

| December 2024

Prepared by CWPA Planning & Architecture

CWPA

Planning & Architecture



Planning Statement

Substitute Consent

Re. Retention of existing development and operations on site, at St. Margaret's Waste Recycling & Transfer Centre, and permission for future use of the facility for up to 21,900 tonnes per annum waste intake.

Quality Assurance – Mandate Statute

This document has been prepared and scrutinized in accordance with CWPA Planning & Architecture Quality Assurance team provisions.

Date of Preparation	Prepared By	Checked By	Approved By
December 2024	Roisin Corr Rachel Kenny	Rachel Kenny	Joe Corr

Application Information:

Applicant:	St Margarets Recycling Centre
Planning Authority:	Fingal County Council
RE:	Retention and continued use of an existing and long-established Waste Recycling & Transfer Centre (see Section 3 for full details)
Subject Site:	St Margarets, Co. Dublin
Prepared By:	CWPA Planning & Architecture

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1.0 Introduction

This Planning Report has been prepared by CWPA Planning & Architecture to assist An Bord Pleanála (the Board) in their considerations of St Margaret's Waste Recycling & Transfer Centre Ltd. application for Substitute Consent, which comprises (i) an application for 'retention of existing works on site and historic use of the site from 2019 to 2023, where waste recycling and transfer operations (incl. an authorised treatment facility for End-of-Life-Vehicles') ranged from c.26,000 to 45,000 tonnes per annum, and on-going operations, from January 2024 for up to 21,900 tonnes per annum', and (ii) a simultaneous application for the future use of the site as a 'waste recycling and transfer facility and authorised treatment facility for End of Life Vehicles' for up to 21,900 tonnes per annum, along with permission for minor works relating to environmental management measures, including enhancement of car and bike parking arrangements, additional surface water attenuation, and improvement of existing boundary arrangements.' A detailed development description is provided in Section 3.

This planning report summarises the key factors and information that we believe to be relevant, focusing on the key substantive issues for consideration at application stage; namely

- (i) planning history,
- (ii) compliance with the Fingal Development Plan(s) and
- (iii) the 'exceptional circumstances' that would allow the development to be considered under 'substitute consent' provisions,

A remedial Environmental Impact Assessment Report (rEIAR) and a remedial Natura Impact Statement (rNIS), are submitted in respect of the substitute consent application relating to the retention elements of the development, along with a Traffic Impact Assessment, and required plans and particulars.

An Environmental Impact Assessment Report (EIAR) and Natura Impact Statement (NIS), are submitted in respect of the simultaneous application relating to the proposed future use of the site, along with a Traffic Impact Assessment, and required plans and particulars under the substitute consent provisions.

1.1 Legislative Provisions relating to the making of this application

An Bord Pleanála was given additional functions and responsibilities under various provisions contained in the Planning and Development (Amendment) Act 2010. Some of the relevant provisions of the Act were subsequently amended by the Environmental (Miscellaneous Provisions) Act 2011, the European Union (EIA and Habitats) Regulations 2011, the European Union (EIA and Habitats) (No. 2) Regulations 2011, the

European Union (Substitute Consent) Regulations 2011, the European Union (Environmental Impact Assessment and Habitats) Regulations 2015 (numbers 1 and 2).

Section 57 of the Planning and Development (Amendment) Act 2010 inserted 2 additional parts into the Planning and Development Act 2000 (as amended) i.e. Parts XA and XAB. The Board's functions were expanded in both parts. Section 75 of the Planning and Development (Amendment) Act 2011 inserted a new section 261A into the Planning and Development Act 2000 (as amended). This section deals with the control of quarries and it contains additional functions for An Bord Pleanála.

Part XA (inserted by section 57 of the Planning and Development (Amendment) Act 2010) deals with the issue of substitute consent. The concept of substitute consent derives from a European Court of Justice finding to the effect that permission for the retention of development affected by the EU Directive on Environmental Impact Assessment may be granted only in exceptional circumstances.

In 2022 this legislation was updated Planning and Development, Maritime and Valuation (Amendment) Act 2022, and this Act came into effect in December 2023. Notwithstanding the passing of the new Planning Act, 2024, and that section 129, et al, of this Act will pertain to 'retrospective planning' in lieu of 'substitute consent, pending the commencement of this part of the Act, it is understood that the provisions relating to substitute consent as adopted and commenced in respect of the 2022 amendment Act pertain. Applications for substitute consent are made directly to An Bord Pleanála under section 177E of the Planning and Development Acts.

In 2022, Section 177K of the Principal Act is amended -

(a) by the insertion of the following subsection after subsection (1I):

"(1J) In considering whether exceptional circumstances exist under subsection (1A)(a) the Board shall have regard to the following matters:

(a) whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive;

(b) whether the applicant had or could reasonably have had a belief that the development was not unauthorised;

(c) whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired;

(d) the actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development;

(e) the extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated;

(f) whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development;

(g) such other matters as the Board considers relevant.”

This is dealt with in Section 8 of this Planning Report.

2.0 Site Location & Description

The subject site is located on lands at Sandyhill St. Margret's, Co. Dublin, and extends to c. 2.93 hectares¹. It is bounded by agricultural lands to all sides of which the majority is in family ownership of the applicant. The site is somewhat isolated from further developments, whether in St Margaret's village to the southeast, or surrounding areas. However, The R108 lies to the south which runs to the south of the site and Dublin Airport is located c. 3.5km to the east with the southern runway being located c. 800m southeast of the site and the northern runway c. 1.3 km to the northeast. The site is strategically well located and benefits from high quality access to the wider road network surrounding Dublin, this allows for smooth operations and good connectivity to key business partners, and is accessible from an existing approved entrance onto the R122 running north of the subject site.

The site is an existing brownfield site and comprises a long-established Waste Recycling & Transfer Facility, and is an authorised treatment facility for end-of-life vehicles. The site entrance, on to the R122, is formed by a high block concrete wall with metal panel gate. A concrete splayed area is situated between the entrance and roadside boundary. On entering the premises, a car parking area is provided to the left. The vast majority of the site is hard surfaced, c.1.7ha. A number of galvanised steel sheds are located to the western boundary of the site. These sheds access onto a concrete yard area. A weighbridge and several prefabricated cabins which function as office space, canteen and toilets is situated within the core waste recycling & transfer centre operational area of the site. An area of c.1.2ha of compacted hardcore is located to the south of the Recycling Centre Operations. While once used for parking and storage associated with activities on site, it is currently not in use.

Figure 1: Site Location Map

Source: Googlemaps.ie



¹ Refer to Site Layout Drawing, site survey (measured site area noted as 2.93ha)

The waste recycling and transfer facility has been in operation for the past 29 years (since c. 1995) and also operates as an authorised treatment facility (ATF) for end-of-life vehicles (ELVs). It currently operates under a Waste Facility Permit from Fingal County Council (WFP-FG-13-0002-02).

The waste types accepted on site, which have been generally consistent since operations commenced, comprise the following:

- Metals
- Construction and demolition waste
- Wood waste
- Bulky skips
- Glass
- End-of-Life Vehicles (ELVs)
- Batteries

All input material is weighed and recorded at the facility weighbridge. Input tonnages are monitored on a monthly and quarterly basis by the applicant.

3.0 Planning History

CWPA Planning & Architecture have undertaken a review of the available planning history pertaining to the subject site and surrounding area on the Fingal Council Planning Register. The pertaining planning history is listed below.

A) FCC Reg. Ref. FW20A/0029 Applicant: St Margarets Recycling & Transfer Centre Ltd.

Development Description	Retention planning permission is sought for the permanent continuation of use of the existing waste processing and transfer facility for the bulking, transfer and recycling of metals, construction & demolition waste, bulky/skip waste, batteries, wood waste, glass, other non-biodegradable non-hazardous wastes, and an Authorised Treatment Facility for end-of-life vehicles, accepting up to 24,900 tonnes of waste per annum. Retention permission is also sought for the continued use of the existing buildings on site associated with the daily operations of the facility including processing shed, offices, plant room, shelter buildings etc., existing site services, boundary treatments and all ancillary site development works necessary to facilitate the development erected under and in accordance with Reg. Ref's. F13A/0409, F11A/0443, F10A/0177, F03A/1561, F03A/1682 and F97A/0109. Planning permission is sought for new proposed stormwater attenuation storage tanks and associated stormwater treatment infrastructure to serve the existing development with permission also sought to restore part of the lands to agricultural use. The above development will require a review of the existing waste facility permit for the site and as such, a separate application will be made to the environmental section of Fingal County Council upon receipt of planning permission
PA Decision	Grant Permission & Grant Retention
Appeal Ref	ABP-310169-21
ABP Decision	Decision Refuse Permission (December 2021)
JR	Decision Upheld (February 2024)

B) FCC Reg. Ref. FW19A/0135 Applicant: St Margarets Recycling & Transfer Centre Ltd.

Development Description	Planning permission is sought (i) the permanent continuation of use of the existing and permitted waste processing and transfer facility at St. Margaret's which is currently operated under and in accordance with temporary planning permission Reg. Ref. F13A/0409 and permanent planning permissions Reg. Ref. F03A/1682 and Reg. Ref. F97A/0109; (ii) an increase in waste throughput at the facility (to accept up to 49,500 tonnes per annum); (iii) continued use of the existing buildings on site associated with the daily operations of the facility; (iv) proposed stormwater attenuation storage tanks and associated stormwater treatment infrastructure; (v) and all ancillary site development
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	works necessary to facilitate the development erected under and in accordance with Reg. Ref's. F13A/0409, F11A/0443, F10A/0177, F03A/1561, F03A/1682 and F97A/0109. This application is accompanied by An Environmental Impact Assessment Report (EIAR).
PA Decision	Withdrawn

c) FCC Reg. Ref. F13A/0409 Applicant: St Margarets Recycling & Transfer Centre Ltd.

Development Description	5 year permission for the continuation of use of a facility for the bulking, transfer and recycling of metals, construction & Demolition waste, bulky/skip waste, batteries, Waste Electrical and Electronic Equipment (WEEE), other non-biodegradable non-hazardous wastes, and an Authorised Treatment Facility for end of life vehicles. Permission is also being sought for a new 5-bay metal-clad portal frame storage building, with external finish to match existing adjacent storage building and associated site works. the new building (447.95m ²) will be used for the storage & shredding of wood/timber products and bulky/skip waste segregation. the site is an established waste facility and operates under Waste Facility Permit WFP-FG-10-00012-02; the following planning permissions apply: F11A/0443, F10A/0177, F03A/1682, F03A/1561 and F97A/0109. Decision Grant Permission D) FCC Reg. Ref. F11A/0443 Reg. Ref. F11A/0443 Development Description The establishment of an authorised treatment facility for the depollution/recovery of end-of-life vehicles (ELVs) at an existing and established waste recycling facility (Planning ref. F97A/0109; Waste Facility Permit WFT-FG-11-00012-01). a change of use of the existing green waste storage building as granted under planning ref: F10A/0177 to carry out ELV de-pollution activities within this building. Modifications to the external facade of the existing storage building on site to facilitate the internal storage of all ELVs delivered to the facility pending de-pollution and an external metal crusher/baler is proposed along the northern boundary of the site, with the crushed bales stored on an adjacent mobile flat bed trailer (on concrete hardstanding), and all necessary site development works.
PA Decision	Grant Permission & Grant Retention - Expired 24th Aug 2019.

D) FCC Reg. Ref. F11A/0443 Applicant: St Margarets Recycling & Transfer Centre Ltd.

Development Description	for the establishment of an authorised treatment facility for the de-pollution/recovery of end-of-life vehicles (ELVs) at an existing and established waste recycling facility (Planning ref. F97A/0109; Waste Facility Permit WFT-FG-11-00012-01). a change of use of the existing green waste storage building as granted under planning ref: F10A/0177 to carry out ELV de-pollution activities within this building. Modifications to the external facade of the existing storage building on site to facilitate the internal storage of all ELVs delivered to the facility pending de-pollution and an external metal crusher/baler is proposed along the northern boundary of the site,
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	with the crushed bales stored on an adjacent mobile flat bed trailer (on concrete hardstanding), and all necessary site development works.
PA Decision	Grant Retention & Permission (for a period of 3 years) – expired June 2015

E) FCC Reg. Ref. F11A/0272

Development Description	Change of use of existing green waste storage building as granted under planning ref: F10A/0177, to a de-pollution/recovery building for end-of-life vehicles and permission to store end of life vehicles on 325 sq.m. of existing concrete hard standing which will be associated with a new authorised treatment facility within the existing recycling facility (Waste Facility Permit WFP-FG-11-00012-01).
PA Decision	Refuse Permission

F) FCC Reg. Ref. F10A/0177 Applicant: Sandyhill Environmental Services Ltd.

