, *ARCO Chemie Nederland and Others*, paragraph 70, and Case C-194/05 *Commission v Italy*, paragraphs 44, 52 and 53).

It follows, in particular, that such national rules relating to the burden of proof cannot result in it being excessively difficult to prove that substances must, on application of the criteria resulting from that case-law, be regarded as by-products.

Subject to this reservation, it should be recalled that the Court has already held that leftover rock and sand residue from ore-dressing operations in the working of a mine which their holder uses lawfully for the necessary filling-in of the galleries of that mine are not classified as 'waste' for the purposes of Directive 75/442 where that holder provides sufficient guarantees as to the identification and actual use of those substances, and that it has, moreover, stated that such case-law can be applied to livestock effluent (see Case C-121/03 *Commission v Spain*, paragraphs 59 and 60 and the case-law cited).

As the Advocate General has observed in point 67 of his Opinion, it is indeed clear that as a general rule, since establishing an intention is involved, only the holder of the products can prove that he intends not to discard those products but to permit their reuse in circumstances that are appropriate for their being classified as a by-product within the meaning of the Court's case-law.

In light of the foregoing, the answer to the second part of Question 1 is that European Union law does not preclude the burden of proving that the criteria for finding that a substance such as the slurry produced, stored and transferred in circumstances such as those of the main proceedings constitutes a by-product are met from resting on the producer of that slurry, provided that this does not result in the effectiveness of European Union law, and in particular of Directive 75/442, being undermined and that compliance with the obligations flowing from European Union law is ensured, in particular the obligation not to make subject to the provisions of that directive substances which, on application of those criteria, must, under the Court's case-law, be regarded as by-products to which the directive does not apply.

Question 3

By Question 3 which it is appropriate to deal with second, the referring court seeks to ascertain, in essence, whether Article 2(1)(b)(iii) of Directive 75/442 must be interpreted as meaning that livestock effluent produced while operating a pig farm located in a Member State is 'covered by other legislation' within the meaning of that provision and, therefore, excluded from the scope of Directive 75/442 by virtue of the existence of Directive 91/676 where the latter directive has not yet been transposed into the law of that Member State.

It is settled case-law that, in order for Community or national legislation to be regarded as 'other legislation' within the meaning of Article 2(1)(b)(iii) of Directive 75/442, it must contain precise provisions organising management of the waste in question and result in a level of protection of the environment which is at least equivalent to that resulting from that directive (see, in particular, Case C-121/03 *Commission v Spain*, paragraph 69 and the case-law cited, and Case C-252/05 *Thames Water Utilities* [2007] ECR I-3883, paragraph 34).

The Court has also explained that, whilst the European Union legislature thus adopted a rule that, in the absence of specific Community legislation and, alternatively, specific national legislation, Directive 75/442 applies, that was in order to avoid the management of that waste not being subject to any legislation in certain situations (see Case C-114/01 *AvestaPolarit Chrome* [2003] ECR I-8725, paragraph 50).

Without there being any need, in the present case, to rule on whether a directive, such as Directive 91/676, if it were transposed into national law, would have to be regarded as 'other legislation' within the meaning of Article 2(1)(b) of Directive 75/442, it need merely be observed that, where a Member State has not adopted the measures necessary to implement the aforesaid directive, the latter cannot in any event be considered to result in a level of protection of the environment which is at least equivalent to that sought by Directive 75/442, since that failure to transpose means, on the contrary, that, if management of the livestock effluent at issue in the main proceedings were not subject to Directive 75/442, it would not be subject to any other legislation.

It follows that the answer to Question 3 is that Article 2(1)(b)(iii) of Directive 75/442 must be interpreted as meaning that, where Directive 91/676 has not been transposed into the law of a Member State, livestock effluent produced while operating a pig farm located in that Member State cannot be considered to be, by virtue of the existence of the latter directive, 'covered by other legislation' within the meaning of that provision.

Question 2

By Question 2, the referring court seeks, in essence, to ascertain whether, in a situation where slurry produced and held by a pig farm is to be classified as 'waste' within the meaning of Directive 75/442, European Union law precludes a Member State from rendering a producer who transfers the slurry to other farmers for use as fertiliser on their land personally liable for compliance by those farmers with European Union legislation concerning the management of waste and fertilisers.

First of all, it should be noted that, as is clear from the very wording of this question and for the reasons that are apparent from the order for reference, the question is asked only if the livestock effluent at issue in the main proceedings should be classified as 'waste' within the meaning of the first subparagraph of Article 1(a) of Directive 75/442.

In this regard, it is to be observed at the outset that – in the light, in particular, of the answer to Question 3 – if that proves to be the case the provisions of Directive 75/442 must apply in respect of a situation such as that at issue in the main proceedings.

Under Article 8 of Directive 75/442, the Member States must ensure that 'any holder of waste' either recovers or disposes of waste himself in accordance with the provisions of that directive or has it handled by a private or public waste collector or by an undertaking which carries out the operations listed in Annex II A or B to the directive. Such obligations imposed upon any holder of waste are the corollary to the prohibition on the abandonment, dumping or uncontrolled disposal of waste laid down in Article 4 of the directive (see, in particular, Case C-1/03 *Van de Walle and Others* [2004] ECR I-7613, paragraph 56).

Here, it is not in dispute that the appellant in the main proceedings, who does not seek in the slightest to recover, or dispose of, himself the waste that he may have produced, is, as 'holder' of that waste and in accordance with the first indent of Article 8 of Directive 75/442, required to have it handled by a private or public waste collector or by an undertaking which carries out the operations listed in Annex II A or B to the directive.

It must be stated in this regard, first, that it cannot be inferred from the information in the order for reference that the farmers to whom Mr Brady intends to pass his slurry can be regarded as entitled to carry out recovery operations for the purposes of Article 8 of Directive 75/442.

There is nothing to indicate that those farmers would possess the permit required under Article 10 of Directive 75/442 for the purpose of carrying out such recovery operations. Nor can it be inferred from the information submitted to the Court that the farmers would be exempted from the requirement for such a permit in compliance with the conditions laid down, in this regard, by Article 11 of the directive.

If it were to be confirmed – a matter which it is, if necessary, for the referring court to determine – that the farmers to whom Mr Brady intends to transfer the waste of which he is the holder neither possess the permit required in Article 10 of Directive 75/442 nor are exempted from that requirement, in accordance with the conditions laid down in Article 11(1) and (2) of the directive, it would follow that Article 8 of the directive precludes the transfers thereby envisaged and, therefore, precludes those transfers from being the subject-matter of any authorisation issued by an authority such as the EPA irrespective, moreover, of the conditions that would be imposed on issue of that authorisation.

Second, it must be added that, if it should be found that the farmers concerned do possess the permit required under Article 10 of Directive 75/442 or are duly exempted from such a requirement and registered in accordance with Article 11(1) and (2) of the directive, the handing over of the waste at issue by Mr Brady to such farmers cannot be subject to conditions in his regard intended to impose liability upon him for compliance by them with European Union legislation concerning the management of waste and fertilisers.

In this connection it should be noted, first of all, that once a holder of waste has it handled under Article 8 of Directive 75/442, the undertaking that possesses a permit pursuant to Article 10 of the directive or is exempted from the requirement for such a permit in accordance with Article 11 becomes the 'holder' of the waste in question. It follows from the very wording of Article 8 of Directive 75/442 that it is the 'holder of waste' who has the task, as the case may be, of recovering such waste in accordance with the provisions of the directive.

Next, it follows from Article 8 in conjunction with Article 10 of Directive 75/442 and from the broad logic of those provisions that, where a holder of waste has it handled by an undertaking which possesses a permit issued under the second of those provisions authorising it to recover that waste, it is exclusively that undertaking, and not the earlier holder of the waste, that is responsible for carrying out the recovery operations while complying, in this regard, with all the conditions to which those operations are subject under both the applicable legislation and the terms of the permit.

Finally, it can likewise be inferred from Article 8 in conjunction with Article 11 of Directive 75/442 and from their broad logic that, where a holder of waste has it handled by an undertaking which is exempted, in accordance with Article 11, from the requirement for a permit in order to recover that waste, it is exclusively that undertaking, and not the earlier holder of the waste, that is responsible for carrying out the recovery operations while complying, in this regard, with the general rules and the requirements to which Article 11 refers and with any other provision of European Union law governing those operations.

In light of all the foregoing, the answer to Question 2 is that, in a situation where slurry produced and held by a pig farm is to be classified as 'waste' within the meaning of the first subparagraph of Article 1(a) of Directive 75/442:

Article 8 of that directive must be interpreted as precluding the holder from being authorised, under any conditions, to transfer that waste to a farmer who uses it as fertiliser on his land if it transpires that that farmer neither possesses the permit referred to in Article 10 of the directive nor is exempted from the requirement to possess such a permit and registered in accordance with Article 11 of the directive; and

Articles 8, 10 and 11 of the directive, read together, must be interpreted as precluding the transfer of that waste by the holder to a farmer who uses it as fertiliser on his land, and who possesses a permit as referred to in Article 10 or is exempted from the requirement to possess such a permit and is registered in accordance with Article 11, from being subject to the condition that the holder assumes liability for compliance by that other farmer with the rules that are to apply to the recovery operations carried out by the latter by virtue of European Union law concerning the management of waste and fertilisers.

Costs

Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable. On those grounds, the Court (Fourth Chamber) hereby rules:

The first subparagraph of Article 1(a) of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Commission Decision 96/350/EC of 24 May 1996, must be interpreted as meaning that slurry produced in an intensive pig farm and stored pending delivery to farmers in order to be used by them as fertiliser on their land constitutes not 'waste' within the meaning of that provision but a by-product when that producer intends to market the slurry on terms economically advantageous to himself in a subsequent process, provided that such reuse is not a mere possibility but a certainty, without any further processing prior to reuse and as part of the continuing process of production. It is for the national courts to determine, taking account of all the relevant circumstances obtaining in the situations before them, whether those various criteria are satisfied.

European Union law does not preclude the burden of proving that the criteria for finding that a substance such as the slurry produced, stored and transferred in circumstances such as those of the main proceedings constitutes a by-product are met from resting on the producer of that slurry, provided that this does not result in the effectiveness of European Union law, and in particular of Directive 75/442, as amended by Decision 96/350, being undermined and that compliance with the obligations flowing from European Union law is ensured, in particular the obligation not to make subject to the provisions of that directive substances which, on application of those criteria, must, under the Court's case-law, be regarded as by-products to which the directive does not apply.

Article 2(1)(b)(iii) of Directive 75/442, as amended by Decision 96/350, must be interpreted as meaning that, where Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources has not been transposed into the law of a Member State, livestock effluent produced while operating a pig farm located in that Member

State cannot be considered to be, by virtue of the existence of the latter directive, 'covered by other legislation' within the meaning of that provision.

In a situation where slurry produced and held by a pig farm is to be classified as 'waste' within the meaning of the first subparagraph of Article 1(a) of Directive 75/442, as amended by Decision 96/350:

Article 8 of that directive must be interpreted as precluding the holder from being authorised, under any conditions, to transfer that waste to a farmer who uses it as fertiliser on his land if it transpires that that farmer neither possesses the permit referred to in Article 10 of the directive nor is exempted from the requirement to possess such a permit and registered in accordance with Article 11 of the directive; and

Articles 8, 10 and 11 of the directive, read together, must be interpreted as precluding the transfer of that waste by the holder to a farmer who uses it as fertiliser on his land, and who possesses a permit as referred to in Article 10 or is exempted from the requirement to possess such a permit and is registered in accordance with Article 11, from being subject to the condition that the holder assumes liability for compliance by that other farmer with the rules that are to apply to the recovery operations carried out by the latter by virtue of European Union law concerning the management of waste and fertilisers.

[Signatures]

* Language of the case: English.





STATUTORY INSTRUMENTS.

S.I. No. 187 of 2014

EUROPEAN UNION (ANIMAL BY-PRODUCTS) REGULATIONS 2014

EUROPEAN UNION (ANIMAL BY-PRODUCTS) REGULATIONS 2014

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EUROPEAN UNION (ANIMAL BY-PRODUCTS) REGULATIONS 2014

I, SIMON COVENEY, Minister for Agriculture, Food and the Marine, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving full effect to Regulation (EC) No. 1069/2009 of the European Parliament and of the Council of 21 October 2009¹, as amended by Directive 2010/63/EU of the European Parliament and of the Council of 22 September 2010², and Commission Regulation (EU) No. 142/2011 of 25 February 2011³, as amended by Commission Regulation (EU) No. 749/2011 of 29 July 2011⁴, Commission Regulation (EU) No. 1063/2012 of 13 November 2012⁵, Commission Regulation (EU) No. 1097/2012 of 23 November 2012⁶, Commission Regulation (EU) No. 294/2013 of 14 March 2013⁷, Commission Regulation (EU) No. 555/2013 of 14 June 2013⁸ and Commission Regulation (EU) No. 717/2013 of 25 July 2013⁹, hereby make the following regulations:

Part 1

PRELIMINARY AND GENERAL

Citation

1. These Regulations may be cited as the European Union (Animal By-Products) Regulations 2014.

Interpretation

2. (1) In these Regulations—

“Animal by-products Regulations” means the Council Regulation and the Commission Regulation;

“approval” means approval for the purposes of Articles 24 and 44 of the Council Regulation and Articles 18 and 33 of the Commission Regulation;

“authorised officer” means—

- (a) a sea-fisheries protection officer (within the meaning of the Sea-Fisheries and Maritime Jurisdiction Act 2006 (No. 8 of 2006));

¹OJ No. L300, 14.11.2009, p.1

²OJ No. L276, 20.10.2010, p.33

³OJ No. L54, 26.2.2011, p.1

⁴OJ No. L198, 30.7.2011, p.3

⁵OJ No. L314, 14.11.2012, p.5

⁶OJ No. L326, 24.11.2012, p.3

⁷OJ No. L98, 6.4.2013, p.1

⁸OJ No. L164, 18.6.2013, p.11

⁹OJ No. L201, 26.7.2013, p.31

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 29th April, 2014.

- (b) an authorised officer within the meaning of section 37 of the Animal Health and Welfare Act 2013 (No.15 of 2013);
- (c) an authorised officer (within the meaning of the European Communities (Food and Feed Hygiene) Regulations 2009 (S.I. No. 432 of 2009));
- (d) a person who, immediately before the making of these Regulations was an authorised officer (within the meaning of the European Communities (Transmissible Spongiform Encephalopathies and Animal By-products) Regulations 2008 (S.I. No. 252 of 2008));
- (e) an authorised officer (within the meaning of the Food Safety Authority of Ireland Act 1998 (No. 29 of 1998));
- (f) a member of the Garda Síochána;
- (g) an officer of the Revenue Commissioners;
- (h) a person appointed under Regulation 14 during the period of his or her appointment;

“Commission Regulation” means Commission Regulation (EU) No. 142/2011 of 25 February 2011³, as amended by Commission Regulation (EU) No. 749/2011 of 29 July 2011⁴, Commission Regulation (EU) No. 1063/2012 of 13 November 2012⁵, Commission Regulation (EU) No. 1097/2012 of 23 November 2012⁶, Commission Regulation (EU) No. 294/2013 of 14 March 2013⁷, Commission Regulation (EU) No. 555/2013 of 14 June 2013⁸ and Commission Regulation (EU) No. 717/2013 of 25 July 2013⁹;

“Council Regulation” means Regulation (EC) No. 1069/2009 of the European Parliament and of the Council of 21 October 2009¹ as amended by Directive 2010/63/EU of the European Parliament and of the Council of 22 September 2010²;

“local authority” has the same meaning as in the Local Government Act 2001 (No. 37 of 2001);

“Minister” means Minister for Agriculture, Food and the Marine;

“premises” includes land (including land under water) with or without buildings, a plant, establishment or an offshore installation (being an offshore installation within the meaning of the Safety, Health and Welfare (Offshore Installations) Act 1987 (No. 18 of 1987));

³OJ No. L54, 26.2.2011, p.1

⁴OJ No. L198, 30.7.2011, p.3

⁵OJ No. L314, 24.11.2012, p.5

⁶OJ No. L326, 24.11.2012, p.3

⁷OJ No. L98, 6.4.2013, p.1

⁸OJ No. L164, 18.6.2013, p.11

⁹OJ No. L201, 26.7.2013, p.31

¹OJ No. L300, 14.11.2009, p.1

²OJ No. L276, 20.10.2010, p.1

“record” includes a memorandum, book, plan, map, drawing, diagram, pictorial or graphic work or other document, a photograph, film or recording (whether of sound or images or both), any form in which data (within the meaning of the Data Protection Acts 1988 and 2003) are held, any other form (including machine-readable form) or thing in which information is held or stored manually, mechanically or electronically and anything that is a part or a copy, in any form, of any of the foregoing or is a combination of 2 or more of the foregoing;

“vehicle” includes a railway wagon or trailer, designed for use or used with a vehicle, or container designed or used for carriage on a vehicle, whether either is attached to or detached from a vehicle;

“vessel” includes a boat, ship, hovercraft or aircraft.

(2) A word or expression which is used in these Regulations and is also used in the Animal by-products Regulations, has, unless the context otherwise requires, the same meaning in these Regulations, as it has in the Animal by-products Regulations.

Part 2

RESTRICTIONS AND AUTHORISATIONS

Disposal and use of animal by-products — authorisations

3. (1) A person shall not, unless the person is authorised, registered or approved under these Regulations, possess, transport, handle, use or dispose of an animal by-product comprising of—

- (a) Category 1 material, except in accordance with Article 12 of the Council Regulation,
- (b) Category 2 material, except in accordance with Article 13 of the Council Regulation, or
- (c) Category 3 material, except in accordance with Article 14 of the Council Regulation.

(2) A person who contravenes paragraph (1) commits an offence and is liable—

- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 3 months, or to both, or
- (b) on conviction on indictment, to a fine not exceeding €250,000 or imprisonment for a term not exceeding 12 months, or to both.

(3) The Minister may authorise the use of an animal by-product for special feeding purposes in accordance with Articles 16(c) and 18(1) of the Council Regulation and Article 13 of the Commission Regulation.

(4) The Minister may authorise the feeding of animal by-products in accordance with Articles 16(c) and 18(2)(a) of the Council Regulation and Article 14(2) of the Commission Regulation.

(5) The Minister may authorise the disposal of a dead pet animal or an equine in accordance with Articles 16(d) and 19(1)(a) of the Council Regulation and Article 15 of the Commission Regulation.

(6) The Minister may authorise the burning or burial on site or the disposal by other means of animal by-products in accordance with Articles 16(d) and 19(1)(b) and (2) of the Council Regulation and Article 15 of the Commission Regulation.

(7) The Minister may authorise the burning or burial on site or the disposal by other means of animal by-products in accordance with Articles 16(d) and 19(1)(c) of the Council Regulation and Article 15 of the Commission Regulation.

(8) The Minister may authorise disposal by means other than burning or burial on site of not more than 20 kg per week of Category 3 materials referred to in Article 10(f) of the Council Regulation in accordance with Articles 16(d) and 19(1)(d) of the Council Regulation and Article 36(3) of the Commission Regulation.

(9) The Minister may authorise the burning or burial on site of animal by-products in accordance with Articles 16(d) and 19(1)(e) of the Council Regulation and Article 15 of the Commission Regulation.

(10) The Minister may authorise the burning or burial on site of bees and apiculture by-products in accordance with Articles 16(d) and 19(1)(f) of the Council Regulation and Article 15(c) of the Commission Regulation.

(11) The Minister may authorise the disposal of an animal by-product in accordance with Article 16(h) of the Council Regulation.

(12) The Minister may authorise the disposal, in accordance with Article 7 of the Commission Regulation, of—

(a) pet food referred to in Article 7(a) of the Commission Regulation, and

(b) Category 3 material referred to in Article 7(b) of the Commission Regulation.

(13) The Minister may authorise the use, handling, transport and disposal of trade samples and display items for exhibitions and artistic activities in accordance with Articles 16(b) and 17 of the Council Regulation and Article 12 of the Commission Regulation.

(14) The Minister may authorise the use, handling, transport and disposal of research and diagnostic samples for research or diagnostic purposes in accordance with Articles 16(b) and 17 of the Council Regulation and Article 11 of the Commission Regulation.

(15) The Minister may authorise the use, handling, transport and disposal of research and diagnostic samples for educational purposes in accordance with Articles 16(b) and 17 of the Council Regulation and points 2, 3 and 6, Section 1 of Chapter I of Annex VI to the Commission Regulation.

(16) Any use or disposal of anything under an authorisation under this Regulation shall be in accordance with the terms or conditions of the authorisation.

Transport of manure

4. (1) The Minister may authorise the transport of manure between two points located on the same farm or between farms in accordance with the second paragraph of Article 21(2) of the Council Regulation and Section 4, Chapter I of Annex VIII and point 6(b) of Chapter II of Annex VIII to the Commission Regulation.

(2) A person who transports manure in the circumstances referred to in paragraph (1) without authorisation under this Regulation commits an offence and is liable on summary conviction to a class A fine.

Commercial documents and health certificates

5. (1) In addition to the requirements of point 2 of Chapter III of Annex VIII to the Commission Regulation the proof of the arrival of a consignment shall be provided by the TRACES system or by a copy of the commercial document sent back by the receiver to the producer.

(2) The Minister may authorise that animal by-products and derived products which are transported are accompanied by the commercial documents referred to in paragraphs (a) and (b) of point 4 of Chapter III of Annex VIII to the Commission Regulation.

Transformation of animal by-products

6. (1) The Minister may authorise the use of alternative transformation parameters for biogas and composting plants subject to the requirements set out in point 1, Section 2 of Chapter III of Annex V to the Commission Regulation.

(2) A person shall not use alternative transformation parameters as referred to in paragraph (1) without authorisation under that paragraph.

(3) A person who contravenes paragraph (2) commits an offence and is liable on summary conviction to a class A fine.

(4) Notwithstanding the requirements under paragraph (1), an authorisation under that paragraph may provide for the following parameters in lieu of those set out in point 2 of Section 1 of Chapter III of Annex V to the Commission Regulation, namely—

- (a) the maximum particle size before entering the hygienisation unit or composting reactor — 400mm,
- (b) the minimum temperature of all material in the unit or reactor —60° celsius,

- (c) the minimum time in the unit or reactor without interruption — 48 hours twice, and
- (d) the material must be completely mixed between the two 48 hour periods.

Treatment of wastewater

7. (1) The Minister may require operators to treat wastewater in accordance with point 5 of Section 2 of Chapter I of Annex IV to the Commission Regulation.

(2) A person shall not treat wastewater in contravention of a requirement under paragraph (1).

(3) A person who contravenes paragraph (2) commits an offence and is liable on summary conviction to a class A fine.

(4) A requirement under this Regulation may be attached as a condition of an operator's approval.

Placing an animal by-product or derived product on the market

8. (1) The Minister may authorise the placing on the market of milk, milk-based products and milk-derived products in accordance with Article 21(2) of the Commission Regulation.

(2) The Minister may authorise the placing on the market, including importation and export of Category 1 material in accordance with Article 26 of the Commission Regulation.

(3) The Minister may determine the conditions for the use of aquatic animals and of aquatic and terrestrial invertebrates as fishing bait, including bait for aquatic invertebrates in accordance with point 2(b) of Chapter III of Annex X to the Commission Regulation.

(4) The Minister may authorise the use of specific requirements for untreated feathers, parts of feathers and down in accordance with paragraph (3) of point A.1 of Chapter VII of Annex XIII to the Commission Regulation.

(5) The Minister may authorise the placing on the market of untreated wool and hair in accordance with the second paragraph (2) of point B of Chapter VII of Annex XIII to the Commission Regulation.

(6) The Minister may authorise the supply of colostrum from one farmer to another farmer in accordance with point 4 of part II of Section 4 of Chapter II of Annex X to the Commission Regulation.

(7) The Minister may authorise the use of one or more components which are to be mixed with an organic fertiliser or soil improver in accordance with Article 22(3) of the Commission Regulation.

Import and transit — authorisation

9. (1) The Minister may authorise the importation or transit of research and diagnostic samples in accordance with Article 27 of the Commission Regulation.

(2) The Minister may authorise the importation or transit of trade samples and display items in accordance with Article 28 of the Commission Regulation.

(3) The Minister may authorise the import of the materials set out in point 1 of Section 2 of Chapter IV of Annex XIV to the Commission Regulation.

Matters relating to authorisations

10. (1) An authorisation under these Regulations may be given—

(a) generally, to a class of persons or to a person, and

(b) where it is given—

(i) generally or to a class of persons, notice of the authorisation should be published on the website on the internet maintained by the Department of Agriculture, Food and the Marine or in any such other manner the Minister considers appropriate, or

(ii) to a person, the authorisation shall be given by notice to the person.

(2) The Minister may attach terms or conditions to an authorisation under these Regulations.

Part 3

REGISTRATION AND APPROVAL

Registration of premises

11. (1) The Minister shall establish and maintain a register for the purposes of Article 23 of the Council Regulation.

(2) The Minister may make exemptions for the purposes of Article 20(4) of the Commission Regulation.

Approval of premises

12. (1) The Minister may grant an approval, attach a condition to an approval or vary or revoke a condition.

(2) An application for an approval shall be in a form and contain any information that the Minister may require.

(3) The Minister shall not consider an application for an approval unless the application contains all the material particulars sought by the Minister and is accompanied by a fee (if any) charged in accordance with Regulation 27.

(4) The Minister may, in exceptional circumstances, issue an approval for a limited period.

(5) A person to whom an approval, referred to in paragraph (1), is issued shall make such returns to the Minister as and when, and in such a form as, the Minister may from time to time direct.

(6) Without prejudice to and in addition to Article 46(1) of the Council Regulation, the Minister may refuse an application for or suspend or withdraw an approval if—

(a) in his or her opinion—

(i) the holder of an approval has failed to comply with a condition attached to an approval,

(ii) the holder of an approval has ceased to carry out the activity to which the approval relates at the premises to which the approval relates,

(iii) the holder of an approval has contravened the Council Regulation or the Commission Regulation,

(iv) in relation to the application, information required has not been furnished or information that is false or misleading in a material respect has been furnished,

(v) the applicant for or the holder of an approval is not a fit and proper person to hold an approval, or

(vi) it is—

(I) necessary to prevent the risk or spread of animal or human disease, or

(II) necessary to eradicate animal or human disease,

or

(b) the applicant for or the holder of an approval has been convicted of an offence under these Regulations, the Animal Health and Welfare Act 2013 or regulations made under the European Communities Act 1972 that relate to an animal or animal product.

(7) Other than in the case of serious risk to public or animal health, where the Minister proposes to refuse an application for an approval, or suspend or withdraw an approval, he or she shall—

(a) by notice notify the applicant for, or holder of, the approval, in writing of the proposal and of the reasons for the proposal, and that he or she may make representations to the Minister in relation to the proposal within 14 days of the notification,

(b) consider a representation duly made before deciding whether to proceed with, modify or annul the proposal, and

- (c) notify the applicant for, or holder of, the approval, in writing of the decision and the reasons for the decision.

(8) Where the Minister decides to refuse an application for or suspend or withdraw an approval, the notification of the decision shall state that the applicant or holder may, not later than 14 days of the date of service of the notification, appeal the decision to the District Court under Regulation 13.

(9) The Minister shall publish on the website on the internet maintained by the Department of Agriculture, Food and the Marine details of approvals and registrations under this Regulation.

Appeal against refusal or withdrawal of approval

13. (1) Where the Minister withdraws, suspends or refuses to grant an approval, the holder of, or applicant for, the approval may, not later than 14 days after the date of service of the notification of the withdrawal, suspension or refusal, as the case may be, appeal to the District Court against the withdrawal, suspension or refusal.

(2) Where the Minister withdraws or suspends an approval, the holder may, if the Minister is satisfied that there is no danger to public or animal health, continue to carry on the business to which the approval relates—

- (a) until the time for bringing an appeal under paragraph (1) has elapsed, or
- (b) where an appeal under paragraph (1) is made, until such time as the appeal is withdrawn or determined in the District Court.

(3) On the hearing of an appeal under this Regulation, the District Court may—

- (a) dismiss the appeal, or
- (b) allow the appeal and direct the Minister to grant the approval or cancel the withdrawal or suspension,

and the decision of the District Court shall be final save that, by leave of that Court, an appeal shall lie to the High Court on a point of law.

(4) On the hearing of an appeal under this Regulation, the onus of establishing that these Regulations, the Council Regulation and the Commission Regulation have been complied with in relation to an approval held by the person lies on the person making the appeal under paragraph (1).

(5) The jurisdiction conferred on the District Court by this Regulation shall be exercised by the judge for the time being assigned to the District Court district—

- (a) where an animal, animal by-product, derived product, premises, equipment, machinery, vehicle, vessel or other thing to which these Regulations or the Animal by-products Regulations relate, the subject of the appeal under this Regulation, is situated, or
- (b) where the person bringing the appeal ordinarily resides or carries on business.

Part 4

ENFORCEMENT

Appointment of authorised officer

14. (1) The Minister may appoint, in writing, such persons or classes of persons as he or she considers appropriate to be authorised officers for the exercise of all or any of the functions conferred on an authorised officer, under these Regulations, specified in the appointment.

(2) The Sea-Fisheries Protection Authority may appoint in writing, such officers of the authority it considers appropriate to be authorised officers for the exercise of all or any of the functions conferred on an authorised officer, under these Regulations, specified in the appointment.

(3) The manager of a local authority may appoint in writing, such officers of the authority as he or she considers appropriate to be authorised officers for the exercise of all or any of the functions conferred on an authorised officer, under these Regulations, specified in the appointment.

(4) The Minister for Communications, Energy and Natural Resources may appoint in writing, such persons or classes of persons as he or she considers appropriate to be authorised officers for the exercise of all or any of the functions conferred on an authorised officer, under these Regulations, specified in the appointment.

(5) The chief executive officer of the Health Service Executive may appoint in writing, such officers of the Health Service Executive as he or she considers appropriate to be authorised officers for the exercise of all or any of the functions conferred on an authorised officer, under these Regulations, specified in the appointment.

(6) The Minister, the Minister for Communications, Energy and Natural Resources, the chief executive officer of the Health Service Executive, the Sea-Fisheries Protection Authority or the manager of a local authority may terminate the appointment of an authorised officer appointed by him or her or that Authority, whether or not the appointment was for a fixed period or specified purpose.

(7) An appointment as an authorised officer ceases—

- (a) if it is terminated in accordance with paragraph (6),
- (b) if it is for a fixed period, on the expiration of that period,

(c) if it is for a specified purpose, on the completion of that purpose, or

(d) if the person appointed—

(i) is an officer of the Minister, the Minister for Communications, Energy and Natural Resources, the Sea-Fisheries Protection Authority, the Health Service Executive or a local authority, upon the person ceasing to be such an officer, or

(ii) is a member of a class of persons, on ceasing to be such a member.

(8) Nothing in paragraph (7) is to be construed so as to prevent the Minister, the Minister for Communications, Energy and Natural Resources, the chief executive officer of the Health Service Executive, the Sea-Fisheries Protection Authority or the manager of a local authority from re-appointing as an authorised officer a person to whom paragraph (7) relates.

(9) An authorised officer appointed under this Regulation shall be furnished with a warrant of his or her appointment and, when exercising a function conferred on him or her as an authorised officer, the officer shall, if requested by a person affected, produce the warrant, or other evidence (including an identity document relating to the officer under section 17 of the Animal Remedies Act 1993) that he or she is such an officer, for inspection.

Functions of authorised officer

15. (1) For the purposes of enforcing these Regulations and the Animal by-products Regulations an authorised officer may—

(a) enter and inspect, at all reasonable times, any premises, if he or she—

(i) is carrying out an official control in accordance with Article 45 of the Council Regulation, or

(ii) has reasonable grounds for believing that—

(I) an animal by-product, derived product or other thing to which these Regulations or the Animal by-products Regulations relate is, may be or has been present,

(II) a record relating to an animal by-product, derived product or other thing to which these Regulations or the Animal by-products Regulations relate is, may be or has been present,

(III) equipment, machinery, a vehicle, a vessel or other thing used in connection with an animal by-product, derived product or other thing to which these Regulations or the Animal by-products Regulations relate is, may be or has been present, or

(IV) the premises has been approved, authorised or registered for a purpose specified in these Regulations or the Animal by-products Regulations, is required to be so approved, authorised or registered or is subject to an application for approval, authorisation or registration,

- (b) require the name and address of the owner, operator or person in possession or control of equipment, machinery, a vehicle, a vessel or other thing used in connection with an animal by-product, derived product or other thing to which these Regulations or the Animal by-products Regulations relate, and the place of departure, journey or destination, if any,
 - (c) inspect equipment, machinery, a vehicle, a vessel or other thing used in connection with an animal by-product, derived product or other thing to which these Regulations or the Animal by-products Regulations relate and require the operator, person in charge or control of such to refrain from moving it,
 - (d) require the owner, operator, person in possession or control of any premises, equipment, machinery, a vehicle, a vessel or other thing used in connection with an animal by-product, derived product or other thing to which these Regulations or the Animal by-products Regulations relate, to produce to the officer such records (and in the case of a record stored in non-legible form, produce to him or her a copy in a legible form) that are in the person's possession or procurement, or under the person's control, as the officer may reasonably require,
 - (e) inspect and take copies of any record (including a legible reproduction of one stored in non-legible form) or a record, document or extracts from the record or document that the officer finds or is produced to him or her during an inspection,
 - (f) take photographs, videos or other electronic recordings,
 - (g) take, without making a payment, samples from an animal, animal by-product, derived product or other thing to which these Regulations or the Animal by-products Regulations relate, or any article, substance or liquid as he or she may reasonably require and carry out or cause to be carried out on the samples such tests, analyses, examinations or inspections as he or she considers necessary or expedient and mark or otherwise identify them.
- (2) An authorised officer may require a person to give information regarding the ownership and identity of equipment, machinery, a vehicle, a vessel or other thing used in connection with an animal by-product, derived product or other thing to which these Regulations or the Animal by-products Regulations relate as is in the person's knowledge or procurement.
- (3) Where an authorised officer has reasonable grounds for believing that—
- (a) there is a risk of disease to public or animal health,
 - (b) a disease or disease agent is or may be present on a premises, equipment, machinery, vehicle or vessel or other thing used in connection

with an animal by-product, derived product or other thing to which these Regulations or the Animal by-products Regulations relate,

- (c) an offence is being or has been committed under these Regulations or the Animal by-products Regulations,
- (d) there is a risk of contamination from an animal by-product or derived product, or
- (e) evidence of a disease or a disease agent, contamination or an offence to which paragraph (c) relates may be, is or has been on any premises, or in any equipment, machinery, vehicle or vessel or other thing used in connection with an animal by-product, derived product or other thing to which these Regulations or the Animal by-products Regulations relate,

the officer may, in addition to the powers exercisable by him or her under paragraph (1)—

- (i) search any premises,
- (ii) search the equipment, machinery, vehicle, vessel or other thing used in connection with an animal by-product, derived product or other thing to which these Regulations or the Animal by-products Regulations relate,
- (iii) require a person in charge or control of the equipment, machinery, vehicle, vessel or other thing used in connection with an animal by-product, derived product or other thing to which these Regulations or the Animal by-products Regulations relate to—
 - (I) refrain from moving it, or move it to a location where it may be searched, and
 - (II) give information regarding its ownership, place of departure, journey or destination,
- (iv) seize and detain, for as long as is necessary, an animal, animal by-product, derived product, record, document or other thing to which these Regulations or the Animal by-products Regulations relate and mark or otherwise identify it,
- (v) detain any equipment, machinery, vehicle, vessel or other thing used in connection with an animal by-product, derived product or other thing to which these Regulations or the Animal by-products Regulations relate for such reasonable period necessary for the purposes of permitting an inspection or a search under this Regulation or the Animal by-products Regulations either at the place where it was first detained or require it to be moved to such other location as the authorised officer requires,

- (vi) remove any equipment, machinery, vehicle, vessel or other thing used in connection with an animal by-product, derived product or other thing to which these Regulations or the Animal by-products Regulations relate, documents or records and detain them for such reasonable period necessary for the purpose of his or her functions under these Regulations,
- (vii) give such direction to a person who has an animal, animal by-product, derived product or other thing to which these Regulations or the Animal by-products Regulations relate, equipment, machinery, vehicle or vessel or other thing used in connection with an animal, animal by-product, derived product or other thing to which these Regulations or the Animal by-products Regulations relate in his or her possession or under his or her control or information relating to such, as the authorised officer may reasonably consider necessary for the purposes of these Regulations.

(4) An authorised officer shall not enter, except with the consent of the occupier, a private dwelling unless he or she has obtained a search warrant under Regulation 16, other than where he or she has reasonable grounds for believing that before a search warrant could be sought in relation to the dwelling, any evidence of an offence referred to in paragraph (3)(c) is being or is likely to be disposed of or destroyed.

(5) An authorised officer, when exercising a function under this Regulation, may be accompanied by other persons and may take with him or her, or those persons may take with them, any equipment or materials to assist the officer in the exercise of the function.

(6) An authorised officer may use reasonable force, if necessary, to exercise his or her functions under these Regulations.

(7) Where, in the course of exercising a function under these Regulations, an authorised officer finds or comes into possession of anything that the officer has reasonable grounds for believing to be evidence of an offence or suspected offence under these Regulations, the officer may seize and retain it for use in evidence in proceedings for an offence under these Regulations.

(8) Nothing in section 17 of the Industrial and Provident Societies Act 1893 prevents an authorised officer from exercising a function conferred on him or her by these Regulations.

(9) A person who has—

- (a) an animal, animal by-product, derived product or other thing to which these Regulations or the Animal by-products Regulations relate, or
- (b) equipment, machinery, a vehicle, a vessel or other thing used in connection with an animal by-product, derived product or other thing to

which these Regulations or the Animal by-products Regulations relate,

in his or her possession or under his or her control, or information or a record relating to any of them, shall give such—

- (i) assistance to an authorised officer, or person who accompanies the officer, and
- (ii) information to an authorised officer,

on request being made in that behalf by the officer as the officer may reasonably require for the exercise of his or her functions under these Regulations.

(10) The owner, operator or person in charge of any premises used in connection with an animal by-product, derived product or other thing to which these Regulations or the Animal by-products Regulations relate shall, if required by an authorised officer, where it is practicable and possible, provide suitable equipment or facilities or a suitable part of the plant or establishment for the officer to carry out his or her functions under these Regulations.

(11) An authorised officer may require a person to give to the officer or another authorised officer such information as is in the person's power or procurement as regards any premises specified by the officer including—

- (a) whether or not the premises is used, either partly or wholly, for or in connection with an animal by-product, derived product or other thing to which these Regulations or the Animal by-products Regulations relate,
- (b) the name of the owner, occupier or person who is in charge of the premises, and
- (c) whether or not the premises is let and, if let, the name and address of the person to whom, and the period of time for which, it is let.

(12) A person who tampers with a sample taken under this Regulation commits an offence and is liable on summary conviction to a class A fine.

Search warrant

16. (1) If a judge of the District Court is satisfied by information on oath of an authorised officer that there are reasonable grounds for believing that—

- (a) there is evidence of or relating to the commission or intended commission of an offence under these Regulations or the Animal by-products Regulations relating to an animal by-product, derived product or other thing to which these Regulations or the Animal by-products Regulation relate on a premises,
- (b) there is or was an animal by-product, derived product or other thing to which these Regulations or the Animal by-products Regulations

relate or equipment or other thing made, used or adapted for use (including manufacture or transport) in connection with an animal by-product, or derived product on a premises, or

- (c) a record related to a thing to which subparagraph (a) or (b) relates is or may be on a premises,

then the judge may issue a search warrant.

(2) A search warrant under this Regulation shall be expressed and operate to authorise a named authorised officer, accompanied by such authorised officers or other persons as the named authorised officer thinks necessary, at any time, within one month from the date of issue of the warrant, on production if so requested of the warrant, to enter the premises named in the warrant and to exercise all or any of the functions conferred on an authorised officer under these Regulations.

Compliance notice

17. (1) Where an authorised officer is of the opinion that—

- (a) a contravention of these Regulations or the Animal by-products Regulations may have taken place, or may be taking place, or
- (b) there is a risk to public or animal health,

the officer may serve a notice (“compliance notice”) stating that opinion on the person—

- (i) who appears to be the owner, occupier, operator or person in charge of the premises, or
- (ii) in possession or control of an animal by-product, derived product or other thing,

to which the notice relates.

(2) A compliance notice shall—

- (a) require the person on whom it is served to take such action as specified in the notice,
- (b) inform the person on whom it is served that he or she may appeal the notice in the District Court under Regulation 18, and
- (c) state that if the person on whom it is served fails to comply with the notice, he or she commits an offence and is liable to the penalty mentioned in paragraph (10).

(3) A compliance notice may—

- (a) prohibit or regulate any activity specified in the notice, including prohibiting or restricting entry onto the premises specified in the notice,

- (b) require that the owner, occupier, operator or person in charge of any premises detain, dispose of or destroy an animal, animal by-product, derived product or other thing to which these Regulations or the Animal by-products Regulations relate in a manner and at any place (if any) specified in the notice,
 - (c) prohibit the transport or further transport of an animal, animal by-product, derived product or other thing to which these Regulations or the Animal by-products Regulations relate, either absolutely or unless such conditions as may be specified in the notice are complied with,
 - (d) require a person to return an animal, animal by-product, derived product or other thing to which these Regulations or the Animal by-products Regulations relate, to the place of departure by a route which in the opinion of the authorised officer is the most direct or prudent,
 - (e) require that such alterations or additions be made to any premises, equipment, machinery, vehicle, vessel or other thing used in connection with an animal by-product, derived product or other thing to which these Regulations or the Animal by-products Regulations relate as may be specified in the notice,
 - (f) require a person to secure, isolate, segregate or return an animal, animal by-product, derived product or other thing to which these Regulations or the Animal by-products Regulations relate in a manner (if any) as may be specified in the notice,
 - (g) require a person to clean and disinfect any premises, equipment, machinery, vehicle, vessel or other thing used in connection with an animal, animal by-product, derived product or other thing to which these Regulations or the Animal by-products Regulations relate in a manner as may be specified in the notice,
 - (h) require an owner, occupier, operator or person in charge of any premises, animal, animal by-product, derived product or other thing to which these Regulations or the Animal by-products Regulations relate, to affix notices prohibiting or restricting entry on to any premises in accordance with the notice, or
 - (i) require a person to undertake a specified type or level of sampling and analysis for a period specified in the compliance notice.
- (4) A person to whom a compliance notice is served—
- (a) shall comply with it until the notice expires or is annulled under Regulation 18, and
 - (b) shall not cause or permit another person to contravene the terms or conditions of the notice.

(5) A compliance notice may specify a time limit within which the person on whom it is served shall comply with the notice.

(6) A compliance notice may be modified or withdrawn in a further notice and the earlier notice has effect subject to the modification or withdrawal.

(7) A compliance notice may require the owner, occupier, operator or person in charge of any premises, an animal, animal by-product, derived product, equipment, machinery, vehicle, vessel or other thing to which these Regulations or the Animal by-products Regulations relate, to choose between two or more of the requirements specified in the notice.

(8) A compliance notice shall include an address for service of an appeal under Regulation 18.

(9) A person on whom a compliance notice is served who fails to comply with, or causes or permits another person to contravene the notice commits an offence.

(10) A person who commits an offence under this Regulation is liable—

(a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 3 months, or to both, or

(b) on conviction on indictment, to a fine not exceeding €50,000 or to imprisonment for a term not exceeding 12 months, or to both.

Appeal against compliance notice

18. (1) A person to whom a compliance notice is served may, not later than 7 days from the date of service of the notice, appeal the notice to the judge of the District Court having jurisdiction in the District Court district—

(a) where an animal, animal by-product, derived product, premises, equipment, machinery, vehicle, vessel or other thing to which these Regulations or the Animal by-products Regulations relate, the subject of the notice, is situated, or

(b) where the person bringing the appeal ordinarily resides or carries on business.

(2) Notice of an appeal shall contain a statement of the grounds upon which the appeal is based and shall be served, if the authorised officer who served the compliance notice—

(a) is appointed by the Minister, is a member of the Garda Síochána, or an officer of the Revenue Commissioners, on the Minister,

(b) is appointed by the Minister for Communications, Energy and Natural Resources, on the Minister for Communications, Energy and Natural Resources,

- (c) is appointed by the chief executive officer of the Health Service Executive, on the Health Service Executive,
- (d) is appointed by the Sea-Fisheries Protection Authority, on the Sea-Fisheries Protection Authority, or
- (e) is appointed by the manager of a local authority, on that local authority,

at the address included in the notice in accordance with Regulation 17 not later than 48 hours prior to the hearing of the appeal.

(3) A person bringing an appeal shall lodge a copy of the notice of appeal with the District Court Clerk concerned not later than 48 hours prior to the hearing of the appeal.

(4) On the hearing of an appeal a judge of the District Court may confirm, modify, or annul the compliance notice.

(5) The decision of the District Court on the hearing of an appeal is final, save that, by leave of the Court, an appeal shall lie to the High Court on a specified point of law.

(6) A person, including a person on whom a compliance notice has been served, shall not, where an appeal has been made under this Regulation in respect of a compliance notice, pending the determination of the appeal, or if the notice is confirmed or modified on appeal, deal with an animal, animal by-product, derived product or other thing to which the Animal by-products Regulations relate, any premises, equipment, machinery, vehicle, vessel or other thing to which the notice relates other than in accordance with the terms of the compliance notice.

(7) In this Regulation “appeal” means an appeal under paragraph (1).

Seizure and detention for non-compliance with a compliance notice

19. (1) Without prejudice to an appeal under Regulation 18, where—

(a) a person in control of—

- (i) an animal, animal by-product, derived product or other thing to which these Regulations or the Animal by-products Regulations relate, or
- (ii) premises, equipment, machinery, vehicle, vessel or other thing used in connection with an animal, animal by-product or derived product,

fails to comply with the terms of a compliance notice within the time specified in the notice, or

- (b) an authorised officer has reasonable grounds for believing that a compliance notice is not being, or is likely not to be, complied with,

an authorised officer may at any time seize and detain the animal, animal by-product, derived product or other thing to which these Regulations or the Animal by-products Regulations relate, equipment, machinery, vehicle, vessel or other thing used in connection with an animal, animal by-product or derived product.

(2) Where an animal, animal by-product, derived product or other thing to which these Regulations or the Animal by-products Regulations relate, equipment, machinery, vehicle, vessel or other thing used in connection with an animal, animal by-product or derived product is seized and detained in accordance with paragraph (1), an authorised officer may—

- (a) sell, destroy or dispose of an animal, animal by-product, derived product or other thing to which these Regulations or the Animal by-products Regulations relate or cause it to be sold, destroyed or be disposed of, or
- (b) take such other measures in relation to the animal, animal by-product, derived product or other thing to which these Regulations or the Animal by-products Regulations relate, equipment, machinery, vehicle, vessel or other thing used in connection with an animal, animal by-product or derived product as the authorised officer considers appropriate in the circumstances.

(3) Any profits arising out of the sale, destruction or disposal of an animal, animal by-product, derived product or other thing to which these Regulations or the Animal by-products Regulations relate in accordance with paragraph (2) shall be paid to the owner of the animal, animal by-product, derived product or other thing to which these Regulations or the Animal by-products Regulations relate less any expenses incurred in connection with the seizure, sale, destruction or disposal.

(4) The costs (including ancillary costs) of a measure taken under this Regulation are recoverable by the Minister—

- (a) as a simple contract debt in a court of competent jurisdiction from the person who was the owner of the animal, the body of an animal, animal by-product, feeding-stuff or other thing at the time the measure was carried out, or
- (b) by deducting the costs from any sum due by the Minister to a person on whom a notice has been served.

Powers of members of Garda Síochána and officers of the Revenue Commissioners

20. (1) Where a person is seen or found committing, or is reasonably suspected of being engaged in committing or having committed an offence under

paragraph (7) or Regulation 3(2), 21 or 24, a member of the Garda Síochána may arrest the person without warrant.

(2) Where a person is arrested by a member of the Garda Síochána under paragraph (1), the person shall be taken by the member to a Garda Síochána station and may be detained there or arrested and detained there in accordance with section 4 of the Criminal Justice Act 1984 and, accordingly, the reference in subsection (2) (inserted by section 9 of the Criminal Justice Act 2006) of that section to “an offence to which this section applies” is to be read as including a reference to the offence concerned under Regulation 3(2), 21 or 24, as the case may be.

(3) Where a member of the Garda Síochána or an officer of the Revenue Commissioners has reasonable grounds for believing that there is evidence on a person of an offence committed under these Regulations the member or officer may without warrant—

- (a) search or cause to be searched the person and, if the member or officer considers it necessary, detain the person for such time as is reasonably necessary to carry out the search,
- (b) search or cause to be searched a vehicle or vessel in which the member or officer suspects that evidence in relation to an offence committed under these Regulations may be found and for the purpose of carrying out the search, if the member or officer thinks fit, require the person who is in charge or control of the vehicle or vessel to bring it to a stop and when stopped to refrain from moving it or, where the vehicle or vessel is already stationary, to refrain from moving it, or
- (c) seize and detain or cause to be seized and detained under paragraph (3), anything found in the course of a search under this Regulation which any such member or officer reasonably suspects to be something which might be required in evidence in proceedings for such an offence.

(4) Where a member of the Garda Síochána or an officer of the Revenue Commissioners decides to search or cause to be searched a person under paragraph (3) the member or officer may require the person to accompany that member or officer to either a Garda Síochána station or a Revenue office for the purpose of being so searched at that station or office.

(5) A member of the Garda Síochána may stop a vehicle or vessel, for the purposes of these Regulations and may require it to be moved for inspection to such place as he or she directs.

(6) Nothing in these Regulations operates to prejudice any power to search or to stop, or to seize or detain property, which may, apart from these Regulations, be exercised by a member of the Garda Síochána or an officer of the Revenue Commissioners.

(7) A person who obstructs or impedes a member of the Garda Síochána or an officer of the Revenue Commissioners in the exercise of a power under paragraph (3) commits an offence and is liable on summary conviction to a class A fine.

Forgery

21. (1) A person shall not in respect of any application, certificate, commercial document, approval, authorisation, registration document or notice issued under these Regulations or the Animal by-products Regulations or a record purporting to be kept and maintained under these Regulations or the Animal by-products Regulations or a document purporting to be an extract from such a document—

- (a) enter on such a document a particular which he or she knows to be false or misleading (hereafter in this Regulation referred to as a “document with false information”), or
- (b) tamper with, deface, forge or otherwise alter such (hereafter in this Regulation referred to as a “forged or altered document”).

(2) A person shall not have without lawful authority (the proof of which lies on him or her) in his or her possession or under his or her control a forged or altered document or a document with false information.

(3) A person who contravenes this Regulation commits an offence and is liable—

- (a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 3 months, or to both, or
- (b) on conviction on indictment to a fine not exceeding €100,000 or to imprisonment for a term not exceeding 12 months, or to both.

Records

22. (1) A person who fails to keep records in accordance with Article 22 of the Council Regulation and Article 17 of the Commission Regulation commits an offence and is liable on summary conviction to a class A fine.

(2) A person shall keep all records pertaining to animal by-products which have been processed, stored or otherwise handled at a premises authorised, registered or approved under these Regulations and shall be retained at that premises for 3 years, unless otherwise directed in writing by an authorised officer.

Part 5

PROCEEDINGS AND SANCTIONS

Obstruction and false statements

23. (1) A person who—

- (a) obstructs, interferes with or impedes an authorised officer, or any person who accompanies an authorised officer, in the course of exercising a function conferred on the officer under these Regulations,
- (b) fails or refuses, without reasonable cause, to comply with a requirement or direction, of an authorised officer under Regulation 15,
- (c) fails, without reasonable cause, to give assistance or requested information to an authorised officer in accordance with Regulation 15,
- (d) in—
 - (i) making an application for approval, authorisation, certificate, or registration or other thing required by these Regulations or the Animal by-products Regulations, or
 - (ii) purporting to give information to an authorised officer for the exercise of that officer's functions under these Regulations—
 - (I) makes a statement that he or she knows to be false in a material particular or recklessly makes a statement which is false, in a material particular, or
 - (II) intentionally fails to disclose a material particular,

commits an offence and is liable on summary conviction to a class A fine.

(2) A statement or admission made by a person pursuant to a requirement under Regulation 15(9)(ii) is not admissible as evidence in proceedings brought against that person for an offence (other than an offence under this Regulation for failing to give information or false information) under these Regulations.

Offences — contravention of Council Regulation or Commission Regulation

24. A person who contravenes or fails to comply with the Council Regulation (other than Article 22 of that Regulation) or the Commission Regulation (other than Article 17 of that Regulation) commits an offence and is liable—

- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 3 months, or to both, or
- (b) on conviction on indictment, to a fine not exceeding €250,000 or imprisonment for a term not exceeding 12 months, or to both.

Matters relating to proceedings

25. (1) In proceedings under these Regulations, it is for the defendant to prove that a farm animal or ruminant animal did not have access to the premises to which the proceedings relate.

(2) In proceedings under these Regulations, if it is not possible to determine whether a particular animal by-product is Category 1 material, Category 2 material or Category 3 material, or a derived product is derived from Category

1 material, Category 2 material or Category 3 material, the animal by-product or derived product shall be treated, unless the contrary is shown, as if it is or is derived from Category 1 material.

Prosecutions

26. (1) An offence under these Regulations may be prosecuted summarily, as may be appropriate, by—

- (a) the Minister,
- (b) the Minister for Communications, Energy and Natural Resources,
- (c) the Health Service Executive,
- (d) the Sea-Fisheries Protection Authority,
- (e) the local authority in whose functional area the offence is alleged to have been committed, or
- (f) a member of the Garda Síochána, in accordance with section 8 of the Garda Síochána Act 2005.

(2) If an offence under these Regulations is committed by a body corporate and it is proved to have been so committed with the consent or connivance of or to be attributable to any neglect on the part of any person who, when the offence is committed, is a director, manager, secretary or other officer of the body corporate, or a person purporting to act in any such capacity, that person, as well as the body corporate, is guilty of an offence and liable to be proceeded against and punished as if guilty of the first-mentioned offence.

(3) If the affairs of a body corporate or unincorporated body are managed by its members, paragraph (2) applies in relation to the acts and defaults of a member in connection with functions of management as if the member is a director or manager of the body corporate.

Part 6

PROCEDURAL

Service of notices and notifications

27. (1) A notice or notification under these Regulations (including a compliance notice) shall, subject to paragraph (2), be addressed to the person concerned by name and may be served on a person—

- (a) by giving a copy to the person, his or her employee, servant or agent, or in the case of a partnership, by delivery of a copy to any of the partners,
- (b) by leaving a copy at the address at which the person ordinarily resides or carries on business or, where an address for service has been furnished, at that address,

- (c) by sending a copy by post in a prepaid registered envelope to the address at which the person ordinarily resides or carries on business and, in the case of a body corporate or unincorporated body at the registered office of the body or, where an address for service has been furnished by the person to the Minister, the Minister for Communications, Energy and Natural Resources, the Sea-Fisheries Protection Authority, the Health Service Executive or the local authority concerned, as the case may be, at that address,
- (d) if the address at which the person ordinarily resides cannot be ascertained by reasonable enquiry and the notice or notification relates to any premises, by delivering a copy to the premises,
- (e) by sending a copy by means of electronic mail or a facsimile machine, to a device or facility for the reception of electronic mail or facsimiles located at the address at which the person ordinarily resides or carries on business or, if an electronic address or facsimile number address for the service of a notice or notification has been furnished by the person to the Minister, Minister for Communications, Energy and Natural Resources, the Sea-Fisheries Protection Authority, the Health Service Executive or the local authority concerned, as the case may be, that electronic address or facsimile machine, but only if—
 - (i) the recipient's facility for the reception of electronic mail generates a message confirming the successful receipt of the electronic mail, or
 - (ii) the sender's facsimile machine generates a message confirming the successful transmission of the total number of pages of the notice.

(2) If a notice or notification is to be served on a person who is the owner, occupier, operator or person in charge of a thing to which the notice relates and the name of the person cannot be ascertained by reasonable enquiry, it may be addressed to that person by using the words "the owner", "the occupier", "the operator" or "the person in charge".

(3) For the purposes of this Regulation, a company within the meaning of the Companies Acts is considered to be ordinarily resident at its registered office and every other body corporate or unincorporated body is considered to be ordinarily resident at its principal office or place of business.

Fees

28. (1) The Minister, the Minister for Communications, Energy and Natural Resources, the Sea-Fisheries Protection Authority, the Health Service Executive or a local authority, as the case may be, may charge a fee in respect of an application for an approval, authorisation, certificate or registration, or for the performance of a function, under these Regulations or the Animal by-products Regulations, not exceeding the cost of providing the service to which the fee relates.

(2) A fee payable under this Regulation may be recovered by the Minister, the Minister for Communications, Energy and Natural Resources, the Sea-Fisheries Protection Authority, the Health Service Executive or a local authority, as the case may be, from the person by whom it is payable as a simple contract debt in a court of competent jurisdiction.

(3) A fee payable to a Minister of the Government under this Regulation shall be disposed of for the benefit of the Exchequer in such manner as the Minister for Public Expenditure and Reform may direct.

(4) The Public Offices Fees Act 1879 does not apply to a fee charged under this Regulation.

Savers

29. (1) An approval, authorisation, certificate, licence, notice or registration granted under the Regulations referred to in Regulation 30 that is in force immediately before the revocation, continues in force and may be dealt with as if granted under these Regulations.

(2) A compliance notice within the meaning of the Regulations referred to in Regulation 30 that is in force immediately before the making of these Regulations continues in force and may be dealt with as if it were a compliance notice or notification under these Regulations.

(3) An appeal under Regulation 25 of the European Communities (Transmissible Spongiform Encephalopathies and Animal By-products) Regulations 2008 (S.I. No. 252 of 2008) that has not been determined before the making of these Regulations may be dealt with as if it were an appeal under Regulation 18 of these Regulations.

Non-application of S.I. No. 252 of 2008 to animal by-products

30. The European Communities (Transmissible Spongiform Encephalopathies and Animal By-products) Regulations 2008 (S.I. No. 252 of 2008) do not apply to animal by-products and, accordingly, the following provisions of those Regulations are revoked:

- (a) Regulations 3, 8, 10(1) to (8), (14) and (15), 11, 12, 13, 15 and 16, and
- (b) Regulations 7, 10(10) and 17 to 33 in so far as they relate to animal by-products.

Revocation — S.I. No. 150 of 2011

31. The European Communities (Transmissible Spongiform Encephalopathies and Animal By-products) (Amendment) Regulations 2011 (S.I. No. 150 of 2011) are revoked.

30 [187]



GIVEN under my Official Seal,
17 April 2014.

SIMON COVENEY,
Minister for Agriculture, Food and the Marine.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

The Regulations provide ancillary and supplementary measures necessary for a series of EC Regulations relating to animal by-products to have full effect.

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STATUTORY INSTRUMENTS.

S.I. No. 113 of 2022

EUROPEAN UNION (GOOD AGRICULTURAL PRACTICE FOR
PROTECTION OF WATERS) REGULATIONS 2022

S.I. No. 113 of 2022

EUROPEAN UNION (GOOD AGRICULTURAL PRACTICE FOR
PROTECTION OF WATERS) REGULATIONS 2022

I, DARRAGH O'BRIEN, Minister for Housing, Local Government and Heritage, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving further effect to Directive 91/676/EEC of 12 December 1991¹, Directive 2000/60/EC of 23 October 2000², Directive 2003/35/EC of 26 May 2003³, Directive 2006/118/EC of 12 December 2006⁴ and Directive 2008/98/EC of 19 November 2008⁵ hereby make the following regulations:

¹ O.J. No. L 375/1, 31 December 1991.

² O.J. No. L 327/1, 22 December 2000.

³ O.J. No. L 156/17, 25 June 2003.

⁴ O.J. No. L 372/19, 27 December 2006.

⁵ O.J. No. L 312/3, 22 November 2008.

*Notice of the making of this Statutory Instrument was published in
"Iris Oifigiúil" of 11th March, 2022.*

EUROPEAN UNION (GOOD AGRICULTURAL PRACTICE FOR
PROTECTION OF WATERS) REGULATIONS 2022

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PART 1
PRELIMINARY

Citation, commencement and application

1. (a) These Regulations may be cited as the European Union (Good Agricultural Practice for Protection of Waters) Regulations 2022.
- (b) These Regulations shall apply to all holdings in the State.
- (c) These Regulations shall apply to all movements of livestock manure in the State.
- (d) These Regulations shall come into effect on 11th March 2022.

Purpose of Regulations

2. The purpose of these Regulations is to give effect to Ireland's Nitrates Action Programme pursuant to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural source.

Revocations

3. The European Union (Good Agricultural Practice for Protection of Waters) Regulations 2017, the European Union (Good Agricultural Practice for Protection of Waters) (Amendment) Regulations 2018, the European Union (Good Agricultural Practice for Protection of Waters) (Amendment) Regulations 2020, the European Union (Good Agricultural Practice for Protection of Waters) (Amendment) (Nos. 2 and 3) Regulations 2020, and the European Union (Good Agricultural Practice for Protection of Waters) (Amendment) Regulations 2021 are hereby revoked.

Interpretation

4. (1) In these Regulations, save where the context otherwise requires—

“Act of 1992” means the Environmental Protection Agency Act, 1992 (No. 7 of 1992);

“Agency” means the Environmental Protection Agency established under section 19 of the Act of 1992;

“agriculture” includes the breeding, keeping and sale of livestock (including cattle, horses, pigs, poultry, sheep and any creature kept for the production of food, wool, skins or fur), the making and storage of silage, the cultivation of land, and the growing of crops (including forestry and horticultural crops);

“application to land”, in relation to fertiliser, means the addition of fertiliser to land whether by spreading on the surface of the land, injection into the land,

placing below the surface of the land or mixing with the surface layers of the land but does not include the direct deposition of manure to land by animals;

“aquifer” means a subsurface layer or layers of rock or other geological strata of sufficient porosity and permeability to allow either a significant flow of groundwater or the abstraction of significant quantities of groundwater;

“biochemical oxygen demand” for the purposes of sub-article (2) (b) (i) means a 5 day biochemical oxygen demand test done in accordance with method ISO 5815-1:2003, International Organisation for Standardization, or any update of that method;

“chemical fertiliser” means any fertiliser that is manufactured by an industrial process;

“commonage” means a land parcel which is held by two or more persons in specified shares or jointly and originally purchased from the Irish Land Commission under the Land Purchase Acts, including land over which two or more persons have grazing rights or the right to take turf;

“dry matter” for the purposes of sub-article (2)(b)(ii) means a test for total solids done in accordance with method 2540B, Standard Methods for the Examination of Water and Wastewater, American Public Health Association, 21st Edition, 2005, or any update of that method;

“eligible area” in relation to a holding and the grassland stocking rate, means the eligible area of the holding or the grassland as appropriate excluding areas under farm roads, paths, buildings, farmyards, woods, dense scrub, rivers, streams, ponds, lakes, sandpits, quarries, expanses of bare rock, areas of bogland not grazed, areas fenced off and not used for production, inaccessible areas and areas of forestry (including Christmas trees), or required to be totally destocked under a Commonage Framework Plan;

“farmyard manure” means a mixture of bedding material and animal excreta in solid form arising from the housing of cattle, sheep and other livestock excluding poultry;

“fertiliser” means any substance containing nitrogen or phosphorus or a nitrogen compound or phosphorus compound utilised on land to enhance growth of vegetation and may include livestock manure, the residues from fish farms and sewage sludge;

“grass” means permanent grassland or temporary grassland (temporary implying leys of less than four years);

“grazing livestock” means cattle (with the exclusion of veal calves), sheep, deer, goats and horses.

“groundwater” means all water that is below the surface of the ground in the saturation zone and in direct contact with the ground or subsoil;

“holding” means an agricultural production unit and, in relation to an occupier, means all the agricultural production units managed by that occupier;

“livestock” means all animals kept for use or profit (including cattle, horses, pigs, poultry, sheep and any creature kept for the production of food, wool, skins or fur);

“livestock manure” means waste products excreted by livestock or a mixture of litter and waste products excreted by livestock, even in processed form;

“local authority” means a city council or county council within the meaning of the Local Government Act, 2001 (No. 37 of 2001);

“local authority shared service” means common or combined services provided to more than one local authority, the provision of which (to the local authorities concerned) enables, assists or facilitates the carrying out of any administrative task or process necessary for or incidental to the performance of a function assigned under these regulations to local authorities.

“the Minister” means the Minister for Housing, Local Government and Heritage;

“the Nitrates Directive” means Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources;

“occupier”, in relation to a holding, includes the owner, a lessee, any person entitled to occupy the holding or any other person having for the time being control of the holding;

“OSi” means Ordnance Survey Ireland established by Ordnance Survey Ireland Act, 2001 (No. 43 of 2001).

“organic fertiliser” means any fertiliser other than that manufactured by an industrial process and includes livestock manure, dungstead manure, farmyard manure, slurry, soiled water, silage effluent, spent mushroom compost, non-farm organic substances such as sewage sludge, industrial by-products and sludges and residues from fish farms;

“ploughing” includes ploughing and primary cultivation, excluding shallow cultivation carried out to encourage natural regeneration;

“relevant local authority” means the local authority in whose administrative area a farm holding or part of a farm holding is situated;

“river basin district” means a river basin district established by the European Communities (Water Policy) Regulations, 2003 (S.I. No. 722 of 2003) or any amendment thereof in relation to the establishment of river basin districts;

“slurry” includes—

- (a) excreta produced by livestock while in a building or yard, and
- (b) a mixture of such excreta with rainwater, washings or other extraneous material or any combination of these, of a consistency that allows it to be pumped or discharged by gravity at any stage in the handling process but does not include soiled water;

“soil test” means a soil sample taken in accordance with the soil sampling procedure set out in Schedule 1 and analysed in accordance with that Schedule, at a laboratory that meets the requirements of the Minister for Agriculture, Food and the Marine for this purpose;

“soiled water” has the meaning assigned by sub-article (2);

“steep slope” means ground which has an average incline of 20% or more in the case of grassland or 15% or more in the case of other land;

“Teagasc” means the Agriculture and Food Development Authority established in September 1988 under the Agriculture (Research, Training and Advice) Act, 1988.

“tidal waters” includes the sea and any estuary up to high water mark medium tide and any enclosed dock adjoining tidal waters;

“waters” includes—

- (a) any (or any part of any) river, stream, lake, canal, reservoir, aquifer, pond, watercourse, or other inland waters, whether natural or artificial,
- (b) any tidal waters, and
- (c) where the context permits, any beach, river bank and salt marsh or other area which is contiguous to anything mentioned in paragraph (a) or (b), and the channel or bed of anything mentioned in paragraph (a) which is for the time being dry, but does not include a sewer;

“watercourses” means any body of water that is marked on a modern 1:5,000 scale OSi map.

“waterlogged ground” means ground that is saturated with water such that any further addition will lead, or is likely to lead, to surface run-off;

and cognate words shall be construed accordingly.

- (2) (a) In these Regulations “soiled water” includes, subject to this sub-article, water from concreted areas, hard standing areas, holding areas for livestock and other farmyard areas where such water is contaminated by contact with any of the following substances—
 - (i) livestock faeces or urine or silage effluent,
 - (ii) chemical fertilisers,
 - (iii) washings such as vegetable washings, milking parlour washings or washings from mushroom houses,
 - (iv) water used in washing farm equipment.
 - (b) In these Regulations, “soiled water” does not include any liquid where such liquid has either—
 - (i) a biochemical oxygen demand exceeding 2,500 mg per litre, or
 - (ii) a dry matter content exceeding 1% (10 g/L).
 - (c) For the purposes of these Regulations, soiled water which is stored together with slurry is deemed to be slurry.
- (3) In these Regulations a reference to:—
- (a) an Article, Part or Schedule which is not otherwise identified is a reference to an Article, Part or Schedule of these Regulations,

- (b) a sub-article or paragraph which is not otherwise identified is a reference to a sub-article or paragraph of the provision in which the reference occurs, and
- (c) a period between a specified day in a month and a specified day in another month means the period commencing on the first-mentioned day in any year and ending on the second-mentioned day which first occurs after the first-mentioned day.

(4) In these Regulations a footnote to a table in Schedule 2 shall be deemed to form part of the table.

PART 2

FARMYARD MANAGEMENT

Minimisation of soiled water

5. (1) An occupier of a holding shall take all such steps, as far as is practicable for the purposes of minimising the amount of soiled water produced on the holding.

(2) Without prejudice to the generality of sub-article (1), an occupier of a holding shall ensure, as far as is practicable, that—

- (a) clean water from roofs and unsoiled paved areas and that flowing from higher ground on to the farmyard is diverted away from soiled yard areas and prevented from entering storage facilities for livestock manure and other organic fertilisers, soiled water, and effluents from dungsteeds, farmyard manure pits, silage pits or silage clamps and
- (b) rainwater gutters and downpipes where required for the purposes of paragraph (a) are maintained in good working condition.

(3) The spreading of soiled water to land is prohibited between the following dates:

- (a) Between 21st December and 31st December for all milk producers from 2022,
- (b) Between 10th December and 31st December for all milk producers from 2023,
- (c) Between 1st December and 31st December from 2024 onwards for all milk producers with the exception of winter/liquid milk⁶ producers, and
- (d) Between 1st December and 31st December from 1st January 2025 onwards for all milk producers including winter/liquid milk¹ producers

⁶ Holdings that produce milk during the winter and hold a winter/liquid milk contract with their milk processor.

Collection and holding of certain substances

6. (1) Livestock manure and other organic fertilisers, soiled water and effluents from dungsteeds, farmyard manure pits, silage pits or silage clamps arising or produced in a building or yard on a holding shall, prior to its application to land or other treatment, be collected and held in a manner that prevents the run-off or seepage, directly or indirectly, into groundwaters or surface waters of such substances.

(2) The occupier of a holding shall not cause or permit the entry to waters of any of the substances specified in sub-article (1).

Provision and management of storage facilities

7. (1) Storage facilities for livestock manure and other organic fertilisers, soiled water and effluents from dungsteeds, farmyard manure pits, silage pits or silage clamps shall be maintained free of structural defect and be maintained and managed in such manner as is necessary to prevent run-off or seepage, directly or indirectly, into groundwater or surface water, of such substances.

(2) Storage facilities being provided on a holding shall—

- (a) be designed, sited, constructed, maintained and managed so as to prevent run-off or seepage, directly or indirectly, into groundwater or surface water of a substance specified in sub-article (1), and
- (b) comply with such construction specifications for those facilities as may be approved from time to time by the Minister for Agriculture, Food and the Marine.

(3) Storage facilities other than those referred to in sub-article (2) shall be of such construction and design and shall be maintained and managed in such a manner so as to comply with the requirements of sub-article (1) and article 6(2).

(4) In this article “storage facilities” includes out-wintering pads, earthen-lined stores, integrated constructed wetlands and any other system used for the holding or treatment of livestock manure or other organic fertilisers.

General obligations as to capacity of storage facilities

8. (1) The capacity of storage facilities for livestock manure and other organic fertilisers, soiled water and effluents from dungsteeds, farmyard manure pits, silage pits or silage clamps on a holding shall be adequate to provide for the storage of all such substances as are likely to require storage on the holding for such period as may be necessary as to ensure compliance with these Regulations and the avoidance of water pollution.

(2) For the purposes of sub-article (1) an occupier shall ensure to have the storage capacity likely to be required during periods of adverse weather conditions when, due to extended periods of wet weather, frozen ground or otherwise, the application to land of livestock manure or soiled water is precluded.

(3) For the purposes of Articles 8 to 14, the capacity of storage facilities on a holding shall be disregarded insofar as the occupier does not have exclusive use of those facilities.

(4) For the purposes of Articles 10 to 14 the capacity of facilities required in accordance with these Regulations for the storage of manure from livestock of the type specified in Tables 1, 2 or 3 of Schedule 2 shall be determined by reference to the criteria set out in the relevant table and the rainfall criteria set out in Table 4 of that schedule and shall include capacity for the storage for such period as may be necessary for compliance with these Regulations of rain-water, soiled water or other extraneous water which enters or is likely to enter the facilities.

(5) The occupier of a holding shall only be eligible to avail of a derogation from the limits on the amount of livestock manure to be applied as specified in Article 20 if the capacity of storage facilities for livestock manure, effluent and soiled water on the holding is in accordance with Articles 8 and 9.

(6) Subject to sub-article (7), the spreading of all slurry must be applied by:

- (a) 8th October from 2022;
- (b) 1st October from 2023 onwards.

(7) Notwithstanding sub-article (6), slurry may be spread between 8th and 15th October in 2022, and between 1st and 15th October from 2023 in accordance with criteria to be published by the Minister, in consultation with the Minister for Agriculture, Food and the Marine, by 1st September 2022.

Capacity of storage facilities for effluents and soiled water

9. Without prejudice to the generality of Article 8, the capacity of facilities for the storage on a holding of—

- (a) effluent produced by ensiled forage and other crops shall equal or exceed the capacity specified in Table 5 of Schedule 2,
- (b) soiled water shall equal or exceed the capacity required to store all soiled water likely to arise on the holding during a period of 10 days,
- (c) soiled water being provided on a holding shall equal or exceed the capacity required to store all soiled water likely to arise on the holding during a period of 15 days, and
- (d) From 1st December 2023, a minimum of 3 weeks' storage capacity shall be in place on the holding and from 1st December 2024, a minimum of 4 weeks' storage capacity shall be in place on the holding except for winter/liquid milk producers where this storage must be in place by 1st December 2025.

Capacity of storage facilities for pig manure

10. (1) Without prejudice to the generality of Article 8, the capacity of facilities for the storage on a holding of livestock manure produced by pigs

shall, subject to sub-article (2) and Article 14, equal or exceed the capacity required to store all such livestock manure produced on the holding during a period of 26 weeks.

(2) The period specified in Schedule 3 shall, in substitution for that prescribed by sub-article (1), apply in relation to livestock manure produced by pigs on a holding where all the following conditions are met—

- (a) the number of pigs on the holding does not at any time exceed one hundred pigs, and
- (b) the holding comprises a sufficient area of land for the application in accordance with these Regulations of all livestock manure produced on the holding.

Capacity of storage facilities for poultry manure

11. (1) Without prejudice to the generality of Article 8, the capacity of facilities for the storage on a holding of livestock manure produced by poultry shall, subject to sub-article (2) and Article 14, equal or exceed the capacity required to store all such livestock manure produced on the holding during a period of 26 weeks.

(2) The period specified in Schedule 3 shall, in substitution for that prescribed by sub-article (1), apply in relation to livestock manure produced by poultry on a holding where all the following conditions are met—

- (a) tillage or grassland farming is carried out on the holding,
- (b) the number of poultry places on the holding does not exceed 2,000 places, and
- (c) the holding comprises a sufficient area of land for the application in accordance with these Regulations of all livestock manure produced on the holding.

Capacity of storage facilities for manure from deer, goats and sheep

12. Without prejudice to the generality of Article 8, the capacity of facilities for the storage on a holding of livestock manure produced by deer, goats and sheep shall, subject to Article 14, equal or exceed the capacity required to store all such livestock manure produced on the holding during a period of six weeks.

Capacity of storage facilities for manure from cattle

13. Without prejudice to the generality of Article 8, the capacity of facilities for the storage on a holding of livestock manure produced by cattle shall, subject to Article 14, equal or exceed the capacity required to store all such livestock manure produced on the holding during the period specified in Schedule 3.

Reduced storage capacity in certain circumstances

14. (1) The capacity of facilities for the storage of livestock manure on a holding may, to such extent as is justified in the particular circumstances of the holding, be less than the capacity specified in Article 10, 11, 12 or 13, as appropriate, in the case of a holding where—

- (a) the occupier of the holding has a contract providing exclusive access to adequate alternative storage capacity located outside the holding,
- (b) the occupier has a contract for access to a treatment facility for live-stock manure, or
- (c) the occupier has a contract for the transfer of the manure to a person registered under and in accordance with the European Communities (Transmissible Spongiform Encephalopathies and Animal By-products) Regulations 2008 (S.I. No. 252 of 2008) to undertake the transport of manure.

(2) Subject to sub-article (3), the capacity of facilities for the storage of live-stock manure may be less than the capacity specified in Article 12 or 13, as appropriate, in relation to—

- (a) deer, goats or sheep which are out-wintered at a grassland stocking rate which does not exceed 130 kg nitrogen until 31st December 2024 and 100 kg nitrogen from 1st January 2025 onwards at any time during the period specified in Schedule 4 in relation to the application of organic fertiliser other than farmyard manure, or
- (b) livestock (other than dairy cows, deer, goats or sheep) which are out-wintered at a grassland stocking rate which does not exceed 85 kg nitrogen at any time during the period specified in Schedule 4 in relation to the application of organic fertiliser other than farmyard manure.

The requirement for full storage for those holdings stocked between 100 kg N/ha and 130 kg N/ha applies from 1st January 2025.

(3) Sub-article (2) shall apply only in relation to a holding where all the following conditions are met—

- (a) all the lands used for out-wintering of the livestock are comprised in the holding,
- (b) the out-wintered livestock have free access at all times to the required lands,
- (c) the amount of manure produced on the holding does not exceed an amount containing 130 kg of nitrogen per hectare per annum until 31st December 2024 and 100 kg of nitrogen per hectare per annum from 1st January 2025 onwards,
- (d) severe damage to the surface of the land by poaching does not occur, and

- (e) the reduction in storage capacity is proportionate to the extent of out-wintered livestock on the holding.

(4) In this article, a grassland stocking rate of 130 kg, 100 kg or 85 kg of nitrogen, as the case may be, means the stocking of grassland on a holding at any time by such numbers and types of livestock as would in the course of a year excrete waste products containing 130 kg, 100 kg or 85 kg of nitrogen, as the case may be, per hectare of the grassland when calculated in accordance with the nutrient excretion rates for livestock specified in Table 6 of Schedule 2.

PART 3

NUTRIENT MANAGEMENT

Interpretation, commencement etc

15. (1) In this Part, “crop requirement”, in relation to the application of fertilisers to promote the growth of a crop, means the amounts and types of fertilisers which are based on the relevant tables in Schedule 2 to apply to soil for the purposes of promoting the growth of the crop having regard to the foreseeable nutrient supply available to the crop from the fertilisers, the soil and from other sources.

(2) The amount of nitrogen or phosphorus specified in Table 7 or 8 of Schedule 2, as the case may be, in relation to a type of livestock manure or other substance specified in the relevant table shall for the purposes of this Part be deemed to be the amount of nitrogen or phosphorus, as the case may be, contained in that type of manure or substance except as may be otherwise specified in a certificate issued in accordance with Article 32.

(3) The amount of nitrogen or phosphorus available to a crop from a fertiliser of a type which is specified in Table 9 of Schedule 2 in the year of application of that fertiliser shall, for the purposes of this Part, be deemed to be the percentage specified in that table of the amount of nitrogen or phosphorus, as the case may be, in the fertiliser.

(4) The amount of nitrogen or phosphorus available to a crop from an organic fertiliser of a type which is not specified in Table 9 of Schedule 2 shall be deemed to be the amount specified in the table in relation to cattle manure or, where supported by the necessary analysis, the amount of nitrogen estimated on the basis of the C:N ratio of the compost in accordance with Table 9A unless a different amount has been determined in relation to that fertiliser by, or with the agreement of, the relevant local authority or the Agency, as the case may be.

(5) A reference in this Part to the “nitrogen index” or the “phosphorus index” in relation to soil is a reference to the index number assigned to the soil in accordance with Table 10 or 11 of Schedule 2, as the case may be, to indicate the level of nitrogen or phosphorus available from the soil.

(6) From 11th March 2022, on holdings with grassland stocking rates of 130 kg nitrogen per hectare from grazing livestock manure (dairy cows and other bovines two years old and over) or above prior to export of livestock

manure from the holding, a maximum crude protein content of 15% is permissible in concentrate feedstuff fed to grazing livestock on the holding between 15th April and 30th September. Records of crude protein content of concentrate feedstuff shall be kept in accordance with Article 23(1)(j).

(7) On holdings with grassland stocking rates of 170 kg nitrogen per hectare from grazing livestock manure or above prior to export of livestock manure from the holding, a liming programme shall be prepared and must establish the following:-

- (a) A calculation of liming requirements for each parcel to achieve optimum pH;
- (b) A lime application programme for the farm.

(8) The stocking rate allowance for commonage land shall not exceed 50 kg organic nitrogen per hectare.

(9) Chemical fertiliser shall not be spread on commonage land.

Duty of occupier in relation to nutrient management

16. (1) An occupier of a holding shall take as far as is practicable all such steps for the purposes of preventing the application to land of fertilisers in excess of crop requirement on the holding.

(2) For the purposes of the determination of the grassland stocking rate in tables 12, 13A and 13B the previous calendar year's stocking rate data shall be used.

- (3) (a) For the purposes of this article, the phosphorus index for soil shall be deemed to be phosphorus index 3 unless a soil test indicates that a different phosphorus index is appropriate in relation to that soil subject to paragraph (e).
- (b) The soil test to be taken into account for the purposes of paragraph (a) in relation to soil shall, subject to paragraph (c), be the soil test most recently taken in relation to that soil.
- (c) Where a period of four years or more has elapsed after the taking of a soil test, the results of that test shall be disregarded for the purposes of paragraph (a) except in a case where that soil test indicates the soil to be at phosphorus index 4.
- (d) The phosphorus fertilisation rate for soils with more than 20% organic matter shall not exceed the amounts permitted for Index 3 soils, subject to the provisions of paragraph (e).
- (e) For the purposes of paragraph (d), soils shall be deemed to have an organic matter content of 20% as defined on a Teagasc-EPA Indicative Soils map unless otherwise determined in soil tests carried out in accordance with this article.
- (f) From 11th March 2022 all occupiers of holdings that have a grassland stocking rate of 170 kg N/ha or above prior to export

of livestock manure, shall take soil tests and shall assume P index 4 until soil tests are taken. From 1st January 2023 all occupiers of holdings with a grassland stocking rate above 130 kg N/ha shall take soil tests and shall assume P index 4 until soil tests are taken. From 1st January 2023 all occupiers of holdings on all arable land shall take soil tests.

(4) Without prejudice to the generality of sub-article (1) and subject to sub-article (5), the amount of available nitrogen or available phosphorus applied to promote the growth of a crop specified in Table 12, 13A, 14, 15, 16, 17, 18, 19, 20 or 21 of Schedule 2 shall not exceed the amount specified in the table in relation to that crop having regard to the relevant nitrogen index or phosphorus index, as the case may be, for the soil on which the crops are to be grown. In the case of crops not identified in the tables listed above, fertilisers shall be applied in accordance with Teagasc guidance as approved by the Minister for Agriculture, Food and the Marine.

(5) Increased phosphorus build-up on grassland on farms with grassland stocking rates of 130 kg nitrogen per hectare and above shall only be permitted in accordance with the rates contained in Table 13B provided that the following conditions are met:

- (a) Soil analysis is carried out for soil phosphorus and soil organic matter contents; Soils shall be deemed to have an organic matter content of 20% as defined on a Teagasc-EPA Indicative Soils map unless otherwise determined in soil tests carried out in accordance with this article.
- (b) An occupier availing of the phosphorus build-up programme shall engage the services of a Department of Agriculture, Food and the Marine approved Farm Advisory System Advisor.
- (c) A detailed farm nutrient plan for the holding shall be submitted in a format specified by the Minister for Agriculture, Food and the Marine.
- (d) The occupier shall participate in an appropriate training programme specified by the Minister for Agriculture, Food and the Marine for the purpose of meeting the requirements of these regulations.

(6) In the case of a holding on which grazing livestock are held, the amount of available phosphorus supplied to the holding by concentrated feedstuff shall be the amount fed to such livestock in excess of 300 kg per 89 kg livestock manure nitrogen in the previous calendar year and the phosphorus content of such concentrated feedstuff shall, in the absence of a known phosphorus content or phosphorus content provided by the supplier, be deemed to be 0.5 kg phosphorus in respect of each 100 kg of such concentrated feedstuff.

(7) The nitrogen and phosphorus maximum limits in Tables 12, 13A and 13B are in addition to the nitrogen and phosphorus contained in grazing livestock manure produced on the holding.

PART 4
PREVENTION OF WATER POLLUTION FROM FERTILISERS AND
CERTAIN ACTIVITIES

Distances from a water body and other issues

17. (1) Chemical fertiliser shall not be applied to land within 2m of any surface waters.

(2) Organic fertiliser or soiled water shall not be applied to land within—

- (a) 200m of the abstraction point of any surface waters, borehole, spring or well used for the abstraction of water for human consumption in a water scheme supplying 100m³ or more of water per day or serving 500 or more persons,
- (b) 100m of the abstraction point (other than an abstraction point specified in paragraph (a)) of any surface waters, borehole, spring or well used for the abstraction of water for human consumption in a water scheme supplying 10m³ or more of water per day or serving 50 or more persons,
- (c) 25m of any borehole, spring or well used for the abstraction of water for human consumption other than a borehole, spring or well specified in paragraph (a) or (b),
- (d) 20m of a lake shoreline or a turlough likely to flood,
- (e) 15m of exposed cavernous or karstified limestone features (such as swallow-holes and collapse features),
- (f) subject to sub-article (12), 5m of any surface waters (other than a lake or surface waters specified at paragraph (a) or (b)), or
- (g) the distance specified in sub-article 2(f) shall be increased to 10m for a period of two weeks preceding and two weeks following the periods specified in Schedule 4.

(3) Notwithstanding the requirements of sub-articles (2)(a), (2)(b) and (2)(c), organic fertiliser or soiled water may be applied to land within:

- (a) 30m from the abstraction point in the case of any surface waters, bore-hole, spring or well used for the abstraction of water for human consumption in a water scheme supplying 10m³ or more of water per day or serving 50 or more persons, or
- (b) 15m from the abstraction point in the case of any borehole, spring or well used for the abstraction of water for human consumption other than a borehole, spring or well specified in paragraph (a),

where the provisions of sub-article (4) are complied with.

(4) Organic fertiliser or soiled water may only be applied to land in accordance with sub-article (3) where a local authority or Irish Water (as the case may be) has completed a technical assessment of conditions in the vicinity

of the abstraction point, including taking into account variation in soil and subsoil conditions, the landspreading pressures in the area, the type of abstraction, available water quality evidence and the likely risk to the water supply source and the local authority, in consultation with Irish Water, where relevant, has determined that the distance does not give rise to a risk to the water supply and a potential danger to human health.

(5) A local authority may, following consultation with Irish Water, where relevant, decide to apply the landspreading restriction to the upstream catchment area and to the close proximity downstream of the abstraction point in the case of any surface waters.

(6) A local authority may, in the case of any particular abstraction point and following consultation with the Agency and, where relevant, Irish Water, specify a greater distance than that specified in sub-articles (2) or (3) where, following prior investigations by Irish Water or the local authority (as the case may be), the local authority is satisfied that such distance is appropriate for the protection of waters being abstracted at that point. The distance so specified shall be determined by the local authority using an evidence-based approach which takes into account the natural vulnerability of the waters to contamination from land spreading, the potential risk to human health arising from the landspreading activity as well as the water quality evidence, including information on water quality trends.

(7) Notwithstanding the provisions of sub-articles (2), (3) and (6), a local authority shall, following prior investigations by Irish Water or the local authority (as the case may be) and following consultation with the Agency and, where relevant, Irish Water, specify an alternative distance, including a landspreading exclusion area where necessary, in the case of a water abstraction for human consumption in a scheme supplying 10m³ or more of water per day, or serving 50 or more persons, within a timeframe to be agreed with the Agency and, where relevant, Irish Water, where—

- (a) on the basis of the results of monitoring carried out for the purposes of Article 7 of the European Communities (Drinking Water) Regulations 2014 (S.I. No. 122 of 2014), the quality of water intended for human consumption does not meet the parametric values specified in Part I of the Schedule of those Regulations or the quality of water constitutes a potential danger to human health, and it appears to the local authority following consultation with the Agency and, where relevant, Irish Water, that this is due to the landspreading of organic fertilisers or soiled water in the vicinity of the abstraction point, or
- (b) investigations undertaken by Irish Water as part of the management of a water supply scheme indicate that the landspreading activity presents a significant risk to the drinking water supply or a potential danger to human health having regard to catchment factors in the vicinity of the abstraction point including but not limited to slope, vulnerability, and hydrogeology, the scale and intensity of land spreading pressures, the type of water supply source and water quality evidence, including information on water quality trends.

(8) A distance specified by a local authority in accordance with sub-articles (3), (5), (6) and (7) may be described as a distance or distances from an abstraction point, a hydrogeological boundary or topographical feature or as an area delineated on a map or in such other way as appears appropriate to the authority.

(9) In relation to sub-articles (6) and (7), "prior investigations" means, in relation to an abstraction point, an assessment of the susceptibility of waters to contamination in the vicinity of the abstraction point having regard to—

- (a) the direction of flow of surface water or groundwater, as the case may be,
- (b) the slope of the land and its runoff potential,
- (c) the natural geological and hydrogeological attributes of the area including the nature and depth of any overlying soil and subsoil and its effectiveness in preventing or reducing the entry of harmful substances to water, and
- (d) where relevant, the technical specifications set out in the document "Groundwater Protection Schemes" published in 1999 (ISBN 1-899702-22-9) or any subsequent published amendment of that document.

(10) Where a local authority specifies a distance in accordance with either of sub-articles (3), (5), (6) or (7) the authority shall, as soon as may be—

- (a) notify the affected landowners, Irish Water, the Agency and the Department of Agriculture, Food and the Marine of the distance so specified,
- (b) send to the Agency a summary of the report of any investigations undertaken and the reasons for specifying the alternative distance,
- (c) make an entry in the register maintained in accordance with Article 30(6), and
- (d) publish and maintain on the local authority website an updated schedule of setback distances specified for each drinking water supply.

(11) The Agency may issue advice or direction to Irish Water or a local authority in relation to any requirements including requirements for technical assessments and prior investigations arising under sub-articles (2), (3), (4), (5), (6), (7), (8) or (9) and Irish Water or a local authority (as the case may be) shall comply with any such advice or direction given.

(12) Notwithstanding sub-article (2)(f), organic fertiliser or soiled water shall not be applied to land within 10m of any surface waters where the land has an average incline greater than 10% towards the water.

(13) Where farmyard manure is held in a field prior to landspreading it shall be held in a compact heap and shall not be placed within-

- (a) 250m of the abstraction point of any surface waters or borehole, spring or well used for the abstraction of water for human

consumption in a water scheme supplying 10m³ or more of water per day or serving 50 or more persons,

- (b) 50m of any other borehole, spring or well used for the abstraction of water for human consumption other than a borehole, spring or well specified at paragraph (a),
- (c) 20m of a lake shoreline or a turlough likely to flood,
- (d) 50m of exposed cavernous or karstified limestone features (such as swallow-holes and collapse features),
- (e) 20m of any surface waters (other than a lake or surface waters specified at paragraph (a)).

(14) Organic fertiliser shall not be held in a field at any time during the periods specified in Schedule 4 as applicable to that substance.

(15) Silage bales shall not be stored outside of farmyards within 20m of surface waters or a drinking water abstraction point in the absence of adequate facilities for the collection and storage of any effluent arising.

(16) No cultivation shall take place within 2m of a watercourse identified on a modern 1:5,000 scale OSi mapping or better, except in the case of grassland establishment or the sowing of grass crops.

(17) Supplementary feeding points shall not be located within 20m of waters and shall not be located on bare rock.

(18) In the case of livestock holdings with grassland stocking rates of 170 kg nitrogen per hectare from livestock manure or above prior to export of livestock manure, bovine livestock shall not be permitted to drink directly from watercourses identified on the modern 1:5,000 scale OSi mapping or better. Where bovine livestock have direct access to watercourses on the holding, a fence shall be placed at least 1.5m from the top of the riverbank or water's edge (as the case may be). It will be permissible to move livestock across a watercourse to an isolated land parcel where necessary, provided that both sides of the watercourse are fenced.

(19) In the case of holdings identified in sub-Article 18, supplementary drinking points may not be located within 20m of surface waters.

(20) There shall be no direct runoff of soiled water from farm roadways to waters. The occupier of a holding shall comply with any specification for farm roadways specified by the Minister for Agriculture, Food and the Marine pursuant to this requirement.

(21) There shall be no direct runoff of soiled waters to waters resulting from the poaching of land on the holding.

(22) For late harvested crops and late harvested spring cereal crops, a minimum buffer of 6m shall be put in place to protect any intersecting watercourses.

Requirements as to manner of application of fertilisers, soiled water etc

18. (1) (a) Livestock manure, other organic fertilisers, effluents, soiled water and chemical fertilisers shall be applied to land in as accurate and uniform a manner as is practically possible.
- (b) Low emission slurry spreading equipment must be used for the application of slurry on holdings with grassland stocking rates of :
- i. 170 kg nitrogen per hectare from grazing livestock manure or above prior to export of livestock manure from the holding.
 - ii. 150 kg nitrogen per hectare from grazing livestock manure or above prior to export of livestock manure from the holding from 1st January 2023.
 - iii. 130 kg nitrogen per hectare from grazing livestock manure or above prior to export of livestock manure from the holding from 1st January 2024.
 - iv. 100 kg nitrogen per hectare from grazing livestock manure or above prior to export of livestock manure from the holding from 1st January 2025.
 - v. slurry produced by pigs on any holding from 1st January 2023.
- (c) From 1st January 2023, low emission equipment shall be used to apply livestock manure to arable land or the livestock manure shall be incorporated within 24 hours.
- (2) Organic and chemical fertilisers or soiled water shall not be applied to land in any of the following circumstances—
- (a) the land is waterlogged;
 - (b) the land is flooded or likely to flood;
 - (c) the land is snow-covered or frozen;
 - (d) heavy rain is forecast within 48 hours, or
 - (e) the ground slopes steeply and there is a risk of water pollution having regard to factors such as surface runoff pathways, the presence of land drains, the absence of hedgerows to mitigate surface flow, soil condition and ground cover.
- (3) A person shall, for the purposes of sub-article (2)(d), have regard to weather forecasts issued by Met Éireann.
- (4) Organic fertilisers or soiled water shall not be applied to land—
- (a) by use of an umbilical system with an upward-facing splashplate,
 - (b) by use of a tanker with an upward-facing splashplate,
 - (c) by use of a sludge irrigator mounted on a tanker, or

- (d) from a road or passageway adjacent to the land irrespective of whether or not the road or passageway is within or outside the curtilage of the holding.
- (5) Subject to sub-article (6), soiled water shall not be applied to land—
- (a) in quantities which exceed in any period of 42 days a total quantity of 50,000 litres per hectare, or
 - (b) by irrigation at a rate exceeding 5 mm per hour.
- (6) In an area which is identified on maps compiled by the Geological Survey of Ireland as “Extreme Vulnerability Areas on Karst Limestone Aquifers”, soiled water shall not be applied to land—
- (a) in quantities which exceed in any period of 42 days a total quantity of 25,000 litres per hectare, or
 - (b) by irrigation at a rate exceeding 3 mm per hour unless the land has a consistent minimum thickness of 1m of soil and subsoil combined.
- (7) For the purposes of sub-article (6), it shall be assumed until the contrary is shown that areas so identified as “Extreme Vulnerability Areas on Karst Limestone Aquifers” do not have a consistent minimum thickness of 1m of soil and subsoil combined.

Periods when application of fertilisers is prohibited

19. (1) Subject to this article, the application of fertiliser to land is prohibited during the periods specified in Schedule 4.
- (2) Sub-article (1) shall not apply in relation to the application to land of—
- (a) soiled water, subject to Article 5(3), or
 - (b) chemical fertilisers to meet the crop requirements of Autumn-planted cabbage or of crops grown under permanent cover, or
 - (c) fertilisers whose application rate or usage rate is less than 1kg per hectare of available nitrogen or phosphorus.

Limits on the amount of livestock manure to be applied

20. (1) The amount of livestock manure applied in any year to land on a holding, together with that deposited to land by livestock, shall not exceed an amount containing 170 kg of nitrogen per hectare. The amount considered to be applied to commonage shall not exceed 50 kg of nitrogen per hectare.
- (2) For the purposes of sub-article (1), the amount of nitrogen produced by livestock and the nitrogen content of livestock manure shall be calculated in accordance with Tables 6, 7 and 8 of Schedule 2 except in the case of pig manure or poultry manure where a different amount is specified in a certificate issued in accordance with Article 32 in relation to that manure.
- (3) For the purposes of sub-article (1), the area of a holding shall be deemed to be the eligible area of the holding.

Ploughing and the use of non-selective herbicides

21. (1) Where arable land is ploughed between 1st July and 30th November the necessary measures, shall be taken within 14 days of ploughing to provide for emergence of green cover. A rough surface shall be maintained prior to a crop being sown in the case of lands ploughed between 1st December and 15th January.

(2) Where grassland is ploughed between 1st July and 15th October the necessary measures shall be taken within 14 days of ploughing to provide for emergence of green cover from a sown crop.

(3) Grassland shall not be ploughed between 16th October and 30th November.

(4) (a) When a non-selective herbicide is applied to arable land or to grassland in the period between 1st July and 30th November the necessary measures shall be taken to provide for the emergence, within 6 weeks of the application, of green cover from a sown crop or from natural regeneration.

(b) When a non-selective herbicide is applied to land after 15th October, the requirement in sub-article 4 (a) shall be reduced to 75% of the relevant cereal area where a contract is in place for seed crops or crops producing grain destined for human consumption which prohibits the application of a non-selective herbicide preharvest.

(5) Where green cover is provided for in compliance with this Article, the cover shall not be removed by ploughing or by the use of a non-selective herbicide before 1st December unless a crop is sown within two weeks of its removal.

(6) In the case of land which is ploughed in the course of a ploughing competition under the auspices of the National Ploughing Association, a temporary exemption applies in the form of an extension to the time period specified in sub-article (1) or (2) for establishment of green cover after the land is ploughed.

(7) Shallow cultivation or sowing of a crop must take place within 7 days of baling of straw post harvest. Where straw is chopped shallow cultivation or sowing a crop must take place within 7 days of harvest. In all circumstances, shallow cultivation or sowing of a crop must take place within 14 days of harvesting. In certain weather conditions, the Minister, in discussion with the Minister for Agriculture, Food and the Marine, may advise when this should not apply.

PART 5
GENERAL

General duty of occupier

22. (1) An occupier of a holding shall ensure compliance with the provisions of these Regulations in relation to that holding.

(2) An occupier of a holding shall comply with any advice and/or directions which may be issued from time to time for the purposes of these Regulations by the Minister, the Minister for Agriculture, Food and the Marine or the Agency.

Keeping of records by occupier

23. (1) Records shall be maintained for each holding which shall indicate—

- (a) total area of the holding,
- (b) eligible area of the holding,
- (c) cropping regimes and their individual areas,
- (d) livestock numbers and type,
- (e) an estimation of the annual fertiliser requirement for the holding and a copy of any Nutrient Management Plan prepared in relation to the holding,
- (f) quantities and types of chemical fertilisers moved on to or off the holding, including opening stock, records of purchase and closing stock,
- (g) livestock manure and other organic fertilisers moved on to or off the holding including quantities, type, dates and details of exporters and importers, as the case may be, in a format specified by the Minister for Agriculture, Food and the Marine,
- (h) the results of any soil tests carried out in relation to the holding,
- (i) the nature and capacity of facilities on the holding for the storage of livestock manure and other organic fertilisers, soiled water and effluents from dungsteads, farmyard manure pits, silage pits or silage clamps, including an assessment of compliance with Articles 9 to 14,
- (j) the quantities and types of concentrated feedstuff fed to grazing live-stock on the holding, and
- (k) the location of any abstraction point of water used for human consumption from any surface waters, borehole, spring or well.

(2) Where fertiliser is used on a holding and a certificate of the type mentioned in Article 15 or 20 was issued in relation to that fertiliser in accordance with Article 32, a copy of the certificate shall be retained and be available for inspection on the holding for a period of not less than five years from the expiry of validity of the certificate.

(3) Records shall be prepared for each calendar year by 31st March of the following year and shall be retained for a period of not less than five years.

(4) Notwithstanding sub-paragraphs (1), (2) and (3), an occupier shall, where requested by the Minister, the Minister for Agriculture, Food and the Marine, a local authority or the Agency, provide such information as is requested relating to the movement of organic fertilisers on or off the holding.

False or misleading information

24. A person shall not compile information which is false or misleading to a material extent or furnish any such information in any notice or other document for the purposes of these Regulations.

Authorised person

25. (1) In this Article, "authorised person" means—

- (a) a person who is an authorised person for the purposes of section 28 of the Local Government (Water Pollution) Act, 1977 (No. 1 of 1977), or
- (b) a person appointed under sub-article (11) to be an authorised person for the purposes of these Regulations.

(2) An authorised person may for any purpose connected with these Regulations—

- (a) enter and inspect any premises for the purposes of performing a function under these Regulations or of obtaining any information which he or she may require for such purposes,
- (b) at all reasonable times, or at any time if he or she has reasonable grounds for believing that there is or may be a risk to the environment, or that an offence under these Regulations is being or is about to be committed, arising from the carrying on of an activity at a premises, enter any premises and bring onto those premises such other persons (including a member of the Garda Síochána) or equipment as he or she may consider necessary, or
- (c) at any time if he or she has reasonable grounds for suspecting there may be a risk to the environment, or that an offence under these Regulations is being or is about to be committed, involving the use of any vehicle halt and board the vehicle and require the driver of the vehicle to take it to a place designated by the authorised person, and such a vehicle may be detained at that place by the authorised person for such period as he or she may consider necessary.

(3) An authorised person shall not enter into a private dwelling under this article unless one of the following conditions applies—

- (a) the entry is effected with the consent of the occupier or
- (b) the entry is authorised by a warrant issued under sub-article (7).

(4) Whenever an authorised person enters any premises or boards any vehicle, under this article, he or she may—

- (a) take photographs and carry out inspections, record information on data loggers, make tape, electrical, video or other recordings,
- (b) carry out tests and make copies of documents (including records kept in electronic form) found therein and take samples,
- (c) monitor any effluent, including trade effluent or other matter, which is contained in or discharged from a premises,
- (d) carry out surveys, take levels, make excavations and carry out examinations of depth and nature of subsoil,
- (e) require that the premises or vehicle or any part of the premises or anything in the premises or vehicle shall be left undisturbed for a specified period,
- (f) require information from an occupier of the premises of any occupant of the vehicle or any person employed on the premises or any other person on the premises,
- (g) require the production of, or inspect, records (including records held in electronic form) or documents, or take copies of or extracts from any records or documents, and
- (h) remove and retain documents and records (including documents held in electronic form) for such period as may be reasonable for further examination, which the authorised person, having regard to all the circumstances, considers necessary for the purposes of exercising any function under these Regulations.

(5) (a) An authorised person who, having entered any premises or boarded any vehicle pursuant to these Regulations, considers that a risk to the environment arises from the carrying on of an activity at the premises or involving the use of the vehicle, may direct the owner or occupier of the premises or the driver of the vehicle to take such measures as are considered by that authorised person to be necessary to remove that risk.

(b) If the owner, occupier or driver referred to in paragraph (a) fails to comply with a direction of an authorised person under this subsection, the authorised person may do all things as are necessary to ensure that the measures required under the direction are carried out and the costs incurred by him or her in doing any such thing shall be recoverable from the owner or occupier by him or her, or the person by whom he or she was appointed.

(6) A person shall not—

- (a) refuse to allow an authorised person to enter any premises or board any vehicle or to bring any person or equipment with him or her in the exercise of his or her powers,

- (b) obstruct or impede an authorised person in the exercise of any of his or her powers,
 - (c) give to an authorised person information which is to his or her knowledge false or misleading in a material respect, or
 - (d) fail or refuse to comply with any direction or requirement of an authorised person.
- (7) (a) Where an authorised person in the exercise of his or her powers under this Article is prevented from entering any premises, or if the authorised person has reason to believe that evidence related to a suspected offence under these Regulations may be present in any premises and that the evidence may be removed therefrom or destroyed, or if the authorised person has reason to believe that there is a significant immediate risk to the environment, the authorised person or the person by whom he or she was appointed may apply to the District Court for a warrant under this Article authorising the entry by the authorised person onto or into the premises.
- (b) If, on application being made to the District Court under this Article, the District Court is satisfied, on the sworn information of the authorised person that he or she has been prevented from entering a premises, the Court may issue a warrant authorising that person, accompanied, if the Court deems it appropriate by another authorised person or a member of the Garda Síochána, as may be specified in the warrant, at any time or times within one month from the date of the issue of the warrant, on production if so requested of the warrant, to enter, if need be by force, the premises concerned and exercise the powers referred to in sub-article (4) or (5).

(8) An authorised person may, in the exercise of any power conferred on him or her by these Regulations involving the bringing of any vehicle to any place, or where he or she anticipates any obstruction in the exercise of any other power conferred on him or her by these Regulations, request a member of the Garda Síochána to assist him or her in the exercise of such a power and any member of the Garda Síochána to whom he or she makes such a request shall comply with this request.

(9) Any certificate or other evidence given, or to be given, in respect of any test, examination or analysis of any sample shall, in relation to that sample, be evidence, without further proof, of the result of the test, examination or analysis unless the contrary is shown.

(10) When exercising any power conferred on him or her by these Regulations an authorised person shall, if requested by any person affected, produce a certificate or other evidence of his or her appointment as an authorised person.

(11) A person may be appointed as an authorised person for the purposes of these Regulations by the Minister, the Minister for Agriculture, Food and the Marine or the Agency.

(12) In this article “premises” includes land whether or not there are any structures on the land.

Offences and related matters

26. (1) A person who contravenes a provision of Parts 2 to 5 and Schedule 5 of these Regulations, excluding Article 17(5), (6), (7), (10) and (11), is guilty of an offence and shall be liable—

- (a) on summary conviction to a Class A fine or to imprisonment for a term not exceeding 3 months or both or,
- (b) on conviction on indictment to a fine not exceeding €500,000 or to imprisonment for a term not exceeding one year or to both such fine and such imprisonment.

(2) Where an offence under these Regulations has been committed by a body corporate and it is proved to have been so committed with the consent or connivance of or to be attributable to any neglect on the part of any person who, when the offence was committed, was a director, manager, secretary or other officer of the body corporate, or a person purporting to act in any such capacity, that person, as well as the body corporate, is guilty of an offence and liable to be proceeded against and punished as if guilty of the first-mentioned offence.

(3) Where the affairs of a body corporate or unincorporated body are managed by its members, sub-article (2) shall apply to the acts and defaults of a member in connection with the functions of management as if such a member were a director or manager of the body.

(4) A prosecution for a summary offence under these Regulations may be taken by a local authority or the Agency.

(5) A prosecution for a summary offence may be taken by a local authority whether or not the offence is committed in the functional area of the authority .

(6) Where a court imposes a fine or affirms or varies a fine imposed by another court for an offence under these Regulations, prosecuted by the Agency or a local authority, it shall, on the application of the Agency or local authority concerned (made before the time of such imposition, affirmation or variation), provide by order for the payment of the amount of the fine to the Agency or local authority, as the case may be, and such payment may be enforced by the Agency or local authority, as the case may be, as if it were due to it on foot of a decree or order made by the court in civil proceedings.

(7) Where a person is convicted of an offence under these Regulations the court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order that person to pay to the Agency or local authority concerned the costs and expenses, measured by the court, reasonably incurred by the Agency or local authority in relation to the investigation, detection and prosecution of the offence, including costs incurred in the taking of samples, the carrying out of tests, examinations and analyses and in respect of the remuneration and other expenses of employees, consultants and advisers.

- (8) (a) Where a local authority has reason to believe that an offence has been or is being committed in relation to a holding the authority may by notice require the person who appears to the authority to be the occupier to provide such information as is specified in the notice in relation to the alleged offence and it shall be the duty of that person to provide such information within the time frame specified in the notice insofar as is known to him or her.
- (b) A notice issued in accordance with paragraph (a) shall set out the provisions of Articles 22(1) and 24 and of sub-article (1).

(9) Where a local authority considers that an offence under these Regulations has been or is being committed in relation to a holding the authority shall take such enforcement measures as are warranted by the circumstances and as are necessary to ensure satisfactory compliance with these Regulations and which, save in the case of a trivial or insignificant offence or specific mitigating circumstances, shall include prosecution for the alleged offence.

- (10) (a) Where on application by motion by the Agency or a local authority to the District Court, Circuit Court or the High Court, the court hearing the application is satisfied that a person has failed or is failing to comply with a provision of Parts 2 to 5 of these Regulations, the court may by order—
- (i) direct the person to comply with the provisions,
 - (ii) make such other provision, including provision in relation to the payment of costs, as the court considers appropriate, and
 - (iii) make such interim or interlocutory order as it considers appropriate.
- (b) An application for an order under this Article may be made whether or not there has been a prosecution for an offence under these Regulations in relation to the relevant failure of compliance and shall not prejudice the initiation of a prosecution for an offence under these Regulations in relation to the failure of compliance.

(11) The powers, duties and functions assigned to a local authority or the Agency by this Article are additional to, and not in substitution for, the powers, duties and functions assigned by the Local Government (Water Pollution) Acts 1977 and 1990 or any other statute.

(12) A local authority shall maintain a register of inspections undertaken of farm holdings and information received for the purposes of Article 26(8) and shall keep updated a record of all enforcement measures undertaken in accordance with the requirements of Article 26(9) and Article 29(6).

PART 6
FUNCTIONS OF PUBLIC AUTHORITIES

Minister for Agriculture, Food and the Marine

27. (1) The Minister for Agriculture, Food and the Marine shall carry out, or cause to be carried out, such monitoring and evaluation programmes in relation to farm practices as may be necessary to determine the effectiveness of measures being taken in accordance with these Regulations.

(2) The Minister for Agriculture, Food and the Marine shall, in relation to each year, make the overall results of monitoring and evaluations carried out in accordance with sub-article (1) available to the Agency, to the Minister and, on request, to a local authority.

(3) The Minister for Agriculture, Food and the Marine shall prepare and keep updated a register of all holdings and shall, on request, make a copy of the register available to the Minister, the Agency or a local authority.

(4) The Minister for Agriculture, Food and the Marine shall make available to the Minister, a local authority or the Agency a report of an inspection or inspections carried out for the purposes of these Regulations or upon written request other information in relation to any holding or holdings as the case may be where such transfer of data is necessary for the purposes of ensuring compliance with these Regulations.

(5) The Minister for Agriculture, Food and the Marine shall make available, upon written request, information in relation to any holding or holdings, as the case may be, where such transfer of data is necessary for the purposes of carrying out any functions set out in these regulations, including for the purpose of promoting compliance with these Regulations. Such information may be requested by the following:-

- (a) the Minister,
- (b) an individual local authority,
- (c) a representative local authority under a local authority shared service established for the purpose of carrying out functions set out in these regulations including for the purpose of promoting compliance with these Regulations,
- (d) Teagasc for the purpose of promoting compliance with these Regulations,
- (e) the Agency.

(6) The Minister for Agriculture, Food and the Marine shall ensure compliance with the Data Sharing and Governance Act, No. 5 of 2019 in making available any information under sub-article (5) above.

Making and review of action programme by the Minister

28. (1) The Minister shall, following consultation with the Minister for Agriculture, Food and the Marine and other interested parties in accordance with this Article, prepare and publish not later than 31st December 2025 and every four years thereafter, a programme of measures (hereafter in this Article referred to as “an action programme”) for the protection of waters against pollution from agriculture. An interim review of this action programme shall be undertaken by the Minister starting within the second year of the programme.

(2) An action programme required by sub-article (1) shall include all such measures as are necessary for the purposes of Article 5 of the Nitrates Directive and shall contain a review of the action programme most recently made for those purposes and of such additional measures and reinforced actions as may have been taken.

(3) The Minister shall ensure that all interested parties are given early and effective opportunities to participate in the preparation, review and revision of an action programme required by this Article and for this purpose shall—

- (a) inform interested parties by public notices or other appropriate means including electronic media, in relation to any proposals for the preparation, review or revision of an action programme,
- (b) make available to interested parties information in relation to the proposals referred to in paragraph (a) including information about the right to participate in decision-making in relation to those proposals,
- (c) provide an opportunity for comment by interested parties before any decision is made on the establishment, review or revision of an action programme,
- (d) in making any such decision, take due account of the comments made by interested parties and the results of the public participation, and
- (e) having examined any comments made by interested parties, make reasonable efforts to inform those parties of the decisions taken and the reasons and considerations on which those decisions are based, including information on the public participation process.

(4) The Minister shall ensure that such reasonable time is allowed as is sufficient to enable interested parties to participate effectively.

(5) Where the Minister publishes any information in accordance with this Article, the Minister shall—

- (a) do so in such manner as the Minister considers appropriate for the purpose of bringing that information to the attention of the public, and
- (b) make copies of that information accessible to interested parties free of charge through a website or otherwise.

(6) The Minister shall specify by way of public notice on a website or otherwise the detailed arrangements made to enable public participation in the preparation, review or revision of an action programme, including—

- (a) the address to which comments in relation to those proposals may be submitted, and
- (b) the date by which such comments should be received.

(7) In this Article “interested parties” includes persons who—

- (a) are carrying on any business which relies upon the water environment or which is affected, or likely to be affected, by the action programme, or
- (b) are carrying on any activities which have or are likely to have an impact on water status, or
- (c) have an interest in the protection of the water environment whether as users of the water environment or otherwise.

Agency

29. (1) The Agency shall prepare at four-yearly intervals a report in accordance with Article 10 of the Nitrates Directive and shall submit such report to the Minister.

(2) The Agency shall undertake a review of progress made in implementing these Regulations and shall submit a report to the Minister by 30th June 2025 and every four years thereafter with the results of that review and with recommendations as to such additional measures, if any, as appear to be necessary to prevent and reduce water pollution from agricultural sources.

(3) In preparing the reports required under sub-articles (1) and (2) the Agency shall consult with the Department of Agriculture, Food and the Marine and the co-ordinating local authority in each river basin district, and such other persons as it considers appropriate.

(4) The Department of Agriculture, Food and the Marine, the relevant local authorities and Irish Water shall provide the Agency with such information appropriate to their functions as may be requested by the Agency for the purposes of these Regulations.

(5) Each monitoring programme prepared by the Agency for the purposes of Article 10 of European Communities (Water Policy) Regulations, 2003 (S.I. No. 722 of 2003) shall include provision for such monitoring as is necessary for the purposes of these Regulations.

(6) The Agency shall make recommendations and shall, where considered necessary, give directions to each local authority in relation to the monitoring and inspections to be carried out, or other measures to be taken, by the authority for the purposes of these Regulations. The Agency may revise such recommendations and directions at such times thereafter as the Agency considers appropriate.

(7) The powers, duties and functions assigned to the Agency by these Regulations are additional to, and not in substitution for, the powers, duties and

functions assigned to the Agency by section 63 of the Environmental Protection Agency Act, 1992 (No. 7 of 1992) or any other statute.

Local authorities

30. (1) A local authority shall carry out, or cause to be carried out, such monitoring of surface waters and groundwater at selected measuring points within its functional area as makes it possible to establish the extent of pollution in the waters from agricultural sources and to determine trends in the occurrence and extent of such pollution.

(2) A local authority shall carry out or cause to be carried out such inspections of farm holdings as is necessary for the purposes of these Regulations and shall aim to co-ordinate its inspection activities with inspections carried out by other public authorities.

(3) For the purposes of sub-article (2) a local authority shall aim to develop co-ordination arrangements with other public authorities with a view to promoting consistency of approach in inspection procedures and administrative efficiencies between public authorities and to avoid any unnecessary duplication of administrative procedures and shall have regard to any inspection protocol which may be developed by the Minister, following consultation with the Minister for Agriculture, Food and the Marine.

(4) A local authority shall, in the exercise of its functions for the purposes of these Regulations—

- (a) consult to such extent as it considers appropriate with the Minister, the Minister for Agriculture, Food and the Marine, the Agency, Irish Water and such other persons as it considers appropriate, and
- (b) have full regard to any recommendations made, and comply with any direction given, to the authority by the Agency in accordance with Article 29.

(5) A local authority shall follow any protocol established by the Minister for furnishing a report of an inspection or inspections to the Department of Agriculture, Food and the Marine and such other persons as it considers appropriate for the purposes of these Regulations where non-compliance has been detected.

(6) A local authority shall maintain a register of all prior investigations carried out by the local authority itself or by Irish Water within its jurisdiction, and distances specified, for the purposes of Article 17.

Compliance with Data Protection Acts

31. The provision of information by a local authority, the Agency or the Minister for Agriculture, Food and the Marine in accordance with Article 27, 29 or 30 of these Regulations shall not be a breach of the Data Protection Acts, 1988, 2003 and 2018.

Certificate in relation to nutrient content of fertiliser

32. (1) A certificate of the type specified in Article 15 or 20 may be issued by a competent authority where the authority is satisfied that the nutrient content of the fertiliser in question has been assessed on the basis of appropriate methodologies based on net farm balance and is as specified in the certificate.

(2) A certificate issued under this Article shall be valid for such period, not exceeding twelve months, as shall be specified in the certificate.

(3) In this Article “competent authority” means—

- (a) the Agency in relation to fertiliser arising in an activity in relation to which there is in force a licence under Part IV of the Act of 1992, and
- (b) the Minister for Agriculture, Food and the Marine in relation to any other fertiliser.

(4) Notice of the methodologies used for the purposes of sub-article (1) shall be notified to the European Commission by the competent authority.

Exemption for exceptional circumstances for research

33. (1) A temporary exemption from a requirement of these Regulations may be granted to a person by the Agency or the Minister for Agriculture, Food and the Marine in the case of exceptional circumstances relating to research.

(2) A temporary exemption for the purposes of sub-article (1) shall be granted by way of certificate issued to the person carrying out the research by the Agency or the Minister for Agriculture, Food and the Marine and shall be subject to such conditions, if any, as are specified in the certificate.

(3) A certificate issued for the purposes of this Article shall specify the nature, extent and duration of the exemption to which the certificate relates and a copy of the certificate shall be sent as soon as may be to the relevant local authority.

SCHEDULE 1

SOIL TEST

A soil test refers to the results of an analysis of a soil sample carried out by a soil-testing laboratory that meets the requirements of the Minister for Agriculture, Food and the Marine for this purpose.

The analysis for phosphorus and, where appropriate, organic matter content and soil pH, and the taking of soil samples shall be carried out in accordance with the procedures below.

Analysis for Phosphorus

The Morgan's extractable P test as detailed below shall be used to determine the Soil P Index. A review of this soil test methodology for phosphorus availability will be undertaken for the mid-term review of this programme.

Preparation of soil sample

The soil shall be dried at 40°C for at least 24 hours (longer if necessary to ensure complete drying) in a forced draught oven with moisture extraction facilities. It shall then be sieved through a 2 mm mesh screen to remove stones and plant debris. After thorough mixing, it shall be sub-divided to obtain a representative sample. Where large samples are received at the laboratory, the entire sample shall be dried and sieved prior to sub-sampling for analysis.

Morgan's extracting solution

Constituents:— 1,400 ml of 40% NaOH in approximately 15 litres of water. Add 1,440 ml of glacial acetic acid. Make up to 20 litres with water and adjust pH to 4.8. The pH of the solution must be checked regularly and adjusted as necessary before use. A volume ratio of one part sieved soil to five parts of solution must be used, e.g. 6 ml of the prepared soil sample is extracted with a 30 ml volume of Morgan's extracting solution. The sample shall be shaken for 30 minutes to get a suitable mix and permit intended reaction, after which it is filtered through a No. 2 Whatman filter paper into vials for analysis. The filtered extract shall be analysed using standard laboratory techniques.

Results shall be reported in mg per litre.

Analysis of organic matter

Organic matter content shall be determined by loss on ignition.

Place a quantity of the prepared soil sample in an oven for 16 hours at 105°C. Remove and cool in a desiccator. Put approximately 4g of this soil into a pre-weighed crucible and determine the weight of the soil (initial weight). Place in a muffle furnace at 500°C for 16 hours for ashing. Remove the crucible, cool in a desiccator and determine the weight of the ash (final weight).

The organic matter of the soil is the difference in weight between the initial and final weights expressed as a percentage of the initial weight.

Analysis of soil pH

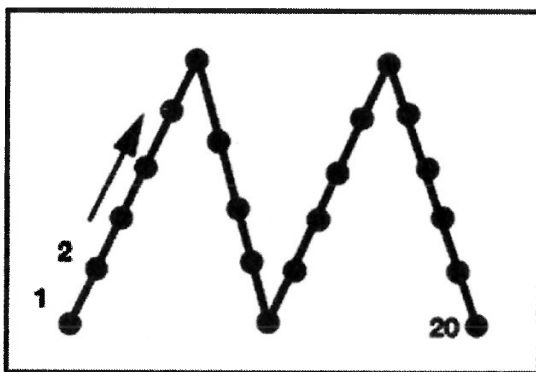
Soil pH shall be determined by measuring pH in a soil:water suspension of 1:2 ratio. Place 10 ml of dried sieved soil and 20 mls of deionised water into a suitable container. Mix thoroughly and allow to stand for at least 10 minutes. Stir for 30 seconds, and allow to settle immediately before recording the pH on a meter calibrated using buffer solutions of pH 4.0 and 7.0

Soil Sampling Procedure

The soil sample shall be taken in accordance with the procedure as specified below:

- (a) The sampling area shall not exceed 4 hectares. Exceptionally, where soil types and cropping of lands were similar during the previous five years, a sample area of up to 5 hectares shall be deemed acceptable.
- (b) Separate samples shall be taken from areas that are different in soil type, previous cropping history, slope, drainage or persistent poor yields.
- (c) Any unusual spots such as old fences, ditches, drinking troughs, dung or urine patches or where fertiliser or lime has been heaped or spilled shall be avoided.
- (d) A field shall not be sampled for phosphorus until 3 months after the last application of any fertiliser containing this nutrient (chemical or organic).
- (e) The sampling pattern shown in the figure below shall be followed. A soil core shall be taken to the full 100 mm depth. 20 cores shall be taken from the sampling area and placed in the soil container to make up the sample. Ensure the container is full of soil.
- (f) The field and sample numbers shall be written/attached onto the soil container.

Figure 1: Sampling pattern



SCHEDULE 2

Article 8

CRITERIA AS TO STORAGE CAPACITY AND NUTRIENT
MANAGEMENT

Table 1 Slurry storage capacity required for sows and pigs

Unit type	m ³ /week ¹				
	2.0:1	2.5:1	3.0:1	3.5:1	4.0:1
Water:meal ratio changing for finishers only					
Breeding unit (per sow place)	-	-	-	-	0.174
Integrated unit (per sow place)	0.312	0.355	0.398	0.441	0.483
Finishing unit (per pig)	0.024	0.031	0.039	0.046	0.053

¹An additional 200mm freeboard must be provided in all covered tanks and 300mm freeboard in all uncovered tanks. Allowance must also be made for net rainfall during the specified storage period for uncovered tanks.

Table 2 Slurry storage capacity required for cattle, sheep and poultry

Livestock type	m ³ /week ¹
Dairy cow	0.33
Suckler cow	0.29
Cattle > 2 years	0.26
Cattle (18-24 months old)	0.26
Cattle (12-18 months old)	0.15
Cattle (6-12 months old)	0.15
Cattle (0-6 months old)	0.08
Lowland ewe	0.03
Mountain ewe	0.02
Lamb-finishing	0.01
Poultry — layers per 1000 birds (30% DM)	0.81

¹An additional 200mm freeboard must be provided in all covered tanks and 300mm freeboard in all uncovered tanks. Allowance must also be made for net rainfall during the specified storage period for uncovered tanks.

Table 3 Storage capacity required for dungstead manure

Livestock type	Solid fraction (m ³ /week)	Seepage fraction (m ³ /week) ¹
Dairy cow	0.28	0.04
Suckler cow	0.25	0.03
Cattle > 2 years	0.23	0.02
Cattle (18-24 months old)	0.23	0.02
Cattle (12-18 months old)	0.13	0.01
Cattle (6-12 months old)	0.13	0.01
Cattle (0-6 months old)	0.07	0.01

¹ Allowance must also be made for net rainfall during the specified storage period for uncovered tanks.

Table 4 Average net rainfall during the specified storage period

County	Millimetres per week
Carlow	24
Cavan	27
Clare	32
Cork	37
Donegal	38
Dublin	17
Galway	34
Kerry	45
Kildare	18
Kilkenny	23
Laois	22
Leitrim	33
Limerick	26
Longford	23
Louth	20
Mayo	40
Meath	19
Monaghan	23
Offaly	20
Roscommon	26
Sligo	32
Tipperary	27
Waterford	31
Westmeath	21
Wexford	25
Wicklow	33

Article 9

Table 5 Storage capacity required for effluent produced by ensiled forage

Crop	Minimum storage requirement	(m ³ /100 tonnes)
	Short Term Storage ¹	Full Storage
Grass	7	21
Arable silage	7	21
Maize	4	10
Sugar beet tops	15	50

¹Only permitted where a vacuum tanker or an irrigation system is available on the holding.

Article 14 and 20

Table 6 Annual nutrient excretion rates for livestock

Livestock type	Total Nitrogen	Total Phosphorus
	kg/year	kg/year
Dairy cow ⁷ (2022 only)	89	13
Dairy cow band 1 ⁸ (from 2023)	80	12
Dairy cow band 2 ⁹ (from 2023)	92	13.6
Dairy cow band 3 ¹⁰ (from 2023)	106	15.8
Suckler cow	65	10
Cattle (0-1 year old)	24	3
Cattle (1-2 years old)	57	8
Cattle > 2 years	65	10
Mountain ewe & lambs	7	1
Lowland ewe & lambs	13	2
Mountain hogget	4	0.6
Lowland hogget	6	1
Goat	9	1
Horse (>3 years old)	50	9
Horse (2-3 years old)	44	8
Horse (1-2 years old)	36	6
Horse foal (< 1 year old)	25	3
Donkey/small pony	30	5
Deer (red) 6 months — 2 years	13	2

⁷ In 2022 the N excretion rate for the dairy cow is 89 kg N/ha and from 2023 onwards the N excretion rate will be determined by the milk yield per annum (for the 3 preceding years) as explained in footnote 8, 9 and 10

⁸ <4,500 kg milk yield per annum

⁹ 4,501 – 6,500 kg milk yield per annum

¹⁰ >6,500 kg milk yield per annum

Deer (red) > 2 years	25	4
Deer (fallow) 6 months — 2 years	7	1
Deer (fallow) > 2 years	13	2
Deer (sika) 6 months — 2 years	6	1
Deer (sika) > 2 years	10	2
Breeding unit (per sow place)	35	8
Integrated unit (per sow place)	87	17
Finishing unit (per pig place)	9.2	1.7
Laying hen per bird place	0.56	0.12
Broiler per bird place	0.24	0.09
Turkey per bird place	1	0.4

Article 15 and 20

Table 7 Amount of nutrient contained in 1m³ of slurry

Livestock type	Total Nitrogen (kg)	Total Phosphorus (kg)
Cattle	2.4	0.8
Pig	4.2	0.8
Sheep	10.2	1.5
Poultry — layers 30% DM	13.7	2.9

For the purposes of calculation, assume that 1 m³ = 1,000 litres = 1 tonne = 1000 kg.

Table 8 Amount of nutrients contained in 1 tonne of organic fertilisers other than slurry

Livestock type		Total Nitrogen (kg)	Total Phosphorus (kg)
Poultry manure	broilers/deep litter	28.0	6.0
	layers 55% dry matter	23.0	5.5
	turkeys	28.0	13.8
Dungstead manure (cattle)		3.5	0.9
Farmyard manure		4.5	1.2
Spent mushroom compost		8	1.5
Sewage sludge		Total nitrogen and total phosphorus content per tonne shall be declared by the supplier in accordance with the Waste Management (Use of Sewage Sludge in Agriculture) Regulations, 1998 to 2001 and any subsequent amendments thereto and this must be submitted to the local authority.	
Dairy processing residues and other products not listed above		Total nitrogen and total phosphorus content per tonne based on certified analysis shall be provided by the supplier.	

Article 15

Table 9 Nutrient availability in fertilisers

Fertiliser	Availability (%)		
	Nitrogen	Phosphorus	
		Soil Index 1 & 2	Soil Index 3 & 4
Chemical	100	100	100
Pig and poultry manure	50	50	100
Farmyard manure	30	50	100
Spent mushroom compost	20	50	100
Cattle and other livestock manure (including that produced on the holding)	40	50	100

Table 9A Nutrient availability in compost

Compost C:N ratio ¹	N availability (%)
<10	25
12.5	17.5
15.0	10
17.5	5.5
>20	0.0

¹The determination of the C:N ratio shall be based on a methodology agreed with the Agency or the Minister for Agriculture, Food and the Marine

Table 10 Determining nitrogen index for tillage crops

Tillage crops that follow permanent pasture			
Nitrogen Index			
Index 1	Index 2	Index 3	Index 4
The 5th tillage crop following permanent pasture. For subsequent tillage crops use the continuous tillage table.	The 3rd or 4th tillage crop following permanent pasture. If original permanent pasture was cut only, use index 1.	The 1st or 2nd tillage crop following permanent pasture (see also Index 4). If original permanent pasture was cut only, use index 2.	The 1st or 2nd tillage crop following very good permanent pasture which was grazed only.
Continuous tillage: — crops that follow short leys (1-4 years) or tillage crops			
Previous crop			
Index 1	Index 2	Index 3	Index 4
Cereals Maize	Sugar beet Fodder beet Potatoes Mangels Kale Oil seed rape, Peas, Beans		
	Leys (1-4 years) grazed or cut and grazed		
	Swedes removed	Swedes grazed in situ	
Vegetables receiving less than 200 kg/ha nitrogen	Vegetables receiving more than 200 kg/ha nitrogen		

Table 11 Phosphorus index system

Soil phosphorus index	Soil phosphorus ranges (mg/l)	
	Grassland	Other crops
1	0.0-3.0	0.0-3.0
2	3.1-5.0	3.1-6.0
3	5.1-8.0	6.1-10.0
4	> 8.0	>10.0

Table 12 Annual maximum fertilisation rates of nitrogen on grassland

Grassland stocking rate ¹	Available Nitrogen ²
(kg/ha/year)	(kg/ha)
≤130	114
131-170	185
Grassland stocking rate greater than 170 kg/ha/year ^{3, 4}	
171-210	254
211-250	225
>250	225 ⁵

¹Total annual nitrogen (kg) excreted by grazing livestock averaged over the eligible grassland area (ha) (grazing and silage area). Stocking rate refers to grassland area only.

²The maximum nitrogen fertilisation of grassland shall not exceed that specified for stocking rates less than or equal to 170 kg/ha/year unless a minimum of 5% of the eligible area of the holding is used to grow crops other than grass or a derogation applies in respect of the holding. Where a derogation applies on the holding derogation rates apply based on stocking rate of the holding. For a new derogation applicant they may apply the derogation rate of 225 kg/ha for the 1st year only and from year 2 onwards must use rates as per stocking rate on the holding.

³This table does not imply any departure from Article 20(1) which prohibits the application to land on a holding of livestock manure in amounts which exceed 170 kg nitrogen per hectare per year, including that deposited by the animals themselves (or 250 kg in the case of a holding to which a derogation has been granted, in accordance with the Nitrates Directive).

⁴ these fertilisation rates are only applicable where the fertiliser type specified by the Minister for Agriculture, Food and the Marine is used.

⁵The application of nitrogen from livestock manure (including that deposited by the animals themselves) to the eligible grassland area shall not exceed 250 kg nitrogen per hectare per year.

Table 13A Annual maximum fertilisation rates of phosphorus on grassland

Grassland stocking rate ¹ (kg/ha/year)	Phosphorus Index			
	1	2	3	4
	Available Phosphorus (kg/ha) ^{2,3,6}			
<85	27	17	7	0
86-130	30	20	10	0
131-170	33	23	13	0
Grassland stocking rate greater than 170 kg/ha/year ^{4,5}				
171-210	36	26	16	0
211-250	39	29	19	0
>250	39	29	19	0

¹Total annual nitrogen (kg) excreted by grazing livestock averaged over the eligible grassland area (grazing and silage area). Stocking rate refers to grassland area only.

²The fertilisation rates for soils which have more than 20% organic matter shall not exceed the amounts permitted for Index 3 soils, subject to the provisions in Article 16(3)(f).

³Manure produced by grazing livestock on a holding may be applied to Index 4 soils on that holding in a situation where there is a surplus of such manure remaining after the phosphorus fertilisation needs of all crops on soils at phosphorus indices 1, 2 or 3 on the holding have been met by the use only of such manure produced on the holding.

⁴The maximum phosphorus fertilisation of grassland shall not exceed that specified for stocking rates less than or equal to 170 kg/ha/year unless a minimum of 5% of the eligible area of the holding is used to grow crops other than grass or a derogation applies in respect of the holding.

⁵This table does not imply any departure from Article 20(1) which prohibits the application to land on a holding of livestock manure in amounts which exceed 170 kg Nitrogen per hectare per year, including that deposited by the animals themselves (or 250 kg in the case of a holding to which a derogation has been granted in accordance with the Nitrates Directive).

⁶An additional 15 kg of phosphorus per hectare may be applied on soils at phosphorus indices 1, 2, or 3 for each hectare of pasture establishment undertaken.

Table 13B Annual maximum fertilisation rates of phosphorus on grassland adopting increased P build-up application rates

Grassland stocking rate ¹ (kg/ha/year)	Phosphorus Index			
	1	2	3	4
	Available Phosphorus (kg/ha) ^{2,3,6}			
131-170	63	43	13	0
	Grassland stocking rate greater than 170 kg/ha/year ^{4,5}			
171-210	66	46	16	0
211-250	69	49	19	0
>250	69	49	19	0

¹Total annual nitrogen (kg) excreted by grazing livestock averaged over the eligible grassland area (grazing and silage area). Stocking rate refers to grassland area only.

²The fertilisation rates for soils which have more than 20% organic matter shall not exceed the amounts permitted for Index 3 soils, subject to the provisions in Article 16(3)(f).

³Manure produced by grazing livestock on a holding may be applied to Index 4 soils on that holding in a situation where there is a surplus of such manure remaining after the phosphorus fertilisation needs of all crops on soils at phosphorus indices 1, 2 or 3 on the holding have been met by the use only of such manure produced on the holding.

⁴The maximum phosphorus fertilisation of grassland shall not exceed that specified for stocking rates less than or equal to 170 kg/ha/year unless a minimum of 5% of the eligible area of the holding is used to grow crops other than grass or a derogation applies in respect of the holding.

⁵This table does not imply any departure from Article 20(1) which prohibits the application to land on a holding of livestock manure in amounts which exceed 170 kg Nitrogen per hectare per year, including that deposited by the animals themselves (or 250 kg in the case of a holding to which a derogation has been granted in accordance with the Nitrates Directive).

⁶An additional 15 kg of phosphorus per hectare may be applied on soils at phosphorus indices 1, 2, or 3 for each hectare of pasture establishment undertaken.

Table 14 Annual maximum fertilisation rates of available nitrogen on grassland (cut only, no grazing livestock on holding)

	Available nitrogen (kg/ha)
1st cut	112
Subsequent cuts	90
Hay	72

Table 15 Annual maximum fertilisation rates of phosphorus on grassland cut only

	Phosphorus Index			
	1	2	3	4
	Available Phosphorus (kg/ha) ^{1,2,3}			
First cut	40	30	20	0
Subsequent cuts	10	10	10	0

¹The fertilisation rates for soils which have more than 20% organic matter shall not exceed the amounts permitted for Index 3 soils, subject to the provisions in Article 16(3)(f).

²The fertilisation rates apply to grassland where there is no grazing livestock on the holding.

³The fertilisation rates in this table apply to those areas of farms where hay or silage is produced for sale off the holding on farms stocked <85 kg grassland stocking rate.

Table 16 Maximum fertilisation rates of nitrogen on tillage crops

Crop	Nitrogen Index			
	1	2	3	4
	Available Nitrogen (kg/ha)			
Winter Wheat ^{1,2}	210	180	120	80
Spring Wheat ^{1,2}	160	130	95	60
Winter Barley ¹	180	155	120	80
Spring Barley ^{1,3}	135	100	75	40
Winter Oats ¹	145	120	85	45
Spring Oats ¹	110	90	60	30
Sugar Beet	195	155	120	80
Fodder Beet	195	155	120	80
Potatoes: Main Crop, >120 days ⁴	250	190	170	140
Potatoes: Maincrop/seed, 90-120 days ⁴	270	230	210	180
Potatoes: Early, 60-90 days ⁴	210	170	150	120
Potatoes: Salad, <60 days ⁴	140	120	100	60
Maize	180	140	110	75
Field Peas/Beans	0	0	0	0
Oil Seed Rape	225	180	160	140
Linseed	75	50	35	20
Swedes/Turnips	90	70	40	20
Kale	150	130	100	70
Forage Rape	130	120	110	90

¹Where proof of higher yields is available, an additional 20 kg N/ha may be applied for each additional tonne above the following yields:

Winter Wheat — 9.0 tonnes/ha Spring Wheat — 7.5 tonnes/ha

Winter Barley — 8.5 tonnes/ha Spring Barley — 6.5 tonnes/ha

Winter Oats — 7.5 tonnes/ha Spring Oats — 6.5 tonnes/ha

The higher yields shall be based on the best yield achieved in any of the three previous harvests, at 20% moisture content.

²Where milling wheat is grown under a contract to a purchaser of milling wheat, an extra 30 kg N/ha may be applied.

³Where malting barley is grown under a contract to a purchaser of malting barley, an extra 20 kg N/ha may be applied where it is shown on the basis of agronomic advice that additional nitrogen is needed to address a proven low protein content in the grain.

⁴Length of growing season

Table 17 Maximum fertilisation rates of phosphorus on tillage crops

Crop	Phosphorus Index			
	1	2	3	4
	Available Phosphorus (kg/ha) ¹			
Winter Wheat ^{2,3,5}	45	35	25	0
Spring Wheat ^{2,3}	45	35	25	0
Winter Barley ^{2,3,5}	45	35	25	0
Spring Barley ^{2,3}	45	35	25	0
Winter Oats ^{2,3,5}	45	35	25	0
Spring Oats ^{2,3}	45	35	25	0
Sugar Beet	70	55	40	20
Fodder Beet	70	55	40	20
Potatoes: Main Crop	125	100	75	50
Potatoes: Early	125	115	100	50
Potatoes: Seed/Salad	125	115	100	85
Maize	70	50	40	20 ⁴
Field Peas	40	25	20	0
Field Beans	50	40	20	0
Oil Seed Rape	55	45	35	0
Linseed	35	30	20	0
Swedes/Turnips	70	60	40	40
Kale	60	50	30	0
Forage Rape	40	30	20	0

¹The fertilisation rates for soils which have more than 20% organic matter shall not exceed the amounts permitted for Index 3 soils.

²Where proof of higher yields is available, an additional 3.8 kg P/ha may be applied on soils at phosphorus 1, 2, or 3 for each additional tonne above a yield of 6.5 tonnes/ha. The higher yields shall be based on the best yield achieved in any of the three previous harvests, at 20% moisture content.

³Where pH is greater than or equal to 7, 20 kg P/ha may be applied on soils at phosphorus index 4.

⁴Must be incorporated prior to or during sowing.

⁵ For winter cereals on soils of P index 1 and 2, 20 kg of the maximum P fertilisation rate may be applied up to 31st October, which must be incorporated prior to or during sowing.

Table 18 Maximum fertilisation rates of nitrogen on vegetable crops

Crop	Nitrogen Index				Maximum additional supplementation (Top dressing)
	1	2	3	4	
	Available Nitrogen (kg/ha)				
Asparagus (Establishment)	140	115	95	70	
Asparagus (After harvest)	0	0	0	0	70
Broad Beans	0	0	0	0	
French Beans	90	85	75	70	
Beetroot	140	125	105	90	
Brussels Sprouts	120	115	105	100	180
Spring Cabbage	50	35	15	0	250
Other Cabbage	150	135	115	100	100
Broccoli	120	115	100	90	120
Cauliflower (Winter and Spring)	75	50	25	0	150
Cauliflower (Summer and Autumn)	120	85	65	40	120
Carrots	90	70	40	0	
Celery	120	85	65	50	180
Courgettes	140	125	105	90	
Leeks	150	130	100	80	150
Lettuce	100	90	80	70	50
Onions	70	60	50	40	70
Scallions	90	80	70	60	60
Parsley	100	80	60	40	150
Parsnip	100	85	70	50	70
Peas (Market)	0	0	0	0	
Rhubarb	100	90	80	70	200
Spinach	140	125	105	90	100
Swede (Horticultural)	70	45	25	20	30
Swede (Transplanted crops)	90	60	30	0	

Table 19 Maximum fertilisation rates of phosphorus on vegetable crops

Crop	Phosphorus Index			
	1	2	3	4
	Available Phosphorus (kg/ha) ¹			
Asparagus (Establishment)	65	45	35	20
Asparagus (After harvest)	27	22	15	10
Broad Beans	65	45	35	20
French Beans	65	45	35	20
Beetroot	65	45	35	20
Brussels Sprouts	65	45	35	20
Spring Cabbage	65	45	35	20
Other Cabbage	65	45	35	20
Broccoli	65	45	35	20
Cauliflower (Winter and Spring)	65	45	35	20
Cauliflower (Summer and Autumn)	65	45	35	20
Carrots	65	45	35	20
Celery	88	65	55	28
Courgettes	65	45	35	20
Leeks	65	45	35	20
Lettuce	80	60	40	20
Onions	65	45	35	20
Scallions	65	45	35	20
Parsley	65	45	35	20
Parsnip	65	45	35	20
Peas (Market)	65	45	35	20
Rhubarb	65	45	35	20
Spinach	65	45	35	20
Swede (Horticultural)	70	60	45	35
Swede (Transplanted crops)	70	60	45	35

¹The fertilisation rates for soils which have more than 20% organic matter shall not exceed the amounts permitted for Index 3 soils.

Table 20 Annual maximum fertilisation rates of nitrogen on fruit/soft fruit crops

	Available Nitrogen (kg/ha)
Apples (Dessert)	125
Apples (Culinary)	125
Pears	50
Cherries	70
Plums	70
Blackcurrants	80
Gooseberries	40
Raspberries	60
Strawberries	50
Redcurrants	60
Loganberries	50
Blackberries	50

Table 21 Annual maximum fertilisation rates of phosphorus on fruit/soft fruit crops

Index	Phosphorus			
	1	2	3	4
	Available			
Phosphorus (kg/ha) ¹				
Apples (Dessert)	25	16	12	8
Apples(Culinary)	20	12	10	8
Pears	16	8	4	0
Cherries	16	8	4	0
Plums	16	8	4	0
Blackcurrants	20	16	12	8
Gooseberries	20	16	12	8
Raspberries	20	16	12	8
Strawberries	16	8	4	0
Redcurrants	20	16	12	8
Loganberries	20	16	12	8
Blackberries	20	16	12	8

¹The fertilisation rates for soils which have more than 20% organic matter shall not exceed the amounts permitted for Index 3 soils.

SCHEDULE 3

Articles 10, 11, 13 and 16

STORAGE PERIODS FOR LIVESTOCK MANURE

1. The storage period specified for the purposes of Articles 10(2), 11(2), 13 and 16(5)(b) is—

- (a) 16 weeks in relation to holdings in counties Carlow, Cork, Dublin, Kildare, Kilkenny, Laois, Offaly, Tipperary, Waterford, Wexford and Wicklow;
 - (b) 18 weeks in relation to holdings in counties Clare, Galway, Kerry, Limerick, Longford, Louth, Mayo, Meath, Roscommon, Sligo and Westmeath;
 - (c) 20 weeks in relation to holdings in counties Donegal and Leitrim, and
 - (d) 22 weeks in relation to holdings in counties Cavan and Monaghan.
1. Where 20% or more of a holding lies within one or more counties of higher storage requirement as specified in paragraph 1, the holding shall be deemed for the purposes of this Schedule to lie wholly within the county in relation to which the longest storage period is specified.

SCHEDULE 4

Articles 14, 17 and 19

PERIODS WHEN APPLICATION OF FERTILISERS TO LAND IS PROHIBITED

1. In counties Carlow, Cork, Dublin, Kildare, Kilkenny, Laois, Offaly, Tipperary, Waterford, Wexford and Wicklow, the period during which the application of fertilisers to land is prohibited in the period from—

- (a) 15th September to 26th January in the case of the application of chemical fertiliser and not withstanding sub-paragraph (4)
- (b) 8th October¹¹ to 12th January in the case of the application of organic fertiliser (other than farmyard manure) and not withstanding sub-paragraph (5)
- (c) 1st November to 12th January in the case of the application of farmyard manure.

¹¹ From 1st January 2023 the date for beginning of prohibited period will be 1st October

2. In counties Clare, Galway, Kerry, Limerick, Longford, Louth, Mayo, Meath, Roscommon, Sligo and Westmeath, the period during which the application of fertilisers to land is prohibited is the period from—

- (a) 15th September to 29th January in the case of the application of chemical fertiliser and not withstanding sub paragraph (4)
- (b) 8th October⁶ to 15th January in the case of the application of organic fertiliser (other than farmyard manure) and not withstanding sub-paragraph (5)
- (c) 1st November to 15th January in the case of the application of farmyard manure.

3. In counties Cavan, Donegal, Leitrim and Monaghan, the period during which the application of fertilisers to land is prohibited is the period from—

- (a) 15th September to 14th February in the case of the application of chemical fertiliser and not withstanding sub-paragraph (4)
- (b) 8th October⁶ to 31st January in the case of the application of organic fertiliser (other than farmyard manure) and not withstanding sub-paragraph (5)
- (c) 1st November to 31st January in the case of the application of farmyard manure.

4. In relation to the prohibited periods for spreading chemical fertiliser, the Minister shall by 1st September 2022, following consultation with the Minister for Agriculture, Food and the Marine, publish criteria for the application of slurry from the 15th January. The spreading of all chemical fertiliser shall be in accordance with these criteria from the 15th January.

5. In relation to the commencement of the closed period for slurry application, the Minister shall by 1st September 2022, following consultation with the Minister for Agriculture, Food and the Marine, publish criteria for the application of slurry from 1st October to the 15th October. The spreading of all slurry shall be in accordance with these criteria from the 8th October to the 15th October 2022 and from 1st October to the 15th October in subsequent years.



GIVEN under my Official Seal,
9 March, 2022.

DARRAGH O'BRIEN,
Minister for Housing, Local Government and Heritage.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These Regulations, which give effect to Ireland's Fifth Nitrates Action Programme, provide statutory support for good agricultural practice to protect waters against pollution from agricultural sources and include measures such as

- periods when land application of fertilisers is prohibited
- limits on the land application of fertilisers
- storage requirements for livestock manure, and
- monitoring of the effectiveness of the measures in terms of agricultural practice and impact on water quality.

The Regulations give further effect to several European Directives including Directives in relation to protection of waters against pollution from agricultural sources ("the Nitrates Directive"), dangerous substances in water, waste management, protection of groundwater, public participation in policy development and water policy (the Water Framework Directive).

The Regulations revoke the European Communities (Good Agricultural Practice for Protection of Waters) Regulations, 2017 and other subsequent amending regulations.

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**THE HIGH COURT
JUDICIAL REVIEW**

[2021] IEHC 254
[2020 No. 566 JR]

BETWEEN

AN TAISCE - THE NATIONAL TRUST FOR IRELAND

APPLICANT

AND

**AN BORD PLEANÁLA, THE MINISTER FOR COMMUNICATIONS CLIMATE ACTION AND
THE ENVIRONMENT, IRELAND AND THE ATTORNEY GENERAL**

RESPONDENTS

AND

KILKENNY CHEESE LIMITED (FORMERLY JHOK LIMITED)

NOTICE PARTY

JUDGMENT of Humphreys J. delivered on Tuesday the 20th day of April, 2021

1. The notice party developer is a joint venture between Glanbia Ireland and a Dutch company, Royal A-Ware. It applied for permission to construct a cheese manufacturing plant and associated works and infrastructure at Belview Science and Technology Park, Gorteens, Slieverue, Co. Kilkenny.
2. According to the non-technical summary of the environmental impact assessment report, 450 million litres of milk per year will be required for the proposed development from 2022 onwards, of which approximately 20% is already in circulation. The milk required will equate to approximately 4.5% of the milk pool projected to be available in Ireland in 2025. The milk will be sourced from Glanbia's own milk suppliers, 4,500 farms in the eastern part of the country. Some 75% of these farms have streams or watercourses running through or adjacent to their lands and only 57% have nutrient management programmes to mitigate water quality deterioration. A significant portion of the milk supply for the plant is already available and being sold to other processors.
3. The applicant, An Taisce – the National Trust for Ireland, is a statutory consultee and made a submission to the planning authority on 23rd October, 2019.
4. Kilkenny County Council decided to grant permission for the development on 14th November, 2019.
5. Following the council's decision, the applicant appealed the permission to the board on 11th December, 2019. A major issue in the appeal was that meeting the State's climate targets requires reducing the national herd of cows and not increasing it and that the dairy industry overall is unsustainable due to the adverse environmental impacts created.
6. The board's inspector made a favourable report on 15th June, 2020 in which she refers to a number of national policies at section 5:
 - (i). the National Spatial Strategy 2002 to 2020;
 - (ii). the National Planning Framework 2018; and

- (iii). "Food Wise 2025" succeeding "Food Harvest 2020" a growth plan for the agri-food sector which involves a significant increase in primary production.
7. She also referred to regional and local plans. Under the heading of Climate Change, at para. 6.2.12 she referred to:
- (i). the National Mitigation Plan which was subsequently quashed by the Supreme Court in *Friends of the Irish Environment v. The Government of Ireland* [2020] IESC 49, [2020] 2 I.L.R.M. 233. It can be noted that the inspector also relied on the High Court decision in that case, *Friends of the Irish Environment CLG v. The Government of Ireland* [2019] IEHC 747 (Unreported, High Court, MacGrath J., 19th September, 2019), referenced at para. 8.7.3 of her report which was later reversed on appeal (perhaps I can note here that I held in *Balscadden Road SAA Residents Association Ltd. v. An Bord Pleanála* [2020] IEHC 586, [2020] 11 JIC 2501 (Unreported, High Court, 25th November, 2020), that reliance on materials later quashed was a ground for challenging a decision, but the applicant didn't plead that point here and in fairness it would only have made a difference if the discussion on climate was something the inspector was obliged to engage in in this way, which I address below);
 - (ii). the National Adaptation Framework 2018;
 - (iii). the Climate Action and Low Carbon Development Act 2015;
 - (iv). the Climate Action Plan, which she says at para. 8.7.2 was made under the 2015 Act, but that is not the case - it is a non-statutory plan made without a strategic environmental assessment.
8. While the Climate Action Plan wasn't quoted extensively by the inspector, it's worth recording that it notes that "the accelerating impact of greenhouse gas emissions on climate disruption must be arrested. The window of opportunity to act is fast closing, but Ireland is way off course ... [w]e are close to a tipping point where these impacts will sharply worsen. Decarbonisation is now a must if the world is to contain the damage and build resilience in the face of such a profound challenge." It goes on to address the use of a marginal abatement cost curve (MACC) to identify the most cost-effective pathway to reduce emissions in the different economic sectors (see p. 33). At pp. 98 to 99 it is noted that dairy products are "products with a high carbon footprint" and indicates that the State will work to meet food demand while contributing to climate commitments "including avoiding the perverse incentive to off-shore agricultural activity to less carbon-efficient production systems and locations". At p. 105 the plan notes that "[w]hile existing policy measures have increased carbon efficiency to an extent, the expansion of the dairy and dry stock herds has exceeded those gains ...".
9. The inspector went on to address indirect effects of the development at para. 8.4.2 The effects on individual farms "would be too remote" as they are distributed over 4,500 dairy

suppliers. National policy is also noted which envisages what the inspector seems to consider to be a modest increase in dairy farming.

10. She states at para. 8.6.3 that the supply of milk to the proposed development will not result in any additional emissions beyond what is currently projected by the government and that the appellant is challenging issues of policy outside the scope of the appeal.
11. She says at para. 8.7.3 that matters involving policy and political choices are for elected representatives.
12. At para. 8.8.1 she implies that the effects of production are too remote and at para. 8.8.2 says that the proposed development will not of itself drive increased milk production the expected increase in production sits within the national policy context and "aligns with national climate change policy".
13. At para. 11.138 she says that "there is an indirect impact" from the development but that this is "expected to decrease by virtue of the production efficiency of the existing dairy herd and implementation of mitigation measures as outlined in the EIAR. Further these emissions are already accounted for and regulated through the National Climate Action Plan as part of dairy sector emissions. The proposed development will not directly or indirectly result in an increase of CO2 emissions proportionate to the required milk input. The impacts arising would be mitigated through compliance with both the Government and Glanbia's sustainability programmes as outlined in the EIAR which I have reviewed and consider reasonable."
14. Under the heading of appropriate assessment, she noted at para. 12.2 that there were six European sites within 15 kilometres but considered that four of them had been screened out due to the lack of pathways (para. 12.3). For the remaining two, the qualifying interests were identified and at paras. 12.10 and 12.11 such qualifying interests that could be affected are identified.
15. At para. 12.30 the inspector says that it is not practicable to assess the potential indirect effects of milk production on all Natura sites, but it can be concluded in general terms that the continued implementation of programmes and mitigation measures will mitigate potential indirect effects.
16. At para. 12.33 she addresses effluent discharge and concludes that the combined future effluent will have the same or lower concentrations of key pollutants and, therefore, there will be no significant cumulative effects on the Lower River Suir SAC water quality.
17. At para. 12.35 she concluded that the development would not adversely affect the integrity of the sites concerned or any other European sites.
18. The board issued a direction to grant permission generally in accordance with the inspector's report and made a formal decision to do so on 30th June, 2020.

19. The statement of grounds was filed on 13th August, 2020 and runs to a modest 87 grounds. The primary relief sought is *certiorari* of the board's decision.
20. Simons J. granted leave on 23rd November, 2020. The matter was later struck out as against the state respondents with no order as to costs, and proceeded before me only as against the board and notice party.

Relevant European law

21. The most relevant EU legislation is as follows:
 - (i). art. 191 of the Treaty on the Functioning of the European Union which references climate change as an explicit objective of EU environmental policy;
 - (ii). art. 47 of the Charter of Fundamental Rights of the European Union;
 - (iii). directive 92/43/EEC, the habitats directive, as amended by directive 2009/147/EC, in particular art. 6(3) requiring an appropriate assessment;
 - (iv). directive 2000/60/EC, the water framework directive;
 - (v). directive 2003/35/EC on public participation;
 - (vi). decision 2005/370/EC adopting the Aarhus Convention;
 - (vii). directive 2008/105/EC on environmental quality standards in the field of water policy;
 - (viii). directive 2010/75/EU on industrial emissions;
 - (ix). directive 2011/92/EU on environmental impact assessment as amended by directive 2014/52/EU, in particular art. 3 requiring assessment and annexes I and II setting out projects requiring assessment; and
 - (x). directive 2016/2284/EU on national emissions ceilings.

Relevant provisions of international law

22. To complete the background, pertinent international law provisions which are referenced in the materials before the court or in the relevant EU legislation include the following:
 - (i). the United Nations Framework Convention on Climate Change, done at New York on 9th May, 1992;
 - (ii). the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters ("Aarhus Convention"), done at Aarhus on 25th June, 1998; and
 - (iii). the Paris Agreement on Climate Change following the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change ("the Paris

Agreement”), done at Paris on 12th December, 2015 which is referred to in the inspector’s report here at para. 8.7.1.

Relevant provisions of domestic law

23. Pertinent domestic law provisions include the following:

- (i). the European Communities (Natural Habitats) Regulations 1997 (S.I. No. 94 of 1997), in particular reg. 32 implementing the habitats directive;
- (ii). the Planning and Development Act 2000, in particular part X implementing the EIA directive and part XAB implementing the habitats directive;
- (iii). the Planning and Development Regulations 2001 (S.I. No. 600 of 2001), in particular schedule 5 setting out relevant projects;
- (iv). the European Communities Environmental Objectives (Surface Waters) Regulations 2009 (S.I. No. 272 of 2009), in particular reg. 28 giving effect to the water framework directive;
- (v). the Climate Action and Low Carbon Development Act 2015, referred to by the inspector, s. 15 of which requires public bodies to have regard to mitigating greenhouse emissions, adapting the State to climate change and to the statutory plans under the Act; and
- (vi). the European Union (National Emission Ceilings) Regulations 2018 (S.I. No. 232 of 2018)).

Alleged breach of Habitats Directive

24. Leaving aside for the moment the question of the impact of the process of producing the raw materials for this cheese plant, the applicant raised two significant questions under the habitats directive:

- (i). firstly, whether the inspector erred in screening out certain interests, particularly Atlantic salt meadows, in the assessment; and
- (ii). secondly, the alleged failure to adequately consider the impact of treated effluent.

25. I will assume for the purposes of this argument that the applicant has standing to make these points by way of judicial review not having made them originally, but of course it needs to be emphasised that the fact that one might be able to make a point that one did not make to the decision-maker does not mean that failure to make the point originally has no consequences whatsoever.

26. In the present case the main consequence of not having pursued the point in the planning process is that there was no scientific evidence put before the board to contradict the Natura Impact Statement. Consequently, it cannot be maintained now that the board acted in a way which left open scientific doubt when there was no such doubt on the materials which it had.

27. As regards the alleged failure to record the conclusion of the board on the issue of the habitats directive, as alleged at para. 70 of the statement of grounds, the form of the decision is a matter of national procedural autonomy and the board can be taken to have relied on the inspector's report which in turn relied on the Natura impact statement: see *Connelly v. An Bord Pleanála* [2018] IESC 31, [2018] 2 I.L.R.M. 453.
28. Finally, there is simply no basis to suggest that the screening out of interests in the Natura Impact Statement was improperly based on mitigation in a way that would contravene the principle in Case C-323/17, *People Over Wind v. Coillte Teoranta* (Court of Justice of the European Union, 12th April, 2018, ECLI:EU:C:2018:244). So unfortunately for the applicant there is nothing in this point.
29. As regards the impact of treated effluent, again assuming that the applicant is entitled to make the point, that does not mean that the applicant is entitled to reconfigure the evidence in the judicial review context. The important point here is that the applicant did not present any contradictory scientific evidence and indeed nobody did. In such circumstances it was open to the board to conclude that the pollutants from the effluent discharged will not affect the European sites, even though the applicant is now saying that the board should have assessed volumes rather than just concentrations. There wasn't anything before the board to make the volumes an issue that warranted express consideration or any material supporting the view that they created scientific doubt. (See generally on this issue *Reid v. An Bord Pleanála* [2021] IEHC 230 (Unreported, High Court, 12th April, 2021)).
30. Had there been any such evidence before the board, I wouldn't have considered it a sufficient defence to say that this would be a matter for the EPA, as contended by the board and the developer. While s. 99F(1) of the Environmental Protection Agency Act 1992 has the effect that the board can't impose conditions to control emissions, it can still refuse permission on "environmental grounds" under s. 99F(2). So it must, therefore, fully and properly consider the emissions situation.

Water Framework Directive 2000/60/EC

31. Assuming for the sake of argument that the applicant can raise this point as well, which was not raised before the board, and assuming that the board's pleading objection as to the lack of specifics can be overcome, the nearest the applicant comes to particularising its case under this heading is at para. 77 of the statement of grounds in which it is suggested that "the Board is precluded from granting permission for the plant in circumstances where that grant of permission will introduce additional pollutants into the River in circumstances where that waterbody has not attained "good" status by 22nd December 2015 for the purposes of Regulation 28 of the Surface Water Regulations S.I. 272 of 2009".
32. It does not seem to me that the applicant has overcome the onus of proof in relation to this particular claim. The particular part of the river into which the discharge will take place appears to be designated as "good" and if the applicant wanted to make a point

about taking the river basin as a whole that would need to have been articulated on the pleadings in a much more specific way.

33. The second point made in para. 77 of the statement of grounds is that permission was unlawful "where the granting of permission may cause a deterioration in the status of the waterbody", citing the *Wesser* case, Case C-461/13, *Bund für Umwelt und Naturschutz Deutschland e.V. v. Bundesrepublik Deutschland* (Court of Justice of the European Union, 1st July, 2015, ECLI:EU:C:2015:433). Again, this goes back to the evidence before the board. Assuming *arguendo* that the applicant can make this point, the validity of the board's decision on this particular issue has to be judged by reference to the evidence before it; and there wasn't anything contradicting the developer's analysis of the extent to which the development might cause a deterioration in the status of the water body.
34. The third point made at para. 77 of the statement of grounds is that "in the absence of any assessment of the impacts of either pollutant source it was not possible for the Board to determine whether or not the proposed development would lead to a deterioration in the water body." However, the premise of that complaint is incorrect because there was an analysis of the impacts, which was reasonable given the information the board actually had before it.

National Emissions Ceilings Directive 2016/2284/EU

35. Assuming *arguendo* that the applicant has standing to make a point under directive 2016/2284/EU, that doesn't overcome the obstacle that in Joined Cases C-165/09 to C-167/09 *Stichting Natuur en Milieu and Others v. College van Gedeputeerde Staten van Groningen* (Court of Justice of the European Union, 26th May, 2011, ECLI:EU:C:2011:348), the CJEU held that "that directive is based on a purely programmatic approach under which the Member States enjoy wide flexibility as regards the choice of the policies and measures to be adopted or envisaged", and that "attainment of the objectives set by the directive cannot interfere directly in the procedures for grant of an environmental permit" (para. 75). Hence, this point is going nowhere.

Standing objection

36. A number of interesting points were canvassed in relation to standing having regard in particular to arts. 6 and 9(2) and (3) of the Aarhus Convention, Case C-137/14 *European Commission v. Federal Republic of Germany* (Court of Justice of the European Union, 15th October, 2015, ECLI:EU:C:2015:683), Case C-826/18 LB, *Stichting Varkens in Nood v. College van burgemeester en wethouders van de gemeente Echt-Susteren* (Court of Justice of the European Union, 14th January, 2021, ECLI:EU:C:2021:7), directive 2003/25/EC, Case C-263/08 *Djurgården-Lilla Värtans Miljöskyddsförening v. Stockholms kommun genom dess marknämnd* (Court of Justice of the European Union, 15th October, 2009, ECLI:EU:C:2009:631), Case C-664/15 *Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation v. Bezirkshauptmannschaft Gmünd* (Court of Justice of the European Union, 20th December, 2017, ECLI:EU:C:2017:987), Case C-470/16 *North East Pylon Pressure Campaign Ltd. v. An Bord Pleanála* (Court of Justice of the European Union, 15th March, 2018, ECLI:EU:C:2018:185) and some Irish domestic

caselaw, particularly *Highlands Residents Association v. An Bord Pleanála* [2020] IEHC 622 (Unreported, High Court, McDonald J., 2nd December, 2020) and *M28 Steering Group v. An Bord Pleanála* [2019] IEHC 929 (Unreported, High Court, MacGrath J., 20th December, 2019).

37. For the record, if it had been necessary to decide this aspect, I don't think the position is properly *acte clair* and would have leaned towards seeking the assistance of the CJEU on the two questions raised, namely:
- (i). whether art. 9(2) of Aarhus convention, approved by decision 2005/370/EC, and/or art. 47 of the Charter of Fundamental Rights, has the effect of precluding a rule of domestic procedure that a challenge before a judicial body to a domestic decision that is subject to public participation and environmental impact assessment, insofar as it includes grounds relating to other provisions of EU law, cannot be maintained by reason of the failure of the applicant to raise such points before the decision-maker; and
 - (ii). whether art. 9(2) and (3) of the Aarhus Convention approved by decision 2005/370/EC, and/or art. 47 of the Charter of Fundamental Rights, has the effect of precluding a rule of domestic procedure that only complaints directed against the same aspects of the contested decision as those which were the subject of observations by the applicant during the administrative procedure are open to challenge before the court, either in general or in the absence of an acceptable explanation.
38. In fact, as the applicant's points where standing was challenged fail anyway, these questions don't arise. Possibly on different pleadings or different facts some of these questions could indeed require decision, in which case they might well be worth referring in such a future hypothetical context.

The key issue - what is the project to be assessed?

39. The main point in the case is the scope of the duty to assess the indirect effects of a project for the purposes of art. 3 of the EIA directive and art. 6(3) of the habitats directive. The present project arises under annex II, para. 7 of the EIA directive and exceeds the threshold for assessment. The EIA directive has a broad purpose and a wide scope and is designed to provide a procedural environmental protection (Case C-72/95 *Aannemersbedrijf P.K. Kraaijeveld BV e.a. v. Gedeputeerde Staten van Zuid-Holland* (Court of Justice of the European Union, 24th October, 1996, ECLI:EU:C:1996:404), paras. 31 and 39). The purpose of the directive is to contribute to environmental protection (Case C-420/11 *Leth v. Republik Österreich* (Court of Justice of the European Union, 14th March, 2013, ECLI:EU:C:2013:166), paras. 28 and 34). In Case C-142/07, *Ecologistas en Acción-CODA v. Ayuntamiento de Madrid* (Court of Justice of the European Union, 25th July, 2008, ECLI:EU:C:2008:445), the CJEU noted the circumstances in which projects required assessment included those where they were likely to have regard to their interaction with other projects to have significant effects on the environment. Thus, measures such as project-splitting to avoid the EIA process were not a valid means to

avoid the application of the directive. Having said that, there is also authority to the effect that the extent of the "project" for the purposes of the EIA directive includes developments to which it is functionally related, but not aspects that are significantly more remote. That seems to be the sense of the opinion of Advocate General Gulmann in Case C-396/92 *Bund Naturschutz in Bayern e.V. v. Freistaat Bayern* (Court of Justice of the European Union, 9th August, 1994, ECLI:EU:C:1994:307) and there is also national caselaw to this effect: see in particular *Fitzpatrick v. An Bord Pleanála* [2019] IESC 23, [2019] 3 I.R. 617, *Kemper v. An Bord Pleanála* [2020] IEHC 601 (Unreported, High Court, Allen J., 24th November, 2020), *R. (Squire) v. Shropshire Council* [2019] EWCA Civ 888, *R. (Finch) v. Surrey County Council* [2020] EWHC 3566 (Admin).

40. The essential questions of EU law raised by the applicant's arguments could be summarised in a number of ways, including as follows:
- (i). is the competent authority relieved from the obligation under art. 2(1) of the EIA directive to assess the environmental effects of a development and/or under art. 6(3) of the habitats directive in assessing impacts on a Natura 2000 site in terms of the production (or increased production) of raw materials (such as natural produce to be processed into food) due to demand for raw materials created by the project, where the supply of such materials is considered by the competent authority as an indirect effect, solely on the ground that the production itself is not part of the matters for which consent is sought, but rather economically connected to it as a consequence of such consent or alternatively that it is not established whether or how much precisely production will increase as a result of the project or where precisely such production will take place; and
 - (ii). does art. 2(1) of the EIA directive and/or art. 6(3) of the habitats directive have the effect that (insofar as the competent authority is required to assess the impacts of production of raw materials for the purposes of a project) in assessing the environmental effects of a development and/or in assessing the impacts on a Natura 2000 site in terms of possible increased production of raw materials (such as natural produce to be processed into food), the competent authority is entitled to rely on general government policy documents that impliedly accept that the production of raw materials so required for the development contribute significantly to emissions harmful to the environment, but that economic analysis dictates that it is more cost effective to make environmental gains by other measures.
41. But the problem from the applicant's view is that the CJEU has already given guidance on the key distinction, which is that between "programmatically" measures and the "procedures for grant of an environmental permit": *Joined Cases C-165/09 to C-167/09 Stichting Natuur en Milieu and Others v. College van Gedeputeerde Staten van Groningen*.
42. The applicant's real grievance is with government policy. It objects that in the face of the climate emergency, and despite the enormous contribution of agriculture in general and dairy in particular to the rise in emissions, the State is not only not reducing dairy production, but actively increasing it by a significant amount (I amn't sure that the

board's characterisation of the increase as "modest" is necessarily self-evident). The State's answer, conveyed in effect on their behalf by the respondent and notice party, is in essence that environmental targets can be met, but should be met at lowest economic cost. Thus, one can classify potential policy measures on the basis of a curve (the marginal abatement cost curve), ranging from those where the low-carbon option involves costs savings as compared with business-as-usual, ranging to cost-neutral measures, cost efficient measures where there is an economic price tag, but it is less than the cost of carbon credits, and at the top of the curve, cost-prohibitive measures where the cost of reducing a unit of emissions is more than the cost of the equivalent carbon credit. Because dairy is so profitable for Ireland, it lies at the upper end of this curve. In the background is an international perspective which adds the further complication that an over-regulated approach in certain areas may simply create perverse incentives to shift production to less carbon efficient jurisdictions, resulting in more emissions globally for the same amount of production (Climate Action Plan, p. 98). Thus, the issue brings together two key insights that need to be stressed again and again in both legal and, if one dare say so, policy contexts:

- (i). Firstly, as put by US economist Thomas Sowell, there are no solutions, only trade-offs (see *McGinley v. The Minister for Justice and Equality* [2017] IEHC 549, [2017] 9 JIC 2801 (Unreported, High Court, 28th September, 2017), para 47 and *North East Pylon Pressure Campaign Ltd. v. An Bord Pleanála* [2016] IEHC 300, [2016] 5 JIC 1215 (Unreported, High Court, 12th May, 2016), para. 97). It is all-too-easy for anybody (even a court) to isolate one fragment of a problem and, on that distortedly superficial premise, present one's proposed rule (or policy) as the solution, sometimes in a form that lends itself to a simplistic 280-character assertion. But a mature and rounded view requires one to look at all of the various trade-offs involved.
- (ii). Secondly, the role of incentives is crucial, and the consequences and incentives (whether positively intended or not) created by the rule or policy being introduced need to be factored in before the decision is formulated. There should be no "law of unintended consequences" - an unhelpful formula. What is that law exactly? That people who don't adequately consider the consequences of their decisions are surprised when there are any? The correct "law" is that articulated by Posner J.: "Justice Antonin Scalia's dissent [in *King v. Burwell* 576 U.S. ____ (2015)] can be summed up in four words: '*fiat justitia, ruat coelum*,' which means, roughly, do justice even if doing justice causes the heavens to fall. In other words, sever legal analysis from consequences however great. That is a dangerous approach to law, and to government generally. Legal doctrine should in my view be shaped with careful regard for consequences, especially where doctrine is flexible, as in the case of statutory interpretation" (slate.com, 2015) (see also *McGinley v. Minister for Justice* at para. 24).

43. Admittedly, the policy starting point is not a given - the Government's objective seems to be to meet existing Paris Agreement targets at the lowest economic cost. Reasonable

people could disagree about these objectives, for example by arguing for more ambitious targets, or by objecting to the idea of buying one's way out of trouble through carbon credits. And another school of thought might hold that even if one accepted the premise of the policy argument, there might be an issue with the friction generated in practical implementation. If dairy is the spoonful of sugar for the economy that helps the medicine of low carbon go down, one might have to wrestle with the possibility that the sugar works better when given alongside the medicine rather than in advance. The fact that there might be a medley of views doesn't in itself suggest that the official policy is incorrect. Courts are good at commutative justice but not equipped for questions of distributive justice that such issues raise, because they simply don't have the instruments of policy investigation and analysis at their disposal. In our system, such policy questions despite or maybe because of their critical importance generally have to be left to the electoral process and the political system in the absence of a much more explicit basis for review. Courts can't get involved in deciding which premise is better without some justiciable instrument mandating forensic involvement, which hasn't been established here. To borrow Carl von Clausewitz's aphorism about war (*Vom Kriege*, Berlin, 1832), law impermissibly becomes "politics by other means" ("der Politik mit anderen Mitteln") when it annexes, for inflexible judicial determination, territory that properly belongs to open and democratic policy debate.

44. At the same time, the mere fact that something can be characterised as policy does not give it immunity from judicial scrutiny if in fact there is some justiciable standard. So the reason I am not going to express any view on these matters is not that they are in principle beyond the scope of judicial consideration if some relevant context for review is established, but that they aren't a basis for challenging a particular decision under the planning code. Confronted with unchallenged policy documents and the highly regulated procedure for an individual planning consent, the applicant is trying to use the latter process to indirectly challenge the former. While that is forensically understandable as a tactic for "pushing the boat out", the reason that it isn't legally appropriate is that general, programmatic policies are not capable of being subjected to the same sort of site-specific regulation as planning applications.
45. At the risk of repetition, policy documents as such are not beyond the scope of judicial review, if an applicant can invoke a justiciable standard, whether in the Constitution, EU law, the ECHR (as incorporated), statute law or administrative law, and provided that the court gives appropriate recognition to the constitutional entitlement of the executive and legislature to formulate policy within the law. But challenging the logic of such documents by the side-wind of a planning judicial review doesn't raise the level of scrutiny of programmatic documents to that applying to individual planning decisions.
46. Applying that concept here, I don't think the decision is invalid due to the board's failure to conduct an assessment of the upstream impacts of milk production, even where the board did consider such matters at the broad level, which it wasn't obliged to do. The basic reason is that effects of raw material production where such production is sufficiently removed from the project as not to be capable of assessment in site-specific

terms are not to be considered part of the project for the purposes of EIA or AA. Such effects need to be considered on a more programmatic basis and hence lie outside the direct purview of grounds for challenging an individual planning decision.

Order

47. The case emphasises a few important themes. To summarise some of the key points:

- (i). An applicant is confined to what is pleaded. The inclusion of a large number of grounds in no way guarantees that the points eventually sought to be made will be covered by a sort of weight-of-numbers effect.
- (ii). Even accepting that the applicant may opt out of making points to the decision-maker in certain circumstances in the environmental field, such opting-out nevertheless has consequences. The decision challenged normally has to be measured primarily against the evidence actually put up before it is made, and if no adverse evidence is given to the decision-maker, the decision itself is unlikely to be invalid on the grounds of failure to consider something. Standing only gets you in the door - it doesn't guarantee you a free buffet lunch when you get there.
- (iii). And finally, many of the obligations of planning law relate only to individual projects. The high standards of scrutiny of particular development consents don't apply to more general issues arising from overall programmes that are not site-specific in the same way.

48. For the reasons set out above, the order will be:

- (i). that the application be dismissed; and
- (ii). that the parties be directed to liaise with the List Registrar to have the matter listed on the next convenient Monday with a view to addressing any consequential matters.



**AN CHÚIRT UACHTARACH
THE SUPREME COURT**

S:AP:IE:2021:000091

[2022] IESC 8

**O'Donnell CJ
Dunne J
Charleton J
Woulfe J
Hogan J**

Between/

AN TAISCE - NATIONAL TRUST FOR IRELAND

Appellant

-AND -

**AN BORD PLEANÁLA, THE MINISTER FOR COMMUNICATIONS,
CLIMATE ACTION AND THE ENVIRONMENT, IRELAND AND
THE ATTORNEY GENERAL**

Respondents

-AND-

KILKENNY CHEESE LIMITED (FORMERLY JHOK LIMITED)

Notice Party

JUDGMENT of Mr. Justice Gerard Hogan delivered on the 16th day of February 2022

Part I: Introduction and Background

Introduction

1. In 2021 the Oireachtas gave legislative approval to a decision by the Government to effect significant and far-reaching changes to the structure of Irish society so that we

could achieve the goal of carbon-neutrality by 2050. This decision reflects commitments made not only by the Irish Government, but also by the other Member States of the European Union and by the Union itself to give practical effect to a range of international commitments designed first to arrest and ultimately to eliminate the continued dependence on fossil fuels and other similar practices contributing to the increase in greenhouse gas emissions (“GHGs”).

2. While the detail of these legislative changes do not directly concern or govern the present appeal, the following extract from the Long Title of the Climate Action and Low Carbon Development (Amendment) Act 2021 (“the 2021 Act”) nonetheless succinctly describes the aims of both the Oireachtas and the Government:

“An Act to provide for the approval of plans by the Government in relation to climate change for the purpose of pursuing the transition to a climate resilient, biodiversity rich and climate neutral economy by no later than the end of the year 2050 and to thereby promote climate justice...”

3. Agricultural emissions – not least from the dairy sector – also present a challenge in this context. It is these emissions which form a key part of the overall context of this appeal which concerns the indirect environmental effects which the construction and operation of a proposed major cheese factory are said to entail. Will this lead to enhanced milk production (and, by extension, greater GHG emissions), or will this milk be produced in any event? And, one way or the other, should the likely emissions from this enhanced milk production be identified and assessed as part of the required environmental impact assessment in respect of the cheese factory project?
4. Article 3(1) of the Environmental Impact Assessment Directive 2011 (2011/92/EU) (“the EIA Directive”) (as inserted by Article 1(3) of Directive 2014/52/EU) articulates what at first blush seems a straightforward principle. It provides that every environmental impact assessment shall “identify, describe and assess” in an appropriate manner “in the light of each individual case, the direct and indirect significant effects of a project” on a range of matters, including biodiversity and “land, soil, water, air and climate.” The object of the EIA Directive is itself perfectly clear, in that it seeks to ensure that the likely environmental impacts of any major project are themselves considered and assessed before any development permission is granted, even if, as this Court has already held, “the outcome of that examination, analysis, evaluation and

identification informs, rather than determines, the planning decisions which should or may be made”: *Fitzpatrick v. An Bord Pleanála* [2019] IESC 23, [2019] 3 IR 617 at 642, per Finlay Geoghegan J.

5. The difficulty arises in the application of this principle and, specifically, the reference to significant indirect effects. Nearly every major construction project will have both direct and indirect effects on the environment. The question is: what is meant by “significant indirect effects of the development” in Article 3(1) of the EIA Directive?
6. As I have already hinted, this problem arises in the present appeal in an acute form. In these judicial review proceedings the appellant seeks to quash a decision of An Bord Pleanála dated the 30th June 2020 to grant planning permission in respect of an application by the developer Notice Party to construct a major cheese factory at Slieverue, Co. Kilkenny. The developer is a joint venture between Glanbia and a Dutch company, Royal-a-Ware. It is envisaged that this project will facilitate a move by Glanbia from the supply of cheddar cheese to the UK market to the development of different lines of cheese production designed principally to satisfy demand in the continental European markets.
7. The central issue in this appeal is whether the Board was under an obligation to assess – whether for the purposes of an environmental impact assessment under the EIA Directive or an appropriate assessment under the Habitats Directive – the upstream consequences of the operation of the proposed cheese factory and, specifically, the milk that is necessary to supply this factory. At the heart of the appellant’s objections to this grant of permission is its contention that such is the scale and size of the proposed factory that it will consume very large quantities of milk – estimated to be some 4.5% of the national milk supply in 2025 – and that this milk can only realistically be sourced by an expansion of the national herd, leading in turn to enhanced methane and other GHG emissions. These are said to be the indirect consequences which will flow from the construction of this factory. The respondents maintain, however, that there is in fact no causal link between the anticipated increase in milk production and the factory. They contend that this increase in milk production will occur in any event, so that even if this increase in milk production results in increasing GHGs, these indirect environmental effects will not be as a result of the operation of the factory.

8. Before considering these difficult and troubling questions, it is necessary first to describe the parties and to set out the background to the present proceedings.

Background

9. The appellant is a non-governmental organisation dedicated to the protection and conservation of the environment. As such it enjoys a privileged status under the provisions of the Planning and Development Act 2000 and it was a statutory consultee in respect of this project. No serious challenge has been advanced as to its general standing to advance the present proceedings, although its entitlement to advance discrete and particular arguments has been challenged. For its part, the developer Notice Party is a joint venture between an Irish multi-national (Glanbia) and a Dutch company, Royal-A-Ware. Purely for reasons of convenience, I propose to describe the developer as Glanbia.
10. In these proceedings the appellant seeks to quash a decision of the Board to grant permission to the Notice Party to construct and operate a cheese manufacturing plant at Slieverue, Co. Kilkenny. The appellant was given notice of the original application for planning permission by the planning authority, Kilkenny County Council, as a statutory consultee, pursuant to Article 28(1) of the Planning and Development Regulations 2001. In accordance with these regulations, the appellant was also provided with details of the various assessments undertaken by the Notice Party including those made under the EIA Directive and the Habitats Directive.
11. As a statutory consultee, the appellant made a submission to the planning authority on the 23rd October 2019. Notwithstanding the appellant's submission, Kilkenny County Council decided to grant permission for the development on the 14th November 2019. Following the County Council's decision, the appellant appealed the permission to the Board on the 11th December 2019 on the ground that permission would prevent the State from meeting its climate targets, which requires the reduction of the national herd of cows, and would lead to unsustainable and adverse environmental impacts.
12. The Board's inspector produced a report on the 15th June 2020 which was favourable to the planning application. In her report the inspector refers to a number of national policies and regional and local plans. She also addresses potential indirect effects of the proposed cheese factory (at paragraph 8.4.2.) including the effect on dairy farms but concludes that these effects were too remote to be fully assessed. She further concluded

that, based on the evidence that she received, the supply of milk to the proposed cheese factory would not result in any additional emissions beyond what was currently projected by the Government (at paragraph 8.6.3).

13. The environmental impact assessment report itself envisages that the proposed cheese factory will require 450 million litres of milk each year, of which approximately 20% is already in circulation. The remaining milk will be sourced from Glanbia's own milk suppliers. This consists principally of some 4,500 farms, largely based in Kilkenny and surrounding counties. Some 75% of these farms have rivers or streams or other watercourses running through them or are immediately adjacent to them. Of these farms only 57% have nutrient management programmes designed to mitigate water quality deterioration. A significant portion of the milk supply for the plant is already available but is currently supplied to other processors.
14. In the High Court Humphreys J delivered a written judgment on the 20th April 2021 dismissing the application for judicial review: [2021] IEHC 254. By a subsequent decision delivered on the 2nd July 2021 Humphreys J refused leave to appeal to the Court of Appeal: see [2021] IEHC 422. (I will return presently to these two judgments). By a determination dated the 23rd September 2021 this Court granted leave for a direct appeal to this Court pursuant to Article 34.5.4 of the Constitution: see [2021] IESCDET 109.
15. Two judgments have already been delivered by this Court in respect of these proceedings. The first concerned a significant disagreement between the three parties (An Taisce, the Board and Kilkenny Cheese) as to the scope of the leave to appeal granted by this Court in its Determination. In a judgment delivered on the 7th December 2021 this Court held that the appellant should be allowed to raise at the substantive hearing all of the grounds set out in its Notice of Appeal, including arguments pertaining to the environment effects of the off-site milk production and the Water Framework Directive (Directive 2000/60/EC): see *An Taisce v. An Bord Pleanála (No.1)* [2021] IESC 79.
16. The second judgment concerned the question as to whether the Attorney General should be permitted to be joined as a party to this appeal in his capacity as guardian of the public interest. In a judgment delivered on the 21st December 2021 this Court held that the Attorney General should be permitted to be joined as a party to this appeal subject

to the condition that he must abide by his own costs: see *An Taisce v. An Bord Pleanála* (No.2) [2021] IESC 83.

17. In light of this Court's judgment delivered on the 7th December 2021 the precise issues to be determined can be summarised as follows:
- a. The extent of the obligation on the Board to assess the indirect environmental impacts of the proposed cheese factory under Article 2(1) of the Environmental Impact Assessment Directive (Directive 2011/92/EU as amended) ("the EIA Directive") and Article 6(3) of the Habitats Directive (Directive 92/43/EEC as amended) and, specifically, whether the obligation includes an assessment of the indirect environmental impact of the off-site milk which will be needed to supply the factory.
 - b. The correct approach to evidence and argument in respect of whether all reasonable scientific doubt has been removed such that a decision maker can conclude that a proposed development will not adversely affect a European Site having regard to its conservation objectives, as required by Article 6(3) of the Habitats Directive.
 - c. The extent of the Board's obligation under the Water Framework Directive to assess the environmental impact of the discharge of pollutants on adjoining rivers and the treatment of scientific evidence in this respect.

Part II: The High Court judgments

The Decision of the High Court

18. The appellant commenced judicial review proceedings in the High Court arguing that the Board had failed to carry out adequate environmental assessments of the production of milk that would be necessary for the cheese factory. The appellant further sought to impugn the decision of the Board on grounds which had not been raised in the planning process, namely that the Board had failed to conduct an adequate appropriate assessment as required under the Habitats Directive and had acted in breach of the Water Framework Directive by granting permission of a project that will result in effluent discharge and thus additional pollutants to the River Suir (which was said to have not attained "good" status for the purposes of Article 28 of the Surface Water Regulations (SI No. 272 of 2009)).

19. In the High Court proceedings the Board and the Notice Party challenged the appellant's standing to raise these latter issues, though did not contest the standing of the appellant to raise the issue that the milk supply should have been assessed as part of the project. The High Court nevertheless proceeded to consider all of the grounds raised on their merits. In his first judgment Humphreys J rejected the appellant's central argument regarding the off-site environmental impact of the proposed milk production, saying (at paragraph 46):
- “The basic reason is that effects of raw material production where such production is sufficiently removed from the project as not to be capable of assessment in site-specific terms are not to be considered part of the project for the purposes of the EIA or AA. Such effects need to be considered on a more programmatic basis and hence lie outside the direct purview of grounds from challenging an individual planning decision.”
20. The judge had earlier stated (at paragraph 13) that:
- “...that doesn't mean that production could never be sufficiently proximate as to require assessment – just that that has not been demonstrated here, either by reference to the relationship between the production and the project or by reference to expert economic evidence.”
21. In his second judgment (dealing with the application for a certificate) Humphreys J clarified (at paragraph 17) that it is the effects of the project which are subject to an assessment, regardless of whether they are site-specific or not:
- “If the effects concerned are the effects of the project, then they do require assessment whether they are site-specific or not. The No 1 judgment should be read as subject to that clarification. But that doesn't help the applicant here because I didn't think the effects were the effects of the project.”
22. In his first judgment Humphreys J went on to reject the appellant's arguments under the Habitats Directive and the Water Framework Directive. He addressed first the appellant's questions under the Habitats Directive, namely, whether the inspector erred in screening out certain interests, such as Atlantic salt meadows, in the appropriate assessment, and the alleged failure to adequately consider the impact of treated effluent. He found that as “there was no scientific evidence put before the board to contradict

the Natura Impact Statement... it cannot be maintained now that the board acted in a way which left open scientific doubt when there was no such doubt on the materials which it had" (at paragraph 26). He made a similar statement as regards the impact of treated effluent (at paragraph 29).

23. Humphreys J then went on to address the Water Frameworks Directive issue on the merits. On this point, he held that the appellant had not overcome the onus of proof necessary to persuade him that the particular part of the river into which the discharge will take place had not been designated as "good" for the purposes of Regulations 28 of the Surface Water Regulations S.I.272 of 2009 (at paragraph 32).
24. It should be noted at this stage that there is some dispute over what Humphreys J actually held in respect of the Habitats Directive issue. The appellant maintains that the High Court precluded it from impugning the conclusions of the Board in respect of the planning process on the basis that An Taisce had not adduced scientific evidence in respect of the points that it had raised, which An Taisce argues is erroneous on the part of the High Court. The Board and the Notice Party, however, argue that this was not what the High Court in fact held, and the High Court's point was that no scientific evidence had been raised – by anyone – which would suggest that the Board was not entitled to reach the findings that it did in its appropriate assessment.

Part III: The submissions of the parties

The Appellant's Submissions

25. At the heart of the appellant's case lies the contention that the Board did not properly take into account the upstream consequences of the operation of the proposed cheese factory. Specifically, it is contended that there was no adequate environmental impact assessment of the 450 million litres of milk necessary to supply the factory. It is further said that such supply will have consequences for Ireland's greenhouse obligations in that, for example, the supply of milk at these quantities will have consequences for methane and nitrate emissions. The appellant accordingly maintains that the Board was under an obligation under Article 2(1) of the EIA Directive to assess these wider (if indirect) environmental impacts due to the demand for milk likely to be created by the project.

26. The appellant originally maintained that the milk supply was originally part of the project itself. On appeal to this Court and in response to a written request from the Court in advance of the oral hearing for clarification of this point, the appellant expressly – and, in my view, clearly correctly – accepted that the milk supply did *not* form part of the project itself but was rather an indirect effect. To anticipate somewhat, it is worth observing at this juncture that this is in fact a significant step in the entire argument regarding the scope of the project, because it means that only an actual increase in milk production by reason of the project – something which almost by definition is difficult to identify and assess – is capable of being regarded as a significant environmental effect.
27. The appellant adopts a similar argument in respect of Article 6(3) of the Habitats Directive insofar as these indirect impacts may affect a Natura 2000 site. But it also argued that the Board’s inspector erred in screening out certain interests, particularly Atlantic salt meadows, in any assessment. (Atlantic salt meadows are communities of salt-tolerant small plants which congregate in tidal estuaries and rivers). It also contended that the Board had failed to have regard to the impact of treated effluent.
28. A slightly different point is made in respect of the Water Framework Directive (Directive 2006/60/EC): it is said that the Board was precluded from granting permission in circumstances where this will lead to an increased discharge of pollutants into the River Suir and where it is said that that waterbody has not achieved what is termed “good” status for the purposes of Article 28 of the Surface Water Regulations (SI No. 272 of 2009).

The Board and Notice Party’s Submissions

29. The Board and Notice Party’s submission in response to the appellant are largely the same and can be summarised together. The Board and Notice Party argue, in the first place, that if the Board was under an obligation to assess the environmental impact of the off-site production of milk for the proposed cheese factory under the EIA Directive this could only be on the basis that the off-site production of milk is an indirect environmental impact that falls within the ambit of that Directive. The Board and Notice Party note that in this Court’s decision in *Fitzpatrick v. An Bord Pleanála* [2019] IESC 23, [2019] 3 IR 617 it was held that the EIA Directive only requires an EIA to be carried out in respect of the *project* for which planning permission is sought, which is

defined by reference to the proposed development which is the subject matter of the application for planning permission. The Board and Notice Party contend that in this case it is clear from the application for planning permission that the proposed development was the "construction and operation of a cheese factory." The Board and Notice Party refute An Taisce's assertion that the proposed development also includes the off-site production of milk, not least because such an assertion is inconsistent with An Taisce's subsequent argument that that production is an *indirect* effect of the proposed development.