Development Description	Retention permission for onsite prefabricated buildings comprising weighbridge control room, office, canteen and toilets, retention of existing 1500 sq.m. skip storage area to the south of the existing process building, change of use of existing 6458 sq.m. agricultural storage area to the south of the site as granted under F03A/1682 to storage area for construction demolition waste, retention of 10172 sq.m. area to the east of the site for processing of construction demolition and other inert non-hazardous waste, retention of existing boundary treatments and planning permission for bulking and transfer of green garden waste within the facility.
PA Decision	Grant Retention & Permission (for a period of 3 years) – Expired 15 Dec 2013

G) FCC Reg. Ref. F05A/0233

Development Description	Development of a concrete batching plant, bunded fuel oil tank, 3 no. 6m x 3m aggregate storage bays, water recycling unit and all other associated works.
PA Decision	Refuse Permission

H) Reg. Ref. F03A/1561 Applicant: Greenstar Ltd.

Development Description	The permanent retention of 5 no. existing prefabricated single storey buildings, comprising of: office accommodation, canteens, toilets and weightbridge control room. Permanent retention is also sought for existing security fencing to boundary and skip storage area to the south of the site. All on an enlarged site from previously granted permission
PA Decision	Decision Grant Permission & Grant Retention (for a period of 3 years)

- I) FCC Reg. Ref. F03A/1682 Applicant: Greenstar Ltd.

Development Description	The retention of an existing stone road serving existing agricultural entrance located on the St. Margarets Road, stone area for use as agricultural storage, hard standing for use as parking of trucks ancillary to waste transfer depot on adjoining site.
PA Decision	Decision Grant Permission & Grant Retention – To be used for agriculture only.

- J) FCC Reg. Ref. F97A/0109 Applicant: Greenstar Ltd.

Development Description	Retention of existing use with extension and alteration of existing buildings, alterations and widening of existing entrance and septic tank to Waste Recycling and Transfer Depot
PA Decision	Decision Grant Permission
Appeal Ref	ABP Reference PL.06F.104750
Appeal Decision	Third Party Appeal Withdrawn

3.1 Analysis of Planning History

Over the last 25 plus years (ie. since 1998), development on site would appear to have benefited from permanent and temporary permissions.

In our initial reviews and assessments of the planning status of development on site, it had been understood that the development permitted in 1998, under F97A/0109, had been commenced and that the then applicant had availed of this permission to carry out development and operations on site. The site had originally been operated by third parties (initially Greenstar Ltd and thereafter Barnmore Ltd.). The management of the site, and operations there in were carried out by these parties, and were unrelated to the current applicant. It was not until 2010 that Mr. Brian Mc.Donnell of St Margarets Recycling & Transfer Centre Ltd., took over operations on site.

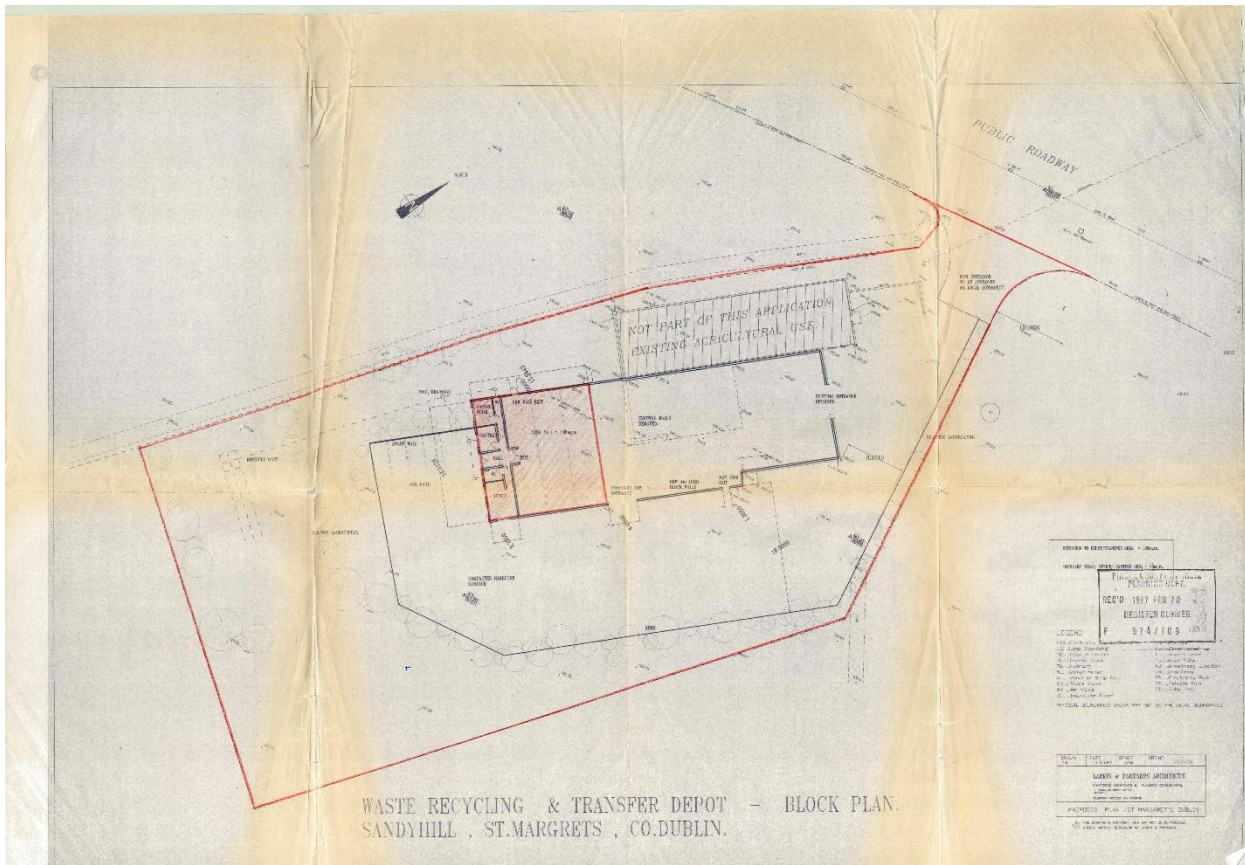
When the site was taken over in 2010 by St Margarets Recycling & Transfer Centre Ltd., it had understood that a permanent permission for 10,000 tonnes per annum existed, and that the development site at that time comprised 0.54 hectares, comprising the physical infrastructure associated with this permitted use. The permanently permitted works were noted as–

- Large sheds/buildings to the north-west of the site, in which waste management operations, comprising 1083sqm.
- Proprietary waste system (septic tank),
- Surface water drainage,
- Site Entrance,
- The weighbridge
- Office use, of c.58sqm.

- Hardstanding for truck and car parking,
- Hardstanding for waste storage/piling and sorting.
- Associated mobile machinery/plant (exempt development)

This appears to be consistent with the Board Inspector's understanding in her Planning Report, under 310169-21, where it was acknowledged that F97A/0109 is a permanent and extant permission relating to the site.

Figure 3.1 – Extract of 1997 planning documents, Block Plan (under F97A/0109)



3.1.1 Evolution of Development on Site

However, following a recent and more detailed analysis of the plans and particulars submitted in 1997, which related to the application under F97A/0109, it is immediately apparent that the development was not carried out or operated in accordance with the plans and particulars or conditions attached at that time. As the application was one of retention, and as the conditions were not complied with, it is our contention that this permission was not commenced. This is considered later in this report (in Section 3.3).

In respect of the physical works on site, it is now understood that the offices were not provided within the 'industrial building' as indicated within the red shaded area, and this use was instead located within prefabricated cabins (subject of retention under F03A/1561). The existing 'agricultural use' building on site, indicated as 'not being part of this application' also came into use at this time (c.1998). Additionally,

conditions attached to permission granted under F97A/0109, relating to installation of a wheelwash, tonnage, etc. were not complied with.

Therefore, with the exception of 'part of the industrial building' and 'the weightbridge' which were already in place prior to the granting of permission in 1998 (in that their retention was sought under F97A/0109), the development permitted on site was not that observed by the Planning Authority when the site was assessed by the Planning Authority in 2003. This is noted in the planners' report in respect of F03A/1561 and F03A/1682. The existing development and use on site did not conform with that granted in 1998, and therefore it appears that the non-conforming use commenced in c.1995, and prior to 1998. Notwithstanding this being noted in 2003 by the Planning Authority, no enforcement action was taken.

F03A/1561 relates to the permanent retention of 5 no. existing prefabricated single storey buildings, comprising of: office accommodation, canteens, toilets and weighbridge control room. Permanent retention was also sought for existing security fencing to boundary and skip storage area to the south of the site. All on an enlarged site from previously granted permission. Temporary permission was granted for the portacabins, etc.. However, the removal of an area of 1500sqm to south of the waste recycling and transfer facility (shaded in pink in figure 3.2 below) was conditioned (ref condition 4).

At this time, the PA also sought the return of the site to F97A/0109 boundary, as per below -

"The applicant is requested to submit comprehensive documentary evidence which clarifies that the extent of the current development site is the same as the site for the development which was given planning permission under planning application, Reg. Ref. F97A/0109. It would appear that current operations extend to a considerable area south of the original approved site. Use of this area should be discontinued forthwith to avoid legal enforcement proceedings by the Planning Authority."

No compliance with F97A/0109 or F03A/1561 was sought at that time, or within the 'enforcement proceedings' timeframe.

Figure 3.2 Evolution of planning history and development on site (Indicative)

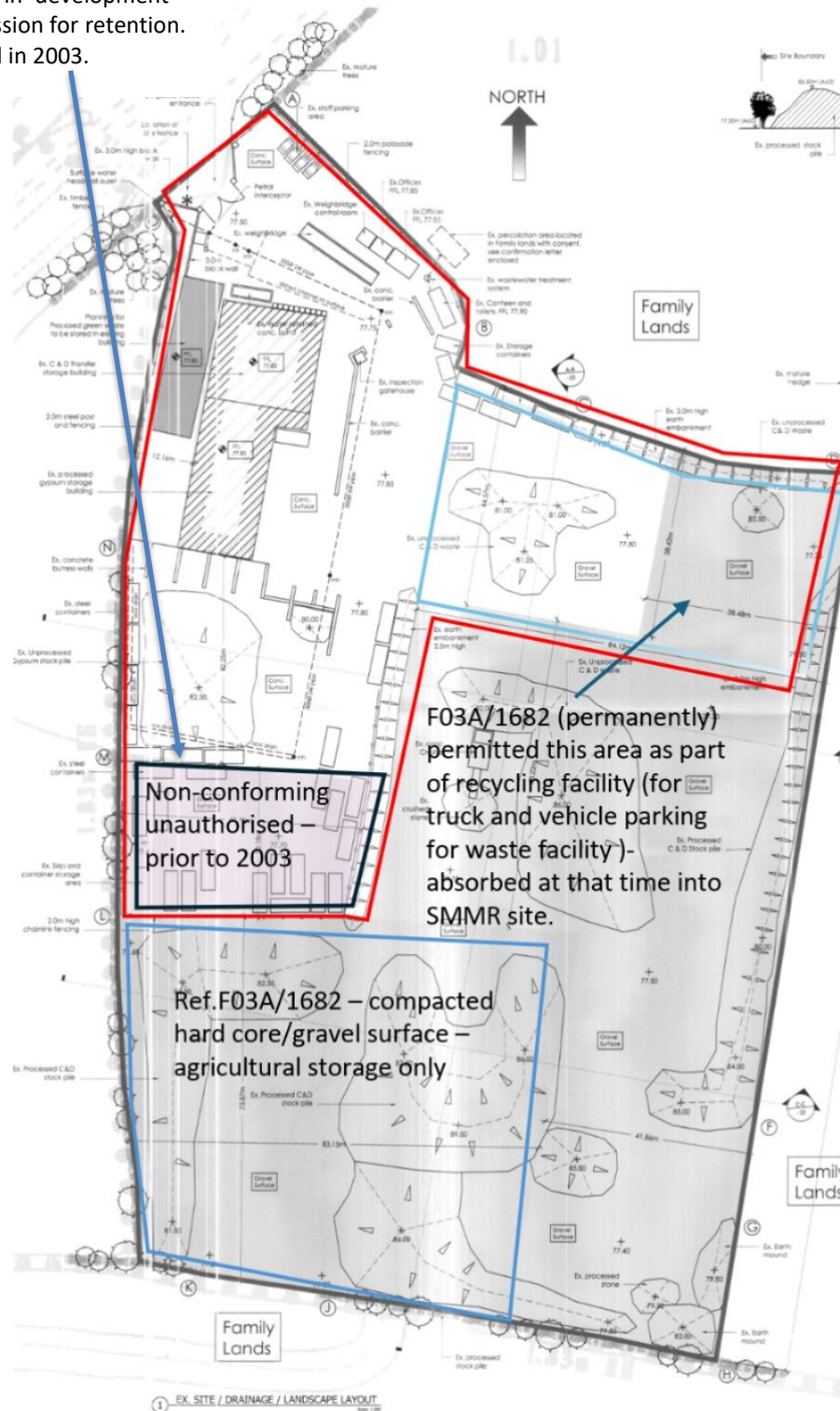
Site History – Evolution of Development on Site

As it is our contention that development on site at the time of F10A/0177 identifies the non-conforming use on site, map extract from F10A/0177 has been used as the base map.