30. Having concluded that the off-site production of milk is not part of the project for which planning permission was sought, the Board and Notice Party next consider the question of whether the off-site production of milk could nevertheless be subject to assessment under the EIA Directive as an indirect environmental effect. It is said that this question raises two issues: whether the Board was required to assess the environmental effects of the off-site milk production at all; and, if so, whether the assessment that was actually carried out by the Board was irrational and thus unlawful (since the Board and Notice Party contend that despite the fact that the Board was not obliged to consider the effects of the off-site milk production in its EIA, it did so anyway).
31. In respect of the first issue, the Board and Notice Party submit that the High Court was correct to find that the Board did not have an obligation to assess the environmental impact of the off-site milk production on the basis that it was too remote. It is said that all proposed developments must have a beginning and end and thus a consideration of remoteness must come into play. This, the Board and Notice Party contend, is supported by the High Court decision in *An Taisce v. An Bord Pleanála* [2015] IEHC 633 in which White J interpreted the words in Article 3 of the EIA Directive – "in light of each individual case" – as meaning that there was a limit to the obligation to assess certain matters and that this limit must be framed by reference to the question of remoteness. The Board and Notice Party then both refer to the High Court of England & Wales' decision in *R.(Finch) v. Surrey County Council* [2020] EWHC 3566 (Admin) and the Scottish Court of Session's decision in *Greenpeace Limited v. The Advocate General* [2021] CSIH 53 to guide this Court on how the question of remoteness should be applied. The Board and Notice Party maintain that on a correct application of the case law the off-site production of milk does not constitute an "indirect" environmental

impact for the purposes of the EIA Directive and thus it was not under an obligation to assess as much.

32. The Board and Notice Party further contend that even if the Board was under such an obligation, it discharged that obligation by the assessment that it in fact conducted. The Board and Notice Party emphasise that the EIA completed by the Board included an assessment of the potential indirect effects arising from the production of milk supply and that the Report concluded that the proposed development would not increase milk production and would not result in any additional emissions beyond those that were already projected by Government and accommodated in Government policy. The Board and Notice Party submit that the Board was entitled – and indeed required – to have regard in that assessment to the National Climate Change Action Plan and the Draft National Climate Air Roadmap for the Agricultural Sector, and that An Taisce’s suggestion that this is inconsistent with this Court’s decision in *Friends of the Irish Environment v Government of Ireland* [2020] IESC 49 is misplaced. The Board and Notice Party submits that the Board was also entitled to have regard to mitigation schemes implemented in the dairy industry for reasons outlined from paragraph 66 of its supplemental submissions. It is therefore submitted that any obligation that the Board was under to assess the indirect environmental impact of the off-site milk production was discharged.
33. In respect of the Habitats Directive, the Board and Notice Party address in their original submissions the arguments advanced by An Taisce to the effect that the Inspector erred in screening out certain interests from the appropriate assessment, including the Atlantic salt meadows, and failed to have regard to the impact of treated effluent. The crux of their argument on this point is that An Taisce has mischaracterised the finding made by the High Court in its principal judgment in dismissing An Taisce’s application. It is argued that An Taisce has erroneously suggested that the High Court held that in order to pursue a challenge to the appropriate assessment under the Habitats Directive it was necessary for An Taisce to have placed scientific evidence before the Board. The Board and Notice party contend, however, that this was not what was found by the High Court, and that the point being made by the Court was that there was nothing before the Board which raised any scientific doubt with regards to the Natura Impact Statement. In this respect, the Board and Notice Party submit that the High Court was correct to dismiss An Taisce’s application for judicial review on this point as there was, indeed,

nothing to suggest that the Board was not entitled to make the findings in its report that it did.

34. The Board and Notice Party adopt a similar argument to that made under the EIA Directive in respect of the obligation to assess the indirect environmental impact of off-site milk production under the Habitats Directive. They first make the point that contrary to what is suggested in An Taisce's legal submissions, the effects of milk production were considered as part of the appropriate assessment in so far as the Inspector identified the effect of milk production as having a potential indirect impact which was likely to change year to year. The Board further noted that the Inspector raised an important point to the effect that these off-site activities would be subject to other environmental controls such that they are unlikely to adversely affect the integrity of any European sites. The Board and Notice Party then both repeat the argument that, in any event, because the off-site production of milk did not constitute part of the "project" under Article 3 of the EIA Directive for the purpose of the appropriate assessment, the Board was not in fact required to carry out any assessment of the potential effects of the milk production. But that, even if it was so required, the appropriate assessment conducted by the Board did consider the potential indirect effect of the milk production and accordingly it did also discharge any obligation it may have had under the Habitats Directive.
35. Finally, in relation to the Board's alleged non-compliance with the Water Framework Directive, it is argued that An Taisce does not have sufficient *locus standi* to raise the argument that the Board was precluded from granting planning permission in circumstances where this will lead to an increased discharge of pollutants into the River Suir and where it is said that that waterbody has not achieved what is termed "good" status for the purposes of Article 28 of the Surface Water Regulations (SI No. 272 of 2009). The Board and Notice Party note that this was not a ground of challenge which the High Court had granted leave to apply for judicial review and that, accordingly, it is not a ground which An Taisce is entitled to pursue under section 50A(5) of the Planning and Development Act 2000. Nevertheless, in so far as the ground was raised in the High Court anyway, the Board and Notice Party underline that it was not dismissed on the basis of a *locus standi* objection but rather on the basis that the High Court determined that An Taisce had not overcome the onus of proof in respect of any

of the arguments that it made. The Board and Notice Party contend that the High Court was correct in this finding and it should be upheld accordingly.

The Attorney General's Submissions

36. The Attorney General's submissions largely mirror those filed by the Board and the Notice Party. The Attorney General submissions begin by considering whether the obligation to assess the indirect environmental impacts of the proposed cheese factory under the EIA Directive extends as far as including the off-site production of milk. He submits that the "project" to be assessed for the purpose of a particular development consent is limited to that in respect of which development consent was sought (citing *Fitzpatrick* at paras 36 and 37), and the Attorney General agrees with the High Court in this respect that *Fitzpatrick* determines this matter definitively. In the instant case the Attorney General considers that the "project" for which development was sought does not include the off-site production of milk and that therefore the milk production does not fall within the scope of "project" which needs to be assessed.
37. Next the Attorney General turns to the question of whether the off-site production of milk could nevertheless be subject to assessment as an *indirect* effect of the "project". It is the Attorney General's position that the "indirect effects" of a "project" for the purposes of the EIA Directive is fact-specific to the individual case and is determined by reference to the question of remoteness. In this regard the Attorney General agrees with the High Court that the off-site production of milk could in certain circumstances be sufficiently proximate as to require assessment, but that such proximity has not been demonstrated here, either by reference to the relationship between the production and the project or by reference to expert economic evidence. In support of this, the Attorney General, like the Board and the Notice Party, draws comparisons with what was decided in related cases such as *An Taisce v. An Bord Pleanála* [2015] IEHC 633, *R (Finch) v. Surrey County Council* [2020] EWHC 3566, and *Greenpeace Limited v. The Advocate General* [2021] CSIH 53. Applying the analysis in those cases here, the Attorney General concludes that the off-site production of milk in this case may have environmental consequences as a matter of fact, but that is not to say, as a matter of law, that it falls within the ambit of "indirect effects" for the purposes of the EIA Directive.

38. In the alternative, if it is decided that the milk production is an indirect effect, the Attorney General submits that the Board did assess the effect of such production, in so far as it was practicable to do so, and therefore the Board did discharge its duty under the EIA Directive. It is noted that the High Court did, indeed, find that the Board undertook an assessment of the effect of milk production even though same was unnecessary and that, by necessity, this assessment was limited in nature. Furthermore, the Attorney General contends that the purported inadequacy of the assessment does not, in any case, immediately give rise to grounds to interfere with the Board's decision to grant planning permission unless the assessment was so inadequate so as to be irrational (*O'Keeffe v. An Bord Pleanála* [1993] 1 IR 39). It is submitted that this threshold has not been met and thus this ground of appeal should be dismissed.
39. Separately, the Attorney General addresses the similar argument made by the appellant under the Habitats Directive insofar as the indirect effects of the off-site milk production may affect a European Site. The Attorney General observes that the appellant does not explain how a failure to assess the indirect effects of the off-site milk production is alleged to have arisen in light of the fact that the following is not known: (i) the location of the farms which may supply milk to the cheese factory; (ii) what "sites" the farms are proximate to; (iii) what, if any, are the pathways from the farms to the "sites"; and (iv) how many farms are proximate to those "sites" – all of which, the Attorney General contends, are key pieces of information that would be required to carry out an appropriate assessment. The Attorney also notes that, in any case, as with the adequacy of the assessment under the EIA Directive, the adequacy of the assessment under the Habitats Directive is a matter for the Board and can only be challenged on grounds of irrationality.
40. The Attorney General next considers the argument made by the appellant under the Habitats Directive that the Inspector erred in screening out certain interests, particularly Atlantic salt meadows, in any assessment and failed to have regard to the impact of treated effluent. The Attorney General raises the same two objections to these arguments as made by the Board and the Notice Party, namely that there is an issue of *locus standi* that stands to be resolved and a question as to the proper approach to evidence in respect of whether all reasonable scientific doubt has been removed such that a decision maker can conclude that a proposed development will not adversely affect a European Site. In essence, the Attorney General states that the proper role of a

court in judicial review proceedings is well-established: the appellant in this case is not entitled to an appeal or a *de novo* hearing and is therefore not entitled to raise new arguments which were not ventilated before the Board. The Attorney General argues that there are good reasons for requiring an applicant to raise any issues it may identify before the planning authorities as can be seen from the case-law. The Attorney General submits that there is nothing in the decisions of the CJEU which would require the Court to disregard these principles and that therefore the appellant should be found to lack standing on these grounds.

41. On the issue of the alleged requirement to adduce scientific evidence, the Attorney General argues that the appellant has failed to acknowledge that the High Court did not actually hold that there is a requirement for a party to have adduced scientific evidence to be entitled to impugn conclusions reached by the consent authority for the purposes of the EIA or Habitats Directive. What the High Court actually held, in the Attorney's view, is that there must be some evidential basis for arguments made in judicial review proceedings by reference to the materials before the decision-maker, but that it is not necessary that the appellant has adduced this evidence. Accordingly, it is submitted that as the appellant cannot point to any evidence put before the Board – by the developer, or by any other member of the public – which would put into reasonable scientific doubt the findings made by the Board in its appropriate assessment, the High Court was perfectly entitled and correct to dismiss the appellant's application on this ground.
42. Finally, as regards the Water Framework Directive, the Attorney General similarly argues that the appellant has failed to point to any material that was before the Board which would suggest that it was not entitled to find that relevant surface water bodies had not achieved "good" status. The Attorney General also points out that the burden of proof is on the appellant to demonstrate that the status of the relevant water bodies was not properly identified by the Board and that the High Court was correct to conclude that the appellant had not discharged this burden.

Part IV: The Challenge based on the EIA Directive

The requirements of the EIA Directive

43. I propose first to consider the challenge based on the alleged non-compliance with the requirements of the EIA Directive. I then propose to consider separately the appeal so far as both the Habitats Directive and the Water Framework Directive is concerned.

44. In any consideration of this question, it is necessary first to commence with an analysis of the EIA Directive itself. While the first iteration of the EIA Directive dates from 1985, this was replaced by a consolidated version, Directive 2011/92/EU. This itself was amended in 2014 by Directive 2014/52/EU (“the 2014 Directive”). These various provisions have been transposed into Irish law by Part X of the Planning and Development Act 2000 (as amended) and by s. 171A(1) of that Act. Nothing turns on this so far as the present appeal is concerned and no issue has been raised regarding the adequacy of the transposition of the 2014 Directive.
45. Recital 7 of the 2014 Directive acknowledges that concerns about climate change had increased over the preceding years. Recital 13 states that:
- “Climate change will continue to cause damage to environment and compromise economic development. In this regard it is appropriate to assess the impact of projects on climate (for example greenhouse gas emissions) and their vulnerability to climate change.”
46. The new version of Article 3(1) of the EIA Directive requires that the effect of the development in respect of climate must also now be considered. Recital 7 of that Directive provides that:
- “Development consent for public and private projects which are likely to have significant effects on the environment should be granted only after an assessment of the likely significant environmental effects of those projects has been carried out. That assessment should be conducted on the basis of the appropriate information supplied by the developer which may be supplemented by the authorities and by the public likely to be concerned by the project in question.”
47. Article 1(1) of the EIA Directive provides that:
- “This Directive shall apply to an assessment of the environmental effects of those public and private projects which are likely to have significant effects on the environment.”
48. The term “project” is itself defined by Article 1(2)(a) as meaning:
- “– the execution of construction works or of other installations or schemes,

– other interventions in the natural surroundings and landscape, including those involving the extraction of mineral resources.”

49. Article 2(1) provides:

“Member States shall adopt all measures necessary to ensure that, before development consent is given, projects likely to have significant effects by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects on the environment. Those projects are defined in Article 4.”

50. Article 3(1) now provides:

“The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case, the direct and indirect significant effects of a project on the following factors:

- (a) population and human health;
- (b) biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC;
- (c) land, soil, water, air and climate;
- (d) material assets, cultural heritage and the landscape;
- (e) the interaction between the factors referred to in points (a) to (d).

51. Article 5(1) requires the developer to provide the information specified in Annex IV of the Directive. Paragraph 1(d) of Annex IV provides that this must include an estimate of the level of emissions which will be produced during the construction and operation phases and paragraph 5(f) states that there must be “a description of the likely significant effects of the project on the environment” resulting from “the impact of the project on climate (for example, the nature and magnitude of greenhouse gas emissions)”. The description should cover, inter alia, the direct and indirect effects of the project.

The evidence which was before the Board

52. It is next necessary to assess the evidence which was before the Board. This principally consisted of an EIA report (“EIAR”) prepared on behalf of the developer in September 2019, a Natura Impact Statement (“NIS”) from the same month and the report of the

Inspector dated the 15th June 2020, along, of course, with submissions from An Taisce and other interested parties and bodies. The EIAR also contained a range of important exhibits, including, for example, two important reports from Teagasc (the National Farm Survey 2017 and a March report entitled, "An Analysis of Abatement Potential of Greenhouse Gas Emissions in Irish Agriculture 2021-2030), along with a report from the Environmental Protection Agency entitled, "Nitrogen and Phosphorous in Irish Waters 2018". It is only proper to say that all these documents are extraordinarily comprehensive and detailed.

53. Perhaps the first question which should be asked in this context was whether there was or is any evidence of a causal relationship between the factory and enhanced milk production in the State. A key contention of both the Board and the developer was that the increased milk production was going to happen in any event and that, in some senses, the proposed factory was a response to that anticipated increase in milk production rather than the other way around. Here a word by way of background may be appropriate.
54. Ireland has many advantages when it comes to milk production because, along with New Zealand, we have perhaps the most ideal climate for the grass fed and largely outdoor, pasture-based dairy production which results in a bountiful supply of high quality milk. To some extent, that production was artificially constrained by the introduction of the milk quota regime by the (then) European Economic Community in 1984. With the increased professionalism and productivity of farmers and the rise of indigenous agri-food multinationals there were many reasons why Irish milk production was set to grow significantly following the ending of the milk quota regime in April 2015.
55. This was, indeed, the conclusion of the EIAR itself (at paragraph 2.6):
- "Following the removal of quotas, dairy production in Ireland has increased significantly. Within 12 months of the expiration of quotas, milk production had increased in Ireland by 37%. Comparing livestock surveys from the Central Statistics Office from December 2014 (shortly before the end of milk quotas) and December 2018 reveals that the number of dairy cows in Ireland had increased by 21.4% since the expiration of milk quotas, from 1.128 million in December 2014 to 1.369 million by the end of 2018. However, much of the growth occurred immediately after the end of the quota system and the trend of

dairy herd growth has been slowing in recent years...According to *Road Map 2025 for Dairy and People in Dairy Action Plan* the dairy herd is set to increase further from its current population of approximately 1.4 million to 1.7 million by 2025. Milk production per cow is also expected to increase from 5.036kg/cow to 5.739 kg/cow, giv[ing] a projected increase of approximately [2].6 billion litres of milk by 2025 to 9.8 billion litres/year from the current output levels of 7.2 billion litres/year. In regard to the 450 million/litres per year that will be required for proposed development from 2022, approximately 20% is already in circulation, and as such it will equate to approximately 4.5% of the milk pool projected to be available in Ireland in 2025."

56. I should perhaps pause here to clarify that the reference to "approximately 20% in circulation" is a reference to the milk which Glanbia currently re-sells to other producers but which will be instead re-directed to service the needs of this plant should it proceed as planned.
57. The EIAR continues (at paragraph 2.9):
 "Glanbia already has a significant portion of the milk required for the proposed development available, as it is currently being resold to other processors. Additionally, milk production from the existing dairy herd is expected to increase by 1.5% year-on-year, which will increase the milk supply without additional emissions. Given the uncertainty surrounding Brexit, it is also expected that some of the milk currently supplying the existing UK cheddar cheese market will be diverted to the proposed development, depending on business conditions once the production commences."
58. The EIAR further states (at paragraph 6.7):
 "Given the already high degree of grassland cover in Ireland and the prevalence of pasture farming, it is expected that any increase in dairy production will be confined to improving efficiency coupled with the modest herd expansion on existing farms, rather than significant new lands being brought under agriculture, thereby limiting potential impacts on biodiversity."
59. Pausing at this point it can be said that that the focus of the EIAR so far as this issue was concerned was that any increase in the milk supply was projected to happen in any

event, regardless of whether the cheese factory went ahead or not. Implicit in this was the contention that the construction of the factory could not have upstream effects of this nature because there was, in essence, no co-relation between any anticipated increase in national milk production or in the national herd and the construction of the factory.

60. Following the grant of permission by Kilkenny County Council of the 14th December 2019, An Taisce appealed that decision to the Board. In its appeal An Taisce noted the claim that the proposal would not require an increase in the dairy herd. It then stated (at paragraph 3.1):

“Even if the bulk of the subject plant’s milk supply would come from subject farms, the increase in productivity nevertheless represents a significant intensification of dairy production with a likely resulting exacerbation of the aforementioned adverse environmental impacts...The EAIR has not provided any data to indicate that productivity increase would not result in additional GHG and nitrogen emissions. Moreover, those other processors currently receiving Glanbia [milk] will still require a milk supply if the proposed cheese plant is built, thereby increasing the amount of milk needed and intensifying production. Additionally, the combination of dairy and related beef related projects under FoodWise 2025, of which the subject proposal is part, will entail an increase in the national herd.”

61. This appeal was responded to in some detail in a submission made by Tom Phillips Associates on behalf of Glanbia on the 20th January 2019. In that submission Messrs. Phillips contended that (at paragraph 1.2):

“...the indirect effects to be addressed are those created by the proposed development, not the impacts of the 4,500 [number of] existing dairy farms, not the impacts of some future supplier farms (which are impossible to predict) and not the impacts of a sect[or] generally (that have been addressed).”

62. This issue was addressed in even further detail at paragraph 3.3.2:

“It is impossible to state definitively the exact number of farms that will supply the proposed development, as some farms may change their structure in the future. Nevertheless, it is important to note that there will be no appreciable

land-use change as a result of the proposed development. As highlighted in section 2.9 of the EIAR, in addition to the significant portion of milk that is already available within the system (but being sold on to other industrial processors at present), an increase in 1.5% productivity gain, year on year, from the existing dairy herd, is expected across the farms in Ireland, and also within Glanbia's milk pool. This will be coupled with a modest expansion on existing farms. Productivity increase is typically based on increasing efficiency at the farms, including more efficient grassland management. Glanbia proactively promotes scientific-based mitigation measures which are detailed in section 8.8 'indirect impacts' of the EIAR. Glanbia's *Milk Planning Census 2019-2023* (based on data collected from farms that account for 86% of Glanbia's milk pool) shows that milk supply is predicted to increase from 2,347 million litres of milk in 2018 to 3,014 million litres of milk in 2023. This amounts to a 28% increase over the 5 years, or an additional 667 million litres of milk per year, arising from the aforementioned productivity gains and a modest increase in dairy herd numbers at Glanbia's supply farms (as per section 2.9 of the EIAR). This increase in milk supply arising from Glanbia's supply farms is encompassed both by *Food Wise 2025* and the national projected increase of milk production (figures produced by the Central Statistics Office) which is set out in further detail within this section. For clarity, this increase in milk production would occur regardless of whether the proposed development takes place, or not. In addition to the above stated milk sources, it is a further strategic priority to redirect some of the existing milk currently proposed for the UK market to the proposed development as a product/market diversification in response to Brexit uncertainties. While it is not possible to quantify this amount given the uncertainties surrounding the extent of impacts associated with the Brexit process, it is likely that this will be a further milk supply input for the development. To re-emphasise, this source relates to milk that already exists within the system, regardless of the requirements of the proposed development...[This information demonstrates] that the proposed development would not in itself drive increased milk production, but would essentially become an additional outlet for milk already in production or planned for production."

The Inspector's report

63. All of these matters were considered by the Inspector in her report dated the 15th June 2020. It should be said immediately that the report is an impressively comprehensive document running to some 86 pages. So far as the milk supply issue is concerned, the following comments of the Inspector should be noted.

64. She stated (at paragraph 8.6.3) that the "supply of milk to the proposed development will not result in any additional emissions beyond what is currently projected by the Government." She then concluded (at paragraph 8.8.1) that she agreed that any "assessment of all 4,500 Glanbia farms is impractical. The EIAR and the NIS should assess the indirect effects of the proposed development if they are likely and to the extent that is reasonable and practicable at the time the planning application is lodged. However...there must be a limit or the effects will be too remote." Further it should be done:

"in the light of each individual case... the indirect effects to be assessed in this case are those created by the proposed development: not the impacts of c. 4,500 dairy farms, not the impacts of some future expansion of dairy farms (which are impossible to predict) or the impacts of some future supplier farms (which are impossible to predict) and not impacts a sector generally (that have been addressed separately)."

65. The Inspector then went on say (at paragraph 8.8.2):

"The proposed development would not of itself drive increased milk production and any reference to an expected increase of milk production on Glanbia's farms, or nation-wide, sits within a national policy context for a managed increase of dairy production in Ireland, subject to the implementation of mitigation measures. Further this national increase in milk production aligns with national climate change policy. Any objection to the principle of such national policy sits outside the scope of this appeal and relevant planning assessment."

66. There are other statements in the report to similar effect. So, dealing with the impact on lands and soils, the Inspector stated (at paragraph 11.48):

"It is expected that the 450 million litres of milk required for the proposed development will mostly come from the existing Glanbia milk [supply] which comprise[s] approximately 4,500 farms with standard year to year changes. The increase in milk supply will largely come from the increase in productivity at the existing farm[s], i.e., there will be no significant increase in the number of new farms."

67. So far as impact on climate is concerned, the Inspector stated (at paragraph 11.91):

"The production of 450 million litres of milk produces [0.513] megatonnes of CO2 [equivalents]. However, this is expected to decrease due to the increase[d] production efficiency of the dairy herd and implementation of mitigation measures as previously outlined. Further, a significant portion of this milk will already be in circulation or will be produced as part of an increased milk supply regardless of whether the proposed development is in existence. These emissions are already accounted for and regulated through the National Climate Action Plan as part of dairy sector emissions. The proposed development will not directly or indirectly result in an increase of CO2 emissions proportionate to the required milk input."

68. The Inspector concluded (at paragraph 11.138):

"Impacts on climate are likely to arise in the production of 450 million litres of milk which produces [0.513 megatonnes] of CO2 [or their equivalents]. While the impact of the proposed development alone is considered insignificant, there is an indirect impact. This impact is expected to decrease by virtue of the production efficiency of the existing dairy herd and implementation of mitigation measures as outlines in the EIAR. Further, these emissions are already accounted for and regulated through the National Climate Action Plan as part of dairy sector emissions. The proposed development will not directly or indirectly result in an increase of CO2 emissions proportionate to the required milk input. The impacts arising would be mitigated through compliance with both the Government and Glanbia's sustainability programme as outlined in the EIAR which I have reviewed and consider reasonable."

69. The Inspector accordingly recommended the grant of permission.

The Board decision

70. In its direction of the 25th June 2020 granting permission for the project the Board stated that it considered that the EIAR “provided information which is reasonable and sufficient to enable the Board to reach a reasoned conclusion on the significant effects of the proposed development on the environment, taking into account current knowledge and methods of assessment.” Crucially, however, it went on to identify the main “significant direct and indirect effects of the proposed development on the environment”. Dealing with the environmental effects of the milk supply issue, the Board stated (at page 5 of the decision):

“Indirect impacts on climate are likely to arise in the production of 450 million litres of milk but the emissions arising [have] already [been] accounted for and regulated through the National Climate Action Plan as part of the dairy sector overall emissions. The impact is expected to be offset by virtue of the increased production efficiency of the existing dairy herd, compliance with the Government’s and Glanbia’s sustainability programmes and implementation of other mitigation measures as outlined in the EIAR, including use of state of the art energy systems.”

71. The Board further stated (at page 6) that, having regard to the EIAR, it had concluded that:

“...subject to compliance with the conditions set out above, the effects on the environment of the proposed development, by itself and in conjunction with other development in the vicinity, would be acceptable. In doing so, the Board adopted the report and conclusions set out in the Inspector’s report.”

What exactly did the Board and the Inspector decide?

72. Against this background, one must then ask: what exactly did the Board (and, by extension, the Inspector) actually find and conclude? The principal finding of the Board appears to be that while the production of 450 million litres of milk will have indirect climate implications, these indirect effects are already known and measured in the context of existing Government policy in respect of GHGs from the dairy sector. These indirect effects will, in any event, be off-set and mitigated by a range of other factors.

73. It also seems implicit in this finding by the Board that the project will not *in and of itself* create a demand for milk production. This, in any event, was an express finding of the Inspector which the Board may be taken to have accepted. The Inspector herself frequently stressed in her report that any increase in the milk supply is likely to come from the enhanced productivity at the existing 4,500 Glanbia farms, changing production lines (so that milk currently utilised to make cheddar cheese for the UK market will be diverted to the new factory) and from the diversion of approximately 20% of the milk it currently sells to other suppliers to the new factory. As the Tom Phillips report itself had stated in several places (see, e.g., at paragraph 3.3.2) "this source relates to milk that already exists within the system, regardless of the requirements of the proposed development."
74. While the Inspector expressly disclaimed any endeavour on her part to assess the environmental impacts of the milk production on the 4,500 farms on the basis that such was too remote from the project and would be impractical and unreasonable, at times her report nonetheless gives the impression that she did just that. Insofar as she looked at these indirect effects, it seems fair to say that she concluded that these indirect environmental impacts were already separately assessed and known and would, in any event, be mitigated by a range of measures.
75. While the Board (and the Inspector) must therefore be taken to have found that the factory will not *in and of itself* create a demand for milk, that is not quite the same thing as saying that a project which will take 4.5% of the national milk supply will not have significant effects on demand for milk production. The very fact that Glanbia proposes to divert the 20% of its existing milk supply which is currently sold to other producers to this factory in order to meet its milk requirements is illustrative of this. This will naturally create a significant vacuum in the existing milk market in the State and it would, I suggest, be unrealistic to expect that these other producers will not have to look elsewhere for supplies.
76. One must, of course, allow for the fact that – as the Tom Phillips' report demonstrated – the projected increase in dairy production will be the result of productivity increases generally. Naturally, these productivity increases will not be confined just to Glanbia suppliers, but other milk processors who are supplied by other farmers will also receive increased milk volumes arising the projected 1.5% year on year productivity increases.

77. Nevertheless, the existence of the factory is likely to reinforce and strengthen the overall demand for milk if only in the particular sense that in its absence the *demand* for milk generally would be reduced. At some elevated macro-economic level one may therefore say there is some link between the factory's requirements for milk and the milk supply. It is, of course, true that allowing for the fact that (as the Inspector found) general productivity increases leading to enhanced milk production would be more than enough to supply the factory's requirements, this is a process which is not infinite. It must accordingly be accepted that the establishment of a new factory which will require 4.5% of current national milk supply will have some relationship to, and possible effect upon, supply. This in turn may have some implications for general milk production within the State and, ultimately, the size of the national herd.

Whether the project will strengthen the overall demand for milk

78. In a complex market economy such as ours it is, of course, all but impossible to predict in advance all the consequences – which are likely in any event to be multi-factorial – of a major economic stimulus resulting from a new project which will take 4.5% of the national milk supply. While the Board found – and, on the evidence, was fully entitled to find – that the factory's requirements would be met from the existing Glanbia milk pool, this still cannot take from the inevitable conclusion that this project is likely to strengthen the *overall* demand for milk, with implications for general milk production on non-Glanbia farms and, as a consequence, environmental emissions arising as a result.
79. In effect, therefore, in the light of these findings from the Board (and, by extension, the Inspector) the EIA question reduces itself to this: are the implications for general milk production on non-Glanbia farms and, as a consequence, environmental emissions arising as a result part of “indirect significant effects of a project” within the meaning of Article 3(1) of the EIA Directive which the EIA itself was required to identify and assess?
80. The key words of Article 3(1) of the EIA Directive are the “direct and indirect significant effects of a project on the following factors...” It should be recalled that the word “project” is defined by Article 1(2)(a) as meaning “the execution of construction works or of other installations or schemes, other interventions in the natural

surroundings and landscape, including those involving the extraction of mineral resources.”

81. The definition of what constitutes a “project” for this purpose is, of course, of critical importance. (While the term “project” is not as such used in our domestic law, it corresponds in substance to the term “proposed development” in s. 172(1A) of the 2000 Act: see *Fitzpatrick v. An Bord Pleanála* [2019] IESC 23, [2019] 3 IR 617 at 628, per Finlay Geoghegan J.). It might, for instance, be argued that where ostensibly off-site activities are so closely and functionally connected with the on-site development that they should really be classified as part of the project itself. Thus, for example, the off-site assembly – perhaps even at a location remote from the site – of industrial plant or buildings which are then transported to the site might, perhaps, be such an example.
82. Apart from these special cases, there are also cases where there is a clear and unbreakable inter-relationship between the project itself and certain off-site activities such that a causal relationship between the construction or operation of the project and certain direct or indirect environmental consequences has been clearly established.
83. An example here is supplied by *Ó Grianna v. An Bord Pleanála* [2014] IEHC 632. Here the issue was whether the project consisted of the construction of wind turbines alone or whether the fact that they had to be connected to the national grid had also to be taken into account. Peart J opted for the latter interpretation, saying (at paragraph 27 of his judgment) that:
- “I am satisfied that the second phase of the development in the present case, namely, the connection to the national grid, is an integral part of the overall development of which the construction of the turbines is the first part... The wind turbine development on its own serves no function if it cannot be connected to the national grid. In that way, the connection to the national grid is fundamental to the entire project, and in principle at least the cumulative effect of both must be assessed in order to comply with the Directive.”
84. This matter was also considered by this Court in *Fitzpatrick v. An Bord Pleanála* [2019] IESC 23, [2019] 3 IR 617. In that case a division of the major computer company, Apple, proposed to establish a data centre at Athenry, Co. Galway. This, however, was the first part of an overall masterplan for the ultimate re-development of that site. Here the question was whether the EAIR was obliged to have regard simply to the proposed data centre or to the wider project.

85. In her judgment for the Court Finlay Geoghegan J answered this question in the negative. She considered that *Ó Grianna* was dependent on a finding of fact that the project for which planning permission had been granted was ([2019] 3 IR 617 at 636) “functionally or legally interdependent on a further development not included in the application for planning permission which might have environmental effects and in respect of which no EIA had been carried out.” By contrast the data centre at issue in *Fitzpatrick* “could be operated as a single data hall” and, in that sense, was a stand-alone project “in the sense of not being functionally dependent on future phases of the masterplan”: [2019] 3 IR 617 at 637.
86. At all events, in contrast to its the position at an earlier stage in these proceedings, An Taisce has now made it clear – at least for the purposes of this appeal – that it accepts that off-site milk production (whether by Glanbia farmers or otherwise) is not part of the project itself. One is accordingly obliged to ask: what do these words in Article 3(1) actually mean in the context of a case such as this and to what extent must the environmental effects of off-site activities be taken account and assessed by an EIA? There would seem to be two possibilities.

The first possible interpretation: an open-ended meaning

87. The first possible interpretation is to say that these words of Article 3(1)(a) of the EIA Directive should be read in an open-ended fashion. In addition to the present case there would appear to be three other decisions of the High Court which have grappled with this issue.
88. In the first of these, *An Taisce v. An Bord Pleanála* [2015] IEHC 633 (“*An Taisce Edenderry*”) the applicant sought to quash a decision of the Board to grant planning permission for the continued use and operation of a previously permitted peat and biomass co-fired power plant in Edenderry, Co. Offaly, on the basis that the environmental effects of extracting the peat fuel source of the thermal power plant were not properly assessed for the purposes of the EIA Directive. In documents submitted as part of the planning application, it was stated that the source of the peat fuel would be from nearby bogs licensed to two notice parties, Bord na Móna Energy Limited and Bord na Móna Allen Peat Limited respectively. The peat itself was transported by a private rail link which was under the exclusive control of Bord na Móna.

89. In his judgment White J determined that he was satisfied that the environmental effects of extracting the peat fuel source from the third party bogs *did* fall within the ambit of “indirect effects” for the purposes of Article 3(1) of the EIA Directive, and were therefore liable to be assessed: see paragraph 73. In reaching this conclusion, White J accepted that “in assessing indirect effects there has to be a limit or the effects will be too remote” (at paragraph 66), but he nonetheless concluded – applying what he described as a functional inter-dependence test – that the Board should not have “excluded completely the consideration of the indirect effects” of the peat extraction from the two bogs. White J found in this respect that the Board had erred in law.
90. Not surprisingly this decision has attracted a good deal of analysis so far as this case is concerned. In her report the Inspector concluded (at paragraph 8.4.2) that the present case was not analogous:
- “The critical difference with the Edenderry Power Plant [case] is that the source of peat was spatially identifiable on selected bog areas with appropriate infrastructure and was therefore inextricably linked to the project as a whole. This is not the case with the Cheese Factory and the expectation that the indirect effects of c 4,500 independent dairy farms suppliers that are removed from the appeal site be assessed should be limited as the effects are too remote.”
91. For my part, I agree that *An Taisce Edenderry* is a special case where the off-site activities were closely inter-twined with the activities on-site such that both had to be considered together. In many ways this case is nonetheless quite close to the facts of a case such as *Ó Grianna, i.e.*, a case where the linkage between the on-site and off-site activities is so close that one cannot realistically be assessed in isolation from the other.
92. A broadly similar approach, albeit with a different outcome, is evident in the judgment of Allen J in *Kemper v. An Bord Pleanála* [2020] IEHC 601. This case concerned the grant of planning permission for the development of a new wastewater treatment plant, as well as various other facilities, at sites in Fingal. The High Court was asked to determine whether the Board had erred in failing to address the impact on the environment of the eventual use of bio-solids and other materials as fertilizer on lands which were not part of the development site (the bio-solids and fertilizer would be an end-product of the wastewater treatment plant). In his judgment Allen J held (at paragraph 377) that, unlike in *An Taisce Edenderry*, it was “impossible to establish a

link between the [Regional Biosolids Storage Facility] and the lands upon which the material may be spread because the lands are not, and cannot be, identified until the purchaser is identified.”

93. Once, however, one moves beyond the facts of special cases such as *An Taisce Edenderry* a range of difficulties open up. The difficulty, however, with such an open-ended interpretation of Article 3(1) is that it does not seem possible to place any *a priori* limit on the range of indirect effects which would have to be assessed for EIA purposes if such an interpretation were to be accepted. A good illustration of these difficulties is provided by the decision of the High Court of England and Wales in *R (Finch) v. Surrey County Council* [2020] EWHC 3566 (Admin).
94. In *Finch* Holgate J considered broadly the same issue that arises here. The proposed development in that case was the retention and expansion of a drilling site which was used for hydrocarbon extraction. The applicant had sought to challenge under the applicable UK regulation (which transposed the EIA Directive) the non-assessment of greenhouse gases that would be emitted when the crude oil produced from the site was used by consumers (typically as a fuel for motor vehicles). The applicant contended that these emissions amounted to indirect effects under the EIA Directive and were therefore liable to be assessed.
95. Holgate J, however, dismissed this argument, taking issue with the applicant and intervener’s interpretation of “indirect effects” as “environmental effects more remote than direct effects (whether in time or location), but not so remote they cannot be attributed to the development at all.” For his part, such an interpretation could not be correct because it meant that a wide range of upstream and downstream effects fell within the ambit of the EIA Directive which could not properly be regarded as effects *of the project or development*: see paragraphs 98-99 and 122 of the judgment.
96. It is, indeed, this connection to the project or development which Holgate J saw as critical to the question of whether an indirect effect falls within the ambit of the EIA Directive or not. In this respect, he considered the “legal test” to be “whether an effect on the environment is an effect of the development for which planning permission is sought” (paragraph 101), which he suggests can be determined by reference to “the use of land for development and the effects of that use” (paragraph 112) (emphasis added). Thus, for Holgate J, “indirect effects” are those consequences which are “less

immediate” than direct effects, but which are nevertheless “effects which *the development itself* has on the environment.” (at paragraph 110) (emphasis supplied).

97. Holgate J illustrated his reasoning by reference to two key CJEU decisions on this matter. The first was the CJEU’s judgment in *Abraham* (Case C-2/07, EU: 2008: 113). As he explained (at paragraph 115):

“The project in that case was for the widening of runways at an airport and the construction of a new control tower, runway exits and aprons, to enable the airport to be used more intensively. The issue was whether the EIA was required to assess the effects of the projected increase in the activity of the airport as a result of the modification. It was in that context that the court decided that the environmental effects requiring assessment were not limited to the direct effects of the works to be carried out but also had to include the environmental impact resulting from the use of the improved airport. These overall effects could properly be regarded as effects of the *development*, namely the increased usage of the airport enabled by the works to improve the existing infrastructure.”

98. The second was the CJEU judgment in *Ecologistas en Accion-CODA* (Case C-142/07, EU:C:2008: 445) which concerned the improvement of the Madrid urban ring road and whether the subsequent use of that ring road could be subject to assessment under the EIA Directive as an indirect effect. Holgate J noted that:

“The CJEU decided that the project was liable to EIA, which could not be avoided by being split into sub-projects, and that the impact of the use of the road as altered should be assessed, and not simply the direct effect of the construction work.”

99. The upshot of Holgate J’s analysis of these cases is that they reinforce the view that, first, an EIA must address the environmental effects, both direct and indirect, *of the project or development* for which planning permission is sought – there is no requirement to assess matters which are not environmental effects of the development or project; and second, that an effect of a project or development is one that is “concerned with the use of land for development and the effects of that use.”

100. For my part, save for one possible caveat, I cannot but agree with these conclusions. It seems to me that if Article 3(1) is given a remorselessly literal and open-ended interpretation there is no principled basis by which the limits of any EIAR assessment could confidently be ascertained. On this view, for example, the significant environmental effects resulting from the consumption or use of the end product would – or, at least, might – also have to be assessed. Would this mean, for example, that carbon emissions resulting from the use of articulated lorries to transport the cheese produced by the new factory to their various destinations in continental Europe would also have to be assessed? If – as seems not unlikely – large quantities of plastic were generated for the purposes of wrapping the cheese produced by the proposed factory at issue in the present case, would the environmental effects of this activity also have to be identified and assessed? If this were so, then this might also entail, for example, an environmental assessment of both the circumstances in which the plastic came to be generated in the first place and how it ultimately came to be disposed of following consumption in the second place. These are just representative examples of potential indirect environmental effects in this wider, open-ended sense, examples of which could easily be multiplied.
101. For good measure I would also point to the fact that a similar view was also taken by the Court of Session (Inner House, First Division) in Scotland in *Greenpeace Limited v. The Advocate General* [2021] CSIH 53. The question there was whether the consumption of oil and gas by an end user ought to be assessed as a direct or indirect significant effect of the exploitation of the Vorlich oil field. The Court of Session held that there was no obligation to assess the ultimate use of the finished refined petroleum products as a direct or indirect significant effect of the project. The Court agreed with the conclusion reached by Holgate J in *Finch* that the obligation to assess the direct and indirect significant effects of a project must be limited to the assessment of the ‘effect of the project, and its operation’ and ‘not that of the consumption and of any retailed product ultimately emerging as a result of a refinement of raw material’ (see paragraphs 63-68).

The second possible interpretation: the indirect effects must be those which the development itself has on the environment

102. The alternative interpretation is to opt for the general approach canvassed in the judgment of Holgate J in the *Finch* case (and, for that matter, the Court of Session in *Greenpeace*), *i.e.*, that they must be direct or indirect “effects which the development itself has on the environment.” This means that matters such as the construction of the plant or emissions from the plant etc. must be identified and assessed, but, generally speaking, not matters such as environmental impacts of the inputs (*e.g.*, milk production) or outputs of the factory (*e.g.*, the environmental consequence of the plastic wrapping of the cheese). This brings me to my caveat in respect of Holgate J’s analysis in *Finch*. There may well, however, be special and unusual cases where the causal connection between certain off-site activities and the operation and construction of the project itself is demonstrably strong and unbreakable. In those special and particular cases the significant indirect environmental effects of these off-site activities would fall to be identified and assessed and, for all the reasons I have already stated, cases such as *Edenderry* and *Ó Grianna* fall into this category.

Choosing as between the two options

103. The difficulty with the first interpretation of Article 3(1) is precisely that it is open-ended. Such an open-ended interpretation of these words leads, however, to conclusions which are not practicable or feasible. In the present case, for instance, it is simply not possible to audit or assess the 4,500 Glanbia farms – which, it may be useful to remind ourselves, are all independently owned and operated – not to speak of the range of other non-Glanbia farmers who may be tempted to enhance their milk production to non-Glanbia producers if Glanbia switch 20% of their existing production away from those producers in the light of the operation of the new factory in the manner I have already described.
104. Besides, were such an open-ended test to be adopted, then in principle there would be few limits to the range of possible inquiry to which those tasked with preparing an EAIR would be put. When pressed on the point during the course of argument, counsel for An Taisce, Mr. Steen SC, was really unable to offer any test by which the limits of this could be ascertained: if the indirect environmental effects of the inputs should properly be assessed, the same might be said of the indirect environmental effects of the outputs, including questions such as the indirect effects of their transportation of the cheese products to market and the end use of these products by customers.

105. In some ways, therefore, to adopt the famous words of Holmes J., I see “hardly any limits but the sky” if such an open-ended interpretation of the Directive were to be adopted: see *Baldwin v. Missouri* 281 US 586 at 595 (1931). It is the fact that such an open-ended interpretation of Article 3(1) would lead to the imposition of an impossibly onerous and unworkable obligation on developers preparing an EIAR that leads me to the conclusion that this interpretation should be rejected.
106. This is underscored by the language of Article 5(1) of the EIA Directive which describes the nature of the information to be included in the EIAR itself. Thus, for example, Article 5(1)(a) requires that the developer provide a description “of the project comprising information on the site, design, size and other relevant features of the project” and Article 5(1)(f) likewise requires that the developer shall include “any additional information specified in Annex IV relevant to the specific characteristics of a particular project or type of project, and to the environmental features likely to be affected.” In a similar vein, paragraph 1(c) of Annex IV, describing the information to be set out in the EIAR, requests: “A description of the main characteristics of the production processes, operational phase of the project (in particular any production process), for instance, energy demand and energy used, the nature and quantity of the materials and natural resources (including water, land, soil and biodiversity) used.” All of these provisions strongly suggest that the information to be supplied must be firmly tethered to the project itself, so that the indirect significant effects to be assessed must be intrinsic to the construction and operation of the project.
107. The alternative interpretation, therefore, seems to me to be the one best suited to the particular circumstances of this case. Important as the EIA Directive undoubtedly is, it was ultimately designed to assist in identifying and assessing the direct and indirect significant environmental effects of a specific project, including (post-2014) the climate change effects of such a project. Yet the proper scope of the EIA Directive should not be artificially expanded beyond this remit and, in particular, it should not, so to speak, be conscripted into the general fight against climate change by being made to do the work of other legislative measures such as the 2021 Act. In this respect, I agree with Humphreys J that these wider indirect environmental consequences of milk production and the dairy sector must really be assessed at a programmatic level by national or sectoral measures in the manner provided for by s. 5 of the 2021 Act.

108. Summing up on this issue, therefore, I take the view that the Board and the Inspector were entitled to find on the evidence that the existing and projected Glanbia milk pool was sufficient to cater for the needs of this factory. To that extent, therefore, it seems at least implicit in the findings of the Board (and the Inspector) that the proposed factory would not have any significant indirect environmental effects, precisely because – as both found – this milk was going to be produced *in any event* by Glanbia farmers and any additional agricultural emissions which might thereby result had already been identified and assessed. In these circumstances, it follows that there will be, in fact, no significant indirect environmental effects as a result of the construction and operation of the factory by reason of the Glanbia milk production.
109. At the same time, it should be acknowledged that having regard to basic economic principles relating to supply and demand, this project is likely nonetheless to strengthen the overall *demand* for milk production, precisely because the 20% of the existing Glanbia milk pool which is currently sold on to other producers will be switched to meet the demands for the new factory. This in turn may well create a market vacuum which will ultimately be catered for by non-Glanbia producers and farmers who may perhaps be tempted to increase their own milk production as a result. Any such assessment must, of course, also be tempered by reason of the other evidence which shows that in any event a yearly 1.5% increase in milk supply is projected by reason of enhanced productivity on the part of all farmers, whether Glanbia suppliers or otherwise.
110. One may thus observe that, viewed from an economic level, any enhanced milk production in the State which follows in the years to come is likely not to be entirely independent of the operation of the factory. Beyond this, however, proof of causality such would satisfy the requirements of the EIA in respect of “direct and or indirect significant environmental effects” remains entirely elusive, contingent and speculative. Its very elusiveness means that it is incapable of measurement or assessment and, hence, cannot be the sort of significant indirect environment effect which Article 3(1) of the Directive must be taken necessarily to contemplate. In these circumstances the present case must be judged to be at the opposite end of the “indirect environmental effects” spectrum when compared with cases such as *An Taisce Edenderry* and *Ó Grianna*.

111. While it is true that this wider economic analysis does not feature in either the EAIR or the Inspector's report or the Board's findings, this, in my view, is irrelevant because any environmental effects which thereby result from the strengthening of the overall demand for milk production cannot be said in any realistic interpretation of this phrase to amount to "indirect significant environmental effects" of this project within the meaning of Article 3(1). This is not to deny the existence of these potential effects or to downplay their significance. Still less is it to say that these effects should not be measured or assessed having regard to the long-term commitments to a carbon-neutral society manifested in the 2021 Act. It is rather that these effects are so remote from the present project that they cannot realistically be regarded as falling within the scope of Article 3(1).
112. For these reasons I would reject the challenge to the adequacy of the EAIR in the present case and affirm the decision of the High Court in that respect.

Part V: Appropriate Assessment and the Habitats Directive

113. I now propose to consider the issue of the Habitats Directive (Directive 92/43 EEC of 21 May 1992) and, specifically, whether the Appropriate Assessment ("AA") required under Article 6(3) of that Directive was satisfactory for this purpose. The requirements of Article 6(3) have been transposed into national law by the provisions of Part XAB of the 2000 Act in general and by s. 177U and s. 177V in particular. Once again, no issue of the transposition of the Habitats Directive arises so far as the present appeal is concerned.
114. The challenge presented by An Taisce under this heading is in many respects – although admittedly not all – similar to that advanced with respect to the EIA, specifically with regard to the potential impact on the various Natura sites by the adverse effects of milk production in the approximately 4,500 Glanbia farms. I propose presently to consider the separate grounds of objection raised by An Taisce but before doing so it is appropriate to say something about the specific nature of the obligations imposed on the national authorities by Article 6(3) of the Habitats Directive.

The obligations imposed on national authorities by Article 6(3) of the Habitats Directive

115. The obligation for an AA arising under Article 6(3) is in respect of a “plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon”. Such a plan or project must then be subject “to appropriate assessment of its implications for the site in view of the site’s conservation objectives.” One must, of course, stress that the project in the present case which requires the AA is the cheese factory itself and not the 4,500 Glanbia farms or, for that matter, those non-Glanbia farms which may be tempted to increase their milk production as a result of the switching of a large volume of Glanbia milk into meeting the proposed factory’s requirements.
116. The general test in this regard is that articulated by the Court of Justice in *Sweetman* (Case C-258/11, EU:C: 2013: 220) (at paragraph 44 of the judgment):
- “So far as concerns the assessment carried out under Article 6(3) of the Habitats Directive, it should be pointed out that it cannot have *lacunae* and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effect of the works proposed on the protected site. It is for the national court to establish whether the assessment of the implications for the site meets these requirements.”
117. The practical implications of this for the functioning of the Board were well articulated by Finlay Geoghegan J in *Kelly v. An Bord Pleanála* [2014] IEHC 400 when she said (at paragraph 48 of the judgment):
- “In accordance with the CJEU decision in *Sweetman*, it is for the national court to determine whether the appropriate assessment (including the determination) was lawfully carried out or reached, and to do so, it appears to me that the reasons given for the Board’s determination in an appropriate assessment must include the complete, precise and definitive findings and conclusions relied upon by the Board as the basis for its determination. They must also include the main rationale or reason for which the Board considered those findings and conclusions capable of removing all scientific doubt as to the effects of the proposed development on the European site concerned in the light of its conservation objectives. In the absence of such reasons, it would not be possible for a court to decide whether the appropriate assessment was lawfully concluded

or whether the determination meets the legal test required by the judgments of the CJEU.”

118. Finlay Geoghegan J went on to point out (at paragraph 49) that the statutory obligation to carry out an AA in accordance with Article 6(3) of the Habitats Directive is one which went to the jurisdiction of the Board and, in contrast to the situation regarding the grant of planning permission, was not one which involved a purely discretionary judgment and assessment by that body.

119. Finlay Geoghegan J then held that an appropriate AA had not, in fact, been carried out by the Board in respect of the proposed windfarm. She noted, for example, (at paragraph 80) that:

“In relation to the potential hydrological/hydrogeological impacts of the construction of the proposed development on Natura 2000 wetlands systems in the vicinity of the site, and in particular, certain turloughs, the Board has not conducted any assessment which includes complete and precise findings and conclusions capable of removing all reasonable scientific doubt as to the effect of the works proposed on the habitat of the Natura 2000 sites in the light of its conservation objectives, having regard, in particular, to the potential indirect effects and lacunae in the information supplied identified by its own Inspector.”

120. This point was also made by Clarke CJ in his judgment for this Court in *Connelly v. An Bord Pleanála* [2018] IESC 31 (at paragraphs 8.15 and 8.16); [2018] 2 ILRM 453 at 472):

“Thus, it seems to me as a result of the foregoing analysis that the overall conclusion which must be reached before the Board has jurisdiction to grant a planning consent after an AA is that all scientific doubt about the potential adverse effects on the sensitive area have been removed. However, there seems, as a matter of EU law, to be a separate obligation to make specific scientific findings which allow that conclusion to be reached. This is apparent from the above passages from *Kelly* and the European case law therein cited.

The analysis in *Kelly* shows that there are four distinct requirements which must be satisfied for a valid AA decision which is a necessary pre-condition to a planning consent where an AA is required. First, the AA must identify, in the

light of the best scientific knowledge in the field, all aspects of the development project which can, by itself or in combination with other plans or projects, affect the European site in the light of its conservation objectives. Second, there must be complete, precise and definitive findings and conclusions regarding the previously identified potential effects on any relevant European site. Third, on the basis of those findings and conclusions, the Board must be able to determine that no scientific doubt remains as to the absence of the identified potential effects. Fourth and finally, where the preceding requirements are satisfied, the Board may determine that the proposed development will not adversely affect the integrity of any relevant European site.”

121. As the decision in *Kelly* itself illustrates this does not *as such* mean that an applicant for judicial review is *obliged* to adduce scientific evidence challenging aspects of the developer’s NIS or, for that matter, the assessment carried out by the Board’s Inspector. While the *legal* burden of demonstrating the invalidity of any grant of planning permission in cases arising under the Habitats Directive will always rest with the applicant, it is clear from the Court of Justice’s decision in *Sweetman* that the *evidential* burden rests with the Board to demonstrate that it has conducted an AA which meets the requirements of Article 6(3). This point was, in any event, confirmed by the judgment of Finlay Geoghegan J in *Kelly* and by that of Clarke C.J. in *Connelly*.
122. This issue arose in the High Court following the first judgment. In that first judgment Humphreys J stated (at paragraph 26):
- “In the present case the main consequence of not having pursued the point in the planning process is that there was no scientific evidence put before the board to contradict the Natura Impact Statement. Consequently, it cannot be maintained now that the board acted in a way which left open scientific doubt when there was no such doubt on the materials which it had.”
123. This point was, however, clarified by Humphreys J in the second judgment in which he refused to grant the appropriate certificate under s. 50A(7) of the 2000 Act where he stated (at paragraph 5):
- “That does not mean that no applicant who does not produce its own evidence can challenge a Natura Impact Statement (NIS). It just means that this particular

applicant cannot because there was not otherwise before the board any “materials which it had” that left open scientific doubt. Those materials could include materials put before the board by the developer and by other parties. For the avoidance of doubt, the board is not obliged to accept an NIS simply because it is uncontradicted. The NIS could have inherent flaws on its face, but I didn’t expressly say that at para. 26 of the No. 1 judgment because that was not demonstrated here and, therefore, was not relevant. You can’t cover everything.”

124. I respectfully agree with the analysis of both Finlay Geoghegan J in *Kelly* and that of Humphreys J as expressed in the second judgment in this case. For my part I consider that such an analysis flows from the requirements of Article 6(3) as interpreted by the Court of Justice in *Sweetman*. This being so we can now turn to the question of considering whether an appropriate assessment was carried out in the present case.
125. The evidence which was before the Board consisted principally of the Natura Impact Statement (“NIS”) dated September 2019, the appeal lodged by An Taisce against the grant of planning permission, the responses of the parties and the report of the Inspector.
126. It is first necessary by Article 6(3) of the Habitats Directive to conduct a screening process and to identify the special areas of conservation (“SAC”) which would be potentially affected by the proposed development. While the actual Slieverue site is not itself situate on an SAC, the NIS identified a range of SACs within the 15km of that site. Two sites in particular – the Lower River Suir SAC and the River Barrow and River Nore SAC – are located within 3km of the boundary of the Slieverue site and the Inspector found (at paragraph 12.4) that “given the current hydrological connection between the site and the Lower River Suir SAC and the River Barrow and River Nore SAC further consideration will be given to these Natura 2000 sites to assess potential adverse effects resulting from the proposed development.” For similar reasons, the Inspector concluded (at paragraph 12.3) that in view of considerations of distance, the lack of hydrological connectivity and the lack of impact pathways, a range of other sites (e.g., the Tramore Back Strand SPA) “have been screened out from further consideration.”
127. In its direction of 25th June 2020 the Board agreed with this conclusion, saying that “the only European sites in respect of which the proposed development has the potential to

have a significant effect are the Lower River Suir SAC (002137) and the River Barrow and River Nore SAC (002162)." No issue, therefore, arises in relation to Stage 1 of the appropriate assessment.

128. As far as the Stage 2 part of the process is concerned, the Inspector set out in detail the various Qualifying Interests of the two sites concerned. Thus, for example, she identified that the site specific objectives of the Lower River Suir site included maintaining the favourable conservation condition of species such as otter while restoring the favourable conservation condition of Atlantic salt meadows (which are salt-tolerant plants which grow close to tidal estuaries), various species of lampreys (which are eel-like fish) and salmon.
129. The Inspector then went on to assess the potential impairment of water quality during the construction phase (at paragraphs 12.22 *et seq.*) before concluding (at paragraph 12.26) that the implementation of the mitigation measures which she proposed would not "have any adverse effects on water quality" within these two river SACs "or species for which they are designated."
130. The Inspector next conducted an analysis of the potential impairment of water quality during the operation phase (at paragraphs 12.27 *et seq.*) arising from the adverse effects of treated process effluent. She considered that these effects could be avoided by a range of measures which she then identified in relation to both the surface water and process water discharge. A key part of this was that there would be a dedicated pipe which would connect with an Irish Water outfall pipe. The combined effluent would then be treated and would discharge into the Lower River Suir. The Inspector then concluded (at paragraph 12.27):

"Average discharge from the proposed development will amount to >0.09% of the average flow of the Lower River Suir. Based on this flow, together with the [best available technology] limits, which will be applied to the discharge from the proposed development...it can be concluded that the treated process effluent will not have an adverse impact on the water quality in the Lower River Suir [SAC] or the River Barrow & River Nore SAC or species for which they are designated."

131. The Inspector then turned to the question of the potential indirect implications on these two Natura sites from the operation of the milk production. She concluded (at paragraphs 12.28 to 12.30) as follows:

“In order to combat adverse effects within the dairy farming milk supply sector, Glanbia is committed to sustainable milk production and has an active Sustainability and Quality Assurance Programme, which is in line with Bord Bia Sustainable Dairy Assurance Scheme (SDAS). The areas of biodiversity and ecology which are considered at farm level assessments include land management, environmental care and carbon footprint, quality and conservation of water, animal health, welfare and biosecurity and the data storage and the responsible use of medicines, pesticides, anthelmintics and other chemicals. Glanbia Ireland is also a supporting partner of the BRIDE (Biodiversity Regeneration in a Dairying Environment) project which aims to design and implement a results based approach to conserve, enhance and restore habitats in lowland intensive farmland. All farms are subject to environmental controls, including controls in the Wildlife Acts and the Habitats and Birds Directive which ensure that they do not significantly adversely affect the integrity of European and other protected sites and so as to ensure the protection of protected species.

The planning application provides a sufficient level of information surrounding the source of milk/milk supply in order to allow for the assessment of the associated indirect impacts to the required extent. There is no evidence of potential for direct habitat loss or fragmentation within designated areas associated with the project or for significant effects on the conservation objectives of any Natura 2000 [SACs].

While it is not practicable to assess potential indirect effects on all Natura sites, it can be concluded in general terms that the continued implementation of the above mentioned programmes and mitigation measures on dairy farms that will supply milk to the proposed development will mitigate potential indirect adverse effects on Natura 2000 sites.”

132. This matter was then considered by the Board in its direction of 25th June 2020 who then concluded:

“...the Board considered that the information before it was adequate to allow the carrying out of an appropriate assessment. In completing the appropriate assessment, the Board considered, in particular, the following:

(a) the likely direct and indirect impacts arising from the development of the proposed development, both individually, when taken together and in conjunction with other plans or projects;

(b) the mitigation measures, which are included as part of the current proposal, and

(c) the conservation objectives for the European sites.

In completing the appropriate assessment, the Board accepted and adopted the appropriate assessment carried out in the Inspector’s report in respect of the potential effects of the proposed development on the aforementioned European sites, having regard to the sites’ Conservation Objectives. In overall conclusion the Board was satisfied that the proposed development, by itself or in combination with other plans or projects, would not adversely affect the integrity of the European Sites, in view of the sites’ Conservation Objectives.”

133. Having considered the appropriate assessment that was carried out in the present case, we may now turn to the three specific grounds of objection raised by An Taisce to the appropriate assessment.

Objection 1: The potential impacts on Atlantic Salt Meadows

134. The first objection is that neither the Board nor the Inspector recorded any conclusion in respect of the potential impacts on Atlantic salt meadows, whether by reason of the operation of the milk supply production or the operation of the factory or both. There is an associated objection to the effect that in the absence of any conclusion, it was unclear whether reliance was placed on mitigation measures to screen out potential impacts on Qualifying Interests such as Atlantic salt meadows. If there was such

reliance, this was said to be contrary to the effect of the decision of the Court of Justice in *People over Wind* (Case C-323/17, EU:C: 2018: 244).

135. In *People over Wind* the Court of Justice held (at paragraph 40) that Article 6(3) of the Habitats Directive precluded the taking into account at the Stage 1 screening stage “of the measures intended to avoid or reduce the harmful effects of the plan or project on that site.” It is, however, perfectly clear that this did not happen in the present case.
136. The Board and the Inspector both referred with approval to the NIS and its associated Tables. Table 6.1 contained in Annex 1 to the NIS addresses the rationale as to why Atlantic salt meadows were screened out:
- “Although the confirmed Atlantic salt meadows occurs ca. 1.2km upstream of the Application Boundary, the potential Atlantic salt meadow is located ca. 40m. south of the Application Boundary. Treated effluent will be piped from the proposed development directly into the existing [Irish Water] outfall, from where it will discharge directly into the Lower River Suir. The increased flowrate will not result in adverse effects to the potential Atlantic salt meadow due to the fact the existing IW discharge pipe is located over 130m. from the nearest potential Atlantic salt meadow and is discharging into an estuarine environment which is a highly dynamic environment. Therefore, this habitat will not be affected. No further assessment is required.”
137. It is thus clear that the only scientific evidence before the Board was that any fluvial discharges from the proposed development would be discharged from a site more than 130m from the nearest Atlantic salt meadow and that this habitat *would not be affected*. It follows that there was no question of any reliance on mitigation measures in order to reach this particular Stage 1 “screening out” conclusion in a manner which would engage the *People over Wind* principle.
138. This conclusion also addresses the objection that neither the Board nor the Inspector addressed the potential implications of the plant for Atlantic salt meadows, since it is plain that they both did so, courtesy of Table 6.1 in Annex 1 of the NIS.
139. It may be convenient when dealing with the next objection if I deal with the implications of the milk supply production issue.

Objection 2: No assessment of the effects of the milk supply production

140. It is true that the NIS did not in terms analyse the impact on the Natura sites of the potential impact of milk production from the individual 4,500 Glanbia farms: see paragraph 7.3 of the NIS. The authors of the NIS evidently adopted this stance because while they concluded that it was not practicable “to assess potential indirect effects on all Natura sites”, they nonetheless took the view that:

“in general terms the continued implementation of the [Glanbia organised farm environmental] programmes and mitigation measures on dairy farms that will supply milk to the proposed development will mitigate potential indirect adverse effects on Natura 2000 sites.”

141. The Inspector took a similar view, saying (at paragraph 12.29 and paragraph 12.30):

“The planning application provides a sufficient level of information surrounding the source of milk/milk supply to allow for the assessment of the indirect impacts to the required extent. There is no evidence of potential for direct habitat loss or fragmentation within designated areas associated with the project or for significant effects on the conservation objectives of any Natura 2000 [site].

While it is not practicable to assess potential indirect effects on all Natura sites, it can be concluded in general terms that the continued implementation of the above mentioned programmes and mitigation measures on dairy farms that will supply milk to the proposed development will mitigate potential indirect adverse effects on Natura 2000 sites.”

142. While it is true that the NIS, the Inspector and the Board all sought to some extent to assess the potential indirect effects of the milk production on the Natura sites, I consider that the short answer to this point is that they were not, as a matter of law, obliged to do so. To repeat, the project to be assessed for the purposes of Article 6(3) was the construction and operation of the cheese factory and *not* the 4,500 Glanbia farms or, for that matter, the thousands of other farms supplying non-Glanbia producers.

Objection 3: The appropriate analysis did not comply with the requirements in Kelly.

143. Here again the objection is that the NIS did not address the potential environmental impacts of milk production at the specific farm level. Yet again, however, it is necessary to stress in response that quite apart from the fact that any obligation to conduct an appropriate assessment of these 4,500 farms would have been completely unrealistic and impractical, the language of Article 6(3) is particularly clear in that the assessment is tied to the project itself, as distinct from the inputs to the project.
144. In this regard it may be recalled that in *Kelly* Finlay Geoghegan J. addressed herself the Article 6(3) implications of the windfarm project which was at issue in that case. She noted that the scientific evidence before the Board had clearly identified matters arising from the construction and operation of the windfarm project which impacted on the integrity of a nearby Natura site (such as, for example, the potential impact on the water fowl and waders by reason of the disturbance of feeding/roosting/commuting area and interference with natural flight lines and potential bird strikes). There was, moreover, no evidence that the Board had conducted any analysis of this issue itself in circumstances where it had disagreed with the findings of its own inspectors.
145. The key point, however, is that this judgment proceeds on the basis that the project was the construction and operation of the windfarm itself. By the same token the obligation on the Board in the present case was to ensure that the environmental effects of the construction and operation of the cheese factory on the two nearby SAC sites that might be affected were appropriately assessed. This, I consider, it has done for all the reasons I have just set out.
146. For these reasons, therefore, I would reject the contention that the Board did not comply with the requirements of Article 6(3) of the Habitats Directive in granting permission for this site.

Part VI: Arguments based on the Water Framework Directive

147. I now turn to consider the arguments advanced by reference to the Water Framework Directive (“WFD”) of 23rd October 2000 (Directive 2000/60/EC). I propose to consider these arguments on their own merits, even though I am conscious of the fact that both

the Board and Glanbia contend that at least some of these issues were never pleaded and properly fall outside the scope of the proceedings. It is equally unnecessary to decide whether An Taisce can raise these points even though they were never raised during the course of the planning process before either Kilkenny County Council or before the Board. Adopting the same approach as Humphreys J did in the High Court, I will assume in An Taisce's favour that it can do so.

- 148.** The essence of the case advanced by An Taisce under this heading is two-fold. First, it contends, relying on the judgment of the Court of Justice in *Bund für Umwelt und Naturschutz Deutschland eV ("Weser")* (Case C-461/13, EU:C: 2015: 433) that the Board was precluded by Article 4(1) of the WFD from granting permission for the cheese factory. In *Weser* the Court of Justice held that, absent a derogation for this purpose, Member States were precluded from granting authorisation for a particular project where it may cause a deterioration of the status of a body of surface water. The argument here is that the discharges from the cheese factory in the present case would introduce additional pollutants into the river in circumstances where that waterbody had not achieved "good" status for the purposes of Article 28 of the Surface Water Regulations 2009 (SI No. 272 of 2009).
- 149.** It is clear, however, from Table 6.1, Annex 1 of the NIS that these discharges will be into the lower River Suir via an Irish Water outfall pipe which itself is located a few hundred metres from the southern boundary of the factory site. It is not, however, in dispute but that the status of the lower River Suir during this period was "good". There was accordingly no impediment on *Weser* grounds by reference to Article 4(1)(a) of the WFD to the Board granting permission.
- 150.** The second argument is a variant of a consistent theme running through this entire appeal, namely, that the projected enhanced milk production from Glanbia farms should be regarded as part of a wider project for which development consent has been sought. In other words, it contends that as such enhanced milk production is likely in turn to lead to greater discharges into the various watercourses either on or adjacent to the 4,500 farms that currently supply Glanbia with milk, this was a factor which should at least have informed the Board's thinking having regard to Article 4(1)(a) of the WFD prior to the grant of planning permission for the site.

151. As it happens the term “project” is not even used in the WFD itself. In *Weser*, however, the Court of Justice reasoned that the general obligations devolved on Member States by Article 4(1)(a) to ensure that there was no deterioration in water quality precluded the grant of development consent where it would have the effect of compromising the water quality in question. These comments were, however, made in the context of the grant of three separate development consents for the development of a specific project, namely, the construction of a navigable channel from the River Weser from inland at Brake to the high seas beyond Bremerhaven.
152. In the present case the nature of the project is clear in that it refers to the construction and operation of the cheese factory. It would, with respect, be entirely unrealistic to say that the principles in *Weser* could be applied beyond the confines of anticipated discharges from the factory (whether in the course of construction or its operation) into watercourses. As it happens, the approximately 4,500 Glanbia supplier farms are dispersed throughout the counties of the south-east and south Leinster areas generally. The evidence was that approximately 75% of these farms have watercourses on their lands and, in any event, one may fairly surmise that virtually all of these farms lie proximate to streams, rivers and lakes. The suggestion that the Board should consider and examine discharges from each of these 4,500 farms in order to ascertain compliance with the requirements of Article 4(1)(a) of the WFD prior to granting planning permission in the present case is, again with great respect, simply divorced from reality.
153. That, of course, is not for a moment to suggest that polluting discharges from individual farms into watercourses (whether into watercourses on their lands or adjacent thereto) is not of importance. It is rather to say that these are matters which fall to be considered separately from the grant of planning permission in respect of this cheese factory. They do not fall to be considered in this context because the supply from these farms is not part of the project which is the subject of this application for planning permission.
154. It follows, therefore, that for these reasons I would reject the appeal so far as it concerns alleged non-compliance with the requirements of the WFD.

**Part VII: Whether to make an Article 267 TFEU reference
to the Court of Justice**

155. An Taisce have pressed this Court, if necessary, to make a reference to the Court of Justice concerning the interpretation of Article 3(1) of the EIA Directive so far as it concerns the meaning in particular of the words “the indirect significant effects of a project.” This Court is, of course, a court of last resort for the purposes of Article 267(3) TFEU. Accordingly, in view of the recent decision of the Court of Justice in *Conorzio Italian Management* (Case C-561/19, EU:C: 2021: 799) and the comments of that Court (at paragraph 51 of the judgment) regarding the nature of the obligation to refer which is imposed on courts of last resort, it is appropriate to record why I did not think it necessary to make a reference of any question of the interpretation of EU law to that Court.
156. It is true that the Court of Justice has not had to pronounce on the proper interpretation of the “significant indirect effects” aspect of Article 3(1) of the EIA Directive. There may indeed be instances of where a court of last resort might feel called upon to make an Article 267 reference on this very point, but I do not consider that the present case is really one of them. The difficulty here is that no acute point of interpretation is really presented by this appeal: it really shades into issues of fact and the application of established principles of EU law. If there were two possible conflicting *a priori* interpretations of Article 3(1) the Directive the resolution of which could guide this Court and assist in the disposition of this appeal, it would, of course, be a different matter. Yet none have presented themselves, whether for the purposes of this appeal or, for that matter, in the course of the earlier case-law.
157. For those reasons I consider that the present appeal in substance concerns the application of EU law, rather than any question of interpretation as such. It is for this reason that I consider that no Article 267 TFEU reference is, in fact, necessary.

Part VIII: Overall conclusions

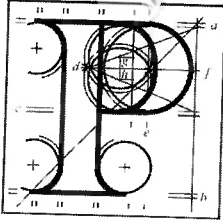
158. In summary, therefore, for the reasons stated, I would dismiss the appeal of An Taisce and uphold the decision of Humphreys J. in the High Court.

Part IX: Costs

159. As this judgment is being delivered electronically, it may be convenient if, for the assistance of the parties, I should here express a provisional view on the issue of costs.

Although An Taisce has lost its appeal and its challenge to the grant of planning permission in respect of the factory has been dismissed, it has nevertheless raised important and practical issues regarding the development consent process. In these circumstances, and quite independently of any arguments that may arise in relation to either s. 50B of the 2000 Act or, for that matter, ss. 3 and 4 of the Environment (Miscellaneous Provisions) Act 2011, I consider that it would be appropriate that each side would abide its own costs. (The Attorney General has, in any event, agreed to abide his own costs).

- 160.** The parties are, of course, free to dispute this provisional view. If, however, any party wishes to contend for a different costs order, they should inform the Supreme Court Office within fourteen days of the delivery of this judgment.



An
Bord
Pleanála

Inspector's Report
ABP-306136-19

Development

Seven-year planning permission for a continental cheese manufacturing plant. Retention of and alterations to the existing construction compound which will be removed on completion of the works. EIAR and a NIS submitted with planning application.

Location

IDA Ireland, Belview Science and Technology Park, Gorteens, Slieverue, County Kilkenny.

Planning Authority

Kilkenny County Council

Planning Authority Reg. Ref.

19668

Applicant(s)

JHOK Ltd

Type of Application

Permission

Planning Authority Decision

Grant with Conditions

Type of Appeal

Third Party

Appellant(s)

An Taisce

Observer(s)

None

Date of Site Inspection

30th April 2020

Inspector

Mary Crowley

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1.0 Site Location and Description

- 1.1. The appeal site with a stated area of 10.32 ha is located in the IDA Ireland Science and Technology Park in Belview, 3km east of Waterford City. The Park measuring 60.9 ha is on the Belview Port Road, thus providing direct access to Belview Port. The appeal site is accessed from the N29 via the L3412 local road.
- 1.2. The site is currently under agricultural use and is adjacent to the Glanbia Ireland Milk Processing Plant to the north. To the east of the site is an access road, with a local road forming the western boundary of the site. To the south is further vacant IDA land. The appeal site is undeveloped, save for an area at the eastern end that contains an existing construction compound and car parking area associated with the planning permission for the Milk Processing Plant (ABP PL10.241077 (Reg Ref 12/324)) on the neighbouring site and its subsequent expansion in 2018 - 2019 (Reg Ref 17/153).
- 1.3. The River Suir is ca 660m to the south. The Irish Water wastewater treatment plant serving Waterford is located adjacent to the River Suir, c.350m south of the site.
- 1.4. The applicant, JHOK Ltd; is a joint venture formed between Glanbia Ireland and Royal A-ware (Netherlands) to develop the proposed Continental Cheese Facility.
- 1.5. A set of photographs of the site and its environs taken during the course of my site inspection is attached. I also refer the Board to the photos available to view on the appeal file. These serve to describe the site and location in further detail.

2.0 Proposed Development

- 2.1. A seven-year planning permission is sought for a Continental Cheese manufacturing plant. The gross floor space of the proposed works is 27,836 sqm (6 no buildings).
- 2.2. The development will include a part single storey and part two storey production building approximately 14 metres high with intakes, processing plant and equipment, packing, stores, dispatch, offices, laboratories, utilities and personnel facilities; a 10 bay milk intake and cream dispatch building approximately 11 metres high and associated plant and equipment with office, milk testing and personnel facilities; storage silos up to 28 metres high for milk, whey and water; pipe and service bridges, salt silos and brine mixing; sprinkler storage tank and pumphouse; waste water

treatment plant comprising balancing, waste water treatment and sludge drying and a truck wash; waste recovery compound and store and a monitoring building.

- 2.3. Site development works will include earthworks; security fencing; traffic barriers; a new entrance; internal roads and paved areas; car, truck and bicycle parking; drains and services; connection to existing water main and foul drain in the Park and a treated wastewater outfall pipeline from the on-site wastewater treatment plant to the existing Irish Water outfall within the Waterford City Wastewater Treatment Plant at Gorteens; attenuation ponds; fire water retention pond; site lighting; signage and landscaping.
- 2.4. The scheme comprises the production of continental cheeses using predominantly milk with some salt as raw materials. It is estimated that the proposed development will produce 52,000 tonnes of cheese on an annual basis. The development will operate 24 hrs / day, 7 days / week, 40 weeks / year with 80 no employees. In terms of waste product whey and cream will be returned to Glanbia for further processing and effluent will be treated in the wastewater treatment plant. Domestic waste and packaging will be stored in bins and recycled or disposed of by licensed waste collectors.
- 2.5. Permission is also sought for the retention of and alterations to the existing construction compound which will be removed on completion of the works.
- 2.6. The development consists of an activity for which an Industrial Emissions Licence is required. It is stated that the applicant has applied for an IPCC License.
- 2.7. The application was accompanied by the following:
- Environmental Impact Assessment Report (EIAR)
 - Natura Impact Statement (NIS)
 - Cover letter
 - Letter from IDA Ireland to Glanbia consenting to the making of a planning application
 - Letter from Irish Water giving the applicant permission to submit a planning application that includes lands owned by Irish Water at Waterford City Wastewater Treatment Plant.

3.0 **Planning Authority Decision**

3.1. **Decision**

3.1.1. Kilkenny County Council issued a notification of decision to grant permission subject to the following 15 no generally standard conditions. It is noted that Condition No 6 and No 9 are the same.

3.2. **Planning Authority Reports**

3.2.1. **Planning Reports**

- The **Senior Planner** having considered the application documentation, the EIAR submitted, NIS submitted, the National and Regional policy objectives and the adopted Local Areas Plan for the area, considered that the development, subject to implementation of the required mitigation measures, would not have any significant impact on the immediate environment of the development or the conservation objectives of the River Suir SAC and therefore recommended that permission be granted subject to 15 no conditions. The notification of decision to grant permission issued by Kilkenny County Council reflects this recommendation.

3.2.2. **Other Technical Reports**

- **Road Design** – No objection subject to conditions relating to the agreement of a Road Maintenance Plan; implementation of a Traffic Management Plan for the construction and operational phase of the development, which prohibits HGV's turning west at the IDA Roundabout onto the LP412 Abbey Road when existing the IDA Science & Technology Park; delineation of all car parking spaces and all external lighting to be of an energy efficient lighting design.
- **Kilkenny Fire Services** - A fire Safety Certificate is required before works commence on site.

3.3. **Prescribed Bodies**

- **Department of Culture, Heritage and the Gaeltacht** – No stated objection subject to conditions relating to archaeological monitoring.

- **Inland Fisheries Ireland** - Queries the suspended solids concentration of 50mg/l and seeks a maintenance contract for the oil interceptor.
- **HSE** – Stated that mitigation measures outlined are adequate to protect public health with emphasis on the requirement to ensure that all mitigation measures proposed are implemented by the developer. Specific requirements are set out in the report.
- **Irish Water** - No objection subject to conditions
- **An Taisce** - It is considered that the application is premature pending review of CAP and that the EIAR and Natura Impact Assessment are systematically deficient. Reference is made to the Boards decision in relation to Shannonbridge Peat Power Plant, Co Offaly (ABP-303108-18 refers).

3.4. **Third Party Observations**

There are two third party observations recorded on the planning file from (1) The Friends of the Irish Environment and (2) the Belview Residents Association. The issues raised may be summarised as follows:

3.4.1. **Belview Residents Association**

- Revised EIAR and associated reports required based on the overall expansion of the current dairy processing site and not on the “stand alone” smaller site as detailed in the application.

3.4.2. **Friends of the Irish Environment**

- **EIA Directive** - The EIAR does not meet the basic information provisions of the Directive with regard to direct and indirect impacts on the material supply source required for the project i.e. milk supply landholdings and the increase in milk production generated. There is a cumulative impact with the existing milk powder plant, and other existing and proposed milk processing plants, regionally and nationally that should be considered.
- **Habitats Directive** – The milk supply source together with its cumulative impact taking into account the plant discharge at Belview including in the Barrow Nore and Suir SAC catchments requires AA.

- **Nitrates Directive & Nitrates Derogation Impact** – Map and landowner or operator name identification is required to establish the extent of existing and any additional Nitrates Derogations arising on the milk supply source for the project.

4.0 **Planning History**

4.1. There has been a number of developments on these IDA landholdings in recent years reflected in the planning history listed below. All these permissions relate to the Glanbia lands immediately north of the proposed site.

- **ABP PL10.241077 (Reg Ref 12/324)** – Glanbia Ingredients (Ballyragget) Ltd were granted permission in January 2013 for a new dairy processing and manufacturing facility for the manufacture and development of dairy products subject to 10 no generally standard conditions.
- **Reg Ref 14/19** – Glanbia Ingredients Ireland DAC were granted permission in April 2014 for amendments to the previously approved development (Planning Ref.12/324 and An Bord Pleanála Ref: 241077.
- **Reg Ref 14/482** – Glanbia Ingredients Ireland DAC were granted permission in January 2015 for amendments to two previous permissions; ABP PL10.241077 (Reg Ref 12/324) and Reg Ref 14/19.
- **Reg Ref 17/77** – Glanbia Ingredients Ireland DAC were granted permission in June 2017 for an extension to the existing milk powder processing plant, extensions to the existing Administration Building and site works including roads and car parking. It is stated in the current appeal that this development has not commenced.
- **Reg Ref 17/153** – Glanbia Ingredients Ireland DAC were granted permission in July 2017 for extensions to the existing Dairy Processing Facility.
- **Reg Ref 17/775** – Glanbia Ingredients Ireland DAC were granted permission in March 2018 for a screening berm at the existing Dairy Processing Facility.
- **Reg Ref 19/378** - Glanbia Ingredients Ireland DAC were granted permission and retention permission in August 2019 for various developments and amendments to permission Reg Ref 17/153.

4.2. The following appeal cases are referenced in the appeal:

- **Glanbia Portlaoise ABP-302886-18 (Reg Ref 18/205)** – The Board granted permission in 2019 for a mozzarella cheese manufacturing facility at Togher National Enterprise Park, Portlaoise, Co Laois subject to conditions.
- **ESB Shannonbridge ABP-303108-18** – The Board refused planning permission in 2018 for the continued operation of the existing West Offaly Power Station beyond 2020 and the phased transition to operating solely on renewable biomass for the following two reasons as summarised:
 - 1) The cessation of the use of peat as a fuel is essential in addressing the generation of excessive greenhouse emissions in meeting the states climate change obligations.
 - 2) Public safety by reason of traffic hazard and obstruction of road users.
- **Dairygold Mogeely ABP PL.249108 (Reg Ref 16/7031)** – The Board granted permission in 2018 for a new cheese production facility and upgrade of the existing Dairygold Food Ingredients Facility subject to conditions.
- **Edenderry Power Limited ABP PL.245295 (Reg Ref 15/129)** – The Board granted permission in 2016 for an extension of the continued uses and operation until 2030 of previously permitted peat and biomass co-fired power plant subject to conditions.

5.0 Policy Context

5.1.1. National Planning Framework

- 5.1.2. The **National Spatial Strategy 2002 – 2020** makes specific reference to Belview Port and its strategic importance for the continued development and enhancement of the critical mass of the South-East Region in particular the Gateway of Waterford, whilst facilitating the growth of Wexford and Kilkenny as hubs. The Plan states inter alia:

Waterford, Kilkenny and Wexford will drive regional growth by providing a large and skilled population base, substantial capacity for additional residential and employment related functions and improving transport network.

In the South East, there is substantial potential for the enhancement of critical mass through the further expansion of the existing designated gateway of Waterford, including the port at Belview

5.1.3. The **National Planning Framework (2018)** (NPF) acknowledges the importance of ongoing investment in the agri-food sector, to underpin the sustainable growth of the sector, as set out in Food Wise 2025. The increase in agri-food exports, value added, primary production and creation of additional jobs are all encouraged. The NPF states that *“the agri-food sector continues to play an integral part in Ireland’s economy and is our largest indigenous industry, contributing 173,400 direct jobs and generating 10.4% of merchandise exports in 2016”*. Policy objectives relevant to the proposed development include:

National Policy Objective 23 - *Facilitate the development of the rural economy through supporting a sustainable and economically efficient agricultural and food sector, together with forestry, fishing and aquaculture, energy and extractive industries, the bio-economy and diversification into alternative on-farm and off-farm activities, while at the same time noting the importance of maintaining and protecting the natural landscape and built heritage which are vital to rural tourism.*

5.1.4. **FoodWise 2025**, launched in 2015 and succeeding Food Harvest 2020 sets out a ten-year plan for the agri-food sector. It identifies growth opportunities for the Irish agri-food and fisheries sector that are expected to arise due to significant population increases and greater access to international markets. It identifies the following growth projections for the industry over the next ten years including:

- 85% increase in exports to €19 billion;
- 70% increase in value added to €13 billion
- 65% increase in primary production to €10 billion and
- The creation of 23,000 additional jobs all along the supply chain from producer level to high-end value-added product development.

5.1.5. **Regional Planning Policy**

5.1.6. The Southern Regional Assembly has prepared a **Regional Spatial and Economic Strategy (RSES) for the Southern Region** for the period 2019-2031 that came into effect on the 31st January 2020. The RSES provides a long-term regional level strategic planning and economic framework in support of the implementation of the National Planning Framework for the future physical, economic and social

development of the Southern Region and includes Metropolitan Area Strategic Plans (MASPs) to guide the future development of the Region's three main cities and metropolitan areas – Cork, Limerick-Shannon and Waterford. The RSES identifies Belview as a strategic employment location for the Waterford MASP and refers to the importance of enhanced access to Belview Port, with regards to the growth of the Waterford Metropolitan Area.

5.1.7. **County Development Plans**

5.1.8. The **Kilkenny County Development Plan 2014 – 2020** identifies Belview as a strategic location for enterprise and employment and as a strategic national, regional and county asset. It is a strategic aim to:

“To implement the provision of the Regional Planning Guidelines and to target the growth of Kilkenny City, Ferrybank / Belview, the District Towns, the other settlements in the hierarchy and rural areas to advance sustainable development.”

5.1.9. The site is located within the IDA lands adjoining Belview Port that is identified as one of two regionally and nationally important strategic locations for enterprise and employment. The Plan commits to the continued development of the Waterford City environs, in particular the Belview Industrial Area:

“Substantial investment is taking place at Belview as a result of the infrastructural improvements, including the construction of a new milk processing plant at Glanbia”

5.1.10. As documented the lands are located on the edge of Waterford City, albeit that they are located in the jurisdiction of Kilkenny County Council. However, the **Waterford City Development Plan 2013 – 2019** includes an objective seeking to promote industrial development in the Belview areas, where the subject proposal is located, as follows:

“To promote and develop the national role of the Port of Waterford and Belview Industrial Zone (OBJ 3.0.7)

5.1.11. **Local Area Plan**

5.1.12. The **Ferrybank Belview Local Area Plan 2017** makes direct reference to the IDA Science and Technology Park and provides support for the further development of the area:

“The Industrial Development Agency (IDA) own a strategic site in Belview, which comprises 18 hectares of land, see Figure 5.1 Belview.

In 2013, Glanbia were granted permission for a new dairy processing and manufacturing facility, which opened in 2015. Glanbia now own their site. As part of the IDA strategy for the Belview area and building on the successful development of Glanbia Ingredients the Plan augments the IDA land bank in the area by zoning an additional 27 hectares of land as Industrial Technology Park adjacent to the Glanbia facility.

5.1.13. Further to this, it contains the Zoning Objective for the Ferrybank – Belview area. The application site is zoned **ITP Industrial / Technology Park**, with the following objective:

“To provide for industry, technology and the expansion of Belview Port”

5.1.14. The permissible uses encompassed within the Zoning Objective includes car park, **industry (general industrial use)** and ancillary office, industrial (light) silos and storage areas, storage tanks including bulk liquid storage and general warehousing. (emphasis added).

5.2. **Natural Heritage Designations**

5.2.1. There are no natural heritage designations within the appeal site. The Lower River Suir SAC is c 660m to the south of the appeal site. Other sites considered relevant to this appeal site include River Barrow & River Nore SAC, Bannow Bay SAC, Tramore Dues & Backstrand SAC, Bannow Bay SPA and Tramore Back Stand SPA.

5.3. **EIA Screening**

5.3.1. An EIAR was submitted with the application as it exceeds thresholds specified under Planning and Development Regulations 2001-2018 Schedule 5, 7(c) Part 1 which sets out the categories and scale of development that require mandatory EIA as follows:

“installations for manufacture of dairy products, where the processing capacity would exceed 50 million gallons of milk equivalent per annum”.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The detailed third-party appeal has been prepared and submitted by **An Taisce** and may be summarised as follows:

6.1.2. Environmental impacts of bovine agriculture and dairy production

6.1.3. The adverse environmental impacts of bovine agriculture are well documented. It is crucial that these impacts in relation to the milk supply for the proposed cheese plant are thoroughly assessed in line with the requirements of the EIA and Habitats Directive. Any increase in Irish dairy production is untenable.

- **Water quality** – The EPA report on Water Quality in Ireland 2013 – 2018 concludes that increased nitrogen runoff from agriculture is one of two primary drivers of this decline and that nitrogen pollution has worsened since 2013 as cattle numbers and fertiliser use have increased.
- **Biodiversity loss** – The last six yearly Article 17 (Habitats Directive) report (August 2016) to the European Commission on the status of EU protected habitats and species in Ireland found that over 70% of protected habitats are adversely impacted by agricultural pressures. Intensive grazing and overgrazing was the most prevalent pressure.
- **Greenhouse Gas Emissions (GHG)** – GHGs from agricultural account for one third of Ireland's total emissions. The Irish bovine agricultural lobby repeatedly claims that Ireland is a world leader in carbon efficiency. Ireland is the most carbon-intensive beef producer in Europe, and ranks as Europe's third highest on emissions from its dairy sector (UN).
- **Air pollution** – Ireland is already in breach of the National Emissions Ceiling Directive and is legally obliged under the Directive to decrease its ammonia emissions by 2030. Intensifying bovine agriculture in Ireland will make achieving these targets extremely difficult.

- 6.1.4. **Details of the proposed milk supply**
- 6.1.5. The EIAR and NIS state that the milk for the proposed cheese plant will be primarily sourced from Glanbia's own milk suppliers, approximately 4,500 farms. The EIAR notes that the specific farms cannot be identified, but that all of Glanbia's suppliers are located in the eastern portion of the country.
- 6.1.6. The EIAR also noted that 75% of Glanbia dairy farms have a stream or other watercourses running through or adjacent to the farm. Despite this, only 57% of Glanbia's farms have nutrient management programmes to mitigate water quality deterioration (EIAR Section 7.8.3 refers).
- 6.1.7. The EPA Water Quality in Ireland 2013 – 2018 report (December 2019) states that increasing nitrogen levels are of particular concern in the southeast of Ireland, where the majority of these Glanbia dairy farms supplying the proposed plant are located and where most of the current dairy intensification is occurring.
- 6.1.8. According to the EIAR (Section 9.2), Glanbia's Milk Planning Census of 2019 – 2023 (which covers 86% of the company's milk pool) is projecting a 1.5% year on year productivity increase from the existing herd. They expect a supply increase from 2,347 million litres in 2018 to 3,014 million l 2023 (28% increase). The EIAR also states that a significant portion of the milk supply for the proposed cheese plant is already available and being sold to other processors. They therefore claim that the proposal will not require an increase in the dairy herd.
- 6.1.9. The EIAR has not provided any data to indicate that a productivity increase would not result in additional GHG and nitrogen emissions. Ultimately, regardless of whether the subject proposal will increase the dairy herd and intensify production, Ireland has an obligation to cut GHG emissions which will require *reducing* dairy production, not merely keeping it stable at current levels and certainly not increasing it.
- 6.1.10. **Precedents**
- 6.1.11. **Edenderry** – There are parallels between this appeal case and the High Court ruling on Bord na Mona's Edenderry Power Plant (ABP PL.19.245295) (An Taisce -v- An Bord Pleanála [2015] IEHC 633). In this case, it was ruled that there was "functional interdependence" between the power plant and the Bord na Mona bogs identified in the planning application. It was decided that the source of the fuel should have been

considered as part of the application for the continued operation of the power plant and that you cannot “exclude completely the consideration of the indirect effects”. Given the comparable relationship with the source of the milk and the proposed cheese plant, An Taisce submits that the source of the milk and environmental impacts associated with milk production must be considered when assessing the subject application.

6.1.12. **Shannonbridge** - In July 2019, An Bord Pleanála refused permission for the continued operation of the County Offaly Shannonbridge peat power plant (ABP PL.19.303108) with progressive biomass co-firing on a range of grounds; including inadequate assessment of the direct and indirect impacts of continued peat extraction from the supply bogs identified. The Board also stated that the continued harvesting and burning of peat would run counter to national climate mitigation policy. It is considered that increased dairy production and processing would similarly run counter to national climate policy.

6.1.13. **Legal requirements of the Habitats Directive**

6.1.14. It is now well established in law that approval can only be granted for plans and projects when it has been established beyond all reasonable scientific doubt that the subject proposal will not adversely impact any Natura 2000 sites. Reference is made to Case C-258/11, Sweetman & Others v An Bord Pleanála & Others and the Kelly v An Bord Pleanála & Other [2013 No 802 J.R.]. If uncertainty exists regarding the potential impact of any proposed development full account should be taken of the precautionary principle, and the development should be refused.

6.1.15. **Habitats Directive**

6.1.16. In light of the above An Taisce submits that granting approval for the subject proposal would contravene Article 6(3) of the Habitats Directive for the following reasons.

- 1) It is stated multiple times in the application that although the milk will primarily be sourced from Glanbia farms, the exact farms and their locations are uncertain and would likely change year to year.
- 2) Given, the known potential for adverse impacts of bovine agriculture on the environment, and the number of Natura 2000 sites, in the Glanbia dairy farm

catchment area, the majority of which are water based it is considered that the impacts of the dairy farms must be evaluated in the Appropriate Assessment. The fact that the localities of the farms from which the milk will be sourced are uncertain means that the potential impact on nearby Natura 2000 sites cannot be properly assessed and definitive findings cannot be reached.

3) It is considered that the lack of information on the milk source farms in the subject application is analogous to the lack of information on the biomass source in the Shannonbridge Power Plant and that it therefore cannot reasonably be determined that the indirect effects of the proposed cheese plant on the environment would be mitigated.

4) While completing an Appropriate Assessment for all 4,500 Glanbia farms may indeed be impractical, it is noted that *none* have been assessed, not even those in closest proximity Natura sites.

5) The NIS and EIAR outline the various sustainability programmes in which Glanbia farms participate and upon which the applicants claims of no adverse indirect impacts as a result of the milk supply are largely predicated. The fact that the NIS's conclusion that these programmes will mitigate any adverse impacts is made "in general terms" indicates a lack of definitive findings.

6.1.17. There is no data or other evidence to indicate that these programmes have actually made demonstrable environmental improvements in water quality, GHG and ammonia emissions reduction, biodiversity protection etc.

6.1.18. **Other considerations**

6.1.19. **Cumulative impacts** – The EIAR has failed to adequately assess the cumulative impacts of the subject proposal in combination with other existing, proposed and expanded dairy-reliant projects such as Glanbia at Togher, Portlaoise, Co Laois and the Norwegian TILE Cheese factory in conjunction with Dairygold at Mogeely, Co Cork. It should also be assessed against other plans and projects that fall under FoodWise 2025 in relation to dairy and beef expansion.

6.1.20. **Greenhouse gas mitigation in a time of climate emergency** – In light of the intensification of dairy production required to meet the demands of the subject proposal (and in combination with other existing and proposed dairy developments),

An Taisce consider that a grant of permission would contravene the Climate Action and Low Carbon Development Act 2015.

6.1.21. The appeal was accompanied by the following:

- *“Look what happened in the Netherlands – Hogan warns Irish dairy sector on environment”* (Article Farming Independent)
- Board Order ABP-303108-18

6.2. Applicant Response

6.2.1. The first party response has been prepared and submitted by Tom Philips & Associates in association with Malone O'Regan and Arthur Cox Solicitors and may be summarised as follows:

6.2.2. The environmental impacts associated with the proposal have been fully addressed in accordance with the EIA and Habitats Directive. The proposed development would result in proper planning and sustainable development, in accordance with national climate change legislation and the policies and objectives of the *Kilkenny County Development Plan 2014 – 2020* and the *Ferrybank-Belview Local area Plan 2017* (LAP) and other relevant considerations.

6.2.3. Description of Development

6.2.4. The description of development that appeared on the Statutory Notices for the planning application included reference to “retention” as follows:

“The application also seeks retention of an alterations to the existing construction compound which will be removed on completion of the works”

6.2.5. The construction compound is already in existence on the site and importantly was granted planning permission in July 2017 (Reg Ref 17/153) in respect of the extension to the Milk Processing Plant granted planning permission in January 2013 (ABP PL10.241077 Reg Ref 12/324). The compound supports the ongoing works associated with the neighbouring development and would cease once the associated works are complete.