Figure 3.3 – Non-conforming development, as observed in 2003 planning applications

Under F10A/0177 the area shaded white appears as 'existing' waste facility – It was not included in 'development' the subject of permission for retention. Removal conditioned in 2003.



3.1.2 'Non-conforming' use re. waste intake

From 1998, c.22,00 tonnes per annum were processed at the facility. And while the development was not operated by the applicant, an EPA Waste Licence was obtained in 2001 by Greenstar, and EPA records relating to tonnage confirm that the site was not operating at the conditioned tonnage. The Waste licence was granted for up to 60,000 tonnes per annum by the EPA, and tonnages on site were recorded by the EPA as follows –

Year	Tonnage
2002	59,259.23
2003	93,970
2004	83,510.4
2005	95,035.8
2006	49,006.61 (up to July)

While applications for retention were lodged in 2003, and the increase in activity and development on site was noted by the Planner (for Fingal County Council) no reference to tonnage was included in the application particulars or the conditions attached to these permissions (F03A/1561 and F03A/1682).

In 2010 the current applicant, Brian McDonnell of St Margaret's Waste Recycling Centre Ltd., took over control of the site and operations therein. An application under F10A/0177, was made by St Margaret's Recycling Centre Ltd, and sought regularisation of an enlarged site size was sought. Operations on this larger site are understood to have been taking place on this larger site prior to 2003. Under F10/0177, permission was granted for an annual tonnage of 25,000 tonnes per annum, which had been noted as being 'existing tonnage' at the time. Under F13A/0409 permission was granted for 21,900 tonnes per annum on a site of c.1.6ha. It is therefore evident that since 1998, annual tonnage has been at minimum c.22,000 tonnes.

During the life of the temporary permissions in 2010 and 2014 (re F13A/0409) operations have generally been consistent with the permitted tonnage, and as per the Waste Permit issued by Fingal County Council. Therefore, notwithstanding the earlier levels of non-compliance with the conditions of the permission, in that this use is a non-conforming use, and outside of the period of enforcement, the applicant is not seeking retention for this historic use carried out by third parties. Waste intake from 2010, and up to the lapse of permission in August 2019, is generally understood to have been assessed and permitted by F13A/0409, F11A/0443, F10A/0177.

However, following the lapse of permission in August 2019, it is accepted that no assessment or permission for this period existed, and in any event, the tonnage exceeded the threshold for EIA.

The tonnage history for the site is as follows:	
2020	26,233 tonnes
2021	42,263 tonnes
2022	42,522 tonnes
2023	33,695
2024	Est. 21,9000 tonnes

3.2 Established Non-Conforming Use on Site

In summary, the applicant acknowledges that on-going operations are not being carried out in accordance with F97A/0109, in that the tonnage is currently c.21,900 tonnes per annum; and equally that the site footprint is greater than that identified in the permission relating to F97A/0109. However, this has been the case for over 25 years (and commencing prior to 1998, and at minimum since 2001, where documentary evidence in the form of the EPA Licence proves same).

Since this time the site comprised a significant amount of plant and machinery, and the types of waste and materials processed is consistent with that processed today, and included processing of end of life vehicles, and processing of certain waste outdoors. These activities existed on site prior to F97A/0109 being permitted (in 1998) and have not materially changed in nature in the intervening years. Permission under F97A/0109, did not restrict or preclude the processing of ELVs, which prior to ELV Regulations, 2003 were considered to be 'metals', and nor did it place any restriction on outdoor processing of waste, or the type of plant and machinery required or used on site to enable the processing of the waste types on site. These activities were taking place prior to 2003, and prior to permission for same being granted on a temporary basis. It is our opinion, following review of the planning and development history of the site, that the nature and scale of operations have been generally consistent, albeit with higher waste intake at times.

While the applicant understood that the development and activities on site comprised, a non-conforming use by reason of permitted and long-established unauthorised development, which in part had the benefit of permanent permissions under F97A/0109 and F03A/1682, as well as numerous temporary permissions under F03A/1561, F10A/0177, F11A/0443 and F13A/0409, having reviewed the site's evolution and planning history, it would appear that the site in fact operated

in a manner that would indicate that developers of the site did not implement the various permissions cited, including F97A/0109. Instead, the site has generally operated in accordance with the various EPA Waste Licence (W0134-01) W0134-10 EPA043639) and Fingal County Council Waste Permit (WFP-FG-13-0002-03). The current applicant only took over management of the site in 2010, and prior to that time was not aware of the extent to which development on site was unauthorised. The current applicant had endeavoured to regularise matters on site in 2010, 2011 and 2013, however, this does not negate the legal position regarding the unauthorised development that took place prior to this time, which is generally consistent with that on site and in operation today, with some minor exceptions relating to the prefabricated cabins and a small workshop in a lean-to adjacent to the industrial waste processing building.

It is our contention that the development permitted under F97A/0109 was not commenced as it was implemented as permitted, and that therefore the development on site has operated as an unauthorised non-conforming use prior to and subsequent to that time, notwithstanding the various temporary permissions sought and granted. As the appropriate period for enforcement has long since lapsed, and as the Planning Authority cannot now take Enforcement Action in respect of the activities and development that development from 1995 to 2003, and has been retained and operated since that time for a period in excess of the enforcement period, the non-conforming use is, as per the Fingal Development Plan definition, c.1.6ha and an annual tonnage of at minimum 22,000 tonnes per annum.

3.3 Relevant Legislation & Case Law

Planning & Development Act, 1963, as amended states -

33.—(1) Where a structure which existed immediately before the appointed day is on the commencement of that day an unauthorised structure, the planning authority at any time within five years after the appointed day (subject to the structure's remaining at that time an unauthorised structure) may, if they decide that it is expedient so to do, and, subject to subsection (9) of this section, shall, if they are directed by the Minister so to do, serve a notice under this section on the owner and on the occupier of the structure.

Planning & Development Act, 2000, as amended states under Section 157, –

(4) (a) No warning letter or enforcement notice shall issue and no proceedings for an offence under this Part shall commence—

(i) in respect of a development where no permission has been granted, after seven years from the date of the commencement of the development;

(ii) in respect of a development for which permission has been granted under Part III, after seven years beginning on the expiration, as respects the permission authorising the development, of the appropriate period within the meaning of section 40 or, as the case may be, of the period as extended under section 42 .

(5) Proceedings for other offences under this Act shall not be initiated later than 7 years from the date on which the offence concerned was alleged to have been committed.

It is our professional opinion that as the majority of the subject development, as outlined in your warning letter, comprises unauthorised development that has been in situ and operating without the benefit of a planning permission, for a period greater than 5 and/or 7 years, as applicable (specifically in respect of the development carried out prior to February 1997 (i.e.. circa January 1995) and/or prior to 2003), as well as that carried out between 2003 and 2010, and noting that enforcement proceedings were not instituted within the statutory time frame, it is our understanding of the legislation that the Planning Authority cannot take enforcement now, some 25 to 30 years later, in respect of that particular development.

It is our understanding, that Judge Holland's judgement in respect of *Donegal County Council v. Planree and Another* [2024] IEHC 193 (hereafter referred to as *Planree*), applies. We have previously acknowledged that the subject development is unauthorised and on foot of our pre-app with An Bord Pleanála (ref. ABP-318538-23), it was our understanding that the Board's stated view (albeit given without prejudice) was that given the extent of non-compliance and lack of planning permission relating to same, the entire development, i.e.. the entire site and scale of use therein is unauthorised, including that which would appear on the face of it to have been permitted under F97A/0109. On foot of this pre-app and advice therein, in conjunction with our understanding of the situation following *Planree*, that the application for retention would be required to include the whole development, including elements previously understood to be permitted. As the development was not carried out or operated in accordance with the plans and particulars submitted, or conditions attached, that it could not rely on that permission, and 'regularisation' of the entire development should be sought.

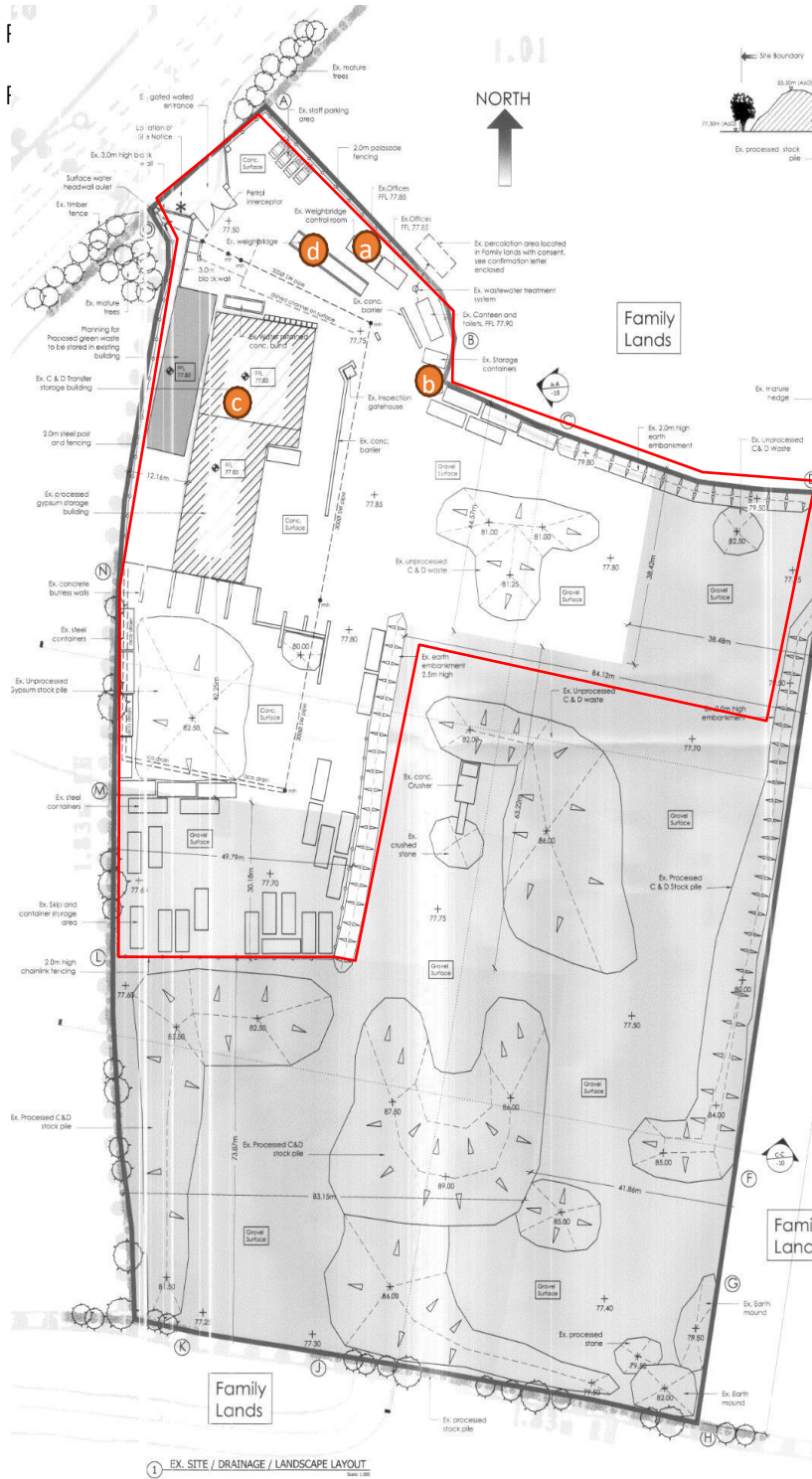
The site outlined in red (in the figure overleaf), which corresponds to the waste permit (WFP-FG-13-0002-03) is a non-conforming use and has been acknowledged as such in F10A/0177 – in that it comprises

- (i) permitted development under F97A/0109 (not retained or constructed as per conditions),
- (ii) permitted development under F03A/1682 (not carried out/retained as per conditions),
- (iii) Unauthorised development in situ prior to 2003, and where no enforcement action was taken within the appropriate period.