6.2.6. Details of the milk supply source

- 6.2.7. The planning submission provides a sufficient amount of information surrounding the supply of milk in order for a sufficient level of assessment surrounding any potential related impacts, either direct or indirect, to be undertaken and robustly concluded. It is impossible to state definitively the exact number of farms that will supply the proposed development as some farms may change their structure in the future. Nevertheless, it is important to note that there will be no appreciable land-use change as a result of the proposed development.
- 6.2.8. As highlighted in Section 2.9 of the EIAR, in addition to the significant portion of milk that is already available within the system (but being sold to other industrial processors at present), an increase of 1.5% productivity gain, year on year, from the existing dairy herd, is expected across farms in Ireland, and also within Glanbia's milk pool. This will be coupled with a modest herd expansion on existing farms. Productivity increase is based on increasing efficiency at the farms, including more efficient grassland management. This would result in improved soil health and thus lower nitrogen emissions. Glanbia proactively promotes scientific-based mitigation measures, which are detailed in Section 8.8 "Indirect Impacts" of the EIAR. For clarity this increase in milk production would occur regardless of whether the proposed development takes places or not.
- 6.2.9. An Taisce has utilised the appeal as an opportunity to object to the intensification of dairy at a national level, for example, through its reference to FoodWise 2025 and Ireland's obligation as a nation. An Taisce's position directly conflicts with the National Climate Change Action Plan 2029, which is based on the Teagasc Marginal Abatement Cost Curve (MACC) Report (refer to Section 10.8.2 "Measures for GHG Emissions Reduction") which allows for a modest increase in the national dairy herd size with implementation of mitigation measures. The National Climate Change Action Plan 2019 details targets for Green House Gas (GHG) emissions from agriculture, as well as mitigation measure that will enable the achievement of such targets.
- 6.2.10. **Environmental Impacts of bovine agriculture and dairy production**
- 1) **Water quality** - The proposed development will not cause intensification of dairy, nor will indirect impacts have significant effects after implementation of mitigation measures, as outlined in Section 8.8 "Indirect Impacts" of Chapter 8 of the EIAR. That section details numerous programmes and mitigation measures implemented

by the Government and Glanbia to mitigate against nitrogen. The proposed development will not result in adverse impacts on water quality and the integrity and conservation status of the qualifying interests of SACs and SPAs will not be adversely impacted upon.

- 2) **Biodiversity Loss** - Indirect impacts on biodiversity were assessed in the Chapter 6 "Biodiversity" where it was concluded there would be no significant impacts on biodiversity. In Chapter 8 "Water", Section 8.8 "Indirect Impacts", it was concluded that there would be no impact on water quality and no impact on biodiversity in aquatic habitats. Detailed mitigation measures will be incorporated within the development with long-term residual impacts on ecology being concluded to be insignificant. The NIS concluded that the proposed development "*would not cause any adverse impacts on any European designated site or any of their designated features of interest given the proposed mitigation measures to be implemented*" (Section 6, Non-Technical Summary of the EIAR).
- 3) **Greenhouse Gas Emissions** - In February 2019 the UN Food and Agricultural Organisation (FAO) confirmed to the Department of Agriculture, Food and the Marine that their model "*should not be used for inter-country comparisons at this point*". An Taisce has misapplied the GLEAM-I model in order to support its argument. It is submitted that the EIAR is based on a robust data set. Glanbia is fully committed to the Government's climate change policy and supports mitigation measures.
- 4) **Air Pollution** - Ammonia emissions which are indirect impacts relating to air quality from dairy farming are robustly addressed in the EIAR Section 8 Air Quality 9.8 Indirect Impacts. The Government and Teagasc have programmes (*Code of Good Agricultural Practise* and MACC for ammonia emissions) in place to address these emissions with the projected dairy productivity and dairy herd size increase. As the milk supply for the proposed development is accounted for in the national projected milk supply in Ireland, the proposed development will have no impact on Ireland reaching these targets.

6.2.11. EIA & Habitats Directive

- 1) **Habitats Directive** – Impacts from dairy farming on air, water, soil and Natura sites are impacts that will arise at an operational level. The assessment of indirect

effects on an individual farm level is not only impractical and unreasonable but is also not in spirit of either the EIA Directive or the Habitats Directive. Glanbia also ensures that best agricultural practises are implemented to prevent and minimise emissions but responsibility for policing emissions from farms is a matter for both local authorities and Government Agencies. Further to this An Taisce submits that there is a functional interdependence between the proposed facility and the individual farms from which they source their milk. The identification of 4,500 individual farmers in a public document would raise data protection concerns under the *Data Protection Act 2018*.

- 2) **Efficacy of the farm sustainability programmes** – Monitoring is built into the sustainability programmes, detailed in the EIAR Section 2.8 as mitigation for potential indirect environmental impacts. All of these programmes utilise similar mitigation measures to Teagasc’s *Action Catchments Programme (ACP)* which was put into place to analyse the *Good Agricultural Practice (GAP)* measures that were implemented under the EU Nitrates Directive. The 2019 EPA Report on Water Quality showed that waterbodies in the ACP program study areas improved by 16% as opposed to the overall decline in water quality referenced by An Taisce.
- 3) **Edenderry Power Plant** - In its appeal, An Taisce referenced to the above High Court ruling on Bord na Mona’s Edenderry Power Plant in respect of “functional interdependence” between the power plant and the source of the fuel; peat extraction from Bord na Mona’s bogs. In contrast the EIAR submitted with the subject planning application has regard to the source of milk and the impact associated with this (to the extent that it should) and therefore, it is submitted that An Bord Pleanála can fully assess any indirect effects arising as a result of the development.
- 4) **Shannonbridge Peat Power Plant** - The Shannonbridge decision enforces a section of national policy, which related specifically to peat as a fuel in relation to a facility that seeks the continued use of peat as a source of fuel. National climate policy does not treat milk production or the dairy industry in the same manner. It is on this basis that no parallel exists between the two cases with regard to national climate policy.
- 5) **Completeness of the EIAR & NIS** - Both the EIAR and the NIS have been completed in accordance with all relevant legislation, guidance documents and

best practise as detailed in Section 1.4 “Methodology” of the EIAR and in Section 2 “Methodology” of the NIS. All indirect and cumulative impacts have been fully assessed in accordance with these requirements. Cumulative impacts have also been robustly considered in each section of the EIAR. The conclusions of each section was that following implementation of mitigation measures, there would be no significant residual impacts associated with the proposed development.

6.2.12. **National Climate Change Policy & Legislation**

6.2.13. An Bord Pleanála is required to “have regard” to climate change under the Climate Change and Low Carbon Development Act 2015 and the Planning and Development Acts 2000 – 2019, particularly in the context of the National Planning Framework 2018.

6.2.14. The proposed development complies in so far as it can and in so far as is appropriate with the *National Mitigation Plan* and the *National Adaptation Framework (2018)* and with the Sectoral Mitigation measures adopted by the Minister for Agriculture included in the *National Mitigation Plan* as demonstrated in the EIAR and NIS.

6.2.15. The EIAR and NIS conclude that the proposed development would result in no significant adverse effects on the environment. By virtue of providing a full assessment of the proposed development with regards to its environmental impacts and proposing the implementation of mitigation measures, the planning application enables decision makers to comply with Section 15(1)(d) of the *Climate Action and Low Carbon Development Act 2015*.

6.2.16. **Other Related Items**

6.2.17. With regard to the movement of foreign investment into the Irish dairy industry it is submitted that both the Netherlands and Ireland are Member States of the European Union. EU policies aim to ensure the free movement of people, goods, services and capital within the internal market, including inter also common policies on trade, agriculture, fisheries and regional development.

6.2.18. The response was accompanied by the following:

- 1) Planning permission for existing construction compound (KCC Reg RE 17/153)
- 2) Dairy Sustainability Ireland response to Ag-Climatise Public Policy Consultation

3) Comments on Legal Aspects of the Appeal by Dr Yvonne Scannell that may be summarised as follows:

- There is no legal requirement that any proposed or individual development must comply with the Climate Action and Low Carbon Development Act 2015. It is a principle of legal interpretation that if a statute expressly provides for an enforcement mechanism, that is the mechanism that ought to be applied.
- In the turf cases, it was reasonable and practicable to assess the impacts of turf extraction because the extraction was always a new extraction from a few identified bogs directly necessitated by the proposed development. In this case the milk will “be mostly sourced from existing c 4,500 Glanbia farms. Any emissions to air, water or affecting biodiversity are currently occurring. It is impossible to predict emissions from potential new suppliers.
- Glanbia itself seeks to enforce contractual measures that ensure compliance with best agricultural practises but it has no right, nor would it be practicable for it to police the environmental behaviour of its suppliers no more than any buyer or goods can police the environmental performance of the seller.
- The EIAR and NIS should assess the indirect effects of the proposed development if they are likely and to the extent that is reasonable and practicable at the time the planning application is lodged. The Board has a discretion to ask for further information to remedy a failure to describe indirect effects adequately and its decision on this matter is one to which the courts will normally defer.
- It would be manifestly unreasonable to require all manufacturing developers, for example, proposed shop, restaurants etc to ascertain, describe and assess the environmental impacts of their suppliers in NIS and EIARs.

6.3. Planning Authority Response

6.3.1. Kilkenny County Council in their response to the appeal set out the following as summarised:

- The project has been assessed through the EIA process with the preparation of an EIAR and has also undergone an Appropriate Assessment Stage 2 NIS Report. It is the view of the Planning Authority that with the appropriate mitigation measures

outlined in the EIAR and NIS that the proposed development would accord with the proper planning and sustainable development of the area.

- In its appeal documents An Taisce suggests that there is a precedence set in the case of An Taisce -v- An Bord Pleanála (PL19.245295 Edenderry Power Limited) and PL19.303108 (ESB Shannonbridge) where the impact of peat extraction on the identified bogs was not considered as part of the application. There is critical difference in those applications as the source of the peat was spatially identifiable on selected bog areas with appropriate infrastructure and was therefore inextricably linked to the project as a whole.
- In this instance the source of the milk is not defined and indeed in a commercial world could come from different sources depending on supply and demand within the market at any given time. Therefore, the milk chain is not part of the project and does not require to be addressed directly as part of the EIAR. It is the view of the Planning Authority that at a National Food Level Food Harvest 2020 and Foodwise 2025 are overarching policies for the development of agri food. Foodwise 2025 has been the subject of its own Strategic Environmental Assessment and Appropriate Assessment.
- The milk supply for the proposed plant is not locationally tied to a particular source and could come from any milk supply source. It is therefore considered that the issue of milk supply does not form part of the project and therefore is not part of the EIAR.
- The Planning Authority respectfully requests An Bord Pleanála to grant permission subject to appropriate conditions.

6.4. **Observations**

- 6.4.1. There are no observations recorded on the appeal file.

6.5. **Further Responses**

- 6.5.1. The appeal was referred to the Environmental Protection Agency (EPA) for comment. A response was received on the 12th June 2020. It is stated that the development may require a licence but that no application has been received to date. Should a licence application be received by the EPA all matters to do with emissions to the environment

from the activities proposed, the licence application documentation and EIAR will be considered and assessed by the Agency.

6.5.2. There are no other responses recorded on the appeal file.

7.0 Assessment

7.1. Having regard to the information presented by the parties to the appeal and in the course of the planning application and to my site inspection of the appeal site, I consider the key planning issues relating to the assessment of the appeal can be addressed under the following general headings:

- Scope of Assessment
- Policy Considerations
- Other Planning Issues
- Environmental Impact Assessment
- Appropriate Assessment

8.0 Scope of Assessment

8.1. The appellant in their appeal and the applicant in their response have provided lengthy and detailed submissions all of which are available to view on the file and all of which have been noted and considered. The key issues raised relates to the assessment of the indirect effects of the dairy farms supplying milk to the proposed factory. EIA and AA are dealt with under separate headings below. This section deals with the specific matters raised in relation to the scope of the assessment under the following headings; Legislative Framework; Milk Supply; Other Cheese Factories; Government Policy on the Dairy Sector; FoodWise 2020 and Government Policy on Climate Change.

8.2. Legislative Framework

8.2.1. **EIA Directive** - The relevant legislation is Directive 2011/92/EU of the European Parliament and Council of 13th December, 2011, on the assessment of the effects of certain public and private projects on the environment. This directive is the codification of Council Directive 85/337/EEC of 27th June, 1985, which had been amended on a number of occasions. The relevant article is Article 3 which states:

The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with Articles 4 to 12, the direct and indirect effects of a project on the following factors:

(a) human beings, fauna and flora;

(b) soil, water, air, climate and the landscape;

(c) material assets and the cultural heritage;

(d) the interaction between the factors referred to in points (a), (b) and (c).

8.2.2. This article is now incorporated in an Act of the Oireachtas, Part X, Section 171A of the Planning and Development Act 2000, as inserted by the Planning and Development (Amendment) Act 2010. Indirect effects are described as the impacts on the environment, which are not a direct result of the project, often produced away from the project site or because of a complex pathway. However, neither the scope nor limit of indirect effects are explicitly defined in the Directive or the Act.

8.2.3. **Habitat Directive** - Council Directive 92/43/EEC of 21st May, 1992, on the conservation of natural habitats and of wild fauna and flora, has been transposed into Irish law by the European Communities (Natural Habitats) Regulations 1997 S.I. 94/97. The relevant article is as follows:

6.3 Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

8.2.4. Article 6.3 has been transposed into Irish legislation by Section 32, Part IV of SI 94/97. Part XAB of the Planning and Development Act 2000 (as amended) sets out the requirements of Articles 6(3) of the Habitats Directive in respect of Screening (Stage 1) and Appropriate Assessment (Stage 2). While potential indirect effects may arise due

to pathways or connections to a European Site neither the scope nor limit of such effects are explicitly defined in the Directive or the Act.

8.3. **Milk Supply**

- 8.1. An Taisce submits that there is an inextricable relationship between the proposed cheese plant and its supply of milk (c4,500 farms) and therefore, in order to carry out the Appropriate Assessment in accordance with the Habitats Directive and to meet the information provision requirements of the EIA Directive, the milk supply inputs for the proposed cheese plant must be fully assessed.
- 8.2. In requiring the impacts of the milk supply farms to be assessed the appellant refers to the High Court ruling on *An Taisce vs An Bord Pleanála* [2015] IEHC 633 (Edenderry Power Plant), 9th October 2015 where there are “crucial parallels” as the peat extraction for fuel for the generating station was held to be a “possible indirect effect” on the environment.
- 8.3. The Edenderry judgment found that the fact that the bogs from which the peat was to be sourced were identified in the EIS and the peat was transported by a private rail link from the bogs to the power plant, meant that there were possible indirect effects of the use of peat from these bogs on the environment that had to be assessed as such in the context of an EIA. It was also held that while the harvesting operations were governed by separate EPA licensing this did not justify exclusion from the EIA process. In essence, the judgement required the scope of the EIA to include the environmental effects of extracting the peat fuel source.
- 8.4. However, there are distinct differences between both the Edenderry case and the appeal case now before the Board as follows:
 - In the Edenderry case the High Court held that *“the important word in the section applying the relevant Article is “indirect” and that in assessing indirect effects there has to be a limit or the effects will be too remote”*. The Court observed that *“the section does put a limit on indirect by stating that it is “in the light of each individual case”*.
 - At Edenderry the peat bogs belonged to Bord na Mona and it had full legal control over how it was extracted whereby there was functional interdependence between both. While the proposed Cheese Factory is dependent on the supply of milk there is functional independence in that the raw material is coming from c4500 dairy

farms over which Glanbia has no legal right to oversee how these independent suppliers operate and any condition to do so would be ultra vires. It would not be reasonable or practicable for the environmental impacts of all these farms to be individually assessed for the purposes of an EIAR or an NIS.

- Mr Justice White also stated *that the respondent excluded completely the consideration of the indirect effects, when considering the planning application for the extension of life of the power plant.* Even if it were conceded that the effects of individual dairy supply farms are indirect effects it remains that the environmental effects of dairy farming have been addressed in the planning application and EIAR and have not been “excluded completely”.
- The Edenderry plant *was constructed, close to Midland bogs for the generation of electricity by burning peat, of which there was a plentiful supply.* The peat was supplied directly by rail from a few defined and easily ascertainable bogs under the control of Bord na Mona. That is not the case for the c4500 dairy farms that are independently removed from the appeal site and where the raw material will be delivered using the national road network.

8.4.1. In addition to the foregoing the appellant also refers to the An Bord Pleanála decision to refuse permission to the ESB Shannonbridge (ABP-303108-18 – ABP) in 2018 for the continued operation of the existing West Offaly Power Station beyond 2020 and the phased transition to operating solely on renewable biomass. In this case the Board found that *“the cessation of the use of peat as a fuel is a key component within national climate and energy policy in helping to reduce the generation of excessive greenhouse emissions.....”*. The cessation of dairy farming is not a component of national policy on climate change or biodiversity or water pollution management. As documented below there is national policy in place for a modest increase in dairy farming (Food Wise 2025 refers).

8.4.2. Overall, I disagree with the appellant that there are parallels with both cases; Edenderry and Shannonbridge and the appeal case. The critical difference with the Edenderry Power Plant is that the source of peat was spatially identifiable on selected bog areas with appropriate infrastructure and was therefore inextricably linked to the project as a whole. This is not the case with the Cheese Factory and the expectation that the indirect effects of c 4500 independent dairy farm suppliers that are removed from the appeal site be assessed should be limited as the effects would be too remote.

With the Shannonbridge development it is national policy to cease the use of peat as a fuel. In the appeal case a modest increase in dairy farming is national policy.

8.5. Other Cheese Factories

8.5.1. Concern is raised that the EIAR has failed to adequately assess the cumulative impacts of the subject proposal in combination with other existing, proposed and expanded dairy-reliant projects, namely Glanbia at Togher, Portlaoise, Co Laois and the Dairygold Cheese factory at Mogeely, Co Cork. I have considered these cases and I note the following:

- Glanbia, Portlaoise - Based on publicly available information this plant will not process milk, as production will be based on curd. There will be no additional milk required or produced for this development.
- Dairygold, Mogeely - Annual milk intake for the proposed factory is reported to be a 245 million litre per annum (source EIAR Reg Ref 16/07031). The factory and the proposed development will cumulatively require 695 million litres of milk. Teagasc predicts that milk supply will increase by 2.6 billion litres between now and 2025 (Source: Teagasc Roadmap 2025). The combined milk input required for the two facilities represents only 27% of the predicted additional milk supply that will be available by 2015.

8.5.2. I am satisfied that no cumulative impacts arise in this case.

8.6. Government Policy on the Dairy Sector

8.6.1. One of An Taisce's main objection is to the Irish Dairy Industry, including criticism of Government endorsed policies / strategies such as FoodWise 2025 that support the growth of the agricultural industry within Ireland.

8.6.2. FoodWise 2025, under the auspices of the Department of Agriculture, Food and the Marine, set out a ten-year plan for the Irish agri-food sector, establishing growth projections for the industry including the intensification of dairy production. FoodWise 2025, which has been the subject of its own Strategic Environmental Assessment and Appropriate Assessment, states that the following growth projections are achievable by 2025:

- *Increasing the value of agri-food exports by 85% to €19 billion;*

- *Increasing the value added in the agri-food sector, fisheries and wood products sector by 70% to more than €13 billion;*
- *Increasing the value of primary production by 65% to almost €10 billion; and*
- *The creation of additional 23,000 direct jobs in the agri-food sector all along the supply chain from primary production to high-value added product development*

8.6.3. The supply of milk to the proposed development will not result in any additional emissions beyond what is currently projected by the Government. I agree with the applicant that the appellant raises issues that present a fundamental challenge to issues of Government policy and principle that are out with the scope of this appeal.

8.7. **Government Policy on Climate Change**

8.7.1. It is submitted that intensive cattle farming is a major emitter of Green House Gases (GHG) and is contributing significantly to Irelands ongoing failures to reach its legally binding Paris Agreement targets.

8.7.2. Ireland has made a specific plan for dealing with climate change under the Climate Change and Low Carbon Development Act 2015. Under this Act a Climate Action Plan was made together with a National Mitigation Plan with certain Ministers (including Agriculture) required to prepare and report on sectoral plans for their areas of responsibility. In November 2019 following the National Climate Action Plan (refer to Section 2.5.3 of the EIAR) published on 1 August 2019, the Department of Agriculture, Food and the Marine (DAFM) published "Draft National Climate & Air Roadmap for the Agriculture Section to 2030 and Beyond", titled "Ag-Climatise". The consultation ended on 10th January 2020. The Ministry for Agriculture has assessed the effects of dairy farming on climate and the environmental and has concluded that compliance with its mitigation policies will ensure compliance with the states climate change obligations.

8.7.3. It is noted that in the Friends of the Irish Environment vs Government of Ireland [2019] IEHC 747 the High Court dismissed arguments that the adequacy of Irelands National Emissions Plan 2017 and National Adaptation Framework made pursuant to the Climate Change and Low Carbon Development Act 2015 can be questioned in judicial proceedings. It is reasonable to conclude that the same arguments apply to administrative authorities and that matters involving policy and political choices are matters for elected representatives.

- 8.7.4. As pointed out by Dr Yvonne Scannell implementation of climate change and biodiversity measures on an ad hoc basis for individual developments or activities is through requiring compliance with a great deal of legislation and not only by the planning system. Other controls include Industrial Emissions and IPC licensing, implementation of the Common Agricultural Policy, compliance with Water Pollution legislation, the introduction of the Agricultural Catchments Programme (for nitrates), compliance with the European Communities (Birds and Natural Habitats Regulations 2011-2019 and various other polices and requirements.
- 8.7.5. An Bord Pleanála is required to “have regard” to climate change under the Climate Change and Low Carbon Development Act 2025 and the Planning and Development Acts 2009 – 2019 particularly in the context of the National Planning Framework. That Framework envisages that the achievement of transitions to a low carbon climate resilient and environmentally sustainable economy by 2050 will be “in line with the National Mitigation Plan and the National Adaptation Framework”.
- 8.7.6. I am satisfied that the proposed development complies in so far as it can and in so far as is appropriate with the National Mitigation Plan and the National Adaption Framework 2018 and with the Sectoral Mitigation measures adopted by the Minister for Agriculture included in the National Mitigation Plan as demonstrated in the EIAR and NIS and the response to the Appeal.

8.8. **Conclusion**

- 8.8.1. Overall, I agree with the general comments of An Taisce that the assessment of all 4,500 Glanbia farms is impractical. The EIAR and NIS should assess the indirect effects of the proposed development if they are likely and to the extent that is reasonable and practicable at the time the planning application is lodged. However as stated above there must be a limit or the effects will be too remote. Further it should be done “*in the light of each individual case*”. As documented by Dr Yvonne Scannell the indirect effects to be assessed in this case are those created by the proposed development not the impacts of c4500 existing dairy farms, not the impacts of some future expansion of dairy farms (which are impossible to predict) or the impacts of some future supplier farms (which are impossible to predict) and not impacts of a sector generally (that have been addressed separately).

8.8.2. I agree with the applicant that the outcome of this appeal may have wide-ranging implications for the Irish agricultural sector. The proposed development would not of itself drive increased milk production and any reference to an expected increase of milk production on Glanbia's farms, or nation-wide, sits within a national policy context for a managed increase of dairy production in Ireland, subject to the implementation of mitigation measures. Further this national increase in milk production aligns with national climate change policy. Any objection to the principle of such national policy sits outside the scope of this appeal and relevant planning assessment.

8.8.3. I am satisfied that the planning application provides a sufficient level of information surrounding the source of milk / milk supply in order to allow for the assessment of the associated indirect impacts to the required extent. Accordingly, I am satisfied that the granting of approval for this application would not contravene the Habitats Directive, the EIA Directive or the Climate Action and Low Carbon Development Act 2015.

9.0 Principle / Policy Considerations

9.1. Belview Port and the surrounding lands have been identified as a strategic employment location and is an important element in building critical mass of the Waterford Metropolitan City Region. This objective is supported at National, Regional and Local Levels through the National Planning Framework, the Regional Spatial and Economic Strategy, the Kilkenny County Development Plan and the Ferrybank Belview Local Area Plan.

9.2. The appeal site is located within the 18 ha IDA lands adjoining Belview Port and is zoned ITP Industrial / Technology Park, where the objective is *to provide for industry, technology and the expansion of Belview Port*. The permissible uses encompassed within the zoning objective include industry (general industrial use). Taken together with the established Glanbia dairy processing and manufacturing facility adjoining the appeal site to the north the proposed scheme is considered acceptable in principle subject to the acceptance or otherwise of site specifics / other policies within the development plan and government guidance.

10.0 Other Planning Issues

- 10.1. **Development Contributions** – Kilkenny County Council has adopted a Development Contribution scheme under Section 48 of the Planning and Development Act 2000 (as amended). The proposed development does not fall under the exemptions listed in Scheme. In line with Condition No 2 of the notification of decision to grant permission issued by Kilkenny County Council it recommended that should the Board be minded to grant permission that a similar suitably worded condition be attached requiring the payment of a Section 48 Development Contribution in accordance with the Planning and Development Act 2000.
- 10.2. **EPA License** – The appeal was referred to the Environmental Protection Agency (EPA) for comment. In their response the EPA state that the development may require a licence and that should a licence application be received all matters to do with emissions to the environment from the activities proposed, the licence application documentation and EIAR will be considered and assessed by the Agency.
- 10.3. It is noted that there are six Integrated Pollution control (IPC) / Industrial Emissions (IE) licensed facilities located within 5km of the proposed development including the Glanbia Ireland Milk Processing Plant immediately to the north of the site. The proposed scheme will operate under an Industrial Emissions License that will be regulated by the Environmental Protection Agency (EPA) whereby all emissions from the proposed scheme will be controlled, licensed and monitored by the EPA in addition to any conditions arising from the planning process. The process for EPA Licenses is separate to the planning code. The EPA is the relevant authority in regard to wastewater discharge authorisation and the setting of emission limit values (ELVs) on EPA licensed activities. Accordingly, emissions arising from the operational phase of the development, will be avoided by the statutory requirement for the applicant to obtain and operate the proposed development in accordance with an Industrial Emissions licence, which will specify emission limits for all relevant parameters. Monitoring of compliance with emission limit values will fall to the EPA
- 10.4. **Archaeology** – I refer to Chapter 13 Cultural Heritage of the EIAR. There are no known archaeological sites within the boundary of the site or within the immediate vicinity. The greatest potential impacts are likely to arise from the large-scale earthworks required to construct the development. I note the report from the

Department of Culture, Heritage and the Gaeltacht submitted to Kilkenny County Council recommending the attachment of conditions relating to archaeological monitoring. Condition No 5 of the notification of decision to grant permission refers. It is recommended that should the Board be minded to grant permission that the Boards standard Archaeological monitoring condition be attached.

- 10.5. **Inland Fisheries** – I note the report from Inland Fisheries Ireland to Kilkenny County Council recommending the attachment of a condition relating to a maintenance contract for the oil interceptor / silt trap (Section 8.4.2.2 of the EIAR Vol 2 refers) to ensure it is emptied on regular basis. It is recommended that should the Board be minded to grant permission that this requirement be attached under the general Construction Management Plan condition.
- 10.6. **HSE** – I note the report from the HSE to Kilkenny County Council recommending the attachment of conditions relating to the disposal of waste at a licensed facility; appointment of a designated member of the construction team to liaise with local sensitive receptors; water quality testing; wheel washing, construction traffic speed limits and the covering of all trucks transporting dry / loose materials with tarpaulin. I am satisfied that for the most part these matters can be dealt with by way of condition whereby the details of the CEMP can be agreed with the Planning Authority. However, I have concerns with regard to the requirement that the *baseline water quality in wells identified as supplying drinking water to homes and businesses is tested against the parameter specified in the Drinking Water Regulations (S.I. No 122 of 2014) before work starts, biannually during the course of the work and once in the year following completion of the construction works*. Having regard to the information made available with the application I am satisfied that there will be no negative impact to ground water quality. Further the requirement to carry out water testing outside the red line boundary of the site and on private property by way of condition would be unreasonable and difficult to enforce.
- 10.7. **Retention of Construction Compound** – The application also seeks retention of and alterations to the existing construction compound which will be removed on completion of the works. The public notices refer. The existing construction compound was granted planning permission in July 2017 (Reg Ref 17/153) in respect of the extension to the Milk Processing Plant granted planning permission in January 2013 (ABP PL10.241077 Reg Ref 12/324). The construction compound therefore has planning

permission and its continued use is required to serve the construction phase of the proposed scheme. I agree with the applicant in that the planning application neither seeks, nor is required to seek, "retention permission for development" in so far as it related to unauthorised development. In addition, no "retention" planning application fees were paid on lodgement of the application. The existing compound is an authorised development. I am satisfied that the construction compound has planning permission and that the planning application seeks the continued use of this compound to serve the construction phase of the appeal development until the works associated with the proposed development are complete. Accordingly, no issues arise in relation to the consideration of this scheme under either the EIA or Habitats Directive.

10.8. **Car Parking** - The Kilkenny County Council Road Design Section noted the shortfall in car parking and accepted the applicant's rationale for the 94 spaces proposed as reasonable. Likewise, the Case Planner raised no issue regarding the shortfall in car parking provision. I agree with the approach taken by the Planning Authority in this instance and based on the rationale put forward by the applicant there is no objection to the reduced provision of 94 no car parking spaces at this location.

10.9. **Road Design** - Having regard to the report of Kilkenny County Council Road Design Section I recommend that a condition be attached requiring that developer agree a Road Maintenance Plan with the Ferrybank Municipal District Engineer and that a Traffic Management Plan is put in place for the construction and operational phase of the development, which prohibits HGV's turning west at the IDA Roundabout onto the L3412 Abbey Road when existing the IDA Science & Technology Park. This recommendation aligns with Condition No 10 and 11 of the notification of decision to grant permission issued by KCC

11.0 **Environmental Impact Assessment**

11.1. **Introduction**

11.2. The relevant classes of development that require EIA are set out in Schedule 5 of the Planning and Development Regulations 2001 (as amended). Schedule 5 transposes Annex 1 and Annex II of the EU EIA Directive (85/337/ECC as amended) into Irish Law as Parts 1 and 2 of the Schedule. Part 1 of Schedule 5 sets out the categories

and scale of development that qualify for mandatory EIA. The most relevant activity class for the proposed Continental Cheese Facility is listed under paragraph C, Class 7 (Food Industry), defined as follows:

“Installations for manufacture of dairy products, where the processing capacity would exceed 50 million gallons of milk equivalent per annum.”

11.3. The proposed facility will process 450 million litres of milk per annum thereby exceeding the threshold of 50 million gallons and requiring a mandatory EIA.

11.4. Both the 2014 amending EIA Directive (Directive 2014/52/EU) and the European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018 are applicable in this instant case.

11.5. **Compliance with Legislation**

11.6. The EIAR consists of three volumes, grouped as follows:

- Volume 1: Non-Technical Summary
- Volumes 2 Environmental Impact Assessment Report
- Volume 3 Appendices

11.7. In accordance with Article 5 and Annex IV of the EU Directive, the EIAR provides a description of the project comprising information on the site, design, size and other relevant features of the project. It identifies, describes and assesses in an appropriate manner, the direct and indirect significant effects of the project on the following environmental factors: (a) population and human health; (b) biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC; (c) land and soils, water (hydrology and hydrogeology), air quality, noise & vibration and climate; (d) material assets including waste, traffic & roads and wastewater discharge; cultural heritage and landscape & visual and it considers the interaction between the factors referred to in points (a) to (d).

11.8. It provides an adequate description of forecasting methods and evidence used to identify and assess the significant effects on the environment. It also provides a description of measures envisaged to avoid, prevent or reduce and, if possible, offset likely significant adverse effects. The mitigation measures are presented in each chapter and are summarised in Chapter 18 (Schedule of Commitments) of the EIAR where proposed, monitoring arrangements are also outlined. Environmental

Interactions are addressed in Chapter 17. Any difficulties which were encountered in compiling the required information are set out under the respective environmental topics.

- 11.9. I am satisfied that the information provided is reasonable and sufficient to allow the Board to reach a reasoned conclusion on the significant effects of the project on the environment, taking into account current knowledge and methods of assessment. I am also satisfied that the information contained in the EIAR complies with the provisions of Articles 3, 5 and Annex (IV) of EU Directive 2014/52/EU amending Directive 2011/92/EU.
- 11.10. I am satisfied that the EIAR has been prepared by competent experts to ensure its completeness and quality. I note the qualifications and expertise demonstrated by the experts involved in the preparation of the EIAR which are set out in Table 1-9 (MOR In-House Project Team) and Table 1-10 (External Environmental Consultants) of the EIAR. The information contained in the EIAR and supplementary information provided by the developer, adequately identifies and describes the direct, indirect effects and cumulative effects of the proposed development on the environment and complies with Article 94 of the Planning and Development Regulations 2000, as amended.
- 11.11. I am satisfied that the information provided in the EIAR is sufficiently up to date and is adequate for the purposes of the environmental impact assessment to be undertaken.
- 11.12. **Vulnerability to Risk of Major Accidents and / or Disaster**
- 11.13. The requirements of Article 3(2) of the Directive include the expected effects deriving from the vulnerability of the project to risks of major accidents and/or disaster. The EIAR addresses the risk of accidents and unplanned events which may either caused by or have impact on the proposed development have been assessed. A risk-based approach has been employed and is detailed in the following chapters: biodiversity, land and soils, water, air quality and noise and vibration. As with all industrial facilities there is some risk that accidents at the site or disasters outside of the operator's control would result in a risk to the environment. Using a risk-based approach the primary accidents that have the potential to have an impact on land and soils in the vicinity of the site are set out in Table 7-1 Risk of Accidents Impacting Land and Soils; Table 8-6 Risk of Accidents Impacting Surface Water and Groundwater and Table 9-9 Risks of Accidents Impacting Air Quality. In terms of building fire, a fire water retention pond

will be constructed as part of the proposed development with sufficient capacity to accommodate water arising from a fire event. The SFRA indicates no potential risk of flooding within the site and the site is not located within an indicative flood zone.

11.14. The proposal is no more vulnerable than any other development of this type. In terms of fire the buildings have been designed to existing fire regulations requirements. The site is not connected to or close to any site regulated under the Control of Major Accident Hazards Involving Dangerous Substances Regulations i.e. SEVESO and so there is no potential effects from this source. Given the nature of and volumes of materials proposed to be stored on-site the Seveso Regulations would not apply.

11.15. It is considered that having regard to the nature and scale of the development itself, there are unlikely to be any effects deriving from major accidents and or disasters and I am satisfied that this issue has been addressed satisfactorily in the EIAR.

11.16. **Alternatives**

11.17. Chapter 4 addresses alternatives. The applicant reviewed a number of locations across Europe with Ireland being the preferred option due to the availability of quality raw materials; the availability of a skilled workforce and the government and regulatory environment. Within Ireland two location were considered; Glanbia, Ballyragget and Belview IDA Science and Technology Park.

11.18. The appeal site was the preferred option for reasons of availability of utilities, water, electrical and gas at the volumes required; better traffic access (local and national); existing infrastructure (truck access and security) at adjoining Glanbia site and receiving water capable of assimilating the wastewater discharge. In addition, the site is strategically located within the centre of the Glanbia milk pool, ensuring an adequate supply is available while also reducing transport emissions associated with the supply of milk from farm to facility. Three different design options were considered with the preferred option demonstrating an efficient placement of building and plant, vehicle access and drainage falls.

11.19. The site is located within the Belview IDA Science and Technology Park and has been undergoing significant investment with the provision of utility supplies and infrastructure. A "do nothing" scenario would have limited long-term environmental benefits.

11.20. The level of detail of the consideration of alternatives is reasonable and commensurate with the project. I am satisfied that the requirements of the Directive in terms of consideration of alternatives have been discharged.

11.21. **Consultations**

11.22. Details of the non-statutory consultation entered into by the applicant as part of the preparation of the application and EIAR and prior to the lodgement of the application are set out in Table 1-8 of the EIAR. Public Consultations are described in Section 1.6. Residents in the vicinity were invited to a consultation evening in September 2019. The concerns were considered as part of the EIAR process and are addressed in relevant chapters. I am satisfied that the participation of the public has been effective.

11.23. **Likely Significant Effects on the Environment**

11.24. The likely significant effects of the development are considered under the following headings, as set out in Article 3 of the EIA Directive 2014/52/EU:

- population and human health;
- biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC;
- land, soil, water, air and climate;
- material assets, cultural heritage and the landscape;
- the interaction between the factors referred to in points (a) to (d).

11.25. In total the main EIAR includes 19 chapters. Chapters 1 to 4 provide an introduction to the project, description of the proposed development, alternatives considered, and consultations undertaken. Chapter 5 addresses population and human health, chapter 6 addresses biodiversity, chapters 7, 8, 9, 10 and 11 address land and soils, air quality, climate and noise and vibration, chapter 12 and 13 addresses landscape and visual and cultural heritage, chapter 14 addresses waste, chapter 15 addresses traffic and transport, chapter 16 addresses wastewater discharge and chapters 17 and 18 addresses interactions, mitigation and monitoring. Chapter 19 sets out references. Each of the above chapters are considered in detail below, with respect to the relevant headings set out in the Directive.

11.26. **Chapter 5 deals with Population and Human Health**

- 11.27. The CSO identifies the development site as within a "Small Area" where the population is relatively low and is reflected in the former agricultural lands' nature of the site. The site is located within lands of the IDA Ireland Science and Technology Park and is zoned for Industrial Technology Park. Within the Gorteens SA there are 149 households, 132 of which are occupied. Waterford City is located within 2km of the development. The closest residential development areas are located 430m to the north-west and south-west of the development. The nearest residence is located 160 metres east of the site boundary.
- 11.28. It is anticipated that the construction phase will take 20 – 24 months and that approx. 300 – 400 jobs will be created during this period. The development once operational will provide up to 80 no new direct jobs on site. The plant will operate for nine months / year in 3 shifts, 7 days per week. There will also be an increase in indirect employment in areas such as transport, maintenance and supply of goods and services.
- 11.29. Potential impacts on human health, in particular, impacts on the residents at neighbouring properties is address in detail in Chapter 8 Water, Chapter 9 Air Quality, Chapter 11 Noise and Vibration, Chapter 12 Landscape and Visual, Chapter 14 Material Assets – Waste and Chapter 15 Material Assets – Traffic and Transport. As with all industries there is a potential for workplace health and safety risks.
- 11.30. Glanbia's milk suppliers are located in the eastern portion of the country, with processing plants strategically located in Cavan, Kilkenny, Waterford and Wexford. There has been significant investment on farms in recent years that in turn has brought significant employment to rural Ireland. In 2018 Glanbia Ireland paid approx. €1 billion(incl VAT) to c4,500 milk farmers across rural Ireland boosting local economies. The indirect effect of the development will be a significant positive effect on the rural economy in the south east of the country.
- 11.31. In order to provide facilities that positively improve employee health and wellbeing the following have been provided as part of the proposed design:
- The development will operate in accordance with all relevant Health and Safety legislation. A site-specific health and safety plan will be developed for both construction and operational phases.

- The developer will promote wellness programmes and schemes for employees and will adopt Glanbia's Sustainability Strategy that includes a group wide Health and Wellness Framework for employees.
- A bike shed to facilitate sustainable transport
- Planting and landscaping to improve the overall character of the site

11.32. On its own the development will have a significant positive impact on employment opportunities and economic activities in the region. In combination with future development in the IDA Park there is potential to have a positive impact on the local and regional population in terms of employment opportunities and economic activities.

11.33. The proposed development will create economic growth and will benefit the local and wider economy by creating direct and indirect local employment opportunities. Once operational the proposed development will have apposite, long term impact on the local economy and employment. The residual impacts with regards to health and safety will be neutral given the measures that will be put in place.

11.34. Having regard to the matters discussed above, I am satisfied that impacts that are predicted to arise in respect of population and human health can be avoided, managed and mitigated by the measures which form part of the proposed development, the proposed mitigation measures and through suitable conditions. I am satisfied, therefore, that the proposed development would not have any unacceptable direct, indirect or cumulative impacts on human health.

11.35. **Chapter 6 Biodiversity**

11.36. The majority of the site is comprised of agricultural lands currently used for grazing livestock with tree / hedge lines bordering the site. The western boundary of the site is comprised of mixed broadleaved woodland. A drainage ditch is located adjacent to the northern boundary of the site. In the north eastern portion of the site, there is an area of hardstanding comprised of a construction compound and gravel-based car park. The Rathpatrick stream is situated to the west of the site boundary. The Gorteens stream is located to the east of the site.

11.37. No direct evidence of bats roosts, badger setts or otter holts were identified on the site during the field surveys. The survey did however note some bat species commuting and foraging along the tress and hedgerows located on the site.

11.38. An Appropriate Assessment Screening exercise was undertaken for the proposed development and it was concluded that the proposed development has the potential to cause adverse impacts on European Sites. Therefore, the AA progressed to Stage 2 of the assessment process and a Stage Two Appropriate Assessment Natura Impact Statement (NIS) was prepared. The NIS concluded that following the inclusion of appropriate mitigation measures that there would be no adverse effects on Natura 2000 sites. The NIS has been submitted as a standalone report as part of the overall application which includes full details of the Assessment undertaken.

11.39. Improved agricultural grassland is the principal habitat that will be lost by the proposed development. However, this habitat is not of significant conservation value and the loss is not considered to be significant. Removal of hedgerows / treelines / scrub does have the potential to support protected species / notable species such as nesting birds. The mixed broadleaved woodland area within the locality of the site have the potential to support protected species / notable species such as nesting birds. The Rathpatrick and Gorteens Stream is of high local value in terms of biodiversity and contributes to habitat diversity within the landscape. The Gorteens stream was identified as having the potential to support protected species such as crayfish and otter. Based on the bat surveys and the presence of suitable habitats within the wider landscape it is considered that the site is of high local value for this species. The inappropriate installation of lighting resulting in light spillage onto retained habitat suitable for bats has the potential to cause adverse effect on bats. During construction, excavating and earthmoving activities have the potential to release sediment and cementitious materials into nearby watercourses which discharge into the Lower River Shannon SAC.

11.40. The following mitigation measures will be incorporated and adhered to during the construction and operation phases of the overall site to ensure that the works do not result in contravention of wildlife legislation:

- All activities will comply with all relevant legislation and best practise to reduce any potential environmental impacts. The mitigation measures detailed within the EIAR will be fully adhered to
- The site manager shall ensure that all personnel working on-site are trained and aware of the mitigation measures detailed within the EIAR

- An Ecological Clerk of Works (ECoW) will be appointed for the duration of the project who will inspect the site in advance of works commencing and will undertake site inspections as required during the works to ensure that all of the works are completed in line with the CEMP and all wildlife legislation
- A CEMP will be prepared and submitted to the Planning Authority in advance of works commencing at the site. All personnel working on-site will be trained and aware of the measures detailed within the CEMP.
- During construction all boundary trees and treelines to be retained will be protected from unnecessary damage through a contrition exclusion zone together with other protection measures as outlined in Section 6.4.1.1.
- The loss of hedgerows / trees as part of the proposed development will be mitigated by the additional planting on site. A landscaping plan has been prepared as an integral part of the overall design and together with the ecological enhancement works that include a habitat management plan and provision of artificial bat roosts are in line with the recommendations as detailed in the County Development Plan.
- In order to ensure that the works do not have significant impacts on bats a number of measures will be implanted as set out in Section 6.4.1.3 that include inspection of the site by the ECoW; the systematic removal of trees; updated surveys confirming the absence of roosting bats and installation of sensitive night lighting.
- Given that terrestrial mammals are known to occur within the wider area that may inadvertently enter the site general construction procedures and mitigation measures which are in line with the NRA (now TT) guidance for otters and badgers will be undertaken.
- The management of vegetation (including tress and scrubs) will be restricted to outside the bird breeding season (typically between 1st March to 31st August).
- While no invasive species were noted within the study area protection measures for invasive species are set out in Section 6.4.1.6. These include washing and cleaning of vehicles, machinery and equipment prior to being used on site; visual inspection, imported materials will be sourced form a reputable suppliers and staff training.
- Surface water from the proposed development will discharge directly to the Gorteens stream via the existing IDA drainage system. The surface water will pass

through an attenuation pond and Class 1 interceptor. The flow rate will be controlled by a hydrobrake.

11.41. The raw material for the proposed new factory is coming from c 4500 dairy farms outside the legal control of the applicant. However to combat biodiversity loss within the dairy farming sector, Glanbia is committed to sustainable milk production and has an active Sustainability and Quality Assurance Programme in line with the Bord Bia Sustainable Dairy Assurance Scheme (SDAS) which also has a biodiversity element. The areas of biodiversity and ecology which are considered at farm level assessments include land management, environmental care and carbon footprint, quality and conservation of water, animal health, welfare and biosecurity and the safe storage and responsible usage of medicines, pesticides, anthelmintic and other chemicals. Glanbia Ireland is also a supporting partner of the BRIDE (Biodiversity Regeneration in a Dairying Environment) project 2018-2023 with the aim to design and implement a results-based approach to conserve, enhance and restore habitats in lowland intensive farmland. This scheme will reward farmers with higher payments for higher wildlife gains. The BRIDE project ecologist will provide participating farmers with farm habitat plans that identify the most appropriate and effective wildlife management options for individual farms. Glanbia is also a Business Supporter of the All-Ireland Pollinator Plan 2015-2020 which aims to reverse the decline of Irish pollinators. Appropriately designed measures targeted for intensive dairy systems will play an important role in halting the decline of biodiversity, along with reducing greenhouse gas emissions and achieving the goals of sustainable expansion. In addition, all farms are subject to environmental including controls in the Wildlife Act, 1976, as amended and the EU Habitats and Birds Directive which ensure that they do not significantly adversely affect the integrity of European (i.e. Natura 2000) and other protected sites and so as to ensure the protection of protected species. Glanbia also expects its supply farms to comply with all of the requirements of public authorities relating to biodiversity and the environment.

11.42. Overall, the majority of the site was considered to be of low ecological interest. The proposed development works are unlikely to have any significant impacts on valued ecological receptors. Further the residual impact associated with the proposed development on biodiversity will not be significant.

11.43. Having regard to the matters discussed above, I am satisfied that impacts that are predicted to arise in respect of biodiversity can be avoided, managed and mitigated by the measures which form part of the proposed development, the proposed mitigation measures and through suitable conditions. I am satisfied, therefore, that the proposed development would not have any unacceptable direct, indirect or cumulative impacts on biodiversity.

11.44. **Chapter 7 Lands and Soils**

- 11.45. The site is elevated at its centre, sloping towards the eastern and western boundaries. The highest point of the site is at its centre; approx. 24.15 maOD. The soils beneath comprise of deep well drained mineral soils derived from mainly non-calcareous parent materials.
- 11.46. The proposed development will change the land at the site from agricultural to an industrial use and it will impact the entire 10ha site. The change will involve two distinct phases; (1) cut and fill operations at the construction phase and the (2) permanent removal of 10ha of land from agricultural to industrial use. In addition potential contamination of soils could occur as a result of spillages (such as waste oil, fuel, chemicals etc) resulting in a potential for a slight impact on the receiving environment.
- 11.47. General construction mitigation measures are outlined in Chapter 3 of the EIAR. Specifically, with regard to protection of soils, the migration measures will form part of the site-specific CEMP. Stockpiling of excavated material will be required on-site. A Soil Management Plan will be implemented to minimise the overall impact arising during the construction programme. Planting along the berm to improve stabilisation will be conducted. Mitigation measures for prevention of oil / fuel spillage that will be included in the CEMP are set out in Section 7.5.1.2. Measures related to the use of poured concrete are set out in Section 7.5.1.3. During the operation phase the facility will operate under an Industrial Emissions licence and as result a number of legally binding conditions will be adhered to and that will ensure that the risk to land and soils during the operational phase will not be significant.
- 11.48. It is expected that the 450 million litres of milk required for the proposed development will mostly come from the existing Glanbia milk supplied which comprise approximately 4,500 farms with standard year to year changes. The increase in milk supply will largely come from the increase in the productivity at the existing farm i.e. there will be

no significant increase in the number of new farms. The growth projections outlined in FoodWise 2025 places a demand on soils to support intensified agriculture. Effective nutrient management is vital to soil health, as impacts from agriculture on soils are mostly related to nutrient management which have a potential for a run-off into the aquatic environment and negative impacts on water quality. The EPA AgriBenchmark research programme is aimed at researching improvements to agricultural practises which would reduce nutrient losses through emissions and runoff and the quantifying impact of mitigation measures. In the dairy industry soil quality is closely linked to grassland management. Recommended actions to improve grassland management and reduce use of fertiliser include regular reseeded of pastures, selecting most suitable and efficient seeds and grass measuring and budgeting. As permeant grassland are a natural carbon store, implementing these management measures will not only improve air, soil and water quality but will also sequester carbon, further enhancing emissions reductions on Irish farms.

11.49. Improving soil health and fertility results absorbing nutrients more effectively, which is central to management of grasslands on farms. This can be achieved through:

- Nutrient Management Plan for a farm
- A tailored farm fertiliser plan and
- Optimising soil pH level through application of lime

11.50. These measures necessitate soil sampling programme which is actively promoted by Glanbia's farm advisory team. Glanbia has also implemented an awareness programme to increase the usage of lime on farms which has been successful. Indirect effect of proposed development on land use will not be significant.

11.51. The cumulative impact of the proposed development and other existing and potential developments within the IDA Science & Technology Park has been subject to a SEA. The impacts to land and soils as stated within the SEA will not be significant in relation to the overall development of the Belview area, subject to implementation of relevant mitigation measures.

11.52. Having regard to the matters discussed above, I am satisfied that impacts that are predicted to arise in respect of land and soils can be avoided, managed and mitigated by the measures which form part of the proposed development, the proposed mitigation measures and through suitable conditions. I am satisfied, therefore, that

the proposed development would not have any unacceptable direct, indirect or cumulative impacts on lands and soils.

11.53. Chapter 8 Water

11.54. The closest hydrological features to the site are the Rathpatrick and the Gorteens streams, which are located approx. 30m to the west and 30m to the east of the site boundary respectively. Both flow into the Lower River Suir Estuary south of the proposed facility. The Lower River Suir Estuary flows in a north-easterly direction before joining the Barrow Suir Nore Estuary and flowing into the Waterford Harbour.

11.55. The principle discharge into the River Suir at this location arises from the Irish Water Wastewater Treatment Plant located immediately to the south of the site. The available data would indicate that the average River Suir Water Quality at both monitoring points is compliant with the Environmental Quality Standards as per the Surface Water Regulations, 2009 for transitional water of good status. However as a result of the combination of pressures from agriculture, domestic and urban WWTP emissions, urban run-off and industrial point source emissions, the Lower Suir Estuary is currently classified by the EPA as “at risk” of not meeting its WFD objectives.

11.56. Under the Strategic Flood Risk Assessment for Ferrybank / Belview Local Area Plan 2017 the proposed facility is designated as being a “Flood Zone C”. It is noted that Flood Zone C covers all areas of the plan which are not in Zones A and B.

11.57. The aquifer beneath the site is classified as a regionally important aquifer which comprises fissured bedrock. The groundwater vulnerability rating beneath the majority of the site is moderate. Groundwater vulnerability is high in the western section of the site.

11.58. Construction and site development works in general can potentially impact on groundwater and surface water quality. Potential impacts include the following:

- Silt run off and the incorrect handling of deleterious materials such as lubricants, waste oils, fuel spills from the onsite plant, cement etc and
- Earthmoving activities have the potential to release sediment and additionally cement can enter waterbodies during construction works
- The principle open waterway that will remain during the construction phase is the Rathpatrick and Gorteens streams. During the construction works

earthmoving activities will take place in the vicinity of these streams. The current design proposals would indicate that direct interaction with groundwater is not likely to occur during the construction phase.

11.59. The appointment contractor will be required to prepare a working draft of the CEMP in line with the requirements of this document. The CEMP will include the mitigation measures detailed in the EIAR. Control of Water Pollution from Construction, Guidance for Consultants and Contractors will be followed during the construction phase of the project.

11.60. The proposed measure to remove the risk from potential contamination and emergency procedure to be implemented in the event of an accidental release or spill of potentially contaminating substances are outlined below. These procedures will be communicated to all relevant site staff.

- Adequate spill kits including absorbent booms and other absorbent material will be maintained outside
- All contractor workers will be appropriately trained in the use of the spill kits
- Any spillage of cementitious materials will be cleaned up immediately and
- Any sediments impacted by contamination will be excavated and stored in appropriate sealed containers for disposal offsite in accordance with all relevant waste management legislation

11.61. In addition, best practice guidelines based on Inland Fisheries Ireland and National Roads Authority guidance documents will be followed.

11.62. General measures for mitigation measures against spills and for protection of water and ground water will be stipulated in the sites IE license:

- Materials on site will be stored and transferred in accordance with EPA Guidance and relevant BAT conclusion. This will include bunding, double lined tanks and pipelines where necessary.
- Where possible all process lines will be above ground to enable easy inspection and maintenance.
- All bunds, tanks and pipelines will be inspected on a regular basis in accordance with the proposed development IE license
- An EMS will be put in place as described in Chapter 3

- 11.63. Process drains will route the effluent to the on-site WWTP for treatment. Treated effluent from the on-site WWTP will discharge via a dedicated pipe that will connect into the IW outfall pipe in agreement with IW and in compliance with conditions stipulated by the EPA. The IW outfall pipe will ultimately discharge the treated process effluent into the Lower River Suir. The foul drain will collect and direct all foul waters arising from toilets, shower and the canteen to the public sewer located on the IDA Access Road to the east of the site. The canteen will be fitted with a grease trap. Foul effluent will be treated in the IW urban WWTP, located to the south of the site.
- 11.64. Only clean uncontaminated rainwater from the site will discharge into the storm water drain. On site storm water drains will connect into the existing IDA storm water drain which ultimately discharges into the Gorteens Stream. Multiple design measures will be constructed to prevent potential impacts including:
- SuDS design implemented ensuring greenfield discharge rates including attenuation tank and hydrobrake
 - Attenuation tank will also serve to settle solids and
 - Oil interceptor / silt trap will be installed for drainage from internal roads and yard
- 11.65. Storm water trigger level (i.e. emission limits) and monitoring requirements will be conditioned as part of the IE License and regulated by the EPA. A sampling chamber will be installed prior to the connection with the public storm water drain together with an automatic shut off valve will be installed.
- 11.66. In the event of a fire on-site all storm drains will be re-routed on the on-site fire-water retention pond. This will ensure fire water containment and monitoring can be completed prior to its release as per EPA guidance.
- 11.67. The facility will require c 4,000m³ of water per day with 2,000m³ per day recovered from the milk for re-use in the process. A maximum of approx. 2,000m³ per day of process and potable water will be taken directly from the mains supply and will be used for the canteen, showers, toilets and other welfare facilities. IW have confirmed that there is a sufficient supply available to meet the demands. There will be no significant impact on water supply in the area.
- 11.68. The on-site water treatment plant will provide necessary pre-treatment of the mains water supply which will comprise water softening and pH adjustment. A water holding

tank will be located on-site. Specific design measures to reduce water consumption and increase water re-use include:

- An advanced whey processing plant which can recover up to 1,907 m³/day of water from whey using a membrane system and
- Three (3 no) pasteurisers allowing the cheese making process to continue in one while the other two are undergoing Clean-In-Place (CIP). This will avoid the need for a full line CIP, and therefore will use less water and energy. This would result in water savings of 13,200 m³/year in addition to significant energy savings.

11.69. Process effluent and potentially other contaminated discharge including milk intake, CIP bund and CIP process discharge, wash down discharge from the facility (internally), truck wash area, boiler blowdown and hard surface area of WWTP will be treated on the site WWTP prior to discharge into a dedicated discharge pipe which will connect with the Irish Water outfall pipe for ultimate discharge into the Lower River Suir. Mitigation measures include:

- The on-site WWTP will provide treatment of the process effluent. It will be designed to treat approx. 6,000 m³ of effluent per day. This will be a full biological WWTP capable of removing biochemical oxygen demand (BOD), chemical oxygen demand (COD) and nutrients characteristic of dairy plant effluent to a level that complies with BAT limits. The main treatment will take place in an anoxic tank and an aeration tank. Biological phosphorus removal will also be included in the design. The WWTP will be automated, operated, monitored and controlled via a dedicated supervisory control and data acquisition (SCADA) system and in turn by a facility wide Building Management System (BMS) with all alarms, levels, flow rates, sensors and motors monitored and recorded.
- The discharge from the WWTP will be regulated by the EPA under the IE licence. The discharges will be a dedicated pipeline along the IDA Access Road which will connect into the IW outfall pipelines at the outfall chamber, that is located downstream of the IW WWTP. This proposed new discharge pipe will be built along the western side of the IDA Access Road underneath the footpath, as indicated in Chapter 8. Total length of this pipe will be c 1.2km however its length within the IDA lands will be 350m.

- Using the existing IW outfall will remove potential impacts associated with constructing another pipe into the Lower Suir Estuary. IW has agreed to this approach in principle.
- In addition to the design measures i.e. onsite WWTP a monitoring programme will be undertaken to ensure all discharges to public sewers are in compliance with the IE license. The frequency of monitoring and emission limit values will be outlined within the EPA authorised IE license.
- A firewater retention pond will be provided onsite for containment of contaminated water in case of a fire. The pond will have approximate capacity of 3,600 m³. It will also serve as containment in recent of spill or any contamination within the surface water system.

11.70. The discharge of the treated process effluent arising from the proposed development will be mixed with the treated IW discharges from the urban WWTP prior to discharging into the River Suir. IW upstream and downstream monitoring of the Lower River Suir indicates that current water quality is within the EQS-es for good quality surface waters (Table 8-7 refers). Average daily flow from the IW urban WWTP for 2018 was 37,752 m³. Allowing for a 20% increase in the volume of this flow to cater for future expansion would amount to 45,302 m³. The worst-case discharge from the proposed development will be c6,000m³/day or c13% of a predicted increased discharge from IW. The key quality parameters in the discharge arising from the proposed development will have the same or lower ELVs than the current IW discharges. It is reasonable to assume that the combined future effluent will have the same or lower concentrations of the key pollutants when compared to the current effluent concentrations discharging to the River Suir at this location. There will be no significant cumulative impact from the combined discharge of the proposed development and the IW urban WWTP on the Lower River Suir water quality.

11.71. The proposed development will not cause intensification of diary, nor will indirect impacts have significant effects after implementation of mitigation measures, as outlined in Section 8.8 "Indirect Impacts" of Chapter 8 of the EIAR. That section details numerous programmes and mitigation measures implemented by the Government and Glanbia to mitigate against nitrogen, including but not limited to

- The Nitrates Action Programme is designed to prevent pollution of surface waters and ground water from agricultural sources and to protect and improve water quality.
- Agricultural Sustainability Support and Advisory Programme (ASSAP) works with farmers in a free and confidential advisory service to help improve water quality, delivering strong practical sustainable measures on 23,000 farms
- Glanbia's Open Source Programme providing a network of farm advisors throughout the Country delivering one-on-one advice
- Low Emission Slurry Spreading Equipment scheme assists farmers purchase new equipment for the spreading of slurry which has distinct environmental advantages and
 - Programmes to reduce the crude protein content in concentrate feeds

11.72. It can be concluded that the indirect effect of proposed development on water quality within the mitigation measures proposed will not be significant.

11.73. Having regard to the matters discussed above, I am satisfied that impacts that are predicted to arise in respect of water can be avoided, managed and mitigated by the measures which form part of the proposed development, the proposed mitigation measures and through suitable conditions. I am satisfied, therefore, that the proposed development would not have any unacceptable direct, indirect or cumulative impacts on water.

11.74. Chapter 9 Air Quality

11.75. The proposed development was subject to a detailed air quality assessment. In addition, indirect impacts on air quality were assessed. Table 9-2 shows the baseline air quality data for Zone D, taken from the Air Quality Report 2017. There are six IPC / IE licensed facilities located within 5km of the proposed development, with licensed emissions to air point sources. These are outlined in Table 9-3. The only emissions that could potentially result in cumulative impacts on air quality and NOx emissions within 1km of the proposed development are listed in Table 9-4. Sensitive receptors (SRs) and their distance to the site are detailed in Table 9-5 and Figure 9-1. The nearest SR is located approx. 159m to the east.

11.76. During the construction phase dust emissions from the earthworks and construction works will potentially give rise to increase levels of dust in the planning application

area and in the general vicinity. Movement of diesel-powered plant during construction has the potential to lead to increased emissions to air. These emissions are not considered significant and would be short term.

11.77. Point sources at the proposed development include an industrial boiler for steam generation and a low pressure hot water, both powered by natural gas. The only air pollutant will be nitrogen oxides as a consequence of the combustion process. Predicted impact of the traffic resulting from the proposed development is imperceptible in comparison to both the background concentrations of the relevant air pollutants and also the relevant AQS. There will be no noticeable odours from the process outside the main production plant. The only potential source of odour at the site will be the WWPT and sludge removal.

11.78. Specific construction mitigation measures include the preparation of a CEMP that will include the following measures to reduce emissions to air during the construction phase:

- Dust emissions from soil movements and stockpiles will be minimised by wetting down during dry, windy weather
- Locating stockpiles away from sensitive receptors and
- Minimisation of vehicle idling to reduce vehicle related emissions

11.79. Operational mitigations measures will include:

- Regular maintenance of boilers to ensure efficient operation in accordance with manufacturers specifications and
- Monitoring of emissions to air as per the sites IE License

11.80. All boilers at the proposed development will be powered by natural gas and emissions to air will not have significant impact on the air quality in the vicinity of the site or in the wider area. Regular monitoring of emissions to air from the boilers will be required by the IE License as well as regular odour assessments.

11.81. The WWTP will include both active and passive odour abatement measures. These measures will ensure that no significant odour emissions will arise from the proposed development.

11.82. Ammonia emissions to air from agriculture mainly arise from activities such as manure storage, slurry spreading and the use of inorganic nitrogen fertilisers. Glanbia fully

supports the implementation of the Code of Good Agricultural Practise (CGAP) as well as all measures recommended by the promotion of low-emission slurry spreading technology on farms through TAMS grant aid and other measures. Chapter 2 of the EIAR (as summarised above) details all Glanbia's sustainability programmes aimed at supply farms, which among other measures facilitate knowledge transfer and great target reduction of ammonia emissions at supply farms.

11.83. The indirect effect of proposed development on atmospheric ammonia emissions with the implementation of the proposed mitigation measures will be slight to moderate adverse, in the short term. However, in the medium term, as the mitigation measures become fully adopted and well established across the dairy farming sector, it is predicted that these indirect effects will become slight adverse.

11.84. Having regard to the matters discussed above, I am satisfied that impacts that are predicted to arise in respect of air quality can be avoided, managed and mitigated by the measures which form part of the proposed development, the proposed mitigation measures and through suitable conditions. I am satisfied, therefore, that the proposed development would not have any unacceptable direct, indirect or cumulative impacts on air quality.

11.85. **Chapter 10 Climate**

11.86. Climate change is recognised as a serious global environmental challenge that requires both international co-operation and local / national action. One of the primary reasons that Belview was chosen as the preferred location for the proposed facility is that it lies in the centre of the Glanbia milk pool limiting the distance milk supply trucks have to travel to get the milk from farm to factory significantly reducing transport emissions.

11.87. The construction phase of the proposed development will result in the following emissions of GHGs:

- GHG emissions from construction related traffic and construction related plant on site. these emissions will be of limited duration and are considered insignificant in comparison to other GHG emissions related to this development
- Carbon embedded in the material used for construction of the proposed development

11.88. During the operational phase GHG emissions resulting from the proposed development will be from the following:

- Combustion of fossil fuels to generate steam and heat required for the process
- Electricity used to power the WWTP and some parts of the process, refrigeration, lighting, canteen etc and
- Transport emissions from deliveries of raw materials, dispatch of product and employee transport

11.89. A number of measures will be put in place to reduce the impact of greenhouse gas emissions from the site including:

- State of the art energy efficient systems utilised throughout the proposed development allowing emissions reductions of at least 15,306 tonnes of CO₂-eq per year when compared with a standard design facility and
- Placement of the site in the centre of the milk supply pool and adjacent to road and port infrastructure, minimising transport-related emissions

11.90. The design of the facility will include a bike shed and electric vehicle charging points to promote emission free transport for employees.

11.91. The production of 450 million litres of milk produces 513 megatons of CO₂eq. However, this is expected to decrease due to the increase production efficiency of the existing dairy herd and implementation of mitigation measures as previously outlined. Further, a significant portion of this milk will already be in circulation or will be produced as part of an increased milk supply regardless of whether the proposed development is in existence. These emissions are already accounted for and regulated through the National Climate Action Plan as part of dairy sector emissions. The proposed development will not directly or indirectly result in an increase of CO₂ emissions proportionate to the required milk input.

11.92. While the impact of the proposed development alone is considered to be insignificant, the indirect impact must be considered on a wider scale. One measure is the contribution of the proposed facility to Ireland's industrial GHG emissions. The EPA's projection for manufacturing emissions in Ireland in 2022 is approximately 30,029 tonnes of CO₂eq. It follows that emissions from the proposed facility would amount to 0.47% of predicted Irish Industrial GHG emissions for 2022.

11.93. Having regard to the matters discussed above, I am satisfied that impacts that are predicted to arise in respect of climate can be avoided, managed and mitigated by the measures which form part of the proposed development, the proposed mitigation measures and through suitable conditions. I am satisfied, therefore, that the proposed development would not have any unacceptable direct, indirect or cumulative impacts on human health.

11.94. **Chapter 11 Noise and Vibration**

11.95. A noise assessment was conducted based on best practise guidance and the criteria outlined with the EPA Guidance document for noise assessments. Baseline noise monitoring conducted in 2019 found the locality to experience relatively low levels of noise, though human created noise, such as industry and road traffic were dominant. Baseline noise monitoring was undertaken at representative locations in the vicinity of the site; Figure 11-1 refers. The closest residential property to the site is located over 159m from the eastern boundary.

11.96. The sources and potential impacts arising from the scheme are as follows:

- Construction Phase – Use of plant operating in the external / open environment. Vibration can arise as an issue where heavy plant, piling or drilling occurs near older buildings. Due to the distance between the sensitive receptors identified and the areas of construction vibration during the construction stage was not deemed a potential impact in relation to this project and no further assessment has been conducted.
- Operational Phase – The proposed development will bring new plant and equipment to the locality. These emissions can be broadly split into (1) mobile emission and fixed plan emissions.

11.97. Construction noise is unavoidable, though short term (c 18 months). They will be undertaken in accordance with all recognised best practise guidelines and the works will adhere to relevant noise limits stipulated for such construction works. All works will be undertaken in compliance with the detailed CEMP.

11.98. Noise monitoring will be conducted during the construction and commissioning phase. In the event of noise nuisance complaints arising, monitoring and investigation of such complaints will be instigated to enable appropriate response. Compliance with the IE license will be further implemented. Annual monitoring will be a requirement of the

sites IE license. The future soundscape will of an audible character similar to the existing ambient environment.

11.99. The estimated in-combination impact of fixed plant will be lower than the standard IE license noise limit values at all sensitive receptors. Utilising a worst case event of the site, incorporating all modelled plant and peal truck movements onsite, some sensitive receptors are predicted to experience an increase in noise above the current (2019) monitored values, albeit they will not be significant increases.

11.100. Proposed traffic movements associated with the proposed development will increase currently authorised HGV movements on the local road network by c45%. This will result in a negligible increase in overall road traffic noise. Overall, the site-specific impact arising from noise associated with the entrance route will be negligible, arising from the predicted traffic along this route and the existing character of road traffic noise in the locality.

11.101. Having regard to the matters discussed above, I am satisfied that impacts that are predicted to arise in respect of noise and vibration can be avoided, managed and mitigated by the measures which form part of the proposed development, the proposed mitigation measures and through suitable conditions. I am satisfied, therefore, that the proposed development would not have any unacceptable direct, indirect or cumulative impacts on climate.

11.102. **Chapter 12 Landscape and Visual Impact**

11.103. The site is of medium-low landscape sensitivity. It is located within the IDA Belview Science & Technology Park, with the surrounding area comprised of agricultural farmland, bounded by hedgerows and by industry and mostly in the form of Belview Port and ancillary / adjacent developments located within 800m of the site to the south east. These include the IW WWTP less than 400m to the south of the site as well as the Glanbia plant located immediately to the north of the site.

11.104. A Visual Impact Assessment (VIA) that involved assessing 10 no visual receptor zones, representing a range of viewing angles, distances and contexts was completed. The impact assessment incorporates any likely cumulative effects as an integral aspect of the assessment. A set of 10 photomontages were prepared form within and around the site to fully illustrate the proposed development. These images are presented in Volume 3 EIA Appendices.

- 11.105. The physical impacts to the existing site land cover and vegetation will be permanent and are not readily reversible. However, none of the affected land cover or vegetation features is rare or decisive in forming the overall landscape character of the area. Construction stage impacts will be short term.
- 11.106. The most notable landscape impacts will result from the construction of numerous 28m high silos, in tandem with a particularly long 14m high building, followed by a waste treatment plant, pump house and substation in the western end of the site. Following this will be the presence of a 60 no car park in the east of the site, and vast areas of concrete / hardscape surfacing across large areas of the site.
- 11.107. In half of these VP locations (5 no), the visual impact is judged to be "imperceptible". Only at VP1, VP4 and VP5 is the significance of visual impact considered to be "slight"; the highest significance of visual impact recorded in the VIA. Furthermore, the "slight" impact is considered to reduce to slight-imperceptible in a post mitigation establishment. These "slight" impacts are the result of either more open visibility of the proposed development when viewed from within the Industrial and Scientific Park (i.e. that of a "low" visual sensitivity), or else from local community views less than 1km from the site, where partial views of the proposed development can be attained. In two remaining viewpoints (VP2 and VP10), the significance of impact was deemed to be "slight-imperceptible".
- 11.108. The main mitigation by avoidance measure employed in this instance is the siting of the proposed development in a robust, industrial-zoned IDA Science and Technology Park that avails of topographic screening to minimise open visibility from within the study area, as well as availing of existing vegetative screening so that the proposed development will not be prominent within the surrounding landscape.
- 11.109. The initial landscape impact will occur during the construction phase of the proposed development. However, this will be "short-term" and it is considered that overall the construction phase of the proposed development will result in minimal impact on the landscape given the industrial fabric of the area.
- 11.110. A landscape plan has also been prepared that will add a high-quality landscape finish and incorporates Kilkenny County Development Plan objectives to incorporate a buffer of planting around industrial developments. There are no aspects of this landscape and visual appraisal that will rely on on-going monitoring.

- 11.111. Having regard to the matters discussed above, I am satisfied that impacts that are predicted to arise in respect of landscape and visual impact can be avoided, managed and mitigated by the measures which form part of the proposed development, the proposed mitigation measures and through suitable conditions. I am satisfied, therefore, that the proposed development would not have any unacceptable direct, indirect or cumulative impacts on landscape and visual impact.
- 11.112. **Chapter 13 Cultural Heritage**
- 11.113. A desk-based assessment and site survey were undertaken by an experienced archaeologist to identify the likely significance and sensitivity of any known or any potential archaeological, architectural and cultural heritage sites. No known archaeological site (Recorded Monuments) occur either within the boundary of the proposed site or within the immediate vicinity of the proposed site. The closest recorded monument to the site is a castle located 580m east of the site boundary (RMP KK047-001).
- 11.114. The greatest potential impacts of the proposed development are likely to arise from the large-scale earthworks required to construct the proposed development. These potential impacts will be mitigated by pre-development archaeological testing. A geophysical survey of the site was carried out in 2004 and while no specific archaeological features were identified, geophysical anomalies identified in the survey required clarification by means of test trenching. The predevelopment testing strategy will involve comprehensive coverage of the site with specific emphasis on the anomalies (possible archaeological features) identified in the geophysical survey. The archaeological testing will be carried out under license to the National Monuments Service of the Department of Culture, Heritage and Gaeltacht.
- 11.115. Having regard to the matters discussed above, I am satisfied that impacts that are predicted to arise in respect of cultural heritage can be avoided, managed and mitigated by the measures which form part of the proposed development, the proposed mitigation measures and through suitable conditions. I am satisfied, therefore, that the proposed development would not have any unacceptable direct, indirect or cumulative impacts on cultural heritage.
- 11.116. **Chapter 14 Material Assets – Waste Management**

- 11.117. On a regional level. Kilkenny is grouped with Carlow, Wexford, Waterford, Tipperary, Cork, Kerry, Clare and Limerick who together make up the new Southern Regional Waste Management Planning Region. The Southern Regional Waste Management Plan 2015 – 2021 aims to establish a framework which protects the health of the environment and its citizens through the sustainable management of wastes generated in the region by transitioning towards a more resource efficient and circular economy.
- 11.118. Due to the scale of the proposed construction works there is a potential for generation of waste material during the construction phase such as site clearance material, road works material and construction material. A small amount of canteen and domestic waste will also be generated during construction. Waste generated onsite during the construction phase will be recycled or reused where possible or disposed of off-site at an appropriate waste facility. Table 14-1 lists the projected annual waste quantities predicted to be generated on site in relation the operations phase of the development i.e. mixed municipal waste, engine, gear and lubricating oils, paper and cardboard packaging and plastic packaging.
- 11.119. It is proposed to maximise the reuse of all excavated materials arising during the construction works on the site, thereby significantly reducing offsite truck movements during the construction phase.
- 11.120. The main process waste generated by the proposed development will be a low-value dairy by-product – whey - which will be used as raw material for Glanbia's AgriChemWhey facility, which was recently granted planning permission. The proposed development will be operating as per the principles of the circular economy, whereby by-products and wastes from one process will be used to create valuable products.
- 11.121. The on-site wastewater treatment plant will produce up to 67.5 tonnes of organic sludge per week, which will be utilised for anaerobic digestion and generation of energy at an appropriately licensed facility. The waste produced and removed from site will be recorded and annually reported to the EPA in the AER as per the requirements of the facility's IE license. Therefore, there will be no significant impact associated with the proposed development on the existing waste management infrastructure.

- 11.122. Having regard to the matters discussed above, I am satisfied that impacts that are predicted to arise in respect of waste can be avoided, managed and mitigated by the measures which form part of the proposed development, the proposed mitigation measures and through suitable conditions. I am satisfied, therefore, that the proposed development would not have any unacceptable direct, indirect or cumulative impacts on waste management.
- 11.123. **Chapter 15 Material Assets – Traffic & Transport**
- 11.124. The existing IDA Science and Technology Park access road will provide access to the site. It is proposed that all HGVs will enter and exit the site via the existing Glanbia entrance. A right of way access has been agreed between the applicant and Glanbia for this shared access. A separate access location will be provided for staff and visitors entering and exiting the proposed development. A total of 94 car parking spaces including 8 disabled spaces are to be provided on the site. Electric vehicle charging and a bike shed will be provided to promote emissions free for employees.
- 11.124.1. A Traffic Impact Assessment was carried out in accordance with the NRA Traffic and Transport Assessment Guidelines 2014. Field studies data analysis and forecast projections were carried out. There is a long-term objective to provide a roundabout on the N29 at its junction with the LP3412.
- 11.125. During construction taking into consideration the normal intensity of on-site activity and the duration of the programme, it is expected that the construction schedule is likely to have a maximum of 300 – 400 staff in the site during the peak construction period. In order to assess a worst-case scenario, it is assumed that 33% of construction workers will arrive together in shared transport, albeit in reality this number will likely be higher. It is assumed that no construction workers will arrive by walking, cycling or use of public transport. Based on these numbers there could be in region of 500 – 600 vehicular trips per day.
- 11.126. Once operational there will be c103 trucks arriving at the facility each operational day. The proposed development will employ approximately 80 staff. Of the 80 staff, 30 staff will be office staff and will be on site between the hours of 08.30 to 17.30. the remaining 50 staff will be shift staff distributed across three 8-hour shift periods with approximately 16 staff working per shift period.

11.127. The findings of a detailed traffic impact assessment confirmed that the surrounding road network will have capacity to cater for traffic associated with both the construction and operational phases of the proposed development.

11.128. Traffic management and monitoring measures will include but not necessarily limited to the following:

- The design of the site will include a bike and electric vehicle charging points to promote emissions free transport for employees
- The site operator will adhere to a routing policy to ensure HGV traffic journey route via the primary strategic road infrastructure wherever possible
- GPS route planning will be implemented throughout the HGV fleet to optimise travel times and routes to raw milk supply sources and reduce overall fuel consumption
- An engine no-idling policy will form part of the overall environmental management for the site

11.129. Having regard to the matters discussed above, I am satisfied that impacts that are predicted to arise in respect of traffic and transport can be avoided, managed and mitigated by the measures which form part of the proposed development, the proposed mitigation measures and through suitable conditions. I am satisfied, therefore, that the proposed development would not have any unacceptable direct, indirect or cumulative impacts on traffic and transport.

11.130. **Chapter 16 Material Assets – Wastewater Discharge**

11.131. The Urban WWTP serving Waterford City is located adjacent to the Lower River Suir, c 350m from the proposed facility and is operated by Irish Water and is regulated by the EPA, in accordance with EPA License D0022-01. The capacity of the UWWTP is 190,600 PE. The treatment comprises preliminary screening and grit removal, primary settlement tanks, secondary aeration, and final settlement tanks. The UWWTP discharges treated effluent via an outfall into the Lower River Sir, which is routed underneath the Irish Rail line. Public foul sewer also runs along the IDA access Road and connect to the UWWTP.

11.132. There will be no wastewater emissions during the construction phase of the project that will directly impact on the adjoining public infrastructure. Treated effluent

from the on-site WWTP will discharge via a dedicated pipeline which will connect into the IW outfall pipe, before discharging into the Lower River Suir. The treatment plant will have sufficient capacity to cater for the foul effluent loadings arising from the proposed development. Based on preliminary consultation with IW this outfall pipe has sufficient capacity to cater for the estimated c4500 m³/day of treated effluent that will arise from the proposed development will be treated differently to process effluent. All agreements with IW will be formalised as part of a pre-connection agreement that will be finalised during the detailed design phase.

11.133. Having regard to the matters discussed above, I am satisfied that impacts that are predicted to arise in respect of the discharge pipe and urban WWTP can be avoided, managed and mitigated by the measures which form part of the proposed development, the proposed mitigation measures and through suitable conditions. I am satisfied, therefore, that the proposed development would not have any unacceptable direct, indirect or cumulative impacts on wastewater discharge.

11.134. **Chapter 17 deals with the interaction of the foregoing.**

11.135. Table 17.1 summarises the interaction of the factors discussed in the preceding chapters. Generally, the negative impacts relate to the construction phase of the project and are slight. There are some positive impacts largely related to population. I consider that this summary of the potential for interacting impacts is reasonable.

11.136. **Chapter 18** provides a schedule of mitigation measures which have been discussed above.

11.137. **Reasoned Conclusion.**

11.138. Having regard to the examination of environmental information contained above, and to the submission by the planning authority it is considered that the main significant direct and indirect effects of the proposed development on the environment are as follows:

- Impacts to biodiversity are likely to arise during construction works due to the removal of agricultural grassland and hedgerows / treeline and shrubs in preparation for the construction of the factory. The impacts arising from the removal of habitat and disturbance would be mitigated by additional planting, appointment of an Ecological Clerk of Works, a CEMP, provision of artificial bat

roosts, management of vegetation to outside the bird breeding season, attenuation of surface water and following best practice and procedures during the construction phase. Regarding the dairy farms supplying the factory, impacts arising would be mitigated through compliance with both the Government and Glanbia's sustainability programmes as outlined in the EIAR which I have reviewed and consider reasonable.

- Potential environmental impacts arise from wastewater discharge and surface water runoff. Having regard to the EIAR submitted and the mitigation measures contained therein that include the development of a WWTP that will treat effluent on site prior to discharge to the Lower River Suir via the IW outfall pipe, surface water management, SuDS and attenuation tanks it is considered that all potential discharges, both those governed by the Industrial Emissions license from the EPA and discharges that may result from spillage or firewater, can be adequately contained and subject to full compliance with all mitigation measures listed in the documentation, by virtue of this development there is no potential for significant adverse impact on the receiving environment proximate or removed from the site, either from this development alone or in combination with other developments.
- Impacts on climate are likely to arise in the production of 450 million litres of milk which produces 513 megatons of CO_{2eq}. While the impact of the proposed development alone is considered insignificant, there is an indirect impact. This impact is expected to decrease by virtue of the production efficiency of the existing dairy herd and implementation of mitigation measures as outlined in the EIAR. Further these emissions are already accounted for and regulated through the National Climate Action Plan as part of dairy sector emissions. The proposed development will not directly or indirectly result in an increase of CO₂ emissions proportionate to the required milk input. The impacts arising would be mitigated through compliance with both the Government and Glanbia's sustainability programmes as outlined in the EIAR which I have reviewed and consider reasonable.
- Construction phase impacts in the form of short term increases in the traffic (private cars and HGVs) on the local road network are recognised, addressed in the EIAR and, specifically in the construction and environment management plan. The

mitigation measures are reasonable and practicable. Noise and vibration levels would be within acceptable emissions limits during normal operation.

- The proposed development entailing a series of large modern industrial design buildings would have an impact on the visual character of the area. This impact is considered acceptable given the location of the site within the IDA Belview Science & Technology Park on land that is zoned for ITP Industrial / Technology Park in the Development Plan.
- There are potential positive impacts for employment opportunities and economic activities in the region. Impacts arising from noise, dust, traffic, and construction will be mitigated by a Construction Management Plan including traffic management measures. There will be no negative impacts subject to mitigation measures outlined or otherwise addressed by condition.

11.139. I am satisfied that the proposed development would not have any unacceptable direct or indirect effects on the environment.

12.0 Appropriate Assessment

12.1. Stage 1 Screening for Appropriate Assessment

12.2. The application included a Natura Impact Statement to evaluate the potential impacts(s) of the proposed development on European Sites located within 15km radius. While 15km is not a statutory requirement I am satisfied that it is a reasonable parameter and that the sites identified in Stage 1 of the AA are acceptable. The appeal site is not located within a designated Natura 2000 site. However, the Lower River Suir SAC is c 630m to the south of the appeal site. Other sites considered relevant to this appeal site include River Barrow & River Nore SAC, Bannow Bay SAC, Tramore Dues & Backstrand SAC, Bannow Bay SPA and Tramore Back Stand SPA. Details are summarised as follows:

Site Name	Code	Dist. (km)	Direction from site
Special Areas of Conservation (SAC)			
Lower River Suir SAC	002137	40m	South
River Barrow & River Nore SAC	002162	2.9km	North

Bannow Bay SAC	000697	14.1m	South East
Tramore Dunes & Backstrand SAC	000571	9.7km	South West
Special Protection Area (SPA)			
Bannow Bay SPA	004033	14.5km	South East
Tramore Back Strand SPA	004027	9.7km	South West

- 12.3. Given the distance, the lack of hydrological connectivity and lack of impact pathways the Bannow Bay SAC, the Tramore Dunes & Backstrand SAC, the Bannow Bay SPA and the Tramore Back Strand SPA have been screened out from further consideration.
- 12.4. The boundaries of the Lower River Suir SAC and River Barrow & River Nore SAC are located within 3km from the application boundary and given the current hydrological connection between the site and Lower River Suir SAC and River Barrow & River Nore SAC, further consideration will be given to these Natura 2000 sites to assess potential adverse effects resulting from the proposed development.
- 12.5. **Lower River Suir SAC (Site Code 002137)** – The Lower River Suir SAC is an extensive site, which covers the freshwater stretches of the River Suir from south of Thurles, Co Tipperary to the Barrow-Suir confluence east of Cheekpoint, Co. Waterford. The SAC is comprised of a number of Annex I habitats, including priority habitats alluvial forest and Yew woodland. Other habitats within the SAC include wet and dry grassland, marsh, swamp, improved grassland, tidal river, deciduous woodland and mudflats. The qualifying interests are as follows:

Natura 2000 Site & Conservation Objective	Qualifying Interest
Lower River Suir SAC Site Code 002137	Annex I Atlantic salt meadows (<i>Glauco-Puccinellietalia maritima</i>) Mediterranean salt meadows (<i>Juncetalia maritimi</i>)

	<p>Water courses of plain to montane levels with the <i>Ranunculus fluitans</i> and <i>Callitriche-Batrachium</i> vegetation</p> <p>Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels</p> <p>Old sessile oak woods with <i>Ilex</i> and <i>Blechnum</i> in the British Isles</p> <p>Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i>, <i>Alnion incanae</i>, <i>Salicion albae</i>)</p> <p><i>Taxus baccata</i> woods of the British Isles</p> <p>Annex II</p> <p>Freshwater pearl mussel (<i>Margaritifera margaritifera</i>),</p> <p>White-clawed crayfish (<i>Austropotamobius pallipes</i>)</p> <p>Sea lamprey (<i>Petromyzon marinus</i>)</p> <p>Brook lamprey (<i>Lampetra planeri</i>)</p> <p>River lamprey (<i>Lampetra fluviatilis</i>)</p> <p>Twaite shad (<i>Alosa fallax fallax</i>)</p> <p>Atlantic salmon (<i>Salmo salar</i>)</p> <p>Otter (<i>Lutra lutra</i>).</p>
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12.6. The overall aim of the Habitats Directive is to maintain or restore the favourable conservation status of habitats and species of community interest. The site specific conservation objectives are to **maintain** the favourable conservation condition of

- Water courses of plain to montane levels
- Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels

- White-clawed Crayfish
- Otter

12.7. And to **restore** the favourable conservation condition of

- Atlantic salt meadows
- Mediterranean salt meadows
- Old sessile oak woods
- Alluvial forests
- Taxus baccata woods
- Freshwater Pearl Mussel
- Sea Lamprey
- Brook Lamprey
- River Lamprey
- Twaite Shad
- Salmon

12.7.1. **River Barrow & River Nore SAC (Site Code 002162)** – The River Barrow and River Nore SAC consists of the freshwater stretches of the Barrow and Nore River catchments extending from the Slieve Bloom Mountains to the estuary and tidal elements in Creadun Head, Waterford. Species rich habitats (Annex I of the EU Habitats Directive) including estuaries, alluvial forests, petrifying springs and intertidal mudflats and sandflats can be found within this SAC. The qualifying interests are as follows:

Natura 2000 Site & Conservation Objective	Qualifying Interest
River Barrow & River Nore SAC Site Code 002162	Annex I Estuaries Mudflats and sandflats not covered by seawater at low tide Salicornia and other annuals colonising mud and sand

	<p>Atlantic salt meadows (<i>Glauco-Puccinellietalia maritimae</i>)</p> <p>Mediterranean salt meadows (<i>Juncetalia maritimi</i>)</p> <p>Water courses of plain to montane levels with the <i>Ranunculion fluitantis</i> and <i>Callitricho-Batrachion</i> vegetation</p> <p>European dry heaths</p> <p>Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels</p> <p>Petrifying springs with tufa formation (<i>Cratoneurion</i>)</p> <p>Old sessile oak woods with <i>Ilex</i> and <i>Blechnum</i> in the British Isles</p> <p>Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i>, <i>Alnion incanae</i>, <i>Salicion albae</i>)</p> <p>Annex II</p> <p>Otter <i>Lutra lutra</i></p> <p>Freshwater Pearl Mussel Margaritifera Margaritifera</p> <p>Nore Freshwater Pearl Mussel Margaritifera <i>durrovensis</i></p> <p>Desmoulin's Whorl Snail (<i>Vertigo moulinsiana</i>)</p> <p>White-clawed Crayfish (<i>Austropotamobius pallipes</i>)</p> <p>Atlantic Salmon (<i>Salmo salar</i>)</p> <p>Sea Lamprey (<i>Petromyzon marinus</i>)</p> <p>Brook Lamprey (<i>Lampetra planeri</i>)</p> <p>River Lamprey (<i>Lampetra fluviatilis</i>)</p> <p>Twaite Shad (<i>Alosa fallax fallax</i>)</p> <p>Killarney Fern (<i>Trichomanes speciosum</i>)</p>
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12.8. The overall aim of the Habitats Directive is to maintain or restore the favourable conservation status of habitats and species of community interest. The site specific conservation objectives are to **maintain** the favourable conservation condition of:

- Desmoulin's whorl snail
- White-clawed crayfish
- Estuaries
- Mudflats & Sandflats not covered by seawater at low tide
- Salicornia and other annuals colonizing mud and sand
- Killarney fern
- Water courses of plain to montane levels
- European Dry Heaths
- Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels
- Petrifying springs with tufa formation

12.9. And to **restore** the favourable conservation condition of

- Sea Lamprey
- Brook Lamprey
- River Lamprey
- Twaité Shad
- Atlantic Salmon
- Atlantic salt meadows
- Otter
- Mediterranean salt meadows
- Nore freshwater pearl mussel
- Old sessile oak woods
- Alluvial forests

12.10. The qualifying interests that could be affected in the **Lower River Suir SAC** are summarised as follows:

Qualifying Interest	Potential Impacts
Atlantic Salmon	Direct effects from water discharge Decrease in water quality Decrease in food availability Pollution
Sea Lamprey	As above
Brook Lamprey	As above
Twaite Shad	As above
Otter	Disturbance / displaced during construction Decreased water quality Decreased prey availability Pollution

12.11. The qualifying interests that could be affected in the **River Barrow and River Nore SAC** are summarised as follows:

Qualifying Interest	Potential Impacts
Atlantic Salmon	Direct effects from water discharge Decrease in water quality Decrease in food availability Pollution
Sea Lamprey	As above
Brook Lamprey	As above
River Lamprey	As above
Twaite Shad	As above
Otter	Disturbance / displaced during construction

	<p>Decreased water quality</p> <p>Decreased prey availability</p> <p>Pollution</p>
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12.12. Atlantic Salmon, Sea Lamprey, Brook Lamprey and Twaite Shad are known to use the Lower River Suir. These species together with the River Lamprey are also known to be present within the estuary during parts of its lifecycle. Given the hydrological connection to the River Suir and River Barrow through the Rathpatrick stream, the Gorteens stream and the discharge of the treated effluent, there is potential for construction and operational works to impact on this species. Further assessment is required.

12.13. Otters are also known to occur within the area. It is considered that the risk to the species resulting from the proposed construction works is very low, given that no works will take place within habitats that are suitable for the species. However due to the hydrological connection between the site and the River Barrow and River Suir there is potential for construction and operational adverse effects to this species in the absence of mitigation. Further consideration is required.

12.14. **Stage 2 Appropriate Assessment**

12.15. The Screening process above has examined the potential for the proposed development to cause adverse effects on Natura 2000 European Sites and qualifying features of interest. A number of species have been identified which require to be brought forward for further consideration due to potential for adverse effects as a result of the proposed development in the absence of appropriate mitigation measures.

12.16. The following impacts with potential to adversely affect the conservation objectives of the identified Natura 2000 sites were considered in the NIS.

12.17. **Potential impairments of water quality during construction phase** – The Rathpatrick and the Gorteens streams are the closest hydrological feature in the vicinity of the site. Due to the fact that the River Suir is considered “at risk” should runoff of potential pollutants from the construction area reach the surface water, groundwater or flow into either the Rathpatrick or the Gorteens streams, this could

adversely affect the water quality within the River Suir and further downstream in the River Barrow and Barrow Suir Nore Estuary.

12.18. **Potential impairment of water quality during operation phase** - Given that both surface water discharges and treated trade effluent discharge arising from the site will be discharged to the Lower River Suir there is potential for adverse effects in the absence of appropriate mitigations measures.

12.19. **Potential Indirect Impacts** - The raw material, milk (450 million litres / year) will be mostly sourced from the existing Glanbia farms (c 4,500 farms). The specific farms supplying milk to the proposed facility cannot be identified and are likely to change from year to year.

12.20. **Mitigation measures** to prevent possible impacts arising from the proposed project are as follows:

12.21. **Construction Procedures** – The construction works will take approximately 20 – 24 months to complete. An ecological clerk of works (ECoW) will inspect the sites in advance of works commencing and will undertake site inspections as required the works, to ensure that they are completed in line with the mitigation measures detailed within the Construction Environmental Management Plan (CEMP). A detailed CEMP will be prepared and submitted to Kilkenny County Council for approval in advance of the works.

12.22. **Potential impairments of water quality during construction phase** - The Rathpatrick and the Gorteens streams are separated from the sites boundaries by roads and mixed broadleaved woodlands. Sections of the Gorteens Stream are within the Irish Water lands and are also separated by a berm. It is considered highly unlikely that there would be adverse effects to these waterbodies as the roads and woodlands will act as buffers between them.

12.23. The proposed measures to remove the risk from potential contamination and emergency procedures to be implemented in the event of an accidental release or spill of potentially contaminating substances are outlined in Section 7.1 of the NIS and include:

- Adequate spill kits will be maintained onsite;
- All contractor workers will be appropriately trained in the use of spill kits

- Any sediments impacted by contamination will be excavated and stored in appropriate sealed containers for disposal off site

12.24. In addition, best practise guidelines will be followed, which are based on Inland Fisheries Ireland (2016) and National Roads Authority (2005) guidance documents and include

- If not used directly all materials shall be stored at the main contractor compound and transported to the works zone immediately prior to construction
- Weather conditions will be considered when planning construction activities to minimise risk of run off from site
- Excavation will be left open for minimal periods to avoid acting as a conduit for surface water flows
- Only emergency breakdown maintenance will be carried out on-site. emergency procedures and spillage kits will be available and construction staff will be familiar with emergency procedures
- Washout of concrete trucks will not be permitted on the site
- Cabins, containers, workshops, plant, material storage and storage tanks shall be located no more than the minimum distance allowed to any surface water channel
- Fuels, lubricants and hydraulic fluids for equipment used in the construction site will be carefully handled to avoid spillage, properly secured against unauthorised access or vandalism and provided with spill containment according to current best practise
- No vehicle or equipment maintenance work will take place within the site
- Prior to any works commencing, all construction equipment will be checked to ensure that they are mechanically sound, to avoid leaks of oil, fuel, hydraulic fluids and grease and
- Measures will be implemented to minimise waste and ensure correct handling storage and disposal of waste

12.25. Measures will also be put in place to prevent suspended solids in any runoff entering the watercourses from the appeal site boundary and to ensure works are in line with the Inland Fisheries Ireland guidelines. These measures will include the following:

- Existing vegetation will be retained where possible

- No construction works will occur within 20m of any watercourse
- No discharges to the surface water drainage system will be made until all drains are fully connected to the proposed oil / water interceptor and attenuation pond;
- Until the surface water drainage system is fully operational drainage during the Construction Phase will be managed through infiltration

12.26. Following the implementation of the above-mentioned mitigation measures, it can be concluded that the construction phase of the proposed development will not have any adverse effects on water quality within the Lower River Suir SAC and River Barrow & River Nore SAC or species for which they are designated.

12.27. **Potential impairment of water quality during operation phase** – Mitigation measures that will form part of the proposed development to ensure that adverse effects in the surface water and treated trade effluent discharge arising from the site can be avoided are set out below.

- **Surface Water / General Mitigation Measures** - Only clean uncontaminated rainwater from the site will discharge into the storm water drain. On-site storm water i.e. uncontaminated rainwater from the roof and clean paved areas of the site will be directed to an attenuation pond in the south eastern corner of the site. Water from the attenuation pond will then be directed via underground pipes to Irish Waters storm drain, eventually discharging into the Gorteens Stream to the east of the site. The hydro brake and fuel / oil separator will be installed downstream of the attenuation pond. The flow to the attenuation pond will be monitored for contaminants with automatic diversion into the firewater retention pond if trigger levels are exceeded. Drainage will be designed to Sustainable Drainage System standard, ensuring the greenfield discharge rates. Storm water trigger levels (i.e. emission limits) and monitoring requirements will be conditioned as part of the IE License and regulated by the EPA. Given the above drainage design, no impacts on water quality or the flow in the Gorteens Stream or Lower River Suir are expected.
- Further general mitigation measures are detailed below in relation to measure to protected water quality on site.