We have had regard to *Planree* and the pre-planning advice of An Bord Pleanála, and therefore believe that the development as a whole is 'unauthorised' and would be the subject of retention in the context of the proposed 'substitute consent' application.

Figure 3.4 Unauthorised Development

(Site developed between Jan 1995 and March 2003, with F10A/0177 base map highlighting 'unauthorised development on site at this time.)



Site outlined in Red has been identified as the 'non-conforming site' ¹ boundary.

Existing development comprising the weighbridge, certain offices, recycling, and transfer/industrial buildings, hard standing, car parking, plant, and machinery, and are 'non-conforming' ¹ uses:

- Prefabricated cabins (2no.) - 177sqm.
- comprising ancillary offices, staff facilities, control room (58sqm permitted under F97A/0109, but not constructed as permitted);
- Prefabricated w/c & Steel Container (store) - 29 sqm (non-conforming);
- Recycling and transfer/Industrial buildings 1917 sqm (retention of 1083 sqm permitted under F97A/0109, but not constructed as permitted);
- Weighbridge (retention permitted under F97A/0109).

Machinery comprising hammermill, shredders, bailers, tilers, forklifts, grabbers, et al. (understood to be exempt development/on site since 1995, never explicitly referenced in development descriptions.)

¹ Non-conforming use is as defined in the Fingal Development Plan(s), as applicable.

Wastewater treatment system located outside of red line.

As per Judge Holland's commentary in para 90 of the Donegal CC v Planree judgement:

"In my view Planree's inevitable concession the deviations which it admits are material is decisive, that its windfarm as built is unauthorized development. The materiality of the deviations would compel that conclusion in any event, but it is all the more inevitable given the Board's statutory finding that the deviations are such as to require EIA and AA."

Para 90 further confirms *"On that view the unauthorised development at issue in this case consists of the windfarm considered as a whole"*.

Judge Holland further goes on *"That is not to suggest that the removal or demolition of the entire windfarm would be necessarily inevitable. Any decision in that regard would have to await enforcement proceedings of one sort or another. It might be for example in that some form of remediation works could bring the windfarm into conformity. I should not rule out that possibility even if substitute consent had been refused though in any event section 160 relief may be pre-exempted in whole or in part by the Board ordering remedial works."*

"For present purposes, I think I need only say that it seems to me clear that in either instance the windfarm, taken as a whole would constitute an unauthorised development"..... "I hold that the unauthorised development at issue in these proceedings consist by reason of the material deviations of the entire windfarm are not discreetly considered of each or all of the material deviations."

Therefore, while it is accepted that the subject development is unauthorised, much of this development was carried out on or before 2003, and no enforcement proceedings have been taken by the Planning Authority or enforced within the statutorily provided appropriate period, as may be applicable. In particular, the unauthorised waste recycling facilities at St. Margaret's Waste Recycling Centre, specifically in respect of the c.1.6ha and the tonnage of c.22,000 tonnes per annum have commenced and operated on site prior to 2003, and in a large part prior to F97A/0109. We contend that the granting of temporary permissions following the 'appropriate period' for taking proceedings does not alter the original status of the authorised development carried out before that time, and in any event certain non-compliances remained, and no enforcement proceedings were taken during the appropriate period.

While various permissions, both permanent and temporary, were granted, and while we would have originally understood a significant component of the development was permanently granted under F97A/0109 and F03A/1682, on foot of the judgement under *Planree*, we believe that these permissions were not enacted and/or conditions complied with (such as to authorise the development subject of retention) and therefore it appears that the development as a whole may not have the benefit of permission.

As the subject development was largely one of retention, and therefore already in existence (i.e. commencement of 'construction' did not signify implementation of the permission), and as conditions attached to the retention permission were not complied with. By way of example, we have highlighted a number of deviations from the conditions of permission under F97A/0109-

- (i) wheel wash facility required (1)(h),
- (ii) all foul water was to be discharged to the proprietary wastewater treatment system (1)(i),
- (iii) tonnage of 10,000 tonnes (as per condition (8)) was exceeded (as is evidenced by the operation and utilisation of the EPA Waste Licence granted in 2000 to Greenstar for 60,000 tonnes, EPA Licence No. 134-1)
- (iv) former agricultural buildings and new 'industrial' buildings were all used for 'waste recycling' and the proposed extension for office and canteen facilities was not constructed as outlined and permitted, but rather constructed and used for waste recycling activities, and the 'existing agricultural shed' was converted to use as a part of the waste recycling facility (although outside of the 1997 application).

As such given the level of non-compliance, it is our contention that from this time (i.e. prior to 1997), the development operated in an unauthorised manner. Subsequent permissions were typically of a temporary nature, but in any event, they too related to 'retention' and there would appear to be material deviation and non-compliance with conditions.

3.4 Addressing Previous ABP Reasons for Refusal

The site and for the most part the development, subject of retention, is the same as that assessed under ABP 310169-21, whereby the Board refused permission because the proposed development, for the following reasons –

1. Insufficient information has been submitted regarding: the activities and processes carried on, the volume of waste produced, the nature and quantity of emissions, mitigation or monitoring proposed, and measures to prevent and contain fire and to control the discharge of fire water; such as to enable the Board to assess the likely impacts of the proposed development on protected European Sites. In such circumstances the Board is precluded from granting permission.
2. Insufficient information has been submitted regarding: the activities and processes carried on, the volume of waste produced, the nature and quantity of emissions, mitigation or monitoring proposed, and measures to prevent and contain fire and to control the discharge of fire water; such as to enable the Board to assess the likely impacts of the proposed development on the environment. In such circumstances the Board is precluded from granting permission.
3. The subject site is zoned 'DA' 'Dublin Airport' under the Fingal Development Plan 2011 – 2017, which seeks to 'ensure the efficient and effective operation and development of the airport in accordance with the adopted Dublin Airport Local Area Plan.' Waste disposal and recovery facilities both low and high impact are not permitted under such land use zoning. The proposed retention for the permanent continuation of use of the existing waste processing and transfer facility for the bulking, transfer and recycling of metals, construction & demolition waste, bulky/skip waste, batteries, wood waste, glass, other non-biodegradable non-hazardous wastes, and an Authorised Treatment Facility for end of life vehicles, accepting up to 24,900 tonnes of waste per annum; and retention for the continued use of the existing buildings on site; would therefore contravene the land use zoning objective for this site; and would furthermore be contrary to the vision statement for the area, as set out in the Fingal Development Plan 2011 – 2017, which seeks to 'facilitate air transport infrastructure and airport related activity/uses only (i.e. those uses that need to be located at or near the airport)'. The development proposed for retention and the development proposed would, therefore, be contrary to proper planning and sustainable development of the area.

Response to Reasons 1 and 2

In summary, reasons 1 and 2 relate to insufficient information being available to the Board to determine whether the development proposed and subject of retention had the potential to impact on any European site or the environment.

In this regard, we do not believe that the Inspector or Board determined there to be an impact, in that there is no obvious AA Screening (Stage 1) or thereafter a Stage 2 (Assessment of an NIS) assessment(s) which would be required if they were to determine that there was any such impact, having regard to EU Habitat's Directive, and as transposed into Irish legislation. Guidance, currently within the public demesne and relating to assessments undertaken by a competent authority (ie Planning Authorities or An Bord Pleanála) on the requirements and methodology have been published by the EPA, Dept, OPR and we understand ABP itself have provide written advice on this to its inspectors.

We also note that the Planning Authority (PA) had engaged the services of Brady Shipman Martin (BSM) to assist them in the required Appropriate Assessment and Environmental impact Assessment screening. BSM concluded that following various requests for additional information, that the Planning Authority had adequate information to screen out the requirement for an EIA and AA. It is our opinion that the Board's Inspector did not engage with the Planning Authority report/submission in this regard, nor that of the applicant, however, it is accepted that they decided that the information was insufficient. The applicant did not knowingly carry out development or operate the site believing that an EIA or NIS was required, in particular noting the views of the Board, and that permissions for similar tonnages had been granted in the past without an EIAR or NIS.

For ease of reference, and to highlight the bona fides of the applicant that there was no intention to breach or avoid compliance with EU directives relating to EAI or Habitats, we note the previous assessments carried out on behalf of the Planning Authority by Brady Shipman Martin (BSM)-

BSM considered that additional information was required, and the applicant responded accordingly, stating that –

- *There is no clear evidence that water quality is currently negatively affecting the conservation objectives of Natura 2000 sites in Malahide Estuary.*
- *Water quality is not listed as a conservation objective for either the SAC of SPA.*

The construction phase was to be limited to the installation of new storm water attenuation measures. These same measures are part of the proposed development within the simultaneous application for the future use of the site, submitted alongside the Substitute Consent application.

At this time it was noted that the current surface water treatment system serving the site comprises a series of silt traps, a buffer tank with oil decanting unit and two hydrocarbon interceptors, which manages and treats runoff from defined hardstanding areas. During construction the existing silt traps and hydrocarbon interceptors will remain in place and so any construction pollutants will be captured prior to entering the Hunstown Stream.

(At that time) Improvements were proposed as follows *(and it would be the applicant's intention to include these proposals as part of environmental improvement measures in the rEIAR and EIAR as applicable)*:

- All external hardstanding yard areas to be captured and directed to the surface water network.
- The external hardstanding area is subdivided into 4 catchment zones, reception area, zone A, zone B and zone C.
- The surface water system to hardstanding in each catchment zone will have buffer tanks to act as attenuation for a 1 in 100 yr storm event. The outfall from each zone is restricted via flow control.
- The buffer tanks are sized via microdrainage software that models in the headdischarge relationship of the flow control and as such the 25% volume increase due to head discharge relationship per requirements of GDSDS is not applied.
- Each zone will have silt trap manholes to capture silt laden run off. Furthermore the gullies, existing and proposed are silt trapped. These will be periodically serviced by the operator as is the current case.
- All catchment zones are conveyed via gravity to a hydrobreak manhole at the entrance to the facility which controls the discharge of the system. The hydrobreak is sized at greenfield run-off rates which equate to 2.1l/s/ha which is akin to the GDSDS requirement of 2.0 l/s/ha limiting throttling criteria.
- After passing through the hydrobreak manhole the surface water will be treated via a class 1 full retention interceptor designed to achieve a concentration of 5mg/l of hydrocarbon at discharge.
- The discharge from the interceptor is then pumped from a wet well manhole to an above ground sand filter unit. The sand filter unit filters the discharge through a medium of sands to remove any silts, grits and lower the concentration of any hydrocarbons that pass through the interceptor. The wet well will operate at less than 50% duty load and will have a standby redundancy pump. The site is supported by an onsite diesel generator in the event of electrical outages.
- Long-term storage is provided in the sized attenuation tanks.
- Rainwater that falls on the roof of the processing building will be captured via roof guttering and

downpipes. As the roof water is considered clean (this is backed up by ongoing historical dust monitoring results at the site), the run-off captured on the roofs do not require any treatment.

- The captured roof run-off is directed into above ground rainwater harvesting tanks that are used for fire fighting purposes. The overflow from the tanks is directed to an attenuation tank and controlled discharge to the surface network at the R122.
- Existing foul wastewater system to be decommissioned and a new wastewater treatment system installed and expanded soil polishing filter. The development will not add to any pressure in the catchment that could act in combination to result in significant effects to Natura 2000 sites.

The above points remain true, and in continuing to operate the development the applicant did not believe himself to be adversely impacting the Natura sites or environment generally. The Board in refusing had equally not concluded that there would be an impact, but rather they did not have enough information. The applicant, consistent with the views of the Planning Authority (and their expert professionals) did not believe that the development has or is causing adverse impact on the environment or European sites, and has never carried out development in a manner so as to avoid contravening or circumventing EU Habitats or Environment Assessment Directives; or contravene the Development Plan.

Respectful of the Board's decision, and to address the Board's concerns we have therefore produced a remedial EIAR and remedial NIS, and an EIAR and NIS, to ensure that the Board has sufficient information to make their decision, and to demonstrate that in respect of the development subject of retention, no significant adverse impact to the environment resulted following the lapse of planning permission in 2019, and notwithstanding the increase in tonnage thereafter; and that subject to proposed mitigation, any potential predicated impact can be obviated and ruled out as outlined in the EAIR. Additionally, we believe that the rNIS and NIS will give the Board sufficient information that there was and will be no likelihood of an adverse effect on integrity of the conservation objectives pertaining to the qualifying interests of the European Sites.

Response to Reason 3

In response to Reason 3, which relates to the Zoning Objective for the area, the Board's Inspector, states that the development is permitted only to 10,000 tonnes, and that this represents the extent of non-conforming use on site. As such the Board considered a reasonable expansion of activity relates to that tonnage. We do not believe this to be the case or an accurate or correct interpretation of the various Fingal Development Plans.

As contained in the previous section of this report, which outlines the planning history relating to the site, and the extent of the 'non-conforming use', we are satisfied that we have demonstrated that the site size, activities and development therein and the annual tonnage is consistent with that permitted in the FCC Waste Permit (and in respect of the tonnage, at times greater than that permitted).

Non-Conforming Use is not and never has been limited to permitted uses, and to this end we refer to the description of 'non-conforming use' in place since non-conforming use were first observed on site. In the case of St Margaret's Waste Recycling & Transfer Facility, the non-conforming use comprises development and uses "*which are unauthorized but have exceeded the time limit for enforcement proceedings.*"

Fingal Development Plan, 2023-2029, pg.471 LAND USE ZONING OBJECTIVES – CHAPTER 13

13.3 Non-Conforming Uses

Throughout the County there are uses which do not conform to the zoning objective of the area. These are uses which were in existence on 1st October 1964, or which have valid planning permissions, or which are unauthorized but have exceeded the time limit for enforcement proceedings. Reasonable intensification of extensions to and improvement of premises accommodating these uses will generally be permitted subject to normal planning criteria.

Objective Z03 Generally, permit reasonable intensification of, extensions to and improvement of premises accommodating non-conforming uses, subject to normal planning criteria

Fingal Development Plan, 2017-2023, pg. 364 LAND USE ZONING OBJECTIVES – CHAPTER 11

11.5 Non-Conforming Uses

Throughout the County there are uses which do not conform to the zoning objective of the area. These are uses which were in existence on 1st October 1964, or which have valid planning permissions, or which are unauthorized but have exceeded the time limit for enforcement proceedings. Reasonable intensification of extensions to and improvement of premises accommodating these uses will generally be permitted subject to normal planning criteria.

Objective Z05 Generally, permit reasonable intensification of, extensions to and improvement of premises accommodating non-conforming uses, subject to normal planning criteria

9.4 NON-CONFORMING USES

Throughout the County there are uses which do not conform to the zoning objective of the area. These are uses which were in existence on 1st October 1964, or which have valid planning permissions, or which are unauthorized but have exceeded the time limit for enforcement proceedings. Reasonable intensification of extensions to and improvement of premises accommodating these uses will generally be permitted within the existing curtilage of the development and subject to normal planning criteria.

Objective Z05 Generally, permit reasonable intensification of, extensions to and improvement of premises accommodating nonconforming uses within the existing curtilage of the development and subject to normal planning criteria

NON-CONFORMING USES

Throughout the County there are uses which do not conform to the zoning objective of the area. These are uses which were in existence on 1st October 1964, or which have valid planning permissions, or which are unauthorised but have exceeded the time limit for enforcement proceedings. Reasonable extensions to and improvement of premises accommodating these uses will generally be permitted within the existing curtilage of the development and subject to normal planning criteria.

Strategy ZS4 To generally permit reasonable extensions to and improvement of premises accommodating non conforming uses within the existing curtilage of the development and subject to normal planning criteria.

While we acknowledge the decision of the courts to uphold the Board's decision, and confirm that it is not our intention to dispute this decision of the Board or Courts, but rather the above is referenced by way of demonstrating the bona fides of the applicant to meet their obligations regarding planning and protection of the environment, and also to provide clarity regarding the extent of 'non-conforming use' on site, as we do not believe that it had been comprehensively explained or understood in previous applications

The applicant in carrying out the development, ie. operating a waste recycling centre, as is apparent from the numerous applications submitted, did not intend to carry out the development without the benefit of permission, and has through exceptional and unforeseen circumstances arrived in this position. The unauthorized non-conforming use established on the site was established while being operated by third parties independent of the applicant, and existed at the time the applicant took control of operations on site in 2010, at which time he endeavoured to regularise matters.

4.0 Existing & Proposed Development

The development subject of Substitute Consent primarily consists of the retention and continued use of a previously permitted waste recycling facility at St. Margaret's.

Under the Substitute Consent application, relating to 'Retention', the applicant is generally seeking permission to retain those elements of the previous temporarily permitted development and use on site (under F13A/0409), alongside retention of minor revisions to some of the site's boundaries and substitute consent relating to the historic use of 'waste transfer and recycling' facility in particular post the period of assessment and temporary permission under F13A/0409, where the annual tonnage ranged from 26,000 tonnes to 45,000 tonnes (during 2019 to 2023) and at 21,900 tonnes in 2024 and onwards..

Specifically, Substitute Consent is sought by St. Margaret's Recycling & Transfer Ltd. at St. Margaret's Recycling & Transfer, Sandyhill, St. Margaret's, Co. Dublin, for -
Retention of:

1. Existing buildings, plant and machinery and their use associated with the daily operations of the waste recycling and transfer facility, and authorised facility for the treatment of 'end of life vehicles' (ATF for ELVs). Existing development comprises the weighbridge, offices, recycling and transfer/industrial buildings, hard standing, car parking, plant and machinery, detailed below:
 - Prefabricated cabins (2no.) - 177sqm. - comprising ancillary offices, staff facilities, control room;
 - Prefabricated w/c & Steel Container (store) - 29 sqm;
 - Recycling and transfer/Industrial buildings of 1917 sqm;
 - Weighbridge; and
 - Machinery comprising hammermill, shredders, bailers, tilters, forklifts, grabbers, et al.
2. Enabling Ancillary Works, including, but not limited to, that subject of permissions under with Reg. Ref's. F13A/0409, F11A/0443, F10A/0177, F03A/1561, F03A/1682 and F97A/0109, including amendments to site access and gateway, boundary arrangements, dust mitigation measures, installation of an impermeable concrete surface over c.1.7 ha, above and below ground surface water drainage, proprietary waste water treatment plant, fire water storage and retention tanks (105m³), surface water attenuation and storage tanks (206m³), truck and vehicle parking,
3. The enlargement of the site for waste transfer and recycling purposes, including an Authorised Treatment Facility for End-of-Life Vehicles, increasing the site size to from 0.6 ha (permitted under F97A/0109) 1.75ha of which 1.6ha is associated with waste permit with additional lands comprising site

access, proprietary wastewater treatment system, installation of an impermeable reinforced concrete slab surface throughout, and underground surface water drainage system.

4. Historic use of 1.6 ha of the site (as per Waste Permit area under WFP-FG-13-0002-03), as a waste transfer recycling centre and an Authorised Treatment Facility for End-of-Life Vehicles, during the period 2019 to 2023, where waste throughput at the facility ranged from c.26,000 to 42,500 tonnes per annum, without the benefit of planning permission, and from 2024 onwards with operations comprising waste throughput of up to 21,900 tonnes per annum.
5. Laying out and historic use (i.e. 2009 to 2023) of lands comprising c.1.2 ha to the east of the licenced 'waste transfer and recycling centre', surfaced with compacted hardcore and used for the temporary storage of vehicles, plant and machinery associated with the waste recycling activity, and existence as a hardstanding area to date, pending restoration.

Substitute consent is sought for -

6. Proposed restoration of the above referenced lands, being c.1.1 ha of compacted hardcore surfaced lands to grassland or wildflower meadow, and to include agricultural haul roads/tracks to serve adjacent agricultural lands, (referenced at item 5 above).
7. Use of the existing metal processing and transfer facility, and Authorised Treatment Facility for End of Life Vehicles, with a proposed waste throughput at the facility to accept up to 21,900 tonnes per annum (in line with waste permit) for the bulking, transfer and recycling of metals, construction & demolition waste, bulky/skip waste, batteries, wood waste, glass, other non-biodegradable non-hazardous wastes, and an Authorised Treatment Facility for end-of-life vehicles, pending the decision in respect of this substitute consent application.

The application for retention will be accompanied by a remedial Environmental Impact Assessment Report (rEIAR) and a remedial Natura Impact Statement (rNIS).

Simultaneous Planning Application for Future Use of Facility

The future permanent use of the site, as a waste recycling and transfer centre for up to 21,900 tonnes per annum, is considered and assessed in a separate Environmental Impact Assessment Report (EIAR), Natura Impact Statement (NIS) and associated documents and drawings submitted in tandem with the application for substitute consent.

Figure 4.1 Development the subject of Retention (for indicative purposes only) – Refer to DWG