- 1) Materials on-site will be stored and transferred in accordance with EPA Guidance (2014) and relevant BAT conclusions (2006). This will include bunding, double lines tanks and pipelines where necessary
 - 2) Where possible, all process lines will be above ground to enable easy inspection and maintenance
 - 3) All bunds, tanks and pipelines will be inspected on a regular basis in accordance with the proposed developments Industrial Emissions (IE) license
 - 4) In the event of a fire on-site, all storm drains will be re-routed to the on-site fire-water retention pond. This will ensure fire water containment and monitoring can be completed prior to its release as per EPA Guidance.
 - 5) Preventative maintenance will be undertaken in accordance with manufacturers and IE License requirements and
 - 6) An Environmental Management System (EMS) will be put in place
- **Process Water Discharge** – Process effluent and potentially other contaminated discharge milk intake, CIP bund and CIP process discharge, wash down discharge from the facility (internally), truck wash area, boiler blowdown and hard surface area of WWTP will be treated in the outside WWTP prior to discharge into a dedicated pipe which will connect with the IW pipe for ultimate discharge into the Lower River Suir. The on-site WWTP will provide treatment of the process effluent. It will be designed to treat approximately 6,000 m³ of effluent per day. This will be a full biological WWTP capable of removing biochemical oxygen demand (BOD), chemical oxygen demand (COD) and nutrients characteristic of a dairy plant effluent to a level that complies with BAT limits. The main treatment will take place in an anoxic tank and an aeration tank. Biological phosphorous removal will also be included in the design.
 - Following complete treatment in the on-site WWTP to a standard that meets with the approval of the EPA, process water will discharge via a dedicated pipe which will connect into the Irish Water outfall pipe. The treated process effluent will at that point be mixed with the IW treated effluent, before the combined effluent will discharge into the Lower River Suir. The location of the proposed new pipes and the location of the outfall are shown in Figure 3-2 of the NIS. Average discharge

from the proposed development will amount to >0.09% of the average flow of the Lower River Suir. Based on this flow, together with the BAT limits, which will be applied to the discharge from the proposed development and the current water quality in the Lower river Suir (refer to table 7-2 of the NIS) it can be concluded that the treated process effluent that will discharge from the proposed development will not have an adverse impact on the water quality in the Lower River Suir or the River Barrow & River Nore SAC or species for which they are designated.

- 12.28. **Potential indirect impacts** - In order to combat adverse effects within the dairy farming milk supply sector, Glanbia is committed to sustainable milk production and has an active Sustainability and Quality Assurance Programme, which is in line with Bord Bia Sustainable Dairy Assurance Scheme (SDAS). The areas of biodiversity and ecology which are considered at farm level assessments include land management, environmental care and carbon footprint, quality and conservation of water, animal health, welfare and biosecurity and the data storage and responsible usage of medicines, pesticides, anthelmintics and other chemicals. Glanbia Ireland is also a supporting partner of the BRIDE (Biodiversity Regeneration In a Dairying Environment) project which aims to design and implement a results based approach to conserve, enhance and restore habitats in lowland intensive farmland. All farms are subject to environmental controls including controls in the Wildlife Acts and the Habitats and Birds Directive which ensure that they do not significantly adversely affect the integrity of European and other protected sites and so as to ensure the protection of protected species.
- 12.29. The planning application provides a sufficient level of information surrounding the source of milk / milk supply in order to allow for the assessment of the associated indirect impacts to the required extent. There is no evidence of potential for direct habitat loss or fragmentation within designated areas associated with the project or for significant effects on the conservation objectives of any Natura 2000.
- 12.30. While it is not practicable to assess potential indirect effects on all Natura sites, it can be concluded in general terms that the continued implementation of the above mentioned programmes and mitigation measures on dairy farms that will supply milk to the proposed development will mitigate potential indirect adverse effects on Natura 2000 sites.

12.31. **Otter** – There are no suitable habitats for otter identified within the appeal boundary, however otters are known to occur within the wider area and have the potential to use the watercourses within close proximity to the appclaiton boundary. The site is separated from watercourses by local roads and areas of woodland. Furthermore, given the presence of the existing faci;oty, WWTP and road infrastructure, any otters utilising these watercourses would have become habituated to elevated levels of human activity. It is therefore considered that works within the site will not adversely impact on otters. However, in line with best practise and taking a precautionary approach, the following mitigation measures will be included, therefore preventing any potential disturbance / adverse effect on otters:

- An Ecological Clerk of Works (ECoW) will be appointed to the project and will undertake supervision works and inspections as required to ensure that the measures detailed in the NIS and EIAR will be fully implemented
- Protected species posters will be erected on the site notice board and be maintained throughout the duration of the works
- In advance of works all site personnel will receive a site induction or toolbox which will include reference to measures detailed in the CEMP and
- Should construction work for the pipeline be required outside of daylight hours the appointed project ECOW will be consulted as required.

12.32. Due to the large size of the Lower River Suir SAC and River Barrow & River Nore SAC, there are numerous projects and activities which have the potential to affect the conservation interests of these sites. However, there is no evidence that there are any development works currently taking place or are planned to be take place within close proximity to the site that have the potential to have an in-combination impact with the proposed development in terms of construction activities.

12.33. The key quality parameters in the process effluent discharge arising from the proposed development will have the same or lower ELVs that the current Irish Water discharges. The combined future effluent will have the same or lower concentrations of the key pollutants when compared to the current effluent concentration discharging to the River Suir at this location. Therefore, it can be concluded that there will be no significant cumulative effects from the combined discharge of the proposed development and the IW Urban WWTP on the Lower River Suir SAC water quality.

12.34. I am satisfied that an examination of the potential impacts has been analysed and evaluated using the best scientific knowledge. Significant effects on Natura 2000 sites were identified. Where potential adverse effects were identified, key design features are prescribed to remove risks to the integrity of the European sites. I am satisfied based on the information available that if the key design features are undertaken, maintained and monitored as detailed in the NIS, adverse effects on the integrity of Natura 2000 sites will be avoided.

12.35. I consider it reasonable to conclude on the basis of the information on the file, which I consider adequate in order to carry out a Stage 2 Appropriate Assessment, that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the Lower River Suir SAC (002137) and River Barrow & River Nore SAC (002162) or any other European site, in view of the site's Conservation Objectives.

13.0 Recommendation

13.1. On the basis of the above planning assessment, environmental impact assessment and appropriate assessment, I recommend that the Board approve the application for the proposed development for the reasons and considerations and subject to the conditions set out below.

14.0 Reasons and Considerations

14.1. Having regard to:

- (i) The written submissions made in respect of the application
- (ii) The established nature of the existing Glanbia Development on the adjoining site, the detailed nature, scale and form of the development and its location relative to nearby sensitive receptors,
- (iii) Mitigation measures which are proposed for the construction and operation phases of the development,
- (iv) The provisions of the Kilkenny County Development Plan 2014-2020 and the Ferrybank/Belview Local Area Plan 2017 including the zoning of the subject lands under the latter plan for Industrial / Technology Park (ITP)

- (v) The nature of the landscape and the absence of any specific conservation or amenity designation for the site,
- (vi) The pattern of development in the area including the proximity to the existing Glanbia facility and the separation distance of the site from existing dwellings,
- (vii) The submissions on file including those from prescribed bodies and the Planning Authority
- (viii) The documentation submitted with the application, including the Environmental Impact Assessment Report and Natura Impact Statement

It is considered that, subject to compliance with the condition set out below, the proposed development would be in accordance with the Development Plan policies, would not seriously injure the visual or residential amenities of the area, would not be prejudicial to public health and would be acceptable in terms of traffic safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

15.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars, lodged with the, except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars. In default of agreement, the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity.

2. All environmental mitigation measures set out in the Environmental Impact Assessment Report and associated documentation submitted by the developer with the application shall be implemented in full except as may otherwise be required in order to comply with the conditions of this order.

Reason: In the interest of clarity and to protect the environment during the construction and operational phases of the development.

3. Monitoring of the construction phase shall be carried out by a suitably qualified competent person to ensure that all Environmental mitigation measures contained in the documentation which accompany the application are fully implemented. A designated member of the company's staff shall interface with the Planning Authority or members of the public in the event of complaints or queries in relation to environmental emissions. Details of the name and contact details and the relationship to the operator of this person shall be available at all times to the Planning Authority on request whether requested in writing or by a member of staff of the Planning Authority at the site.

Reason: To safeguard the amenities of the area.

4. (a) Prior to the commencement of development, the developer shall enter into a connection agreement with Irish Water.
(b) Drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health and to ensure a proper standard of development.

5. Lighting shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes, details of which shall be submitted to, and agreed in writing with the planning authority prior to commencement of development. The scheme shall minimise obtrusive light outside the boundaries of the development at all times.

Reason: In the interest of amenity and public safety.

6. The developer shall facilitate the planning authority in preserving, recording or otherwise protecting archaeological materials or features that may exist within the site. In this regard, the developer shall
 - a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,

- b) employ a suitably qualified archaeologist who shall monitor all site investigations and other excavation works, and
- c) (c) provide satisfactory arrangements for the recording and removal of any archaeological material which may be considered appropriate to remove.

Reason: In order to conserve the archaeological heritage of the site and to secure the preservation of any remains which may exist within the site.

7. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including:

- (a) hours of operation,
- (b) location of the site and materials compound(s) including area(s) identified for the storage of construction refuse,
- (c) location of areas for construction site offices and staff facilities,
- (d) details of site security fencing and hoardings,
- (e) details of car parking facilities for site workers during the course of construction,
- (f) details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site,
- (g) measures to obviate queuing of construction traffic on the adjoining road network,
- (h) measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network,
- (i) alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works,

(j) details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels,

(k) containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater,

(l) means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains,

(m) a maintenance contract for the oil interceptor to ensure it is emptied on a regular basis shall be submitted

(n) details of construction lighting, and

(o) details of key construction management personnel to be employed in the development.

The plan shall include measures for monitoring dust, noise, groundwater and surface water and shall include a proposal for periodic reporting to the planning authority.

A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan and monitoring results as appropriate shall be kept for inspection by the planning authority.

A Construction Manager shall be appointed to liaise directly with the Council for the duration of the construction of the scheme.

Reason: In the interest of amenities, environmental protection, public health and safety.

8. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the "Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects", published by the Department of the Environment, Heritage and Local Government in July 2006.

Reason: In the interest of sustainable waste management.

9. A noise management plan which shall include a monitoring programme shall be put in place by the developer in respect of the construction phase of the development. The nature and extent of the plan and the monitoring sites shall be agreed in writing with the planning authority prior to commencement of the development. The results of the programme shall be submitted to the planning authority on a monthly basis.

Reason: To protect the residential amenities of the area.

10. During construction the wheels of all trucks shall be washed prior to their exit from the site in a wheel wash facility. Details of the construction, installation and operation of this facility shall be agreed in writing with the Planning Authority prior to commencement of any development.

Reason: To safeguard the amenities of the area.

11. All solid wastes arising on the site shall be recycled as far as possible. Materials exported from the site for recovery, recycling or disposal shall be managed at an approved facility and in such a manner as is agreed with the Planning Authority. In any case no such wastes shall be stored on the site except within the confines of the buildings on site. Adequate on-site arrangements for the storage of recyclable materials prior to collection shall be made to the satisfaction of the Planning Authority.

Reason: To safeguard the amenities of the area

12. (a) The site shall be landscaped and planted in accordance with a scheme to comprise predominantly native and naturalised hedgerow, shrub and tree species reflecting those species naturally occurring in the locality. This plan shall be prepared with input from an ecologist. Full details (including drawings) shall be submitted in a landscape plan to be agreed in writing with the Planning Authority prior to commencement of development. It is desirable that the plan will reflect the principle of no net loss of native trees or hedgerows.
 - (b) Prior to commencement of development, the applicant shall submit the exact details of the type and location of a sturdy fence to be erected to

protect the trees and hedgerows on the site to be retained. The design and location of this protective fence should be determined by taking into account the recommendations of BS 5837:2012 with particular regard to the calculation of the Root Protection Area (RPA). This fence is to be erected prior to the commencement of development works on site and retained in place until all construction works are completed

Reason: In the interests of proper planning and sustainable development and protecting the biodiversity value of the site.

13. (a) The applicant shall put in place a Traffic Management Plan for the construction and operational phase of the development, which prohibits HGV's turning west at the IDA Roundabout onto the L3412 Abbey Road when exiting the IDA Science & Technology Park. All HGV traffic must utilise the available national and regional road network.
- (b) The developer shall agree a Road Maintenance Plan with the Ferrybank Municipal District Engineer which shall be implemented during the construction phase. This plan shall ensure to keep public roads clean with roads swept using a suction sweeper. No debris, and/or dust/dirt associated with the proposed development shall be deposited on the public roads.

Reason: In the interest of development control and traffic safety

14. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall

be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission

Mary Crowley

Senior Planning Inspector

15th June 2020

APPROVED

[2024] IEHC 55

**THE HIGH COURT
JUDICIAL REVIEW**

Record No. 2019/184JR

BETWEEN:

PETER SWEETMAN

APPLICANT

-AND-

**THE ENVIRONMENTAL PROTECTION AGENCY, IRELAND AND
THE ATTORNEY GENERAL**

RESPONDENTS

-AND-

MICHAEL NOEL O'CONNOR

NOTICE PARTY

JUDGMENT of Mr. Justice Conleth Bradley delivered on the 23rd day of January 2024

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INTRODUCTION

Preliminary

1. The principal relief sought by Mr. Sweetman, in this application for judicial review, is an order of *certiorari* quashing the decision of the Environmental Protection Agency dated 6th February 2019 to grant an Industrial Emissions Licence¹ pursuant to section 83 of the Environmental Protection Agency Act, 1992² to Mr. O'Connor for an intensive agricultural enterprise involving the rearing of 74,000 broiler chickens.³ Various related declarations are also sought and I address these matters later in this judgment.
2. At the commencement of the hearing, I was informed that the case as against the State parties has been discontinued and that Mr. O'Connor, the recipient of the licence (and joined by the Applicant as a notice party), has not participated in the proceedings.
3. This judicial review application dates back to 2019 and, as accepted by the parties, relied on an older format of 'pleading' and presentation which applied at a time before the innovations and more focused pleading in similar judicial review challenges which are now applied, for example, in the Planning and Environment List as per High Court Practice Direction HC 124.⁴

¹ P1042-01 and also referred to herein as "the Licence."

² Hereafter also referred to as "the EPA Act 1992."

³ A broiler chicken is a chicken that is bred specifically for meat production.

⁴ As signed by Barniville P. on 5th December 2023. Further – and post-dating this case – in *Eco Advocacy CLG v An Bord Pleanála* (Case C-721/21, ECLI:EU:C:2023:477) (at paragraphs 23 and 24) the CJEU *inter alia* confirmed that the pleading requirements in the Rules of the Superior Courts, 1986 (as amended) were consistent

4. James Devlin SC and Margaret Heavy BL appeared for Mr. Sweetman (hereafter also referred to as “the Applicant”) and Suzanne Murray SC and Caoimhe Ruigrok BL appeared for the Environmental Protection Agency (hereafter also referred to as “the Agency”).

5. While the applicable statutory and regulatory regime is somewhat complex, the essence of the question which the Applicant seeks to argue was concisely captured by Mr. Devlin SC, in his opening comments on the first day of the hearing of this case, as follows:

*“... [t]he basic issue...here, is you can't have chicken production on any scale, and certainly not on this scale, without also producing chicken manure. Disposing of the chicken manure is one of the key environmental issues arising from an enterprise of this sort ...”*⁵

6. Intensive poultry rearing, the subject of the licence which is sought to be impugned, generates *poultry litter* and *wash water*. Mr. Devlin SC submits that the poultry litter and wash water constitute ‘emissions’ and ‘waste’ (as those terms are defined in law) and that their application on lands outside of the installation where the poultry rearing occurs should have been assessed and addressed in the Licence which was granted.

with EU law. In *O'Donnell & Ors v An Bord Pleanála* [2023] IEHC 381 at paragraph 114, the High Court (Humphreys J.) *inter alia* observed that “... [t]he message of *Eco Advocacy* is that there is no European cavalry ready to ride to the rescue of inadequately-pleaded applications ...”.

⁵ Mr. James Devlin SC, for the Applicant, on Tuesday, 14th November 2023.

7. If he is incorrect in that regard, Mr. Devlin SC says that you cannot separate intensive poultry rearing from its inevitable consequences, being poultry litter and wash water, and their use off-site.

8. Whilst he accepts that the Nitrates Regulations and the Animal By-Products Regulations (which are referred to in detail later in this judgment) “... *provide some degree of regulation ...*”, he contends that they are “... *not exclusive regulation ...*” and what is more, there is a particular obligation on the Agency, as the Environmental Protection Agency, to assess, authorise and regulate ‘the consequences of poultry rearing’ namely the use of poultry litter for land spreading as fertiliser or its disposal as waste and the disposal of the wash water (away from the installation or off-site) especially having regard to (a) the size and scale of the activity (involving 74,000 broiler chickens) and (b) the Industrial Emissions Directive, the Habitats Directive and the Water Framework Directive.

9. It is, however, common case that the Agency’s decision under challenge, in this application for judicial review, was that of 6th February 2019 which authorised the rearing of 74,000 broiler chickens at an installation in Newcastle West, County Limerick. In summary, the dispute which arises centres on whether *that* decision should have addressed and assessed off-site consequences of this intensive poultry rearing farming, namely the land spreading of organic fertiliser and the disposal of wash water on other lands.

Licence P1042-01 dated 6th February 2019

10. The Licence⁶ was granted, subject to conditions, to Michael Noel O'Connor⁷ as part of the Agency's decision dated 6th February 2019 pursuant to section 83(1) of the EPA Act 1992 in respect of the following activity – "(6.1) [t]he rearing of poultry in installations where the capacity exceeds 40,000 places" – occurring in an installation located at Rathcahill West, Templeglantine, Newcastle West, County Limerick which is delineated in red on a map referred to in condition 1.3 of the Licence⁸ and *inter alia* includes the three broiler houses containing the 74,000 poultry. The only activity that is licensed, therefore, is the rearing of poultry at the one location in an installation delineated in the map attached to the Licence.

11. Licence P1042-01 defines "organic fertiliser" as "... any fertiliser other than that manufactured by industrial process and includes livestock manure, dung stead manure, farmyard manure, slurry, soiled water. Silage effluent, non-farm organic substances such as sewage sludge, industrial by-products and sludges and residues from fish farms." "Wash water" is defined as "... water contaminated by use in the washing of yards and animal housing." "Waste" is defined as "... any substance or object which the holder discards or intends or is required to discard."

⁶ Licence Register Number: P1042-01.

⁷ The Notice Party.

⁸ Condition 1 of the Licence deals with its scope and Condition 1.1 provides "[f]or the purposes of this licence, the installation is the area of land outlined in red on Drawing No. 10 Rev 3, of the application. Any reference in this licence to "installation" shall mean the area thus outlined in red. The licensed activity shall be carried on only within the area outlined."

12. The nature of the activity, the subject of this application for judicial review, was described by Ms. Éimer Godsil, the Agency's Inspector, in her Report on an Industrial Emissions Licence Application dated 5th December 2018, as follows:

“[t]he main activities at this installation occur during normal working hours between 06:00 and 18:00. Stock inspections are carried out every day, including weekends and bank holidays and additional essential activities may be undertaken outside of core working hours. The installation currently operates in accordance with the requirements of the Department of Agriculture, Food and the Marine (DAFM) and the Bórd Bia Poultry Products Quality Assurance Scheme (PPQAS).

The process involves the rearing of stock specifically bred for lean poultry meat production, from day olds delivered from the hatchery, until they are removed from the site to the processing installation (approximately 6-8 weeks). At the end of each rearing cycle the houses are destocked and the birds are sold for processing. Following a period of two weeks to allow for removal of the poultry litter (organic fertiliser) and complete drying after the cleaning process, the houses are restocked.

The type of broiler house used for this activity is a simple closed building of block and timber/wood construction on an impervious concrete base. The houses are thermally insulated with a forced computer controlled ventilation system and artificial lighting. Automatic feeding and ventilation systems operate on a 24-hour basis.

The solid flooring of each broiler house is bedded with chopped straw over its entire area immediately prior to housing each new batch bought from the hatchery.

The principal inputs to the operation are feed, water, veterinary medicines and energy (electricity and gas for heating). The main by-product of poultry rearing is poultry litter (organic fertiliser) ...”⁹

THE APPLICANT’S CASE

13. It is, I believe, helpful to categorise the Applicant’s case into the following issues.

The statutory basis of the decision dated 6th February 2019

14. On 5th July 2016 Mr. O’Connor applied for an Industrial Emissions Licence for the rearing of 74,000 broiler chickens as part of an intensive agricultural chicken rearing enterprise at an installation located at Rathcahill West, Templeglantine, Newcastle West, County Limerick and was granted the Licence (P1042-01) on 6th February 2019.

15. The Applicant claims that one of the reasons why a chicken rearing enterprise of this type requires an *Industrial Emissions Licence*, in the first place, is because the poultry litter (chicken manure) and wash water is an essential feature of, and cannot be divorced from, the chicken broiler rearing project. It is asserted, for example, that the Agency cannot disavow the ultimate destination and final treatment of the poultry litter (chicken

⁹ Page 2 of the Inspector’s Report.

manure) and wash water from its regulatory remit when an application is made for intensive poultry farming.

16. From a practical perspective, (as the description in the Inspector's report, just quoted confirms), Mr. Devlin SC likewise described how the poultry litter and wash water are created, as follows: the poultry rearing generates poultry litter, which is comprised of straw bedding mixed with poultry faeces and urine; the poultry litter is cleared from the broiler sheds every six to eight weeks when the straw bedding is changed which coincides with the rotation of the poultry (the chicks are brought at one day old and are reared for six to eight weeks when they are replaced by the next rotation) and at that point the straw bedding is changed and the shed floor is then washed down with disinfectant and water resulting in wash water.

17. The central legal issue in this case, however, is the Applicant's assertion that the Agency erred in the granting of the Licence to Mr. O'Connor in the exercise of its powers pursuant to section 83(1) of the EPA Act 1992.

The alleged 'screening out' of AA¹⁰ of Land Spreading as a mitigation measure

18. The second issue which is contended for on behalf of the Applicant is that the Agency, in its decision of 6th February 2019 (incorporating the inspector's report dated 5th December 2018) screened out at the Stage 1 Screening Stage the requirement to carry out an Appropriate Assessment of land spreading of poultry litter and disposal of the

¹⁰ The terms "AA" and "Appropriate Assessment" are used interchangeably in this judgment.

wash water on other lands because it interpreted the application of the Nitrates Regulations to land spreading and wash water as mitigation measures which was, it is submitted, contrary to the judgment of the CJEU in *People Over Wind & Sweetman v Coillte Teoranta* (Case C-323/17) ECLI:EU:C:2018:244 (“*People Over Wind & Sweetman*”),¹¹ which precludes the taking into account of mitigation matters at the screening stage (one) for AA (see also *Eco Advocacy CLG v An Bord Pleanála* (Case C- 721/21) ECLI:EU:C:2023:477 which is addressed later in this judgment).

19. The background to this central issue which the Applicant has sought to advance in this application for judicial review may be found in the Inspector’s response to a submission from the (then styled) Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs which recommended that an Appropriate Assessment Screening be carried for the site, including an assessment of the potential effect of the spread lands on any European Sites and also provide a map of the proposed spread lands. The Inspector’s report dated 5th December 2018 stated *inter alia* at pages 8-9, in response, that:

“[a]ppropriate Assessment screening for the activity has been carried out as detailed in Section 15 below. The issue of Appropriate Assessment and the spreading of organic fertiliser is discussed therein. Organic fertiliser generated by the activity will be sent offsite for use in mushroom compost production facilities in accordance with the Nitrates Regulations and the European Animal By-Product

¹¹ In *People Over Wind & Sweetman*, the particular mitigation measures at the screening stage for Appropriate Assessment were the Sustainable Urban Drainage Systems (SUDS) methods which had been incorporated into the project design.

Regulations (EC Regulation No 1069/2009 and Commission Regulation 142/2011), (Animal By-Product Regulations). The IE licence relates to the site of the activity for which the licence application is made and does not extend to the lands or facilities on which organic fertiliser may be used as fertiliser. The use of organic fertiliser as fertiliser will be carried out in accordance with the Nitrates Regulations and Animal By-Product Regulations and will be monitored and controlled by the DAFM¹² and Local Authorities. As outlined in Section 15 below, I consider that the use of organic fertiliser as fertiliser in accordance with the Nitrates Regulations will not cause environmental pollution and I am satisfied beyond reasonable scientific doubt that the use of organic fertiliser from the activity as fertiliser will not have a significant effect on any European sites.”

20. Additionally, in her response to Mr. Sweetman’s first submission, which in addition to raising a point about insufficient information being provided to enable the EPA to complete an EIA¹³ of the likely significant indirect effects on the environment in relation to the proposal to spread the manure generated by the proposed development on lands that are remote from the site, also stated that no information had “... *been provided on the potential for significant effects on European sites arising from such spreading, and in the absence of an appropriate assessment that deals with this matter, being an indirect effect of the proposed development ...*”, the Inspector stated at pages 9 to 10 of her Report that:

¹² Department of Agriculture, Food and the Marine.

¹³ Environmental Impact Assessment.

“... I am satisfied that I have sufficient information available to complete an assessment, in an appropriate manner, regarding the effects of the project and to make a recommended determination (as accompanies this report). I have considered the information in the environmental impact statement and the application documentation, the further information provided and the information received as part of consultations both externally and internally across the EPA.

Section 12 of the IR outlines the options for the management of litter manure from the installation. In the application form the applicant has identified the transfer of litter manure to mushroom composters. There is also the option of land-spreading the organic fertiliser.¹⁴ The organic fertiliser must be managed in accordance with appropriate National and European legislation. The RD requires the licensee to calculate/record the quantities of organic fertiliser generated and moved offsite to provide for the appropriate handling of the material and the protection of the environment.

The IE licence relates to the site of the activity for which the licence application is made and does not extend to the lands on which organic fertiliser may be used as fertiliser. There will be no adverse significant effects on the environment from land spreading, which is subject to the controls of the Nitrates Regulations or from the handling onsite of organic fertiliser (poultry litter/wash water) from the activity or from

¹⁴ Emphasis/underlining added.

its use in compost production.¹⁵ If the activity is carried on in accordance with the RD and the conditions attached, the operation of the activity will not cause environmental pollution.

I have addressed the potential for significant effects of the project arising from land spreading of organic fertiliser on European Sites in Section 15 Appropriate Assessment of this report, Appendix 1 lists the European Sites assessed, their associated qualifying interests and conservation objectives.

I have considered all of the documents submitted with the licence application and all submissions and observations made on the licence application, and having considered the processes and emissions associated with the activity (as now outlined throughout this Inspector's report), a screening for Appropriate Assessment was undertaken. The assessment¹⁶ determined that the poultry activity is not directly connected with or necessary to the management of any European Site and the Agency considered, for the reasons set out in Section 15 of the IR, that it can be excluded, on the basis of objective information, that the activity, individually or in combination with other plans or projects, will have a significant effect on any European Site and accordingly determined that an Appropriate Assessment of the activity was not required...''

¹⁵ Emphasis/underlining added.

¹⁶ This refers to Appropriate Assessment.

21. The Applicant contends that the above paragraph (as underlined) together with the reasons set out in section 15 of her report (for example, the reference to the Nitrates Regulations), confirms that the Inspector was screening out the requirement to carry out an Appropriate Assessment for the land spreading of organic fertiliser i.e. poultry litter and wash water, and that the reference to the Nitrates Regulations was the mitigation which is not allowed at a Stage 1 screening.
22. The Applicant further suggests that any reliance by the Agency, as an argument in the alternative, on the decision of the High Court (Humphreys J.) in *Friends of the Irish Environment v The Government of Ireland & Others* [2023] IEHC 562 is misplaced. In that case Humphreys J. suggested that the rejection of the carrying out by the State of a voluntary AA screening, which was not strictly required, would be counter-productive environmentally “... as it would create a chilling effect that would dissuade anybody from voluntarily conducting environmental assessments because that would preclude them from relying later on the voluntary nature of the exercise. That would tend to limit environmental assessments to cases where they were seen as strictly obligatory, an approach that would not serve goals of a high level of environmental protection ...”.¹⁷
23. Finally, in response to the fourth submission received, again from Mr. Sweetman who enclosed as copy of the judgment from the CJEU in Case C-323/17 dated 12th April 2018 and quotes the following extract: “Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that, in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a

¹⁷ [2023] IEHC 562 per Humphreys J. at paragraph 64.

plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site ...”, the Inspector responded by stating as follows:

“In Section 15, Appropriate Assessment, I have addressed the potential for significant effects of the project on European Sites and have detailed the results of an Appropriate Assessment screening and a full Appropriate Assessment conducted as part of the licence application. There are 4 no. European Sites within 20 km of the installation. Any European Sites more than 20 km distance from the installation fall well outside of the potential zone of influence of the activity, so it was not necessary to consider them further. Qualifying interests and conservation objectives of each individual site were detailed as part of that Appropriate Assessment”.

24. Again, in support of his argument that the above quoted paragraphs together with section 15 of the Inspector’s report constituted a *screening out* of the land spreading of the poultry litter (chicken manure) from the Appropriate Assessment, the Applicant seeks to contrast the position here with the following observations of Hogan J. contained at paragraph 142 of the judgment of the Supreme Court in *An Taisce – National Trust for Ireland v An Bord Pleanála* [2022] IESC 8 (“the Cheese Factory case”): “[w]hile it is true that the NIS, the Inspector and the Board all sought to some extent to assess the potential indirect effects of the milk production on the Natura sites, I consider that the short answer to this point is that they were not, as a matter of law, obliged to do so. To repeat, the project to be assessed for the purposes of Article 6(3) was the construction

and operation of the cheese factory and not the 4,500 Glanbia farms or, for that matter, the thousands of other farms supplying non-Glanbia producers...”.

25. Accordingly, Mr. Devlin SC submits that in contrast to the approximately 4,500 farms in the *Cheese Factory case* which provided *inputs*, the poultry litter and wash water are *outputs*.
26. It is contended that if the project in this case is the operation of a poultry farm of such a scale and the inevitable consequence of that operation is the generation of poultry litter, there are no circumstances in which poultry litter will not be generated if you have 74,000 broiler chickens on site. It is suggested that the poultry litter generated is not an *input* but, rather, an inevitable and certain *output* that comes within the category of polluting substances in *inter alia* the Industrial Emissions Directive and the Water Framework Directive.
27. A second argument made on behalf of the Applicant arises from the following observation by the Inspector at page 29 of her report dated 5th December 2018: “[i]n addition, the Agency notes the activities which can take place within European sites are restricted by legislation...”. It is contended that the alleged AA which was purportedly carried out applied the wrong test by looking at what happened or the activity/activities located *within* a particular European site whereas Article 6(3) of the Habitats Directive requires whether an activity or activities will have an *impact on (a)* European site(s).

Waste

28. “Waste” is defined in the Licence as “*any substance or object which the holder discards or intends or is required to discard.*”

29. It is contended, on behalf of the Applicant, that the Agency *could have* treated the poultry litter and wash water as waste and reference is made to the decision of the CJEU¹⁸ in *Brady v EPA* (Case C-113/12, ECLI:EU:C:2013:627)¹⁹ and the following statement at paragraph 43 of that judgment: “[i]n light of the guidance provided by the case-law as set out above, it must be held that effluent generated by an intensive pig farm, which is not the product primarily sought by the farmer and any recovery of which by spreading as fertiliser must, as is apparent in particular from the sixth recital in the preamble to Directive 91/676 and the mechanism established by that directive, involve the taking of special precautions owing to the potentially hazardous nature of its composition from an environmental point of view, is, in principle, waste (see, by analogy, Case C-194/05 Commission v Italy, paragraph 35 and the case-law cited, and Commune de Mesquer, paragraph 41)”.

30. Mr. Devlin SC submits that the Applicant’s central concern relates to the possible land spreading of the poultry litter and wash water generated from the operation of the intensive poultry farm in an area or in a manner which could impact on a protected site under the Habitats Directive. He submits that the Agency, in the granting of this Licence, is effectively allowing land spreading to happen and has not, for example, conditioned its non-use or assessed the impacts it could have on a site under the Habitats Directive.

¹⁸ Court of Justice of the European Union.

¹⁹ *Donal Brady v EPA*, Case C-113/12, 3 October 2013.

31. As mentioned, it is submitted that the Agency was perfectly positioned to carry out such an assessment arising from decisions of the CJEU in *Brady v EPA* (Case C-113/12, ECLI:EU:C:2013:627²⁰ and in *Commission v Spain* (C-121/03) ECLI:EU:C:2005:512; 2005 I-07569 where at paragraph 60 of its judgment, the CJEU held that livestock effluent may fall outside of the classification as waste if it is used as soil fertiliser as part of a lawful practice of spreading on *clearly identified parcels* of land and if its storage is limited to the needs of those spreading operations.
32. It is submitted in considering whether, for example, poultry litter and wash water are or are not waste in the first place, a central element of that exercise was the process of clearly identifying the parcels of land on which the poultry litter would be spread. Mr. Devlin SC submits that the suggestion that the Agency is confined to the red line boundary of the licence application is incorrect and does not make sense in the context of an Agency that is, first and foremost, meant to be dealing with emissions, which generally do not respect land boundaries, including the red line boundary in this case.
33. The Applicant contends that the Agency could not have been certain that the poultry litter and wash water would be sent for land spreading because it did not know the location of the recipient lands and for that reason the poultry litter and wash water could not be defined as a by-product, and were, rather, waste. It is submitted that, in such circumstances, the Agency should have treated the poultry litter and wash water as waste.

²⁰ *Donal Brady v EPA*, Case C-113/12, 3 October 2013.

Water & the question of eutrophication?

34. As with the issue in relation to waste, it is contended, on behalf of the Applicant, that if the Agency do not know the location of the ‘spread lands’, it follows that it cannot know if there will be a deterioration of a water body.
35. The Applicant states at paragraph 68 of the Statement of Grounds that “... *the location of the spreading lands for poultry litter was not made known to the [Agency] and no water quality information was provided or sought in relation to water bodies into which the spreading lands drain. The effect of the land spreading of emissions from this facility, over a considerable and unquantified acreage, on water quality objectives set under the Water Framework Directive has not been assessed.*”
36. In terms of water quality, the Applicant states that he is concerned with eutrophication – pollution caused by too many nutrients, such as phosphate and nitrate, which leads to a deterioration in water quality – and the main sources of these nutrients are agriculture slurry and chemical fertilisers²¹ and he refers to the location of the farm relative to rivers and “... *where it appears this poultry litter and wash water has gone in the past at any rate.*”
37. The Applicant asserts that when Mr. O’Connor made his initial application for the Licence he had stated that it was intended that the poultry litter and wash water was to

²¹ Sewage (waste water treatment plants) are also a source of such nutrients that issue is not applicable in this case.

be used *exclusively* for mushroom composting but that the Inspector's report refers also to other possible end-uses, including land spreading.

38. This point also forms the basis for the Applicant's criticisms of a sentence (underlined below) in paragraph 9 of the Agency's Statement of Opposition. This states that "*[m]uch of the Applicant's case is premised on the assumption that the activity the subject of the licence application before the Agency included the land spreading of poultry litter on third party lands including lands at some remove from the installation. This assumption is not correct. The licence application indicated that all poultry litter produced on site would be transported to mushroom compost production facilities where it would be composted. Although the Notice Party provided information as to the historic use of poultry litter generated on the site for land-spreading, he confirmed that land spreading of poultry litter was not part of the proposal before the Agency.*"²²

39. In my view, very little turns on the criticism of this plea; in her report the Inspector does say that "... poultry litter will be sent for use in the mushroom compost production industry and may also be sent for land spreading ...".

40. Ultimately, in addressing what the Applicant rhetorically described as a central issue in the case as to "... what did the Licence authorise ...", the only activity which the Licence dated 6th February 2019 regulates, in this case, is the intensive poultry rearing in an installation at a location Newcastle West, County Limerick where the capacity exceeds 40,000 places and involves 74,000 broiler chickens housed at that installation.

²² Emphasis added.

THE RESPONSE OF THE AGENCY

41. The Agency's response, in summary, is as follows.
42. In relation to the argument made on behalf of the Applicant that the reference to the downstream application of the Nitrates Regulations regarding the use of poultry litter and wash water for land spreading on other lands constituted an unlawful application of a mitigation measure at AA stage 1 screening, the Agency makes two responses, in the alternative.
43. First, it is stated that as this was an application under the EPA Act 1992 for intensive poultry rearing at an installation, no AA was required of land spreading, and therefore, the Applicant's argument falls away *ab initio*, i.e. as Mr. O'Connor did not apply for the land spreading of poultry litter, no AA was required and no AA was carried out in relation to land spreading. It is submitted, on behalf of the Agency, that the Inspector's observations were simply a recognition that if land spreading were potentially to occur, it would be required to be done in accordance with the Nitrates Regulations and accordingly there would not be pollution or environmental effects on a site.
44. Second, in the alternative, and in the event that Ms. Murray SC was wrong on the first argument that AA was not required in relation to land spreading because it does not form part of the activity prescribed by this Licence, it is argued, by reference to some of the observations made by the Inspector (referred to above) and having regard to the gloss on the decision in *People Over Wind & Sweetman* by the CJEU's judgment in *Eco*

Advocacy CLG v An Bord Pleanála (Case C-721/21) ECLI:EU:C:2023:477, at paragraphs 44 to 48 of the judgment – (to the effect that where measures are incorporated into the design of a project as a typical type standard feature rather than seeking to reduce negative effects, those features could not be interpreted as indicating probable significant harm to the site) – that, if there was a requirement on the Agency to carry out an AA of land spreading, the Agency could lawfully rely on a typical standard feature such as compliance with the Nitrates Regulations (similar to the application of SUDS in the *Eco Advocacy* case) which are aimed at ensuring, through various measures, that water pollution does not arise through land spreading and this means that it is not a mitigation measure precluded by the decision in *People Over Wind & Sweetman*.

45. In relation to the Inspector's reference at page 29 of her report dated 5th December 2018 to “[i]n addition, the Agency notes the activities which can take place within European sites are restricted by legislation...”, the Agency submit that the Inspector is simply noting that there are measures under, for example, the 2011 Habitats Regulations, in addition to the Nitrates Regulations, which apply within a European site and reference is made, for example, to the written consent from the relevant Minister before performing particular operations on or affecting particular habitats.

46. Further, Ms. Murray SC submits that the sentence referred to by Mr. Devlin SC should not be read in isolation and that the preceding paragraphs (on pages 28 and 29 of the Inspector's report dated 5th December 2018) in fact addresses the assessment in the context of the applicable European sites and not just the impact of development taking place within a European site.

47. In relation to the Applicant's arguments that the Agency erred by not treating the poultry litter and wash water as *waste* (rather than as a by-product) because it could not have been certain as to the location of their ultimate 'land spreading' destination, Ms. Murray SC, for the Agency, responds by saying that this contention does not advance the Applicant's case for essentially three reasons:

- (i) the production of poultry litter and wash water as a consequence of the intensive poultry rearing at the installation was assessed;
- (ii) the Animal By-Products legislative and regulatory code in fact addresses the disposal of poultry litter and wash water as a category 2 material or as waste;
and
- (iii) both (i) and (ii) are reflected in the Inspector's Report dated 5th December 2018 and in the decision of the Agency dated 6th February 2019.

48. The Agency submits that, on the facts of this case, the poultry litter and wash water are animal by-products and not a waste or emission and their future use and regulation off-site are governed by 'the Animal By-Products Regulations' and may also be treated as 'organic fertiliser', the use and regulation of which off-site are governed by the 'Nitrates Regulations' which implement the Nitrates Directive (91/676/EEC) and are not governed not by the Industrial Emissions Directive.²³

²³ The Industrial Emissions Directive defines "emission" as meaning the direct or indirect release of substances, vibrations, heat or noise from individual or diffuse sources in the installation into air, water or land. The applicant says that the chicken manure and the wash water comes from the installation and its either a direct or an indirect

49. Likewise, in relation to water quality, the Agency's position is that the land spreading of agricultural slurry which contains nutrients such as phosphate and nitrate is regulated by the Department of Agriculture, Food and the Marine ("DAFM") under the Nitrates Directive and Nitrates Regulations such as the European Union (Good Agricultural Practice for Protection of Waters) Regulations 2017 (S.I. No. 605 of 2017).

ASSESSMENT & DECISION

50. The Licence dated 6th February 2019 recognises on its face that it is addressing an application for the following licensable activity: *"6.1 The rearing of poultry in installations where the capacity exceeds 40,000 places."*

release of the substance and it doesn't matter whether you categorise it as direct or indirect. In its Statement of Opposition, the Agency states, on a without prejudice basis, neither poultry litter nor wash water are an "emission" from the licenced activity within the meaning of section 3 of the EPA Act 1992 Act. Poultry litter does not constitute an "emission" to water or air for the purposes of Industrial Emissions Licensing. Poultry litter constitutes an animal by-product, as set out in Regulation 1069/2009 and can lawfully be dealt with as a secondary product.

51. The Applicant argues, in summary, that the Agency should have assessed the consequences of that activity – in particular the use of poultry litter and wash water for land spreading of organic fertiliser or as waste – on lands outside of the installation.
52. Section 83(1) of the EPA Act 1992 provides where an application is made to the Agency in the prescribed manner for a licence under [Part IV] it may, subject to *section 99A* [the payment of fees] and compliance with any regulations under *section 89* [ministerial regulations regarding licences], grant the licence subject to such conditions as it considers appropriate or refuse the application.
53. Section 83(5)(a)(iii) of the EPA Act 1992 provides that the Agency shall not grant a licence or revised licence for an activity *unless it is satisfied* that any emissions from the activity or any premises, plant, methods, processes, operating procedures or other factors which affect such emissions will comply with, or will not result in the contravention of, any relevant standard including any standard for an environmental medium prescribed under regulations made under the European Communities Act 1972, or under any other enactment.
54. Section 83(5)(a)(v) of the EPA 1992 provides that the Agency shall not grant a licence or revised licence for an *activity* unless it is satisfied that any emissions from the activity will not cause significant environmental pollution.
55. The reference to “*unless it is satisfied*” incorporates well-settled public law principles which governs a central decision-making function of the Agency in this context.

56. A synonymic phrase which is used, for example, in many legislative measures is where the particular decision-making body “... *is of opinion* ...” and, in summary, when a court is required to assess the lawfulness of a decision where the legislative or regulatory underpinning code uses the phrase “... *unless it is satisfied* ...” or “... *is of the opinion* ...”, it must be satisfied that the decision is *bona fide* held, factually sustainable, and not unreasonable, namely that the opinion must otherwise be within *vires*.²⁴

57. The essence of the inquiry, therefore, is whether the public body in question – here the Agency – has correctly defined the ambit of the statutory and regulatory power, be it one that emanates from an EU law measure, primary or secondary legislation, or all three.

58. When this is applied to the core question raised in this case on behalf of the Applicant, the central issue comes down, I believe, to the following question: *Did the Agency err, in defining the ambit of its regulatory powers under the EPA Act 1992 (including section 83), in not assessing, authorising and regulating the final end use off-site through land spreading (on other lands) of the poultry litter and wash water as organic fertiliser, or its disposal as waste, which were an inevitable consequence of the licensable activity under the EPA Act 1992 regarding the intensive rearing of 74,000 broiler chickens,*

²⁴ See the discussion of this matter in *Waltham Abbey & Ors v An Bord Pleanála* [2022] IESC 30 per Hogan J. at paragraph 28, *Kiely v Kerry County Council & Ors* [2015] IESC 97 per McKechnie J. at paragraphs 68 to 71, *State (Lynch) v Cooney* [1982] I.R. 337 per O’Higgins C.J. at page 380, *Kiberd v Hamilton* [1992] 2 I.R. 257 per Blayney J. at 265.

having regard to requirements of the Industrial Emissions, Habitats and Water Framework Directives?

59. The core of Mr. Devlin SC's argument is that the Agency (a) had the power to do so (b) was obliged to do so, but (c) did not do so.
60. In assessing these matters in a judicial review application, it is important to have regard to the statutory provisions which underpin the decision as well as the nature of the decision itself.
61. As just referred to, the legal test, therefore, which the court must apply in this application for judicial review, when assessing the manner in which the Agency made its decision on 6th February 2019, is whether it correctly defined the ambit of its statutory and regulatory power *i.e.*, whether it acted within its jurisdiction.
62. I am of the view, for the following reasons, that the Agency in its decision of 6th February 2019 – (including the decision and reasons for the decision, the schedule of activities licensed, the following conditions dealing *inter alia* with (1) scope, (2) management of the installation, (3) infrastructure and operation, (4) interpretation, (5) emissions, (6) control and monitoring, (7) resource use and energy efficiency, (8) materials handling, (9) accident prevention and emergency response, (10) decommissioning and residuals management, (11) notification, records and reports, (12) financial charges and provisions and having regard to Schedule A which refers to the 74,000 broiler chickens housed at the installation, Schedule B which sets out emission limits, Schedule C which addresses Control and Monitoring, Schedule D, the Annual Environmental Report

(AER)) and its incorporation and adoption of the Report of the Inspector²⁵ on an Industrial Emissions Licence Application dated 5th December 2018 – *correctly* defined the ambit of its statutory and regulatory power and jurisdiction under the EPA Act 1992, including section 83(1) thereof, when granting an Industrial Emissions Licence to Michael Noel O’Connor to carry on the following activity – *6.1 - The rearing of poultry in an installation where the capacity exceeds 40,000 places (in this case 74,000 broilers)* – at the installation located at Rathcahill West, Templeglantine, Newcastle West, County Limerick.

63. First, insofar as the role of *this Agency* is concerned – recalling that the Applicant emphasises the importance of its functions as the Environmental Protection Agency in the context of the Industrial Emissions Directive – the Court of Appeal outlined in *Harte Peat Limited v The EPA, Ireland & The Attorney General* [2022] IECA 276, in the context of a case concerning an IPC licence and peat extraction where Class 1.4 of the First Schedule to the EPA Act 1992 identified the relevant activity which required a licence for ‘the extraction of peat in the course of business which involves an area exceeding 50 hectares’, that the invocation of the First Schedule threshold in that case represented “... *the gateway to the licensing regime under the 1992 Act and the EPA [the Agency] does not have jurisdiction to entertain a licence application for a project under that threshold.*”²⁶

²⁵ The Inspector was Ms. Éimear Godsil.

²⁶ *Harte Peat Limited v The EPA, Ireland & The Attorney General* [2022] IECA 276 (6th December 2022) at paragraphs 10 and 11. The judgment delivered was that of Court which was comprised of Faherty, Power and Collins JJ.

64. Some years earlier, in *Brady v The EPA* [2007] IEHC 58; [2007] 3 I.R. 232²⁷ the High Court (Charleton J.) observed that when considering an application for a licence generally under section 83 of the EPA Act 1992, the Agency was “... *limited by its functions and bound by its objectives ...*” and the court observed that “... *any activity which is scheduled under the Act must have a licence from the respondent. The licence is granted under Part IV of the Act and the First Schedule thereto provides ... the activities to which that part of the Act applies ...*”.²⁸

65. Similarly, in this case, the *jurisdictional basis* for the Agency’s decision and determination on 6th February 2019 and *the gateway* to its jurisdiction is *inter alia* section 83(1) of the EPA Act 1992 and the First Schedule of the EPA Act 1992 which references “[a]ctivities to which Part IV applies” and paragraph 6 deals with “Intensive Agriculture” and includes at paragraph 6.1(a) “[t]he rearing of poultry in installations where the capacity exceeds 40,000 places”.²⁹

²⁷ This decision was appealed to the Supreme Court and the reference by the Supreme Court to the CJEU led to the decision in *Brady v EPA* (Case C-113/12, ECLI:EU:C:2013:627).

²⁸ Further, of particular relevance in that case was the requirement that the Agency must have regard to “*such other matters related to the prevention, limitation, elimination, abatement or reduction of environmental pollution*” as *it* considered necessary.

²⁹ Substituted on 23rd April 2014 by Regulations 23(g)(i), (g)(ii), (h)(i), (h)(ii), (i)(i) of the *European Union (Industrial Emissions) Regulations 2013* (S.I. No. 138 of 2013). These Regulations mainly amended the EPA Act 1992 and the Waste Management Act 1996 to transpose Chapters II and VI of Directive 2010/75/EC of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (Recast). The Regulations apply to the industrial emissions directive activities specified in the First Schedule to the EPA Act 1992, as amended by this statutory instrument.

66. This also reflects the contents of Chapter II (Provisions for activities listed in Annex I) and Article 10 (dealing with ‘Scope’) of the Industrial Emissions Directive³⁰ which provides that Chapter II shall apply to the activities set out in Annex I and, where applicable, reaching the capacity thresholds set out therein. At Annex I (Categories of activities referred to in Article 10) paragraph 6 (“Other activities”) of the Industrial Emissions Directive at sub-paragraph 6.6 reference is made to “[i]ntensive rearing of poultry or pigs: (a) with more than 40,000 places for poultry.”

67. The term “activity” is defined in the EPA Act 1992 as meaning any process, development or operation specified in the *First Schedule* and carried out in an installation. The term “installation” is defined in the EPA Act 1992 as meaning a stationary technical unit or plant where the activity concerned referred to in the First Schedule is or will be carried on, and shall be deemed to include any directly associated activity, whether licensable under [Part IV] or not, which has a technical connection with the first-mentioned activity and is carried out on the site of that activity.

68. In addressing the substance of the question as to what the Licence authorised, Condition 1.6 of the Licence dated 6th February 2019 (signed by Tara Gillen as an authorised person), for example, provides that “[t]his licence is for the purpose of IE licensing under the EPA Act 1992 as amended only and nothing in this licence shall be construed as negating the licensee’s statutory obligations or requirements under any other enactments or regulations.”

³⁰ Directive 2010/75/EU (24th November 2010) on industrial emissions (integrated pollution prevention and control) (Recast).

69. The jurisdiction of the Agency, in this case, related to the scheduled activity applied for and subsequently licensed, namely the rearing of poultry in an installation located at Rathcahill West, Templeglantine, Newcastle West, County Limerick where the capacity exceeded 40,000 places and comprised 74,000 broilers.
70. Second, on the first day of the hearing³¹ before me, Mr. Devlin SC helpfully clarified what grounds were being pursued and what grounds were not being pursued. It was confirmed, on behalf of the Applicant, that there was now no 'EIA'³² challenge to the decision of the Agency of 6th February 2019 in this application for judicial review and any reference to EIA matters was merely contextual.
71. It was also confirmed that the challenge to the AA³³ carried out by the Agency in relation to the licensed activity of rearing 74,000 broiler chickens (in respect, for example, of air emissions and ammonia levels) was no longer being pursued.
72. As I have found that the decision-making function of the Agency in this case, *from a jurisdictional perspective*, related to the scheduled and licensed activity of the intensive poultry rearing of 74,000 broiler chickens located in an installation located at Rathcahill West, Templeglantine, Newcastle West, County Limerick and it was confirmed at the hearing that there is no EIA or AA challenge to *that* decision-making process, it is strictly unnecessary to address those matters any further. I will, however, refer to the AA which was carried out in relation to the application for the licensed activity and

³¹ Tuesday, 14th November 2023.

³² Environmental Impact Assessment.

³³ Appropriate Assessment.

which is contained in the decision of 6th February 2019 (at pages 6-9) and the Section 15 Appropriate Assessment at pages 28-30 of the Inspector's Report dated 5th December 2018 as they are informative in understanding the balance of the Applicant's case.

73. The AA decision is found under the heading "*Decision & Reasons for the Decision*" at pages 6-9 of the IEL (P1042-01) dated 6th February 2019.

74. In this decision, the Agency *inter alia* stated that it had completed the Appropriate Assessment of potential impacts on European sites and "*... has made certain, based on best scientific knowledge in the field and in accordance with the European Communities (Birds and Natural Habitats) Regulations 2011 as amended, pursuant to Article 6(3) of the Habitats Directive, that the activity, individually or in combination with other plans or projects, will not adversely affect the integrity of any European Site, in particular Lower River Shannon SAC, Blackwater River (Cork/Waterford) SAC, Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA and Moanveanlagh Bog SAC, having regard to their conservation objective's and will not affect the preservation of these sites at favourable conservation status if carried out in accordance with this licence and the conditions attached hereto for the following reasons:*

- *The installation is not located within a European site.*

- *The only surface water pathway connecting the installation to European sites arises where the clean storm water from the site discharges to a drain through SW1 which discharges into the Ballymurragh-East Stream, this then flows 500m*

west to the Doonakenna River. The Doonakenna River flows 5.3km south westerly to join the Allaghaun River (Lower River Shannon SAC), which flows 7.5km west to join the River Feale. The River Feale continues for approximately 37km into the Mouth of the Shannon.

- The risk of surface water or groundwater contamination as a result of accidental emissions during washing activities, or from spillage from the wash water tanks, is minimal. The provision of bunding and the protection of surface water and ground water are sufficient to ensure that accidental emissions from the activity will not impact on the qualifying interests of the European sites identified above.*

- The litter generated at the installation has high dry matter content and remains within the concrete-floored, covered broiler houses until all broilers are removed at the end of the batch. Therefore there is no pathway between the litter and surface water/groundwater while the houses are stocked. When the houses are destocked the litter is removed from the sheds and loaded onto lorries for transport offsite for composting and the houses are brushed and washed down. Considering the controls in place in relation to the management of organic fertiliser on site, the Agency is satisfied beyond reasonable scientific doubt that this method of handling the organic fertiliser (poultry litter) from the activity within the installation boundary will not have a significant effect on any European site.*

- *Wash water is used as a fertiliser on lands that are not within the installation boundary, in accordance with the Nitrates Regulations. Poultry litter is transported by a contractor to composting facilities or may be used as an organic fertiliser on land in accordance with the Nitrates Regulations.*

- *The licence relates to the site of the activity for which the licence application is made, i.e. the rearing of poultry within the installation boundary, and does not extend to the lands on which organic fertiliser may be used as fertiliser. There are regulatory controls in place in relation to the transport and use of organic fertiliser as fertiliser on land beyond the installation boundary. The Nitrates Regulations make it possible for DAFM³⁴ to know and take account of the additional input of nitrogen and phosphorous from the activity, with a view to ensuring there is no downstream environmental pollution. It is considered that the regulatory systems in place will ensure that cumulative impacts as a result of the use of organic fertiliser on land from this activity will not have a significant effect on European sites.*³⁵

- *In addition, the Agency notes that the activities which can take place within European sites are restricted by legislation. All persons must obtain the written consent from the relevant Minister before performing particular operations on, or affecting, particular habitats where they occur on lands/waters within the Special Area of Conservation. Hence, further regulatory controls exist for the spreading of fertilisers within European sites. Therefore, the Agency considers*

³⁴ Department of Agriculture, Food and the Marine.

³⁵ Emphasis (underlining added).

that the use of poultry litter and wash water as fertiliser in accordance with the Nitrates Regulations will not cause environmental pollution and the Agency is satisfied beyond reasonable scientific doubt that use of wash water and poultry litter as fertiliser from the activity will not have a significant effect on any European sites. The Agency is also satisfied that the use of the applicant's poultry litter for mushroom composting will not cause environmental pollution and the Agency is satisfied beyond reasonable scientific doubt that this method of handling the organic fertiliser (poultry litter) from the activity will not have a significant effect on any European site."³⁶

75. In making its decision of 6th February 2019, the Agency considered documentation relating to the application and supporting documentation received on behalf of Mr. O'Connor, the submissions received (including two received from Mr. Sweetman) and the report of the Inspector dated 5th December 2018.

76. In this decision, which records the Appropriate Assessment which was carried out, the Agency confirms (at the sixth indent on page 8 of the decision and underlined above) that the Licence "... relates to the site of the activity for which the licence application was made, i.e. the rearing of poultry within the installation boundary and does not extend to the lands on which organic fertiliser may be used as fertiliser." In this application, the Agency was not required to carry out an Appropriate Assessment (including a Stage 1 assessment) in relation to the future use of the poultry litter as an

³⁶ Emphasis (underlining added).

organic fertiliser or the future disposal of the wash water on lands outside of the installation.

77. The Applicant submits that the reference by the Agency (again at the sixth indent on page 8 of its decision dated 6th February 2019 and underlined above) to the “... *regulatory controls in place in relation to the transport and use of organic fertiliser as fertiliser on land beyond the installation boundary. The Nitrates Regulations make it possible for DAFM to know and take account of the additional input of nitrogen and phosphorous from the activity, with a view to ensuring there is no downstream environmental pollution. It is considered that the regulatory systems in place will ensure that cumulative impacts as a result of the use of organic fertiliser on land from this activity will not have a significant effect on European sites ...*” and similar references in the Inspector’s report dated 5th December 2018 represent the unlawful (stage 1) screening out of an AA requirement to the land spreading of poultry litter and disposal of wash water by referring to the application of the Nitrates Regulations as mitigation measures contrary to the judgment of the CJEU in *People Over Wind & Sweetman v Coillte Teoranta* (Case C-323/17, ECLI:EU:C:2018:244).³⁷

78. The Agency (at the seventh indent on pages 8 and 9 of its decision and underlined above) notes “in addition” that “... *the activities which can take place within European sites are restricted by legislation. All persons must obtain the written consent from the relevant Minister before performing particular operations on, or affecting, particular habitats where they occur on lands/waters within the Special Area of Conservation.*”

³⁷ See also *Eco Advocacy CLG v An Bord Pleanála* (Case C - 721/21) ECLI:EU:C:2023:477.

Hence, further regulatory controls exist for the spreading of fertilisers within European sites. Therefore, the Agency considers that the use of poultry litter and wash water as fertiliser in accordance with the Nitrates Regulations will not cause environmental pollution and the Agency is satisfied beyond reasonable scientific doubt that use of wash water and poultry litter as fertiliser from the activity will not have a significant effect on any European sites. The Agency is also satisfied that the use of the applicant's poultry litter for mushroom composting will not cause environmental pollution and the Agency is satisfied beyond reasonable scientific doubt that this method of handling the organic fertiliser (poultry litter) from the activity will not have a significant effect on any European site."

79. Previously the Inspector, in section 15 of her report³⁸ stated that this licensed activity occurred in an installation located at Rathcahill West, Templeglantine, Newcastle West, County Limerick which was not located within a European site and, in terms of risk assessment, the Inspector found that there was no surface water or groundwater pathway from the litter generated *at the installation* when the chicken houses were stocked. Therefore, the following finding was made and is not being challenged in these proceedings: *"[a]n Inspector's Appropriate Assessment has been completed and has determined, based on best scientific knowledge in the field and in accordance with the European Communities (Birds and Natural Habitats) Regulations 2011 as amended, pursuant to Article 6(3) of the Habitats Directive, that the activity, individually or in combination with other plans or projects, will not adversely affect the integrity of any European Site."*

³⁸ At pages 28-30 of the Inspector's Report.

80. I consider that these and other references by the Agency in its decision and Licence of 6th February 2019 or the Inspector's report dated 5th December 2018 to what may happen *if* the end-use of the poultry litter or wash water was its disposal off-site by way of land spreading as a fertiliser or disposal as waste pursuant to the regulatory process under the Nitrates Regulations or the Animal By-Product Regulations do not in any way impugn the Agency's decision which related to the authorisation of the licensed activity of rearing 74,000 broiler chickens in a farm which activity was the subject of an AA and an EIA by the Agency as the Competent Authority.

81. In her report dated 5th December 2018 (at page 22) the Inspector, for example, stated that "*[t]he installation will necessarily generate organic fertiliser (poultry manure and soiled water). The operation of the poultry unit at current bird capacity (74,000 broilers) results in the production of approximately 775m³ of organic fertiliser per annum. For the purposes of EIA, the environmental factors identified as potentially being directly and indirectly affected by land spreading of fertiliser materials from the activity include: human beings, flora and fauna, air, land, soil and water...*".

82. The Inspector addressed at section 12 Organic Fertiliser (and 12.1 Poultry Litter (Organic Fertiliser) at pages 22 to 24 of her report dated 5th December 2018 stating *inter alia* that "... *the collection, transport, handling, treatment, transformation, processing, storage, placing on the market, distribution, and use and disposal of all animal products (ABP) including poultry litter is governed by the EU Animal By-product Regulation (EC) No. 1069 of 2009 and Regulation (EU) No. 142 of 2011 which are given legal effect by The European Communities (Animal By-Product) Regulations 2014 (SI No.*

187/2014). Poultry litter is categorised as a category 2 Animal By-Product and the options for its disposal are set out in Article 13 of Regulation 1069/2009. Poultry litter must be transported by a haulier registered with the DAFM...”, and making reference to its transport by a registered contractor MJ Kehoe Transport Limited (“... organic fertiliser generated onsite will be removed offsite by a registered contractor to mushroom compost production facilities ...”), the requirement under the Licence to submit to the (then) Department of Agriculture, Food and the Marine annually details in relation to the quantity of organic fertiliser (poultry litter and wash water) exported (Record 3 form) and pointing out that “[a]s outlined above, poultry litter will be sent for use in the mushroom compost production industry and may also be sent for land spreading. It is important to note that the IE licence relates to the site of the activity for which the licence application is made and does not extend to the lands on which organic fertiliser may be used as fertiliser. The Nitrates Regulations specifies when organic fertiliser can be applied to land, the application rates etc. and are enforced by the DAFM³⁹ and Local Authorities...”.

83. The Inspector stated at page 24 of her report dated 5th December 2018 that “[t]here is no land spreading of organic fertiliser conducted and/or permitted within the installation boundary so nuisance from land spreading or direct impacts, on soil, water and groundwater quality and habitats in the immediate vicinity of the installation and consequential indirect effects on flora and fauna and their habitats will not occur. Therefore, while impacts could occur on or near the spread lands (nuisance, pollution of water/groundwater/soil, impacts on flora and fauna) these would be indirect effects

³⁹ Department of Agriculture, Food and the Marine.

of the activity only. I consider that the transport and use of organic fertiliser as fertiliser in accordance with the Nitrates Regulations and Animal By-Product Regulations will not cause environmental pollution.”

84. The next section of the Inspector’s report (12.2) at pages 25-26, under the sub-heading “Wash Water”, *inter alia* states that “[w]ash water will be generated by the activity every 6-8 weeks, after the poultry litter has been removed from the poultry houses. The applicant states that 90.9m³ of wash water is generated by the activity per annum. Prior to washing the houses the floors are brushed to reduce the quantity of poultry litter remaining in the houses. The houses are then washed down with water and disinfectant applied. The wash water is directed to wash water storage tanks where it is contained until sent offsite for use as fertiliser. The wash water consists of water contaminated with poultry litter and small quantities of disinfectant. The wash water is considered suitable for use on land as fertiliser and such use is provided for by the Nitrates Regulation and Animal By-Product Regulations. Wash water from the activity will be collected in two wash water collection tanks with an estimated capacity of 37.6m³ (net of freeboard). The wash water storage tanks provide in excess of the 26-weeks’ storage capacity requirement in the Nitrates Regulations. The applicant has identified that the wash water will be used on approximately [20ha]⁴⁰ of farmland, in the vicinity of the activity outside the boundary to which this licence relates...”

⁴⁰ As referenced here, the Inspector assumed incorrectly that Mr. O’Connor had identified that the wash water would be used on approximately 20 hectares of farmland when in fact his correspondence dated 5th February 2018 identified 5.8 hectares (14.3 acres).

85. This again is what the Inspector was saying when she observed: “[i]t is considered that the regulatory systems in place will ensure that cumulative impacts as a result of the use of organic fertiliser on land from this activity will not have a significant effect on any European sites”, and “[h]ence, further regulatory controls exist for the spreading of fertilisers within European sites. Therefore, the Agency considers that the use of poultry litter and wash water as fertiliser in accordance with the Nitrates Regulations will not cause environmental pollution and I am satisfied beyond reasonable scientific doubt...”.
86. In a similar vein in *Joyce Kemper v An Bord Pleanála* [2020] IEHC 601 it was common case that An Bord Pleanála in that case did not carry out a screening of the AA or an AA of the *land spreading* in that case but looked at the matter at a high level and the High Court (Allen J.) observed at paragraph 369 (page 83) of the judgment that “... *the Board’s position is that it was cognisant of and took account of the eventual use of the material in its planning assessment and in its EIA.*”
87. Further, in *An Taisce – The National Trust for Ireland v An Bord Pleanála & Ors* (“the *Kilkenny Cheese Factory* case”), the Supreme Court (Hogan J.) distinguished between the assessment (AA and EIA) carried out in the context of the construction and operation of the cheese factory, on the one hand, stating that an appropriate assessment in respect of the milk-production in the Glanbia farms and potentially the thousands of other (non-Glanbia) farms was not required, on the other hand.
88. The references and language used in parts of the Inspector’s report which incorporates “screening like” terms (for example, part of the response to ‘Submission No.3’ from Mr. Sweetman at the bottom of page 9 and the top of page 10 of the Inspector’s report dated

5th December 2018 and quoted earlier in this judgment) explains, of course, why Mr. Devlin SC, for the Applicant, seeks to point to extracts of the Inspector's Report and submit, in argument, that this looks like the language involved in a 'screening exercise' which, he argues, screens out an appropriate assessment for the land spreading of poultry litter and wash water. While I appreciate why this argument is made by reference to those somewhat confusing extracts of the Inspector's report (quoted earlier in this judgment), the legal test which I have to consider and apply is *not* this issue but is, rather, whether or not the Agency acted within its *jurisdiction* in making the decision and determination made on 6th February 2019.

89. In this regard, my finding that the Agency, when considering the application which was made to it from Mr. O'Connor, *correctly* defined the ambit of its statutory and regulatory power in the EPA Act 1992, including sections 83 to 86 thereof, as applying to the intensive rearing of poultry within the installation boundary and did not extend to the authorisation of the possible end-use of the poultry litter or wash water generated from the intensive poultry rearing as organic fertiliser or as waste on lands outside of the installation, addresses and rejects the Applicant's argument that there was an erroneous Stage 1 *screening out* of the appropriate assessment for land spreading by relying on the Nitrates Regulations as a mitigation measure.

90. This finding also makes it unnecessary for me to consider the alternative argument made by Ms. Murray SC, having regard to the gloss on the decision in *People Over Wind & Sweetman* by the CJEU's judgment in *Eco Advocacy CLG v An Bord Pleanála* (Case C-721/21) ECLI:EU:C:2023:477, and that, *if* there was a requirement on the Agency to carry out an AA of land spreading, the Agency could lawfully rely on a typical standard feature such as compliance with the Nitrates Regulations which, it is submitted, is not a

mitigation measure precluded by the decision in *People Over Wind & Sweetman* and, similarly, my finding means that it is not necessary for me to consider whether the decision of the High Court (Humphreys J.) in *Friends of the Irish Environment v The Government of Ireland & Others* [2023] IEHC 562 and the acceptance of a voluntary screening, was applicable to the facts of this case. In summary, rather, I find that jurisdictional gateway and basis for the Agency's decision and determination on 6th February 2019 in this case is the EPA Act 1992, including section 83(1) and sections 83 to 86 and the First Schedule of the EPA Act 1992 which references “[a]ctivities to which *Part IV applies*”, and paragraph 6 which deals with “Intensive Agriculture” and includes at paragraph 6.1(a) “[t]he rearing of poultry in installations where the capacity exceeds 40,000 places” – in this case 74,000 broiler chickens.

91. Third, to recap, it is contended on behalf of the Applicant that the Agency could not have been certain that the poultry litter and wash water would be sent for land spreading because it did not know the location of the recipient lands and for that reason the poultry litter and wash water were in fact waste (and not category 2 material) and should have been assessed by the Agency as waste. This contention is also reflected in the Applicant's Statement of Grounds which alleges that the fact that an amount of the poultry litter spread to land is likely to be wasted as runoff or wasted to air should have been within the contemplation of the Agency. Further, it is submitted on behalf of the Applicant that in order to comply with EU law, the Agency must have certainty to the destination and use of any substances emitted from the operation that are likely to be wasted to water, air or soil through overspreading or which may be discharged accidentally. It is asserted that the required certainty was not present in the decision of 6th

February 2019 decision and as a result the Agency fell into error and acted contrary to the law.

92. Again, the prism or gateway through which I must assess these matters in this judicial review application is whether the Agency has correctly defined the ambit of its statutory and regulatory power, principally under section 83(1) of the EPA Act 1992 (as amended), in making a decision of 6th February 2019 in relation to the licensable poultry rearing activity *in an installation* located at Rathcahill West, Templeglantine, Newcastle West, County Limerick involving the rearing of 74,000 broiler chickens.
93. The Inspector's report and the conditions in the Licence P1042-01 confirm that the production of poultry litter and wash water as a consequence of the intensive poultry rearing and held *at the installation* located at Rathcahill West, Templeglantine, Newcastle West, County Limerick was addressed.
94. As referred to earlier, the Inspector's report (internal page 23), for example, under the sub-heading 12. Organic Fertiliser, 12.1 Poultry Litter (Organic Fertiliser) *inter alia* states:

“[a]s outlined above, poultry litter will be sent for use in the mushroom compost production industry and may also be sent for land-spreading. It is important to note that the IE licence relates to the site of the activity for which the licence application is made and does not extend to the lands on which organic fertiliser may be used as fertiliser. The Nitrates Regulations specifies when organic fertiliser can be applied to land,

the application rates etc. And are enforced by the DAFM and Local Authorities.

The quantity of nitrogen and phosphorus generated by the activity is 18,000kg/N and 6,750kg/P based on figures available in the Nitrates Regulations (Annual nutrient excretion rates for livestock). Aside from potential pollution and nuisance, which are negative in nature, the application of organic fertiliser to land as fertiliser is a positive effect of the development. The RD provides that organic fertiliser may be sent offsite for use as fertiliser by farmers in accordance with the Nitrates Regulations. The RD requires that records of organic fertiliser that is sent offsite for use on land are maintained in accordance with the requirements of the Nitrates Regulations. Records of organic fertiliser that is sent for compost production must also be maintained.

The Animal By-Product Regulations impose legal requirements on the licensee, the 'commercial hauler' (registered by DAFM) that is used to transport the organic fertiliser and the user of the organic fertiliser. These requirements include use of a 'commercial document' to record the consignor (licensee/poultry farmer), the consignee (customer farmer/mushroom compost facility operator receiving the organic fertiliser), the carrier (haulier), means of transport, the quantity the date of dispatch. The consignor is required to receive a completed copy of the 'commercial document' from the consignee confirming its final destination. There is no land-spreading of organic fertiliser conducted

and/or permitted within the installation boundary so nuisance from land-spreading or direct impacts, on soil, water and groundwater quality and habitats in the immediate vicinity of the installation and consequential indirect effects on flora and fauna and their habitats will not occur. Therefore, while impacts could occur on or near the spread-lands (nuisance, pollution of water/groundwater/soil, impacts on flora and fauna) these would be indirect effects of the activity only. I consider that the transport and use of organic fertiliser as fertiliser in accordance with the Nitrates Regulations and Animal By-Product Regulations will not cause environmental pollution. I am satisfied that there will be no adverse significant effects on the environment from land-spreading which is subject to the controls of the Nitrates Regulations Or from the handling onsite of organic fertiliser (poultry litter) from the activity or from its use in compost production.”

95. The Licence did not regulate the future use *off-site* of the poultry litter or wash water as an animal by-product, as waste or as a fertiliser and does not, for example, address, authorise or regulate (a) the possession (b) transport (c) handling (d) use or (e) disposal of poultry litter and wash water.

96. Waste is defined in the Licence as “... *any substance or object which the holder discards or intends or is required to discard ...*”, (which reflects the definition in the Waste Directive).

97. Condition 8 ('Materials handling') envisages, for example, that the poultry litter *may* be disposed of as a by-product through land spreading or as a by-product through use in mushroom composting, or, alternatively, as waste. It is neutral as to whether the chicken litter *is* a waste or a by-product but does provide, in terms of record-keeping, movement, *etc.*, arising from the licensable poultry rearing activity *in the installation*.

98. By way of further example, condition 8.1 of the Licence provides that “[*t*]he licensee shall ensure that waste generated in the carrying on of the activity shall be prepared for re-use, recycling or recovery or, when that is not technically or economically possible, disposed of in a manner which will prevent or minimise any impact on the environment”; Condition 8.2 provides that “[*a*]ll waste that is not reused on site shall be sent off-site to an authorised facility for disposal or recovery or reuse”; Condition 8.3 provides that “[*w*]aste sent off-site for recovery or disposal shall be transported only by an authorised waste contractor or an exempted person (Waste Management (Collection Permit) Regulations 2007 as amended. The waste shall be transported from the site of the activity to the site of recovery/disposal only in a manner which will not adversely affect the environment and in accordance with the appropriate National and European legislation and protocols”; Sub-condition 8.3.1 (which does not apply to poultry litter) provides that “animal tissue or carcasses sent off site for disposal/recovery shall be transported in covered, leak-proof containers”; Sub-condition 8.3.2: provides that “[*w*]aste sent off-site for recovery or disposal shall be transferred only to an appropriate facility.”

99. Licence P1042-01 of 6th February 2019 also addresses how the poultry litter (as an organic fertiliser) and the wash water as by-products of the poultry rearing are to be regulated and treated at the installation.

100. For example, Condition 3 of Licence P1042-01 provides for the “Infrastructure and Operation” which includes addressing the wash water and the chicken litter as an organic fertiliser. Condition 3.6 of Licence P1042-01 provides that “[f]rom 1 December 2019, the wash water storage tanks shall be fitted with high level liquid indicators.” Condition 3.7 of Licence P1042-01 provides that “[t]he licensee shall provide a minimum of 26 weeks storage of organic fertiliser on-site or have a contract providing exclusive access to adequate alternative storage capacity located outside the installation, have a contract for the transfer of organic fertiliser to a treatment facility for livestock organic fertiliser, or gave a contract for the transfer of the organic fertiliser to a person registered under and in accordance with the European Communities (Transmissible Spongiform Encephalopathies and Animal By-products) Regulations 2008 S.I. 252 of 2008 to undertake the transport of organic fertiliser.”

101. Similarly, condition 6 of Licence P1042-01 addresses control and monitoring with, for example, condition 6.8 providing that “[t]he licensee shall inspect the integrity of the floors of all deep litter houses after each wash down and shall undertake remedial actions to repair any damaged or cracked floors as necessary. The licensee shall maintain a record of all inspections and remedial actions taken.” Condition 6.9 of Licence P1042-01 provides that “[t]he licensee shall, within six months of the date of grant of licence, repair damaged concrete yards over which wash water may be directed or organic fertiliser may be moved. The licensee shall carry out measures to ensure that

*the ingress of storm/flood water from adjoining lands does not generate excess soiled water or cause the release of polluting matter to ground, groundwater or surface waters.”*⁴¹ In some instances Licence P1042-01 uses the terms organic fertiliser and poultry litter synonymously. Condition 8.8 of Licence P1042-01 provides that “[o]rganic fertiliser (poultry litter) shall not be stored in the open pending its collection. Organic fertiliser (poultry litter) shall only be stored within the houses.”

102. While the regulation of the poultry litter/organic fertiliser at the installation contemplates its ultimate or future use, this does not mean that it regulates, authorises or assesses that ultimate or future use. It is a matter of good administration that one form of regulation understands the next possible stage in the process but that also does not mean that there is a gap or lacuna such as to warrant the court in a judicial review application intervening in the manner suggested on behalf of the Applicant.

103. The licence (including its conditions) in this case does not authorise or regulate either the use of poultry litter in mushroom compost or its land spreading and the Agency, by these conditions, is not purporting to so regulate its end use on other lands. The reference to ‘onsite’ and ‘off-site’ are important terms. For example, Condition 8.9 provides that “[o]rganic fertiliser shall not be discarded to ground while loading for shipment off site.

⁴¹ This second sentence of condition 6.9 does not relate to wash water *per se*, but rather addresses potential flooding from outside which would subsequently become contaminated when mixed with the material on the ground of the installation and become soiled water.

Any organic fertiliser spilled during loading shall be collected and returned to storage or to the vehicle into which it was being loaded.” Likewise, condition 8.10 (sub-conditions 8.10.1 to 8.10.4) addresses Organic Fertiliser Movements including the recording of all organic fertiliser movements off-site in an ‘organic fertiliser register’ on an annual basis which includes *inter alia* the customer farmer receiving the organic fertiliser and the submission of the completed records of the movement of organic fertiliser from the installation – referred to as ‘Record 3’ by the Department – to the Department of Agriculture, Food and the Marine in accordance with the European Union (Good Agricultural Practice for Protection of Waters) Regulations 2017 (S.I. No. 605 of 2017) and in particular Article 23 thereof. I agree that the ‘Record 3’ forms are important irrespective of whether the end use is for mushroom composting or land spreading.

104. The Licence, therefore, anticipates and acknowledges, in a number of conditions, that a potential use of the poultry litter may include that as a fertiliser for the purposes of land spreading and thereby regulated by the Nitrates Regulations 2017.

105. Separately, the submission on behalf of the Agency (also reflected in the decision of the Agency dated 6th February 2019 and the Inspector’s report 5th December 2018) that the potential use off-site of the consequences of the intensive poultry rearing activity – namely poultry litter and wash water – may be as ‘animal by-products’, which use and regulation off-site are governed by ‘the Animal By-Products Regulations’ and may also be treated as ‘organic fertiliser’, which use and regulation off-site are governed by the ‘Nitrates Regulations’, is simply a recognition of those regulatory codes.

106. Dealing first with the Animal By-Products Regulations, the Code of Good Practice for End-Users of Poultry Litter sets out what it refers to as the legal obligations and good practice guidelines for *end-users* of poultry litter as an organic fertiliser/soil improver.
107. Accordingly, persons intending to land spread poultry litter (described as *end-users*) are obliged to comply with the requirements of the European Animal By-Products Regulations, *i.e.*, Regulation (EC) No 1069/2009 (21st October 2009) and Regulation (EU) No 142/2011) (25th February 2011) European Union (Animal By-Products) Regulations 2014 (S.I. 187 of 2014) and the European Union (Good Agricultural Practice for the Protection of Waters) Regulations 2017 (S.I. 605 of 2017) when it comes to use of poultry litter as an organic fertiliser.
108. Therefore, poultry litter and wash water which arise as a consequence of intensive poultry farming are ‘Category 2’ materials as defined under the Animal By-Products Regulations. Specifically, Article 9 of S.I. 187 of 2014 defines Category 2 material comprising a suite of animal by-products including (a) manure, non-mineralised guano and digestive tract content and Article 3 of S.I. 187 of 2014 defines manure as meaning “... *any excrement and/or urine of farmed animals other than farmed fish, with or without litter.*”
109. Article 3(1)(b) of the European Union (Animal By-Products) Regulations 2014 (S.I. No.187/2014) provides that a person shall not, unless the person is authorised, registered or approved under these Regulations, *possess, transport, handle, use or dispose of* an animal by-product comprising of Category 2 material except in accordance with Article 13 of the Council Regulation (No. 1069/2009) (21 October 2009) laying down health

rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No.1774/2002 (Animal by-products Regulation).

110. One of the conditions of the Licence, for example, is that the poultry litter will be *removed* by an authorised person under the (Animal By-Products) Regulations – in this case MJ Kehoe (as authorised persons or carriers).

111. The *removal* of the Category 2 material is therefore effected by an authorised person and its subsequent *use* must be in accordance with the uses specified in Article 13 of the (Animal By-Products) Regulations, which allows for Category 2 animal by-products to be used in composting and as a fertiliser. In this case, for example, the licence provides that the category 2 material, as an animal by-product, *can* be removed and moved under Article 13 for composting to Custom Compost in Wexford in accordance with Article 13 of Council Regulation (No. 1069/2009) or for use as a fertiliser.

112. Article 13 of Council Regulation (No. 1069/2009) provides for the *disposal and use* of poultry litter and wash water, as Category 2 material (as animal by-product) *as waste by incineration or co-incineration, for the manufacturing of organic fertilisers or soil improvers, composted* or transformed into biogas, subject to certain requirements applied to land without processing, used as a fuel for combustion with or without prior processing.

113. Turning to the Nitrates Directive⁴², since 1991 this directive has sought to protect water quality from pollution by agricultural sources and to promote the use of good farming practice. The State's Nitrates Action Programme is designed to prevent pollution of surface waters and ground water from agricultural sources and to protect and improve water quality. The "Nitrates Regulations" or "the GAP Regulations" comprise the European Union (Good Agricultural Practice for Protection of Waters) Regulations⁴³ and give legal effect to Ireland's Nitrates Action Programme.

114. The European Union (Good Agricultural Practice for Protection of Waters) Regulations 2017 (S.I. No. 605/2017) ("the Nitrates Regulations 2017") give effect to Ireland's Fourth Nitrates Action Programme.

115. Insofar as the issues in these proceedings are concerned, the Nitrates Regulation 2017 provide statutory definition for good agricultural practice to protect waters against pollution from agricultural sources and set out, for example, when, where and how *land spreading* can occur and be monitored. There is a general duty⁴⁴, for example, on an

⁴² Directive 91/676/EEC

⁴³ See S.I. No. 605/2017 - European Union (Good Agricultural Practice for Protection of Waters) Regulations 2017 and S.I. No. 65/2018 - European Union (Good Agricultural Practice for Protection of Waters)(Amendment) Regulations 2018. The most recent Regulations are: S.I. No. 62/2023 - EU (Good Agricultural Practice for Protection of Waters)(Amendment) Regulations 2023; S.I. No. 716/2022 - European Union (Good Agricultural Practice for Protection of Waters) (Amendment)(No. 2) Regulations 2022; S.I. No. 393/2022 -European Union (Good Agricultural Practice for Protection of Waters)(Amendment) Regulations 2022; S.I. No. 113/2022 European Union (Good Agricultural Practice for Protection of Waters) Regulations 2022; S.I. No. 749/2021 European Union (Good Agricultural Practice for Protection of Waters) (Amendment) Regulations 2021

⁴⁴ Part 5, Articles 22 to 26, "General" in S.I. No. 605/2017.

occupier of a “holding” (in most instances this will be a farmer) to ensure compliance with the Nitrates Regulations 2017 and with any ministerial advice or guidelines or advice or guidelines from the Agency. The Nitrates Regulations 2017 define “holding” as meaning an agricultural production unit and, in relation to an occupier, means all the agricultural production units managed by that occupier.

116. The Nitrates Regulations 2017 provides for the detailed use – including the spreading on land outside of an installation – of organic fertilisers which includes poultry litter and wash water.

117. Article 4 of the Nitrates Regulations 2017 defines “organic fertiliser” as meaning any fertiliser other than that manufactured by an industrial process and includes *livestock manure*, dung-stead manure, farmyard manure, slurry, soiled water, silage effluent, spent mushroom compost, non-farm organic substances such as sewage sludge, industrial by-products and sludges and residues from fish farms.

118. “Livestock” means all animals kept for use or profit (including cattle, horses, pigs, poultry, sheep and any creature kept for the production of food, wool, skins or fur). “Livestock manure” is defined as meaning waste products excreted by livestock or a mixture of litter and waste products excreted by livestock, even in processed form. Poultry litter is, therefore, an organic fertiliser regulated by the Nitrates Regulations 2017.

119. As mentioned, Article 4 of the Nitrates Regulations 2017 states that soiled water has the meaning assigned by Article 4(2) which in turn provides per Article 4(2)(a) that

“soiled water” includes water from concreted areas, hard standing areas, holding areas for livestock and other farmyard areas where such water is contaminated by contact with any of the following substances (i) livestock faeces or urine or silage effluent (ii) chemical fertilisers, (iii) washings such as vegetable washings, milking parlour washings or washings from mushroom houses, (iv) water used in washing farm equipment.

120. Wash water or soiled water is also addressed in the Nitrates Regulations 2017 under Part 2, Articles 5-14 dealing generally with farm management, as well as under Part 4, Article 18 (setting out requirements as to the manner of application of fertilisers, soiled water) and providing generally for the prevention of water pollution from fertilisers and certain activities.

121. Article 11(1) of the Nitrates Regulations 2017 addresses, for example, the capacity of storage facilities for poultry manure and provides that “[w]ithout prejudice to the generality of Article 8⁴⁵, the capacity of facilities for the storage on a holding of livestock manure produced by poultry shall, subject to sub-article (2) and Article 14, equal or exceed the capacity required to store all such livestock manure produced on the holding during a period of 26 weeks.”

122. Part 3 of the Nitrates Regulations 2017 deals with Nutrient Management and addresses, for example in Article 1 and Schedule 2 the amount of nitrogen or phosphorus depending on the fertiliser used, such as poultry litter.

⁴⁵ Article 8 of the Nitrates Regulations of S.I. No.605/2017 provides for “general obligations as to capacity of storage facilities.”

123. In terms of the matters at issue in this case, Part 4 of the Nitrates Regulations 2017 (S.I. No. 605/2017) deals with the 'Prevention of Water Pollution from Fertilisers and certain activities'. Within Part 4, Article 17 provides for the distance, for example, that chemical fertilisers and organic fertilisers can be used from water bodies. Article 18 deals with land spreading and sets out the requirements as to the manner of the application of *fertilisers, soiled water*, and so on. Article 18(1), for example, provides that "... *livestock manure, other organic fertilisers, effluents, soiled water and chemical fertilisers shall be applied to land in as accurate and uniform a manner as is practically possible.*" Article 18(2) of the Nitrates Regulations 2017 provides that *organic and chemical fertilisers or soiled water* shall not be applied to land in any of the following circumstances: (a) the land is waterlogged; (b) the land is flooded or likely to flood; (c) the land is snow-covered or frozen (d) heavy rain is forecast within 48 hours, or (e) the ground slopes steeply and there is a risk of water pollution having regard to factors such as surface runoff pathways, the presence of land drains, the absence of hedgerows to mitigate surface flow, soil condition and ground cover.

124. Article 18(4) also provides, for example, that *organic fertilisers or soiled water* shall not be applied to land (a) by use of an umbilical system with an upward-facing splash plate (b) by use of a tanker with an upward-facing splash plate, (c) by use of a sludge irrigator mounted on a tanker, or (d) from a road or passageway adjacent to the land irrespective of whether or not the road or passageway is within or outside the curtilage of the holding.

125. Article 20(1) of S.I. 605/2017 provides that the amount of livestock manure applied in any year to land on a holding, together with that deposited to land by livestock, shall not

exceed an amount containing *170kg of nitrogen per hectare*.⁴⁶ The Nitrates Regulations make it possible for the Department of Agriculture, Food and the Marine⁴⁷ to know and take account of the additional input of nitrogen and phosphorous from the activity, with a view to ensuring there is no downstream environmental pollution.

126. For completeness, given that the matter was raised by the Applicant, I agree that section 3 of the EPA Act 1992 (Interpretation) defines “emission” as meaning in relation to an activity referred to in Part IV of the 1992 Act, *any direct or indirect release of substances, heat or noise from individual or diffuse sources in the activity into the atmosphere, water or land, and includes:*⁴⁸

(a) *“an emission into the atmosphere of a pollutant within the meaning of the Air Pollution Act, 1987,*

⁴⁶ Article 20(1) of S.I. 605/2017 also provides that where imported livestock manure is to be applied to the land on the holding, calculations shall be based on the previous calendar year’s stocking rate. According to the Government’s website, it appears that in 2022, Ireland was granted a derogation to allow intensive farmers a higher stocking rate of livestock manure, subject to them complying with strict rules that are overseen by the Department of Agriculture, Food and the Marine. The derogation increases the application limit of 170kg/ha of livestock manure to 250kg/ha each year. It is stated on the website that the current derogation will run to the end of 2025, when the fifth programme concludes and that an interim review will include an assessment of water quality and if this water quality assessment indicates average water quality above a threshold of 50 mg/l NO₃, or increasing trends, or eutrophic water bodies or water bodies that could become eutrophic, the derogation application limit of 250kg/ha will be reduced to 220kg/ha in farms in these catchment areas from 2024.

⁴⁷ Also referred to in this judgment as “the DAFM”.

⁴⁸ The definition adds “*but does not include a radioactive substance within the meaning of Council Directive 96/29/Euratom, a genetically modified micro-organism within the meaning of Council Directive 90/219/EEC or a genetically modified organism within the meaning of Directive 2001/18/EC of the European Parliament and of the Council.*”

- (b) *a discharge of polluting matter, sewage effluent or trade effluent within the meaning of the Local Government (Water Pollution) Act, 1977, to waters or sewers within the meaning of that Act,*
- (c) *the disposal of waste,*⁴⁹ *or*
- (d) *noise”.*

127. Section 86(1)(a)(iii) of the EPA Act 1992 provides that without prejudice to the generality of section 83(1), conditions attached to a licence or revised licence granted under Part IV (*i.e.*, Integrated Pollution Control) *shall* if necessary, and in all cases where the licence or revised licence relates to an industrial emissions directive activity, specify requirements concerning protection of the soil and groundwater, and *the management of waste generated by an activity.*

128. Section 86(1)(b)(iv) of the EPA Act 1992 provides that without prejudice to the generality of section 83(1), conditions attached to a licence or revised licence granted under Part IV (*i.e.*, Integrated Pollution Control) may (to the extent that the matter is not provided for by a condition under paragraph (a)) specify the concentration of an environmental pollutant in an environmental medium or a deposition or discharge rate which shall not be exceeded.

129. Section 86(1)(b)(xi) of the EPA Act 1992 provides that without prejudice to the generality of section 83(1), conditions attached to a licence or revised licence granted under Part IV (*i.e.*, Integrated Pollution Control) *may* (to the extent that the matter is not provided for by a condition under paragraph (a)), *specify requirements in relation to the*

⁴⁹ Emphasis added.

recovery or disposal of waste arising from the activity on land other than land on which the installation is situated and whether in the ownership or occupation of the licensee or not (including requirements with respect to the furnishing of information to the Agency in relation to the land for the time being used, or land proposed to be used, for the purpose of such recovery or disposal).

130. Annex II of the Industrial Emissions Directive refers to the “[l]ist of polluting substances” and the item at number 2 under the heading AIR refers to “[o]xides of nitrogen and other nitrogen compounds” and the item at number 11 under the heading WATER refers to “[s]ubstances which contribute to eutrophication (in particular, nitrates and phosphates)”.⁵⁰

131. While I agree with Mr. Devlin SC that nitrates and phosphates are a substance for the purpose of the Industrial Emissions Directive, (as referred to earlier) the Inspector’s report (internal page 23) under the sub-heading 12. Organic Fertiliser, 12.1 Poultry Litter (Organic Fertiliser) acknowledges that “... *the quantity of nitrogen and phosphorus generated by the activity is 18,000kg/N and 6,750kg/P based on figures available in the Nitrates Regulations (Annual nutrient excretion rates for livestock) ...*”, and adds that ‘the Nitrates Regulations’ make it possible for the Department of Agriculture, Food and the Marine⁵¹ to know and take account of the additional input of nitrogen and phosphorous from the activity, with a view to ensuring there is no downstream environmental pollution. The Inspector considered in her report that the regulatory

⁵⁰ Similarly, Annex VIII of the Water Framework directive sets out an “Indicative List of the Main Pollutants” and item 11 refers to “[s]ubstances which contribute to eutrophication (in particular, nitrates and phosphates).”

⁵¹ Also referred to as “DAFM”.

systems in place will ensure that cumulative impacts as a result of the use of organic fertiliser on land from the activity will not have a significant effect on any European sites.

132. While, in terms of options, the inspector states that the poultry litter *will* be sent for use in the mushroom compost production industry *and may also* be sent for land spreading, I have found, in relation to the jurisdictional question which arises in this application for judicial review, that the Licence related to the site of the activity for which the licence application was made – the scheduled and licensed activity, pursuant to the EPA Act 1992, of the intensive poultry rearing of 74,000 broiler chickens located in an installation located at Rathcahill West, Templeglantine, Newcastle West, County Limerick – and did not extend to the lands on which organic fertiliser *may* be used as fertiliser adding that “... *the Nitrates Regulations specifies when organic fertiliser can be applied to land, the application rates etc. And are enforced by the DAFM and Local Authorities.*”

133. In assessing whether or not the Agency acted within or out with its jurisdiction in this case, the central context and circumstance is that which relates to the scheduled and licensed activity of intensive poultry rearing of 74,000 broiler chickens located in an installation located at Rathcahill West, Templeglantine, Newcastle West, County Limerick and not that which concerned the CJEU in a number of decisions, including *Commission v Spain* (C-121/03) ECLI:EU:C:2005:512; 2005 I-07569 and *Brady v EPA* (Case C-113/12) ECLI:EU:C:2013:627, which held that where the context and circumstance arise it is for the national courts to determine, taking account of all the relevant circumstances obtaining in the situations before them, to determine whether or not slurry meets the following criteria: (i) the producer intends to market the slurry on

terms economically advantageous to himself in a subsequent process, (ii) such reuse is not a mere possibility but a certainty, without any further processing prior to reuse and as part of the continuing process of production.

134. Fourth, similar to the point made in relation to waste, it is contended on behalf of the Applicant that if the Agency do not know the location of the 'spread lands', it follows that it cannot know if there will be a deterioration of a water body.

135. As indicated earlier in the judgment, the question of the manner in which the Agency interpreted its jurisdiction in this case is directly related to the scheduled activity applied for prescribed by the provisions of the EPA Act 1992 and subsequently licensed, namely the intensive rearing of poultry in an installation located at Rathcahill West, Templeglantine, Newcastle West, County Limerick which capacity comprised 74,000 broilers and not the future land spreading of poultry litter or wash water on other lands or its possible treatment as waste, as contend for on behalf of the Applicant.

136. While both the Applicant and the Agency rely on observations made by the Supreme Court (Hogan J.) in *An Taisce – National Trust for Ireland v An Bord Pleanála* [2022] IESC 8; [2022] I.R. 173, the relevant aspect of the judgment of Hogan J. to the facts of this case is the court's distinction between the required assessment (AA and EIA) carried out in the context of the construction and operation of the cheese factory and the unnecessary requirement to do likewise in respect of the milk-production in the Glanbia farms and the other approximate other unknown farms estimated at 4,500 in number.

137. In the circumstances I find that by the manner in which it made its decision on 6th February 2019 the Agency correctly defined the ambit of its statutory and regulatory power and jurisdiction under the EPA Act 1992, including section 83(1) and sections 83 to 86 thereof, when granting an Industrial Emissions Licence to Michael Noel O'Connor to carry on the following activity – 6.1 - The rearing of poultry in an installation where the capacity exceeds 40,000 places (in this case 74,000 broilers) at the installation located at Rathcahill West, Templeglantine, Newcastle West, County Limerick.

138. I, therefore, refuse the Applicant the reliefs sought in this application for judicial review.

139. In addition, I make, what are in the circumstances, the following *obiter* observations.

140. First, in addition to seeking an order of *certiorari* the Applicant sought what was described as “related declarations” regarding the Agency’s decision of 6th February 2019 to grant Licence P1042-01 to Mr. O'Connor. In terms of pleading judicial review applications, prior to the changes brought about by a number of Practice Directions in, for example, the Planning and Environment List, I agree with Mr. Devlin SC that often the declarations sought (as in this case) are really an indication of what the issues are in a case, rather than the seeking of formal reliefs.

141. Second, it was pointed out in the context of the “related declarations” sought in this case, that the Applicant’s concern was not this particular poultry farm but rather *the approach* of the Agency to this issue *in general* and how the Agency regulates or how

it approaches its role in the land spreading of chicken manure (poultry litter) and wash water.