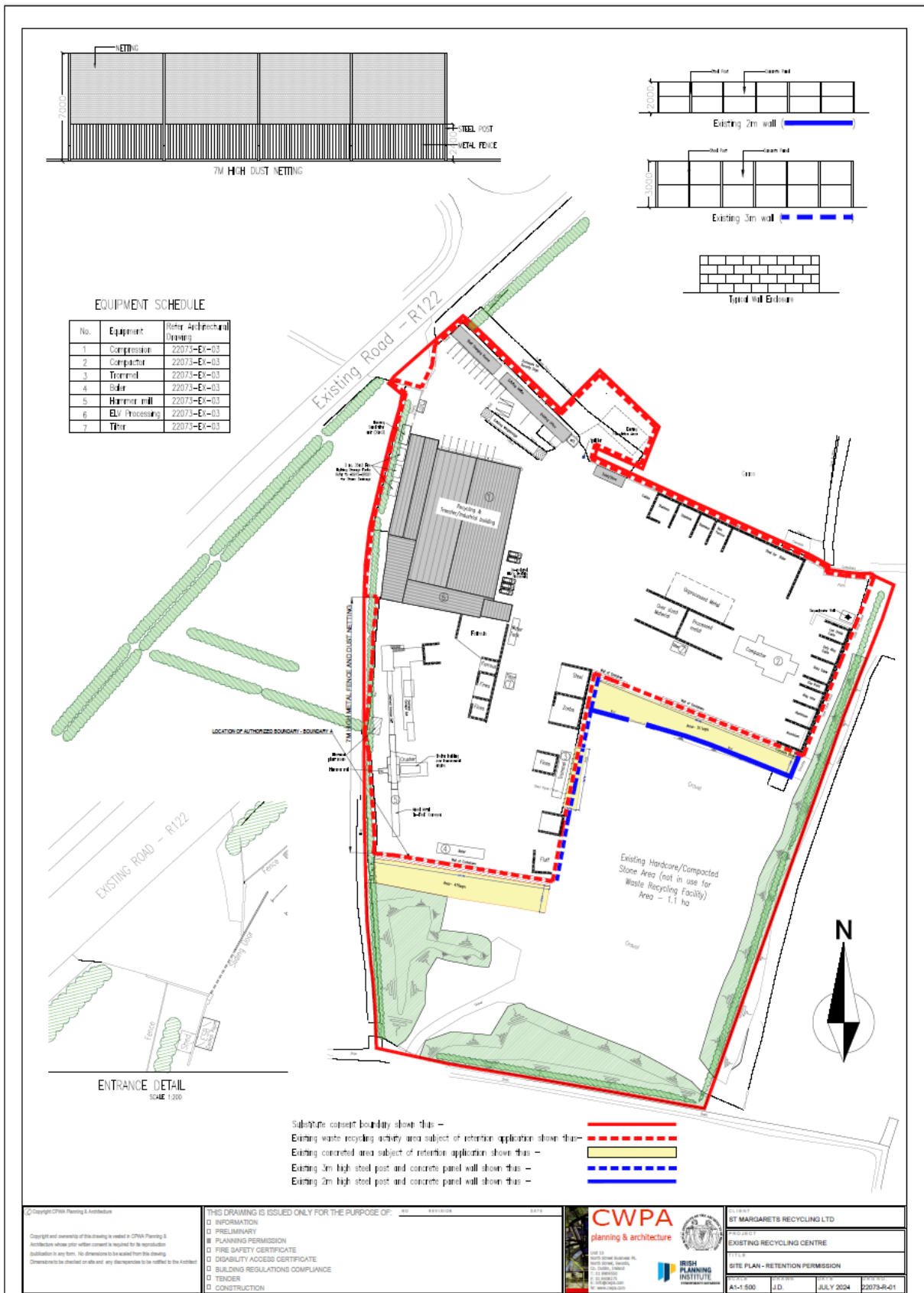
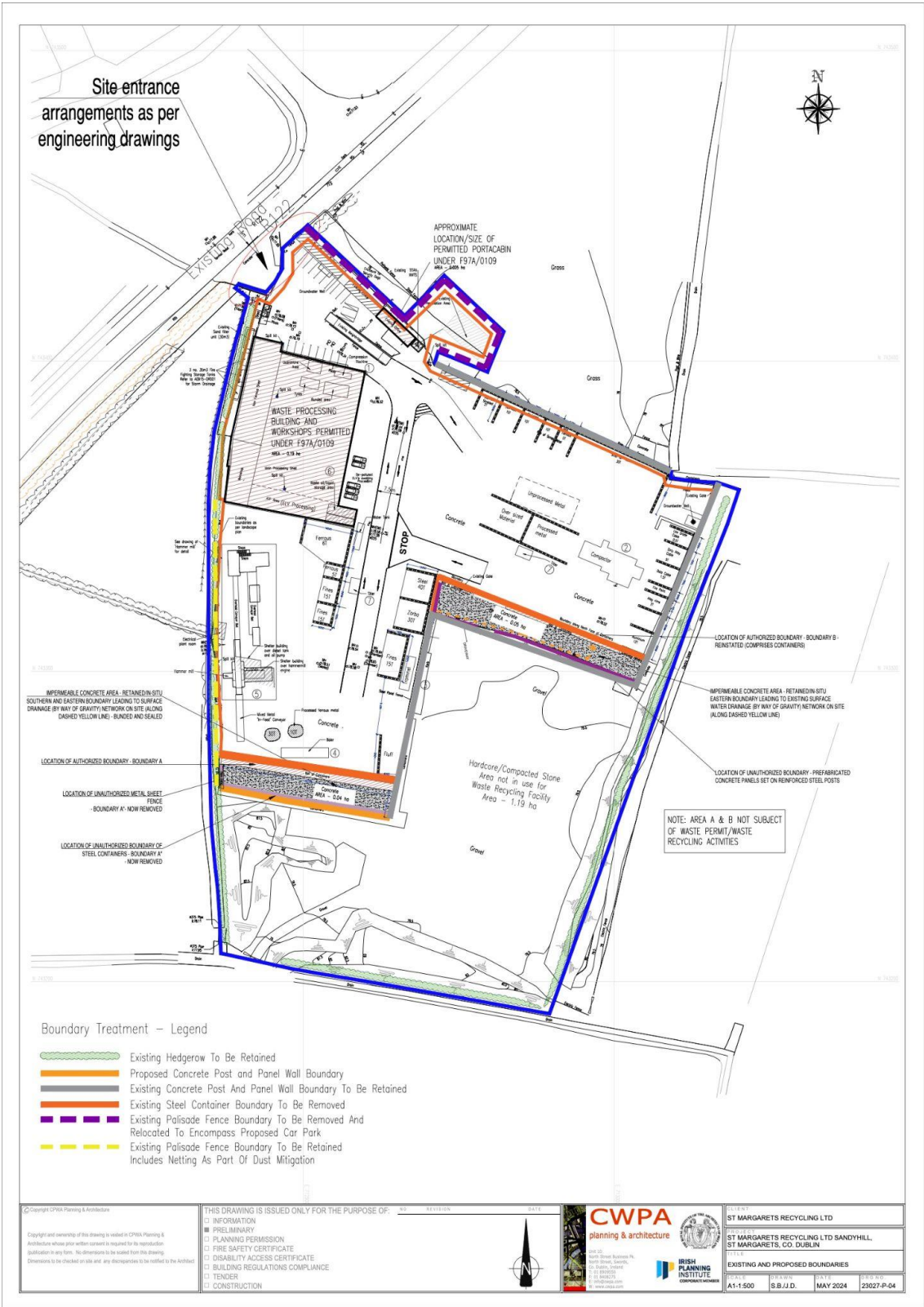


Fig 4.2: Proposed landscape Plan at St. Margaret’s Recycling & Transfer Centre Ltd. (Indicative) Refer to DWG



5.0 Statutory Planning Context

The following section of this supporting Planning Report outlines national, regional and local planning policies and objectives are contained in these statutory planning policy documents which are relevant to this development.

Table 1: Statutory Planning Policy Documents

Section	Statutory Policy
5.1	National Planning Framework: Ireland 2040 – Our Plan
5.2	A Waste Action Plan for a Circular Economy, Ireland’s National Waste Policy 2020-2025
5.3	Regional Spatial Economic Strategy (Eastern & Midlands Regional Assembly, 2019 - 2031)
5.4	Eastern Midlands Regional Waste Management Plan
5.5	Fingal Development Plan

5.1 National Planning Framework- Project Ireland 2040

The National Planning Framework (NPF – 2040) outlines the Irish Government’s range of long-term strategic goals for the Republic of Ireland and aims to improve the effectiveness of public investment in infrastructure and other relevant services across the country. These goals focus on sustainable development and compact growth to effectively manage and accommodate an increase in population of up to c. 1 million people alongside with predicted economic growth by 2040. Population and economic growth are expected to cause challenges in the provision of resources and land and therefore increase pressure on existing waste infrastructure and services across the country. Thus, waste management is a key focus of the NPF strategy, as consumption remains a major contributor of waste generation.

Accordingly, Section 9.2 highlights the following: “Ireland has actively improved its waste management systems, but we remain heavily reliant on export markets for the treatment of residual waste, recyclable wastes and hazardous waste. A population increase of around one million people, alongside economic growth to 2040, will increase pressure on waste management capacity, as consumption is still a key driver of waste generation. While the ultimate aim is to decouple, as much as possible, consumption from waste generation over time, additional investment in waste management infrastructure, and in particular different types of waste treatment, will be required. In managing our waste needs, the NPF supports circular economy principles that minimise waste going to landfill and maximise waste as a resource. This means

that prevention, preparation for reuse, recycling and recovery are prioritised in that order, over the disposal of waste.” Accordingly, the following National Policy Objective is contained in the NPF – 2040;

National Policy Objective 56: Sustainably manage waste generation, invest in different types of waste treatment and support circular economy principles prioritising prevention, reuse, recycling and recovery, to support a healthy environment, economy and society.

Effective Waste Management Waste planning in Ireland is primarily informed by national waste management policies and regional waste management plans⁴⁹. Planning for waste treatment requirements to 2040 will require:

- Regional Spatial and Economic Strategies and the core strategies of MASPs and city and county development plans will support national and regional waste policy and efficient use of resources;
- District heating networks will be developed, where technically feasible and cost effective, to assisting meeting renewable heat targets and reduce Ireland’s GHG emissions;
- Development of necessary and appropriate hazardous waste management facilities to avoid the need for treatment elsewhere;
- Adequate capacity and systems to manage waste, including municipal and construction and demolition waste in an environmentally safe and sustainable manner and remediation of waste sites to mitigate appropriately the risk to environmental and human health.

5.2 A Waste Action Plan for a Circular Economy, Irelands National Waste Policy, 2020-2025

The Waste Action Plan for a Circular Economy, Irelands National Waste Policy 2020-2025 sets out Irelands vision for of shifting the focus of waste management back to the product life cycle, eliminating or avoiding harmful waste, extending the life of the products and goods we use, and preventing the generation of waste in the first place - a waste-free future. “In a circular economy, waste and resource use are minimised; the value of products and materials is maintained for as long as possible through good design, durability and repair; and when a product has reached the end of its life, its parts are used again and again to create further useful products. It is an alternative to the traditional, linear economy, in which we extract great quantities of natural resources to make things that we may use once only before throwing them away.”

The plan highlights Ireland's commitment to fulfil EU strategies towards developing Europe's economy towards a circular model. The EU identified 7 key product value chains that play an overarching role in meeting the targets:

- Electronics and ICT
- batteries and vehicles
- packaging
- plastics
- textiles
- construction and buildings
- and food, water and nutrients.

The plan recognises the importance of supporting Ireland's waste management infrastructure to maintain and increase the treatment capacity and exports less waste, but process and recycle in the country. It aims to streamline processes and timelines to support the appropriate development of waste infrastructure and provide contingent capacity.

5.3 Regional Spatial Economic Strategy (Eastern & Midlands Regional Assembly (2019-2031))

The Regional Spatial Economic Strategy (RSES) for the Eastern and Midlands Regional Assembly (EMRA), was published on 26th of June 2019. Within the RSES EMRA, are policies contributing to the further economic growth of the region up to and beyond the lifetime of this plan (2019 – 2031) with a vision to reaching the targets set out in the NPF – 2040 for the year 2040. Many policies and objectives set out within the RSES compliment those set out in the NPF – 2040 with their goal of providing for compact and sustainable growth throughout the region in a balanced manner. The document focuses on delivering a spatial planning/ economic policy document for the first time. One of the key principles of such is Economic Opportunity.

The objective of this is to 'create the right conditions and opportunities for the Region to realise sustainable economic growth and quality jobs that ensure a good living standard for all'. In relation to Waste Management the RSES states the following: "Waste is identified as anything that is discarded. A circular economy is one where materials are retained in use and their highest value for as long as possible and are then re-used or recycled, leaving a minimum of residual waste. This Strategy supports the move to a more circular economy as this will save resources, increase resource efficiency and help to reduce carbon emissions. The successful implementation of circular economy principles will help to reduce the volume of waste the region produces and has to manage and will assist in delivering the resource efficiency ambition of the Europe 2020 Strategy.

"The Strategy refers to the goals set out in the Eastern Midlands Regional Waste Management Plan 2015 – 2021 to achieve waste reduction, increases in material re-use and recycling, and reductions in waste going for disposal. The following Regional Policy Objective applies:

RPO 10.25 - Waste Management: Development plans shall identify how waste will be reduced, in line with the principles of the circular economy, facilitating the use of materials at their highest value for as long as possible and how remaining quantum of waste will be managed and shall promote the inclusion in developments of adequate and easily accessible storage space that supports the separate collection of dry recyclables and food and shall take account of the requirements of the Eastern and Midlands Region Waste Management Plan.

5.4 Eastern Midlands Regional Waste Management Plan 2015-2021

The Eastern Midlands Region Waste Management Plan is a statutory document prepared by the local authorities of one of Ireland's three Waste Management Regions to ensure the continued management of waste in a safe and sustainable manner. The Region has 12 constituent local authorities, stretching from Dublin in the east, Louth to the north and Wicklow to the south, it covers the period from 2015 to 2021.

As the plan has not been revised or replaced at the time writing its vision, policies and objectives are still considered relevant for the proposed development. The Plan's overall vision is to rethink the approach taken towards managing waste, and that waste should be seen as a valuable material resource. The Plan supports a move towards achieving a circular economy which is essential if the region is to make better use of resources and become more resource efficient. The policies outlined below are considered relevant for the proposed development:

Policy E19: The waste plan supports the development of indigenous reprocessing and recycling capacity for the treatment of non-hazardous and hazardous wastes where technically, economically and environmentally practicable. The relevant environmental protection criteria for the planning and development of such activities need to be applied.

Policy E20: The waste plan supports the development of repair and preparing for reuse enterprises in the region as part of the transition to a more resource focused management approach and will provide technical, regulatory and financial guidance to operators active on this tier of hierarchy.

Policy E 21: The local Authorities will review the approach to authorise waste treatment facilities requiring a waste facility permit or certificate of registration having regard to the need to achieve consistency of approach between planning approval and operational capacity.

5.5 Fingal Development Plan 2023-2029.

The rEIAR outlines compliance with the previous Development Plan, ie. Fingal Development Plan 2017-2023 in that this Plan was in effect when the temporary permission lapsed in 2019. However, the relevant development plans have been consistent in their zoning and non-conforming uses definition since operations commenced. Therefore, in this Statement, to avoid repetition reference to the current plan numbering of the same/consistent objectives is noted hereunder.

The subject site is located within the administrative area of Fingal County Council; thus, the relevant statutory development plan is the Fingal Development Plan 2023 – 2029.

The Land Use Zoning pertaining to the subject in the Fingal Development Plan 2017 – 2023 is 'DA' – Dublin Airport and is located within the 'Outer Public Safety Zone'.

The Objective of 'DA' Land Use Zoning is to 'Ensure the efficient and effective operation and development of the airport in accordance with an approved Local Area Plan.'

The Vision for this Land Use Zoning is to 'Facilitate air transport infrastructure and airport related activity/uses only (i.e. those uses that need to be located at or near the airport). All development within the Airport Area should be of a high standard reflecting the status of an international airport and its role as a gateway to the country and region. Minor extensions or alterations to existing properties located within the Airport Area which are not essential to the operational efficiency and amenity of the airport may be permitted, where it can be demonstrated that these works will not result in material intensification of land use.

Air Transport Infrastructure includes: aircraft areas, air traffic control/tower, ancillary health, safety and security uses, aprons, cargo handling, maintenance hangars, meteorology, retail – airside/duty free, runways, taxiways, terminals and piers'

The site at St Margarets also benefits from a local/map based objective (as outlined in Appendix 8, of the CDP) which facilitates the site's continued use and reasonable intensification and extension as a waste recycling centre.

Number: Objective 57

Description: Generally, permit reasonable intensification of, extensions to and improvement of premises accommodating the non-conforming use, Recycling Centre, subject to normal planning criteria.

Non-Conforming Use is defined in the Fingal Development Plan(s) as follows –

"Throughout the County there are uses which do not conform to the zoning objective of the area. These are uses which were in existence on 1st October 1964, or which have valid planning permissions, or which are un-authorised but have exceeded the time limit for enforcement proceedings. Reasonable intensification of extensions to and improvement of premises accommodating these uses will generally be permitted subject to normal planning criteria."

Objective ZO3 – Non-Confirming Uses

Generally, permit reasonable intensification of, extensions to and improvement of premises accommodating non-conforming uses, subject to normal planning criteria.

Noting the provisions of the development plan, and the specific map based objective pertaining to the site, it is reasonable to allow the development to be permitted, and without contravening the development plan.

There are over c.840 ha of DA lands which have yet to be developed, and therefore the use of this 1.75ha for its current and established use, allowing for minor works relating to improved environmental measures does not in any way prejudice the Vision for this area.

Figure 5.1 - Extract from Sheet 11- South Fingal, CDP 2023-2029



Policy IUP30 – Promote Low Carbon Energy Development

Promote more energy-efficient development through the location of housing and employment along district heating hubs, or potential renewable energy locations, where people can connect buildings to energy efficient, low-carbon alternatives.

Policy IUP33 – Renewable Energy

Continue to develop and implement climate action and energy related initiatives in Fingal and continue to support the recording and monitoring of renewable energy potential in Fingal in partnership with other stakeholders including the East Midlands Regional Assembly EMRA, the Dublin Energy Agency (Codema) and the Climate Action Regional Office (CARO).

Objective IUO29 – Sustainable Waste Recovery and Disposal

Provide for, promote and facilitate high quality sustainable waste recovery and disposal infrastructure/technology in keeping with the EU waste hierarchy, national legislation and regional waste management policy to adequately cater for Fingal's growing population.

6.0 Substitute Consent Provisions

Notwithstanding that many of the previous applications were for retention and continued use of the site as a waste recycling and transfer facility, they were submitted and considered under section 34. We would take this opportunity to make the distinction between previous s.34 applications for retention and the current proposal. Specifically, we would note that in the past, applications were often 'retention' of an 'authorised' or previously but temporarily permitted development, where the 'temporary' permission had not lapsed. Given the nature of operations, and planning history on site, retention for certain 'unauthorised' extensions were also permitted over three decades.

Requirement for rEIAR - In respect of the current proposal, we note the lapse of permission (as of August 2019), and therefore the 'unauthorised' nature of the development and increase in intensity of use on site. Noting recent case law, the level of activity on site (in excess of 25,000 tonnes per annum), and the Board's previous consideration of development of the site (under ABP 310169), we consider that the Planning Authority are precluded from considering this 'retention application' under s.34, as it would appear based on recent 'tonnage' history, an EIAR is mandatorily required.

Requirement for rNIS- An Appropriate Assessment screening report was submitted with previous application (FW20A/0029), and this demonstrates that site management activities/operations, are such that there is no significant likely effect on any European site in view of the site's conservation objectives. We do not believe, in respect of retention of the current development and operations that a Natura Impact Assessment was required, however, addressing the Board's concerns a rNIS and NIS are submitted.

FCC Conclusion re EIA and AA -

Following EIA and AA Screening, additional information was sought including the reduction of tonnage on site. The applicant responded to the AI, Clarification and further clarification requests. The PA following receipt of responses was satisfied that neither an EIAR or NIS was required.

However, the Board's Inspector, and ultimately the Board, in that they generally agreed with the Inspector, considered that there was inadequate information regarding both AA and EIA. I would note that no Appropriate Assessment was carried out by the Board's Inspector or Board, therefore the rationale (or Reasons and Considerations) for their decision in this regard are not provided.

Para 7.6.7. from ABP Inspector's report - The volume of waste throughput per annum, proposed in the subject application, has been selected in order to avoid the need for Environmental Impact Assessment, but, having regard to the throughputs per annum previously accepted at the facility, which have significantly exceeded planning permission and licence limits, it should not be supposed that the limit stated in either the original application (24,900 tonnes) or in the further information response (24,000 tonnes) will be adhered to, and therefore although presented as a sub-threshold development, I consider that the scale is such as to require Environmental Impact Assessment

As per the Board Order, one of the reasons for refusal includes "Insufficient information has been submitted regarding: the activities and processes carried on, the volume of waste produced, the nature and quantity of emissions, mitigation or monitoring proposed, and measures to prevent and contain fire and to control the discharge of fire water; such as to enable the Board to assess the likely impacts of the proposed development on the environment...."

CONCLUSION

Having reviewed the planning history relating the site, and current levels of tonnage arriving to site, the following conclusions can be drawn -

1. Unauthorised development exists and is taking place on site; and to regularise this 'retention' permission is required;
2. Tonnage is such that it has exceed 25,000 tonnes since the application was considered by Fingal County Council and An Bord Pleanala, and this level of tonnage brings the development within the mandatory EIA requirements;
3. As a mandatory EIAR is required, and as the application is one of retention the Planning Authority are precluded from dealing with it under section 34.
4. Noting items 1 to 3 above, substitute Consent provisions are therefore applicable (see section 7 for details).
5. From a review of AA screening documents previously submitted, and the Planning Authority's assessment of same, and that it was there opinion that a NIS was not required, reflecting the Board's view that inadequate information was submitted to rule out a potential adverse effect of the integrity of the conservation objectives of the European Sites, a remedial NIS and NIS are included.

7.0 Statutory Provisions

While we note the provisions of the Planning Act, 2024, at the time of making this application, the provisions governing 'retrospective consent' had not been commenced, and therefore 'Substitute Consent' is being sought and the application has been prepared having regard to the guidance provided by the Board at the pre-application consultation meeting. Therefore the following applies -

Any person who has carried out development (or the owner, occupier of the land) may apply to the Board for substitute consent in respect of development carried out where an EIA or AA or both are required and where the applicant considers exceptional circumstances exist. Section 177A provides for applications for substitute consent.

Section 177B provides that where a planning authority becomes aware that a development would have required an EIA, determination as to whether an EIA was required or an AA and/or a court within the state of the ECJ had invalidated a grant of permission in relation to that development the planning authority must inform the developer that an application for substitute consent should be made to the Board.

Section 177C provides that in the absence of a notice under 177B the owner or occupier of land where development has been carried out where that development would have required an EIA, determination as to whether an EIA was required or an AA may apply to the Board for substitute consent if:

- There is a material defect in a permission as determined by a court within the state, the ECJ because of the absence or inadequacy of an EIA or AA, any error of fact or law or,
- where the applicant is of the opinion that exceptional circumstances exist, which would make it appropriate to permit the regularisation of the development by way of an application for substitute consent.

There is also provision for pre-application consultations with the Board re. proposed substitute consent applications (as per the Planning & Development, Maritime and Valuation (Amendment) Act, 2022 and specifically s.27 of this Act, amending s.177E of the Principal Act.). The applicant availed of this provision, and a pre-app meeting was held in February 2024.

In respect of the subject matter, the applicant is satisfied that an EIAR is required (noting current operating levels exceeding 25,000 tonnes per annum), and that even at the sub-threshold limit permitted by the PA, the Board's Inspector under ABP-310169, and thereafter the Board in accepting the Inspector's assessment of the case, considered a sub-threshold EIA to be required. In addition, and as required, we have considered that matter of exceptional circumstances, and are satisfied that they exist. In such circumstances, it would appear to be most appropriate to seek permission to regularise the development by way of an application

for substitute consent.

On foot of the Amendment Act, 2022, Section 177K of the Principal Act is amended -

(a) by the insertion of the following subsection after subsection (1I):

"(1J) In considering whether exceptional circumstances exist under subsection (1A)(a) the Board shall have regard to the following matters:

(a) whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive;

(b) whether the applicant had or could reasonably have had a belief that the development was not unauthorised;

(c) whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired;

(d) the actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development;

(e) the extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated;

(f) whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development;

(g) such other matters as the Board considers relevant."

Compliance with 'exceptional circumstances' is dealt with in Section 8 of this Planning Report.

8.0 Assessment of 'Exceptional Circumstances'

We can confirm that the owner or occupier of land has not been issued a notice by a planning authority in relation to unauthorised development.

The Board in their consideration and determination of ABP-310169-21, for a development which is consistent with the subject of this application is one which requires an EIAR, and therefore this application is one to which Section 117(C)(2) applies.

The applicant is satisfied that exceptional circumstances apply which fulfil the criteria for exceptional circumstances required by section 177(2)(b) which would allow the Board to consider an application for substitute consent (noting that the provisions regarding leave to apply for substitute consent under section 177D have been revoked) we propose to engage in pre-app discussions with the Board as provided for under s.177E, and thereafter, to make an application.

The exceptional circumstances are set out in Section 177K and remain applicable.

"Whether the regularisation of the development would circumvent the purposes and objectives of the EIA Directive or the Habitats Directive"

The subject development, as outlined in the application and description for the proposed development is one that was assessed in respect of Appropriate Assessment and Environmental Impact, since at minimum 2010. Therefore, it is clear that the applicant did not carry out the development with the intention to circumvent the EIA Directive or the Habitats Directive.