142. It is not the function of the court, however, on an application for judicial review to give what could amount to an advisory opinion on the approach of a decision making body *generally* or further to do so in the absence of a particular context. This well-settled principle was reaffirmed by the Supreme Court in the judgment of O'Donnell C.J. in *Odum v Minister for Justice & Equality* [2023] IESC 3.⁵² In the case before me, for example, I have held that by the manner in which it made its decision on 6th February 2019 the Agency correctly defined the ambit of its statutory and regulatory power and jurisdiction under the EPA Act 1992, including section 83(1) and sections 83 to 86 thereof, when granting an Industrial Emissions Licence to Michael Noel O'Connor to carry on the following activity – 6.1 - The rearing of poultry in an installation where the capacity exceeds 40,000 places (in this case 74,000 broilers) at the installation located at Rathcahill West, Templeglantine, Newcastle West, County Limerick. The Applicant was, in my view, incorrect to assume that – because of the fact that (i) the decision of 6th February 2019 (which includes the Inspector's Report) *envisages* that there *may be* or *can be* future land spreading of the poultry litter or wash water on lands outside of the installation, and because (ii) poultry litter and wash water can, on different occasions, be waste or not waste – the decision of 6th February 2019 was somehow an *authorisation* and *regulation of* land spreading. The Applicant's approach was mistaken in assuming that the references to the possible future alternate end-uses of the poultry litter and wash water on different lands in the decision of 6th February 2019 approximates to an

⁵² The Supreme Court comprised O'Donnell CJ and Charleton, Woulfe, Hogan and Murray JJ.

authorisation for that end-use or provides a basis for impugning the decision of 6th February 2019 to grant a Licence to Mr. O'Connor for the activity of intensive poultry rearing of 74,000 broiler chickens in an installation located at Newcastle West, County Limerick. Further, there is no *lacuna*, as is suggested on behalf of the Applicant, into which the Agency must act.

143. Third, the remedy of mandamus aside, the seeking of a declaration in an application by way of judicial review which sought to address generally the approach of a public body as to how it regulates or how it approaches its role without the context of a particular decision would offend other well-settled judicial review principles such as, for example, that a decision must be challenged by a person who has the requisite standing to do so; that the available remedies – *certiorari*, mandamus, prohibition or declaration (in certain circumstances damages and quo warranto) are contextual and subject to judicial discretion⁵³; that the decision of the public body in question is required to be challenged within a prescribed time period either pursuant to the Rules of the Superior Courts, 1986 (as amended) or under legislation; that the grounds should relate to *the manner* in which *a decision* is reached i.e. its legality, rather than its *merits*; that any decision which is sought to be impugned enjoys the presumption of validity; that the challenge to the decision cannot be a proxy for a collateral challenge to another decision.⁵⁴

144. Fourth, looking backwards in time, for example, the Applicant was critical of the planning authority's decision to grant planning permission in 2012. That decision was

⁵³ *Kelly v The Minister for Agriculture & Others* [2021] IESC 23 (substantive judicial review); [2021] IESC 28 (remedy); [2021] IESC 70 (costs).

⁵⁴ *Sweetman v An Bord Pleanála* [2018] IESC 1; [2018] 2 I.R. 250.

not challenged and in fairness to the Applicant it was correctly accepted, on his behalf, that any such decision could not now be the subject of a collateral challenge in this application for judicial review. This is perhaps not surprising, in the circumstances, as the leading authority on the question of collateral challenge arose in the decision of the Supreme Court in *Sweetman v An Bord Pleanála* [2018] IESC 1; [2018] 2 I.R. 250 and where Mr. Sweetman was successful before the High Court, Court of Appeal and Supreme Court on the question of what amounted to a collateral challenge.

145. Similarly, looking forward, it is at least open to question whether the Applicant's concerns may in reality be against the Competent Authority under the Nitrates Regulations, namely the Minister for Agriculture, Food and the Marine. Poultry litter and wash water are, for example, categorised as Category 2 Animal By-Product material within Articles 3 and 9 of the EU Animal By-Product Regulations 1069/2009 and the spreading of fertilisers on land comes within the scope of the Nitrates Directive 91/676/EEC and the Nitrates Regulations.

146. Finally, as mentioned at the beginning of the judgment these proceedings date back to 2019 and, as accepted by the parties, relied on an older format of pleading and presentation which applied prior to the more recent Practice Directions. On the first day of the hearing, Mr. Devlin SC carefully and helpfully delineated the remaining 'live grounds' and reliefs sought from a total of 74 grounds (including at least 5 which were initially against the State) which involved a number of Directives and Regulations in addition to the EPA Act 1992 and pointed which grounds were no longer being pursued. As mentioned, this was a helpful exercise and if parties consider using it as a template for future similar cases, which may not be covered by the recent Practice Directions,

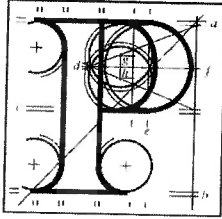
consideration might be given to agreeing this approach earlier in a case and prior to the fixing of a hearing date. In this application for judicial review, arising from the assistance of both counsel, this case was completed within the 3 days allocated to it.

PROPOSED ORDERS

147. In the circumstances, I am satisfied that the Agency, when considering the application which was made to it from Mr. O'Connor, correctly defined the ambit of its statutory and regulatory power in the EPA Act 1992, including sections 83 to 86, as applying to the site of the activity for which the licence application was made, *i.e.*, the intensive rearing of poultry within the installation boundary located at Newcastle West, County Limerick and that this did not extend to the authorisation of the possible end use of the poultry litter or wash water generated from the intensive poultry rearing as organic fertiliser or as waste on lands outside of the installation.

148. I, therefore, refuse the Applicant the reliefs claimed in this application for judicial review.

149. I will list the matter for **Tuesday, 6th February 2024 at 10.30 am** for the purpose of making a final order and to deal with any ancillary and consequential matters that arise.



An
Bord
Pleanála

Inspector's Report ABP-308942-20

Development	Development of a Biogas Plant.
Location	Townlands of Ballynamantan, Kinincha and Glenbrack, Gort, Co. Galway.
Planning Authority	Galway County Council
Planning Authority Reg. Ref.	19/1812
Applicant(s)	Sustainable Bio-Energy Limited.
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party vs. Refusal
Appellant(s)	Sustainable Bio-Energy Limited.
Observer(s)	See Appendix for details.
Prescribed Bodies	An Taisce Environmental Protection Agency
Date of Site Inspection	12 th November 2021
Inspector	Stephen Ward

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1.0 Site Location and Description

- 1.1. The site is located within the townlands of Ballynamantan, Kinincha and Glenbrack, in the northern environs of the town of Gort, County Galway. It is distanced c. 900m from the town centre and c. 400m from the northern periphery of the existing built-up footprint of the town.
- 1.2. The site extends to a stated area of 10.01 hectares and is of an irregular shape. The western portion of the site generally comprises a narrow curvilinear section around the existing/proposed access road and widened splays onto the adjoining Regional Road R458 (old N18 National Primary road). The main body of the site is located to the east along a narrow county road (Kinincha Road) and it gradually increases in width and elevation to the north and west. An existing 'horse gallop' area surrounded by steep embankments would be retained between the eastern and western portions of the proposed site. The site is currently used for agricultural grazing and equine related purposes.
- 1.3. The boundary of the site along the local road to the east comprises a mixture of stone wall, fencing and hedges, while the northern boundary to the north consists of a steep bank and hedging. To the south, a timber fence forms the boundary with the side garden of an existing dwelling. There are some rows of hedging along the western site boundary as it stretches through the existing farmyard and the western extremity of the site along the R458 consists of a stone wall and hedging.
- 1.4. Apart from the existing dwelling to the south and a local authority storage site to the east, the immediately adjoining land is in agricultural use. There are several 'one-off' houses in the surrounding area, with a particular concentration along the R458 road to the west, while the northern periphery of town consists of a mixture of residential and industrial uses. The M18 Motorway bypasses the western side of the town in a north-south direction and is c. 500m to the west of the appeal site, while the Galway-Limerick railway line runs at a similar alignment and distance to the east.
- 1.5. The Gort River flows within c. 20m of the eastern site boundary and Coole Lough is c. 2 km to the west. The area around Coole Lough is designated as a Special Area of Conservation and Special Protection Area and includes Coole Park and Nature Reserve.

2.0 Proposed Development

- 2.1. The proposal involves the development of a Biogas Plant involving the use of anaerobic digestion technology to produce renewable energy and fertiliser. It includes the construction of the following:
- 2-storey office building (509m²) with connection to the public sewer
 - Single storey electrical substation (14.43m²) and associated banded transformer
 - 13.4m high feedstock reception building (3,806m²)
 - Banded Tank Farm (14,805m²) containing 2 no. pump houses, pipework, 8 digester vessels and 4 storage vessels (each vessel 15m in height and c. 5,120m³ capacity)
 - Biogas purification plant
 - Carbon dioxide processing building (10.44m height and 138m²) containing treatment plant and 4 outdoor storage tanks (each 12m high and 50m³ capacity)
 - Odour control system comprising air scrubber units, carbon absorption bed and associated stack up to 23m high
 - Energy centre containing combined heat and power (CHP) plant and 2 standby boilers with exhaust stacks (16.4m high)
 - Biogas ground flare stack (8m high) and gas booster station
 - Ancillary development including weighbridge, fencing, new entrance off the R458 road and internal access roads, emergency entrance/exit, planted soil berm and landscaping, car parking, surface water settlement and storage lagoons, lighting, and engineering works for disposal of foul and surface water.
- 2.2. Permission is being sought for a period of 10 years and the development is for the purpose of an activity requiring an Industrial Emissions (IE) Licence from the Environmental Protection Agency (EPA). An Environmental Impact Assessment

Report (EIAR) and Natura Impact Statement (NIS) have been prepared and accompany the application.

Feedstock

2.3. The application states that the proposed Biogas Plant will accept and process feedstock from the agri-food sector within a 30km radius Feedstock Catchment Zone (FCZ) of the appeal site (and potentially beyond this catchment in the case of Agri-food residues). Feedstock will comprise the following:

Feedstock	Annual Tonnage	% of Feedstock Input
Grass silage	54,000	60%
Cattle Slurry	22,500	25%
Agri-food Residues	13,500	15%
Total Annual Tonnage	90,000	100%

Process Description

2.4. Feedstock will be delivered by road using HGVs and will enter and exit the reception building via a purposely designed air lock lobby. The reception building will operate under negative pressure to ensure that any fugitive emissions (such as noise, dust and odours) are contained. Once treated and abated, air will be discharged to the atmosphere via a 22m high stack. Process effluents from activities within the reception building will be recovered to the AD process via 2 underground storage tanks. Feedstocks will be processed within 72 hours to reduce the potential for odour generation and feedstock bays will be emptied at least weekly.

2.5. The proposal includes 4 primary and 4 secondary digesters which will be heated and stirred/mixed continuously. AD is a natural process in which microorganisms break down organic matter in the absence of oxygen into biogas (a mixture of carbon dioxide (CO₂) and methane (CH₄)) and digestate (a nitrogen-rich fertiliser). The biogas is further upgraded and used in the same way as natural gas. Each digester will be covered with an airtight gas membrane to recover and store raw biogas.

2.6. The biogas pasteurisation process is intended to reduce the numbers of any pathogens and to ensure that all products are safe to handle and use. Digestate from

secondary digester vessels will be fed via macerators (to reduce particle size) to the pasteurisation unit where it will be circulated and heated to an optimal temperature of 70°C.

Digestate (Organic Fertiliser)

- 2.7. Once pasteurised, digestate material will be forwarded for storage and testing to ensure consistent quality. It is estimated that up to 150,000 tonnes of whole digestate will be produced per annum once fully commissioned. The relevant nutrients in the digestate are predominantly nitrogen, phosphorous, potassium and the organic carbon content. It is stated that the proposal will result in the production of nutrient-rich digestate which will be used as organic fertiliser and a substitute for chemical fertiliser on agricultural lands in the area, particularly those which provide feedstock, thereby providing a circular economy.

Biomethane

- 2.8. The gas clean-up plant recovers over 99.9% of the biomethane present in the raw biogas by separating the carbon dioxide through a process of chemical absorption. The biomethane gas produced is high quality and can be directly injected into the gas grid, compressed to produce bio-CNG, or liquified to produce bio-LNG. Following dewatering and the removal of a number of elements, the gas will be pumped into standard containers (5,500Nm³) for transportation to customers.

Carbon Dioxide

- 2.9. A chemical absorption process will be used to separate Carbon Dioxide from biogas. It will be purified and compressed to a class food grade 3 substance and stored in insulated tanks. Bulk tankers will periodically remove the clean compressed CO₂ for use elsewhere in the food and beverage industry.

CHP Unit and Boilers

- 2.10. Biomethane will also be directed to an on-site unit to generate electricity and heat to provide for the site's parasitic load, including heat for the AD process, pasteurisation, and the gas clean-up plant. Two c. 2MW standby dual fuel (gas and light oil) boilers will also be provided for use when CHP is unavailable.

Construction works

- 2.11. The development of the site is estimated to occur over a 24-month period. An Outline Construction Management Plan is included, and it is estimated that there will be an average of 15 trucks accessing the site per day to deliver materials. During peak construction activity, it is estimated that there will be 80 workers (40 vehicles) on site. Decommissioning of the plant will be subject to the terms of the IE Licence and a decommissioning methodology is included with the application.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. It should be noted that Galway County Council (GCC) originally made a decision to refuse the application on 23rd January 2020, after which an appeal by the applicant to the Board (ABP Ref. 306709-20) was deemed invalid based on its receipt after the appeal period deadline. The applicant subsequently took a Judicial Review case regarding the date of the GCC decision and I understand that a High Court order of 13th October 2020 quashed the original decision, thereby requiring the re-issue of a decision on the application.
- 3.1.2. By order dated 2nd December 2020, GCC then issued notification of the decision to refuse permission for the following reasons:

- 1. The proposed development would involve the redesign of an existing Regional Road entrance (R458) and associated works and a significant intensification of use of this entrance to facilitate a high daily volume of commercial HGV traffic with associated frequent accessing and egressing daily turning movements onto a busy regional road at a point where the maximum rural speed limit applies for this category of road, where sight distance is below optimum, and where traffic is known to be fast moving for this category of road. It is considered therefore that the proposed development would present undue potential for the creation of dangerous and conflicting traffic movements and would accordingly be prejudicial to public safety. The Planning Authority, in addition, is not satisfied that the proposed development would not, by reason of the volume of HGV movements*

potentially associated with the proposed use, and residual uncertainties over regulation of the routing and off site control of HGV traffic associated with the proposed use, generate undue traffic congestion and conflict between commercial HGV traffic and other urban traffic in nearby Gort town centre and Junction 16. The proposed development would accordingly be contrary to the proper planning and sustainable development of the area.

- 2. The Planning Authority, having reviewed the justification submitted with this application, is not satisfied that the proposed development, located in a rural area close to Gort, which is not zoned for development, due to the nature and scale of the proposed development as outlined in submissions received with this application in the context of Galway County Development Plan Objective ER 8, satisfactorily meets the criteria set out therein. It is considered therefore that the proposed industrial development, located in a rural area, upon which the use is not dependent for electrical or gas grid connection, would be contrary to the provisions of Objective ER 8 and Objective EDT7 of the Galway County Development Plan 2015-2021. The proposed development would accordingly be contrary to the proper planning and sustainable development of the area.*
- 3. The proposed development would entail the construction of commercially operated anaerobic digestion biogas plant, which would contain several large structures, within an open, exposed and low-lying rural area which is characterised by low intensity agricultural activities. Having reviewed the submitted plans and particulars, Landscape and Visual Assessment contained within the submitted EIAR and associated photomontages with respect to the chosen receptors, the Planning Authority are not satisfied that the development would not be visually obtrusive and adversely impact on the receiving Class 3 landscape, including the Coole Demesne area to the north, the Kinincha Road/Gort River area and other potentially sensitive receptors. It is also considered that additional viewpoints would have been required to enable the Planning Authority to fully assess the proposal for a visual impact perspective and furthermore that the potential for visual impact of any visible air emissions associated with the use should all have been assessed in detail*

as well as the potential visual impacts of the stacks and any visible air emissions associated with the use from a wider visual catchment study area. The proposed development would accordingly be contrary to the provisions of Policy LCM 1 and Objective LCM 2 of the Galway County Development Plan 2015-2021, would seriously injure the amenities of the rural area, and would, therefore, be contrary to the proper planning and sustainable development of the area.

4. The site of the proposed development is located within c.600m of the Coole Garryland Complex SAC, c1.1km from Coole Garryland SPA, and within a distance of 15km of 27 no. other designated European site for rare and threatened flora and fauna across the European Union (i.e. Natura 2000 network of sites), which are protected under the EU Habitats Directive (92/43/EEC) & EU Birds Directive (79/409/EEC, as amended by Directive 2009/147/EC) and the European Communities (Natural Habitats) Regulations 1997, as amended by the European Communities (Birds and Natural Habitats) Regulations 2011. The protection of these European sites is further reinforced in the 2015-2021 Galway County Development Plan under Policy NB 1, Objective NB 1, Objective NB 2, Objective NB 3 and DM Standard 40. Based on the information included with the planning application, and the concerns identified by the Planning Authority in relation to the potential direct, indirect and cumulative impacts of air pollutants, pollutants to water quality, habitat loss/fragmentation and the exclusion of a satisfactory assessment of a number of European sites in the vicinity of the proposed development in the NIS submitted, the planning authority in conjunction with the application of the precautionary principle, consider that significant adverse effects on the integrity and conservation objectives of the European sites in the vicinity, cannot be ruled out, as a result of the proposed project. Therefore, the development is likely to have significant adverse impacts on the qualifying criteria and conservation objectives of nearby European sites, in particular the Coole Garryland Complex SAC, the Coole Garryland SPA, Lough Cutra SAC and Kiltartan Cave SAC which would contravene materially a policy, objectives and a development management standard contained in the current

Galway County Development Plan, and would be contrary to the proper planning and sustainable development of the area.

5. *Based on the information submitted in the Environmental Impact Assessment Report and as identified in the Environmental Impact Assessment carried out by the Planning Authority, it is considered that the EIAR submitted has not presented a sufficient level of information and assessment in relation to impacts on population and human health, biodiversity, land, soil water air and climate, material assets and landscape, for the competent authority to make an EIA determination there is an acceptably low likelihood of environmental effects of a magnitude which would have a significant effect on sensitive environmental receptors as a result of the proposed development and mitigation proposed as part of the submitted EIAR. Therefore if permitted as proposed the development would be contrary to the proper planning and sustainable development of the area.*

3.2. Planning Authority Reports

Planner's Report

- 3.2.1. The Planner's Report outlines an analysis of the 'key planning issues', which can be summarised as follows:

Strategic analysis

- The site is located in a rural area outside the Gort LAP area; is not zoned for development; and is within a sensitive karst landscape that is hydrologically and hydrogeological linked to designated sites all located within a groundwater body with an overall status of 'poor'.
- It is proposed to export energy recovered on site and the use does not appear to be dependent on this site for electrical/gas network connection.
- The applicant's justification is based on the consideration of 4 alternative sites but has not satisfactorily demonstrated that suitable sites are not available in the reserve of land zoned for industrial use in Gort or other settlements.
- The reference in Objective ER 8 to promote '*Tuam Hub Town, Athenry and Gort and their environs as energy hubs*' does not alone constitute a

reasonable basis/justification for the selection of an unzoned rural site close to Gort. The reference to “and their environs” is considered to mean the area within the Gort LAP boundary and lands outside that boundary can be classed as ‘rural’.

- The Draft Regional Spatial and Economic Plan for the region outlines that waste infrastructure shall in urban areas generally be on lands zoned for industrial use and in non-urban areas shall accord with proper planning and sustainable development.
- Feedstock sources (which has not been sufficiently detailed) does not appear to have been a significant determinant of site selection.
- The Planning Authority is not satisfied that the proposed industrial development has been justified in a rural area and the proposals would be contrary to the provisions of Objective ER 8 and Objective EDT 7 of the CDP.

Environmental Impact Assessment

- The content and competencies of the EIAR comply with the requirements of Article 94 of the P&D Regs 2000 (sic) and Article 5 of the EIA Directive 2014.
- There are concerns in the context of the Major Accidents Directive, including expected effects arising from the vulnerability of the project to major accidents and/or disasters. Sections 4 and 7 of the EIAR identify voids in the bedrock and there are uncertainties in the potential to cause accidents/disasters, including implications for human health, cultural heritage and the environment. The Planning Authority has also identified traffic hazards impacting on public safety. Likely significant effects on population and human health cannot be excluded.
- The main biodiversity concerns relate to bats (inadequate scope of assessment, loss of hedgerow and fragmentation/loss of habitat), badgers, the direct impact of air emissions (most notably Nitrogen) on the Gort River, and indirect impacts on connected European sites (Coole-Garryland SAC, Coole-Garryland SPA). There is ambiguity about the presence of an otter sett on site and the overall cumulative impacts on biodiversity. Likely significant biodiversity effects on the environment cannot be excluded.

- Having regard to the limited soil cover and bedrock outcrops on site, it is considered that inadequate detail of the extensive construction work has been submitted and concerns remain about the direct impact of wet concrete on bedrock and groundwater and indirect impacts on ecology and biodiversity.
- The Hydrology and Hydrogeology analysis in the EIAR is based on outdated (2015) data and a 'good' water quality status for the Canahowna (Gort) river. The quality status should be assigned as 'poor'. The EIAR stated requirement for further detailed pre-construction investigation to evaluate the bedrock and allow for appropriate mitigation of impacts on karst features undermines the efficacy of the proposed mitigation measure and the residual impact of same. The Flood Risk Assessment identifies the vulnerability of the proposal to high groundwater levels associated with high river levels, but inadequate mitigation detail is provided for the proposed bund and stormwater management. The Planning Authority concludes that the information does not provide for a complete and robust assessment of the impacts on hydrology and hydrogeology.
- Air quality impacts in the EIAR primarily focus on emissions from the CHP plant and Nitrogen deposition direct impacts on the nearest European sites, but no reference is made to the cumulative Nitrogen deposition from other sources or the risk of gaseous emissions on the Gort River and the impact of traffic movements has not been quantified. The EIAR does not address the odour impacts associated with spreading digestate and the efficacy of the carbon filter, and odour arising from the facility has been queried by the Environment Section. The Planning Authority is satisfied that significant effects on the environment will not arise due to noise but likely significant effects on Land, Soil, Water, Air and Climate cannot be excluded.
- Due to the inclusion of a 22m high stack (presumably with potentially visible gaseous emissions) the Planning Authority has residual concerns about the EIAR study area assumptions, does not concur that the visual impact rating from VRP 5 (Kinincha Road/Gort River area) would be 'low', and notes that visual impact assessment from the north, northwest and Gort town centre is absent.

- The Planning Authority has outstanding concerns about intensified/conflicting traffic movements, impacts on Junction 16 of the M18/R458 roads, the regulation of off-site HGV movements to avoid Gort town centre, and the overall impact on public safety.
- A satisfactory assessment has not (sic) been carried out to establish that significant direct, indirect and cumulative impacts on Archaeology are not likely.
- The EIAR provides limited analysis of the identified interactions between environmental factors. The Planning Authority also notes that the feedstock sources and end user locations for digestate have not been satisfactorily identified to provide a robust assessment of interactions.
- The Planning Authority's reasoned conclusion states that it has not ruled out the potential for likely significant effects deriving from the vulnerability of the project to risks of major accidents and/or disasters and includes a determination that that the EIAR was not adequate in identifying and describing the direct, indirect and cumulative effects of the proposed development, alone or in combination with other plans and projects on the receiving environment to satisfy the competent authority that all likely significant environmental impacts cannot be ruled out as a result of the proposed development and proposed mitigation.

Appropriate Assessment

- Based on the information submitted and the Planning Authority's concerns in relation to potential direct, indirect and cumulative impacts of air pollutants, pollutants to water quality, habitat loss/fragmentation and the exclusion of a satisfactory assessment of a number of European sites in the vicinity of the proposed development in the NIS submitted, the planning authority in conjunction with the application of the precautionary principle, consider that significant adverse effects on the integrity and conservation objectives of the European sites in the vicinity, cannot be ruled out, as a result of the proposed project. Therefore, the development is likely to have significant adverse impacts on the qualifying criteria and conservation objectives of nearby

European sites, in particular the Coole Garryland Complex SAC, the Coole Garryland SPA, Lough Cutra SAC and Kiltartan Cave SAC.

Flood Risk

- Concerns are raised as outlined in the EIA section above and inadequate detail is provided on uplift pressure and the bund to address these concerns.

Access, Roads and Transportation

- The Planning Authority has serious concerns about the design of the entrance and adequacy of sightlines; the speed of traffic and alignment of the road at this location; the projected volume of traffic movements; and the implication of proposed turning lanes on traffic safety.
- It is unclear how the applicant can ensure that feedstock inputs and digestate outputs will not be routed through Gort town centre.
- The impact of traffic movements on the M18 Junction 16 has not been assessed in detail and there are residual uncertainties regarding stacking / circulation.

Visual Impacts

- Concerns are raised as outlined in the EIA section above.
- The Planning Authority is not satisfied that the proposal would not adversely impact on the receiving Class 3 landscape, including Coole Demesne, the Kinincha Road/Gort River area and other vantage points.

Archaeology and Built Heritage

- In the event that the proposal is favourably considered, conditions requiring archaeological impact assessment should be attached.

Energy Transmission

- The application does not make provision for direct connection to the electrical or gas networks, proposing instead to export gas via HGV to third parties or the national gas supplier/grid.

Public Health and Safety

- There appears to be deficiencies and uncertainties in the EIAR in terms of description of expected significant effects and mitigation concerning preparedness and response to major accidents/emergencies; potential to cause accidents or disasters and implications for human health, cultural heritage and the environment; and vulnerability to potential accidents/disasters including risk of natural (flooding) and man-made disasters (technological issues).

Recommendation

- The Planner's Report recommended to refuse permission for the 5 reasons set out in the GCC decision.

Other Technical Reports

3.2.2. Roads Directorate: An email report of 21st January 2020 forms the basis of the roads/traffic concerns outlined in section 3.2.1 above. It concludes that the proposal would be contrary to the proper planning and sustainable development of the area for the reasons set out in reason no. 1 of the GCC decision.

3.2.3 Environment Section: The report of 21st January 2020 is prefaced by details of general discussions with the EPA regarding similar facilities and ongoing complaints and compliance issues. Otherwise, the report can be summarised as follows:

- The Environment Section generally supports anaerobic digestion facilities, subject to meeting national sustainability criteria, suitable location, and operation under a permit/license as appropriate. These facilities can provide numerous benefits including renewable energy, reduction in green house gas emissions, reduced risk of water pollution, and reduced reliance on chemical fertilisers.
- The Connaught Waste Management Plan 2015-2021 supports the development of new facilities in the biological treatment sector, in particular composting and anaerobic digestion.

- The facility will have an IE licence from the EPA which will enable ongoing monitoring and review of feedstocks and other environmental issues.
- The applicant should be requested to demonstrate that the proposal meets the sustainability criteria set out in the SEAI study *Sustainable Criteria Options and Impacts for Irish Bioenergy Resources* based on feedstock type, source area and GHG emissions through by-product transportation.
- The applicant should be requested to carry out an assessment of odour nuisance as a result of digestate spreading.
- The applicant should be requested to submit further details on the proposed carbon filter for odour abatement including sizing and evidence of its efficacy.
- Any required ground investigation should be carried out at planning stage so they can inform the design of the development, the EIAR and the NIS.
- Clarification is required on whether cleaning disinfectants can be re-used on site or whether it is proposed to dispose to the public WWTP (which is generally compliant with EPA wastewater licence).
- The ecological status (2013-2018) of the monitoring station downstream of this site is 'poor' based on biological monitoring data and further assessment is required in relation to the risk of deposition of gaseous emissions on the Gort River.
- If permission is granted, conditions should be applied requiring the preparation and supervision of an Environmental Management Plan for the construction and operation stage, as well as an Incident Response Plan.

3.3 Prescribed Bodies

Environmental Protection Agency (EPA): The content of the submission is covered in the observations on this appeal (see section 6.4 of this report).

Department of Culture, Heritage & Gaeltacht (DCHG): The submission can be summarised under the following headings:

Archaeology

- The scale, extent and location of the development has the potential to encounter subsurface archaeological remains and conditions requiring an archaeological impact assessment should be included in any grant of permission.

Biodiversity

- It would appear that further biological surveys are still to be completed and it is not clear what these surveys consist of.
- The EIAR assumptions regarding the location of a lesser horseshoe bat roost in a mill may be incorrect as the species has been recorded a different mill location in the area. The removal of 520m of hedgerow may have effects on commuting lesser horseshoe bats. Due to these other records and features in the area, a wider study should be done on how lesser horseshoe bats are using the landscape and accessing their summer and winter sites. It should also assess fragmentation and wider cumulative habitat loss and include Kiltartan Cave SAC and Lough Cutra SAC.

Water Quality

- The submission highlights the sensitivity of the surrounding water environment.

Air Quality

- Air quality impacts in the EIAR primarily focus on Nitrogen deposition direct impacts on the nearest European sites, but no reference is made to the cumulative Nitrogen deposition from other sources.

An Taisce: The grounds of the submission are covered in the observations on this appeal (see section 6.4 of this report).

Inland Fisheries Ireland: The submission (not on file but available on GCC website) highlights the proximity of the site to the Cannahowna (Gort) River and that it contains a resident population of brown trout. It has a WFD Directive 'good' status which should be protected and there are concerns about the proximity of the development and land spreading of digestate which may impact on the water quality

of local fisheries catchments. The location of land for spreading must be clarified before an informed decision can be made on the application.

3.4. **Third Party Observations**

The Planning Authority recorded a total of 405 submissions which are comprehensively summarised in the GCC Planner's Report. The issues raised are largely consistent with the issues raised in the observations on the appeal (see section 6.3 of this report).

4.0 **Planning History**

4.1. The following planning history is relevant to the appeal site:

ABP Ref. 306709-20: A previous appeal of the GCC decision was deemed invalid based on its receipt after the appeal period deadline. That GCC decision was subsequently quashed by High Court Order.

P.A. Ref. 18/502: Permission was sought for a similar Biogas Plant development on a smaller site (7.85ha) at this location. Further Information was requested by the Planning Authority on 19th June 2018 and the applicant subsequently withdrew the application on 14th December 2018.

P.A. Ref. 00/4545: Permission granted (8th January 2001) for the conversion of first floor of stables to residential accommodation and for the construction of a septic tank and percolation area.

P.A. Ref. 00/600: Permission granted (15th May 2000) for the retention and completion of stables and use for commercial purposes and for use of horse training facilities and horse gallop for commercial purposes.

P.A. Ref. 98/4738: Permission granted (29th March 1999) for construction, retention and completion of horse gallop and internal road and for construction of access off existing county road at Kinincha to access horse riding stables and lunging ring etc.

ABP Ref. 310203-21: Current application on a site c. 300m to the south for approval made under Section 177(AE) of the Planning and Development Act, 2000 (local authority development requiring appropriate assessment) for the provision of a Civic Amenity site/recycling centre.

5.0 Policy Context

5.1 National Legislation/Policy

Climate Change and Energy

- 5.1.1. The ***Climate Action Plan 2021*** recognises the critical nature of the climate change challenge and sets out a roadmap for taking decisive action to halve GHG emissions by 2030 and reach net zero by 2050 in accordance with the European Green Deal, The Paris Agreement, and the Climate Action and Low Carbon Development (Amendment) Act 2021. It acknowledges that agriculture, transport and energy industries consistently have the largest shares of emissions, and that key drivers of recent reductions in emissions include reduced use of peat and increased renewable power generation in the electricity sector. The Plan lists the actions needed to deliver on our climate targets and sets indicative ranges of emissions reductions for each sector of the economy.
- 5.1.2. The ***Draft Bioenergy Plan*** which was published by the then Minister for Communications, Energy and Natural Resources in October 2014. The draft Plan sets out the broader context for the development of Ireland's bioenergy sector, and the current status with regard to the range of policy areas that must be coordinated in order to create the conditions necessary to support the development of this sector. A Bioenergy Steering Group has been established in order to oversee the finalisation and implementation of the Bioenergy Plan.
- 5.1.3. The 2018 ***National Policy Statement on the Bioeconomy*** sets out a vision, common principles, strategic objectives, and a framework for implementation to deliver on this vision for the bioeconomy in Ireland. It recognises that potential benefits include a reduction in the effects of climate change and the promotion of rural employment and economic development, and highlights that Ireland has significant strengths and comparative advantages in the bioeconomy.

Waste

- 5.1.4. The ***Waste Action Plan for a Circular Economy – National Waste Policy 2020-2025*** was produced by the Department of Environment, Climate and Communications and comprises a new roadmap for waste planning and management. It looks to move

away from waste disposal and looks instead to how resources can be preserved by creating a circular economy and climate change targets realised. It aims to reduce food waste by 50% by 2030, including pursuing ambitious reductions and other measures that contribute towards a sustainable food chain in the Agri-food sector, and aims to realise the food waste resource potential of Anaerobic Digestion (AD) and composting. It states that AD and composting provide opportunities for regional development with benefits for communities through sales of locally generated energy and compost.

Water

- 5.1.5. The EU Water Framework Directive aims to improve water quality and applies to all water bodies. The Directive runs in six-year cycles and is currently in its second cycle 2016 to 2021. Member States are required to achieve 'good' status in all waters and must ensure that status does not deteriorate. The Directive has been given effect by the Surface Water and Groundwater Regulations.

Planning

- 5.1.6. Project Ireland 2040, including the **National Planning Framework (NPF)** and the **National Development Plan 2018-2027**, set out a vision for the future development of the country. The NPF contains a number of relevant National Strategic Outcomes (NSOs) and National Policy Objectives (NPOs) which can be summarised as follows:
- NSO 8** 'Transition to a low carbon and climate resilient society' recognises that more diversified and renewables focused energy systems will be necessary, including biomass, and that our gas storage capacity is limited. It includes an aim to deliver 40% of electricity needs from renewable sources by 2020, with further increases through to 2030 and beyond in accordance with EU/National policy.
- NSO 9** 'Strategic Management of Water and other Environmental Resources' highlights the future effects of climate change on the availability of water sources. It also states that waste treatment planning will require biological treatment and an increased uptake in anaerobic digestion, along with waste to energy facilities.
- NPO 21** Enhance the competitiveness of rural areas by supporting innovation and diversification of the rural economy into new sectors and services, including those addressing climate change and sustainability.

NPO 23 Facilitate the development of the rural economy through supporting a sustainable and economically efficient agricultural and food sector, together with other industries including energy and the bio-economy, while protecting the natural landscape and built heritage which are vital to rural tourism.

NPO 53 Support the circular and bio economy including greater use of renewable resources.

NPO 55 Promote renewable energy use and generation at appropriate locations.

NPO 56 Promotes the sustainable management of waste, investment in different types of waste treatment, and circular economy principles.

5.2. Regional Policy

- 5.2.1. This ***Regional and Spatial Economic Strategy*** (RSES) for the Northern & Western Regional Assembly provides a high-level development framework for the region that supports the implementation of the NPF and the relevant economic policies and objectives of Government. It provides a 12-year strategy to deliver the transformational change that is necessary to achieve the objectives and vision of the Assembly.
- 5.2.2. Section 4.4 identifies several sectors and clusters that are of most importance to the region. Under 'Renewable Energy and Low Carbon Future' the RSES acknowledges the region's huge potential for growth in renewables. RPO 4.20 supports the development of the bio-economy for energy production, heat and storage distribution. It also highlights the critical importance of maintaining the 'green' credentials of the 'Agri-food and the bioeconomy' sector. RPO 4.27 supports the National Policy Statement on the Bioeconomy and opportunities for the circular resource-efficient economy, RPO 4.28 supports the potential creation of appropriately scaled local multi-feedstock bio-refining hubs, and RPO 4.29 supports the use of bio-renewable energy for the sustainable production of bio-based products.
- 5.2.3. Section 8.3 deals with 'Gas Networks' and recognises that Compressed Natural Gas (CNG) can contribute to decarbonisation in transport. RPO 8.7 supports innovative

partnerships extending the gas network in the region, including the potential for gas to grid injection facilities along with anaerobic digestion facilities.

5.2.4. Section 8.4 deals with 'Waste Infrastructure' and supports the implementation of the Connaught Ulster Regional Waste Management Plan 2015-2021. RPO 8.10 states that the siting of waste infrastructure shall in urban areas generally be on lands zoned for industrial use and in non-urban areas shall accord with the principles of proper planning and sustainable development. RPO 8.11 supports the move towards regional and national self-sufficiency in terms of waste management infrastructure in accordance with the proximity principle and with the circular green economy.

5.2.5. The strategic vision of the **Connaught Ulster Regional Waste Management Plan 2015-2021** is to rethink the approach to managing waste, by viewing waste streams as valuable material resources. The approach places a stronger emphasis on preventing wastes and material reuse activities. It seeks to build on recycling progress and strives to improve the recovery and generation of energy by maximising the resource value of the materials and energy embodied in residual wastes. Finally, the plan will seek to further reduce the role of landfilling in favour of higher value recovery options. Some of the key measures in the plan include:

- Plan and develop higher quality waste treatment infrastructure including new reprocessing, biological treatment, thermal recovery and pre-treatment facilities
- Grow the biological treatment sector, in particular composting and anaerobic digestion, by supporting the development of new facilities
- Ensure existing and future waste facilities do not impact on environmentally sensitive sites through proper assessments and siting.

5.3. Local Policy

5.3.1. The operative Development Plan for the area is the **Galway County Development Plan 2015-2021**. The Core Strategy of the Plan identifies Gort as A 'Key Town' with an extensive range of services, infrastructure and a strong historical identity. Sustainable growth in these settlements is required to achieve their potential as self-sustaining towns. Gort is within the identified 'Economic Engine' of the county

running north-south between Gort and Tuam and east-west between Ros a Mhil and Ballinasloe.

- 5.3.2. Section 7.4 recognises the huge potential for the county for 'Renewable Energy' including biomass as a source. Section 7.4.5 outlines support for the production of bio-crops and forestry for biomass in the generation of renewable energy as well as production units in appropriate locations. The policies and objectives in this section generally support renewable energy projects and include the following objectives:

ER 4 Support the use of appropriate renewable energy resources and associated infrastructure, including Bio-Energy and CHP.

ER 8 Promote Tuam Hub Town, Athenry and Gort and their environs as energy hubs, to take account of opportunities to develop suitable sustainable enterprises due to their proximity to electricity and gas transmission networks and minimising environmental impact.

- 5.3.3. Sections 4.9 and 4.10 support rural enterprise and farm diversification. Objective EDT 7 encourages industrial and enterprise development to operate from lands zoned for these purposes within the various Local Area Plans, subject to an adequate consideration of the policies and objectives of this plan and the need to protect the vitality and amenities of the town or settlement.

- 5.3.4. Section 11.1.1 deals with 'Agriculture' and recognises the opportunities and challenges facing the industry, while Section 11.3 highlights the potential to increase carbon efficiency within the food sector. Relevant policies and objectives can be summarised as follows:

Policy AFF 1 recognise innovative strategies in the agri-food sector

Policy AFF 3 Facilitate the sustainable development of the countryside and diversification of appropriate uses on rural landholdings to ensure the continued viability of agriculture

Objective AFF 1 support sustainable development of agriculture, with an emphasis on a high quality, traceable primary production methods, the promotion of local food supply and diversification.

- 5.3.5. Section 9.10 outlines that the Landscape Character Assessment for the county identifies 25 'character areas'. The Landscape Sensitivity and Character Area Map

(LCM2) shows that the site is within an area to the north of Gort that is 'Class 3 – Medium' sensitivity, while map LCM1 indicates that the Landscape Value Rating for the area is also medium. The area around Coole Lough to the northwest of the site is classified as 'Class 4 – Special' sensitivity and is rated as being of 'high' value. The policies and objectives of the plan generally aim to protect landscape character and to have regard to the landscape character assessment classification when considering proposals for development.

5.3.6. The **Gort Local Area Plan 2013-2023** provides a statutory framework and strategic vision for the future growth, development and improvement of Gort. The appeal site itself is located directly outside the northern extent of the LAP Boundary.

Nonetheless, the provisions of the LAP are relevant to the appeal case and include the following summarised points:

Objective DS 1 & Policy LU1 – Support orderly and sequential development focusing on the consolidation of the town centre and protection of landscape character, heritage and identity.

Objective LU3 (Industrial zoning) - Promote the sustainable development of industrial and industrial-related uses on suitable lands with adequate services and facilities and a high level of access to the major road network and public transport facilities.

Objective LU7 (Agriculture zoning) - Protect the rural character of the area from inappropriate development and provide for agricultural and appropriate non-urban uses.

Objective CF9 - Support a network of greenway linkages and amenities including an amenity walking circular route along the Kinincha Road returning via the river bank to George's Street.

Objective ED2 - Facilitate business, enterprise and industrial developments that are considered compatible with surrounding uses on suitably zoned and serviced sites and subject to appropriate buffer zones/screening. The Business and Enterprise (BE) and Industrial (I) zonings will be the primary focus for such uses.

Objective TI24 - Provide a walkway along the Cannahowna/Gort River including the Kinincha and Pound Road.

Policy UI6 - Support the provision of adequate energy infrastructure to service developments, including gas. In particular, the Council supports the increased development and use of renewable energy.

Objective UI18 - Facilitate the provision of an adequate supply of electricity and gas to developments in the Plan Area, to the requirements of the relevant service provider and in accordance with the principles of proper planning and sustainable development.

Objective UI21 - Promote and facilitate the development and use of renewable energy sources and associated infrastructure within the Plan Area, including bioenergy and geothermal/CHP. Encourage the integration of micro-renewable energy sources into the design and construction of new developments.

Policy UI7 - Support and promote local, national and international initiatives for limiting/reducing emissions of greenhouse gases and encouraging the development of renewable energy in accordance with climate change and air quality policy/legislation.

Objective NH5 – Protect and enhance biodiversity and ecological connectivity including the water quality and ecology of the Gort River.

5.4. **Natural Heritage Designations**

The nearest Natura 2000 sites are Coole-Garryland Complex SAC (c. 750m to the west) and Coole-Garryland SPA (c. 1 km to the southwest). There are several other Natura 2000 sites within a surrounding 15km radius of the site.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

- 6.1.1. The decision of GCC to refuse permission has been appealed by the applicant, Sustainable Bio-Energy Limited. The appeal reiterates the development rationale in the context of policy/legislation relating to Energy, Climate Change, Environment, Agriculture and Waste, and contends that the biogas industry is central to

Government policy achieving renewable energy and greenhouse gas reduction targets.

6.1.2. The grounds of appeal address the 5 reasons for refusal and can be summarised as follows:

Reason No. 1 (Traffic)

- The reference in Table 2.1 of the EIAR to 90m sight distances from the new entrance is a typographical error. The 215m sight distances shown on the drawings account for traffic conditions, exceed CDP requirements (160m), and are agreed in accordance with the Road Safety Audit (RSA).
- In accordance with the RSA, the left turn lane has been removed and a right-turn lane will maintain existing hard shoulders for pedestrians.
- Proposed traffic movements are extremely low (less than 1.5% of movements at entrance location on R458) and spare capacity is detailed in Tables 11.3 and 11.5 of the EIAR.
- Impacts on the M18 Junction 16 were not assessed as predicted traffic movements (1 – 1.5 per 15mins) would not result in a measurable impact in terms of changes in ratios of flow to capacity values output by junction modelling software.
- Feedstock will not be delivered from the whole FCZ and will not be delivered by HGVs via Gort town centre.
- The collision history statistics have been considered in the RSA preparation.
- Traffic modelling accounts for seasonal variations (Table 11.4 of EIAR) and is based on the maximum values.
- Erroneous claims are made within the objections, including that traffic modelling is based on 10 movements per day, and that junction radii are based on residential entrances.

Reason No. 2 (Locational justification)

- The proposed location is informed by relevant policy and constraints relating to access, distance, sustainable transport of feedstock and output products, availability of services, buffer distance to residential receivers, and availability of sufficient lands.

- The CDP (Section 7.4) reference to promoting energy hubs in the 'environs' of Gort should include lands within townlands surrounding, and in the vicinity of, the defined LAP boundary.
- The site selection and alternatives process considered sites zoned for industrial uses within the Gort LAP area. Due to the lack of suitable sites and the location of feedstock sources in the agricultural hinterland, it concluded that the development should be sited outside the LAP boundary. It is located adjacent to industrial zoned land while also providing sufficient buffer distance from sensitive receptors (e.g. residential areas).

Reason No. 3 (Visual Amenity)

- The CDP classifies the landscape value as 'medium' (2nd lowest of 4 categories) and the landscape sensitivity borders on 'moderate' and 'medium' (2nd and 3rd lowest of 5 categories). The applicant's EIAR considers that the area has a lower sensitivity than that of the CDP i.e. a highly modified and somewhat degraded setting of 'low' sensitivity, and concluded that the proposed development would have a 'moderate-slight' impact.
- Viewpoint VP7 assesses worst-case-scenario views from Coole Demesne (which is further away on lower ground) as 'slight', with only the upper sections of a couple of tanks and stacks visible. Impacts from Coole Demesne will be even lower or non-existent and will be separated from the proposed development by 2 major road corridors.
- VP1, VP4 and VP5 are within the Kinincha Road / Gort River area. They account for sensitive receptors, worst-case scenario views and mitigation measures, and demonstrate that impacts will not be significant in this area.
- Views from the north (M18) are represented by VP8 and demonstrate an 'imperceptible' impact. Further north and west, the M18 is at a lower elevation and there would be limited impact.
- Gort town centre is represented by VP6 and the town edge by VP2, both as 'worst-case-scenarios' demonstrating the absence of significant impacts and the absence of visibility from the town core.
- There would be no visible plume emanating from the proposed stacks.

Reason 4 (Habitats Directive & Biodiversity)

- The potential for impacts on European Sites is fully acknowledged in the NIS. The Planning Authority's AA Screening rationale is unclear and is at odds with the applicant's robust and precautionary approach (see Table 1 of Appendix 1 of NIS). The AA conclusions are also unclear and at odds with those of the applicant's NIS.
- The appeal outlines the extent of bat habitat and activity surveys carried out in recent years and the consultation, methodologies and guidance applied. This makes it clear that, completely contrary to the GCC Planner's Report, Bat Conservation Ireland was consulted on wider area records for bat species (Tables 5.9a, b & c of the EIAR) and surveys were undertaken in accordance with relevant Guidelines. Wider area studies would only be relevant if the proposal could result in wider area impacts, which is not the case.
- The site holds no potential otter holts as detailed in section 5.4.5 of the EIAR.
- There are no confirmed active badger setts within or close to the site. However, there is recognised potential to occur in the future and appropriate mitigation in the form of a pre-construction mammal survey is proposed.
- A detailed assessment of predicted nitrogen deposition rates at all designated sites within 10km has been undertaken relative to existing background concentration and the 'critical load' for each site. It has been determined that the proposal will not have a significant impact. The potential impact of air emissions on the Gort River has not been assessed as it is not part of a European Site and nitrogen inputs from agricultural practices are much more significant compared to atmospheric deposition.
- The Planning Authority's concerns about habitat loss and fragmentation is assumed to relate to hedgerow loss impacts on lesser horseshoe bats. However, the potential loss of 1.9km of hedgerow refers to a worst-case pre-mitigation scenario and sections 2.3.4, 3.4.1 and the biodiversity mitigation measures in the EIAR address this impact. The landscape model (section 5.6.1) also proposes hedgerow planting (450m) and replacement to enhance bat commuting and feeding, ensuring that any loss of hedgerow will be minimised and temporary.

- A core part of the NIS assesses air quality impacts on European Sites and the Planner's Report does not detail the basis of concerns in this regard.
- A detailed odour and air quality impact assessment has assessed the impact on residences and European Sites and has determined compliance with relevant standards and guidelines.
- Odour modelling from land spreading of digestate is not a planning requirement but odours from organic fertilisers such as slurry or digestate is common practice and impacts are short-term and transient.
- The additional vehicular movements do not require an air quality assessment and will not result in a significant air quality impact.

Reason 5 (Environmental Impact Assessment)

- The EIAR was prepared by competent experts and provides relevant information that is complete and of sufficient high quality in identifying, describing and assessing the significant direct and indirect effects of the project on all factors. The appeal presents the unclear and unfounded reasons on which the Planning Authority reached its decision to refuse permission.

6.2. **Planning Authority Response**

The Planning Authority has not responded to the grounds of the appeal.

6.3. **Observations**

A total of 49 no. 3rd party submissions have been received in relation to the appeal. Some of the submissions are on behalf of multiple individuals/parties. The issues raised in many of the submissions are generally consistent in their opposition to the proposed development and I propose to summarise the content on a themed basis using the following headings:

Feedstock supply

- The viability of silage in terms of availability and cost.
- The facility may become a national destination for other products, including animal/fish by-products and waste.

- The site is not close to source materials and no details of the source locations have been provided.
- The environmental impacts of silage production need to be assessed.

Water supply

- The requirement of 120,000m³ per annum for silage is an underestimate and over 200,000m³ would be required.
- The primary supply (rainfall) has not considered seasonal water supply and requirements and has the potential to put the town's supply under pressure.

Transport and traffic

- Contravenes best practice to locate adjacent to source raw material.
- A round trip of 40km would be a best-case journey for each vehicle collection/delivery and data suggests that journeys over 18km from the plant could be commercially non-viable.
- The predicted traffic volume figures are inconsistent and significantly reduced compared to the previous application (PL 18/502) and other similar proposals.
- Traffic predictions do not account for the higher gas production yield associated with silage feedstock; the potential use of tractor-drawn trailers and slurry tanks (which are excluded from motorway use); and the seasonality of silage and digestate movements.
- Concerns about routing traffic through Gort and lack of clarity in relation to routes/vehicles for the collection of digestate. There is no plausible mechanism to ban movements through the town centre.
- Traffic congestion/conflict and dangerous traffic movements/conditions at this location.
- The Spatial Planning and National Roads Guidelines could be applied to this Regional Road which carried significant volumes of traffic outside the 50-60kmph speed limit.
- Planning history of restricted access onto the R458.
- Inadequate assessment on the capacity of the M18 and associated junctions

Location

- Not zoned for industrial/commercial, goes against the Gort LAP, and cannot be considered an 'on-farm' facility that would be preferred on unzoned land.
- The proposal does not comply with the Irish Bioenergy Association of Ireland recommendations for siting in rural and urban brownfield sites and to avoid proximity to 'high amenity areas'.
- The Irish Bioenergy Association of Ireland planning guidelines are relevant and important but are not local or national planning policy. Further national/regional guidance is required in relation to biogas facilities.
- Inadequate assessment of site-selection and alternatives.
- Proposal is inconsistent with CDP Objective ER 8 which facilitates energy proposals that would connect directly to the local gas and electrical networks.
- The large scale of the proposals and total reliance on road transport would not be supported by RPO 4.28 and 4.29 of the RSES.
- Too close to the town centre and urban population and will restrict housing supply for the area.

Visual Amenity and Landscape

- The site is fully within the CDP 'Class 3 - Medium' sensitivity landscape and the applicant's attempt to reclassify to 'Class 1' is severely flawed. The site is close to the 'Class 4' Coole Garryland landscape.
- The scenic, cultural and perceptual values of the wider area are highlighted, including Coole Park, monastic and cultural attractions, trails, rivers and lakes, the Wild Atlantic Way, and The Burren. The development would compromise the tourism potential associated with these attractions.
- The proposal will adversely impact on the amenity/recreational value of Gort's 'Golden Mile', an award-receiving 1-mile stretch between Kinincha Road to Coole, and the existing and proposed phases of Gort River Walk, as well as other trails and attractions.
- The applicant's assessment gives very little consideration to impacts on tourism, heritage and other features, including Thoor Ballylee, Kiltartan

Gregory Museum, River Walk, Golden Mile, Lavallylisheen Children's Graveyard, Wild Atlantic Way loop, residences, The Burren, bus and train approaches,

- The applicant's visual impact assessment and photomontages are not representative of existing and proposed development.
- The development, including flame burning, would be unsightly and overlooked by c.100 houses.
- Further archaeological research of adjoining fields should have been completed.

Noise

- Lack of clarity regarding the EIAR suggestion that the existing site is noisier than Junction 16 and the R458.
- Given the inadequate traffic volume information, the effects of traffic noise on human health have not been properly assessed.
- Noise/vibration was not measured at the identified sensitive receptors, has not been carried out for night-time periods, and is deficient to establish that it will not interfere with surrounding amenities.

Air / Odour

- Volumetric emission rates from the reception building (stated as 75,000m³/hour in the EIAR) will actually be 150,000m³/hour and the odour dispersion model is incorrect as a result.
- Assessments of odour on surrounding residences have not been carried out.
- Odour measurements were carried out during slurry spreading season so there has been no measurement for ambient air quality.
- The predicted emissions are highly speculative and lacks site-specific parameters and consideration of surrounding topography.
- The proposed stack height may not be sufficient to disperse Hydrogen Sulphide emissions given the low-lying nature of the site and 'draw down' cannot be ruled out.

- Meteorological data sources have not been clarified and prevailing wind directions have not been considered.
- Odour emissions from other biogas plants and previous developments in Gort.
- Air quality impacts on human health and quality of life.
- Increased emissions associated with traffic.
- Digestate odour will be much more than current slurry spreading levels.

Natura 2000 sites and biodiversity

- Increased noxious gases and inadequate dispersion has the potential to impact on the foraging habitat of lesser horseshoe bats, insectivorous birds, the Gort River, Coole-Garryland SPA and Caherglassaun Turlough SAC.
- Maximum nitrogen deposition rates have been calculated in isolation, with no assessment of cumulative impacts from other sources.
- The NIS has not addressed the impacts of digestate disposal, including locations, transport and flooding implications. The IFI has also raised concerns in this regard.
- Galway Bay Natura 2000 sites, Lough Cutra SAC, Peterswell Turlough SAC and Termon Lough SAC have been excluded from the Appropriate Assessment and other SACs have not been assessed for the impacts of digestate disposal.
- Flood events are increasing in frequency and severity in the area and complex underground systems make groundwater modelling and maximum flood levels for the site and land used for digestate unpredictable. The precautionary principle means that significant adverse impacts on integrity/conservation objectives of European sites cannot be excluded.
- Additional loading on the wastewater treatment plant has the potential to impact a number of Natura 2000 sites via the Gort River, which has not been fully investigated.
- The connection of site drainage to an infiltration system is in direct contravention of the NIS mitigation measures and presents a very high risk of pollution of groundwater pathways to the Coole-Garryland SAC.

- By preventing access to the development for local farms/businesses it is likely to increase nitrate pollution in the eastern and west-central FCZ, which are predominantly SAC areas with high groundwater vulnerability, and would effectively rule out any future investment in sustainable AD biogas in the area.
- Potential risk to the karst aquifer and SAC cannot be screened out until ground investigation and mitigations measured have been detailed in full. In the absence of these mitigation measures the NIS is invalid.
- Potential impacts on designated shellfish production areas in Auginish Bay and Kinvara Bay.
- Lighting impacts on lesser horseshoe bats during construction and operation.
- Disturbance to flora and fauna on site and in the surrounding area.

Major Incidents / Health & Safety

- The storage of 33 tonnes of biogas would require consideration as a 'high hazard site' for fire/emergency and services in the area are inadequate.
- The applicant incorrectly assumes that there will be no effects despite the evidence of accidents associated with biogas plants.
- The applicant has associations with the Glemore Biogas Plant in County Donegal, which has had serious EPA compliance issues relating to reporting incidents, waste/odour management, monitoring, digestate management, air emissions, and storage of potentially polluting liquids.
- Health and safety implications for local residents, including the dangers of Hydrogen Sulphide.
- The individual who prepared the Population and Human Health chapter of the EIAR and their qualifications is not identified.
- Lack of detail on design compliance with applicable laws, standards, codes and guidelines.
- Over-development of the site and inadequate detail on site spacing and gas export plans.

- Potential to produce quantities of methane which exceed the qualifying threshold for the Control of Major Accidents Hazards Regulations.
- Lack of detail on Commission for Regulation of Utilities requirements.
- Estimated construction timeframes are totally unrealistic and should be c.4yrs
- Insufficient experience to secure a safe, well-functioning plant.

Economic / Financial

- Potential adverse impacts on the tourism attraction of the area.
- Potential loss of tourism jobs and related businesses.
- The proposal will devalue local property.
- Reduced attractiveness of Gort as a place to live and work.

Energy / Climate change

- Support for sustainable solutions but not at this location and scale.
- The proposed methodology is not a sustainable approach.

Nature and extent of the development

- The absence of connection to gas and electricity networks raises the question of whether the development should simply be regarded as an energy efficient waste management facility.
- The development must make provision for connection to gas/electricity networks, which need full assessment as part of the application.
- No detail has been included on any future locations for Central Grid Injection facilities in the gas transmission network.
- Potential for future extensions/upgrading.
- The reference in Table 11.5 of the EIAR to potential development access on the proposed new R458 junction may relate to further development of the facility and requires assessment.

Soils and geology

- The 'soils and geology' chapter is dependent on the results of 2 shallow trial holes. The EIAR should be prepared with the benefit of a detail investigation of conditions underneath the facility.
- Questions about the capacity of this karst area, including a nearby sinkhole, gorge and 'punch bowl', to carry the weight of the development. An underground collapse is possible.

6.4. Prescribed Bodies

6.4.1. Environmental Protection Agency: The appeal was referred to the EPA in accordance with section 87 of the EPA Act 1992, as inserted by Article 5 (1F) of the EU (EIAR) (IPPC) Regulations 2012. The EPA response can be summarised as follows:

- The proposed development may require a licence under Class 11.4 of the EPA Act 1992, but the agency has not received a licence application.
- Any licence application will be subject to EIA as respects the matters that come within the functions of the Agency and subject to further consultation with the Planning Authority.
- Should a licence application be received, all matters to do with emissions to the environment from the activities proposed, the application documentation and EIAR will be considered and assessed by the Agency.
- Where the Agency is of the opinion that the activities cannot be carried on or effectively regulated, a licence cannot be granted.
- Any granted licence will incorporate conditions to ensure that National and EU standards are applied and that Best Available Technologies will be used.
- The Agency cannot issue a Proposed Determination on a licence application until a planning decision has been made.

6.4.2. An Taisce: The submission highlights the previous application for a similar development on the site and can be summarised as follows:

- Such proposals should demonstrate sustainability in both input sourcing and production process. The emissions that contribute to the growth, harvesting

and transport of feedstock must be considered, and fertiliser use for increased energy crop production can produce emissions and contribute to water pollution. With regard to slurry use, intensive cattle farming is a major emitter of GHGs and bioenergy production should not rely on the intensification of bovine agriculture.

- Highlights ongoing Water Quality trends and commitments and contends the biogas production contingent on increased silage production would likely increase inputs of nitrogen fertiliser and risks of water pollution.
- Full calculations of GHG emissions and emissions mitigation potential are required to establish the sustainability of the proposal. This should account for potential methane slippage and postponed emissions of nitrous oxide, methane, and ammonia. Therefore, the AD process may not even reduce, let alone eliminate, the climate impact of GHGs and air emissions.
- Highlights ongoing Ammonia emission trends and commitments. Intensifying bovine agriculture will make achieving targets extremely difficult and ammonia emissions associated with the proposal, including feedstock production, require assessment.
- Highlights ongoing challenges associated with biodiversity loss and states that the potential impacts on biodiversity as a result of feedstock production require assessment.
- There is a functional interdependence between the biogas plant and the feed source, and the feedstock must be addressed as part of the EIAR and NIS.
- The EIAR does not identify or assess the specific locations of feedstock supply and wholly fails to identify or assess the proposed agri-food inputs.
- No projections or plans for achieving greater efficiencies in silage production within the FCZ have been provided. If the proposal is predicated on this and given that the increasing bovine herd is running into fodder availability limits, a sustainable silage supply cannot be guaranteed.
- The efficiency of grass as an energy crop needs to be determined.
- Anaerobic Digestion may not be the most sustainable use of agri-food waste.
- Biogas cannot be considered sustainable if it relies on fossil gas for its end use and clarification is required on this.

- The application in its current form is based on untenable feedstock availability and unless sustainable feedstock can be established the energy gained by AD is a 'greenwash'. Given the lack of specific information on the source and sustainability of feedstock, there can be no security of supply and the direct, indirect and cumulative impacts cannot be adequately assessed for the purposes of the EIA and Habitats Directives.

7.0 **Assessment**

7.1. I have inspected the site, had regard to local and national policy and guidance, and examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal. Many of the issues relevant to this case relate to Environmental Impact Assessment and Appropriate Assessment, which are examined in sections 8.0 and 9.0 respectively. In addition, I consider that the main issues in this appeal are as follows:

- The principle of the development
- The scope of assessment
- Location and policy/zoning
- Feedstock availability
- Drainage and water supply

7.2. **The principle of the development**

7.2.1. Section 5 of this report outlines a wide range of European, national, and regional policies and objectives aimed at addressing climate change, reducing GHG emissions, improving waste management, and improving water quality and agricultural practice.

7.2.2. More particularly, the Climate Action Plan 2021 aims for the collaboration of the waste and agricultural sectors sector to contribute agricultural feedstocks to the production of 1.6 TWh per annum of indigenous sustainably produced biomethane for injection into the gas grid by 2030, representing about 3% of natural gas supply. It states that the remaining agricultural feedstocks, primarily grass silage and animal slurries, required to produce 1.6 TWh, after the utilisation of waste resources, could

be provided through improved productivity and grassland management practices while keeping within the sustainability criteria as laid out in the Renewable Energy Directive. Regarding fertiliser use, it aims for a significant reduction in nitrous oxide emissions by changing farm management practices in relation to nutrient use, including a reduction in use of chemical nitrogen use on Irish farms to <350,000 tonnes by 2025 and <325,000 tonnes by 2030.

- 7.2.3. The Climate Action Plan acknowledges that the circular economy and climate action are inherently interlinked and highlights the Waste Action Plan for a Circular Economy focus on increasing recycling, minimising waste generation by prioritising the prevention of waste at every opportunity through eco-design, reuse and repair, and increasing segregation. It aims to enhance food waste segregation, collection and treatment (including anaerobic digestion) and also highlights the Government's vision for the bioeconomy, as set out in the National Policy Statement on the Bioeconomy, which is to grow Ireland's ambition to be a global leader for the bioeconomy through a co-ordinated approach that harnesses Ireland's natural resources and competitive advantage, and that fully exploits the opportunities available while monitoring and avoiding unintended consequences. Regarding transport, the Climate Action Plan supports the development of renewable gas, such as biomethane, as a transport fuel.
- 7.2.4. In terms of national planning policy, I note that NSO9 and NSO56 support the sustainable management of waste, investment in different types of waste treatment, and circular economy principles, including an increased uptake in anaerobic digestion. NPOs 21 and 23 also aim to support rural economies through increased diversity and sustainability, including investment in sectors/industries that address climate change, energy efficiency and the bio-economy.
- 7.2.5. At regional level, the RSES for the NWRA supports the development of the bio-economy for energy production and supports the development of the gas network, including gas to grid injection and the development of AD facilities. The Connaught Ulster Regional Waste Management Plan 2015-2021 also supports the growth of new facilities in the biological treatment sector, in particular composting and anaerobic digestion. The Galway County Development Plan is also generally consistent in supporting the development of renewable energy, CHP and rural diversification.

- 7.2.6. The proposed development involves the use of silage, slurry and agri-food residues for the production of biomethane as a renewable gas supply, carbon dioxide for re-use in the food sector, and digestate as an organic fertiliser. Having regard to the policy context outlined above, I consider that the benefits of anaerobic digestion are widely recognised in national, regional and local policy such that, in principle, the form of development proposed is in my opinion acceptable and compatible with national energy and waste policy. It would contribute towards the achievement of national targets for greenhouse gas emission reductions through the proposed replacement of natural gas with gas generated from the anaerobic digestion process. It would also be consistent with policies that support rural/agricultural diversification and would promote the use of digestate as an organic fertiliser in place of the spreading of slurry or the use of chemical fertilisers.
- 7.2.7. I note that several 3rd party submissions have raised questions about the nature and scale of the proposed development, with some suggesting that the absence of a gas/electricity grid connection compromises the energy-generation value, and others contending that the excessive scale will compromise the roll-out of more appropriately scaled farm-based biogas schemes. However, notwithstanding the relative proximity of the gas and electricity grids, I do not consider that the proposal needs necessarily to be connected to the grid and I am satisfied that the RSES supports the principle of gas to grid injection facilities. Regarding scale, I acknowledge that the Climate Action Plan supports the development of micro/small-scale energy generation. However, I do not consider that this is to the exclusion of larger scale projects as proposed.
- 7.2.8. Having regard to the foregoing, I have no objection in principle to the proposed development, subject to further detailed assessment of site suitability and environmental impacts.

7.3. **The scope of assessment**

- 7.3.1. The Planning Authority, along with submissions from An Taisce, IFI and 3rd party observers highlight the need to widen the scope of assessment of the proposal to assess the impacts of feedstock supply and digestate spreading. It is argued that no detailed information has been submitted on the locations for feedstock supply and

land spreading and that, consequently, a cumulative and comprehensive assessment of the impacts of the development cannot be completed.

7.3.2. I acknowledge that the feedstock is to be sourced within a 30km radius of the site and that no specific locations are specified. However, given the volume of material required (90,000 tonnes per annum) and the likely lifespan of the project, I consider that:

- The practicalities of identifying specific sources for the input of feedstock into the anaerobic digestion process are infeasible.
- It would be unreasonable to expect that agreements with farmers would be finalised at this stage or that the feedstock locations would remain constant over time.
- There is a functional independence between the proposed development and the feedstock suppliers.
- The applicant would have no legal remit to control or oversee the operations of feedstock suppliers and any condition requiring this would be ultra vires.

7.3.3. Accordingly, I do not consider that it is feasible or practical to carry out an assessment of the impacts of feedstock supply within a multiplicity of defined sources. Furthermore, I would contend that none of the feedstock inputs are being produced with the sole intention of supplying the AD process. The silage, slurry and agri-food residues are already being produced and in the event of a 'do-nothing' scenario would have to be disposed of by alternative means.

7.3.4. A similar situation occurs with regard to the digestate produced from the anaerobic digestion process. It will be suitable to be used as an organic fertiliser on agricultural lands and, again, I consider that the identification, assessment and control of the land-spreading locations is infeasible in the context of the current application. The EIAR, by highlighting the environmental improvements associated with the proposed digestate, does not entirely disregard the impacts of land spreading. I would concur that the proposed digestate would replace more potentially contaminating raw materials such as slurry and chemical fertilisers, and that, in a 'do nothing' scenario, the cattle slurry that makes up 25% of the proposed feedstock would likely be disposed of by spreading on land. And while the activity of digestate disposal clearly

has the potential for impacts, I am satisfied that the activity does not form part of the current project and that it can be appropriately controlled by the requirement for Nutrient Management Plans and compliance with the European Union (Good Agricultural Practice for the protection of waters) Regulations 2017.

- 7.3.5. The question of assessing the impacts of gas grid injection facilities as part of this application has also been raised. I am aware that Gas Networks Ireland (GNI) currently operates a purpose-built injection facility in Cush, Co. Kildare. The Board has granted permission for another facility in Mitchelstown, Co. Cork (ABP Ref: 307394, 21st December 2020) and GNI has stated plans to roll out a network of facilities across the country. In relation to gas-powered transport, there are currently 7 Compressed Natural Gas (CNG) stations operational in the country (including stations at Shannon and Limerick) and a further 9 stations at various stages of design, planning and construction (including a station at Birdhill, Co. Tipperary). I am satisfied that the on-going roll-out of these facilities will expand the market for the proposed development. Furthermore, I am satisfied that these facilities will be suitably assessed as independent projects in the planning process and do not warrant a cumulative assessment as part of the proposed biogas project.
- 7.3.6. Some 3rd party submissions have raised concerns about the potential for future expansion and changes to the proposed development, including changes to the feedstock supply. However, I am satisfied that the appeal should be assessed on the basis of the current plans and particulars and that the conditions of any grant of permission would appropriately control the operation of the development, including the nature and quantity of feedstock. Any future material changes would have to be assessed as part of a new application for planning permission. Submissions have also raised concerns about potential unauthorised developments and non-compliance with EPA license requirements, referring particularly to the planning history of the site and the applicant's related operation at Ballybofey, Co. Donegal. However, I consider that the current proposal should be addressed on its merits and that any historical or potential future unauthorised developments/activities are the responsibility of the relevant enforcement authority.
- 7.3.7. Having regard to the above, I consider that the scope of assessment should concentrate on the direct, indirect and cumulative/in-combination impacts of the proposed development itself. A cumulative assessment is not warranted in relation to

the agricultural activities associated with feedstock supply and digestate spreading, or in relation to gas grid injection projects.

7.4. Location and policy/zoning

- 7.4.1. The Planning Authority decision to refuse permission did not consider that an appropriate justification had been demonstrated for the location of the proposed development in a rural unzoned area. The 3rd party observations have also raised concerns that the proposed rural location would not comply with the Irish Bioenergy Association of Ireland recommendations, would have unacceptable amenity impacts, and would compromise the future development of Gort.
- 7.4.2. In terms of locational policy as outlined in the CDP, I note that Objective ER8 promotes Gort and its environs as an energy hub to take account of opportunities to develop suitable sustainable enterprises due to their proximity to electricity and gas transmission networks and minimising environmental impact. Objective EDT 7 encourages industrial and enterprise development to operate from lands zoned for these purposes within the various Local Area Plans, subject to an adequate consideration of the policies and objectives of this plan and the need to protect the vitality and amenities of the town or settlement. While the site is located outside the Gort LAP boundary, I note that the LAP supports the consolidation of development, including industrial, on zoned lands, and aims to protect the rural character of the area while providing for agriculture and appropriate non-urban uses. The LAP also supports the provision of provision of adequate energy infrastructure, including gas, renewables and bioenergy.
- 7.4.3. I note the references to the Irish Bioenergy Association Planning Guidance Recommendations for Bioenergy Projects in Ireland document. While this is clearly not approved national policy, I note that it suggests the location of 'large scale projects' in rural or urban brownfield sites and that 'exclusionary factors' would include proximity to designated sites, areas of high amenity or archaeological interest, and appropriate CDP zoning.
- 7.4.4. With regard to CDP Objective ER8 and the promotion of Gort as an energy hub, the Planning Authority has contended that the objective does not apply as the site is not within 'the environs' of Gort and does not propose to connect to the gas or electricity

network. I accept that the CDP does not define the extent of the 'environs' and the Planning Authority has interpreted that the LAP boundary forms its limit. However, I would consider that this is an overly rigid interpretation and that the environs of Gort would extend beyond the LAP boundary to include the appeal site to the immediate north of the boundary. With regard to the gas/electricity networks, I acknowledge that the proximity of Gort appears to have largely informed the rationale for Objective ER 8. However, I do not consider that a connection to the network would be a prerequisite for any such proposal or that the proposed development is contrary to the objective simply by reason of the absence of a connection to the transmission network. I consider that the proposed development would provide a large-scale renewable energy development in the environs of Gort, which would be consistent with the provisions of Objective ER 8.

7.4.5. Similarly, I acknowledge that CDP Objective EDT 7 encourages industrial development on suitably zoned lands, subject to the consideration of other policies/objectives and the protection of the vitality and amenities of the town. While the aim of the objective is acknowledged, I do not consider that this specifically precludes industrial development on other lands subject to suitability. I consider this to be the case, in particular, given that the nature and scale of the proposed development would not easily integrate with the town centre or existing/future residential development.

7.4.6. Regarding the location of the proposed entrance onto Regional Road R458, I acknowledge that the 'Spatial Planning and National Roads Guidelines for Planning Authorities' (DECLG, 2012) make provision for the restriction of access to regional roads outside the 60kph speed limit, subject to the identification of applicable roads in the Development Plan. In this regard, Objective TI 6 of the CDP aims to protect the capacity and safety of the Strategically Important Regional Road network and DM Standard 19 (Table 13.2) lists the 'Restricted Regional Roads' (Class II Control Roads) to which such policies will apply. Regional Road R458 is not included in Table 13.2 of the CDP. However, I acknowledge that some reclassification of roads would have occurred since the completion of the M18 motorway (after adoption of the CDP) and that the R458 was previously classified as the N18 National Primary Road. The N18 is listed in Table 13.2 and is described as 'County Boundary to Gort'. In considering the historical route of the N18, I note that the only section that ran

from the 'County Boundary to Gort' was the southern approach to Gort from the Galway/Clare county boundary. The N18 route to the north of Gort (i.e. the section including the proposed entrance location) terminated at Claregalway, did not cross a county boundary, and, therefore, cannot form part of the N18 referred to in Table 13.2. Accordingly, I do not consider that Table 13.2 of the CDP includes either the existing R458 or the former N18 section on the northern side of Gort, and, therefore, the access restrictions of the CDP (i.e. Objective TI6 and DMStandard 19) and the Spatial Planning and National Roads Guidelines for Planning Authorities' (DECLG, 2012) do not apply at this location.

7.4.7. In conclusion, and notwithstanding that the lands are not zoned for industrial development or that the proposal does not include a connection to the gas/electricity network, I do not consider that the proposed development is precluded by the zoning objectives or planning policy regarding the location of such developments. Furthermore, the proposed location adjoining the planned industrial expansion of Gort is considered to be an acceptable location in principle given that the nature and scale of the development would not easily integrate with the town centre or existing/future residential development. The suitability of the proposed site therefore warrants consideration on its merits and will be assessed in further detail throughout this report.

7.5 Feedstock availability

7.5.1. The EIAR outlines that the majority of feedstock (60%) will consist of silage and points to a 2013 Teagasc study¹ which concluded that there was an estimated 1.7 million tonnes per annum of dry matter available in excess of livestock requirements, and that this could be increased to 12 million tonnes if grassland management techniques were improved. I acknowledge that the country has experienced periodic livestock fodder shortages in recent years, most recently in 2018. However, I am satisfied that these were largely temporary weather-related events and that, in principle, there is an excess and potentially increasing supply of silage available for bioenergy use.

¹ McEniry et al (2013), 'How much grassland biomass is available in Ireland in excess of livestock requirements?' Irish Journal of Agricultural and Food Research.

- 7.5.2. The current proposal is based on a feedstock catchment zone (FCZ) of 30km radius, a total land area of 282,167 hectares. The EIAR excludes unsuitable lands (including urban, forest, bog, The Burren, and ecological designations) from this FCZ and estimates that there would be 95,022 hectares of suitable pasture lands available. It estimates that 1,100 hectares will be required per annum to supply the required 54,000 tonnes of silage, which equates to just 1% of the available land within the 30km FCZ. The EIAR does not outline the basis for its estimated requirement of 1,100ha, but it would appear to imply a very high silage yield of c. 50 tonnes per hectare (i.e. feedstock input of 54,000 tonnes divided by 1,100ha). Notwithstanding this, I would accept that even a significantly lower yield of 10 tonnes per hectare would require 5,400 ha, which would still be just c. 5% of the suitable pasture lands.
- 7.5.3. In relation to cattle slurry as a proposed co-digestant, the EIAR outlines that restrictions on the extent of land spreading have already resulted in a situation where there is no outlet for excess slurry. It estimates that there is 471,361m³ slurry per annum available within the 30km FCZ and that the proposed requirement of 22,500 tonnes would equate to 5% of the available source. Finally, the EIAR states that residues from the agri-food sector will make up a complimentary but minor portion of the overall feedstock and would be sourced from a limited number of producers within and beyond the 30km FCZ.
- 7.5.4. The EIAR states that positive discussions have been held with farmers and that the applicant has reached agreements with farmers within the 30km FCZ regarding the availability of c. 2,000 hectares for the supply of feedstock (silage and manure) and the use of organic fertiliser (digestate) produced in the proposed development.
- 7.5.5. I acknowledge that some submissions on the appeal have raised concerns about the security and sustainability of feedstock for the proposed development. However, having regard to the preceding paragraphs, I am satisfied that the applicant has provided a reasonable basis to demonstrate the existing availability of adequate feedstock and that availability is likely to increase due to improved grassland management and reduced capacity for land spreading of slurry. I am also satisfied that any associated changes to agricultural practice will be suitably managed separately through agricultural policy and legislation. Accordingly, I do not consider that an objection to the proposed development is warranted on the basis of

feedstock security or sustainability, and that concerns raised about the commercial viability of the operation are not a planning consideration.

7.6 Drainage and water supply

- 7.6.1. The Planning Authority felt that clarification was required on whether cleaning disinfectants can be re-used on site or whether it is proposed to dispose to the public WWTP. However, I note that section 7.8.2 of the EIAR makes it clear that there will be no effluent discharge and that process effluent will be fully captured and removed from the site where not reused. It states that foul effluent discharge to the WWTP will be limited to the office/control buildings and will be of a domestic nature.
- 7.6.2. The Planning Authority noted the contents of the storm water report included with the application but raised concerns that the drainage drawings referenced therein were absent. However, I can confirm that Appendix 7.3 of the EIAR does consist of 'Surface Water Drainage Drawings'.
- 7.6.3. The 3rd party submissions have raised concerns about the proposed water supply, contending that the applicant's stated requirement for 120,000m³ per annum for silage underestimates an actual requirement for over 200,000m³. There are concerns that the proposed primary supply (rainfall) has not accounted for seasonal supply pressures and that the town's supply (via Irish Water) will be put under pressure.
- 7.6.4. I note that the applicant's storm water report outlines that the primary site drainage will route to a 2-day storage tank for processing of the feedstock. When full, excess stormwater from the 2-day tank will be pumped to a lined attenuation pond at the southern end of the site. It states that an annual liquor requirement of 120,000m³ is based on daily requirements of 300-330m³ and that the attenuation pond will provide c. 9 days storage (2,954m³). At times of dry weather, a penstock arrangement will release water from the pond back to the 2-day storage tank and the pond will naturally recharge after subsequent rainfall events.
- 7.6.5. It is important to note that the applicant's stated requirement for 120,000m³ per annum refers to 'liquor' rather than 'water' specifically. The exact make-up of the liquor and what proportion would consist of water is unclear. It is clear that the proposed development provides for significant re-use of water and other effluents within the process, but it has not been clarified whether or not re-cycled water would

contribute towards the overall liquor requirement of 120,000m³, or what volume of public water supply would be required. Correspondence with Irish Water (Appendix 1.1 of EIAR) would indicate that a water supply demand of 0.042l/sec has been indicated in the pre-connection enquiry submission and that a watermain connection would be available. At a flow of 0.042 l/sec, I estimate that the public water supply would amount to c. 1,300m³ per annum. This falls significantly short of the stated requirement for 120,000m³ and it would therefore appear that the vast majority of 'liquor' requirements would be met by the capture of rainwater and the recycling of other effluents/liquids as part of the process.

7.6.6. In terms of rainwater capture and processing capacity, I note that the Storm water report calculations are based on a drained area of 3.85 ha. Section 7.3.6 of the EIAR outlines that the mean annual rainfall is expected to be in the region of 977.6mm/yr based on data from the Shannon Airport station, which I consider to be in reasonable proximity to the appeal site (40km). Based on these figures, I estimated that rainwater capture on the site would be in the region of 38,000m³ per annum, which is again significantly short of the stated liquor requirement of 120,000m³.

7.6.7. In conclusion, I would acknowledge the lack of clarity regarding water/liquor requirements. It is unclear as to how the liquor requirement for 120,000m³ would be met and what proportion of this would be composed of public supply, captured rainwater, recycled water, or other sources. However, I am satisfied that the project will be largely dependent on captured rainwater and other recycled water/liquids. For example, section 2.7 of the EIAR states that the plant is designed to allow recirculation of digestate (liquid) to the feedstock mixing area for the efficient use of liquid resources. My estimations would indicate that the stated rainwater capacity (38,000m³) and Irish Water supply (1,300m³) would fall significantly short of the 120,000m³ requirement. The Board may wish to consider requesting further information that would detail the water/liquor demand required to serve the proposed development and a breakdown of the sources of this water/liquor. On balance however, given the indications of the sourcing of process water supply from a wide range of on-site collection and recycling sources, and the fact that the development will require a connection agreement with Irish Water prior to the commencement of development, I consider that this issue could be satisfactorily addressed by way of conditions. Such conditions would require that the developer would enter into a

connection agreement with Irish Water prior to the commencement of development, and that the developer would submit a breakdown of water supply sources to the development with associated calculations for the agreement of the Planning Authority. I consider that this would ensure appropriate protection of the public water supply.

8.0 Environmental Impact Assessment

8.1. Introduction

8.1.1. The application is accompanied by an Environmental Impact Assessment Report (EIAR). Section 1.3.1 of the EIAR states that following a review of the legislation and guidance governing the requirements for mandatory and sub-threshold EIA and consultation with GCC, it was determined that a full EIAR should be prepared in support of the application. It is stated that several pre-planning meetings were carried out with the Planning Authority and that information meetings were held with GCC elected members for the electoral area, members of the farming community, and members of the local community. Consultation was carried out with relevant public and private agencies by the various EIA specialists, details of which are provided within the relevant EIAR chapters and appendices.

8.1.2. This section of my report evaluates the information in the EIAR and carries out an independent and objective environmental impact assessment (EIA) of the proposed project in accordance with the requirements of relevant legislation. In carrying out an independent assessment, I have examined the information submitted by the applicant, including the EIAR, as well as the written submissions made to the Board on appeal as set out in section 6.0 of this report. The main issues raised specific to EIA have been addressed under the relevant headings and, as appropriate, in the reasoned conclusion and recommendation, including conditions. The main issues can be summarised as follows:

- The scope of the assessment and impacts relating to feedstock collection, digestate disposal and connection to the gas network.
- The potential for accidents and/or disasters.
- Impacts on Biodiversity, including the Natura 2000 network.
- Impacts on the public water supply.

- Pollution of surface water and groundwater.
- Air, noise and odour pollution.
- Landscape and Visual impacts.
- Traffic and transport impacts.

- 8.1.3. As outlined above, concerns have been raised that the scope of the EIAR does not consider the entire project and, in particular, excludes the potential impacts associated with the provision of feedstock, the disposal of digestate, and the connection of the gas to the national network. I have previously addressed this matter in section 7.3 of this report, and I have concluded that it is not feasible or practical to assess the impacts of feedstock supply and digestate land-spreading over a multiplicity of sources/destinations, particularly under the circumstances when these activities are already occurring and will be suitably controlled by good agricultural practice and legislation. Regarding connection to the gas grid, I am satisfied that the existing and on-going roll-out of grid-injection facilities have and will be suitably assessed as independent projects in the planning process and do not form part of the proposed development for the purposes of EIA. Accordingly, I do not consider that the issue of project-splitting arises in this case and I am satisfied that it is not reasonable or practical to assess the cumulative impacts of activities/projects associated with feedstock provision, digestate spreading or gas grid connection.
- 8.1.4. The EIAR includes various appendices relating to supporting information and studies, as well as a separate non-technical summary. Several issues relevant to the EIA have already been addressed in my planning assessment as outlined in section 7.0 of this report. This EIA section should, where appropriate, be read in conjunction with the relevant parts of the planning assessment.
- 8.1.5. The impact of the proposed development is addressed under all relevant headings with respect to the environmental factors listed in Article 3(1) of the 2014 EIA Directive. Although the factor of 'Land' is not specifically dealt with as a chapter heading, I am satisfied that is adequately addressed in the EIAR, including the section on 'Material Assets' (Chapter 13). The EIAR sets out a description of the proposed development and associated processes. The application has complied with statutory public notice requirements in the form of site notice, newspaper notice and

EIA Portal notification. The competency of experts involved in producing the EIAR are set out in Section 1.5.

8.1.6. I am satisfied that the information contained in the EIAR has been prepared by competent experts to ensure its completeness and quality; that the information contained in the EIAR and supplementary information adequately identifies and describes the direct, indirect and cumulative effects of the proposed development on the environment; and that it complies with article 94 of the Planning and Development Regulations 2001 (as amended).

8.2. **Consideration of alternatives**

8.2.1. Part 2 of Annex IV of the 2014 EIA Directive requires that the developer sets out a description of reasonable alternatives studied and provides an indication of the main reasons for selecting the chosen option. Section 2.13 of the EIAR sets out the evaluation of the alternatives considered as part of the development.

8.2.2. The EIAR states that the proposal will result in benefits to a number of sectors including renewable energy and agri-food. It is stated that the do-nothing scenario will result in higher levels of pollutants and greenhouse gas emissions, as well as further deterioration in the quality of groundwater and surface water bodies.

8.2.3. The proposal to locate a biogas plant in Gort was informed by a high-level review of policy and guidance. Key land use considerations are identified as the location relevant to raw materials and sensitive locations; landscape and visual impact; pollution potential; transport infrastructure and biodiversity. Four potential sites were considered and rated according to relevant assessment criteria. Key aspects of the assessment for each site can be summarised as follows:

- Site 1 (Rindifin) – Zoned 'Industrial' with potential size constraint (3.8ha), need for transport through town centre and proximity to residential areas. Rates poorly for noise, air, human and transport impacts. (Overall ranking score: 31)
- Site 2 (Kinincha) – Zoned 'Industrial' with a former industrial use and no need for transport through town centre. Potential size constraint (1.37ha) and possibility of ground contamination. Close proximity to residential areas and rates moderately for noise, air, and human impacts, and poorly in relation to

environmental licences and technical engineering challenges. (Overall ranking score: 34)

- Site 3 (Lavalley) – Unzoned agricultural site with potential need for transport through town centre and proximity to residential areas. Rates moderately in relation to noise, air, landscape, soils, geology, hydrogeology, agronomy, ecology and human impacts, and poorly in relation to traffic and transport. (Overall ranking score: 32)
- Site 4 (The appeal site) - Unzoned agricultural site with no need for transport through town centre and distanced from any concentrated residential area. Rates moderately in relation to change of landuse, ecology and agronomy, but otherwise rates highly and has the highest overall ranking score (39).

8.2.4. Alternative layouts were considered and progressed in order to incorporate adequate digestate storage facilities and to address landscape impacts, engineering constraints (including bunding), and DAFM requirements. A proposal for a digestate storage lagoon was not progressed due to potential impacts on geology, waters and air quality, and has been replaced with the current proposal for digestate storage vessels and digesters within a bunded tank farm. An earlier proposal for access via an upgraded Kinincha Road has also been replaced in favour of the current proposal for a new access off the R458.

8.2.5. The final design aims to minimise visual intrusion through a low base elevation (17m AOD) while carefully considering the potential for groundwater ingress or flooding. The CHP and odour control unit stacks have been designed at a height of 22m to ensure sufficient emission dispersion and an air lock lobby has been incorporated into the reception building to mitigate potential odour impacts.

8.2.6. Several different process configurations were considered, and the chosen process design is a continuous feed system with multi-stage process to take advantage of the fact that different portions of the overall biochemical process have different optimal conditions and to increase the overall rate of production. Several options for dealing with the biogas generated were considered. The final design includes a standby flare (for emergency use) and an on-site CHP, while the vast majority of biomethane produced will be exported for use in the heat and transport sectors.

- 8.2.7. I note that 3rd party submissions have raised concerns about the nature and extent of the alternatives considered. In this regard the EIAR has concentrated on the Gort area only and the applicant states that this is informed by relevant policy and constraints relating to access, distance, sustainable transport of feedstock and output products, and availability of services. I consider that the applicant's focus on the Gort area is reasonable given its promotion as an 'energy hub' in the CDP, and, as previously outlined in section 7.4 of this report, I do not consider that this approach is necessarily dependent on connection to the gas/electricity network. I acknowledge that other towns have been identified as possible energy hubs, both within Galway and in several other counties. However, I would accept that the consideration of all such potential locations would be excessive and I am satisfied that the adopted focus on Gort is a reasonable approach.
- 8.2.8. Within that focus, the EIAR considers 4 potential locations, 2 sites (no.'s 1 & 2) on industrial zoned lands within the LAP boundary, and 2 unzoned sites (sites 3 & 4) within the rural/agricultural environs of the town. I would concur with the concerns raised in relation to sites 1 & 2, which largely relate to site size, proximity to residential areas and associated noise, air, and human impacts. I would also agree with the concerns raised about direct access to Site 1, and that Site 2 would involve potential ground contamination. Site 3 also adjoins residential areas, does not have convenient access to the motorway, and rates only moderately in relation to noise, air, landscape, soils, geology, hydrogeology, agronomy, ecology and human impacts. I would concur with the EIAR conclusion that Site 4 (the appeal site) is the most appropriate of the options considered. It has the most convenient access to the M18, is not constrained by site size, and is significantly distanced from sensitive residential receptors. I acknowledge that it rates only moderately in relation to land-use, agronomy and ecology, but I am satisfied that these issues can be assessed further as part of the EIA process.
- 8.2.9. In addition to the issue of location, the EIAR has outlined the alternatives considered in relation to layouts and processes. I note that alternative access and digestate storage proposals were discounted in favour of the current proposals, and that the levels of the proposed development have been designed to achieve an appropriate balance between visual impact, ground water flooding and air control/dispersion. I also note that process configuration options were decided on the

basis of a continuous feed system which promotes recycling and the minimisation of any waste.

8.2.10. Having regard to the above, I am satisfied that the EIAR includes an adequate examination of the reasonable alternatives to the proposed development.

8.3. Consideration of risks associated with major accidents and/or disasters

8.3.1. Article 3(2) of the 2014 EIA Directive includes a requirement that the expected effects derived from the vulnerability of the project to major accidents and/or disasters that are relevant to the project concerned are considered. There are no existing Seveso sites in the vicinity of the site.

8.3.2. I note that some of the observations on the appeal have questioned the potential to exceed the threshold for Seveso sites based on the stated feedstock supply of 90,000 tonnes per annum. Other concerns have been raised about the design and layout of the proposed development and potential safety concerns, including fire hazards. The EIAR outlines that the proposed infrastructure on site will be constructed in accordance with their respective guidance and/or regulations, which will dictate their design, location, construction and maintenance. It is stated that notification and engineering certification in respect of each structure will be required by the EPA, and that the proposed development will operate in accordance with the requirements of the Health and Safety Authority. The application also outlines that a Fire Safety Certificate will be required, and proposals have been included for a dedicated fire-fighting water supply at the northern end of the site.

8.3.3. Regarding the Seveso Directive, the EIAR states that the total storage of biomethane on site at any one time will be equivalent to c. 33 tonnes and that this is below the qualifying quantity for application of the Control of Major Accident Hazards (COMAH) Regulations. I note that for the purpose of these regulations upgraded biogas may be classified under entry 18 of Part 2 of this Schedule where it has been processed in accordance with applicable standards for purified and upgraded biogas ensuring a quality equivalent to that of natural gas, including the content of Methane, and which has a maximum of 1% Oxygen, and that the qualifying quantity under entry 18 is 50 tonnes. I acknowledge that the EIAR details are consistent with maximum storage of 33 tonnes (i.e. the provision of 6 no. modules with a gas mass of 5,500kg each) and

this is generally consistent with the drawings submitted with the application (i.e. Drawing No. GBIO-19-011 for the Gas Bottling Plant). Furthermore, regarding 3rd party concerns regarding the potential output from 90,000 tonnes of feedstock, I would state that the regulations refer to quantity of the 'dangerous substance' present on site, rather than a theoretical maximum feedstock potential.

- 8.3.4. Separate to the storage of biomethane as an 'upgraded biogas' under entry 18 of Part 2 of the COMAH Regulations, I note that the 8 proposed digesters have the potential to store raw biogas (c. 1,400m³ each) in the collection domes. The EIAR does not specifically address this matter in relation to the COMAH Regulations, which set a lower tier requirement threshold for P2 'flammable gas' of 10 tonnes. In the absence of the applicant's assessment, I would note that the typical weight of biogas is approximately 1.15kg / cubic metre, which would likely vary depending on the exact mixture and atmospheric conditions. Using 1.15 kg/ cubic metre, the level of 1,400 cubic metres of gas storage provided in the 8 digestors domes would equate to a total of 12,880 kg or 12.88 tonnes, which would exceed the 10-tonne threshold.
- 8.3.5. However, I would acknowledge that generalised assumptions have been made in this calculation. I also understand that the AD process is likely to collect a significantly smaller volume of gas in the secondary digester, so the maximum volume of gas collected in the domes is likely to be less than the theoretical maximum of 12.88 tonnes. Finally, I note that the biogas would consist of approximately 60% methane, 35% carbon dioxide, and the remainder consisting of other components such as oxygen, nitrogen and hydrogen sulphide. The mixture would therefore consist of a significant proportion that is not relevant to the COMAH Regulations (i.e. carbon dioxide) and I understand that such situations would result in a reduced overall total of dangerous substances when calculating compliance with the relevant COMAH thresholds. Therefore, the factors outlined above may well result in a total biogas capacity that would be below the 10-tonne threshold.
- 8.3.6. The Board may wish to consider seeking further information on this matter and I would bring the Board's attention to High Court case No. 637 of 2016, which is *Halpin vs An Bord Pleanala*, relating to a challenge to the decision of An Bord Pleanala to grant permission to Greenfield Ventures Limited for a development comprising the construction of 2 no. anaerobic digesters to process farm slurry and

biodegradable waste to produce renewable energy and fertiliser at Gillstown, Garlow Cross, Navan, Co. Meath, (Meath County Council Ref. NA120218; An Bord Pleanála Refs. PL17.241533 and PL17.244154). The judgement in this case quashed the Board's decision to grant permission.

- 8.3.7. Firstly, the decision raised concerns that the Board concluded that there was no likelihood of the 10-tonne limit for biogas being exceeded based on inadequate information regarding *inter alia* the operation of the AD plant; the volume of gases to be produced; the fractions of the biogas that would constitute substances for the purposes of the Seveso Directive or the COMAH Regulations; storage periods and gas build-up; and the absence of express reference to the 10-tonne threshold itself. It stated that these omissions have to be seen against a factual background where the theoretical capacity of the tanks could exceed the 10-tonne limit and concluded that the Board's conclusions were unreasonable in the sense that there was no material to support the conclusions. Secondly, concerns were raised that a condition imposed by the Board² did not require the developer to *demonstrate* that the maximum quantity of biogas present on the site at any one time could never exceed 10 tonnes and was not prescriptive in respect of the suitable operational controls to be implemented to limit biogas quantities, e.g. monitoring liquid levels in tanks, monitoring biogas concentrations in the vapour spaces of the tanks, use of flaring to manage inventory if required, or other measures.
- 8.3.8. In conclusion, I acknowledge that applicant's contention that the project is below the qualifying quantity for application of the Control of Major Accident Hazards (COMAH) Regulations, and I would highlight the ultimate requirement in this regard to comply with regulatory regimes of the Health and Safety Authority. Therefore, I am satisfied that a suitable condition can be applied taking into account the salient points outlined above. Firstly, the condition should specify that the maximum quantities present on site at any one time shall not exceed the relevant thresholds of the COMAH Regulations. Secondly, the developer shall be required to submit information to *demonstrate* that the maximum quantities will not exceed the relevant thresholds, including details of the suitable operational controls to be implemented.

² Condition no. 3. The maximum quantity of biogas present on site at any one time shall not exceed 10 tonnes. Reason: To ensure that the facility will not comprise an establishment for the purposes of the Seveso III Regulations in the interest of clarity.