The applicant only took over the site in 2010, at which time he endeavoured to regularise existing development and use of the site, including the carrying out of EIA and AA Screening. There was and is no attempt to circumvent the Directives noted above.

The Planning Authority had prior to the lapse of the permission in 2019 and thereafter in their assessment of the application for retention in 2020, assessed the development and considered it not to require an NIS or an EIA, and the applicant accepted the bona fides of the decision of the Planning Authority, as the Planning Authority were the competent Authority in the first instance and up until the appeal in 2021 (under ABP-310169-21). While the applicant accepts the decision of the Board in 2022, to refuse the development, including for reasons relating to the inadequacy of information to determine if an EIAR or NIS was required, the development was already existing at this time, and had been in operation at this scale or similar for over 25 years.

At this time, and through the lodgement of this application, the applicant has ensured that regularisation of the long-established non-conforming unauthorised development including the carrying out of AA (with the preparation of an NIS) and EIA would not circumvent the objectives of the Habitats Directive or EIA Directive, and in fact allows the implementation of these Directives, including the introduction of mitigation and environmental measures.

"Whether the applicant had or could reasonably have had a belief that the development was not unauthorised"

Since 1998, development, ie the waste recycling & transfer use on site had the benefit of planning permission, and as operations have extended on site, subsequent permissions have been sought and granted. The applicant only took over the site in 2010, and at that time he had understood that the development was 'authorised' and that where there were any irregularities, the applicant sought to regularise these from 2010 onwards. The applicant had understood that the 'use and development' of the site prior to the lapse of the permission in August 2019 were authorised and had been so for 22 years. The site has been operating for 20 years under various temporary permissions, and no enforcement proceedings had been issued. Subsequent applications and assessments by the planning authority had referred to the planning history and noted the site as comprising 'non-conforming use', but the details were not outlined.

In that since 2003, ie over 20 years temporary permissions have been granted on an on-going basis on the site, and for a development of a similar scale to the current use, the applicant could not have reasonably envisaged the activities becoming unauthorised, following the Board refusal and lapse of the F13A/0409 permission (in August 2019) given the length of time that operations have been facilitated in this temporary manner, and in particular in light of the extant waste licence.

It is now acknowledged following a detailed review of development on site, and noting very recent case law (re Planree) that the development is unauthorised, but that it is non-conforming, and has been such since prior to 1998. These activities were carried out, and the non-conforming use established prior to the applicant taking over the site operations.

"Whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired."

The process of EIA and AA involves the research and provision of information to the public and consenting

authorities in relation to likely significant effects on the environment and European sites having regard to the sites' conservation objectives.

In the present case the ability to provide such information has not been substantially impaired and the provision of information would facilitate public participation in the assessment/consent process.

The Planning Authority (as per their decision under FW20A/0029) were satisfied that adequate information had been provided, and could be provided, and third parties engaged with this information. Notwithstanding the refusal by the Board and lapse of permission, matters on site have not altered such as would preclude the applicant's ability to carry out the appropriate assessments, and given the previous assessments carried out, there is sufficient baseline information to facilitate engagement with historic facts and baseline data.

Operations on site are licenced, and activities, including emissions, are monitored on an on-going basis in the intervening period.

We are satisfied that the ability to prepare an rEIAR and rNIS to assess the potential impact on the environment or likely effects on any European site has not been substantially impaired nor has the capacity for public participation in the process through the making of submissions to the Board in relation to any future application for substitute consent been substantially impaired.

"The actual or likely significant effects on the environment or adverse effects on the integrity of a European Site resulting from the carrying out or continuation of the development"

While we note the decision of the Board to refuse permission under ABP 310169-21 (Re. F20A/0029), due to the inadequacy of information re. the carrying out of an EIA and AA, we highlight the fact that the Board did not conclude that there was an impact, but rather that it did not have sufficient information to determine this.

We are satisfied that sufficient information was and can be submitted to demonstrate that there was and will be no actual or likely significant effects on the environment or adverse effects on the integrity of a European Site resulting from the carrying out or continuation of the development. The site is the subject of a Waste Licence and under this licence the monitoring of potential environmental impacts is on-going, and were such impacts to have arisen, the Planning Authority would have identified these impacts, and required the applicant to act, or to close or modify operations at the site. This did not occur.

“The extent to which significant effects on the environment or adverse effects on the European site can be remedied”

The site has operated as a waste recycling centre for approximately 3 decades, and has been subject to waste licencing and monitoring throughout this time. We are satisfied that no adverse impact has taken place during this time, and that none will occur if the development were permitted to continue, in particular where the mitigation measures recommended in the (r)EIAR and NIS are implemented.

We would further argue that the site benefits from a local objective facilitating its continued use, Local Objective 57, and that this was subject to AA and SEA during the making of the Plan.

Local Objective 57, relating to the subject site states - Generally, permit reasonable intensification of, extensions to and improvement of premises accommodating the non-conforming use, Recycling Centre, subject to normal planning criteria.

Finally, noting the national and regional planning context relating to waste management, operations on site are of benefit to the environment.

“Whether the applicant has complied with previous planning permissions or previously carried out an unauthorised development”

While previous applications relate to ‘retention’, operations were commenced by third parties (eg. Greenstar, et al) and not the applicant. When the applicant took over operations in 2010, he endeavoured to comply with planning requirements. In that the development had been long established, and given the number of planning permissions on site, it had been understood that ‘unauthorised development’ only arose where the temporary permissions lapsed. Therefore, retention appeared to be required largely as a result of the series of temporary permissions relating to development on site, with applicants continually obligated to seek ‘retention’ of the temporarily permitted development. Where permissions were at times only granted for 3 years, and noting the time it takes to prepare an application, and obtain a planning decision, the development at times since 2010 became unauthorised.

The applicant has made every effort to manage the site in accordance with the parameters of the current waste licence, and to manage waste arriving to site, diverting it to Dundalk and UK (via Belfast), etc. without entry to the site, and tonnage arriving to site is at c.21,9000 tonnes per annum.

The applicant as part of the environmental management measures proposed in the rEAIAR, submitted as part of the substitute consent is proposing to comply with conditions 3 and 6 of the lapsed temporary permission in so far as is practical. As compliance with this condition requires importation of topsoil of such quantities it is understood that permission is required for this, and hence compliance with this has

not been possible. Additionally, to reduce the carbon footprint it would be more appropriate to use soil from the general site when constructing the proposed attenuation areas, rather than import soil from another location off site.

“Such other matters as the Board consider relevant”

We are not aware of further matters that need to be considered by the Board in this case.

A notable proportion of the physical works were understood to be originally permitted under the parent permission in 1997, and thereafter extended under temporary permissions from 2003 to 2014 (under F13A/0409, F11A/0443, F10A/0177, F03A/1561, F03A/1682 and F97A/0109). It would appear that unauthorised development commenced and continued on site for some 13 to 15 years, prior to the applicant taking over the site in 2010. It was during this time that the non-conforming use was established on site.

Under F10A/0177, regularisation of the enlarged site size, was sought, however operations on the site had been taking place on this larger site prior to 2003. Under F10/0177, permission was granted for an annual tonnage of 25,000 tonnes per annum. Under F13A/0409 permission was granted for 21,900 tonnes per annum on a site of c.1.6ha. This permission lapsed in August 2019. These tonnages were significantly less than when the site was operated by Greenstar and as per the EPA Waste licence granted in 2001, which allowed 60,000 tonnes of waste per annum.

During the above noted period, following the lapse of planning permission under F13A/0409, i.e. from 2019 to date, various environmental management measures were introduced, and these included –

- Change in operating regime from 1997 permission, to introduce a permanent restriction on acceptance of raw material to licensed waste collectors and trade/construction companies, with associated ban on acceptance of material from members of the public, ban on sale of material to members of the public.
- Enhancement of access arrangements and maintenance of sightlines at gateway onto the R122 St Margarets Road in compliance with the appropriate design standards.
- Enhancement of boundary treatments, replacing stacked steel containers with steel post and concrete panel walls.

- Installation of impermeable concrete surface, enhancement of surface water drainage systems with oil traps and increased surface water attenuation, fire prevention, water supply and fire water retention measures, dust suppression, etc.
- Upgrade of septic tank to proprietary wastewater treatment system

We are satisfied that the applicant has taken every measure to ensure that no adverse impact arises and this we believe is demonstrated in the rEIAR and rNIS, as well as the EIAR and NIS.

9.0 Conclusion

We have examined whether or not exceptional circumstances exist such that it would be appropriate to allow the opportunity for regularisation of the development through the making of an application for substitute consent.

In this regard we believe we have and can further demonstrate that the regularisation of the development:

- would not circumvent the purposes and objectives of the Environmental Assessment Directive (as amended) and the Habitats Directive because it would allow for the provision of information and an analysis of the significant impacts on the environment and likely significant effects of the development on European sites in the vicinity of the development site.
- has the ability to carry out an appropriate assessment and environmental impact assessment and that public participation in such assessments have not been substantially impaired.
- allows for the submission of an rEIAR which would facilitate an assessment of the potential impacts on the environment.
- allows for the submission of an rNIS which would facilitate an assessment of the potential for the remediation of any significant effects on European sites.

It is also noted that:

- the planning authority has not pursued enforcement proceedings against the applicant in this case; and
- the applicant has always endeavoured to and is making reasonable efforts to regularise the planning status of the development.
- the operation of temporary permissions over a period spanning in excess of twenty years has resulted in a permitted development becoming effectively unauthorised overnight with the lapse of permissions.
- The need for the proposed development, in order to facilitate the objectives of the Fingal Plan regarding waste management, which is an enabler of all socio-economic development and growth within the county; and where allowing it to occur closest to source minimises the carbon foot print of such activities.

Having regard to the above, it is considered that exceptional circumstances do exist such that it would be appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent in relation to the site outlined in this application.

OVERALL IMPACT ON THE ENVIRONMENT

The retention and on-going use of the site as a Waste Recycling Centre is considered to result in a positive long term moderate impact, as it plays a vital role in the sustainable circular economy and fully accords with the Regional Waste Management Strategy.

The remedial Environmental Impact Assessment Report and Environmental Impact Assessment Report have assessed the characteristics of the proposal for significant environmental impacts. Each topic was examined and the resultant environmental impact, if any, noted and mitigation or reductive measures have been put in place. Accordingly, the proposed development will result in no significant negative impacts on the environment. It has also identified potential for interactions between a range of factors identified in Table 17.1. These interactions require the implementation of suitable mitigation measures to ameliorate the impact of the development on the environment. The EIAR has found that subject to the full implementation of the various mitigation measures specified by the EIAR team, the development will have no significant negative impact on the environment.

The existing development, in terms of physical works comprises various environmental improvement measures that have been implemented on a phased basis over the last 25 years, ultimately resulting in a positive, long-term, slight to moderate impact, where these works include improvements to access arrangements, site surfaces, oil interceptors, new waste water treatment system, installation of solar panels, SUDs and fire water access and retention, etc. . Other works including mitigation measures regarding dust suppression, improved boundary treatment, etc. which have resulted in slight, positive and long-term benefits. The buildings on the site are only visible at the site access, and appear not unlike agricultural structures and therefore do not materially alter the landscape character. The site has since prior to 1995 comprised the industrial buildings, being former agricultural buildings. Their impact is considered to be imperceptible, neutral and long term.

The proposed development, in terms of physical works comprises 3 environmental improvement measures – namely the installation of additional SUDs measures to reflect possible 1:30 and 1:100 year flood events, ultimately a positive, short-term, slight-moderate impact, installation of EV charging, which will tie in to the solar powered electricity available on site, resulting in a positive, long-term, slight impact (reducing carbon footprint through use of renewable energy sources), and lastly the replacement of steel container boundary treatments with steel post and concrete panel walls, improving the visual amenity, albeit only within the site, and as such is an imperceptible, long-term, positive impact.

The on-going use of the existing facility as a waste recycling and transfer centre is a more sustainable option than development of a greenfield site, or transporting the county's waste to Northern Ireland. IN respect of metal waste, c.70 to 80% would be required to be transported to northern Ireland if the Centre were not to accept it, as there is no other centre that can cater and process the metal waste as per St Margarets. The proposed development, comprising the on-going use of the centre, is considered to be a long-term, positive, moderate impact.