8.3.9. Otherwise, I note that, where relevant, each section of the EIAR outlines the expected effects deriving from vulnerability to risks of major accidents or disaster, including those relating to population and human health; soils & geology; and hydrology and hydrogeology; which are discussed in the following sections of this report. The EIAR outlines the existing and proposed procedures and mitigation measures in this regard and does not identify significant residual risks. I am satisfied that this is a reasonable conclusion subject to the inclusion of conditions as outlined in the previous paragraph.

8.4. **Assessment of the likely significant direct and indirect effects**

8.4.1. The likely significant effects of the development are considered below under the headings used in the EIAR, which generally follows the order of the factors set out in Article 3 of the EIA Directive 2014/52/EU.

8.5. **Population and Human Health**

8.5.1. This chapter highlights that a range of issues that may impact on human beings are addressed in other chapters of the EIAR (landscape and visual, traffic and transport, noise and vibration, air quality) and that it will focus on the potential impacts that have not been addressed elsewhere. A desk study was undertaken of relevant data from the CSO, planning policy and other sources.

8.5.2. The EIAR predicts the following impacts:

- No direct positive or negative effects on population levels but the project may encourage employees to relocate to the town to reduce commuting distances.
- Construction phase has potential for limited impacts on residential amenity.
- Traffic may be a slight negative impact during construction and decommissioning but will be imperceptible during operation.
- Land use impacts are long-term, direct and indirect, and will be of a slight/moderate positive significance.
- Significant direct positive employment impacts from the construction and operational stages, as well as indirect employment associated with haulage,

services and other spin-off sectors. There will be up to 80 employed during construction and 20 at operational stage.

- The EIAR outlines the legislation and procedures that apply to Health and Safety during construction and operation and outlines the various potential hazards associated with the proposal. In terms of personnel accidents, the impact is predicted as direct slight/moderate negative, and with respect to accidents to infrastructure is predicted as direct slight negative.

8.5.3. Mitigation measures for the construction stage have included an outline Construction Environmental Management Plan (CEMP) and post-mitigation impacts to population and human health are predicted to be 'short-term direct and indirect slight positive short-term'. Operational mitigation measures include various monitoring and control systems to reduce and control hazards; feedstock odour controls/treatment; digester and digestate storage vessels to be integrity-tested and fitted with air tight covers; and concrete bunding to contain spillage, after which impacts are predicted as being 'long-term, direct and indirect slight/moderate positive'. The EIAR concludes that no residual or likely significant negative impacts for population and human health are predicted and that the proposal has the potential to result in overall effects of a slight positive, long-term nature.

8.5.4. Otherwise, I note that GCC has raised concerns about human health hazards from potential accidents/disasters associated with bedrock voids and traffic hazard. The observations on the appeal also raise concerns about potential fire hazards and inadequate services, potential accidents and gaseous emissions, and compliance with relevant building standards/codes.

8.5.5. I would concur that the proposal has limited potential to impact on the population trends in the area. I would also accept that the construction phase has the potential to negatively impact on the amenity of surrounding residents through traffic, noise and other disturbances, but I am satisfied that this would be a temporary effect that would be acceptable as part of any large-scale project, particularly given that housing density is very low in the immediate environs. This will be suitably mitigated through a CEMP. There will also be positive effects during the construction and operational stage through employment generation.

- 8.5.6. Regarding potential hazards and accidents, the EIAR acknowledges the need to comply with the Safety Health and Welfare at Work Act 2005 and that a Project Supervisor for the Design Process (PSDP) and Project Supervisor for the Construction Stage (PSCS) will be appointed to design and manage risk assessment until construction is completed. The EIAR also recognises the hazards associated with the operation of a biogas plant, the process of AD and biogas production. A Supervisory Control and Data Acquisition (SCADA) system will monitor the plant performance and will alert the operators to prevent emergency situations.
- 8.5.7. I note that the other potential environmental interactions with population and human health are largely dealt with in other chapters of the EIAR (i.e. landscape and visual, traffic and transport, noise and vibration, air quality). Therefore, consistent with the EIAR approach, I propose to address these impacts in other sections of my assessment.

Conclusion

- 8.5.8. I have considered all the information on file, including submissions received and the information contained in the EIAR. Having regard to the above, I am satisfied that impacts predicted to arise in relation to population and human health would be avoided, managed, and mitigated by the measures which form part of the proposed scheme and through suitable conditions. I am, therefore, satisfied that the proposed development would not have any unacceptable direct, indirect, or cumulative impacts in terms of population and human health.

8.6. **Biodiversity**

- 8.6.1. The Biodiversity chapter acknowledges relevant legislation, policy and guidance and is supported by a Natura Impact Statement. Several field surveys (for scoping, habitats, bats, mammals and birds) were undertaken between 2017-2019 and a desktop study of relevant databases was completed.
- 8.6.2. Section 5.3.3 outlines that 10 SACs, 2 SPAs, 1 Ramsar site, 1 NHA and 12 pNHAs lie within the potential zone of influence. Of these designated areas, 2 Natura 2000 sites (Coole-Garryland Complex SAC and Cole Garryland SPA, as well as their related Ramsar/NHA designations) have potential surface water connectivity via the Gort River. Other sites have potential groundwater connectivity, falling within the

same groundwater body within a karst area and holding groundwater dependent features. A desktop study was also completed for important recorded and protected species using data from the National Biodiversity Data Centre (NBDC) and Bat Conservation Ireland.

8.6.3. An extended Phase 1 Habitat Assessment was undertaken in December 2017 and updated surveys were completed in 2018 and 2019. Table 5.10 lists the habitat types (according to Fossitt, 2000), the majority of which consist of varied calcareous grassland, and all of which is of potential ecological value (except for 'Buildings and artificial surfaces').

8.6.4. Habitat suitability assessments and an emergence survey for bats were carried out for buildings and trees throughout the site and BCI records were consulted, resulting in a conclusion of negligible suitability for roosting bats. The site was deemed to have a high suitability for foraging and commuting bats having regard to proximity to known roosts of international importance (Kiltartan Cave SAC), the existence of river/tree/hedgerow connections, and BCI records. Eight bat species are known to occur in the vicinity of the site and notably there are records of a lesser horseshoe roost within in an 'old mill' in the same 1km grid as the appeal site (assumed to be 'Tuck Mill' 270m to the east). The NBDC habitat suitability index for bats was also consulted, which generally ranges from 52 to 72 (0 = least favourable and 100 = most favourable). The EIAR states that species likely to be found within the core part of the site would be features of 'local (higher)' importance, while the area along the eastern boundary of the site along the river is of 'county' importance for commuting. Dusk and dawn bat surveys in the form of walked transects were carried out at various times in the summer of 2018 and 2019. The existing derelict site to the south of the site was shown to have moderate potential for roosting bats. Static bat detectors were deployed in 2018 over a period of 2 weeks.

8.6.5. Badger surveys were carried out in 2018 and 2019. No confirmed active badger sett was found within the application site (some areas could not be accessed) but the EIAR concludes that the species likely uses the site for commuting and foraging and that it is a feature of 'local (higher)' importance. An Otter survey of the site and surrounds (including the Gort River) was completed and no holts, lie-up areas or slipways were recorded, although a mammal track near the site indicates likely otter

occurrence (outside the site) of a 'local (higher) importance'. The potential of the site to support a population of Irish Hare is rated as 'local (lower) importance'.

- 8.6.6. Bird surveys were carried out over 2018 and 2019. Although the site itself supports a relatively limited bird assemblage, it is enhanced by the existence of flooding and wet meadows to the east. The surveys recorded 6 red-listed birds and 14 amber-listed birds, including 1 Annex I species (Little egret). Overall, the EIAR considers that the site supports a bird assemblage of 'local (higher) importance'.
- 8.6.7. Section 5.5.2 of the EIAR identifies the potential impacts of the construction phase without mitigation, which largely relate to water quality, habitat loss, species disturbance, and lighting. The EIAR considers that potential direct impacts (without mitigation) at operational phase are limited to water and air quality changes as well as operational lighting. It considers that the proposed development is self-contained in water terms and that impacts on watercourses and downstream ecology will not be significant. Lighting has the potential to affect commuting/foraging habitat for bats at a significant local/county scale. Secondary impacts at operational stage (without mitigation) are identified as water quality changes for designated sites resulting from contamination of surface water or groundwater, and noise disturbance for the waterbird assemblage at a significant local scale.
- 8.6.8. Section 5.6 of the EIAR outlines that the proposal contains significant embedded mitigation, including a sealed effluent and water system and landscape/habitat creation. Additional construction stage mitigation (by avoidance) includes measures to protect watercourses, groundwater and designated areas, and to protect important habitats and species. Construction mitigation (by reduction) includes the establishment of a working corridor near treelines and hedgerows, as well as an active approach to silt control. Construction mitigation (offsetting) includes habitat restoration and bird species protection through the protection and replacement of existing vegetation.
- 8.6.9. Operational stage mitigation (by reduction) includes measures for the protection of bats (lighting and foraging features/habitats), and habitat creation to reduce the potential for silt-laden run-off to watercourses and associated impacts on designated sites. Mitigation 'offsetting' includes monitoring and remediation of the habitat restoration proposals. The EIAR states that the construction mitigation measures will

similarly be applied to the de-commissioning phase to ensure that all such impacts are avoided.

8.6.10. The EIAR concludes that, following the implementation of mitigation measures, there is a worst-case scenario of residual impact in the case of the loss of calcareous grassland which will be significant at the local scale, and short-term residual impacts for the loss of hedgerows which will be significant at the local scale. Other potential effects are not deemed to be significant.

8.6.11. I accept that the proposed development would result in a direct loss of on-site habitat, which mainly consists of calcareous grassland of local ecological significance. However, in light of the location of the site in the environs of Gort and the relative abundance of similar habitat in the surrounding area, I consider that the predicted habitat loss is acceptable in this case.

8.6.12. Regarding impacts on bats, I note that the Planning Authority and the DCHG have raised concerns about the scope of assessment carried out and potential impacts on foraging/commuting due to the loss of hedgerow. As previously outlined, the EIAR assessment of bats is based on a total of 8 site surveys carried out between 2017-2019, including 1 winter habitat/roost survey and 7 dusk and dawn surveys during the active summer season. I also note that the applicant has consulted BCI on wider area records for bat species (Tables 5.9a, b & c of the EIAR) and I consider that surveys were undertaken in accordance with relevant guidelines, including Bat Mitigation Guidelines for Ireland (NPWS, 2006). I note the suggestions of the file that a wider scope of study would be required to assess how Lesser Horseshoe Bats are using the landscape, but I do not consider that this is warranted given the limited scale of impact associated with the proposed development.

8.6.13. I would concur with the EIAR conclusions that the site has negligible suitability for roosting and that the eastern boundary of the site is of 'county' importance for commuting. The appeal outlines that the concerns of the Planning Authority were incorrectly founded on a worst-case scenario of hedgerow removal (i.e. pre-mitigation) and contends that the impact of any commuting habitat will be mitigated through the retention and strengthening of hedgerows/linear features on site. While this is noted, I consider that the proposed mitigation measures and the Landscape Mitigation Plan lack certainty regarding the precise extent of existing hedgerow

retention. I do not consider that this uncertainty is necessary given that the proposed works (apart from the entrance along the R458) are generally significantly distanced from the site boundaries, and particularly the eastern site boundary which would be of most foraging/commuting value. I consider that any grant of permission could include a condition requiring the retention of the eastern site boundary and, together with the proposed planting, I consider that this would appropriately protect the value of the site to bats. I also note that the NIS includes measures to include an external lighting plan to ensure that areas of vegetation are retained in close to darkness (1 lux) and I am satisfied that this will appropriately address lighting impacts on bats.

8.6.14. While the Planning Authority has highlighted a lack of clarity regarding the potential for otters on site, I consider that section 5.4.5 of the EIAR clearly outlines that the site holds no potential for otter holts. And while there are also no confirmed active badger setts within or close to the site, the EIAR recognises the potential for activity to occur in the future and mitigation in the form of a pre-construction mammal survey is proposed, which I consider to be acceptable.

8.6.15. The EIAR also identifies potential biodiversity impacts relating to water quality and air quality. I acknowledge that the EIAR states that the proposal has been designed to be self-contained in water terms with no direct discharges (of process effluents or dirty storm water) to ground/groundwater or surface water. This is discussed further in section 8.8 of this report whereby I outline that the proposed development would not result in any unacceptable water quality impacts and, by extension, no unacceptable water quality impacts on species or habitats in the area.

8.6.16. With regard to air quality (discussed further in section 8.9 of this report) and the concerns raised by the Planning Authority, I note that section 5.5.3 of the EIAR outlines that the NIS demonstrates that there will be no impact on the integrity of Natura 2000 sites and that this can be applied equally to nationally designated sites which cover much of the same area. Chapter 8 of the EIAR (Air) outlines that the predicted nitrogen deposition rates at the Coole-Garryland Complex SAC and East Burren Complex SAC are less than 10% of the relevant critical load and 3.9% of the existing background levels, and that there will be no significant impacts on designated sites.

8.6.17. I acknowledge that the EIAR did not specifically assess the potential impact of air emissions on the Gort River. However, in addition to the applicant's appeal contentions that the Gort River is not a designated site and that nitrogen inputs from agricultural practices would be much more significant compared to atmospheric deposition, I note from Table 8.11 of the EIAR (Predicted Maximum Ground Level Concentrations) that even the maximum predicted environmental concentrations for any of the potential air pollutants would not exceed 40.3% of the relevant limit value. Therefore, even in the event of maximum concentrations occurring on the Gort River, which is not the case, I am satisfied that the concentrations will still be within acceptable levels. Furthermore, I am satisfied that air emissions will be appropriately controlled through the Industrial Emissions licence application.

8.6.18. Regarding potential cumulative impacts, I note the current application before the Board for a local authority development consisting of a Civic Amenity site/Recycling centre on a site located c. 300m to the south of the appeal site (ABP Ref. 310203-21 refers). This application has addressed the potential for loss of foraging, commuting and roosting habitat for the Lesser Horseshoe Bat and was subject to a 14-day survey which found only 2 records of site usage. It involves a small site (0.168ha) with limited vegetation and the proposal includes habitat enhancement measures and measures to ensure that lighting does not impact on bat activity. Accordingly, I am satisfied that likely significant effects on the Lesser Horseshoe Bat will not arise and there will be no cumulative impacts with the proposed biogas project. The local authority application also identifies the potential for indirect impacts on biodiversity due to deleterious material run-off affecting water quality during construction and operation stages. However, the NIS submitted with the application includes measures to address flood risk; to contain run-off; for the treatment of surface water prior to discharge to the wastewater treatment plant; for the bunding of oils and paints etc; and for the containment of material through construction management practices. I am satisfied that the potential water quality impacts associated with the local authority proposal will be appropriately mitigated and, accordingly, there will be no cumulative biodiversity effects associated with the proposed biogas project.

8.6.19. The predicted impacts in relation to designated Natura 2000 sites will be addressed in detail through Appropriate Assessment in section 9.0 of this report.

Conclusion

8.6.20. I have considered all the information on file, including submissions received and the information contained in the EIAR. Having regard to the above, I am satisfied that impacts predicted to arise in relation to biodiversity would be avoided, managed, and mitigated by the measures which form part of the proposed scheme and through suitable conditions. I am, therefore, satisfied that the proposed development would not have any unacceptable direct, indirect, or cumulative impacts in terms of biodiversity.

8.7. **Soils & Geology**

- 8.7.1. This chapter of the EIAR is informed by a desktop study of site-specific resources (including surface water samples, trial pit logs and other elements of the EIAR) and online mapping data and studies. Site investigations also informed the study, comprising 2 trial pits (part of the Flood Risk Assessment and stormwater design works) and field survey works (part of hydrogeological risk assessment works), and consultations were carried out with GCC and the EPA.
- 8.7.2. The EIAR review of Teagasc soil mapping outlines that the northern area of the site is composed of 'deep well drained soils' (grey brown podzolics and brown earths) and the remaining area is composed of shallow well drained soils (renzinas and lithosols). The review of EPA mapping indicates that soil cover is composed of well drained Faoldroim (fine loamy drift with limestone) across the entire site. GSI Quaternary Geology mapping indicates that the majority of the site is underlain by 'till derived from limestones', with the far north corner containing river alluvium and the southern area underlain by outcropping bedrock geology of the Tubber Formation. The Teagasc Subsoils map confirms that the cover is 'Limestone Tills' in the northern area and surface bedrock (limestone) across the southern area. The trial pit investigations indicate a reduction in soil thickness and drift deposits from north to south and sandy material of higher permeability.
- 8.7.3. In terms of geology, the EIAR states that the GSI bedrock maps show that the site is underlain by the Tubber Formation and that rock outcrops at the surface across much of the site. The trial pit at the northern end of the site had not reached rockhead at the completed depth of 3mbgl, while the southern pit encountered rock

at a depth of 1.2mbgl. GSI mapping also indicate that 3 boreholes were recorded within 1km of the site and recorded rockhead at depths of 1.8m to 2.1m.

8.7.4. Regarding features of geological significance, the EIAR acknowledges the sensitivity of the overall limestone unit (including caves and turloughs) and the presence of a trending fault feature 800m southeast of the site. Although GSI data indicates that a quarry was active between 1975-1995, the land is currently undeveloped fields. The EIAR states that the site includes an area of geological heritage interest consisting of peloidal limestones from the Tubber Formation which is subject to further review by GSI as part of a County Geological Site Report. At the time of writing the EIAR (June 2019) an audit had not been completed and a 200m buffer had been mapped in the absence of a defined boundary. It is stated that consultation with GSI indicates that the development of adjacent sites rarely causes a direct conflict of interest. The EIAR inspected historical maps and aerial photography to evaluate potential land contamination of the site and no potential sources were identified.

8.7.5. The EIAR identifies the following potential impacts (without mitigation):

Construction phase

- Moderate impacts on drift deposits and bedrock geology due to contamination from leaks of hazardous substances/chemicals/fuels stored on site.
- Negligible impacts due to the loss of shallow soils and drift due to construction on site.
- Moderate impacts on bedrock geology due to contamination from foundation construction and road works.

Operational Phase

- Moderate impacts on shallow soils, drift deposits and bedrock geology due to contamination from leaks of chemicals/fuels stored on site.
- Moderate impacts on shallow soils, drift deposits and bedrock geology due to contamination from leaks/spills from waste processing and storage tanks.
- Moderate impacts on exposed drift deposits due to erosion.

8.7.6. Table 6.14 of the EIAR outlines mitigation measures to include the following:

- Dedicated areas for deliveries, storage and wash-out

- Use of spill kits, drip trays, bunding and secondary containment
- Developing of waste management and incident response plans
- Casing for wet concrete to protect deeper sub surface deposits
- Revegetation of exposed drift deposits

8.7.7. The EIAR states that the construction mitigation measures will similarly be applied to the de-commissioning phase to ensure that all such impacts are avoided. It also states that no cumulative impacts exist for the on-site receptors given that impacts will be negligible post mitigation, and that the residual effects of the development will be negligible.

8.7.8. Section 6.9 of the EIAR considers the effects deriving from the vulnerability of the development to risks of major accidents or disasters. It states that the risk of earthquakes, fire, tidal or weather events is low, and that flood risk has been assessed. With regard to accidents, it is stated that the development will be constructed in accordance with relevant guidance and/or regulations, and that the operational activity will be in accordance with an Environment Health and Safety Management Plan. It concludes that vulnerability to major accidents or disasters is low.

8.7.9. I note that 3rd party submissions raise concern that the extent of ground investigations have been limited to 2 shallow trial holes and question the capacity of this karst area to structurally absorb the proposed development. However, as outlined in the following section of this report (section 8.8), it should be noted that a comprehensive geophysical survey of the site was also completed to determine the extent of karstified bedrock below the site and further pre-construction investigations will be completed to establish suitable bedrock foundations for the proposed development. I consider that this constitutes an acceptable approach to investigation and mitigation, and that it would be unreasonable to expect any further extent of investigation at this planning stage.

8.7.10. Regarding the potential area of geological interest identified by GSI, I note that, since the completion of the EIAR, the geological audit for County Galway³ has been

³ The Geological Heritage of County Galway, An Audit of County Geological Sites in County Galway 2019

completed. It outlines that a range of sites had been previously flagged for consideration in the IGH Master Site List, and some were assessed as unsuitable for County Geological Site status in this audit. One of those excluded includes the feature identified on the appeal site (i.e. 'County Council Quarry near Gort'), about which it is stated that the site has been re-landscaped such that only a single, low rock exposure survives. It concludes that this outcrop and its extent is not deemed of sufficient importance to merit CGS status.

8.7.11. I acknowledge that the loss of soil and bedrock is an inevitable consequence of development and I consider that the significant retention and landscaping of soil on site will assist in mitigating these impacts. Furthermore, I consider that the loss of any geological features will not be significant and the EIAR includes adequate measures to mitigate against potential bedrock/geological impacts during construction and operation.

Conclusion

8.7.12. I am satisfied that the impacts that are predicted to arise in relation to soils and geology are negligible having regard to the extensive resources in the surrounding area. I have considered all the information on file, including submissions received and the information contained in the EIAR, and I am satisfied that impacts predicted to arise in relation to soils and geology, would be avoided, managed, and mitigated by the measures which form part of the proposed scheme and through suitable conditions. I am, therefore, satisfied that the proposed development would not have any unacceptable direct, indirect, or cumulative impacts in terms of soils and geology.

8.8. Hydrology & Hydrogeology

8.8.1. This chapter of the EIAR focuses on the water environment (surface water and groundwater) and its relationship with the underlying limestone karst environment. It is informed by a review of the development proposal, site-specific reports, legislation and guidance, and consultation with relevant statutory authorities. Site investigations also informed the study, comprising 2 trial pits (part of the Flood Risk Assessment and stormwater design works) and field survey works (part of hydrogeological risk assessment works).

- 8.8.2. The chapter recognises the numerous designated sites in the surrounding area, the topographical location of the site within the 'Gort lowlands', rainfall records, and the geology/geological heritage of the site as previously outlined in section 8.7 of this report. It also identifies the mapped regional karst features in the surrounding area and the potential for additional unmapped features, and that underlying geological bedrock is classified as a regionally important karstified aquifer (conduit flow) with significant possibility of groundwater flow. The site is within the Kinvara/Gort groundwater body which consists of high transmissivity karstified limestone and has significant interconnectivity between surface water and groundwater.
- 8.8.3. With regard to the adjoining Gort River, the EIAR outlines that the WFD status for the 2010-2015 period is 'good' and that a 2017 water sample analysis showed an exceedance of Ammoniacal Nitrogen values against the surface water Environmental Quality Standards. The Gort River becomes subterranean at Castletown sink, where water levels fluctuate significantly, and nine subsurface traces have been confirmed.
- 8.8.4. The EIAR states that the GSI Groundwater Vulnerability Map shows that the site is generally classified at 'rock at or near the surface' in the southern part of the site, 'high' in the northern part, and 'moderate' in the northwest part associated with the proposed entrance. The groundwater quality status for the period to 2015 is described as 'poor', although further GCC results indicate that there is generally a good quality. GSI data on average groundwater recharge for the region is stated to be 431mm/yr (recharge coefficient of 60%) with higher areas being 611mm/yr (coefficient of 85%). This chapter of the EIAR also considers available data in relation to bore holes and wells.
- 8.8.5. A comprehensive geophysical survey of the site was completed to determine the extent of karstified bedrock below the site and to assess any risk to the hydrogeological environment. It observed that depth to bedrock across the site varies considerably and highlighted several karst features within the bedrock profile. The most significant feature identifies a vertical area of low resistivity over a distance of 20m below ground level which is likely to represent a significant fissure. High resistivities (typical of air filled fissures or voids) were also observed along profiles across the central and southern parts of the site. The EIAR also refers to an evaluation of karst risk carried out in 2014/2015 in connection with the M18

motorway project, which outlined that the section in proximity to the appeal site had a risk rating of low to high, with the majority designated as medium risk. With regard to karst mitigation for the subject development, it is stated that pre-construction ground investigations will inform the detailed design and foundation solution in order to mitigate against karstified bedrock impacting on the foundation and bund integrity of the facility. Founding of the structure on competent bedrock will also mitigate against any possible settlement of the structure as a result of karst processes.

8.8.6. The EIAR identifies the potential construction phase impacts (without mitigation) as follows:

- Major impacts on surface water and groundwater from contamination due to spills/leaks of fuel/oil and hazardous substances.
- Negligible impacts on surface water due to disturbance of contaminated soil.
- Moderate impacts on groundwater due to increased vulnerability of the aquifer as a result of soil removal.
- Major impacts on groundwater due to contamination by concrete/cement/grout
- Negligible impacts on groundwater due to decreased infiltration on site, dewatering causing a reduction in water table and change in local flow patterns, and disturbance of contaminated soil.

8.8.7. The EIAR includes a Hydrogeological & Hydrological Risk Assessment for the Operational Phase which identifies potential sources (effluent, digestate fertiliser, feedstock, and other hazardous material), pathways (infiltration of soil/subsoil, infiltration into bedrock, degradation/compromise of concrete bunding/hardstanding, and corrosion/cracking of piping used for connections), receptors (surface water and groundwater) and risk (low, medium and high). After mitigation measures are applied, the residual risk in all cases is classified as 'low'. Table 7.18 summarises the potential operational phase impacts (without mitigation) as follows:

- Major impacts on surface water due to contamination of underlying drift deposits and soils due to leaks from chemical/fuels stored on site and leaks/spills from waste processing/storage tanks.
- Major impacts on groundwater due to contamination of underlying drift deposits and soils due to leaks from chemical/fuels stored on site and leaks/spills from waste processing/storage tanks.

- Negligible impacts on groundwater due to decreased infiltration on site associated with increased hardstanding.

8.8.8. Tables 7.19 and 7.20 outline the EIAR mitigation measures to include the following:

- Dedicated areas for deliveries, storage, refuelling and wash-out etc
- Use of spill kits, drip trays, bunding and secondary containment
- Developing of waste management and incident response plans
- Chemical used within a contained/lined area
- Excavation and disposal off-site of contaminated soils
- Casing for wet concrete to protect deeper sub surface deposits
- Minimised land disturbance and soil movement and covering of exposed bedrock.
- Application of SUDS principles and oil interceptor drainage/stormwater.
- Regular integrity testing of bunding, hardstanding, and storage vessels
- Groundwater monitoring boreholes to assess water levels and the integrity of constructed mitigation.
- Further ground investigation to determine foundation design and structure settlement measures.

8.8.9. The EIAR considered cumulative effects with the M18 Motorway and the Gort Wastewater Treatment Plant. Given the extensive measures taken for the M18 project to protect and mitigate against any potential groundwater contamination, the cumulative effects of the proposed development are deemed to be negligible. It is proposed to connect to the Gort WWTP which discharges to the Gort River. Given that there are no discharges within the site itself, the EIAR considers that exceedance of capacity at the Gort WWTP is the only potential cumulative impact on hydrogeology. It concludes that the nature and volume of effluent disposal is unlikely to exceed the WWTP capacity and that any impacts on hydrogeology will be negligible.

8.8.10. The EIAR concludes that there will be no significant residual impacts and that after mitigation, the significance of impacts on the identified receptors (shallow soils, underlying drift, bedrock geology and waters) will be 'negligible'.

8.8.11. Section 7.12 of the EIAR considers the effects deriving from the vulnerability of the development to risks of major accidents or disasters. It states that the risk of

earthquakes, fire, tidal or weather events is low, and that flood risk has been assessed. With regard to accidents, it is stated that the development will be constructed in accordance with relevant guidance and/or regulations, and that the operational activity will be in accordance with an Environment Health and Safety Management Plan. Vulnerability to major accidents or disasters is therefore considered to be low.

- 8.8.12. The Planning Authority has highlighted that the updated WFD water quality status for the Gort River is 'poor', which I can confirm to be the case. It also raised concerns about bedrock stability and uncertainty about mitigation of impacts on karst features, as well as concerns about the interaction between high groundwater levels and the proposed bund. The submissions from DCHG, IFI, and An Taisce also highlight general water quality challenges and obligations, as well as the potential impacts associated with intensifying agricultural activity and land spreading (which I have previously advised to be outside the scope of this assessment).
- 8.8.13. I acknowledge the sensitivities and interactions of surface water and groundwater activity in this karstified region, and the associated concerns raised by the Planning Authority. However, I consider that the EIAR information, including the geophysical survey completed, constitutes an acceptable level of investigation and prediction of bedrock below the site and the potential impacts of the project on the hydrogeological environment. This would be followed by further pre-construction ground investigations to inform detailed foundation design and to ensure the integrity of the bund design. I would accept that the requirements for further ground investigation and detailed design contain an inherent potential for the identification of further impacts. However, I would not consider this to be an uncommon feature of the construction stage, particularly in karst areas, and I consider that such further investigation/monitoring is an acceptable construction mitigation measure which could be further controlled through the agreement of details by condition. Accordingly, I am satisfied that the EIAR presents an acceptable level of certainty regarding hydrogeological impacts and that any residual impact risks could be acceptably managed.
- 8.8.14. With regard to flood risk, I note that the EIAR Flood Risk Assessment report (Appendix 7.1) outlines that CFRAM fluvial flood modelling does not impact on the site. And while the extent of CFRAM modelling does not extend to include the extent

of the Gort River adjoining the northern extremity of the site, the FRA has included further modelling to demonstrate that the lowest site level adjacent to the river would be 19mAOD, i.e. 1m+ in excess of the predicted 0.1% AEP river level. This is consistent with the OPW 'National Indicative Fluvial Mapping – Present Day' (as per www.floodinfo.ie), which does include the extent of the river to the north of the site and indicates that the site is not at fluvial flood risk.

- 8.8.15. In relation to groundwater, I note that only a marginal portion to the east of the site is affected by the GSI Groundwater Flooding Probability Mapping, and this is limited to a return period of every 1000 years (0.1%AEP). The FRA acknowledges that the bund level (17mAOD) is below the relevant predicted river flood levels. Accordingly, the level of the top of the bund has been designed at 19.1mAOD in order to exceed the 0.1% AEP (used to account for climate change instead of the 1% AEP) plus a 300mm freeboard. I am satisfied that this approach is in accordance with the mitigation approach to levels as recommended in The Planning System and Flood Risk Management Guidelines (2009, p. 72) and that it will satisfactorily address the groundwater flood risk to the project. The FRA also confirms that the bund should be capable of withstanding the uplift pressure from groundwater. And while the Planning Authority considered that there was inadequate detail in this regard, I am satisfied that it is a detailed structural design measure and that an appropriate condition could be applied in this respect.
- 8.8.16. I acknowledge that the construction stage has the potential for impacts on surface water and groundwater due to construction materials/pollutants, soil disturbance/removal, construction run-off, and impacts on groundwater levels/flows. However, the EIAR includes a wide range of construction-stage mitigation measures, including a Construction and Environmental Management Plan (CEMP) addressing construction site run-off, water pollution prevention controls, and water quality monitoring and management, and I am satisfied that these measures will satisfactorily address the identified risks.
- 8.8.17. I also acknowledge the potential operational stage effects emanating from sources including effluent, digestate, feedstock, and other hazardous material. However, the proposed project is based on a self-contained system whereby potential water pollutants will be controlled in accordance with the mitigation measures outlined in Tables 7.17 and 7.20 of the EIAR. On this basis, the only potential hydrological

connections will be via the proposed surface water infiltration area along the eastern boundary and the proposed effluent discharge to the Gort WWTP (and subsequently the Gort River).

- 8.8.18. Regarding the infiltration area, I note that it has been included to accommodate overflow in the coincidence of a 1 in 100-year storm event and the attenuation pond being full, and that a By-Pass Petrol Interceptor will be installed to protect the water quality of the storage pond and ultimately that of any infiltrated water. Accordingly, given that water infiltration will only occur in storm events and will be adequately treated, I am satisfied that any potential impacts as a result of surface water infiltration are acceptable.
- 8.8.19. Regarding the proposed wastewater discharge, I note that, according to the Irish Water Annual Environmental Report 2020 (Gort D0195-01), the final effluent of the Gort WWTP was deemed to be compliant with Emission Limit Values and the capacity of the plant was not predicted to be exceeded within the next 3 years. The foul effluent discharge to the WWTP from the proposed project will be limited to the office/control buildings and will be of a domestic nature. It is stated that there will be approximately 20 people employed at the plant during the operational stage and I do not consider that this will have a significant impact on the capacity of the WWTP which has a design PE of 4,310. Accordingly, I am satisfied that there will be no unacceptable impacts on water quality as a result of the proposed connection to the Gort WWTP.
- 8.8.20. Regarding potential cumulative impacts, I note the current application before the Board for a local authority development consisting of a Civic Amenity site/Recycling centre on a site located c. 300m to the south of the appeal site (ABP Ref. 310203-21 refers). This application has identified the potential for impacts on water quality due to deleterious material run-off during construction and operation stages. However, the NIS submitted with the application includes measures to address flood risk; to contain run-off; for the treatment of surface water prior to discharge to the wastewater treatment plant; for the bunding of oils and paints etc; and for the containment of material through construction management practices. I am satisfied that the potential water quality impacts associated with the local authority proposal will be appropriately mitigated and, accordingly, there will be no cumulative hydrological effects associated with the proposed biogas project

Conclusion

8.8.21. I am satisfied that the impacts that are predicted to arise in relation to water are acceptable having regard to the characteristics of the existing hydrological and hydrogeological regime. I have considered all the information on file, including submissions received and the information contained in the EIAR. Having regard to the above, I am satisfied that impacts predicted to arise in relation to water would be avoided, managed, and mitigated by the measures which form part of the proposed scheme and through suitable conditions. I am, therefore, satisfied that the proposed development would not have any unacceptable direct, indirect, or cumulative impacts in terms of water.

8.9. **Air Quality, Odour & Climate**

8.9.1. Chapter 8 of the EIAR includes an odour and air assessment of the potential impacts from the emission stacks on the nearest residential properties (20 no. receptors). A dispersion modelling assessment is included to predict the impact and allow for comparison to an appropriate odour annoyance criterion and the relevant ambient air quality standards outlined in the Air Quality Standards Regulations 2011 (S.I. No. 180 of 2011). The SCAIL-Agriculture (Simple Calculation of Atmospheric Impact Limits from Agriculture) screening tool is also used to assess impacts on designated sites while considering background deposition and the critical load of the habitat. A detailed Dispersion Modelling Assessment (AERMOD) is also used to predict the nitrogen deposition level.

8.9.2. The EIAR states that an appropriate stack height determination study was carried out to establish a minimum 22m height for the stacks at the reception building and CHP installation, which is 7.6m above the highest roof level of the facility. The flare stack will have a height of 8m but will be rarely used (<1% of year) and the temporary boiler emissions will emit at a height of 16.4m. These form the emission points for the study. The chemistry of the proposed processes has been considered along with time averaging and percentiles to calculate the relevant odour and air emission rates for input into the Air Dispersion Model.

8.9.3. The EIAR preparation included baseline air quality monitoring in June/July 2019 at locations representative of the nearest point of the 2 closest designated European sites and at the proposed site entrance along the R458. The results show that NO_x

concentrations at the 2 closest designated sites are less than 15% of the annual limit for the protection of vegetation and that NO₂ concentrations at the closest residential properties are less than 10% of the annual limit for the protection of human health. Consistent with the EPA classifications for the area (i.e. Zone D), the air quality in the area is deemed to be 'good'. Typical average background concentrations based on EPA data are therefore applied for the air quality assessment. The EIAR states that Baseline odour surveys were also carried out in June/July 2019 in the vicinity of the site. No significant individual odour source has been identified and background odours are therefore typical of intermittent rural areas influenced by agricultural activities etc.

- 8.9.4. In relation to climate change and greenhouse gases, the EIAR highlights the proposed production of biogas and fertiliser will result in an overall reduction in carbon dioxide emissions in comparison to typical fossil energy sources.
- 8.9.5. For the construction stage, the EIAR considers the potential for construction dust and traffic emissions on sensitive receptors. Using NRA guidelines, the EIAR considers that dust from this 'moderate scale' development may cause an impact on sensitive receptors within 25m. It states that the nearest sensitive receptor is at a distance of 250m and all sensitive habitats are at a greater distance than 25m, and concludes that construction stage impacts will be imperceptible.
- 8.9.6. For the operational phase, the EIAR predicts the following potential impacts:
- Emissions from the CHP plant (nitrogen oxides (NO₂), sulphur dioxide (SO₂), non-methane volatile organic compounds (VOCS), carbon monoxide (CO) and particulates) indicate that maximum short-term and annual mean ambient ground level concentrations (GLCs) are below the relevant air-quality standards.
 - Maximum odour emissions from the feedstock stack at the nearest residential receptor are well below target values.
 - The predicted nitrogen deposition rates at the Coole-Garryland Complex SAC and East Burren Complex SAC are less than 10% of the relevant critical load and 3.9% of the existing background levels. Therefore, there will be no significant impacts on designated sites or sensitive habitats.

- Annual mean nitrogen oxide and sulphur dioxide concentrations at all designated sites will also be below the relevant limit values for the protection of vegetation.
- The limited level of vehicle movements associated with the development will not result in a significant air quality impact.

8.9.7. The EIAR proposes mitigation measures for the construction and operational phase to include the following:

- Dust monitoring and cleaning arrangements during construction
- Material storage and handling areas to prevent dust emissions
- Containment of materials within the reception building
- Containment of emissions within tanks and other vessels.
- CHP combustion of biogas to destroy odorous compounds
- 22m high stacks to ensure adequate dispersion of odour and air pollutants
- Operational procedures to minimise odour generation.
- Recording and monitoring of materials received, vehicle movements, and odour assessment.
- Monitoring of spillages and planned preventative maintenance
- A Neighbour/Stakeholder Communication Plan to establish contacts, complaints and response procedures for off-site odour emissions.

8.9.8. The EIAR states that there are no other significant air pollutant sources in the area other than traffic, that air quality is good, and that there will be no significant cumulative impacts. It concludes that there will be no significant residual impacts; that the emission points will be regulated through the EPA licensing process; that air quality impacts will be acceptable in accordance with Air Quality Standards Regulations 2011; and that a stringent odour target value will be achieved in the vicinity of the site and at the surrounding sensitive receptors.

8.9.9. The Planning Authority has raised concerns that the EIAR has not properly considered the cumulative Nitrogen deposition rates, emissions to the Gort River, emissions from traffic movements, or the efficacy of the proposed carbon filter in relation to odour abatement. In response, I note that the EIAR includes a detailed assessment of predicted nitrogen deposition rates at all designated sites within 10km relative to existing background concentration and the 'critical load' for each site. It

has been determined that the proposal will not have a significant impact and I am satisfied that this constitutes an appropriate cumulative assessment of impacts. As previously outlined in this report, I acknowledge that the EIAR did not specifically assess the potential impact of air emissions on the Gort River. However, Table 8.11 of the EIAR demonstrates that even the maximum predicted environmental concentrations for any of the potential air pollutants would not exceed 40.3% of the limit value. Therefore, even in the event of maximum concentrations occurring on the Gort River, which is not the case, I am satisfied that the concentrations will still be within acceptable levels. Furthermore, I am satisfied that the extent of air emissions from traffic will be negligible to the extent that quantification is not required, and that any required clarification in relation to the carbon filter would be satisfactorily addressed as part of the Industrial Emissions licensing process.

8.9.10. The 3rd party submissions have raised several concerns in relation to the EIAR air and odour assessments, including fundamental concerns about the volumetric odour emission rate used (75,000m³/hour). The 3rd party submissions contend that a rate of 150,000m³/hour should apply. In this regard, the EIAR states that, in accordance with BAT (best available technology), the volumetric emission rate from the feedstock reception building should be three times the building volume. While the EIAR does not provide any further detail on calculations, I note that the main feedstock reception space (i.e. excluding the 'air lock lobby' and the digestion enhancement' areas) has a floor area of c. 2900m². The internal ceiling height is not consistent but would generally average at c. 11.5m. On that basis I have calculated that the space has a potential total volume of c. 33,350m³. Within that space, deductions should apply for the proposed tanks (c. 650m³). Further reductions would apply due to the presence of feedstock material itself within the tipping/quarantine bays and the mixing area (estimated capacity of c. 3,000m³). The identified deduction would, therefore, reduce the actual volume of the space to less than 30,000m³. I would acknowledge that these are estimated figures and further deductions may apply for inter alia the pedestrian lobbies, disinfection areas, and other ancillary plant and equipment. Accordingly, I am satisfied that the volumetric rate used in the EIAR (i.e. 25,000m³ x 3 = 75,000m³) is reasonable and generally consistent with my calculations. Furthermore, I am satisfied that the predicted odour concentrations have been demonstrated to be well below the target value of C_{98, 1-}

Hour 1.50UE/m³ and the odour emission rate will be appropriately controlled via the Industrial Emissions licence process.

8.9.11. Regarding other 3rd party concerns, I would state the following:

- Baseline odour monitoring has been carried out in the vicinity of the appeal site at a suitable time and under suitable meteorological conditions, and there is no requirement for baseline monitoring within each residential property.
- According to the US EPA website⁴, the AERMOD dispersion modelling system includes the regulatory components of AERMET and AERMAP, which are meteorological and terrain data pre-processors respectively. I am therefore satisfied that the assessment appropriately accounts for the site-specific meteorological and topographical conditions.
- The EIAR has outlined that the stack heights have been designed to address the potential 'downwash' effects of all emission point sources.

8.9.12. I acknowledge that the construction stage has the potential for impacts on sensitive receptors as a result of traffic and dust emissions. However, the EIAR includes a range of construction-stage mitigation measures, including a Construction and Environmental Management Plan (CEMP), and I am satisfied that these measures will satisfactorily address the identified risks.

8.9.13. I also consider that the air and odour impacts at operational stage have been suitably identified and mitigated and that these impacts will be satisfactorily controlled through the Industrial Emissions Licence process. Air and odour impacts from traffic at operational stage are unlikely to be significant as a proportion of existing traffic emissions and do not warrant further assessment.

8.9.14. In relation to climate change and greenhouse gases, I consider that the proposed production of biogas will result in an overall reduction in carbon dioxide emissions in comparison to typical fossil energy sources and this will be a positive impact on climate.

⁴ <https://www.epa.gov/scram/air-quality-dispersion-modeling-preferred-and-recommended-models>

Conclusion

- 8.9.15. I am satisfied that the impacts that are predicted to arise in relation to air quality, odour and climate are acceptable having regard to the nature and scale of the proposed development. I have considered all the information on file, including submissions received and the information contained in the EIAR. Having regard to the above, I am satisfied that impacts predicted to arise in relation to air quality, odour and climate would be avoided, managed, and mitigated by the measures which form part of the proposed scheme and through suitable conditions. I am, therefore, satisfied that the proposed development would not have any unacceptable direct, indirect, or cumulative impacts in terms of air quality, odour and climate.
- 8.10. **Noise and Vibration**
- 8.10.1. This chapter is informed by the preparation of a noise impact assessment on the nearest neighbouring properties. A 10-day noise monitoring survey was undertaken at the site boundary closest to nearest residential properties in January/February 2018. Short-term daytime noise surveys were also taken at the proposed access and at residences along the R458 road. Noise modelling has also been undertaken to predict construction and operational noise levels in the vicinity of the site and at nearest noise sensitive receptors.
- 8.10.2. The background noise levels recorded were dominated by distant motorway and local traffic, agricultural activities and wind noise. The measurements recorded were not deemed to qualify as an 'area of low background noise' and noise limit criteria was determined based on EPA guidance as 55dB (daytime noise, dB $L_{Ar,T}$), 50dB (evening noise, dB $L_{Ar,T}$), and 45dB (night-time noise, dB $L_{Aeq,T}$).
- 8.10.3. The EIAR states that construction will be limited to the 'daytime' and uses BS 5228 guidance to establish that a noise limit of 65 dB $L_{Aeq,T}$ applies. It predicts the worst-case scenario noise levels at various distances from construction noise sources (ranging from c. 53 dB(A) at 100m to c. 38 dB(A) at 400m) and concludes that the construction noise limit (65 dB $L_{Aeq,T}$) will not be exceeded at the nearest sensitive receptor (200m). It states that the additional construction traffic movements along the R458 will result in a less than 1 dB(A) increase, which would be an imperceptible effect.

8.10.4. Operational noise levels for the main sources have been predicted using worst-case assumptions based on the Cadna_A noise model and measurements at the existing Glenmore Biogas Plant in Ballybofey, Co. Donegal. None of the predicted noise levels for on-site plant is predicted to exceed the EPA limits for daytime, evening and night-time, and the additional operational traffic movements along the R458 are predicted to result in an imperceptible increase of less than 1 dB(A). The combined worst-case noise predictions for plant/equipment and site traffic movements during daytime would also not exceed EPA daytime limits at any of the surrounding sensitive receptors. Noise predictions are also stated to be in accordance with WHO Guidelines for Community Noise.

8.10.5. The EIAR outlines mitigation measures for the construction phase (none deemed necessary for operational phase) to include the following:

- Contractor to apply appropriate control measures recommended in BS 5228.
- Working hours restricted to daytime
- On-site speed limits for vehicles
- Use of quiet working methods
- Use of noise-reduced construction plant, vehicles and equipment
- Positioning and screening of noisy construction plant
- Construction workers to be informed of requirement to minimise noise and undergo training.

8.10.6. The EIAR states that the background noise levels have been considered and no other significant cumulative effects are identified. It concludes that there will be no significant residual noise impacts associated with the development.

8.10.7. The 3rd party submissions have questioned the methodology and results of the baseline noise monitoring and contend that higher levels should not apply to the appeal site compared to the appeal site monitoring location compared to the 2 other locations along the R458. I acknowledge that baseline noise monitoring has not been carried out at the actual sensitive receptors, but I am satisfied that the monitoring locations used present a realistic background noise level, both for the area along the R458 road and areas to the north and east of the appeal site. It should also be noted that the appeal site monitoring was carried out over 10 days, while the monitoring along the R458 was over a short period of c. 4 hours, which may account any

perceived anomalies in the results. In any case, I consider that the purpose of the noise monitoring was to establish that this is not an area of 'low background noise' and I am satisfied that this has been demonstrated by the monitoring results.

8.10.8. Regarding noise prediction modelling, the 3rd party submissions also contend that realistic traffic volumes have not been considered and that modelling is insufficient to establish that noise levels will not interfere with surrounding amenities. The issue of traffic volume is dealt with in a following section of this report (section 8.12).

Furthermore, I note that the noise prediction modelling has been run for the worst-case night-time scenario and will not exceed the EPA Noise Limit of 45dB. I am satisfied that traffic noise can be excluded for the evening and night-time periods as it is not envisaged that there will be traffic movements on site at these times. Based on the predicted operational noise levels within the EPA Noise Limits, I am satisfied that no further mitigation measures are required in this regard.

8.10.9. I acknowledge that the construction stage has the potential for impacts on sensitive receptors as a result of construction activities and the operation of vehicles/plant. However, the EIAR includes a range of construction-stage mitigation measures, including a Construction and Environmental Management Plan (CEMP), and I am satisfied that these measures will satisfactorily address the potential impacts.

Conclusion

8.10.10. I am satisfied that the impacts predicted to arise in relation to noise and vibration are negligible. I have considered all the information on file, including submissions received and the information contained in the EIAR. Having regard to the above, I am satisfied that impacts predicted to arise in relation to noise and vibration would be avoided, managed, and mitigated by the measures which form part of the proposed scheme and through suitable conditions. I am, therefore, satisfied that the proposed development would not have any unacceptable direct, indirect, or cumulative impacts in terms of noise and vibration.

8.11. Landscape & Visual

8.11.1. Chapter 10 of the EIAR includes a Landscape and Visual Impact Assessment (LVIA) based on a desktop study of designations and receptors and fieldwork to establish the landscape character and refine viewpoints to be used for visual assessment. A

computer-generated Zone of Theoretical Visibility (ZTV) was also prepared over a 5km radius study area and the EIAR contends that c. 50% of the area has no theoretical visibility of the development; visibility generally mirrors the landform in a northeast-southwest alignment; the most exposed areas along the Gort River tend to be enclosed by vegetation such that theoretical visibility is seldom reflected by actual visibility; the theoretical visibility of the upper sections of the development are concentrated to the west and southwest and on sporadic hilltops in the wider area.

8.11.2. The EIAR outlines that mitigation measures include the construction of a planted/seeded berm along the eastern side of the site and the retention/bolstering of existing vegetation around the site perimeter. Embedded mitigation will also be provided in the colour/tone of the proposed buildings/structures.

8.11.3. The LVIA assesses the landscape sensitivity and concludes that the landscape is, with the exception of Coole Park, not rare or distinctive for the county or region; that it offers only a modest level of scenic amenity; that it is much-modified; and that it is at odds with the wider study area and Landscape Character Area and deemed to be of low sensitivity. It considers the magnitude of landscape impacts to be 'high-medium' in the vicinity of the site (reducing to medium, low, and imperceptible with distance) and concludes that the proposed development would have a landscape significance impact no greater than 'moderate-slight' (with most of the study area likely to experience imperceptible impacts) and will not be incongruous when considered in the broader context of the northern fringe of Gort.

8.11.4. The LVIA selected 8 viewshed reference points based on various criteria for visual impact assessment, the conclusions of which can be summarised as follows:

Viewshed Reference Point	Stage	Receptor Sensitivity	Impact Magnitude	Impact Significance
VP1	Pre-mitigation	Low	Negligible	Imperceptible
	Post-mitigation	Low	Negligible	Imperceptible
VP2	Pre-mitigation	Medium Low	Medium Low	Moderate Slight
	Post-mitigation	Medium Low	Low	Slight
VP3	Pre-mitigation	Medium	Negligible	Imperceptible
	Post-mitigation	Medium	Negligible	Imperceptible
VP4	Pre-mitigation	Medium	Medium Low	Moderate Slight
	Post-mitigation	Medium	Low	Slight
VP5	Pre-mitigation	Medium Low	Medium	Moderate
	Post-mitigation	Medium Low	Medium Low	Moderate Slight
VP6	Pre-mitigation	Low	Low	Slight Imperceptible

	Post-mitigation	Low	Low negligible	Imperceptible
VP7	Pre-mitigation	Medium	Low	Slight
	Post-mitigation	Medium	Low	Slight
VP8	Pre-mitigation	Low	Negligible	Imperceptible
	Post-mitigation	Low	Negligible	Imperceptible

- 8.11.5. The EIAR does not consider that there will be any discernible landscape or visual impacts in combination with other existing or permitted developments and concludes that the development would not give rise to any significant landscape or visual impacts.
- 8.11.6. The Planning Authority decision has raised concerns about the scope of the EIAR assessment and the potential impact of the development on the receiving Class 3 landscape, including Coole Demesne and the Kinincha Road/Gort River area. The 3rd party submissions also highlight visual/landscape concerns relating to local amenities such as the 'river walk', the 'golden mile' and Coole Park, as well as wider landscape features and tourist attractions including The Wild Atlantic Way and The Burren.
- 8.11.7. Having reviewed the Landscape Sensitivity and Character Area Map (LCM2) of the CDP, it would appear that the site is marginally within a 'Class 3 – Medium' sensitivity area, although it is close to both the 'Class 4 – Special' sensitivity area around Coole Lough to the northwest and the wider 'Class 2 – Moderate' sensitivity area of the south and east. However, I would accept that the landscape designations are based on quite broad areas of categorisation with significant variation therein, and that individual proposals require a more detailed assessment of site context. In that regard, I consider that the appeal site is quite detached from the Class 4 Coole Lough landscape to the west by the intervening higher topography and significant modern development, including the M18 Motorway. The site context is also affected by the built-up area of Gort to the south, which presents a much-modified landscape that is not consistent with the remainder of the Class 3 landscape to the north. I acknowledge that the Gort River corridor is to the east of the site, but I consider that it is largely screened by dense vegetation and does not form a significant landscape presence in the context of the site. Accordingly, I would be of the opinion that the landscape sensitivity is more consistent with the Class 2 'moderate' sensitivity classification for the wider area to the south and east of the

appeal site. In that context I would concur with the conclusions of the EIAR insofar as landscape significance impacts would be acceptable and that the project would not be incongruous when considered in the broader context of the northern fringe of Gort.

8.11.8. Regarding the Visual Impact Assessment and the viewpoints selected in the Kinancha Road/Gort River area, I note that the project will not be visible from VP1 but would obviously create a significant visual impact further north along the Kinincha Road. Viewpoints VP4 and VP5 are taken from the eastern side of the Gort River and I would concur with the EIAR conclusions that the impact significance is greatest in this general area. I would acknowledge that the project would form a significant visual presence from these views and would increase the extent of urban development in this direction. However, I consider that these impacts are quite localised and will be significantly mitigated by the embedded design features and the additional berm/planting on site. I acknowledge the concerns raised by the Planning Authority and 3rd parties about the impact on the Gort River area and the existing/planned sections of the river walkway. I consider that views of the project from the existing walkway would largely be screened by existing riverside vegetation, but I acknowledge that it would create significant localised visual impacts, and particularly so if the planned section of the walkway is completed on the western side of the river to connect to Kinincha Road. However, the impact of the development must be considered in the full context of the existing and planned development for the area. In this regard I consider that the Kinancha Road to the west of the river valley area is largely dominated by the existing industrial development and utilities such as the WWTP and the municipal storage facility, and the Gort LAP land zoning would facilitate the further extension of industrial development as far as the appeal site. I also note that the current application before the Board for a Civic Amenity/Recycling centre along Kinincha Road (ABP Ref. 310203-21), which I consider to be consistent with the emerging and proposed pattern of utilitarian/industrial uses at this location.

8.11.9. The eastern side of the river valley includes the railway line and the Gort LAP land zoning again provides for additional industrial lands. Therefore, while I acknowledge that the scale of the proposed development would create a significant visual presence in the river valley from some viewpoints, I am satisfied that the impact will

be suitably localised and will be acceptable when viewed in its locational context adjoining the planned industrial expansion of Gort, and that suitable mitigation measures are included to appropriately accommodate the visual/landscape impacts at this location.

- 8.11.10. Further to the southeast along the N66 road corridor, I note that the impacts presented by VP2 and VP3 indicate that the project will either be obscured by existing vegetation/development or, where visible, will not be out of character with the transitional hinterland of Gort. The project will be suitably nestled into the landscape by the rising topography and trees to the rear, and I consider that the proposed colours and additional berm/planting will ensure that there will be no unacceptable visual impacts.
- 8.11.11. The town centre is largely enclosed by a perimeter of 3-storey terraces. Views from within the town centre area are severely restricted and I am satisfied that the project will not have any significant impacts from this location. I consider that worst-case scenario impacts for the town centre environs are appropriately demonstrated in VP8 (an elevated pedestrian overpass at Gort train station) and I do not consider that the project will result in any unacceptable visual impacts from this location.
- 8.11.12. Visual impacts from the west are demonstrated from VP7 (along the R458 road) and from the southwest by VP8 (an elevated overpass of the M18 Motorway). From the R458 road I am satisfied that the intervening higher ground levels will largely screen the proposed development. Despite the fact that the roofline of the tanks/reception building and the upper elements of the stacks would be visible, I do not consider that this would seriously detract from the visual amenities of the area. I note that no assessment has been carried out from the M18 Motorway or the Coole Lough area further west/north of VP7. However, having inspected the topography of the surrounding area further west/north, I am satisfied that visual impacts would not be any more significant than those presented in VP7 and I have no objection in this regard. I acknowledge the significant value of Coole Lough and the associated parklands, but I am satisfied that the project will not significantly impact on the amenity value of this resource due to the significant separation distance and the nature of intervening topography. I consider that the elevated view of the project above the M18 Motorway to the southwest (VP8) would not result in any significant

impacts and that the actual view from the lower motorway level would be further reduced.

8.11.13. I acknowledge the wide range of landscape features and tourist attractions that exist in the wider area and have been referenced in the 3rd party submissions received. However, I consider that the scope and extent of the landscape and visual impact assessment is sufficient, and I do not consider that the project would significantly detract from the value of the various features mentioned. I also note that the applicant confirms that the flare stack will be rarely used (<1% of year) and that there will be no visible plume emissions from the stacks, and, accordingly, I do not consider that significant visual impacts will occur from these features.

Conclusion

8.11.14. In conclusion, I am satisfied that the predicted landscape and visual impacts are acceptable having regard to localised area affected due to the low-lying nature of the site within an enclosed river valley and having regard to the location of the project adjoining the boundary of the planned industrial expansion of Gort. I have considered all the information on file, including submissions received and the information contained in the EIAR. Having regard to the above, I am satisfied that impacts predicted to arise in relation to landscape and visual amenity would be avoided, managed, and mitigated by the measures which form part of the proposed scheme and through suitable conditions. I am, therefore, satisfied that the proposed development would not have any unacceptable direct, indirect, or cumulative impacts in terms of landscape and visual amenity.

8.12. **Traffic & Transport**

8.12.1. Chapter 11 outlines the roads, traffic and transport impacts of the proposed development and is based on a desktop study (including traffic collisions), field work (traffic counts and geometric measurement) and traffic modelling (to account for future assessment years, daily/peak trips, and junction modelling). The EIAR states that all collisions recorded by the RSA occurred before the opening of the M18 Motorway and the reclassification of the former N18 road (100km/h) as the current R458. A traffic count was carried out over a 15-day period in May 2019 and growth factors have been applied in accordance with TII guidelines. The assessment has

been carried out on the basis of access to the site from the south via the M18 motorway junction 16 and the R458; that no deliveries will be made using tractor-hauled slurry type tankers; and that no feedstock deliveries will be routed through Gort town centre.

8.12.2. The EIAR predicts the following impacts for the construction phase:

- The new site access junction will operate with over 90% spare capacity during peak hour movements, with negligible queuing.
- Maintenance of the structure of the R458 in the vicinity of the new access will be incorporated and any impact will be fully mitigated.
- Traffic and activity related to road/junction construction activities will create significant noise for a short period and mitigation measures will be included.
- No measurable local air pollution impact.

8.12.3. For the operational phase, the following impacts are predicted in the EIAR:

- Trips are less than 5% of peak hour traffic movements on the R458, which is below the normal threshold levels for assessment and intervention.
- The R458/new access junction will operate with over 98% spare capacity, with negligible queuing.
- No road structure impact is predicted.
- Due to low traffic flow, particularly at night, no noise impact is predicted.
- Due to low traffic flow, no measurable local air pollution impact is predicted.

8.12.4. The following mitigation measures are proposed:

- Junction design to incorporate the Road Safety Audit recommendations.
- New junction and access road to be completed in advance of the biogas plant
- A Temporary Traffic Management Plan will be implemented
- Drivers will be informed of appropriate delivery routes
- Road construction activity to be limited to the period 07:00 to 1900
- Spread of dust and materials to be minimised.

8.12.5. The EIAR states that cumulative traffic and transport impacts have been accounted for and the proposed development is unlikely to result in capacity-related issues on the local road network. It concludes that the inclusion of mitigation measures will

ensure that no significant adverse impacts on roads and traffic-related environmental impacts are anticipated.

- 8.12.6. The Planning Authority decision has raised concerns about the safety of the proposed entrance, the traffic volumes generated by the development, conflict with existing traffic and junctions, and potential impacts on Gort town centre. In addition to these concerns, the 3rd party submissions have raised concerns about the scope and methodology of the traffic assessment, underestimation of the potential volumes, and the inadequate measures to appropriately control movements.
- 8.12.7. The predicted average daily operational phase two-way traffic movements are outlined in Table 11.4 of the EIAR and indicate a total of 51 two-way movements, 29 of which are HGV. The basis for these predictions is not clearly set out and I acknowledge that it has been challenged in the 3rd party observations. Ultimately, I note that the majority of HGV/Tanker movements relate to feedstock delivery (10 two-way movements) and whole digestate collection (7 two-way movements), which are discussed further in the following paragraphs.
- 8.12.8. In relation to feedstock delivery, it is proposed to deliver a maximum of 90,000 tonnes per annum and the EIAR states that the facility will operate 7 days a week. Therefore, the predicted movements would appear to be based on an average of 10 no. 25-tonne deliveries per day (i.e. 90,000 tonnes/365 days/10 vehicles), which I consider this to be a reasonable estimation. I accept that there may be fluctuations in quantities of silage feedstock deliveries on a seasonal basis, although silage need not necessarily be delivered during the cutting season. Furthermore, it should be noted that the predicted feedstock delivery movements are not based on silage only and other feedstock sources make up a significant proportion (40%). Accordingly, I consider it reasonable that deliveries could be reasonably balanced throughout the year and I have no objection to the figures predicted in the EIAR.
- 8.12.9. Regarding whole digestate collection by tanker, I would estimate that the daily (365 days) movements of 7 no. tankers (using a weight capacity of 44 tonnes) would equate to the collection of c. 112,000 tonnes of whole digestate per annum. I acknowledge that this is less than that indicated in the EIAR (150,000 tonnes per annum). However, I would accept that this is a maximum figure, and that some flexibility should apply to these estimations.

- 8.12.10. Having regard to the above, I consider that the predicted traffic movements set out in Table 11.4 of the EIAR are reasonable. Based on the EIAR traffic counts on the R458, the predicted operational trips equate to 4.2% of the AM peak hour traffic movements and 3.6% of the PM peak hour movements. The industry standard PICADY modelling software has been used to demonstrate that the junctions tested will operate with over 98% spare capacity and negligible queuing during the operational phase of the development. Therefore, while I acknowledge the inherent margins that apply to traffic modelling predictions, I consider that there is significant spare capacity in the road network, that any likely increase in estimated volumes could be satisfactorily accommodated, and that further assessment is not required in relation to Junction 16 of the M18 Motorway.
- 8.12.11. In addition to traffic volumes, significant concerns were raised by the Planning Authority and 3rd party observations regarding the control of the type of vehicles to be used in connection with the development and the routes that they may use, particularly as it relates to Gort town centre. I consider that the application outlines a clear intention that tractor-trailer arrangements will not be used for the delivery of feedstock or collection of digestate. I am satisfied that this is within the control of the prospective operator and that it could be appropriately conditioned as part of any permission.
- 8.12.12. Regarding the travel routes to and from the subject site, I again note that the EIAR sets out a clear intention that collection/delivery vehicles will be contracted to use the M18 Motorway and to avoid travelling through Gort town centre. This is not an uncommon arrangement for traffic associated with operations such as this and I am satisfied that it can be appropriately controlled by the operator. Furthermore, I consider that the identified feedstock sources and digestate destinations are unlikely to generate a desire to travel through the town centre. The vast majority of the FCZ to the west (The Burren) and east (Forest & Bogland area) is unsuitable for both feedstock supply and digestate application. The largest suitable area within the FCZ is to the north of the appeal site and will not necessitate travel through Gort. Similarly, I would consider that any suitable areas within the FCZ to the west of the M18 would most likely use the M18 rather than crossing it to travel through the town centre of Gort. Finally, regarding the southeast area of the FCZ, I consider that the likely route to and from the site would be via Ennis and the M18 rather than a more

direct north-south route over the Slieve Aughty Mountain range. Accordingly, I am satisfied that the source and destination routes associated with the proposed development will not generate a desire to travel through Gort town centre and that this can be further controlled by the operator via contractual arrangements.

8.12.13. Regarding the proposed entrance and safety of sightlines, the EIAR includes a Road Safety Audit (RSA) in Appendix 11.2. The RSA recommendations include the provision of clear visibility splays; the removal of a left-turn lane; alterations to the junction radii; provision of signage, lining and lighting; and the provision of safe access to the 'Kinincha Stables' via the proposed new access. In accordance with these recommendations, the proposed development incorporates visibility splays of 215m in each direction; does not include a left-turn lane into the site; and facilitates a new access to the 'Kinincha Stables' off the southern side of the proposed new junction.

8.12.14. The CDP 'DM Standard 20' outlines that sight distances required for Regional Roads with a design speed of 100kph are 160 metres. While the speed limit on the R458 is 80kph, I acknowledge that this was formerly a National Primary Road and the design speed could be taken to exceed 80kph and possibly up to 100kph. In any case, the proposed sight distances of 215m would significantly exceed the maximum requirements for Regional Roads (160m). Having inspected the site, I am satisfied that the horizontal and vertical alignment conditions for the proposed development are favourable and that acceptable sight distances (215m) can be achieved as proposed. I consider that any outstanding detailed design issues in relation to signage, lighting and road markings could be satisfactorily agreed by condition.

Conclusion

8.12.15. In conclusion, I consider that the application clearly outlines the existing traffic conditions at the site and reasonably predicts that the impact of the proposed development and wider traffic growth will not result in a cumulative adverse impact on traffic and transport. I am satisfied that the impacts that are predicted to arise in relation to traffic and transport are acceptable having regard to the nature and scale of the proposed development. I have considered all the information on file, including submissions received and the information contained in the EIAR. Having regard to the above, I am satisfied that impacts predicted to arise in relation to traffic and

transport would be avoided, managed, and mitigated by the measures which form part of the proposed scheme and through suitable conditions. I am, therefore, satisfied that the proposed development would not have any unacceptable direct, indirect, or cumulative impacts in terms of traffic and transport.

8.13. **Archaeology & Cultural Heritage**

8.13.1. Chapter 12 presents an assessment of cultural heritage (i.e. overall archaeological, architectural, historical and folklore heritage resources) within in a study area of 1km from the site, extending to 10km for visual impact assessment. It is based on a desktop survey of all recorded sites within the study area and a field inspection.

8.13.2. The EIAR outlines that:

- There are no recorded archaeological sites within the appeal site or Preservation Orders on sites within the study area, and that there are no monuments in state ownership/guardianship in the study area.
- Relevant cartographic and placename evidence has been reviewed, revealing a removed line of the townland boundary between Kinincha and Glenbrack.
- Previous excavations in the study area did uncover previously unrecorded archaeological features
- The site is outside the Gort Architectural Conservation Area. The closest Protected Structure is 800m to the south and the closest NIAH structure is 565m to the northeast.
- The site has been significantly modified by extensive groundworks and unrecorded archaeological remains are likely severely truncated or destroyed
- An overgrown dump of stones recorded during field inspection may represent the remnants of a small circular feature, but the feature was not recorded by the OS in the 1940's and may have been removed in the early 20th century.

8.13.3. Having regard to the above, the EIAR assesses the impact on the archaeological and cultural heritage resource as 'imperceptible'. It states that the construction phase has the potential to impact on unrecorded sub-surface archaeological remains and mitigation measures are proposed to include archaeological monitoring, supervision and recording of findings. There will be ongoing liaison with the National Monuments

Service throughout construction to ensure appropriate mitigation by avoidance, reduction and remediation. Following the implementation of these measures, EIR predicts no impacts or mitigation requirements at operational phase. No cumulative or residual impacts are predicted and the EIR concludes that there will be no significant adverse impacts arising from the proposed development.

8.13.4. I note that the submission to the Planning Authority from the Department of Culture, Heritage and the Gaeltacht advised that conditions requiring the submission of an archaeological impact assessment should be included in any grant of permission. I would concur that this would satisfactorily address any outstanding archaeological issues.

Conclusion

8.13.5. I am satisfied that the impacts that are predicted to arise in relation to archaeology and cultural heritage are acceptable having regard to the significant modifications that have already taken place on site and the absence of significant archaeological/heritage impacts on the surrounding area. I have considered all the information on file, including submissions received and the information contained in the EIR. Having regard to the above, I am satisfied that impacts predicted to arise in relation to archaeology and cultural heritage would be avoided, managed, and mitigated by the measures which form part of the proposed scheme and through suitable conditions. I am, therefore, satisfied that the proposed development would not have any unacceptable direct, indirect, or cumulative impacts in terms of archaeology and cultural heritage.

8.14. **Material Assets**

8.14.1. Chapter 13 of the EIR evaluates the impacts on material assets other than those already discussed in previous chapters. In summary, it assesses the identified assets as follows:

- Ownership and access – No severance of land or loss of rights of way or amenities. Landowner consent is included with the application.
- Agriculture – The location of the development on agricultural lands conforms with best practice and would be inappropriate within an urban environment.

- **Water Quality** – The proposals will support the agricultural sector by processing and converting raw organic wastes into certified organic fertiliser with known nutritional composition. Its application to lands will require effective and robust nutrient management planning.
- **Climate Change and GHGs** – Reduced GHG emission through biogas recovery (methane and carbon dioxide); replacement of fossil fuels with renewable gas (biomethane); utilisation of organic fertiliser to replace inorganic fertiliser which results in manufacturing GHG emissions; reduction in nitrous oxide emissions from land application of organic fertiliser.
- **Settlements** – Impacts on population and surrounding agricultural land have been previously outlined.
- **Services** – No process effluents will be discharged to the municipal sewer; SUDS will manage surface water; fire safety requirements have been incorporated and will be the subject of a Fire Certificate application; and a flood risk assessment has established that the development does not give rise to flood impacts.

8.14.2. The EIAR concludes that no significant impacts are likely given the mitigation measures that have been embedded in the design and implementation of the proposed development.

8.14.3. Given the location of the site outside the LAP boundary for Gort, I do not consider that the development of the site would significantly impact on impact on the availability of land as sufficient land has already been reserved within the LAP boundary to facilitate the future development of the town. The project will effectively result in the loss of agricultural/equine land and I am satisfied that there is an abundance of other suitable lands for these uses in the surrounding area.

8.14.4. I have previously outlined the impacts of the proposed development on the public water supply and wastewater treatment services. While I have identified a lack of information regarding water supply to the proposed development, I consider that the public water supply 'asset' would be suitably managed by the requirement to enter a connection agreement with Irish Water. I have also previously outlined that the project conforms with best practice policy relating to agriculture, waste management and energy production. The proposal will assist in the reduction of agricultural

pollution through the replacement of slurry-spreading and chemical fertilisers with organic fertiliser and will assist in the reduction of GHG emissions through the replacement of fossil fuels with renewable gas.

Conclusion

8.14.5. I am satisfied that the impacts that are predicted to arise in relation to material assets are acceptable and have been adequately addressed throughout various sections of the EIAR. I have considered all the information on file, including submissions received and the information contained in the EIAR. Having regard to the above, I am satisfied that impacts predicted to arise in relation to material assets would be avoided, managed, and mitigated by the measures which form part of the proposed scheme and through suitable conditions. I am, therefore, satisfied that the proposed development would not have any unacceptable direct, indirect, or cumulative impacts in terms of material assets.

8.15. **Interactions**

8.15.1. Chapter 14 of the EIAR addresses the interactions between different aspects of the environment that may be impacted as a result of the construction, operation, and decommissioning phases of the development. The potential interactions are set out in Table 14.1 of the EIAR. The main aspects for interaction are Population & Human Health (with Air, Odour, Climate, Noise & Vibration, Landscape, Biodiversity, Waters, Soils & Geology, and Traffic & Transport), Biodiversity (with Population & Human Health, Air, Odour, Climate, Noise & Vibration, Landscape, Waters, Soils & Geology, Traffic & Transport), Soils & Geology (with Population & Human Health, Air, Odour, Climate, Biodiversity, Waters, Material Assets, Traffic & Transport) and Traffic & Transport (with Population & Human Health, Air, Odour, Climate, Noise & Vibration, Landscape, and Biodiversity). The EIAR highlights that the potential interactions have been considered in the design of the proposed development and the inclusion of mitigation measures.

Conclusion

8.15.2. I am satisfied that the predicted interactions have been adequately identified and that potential impacts have been satisfactorily addressed and mitigated in relevant sections throughout the EIAR. I have considered all the information on file, including

submissions received and the information contained in the EIAR. Having regard to the above, I am satisfied that impacts relating to interactions would be avoided, managed, and mitigated by the measures which form part of the proposed scheme and through suitable conditions. I am, therefore, satisfied that the proposed development would not have any unacceptable direct, indirect, or cumulative interactions.

8.16. Reasoned Conclusion

8.16.1. Having regard to the examination of environmental information contained above, and in particular to the EIAR and supplementary information provided by the applicant, the reports from the planning authority and submissions by prescribed bodies and the appellant in the course of the application, it is considered that the main significant direct and indirect effects of the proposed development on the environment are, and will be mitigated, as follows:

- Direct positive employment impacts from the construction and operational stages, as well as indirect employment associated with haulage, services and other spin-off sectors.
- Potential risks associated with major accidents and/or disasters, which will be suitably mitigated through compliance with the relevant health and safety regulatory regimes and by limiting the quantities of dangerous substances present on site to levels below the relevant thresholds for the COMAH Regulations.
- Direct and indirect impacts on Biodiversity at the construction and operational stages due to the loss of habitat, disturbance of species due to noise and lighting, and impacts on water quality and air quality. These impacts will be addressed by embedded mitigation measures including a sealed effluent/water system and landscape/habitat creation. Construction stage impacts will be mitigated by the implementation of a Construction Environmental Management Plan including the establishment of a working corridor near treelines/hedgerows and an active approach to silt control. Operational stage impacts will be mitigated by the provision of suitable lighting and habitat creation, as well as future monitoring and remediation of habitat restoration proposals.

- Potential direct and indirect impacts on Hydrology and Hydrogeology at construction and operational stage as a result of construction materials/substance pollution, soil disturbance/removal, groundwater flood risk, and pollution from the operational processes and materials. These potential impacts will be mitigated through a Construction and Environmental Management Plan and appropriate operational measures for the bunding design, storage and containment of potential pollutants. Surface water management, including SuDS, attenuation, and interceptors, will be employed to ensure that all potential discharges to water will be adequately contained. Further ground investigations will inform the detailed foundation design for structures and ongoing Integrity test and monitoring will apply to all potential pollution sources. Any potential cumulative water impacts have been satisfactorily addressed by the mitigation measures included in the M18 Motorway project and by the recent upgrade to the capacity of the Gort Wastewater Treatment Plant.
- Direct air and odour impacts on sensitive receptors (including designated sites and biodiversity) and populations in the site vicinity as a result of emissions during the construction and operation stages. Construction stage impacts will be suitably distanced from sensitive receptors and will be mitigated by dust suppression measures. Operational air and odour emissions will be appropriately treated (including containment, CHP combustion, and odour abatement) and dispersed at height to comply with the Air Quality Standards Regulations 2011 (S.I. No. 180 of 2011) and stringent odour target values.
- Positive indirect impacts on Climate due to a reduction in carbon dioxide emissions through the production of biogas as a replacement of fossil energy sources.
- Direct Noise impacts during the construction phase which will be suitably mitigated through compliance with construction noise standards and a Construction Environmental Management Plan.
- Landscape and Visual impacts due to the scale of the project, which will be mitigated by embedded design measures including the proposed layout, form and colours, as well as the creation of additional berm screening and landscape planting.

- Direct and indirect traffic and transport impacts which will be mitigated by the design of the proposed entrance and the control of haulage vehicle type and routes.

8.16.2. Having regard to the above, I am satisfied that the likely significant environmental effects arising from the proposed development have been identified, described and assessed, and I consider that, subject to the mitigation measures proposed, the proposed project would not have any unacceptable, direct, indirect or cumulative effects on the environment.

9.0 **Appropriate Assessment**

9.1. **Introduction**

The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U and section 177V of the Planning and Development Act 2000 (as amended) are considered fully in this section. The areas addressed in this section are as follows:

- Compliance with Article 6(3) of the EU Habitats Directive
- Screening the need for appropriate assessment
- The Natura Impact Statement and associated documents
- Appropriate Assessment of implications of the proposed development on the integrity of relevant European sites.

9.2. **Compliance with Article 6(3) of the Habitats Directive**

9.2.1. The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal will not adversely affect the integrity of the European site before consent can be given.

9.2.2. The proposed development is not directly connected to or necessary to the management of any European site and therefore is subject to the provisions of Article 6(3).

9.3. **Screening the need for Appropriate Assessment**

Background

9.3.1. The applicant has submitted a Natura Impact Statement (NIS), including an appended 'Screening for Appropriate Assessment', as part of the planning application. It has been prepared by ecologists Hazel Doyle (MSc. BSc. CIEEM) and Will Woodrow of Woodrow Sustainable Solutions Ltd.

9.3.2. The AA Screening Report was prepared in line with current best practice guidance and identifies European Sites with potential pathways to the proposed development in order to establish the zone of influence of the proposal. It concludes that there is potential for likely significant effects due to hydrological connections (surface water and/or groundwater) to European Sites sensitive to water quality impacts at construction stage (due to sedimentation and hydrocarbon input) and operational stage (due to nutrient enrichment and eutrophication as a result of the proposed connection to the Gort WWTP). It also states that there is potential for air quality impact such as nitrogen deposition on sensitive qualifying interests of the Coole-Garryland Complex SAC. The European Sites with potential likely significant effects are included as follows:

- Coole-Garryland Complex SAC (Site Code: 000252)
- Carowbaun, Newhall and Ballylea Turloughs SAC (Site Code: 002293)
- East Burren SAC (Site Code: 001926)
- Lough Coy SAC (Site Code: 002117)
- Caherglassaun Turlough SAC (Site Code: 000238)
- Kiltartan Cave (Coole) SAC (Site Code: 000286)

9.3.3. Having reviewed the documents and submissions on file, I am satisfied that the information allows for a complete examination and identification of all the aspects of the project that could have an effect, alone, or in combination with other plans and projects on European sites.

9.3.4. I note that concerns have been raised that the scope of the NIS does not consider the entire project, and in particular excludes the potential impacts associated with the provision of feedstock and the disposal of digestate, I have previously addressed this matter in section 7.3 of this report, and I have concluded that it is not feasible or practical to assess the impacts of feedstock supply and digestate land-spreading over a multiplicity of sources/destinations, particularly under the circumstances when these activities are already occurring and will be suitably controlled by good agricultural practice and legislation. Accordingly, I am satisfied that the cumulative impacts of these activities do not form part of the Appropriate Assessment of this project.

Screening for Appropriate Assessment – Test of likely significant effects

9.3.5. The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site in view of the conservation objectives of those sites.

9.3.6. A detailed description of the development is set out in Chapter 2 of the EIAR and section 2 of this report. In summary, the proposed development involves the development of a Biogas Plant involving the use of anaerobic digestion technology to produce renewable energy and fertiliser. The application site extends to 10.1 hectares and is described as consisting mainly of varied calcareous grassland in use as agricultural grazing and equine-related purposes. Taking account of the characteristics of the proposed development in terms of its location and the scale of works, the main issues considered for examination in terms of implications for likely significant effects on European sites are water quality impacts, air quality impacts, lighting impacts, and habitat loss/fragmentation

Submissions and Observations

9.3.7. One of the Planning Authority's reasons for refusal outlined that, based on the precautionary principle, significant adverse effects on the integrity and conservation objectives of the European sites in the vicinity cannot be ruled out, in particular, the Coole Garryland Complex SAC, the Coole Garryland SPA, Lough Cutra SAC and Kiltartan Cave SAC. This reason for refusal was based on the following concerns:

- Inadequate scope of assessment for bats and fragmentation/loss of habitat as a result of hedgerow removal,
- The direct impact of air emissions (most notably Nitrogen) on the Gort River and indirect impacts on connected European sites (Coole-Garryland SAC, Coole-Garryland SPA)
- Pollutants to water quality, and
- The exclusion of a number of European Sites.

9.3.8. The Planning Authority received a submission from the DCHG which questioned the nature and extent of the application reference to the completion of further biological surveys. It also questioned the EIAR assumptions regarding the location of a lesser horseshoe bat roost and raised concerns that the removal of 520m of hedgerow may have effects on commuting lesser horseshoe bats. It recommended that a wider study should assess how lesser horseshoe bats are using the landscape and accessing their summer and winter sites, as well as fragmentation and wider cumulative habitat loss and include Kiltartan Cave SAC and Lough Cutra SAC.

9.3.9. The 3rd party observations on the appeal also raised issues relevant to European Sites, which can be summarised as follows:

- Increased noxious gases and inadequate dispersion has the potential to impact on the foraging habitat of lesser horseshoe bats, the Gort River, Coole-Garryland SPA and Caherglassaun Turlough SAC.
- Maximum nitrogen deposition rates have been calculated in isolation, with no assessment of cumulative impacts from other sources.
- The NIS has not addressed the impacts of digestate disposal, including locations, transport and flooding implications.
- Galway Bay Natura 2000 sites, Lough Cutra SAC, Peterswell Turlough SAC and Termon Lough SAC have been excluded from the Appropriate Assessment and other SACs have not been assessed for the impacts of digestate disposal.
- The unpredictability of flood events means that significant adverse impacts on integrity/conservation objectives of European sites cannot be excluded.

- Additional loading on the wastewater treatment plant has the potential to impact a number of Natura 2000 sites via the Gort River
- The connection of site drainage to an infiltration system is in direct contravention of the NIS mitigation measures and presents a very high risk of pollution of groundwater pathways to the Coole-Garryland SAC.
- Potential risk to the karst aquifer and SAC cannot be screened out until ground investigation and mitigations measured have been detailed in full. In the absence of these mitigation measures the NIS is invalid.
- Lighting impacts on lesser horseshoe bats during construction and operation.

European Sites

9.3.10. The development site is not located in or immediately adjacent to a European site. Table 1 (of Appendix 1) of the applicant's Screening for Appropriate Assessment presents a 'Screening Matrix of all Natura 2000 Sites in the vicinity of the Proposed Development'. It focuses on the potential for pathways to establish whether or not each site is within the potential zone of influence of the proposed development and concludes that the following sites are not (for the reasons outlined):

- Ballinduff Turlough SAC (No groundwater or surface water connectivity)
- Lough Cutra SAC (Distance in excess of 2.5km from qualifying bat roosts)
- Cahermore Turlough SAC (No groundwater or surface water connectivity)
- Peterswell Turlough SAC (No groundwater or surface water connectivity)
- Drummin Wood SAC (No surface water connection and QI not groundwater dependent)
- Gortacarnaun Wood SAC (No surface water connection and QI not groundwater dependent)
- Ardahan Grassland SAC (No groundwater or surface water connectivity)
- Cregg House Stables, Crusheen SAC (No hydrological connectivity impact and the separation distance will prevent foraging habitat impacts on QI species)
- Moyree River System SAC (No groundwater or surface water connectivity)
- Lough Fingall Complex SAC (No pathways exist)
- Castletaylor Complex SAC (No pathways exist)

- Kiltiernan Turlough SAC (No pathways exist)
- Ballyogan Lough SAC (No groundwater or surface water connectivity)

9.3.11. I note that the Planning Authority and 3rd party observers have raised concerns about potential impacts on some of the above sites (i.e. Lough Cutra SAC and Peterswell Turlough SAC). In this regard I note that the only QI for Lough Cutra SAC is the Lesser Horseshoe Bat and the Conservation Objectives for the site would indicate that impacts are unlikely outside 2.5km from qualifying roosts. The proposed development is c. 6km from the roost location and, accordingly, I am satisfied that significant effects on the SAC QI are not likely. Peterswell Turlough SAC is located c. 5.7km upstream of the appeal site in a different groundwater body, and accordingly, I am satisfied that there will be no likely significant effects as a result of the proposed development. I have also considered the other sites listed in the preceding paragraph and I am satisfied that the applicant has appropriately excluded these sites from the potential zone of influence based on *inter alia* the absence of surface water and/or groundwater pathways; the separation distance involved; and the nature/sensitivity of the QIs.

9.3.12. For the remaining Natura 2000 sites included in the applicant's 'Screening Matrix', it should be noted that there are 2 entries for some sites (i.e. Coole-Garryland SPA, Lough Cultra SPA, Slieve Aughty Mountains SPA, Inner Galway Bay SPA, Rahasane Lough SPA, and Glendree Bog SAC) and that the conclusions regarding their inclusion within the zone of influence and/or potential effects differ in some cases. However, for each of the sites included in the table below, the applicant has indicated in some way that they are within the zone of influence and, accordingly, I have included them for further screening in the interests of caution and completeness. A summary of European Sites within the potential zone of influence and the applicant's assessment of potential effects and is presented in the table below. I have added links to conservation objectives for each site, which I have taken into consideration in this Appropriate Assessment section.

European Site (Site Code)	Qualifying Interests (QIs) *Denotes a priority habitat	Distance	Connections (source, pathway, receptor) and effects
Coole – Garryland Complex SAC (000252)	Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation, Turloughs*, Rivers with muddy banks with Chenopodium rubri p.p. and Bidenton p.p. vegetation, Juniperus communis formations on heaths or calcareous grasslands, Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco Brometalia) (* important orchid sites)*, Limestone pavements*, Taxus baccata woods of the British Isles* Conservation Objectives: https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000252.pdf	900m	Potential for surface water and groundwater quality impacts on water dependent QIs during construction and operation. Potential air quality impacts on QI habitats through nitrogen deposition.
Carowbaun, Newhall and Ballylea Turloughs SAC (002293)	Turloughs Conservation Objectives: https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002293.pdf	1.35km	Groundwater connectivity, proximity and poorly productive bedrock raises potential for impacts at construction and operation stage.
Coole- Garryland SPA (Site Code: 004107)	Whooper Swan Conservation Objectives: https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004107.pdf	1.35km	Surface water and groundwater connections may impact on foraging habitat. Potential for noise and visual disturbance, but unlikely that significant numbers would use the wetland habitat around the appeal site due to proximity and disturbance from surrounding urban development and traffic. Therefore, there will be no likely significant effects on this SPA.
Kiltartan Cave (Coole) SAC (000286)	Caves not open to the public, Lesser Horseshoe Bat. Conservation Objectives: https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000286.pdf	1.9km	Potential use of the site by Lesser Horseshoe Bat for foraging.
Eastern Burren	Hard oligo-mesotrophic waters with benthic vegetation of Chara spp, Turloughs, Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation, Alpine and Boreal heaths, Juniperus communis	3.5km	Groundwater connectivity, proximity and poorly productive bedrock raises potential for impacts on

European Site (Site Code)	Qualifying Interests (QIs) *Denotes a priority habitat	Distance	Connections (source, pathway, receptor) and effects
Complex SAC (001926)	<p>formations on heaths or calcareous grasslands, Calaminarian grasslands of the <i>Violetalia calaminariae</i>, Semi-natural dry grasslands and scrubland facies on calcareous substrates (<i>Festuco-Brometalia</i>) (* important orchid sites), Lowland hay meadows (<i>Alopecurus pratensis</i>, <i>Sanguisorba officinalis</i>), Calcareous fens with <i>Cladium mariscus</i> and species of the <i>Caricion davallianae</i>, Petrifying springs with tufa formation (<i>Cratoneurion</i>), Alkaline fens, Limestone pavements, Caves not open to the public, Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i>, <i>Alnion incanae</i>, <i>Salicion albae</i>), <i>Euphydryas aurinia</i> (Marsh Fritillary), Lesser Horseshoe Bat, Otter</p> <p>Conservation Objectives: https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO001926.pdf</p>		turloughs, petrifying springs and fens at construction and operation stage.
Lough Coy SAC (002117)	<p>Turloughs*</p> <p>Conservation Objectives: https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002117.pdf</p>	3.75km	Groundwater connectivity, proximity and poorly productive bedrock raises potential for impacts on turloughs, petrifying springs and fens at construction and operation stage.
Lough Cutra SPA (004056)	<p>Cormorant</p> <p>Conservation Objectives: https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004056.pdf</p>	3.9km	No pathways or suitable breeding/feeding habitat in the vicinity of the site and distance from the SPA is too great for potential disturbance impacts.
Slieve Aughty Mountains SPA (004168)	<p>Hen Harrier</p> <p>Merlin</p> <p>Conservation Objectives: https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004168.pdf</p>	4km	No ecological connection exists and there is no suitable breeding or foraging habitat on the appeal site.
Caherglassaun Turlough SAC (Site Code: 000238)	<p>Turloughs*, Rivers with muddy banks with <i>Chenopodium rubri</i> p.p. and <i>Bidention</i> p.p. vegetation, Lesser Horseshoe Bat.</p> <p>Conservation Objectives: https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000238.pdf</p>	4.4km	Location within the same groundwater body raises potential for impacts during construction and operation. Foraging habitat for Lesser

European Site (Site Code)	Qualifying Interests (QIs) *Denotes a priority habitat	Distance	Connections (source, pathway, receptor) and effects
			Horseshoe Bat may also be affected.
Termon Lough SAC (Site Code: 001321)	Turloughs* Conservation Objectives: https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO001321.pdf	4.6km	Groundwater connectivity and proximity raises potential for groundwater impacts. However, the mitigation measure proposed for sites in closer proximity will mitigate against similar effects to this site.
Galway Bay Complex SAC (000268)	Mudflats and sandflats not covered by seawater at low tide, Coastal lagoons, Large shallow inlets and bays, Reefs, Perennial vegetation of stony banks, Vegetated sea cliffs of the Atlantic and Baltic coasts, Salicornia and other annuals colonising mud and sand, Atlantic salt meadows, Mediterranean salt meadows, Turloughs, Juniperus communis formations on heaths or calcareous grasslands, Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (* important orchid sites), Calcareous fens with Cladium mariscus and species of the Caricion davalliana, Alkaline fens, Limestone pavements, Otter, Harbour Seal. Conservation Objectives: https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000268.pdf	10.2km	The SAC is located within a different groundwater body. Due to the large separation distance and lack of a direct surface water connection, there will be no likely significant effects on surface water QI habitats.
Sonnagh Bog SAC (001913)	Blanket Bogs (* if active bog) Conservation Objectives: https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO001913.pdf	10.85km	Within the same groundwater body but there will be no likely significant effects due to the large distance between the SAC and the appeal site. Groundwater mitigation measures for closer sites would prevent any effects to this SAC.
Rahasane Turlough SAC (000322)	Turloughs Conservation Objectives: https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000322.pdf	14.1km	Within the same groundwater body but there will be no likely significant effects due to the large distance between the SAC and the appeal site.

European Site (Site Code)	Qualifying Interests (QIs) *Denotes a priority habitat	Distance	Connections (source, pathway, receptor) and effects
			Groundwater mitigation measures for closer sites would prevent any effects to this SAC.
Rahasane Turlough SPA (004089)	Whooper Swan Wigeon, Golden Plover, Black-tailed Godwit, Greenland White-fronted Goose, Wetland and Waterbirds Conservation Objectives: https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004089.pdf	14.3km	No species recorded during winter bird surveys and unlikely that significant numbers would use the wetland habitat around the appeal site due to proximity and disturbance from surrounding urban development. However, there is potential that the QIs could be affected by groundwater impacts.
Glendree Bog SAC (001912)	Blanket Bogs (*if active bog) Conservation Objectives: https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO001912.pdf	14.5km	Within the same groundwater body and there is potential for airborne nitrogen deposition affecting the blanket bog habitat. However, due to the large distance between the SAC and the appeal site there will be no likely significant effects. Groundwater mitigation measures for closer sites would prevent any effects to this SAC.
Inner Galway Bay SPA (004031)	Black-throated Diver, Great Northern Diver, Cormorant, Grey Heron, Light-bellied Brent Goose, Wigeon, Teal, Red-breasted Merganser, Ringed Plover, Golden Plover, Lapwing, Dunlin, Bar-tailed Godwit, Curlew, Redshank, Turnstone, Black-headed Gull, Common Gull, Sandwich Tern, Common Tern, Wetland and Waterbirds Conservation Objectives: https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004031.pdf	10.2km	Although curlew, lapwing, teal, grey-heron, and black-headed gull were recorded during winter bird surveys, it is unlikely that significant numbers would utilise wetland habitat around the appeal site due to the distance and disturbance from surrounding urban development. Therefore, there will be

European Site (Site Code)	Qualifying Interests (QIs) *Denotes a priority habitat	Distance	Connections (source, pathway, receptor) and effects
			no likely significant effects.

Identification of likely effects

9.3.13. In conclusion, the applicant's screening assessment states that there will be no direct loss of SAC or SPA habitat. However, it highlights the location of the site within a karst area/karstic groundwater body and adjacent to a watercourse (Gort River), and the proposal to connect to Gort WWTP and increase loading on a plant that is currently overcapacity and exceeding emission limit values. Due to hydrological connections to European Sites sensitive to water quality; the proposed WWTP loading and its hydrological connection to Coole-Garryland Complex SAC; and the proximity and sensitivity of the development to Coole-Garryland SAC; it concludes that an Appropriate Assessment is required due to the potential for impacts on the following Natura 2000 sites and their QIs:

- Coole-Garryland Complex SAC
- Carrowbaun, Newhall and Ballylea Turloughs SAC
- Eastern Burren SAC
- Lough Coy SAC
- Caherglassaun Turlough SAC
- Kiltartan Cave (Coole) SAC

9.3.14. The applicant's screening assessment conclusion identifies the following potential impacts in the absence of mitigation:

Water quality impacts (on dependent QIs and sensitive habitats listed above)

- Surface and/or groundwater pollution (hydrocarbon and chemical) and sedimentation/siltation from the construction phase
- Nutrient enrichment/eutrophication and the presence of chemicals from the operational phase

Air quality impacts (on all QIs of the Coole-Garryland SAC)

- Nitrogen deposition during the operation of the biogas plant.

Sites that were 'screened out'

- 9.3.15. I note that the applicant has 'screened out' a number of sites within the potential zone of influence. With regard to the Galway Bay SAC/SPA sites, which are at a significant separation distance (c.10km) and have no evident hydrological connections to the appeal site, together with the disturbance associated with the proximity of the appeal site to the built-up area that would most likely deter the presence of any QI species, I am satisfied that the proposed development is not likely to have significant effects on the QI habitats and species for these European sites. Similarly, and notwithstanding the DCHG submission to the Planning Authority regarding Lough Cutra SPA, I consider that the Lough Cutra SPA and Slieve Aughty Mountains SPA sites are significantly distanced and disconnected from the appeal site, that there is no suitable breeding/foraging habitat in the vicinity of the appeal site for QI species, and that the proposed development is not likely to have significant effects on the QI habitats and species for these European sites.
- 9.3.16. I consider that the applicant's AA screening assessment lacks some clarity in relation to the Coole-Garryland SPA. Referring again to the double entries for some sites, I note that Table 1 (page 83) identifies potential hydrological impacts on the foraging habitat of Whooper Swan for the Coole-Garryland SPA, which is again reiterated in pages 97-98. And while page 98 concludes that significant numbers of Whooper Swan are unlikely to use wetland habitat in the site vicinity for ex-situ foraging, there is no conclusion in relation to the potential for hydrological impacts on the SPA itself, downstream from the project. On the basis of this potential, I do not consider that the Cool-Garryland SPA can be 'screened-out'.
- 9.3.17. The applicant's screening assessment also refers to potential groundwater impacts on Termon Lough SAC, Sonnagh Bog SAC, Rahasane Turlough SAC and Glendree Bog SAC, but concludes that significant effects are not likely due to a combination of large separation distances (except in the case of Termon Lough SAC) and the mitigation measures for other European Sites closer to the proposed development. However, mitigation measures cannot be relied upon in the screening exercise and therefore the Board must establish that these sites can be 'screened out' without considering mitigation measures. In this regard, I note that the Sonnagh Bog SAC, Rahasane Turlough SAC and Glendree Bog SAC are in excess of 10km from the appeal site, that Sonnagh Bog SAC is marginally located within the groundwater

body of the appeal site and is significantly elevated (c. 200m+), and that Rahasane Turlough SAC and Glendree Bog SAC are within different groundwater bodies to the appeal site. Given the significant disconnect between these sites and the proposed development, I am satisfied that significant effects are not likely. However, Termon Lough SAC is closer to the proposed development (c.4.5km) and is partially within the same groundwater body. I do not consider that this site can be 'screened out' on the basis of the mitigation measures for other closer sites and, accordingly, Termon Lough SAC should be included in the Appropriate Assessment.

9.3.18. Finally, I note that the applicant's assessment identifies the potential for groundwater impacts on the QIs of Rahasane Turlough SPA but does not exclude the potential for likely significant effects. However, I note that this SPA is located at a significant distance (c. 14km) and is within a different groundwater body to the appeal site. Accordingly, I am satisfied that there will be no likely significant effects on this SPA.

9.3.19. Having regard to the above, I would concur with the applicant's AA Screening conclusion in relation to the potentially significant effects as a result of water quality and air quality for the following sites:

- Coole-Garryland SAC (Site Code: 000252)
- Carrowbaun, Newhall and Ballylea Turloughs SAC (Site Code: 002293)
- Eastern Burren SAC (Site Code: 001926)
- Lough Coy SAC (Site Code: 002117)
- Caherglassaun Turlough SAC (Site Code: 000238)

9.3.20. Furthermore, although not specifically stated in the applicant's screening conclusion, I am also satisfied that the screening report identified the potential for the loss of foraging habitat for the Lesser Horseshoe Bat and consequent significant effects on Kiltartan Cave (Coole) SAC (Site Code 000286). The applicant's NIS (page 8) also highlights that likely significant effects relating to lighting cannot be ruled out on this site/QI.

9.3.21. However, as previously outlined, and contrary to the applicant's AA Screening conclusion, I consider that the potential for significant effects on Termon Lough SAC and Coole-Garryland SPA cannot be excluded at this stage.

Mitigation Measures

9.3.22. As previously discussed, the applicant's AA screening exercise has incorrectly considered mitigation measures in 'screening out' likely significant effects on Termon Lough SAC, Sonnagh Bog SAC, Rahasane Turlough SAC and Glendree Bog SAC. For the reasons previously discussed, I am satisfied that the potential for likely significant effects can be excluded without mitigation measures for Sonnagh Bog SAC, Rahasane Turlough SAC and Glendree Bog SAC. However, I do not consider that likely significant effects can be excluded for Termon Lough SAC in the absence of mitigation relating to groundwater impacts. In this screening exercise, I have not relied upon any measures designed or intended to avoid or reduce any harmful effects of the project on European Sites.

AA Screening Conclusion

9.3.23. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually, or in combination with other plans or projects, could have a significant effect on 8 European Sites in view of the Conservation Objectives of those sites and Appropriate Assessment is therefore required for the following sites:

- Lough Coole-Garryland SAC (Site Code: 000252)
- Carrowbaun, Newhall and Ballylea Turloughs SAC (Site Code: 002293)
- Eastern Burren SAC (Site Code: 001926)
- Lough Coy SAC (Site Code: 002117)
- Caherglassaun Turlough SAC (Site Code: 000238)
- Kiltartan Cave (Coole) SAC (Site Code: 000286)
- Termon Lough SAC (Site Code: 001321)
- Coole-Garryland SPA (Site Code: 004107)

9.3.24. The possibility of significant effects on other European sites has been excluded on the basis of objective information. The following European sites have been screened out for the need for appropriate assessment:

- Ballinduff Turlough SAC
- Lough Cutra SAC
- Cahermore Turlough SAC
- Peterswell Turlough SAC
- Drummin Wood SAC
- Gortacarnaun Wood SAC
- Ardrahan Grassland SAC
- Cregg House Stables, Crusheen SAC
- Moyree River System SAC
- Lough Fingall Complex SAC
- Castletaylor Complex SAC
- Kiltiernan Turlough SAC
- Ballyogan Lough SAC
- Galway Bay Complex SAC
- Inner Galway Bay SPA
- Lough Cultra SPA
- Slieve Aughty Mountains SPA
- Sonnagh Bog SAC
- Rahasane Turlough SAC
- Rahasane Turlough SPA
- Glendree Bog SAC

9.4. **The Natura Impact Statement and associated documents**

9.4.1. The application included a NIS which examines the potential effects of the proposed development on the integrity of the following European Sites:

- Lough Coole-Garryland SAC (Site Code: 000252)
- Carrowbaun, Newhall and Ballylea Turloughs SAC (Site Code: 002293)
- Eastern Burren SAC (Site Code: 001926)
- Lough Coy SAC (Site Code: 002117)
- Caherglassaun Turlough SAC (Site Code: 000238)

- Kiltartan Cave (Coole) SAC (Site Code: 000286)

9.4.2. The NIS outlines a description of each of the Natura 2000 sites, including the QIs and its extent and character, the conservation objectives, and the various threats, pressures and activities impacting on each site. It notes that site-specific conservation objectives were not available for all sites at the time of writing and refers to both generic objectives and detailed conservation objectives for other similar sites/QIs. I note that site-specific conservation objectives have since been produced for Carrowbaun, Newhall and Ballylea Turlough SAC⁵, Lough Coy SAC⁶, and Caherglassaun Turlough SAC⁷. I will have regard to these objectives in my assessment, as well as the site-specific objectives for the Kiltartan Cave (Coole) SAC and the generic conservation objectives that apply to the other sites.

9.4.3. The applicant's NIS was prepared in line with current best practice and includes an assessment of the direct and indirect effects on habitats and species, as well as an assessment of the cumulative impact of other plans and projects. It concludes that if the mitigation and guidance referred to in the NIS is adhered to in full, then in view of best scientific knowledge and the conservation objectives of the Natura 200 sites, the proposed development will not have any adverse effects on the integrity of any Natura 2000 sites, either alone or in-combination with other plans and projects.

9.4.4. Having reviewed the documents and submissions included in the appeal file, I am satisfied that the information allows for a complete assessment of any adverse effects of the development alone, or in combination with other plans and projects, on the conservation objectives of the relevant European Sites.

9.5. **Appropriate Assessment of implications of the proposed development on the integrity of each European Site**

9.5.1. The following is a summary of the objective scientific assessment of the implications of the project on the qualifying interest/special conservation interest features of the European Sites using the best scientific knowledge in the field. All aspects of the

⁵ https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002293.pdf

⁶ https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002117.pdf

⁷ https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000238.pdf

project which could result in significant effects are assessed and mitigation measures are considered and assessed.

9.5.2. The main aspects of the proposed development that could adversely affect the conservation objectives of the site include:

- Water Quality: Potential pollution, eutrophication, sedimentation/siltation of surface waters and groundwater.
- Air Quality: Emissions may impact on QI species/habitats.
- Habitat loss/fragmentation: Due to the loss of hedgerows and in-combination impacts with the M18 Motorway.
- Disturbance: Due to the external lighting associated with the development.

Air quality Impacts on Coole-Garryland Complex SAC and Coole-Garryland SPA

9.5.3. The NIS acknowledges the production of industrial emissions at operational stage and the potential for nitrogen deposition to impact on QIs. High resolution output modelling analysis of likely nitrogen depositions has been undertaken and outlines that the likely levels at the nearest point of the SAC would be 0.4 kg/N/ha/yr, with levels falling off to 0.2 or less within the SAC. The NIS also highlights that baseline monitoring shows that existing concentrations for NO, NO₂ and NO_x are less than 25% of the annual limit for protection of vegetation; that monitoring at Coole-Garryland SAC showed the lowest NO_x concentration at 6.6% of the annual limit for protection of vegetation; and that the EPA Air Quality Index for Health shows that the air quality is good in this area.

9.5.4. The NIS outlines various studies in relation to the effects of nitrogen deposition on the QIs and, where available and/or relevant, provides published critical load information for similar habitats, which generally range from 10 to 15 kg/ha/yr, although the critical load for 'limestone pavements' is stated to be 5-10 kg/ha/yr. It outlines that the relevant QIs are likely to experience a worst-case nitrogen deposition level of 0.2kg/ha/yr (reducing with distance), which would be equivalent to 1.98% of the total background level for the area and generally less than 2% of applicable critical loads. In the case of 'limestone pavements', the deposition level would be slightly higher at 4% of the critical load.

- 9.5.5. In addition to the direct pathway for emissions by air, I consider that air emissions also have an indirect pathway via the Gort River hydrological connection. However, I note from Table 8.11 of the EIAR that even the maximum predicted environmental concentrations for any of the potential air pollutants in the vicinity of the site, including the Gort River, would not exceed 40.3% of the limit value. Given the limited air emission concentrations present, together with the significant assimilative capacity of waters between the appeal site and Coole Lough, I do not consider that any air emissions are likely to have significant impacts on these European Sites via indirect hydrological connections.
- 9.5.6. Having regard to the baseline air quality, sensitivity level of the habitat, separation distance and fall-off levels of deposited nitrogen, I would concur with the NIS conclusion that there is no likely potential for impact on the integrity of the Coole-Garryland SAC as a result of air-quality impacts.
- 9.5.7. Although the NIS does not specifically address Coole-Garryland SPA, I am satisfied that the same conclusions can be applied. There are no site-specific conservation objectives for this SPA, but I note that the conservation objectives for Whooper Swan in other SPAs (e.g. River Shannon and River Fergus Estuaries SPA, Site Code: 004007) relate to population trend and distribution. Having regard to the separation distance between the appeal site and the SPA; the limited effects of air emissions as outlined above; and the unlikely scenario of ex-situ effects in the vicinity of the appeal site, I am satisfied that the proposed development will not adversely impact on the population trends or distribution of the Whooper Swan species or the integrity of the Coole-Garryland SPA as a result of air quality.

Surface water quality impacts on Coole-Garryland Complex SAC and Coole-Garryland SPA

- 9.5.8. It is proposed to connect foul discharges to the Gort WWTP, which discharges to the Gort River and is hydrologically connected to the SAC and SPA. The NIS states that, at the time of writing, upgrades to the Gort WWTP were due to be finished by October 2019 and would ensure that the proposal for foul discharges from the development would not result in nutrient enrichment or eutrophication. As previously outlined in section 8.8 of this report, the final effluent of the Gort WWTP is compliant

with Emission Limit Values and the capacity of the plant is not predicted to be exceeded within the next 3 years.

- 9.5.9. The NIS states that the development has the potential for sediments to enter the Gort River and undermine conservation objectives relating to water quality transparency and turbidity for 'Natural Eutrophic Lakes with Magnopotamion or Hydrocharition-type vegetation', and for the emission of nitrogen from the plant at operational stage to impact on soil type attributes for 'Turlough's and 'Rivers with muddy banks with Chenopodion rubric p.p. and Bidention p.p. vegetation'. It states that suitable mitigation will be required to ensure that there is no potential for such surface water pollution events.
- 9.5.10. I have previously addressed the potential for impacts on surface water quality at construction and operational stage in section 8.8 of this report. I am satisfied that the potential impacts will be mitigated through a Construction and Environmental Management Plan and appropriate operational measures for the bunding design, storage and containment of potential pollutants. Surface water management, including SuDS, attenuation, and interceptors, will also be employed to ensure that all potential discharges to surface waters will be adequately managed.
- 9.5.11. Regarding potential cumulative impacts, I note the current application before the Board for a local authority development consisting of a Civic Amenity site/Recycling centre on a site located c. 300m to the south of the appeal site (ABP Ref. 310203-21 refers). This application has addressed the potential for impacts on surface water quality due to deleterious material run-off during construction and operation stages. The NIS submitted with the application includes measures to address flood risk; to contain run-off; for the treatment of surface water prior to discharge to the wastewater treatment plant; for the bunding of oils and paints etc; and for the containment of material through construction management practices. I am satisfied that the potential water quality impacts associated with the local authority proposal will be appropriately mitigated and, accordingly, there will be no cumulative effects associated with the proposed biogas project. The potential cumulative surface water impacts with the M18 Motorway project have been satisfactorily addressed by the mitigation measures included in that project. The potential cumulative surface water impacts associated with wastewater discharges to the Gort River have been

satisfactorily addressed through the recent upgrade to the capacity of the Gort Wastewater Treatment Plant.

- 9.5.12. Although the Coole-Garryland SPA has not been included in the NIS, I am satisfied that surface water quality impacts on the foraging habitat of Whooper Swan is unlikely to be affected as it is a terrestrial feeding species. The site-specific conservation objectives for Whooper Swan in other SPAs relate to population trend and distribution. Having regard to the separation distance between the appeal site and the SPA; the limited effects on water quality as outlined above; and the unlikely scenario of ex-situ effects in the vicinity of the appeal site, I am satisfied that the proposed development will not adversely impact on the population trends or distribution of the Whooper Swan species or the integrity of the Coole-Garryland SPA.
- 9.5.13. Having regard to the above, I am satisfied that there will be no adverse impacts on the integrity of the Coole-Garryland SAC or Coole-Garryland SPA as a result of surface water quality impacts.

Groundwater Impacts to SACs within the same groundwater body

- 9.5.14. Coole-Garryland Complex SAC, Coole-Garryland SPA, Carrowbaun, Newhall and Ballylea Turlough SAC, Lough Coy SAC, Eastern Burren Complex SAC, Caherglassaun Turlough SAC, and Termon Lough SAC are within c. 4.5km of the development and are within the same groundwater body as the proposal. The NIS outlines that the construction stage of the development has the potential for impacts including non-toxic contamination (sedimentation/siltation) and toxic contamination (pollution, hydrocarbons, chemicals), and that the operational stage has potential impacts relating to nutrient enrichment / eutrophication and chemical pollution events.
- 9.5.15. The NIS considers that groundwater impacts on habitats such as petrifying springs and fens are not likely to be significantly affected, but that any mitigation measures relating to turloughs would need to essentially sever potential connectivity. It considers that potential impacts on turloughs are unlikely but that potential connectivity via underground routes is not fully known and the precautionary principle requires that appropriate mitigation is put in place to ensure an effective severing between the construction works, operating plant and ancillary infrastructure

(including drainage), and groundwater. Although the NIS did not include Termon Lough SAC or Coole-Garryland SPA, I am satisfied that similar circumstances would apply to this site as would to the other 5 sites listed in the preceding paragraph, and that the NIS information, predicted effects and mitigation measures can be equally applied to Termon Lough SAC and Coole-Garryland SPA to enable a full assessment.

- 9.5.16. I have previously addressed the potential impacts on groundwater quality at construction and operational stage in section 8.8 of this report. I am satisfied that the potential impacts will be mitigated through a Construction and Environmental Management Plan and appropriate operational measures for the bunding design, storage and containment of potential pollutants. Surface water management, including SuDS, attenuation, and interceptors, will also be employed to ensure that all potential discharges to groundwater water will be adequately contained. While the NIS refers to a severing of potential groundwater connectivity, I acknowledge that the proposed infiltration area has the potential for a hydrological link. However, it should be noted that infiltration will only be used in the event of a 1 in 100-year storm event and the attenuation pond being full. Any such water would also have been treated via an interceptor prior to infiltration. I consider that the NIS reference to 'severance' of water connectivity should be applied only to process effluents and 'dirty' storm water, and I am satisfied that the proposal adequately provides for such an arrangement.
- 9.5.17. I acknowledge that further ground investigations will inform the detailed foundation design and further mitigation measures for structures, and that ongoing integrity testing and monitoring will apply to all potential groundwater pollution sources. Such monitoring arrangements are an established feature of the construction stage and I note that a Project Ecologist will be employed on site to ensure compliance with mitigation measures. Given the inherent challenges for large-scale construction in karst areas, I consider that this is a reasonable best-practice approach to ensure that potential impacts are appropriately mitigated.
- 9.5.18. Regarding potential cumulative impacts, I note the current application before the Board for a local authority development consisting of a Civic Amenity site/Recycling centre on a site located c. 300m to the south of the appeal site (ABP Ref. 310203-21 refers). This application has addressed the potential for impacts on groundwater

quality during construction and operation stages. The NIS submitted with the application includes measures to contain potential pollutant materials/substances within bunded areas and for the containment of material through construction management practices. I am satisfied that the potential groundwater quality impacts associated with the local authority proposal will be appropriately mitigated and, accordingly, there will be no cumulative effects associated with the proposed biogas project.

9.5.19. Having regard to the above, I am satisfied that there will be no adverse impacts on the integrity of the Coole-Garryland Complex SAC, Coole-Garryland SPA, Carrowbaun, Newhall and Ballylea Turlough SAC, Lough Coy SAC, Eastern Burren Complex SAC, Caherglassaun Turlough SAC, or Termon Lough SAC as a result of groundwater quality impacts.

Impacts on Lesser Horseshoe Bats of Kiltartan Cave (Coole) SAC

9.5.20. The NIS highlights the potential for impacts on this QI as a result of the loss of foraging habitat and linear features. However, it states that these impacts are more relevant to summer roosting bats while these bats specifically hibernate during winter months, although there is limited potential for impacts during transitional periods. It highlights the intentions to strengthen hedgerow habitats and states that the commuting and foraging potential for bats will be increased. The NIS also acknowledges the potential light pollution impacts and impacts on winter roosts. It concludes that the proposed development is not located in the immediate surroundings of the SAC site and is not likely to impact on the roost site but accepts that the small-scale loss of linear features or inappropriate lighting has the potential for effects. It states that mitigation measures will be required and will be aimed towards areas where Lesser Horseshoe Bats were recorded on site.

9.5.21. I note that the Planning Authority and the DCHG have raised concerns about the scope of assessment carried out and potential impacts on foraging/commuting due to the loss of hedgerow. As previously outlined in this report, the EIAR assessment of bats is based on a total of 8 site surveys carried out between 2017-2019, including 1 winter habitat/roost survey and 7 dusk and dawn surveys during the active summer season. I also note that the applicant has consulted BCI on wider area records for bat species (Tables 5.9a, b & c of the EIAR) and I consider that surveys were

undertaken in accordance with relevant guidelines, including Bat Mitigation Guidelines for Ireland (NPWS, 2006). I note the suggestions that a wider scope of study would be required to assess how Lesser Horseshoe Bats are using the landscape, but I do not consider that this is warranted given the limited scale of impact associated with the proposed development.

- 9.5.22. I would concur with the EIAR conclusions that the site has negligible suitability for roosting and that the eastern boundary of the site is of 'county' importance for commuting. The appeal outlines that the concerns of the Planning Authority were incorrectly founded on a worst-case scenario of hedgerow removal (i.e. pre-mitigation) and contends that the impact of any commuting habitat will be mitigated through the retention and strengthening of hedgerows/linear features on site. I consider that existing vegetation, particularly the eastern site boundary, can be suitably retained given that the proposed works are generally significantly distanced from the site boundaries. This can be enforced through a suitable condition. I also note that the NIS includes measures to include an external lighting plan to ensure that areas of vegetation are retained in close to darkness (1 lux) and I am satisfied that this will appropriately address lighting impacts on bats.
- 9.5.23. Regarding potential cumulative impacts, I note the current application before the Board for a local authority development consisting of a Civic Amenity site/Recycling centre on a site located c. 300m to the south of the appeal site (ABP Ref. 310203-21 refers). This application has addressed the potential for loss of foraging, commuting and roosting habitat for the Lesser Horseshoe Bat and was subject to a 14-day survey which found only 2 records of site usage. It involves a small site (0.168ha) with limited vegetation and the proposal includes habitat enhancement measures and measures to ensure that lighting does not impact on bat activity. Accordingly, I am satisfied that likely significant effects on the Lesser Horseshoe Bat will not arise and there will be no cumulative impacts with the proposed biogas project.
- 9.5.24. I am satisfied that the mitigation measures relating to the retention of existing vegetation and the creation of new foraging habitat are suitable and can be enforced by the attachment of a suitable condition. Together with the provision of appropriate lighting on site, I consider that there will be no significant adverse effects on the Lesser Horseshoe Bats of Kiltartan Cave (Coole) SAC.

In-combination effects

9.5.25. The NIS considered consented proposals in the vicinity of the site and concluded that there was limited potential to act in combination with the proposed development to result in significant cumulative effects on any of the QIs identified within the zone of influence. It states that the upgrade of the Gort WWTP will prevent cumulative water quality impacts, that the lack of other significant projects obviates cumulative construction stage impacts, and that the lack of other IE licence developments in the zone of influence will ensure there will be no in-combination air quality impacts. I have carried out an updated review of such projects, including the current application before the Board for a local authority development consisting of a Civic Amenity site/Recycling centre (ABP Ref. 310203-21 refers), and I do not consider that there are any developments with potential to result in significant cumulative effects.

9.5.26. The NIS considers the cumulative impacts on the M18 Motorway as follows:

Air quality

The air quality modelling exercise is a measurement of increased impacts on existing background levels. It is, therefore, already a cumulative assessment, and the results of the air quality baseline monitoring show that the quality in the surrounding area is very good.

Water quality

The extensive mitigation measures undertaken as part of the M18 construction project and concludes that any cumulative water quality impacts with the proposed development can be deemed to be negligible.

Habitat Fragmentation

Limited loss of grassland and hedgerow has the potential to act in combination with the loss of similar features associated with the M18. However, if mitigation measures relating to habitat enhancement are implemented there will be minimal habitat loss.

9.5.27. Section 3 of the NIS sets out the measures proposed to mitigate the potential effects of the proposed development. In summary, they include the following:

Mitigation of Water Quality during Construction

- Inclusion of a Construction Environmental Management Plan (CEMP) incorporating the following:
 - Construction Waste Management Plan (CWMP)
 - Incident Response Plan (IRP)
 - IFI (2016) Guidelines on protection of fisheries during construction works in and adjacent to waters
 - CIRIA (2006) guidance on Control of water pollution from linear construction projects, and
 - SEPA (2017) guidance on Works and maintenance in or near water. GPP 5.
- Measures based on facility design to include:
 - Dedicated areas for deliveries, wash-out, storage
 - Use of bunding and secondary containment
 - Works involving chemicals/concrete will be suitably contained/cased
 - Minimise soil disturbance and off-site disposal of contaminated soils
 - No direct discharges to soil or surface water
 - Tank farm bund and second outer bund for processing areas
 - Integrity testing in the design of all structures
 - Prior to construction, areas where bedrock aquifer is exposed must be protected from surface activities
 - All outflows by diffuse overland drainage at appropriate locations and no on-site holding of pollutants unless bunded/contained.
 - Sealed effluent and water system
- Karstic mitigation measures to include ground investigations as part of detailed design to evaluate the karst bedrock and allow appropriate mitigation measures to ensure the integrity of bund design and foundation on competent bedrock.
- Hydrological Risk Assessment measures to include:
 - Regular integrity testing of bunding, hardstanding, vessels and piping
 - Groundwater monitoring boreholes
 - IRP to provide for total contamination clean-up of any spills

- Site surface water controlled and cleaned using best practice pollution control measures.
- Good housekeeping and facility management to prevent negative effects from sedimentation.
- Measures to avoid the release of cement leachate from the site
- On-site project ecologist to confirm adequacy of EIAR/CEMP mitigation measures and recommend further actions if required to avoid potential impacts on Natura 2000 sites.

Mitigation of water quality impacts during operation

- Connection to the upgraded Gort WWTP in accordance with Irish Water procedures will ensure that there will be no impact on surface water quality through eutrophication and/or nutrient enrichment.

Mitigation of air quality impacts on sensitive habitats

- Waste not handled outside the feedstock reception building, which will be enclosed and fitted with air/odour treatment facilities prior to exhausting
- Tanks/vessels will be fully sealed.
- Combustion of biogas in the CHP plant will destroy odorous compounds
- Adequate dispersion through 22m high stacks
- Operational procedures, recording, maintenance
- Neighbourhood / Stakeholder communication regarding complaints
- Compliance with EPA monitoring and requirements

Mitigation of impacts on Lesser Horseshoe Bats

- Hedgerow retention/strengthening and replacement where necessary
- Additional tree planting and strengthening of linear habitat
- Planting schedule to avoid any alien invasive plants
- External lighting plan to ensure that areas of vegetation are retained in close to darkness (1 lux).

9.6. **Appropriate Assessment Conclusion**

- 9.6.1. The proposed development has been assessed in light of the requirements of Sections 177U and 177V of the Planning and Development Act 2000 (as amended).

Having carried out screening for Appropriate Assessment of the project, it was concluded that it may have a significant effect on the following European Sites:

- Lough Coole-Garryland SAC (Site Code: 000252)
- Carrowbaun, Newhall and Ballylea Turloughs SAC (Site Code: 002293)
- Eastern Burren SAC (Site Code: 001926)
- Lough Coy SAC (Site Code: 002117)
- Caherglassaun Turlough SAC (Site Code: 000238)
- Kiltartan Cave (Coole) SAC (Site Code: 000286)
- Termon Lough SAC (Site Code: 001321)
- Coole-Garrland SPA (Site Code: 004107)

9.6.2. Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying interests/special conservation interests of those sites in light of their conservation objectives. I am satisfied that an examination of the potential impacts has been analysed and evaluated using the best scientific knowledge. Where potential significant effects on Natura 2000 sites have been identified, key design features and mitigation measures have been prescribed to remove risks to the integrity of the European sites. I am satisfied based on the information available, which I consider to be adequate in order to carry out a Stage 2 Appropriate Assessment, that if the key design features and mitigation measures are undertaken, maintained and monitored as detailed in the NIS, adverse effects on the integrity of Natura 2000 sites will be avoided.

9.6.3. Therefore, following an Appropriate Assessment, it has been ascertained that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the Lough Coole-Garryland SAC (Site Code: 000252); Carrowbaun, Newhall and Ballylea Turloughs SAC (Site Code: 002293); Eastern Burren SAC (Site Code: 001926); Lough Coy SAC (Site Code: 002117); Caherglassaun Turlough SAC (Site Code: 000238); Kiltartan Cave (Coole) SAC (Site Code: 000286); Termon Lough SAC (Site Code: 001321); Coole-Garryland SPA (Site Code: 004107) or any other European site, in view of the sites' Conservation Objectives. This conclusion is based on a complete assessment of all

aspects of the proposed project and there is no reasonable doubt as to the absence of adverse effects.

10.0 Material Contravention

- 10.1. One of the Planning Authority's reasons for refusal (reason no.4) states that the proposed development would contravene materially a policy (NB 1), objectives (NB 1, NB 2, NB 3) and a development management standard (DM Standard 40) of the current Galway County Development Plan. This reason is based on the Planning Authority's conclusion that significant adverse effects on the integrity and conservation objectives of the European sites cannot be ruled out as a result of the proposed project, and that the development is likely to have significant adverse impacts on the qualifying criteria and conservation objectives of nearby European sites, in particular the Coole Garryland Complex SAC, the Coole Garryland SPA, Lough Cutra SAC and Kiltartan Cave SAC.
- 10.2. Section 37(2)(b) of the Planning and Development Act 2000 (as amended) outlines that, where a planning authority has decided to refuse permission on the basis of a material contravention of the development plan, the Board may only grant permission where it considers that one of the following circumstances apply:
- (i) the proposed development is of strategic or national importance,*
 - (ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or*
 - (iii) permission for the proposed development should be granted having regard to the regional spatial and economic strategy for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or*
 - (iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.*
- 10.3. However, despite the decision of the Planning Authority, the Board may determine that the proposed development would not materially contravene the Development

Plan. Having regard to the Appropriate Assessment conclusion outlined in section 9.6 of this report, I am satisfied that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of any European Sites. Accordingly, I would advise the Board that the proposed development would not materially contravene the Development Plan and the provisions of Section 37(2)(b) of the Act need not be applied.

10.4. Should the Board disagree with the Appropriate Assessment conclusion contained in this report, then the provisions of Section 37(2)(b) of the Act would be academic as the Board would be precluded from granting permission under the provisions of the Habitats Directive.

11.0 Recommendation

On the basis of the above planning assessment, Environmental Impact Assessment and Appropriate Assessment, I recommend that, subject to the conditions outlined in section 13 (below), permission should be granted for the proposed development in accordance with the recommended order in section 12 (below) and the reasons and considerations contained therein.

12.0 Recommended Order

Planning and Development Acts 2000 to 2020

Planning Authority: Galway County Council

Planning Register Reference Number: 19/1812

Appeal by Sustainable Bio-Energy Limited, care of Halston Environmental & Planning Ltd. of IHUB, Westport Road, Castlebar, County Mayo, against the decision made on the 2nd day of December 2020 by Galway County Council to refuse permission for the proposed development.

Proposed Development: Development of a Biogas Plant on a 10.01 hectare (ha) site located in the townlands of Ballynamantan, Kinincha and Glenbrack. The Biogas plant will utilise anaerobic digestion technology to produce renewable energy and organic fertiliser. The plant will consist of;

(i) Two storey office building (509 sq. m floor area) with connection to public sewer; incorporating offices / reception area, switch room, laboratory, welfare facilities, meeting room, storage room and electrical switch room;

(ii) single store electrical substation building (14.43 sq. m. floor area) and associated banded transformer;

(iii) 13.4m high feedstock reception building (3,806 sq. m floor area) incorporating; airlock lobby, feedstock reception area, processing and mixing areas, pasteurisation vessels and ancillary heating technology, wash down area, feedstock quarantine area, storage areas, workshop area, hygiene facilities, digestate separation area and process wastewater tanks;

(iv) banded tank farm (14,805 sq. m) containing; 2 no. pump house buildings (216 sq. m) and delivery pipework serving feedstock reception building, 8 no. digester vessels (each of c.15m in height and c.5, 120m³ in capacity) and 4 no. storage vessels (each of c.15m in height and c.5,120m³) fitted with gas collection roofs/domes, stairwell towers and gantries, banded digestate dispatch bays;

(v) biogas purification plant on raised concrete apron including containerised electrical room and glass modules, gas scrubber and filter unit (up to 14m in height), compressors, cooler, chiller, bottling plant and loading bays;

(vi) Carbon dioxide processing building (10.44m in height, 138 sq. m floor area) containing treatment plant and 4 no. outdoor storage tanks (each of 12m in height and 50m³ capacity) and dispatch area;

(vii) Odour control system comprising air scrubber units, carbon adsorption bed and associated stack of up to 23m in height;

(viii) energy centre, containing combined heat and power (CHP) plant and 2 no. standby boilers with exhaust stacks (16.4m in height);

(ix) Biogas ground flare stack (c. 8m in height) and gas booster station;

(x) weighbridge with secure lift barrier and all ancillary development, including perimeter fencing, internal access roads, emergency exist/entrance, planted soil berm and landscaping, car parking, surface water settlement and storage lagoons, lighting and all civil engineering works for the disposal of foul and surface water.

The development includes for construction of a new entrance to the site from the N18/R458 with associated signage and an access road (area of 1.734ha) from the new entrance to the Biogas plant.

Permission is being sought for 10 years and is a development that is for the purpose of an activity requiring an Industrial Emissions Licence from the Environmental Protection Agency (EPA). An Environmental Impact Assessment Report (EIAR) and Natura Impact Statement (NIS) has been prepared and accompanies this planning application.

Decision:

Grant permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.

Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

Reasons and Considerations

In coming to its decision, the Board had regard to the following:

- (a) the policies and objectives set out in the National Planning Framework and the Regional and Spatial Economic Strategy for the Northern & Western Regional Assembly

- (b) the policies and objectives set out in the Galway County Development Plan 2015-2021 and the Gort Local Area Plan 2013-2023
- (c) the provisions of the Climate Action Plan 2021 (Government of Ireland)
- (d) the Draft Bioenergy Plan (Department of Communications, Energy and Natural Resources, 2014)
- (e) the National Policy Statement on the Bioeconomy (Government of Ireland, 2018)
- (f) the Waste Action Plan for a Circular Economy – National Waste Policy 2020-2025 (Department of Environment, Climate and Communications)
- (g) the Connaught Ulster Regional Waste Management Plan 2015-2021
- (h) The Planning System and Flood Risk Management Guidelines (Department of Environment, Heritage and Local Government and The Office of Public Works, 2009)
- (i) the nature, scale and design of the proposed development
- (j) the pattern of existing and permitted development in the area
- (k) the planning history of the site and the surrounding area
- (l) the submissions and observations received, and
- (m) the report of the Inspector.

Appropriate Assessment

The Board agreed with the screening assessment and conclusion carried out in the Inspector's report that the:

- Lough Coole-Garryland SAC (Site Code: 000252),
- Carrowbaun, Newhall and Ballylea Turloughs SAC (Site Code: 002293),
- Eastern Burren SAC (Site Code: 001926),
- Lough Coy SAC (Site Code: 002117),
- Caherglassaun Turlough SAC (Site Code: 000238),

- Kiltartan Cave (Coole) SAC (Site Code: 000286), and
- Termon Lough SAC (Site Code: 001321)
- Coole-Garryland SPA (Site Code: 004107)

are the European sites for which there is a likelihood of significant effects. The Board noted the decision of the Planning Authority and submissions from third parties and prescribed bodies regarding the potential for significant effects on the Lough Cutra SAC, Peterswell Turlough SAC, Galway Bay Complex SAC, and the Inner Galway Bay SPA, but agrees with the conclusion in the Inspector's report that significant effects are not likely on these sites having regard to the absence of surface water and/or groundwater pathways; the separation distance involved; and the nature/sensitivity of their qualifying interests.

The Board considered the Natura Impact Statement and all other relevant submissions and carried out an appropriate assessment of the implications of the proposed development for European Sites in view of the above sites' Conservation Objectives.

The Board considered that the information before it was sufficient to undertake a complete assessment of all aspects of the proposed development in relation to the sites' Conservation Objectives using the best available scientific knowledge in the field. The Board accepted the Inspector's conclusion that it is not feasible or practical to assess the impacts of feedstock supply and digestate land-spreading over a multiplicity of sources/destinations, particularly under the circumstances when these activities are already occurring and will be suitably controlled by good agricultural practice and legislation, and determined that the cumulative impacts of these activities do not form part of the Appropriate Assessment of this project. In completing the assessment, the Board considered, in particular, the following:

- Site Specific Conservation Objectives for these European Sites,
- Current conservation status, threats and pressures of the qualifying interest features, likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects,
- Submissions from observers, prescribed bodies and the reports of the Planning Authority, and

- Mitigation measures which are included as part of the current proposal.

In completing the Appropriate Assessment, the Board accepted and adopted the Appropriate Assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the aforementioned European Sites. The Board identified that the main likely impacts arising from the proposed development on the European Sites would arise from operational air quality impacts on Coole-Garryland Complex SAC and Coole-Garryland SPA, surface water quality impacts on Coole-Garryland Complex SAC and Coole-Garryland SPA at construction and operational stages, groundwater impacts to European Sites within the same groundwater body during construction and operational stages, and the impacts on Lesser Horseshoe Bats of Kiltartan Cave (Coole) SAC as a result of lighting and the loss of foraging habitat and linear features. Having regard to these potential impacts and the avoidance and mitigation measures as set out in the Natura Impact Statement, the Board concluded that the proposed development, subject to the identified mitigation measures, would not adversely affect any of the habitats or species within the relevant European sites. In the overall conclusion, the Board was satisfied that the proposed development would not adversely affect the integrity of the European sites in view of the site's conservation objectives and there is no reasonable scientific doubt as to the absence of such effects.

Environmental Impact Assessment

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

- (a) the nature, scale, location and extent of the proposed development,
- (b) the Environmental Impact Assessment Report and associated documentation submitted with the application,
- (c) the reports and decision the Planning Authority, and the submissions received from third party observers and the prescribed bodies in the course of the application and the appeal, and
- (d) the Inspector's report.

The Board considered that the Environmental Impact Assessment Report, supported by the documentation submitted by the applicant, adequately identifies and describes the direct, indirect, secondary and cumulative effects of the proposed development on the environment. The Board agreed with the Inspector's conclusion that it is not feasible or practical to assess the potential impacts associated with the provision of feedstock, the disposal of digestate, and the connection of the gas to the national network, particularly under the circumstances when these activities/projects are already occurring and will be suitably controlled by good agricultural practice/legislation and/or separate planning processes. Accordingly, the issue of project-splitting does not arise in this case and it is not reasonable or practical to assess the cumulative impacts of activities/projects associated with feedstock provision, digestate spreading or gas grid connection.

The Board agreed with the examination, set out in the Inspector's report, of the information contained in the Environmental Impact Assessment Report and associated documentation submitted by the applicant and submissions made in the course of the planning application and the appeal. The Board considered and agreed with the Inspector's reasoned conclusions, that the main significant direct and indirect effects of the proposed development on the environment are, and would be mitigated, as follows:

- Direct positive employment impacts from the construction and operational stages, as well as indirect employment associated with haulage, services and other spin-off sectors.
- Potential risks associated with major accidents and/or disasters, which will be suitably mitigated through compliance with the relevant health and safety regulatory regimes and by limiting the quantities of dangerous substances present on site to levels below the relevant thresholds for the COMAH Regulations.
- Direct and indirect impacts on Biodiversity at the construction and operational stages due to the loss of habitat, disturbance of species due to noise and lighting, and impacts on water quality and air quality. These impacts will be addressed by embedded mitigation measures including a sealed effluent/water system and landscape/habitat creation. Construction stage

impacts will be mitigated by the implementation of a Construction Environmental Management Plan including the establishment of a working corridor near treelines/hedgerows and an active approach to silt control. Operational stage impacts will be mitigated by the provision of suitable lighting and habitat creation, as well as future monitoring and remediation of habitat restoration proposals.

- Potential direct and indirect impacts on Hydrology and Hydrogeology at construction and operational stage as a result of construction materials/substance pollution, soil disturbance/removal, groundwater flood risk, and pollution from the operational processes and materials. These potential impacts will be mitigated through a Construction and Environmental Management Plan and appropriate operational measures for the bunding design, storage and containment of potential pollutants. Surface water management, including SuDS, attenuation, and interceptors, will be employed to ensure that all potential discharges to water will be adequately contained. Further ground investigations will inform the detailed foundation design for structures and ongoing Integrity test and monitoring will apply to all potential pollution sources. Any potential cumulative water impacts have been satisfactorily addressed by the mitigation measures included in the M18 Motorway project and by the recent upgrade to the capacity of the Gort Wastewater Treatment Plant.
- Direct air and odour impacts on sensitive receptors (including designated sites and biodiversity) and populations in the site vicinity as a result of emissions during the construction and operation stages. Construction stage impacts will be suitably distanced from sensitive receptors and will be mitigated by dust suppression measures. Operational air and odour emissions will be appropriately treated (including containment, CHP combustion, and odour abatement) and dispersed at height to comply with the Air Quality Standards Regulations 2011 (S.I. No. 180 of 2011) and stringent odour target values.

- Positive indirect impacts on Climate due to a reduction in carbon dioxide emissions through the production of biogas as a replacement of fossil energy sources.
- Direct Noise impacts during the construction phase which will be suitably mitigated through compliance with construction noise standards and a Construction Environmental Management Plan.
- Landscape and Visual impacts due to the scale of the project, which will be mitigated by embedded design measures including the proposed layout, form and colours, as well as the creation of additional berm screening and landscape planting.
- Direct and indirect traffic and transport impacts which will be mitigated by the design of the proposed entrance and the control of haulage vehicle type and routes

The Board completed an Environmental Impact Assessment in relation to the proposed development and concluded that, subject to the implementation of the proposed mitigation measures set out in the Environmental Impact Assessment Report, and subject to compliance with the conditions set out below, the effects on the environment of the proposed development, by itself and in combination with other development in the vicinity, would be acceptable. In doing so, the Board adopted the report and conclusions of the Inspector.

Conclusions on Proper Planning and Sustainable Development

The Board considered that the proposed development would be in accordance with national, regional and local policy relating to energy and waste, and notwithstanding that the appeal site is not zoned for industrial use and the proposed development does not include a connection to the gas or electricity network, the Board did not consider that the proposed development was precluded at this location by any of the policies and objectives set out in the Galway County Development Plan 2015-2021 or the Gort Local Area Plan 2013-2023. Furthermore, the Board considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable at this location adjoining the planned industrial expansion of

Gort, would not seriously injure the residential or visual amenities of the area, and would be acceptable in terms of pedestrian and traffic safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

13.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on the 21st day of November, 2019, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The developer shall ensure that all mitigation measures set out in the Environmental Impact Assessment Report and Natura Impact Statement submitted with the application, shall be implemented in full, except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity and the protection of the environment during the construction and operational phases of the development.

3. The following limits and requirements shall be complied with in the anaerobic digestion process:

- (a) A maximum of 90,000 tonnes per annum of raw materials shall be treated in the anaerobic digesters

- (b) The composition of feedstock used as input into the anaerobic digestors shall be as detailed in Table 2.4 of Volume 2 of the EIAR.

Reason: In the interests of clarity

4. An annual report on the operation of the facility hereby permitted shall be submitted to the Planning Authority. The content of this report shall be as agreed in writing with the Planning Authority and shall include inter alia the following:

- (a) Details of the source of all feedstock and final disposal areas of digestate,
- (b) The volumes of raw materials treated in the anaerobic digester in the previous 12 months,
- (c) The volume and weight of digestate produced and stored in previous 12 months, and
- (d) The volume and weight of Biomethane and Carbon Dioxide produced/stored on site in previous 12 months.

Reason: In the interest of orderly development and to ensure compliance with the parameters set out in the application.

5. Water supply and drainage arrangements, including the attenuation and disposal of surface water shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health and to ensure a proper standard of development.

6. Prior to the commencement of development, the developer shall submit for the written agreement of the Planning Authority a breakdown of water/liquor

supply sources to the development with associated calculations that confirm the capacity to meet the requirement for 120,000m³ of liquor per annum as outlined in the Stormwater Report (Appendix 7.2 of Volume 3 of the EIAR).

Reason: In the interest of public health and to ensure a proper standard of development.

7. Prior to commencement of development, the developer shall enter into water and/or waste water connection agreements with Irish Water.

Reason: In the interest of public health

8. (a) Prior to the commencement of development, and on an annual basis post operation, the developer shall submit a mobility plan setting out the haul routes to and from the site for the agreement of the Planning Authority. The plan shall indicate the main feedstock and digestate spreading locations and demonstrate as far as is practicable how routes to and from the site to these locations are restricted to the primary routes and avoid Gort town centre and residential areas.

(b) All deliveries to and from the site shall be via Heavy Goods Vehicles and hauliers shall be contractually obliged to adhere to the haul routes agreed by condition 8 (a) above.

Reason: In the interests of traffic safety and to safeguard the amenities of the area.

9. Feedstock deliveries to the site and transport of digestate and biogases from the site shall be confined to between the hours of 0700 to 1900 Monday to Friday and between the hours of 0900 to 1500 on Saturday and Sunday.

Reason: In the interest of orderly development and the residential amenity of surrounding dwellings.

10. Prior to the commencement of development, the developer shall submit details for the written agreement of the planning authority of the proposed entrance arrangements and compliance with the recommendations of the Road Safety Audit, including details of signage, lighting and road markings.

Reason: In the interest of traffic safety.

11. Permission is hereby granted on the basis that the maximum quantity of biogas and/or biomethane present on the site at one time can never exceed the relevant lower tier thresholds under the Seveso Directive. Prior to the commencement of development, the developer shall submit details for the written agreement of the Planning Authority that clearly demonstrate compliance with these limits, including details of operational controls to limit the quantities, such as, but not limited to, the monitoring of liquid levels in tanks, monitoring biogas concentrations in the vapour spaces of the tanks, and the use of flaring to manage inventory.

Reason: In the interests of clarity and to prevent the facility from becoming an establishment for the purposes of the Seveso III Regulations.

12. Following further ground investigations and prior to the commencement of development on site, the developer shall submit for the written agreement of the planning authority details of the proposed foundation and bund design. Proposals shall clearly demonstrate that mitigation measures relating to the protection of soil, geology, hydrogeology and groundwater have been appropriately incorporated, and that the bund design shall withstand the uplift pressure of groundwater.

Reason: In the interest of clarity and the protection of the environment during the construction and operational phases of the development.

13. The existing hedgerows along the eastern site boundary shall be retained, protected from damage, and enhanced in such a manner as to ensure that its value as a commuting and foraging habitat is protected. A revised Landscape Mitigation Plan shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development, and shall clearly detail proposals in this regard including the precise extent of existing hedgerow to be retained.

Reason: To ensure the protection of a feature of importance for bats.

14. The developer shall facilitate the planning authority in preserving, recording, or otherwise protecting archaeological materials or features that may exist within the site. In this regard, the developer shall

- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,
- (b) employ a suitably qualified archaeologist who shall monitor all site investigations and other excavation works, and
- (c) provide satisfactory arrangements for the recording and removal of any archaeological material which may be considered appropriate to remove.

Reason: In order to conserve the archaeological heritage of the site and to secure the preservation of any remains which may exist within the site

15. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be permitted in exceptional circumstances where prior written approval has been received from the planning authority.

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

16. The construction of the development shall be managed in accordance with a Construction and Environmental Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall incorporate all the construction stage mitigation measures outlined in the Environmental Impact Assessment Report and Natura Impact Statement, and shall provide details of intended construction practice for the development, including and not limited to:

- (a) location of the site and materials compound(s) including area(s) identified for the storage of construction refuse,
- (b) location of areas for construction site offices and staff facilities,
- (c) details of site security fencing and hoardings,
- (d) details of car parking facilities for site workers during the course of construction,
- (e) details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site if required,
- (f) measures to obviate queuing of construction traffic on the adjoining road network,
- (g) measures to prevent the spillage or deposit of clay, rubble, or other debris on the public road network,
- (h) alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works,
- (i) details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels,
- (j) containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater,
- (k) details of construction lighting,

(l) details of key construction management personnel to be employed in the development, and

(m) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.

A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan and monitoring results as appropriate shall be kept for inspection by the planning authority.

Reason: In the interest of amenities, environmental protection, public health, and safety.

17. Monitoring of the construction phase shall be carried out by a suitably qualified and competent person to ensure that all mitigation measures outlined in the Environmental Impact Assessment Report and Natura Impact Statement are fully implemented. In addition, the designated member of the company's staff shall interface with the planning authority and members of the public in the event of complaints or queries in relation to environmental emissions. Details of the name and contact details, and the relationship to the operator of this person shall be available at all times to the planning authority on request whether requested in writing or by a member of staff of the planning authority at the site.

Reason: To safeguard the amenities of the area.

18. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the "Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects", published by the Department of the Environment, Heritage and Local Government in July 2006.

Reason: In the interest of sustainable waste management.

19. All solid wastes arising on the site shall be recycled as far as possible.

Materials exported from the site for recovery, recycling or disposal shall be managed at an approved facility and in such a manner as is agreed with the Planning Authority. In any case no such wastes shall be stored on the site except within the confines of the buildings on site. Adequate on-site arrangements for the storage of recyclable materials prior to collection shall be made to the satisfaction of the Planning Authority.

Reason: To safeguard the amenities of the area

20. Lighting shall be provided in accordance with a scheme, details of which shall be submitted to, and agreed in writing with the planning authority prior to commencement of development. The scheme shall minimise obtrusive light outside the boundaries of the development at all times and shall comply with the mitigation measures for bats as outlined in the Natura Impact Statement.

Reason: In the interest of amenity, public safety, and the protection of bats.

21. An odour management plan, which shall include a monitoring programme, shall be put in place by the developer in respect of the construction and operation phase of the development. The nature and extent of the plan and the monitoring sites shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The results of the programme shall be submitted to the planning authority on a monthly basis.

Reason: To protect the residential amenities of the area.

22. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or

on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission

Stephen Ward
Senior Planning Inspector

3rd December 2021

Appendix: List of Observers

1. Leo Smyth
2. Kathleen Bell Boylan
3. Gort Biogas Concern Group
4. Sheelagh Jacobs
5. Noelle & Pearse Piggott and Family
6. Clare Conway
7. Richard Joyce (x2)
8. Jennifer Joyce
9. Aongus Kelly
10. PJ Hawkins Foodstore and Newsagent
11. Kitty Cunningham
12. Ignatius Cahill
13. John Sullivan
14. Bridie Dolan
15. Mary Brennan & Others
16. Karen O'Neill
17. Maisie Murphy
18. Diane Kirk & Others
19. Mary Anne Jacobs
20. Bill Richardson and Enda De Paor
21. Andreas Elder
22. Tony Hilley
23. Martina Dempsey
24. Rita Lundon
25. Grainne Ni Choncuile and Sean O'Connor
26. Sean Og Duffy
27. Edward Conlon & Others
28. Louise Duffy
29. Dermot Duffy
30. David Murray
31. Cuan Beo

32. Petra Bhreatnach & Others
33. E. Van Hout
34. Elizabeth Joyce
35. Mernie Gleeson
36. Bill Richardson & Emer MacSweeney
37. Richard & Christina Cooper & Others
38. South Galway AC
39. Frank Murray
40. Ciaran O'Donnell & Others
41. Sharon Cropera & Others
42. Sheila Duffy
43. George Fahey
44. James Kelly
45. Martin & Valerie Aherne
46. James B. Hannigan & Patricia Hannigan
47. Pat & Mona O'Donnell
48. Mary Kealy & Colman Sherry

Our Ref: IE2888/PMS/6127

Your Ref:

Date: 21st June 2024

An Bord Pleanála

64 Marlborough Street

Dublin

D01 V902



Dear Sir / Madam

Re: Proposed 1 No. Poultry Layer House & 1 No. Manure/General Purpose Store, Together with All Ancillary Structures & Site Works at Carrickbaggott, Grangebellew, Co Louth - Planning Reference 24/60189 - First Party Appeal

IE Consulting hereby make the following submission on behalf of Crayvall Egg Production Ltd in support of a first party appeal against the decision of Louth County Council by order dated 30th May 2024 to refuse permission for planning application reference 24/60189.

Specifically in relation points 2, 3, 4 and 5 of the Louth County Council Place Making & Physical Development Section memo dated 15th May 2024 (copy of which is contained in Appendix A) we hereby comment as follows;

Point 2

As presented in the Sub-Soil & Hydrological Assessment & Stormwater Management Assessment study undertaken by IE Consulting (report reference IE2888_Report_6092 Rev 4.0, dated 22nd March 2023), a detailed hydrological and stormwater management assessment has been undertaken in order to determine a suitable and sustainable stormwater management solution for the development as proposed.

As presented in the above report, detailed hydrological and stormwater analysis and calculations have been presented in support of the proposed stormwater management solution. Detailed analysis and calculations have been presented in order to demonstrate that the proposed stormwater discharge from the development shall be limited to pre-development levels and will not adversely impact on any receiving waterways (Section 4 & Section 5 of study report & detailed calculations presented in Appendix D).

A detailed assessment and analysis of the existing sub-soils at the site has been undertaken in accordance with BRE365 (Section 3 of study report). The proposed stormwater management system, including the proposed stormwater swale system, has been designed in order to provide a robust and sustainable SuDS stormwater management system and in accordance with the principles of the GDSDS.

As presented in the Sub-Soil & Hydrological Assessment & Stormwater Management Assessment study and accompanying details, no effluent, foul water or contaminated surface water shall discharge or enter the surface water, ground water or any watercourse within or adjoining the proposed development.

Point 3

With respect to the proposal to provide access culverts at two locations along an existing water drainage channel and to partially divert another existing water drainage channel within the site, a detailed hydrological and hydraulic analysis has been undertaken in this regard (Section 5, Section 7 & Section 8 of study report).

A detailed hydraulic design of the proposed culverts has been undertaken utilising standard culvert design methodology and utilising a specialist culvert analysis software package (presented in Appendix E of study report). The output of the detailed hydraulic culvert analysis demonstrates that the proposed culverts will not result in an adverse impact to the pre-development flows or storage along the existing stream/drains. Detailed plan and cross-sectional elevation drawings of the proposed culverts is presented on Drawing No's IE2888-005-A, IE2888-006-A, IE2888-007-A & IE2888-008-A, Appendix A of the study report.

A detailed hydraulic design of the proposed partial diversion of the existing water drainage channel has been undertaken utilising standard hydrological methodology and utilising a specialist channel analysis software package (presented in Appendix E of study report). The output of the detailed hydraulic channel analysis demonstrates that the proposed partial diversion of the existing water drainage channel will not result in an adverse impact to the pre-development flows or storage along the existing stream/drains. Detailed plan and cross-sectional elevation drawings of the proposed partial diversion of the existing water drainage channel is presented on Drawing No's IE2888-009-A & IE2888-010-A, Appendix A of the study report.

Point 4

In the context of a development proposal where local authority planning permission is sought, the OPW will not confirm or otherwise if a Section 50 consent under the Arterial Drainage Act is required for any proposal to culvert a watercourse. It is standard procedure that the planning authority assesses, from a planning perspective, the acceptability or not of any proposal to culvert a watercourse, and if deemed acceptable then a condition is normally applied to any grant of planning permission that Section 50 consent is obtained from the OPW prior to commencement of any site development works.

The OPW will not confirm or otherwise if a Section 50 consent under the Arterial Drainage Act is required for any proposal to culvert a watercourse prior to grant of planning permission. The OPW Section 50 application form (AF50 Rev 1113) specifically lists that a copy of the relevant local authority grant of planning permission must accompany any application for consent to culvert a watercourse.

Under Section 9 of the Arterial Drainage Amended Act 1995, OPW consent to alter or divert a watercourse is required where the watercourse forms part of a designated OPW Drainage Scheme. The existing water drainage channel which is proposed to be partially diverted as part of this development proposal is not part of a designated OPW Drainage Scheme.

Point 5

The site of the proposed development does not fall within a predictive, indicative, anecdotal or historic fluvial flood zone, therefore it is the opinion of IE Consulting that a Site Specific Flood Risk Assessment is not required in support of this development proposal.

With respect to potential pluvial flooding from the development as proposed, a detailed assessment and analysis has been undertaken (Section 4 of study report) which demonstrates that the proposed retention pond/swale has capacity to accommodate a 1 in 100 year storm event plus 20% climate change allowance, is not at risk of flooding nor will exacerbate pluvial flooding elsewhere.

Yours Sincerely

Paul McShane



Senior Hydrological Engineer

For IE Consulting

Appendix A

Louth County Council Place Making & Physical Development Section memo

**Place Making & Physical Development
Section**

Louth County Council
County Hall
Dundalk,
Co.Louth

LOUTH COUNTY COUNCIL

Memo

To: Louth County Council Planning Section

From: Martin Mc Creesh, Senior Executive Engineer, Place Making & Physical Development Section

Date: 15th May 2024

Re: Planning Application No. 2460189 from Crayvall Egg Production Ltd

Development: Permission to construct 1 No. Poultry Layer House and 1 No. Manure/General Purpose store, together with all ancillary structures, (to include 3 No. meal storage bin(s) and soiled water tank), and all associated site works (to include upgraded internal farm laneway, site drainage and storm water attenuation) associated with the proposed development. This application relates to a development, which is for the purposes of an activity requiring a Licence under part IV of the Environmental Protection Agency (Licensing) Regulations 1994 to 2013. An Environmental Impact Assessment Report (E.I.A.R.) and Natura Impact Statement (N.I.S.) will be submitted with this planning application

Location: Carrickbaggott, Grangebellew, Co. Louth.

Having examined these documents and visited the site, the following Further Information is required.

1. The applicant shall be satisfied that the newly constructed culvert over the water course at the site entrance has been designed and constructed to ensure adequate loading capacity for proposed users. i.e. A competent structural engineer shall certify design and construction of culvert. This certification shall be submitted as part of this FI request.
2. The applicant shall submit to the planning authority for their approval an engineering summary of the surface water drainage and SUDS elements to be incorporated in the proposed development as the information submitted is not done in a clear and concise manner. The applicant shall submit calculations to demonstrate and provide confirmation that flow to receiving waterways will not be increased above pre-development levels and that SUDS measures have been implemented. The applicant shall confirm that the soil characteristics on site can accommodate the SUDS measures proposed. Note: No effluent, foul water or contaminated surface water shall discharge or enter the surface water, ground water or any water course within or adjoining the development.

3. The applicant proposes to culvert at two locations an existing water drainage channel and divert another existing water drainage channel within the site. Hence, the applicant shall submit for approval an updated and more detailed design for piping of the existing drain/stream with new culverts and diversion of an existing drain. Hydraulic calculations should be submitted demonstrating the impact of any piping of isolated crossing points on the open drain to be culverted and the drainage channel to be diverted. Applicant shall demonstrate no adverse impact to the predevelopment flows or storage along the existing stream/drains that are to be interfered with.
4. The applicant shall confirm with the OPW if a Section 50 is required in relation to the drainage channels to be culverted/diverted. If it is required proposals to construct over a watercourse or alter a watercourse shall be accompanied by the consent from the Commissioners of Public Works that is required for such works under Section 50 of the Arterial Drainage Act 1945. OPW consent does not confer permission to construct and does not absolve the applicant from fulfilling any other legal obligations or from third party claims that might arise from the development. The applicant shall obtain OPW Consent under Section 50 of the EU (Assessment and Management of Flood Risks) Regulations SI 122 of 2010 and Section 50 of The Arterial Drainage Act, 1945 for proposed culverting and diversion of existing drainage channels.

A Link to Section 50 guidance can be found at;
<https://www.gov.ie/en/publication/957aa7-consent-requirements-constructionalteration-of-watercourse-infrastru/>

5. A Flood Risk Assessment, completed by a professionally qualified independent competent person for the development including a detailed level survey of the area clearly demonstrating the pluvial flooding extents and levels within the site relative to the finished floor levels of the proposed development. The assessment shall also demonstrate that the volume of the proposed retention pond/swale is of sufficient capacity to cater for the existing site characteristics (pluvial events) and all future storm water retention (30 year storm period) from the storm water network and demonstrate that the development is not at risk of flooding nor will exacerbate flooding elsewhere i.e. adjoining public road and residential properties.

Signed: Martin Mc Creesh
Martin Mc Creesh
Senior Executive Engineer

JUDGMENT OF THE COURT (Fourth Chamber)

3 October 2013 (*)

(Environment – Directive 75/442/EEC – Slurry produced in a piggery and stored there pending its transfer to farmers who use it as fertiliser on their land – Classification as ‘waste’ or ‘by-product’ – Conditions – Burden of proof – Directive 91/676/EEC – Failure to transpose – Personal liability of the producer as to compliance by those farmers with European Union law concerning the management of waste and fertilisers)

In Case C-113/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Supreme Court (Ireland), made by decision of 23 February 2012, received at the Court on 1 March 2012, in the proceedings

Donal Brady

v

Environmental Protection Agency,

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, President of the Chamber, J. Malenovský, U. Lõhmus, M. Safjan and A. Prechal (Rapporteur), Judges,

Advocate General: P. Cruz Villalón,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 27 February 2013,

after considering the observations submitted on behalf of:

- Mr Brady, by A. Collins SC and D. Gearty, Solicitor,
- the Environmental Protection Agency, by A. Doyle, Solicitor, N. Butler SC and S. Murray BL,
- the French Government, by G. de Bergues and S. Menez, acting as Agents,
- the European Commission, by K. Mifsud-Bonnici, D. Düsterhaus and A. Alcover San Pedro, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 16 May 2013,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Commission Decision 96/350/EC of 24 May 1996 (OJ 1996 L 135, p. 32) (‘Directive 75/442’).
- 2 The request has been made in proceedings between Mr Brady and the Environmental Protection Agency (‘the EPA’) concerning certain conditions attached to a licence to increase the size of a piggery

issued by that authority to Mr Brady.

Legal context

European Union law

Directive 75/442

3 Directive 75/442 was repealed and replaced by Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste (OJ 2006 L 114, p. 9), which was itself subsequently repealed and replaced by Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ 2008 L 312, p. 3). However, in view of the date on which the licence at issue in the dispute in the main proceedings was issued, that dispute remains governed by Directive 75/442.

4 The first subparagraph of Article 1(a) of Directive 75/442 stated:

‘For the purposes of this Directive:

(a) “waste” shall mean any substance or object in the categories set out in Annex I which the holder discards or intends or is required to discard.’

5 The second subparagraph of Article 1(a) of Directive 75/442 entrusted the Commission of the European Communities with the task of drawing up ‘a list of wastes belonging to the categories listed in Annex I’. In Decision 94/3/EC of 20 December 1993 (OJ 1994 L 5, p. 15), the Commission drew up such a list (‘the European Waste Catalogue’), which includes, among ‘waste resulting from agricultural ... primary production’, ‘animal faeces, urine and manure (including spoiled straw), effluent, collected separately and treated off-site’.

6 Article 1(b) and (c) of Directive 75/442 contained the following definitions:

(b) “producer” shall mean anyone whose activities produce waste ...

(c) “holder” shall mean the producer of the waste or the natural or legal person who is in possession of it’.

7 Article 2(1)(b)(iii) of Directive 75/442 stated:

‘The following shall be excluded from the scope of this Directive:

...

(b) where they are already covered by other legislation:

...

(iii) animal carcasses and the following agricultural waste: faecal matter and other natural, non-dangerous substances used in farming’.

8 Article 4 of Directive 75/442 provided:

‘Member States shall take the necessary measures to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment, and in particular:

- without risk to water, air, soil and plants and animals,
- without causing a nuisance through noise or odours,

– with that adversely affecting the countryside or places of special interest.

Member States shall also take the necessary measures to prohibit the abandonment, dumping or uncontrolled disposal of waste.’

9 Article 8 of Directive 75/442 provided:

‘Member States shall take the necessary measures to ensure that any holder of waste:

- has it handled by a private or public waste collector or by an undertaking which carries out the operations listed in Annex II A or B, or
- recovers or disposes of it himself in accordance with the provisions of this Directive.’

10 Article 10 of Directive 75/442 stated that any establishment or undertaking which carried out waste recovery operations listed in Annex II B had to obtain a permit from the competent authority.

11 The operations listed in Annex II B included, numbered R 10, ‘[I]and treatment resulting in benefit to agriculture or ecological improvement’.

12 Article 11(1) and (2) of Directive 75/442 stated:

‘1. ... the following may be exempted from the permit requirement imposed in ... Article 10:

...

(b) establishments or undertakings that carry out waste recovery.

This exemption may apply only:

- if the competent authorities have adopted general rules for each type of activity laying down the types and quantities of waste and the conditions under which the activity in question may be exempted from the permit requirements,

and

- if the types or quantities of waste and methods of ... recovery are such that the conditions imposed in Article 4 are complied with.

2. The establishments or undertakings referred to in paragraph 1 shall be registered with the competent authorities.’

Directive 91/676/EEC

13 The sixth recital in the preamble to Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ 1991 L 375, p. 1) states:

‘...it is ... necessary, in order to protect human health and living resources and aquatic ecosystems and to safeguard other legitimate uses of water, to reduce water pollution caused or induced by nitrates from agricultural sources and to prevent further such pollution; ... for this purpose it is important to take measures concerning the storage and the application on land of all nitrogen compounds and concerning certain land management practices’.

14 As set out in Article 3(1) and (2) of Directive 91/676:

‘1. Waters affected by pollution and waters which could be affected by pollution if action pursuant [to] Article 5 is not taken shall be identified by the Member States in accordance with the criteria set out in Annex I.

2. Member States shall ... designate as vulnerable zones all known areas of land in their territories which drain into the waters identified according to paragraph 1 and which contribute to pollution: ...'.

15 Article 4(1)(a) of Directive 91/676 sets out, with the aim of providing a general level of protection against pollution for all waters, that Member States are to establish a code or codes of good agricultural practice, to be implemented by farmers on a voluntary basis, which should contain provisions covering at least the items mentioned in Annex II A to the directive. The items set out in Annex II A relate in particular to periods when the land application of fertiliser is inappropriate, land application in the light of the nature and the state of the ground, the conditions for land application in the light of proximity to watercourses, the capacity and construction of storage vessels for livestock manure, and procedures for land application.

16 Under Article 5(1) and (4) of Directive 91/676, the Member States are obliged to establish action programmes in respect of designated vulnerable zones, which have to contain the measures referred to in Annex III and the measures prescribed in the code(s) of good agricultural practice except those which have been superseded by the measures in Annex III. The measures referred to in Annex III must, as is clear from that annex, include rules relating, in particular, to periods when the land application of certain types of fertiliser is prohibited, the capacity of storage vessels for livestock manure, limitation of the land application of fertilisers so as to ensure a balanced presence of nitrogen in the soil, and maximum quantities of manure that can be applied to the land on the basis of the manure's nitrogen content.

Irish law

17 The Waste Management Act, 1996 ('the 1996 Act'), was adopted for the purpose of transposing Directive 75/442 into national law. Section 4(1) of the 1996 Act provides:

'In this Act, "waste" means any substance or object belonging to a category of waste specified in the First Schedule or for the time being included in the European Waste Catalogue which the holder discards or intends or is required to discard, and anything which is discarded or otherwise dealt with as if it were waste shall be presumed to be waste until the contrary is proved.'

18 Section 51(2)(a) of the 1996 Act states:

'Subject to paragraph (b), a waste licence ... shall not be required for the recovery of—

...

(iii) faecal matter of animal or poultry origin in the form of manure or slurry ...'.

19 Section 52 of the Environmental Protection Agency Act, 1992 ('the 1992 Act'), states:

'(1) The functions of the [EPA] shall ... include—

(a) the licensing, regulation and control of activities for the purposes of environmental protection,

...

(2) In carrying out its functions, the [EPA] shall—

...

(b) have regard to the need for a high standard of environmental protection and the need to promote sustainable and environmentally sound development, processes or operations,

...'

20 The referring court explains that, although the 1992 Act established a licensing scheme which has certain similarities with that envisaged by Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (OJ 1996 L 257, p. 26), that directive was not

transposed into Irish law until 2003, and therefore the licence at issue in the main proceedings was not granted pursuant to measures of national law adopted to implement that directive.

21 The referring court also points out that, on the date on which that licence was granted, Directive 96/676 had not yet been transposed into Irish law and no other domestic legislation controlled the use of animal fertiliser on agricultural land.

The dispute in the main proceedings and the questions referred for a preliminary ruling

22 Mr Brady operates an intensive pig farm having about 2 000 sows.

23 On 9 March 1998, Mr Brady applied for a licence to extend his farm, stating in the application that he had constructed tanks on his land of a capacity to store the equivalent of the farm's annual output of slurry and that he had entered into agreements with various farmers under which they undertook to purchase slurry for use as fertiliser on their land.

24 The licence that the EPA granted to Mr Brady, by decision of 22 October 1999, provides, in particular, that he is required to ensure that the farmers to whom he supplies slurry use it in strict accordance with the conditions set out in the licence.

25 In support of the action which he brought before the High Court against that decision, Mr Brady submitted, first, that the slurry at issue in the main proceedings is not 'waste' within the meaning of Directive 75/442 and the 1996 Act, but a by-product of his farm which he sells as fertiliser, so that the EPA did not have, on the basis of the 1992 Act, the power to regulate the disposal or the recovery of that slurry in the manner laid down in the contested licence.

26 Second, in Mr Brady's submission the EPA is not justified in imposing upon him, the obligation – enforceable by criminal sanction and impossible to satisfy – of controlling how the slurry he sells to other farmers is used by them, in particular as the European Union has enacted specific legislation intended to apply to the spreading of livestock effluent as fertiliser, namely Directive 91/676.

27 In this connection, the referring court states that Mr Brady contended in support of his action that the effect of the waste management conditions in the contested licence is to impose upon him, inter alia, the following obligations:

'...

- (c) to ensure that the purchaser of the fertiliser does not spread it on lands that are not in the purchaser's possession, ownership or control;
- (d) to ensure that none of [Mr Brady's] fertiliser is provided to lands that receive waste for landspreading from any other off-farm source which is not included in the Nutrient Management Plan, other than by agreement with the [EPA];
- (e) to agree in advance a Nutrient Management Plan in respect of lands not owned by [Mr Brady] and farmed by persons not under his control;
- (f) to monitor the use of the fertiliser by persons who purchase it for use on their lands and to direct the manner in which it is to be used;
- (g) to monitor surface waters that bisect areas on which the fertiliser is applied, i.e. at locations not under [Mr Brady's] control;
- (h) to monitor wells located on lands on which the fertiliser is spread, i.e. on lands not under [Mr Brady's] control;
- (i) to maintain at all times a register of use of the fertiliser for inspection by the EPA and for the ... purpose of submitting monthly reports to the EPA. The register must consist of fertiliser spreading: the name of the person who carries it out: weather and ground conditions at the time,

and the weather forecast for the following 24 hours: the nutrient requirements for individual plots: and the volume of fertiliser applied to those plots.’

- 28 Following the dismissal of his action by the High Court, Mr Brady appealed to the Supreme Court. He relies in support of his appeal upon two grounds, alleging, first, that the High Court erred in law in classifying the slurry produced on his farm as waste and, second, that if that slurry should indeed be classified as waste, the EPA is not justified in imposing, as part of the licence which it has granted to him, conditions requiring him to control spreading activities carried out by third parties on land owned by them and to be liable for those activities.
- 29 The Supreme Court considers that, although the judgments in Case C-416/02 *Commission v Spain* [2005] ECR I-7487; Case C-121/03 *Commission v Spain* [2005] ECR I-7569; Case C-194/05 *Commission v Italy* [2007] ECR I-11661; Case C-195/05 *Commission v Italy* [2007] ECR I-11699; and Case C-263/05 *Commission v Italy* [2007] ECR I-11745 contain various useful pointers in this regard, uncertainty remains as to whether the slurry at issue in the main proceedings must be classified as waste.
- 30 Observing that it follows in particular from that case-law that slurry remains waste if it is required to remain in long-term storage giving rise to a risk of pollution of the type intended to be prevented by the requirements of European Union law, the referring court raises in particular the question of the criteria for determining whether such a situation arises in the dispute before it.
- 31 It observes in this regard, first, that, bearing in mind that the sale of fertiliser is a seasonal undertaking, it is inevitable that the substantial volume of slurry generated by the activities of the appellant in the main proceedings will give rise to long-term storage, which should not, however, normally exceed the period of 12 months between two spreading seasons. It points out, second, that it has no material before it indicating whether the mere existence of this type of long-term storage in tanks authorised for that purpose does, or is likely to, lead to pollution.
- 32 Furthermore, on the assumption that the slurry at issue in the main proceedings is to be regarded as waste, the question then arises whether European Union law permits the EPA to attach to an operating licence conditions the effect of which is to continue to impose on Mr Brady obligations as to the eventual subsequent use of his slurry by other farmers or whether liability for such use must rest with those farmers.
- 33 It was in those circumstances that the Supreme Court decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

‘In the absence of a definitive interpretation of the meaning of “waste” for the purposes of Union law, is a Member State permitted by national law to impose upon a producer of pig slurry the obligation to establish that it is not waste, or is waste to be determined by reference to objective criteria of the type referred to in the case-law of the Court of Justice of the European Union:

1. If waste is to be determined by reference to objective criteria of the type referred to in the case-law of the Court of Justice of the European Union, what level of certainty of reuse of pig slurry is required, ... which a licensee collects and stores or may store for upwards of 12 months, pending its transfer to users?
2. If pig slurry is waste, or is determined to be waste in accordance with the application of the appropriate criteria, is it lawful for a Member State to impose upon its producer – who does not use it on his own lands, but disposes of it to third party landowners for use as fertilisers on those third parties’ lands – personal liability for compliance by those users with Union legislation concerning the control of waste and/or fertilisers, in order to ensure that the third parties’ use of that pig slurry by land spreading will not give rise to a risk of significant environmental pollution?
3. Is the aforesaid pig slurry excluded from the scope of the definition of “waste” by virtue of Article 2(1)(b)(iii) of Directive [75/442], by reason of its being “already covered by other legislation”, and in particular by [Directive 91/676], in circumstances where, at the time the

licence was granted, Ireland had not transposed [Directive 91/676], no other domestic legislation controlled the application of pig slurry to land as fertiliser, and [Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption (OJ 2002 L 273, p. 1)] had not then been adopted?

Consideration of the questions referred

Question 1

34 By its introductory question and Question 1, which it is appropriate to deal with together, the referring court seeks, in essence, to ascertain, first, under what conditions slurry produced in an intensive pig farm and stored pending its transfer to farmers in order to be used by them as fertiliser on their land may be classified as a by-product and consequently cease to be regarded as 'waste' within the meaning of Directive 75/442 and, in particular, what level of certainty is required as regards the reuse of the slurry envisaged. Second, the referring court wishes to ascertain to what extent the burden of proving that those conditions are satisfied can rest on the producer of that slurry.

The first part of Question 1

35 As regards the circumstances in which pig slurry stored by a producer pending its transfer to farmers in order to be used by them as fertiliser on their land must be classified as a by-product rather than as 'waste' within the meaning of Directive 75/442, it should be recalled that the first subparagraph of Article 1(a) of that directive defines waste as 'any substance or object in the categories set out in Annex I which the holder discards or intends ... to discard'.

36 Both Annex I to Directive 75/442 and the list of wastes that is included in the European Waste Catalogue adopted on the basis of the second subparagraph of Article 1(a) of that directive are intended only as guidance (see, in particular, the judgment of 29 October 2009 in Case C-188/08 *Commission v Ireland*, paragraph 33 and the case-law cited).

37 Therefore, the fact that the European Waste Catalogue refers to 'animal faeces, urine and manure (including spoiled straw), effluent, collected separately and treated off-site' is not decisive for the purpose of assessing the concept of waste. That general mention of livestock effluent does not take into account the conditions in which the effluent is used and which are decisive for the purposes of such an assessment (see, to this effect, Case C-121/03 *Commission v Spain*, paragraph 66).

38 According to settled-case-law, classification as 'waste', within the meaning of Directive 75/442, is to be inferred primarily from the holder's actions and the meaning of the term 'discard', referred to in the first subparagraph of Article 1(a) of the directive (see, inter alia, Case C-194/05 *Commission v Italy*, paragraph 32, and Case C-188/07 *Commune de Mesquer* [2008] ECR I-4501, paragraph 53).

39 The term 'discard' must be interpreted in the light not only of the essential objective of Directive 75/442, which, according to the third recital in the preamble thereto, is 'the protection of human health and the environment against harmful effects caused by the collection, transport, treatment, storage and tipping of waste', but also of Article 174(2) EC. That provision states that 'Community policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Community. It shall be based on the precautionary principle and on the principles that preventive action should be taken ...'. It follows that the term 'discard' and, accordingly, the concept of 'waste' within the meaning of that directive cannot be interpreted restrictively (see, inter alia, Case C-194/05 *Commission v Italy*, paragraph 33 and the case-law cited, and *Commune de Mesquer*, paragraphs 38 and 39).

40 The Court has held in particular that among the circumstances that may constitute evidence that the holder has discarded a substance or object or intends or is required to discard it, within the meaning of Article 1(a) of Directive 75/442, is the fact that a substance is a production or consumption residue, that is to say, a product which was not itself sought (see, inter alia, Case C-194/05 *Commission v Italy*, paragraph 34 and the case-law cited, and *Commune de Mesquer*, paragraph 41).

- 41 Such evidence may likewise be constituted by the fact that the substance in question is a production residue for which special precautions must be taken if it is used owing to the environmentally hazardous nature of its composition (see Joined Cases C-418/97 and C-419/97 *ARCO Chemie Nederland and Others* [2000] ECR I-4475, paragraph 87, and Case C-9/00 *Palin Granit and Vehmassalon kansanterveystyön kuntayhtymän hallitus* [2002] ECR I-3533, paragraph 43).
- 42 It is also clear from the case-law that neither the method of treatment reserved for a substance nor the use to which that substance is put determines conclusively whether or not the substance is to be classified as waste and that the concept of waste does not exclude substances and objects which are capable of economic reuse. The system of supervision and control established by Directive 75/442 is intended to cover all objects and substances discarded by their owners, even if they have a commercial value and are collected on a commercial basis for recycling, reclamation or reuse (Case C-194/05 *Commission v Italy*, paragraphs 36 and 37, and *Commune de Mesquer*, paragraph 40).
- 43 In light of the guidance provided by the case-law as set out above, it must be held that effluent generated by an intensive pig farm, which is not the product primarily sought by the farmer and any recovery of which by spreading as fertiliser must, as is apparent in particular from the sixth recital in the preamble to Directive 91/676 and the mechanism established by that directive, involve the taking of special precautions owing to the potentially hazardous nature of its composition from an environmental point of view, is, in principle, waste (see, by analogy, Case C-194/05 *Commission v Italy*, paragraph 35 and the case-law cited, and *Commune de Mesquer*, paragraph 41).
- 44 However, it is also clear from the case-law of the Court that, in certain situations, goods, materials or raw materials resulting from an extraction or manufacturing process the primary aim of which is not their production may be regarded not as a residue, but as by-products, which their holder does not seek to 'discard', within the meaning of the first subparagraph of Article 1(a) of Directive 75/442, but which he intends to exploit or market on terms advantageous to himself in a subsequent process – including, as the case may be, in order to meet the needs of economic operators other than the producer of those substances – provided that such reuse is not a mere possibility but a certainty, without any further processing prior to reuse and as part of the continuing process of production (see, inter alia, Case C-121/03 *Commission v Spain*, paragraph 58; Case C-194/05 *Commission v Italy*, paragraph 38; and *Commune de Mesquer*, paragraph 42).
- 45 As regards, more specifically, livestock effluent such as that at issue here, the Court has already held that it may fall outside classification as waste if it is used as soil fertiliser as part of a lawful practice of spreading on clearly identified parcels and if its storage is limited to the needs of those spreading operations (Case C-121/03 *Commission v Spain*, paragraph 60).
- 46 The Court has also stated that it is not appropriate to limit that analysis to livestock effluent used as fertiliser on land forming part of the same agricultural holding as that which generated the effluent. It is possible for a substance not to be regarded as 'waste' within the meaning of Directive 75/442 if it is certain to be used to meet the needs of economic operators other than the operator which produced it (Case C-121/03 *Commission v Spain*, paragraph 61).
- 47 It is for the national courts, taking account of the guidance provided by the Court's case-law and of all the circumstances of the situation on which they have to give judgment, to determine whether a by-product actually exists, while ensuring in this regard that classification as a by-product is limited to the situations that fulfil the conditions recalled in paragraph 44 of the present judgment.
- 48 So far as concerns determining that the reuse of the slurry stored pending spreading is sufficiently certain, it is to be pointed out first of all that, as follows from the case-law recalled in paragraphs 45 and 46 of the present judgment, the mere fact that such reuse will not, as a matter of fact, become absolutely certain until the spreading operations envisaged have in fact taken place through action by the third-party purchasers concerned does not preclude classification as a by-product.
- 49 What subsequently happens to an object or a substance is not in itself determinative of its nature as waste, which, in accordance with Article 1(a) of Directive 75/442, is established on the basis of whether the holder of that object or substance discards it or intends or is required to discard it (Case C-194/05 *Commission v Italy*, paragraphs 49 and 50 and the case-law cited).

- 50 It should need be pointed out in this regard that, if the referring court were to come to the conclusion that the reuse of the slurry envisaged by Mr Brady is, in this instance, sufficiently certain for the slurry to be considered, while stored by him and until it is actually delivered to the relevant third parties, a by-product which the person concerned seeks not to 'discard' within the meaning of the first subparagraph of Article 1(a) of Directive 75/442 but to exploit or market, that would not at all affect the fact that that slurry may, in some circumstances, become waste after its delivery, in particular if it were to become apparent that it is ultimately discharged by those third parties into the environment in an uncontrolled manner, in conditions which enable it to be regarded as waste (see, to this effect, Case C-416/02 *Commission v Spain*, paragraph 96).
- 51 In such a case, account should be taken of the fact that, according to the Court's case-law, the person who is in fact in possession of products immediately before they become waste must be regarded as having 'produced' that waste within the meaning of Article 1(b) of Directive 75/442 and thus be categorised as its 'holder' within the meaning of Article 1(c) of that directive (see, in particular, *Commune de Mesquer*, paragraph 74).
- 52 For the purpose of determining whether the reuse of the slurry through spreading by other farmers, as envisaged by the appellant in the main proceedings, is sufficiently certain to justify its storage for a period other than that necessary for its collection with a view to disposal, it is incumbent, on the other hand, on the referring court, as is apparent from the case-law recalled in paragraph 45 of the present judgment, to satisfy itself, in particular, that the plots of land of those farmers on which that reuse is to take place are, from the outset, clearly identified. Such identification is capable of showing that the quantities of slurry to be delivered are in principle actually intended to be used for the purpose of fertilising the plots of land of the farmers concerned.
- 53 Therefore, if the producer of the slurry wishes to store it for a longer period than that necessary for its collection with a view to disposal, he must have firm commitments from operators to take delivery of the slurry for the purpose of using it as fertiliser on duly identified plots of land.
- 54 As to the condition, also recalled in paragraph 45 of the present judgment, that the storage of the livestock effluent must be limited to the needs of the spreading operations, it should be noted that this condition is explained, in particular, by the fact that storage operations with a view to reuse of a substance may, in light of their duration, constitute a burden for the holder and be potentially the cause of precisely the environmental pollution which Directive 75/442 seeks to limit (see, to this effect, Case C-194/05 *Commission v Italy*, paragraph 40).
- 55 In this connection, it is incumbent, in particular, upon the national courts to satisfy themselves that the storage facilities which the producer of the slurry uses are designed so as to prevent any run-off of that substance or seepage into the soil, and that they provide sufficient capacity to store the slurry produced pending its actual handing over to the farmers concerned.
- 56 It is also important that the actual storage of the slurry be strictly limited to the needs of the spreading operations envisaged, which means, first, that the quantities stored must be limited in such a way that they are, in their entirety, indeed intended to be so reused (see, to this effect, *Palin Granit and Vehmassalon kansanterveystyön kuntayhtymän hallitus*, paragraph 40) and, second, that the period of storage must be limited in the light of the requirements resulting in this regard from the seasonal nature of the spreading operations, that is to say, it must not exceed what is required in order for the producer to be able to meet his existing contractual commitments to deliver slurry for spreading purposes during the spreading season in progress and the coming one.
- 57 Furthermore, it is likewise for the national courts to determine, having regard to all the relevant circumstances, that the reuse of the slurry by the third parties concerned, as programmed by the producer, is such as to confer upon him an advantage over and above merely being able to discard that product, since such a circumstance, when established, indeed increases the likelihood of actual reuse (see, to this effect, Case C-194/05 *Commission v Italy*, paragraph 52, and *Palin Granit and Vehmassalon kansanterveystyön kuntayhtymän hallitus*, paragraph 37).
- 58 As is apparent from the case-law recalled in paragraph 44 of the present judgment, the slurry at issue in the main proceedings can in fact be considered to have economically the value of a product only if the

view can be taken that that slurry is indeed intended to be actually exploited or marketed on terms economically advantageous to its holder.

59 The relevant circumstances liable to require being taken into account by the national courts for the purpose of determining whether the aforesaid requirements are met include the circumstance that the substances concerned are the subject of actual commercial transactions and meet the buyers' specifications (see, to this effect, *Commune de Mesquer*, paragraph 47). Thus, it may be pertinent, in this connection, to examine the conditions, in particular the financial conditions, under which the transactions between the producer and the purchasers of the slurry take place. The same applies to the burdens, in particular those linked to storage of the substances concerned, which are brought about for the holder by the reuse of those substances, since such burdens must not prove excessive for him (see, to this effect, *Commune de Mesquer*, paragraph 59).

60 In light of all the foregoing, the answer to the first part of Question 1 is that the first subparagraph of Article 1(a) of Directive 75/442 must be interpreted as meaning that slurry produced in an intensive pig farm and stored pending delivery to farmers in order to be used by them as fertiliser on their land constitutes not 'waste' within the meaning of that provision but a by-product when that producer intends to market the slurry on terms economically advantageous to himself in a subsequent process, provided that such reuse is not a mere possibility but a certainty, without any further processing prior to reuse and as part of the continuing process of production. It is for the national courts to determine, taking account of all the relevant circumstances obtaining in the situations before them, whether those various criteria are satisfied.

The second part of Question 1

61 So far as concerns determination of the person upon whom rests the burden of proof as to fulfilment of the criteria entailing, in accordance with the Court's case-law recalled in paragraph 44 of the present judgment, a finding that a substance must be classified as a by-product and not as 'waste' within the meaning of Directive 75/442, it must be pointed out that the directive does not contain specific provisions relating to this question. Accordingly, the national court is to apply in this regard the provisions of its own legal system provided that, in so doing, the effectiveness of European Union law and in particular of Directive 75/442 is not undermined and compliance with the obligations flowing from European Union law is ensured (see, to this effect, *ARCO Chemie Nederland and Others*, paragraph 70, and Case C-194/05 *Commission v Italy*, paragraphs 44, 52 and 53).

62 It follows, in particular, that such national rules relating to the burden of proof cannot result in it being excessively difficult to prove that substances must, on application of the criteria resulting from that case-law, be regarded as by-products.

63 Subject to this reservation, it should be recalled that the Court has already held that leftover rock and sand residue from ore-dressing operations in the working of a mine which their holder uses lawfully for the necessary filling-in of the galleries of that mine are not classified as 'waste' for the purposes of Directive 75/442 where that holder provides sufficient guarantees as to the identification and actual use of those substances, and that it has, moreover, stated that such case-law can be applied to livestock effluent (see Case C-121/03 *Commission v Spain*, paragraphs 59 and 60 and the case-law cited).

64 As the Advocate General has observed in point 67 of his Opinion, it is indeed clear that as a general rule, since establishing an intention is involved, only the holder of the products can prove that he intends not to discard those products but to permit their reuse in circumstances that are appropriate for their being classified as a by-product within the meaning of the Court's case-law.

65 In light of the foregoing, the answer to the second part of Question 1 is that European Union law does not preclude the burden of proving that the criteria for finding that a substance such as the slurry produced, stored and transferred in circumstances such as those of the main proceedings constitutes a by-product are met from resting on the producer of that slurry, provided that this does not result in the effectiveness of European Union law, and in particular of Directive 75/442, being undermined and that compliance with the obligations flowing from European Union law is ensured, in particular the obligation not to make subject to the provisions of that directive substances which, on application of

those criteria, must, under the Court's case-law, be regarded as by-products to which the directive does not apply.

Question 3

- 66 By Question 3 which it is appropriate to deal with second, the referring court seeks to ascertain, in essence, whether Article 2(1)(b)(iii) of Directive 75/442 must be interpreted as meaning that livestock effluent produced while operating a pig farm located in a Member State is 'covered by other legislation' within the meaning of that provision and, therefore, excluded from the scope of Directive 75/442 by virtue of the existence of Directive 91/676 where the latter directive has not yet been transposed into the law of that Member State.
- 67 It is settled case-law that, in order for Community or national legislation to be regarded as 'other legislation' within the meaning of Article 2(1)(b)(iii) of Directive 75/442, it must contain precise provisions organising management of the waste in question and result in a level of protection of the environment which is at least equivalent to that resulting from that directive (see, in particular, Case C-121/03 *Commission v Spain*, paragraph 69 and the case-law cited, and Case C-252/05 *Thames Water Utilities* [2007] ECR I-3883, paragraph 34).
- 68 The Court has also explained that, whilst the European Union legislature thus adopted a rule that, in the absence of specific Community legislation and, alternatively, specific national legislation, Directive 75/442 applies, that was in order to avoid the management of that waste not being subject to any legislation in certain situations (see Case C-114/01 *Avesta Polarit Chrome* [2003] ECR I-8725, paragraph 50).
- 69 Without there being any need, in the present case, to rule on whether a directive, such as Directive 91/676, if it were transposed into national law, would have to be regarded as 'other legislation' within the meaning of Article 2(1)(b) of Directive 75/442, it need merely be observed that, where a Member State has not adopted the measures necessary to implement the aforesaid directive, the latter cannot in any event be considered to result in a level of protection of the environment which is at least equivalent to that sought by Directive 75/442, since that failure to transpose means, on the contrary, that, if management of the livestock effluent at issue in the main proceedings were not subject to Directive 75/442, it would not be subject to any other legislation.
- 70 It follows that the answer to Question 3 is that Article 2(1)(b)(iii) of Directive 75/442 must be interpreted as meaning that, where Directive 91/676 has not been transposed into the law of a Member State, livestock effluent produced while operating a pig farm located in that Member State cannot be considered to be, by virtue of the existence of the latter directive, 'covered by other legislation' within the meaning of that provision.

Question 2

- 71 By Question 2, the referring court seeks, in essence, to ascertain whether, in a situation where slurry produced and held by a pig farm is to be classified as 'waste' within the meaning of Directive 75/442, European Union law precludes a Member State from rendering a producer who transfers the slurry to other farmers for use as fertiliser on their land personally liable for compliance by those farmers with European Union legislation concerning the management of waste and fertilisers.
- 72 First of all, it should be noted that, as is clear from the very wording of this question and for the reasons that are apparent from the order for reference, the question is asked only if the livestock effluent at issue in the main proceedings should be classified as 'waste' within the meaning of the first subparagraph of Article 1(a) of Directive 75/442.
- 73 In this regard, it is to be observed at the outset that – in the light, in particular, of the answer to Question 3 – if that proves to be the case the provisions of Directive 75/442 must apply in respect of a situation such as that at issue in the main proceedings.
- 74 Under Article 8 of Directive 75/442, the Member States must ensure that 'any holder of waste' either recovers or disposes of waste himself in accordance with the provisions of that directive or has it

handled by a private or public waste collector or by an undertaking which carries out the operations listed in Annex II A or B to the directive. Such obligations imposed upon any holder of waste are the corollary to the prohibition on the abandonment, dumping or uncontrolled disposal of waste laid down in Article 4 of the directive (see, in particular, Case C-1/03 *Van de Walle and Others* [2004] ECR I-7613, paragraph 56).

- 75 Here, it is not in dispute that the appellant in the main proceedings, who does not seek in the slightest to recover, or dispose of, himself the waste that he may have produced, is, as 'holder' of that waste and in accordance with the first indent of Article 8 of Directive 75/442, required to have it handled by a private or public waste collector or by an undertaking which carries out the operations listed in Annex II A or B to the directive.
- 76 It must be stated in this regard, first, that it cannot be inferred from the information in the order for reference that the farmers to whom Mr Brady intends to pass his slurry can be regarded as entitled to carry out recovery operations for the purposes of Article 8 of Directive 75/442.
- 77 There is nothing to indicate that those farmers would possess the permit required under Article 10 of Directive 75/442 for the purpose of carrying out such recovery operations. Nor can it be inferred from the information submitted to the Court that the farmers would be exempted from the requirement for such a permit in compliance with the conditions laid down, in this regard, by Article 11 of the directive.
- 78 If it were to be confirmed – a matter which it is, if necessary, for the referring court to determine – that the farmers to whom Mr Brady intends to transfer the waste of which he is the holder neither possess the permit required in Article 10 of Directive 75/442 nor are exempted from that requirement, in accordance with the conditions laid down in Article 11(1) and (2) of the directive, it would follow that Article 8 of the directive precludes the transfers thereby envisaged and, therefore, precludes those transfers from being the subject-matter of any authorisation issued by an authority such as the EPA irrespective, moreover, of the conditions that would be imposed on issue of that authorisation.
- 79 Second, it must be added that, if it should be found that the farmers concerned do possess the permit required under Article 10 of Directive 75/442 or are duly exempted from such a requirement and registered in accordance with Article 11(1) and (2) of the directive, the handing over of the waste at issue by Mr Brady to such farmers cannot be subject to conditions in his regard intended to impose liability upon him for compliance by them with European Union legislation concerning the management of waste and fertilisers.
- 80 In this connection it should be noted, first of all, that once a holder of waste has it handled under Article 8 of Directive 75/442, the undertaking that possesses a permit pursuant to Article 10 of the directive or is exempted from the requirement for such a permit in accordance with Article 11 becomes the 'holder' of the waste in question. It follows from the very wording of Article 8 of Directive 75/442 that it is the 'holder of waste' who has the task, as the case may be, of recovering such waste in accordance with the provisions of the directive.
- 81 Next, it follows from Article 8 in conjunction with Article 10 of Directive 75/442 and from the broad logic of those provisions that, where a holder of waste has it handled by an undertaking which possesses a permit issued under the second of those provisions authorising it to recover that waste, it is exclusively that undertaking, and not the earlier holder of the waste, that is responsible for carrying out the recovery operations while complying, in this regard, with all the conditions to which those operations are subject under both the applicable legislation and the terms of the permit.
- 82 Finally, it can likewise be inferred from Article 8 in conjunction with Article 11 of Directive 75/442 and from their broad logic that, where a holder of waste has it handled by an undertaking which is exempted, in accordance with Article 11, from the requirement for a permit in order to recover that waste, it is exclusively that undertaking, and not the earlier holder of the waste, that is responsible for carrying out the recovery operations while complying, in this regard, with the general rules and the requirements to which Article 11 refers and with any other provision of European Union law governing those operations.

In light of the foregoing, the answer to Question 2 is that, in a situation where slurry produced and held by a pig farm is to be classified as 'waste' within the meaning of the first subparagraph of Article 1(a) of Directive 75/442:

Article 8 of that directive must be interpreted as precluding the holder from being authorised, under any conditions, to transfer that waste to a farmer who uses it as fertiliser on his land if it transpires that that farmer neither possesses the permit referred to in Article 10 of the directive nor is exempted from the requirement to possess such a permit and registered in accordance with Article 11 of the directive; and

Articles 8, 10 and 11 of the directive, read together, must be interpreted as precluding the transfer of that waste by the holder to a farmer who uses it as fertiliser on his land, and who possesses a permit as referred to in Article 10 or is exempted from the requirement to possess such a permit and is registered in accordance with Article 11, from being subject to the condition that the holder assumes liability for compliance by that other farmer with the rules that are to apply to the recovery operations carried out by the latter by virtue of European Union law concerning the management of waste and fertilisers.

Costs

- 84 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

1. The first subparagraph of Article 1(a) of Council Directive 75/442/EEC of 15 July 1975, as amended by Commission Decision 96/350/EC of 24 May 1996, must be interpreted as meaning that slurry produced in an intensive pig farm and stored pending disposal by farmers in order to be used by them as fertiliser on their land constitutes not 'waste' within the meaning of that provision but a by-product when that producer intends to make use of that slurry on terms economically advantageous to himself in a subsequent process, provided that such reuse is not a mere possibility but a certainty, without any further processing prior to reuse and as part of the continuing process of production. It is for the national courts to determine, taking account of all the relevant circumstances obtaining in the situations before them, whether those various criteria are satisfied.
2. European Union law does not preclude the burden of proving that the criteria for finding that a substance such as the slurry produced, stored and transferred in circumstances as those of the main proceedings constitutes a by-product are met from resting on the producer of that slurry, provided that this does not result in the effectiveness of European Union law, and in particular of Directive 75/442, as amended by Decision 96/350, being undermined and that compliance with the obligations flowing from European Union law is ensured, in particular the obligation not to make subject to the provisions of that directive substances which, on application of those criteria, must, under the Court's case-law, be regarded as by-products to which the directive does not apply.
3. Article 2(1)(b)(iii) of Directive 75/442, as amended by Decision 96/350, must be interpreted as meaning that, where Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources has been transposed into the law of a Member State, livestock effluent produced by an operator operating a pig farm located in that Member State cannot be considered to be, by virtue of the existence of the latter directive, 'covered by other legislation' within the meaning of that provision.
4. In a situation where slurry produced and held by a pig farm is to be classified as 'waste' within the meaning of the first subparagraph of Article 1(a) of Directive 75/442, as an

by Decision 96/350:

- Article 8 of that directive must be interpreted as precluding the holder from being authorised, under any conditions, to transfer that waste to a farmer who uses it as fertiliser on his land if it transpires that that farmer neither possesses the permit referred to in Article 10 of the directive nor is exempted from the requirement to possess such a permit and registered in accordance with Article 11 of the directive; and
- Articles 8, 10 and 11 of the directive, read together, must be interpreted as precluding the transfer of that waste by the holder to a farmer who uses it as fertiliser on his land, and who possesses a permit as referred to in Article 10 or is exempted from the requirement to possess such a permit and is registered in accordance with Article 11, from being subject to the condition that the holder assumes liability for compliance by that other farmer with the rules that are to apply to the recovery operations carried out by the latter by virtue of European Union law concerning the management of waste and fertilisers.

[Signatures]

* Language of the case: English.